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SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE  
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. Crim 24552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,  
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 95

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT  
December 12, 1984

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Official Reporters

COMPUTERIZED TRANSCRIPT

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1 SAN DIEGO, CALIFORNIA, WEDNESDAY, DECEMBER 12, 1984 9:30 A.M..

2 --oo0oo--

3  
4 (Chambers conference reported.)

5 THE COURT: Good morning.

6 MR. NEGUS: Good morning.

7 THE COURT: All right. The defendant and all counsel are  
8 in chambers.

9 MR. KOCHIS: Your Honor, the witness that was supposed to  
10 come down from Oakland yesterday did, and he's here in the  
11 courtroom. He's Mr. Morton, he's a criminalist, he did some  
12 hair work in this case. He wrote a written report, which he  
13 furnished me, which I furnished Mr. Negus a copy of.

14 He also looked at some evidence and furnished me  
15 with results over the telephone which I in turn furnished to Mr.  
16 Negus.

17 When I picked him up last night, we talked briefly  
18 about the case this morning. I asked if he had any notes upon  
19 which he based his opinion in the written report and he did, and  
20 he's Xeroxed two copies of those this morning and gave me a copy  
21 and gave -- I gave Mr. Negus a copy.

22 Mr. Negus is going to address the Court on the  
23 problem that creates for him.

24 MR. NEGUS: The problem that creates for me is that the  
25 written report I had was three typewritten pages and basically  
26 conclusions, and this is all the detail of all the different  
27 things that he did, which has a lot of stuff, I can just tell by  
28 looking at, which isn't in the report. That is 30 some odd

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1 pages, it looks like, from just looking at it.

2 I can't -- I am not -- you know, on all these sort  
3 of things I am relying, relying on tutelage from all the  
4 others, Mr. Thorton, and I don't think I can cross-examine him  
5 until Mr. Thorton has that chance.

6 THE COURT: Where is Thorton?

7 MR. NEGUS: He's in Napa. I get this stuff to him  
8 Federal Express lickety-split, when I get time, and I can get  
9 it, and I can have it to John by 5:00 o'clock tomorrow.

10 THE COURT: Where this did witness come from?

11 MR. KOCHIS: Oakland.

12 THE COURT: Do you have other backup witnesses?

13 MR. KOCHIS: The other hair expert is here, Mr. Negus has  
14 his notes, he would be first. Mr. Morton was going to be next.

15 I can put the Handys on after that, and then after  
16 that there may be some evidence about a video tape, I'm not  
17 sure. Mr. Ogino is also here. Mr. Ogino is going to testify  
18 about some tobacco and Mr. Negus represented to me he's not  
19 prepared to cross-examine Mr. Ogino.

20 MR. NEGUS: Based upon, again, you know, all the  
21 discovery on the tobacco has come in the last two weeks. More  
22 has just come in this morning, and --

23 THE COURT: Why can't tonight you get Thornton down here?

24 MR. NEGUS: Well, I think that John has other  
25 responsibilities and he's not prepared to sit in court with me.  
26 You know -- that's --

27 THE COURT: Well, as far as Ogino is concerned, you  
28 can -- we will just hear direct examination today, and perhaps

1 have to pull your Oakland hair expert back for  
2 cross-examination. I'm simply not going to come to an absolute  
3 halt.

4 MR. NEGUS: Well, let's -- first off, we have the Handys  
5 and Mr. Lightfoot, which is over a half day, I think.

6 I suppose we could get Mr. Clifford, and Mr.  
7 O'Campo this afternoon if we had to.

8 MR. KOCHIS: I don't think that is possible. That's not  
9 possible.

10 MR. NEGUS: Okay, the upshot of it is, that in the last  
11 week all the sudden there was a whole bunch of that that had  
12 been to done.

13 Last night Mr. Arthur and Mr. Kochis, Mr. Kottmeier  
14 and Mr. Arthur and I drove up to the Ryen house, which was  
15 necessary in order to evaluate what we were going to do about  
16 the tapes, so I didn't have any chance to work or consult with  
17 anybody last night, and --

18 THE COURT: But they're not going to change. Mr.  
19 Thornton is not going to charge the direct-examination. We can  
20 send his expert back home and bring him back at the more  
21 suitable times perhaps.

22 MR. NEGUS: The problem with that is then that doesn't  
23 seem fair. They're going to have to come back anyway.

24 It doesn't seem to fair to split up the direct and  
25 the cross. I mean, get all the direct without the impact of the  
26 cross, that is sort of --

27 THE COURT: We've got 20 people or more, more than that,  
28 waiting around. I am not going to waste two hours of court

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1 time.

2 MR. NEGUS: The problem is that those witnesses whom we  
3 named is it, as far as the prosecution's case is concerned.  
4 They're going to rest, depending when we get all this matter  
5 straightened out.

6 But, you know, the more we rush, the less time I  
7 have to get the matters straightened out.

8 Mr. Kottmeier has come up with a --

9 THE COURT: Let's see, who have we have got then? We  
10 have got --

11 MR. KOCHIS: Do Lightfoot start to finish, we will do  
12 Owen Handy start to finish.

13 If we have an interpreter, which I requested,  
14 Angelica Handy, start to finish. Lightfoot, Mr. Handy, Mrs.  
15 Handy.

16 THE COURT: Mrs who?

17 MR. KOCHIS: Mrs. Handy. Those three people.

18 THE COURT: You are going to use an interpreter for Mrs.  
19 Handy?

20 MR. KOCHIS: Yes, your Honor.

21 MR. NEGUS: That's today.

22 THE COURT: Any interpreter problem as far as your client  
23 is concerned? one interpreter shouldn't --

24 MR. NEGUS: Mr. Cooper doesn't speak Spanish, that's --

25 MR. KOCHIS: That is why the judge asked.

26 MR. NEGUS: No. The --

27 THE COURT: There is new cases on interpreters.

28 MR. NEGUS: Double interpreter. The problem is when I



1 have a Spanish-speaking client, we don't have two.

2 THE COURT: So we don't have a problem in that regard.

3 One interpreter is fine.

4 You have arranged for that, Mr. Kochis?

5 MR. KOCHIS: The clerk did. I asked the clerk and they  
6 did.

7 THE COURT: So we have got the Lightfoot, the Handys.

8 MR. NEGUS: Tomorrow.

9 THE COURT: Who else?

10 MR. NEGUS: That's it. That would be my suggestion for  
11 today.

12 THE COURT: What's your -- what's your witness from  
13 Oakland's name?

14 MR. KOCHIS: Charles Morton.

15 MR. NEGUS: My request would be that then tomorrow we  
16 have O'Campo, Clifford and the Josh tape. The two Josh tapes  
17 are two hours, almost two hours long. By the time we get -- we  
18 try and get all that --

19 THE COURT: Is that what you decided to --

20 MR. NEGUS: This -- no, this is my request as far as a  
21 stipulation is concerned.

22 THE COURT: Yes.

23 MR. NEGUS: Yes. Once I can review my transcripts of the  
24 stipulation and excise certain portions of the Lorna Forbes  
25 tape, which we have litigated before, then that is what we will  
26 do as far as Josh is concerned. Mr. Kottmeier is going to  
27 reserve the right, if it is appropriate, if Josh's testimony  
28 would be appropriate in rebuttal, to call him in rebuttal

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1 outside the stipulation. I presume I have the same right, if  
2 that were either in some form other than in either live form or  
3 in video tape form, depending upon --

4 THE COURT: How long --

5 MR. NEGUS: What happens --

6 MR. KOTTMEIER: In other words, we are not closing the  
7 door to Josh testifying either on tape or in person during  
8 rebuttal at some point in time just because we don't call him at  
9 this point.

10 THE COURT: Have we got all the witnesses in addition to  
11 Morton and the Handys, Lightfoot, O'Campo, Clifford?

12 MR. NEGUS: Then I would suggest, if possible, Morton and  
13 Ogino --

14 THE COURT: Let me finish that. Just a moment, if you  
15 can.

16 MR. KOCHIS: Craig Ogino, and if I can't work out a  
17 stipulation on chain, which I think Mr. Negus can work out,  
18 would be Bill Arthur on the stuff he collected, because he's in  
19 the courtroom, and I think Mr. Negus and I can work out a  
20 stipulation.

21 MR. NEGUS: Right. We will.

22 MR. KOCHIS: So you should have our list, you should have  
23 Glenn Lightfoot, Owen Handy, Angelica Handy, John Clifford,  
24 Hector O'Campo, Charles Morton, Craig Ogino, Josh Ryen's video.

25 MR. KOTTMEIER: There is no real reason, your Honor, why  
26 we couldn't do at least the video portion of Josh this  
27 afternoon. It could -- would take us a half hour to put the TV  
28 in the courtroom. But that doesn't require any editing.

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1 MR. NEGUS: Right.

2 THE COURT: If we delayed Morton until say Monday.

3 MR. NEGUS: Ogino to Monday, then they could rest on  
4 Monday.

5 THE COURT: Ogino is not ready.

6 MR. NEGUS: I'm not ready, no.

7 MR. KOCHIS: No, that's a misrepresentation, Judge. He's  
8 here, Mr. Negus is not ready to examine him.

9 MR. NEGUS: Right.

10 THE COURT: Was there some new discovery on Ogino?

11 MR. NEGUS: Right. And plus I had the old discovery, I  
12 just got to John, either last night, and I didn't have a chance  
13 to call John last night because I was with Kottmeier and Mr.  
14 Arthur in Chino. So, I haven't talked to -- I haven't talked to  
15 John about tobacco at all.

16 Now, we have additional tobacco. I can get all  
17 this Federal Express to him by tomorrow, and I can have a chance  
18 to talk with him over the weekend, and, too, I need time for  
19 cross-examination purposes. We can put him on Monday, and that  
20 would finish the prosecution's case.

21 THE COURT: How long do you expect Morton and Ogino to  
22 take on direct and cross. Do you have any idea?

23 MR. KOCHIS: I can't estimate. They could --

24 MR. NEGUS: Half to three-quarters of a day probably.

25 MR. KOCHIS: Half to a day-and-a-half. Mr. Ogino has the  
26 photographs of various samples of tobacco and we will have to go  
27 through that foundationally to explain to the jury.

28 THE COURT: If you put on Morton say at 1:30 on Monday

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1 and finish, at 9:30 --

2 MR. KOCHIS: No, I would put Mr. Morton first. He's long  
3 distance. He's the most expensive.

4 THE COURT: That makes it hard for him to get here  
5 earlier and be ready by 9:30.

6 MR. KOCHIS: I have to fly him in Sunday night.

7 Can I check and make sure he's available to fly  
8 down Sunday night to testify Monday? Because he testifies  
9 throughout the country. I don't know what other commitments  
10 he's made in other courts.

11 THE COURT: If we just get Lightfoot and the Handys on  
12 today --

13 MR. NEGUS: And one tape.

14 THE COURT: -- and one tape. And then tomorrow --

15 MR. KOTTMEIER: We could start with the second tape.

16 MR. NEGUS: Then the police officer. And we may have to  
17 break early tomorrow. But then we're not wasting a lot of time.

18 But, you know, the thing is, I can only go so fast.

19 THE COURT: Okay. It doesn't seem too bad when you  
20 analyze it.

21 MR. KOCHIS: May I check with Mr. Morton?

22 Oh, I'm sorry, we have Mr. Aubrey Evelyn whose  
23 coming in, and I will put him on this afternoon. He's from  
24 Richmond, Virginia.

25 THE COURT: Are you assuming I'm going to deny your right  
26 to put on the so-called snitch?

27 MR. KOCHIS: No. We have to find time to litigate I  
28 didn't have enough time to discuss that this morning.

1 MR. KOTTMEIER: The end of a big trial like this is  
2 always hectic.

3 THE COURT: Oh, I fully recognize my frailties and, in  
4 being somewhat unyielding and pushing all the time.

5 MR. NEGUS: I don't know if Mr. Kochis wants to be here  
6 for this, but, I would like to make a request which you are  
7 going to deny, but I still would like to make it, with respect  
8 to the defense case.

9 MR. KOTTMEIER: What case?

10 MR. NEGUS: The defense case. The other side of the  
11 story.

12 THE COURT: All right.

13 MR. KOTTMEIER: I can represent --

14 THE COURT: I anticipated it, you know, it was coming.

15 MR. NEGUS: Well, that is true I tell you why then you  
16 can deny it and we will start off on Tuesday.

17 MR. KOTTMEIER: Go ahead and tell us why.

18 MR. NEGUS: My intention would be to put Mr. Cooper on as  
19 my first witness, if I'm allowed to present the case in the  
20 manner in which I would normally choose.

21 THE COURT: Excuse me. Read that back. Start over. "My  
22 intention --"

23 MR. NEGUS: I will tell -- Mr. Kochis will figure this  
24 out anyway.

25 My intention is going to be to put Mr. Cooper on as  
26 my first witness for the defense. However, I do not -- would  
27 not put him on before Christmas because I don't think it is fair  
28 that the prosecution should have twelve days. I would

1 anticipate their cross-examination of him being lengthy. I  
2 don't think it is right that they should have twelve days to  
3 work with him in the middle of their cross-examination.

4 THE COURT: Would you like to work a couple days between  
5 the holidays?

6 MR. NEGUS: No. So, my intention would be to put Mr.  
7 Cooper on as my first witness on January 2nd. If, however, I'm  
8 forced to, I would, I am sure, be able to find something to fill  
9 it up. But it would distort the way I intend to, intend to  
10 present the defense case, and I was -- so I would be requesting  
11 that we go over until the 2nd.

12 THE COURT: It is beginning to look like now that we're  
13 going to rest, probably at the latest, Tuesday.

14 So, you are asking for two more days off, in  
15 effect.

16 MR. NEGUS: Not more days -- yeah, I guess so.

17 THE COURT: Well, I don't think we ought to make a  
18 decision on that until we see how much time we're looking at.

19 MR. NEGUS: Probably going to go three days.

20 THE COURT: This could be protracted.

21 Beyond that, what did you find out, Mr. Kochis?

22 MR. KOCHIS: He's available. We will bring him down  
23 Sunday night or Monday.

24 THE COURT: All right. Then that's our schedule. So,  
25 you can tell him to go back home and come back down.

26 MR. KOCHIS: Well, he has to stay here because he has no  
27 way to get to the airport at the moment. He will be here for  
28 part of today.

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1 THE COURT: Oh, okay. All right. Anything further?

2 MR. KOCHIS: The only thing I would need then is if we  
3 can take a recess between Mr. Lightfoot and the Handys so I can  
4 mark some additional exhibits for the Handys. I can do that  
5 over the recess. I am sure the direct and cross of Mr.  
6 Lightfoot probably will put us at the break, if not beyond it,  
7 or somewhere around that.

8 MR. NEGUS: Cross isn't going going to be very lengthy.

9 MR. KOTTMEIER: I cannot have the video set up in court  
10 in less than a half hour. It takes a half hour to do the  
11 television in, get the television in, get the cable down.

12 MR. NEGUS: At this time we're going to go with the  
13 Handys until I would say at least 3:00.

14 THE COURT: Suppose you set up during the noon period.  
15 We can step over tapes and things, in that period of time,  
16 during the balance of the afternoon.

17 MR. KOTTMEIER: The difficulty is that you have two  
18 televisions that are put in front of the jury, which will very  
19 much obstruct their vision in the courtroom, on high rolling  
20 carts, that in effect maximizes their opportunity to see. It is  
21 not a simple operation to even put them in the courtroom.

22 THE COURT: Well, now all three of you are beating on me.  
23 Let's just go ahead and do our work and see how far  
24 along we get.

25 MR. NEGUS: The other -- only other thing is before we  
26 put Josh's tape on we have to do a waiver from Mr. Cooper with  
27 respect to that tape, as to his right of confrontation and work  
28 out the precise details of the wording of the stipulation, which

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1 would be, I would assume, that we would stipulate that Josh  
2 would be deemed to have been testifying under oath as depicted  
3 on the tape, that Mary, Dr. Mary Howell administered an oath,  
4 although she's not an official person of the court, that that  
5 oath be deemed to be the same oath as everybody else would get  
6 or something.

7 THE COURT: Waive any defect in the administering of the  
8 oath?

9 MR. NEGUS: Waive any defect in the administration of the  
10 oath. Then Mr. Cooper has to waive his right to personally  
11 confront Josh.

12 THE COURT: All right. Then firm it up. Let's do it  
13 later on today.

14 Bring in the jurors.

15 (Chambers conference concluded.)

16  
17 THE COURT: good morning.

18 The delay that we had this morning was made up of a  
19 rather extended discussion between the Court and counsel,  
20 logistically speaking, thinking about the remaining witnesses  
21 that we have and the distance that they are from the court and  
22 problems of discovery and one thing and another.

23 We're trying to run as efficiently as possible but  
24 there may be some delays, some of the adjustments and all. Bear  
25 with us. I assure you we're moving as fast we can reasonably.  
26 But this is a long case, you can expect some of these  
27 imperfections.

28 If there is any curiosity in your minds about the



1 reason why there's a judicial fat lip this morning, I attribute  
2 it to something less than a classic forehand on the tennis court  
3 last night.

4 Okay, everybody is present once again.

5 Mr. Kochis, whose next.

6 MR. KOCHIS: Mr. Glenn Lightfoot, your Honor.

7 THE COURT: Mr. Lightfoot.

8  
9 GLENN RICHARD LIGHTFOOT,

10 called as a witness on behalf of the People, having been duly  
11 sworn, testified as follows:

12 THE CLERK: Would you be seated.

13 Would you state your full name for the record and  
14 spell your last name.

15 THE WITNESS: Glenn Richard Lightfoot.

16 L-i-g-h-t-f-o-o-t.

17 THE CLERK: Thank you.

18 MR. KOCHIS: May I proceed?

19 THE COURT: Certainly.

20

21 DIRECT EXAMINATION

22 BY MR. KOCHIS:

23 Q. Mr. Lightfoot, by whom are you presently employed?

24 A. By the Sheriff's Department, crime laboratory of  
25 County of San Bernardino.

26 Q. And in what capacity?

27 A. As a supervising criminalist.

28 Q. How long have you been employed as a criminalist.

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1           A.     It is going on twelve years, now.

2           Q.     Do you specialize in any particular area of

3     examination within the crime lab?

4           A.     Yes, I do.

5           Q.     Which area or areas?

6           A.     I specialize in the firearms examination, tool mark

7     examination, and hair examination.

8           Q.     Do you have any educational background in the area

9     of hair examination?

10          A.     Yes, I do.

11          Q.     What does that consist of?

12          A.     I have a bachelors of science degree in

13     criminalistics from California State Long Beach, and I've also

14     attended a class devoted specifically to hair microscopy by the

15     Federal Bureau of Investigation.

16          Q.     In the past have you, in the laboratory setting,

17     conducted hair analysis and examinations?

18          A.     Yes, I have.

19          Q.     Can you estimate on how many occasions?

20          A.     Perhaps a hundred, maybe even more.

21          Q.     Have you likewise testified in a court of law as an

22     expert in the area of hair comparison?

23          A.     Yes, I have.

24          Q.     Could you estimate for the jury approximately how

25     many times?

26          A.     I would say several dozen times.

27          Q.     Now, is it possible to conduct certain types of

28     examinations on human hair?

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- 1           A.     Yes, it is.
- 2           Q.     Is it possible to distinguish hair from a fiber  
3     such as a carpet fiber?
- 4           A.     Yes, sir.
- 5           Q.     Is it possible to distinguish human hair from  
6     animal hair?
- 7           A.     Yes.
- 8           Q.     Is it possible to determine the approximate  
9     location on the body, for example, head hair versus facial hair,  
10    versus body hair, versus pubic hair?
- 11          A.     Yes, it is.
- 12          Q.     Are there differences, different characteristics  
13    that manifest themselves in the hair of the different races?
- 14          A.     Yes.
- 15          Q.     And, likewise, can you distinguish a particular  
16    hair from coming from a particular person and exclude that  
17    person as the donor of hair?
- 18          A.     Yes. You can exclude individuals as being the  
19    source of hair.
- 20          Q.     Now, can you individualize hair?
- 21          A.     Yes, you can.
- 22          Q.     Can you individualize hair to the extent that you  
23    can individualize a fingerprint?
- 24          A.     No, you cannot.
- 25          Q.     Is it possible therefore with a hair to say  
26    definitely that it came from a particular person?
- 27          A.     No, it is not.
- 28          Q.     In the art of -- in the science of comparing hair,

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1 do you essentially compare a standard, a known with an unknown?

2 A. Yes.

3 Q. And what type of examinations do you conduct on  
4 hair when you do a hair examination?

5 A. Primarily it is microscopic examination.

6 Q. Now, does human hair consist of various parts?

7 A. Yes, it does.

8 Q. Directing your attention to an exhibit which has  
9 been marked for identification as Exhibit 625.

10 Do you recognize this particular exhibit?

11 A. Yes, I do.

12 Q. Is it an exhibit that you in fact prepared to  
13 assist the jury in understanding your testimony today?

14 A. Yes.

15 Q. Could you join me perhaps at the diagram -- you  
16 found the pointer -- and can you explain to the jury what the  
17 diagram consists of.

18 A. Very well. First off, this is a cross-sectional  
19 view of a particular hair, and also a longitudinal view of a  
20 particular hair.

21 What I've illustrated on this is some of the  
22 various characteristics the hair might have yet not necessarily  
23 have to have.

24 I've illustrated some of the more prominent ones.  
25 These are the kinds of ones that I will look at when I'm  
26 examining a hair, especially during the comparison phase when  
27 I'm trying to see whether or not a particular hair has  
28 similarities in some of these characteristics with another type

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1 of hair.

2 Basically one of the first things we will look at  
3 is get an overall feel of the hair itself, such things as  
4 diameter, how thick the hair is. Also, with diameter, there  
5 will be a particular shape. If the hair is very round, that is  
6 characteristic of people from Asian heritage. If the hair is  
7 more of an oval shape, that's primarily Caucasoid or Caucasian.  
8 If the hair is a flattened shape, that's very prominent with the  
9 Black race.

10 Also with the diameter, I'm interested in whether  
11 or not there is something called "diameter variation". Given  
12 any particular hair the hair will vary in its diameter, from the  
13 proximal end, or the root shaft end, out to the distal or  
14 terminal end.

15 The degree of diameter variations can be  
16 characteristics. What I'm looking for, for instance, if (A) a  
17 person's hair, person's hair shows very little diameter  
18 variations, or where person (B) hair shows a great deal of  
19 diameter variation, that could be a distinguishing  
20 characteristic.

21 Also, the diagram illustrates some of the internal  
22 characteristics there that make up the hair and give it its  
23 shape, color, body, et cetera.

24 The central portion of the hair, which is known as  
25 the medulla, or when we look through transmitted lights in the  
26 microscope appears to be dark. The medulla, this is a cavity or  
27 a vacant space within the hair itself, but because of a  
28 transmitted light will actually look through the microscope,

018441

1 look dark.

2 The thickness of the medulla, with respect to the  
3 overall diameter of the hair, is a good indicator to distinguish  
4 between animal and human hair. The medulla on animal hair is  
5 very prominent, usually taking up almost two-thirds of the  
6 diameter of the hair; whereas, on humans, this tends to be  
7 one-third or less.

8 I have also illustrated that the medulla can come  
9 in various shapes, various sizes. The medulla can be one long  
10 continuous dark ribbon through the hair. Its granular  
11 appearance can be very opaque. It also can be what's known as  
12 fragmented. That is, it occurs in fragments throughout the  
13 shaft.

14 It can also take on what's known as a transparent  
15 shape. This could again be fragmented, continuous or it could  
16 be solid.

17 Also, it is possible, as you go from the proximal  
18 end of the hair shaft, to the distal end, that you can see  
19 various combinations of medulla, some locations dark, coarse and  
20 continuous, other locations fragmented, transparent, or perhaps  
21 even absent.

22 The hair color that we associated is actually made  
23 up of small pigment granules, they are darkened areas that look  
24 somewhat like grains of sand.

25 What's also important with that one area is it can  
26 have a variety of different possibilities. For instance, are  
27 the pigment granules, what is their shape? Are they fine, are  
28 they medium or are they coarse? What's the concentration of

0184442

1     them? Are they heavily concentrated throughout the entire  
2     shaft, or are they light concentrations?

3             Also, the distribution of the pigment granules.  
4     Are they evenly distributed across the diameter of the hair, or  
5     do they favor the edges of the cuticles? Margins having higher  
6     concentration, they're going to have lesser concentrations to  
7     the medulla. Or the other could be possible. They could be  
8     heavily concentrated about the medullary structure and as you go  
9     towards the cuticle margins, do they taper off and become very  
10    less concentrated.

11            So, with that one area, this one characteristic  
12    pigment, I could have a possibility of perhaps half a dozen  
13    features that are associated with the hair, which must be looked  
14    at.

15            Also, I have to look at all of these features from  
16    one end of the hair to the other, because it can change again as  
17    you go from the proximal root tip area to the distal shaft.

18            The central body of the hair is actually made up of  
19    what's known as cortical cells, the body being the cortex. That  
20    is the area between this inner circle to this edge here. The  
21    outer circle is known as the cuticle or cuticle margin. That  
22    can vary from being extremely thin. Sometimes the inner margins  
23    are not even visible. This is particularly true in Caucasian  
24    hair, especially those individuals who have blond hair.

25            The cuticle margin can also be very thick, and when  
26    looked at under the microscope you can see the inner and outer  
27    margins of that. This tends to be very transparent, and this  
28    incidentally makes up the scales of the hair. All of our hair,

010443

1 the outer margins or outer areas of the hair is composed of  
2 scales much like fish scales.

3 Looking at this you can tell also whether or not a  
4 person has chemically or thermally or mechanically altered their  
5 hair. If, for instance, you back brush your hair to make it  
6 stand it up, it does so because the hair, normally when they are  
7 next to one another, they will lie flat. When you back brush  
8 against the scales, you pull the scales up, which enable the  
9 hairs to get a greater degree of separation between them, and  
10 gives a more full appearance.

11 Chemical treatment of hair can damage this layer,  
12 and depending upon the amount of growth between the area where  
13 the chemical is applied and the root can tell me about how long  
14 ago it was that you treated your hair.

15 At times, the cortical cells are prominent and they  
16 appear to look like elongated cells that are either densely or  
17 loosely packed together. This is not true in every case. Some  
18 individual cortical cells will be essentially invisible, but we  
19 do know they are always there. That's what comprises the  
20 central area called the cortex.

21 Cortical fusii, on the other hand, appear to be  
22 very similar to that of pigment granules. They are dark, very  
23 spherical arrangements. The difference between that and a  
24 pigment granule is on the surface, this is on the cuticle layer  
25 itself, whereas the pigment granules are imbedded between the  
26 cortex.

27 To differentiate the two, you will focus on the top  
28 portion of the hair. That will show you the cortical fusii, as

010444



1 you bring the image closer and you peer deeper into the hair  
2 shaft itself, because these are located on the surface, they go  
3 out of focus and they literally disappear as you are focusing  
4 your microscope up and down the hair.

5 What's important, I think, with hair  
6 microscopically, or hair comparison, is that any or all of these  
7 things need not be present. They will be in combinations. And  
8 the key to it is, as you compare one source with another, you  
9 will look for trends.

10 Sometimes, for instance, a key component, such as a  
11 medulla, will be absent in every hair that you look at from that  
12 source. When you compare it to another hair that is present, in  
13 every hair that you see, that tends to lead you towards the  
14 conclusion that the two hairs are not consistent with, from  
15 coming from a common origin.

16 One thing about hair examinations is, if there are  
17 enough of these dissimilarities that are there, then I can state  
18 that the hair does not belong to a particular person.

19 However, even if I had total agreement on every  
20 item I look at, the some sixteen characteristics, I cannot state  
21 that it definitely came from a person. The strongest statement  
22 I can make is that it is consistent with coming from that  
23 individual.

24 Q. Perhaps you could resume your seat for a movement.

25 The various characteristics that you've just  
26 explained to the jury in conjunction with the chart, are those  
27 examples of some of the characteristics you take into  
28 consideration when you do a hair comparison?

1 A. Yes, it is.

2 Q. And can you perhaps give us an example of how it's  
3 possible to distinguish a fiber that's not hair from hair?

4 A. A fiber could have the same overall shape and  
5 diameter, but because it's a solid chemical or polymer it will  
6 not have these internal features because these -- this is a  
7 result of a dynamic process of growth, whereas a fiber is  
8 nothing more than extruding a plastic-type substance through an  
9 orifice and making a long stream scalely like material. It will  
10 not have any of these internal characteristics.

11 Q. Could you give the jury an example of how it would  
12 be possible to distinguish animal hair from human hair?

13 A. Yes. Depending upon the animal, some of the  
14 animals we look at the shape of the scales, they take on a very  
15 unique shape. In fact, that's one of the ways you can  
16 differentiate between species of an animal is that their scales  
17 will have a different shape.

18 Also, I mentioned earlier that the medulla itself  
19 will be quite pronounced in an animal hair and take on different  
20 types of shapes than associated with human hair.

21 The human hair looks somewhat like a ribbonous-type  
22 material, whereas an animal medulla can have a series of boxes  
23 known as a serial patterns, and those boxes will go lay one  
24 layer upon the other throughout the entire two-thirds of the  
25 shaft. It's quite distinctive.

26 Q. You also mentioned that based on an examination,  
27 including an examination under a microscope, that you can  
28 determine through the examination of various characteristics the

018456

1 approximate area on the body that hair would come from.

2 How can the different areas of the body manifest  
3 differences in the hair that is produced in those readings?

4 A. Yes. There are four broad categories. Head hair,  
5 which especially in Caucasian and Mongoloid races, tends to be  
6 quite straight, long, not a great deal of diameter variation.  
7 It could have some.

8 Pubic hair on the other hand tends to be very flat  
9 and ribbon like. Because it is flat it tends to do what is  
10 known as buckling. As if you can imagine, if you can imagine  
11 this as being a pubic hair, you will notice that its tends to  
12 fold over itself, become ribbon like. That area where it twists  
13 is or buckles is what gives it that characteristic springy  
14 appearance and texture. That is unique to pubic hair, although  
15 there is other types of hair known as transitional hairs or  
16 axillary hairs, hairs found in the upper thigh groin area which  
17 tend to take on a more flattened appearance than, for instance,  
18 head hair, and they have characteristics of both head and pubic  
19 hair, hence called a transitional hair.

20 Facial hair on the other hand tends to go extremely  
21 course. When you examine it under a microscope the pigment  
22 granules are extremely large, densely packed. And when you do a  
23 cross-sectional examination, especially with beard or moustache  
24 hair, it tends to take on a triangular appearance, very coarse,  
25 very stiff. The hairs themselves have also very different  
26 growth rates which could also help you.

27 Q. Mr. Lightfoot, you used something when you  
28 demonstrated the what pubic hair was like to the jury, and for

018447

1 the record you were using what?

2 A. A piece of paper that I tore off of my notes here.

3 Q. Now, you mentioned that different races may have  
4 different characteristics in terms of hair. Would you give the  
5 jury an example of the differences in the characteristics that  
6 exist between the races?

7 A. Mongoloid hair is obviously very darkly pigmented.  
8 It tends to be extremely straight, showing very little diameter  
9 variation. It tends to have a very large diameter and a very  
10 thick cuticle margin. When looked at it will, as you go  
11 longitudinally from one end to the other, you will see very  
12 little deviation in its diameter, a cross-section very circular.

13 Caucasian hair is the hair that shows a great deal  
14 of diameter variation, has a wider variety of possible  
15 concentrations of pigment.

16 The blond-haired individuals will have usually very  
17 fine granules and the distribution is very light.

18 Brunettes or darker-haired individuals will have a  
19 greater number of pigment granules and they tend to be more  
20 heavily concentrated. A cross-section of that gives us somewhat  
21 of an oval appearance.

22 Black individuals have a somewhat unique feature  
23 associated with their hair. They are the only race that has  
24 this. And that is that their pigment granules tend to lump  
25 together into densely packed areas surrounded by areas that will  
26 be absent of pigment granules or very light concentration. When  
27 you look at it it appears to take on a clumpy arrangement such  
28 as there, hence the phrase "pigment clumping". That can be

018448

1 throughout the entire length of the hair and through a  
2 cross-section of the hair, but it is unique to black  
3 individuals.

4 Q. You mentioned the term, when we talked about race  
5 and hair, "Mongoloids". What type of people were you talking  
6 about?

7 A. People of Asian heritage. It can be  
8 American-Indian. It can be people from the Orient itself. And  
9 this day and age it's not all that common to see characteristics  
10 of one race intermingled with another race because of  
11 intermarriage.

12 Q. I believe you said it's not all that "common," had  
13 you meant to say it's not "uncommon"?

14 A. It's not uncommon. I'm sorry.

15 Q. Now the chart, 625, the figure that appears to the  
16 left as you face the chart, what you have referred to as the  
17 longitudinal view, is that a view of a hair looking at it from  
18 the side?

19 A. Yes.

20 Q. And the cross-sectional view which you diagrammed  
21 on the right, would that be the view if the hair was cut and you  
22 looked straight on into the cut end?

23 A. Yes.

24 Q. The items that you've depicted on 625, would these  
25 be the type of characteristics you would need a microscope to  
26 use to make the comparison?

27 A. Yes, you would.

28 Q. For example, if you looked at a human hair with

1 your naked eye, would you see all the different characteristics  
2 that you've listed under 625?

3 A. No, you would not.

4 Q. Now, you mentioned also the type of conclusions you  
5 can draw upon an examination of hair, if you have a standard  
6 hair, a hair that you know the identity of the person from which  
7 it came, and an unknown hair, a hair that you do not know the  
8 identity of the person from which it came, with an analysis,  
9 including a microscopic analysis, if there are differences which  
10 are significant, can you reach a conclusion that your unknown  
11 hair did not come from the person whose known hair you have?

12 A. Yes.

13 Q. On the other hand, however, if you examined the  
14 unknown hair compared to the known hair and you find agreement  
15 in all the characteristics, your conclusion would be that it  
16 either came from the person whose known hair you have or someone  
17 that has that person's characteristics, the same  
18 characteristics?

19 A. Yes. Although I would have stated that to have  
20 been it is consistent with having come from that individual.

21 Q. Oh, so it's not like a fingerprint?

22 A. Not at all.

23 Q. Now, in this particular case did you perform an  
24 examination on some known hair and some unknown hair?

25 A. I did yes.

26 Q. For example, did you have for examination the known  
27 head hair of the victims in this case, the Ryen family, and  
28 Chris Hughes?

018450

1 A. I did.

2 Q. And was that submitted to your laboratory under  
3 various identification numbers?

4 A. Yes.

5 Q. Did you also have the known pubic hair of Mr. Ryen  
6 and Mrs. Ryen?

7 A. Yes.

8 Q. Did you also have known head hair samples that were  
9 submitted to you which were taken from the defendant in this  
10 case, Kevin Cooper?

11 A. Yes, I did.

12 Q. And were those assigned certain laboratory  
13 identification numbers?

14 A. They were.

15 Q. And do you recall the laboratory identification  
16 numbers that were assigned to Kevin Cooper's known head hair and  
17 his pubic hair?

18 A. May I refer to my notes?

19 Q. Yes.

20 THE COURT: At all times.

21 THE WITNESS: The standard pubic hair from the suspect  
22 was designated as VV-7. The standard head hair from that  
23 individual was designated as VV-4.

24 BY MR. KOCHIS:

25 Q. And do you have the designations for the head, the  
26 known head and pubic hair of both Mr. and Mrs. Ryen?

27 A. The pubic hair standard from Mrs. Ryen was  
28 designated as B-2. The pubic hair standards from the victim

018451

1 Douglas Ryen were designated as D-8.

2 Q. Do you also have, I believe they are also in the  
3 greens sheets under the autopsy protocols, the laboratory  
4 identification numbers that were assigned to the standard head  
5 hair of Mr. and Mrs. Ryen? Do you have those?

6 A. Not under the autopsy collection, no, they were not  
7 apparently collected at the time of the autopsy.

8 Q. Did you have the "B" series?

9 A. I'm sorry, the "D"?

10 Q. For example, Peggy Ryen, do you have a list of  
11 items that were collected by Mr. Stockwell at the morgue on June  
12 the 6th?

13 A. Yes, I do.

14 Q. The "B" series of items from Peggy Ryen?

15 A. B-13 is designated as standard samples of head  
16 hair.

17 Q. And with Jessica Ryen was the laboratory  
18 identification number assigned to her standard head hair C-14?

19 A. That's correct, it was.

20 Q. And was the laboratory identification number  
21 assigned to Mr. Ryen's known head hair D-15?

22 A. That's correct. It is D-15.

23 Q. And with Chris Hughes, was his head hair sample  
24 E-12?

25 A. That's correct.

26 Q. Now, did you conduct an examination on an item of  
27 evidence which bore the laboratory identification number V-19?

28 A. I did, yes.

018452



1 Q. Was it necessary for you to mount some of the  
2 standard head and pubic hair, for example, of Mr. and Mrs. Ryen  
3 when you did your examinations?

4 A. Yes, it was.

5 Q. Was it necessary for you to mount some of the known  
6 pubic and head hair of the defendant when you conducted your  
7 examinations?

8 A. Yes.

9 Q. Could you tell the jury what mounting consists of?

10 A. That's preparing the sample for an examination  
11 under the microscope, taking the hair and placing it in a drop  
12 of mounting medium, which is a kind of a transparent oily  
13 substance; this being placed on a microscope slide, the hair  
14 being placed on top of that; and then on top of that media  
15 dropped a cover slip so that all of the air is moved away from  
16 the fluid and the hair is imbedded inside the fluid.

17 Q. When you do a comparison in a laboratory with a  
18 microscope using a known hair and an unknown hair, would you do  
19 a side-by-side comparison with two slides?

20 A. Yes.

21 Q. And was that one of the techniques that you  
22 employed in this particular case?

23 A. Yes.

24 Q. Could you tell the jury what V-19 consisted of?

25 A. V-19 was described as hairs recovered from the  
26 passenger floor of the Ryen vehicle, several hairs. One hair  
27 was removed for further examination. The remaining hairs were  
28 eliminated due to gross differences between those hairs and

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1 those from the suspect.

2 Q. So, visually you were able to eliminate some of the  
3 hairs as originating from Kevin Cooper?

4 A. Yes.

5 Q. The one hair that was removed, could you tell the  
6 jury what that looked like? Would you describe it?

7 A. It was approximately -- it was a hair fragment  
8 approximately one-half inch in length, the split end, that then  
9 was compared to the standard pubic and head hairs from the  
10 suspect.

11 Q. You've used the word "hair", were you able to  
12 determine through your analysis that this item that you removed  
13 from V-19 and mounted was hair as opposed to like a carpet  
14 fiber?

15 A. Oh, yes, it was hair.

16 Q. Were you able to determine whether it was human  
17 hair or animal hair?

18 A. It was human.

19 Q. Were you able to draw any conclusions as to the,  
20 based on the characteristics of the hair, the race of the person  
21 from which it came?

22 A. I felt it came from a Black person.

23 Q. Were you able to draw any conclusions as to the  
24 area of the body from which the hair came?

25 A. I felt that it was very consistent with being a  
26 pubic hair, although the hair size itself limited a great deal  
27 of what I could say about it. It was quite small.

28 Q. Now, did you compare that hair then with the

0-1-8-4-5-7

1 standard or the known pubic hair of Mr. and Mrs. Ryen?

2 A. I did, yes.

3 Q. When you compared it with the known pubic hair of  
4 the victims, what did you learn?

5 A. That the hair was grossly different to the hairs  
6 from the victims. The differences I noted were in color  
7 diameter, diameter variation, pigment size and distribution,  
8 presence or absence of corticle cells, cortical fusii, and the  
9 medulla itself.

10 Q. So, based on your examination your conclusion was  
11 that V-19 could not have come from either Mr. or Mrs. Ryen?

12 A. That's correct, yes.

13 Q. Now, could you perhaps briefly explain to the jury  
14 how we lose hair?

15 A. Well, it's a natural process. As a hair grows it  
16 can be removed physically, that is, through combing and brushing  
17 your hair. Hair does have a distinct life cycle. Once it goes  
18 beyond its growing stage it will naturally fall out. It can  
19 also be removed as a result of disease or as a result of  
20 applications of a chemical.

21 Q. So in other words, hair doesn't have to be pulled  
22 out at a particular location to end up at that location?

23 A. Not at all, no.

24 Q. Now did you compare the single hair that you  
25 mounted which was taken from V-19, from the car, the Ryen's car,  
26 did you compare that hair with the known head and pubic hair of  
27 Kevin Cooper?

28 A. I did, yes.

018455

1 Q. When you compared the color of the hair, V-19, to  
2 Mr. Cooper's pubic hair, what did you find?

3 A. I found they were both similar in color.

4 Q. When you compared the texture of that hair, V-19,  
5 with Mr. Cooper's known pubic hair, what did you discover?

6 A. I felt that they both had a similar configuration  
7 which would give them a coarse springy texture.

8 Q. When you examined the pigment granule and did that  
9 comparison between V-19 and Mr. Cooper's pubic hair, what did  
10 you learn?

11 A. I found that they were similar in the size of the  
12 pigment granules and the concentration of the pigment granules.

13 Q. When you compared the cuticle of the unknown, V-19,  
14 and Mr. Cooper's pubic hair, what did you find?

15 A. They were -- there was some differences noted in  
16 the cuticle margin, the thickness of the cuticle margin.

17 Q. Does the cuticle margin of a hair remain constant  
18 throughout the length of that particular hair?

19 A. No, not necessarily.

20 Q. Does it vary, for example, depending on which  
21 portion of the hair you actually get?

22 A. It can, yes.

23 Q. Did you examine and compare the two medullas, the  
24 medulla of the unknown and the known?

25 A. Yes.

26 Q. And what did you find?

27 A. They were alike.

28 Q. Now, did you -- based on this examination, this

0184556

1 comparison that you conducted between V-19 and Mr. Cooper's  
2 known pubic hair, what did that examination consist of?

3 A. A microscopic examination with the use of a  
4 comparison microscope.

5 Q. And is a comparison microscope the type of  
6 microscope that allows to you do side-by-side comparisons?

7 A. Yes, it is.

8 Q. And in this case would that have included a  
9 side-by-side comparison of a slide containing Mr. Cooper's known  
10 pubic hair and this hair that was taken out of the Ryen car?

11 A. Yes.

12 Q. Now based on your microscopic examination did you  
13 reach an opinion as to the body location of V-19, by that I mean  
14 head versus beard versus pubic hair?

15 A. I felt it was consistent with being a pubic hair.

16 Q. And the -- Was it consistent with Caucasian hair?

17 A. No.

18 Q. Was it consistent with the hair of an Asian person?

19 A. No.

20 Q. It was consistent, at least in terms of  
21 characteristics, with the hair of a Black person?

22 A. Yes.

23 Q. And in terms of the comparison of that hair with  
24 Mr. Cooper's hair, what was your opinion?

25 A. I felt that there was enough similarity between the  
26 two hairs, that is, from the hairs from Mr. Cooper and the  
27 unknown hair that I felt the unknown hair was consistent with  
28 coming from Mr. Cooper.

018457

1 Q. Thank you.

2 I have nothing further.

3 THE COURT: Mr. Negus.

4

5 CROSS-EXAMINATION

6 BY MR. NEGUS:

7 Q. Mr. Lightfoot, when you were processing the  
8 evidence in this particular case you essentially went through  
9 all the hair that had been collected from the Ryen house, the  
10 station wagon, all those different areas, and examined each one  
11 with your naked eye to begin with?

12 A. Yes, I did.

13 Q. Approximately how many hairs was it that you went  
14 through, if you could guesstimate?

15 A. I could give you a guess of perhaps a hundred or  
16 even greater than that.

17 Q. You say that the hairs fall out naturally, just  
18 part of life. How many hairs would an average person, human  
19 being, lose during the day?

20 A. I would have no way of knowing.

21 Q. The slide mounting process that you went through,  
22 how many different -- how many different hairs did you pull out  
23 for slide mounting?

24 A. I don't know the exact number, but I would say  
25 probably a dozen were mounted for further examination.

26 Q. Okay. From the number, the laboratory number V-19,  
27 how many did you mount?

28 A. One.

018458

1 Q. What about laboratory number V-3?

2 A. Okay. I removed two of them for mounting and  
3 further examination.

4 Q. Did you mount both those in the same slide, I mean,  
5 the same actual piece of glass?

6 A. That's a possibility they were both fragments. I  
7 don't recall offhand.

8 Q. Now, as to the -- as to the item number -- that you  
9 numbered -- the one single slide that you did from the V-19, did  
10 you note any -- any difficulties in analyzing that particular  
11 hair?

12 A. I did note that there was some differences between  
13 the characteristics displayed by that hair and those of the  
14 suspect.

15 Q. But -- Well, let me just, generally then would a,  
16 for example, a half-inch or fragment, would that be normally  
17 less informative than a longer piece of hair?

18 A. Yes.

19 Q. And a fragments of hair that had a split end, would  
20 that be less informative than a fragment that didn't?

21 A. Yes.

22 Q. With respect to the -- to the two hairs that were  
23 mounted as to V-3, did you form the opinion that they were  
24 consistent with having come from Kevin Cooper?

25 A. One of them was consistent. The remaining one was  
26 generally not consistent, but showed enough degree of similarity  
27 that I could not eliminate it.

28 Q. Either of those hairs an animal hair?

018459

1 A. In V-3 we are speaking of?

2 Q. Yeah, the two that you mounted.

3 A. Those two that I examined, no, were not animal  
4 hairs.

5 Q. Do you remember what color they were?

6 A. Only that they were dark.

7 Q. If the hairs were -- if you saw a hairs of a  
8 reddish-brown color, would that enable you to just on color  
9 alone eliminate those hairs as having come from Mr. Cooper?

10 A. Well, if they were reddish-brown to the naked eye I  
11 probably could, depending upon whether or not that was the  
12 result of a chemical treatment.

13 Reddish-brown under a microscope, no I could not.

14 Q. That's all I have.

15

16 REDIRECT EXAMINATION

17 BY MR. KOCHIS:

18 Q. Mr. Lightfoot, Mr. Negus asked you some questions  
19 about items that you may have identified under laboratory  
20 identification number V-3. The -- that particular laboratory  
21 identification number, there were more than just two hairs in  
22 that item that you examined, isn't that true?

23 A. Yes, that's correct.

24 Q. And is it fair to say there were a number of hairs  
25 in that laboratory identification number?

26 A. Yes.

27 Q. And the vast majority of those you could eliminate  
28 with your naked eye as not being similar to Mr. Cooper's head

018460



1 hair or pubic hair?

2 A. That's correct.

3 Q. And they were put aside?

4 A. Yes.

5 Q. An then of the two that you mounted, each one of  
6 those showed some substantial differences to Mr. Cooper's hair?

7 A. That's correct.

8 MR. KOCHIS: I have nothing else.

9 THE COURT: Anything?

10 MR. NEGUS: Nothing further, no.

11 THE COURT: Thank you, Mr. Lightfoot.

12 Counsel previously informed me that he needed time  
13 to mark some more exhibits before the next witness. We will  
14 take the recess at this time. Remember the admonition. Take  
15 the morning recess.

16 (Recess taken.)

17

18 THE COURT: Mr. Kochis.

19 MR. KOCHIS: Owen Handy, your Honor, would be my next  
20 witness. I believe he's right outside the courtroom.

21

22 OWEN WILLIAM HANDY, JR.,  
23 called as a witness on behalf of the People, having been duly  
24 sworn, testified as follows:

25 THE CLERK: Thank you, would you have a seat on the  
26 witness stand.

27 Would you state your full name for the record and  
28 spell your last name.

018461

1 THE WITNESS: Owen William Handy, Jr., H-a-n-d-y.

2

3

DIRECT EXAMINATION

4

BY MR. KOCHIS:

5

Q. Mr. Handy, I'd like to take you back in time to  
6 about a year and a half to June of 1983. Specifically to June  
7 the 9th of 1983.

8

On that particular day, what country were you in?

9

A. Mexico.

10

Q. Which city within Mexico?

11

A. Ensanada.

12

Q. Is there anyone present in court today that you met  
13 in Ensanada, Mexico, on June the 9th of 1983?

14

A. Yes.

15

Q. And could you tell the jury where that person is  
16 seated today and perhaps what color clothing he's wearing?

17

A. He's wearing a brown suit, setting in the far -- to  
18 my left of the table.

19

THE COURT: Indicate --

20

THE WITNESS: Kevin Cooper.

21

THE COURT: Indicating the defendant?

22

THE WITNESS: Yes.

23

BY MR. KOCHIS:

24

Q. Do you know him now by a particular name?

25

A. Kevin Cooper.

26

Q. Now, how did you meet him on the 9th of June in  
27 Ensanada?

28

A. I was walking down the street.

018422

1 Q. What was he doing?  
2 A. Walking in the opposite direction I was walking.  
3 Q. Did the two of you have a conversation at that  
4 time?  
5 A. Yes. He asked if I knew where he could get  
6 employment.  
7 Q. What did you tell him?  
8 A. That it was hard for Americans to get work in  
9 Mexico because it was illegal to work there.  
10 Q. Did you own a boat at that time?  
11 A. Yes.  
12 Q. What was the name of the boat?  
13 A. Illa Tika.  
14 Q. Could you spell that for the reporter.  
15 A. I-l-l-a, T-i-k-a.  
16 Q. What condition was the boat in back in June of  
17 1983, on the 9th of June?  
18 A. It was out of the water in a dry dock.  
19 Q. Was Mr. Cooper, the man in court, was he carrying  
20 anything when you met him?  
21 A. He was carrying a white plastic bag, and a green  
22 bag; canvas bag.  
23 Q. Did either of the bags have anything in them?  
24 A. Both of them appeared to be abundantly full with  
25 clothing.  
26 Q. Now, did you learn his name on that day?  
27 A. Um, later on that day.  
28 Q. What name was the defendant using at that time?

01084577

1 A. Angel Jackson.

2 Q. That's how he identified himself to you?

3 A. Yes.

4 Q. After the conversation where you first met, did the  
5 two of you go back to where your boat was?

6 A. Yes.

7 Q. For what reason?

8 A. To show him my boat, what I was doing. I offered  
9 to give him some food to help paint the boat.

10 Q. Was there some type of employment situation that  
11 was worked out between you and the defendant?

12 A. Yeah. He could have a place to stay for awhile if  
13 he'd help me paint.

14 Q. Was there some -- do you remember how long it took  
15 you to get the boat into condition to which it could be put back  
16 in the water?

17 A. Two days.

18 Q. Do you know where Angel Jackson, or Kevin Cooper,  
19 as we know him now, stayed during that period of time?

20 A. In the forecastle.

21 Q. What's a forecastle?

22 A. The forward part of the boat.

23 Q. Does it have a particular spelling you can give the  
24 court reporter?

25 A. Do know the spelling of --

26 A. Not offhand, no.

27 Q. Now, did there come a time when you left Ensanada?

28 A. Yes.

1 Q. Were you married at the time.  
2 A. Yes.  
3 Q. What's your wife's name?  
4 A. Angelica Maria Handy.  
5 Q. And in fact, is she outside?  
6 A. Yes.  
7 Q. Did you have any children at that time?  
8 A. Yes. Karole Vanessa Handy.  
9 Q. Was she with you back in June in Ensanada?  
10 A. Yes.  
11 Q. When you sailed out of Ensanada, other than your  
12 wife and daughter, who was with you?  
13 A. Angel Jackson.  
14 Q. What was your destination?  
15 A. San Francisco.  
16 Q. Did you have any intentions of going south to Costa  
17 Rica at that time?  
18 A. Not when we left port. Beforehand.  
19 Q. When?  
20 A. The day I put the boat in the water we had planned  
21 to go Costa Rica instead.  
22 Q. Did you go to Costa Rica?  
23 A. No. There had been three hurricanes in a row that  
24 year.  
25 Q. When you met the defendant, did he have any money?  
26 A. Yes.  
27 Q. What type of money?  
28 A. Mostly quarters.

018465

1 Q. Are you talking about U.S. currency?  
2 A. Yes. U.S. currency.  
3 Q. Do you know how much money he had?  
4 A. A little over forty dollars.  
5 Q. Was any of it dollar bills?  
6 A. A little bit.  
7 Q. Where did you go when you left Ensanada?  
8 A. North.  
9 Q. To where?  
10 A. The first landfall was Catalina Harbor, Catalina  
11 Island.  
12 Q. Do you know about when you got there?  
13 A. About seven days later.  
14 Q. Now, when you got to Catalina, did you essentially  
15 stay in a bay or harbor?  
16 A. Yeah. Cat Harbor.  
17 Q. Did the defendant leave the boat and go ashore?  
18 A. No.  
19 Q. How long did you remain in Catalina?  
20 A. Two days.  
21 Q. Then where did you go?  
22 A. To Santa Cruz Island.  
23 Q. Where is that located?  
24 A. Almost due north of Catalina Island.  
25 Q. How long did you stay at that location?  
26 A. About two days.  
27 Q. Did the defendant go ashore at that location?  
28 A. No.

018466

1 Q. Where did you go next?  
2 A. Cojo. Just under Pt. Conception.  
3 Q. How long were you there?  
4 A. About four days.  
5 Q. Did the defendant go ashore at that location?  
6 A. No.  
7 Q. After that location, where did you go?  
8 A. Santa Barbara.  
9 Q. And how long did you stay in Santa Barbara?  
10 A. Four days. Three to four days.  
11 Q. Did the defendant go ashore up in Santa Barbara?  
12 A. No, not that I know of.  
13 Q. Now, did the defendant remain on your boat with you  
14 essentially between the time you set sail with your family from  
15 Ensanada on the 9th of June until approximately July the 30th of  
16 1983?  
17 A. Yes.  
18 Q. Was the defendant ever able, for example, to sail  
19 your boat?  
20 A. No.  
21 Q. Did he demonstrate any seamanship abilities to you?  
22 A. No.  
23 Q. Was he from time to time ill?  
24 A. Most of the time.  
25 Q. Did it appear to be from seasickness?  
26 A. The first 15 days he was seasick straight.  
27 Q. All the duties of sailing the boat then were with  
28 you?

- 1 A. Yes.
- 2 Q. Did you ever observe the defendant to wear gloves?
- 3 A. Yes.
- 4 Q. Do you recall what type of gloves?
- 5 A. Leather gloves.
- 6 Q. And do you recall when he would wear gloves?
- 7 A. They wore out pretty fast. He had, when he first
- 8 started working for us, we were scraping varnish off the hull.
- 9 It burns your skin and stuff. And he wore them while doing that
- 10 and while painting.
- 11 Q. Now, where were you on July the 30th, 1983?
- 12 A. Pelican's Bay.
- 13 Q. Was your family with you at that time?
- 14 A. Yes.
- 15 Q. Was Mr. Cooper still with you at that time?
- 16 A. Yes.
- 17 Q. How long had you been at Pelican Bay?
- 18 A. I would guess four to five days.
- 19 Q. Now, between the time you left Ensanada in June,
- 20 and the 30th of July of 1983, did the defendant ever leave the
- 21 boat, to your knowledge?
- 22 A. Yes. Once or twice.
- 23 Q. Was that around July the 4th?
- 24 A. Yes.
- 25 Q. And where were you? Where was the boat at that
- 26 time?
- 27 A. In the anchorage at Stearns Pier in Santa Barbara.
- 28 Q. Was it close to a town or anything?

018468



1 A. Santa Barbara.

2 Q. Did you know where the defendant went when he left  
3 your boat?

4 A. Went down to Blacks Beach.

5 Q. To your knowledge, did he go into town?

6 A. No.

7 Q. Other than that one occasion on which he left the  
8 boat, and went to that beach, did he ever, for example, to your  
9 knowledge, did he ever go into a town?

10 A. No. Oh, excuse me. We went to town and took  
11 showers one time, but we all went to go.

12 Q. Which town was that?

13 A. Santa Barbara.

14 Q. Do you remember when that was?

15 A. I would say near mid-July.

16 Q. Now, during the time the defendant was on your  
17 boat, did you know he was Kevin Cooper?

18 A. No.

19 Q. Did you believe him to be a person named Angel  
20 Jackson?

21 A. Yes.

22 Q. Were you present on your boat on the 30th of July  
23 in Pelican Bay when the coast guard came into the harbor?

24 A. I was -- I was very near my boat. I was rowing  
25 back to my boat. I was in my dinghy.

26 Q. Were you present when, for example, when the coast  
27 guard placed Kevin Cooper under arrest?

28 A. I was on my boat at that time, yes.

018459

1 Q. And is essentially what happened the coast guard  
2 came in, Mr. Cooper dived off your boat, swam to a small boat  
3 called the dinghy and started to row for shore and he was  
4 arrested by the Coast Guard?

5 A. Yes.

6 Q. The day after he was arrested, where was your boat?

7 A. Santa Barbara.

8 Q. Was that on the dock or anything?

9 A. Yes.

10 Q. And on that particular day, did members of the  
11 Sheriff's office from San Bernardino, come on your boat?

12 A. Yes.

13 Q. And did they look through the area that the  
14 defendant had been staying?

15 A. Yes.

16 Q. Now, the area that he was staying on your boat, did  
17 you keep things in there?

18 A. Yes.

19 Q. What type of things did you keep?

20 A. Two or three rifles, couple sails, my daughters  
21 toys, some clothing.

22 Q. Were you present when the officer removed certain  
23 items from the boat on July the 31st?

24 A. Yes.

25 Q. Were any of those items yourself?

26 A. No.

27 Q. Do you know who the items belonged to?

28 A. Or at least who had -- you had seen them with.

018470

1 A. Yes.

2 Q. Who was that?

3 A. Kevin Cooper.

4 Q. Directing your attention to a series of exhibits  
5 which are photographs, the first of which has been marked for  
6 identification as Exhibit 626. It is an eight by ten color  
7 photograph, appears to be of some boats.

8 Do you recognize any of the boats in that picture?

9 A. My boat. That is the Illa Tika.

10 Q. There appears to be a number of boats in the  
11 photograph, one of which appears to be a boat that is brown in  
12 color, has a blue sail rolled up, and there appears to be a  
13 person. Is that yourself in the picture?

14 A. Yes.

15 Q. Is that the boat we have been talking about?

16 A. Yes.

17 Q. Directing your attention to a photograph which has  
18 been marked for identification as Exhibit 627.

19 Do you recognize what that is a picture of?

20 A. Yes. Me and my wife and the boat and two  
21 Sheriff's.

22 Q. And are those -- is one of those the person that  
23 came on your boat and removed some items on July the 31st?

24 A. Yes.

25 Q. In fact, do the pictures, to your knowledge, were  
26 they taken on the day that the officers came onto the boat and  
27 took certain things off the boat?

28 A. Yes.

1 Q. Directing your attention to Exhibit 628, which  
2 appears to be an eight by ten color photograph.

3 Do you recognize what that picture shows?

4 A. That is taken from the sala, it is called the  
5 living room, into the forecandle.

6 Q. Now 628, that is the area that the defendant stayed  
7 in?

8 A. Yes.

9 Q. Directing your attention to Exhibit 629, which  
10 appears to be an eight by ten color photograph.

11 Are you able to orient this photograph?

12 A. Yes. This is looking from this area. Here is the  
13 berth, this area here is the bed.

14 Q. Referring to 628?

15 A. Yeah. And it is -- right here is another bed that  
16 comes back out this way, and they was standing on this bed  
17 looking down at the floorboards between these two rooms.

18 Q. Would this -- how should the photograph be  
19 positioned? Explain to the jury --

20 A. Like this.

21 Q. -- so we can't do it exactly.

22 That's looking at actually --

23 A. Looking down at the deck, yes.

24 Q. And likewise, with Exhibit 630.

25 Do you recognize the area of the boat that shows?

26 A. This is this way, looking out the window, forward.  
27 This window and that window are the same windows.

28 Q. The window then in 628 and 630?

1 A. Are the same window, yes.

2 Q. And do these three photographs then: 628, 629 and  
3 630, are they pictures of the area that the defendant stayed in?

4 A. Um, this area is the bedroom.

5 Q. Now which photograph?

6 A. I mean this center photo. He stayed in this area  
7 in here and that area; the same area.

8 Q. The areas in 628 and 630?

9 A. Yes.

10 Q. Now, directing your attention to a series of items  
11 which have previously been identified I believe by the Langs.

12 Starting with an item which has been marked for  
13 identification as Exhibit 103, which appears to be a bag, it is  
14 green and yellow.

15 Is this your bag?

16 A. No.

17 Q. Have you seen it before?

18 A. Yes. Angel Jackson was carrying it the first day I  
19 met him, full of clothes.

20 Q. The man in court was carrying it?

21 A. Yes.

22 Q. When you met him in Ensanada on June the 9th?

23 A. Yes.

24 Q. And does that appear to be one of the items that  
25 the officers took off --

26 A. Yes.

27 Q. -- your boat on the 31st?

28 A. (No audible response.)

018473

1 Q. You have to answer at the end of the question.

2 A. Yes. Excuse me.

3 Q. Now, directing your attention to an item we have  
4 marked for identification in this trial, it is Exhibit 110,  
5 appears to be a blue short-sleeved T-shirt, with the word "Costa  
6 Rica" written on it.

7 Is this your T-shirt?

8 A. No.

9 Q. Did your wife have possession of it at one time?

10 A. Yes.

11 Q. Where did she get it?

12 A. It was a gift.

13 Q. From who?

14 A. Angel Jackson.

15 Q. Do you know when the defendant gave her this  
16 T-shirt?

17 A. The first day we met him.

18 Q. About June the 9th?

19 A. Yes.

20 Q. And did your wife keep this T-shirt on the boat  
21 then?

22 A. Yes.

23 Q. Did your wife, on July the -- at some other time in  
24 July, at the end of July, give this to the officers?

25 A. Yes.

26 Q. Directing your attention to Exhibit 168, a pair of  
27 green pants. They appear to be army fatigues. Are these yours?

28 A. No.

01804474

1 Q. Have you seen them before?  
2 A. Yes.  
3 Q. Where?  
4 A. He was wearing those the first day I met him.  
5 Q. The defendant was?  
6 A. Yes.  
7 Q. In Ensanada?  
8 A. In Ensanada.  
9 Q. Was that the only time he wore those?  
10 A. No.  
11 Q. Directing your attention to another exhibit  
12 previously identified by the Langs, Exhibit 117, a pair of blue  
13 sweat pants. Are these yours?  
14 A. No.  
15 Q. Have you seen them before?  
16 A. Yes.  
17 Q. Where?  
18 A. The defendant had them.  
19 Q. Mr. Cooper?  
20 A. Yes.  
21 Q. Did he wear them from time to time on your boat,  
22 the Illa Tika?  
23 A. Yes.  
24 Q. Does that appear to be another item that the  
25 sheriffs later took off your boat?  
26 A. Yes.  
27 Q. Directing your attention to Exhibit 107, which  
28 appears to be a multicolored long-sleeved shirt.

018475

- 1 Is this your shirt?
- 2 A. No.
- 3 Q. Have you seen it before?
- 4 A. Yes.
- 5 Q. Where?
- 6 A. On the boat.
- 7 Q. Did you ever see the defendant wear it?
- 8 A. Not that I remember.
- 9 Q. Where on the boat did you see it?
- 10 A. In his possession.
- 11 Q. In Cooper's possession?
- 12 A. Yes.
- 13 Q. Directing your attention to Exhibit 119, which
- 14 appears to be a pair of blue denim pants, with "Levi Strauss
- 15 Company" on the rear pocket. Are these yours?
- 16 A. No.
- 17 Q. Have you seen them before?
- 18 A. Yes.
- 19 Q. Where?
- 20 A. The defendant wore them.
- 21 Q. On your boat?
- 22 A. Yes.
- 23 Q. Directing your attention to Exhibit 109, which
- 24 appears to be a tan short-sleeved, perhaps knit shirt. Is this
- 25 yours?
- 26 A. No.
- 27 Q. Have you ever seen this shirt before?
- 28 A. Yes.

018476



- 1 Q. Where?
- 2 A. I seen Kevin Cooper wearing it.
- 3 Q. On your boat?
- 4 A. Yes.
- 5 Q. Exhibit 105, which appears to be a pair of slacks
- 6 which has some type of black material about the knee area or
- 7 black substance, and they appear to be a light color, an off
- 8 white or a beige; are these yours?
- 9 A. No.
- 10 Q. Have you seen them before?
- 11 A. Yes.
- 12 Q. Under what circumstances?
- 13 A. Being worn by Kevin Cooper.
- 14 Q. On your boat?
- 15 A. Yes.
- 16 Q. Directing your attention to Exhibit 119, which
- 17 appears to be a pair of slacks, darker in color, and Exhibit
- 18 118. at least one brown button at the top. Are these your
- 19 pants?
- 20 A. No.
- 21 Q. Have you seen them before today?
- 22 A. Yes.
- 23 Q. Under what circumstances?
- 24 A. Being worn by Kevin Cooper.
- 25 Q. You have previously identified these exhibits in a
- 26 hearing in Municipal Court sometime ago; is that correct?
- 27 A. Yes.
- 28 Q. Now, Exhibit 95 appears to be a pair of sunglasses

010477

1 with the word "Zeiss" on them, "West Germany".

2 Do you recognize those?

3 A. No.

4 Q. And Exhibit 166 appears to be another pair of  
5 sunglasses. Do you recognize those? They are black in color.

6 A. No.

7 Q. And the case, the black Zeiss case with West  
8 Germany on it, which is Exhibit 96, do you recognize that?

9 A. No.

10 Q. When Mr. Cooper was on the boat, would you, for  
11 example, go through the green bag which we've marked for  
12 identification in this trial as Exhibit 103, would you actually  
13 go through that and examine the contents of that bag?

14 A. No, I never went through nothing of his.

15 Q. The plastic bag that he brought on the boat?

16 A. Nothing.

17 Q. Did you go through that?

18 A. No.

19 Q. So, the items I've just shown you those were items  
20 that, for example, many of them you actually saw him wear on the  
21 boat?

22 A. Yes.

23 Q. So, you never searched the green bag to see what  
24 was in it or what was not in it?

25 A. No.

26 Q. The orange material which appears in Exhibit 630,  
27 was that kept in that location in the boat at all times?

28 A. No.

018478

1 Q. What type of material is the orange material?

2 A. It's a Genoa sail.

3 Q. And at times was that placed on the mast?

4 A. On the forward stay.

5 Q. The pants that you've identified, did they appear  
6 to fit Mr. Cooper?

7 A. They seemed a little bit short.

8 Q. Thank you.

9 I have no further questions.

10

11

CROSS-EXAMINATION

12 BY MR. NEGUS:

13 Q. Mr. Handy, your particular lifestyle, you have a  
14 pension from the government for your service in the military; is  
15 that correct?

16 A. Yes.

17 Q. And basically you and your -- you and your wife and  
18 daughter travel around on a boat living off your -- your pension  
19 and essentially the fish that you could catch from the ocean?

20 A. Yes.

21 Q. Basically as far as fishing is concerned, you are,  
22 you're skilled enough as a fisherman to be able to essentially  
23 just live off the ocean; is that right?

24 A. I've commercial fished for 12 years.

25 Q. In your -- in your particular -- in your particular  
26 lifestyle, are precise dates very important to you?

27 A. Not -- not always.

28 Q. In the -- in the time that -- in the time frame

00184157

1 that you -- that you knew Kevin Cooper, were there a couple of  
2 dates that were particularly important, like what date do you  
3 normally pick -- are you able to pick up your pension check?

4 A. The 1st of the month.

5 Q. So, on the 1st of the month did you, for example,  
6 go ashore for that purpose and then to buy some supplies with  
7 some of the money that you got?

8 A. Yes.

9 Q. And did you also take particular note of the -- of  
10 the date that you set out to sea from Ensenada?

11 A. Yes. I put an "X" on the calendar.

12 Q. What date was that?

13 A. The 13th.

14 Q. And looking at the calendar which we've put on the  
15 back -- behind you on the board, that would have been Monday,  
16 June the 13th of 1983?

17 A. Yes.

18 Q. Other than that, during the -- oh, did you also  
19 because of the nature of the holiday also take note of Fourth of  
20 July?

21 A. Yes.

22 Q. Any other dates that you particularly noted the  
23 dates of during that particular point in time?

24 A. No.

25 Q. Basically due to your -- your particular lifestyle  
26 you don't have to worry about being at a certain place at a  
27 certain time?

28 A. No.

018480

1 Q. That's one of the attractions of it?  
2 A. Yeah.  
3 Q. When -- when you first -- when you first met Kevin,  
4 did he have a newspaper with him?  
5 A. Yes.  
6 Q. And was that newspaper the June 8th edition of  
7 the -- well, the June 8th -- June 8th copy of the San Diego  
8 edition of the L.A. Times?  
9 A. I'm not sure of the date.  
10 Q. Did it have the front page missing?  
11 A. Yes.  
12 Q. At some point in time after Kevin's arrest did you  
13 hand that newspaper to Mr. O'Campo, a detective from the San  
14 Bernadino Sheriff's Office?  
15 A. Yes.  
16 Q. And he took possession of it?  
17 A. Yes.  
18 Q. And that newspaper was the -- was the same  
19 newspaper that Kevin had brought on the boat with him?  
20 A. I don't -- Yes.  
21 Q. Okay. I mean, how did it happen to be on the boat  
22 all that period of time?  
23 A. Because I -- we didn't never throw it away.  
24 Q. That was the only newspaper that you had on the  
25 boat?  
26 A. I believe so.  
27 Q. I mean, you didn't normally when you were in a  
28 harbor go out and buy a newspaper or anything of that nature?

1           A.     No.

2           Q.     Do you speak Spanish?

3           A.     Yes.

4           Q.     When you were at the dry dock in Ensenada, were

5           there other people -- did you have contact with like the owners

6           of the dock -- of the dry dock?

7           A.     Intimately for years. They are like family.

8           Q.     Do you normally speak to them in Spanish?

9           A.     All the time. They don't speak English.

10          Q.     Did Kevin speak to them in Spanish? Did you ever

11          see him speak Spanish?

12          A.     No.

13          Q.     As far as you know he only spoke English?

14          A.     Yes.

15          Q.     And when you and your wife would speak to Kevin you

16          would speak to him in English?

17          A.     Yes.

18          Q.     When Kevin was wearing gloves when he was working

19          for you, did you particularly notice and pay attention to his

20          hands?

21          A.     Yes.

22          Q.     When -- when he was wearing the gloves he would

23          take the gloves off when he wasn't actually working; is that

24          right?

25          A.     Yes.

26          Q.     Did he have any injuries to his hands when he first

27          arrived on the boat?

28          A.     No.

018482

1 Q. Mr. Kochis asked you if Kevin ever went ashore  
2 while he was with you, did you -- when you were answering that  
3 were you just answering about the mainland rather than any land?

4 A. Yes.

5 Q. The Pelican Bay that you mentioned, that's on Santa  
6 Cruz Island?

7 A. Yes.

8 Q. What kind of island is Santa Cruz?

9 A. It's two large sea branches surrounded on the  
10 border by a natural nature park.

11 Q. Are there any other people living on the island?

12 A. There is two ranch sites.

13 Q. That's the only --

14 A. That's it.

15 Q. Basically it's sort of an unspoiled wilderness  
16 area?

17 A. Yes.

18 Q. While you were on that particular -- on that  
19 particular island, did -- did Kevin go ashore with you?

20 A. Yes.

21 Q. Is that island a popular meeting place for people  
22 who -- who like to sail the -- sail out in the ocean, people  
23 sail out there a lot?

24 A. Yes.

25 Q. So, it's a place where you can meet and socialize  
26 with other people?

27 A. Yes.

28 Q. While -- while -- while Kevin was there on the --

018483

1 on the Illa Tika with you at Santa Cruz, did he ever -- did he  
2 ever injure his hand?

3 A. Yes.

4 Q. How did that happen?

5 A. I wasn't with him.

6 Q. Did he come back though at one point in time you  
7 noticed he had a wound he hadn't had before?

8 A. Yes.

9 Q. Whereabouts was that?

10 A. On the Pelicans Bay.

11 Q. Excuse me. Where on Kevin's hand was the injury?

12 A. On the heel of his hand.

13 Q. Do you remember which hand it was?

14 A. No, I don't.

15 Q. Was it like a circular scrape?

16 A. Yeah.

17 Q. Where the skin had been scraped away?

18 A. Yes.

19 Q. Another occasion oh -- Well, did Kevin while he was  
20 with you smoke?

21 A. Not that I remember.

22 Q. Did -- do you smoke?

23 A. No.

24 Q. Does your wife?

25 A. Yes. She did, but she hasn't for quite awhile.

26 Q. Was she smoking when you knew Kevin?

27 A. Yes.

28 Q. What brand of cigarettes was she smoking?



1 A. I don't know.  
2 Q. Don't know. Okay.  
3 A. She mostly smoked Camel filters, Marlboros and  
4 that's about it.  
5 Q. Did you ever see Kevin with Pall Mall cigarettes?  
6 A. Yes.  
7 Q. By my saying that that brings it back to your mind?  
8 A. Yes. It reminds me that there was a package of  
9 Pall Malls around, a red package.  
10 Q. Okay. And that was Kevin's?  
11 A. Yes.  
12 Q. When the --  
13 A. I never seen him smoking any of them.  
14 Q. When -- when Kevin was arrested, do you remember  
15 what he was wearing?  
16 A. He had just got out of bed and seems like he had a  
17 T-shirt and shorts on.  
18 Q. Did he take -- when he left the boat and dived  
19 overboard, did he take anything else with him?  
20 A. Not that I know of.  
21 Q. After, you know, when Kevin was arrested and  
22 between the time he was arrested and the time that the San  
23 Bernadino Sheriff's officers came on your boat and searched it,  
24 did you get rid of any of Kevin's stuff?  
25 A. No.  
26 Q. So, all the stuff that Kevin had just before --  
27 before his arrest was still there on the boat when the officers  
28 came aboard?

1 A. Yes.

2 Q. Showing you Exhibit 167, a duffel bag inside of --  
3 which I've taken out of a plastic bag. Do you remember that  
4 duffel bag?

5 A. Yes.

6 Q. Did Kevin have that duffel bag with him when you  
7 first met him in Ensenada?

8 A. No.

9 Q. Did he at one point in time while you were at  
10 Pelican, did he come back with that bag in his possession?

11 A. Yes.

12 Q. Did he tell you what was in it or show you what was  
13 in it?

14 A. He showed us what was in it.

15 Q. Okay. Opening the bag there appears to be various  
16 items in this bag at the present time. There seems to be a  
17 smaller bag with --

18 THE COURT: Stand to one side, counsel.

19 MR. NEGUS: Excuse me.

20 Q. I believe if you looked inside there would be  
21 cosmetic items, some shoes, a T-shirt, a bunch of different  
22 items. Do you recall those being the items that were in the bag  
23 when he --

24 A. No.

25 Q. Were there different items or you just can't  
26 recall?

27 A. Some of the items were. This was in the bag.  
28 These shoes he brought with him in the green bag when he came on

1 the boat in Ensanada.

2 Q. Okay. So the contents of the bag now are somewhat  
3 mixed up between what Kevin brought with him when he first got  
4 on the boat and what he brought back in this bag?

5 A. Yes.

6 Q. Did he tell you that he found the bag on the  
7 islands?

8 A. Yes.

9 Q. Do you remember if there was anybody with him when  
10 he came back with the bag?

11 A. I think he was with a small boy.

12 Q. Okay. Was that the nephew of one of the other  
13 people that lived on Pelican?

14 A. Yes, a man named Steve on a boat named Scooter.

15 Q. At sea, by the way, do you normally -- do you  
16 normally exist on a first name basis where you remember people  
17 primarily by their first name and their boat name?

18 A. Yes.

19 Q. Rather than, you don't necessarily know their last  
20 name?

21 A. Hardly ever know anybody's last full name. It's  
22 almost always there first name and their last name is the name  
23 of their boat.

24 Q. While -- when you met Kevin did he tell you that he  
25 was an art student from Pennsylvania?

26 A. A graduate.

27 Q. Excuse me?

28 A. A graduate.

018487

1 Q. An art graduate from Pennsylvania?

2 A. Yes.

3 Q. And while he was on the -- did he have any artists  
4 supplies with him that you saw when he arrested?

5 A. No.

6 Q. Did he obtain some artist supplies while you were  
7 at sea, I mean, while you were at Pelican?

8 A. Yes.

9 Q. What do you recall him having obtained?

10 A. Mostly paper, brushes, and some colored pencils.

11 Q. Did he in fact do drawings and various things for  
12 you while -- while he was -- while you were moored in the  
13 various anchorages that you were at?

14 A. Yes.

15 Q. And did you likewise give those -- did the  
16 Sheriff's Officers likewise take those away with them when they  
17 searched your boat on July the 31st?

18 A. Yes.

19 Q. Did the Sheriff's -- other than the -- than some of  
20 the art work that Kevin had done for you, was all the stuff that  
21 the officers took away with them on July the 31st Kevin's?

22 A. Yes.

23 Q. The -- when you gave the newspaper to Mr. O'Campo,  
24 on -- after Kevin was arrested, did you also give him a couple  
25 of caps and some other items?

26 A. Yes.

27 Q. Were those items that you had found after -- after  
28 the search of the boat which had somehow been overlooked in the

018488

1 search but were none the less Kevin's?

2 A. Yes.

3 Q. After you gave those items to the officers was  
4 there anything left on your boat that had been, you know, had  
5 been Kevin's or brought there by Kevin?

6 A. No.

7 Q. Showing you -- showing you a bag that's been marked  
8 as Exhibit 631 and from that bag taking a photo album; do you  
9 recognize that photo album?

10 A. Yes.

11 Q. Where have you seen that before?

12 A. It's ours.

13 Q. By "ours" you mean your --

14 A. My family's.

15 Q. Did you -- Did you give that to Kevin or loan that  
16 to Kevin?

17 A. I believe I gave it to him, yes.

18 Q. That was for him to use as -- to make pictures  
19 with?

20 A. Or to keep them in so they wouldn't -- because in a  
21 boat everything gets mixed up as you sail and everything.

22 Q. When -- when Kevin arrived on the boat, did he have  
23 any like toiletry items with him, toothpaste, that kind of  
24 stuff?

25 A. I'm not -- I don't know.

26 Q. Did you ever give him any sort of supplies to use?

27 A. I -- I worked on the boat all the time outside and  
28 on the boat and everything, and something like that he would

1 have got from my wife if he asked for something like that.

2 Q. The time that Kevin went ashore with you at Santa  
3 Barbara, that was -- you don't remember exactly what date that  
4 was?

5 A. No.

6 Q. Did you go to a person whose name you know only as  
7 Diane's house?

8 A. Yes.

9 Q. And was that in the company of a person by the name  
10 of Jim?

11 A. Yes.

12 Q. Do you remember what Jim's boat's name was?

13 A. Yeah.

14 Q. What was that?

15 A. The Tara Maru. Jim's last name is Savage.

16 Q. And how -- how did you -- what -- what occurred  
17 during that particular -- that particular excursion?

18 A. All of us took turns taking a bath and then we ate  
19 some ice cream and returned to the boat.

20 Q. Nothing -- nothing notable?

21 A. Nothing notable.

22 Q. Did you all go up there in the same vehicle?

23 A. Yes.

24 Q. Was that Jim's truck?

25 A. Yes.

26 Q. Showing you Exhibit 117, and -- the -- some blue  
27 sweat pants, there is some chord in those -- in those pants; do  
28 you recognize that particular type of chord?

010490

1 A. No.

2 Q. Well, does it appear consistent with some of the  
3 line that you had on the boat?

4 A. I have all kinds of odds and ends. Any kind of  
5 line similar to this I pick up because you use it to tie things  
6 down on the boat and stuff. It could very possibly be from the  
7 boat. I don't -- I don't have any one specific type of line.  
8 If I'm -- I pick them up in town and all over the place. Any  
9 time I see a little piece of line laying on the ground or on the  
10 streets I pick it up and take it home. I have thousands of  
11 different kinds of little pieces of line on the boat.

12 Q. You can't say for sure, but it's possible?

13 A. It looks like something from the boat, but I can't  
14 be sure.

15 Q. Okay. When Kevin was drawing did he ever use a  
16 razor blade type thing to sharpen his pencils with?

17 A. Yes.

18 Q. And showing you a razor blade with tape around it  
19 and a piece of cardboard on one end from Exhibit 96, does that  
20 appear to be the kind of implement that Kevin used to sharpen  
21 his pencils?

22 A. Yes.

23 Q. Can you recognize this particular implement or just  
24 same general type?

25 A. No; no, I can't recognize that particular one.

26 Q. In that -- Let's see, showing you Exhibit 120, do  
27 those appear to be a pair of shoes that were worn by Kevin?

28 A. Yes.

1 Q. And you notice another -- mentioned another pair of  
2 shoes, a pair of black shoes, one of which I'm taking out of  
3 Exhibit 167, did you also see Kevin wearing a pair of shoes such  
4 as this?

5 A. Yes.

6 Q. Other than those two pair of shoes, while Kevin was  
7 on your boat did you see him wearing any other shoes?

8 A. No.

9 Q. Did you ever see any other shoes in his possession?

10 A. No.

11 Q. You are thinking?

12 A. It's -- I can't -- Somebody gave a pair of shoes to  
13 us, but it seems like I got them instead of him. But it was at  
14 the end of July and in Santa Barbara. Jim.

15 MR. NEGUS: Perhaps -- I have a few more questions but  
16 both I think Mr. and Mrs. Handy will be back after lunch.

17 THE COURT: All right. We will break it for the noon  
18 recess. Please, return at 1:30.

19 You as well, Mr. Handy.

20 Remember the admonition.

21 (Noon recess taken.)

22

23

24

25

26

27

28

018492



1           1     SAN DIEGO, CALIFORNIA, WEDNESDAY, DECEMBER 12, 1984 1:30 P.M.

2                               --oo0oo--

3  
4           THE COURT: Okay, counsel.

5  
6                               OWEN WILLIAM HANDY, JR.,

7     called as a witness on behalf of the People, having been  
8     previously duly sworn, resumed the stand and testified further  
9     as follows:

10  
11                              CROSS EXAMINATION (Resumed)

12     BY MR. NEGUS:

13               Q.     Mr. Handy, I'd like to show you a glove that came  
14     out of the envelope marked Exhibit 159.

15                       Does that appear to be the same type of glove that  
16     Kevin had when he was working on your boat?

17               A.     Yes.

18               Q.     And directing your attention to some reddish-brown  
19     stuff that appears on the surface of the glove.

20                       Does that appear to be the same color tan, what  
21     have you, as the paint that you were having Kevin apply to your  
22     boat?

23               A.     Yes.

24               Q.     Amongst the other people that were -- which you  
25     came in contact with you, while you were with Kevin, was there a  
26     person by the name of Peter on a boat calling the "Burma Girl"  
27     who came from the bay area?

28               A.     Yes.

- 1 Q. And did Kevin have some contact with him?
- 2 A. Yes.
- 3 Q. Do you know if he gave Kevin any artist supplies?
- 4 A. It was Pam, his girl friend.
- 5 Q. His girl friend gave him some oil paints?
- 6 A. Yes.
- 7 Q. Was there also a couple named Ivan and Nancy?
- 8 A. Yes.
- 9 Q. And did Kevin have some contact with them as well?
- 10 A. Yes.
- 11 Q. When Kevin was working on the boat for you, did you
- 12 ever notice him like trying to pull ropes, however, you call it?
- 13 Whatever you call that nautically.
- 14 A. Yes.
- 15 Q. Did his hands appear to be quite weak so he was
- 16 unable to do that task?
- 17 A. He didn't do it as well as any other people did it.
- 18 Q. Did his hands appear to be weak?
- 19 A. Yes.
- 20 MR. NEGUS: That's all I have.

21

## 22 REDIRECT EXAMINATION

23 BY MR. KOCHIS:

- 24 Q. Mr. Handy, some of the supplies that you referred
- 25 to in your testimony, the paper, and the pencils, and the things
- 26 that the defendant had, were those given to him by people on
- 27 various boats?
- 28 A. Yes.

1 Q. For example, those were not things that were  
2 purchased by the defendant in towns.

3 A. No.

4 MR. KOCHIS: I have nothing further.

5 THE COURT: We thank you very much so. You can leave or  
6 remain as you wish.

7 MR. KOCHIS: Angelica Handy was the next, your Honor,  
8 provided the interpreter is outside. That's who I'm looking  
9 for.

10 THE COURT: What's the name of the language?

11 MR. KOCHIS: Spanish.

12 THE BAILIFF: There is no interpreter.

13 THE COURT: Ask Mrs. Handy to remain, please. Ask her  
14 have to have her remain.

15 And what can we do about it, Mr. Kochis? The clerk  
16 expects -- is there someplace we can call?

17 MR. KOCHIS: The interpreter was here all morning.

18 THE COURT: She's apparently on the phone. Relax a  
19 moment, chat if you wish.

20 MR. KOCHIS: Your Honor, if there is --

21 THE COURT: Anybody you can call out of order.

22 MR. KOCHIS: Is there unavailability of the interpreter?

23 THE COURT: I think momentarily, but --

24 MR. KOCHIS: We can -- the areas that I am going to  
25 examine her about, Mrs. Handy, are not technical, they're the  
26 same areas as her husband was questioned about. She has some  
27 command of the English language.

28 In fact, she's developed quite a bit since the

018495

1 preliminary a year ago. And we could start -- I don't know if  
2 that creates a problem for the defense.

3 MR. NEGUS: Having similar linguistics as Mrs. Handy, I  
4 would feel that it would be better to have the interpreter.

5 THE COURT: Generally I think it is best to make the  
6 witness comfortable.

7 MR. KOCHIS: How long of a delay are we talking about?  
8 Minute, two minutes?

9 THE COURT: Is that the last witness before --

10 MR. KOCHIS: No. Mr. Evelyn is here. He is going to  
11 take I think some period of time. There's a number of exhibits  
12 Mr. Negus wanted to have marked for his testimony, which have  
13 not been marked as of yet.

14 We don't have a problem.

15 THE COURT: Are you the interpreter?

16 The interpreter would then come forward first and  
17 then take the interpreter oath, please.

18

19 RUTH CONRIQUE-SEGAT,

20 Called as an interpreter to interpret English into Spanish and  
21 Spanish into English, was duly sworn:

22 THE CLERK: Would you state your name for the record.

23 THE WITNESS: Ruth Conrique-Segat. C-o-n-r-i-q-u-e, and  
24 then hyphen, S-e-g-a-t.

25 THE COURT: Mrs. Handy, would you come forward and take  
26 the oath.

27

28

ANGELIC HANDY,

018496

1 called as a witness on behalf of the People, having been duly  
2 sworn, testified as follows:

3 THE CLERK: Would you state your full name for the  
4 record.

5 THE WITNESS: Angelica Handy.

6 THE CLERK: Thank you. Would you be seated, please.

7

8 DIRECT EXAMINATION

9 BY MR. KOCHIS:

10 Q. Mrs. Handy, do you speak Spanish?

11 A. Yes.

12 Q. Do you also speak English somewhat?

13 A. Somewhat.

14 Q. In court today --

15 THE COURT: Excuse me. Could you stand over a little bit  
16 so that the jurors can see there. That's fine.

17 Thank you very much.

18 BY MR. KOCHIS:

19 Q. In court today we're going to use an interpreter in  
20 asking you questions.

21 Although you may understand my questions in  
22 English, could you wait until they are interpreted into Spanish  
23 before you answer them.

24 A. Yes.

25 Q. Are you married?

26 A. Yes.

27 Q. Is your husband's name Owen Handy?

28 A. Yes.

018497

- 1 Q. Was he in court testifying before lunch?
- 2 A. Yes.
- 3 Q. Back in June of 1983, were you with your husband
- 4 and daughter in Ensanada, Mexico?
- 5 A. Yes.
- 6 Q. Did you and your husband have a boat at that time?
- 7 A. Yes.
- 8 Q. What was the name of the boat.
- 9 A. Illa Tika in Spanish.
- 10 Q. In June of 1983, around June the 9th, was that boat
- 11 being fixed in a dry dock?
- 12 A. Yes.
- 13 Q. Did you meet anyone in Ensanada back on June the
- 14 9th of 1983 who is in this courtroom today?
- 15 A. Yes.
- 16 Q. Do you know today that person's name?
- 17 A. Yes.
- 18 Q. What's his name?
- 19 A. Excuse me. I have heard that he's called Kevin
- 20 Cooper.
- 21 Q. And where is he seated in the courtroom?
- 22 A. To the right of the second man. He's on the left.
- 23 Excuse me. Excuse me, to the right of the man that is on the
- 24 left. The first -- no, the first.
- 25 Q. Is he the only black man that's seated at counsel
- 26 table?
- 27 A. Yes.
- 28 Q. What name did you know him by in Ensanada?

018498

1 A. Angel Jackson.  
2 Q. Is that Angel Jackson?  
3 A. I think so, in English. I have heard.  
4 Q. When you first met Kevin Cooper, did he have  
5 anything with him?  
6 A. Yes.  
7 Q. Did he have any money with him?  
8 A. At the moment that he arrived, I didn't know. But  
9 afterwards I became aware of it.  
10 Q. When he first arrived, what did he have?  
11 A. A bag, or a bag. Or that is what we call it.  
12 Q. Could you tell what was in the bag?  
13 A. When he got there?  
14 Q. When he got there.  
15 A. Not at the time when he got there. Not until  
16 later, no. No, towards the last.  
17 Q. Did you see Kevin Cooper with some money?  
18 A. No.  
19 Q. After he had been with you for awhile, did you see  
20 him with some money?  
21 A. No.  
22 Q. Did you ever get any money from Kevin Cooper?  
23 A. Yes.  
24 Q. How long after you met him did you get some money  
25 from him?  
26 A. I don't know. A week, possibly. Possibly less. A  
27 week.  
28 Q. How much money did you get?

018499

1 A. About twenty-seven to thirty dollars.

2 Q. What type of money did you get? Was it coins or

3 dollar bills or what was it?

4 A. Coins.

5 Q. Do you remember what type of coins, whether they

6 were quarters or nickels or dimes?

7 A. Most of them were twenty-five cents.

8 Q. Did there come a time when you and your husband and

9 daughter sailed out of Ensanada?

10 A. Yes.

11 Q. Did the man in court that you knew as Angel

12 Jackson, did he go with you?

13 A. Yes.

14 Q. Did you know that he was Kevin Cooper at that time

15 back in Ensanada?

16 A. No.

17 Q. Did Kevin Cooper remain with you and your husband

18 until he was arrested in Santa Barbara around the end of July?

19 A. Yes.

20 Q. Did you see Mr. Cooper ever get seasick while he

21 was with you and your husband?

22 A. Yes.

23 Q. Was he seasick a lot or seldom?

24 A. It seemed like a lot.

25 Q. Was he able to sail the boat himself?

26 A. No.

27 Q. Directing your attention to an item which has been

28 marked for identification as Exhibit 103 appears to be a green

0185000



1 and yellow type canvas bag.

2 Have you seen this bag before?

3 A. Yes.

4 Q. Is it your bag?

5 A. No.

6 Q. Was it ever on your boat, the Illa Tika?

7 A. Yes.

8 Q. Who brought it on the boat?

9 A. Kevin.

10 Q. Directing your attention to Exhibit 110, which

11 appears to be a short-sleeved blue T-shirt with "Costa Rica" on

12 it.

13 Have you seen this T-shirt before today?

14 A. Yes.

15 Q. Was it ever given to you?

16 A. Yes.

17 Q. By whom?

18 A. Kevin.

19 Q. Did you give it to the police after Kevin Cooper

20 was arrested?

21 A. Yes.

22 Q. Directing your attention to Exhibit 117, which

23 appears to be a pair of sweatpants, which are blue in color.

24 Have you seen these before today?

25 A. Yes.

26 Q. Did you ever see them on your boat, the Illa Tika?

27 A. On Kevin.

28 Q. And directing your attention to Exhibit 168, a pair

018501

1 of green fatigue-type pants.

2 Have you seen these before today?

3 A. Yes.

4 Q. Did you see Mr. Cooper wearing them on your boat?

5 A. When he got there.

6 MR. KOCHIS: Thank you. I have no further questions,  
7 your Honor.

8

9

CROSS EXAMINATION

10 BY MR. NEGUS:

11 Q. Mrs. Handy, when Kevin arrived on your boat, did  
12 you give him some soap and toilet articles to use?

13 A. When he got to my boat?

14 Q. Yes.

15 A. I don't remember now. I think so. A perfume soap.

16 Q. Did he have any towels with him when he got to the  
17 boat?

18 A. No.

19 Q. I have here Exhibit 630 --

20 A. No, I didn't give him soap.

21 Q. I have here Exhibit 633, which has been -- inside  
22 are two towels.

23 Are either of these your towels?

24 A. No.

25 Q. Did you at some point in time see Kevin bring back  
26 a blue bag such as I have in my hand in Exhibit 167?

27 A. Yes, I remember the bag.

28 Q. Did Kevin first bring that bag in the boat when you

1       were at Pelican Cove?

2               A.     In Pelican?

3               Q.     Yes.

4               A.     Yes.

5               Q.     And did -- from that bag did he give you some

6       toilet articles; cosmetics?

7               A.     Yes.

8               Q.     Did he also, did he also obtain these two towels

9       that came from Exhibit 633 from that blue bag?

10              A.     I don't remember exactly.

11              Q.     Did you smoke in June and July of 1983?

12              A.     Yes.

13              Q.     Did you smoke cigarettes?

14              A.     Yes.

15              Q.     What brand?

16              A.     Any kind of tobacco that let out smoke?

17              Q.     Did you -- was there a particular -- did you like

18       smoke Camel's or just anything you could get?

19              A.     Yes.

20              Q.     Showing you a couple of packs of cigarettes, some

21       Pall Mall's from Exhibit 634.

22                     Did you ever smoke that brand of cigarette?

23              A.     I smoked but I never bought a package.

24              Q.     When Kevin was on your boat, did you see him smoke

25       this kind of cigarette?

26              A.     No.

27              Q.     Did you and your husband ever leave Kevin on charge

28       of the boat for half a day?

018503

1 A. Yes.

2 Q. Was that on the 1st of July?

3 A. Yes.

4 Q. And on that particular day, did you and your

5 husband go down to the Navy exchange in Long Beach?

6 A. Yes.

7 Q. Where was your boat while you and your husband went

8 down to Long Beach?

9 A. In Santa Barbara at the --

10 THE INTERPRETER: There was a word she's using, I'm

11 sorry.

12 MR. NEGUS: I think the English word anchor. In the

13 anchor.

14 THE INTERPRETER: May I ask her what she means by that?

15 THE WITNESS: Oh, it was the anchor was down.

16 BY MR. NEGUS:

17 Q. The boat was not at the pier as it is in this

18 photograph, 627, but it was out in the bay there?

19 A. Yes. At another side. At the other side of the

20 pier.

21 Q. Over which direction, to the right or the left?

22 A. To the right of what?

23 Q. Of the -- if you are sitting there on the

24 photograph.

25 A. It is not there. You can't see it on the

26 photograph because the pier is on the other side.

27 Q. The place where the boat was left, is that the

28 place where people leave their boats in Santa Barbara without

018504

1 paying any fees?

2 A. Not to -- not to pay? Which people?

3 Q. I'm sorry, I was conferring, I didn't hear the last

4 answer.

5 A. Which people?

6 Q. Did you and your husband leave your boat there

7 without having to pay for it?

8 A. Any person can put their anchor down wherever they

9 wish.

10 Q. How far from the shore was your boat anchored?

11 A. I don't know exactly how far.

12 Q. A couple of hundred meters?

13 A. More than that. A little bit more.

14 Q. Did your husband give Kevin lessons in sailing the

15 boat?

16 A. No, no.

17 Q. Did Kevin ever sail the boat with your husband

18 watching him?

19 A. Yes.

20 Q. Did you ever see Kevin wearing sunglasses?

21 A. No.

22 Q. Did Kevin ever give you a pair of sunglasses?

23 A. Yes.

24 Q. When was that?

25 A. When he took the blue bag.

26 Q. Okay. Was the blue bag, was there two pair of

27 sunglasses: One he gave to you and one he kept?

28 A. Yes. Yes.

1 Q. Did Kevin ever -- when Kevin gave you the money,  
2 was that to buy food with?

3 A. Yes.

4 Q. And that food was purchased in Ensanada before you  
5 set sail?

6 A. Yes.

7 Q. When Kevin first arrived on the boat, did he appear  
8 to have any teeth missing?

9 A. No.

10 Q. When he was seasick, did he lose some dentures?

11 A. He lost it when we were at sea, yes.

12 Q. So after -- after you were at sea you could see  
13 gaps where his teeth were missing.

14 A. Yes.

15 Q. When Kevin first arrived at the boat, did you see  
16 him with any weapons?

17 A. No.

18 Q. At the time that he found the blue bag, did he  
19 bring back a fillet knife?

20 I'll rephrase the question. At the time that he  
21 found the blue bag, did he bring back a knife?

22 A. Yes.

23 Q. And was that a small knife of the type that is used  
24 for cutting up fish?

25 A. Not for cutting fish, but it was small.

26 Q. The first time that you saw what was inside Kevin's  
27 bags, was that after he was arrested?

28 A. Yes.

018506

1 Q. So when you said the last day in answer to Mr.  
2 Kochis' question about the bag, you meant the day that Kevin was  
3 arrested; is that right?

4 A. Yes.

5 Q. Did your husband keep guns on the boat?

6 A. Yes.

7 Q. Were those kept loaded?

8 A. Some.

9 Q. Did Kevin sort of sleep on top of those or over  
10 those guns?

11 A. In the same room.

12 Q. Did you leave those guns on the boat when you and  
13 your husband went down to Long Beach?

14 A. It is our house.

15 Q. So you left them there, right?

16 A. Yes.

17 MR. NEGUS: I have nothing further.

18

19 REDIRECT EXAMINATION

20 BY MR. KOCHIS:

21 Q. Mrs. Handy, when you first met Kevin Cooper was he  
22 wearing glasses?

23 A. No.

24 Q. Did he ever wear glasses while he was with you and  
25 your husband on the boat?

26 A. No.

27 Q. How was Kevin Cooper wearing his hair when you  
28 first met him?

0100507

1           A.     He had a hat, not a hat, but like -- like a -- I  
2     don't know what you call it here.

3           Q.     Did he have something on his head?

4           A.     Yes, a hat, a hat.

5           Q.     Could you see part of his hair?

6           A.     I didn't notice.

7           Q.     When he was on the boat, how did he wear his hair?

8           A.     Braids.

9           Q.     Did he ever wear it in any other style?

10          A.     Yes.

11          Q.     What other style?

12          A.     Tied with something.

13          Q.     Any other way?

14          A.     Loose.

15          Q.     What do you mean by loose?

16          A.     Not in braids, not tied, just --

17          Q.     Combed out?

18          A.     He never did -- like an Afro, like an Afro hairdo.

19          Q.     Did Kevin Cooper work on your boat in Ensenada?

20          A.     A little.

21          Q.     When it was in dry dock?

22          A.     Yes, a little.

23          Q.     Did he scrape paint, for example, off the boat?

24          A.     I don't remember.

25          Q.     Thank you.

26                 I don't have any further questions.

27     MR. NEGUS:   Neither do I.

28     THE COURT:   Thank you very much, Mrs. Handy.

018508



1 THE INTERPRETER: May I be excused?

2 THE COURT: Yes. You both may. Thank you also.

3 THE INTERPRETER: Thank you.

4 MR. KOCHIS: Mr. Evelyn is my next witness. There are  
5 one or two exhibits that have to be marked. I can have the  
6 clerk mark one of them while I start a portion of my direct.

7 THE COURT: All right. Ask in Mr. Evelyn, please.

8 Come forward to the witness stand, please.

9 THE CLERK: Would you raise your right hand to be sworn  
10 please.

11

12 AUBREY EVELYN,

13 called as a witness on behalf of the People, having been duly  
14 sworn, testified as follows:

15 THE CLERK: Would you state your full name for the  
16 record.

17 THE WITNESS: Aubrey Evelyn.

18 THE CLERK: I'm sorry, I didn't hear you.

19 THE WITNESS: Aubrey, A-u-b-r-e-y.

20 THE CLERK: Uh-huh.

21 THE WITNESS: Last name is Evelyn, E-v-e-l-y-n.

22 THE CLERK: Thank you.

23 THE COURT: Please have a seat.

24

25 DIRECT EXAMINATION

26 BY MR. KOCHIS:

27 Q. Mr. Evelyn, who do you work for?

28 A. U.S. Tobacco Company.

018509

1 Q. Where are they located?

2 A. Well, their home office, the corporate office is in  
3 Greenwich, Connecticut. I actually work out of our office and  
4 plant in Richmond, Virginia.

5 Q. How long have you worked for U.S. Tobacco?

6 A. Be eleven years coming March of this year -- next  
7 year. I have been there ten years.

8 Q. What is your current job?

9 A. I am Private Brands and Institutional Sales Manager  
10 for the company.

11 Q. Is that the only company you've work for in the  
12 tobacco industry?

13 A. No.

14 Q. How long have you been employed in some capacity in  
15 the tobacco industry?

16 A. Since August of 1955.

17 Q. Almost 30 years?

18 A. (No audible respnse.)

19 Q. You have to answer out loud.

20 A. Right.

21 Q. What does your current job responsibilities  
22 include?

23 A. My current job as sales manager includes making  
24 sales plans to sell products, developing products, keeping up  
25 with industry trends, competitive products, and analyzing them  
26 and trying to develop new products that would be in competition  
27 with them to put on the market.

28 Q. Now, you mentioned in your title institutional

- 1 sales; is that correct?
- 2 A. That's right.
- 3 Q. To what does that term apply?
- 4 A. I did not hear you.
- 5 Q. What are we talking about when we're talking about
- 6 institutional sales?
- 7 A. Well, that is sales to prisons, jails, hospitals,
- 8 usually through state purchasing departments. Most of it is
- 9 done on a bid basis.
- 10 Q. Are you the only tobacco company in this kind of
- 11 work?
- 12 A. Am I what?
- 13 Q. Is U.S. Tobacco Company the only tobacco company in
- 14 the United States?
- 15 A. Oh, no.
- 16 Q. There are others?
- 17 A. Sure.
- 18 Q. R. J. Reynolds?
- 19 A. Right.
- 20 Q. Do you have a contract in which you ship a
- 21 particular type of tobacco to the men's prison in Chino
- 22 California?
- 23 A. I have a verbal contract with L. B. Ball Company.
- 24 Q. And as a result of that verbal contract do you, in
- 25 fact, ship a particular product to the men's prison in Chino,
- 26 California?
- 27 A. That's right.
- 28 Q. Does that product have a name that we can refer to

4888

1 during this particular trial, for example?

2 A. Yes.

3 Q. What name would be used?

4 A. Role Rite, R-o-l-e, R-i-t-e.

5 Q. Now, tobacco is essentially what type of commodity?

6 By that I mean, is it a vegetable, mineral?

7 A. It's a plant, yes.

8 Q. Do you -- does your company grow its own tobacco?

9 A. No.

10 Q. How do you get it?

11 A. We buy it from the open market.

12 Q. Is your company involved in the manufacture of

13 tobacco?

14 A. Yes.

15 Q. Now, for those of us that don't have any background

16 in this field of tobacco, when you manufacture tobacco, what are

17 we talking about?

18 How do you change it from the product -- from the

19 form in which you get it, for example?

20 A. That's a long story. You don't want me to tell the

21 whole thing, I'm sure.

22 Q. Okay. Well, let me see if I can break it down,

23 when you buy it is it in a leaf form?

24 A. Yes, it is.

25 Q. During the manufacturing process is it cut?

26 A. That's right.

27 Q. Can it be treated chemically?

28 A. Sure.

COMPUTERIZED TRANSCRIPT

4889

1 Q. Is it flavored?

2 A. Right.

3 Q. Now, is all tobacco cut in the same shape?

4 A. No.

5 Q. For example, does your company sell tobacco other

6 than this Role Rite tobacco?

7 A. Sure.

8 Q. Is the cut of all your tobacco the same?

9 A. The same?

10 Q. Right.

11 A. No.

12 Q. Within the different types of cuts, is there a cut

13 that's called shredded and a cut that's called granulated?

14 A. Right.

15 Q. Could you explain to the jury how that difference

16 shows up?

17 A. Shredded is a long type of tobacco that's --

18 Maybe if I explain it a little bit.

19 When it comes through the machine it's pressed into

20 a cake or a cheese, as we call it. And you would have machines

21 that come down and cut it off and it leaves it in long shreds.

22 Okay?

23 Q. Okay.

24 A. Now the granulated is a double-cut product. It's

25 also cut that way, but then it's cut the opposite way, and they

26 make it into little flakes.

27 Q. This Role Rite tobacco that is sent to the men's

28 prison at Chino do you know what kind of container it's shipped

COMPUTERIZED TRANSCRIPT

4890

1 out in? By that I mean the tobacco.  
2 A. Are you talking about the individual container?  
3 Q. Yes.  
4 A. Yes. It's in a plain white box.  
5 Q. Is that a pipe tobacco or a cigarette tobacco?  
6 A. It's a paper -- cigarette tobacco, excuse me.  
7 Q. Is it shredded or granulated?  
8 A. Granulated.  
9 Q. And is it made up of more than one type of tobacco?  
10 A. Yes.  
11 Q. What's it's made up of?  
12 A. It's made up of Burley and Virginia tobacco.  
13 Q. Is there any difference between Burley and Virginia  
14 tobacco that you can see with the naked eye?  
15 A. Sure.  
16 Q. What's the difference?  
17 A. Color.  
18 Q. Which one is the different -- Well, Burley is what  
19 color essentially?  
20 A. It varies in shades of browns, from real dark brown  
21 to a light brown.  
22 Q. And Virginia, what about its color?  
23 A. More yellow, golden colors.  
24 Q. Is it also a light brown or a tan?  
25 A. It could be some, but not too much.  
26 Q. Directing your attention to two exhibits that have  
27 been marked for identification as Exhibit 624 and Exhibit 59; do  
28 you recognize either one of those products?

COMPUTERIZED TRANSCRIPT

0-18514

4891

1 A. Yes.

2 Q. One of them or both of them?

3 A. Both of them.

4 Q. The exhibit that's opened, which is Exhibit 624,

5 does this appear to be a box of the Role Rite we have been

6 talking about?

7 A. That's right.

8 Q. This is the type of product that you ship to the

9 men's prison in Chino?

10 A. That's right.

11 Q. Now, --

12 A. Excuse me.

13 Q. I'm sorry. If I lift the evidence tag up there

14 appears to be some type of white paper inside the cellophane and

15 outside the box, do you recognize what that is?

16 A. Yes. It's roll your own cigarette papers.

17 Q. Do you ship the rolling paper with the boxes as it

18 appears in this exhibit?

19 A. Yes. It's packaged just as you see it with one

20 booklet to a package like this.

21 Q. And you've referred to 59, Exhibit 59?

22 A. Yeah.

23 Q. Now do these both appear to be the same box that

24 you send to Chino?

25 A. Yeah. as far as I can tell.

26 Q. Now, Exhibit 624, I'm taking out what appears to be

27 some type of checkered pouch, a blue and white checkered pouch;

28 do you recognize what this is?

COMPUTERIZED TRANSCRIPT

1 A. Yes.

2 Q. One of them or both of them?

3 A. Both of them.

4 Q. The exhibit that's opened, which is Exhibit 624,

5 does this appear to be a box of the Role Rite we have been

6 talking about?

7 A. That's right.

8 Q. This is the type of product that you ship to the

9 men's prison in Chino?

10 A. That's right.

11 Q. Now, --

12 A. Excuse me.

13 Q. I'm sorry. If I lift the evidence tag up there

14 appears to be some type of white paper inside the cellophane and

15 outside the box, do you recognize what that is?

16 A. Yes. It's roll your own cigarette papers.

17 Q. Do you ship the rolling paper with the boxes as it

18 appears in this exhibit?

19 A. Yes. It's packaged just as you see it with one

20 booklet to a package like this.

21 Q. And you've referred to 59. Exhibit 59?

22 A. Yeah.

23 Q. Now do these both appear to be the same box that

24 you send to Chino?

25 A. Yeah, as far as I can tell.

26 Q. Now, Exhibit 624, I'm taking out what appears to be

27 some type of checkered pouch, a blue and white checkered pouch;

28 do you recognize what this is?



4892

1 A. Yes.

2 Q. What is it?

3 A. It's a pouch.

4 Q. Ask a simple question, get a simple answer.

5 Is this the type of pouch that you place inside

6 every one of the Role Rite -- every one of the white boxes that

7 contains the Role Rite tobacco?

8 A. That's right. That's right,

9 THE COURT: Mr. Kochis, could you step back a bit.

10 MR. KOCHIS: I'm sorry.

11 Q. Have you had a chance to look inside this

12 particular blue and white pouch that I'm going to open for you?

13 A. Yeah.

14 Q. Do you see the tobacco inside?

15 A. Yes.

16 Q. Does that appear to be the tobacco that the name

17 we've used in this particular case, the Role Rite tobacco?

18 A. I would say, yes.

19 Q. Now, have you had any role in the development of

20 that particular product?

21 A. Yes, I did.

22 Q. Now, that product, is that sold anywhere in the

23 country on a retail basis?

24 A. No.

25 Q. Do you sell it, for example, to tobacco stores?

26 A. No.

27 Q. Do you sell it to major stores like Fedco, Target,

28 things of that nature?

COMPUTERIZED TRANSCRIPT

0018516

4893

1 A. No.,  
2 Q. Do you sell it to liquor stores?  
3 A. No.  
4 Q. Is that a product that you ship exclusively to  
5 institutions?  
6 A. That's what it was developed for and that's where  
7 we ship it.  
8 Q. Do you ship it to any state other than the State of  
9 California?  
10 A. No.  
11 Q. Now, did you examine some business records that  
12 your company keeps of invoices prior to coming to California to  
13 testify?  
14 A. Yes, I did.  
15 Q. And did you bring with you Xerox copies of the  
16 invoices that show every location within California that that  
17 type of tobacco was shipped to in 1983?  
18 A. Yes.  
19 Q. And directing your attention to what has been  
20 marked for identification as Exhibit 632, does that the appear  
21 to be a copy of the records you brought?  
22 A. They are the ones that I brought, yes.  
23 Q. Now, according to the records the men's prison in  
24 Chino is not the only prison that tobacco -- that the Role Rite  
25 tobacco is shipped to, is that true?  
26 A. That's true.  
27 Q. For example, is it also shipped to a location in  
28 California called the Preston School of Industry?

COMPUTERIZED TRANSCRIPT

1 A. That's right.

2 Q. The woman's prison which is located I believe in  
3 Frontera?

4 A. That's true.

5 Q. And a place in California called the California  
6 Rehabilitation Center?

7 A. That's right.

8 Q. Likewise to Soledad prison?

9 A. Soledad? I know some went to Folsom. I don't  
10 remember Soledad.

11 Q. It appears neither one.

12 Now is that the only tobacco you send to  
13 institutions?

14 A. No.

15 Q. Do you also ship a shredded tobacco to some of the  
16 institutions?

17 A. Yes.

18 Q. Can you tell the difference between the shredded  
19 and the Role Rite, the tobacco by appearance?

20 A. Than the granulated?

21 Q. Right.

22 A. Sure, by appearance sure you can.

23 Q. For example, the tobacco in front of you, the Role  
24 Rite, is that what you've described previously as granulated  
25 type?

26 A. This is granulated.

27 Q. Now is there a particular reason that this type of  
28 tobacco is sent only to certain prisons in California and not

010510

1 anywhere else?

2 A. You've asked me a tough one. All I can tell you is  
3 this is what they specified and ordered, and that's what we  
4 shipped them. What the reasons for I don't know.

5 Q. Essentially do you bid for certain contracts with  
6 certain prisons?

7 A. That's right.

8 Q. And you have a contract with the men's prison in  
9 Chino, is that true?

10 A. No. I have a verbal contract with L. B. Ball  
11 Company who has a contract with the State of California.

12 Q. And this product, was it designed specifically to  
13 ship it to the prisons in California?

14 A. That's right.

15 Q. Not to be sold over the counter.

16 A. That's true.

17 Q. Now, are the U.S. Tobacco Company tobacco products  
18 the only type of tobacco products you've seen?

19 A. No.

20 Q. Do you, for example, keep track of what your  
21 competitors are doing?

22 A. I try to.

23 Q. Do you look at the type of things they sell?

24 A. Right.

25 Q. And are you able at times, if the sample is big  
26 enough, to tell if a type of tobacco is the type that your  
27 company ships as opposed to what someone else ships?

28 A. Would you come again with that one? I didn't

010519

1 understand what you were asking me.

2 Q. The Role Rite tobacco, are you able to recognize  
3 that as it sits in front of you on the witness stand, for  
4 example, you can tell that's the stuff you --

5 A. Yes, I can tell.

6 Q. And that's one of the products you helped develop?

7 A. Right.

8 Q. Maybe the easier way to explain it is with a chart.

9 Directing your attention to an exhibit which we've  
10 marked for identification as Exhibit 635.

11 Which I suppose for the record should explain, your  
12 Honor, to both the jury and the court personnel.

13 It's an exhibit which has the ability to be changed  
14 if we are not careful with it in that tobacco can be rubbed off  
15 it.

16 Do you -- can you see this particular exhibit?

17 A. Yeah.

18 Q. Now, have you had a chance to look at the exhibit  
19 before you got on the witness stand, for example?

20 A. Yes.

21 Q. And is there tobacco on this particular exhibit  
22 that you recognize as being similar in appearance visually to  
23 the tobacco in front of you on the witness stand?

24 A. Yeah.

25 Q. And which one is it?

26 A. The Bull Durham up at the top, and American Spirit.  
27 That's about it.

28 Q. Do you see on the exhibit tobacco that your company

01005700

1 ships to California?

2 THE COURT: You mean the Role Rite?

3 MR. KOCHIS: Yeah, the Role Rite. I'm sorry.

4 THE WITNESS: The third.

5 BY MR. KOCHIS:

6 Q. What has been labeled as CIM Tobacco FF-2?

7 A. Right.

8 Q. Now, are their differences that -- are their

9 differences when you look at the tobacco, for example, between

10 the American Spirit and your Role Rite?

11 A. Difference in color and also in size of the flake.

12 Q. And likewise is there a difference between the Bull

13 Durham and your tobacco?

14 A. Right, same difference.

15 Q. And are there examples on this diagram of what you

16 referred to when you mentioned shredded tobacco?

17 A. Yes.

18 Q. Could you perhaps pick one of those out and by name

19 tell the jury which one?

20 A. I would say the Top, see the long piece.

21 Q. Which name is under it?

22 A. Top.

23 Q. Okay. Top, down here?

24 A. Uh-huh. Bugler.

25 Q. Bugler above that?

26 A. Drum.

27 Q. And Drum?

28 A. Is also -- That's a real fine cut, but it is a

1 shredded type tobacco.

2 Tree Castles.

3 Q. And then --

4 A. Down at the bottom there, Tree Castles.

5 Q. And then would the Bull Durham and American Spirit  
6 and the Role Rite be examples of their granulated tobacco?

7 A. That's right.

8 Q. Could Carter Hall, for example, be another example  
9 of the granulated tobacco or would that be shredded?

10 A. It could be. It wouldn't be granulated but it  
11 would be more of a flake, yes, flake type tobacco.

12 Q. Directing your attention to a series of exhibits,  
13 Mr. Evelyn, one of which has been marked for identification in  
14 the trial as Exhibit 582, it has a laboratory identification  
15 number I believe of J-28, and opening the box for you, does that  
16 appear to contain tobacco?

17 A. Yes.

18 Q. Does it appear to contain the type of tobacco that  
19 your company manufactures?

20 A. Yes.

21 Q. Which type?

22 A. The granulated Role Rite.

23 Q. Directing your attention to an item which has been  
24 marked for identification as 583, which has a laboratory  
25 identification number V-15, some vegetable material taken out of  
26 the Ryen car; does that appear to contain some tobacco?

27 A. Yes.

28 Q. As you look at it visually, does it appear to be

1 the type of tobacco that your company manufactures?

2 A. I would say yes, but it's been handled a lot,  
3 something has broken it up; but I would say it seems to be the  
4 same thing.

5 Q. The Role Rite.

6 A. Yes.

7 Q. Now, directing your attention to Exhibit 584, which  
8 is an envelope from which I'm going to remove V-12, does there  
9 appear to be some tobacco in there?

10 A. Yeah.

11 Q. Now, is there anything about the appearance of the  
12 tobacco in V-12, for example, that is -- Let me strike that.

13 Inside V-12, does there appear to be something  
14 that's not tobacco?

15 A. It seems to be a piece of cigarette paper that's  
16 been burned on one end.

17 Q. Now, the -- the granulated pieces of tobacco  
18 themselves, are the pieces in V-12 the same size, for example,  
19 as the pieces in -- I'm sorry, the pieces that came from Exhibit  
20 584 the same size as 582?

21 A. No.

22 Q. Do they appear to actually have been -- to be  
23 smaller?

24 A. Much smaller, yes.

25 Q. Do they have the appearance of being handled, for  
26 example -- Well, let me --

27 A. That's kind of hard to say.

28 Q. Okay. What happens to tobacco when you roll it in



1 cigarette paper?

2 A. Well, it depends upon the condition of the tobacco  
3 when it's being rolled. If it's on the dry side it will crumble  
4 up, break up in small particles.

5 Q. Will then larger granulated particles get smaller  
6 if you take it and roll it?

7 A. Right; right.

8 A. Thank you.

9 I have no further questions.

10

11 CROSS-EXAMINATION

12 BY MR. NEGUS;

13 Q. Mr. Evelyn, you say that the product that you sell,  
14 the Role Rite, is a mixture of Virginia and Burley tobaccos?

15 A. That's right.

16 Q. Any particular type of Burley tobacco that's  
17 involved or just whatever you can get?

18 A. Well, there is whole lots of grades and it's  
19 different grades, and I don't know exactly how to explain it to  
20 you. Burley tobaccos that we buy on the market, yes, that's all  
21 I can say.

22 Q. So that you don't have -- would it be fair to  
23 say --

24 A. I don't have the formula with me, sir, and I would  
25 not tell you what grades that went in there. I mean, that's  
26 company secrets that I don't divulge, and I don't know it  
27 personally myself because it's all written down.

28 Q. I see. So somebody back in Richmond knows what

1 mixtures you have in there, but you're trying to keep R. J.  
2 Reynolds from finding out?

3 A. That's true.

4 Q. I take it then that you haven't divulged that  
5 information to our crime lab?

6 A. To whom?

7 Q. The --

8 A. No.

9 Q. You have had some contact with our Sheriff's  
10 Department?

11 A. No; no. I have not divulged any type other than it  
12 was Burley and Virginia. That's all I have divulged.

13 THE COURT: Please, make sure you wait until he finishes  
14 the question before you commence to answer.

15 THE WITNESS: Okay.

16 BY MR. NEGUS:

17 Q. What percentage of all tobacco that you can buy in  
18 the United States is Virginia?

19 A. What percentage would be Virginia?

20 Q. Yeah.

21 A. I really couldn't answer the question. I don't  
22 know.

23 Q. Somewhere between half and two-thirds sound within  
24 the ballpark?

25 A. I really couldn't answer that either because I  
26 never needed to know that and I just don't know it.

27 Q. Would you say that Virginia is the -- Well, let's  
28 see, how many -- besides Virginia and Burley, what other kinds

01005255

1 of tobacco can you get?

2 A. You can get Latakia. You can get Turkish. You can  
3 get Maryland. And you can get Perouk (phonetic), which is a  
4 type of Burley, but been treated a special way and cured a  
5 special way.

6 Q. The other four that you mentioned, the Maryland,  
7 the Latakia, the Turkish, and the Perouk (phonetic), are they  
8 relatively less common than the Virginia and the Burley?

9 A. Right.

10 Q. When -- when the tobacco arrives at U.S. Tobacco  
11 Company, has it been cured?

12 A. When it comes to my company it's been what we call  
13 stemmed, in other words, the big stem has been taken out and  
14 it's packaged in hogsheads. That's hogsheads, and it's -- which  
15 hold approximately from 950 to 1000 pounds of tobacco.

16 We put it in our warehouse and we have to age it  
17 anywhere from one-and-a-half to two, three years before we  
18 actually use it. Does that answer you?

19 Q. I'm not sure. I got a script I'm following.

20 A. It's in stripped form, that's what we call it when  
21 it comes to us.

22 Q. I got a different script.

23 In the tobacco business are their different  
24 processes called curing, that is, fire, flue and --

25 A. Sure.

26 Q. Is that done by you?

27 A. No.

28 Q. That's done back at the --

0105729

1 A. That's done by the farmer, the grower does that.

2 Q. Now, the tobacco that you use in Role Rite, what  
3 kind of cure does that involve or can it be a mix?

4 A. All right. The Virginia would be flue cured. The  
5 Burley would be air cured.

6 Q. That's "air" like in what we breathe, right?

7 A. That's exactly right.

8 Q. And basically a person like yourself could tell the  
9 difference by looking at that?

10 A. Oh, yeah.

11 Q. Besides the -- besides the cut and the type, that  
12 is, the Virginia, Burley, whatever, and the cure, is there any  
13 other thing that you can tell about the tobacco just by looking  
14 at it as you've done with the tobacco you had there on the  
15 stand?

16 A. Well, that's the main way you tell it is by color,  
17 looks, and cut. If there is flavoring in it, you can. If you  
18 got a good nose you can also tell by that.

19 Q. I notice that when you -- that you were smelling  
20 the Role Rite packet there -- I mean, when you looked at the  
21 Role Rite packet you did smell, is that correct?

22 A. Well, that's just something that tobacco people  
23 automatically do. Whenever they see tobacco they just smell it.  
24 Don't ask me why.

25 Q. So, mainly the smell was not -- that wasn't part of  
26 the -- of your general analysis of the stuff?

27 A. Not in this case because I think the product is  
28 pretty old and most of the smell is gone. I don't know how old

1 the product is.

2 Q. As far as the granulated cut is concerned, are  
3 there any subdivisions that you have in the trade to describe  
4 different varieties of granulated cut or do they all just more  
5 or less go under one name?

6 A. We just call it granulated, one name, that's it.  
7 But it can be different sizes I'm sure, but I mean --

8 Q. How many -- The tobacco market, I guess, and -- I'm  
9 not trying to get you into an anti-trust case or anything, but  
10 basically are there just a few companys that have most of the  
11 market or is it a whole bunch of them?

12 A. Well, it's not but a few companys.

13 Q. How many?

14 A. Can I name them off to you?

15 Q. Sure.

16 A. American Tobacco, R. J. Reynolds Tobacco, P.  
17 Lorilei, Brown Williamsons, U.S. Tobacco, and Liggett and Myers.  
18 They are the main ones.

19 Q. 99 percent of all?

20 A. I would say yes.

21 Q. How many different -- of those six companys then  
22 how many different granulated tobaccos would use a mixture of  
23 Virginia and Burley? How many different products are there that  
24 are granulated mixed with Virginia and Burley?

25 A. Are you speaking strictly of cigarette type, sir,  
26 or pipe tobaccos or what?

27 Q. Any type tobacco you want, any different type of  
28 product.

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1 A. That would be a question I couldn't answer.

2 Q. Lots?

3 A. I would say lots.

4 Q. When the -- when you put the tobacco into this

5 pouch here, I take it that some -- somewhere in your

6 corporate -- somewhere in your corporate world there's one

7 particular machine that cuts that stuff up or several particular

8 machines or something like that?

9 A. That's right.

10 Q. And they -- do you always put the same stuff in

11 there?

12 A. Sure.

13 Q. I mean, always the same mixture of Virginia-Burley

14 no matter what, it's a secret formula and it's always the same?

15 A. That's right.

16 Q. In developing this particular product and figuring

17 out what the mixes are going to be, would it be fair to say that

18 one of the prime things you're looking towards is to make it

19 cheap?

20 A. For institutions, yes.

21 Q. How many different -- how many different tobacco

22 products have approximately that size cut that are made of that

23 particular mix?

24 A. I don't know how I could answer that. Are you

25 talking about of all manufacturers?

26 Q. Sure.

27 A. I really don't know.

28 Q. I mean, if we didn't have these things in pouches

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1 for you, could you look at them and say, "I know that's Role  
2 Rite and nothing else."?

3 A. Yes, I think I could if I compare it with some of  
4 the other brands on the market today that is used for cigarette  
5 tobaccos, yes.

6 Q. Well, can you tell the difference, I mean, between  
7 a granulated cigarette and pipe tobacco just by looking at  
8 the --

9 A. Sure.

10 Q. Let's take J-28, the box here first, the bigger  
11 box, would that kind of remains, you can tell that's cigarette  
12 tobacco not pipe?

13 A. Right.

14 Q. Tobacco because it's flaky?

15 A. Right.

16 Q. And can you tell that that that's Role Rite and  
17 nothing but Role Rite?

18 A. Yeah. I would say it's Role Rite.

19 Q. And?

20 A. Nothing but Role Rite.

21 Q. And no other tobacco in the United States sold  
22 today could be that?

23 A. I don't think so, no.

24 Q. How about the ones that are more chopped up, can  
25 you tell for sure that they are Role Rite and nothing else, the  
26 other two little boxes?

27 A. This one would be -- one of them would be hard to  
28 really say that it was Role Rite. The one in, I believe it was

1 this one.

2 Q. Okay. Is that because it's so -

3 A. But it does have the same coloring and appearance  
4 and so forth, but it is chopped up awful fine there.

5 MR. KOCHIS: Could we for the record have an indication  
6 of which exhibit?

7 MR. NEGUS: That's the little pill box, V-12, right?

8 THE WITNESS: (No audible response.)

9 BY MR. NEGUS:

10 Q. What else could that be?

11 A. I don't know. It's tobacco, I can tell you that,  
12 but I don't know what else.

13 You mean what other brands would it be?

14 Q. Yeah.

15 A. Is that what you're asking me?

16 Q. Yeah.

17 A. Well, in looking the at this chart over here,  
18 either could be American Spirit, I mean by the size if you look  
19 at the size of it, yes.

20 Q. Well, is American Spirit, is that made up of a  
21 mixture of Burley and Virginia?

22 A. I would have to -- come closer or you can hand it  
23 to me because I can't see --

24 Q. Both you and the jury can see.

25 A. -- with my bifocals. I would say it is a mixture  
26 of Burley and Virginia, yes.

27 Q. Okay.

28 Q. Is that put out by your company?



1 A. No.

2 Q. Who puts that out?

3 A. I really don't know.

4 Q. And let's look at V-15, there is lots of stuff in  
5 there, hairs and whatever, but there are some larger flakes of  
6 tobacco in that than what appeared in V-12.

7 Because of the largeness of the flakes then you can  
8 say that's Role Rite and nothing else?

9 A. I would say it's Role Rite, yes. I have no doubt  
10 in any mind that it's not.

11 Q. And what -- and that's based upon the largeness of  
12 the size and the color?

13 A. And the appearance of it, yes.

14 THE COURT: Counsel, if you will be some time we could  
15 take a recess.

16 MR. NEGUS: I always like a recess.

17 THE COURT: All right. We will take an 15 to 20 minute  
18 recess. Remember the admonition, please.

19 You can step down.

20 (Recess taken.)

21

22 (Chambers conference reported.)

23 THE COURT: All right. Mr. Cooper and all counsel are in  
24 chambers.

25 MR. KOCHIS: Your Honor, I'd like to ask the court's  
26 permission when we are done with Mr. Evelyn to recall Mr. Handy.  
27 I left out one small area that should take me all of three  
28 minutes to handle. He's still outside the courtroom.

1 THE COURT: He'd probably stipulate to it.

2 MR. KOCHIS: It is faster to take the testimony than --

3 THE COURT: No problem. All right. While we're here,  
4 have you formalized yet any kind of a preface or stipulation  
5 with reference to the tapes tomorrow?

6 MR. KOTTMEIER: Specifically, no, as far as I am aware  
7 of. I'm waiting for Mr. Negus.

8 THE COURT: Explain to the jury that this was a tape by  
9 the two attorneys of Josh Ryen taken such and such a date.

10 MR. KOTTMEIER: Fine. And that there was no one else  
11 present.

12 MR. NEGUS: Except Mary.

13 MR. KOTTMEIER: The rest of it I think is  
14 self-explanatory.

15 THE COURT: Dr. Mary Howell, is that the grandmother?

16 MR. NEGUS: Yes. She -- you saw the tape. She  
17 administers a form of oath.

18 THE COURT: I wondered about that at the time.

19 MR. NEGUS: That was a certain amount of show business on  
20 the D.A.'s part, but I did not object to it.

21 THE COURT: Probably impressed the boy.

22 MR. NEGUS: I tend to agree.

23 But what I think we're willing to stipulate is that  
24 they can consider that as if Josh testified under oath. They  
25 can also consider a tape that we're going to play for them where  
26 Dr. Lorna Forbes is asking questions of Josh, as if they were  
27 under oath.

28 THE COURT: Are you going to have a transcript for them

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1 to read along?

2 MR. NEGUS: No. We don't want to do that because that  
3 tends to emphasize some testimony over others. We're going to  
4 have a transcript which we're going to stipulate the reporter  
5 can use in lieu of taking it all down. We don't have a  
6 transcript for the television thing but we're planning on just  
7 playing the portion after, the second version; second part of  
8 the interview, not the first part.

9 MR. KOTTMEIER: Yes. Not the prediscussion where we ask  
10 certain general questions because, as you recall, once I asked  
11 the questions, some areas I left out.

12 THE COURT: Why don't we take a waiver from Mr. Cooper  
13 now.

14 MR. NEGUS: Mr. Cooper, you understand that the proposal  
15 that we do is that in lieu of the prosecution calling Joshua  
16 Ryen as a witness in this case, that we stipulate that the tape,  
17 the video tape that you saw yesterday morning from Josh, and the  
18 tape which I believe you -- the oral tape which I believe you  
19 have seen the transcript of his interview in November, 1983,  
20 with Dr. Lorna Forbes, be played to the jury with certain  
21 deletions which we have discussed from Dr. Lorna Forbes' tape,  
22 and that either side would have the right at a later time, if it  
23 were otherwise legally appropriate, to recall Josh; but that  
24 unless that, unless that occurred, that would be the only  
25 testimony of him taken; that we would not have essentially any  
26 cross-examination of Josh in open court. The only cross  
27 examination of him that would exist would be the four or five  
28 questions that I saw fit to ask on the video tape.

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1                   When you do that you give up your right to  
2 personally confront Joshua in open court and to have me  
3 cross-examine him in front of the jury.

4                   Do you agree to do that?

5                   MR. COOPER: Yes, sir.

6                   THE COURT: So, knowing that you are giving that up, you  
7 waive and give up your right to see and hear him in court; is  
8 that correct?

9                   MR. COOPER: Yes, I do.

10                  THE COURT: You waive and give up your right to have your  
11 attorney cross-examine him in open court in your presence?

12                  MR. COOPER: Yes, I do.

13                  THE COURT: And you join in the waiver?

14                  MR. NEGUS: I do.

15                  THE COURT: All right, I accept that.

16                  MR. KOTTMEIER: Our logistical problem is it would take a  
17 half hour to set up the courtroom. As I mentioned, we were  
18 finished with the witnesses today, which I anticipate will  
19 probably be no more than 10 to 15 minutes. By the time we got  
20 set I --

21                  THE COURT: No. We're going to break today.

22                         You want to start off with the tapes in the morning  
23 first thing?

24                  MR. KOTTMEIER: Fine.

25                  THE COURT: Why don't you get here at 9:00.

26                  MR. KOTTMEIER: We will be here very early and have  
27 everything pretested, set up in advance.

28                  THE COURT: Very good. Okay. Let's go out and conclude

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1 with this witness.

2 MR. KOCHIS: Mr. Handy after him.

3 THE COURT: Sure.

4 MR. KOCHIS: We will have the clerk available for the  
5 group photo by 3:45.

6 MR. NEGUS: Mr. Kottmeier, one point at a time. We're  
7 still concerned about who takes the blame.

8 MR. KOTTMEIER: We finished early two days in row. I'm  
9 really concerned about finishing even 30 seconds early today.

10 THE COURT: I'm keeping score of --

11 MR. KOTTMEIER: Somebody is keeping score.

12 MR. NEGUS: I'm willing to let them know that the reason  
13 the prosecution did not fill up today was that I had to do more  
14 work on certain witnesses. So, if you wish to tell --

15 THE COURT: Don't say a thing. I have already told them  
16 we're going to knock off early today.

17 We didn't come back at 1:15 like I told them.

18 MR. NEGUS: That is my fault.

19 THE COURT: It is going to be so close, don't worry about  
20 it.

21 Bring the jurors in as soon as you get Mr. Cooper.

22 (Chambers conference concluded.)

23

24 THE COURT: Proceed.

25

26 CROSS EXAMINATION (Resumed)

27 BY MR. NEGUS:

28 Q. Mr. Evelyn, before you came out from Virginia to

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2 1 testify here in California, did you have any telephone  
2 conversations with Mr. Kochis here, the prosecutor?  
3 A. Yes, I did.  
4 Q. About how much time did you talk to him?  
5 A. Um, I would say probably about three times.  
6 Q. And did that involve various -- you gave him  
7 various information about the tobacco industry and your  
8 particular product?  
9 A. Some. Not -- not in great detail.  
10 Q. Did you also -- did you also have -- did you ever  
11 have any conversation with anybody from our sheriff's department  
12 out here?  
13 A. Did I have any conversation?  
14 Q. In June.  
15 A. No, I did not.  
16 Q. When you were here this morning -- you got in town  
17 last night?  
18 A. This morning.  
19 Q. This morning. This morning did you, before you  
20 testified, did you again sort of have a chance to discuss your  
21 testimony with Mr. Kochis?  
22 A. A little bit.  
23 Q. And did you also have a chance to discuss the  
24 charts that you have back there with Mr. Kochis and also I guess  
25 with young Mr. Ogino?  
26 A. Yes, they showed them to me.  
27 Q. They showed you the tobacco as well?  
28 A. Right.

1 Q. Some time, I guess it was last week, did you get a  
2 phone call from somebody who identified himself as Ron Forbush?

3 A. Yes, I did.

4 Q. And did he identify himself as a private  
5 investigator who was working for the defense in this particular  
6 case?

7 A. Yes.

8 Q. And did he ask you if he could ask you some  
9 questions about the tobacco industry over the telephone?

10 A. Yes.

11 Q. Did you initially agree to talk to him?

12 A. Did I initially agree? No.

13 Q. You never initially agreed to talk to him?

14 A. I told him I had to consult my corporate counsel.

15 Q. Do you remember agreeing to talk to him, to start  
16 talking to him and then deciding not to when he indicated he  
17 would like to tape record what you had to say?

18 A. No. I mean, I know I told him I had to consult  
19 counsel first before I could talk to him.

20 Q. I see. Did you do that before you talked to Mr.  
21 Kochis?

22 A. The first contact I believe with Mr. Kochis, I was  
23 not in the office and my assistant talked with him. But he also  
24 contacted our counsel and they gave him permission to talk with  
25 Mr. Kochis, yes.

26 Q. But you didn't give permission to talk with Mr.  
27 Forbush.

28 A. No, I did not.

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1 Q. Well, before you, before you communicated your  
2 final decision to Mr. Forbush, did you also call young Mr.  
3 Kochis, or Mr. Kochis?

4 A. Did I what now?

5 Q. Between the time that Mr. Forbush made his first  
6 call to you, and then you got back, then you got to your  
7 corporate counsel, did you also call Mr. Kochis here?

8 A. Did I call him? No.

9 Q. You didn't call?

10 A. I did not call him.

11 Q. No phone conversation with him?

12 A. He called me but I didn't call him, sir.

13 Q. He called you.

14 A. He called me about something else.

15 Q. Well, when he called you about something else, did  
16 you then bring up to him --

17 A. I asked him the question, yes.

18 Q. -- who Mr. Forbush was?

19 Q. Did he tell you he was an investigator for the  
20 defense in this particular case and you still didn't want to  
21 talk to Mr. Forbush?

22 A. Well, I mean, my corporate lawyer told me not to.  
23 I can't go against what my corporate lawyer says.

24 MR. NEGUS: That's all I have.

25 MR. KOCHIS: I don't have any further questions.

26 THE COURT: We thank you for the long trip. You are free  
27 to go. Thank you very much.

28 THE WITNESS: Thank you.



1 MR. KOCHIS: Your Honor, I'd ask permission to recall Mr.  
2 Handy. I left out an area. It shouldn't take me long to cover.

3 THE COURT: Go ahead. Ask Mr. Handy to come back in,  
4 bailiff.

5 I thought you'd be out sailing.

6 THE WITNESS: My boat's on land.

7 THE COURT: You are still under oath, a few more  
8 questions to ask you, sir.

9

10 OWEN WILLIAM HANDY, JR.,

11 called as a witness on behalf of the People, having been  
12 previously duly sworn, resumed the stand and testified further  
13 as follows:

14 DIRECT EXAMINATION (Resumed)

15 BY MR. KOCHIS:

16 Q. I apologize, Mr. Handy, I neglected one small area.  
17 During the time Kevin Cooper stayed with you, would  
18 you from time to time eat your meals together?

19 A. All the time.

20 Q. Did you have a chance to observe which hand Mr.  
21 Cooper would use, for example, when he would pick up a fork or a  
22 knife?

23 A. Left hand.

24 Q. Did you have a chance to observe which hand he  
25 favored when he did chores, for example, like painting?

26 A. Left hand.

27 Q. Now, when you were with him and he did a chore that  
28 would take sometime, for example, painting, would he ever use a

1 hand other than his left hand?

2 A. He seemed pretty apt with his right hand, also.

3 Q. Would he use both hands, for example, when he would  
4 do chores?

5 A. Yeah. Tie lines, and when one arm would get tired  
6 painting and stuff, he'd use the other hand.

7 MR. KOCHIS: Thank you. That's all I have.

8 THE COURT: Mr. Negus.

9 MR. NEGUS: No questions.

10 THE COURT: Thank you again, sir.

11 I believe this concludes the session today. Let me  
12 verify that.

13 MR. KOTTMEIER: Yes, your Honor. The next portion will  
14 require some setting up and also will probably require at least  
15 one hour of approximately an hour increment.

16 THE COURT: We would like to have you back at 9:30  
17 tomorrow morning when we're going to let you watch television  
18 for about an hour or so. Okay?

19 In the meantime, remember the admonition. Don't  
20 talk about the case, don't let others discuss it with you, don't  
21 yet express or form an opinion about the case until we finally  
22 submit it to you. Have a nice evening.

23 --oo0oo--

24

25 (Adjournment)

26

27

28

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT  
December 13, 1984

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COMPUTERIZED TRANSCRIPT

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78	8 X 10 Color Photo Inside Closet, Bilbia Bedroom 2991	2681	4993
79	8 X 10 Color Photo Inside Closet, Bilbia Bedroom 2991, (Rope)	2688	4993
80	8 X 10 Color Photo Footprint, Bilbia Bedroom 2991	2951	4993
81	Green Blanket, in Plastic Bag	3075	4993
82	Telephone Bill, 2991 Old English Road	2872	4993
83	8 X 10 Color Photo Hatchet	2685	4993
84	Pro Ked Invoices, CIM 1982	2622	4993
85	Pro Ked Invoices, Other Ca. Inst. 1982	2623	4993
86	Pro Ked Invoices, Other States 1982	2633	4993
87	Pro Ked Invoices, Ca. 1983	2624	4993
88	Pro Ked Invoices, Other States 1983	2624	4993

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105	Pair Beige Men's Pants	3000	4993
106	8 x 10 Color Photo of Lang & Co.	3001	4993
107	Grey Print Shirt	3001	4993
108	8 x 10 Color Photo of Lang on Horse	3002	4993
109	Tan Shirt	3001	4993
110	Blue T-Shirt - Costa Rica	2978	4993
111	8 x 10 Color Photo of Vickie & Roger Lang & Hatchet	2979	4993
112	8 x 10 Diagram of 2991 Residence	2816	4993
113	Phone Bill from Bell of Pennsylvania	3176	3176
114	8 x 10 Diagram of 2991 Residence	2835	4993
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119	1 Pair Grey Tweed Pants	2999	4993
120	1 Pair Yellow Tennis Shoes	4867	4993
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122	3 x 5 Photo, Interior, Garage, Store Room, 2991		2968

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131	3 x 5 Photo, Bedroom West of Entryway	2920	2968
132	3 x 5 Photo, Northeast Wall, Bedroom West of Entry	2921	2968
133	3 x 5 Photo, Saddle in Bedroom West of Entry	2921	2968
134	3 x 5 Photo, Bedroom West Of First Bedroom (Middle Bedroom)	2921	2968
135	3 x 5 Photo, Southeast Corner of Middle Bedroom	2921	2968
136	3 x 5 Photo, Western Bedroom and Bed	2922	2968
137	3 x 5 Photo, Northeast Corner of Kitchen Area	2923	2968
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140	3 x 5 Photo, Pool Table, Game Room	2924	2968
141	3 x 5 Photo, Pool Table Near Living Room, Glass Doors	2924	2968
142	3 x 5 Photo, Looking North Towards Picture Window	2924	2968
143	3 x 5 Photo, Display Case With Ribbons	2924	2968
144	3 x 5 Photo, Fireplace, 2991 Residence	2924	2968
145	3 x 5 Photo, Fingerprint Lift Dated 6-7-83	2946	4993
146	3 x 5 Photo, Footprint In Plastic	2944	4993
147	3 x 5 Photo Fingerprint Card of Kevin Cooper	2955	4993
148	3 x 5 Photo, Footprint Card of Kevin Cooper	2938	4993
149	3 x 5 Photo Fingerprint Comparison Display	2960	4993
150	3 x 5 Photo, Footprint Comparison Display		4993
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152	3 x 5 Photo, Lang Bedroom Closet, 2991	2926	4690
153	3 x 5 Photo, Shoe Impression	2935	4690
154	3 x 5 Photo, Shoe Impression, 2991	2935	4690
155	3 x 5 Photo, Lang Bedroom		4690

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158	Xerox Copies of Fingerprints, Duffy, 2991	2964	4993
159	Manilla Envelope Containing Glove	2976	4993
160	Paper Bag with Towel & T-Shirt	3074	4993
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165	Drawing of Knives by Mr. Lang	3047	
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180	11 X 11 Color Photo Ryen Bedroom Doug Ryen and First Aid		4993
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191	8 X 10 Color Photo A-41	3373	4993
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193	8 X 10 Color Photo Ryen Trophy Room	3371	4993
194	8 X 10 Color Photo Ryen Home, Laundry Room	3373	4993
195	8 X 10 Color Photo Ryen Home Open Refrigerator	3374	4993
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207	3 X 5 Color Photo 2991 Front Counter, Looking to Master Bathroom	3164	4690
208	3 X 5 Color Photo 2991 Master Bathroom	3138	4690
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210	3 X 5 Color Photo 2991 Bedroom with Saddle		4690
211	3 X 5 Color Photo 2991 Lang Bedroom		4690
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216	16 X 20 Color Photo Doug Ryen	3220	4993
217	16 X 20 Color Photo Peggy Ryen, Jessica Ryen and Chris Hughes	3220	4993
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232	3 x 5 Color Photo Barn, Front Driveway	3302	4691
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243	3 x 5 Color Photo Backyard	3409	4691
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253	3 x 5 Color Photo View from Patio	3409	4691
254	3 x 5 Color Photo X-1	3410	4691
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262	3 x 5 Color Photo A-41	3420	4691
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267	3 x 5 Color Photo A-46	3420	4691
268	3 x 5 Color Photo A-47	3420	4691
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288	3 x 5 Color Photo A-74	3421	4691
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291	3 x 5 Color Photo A-78	3421	4691
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294	3 x 5 Color Photo A-84	3421	4691
295	3 x 5 Color Photo A-85	3421	4691
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305	3 x 5 Color Photo A-99		4691
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307	3 x 5 Color Photo A-101	3385	4691
308	3 x 5 Color Photo A-102	3489	4691
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410	3 x 5 Color Photo T-13	3676	4691
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417	3 x 5 Color Photo U-7	3424	4692
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018579

1       1       SAN DIEGO, CALIFORNIA, THURSDAY, DECEMBER 13, 1984, 9:25 A.M.

2                       --ooOoo--

3  
4                       (Chambers conference reported.)

5               THE COURT: Good morning, gentlemen.

6                       All right, defendant and all three counsel are in  
7 chambers for what purpose.

8               MR. NEGUS: First off, the television people apparently  
9 wish to set up and take television tapes of the playing of Josh  
10 Ryen.

11                      I have represented to get one of the tapes that we  
12 are going to be playing to both Dr. Howell and her attorney it  
13 would in no way be released to the press. The harm that was in  
14 your original order about no coverage of Josh Ryen was not just  
15 the actual effect of the cameras on Josh himself, but the effect  
16 of exposure of his face, voice, and what have you on the  
17 television.

18                      And so I would request that the media not be  
19 allowed to be in the room where they can get a tape recording of  
20 Josh's voice or take pictures of the television or anything  
21 else.

22                      They wish to apparently just be in there and take  
23 pictures of us during the viewing, but they are going to be able  
24 to pick up the audio. They have very sensitive things.

25               THE COURT: Where is the harm, Mr. Negus?

26               MR. NEGUS: The harm is to Josh. And I have represented  
27 to Dr. Howell that -- that -- now that the tape that I had made  
28 by Dr. Forbes would not be released, and I believe it's implicit

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1 that at least --

2 THE COURT: You mean you represented to Dr. Howell that  
3 what wouldn't be released?

4 MR. NEGUS: We are going to play a tape by Lorna Forbes,  
5 that that would not be released to the press.

6 THE COURT: And you represented that to whom?

7 MR. NEGUS: Dr. Howell and her attorney Michael Gendler.  
8 That's how I got the tape. You know, there is -- there's a real  
9 problem.

10 THE COURT: I'm not sure if that came up before. Did it?

11 MR. NEGUS: Yes. You've made an order -- The original  
12 order you made when you decided on that was based partly on  
13 representations about -- about the effect of exposure in the  
14 media of Josh's face and voice, and that's -- you even said that  
15 as one of your --

16 THE COURT: We got two things: One, we've got the effect  
17 upon Josh and whether or not the media should be permitted to  
18 film a video tape of Josh or an audio tape of Josh.

19 Another one, you have -- the other issue that I was  
20 more puzzled by was a representation to Dr. Forbes and to her  
21 lawyers, I guess, or somebody's lawyers, Mary Howell's lawyers.

22 MR. NEGUS: Okay. The tape -- I was just putting that as  
23 part of the -- as part of the effect on Josh. They don't want  
24 it to be -- they don't want Josh's voice and picture released  
25 because they are afraid of the effect it will have on him, and  
26 it's apparent, so which I think is a reasonable position.

27 When I arranged back in November of 1983 to have  
28 Dr. Forbes interview Josh, I essentially negotiated with Dr.

010581

1 Howell through her attorney, Michael Gendler, G-e-n-d-l-e-r, of  
2 Irell, I-r-e-l-l, and Manella, M-a-n-e-l-l-a, we -- the  
3 agreement we had was that that particular tape would not be  
4 released to the press, and that was one of the -- that was one  
5 of the specific representations.

6 THE COURT: You did that on your own?

7 MR. NEGUS: Yes.

8 THE COURT: Without any commitment from the Court?

9 MR. NEGUS: Right. But that tape is part of the  
10 stipulation that we are entering into. And I entered into the  
11 stipulation, you know, with the assumption that, you know, I  
12 wouldn't be violating the promise I made to Mr. -- to Mr.  
13 Gendler by it, because your order said that it wasn't -- it  
14 wasn't going to be done. Now, you know, they are trying to get  
15 in and I don't think they should.

16 THE COURT: I'm desirous of letting them in. I don't see  
17 the harm to Josh any more.

18 Do you, counsel, wish to be heard?

19 MR. KOTTMEIER: Only in regard to the representations of  
20 Josh himself. I think that, for example, obviously we have  
21 talked about what Josh will say even in the opening statement.  
22 Mr. Negus has talked about the content of what Josh will say.

23 I can see where there might be some harm if they  
24 got ahold of a portion of our video tape that we are playing and  
25 put it on the 11:00 o'clock news and Josh saw himself in that  
26 setting when we led him to believe that in effect at our taping  
27 session on Sunday that this is a relatively private matter, that  
28 is, that there wasn't a lot of people that were going to be

1 seeing it and to set him at ease.

2 I part company with Mr. Negus though when it comes  
3 to the audio content of what Josh has to say. I think that that  
4 will be a source of contention probably all the way up until  
5 argument. And the audio portion of Josh's statements or the  
6 content of the statements are not something that we can  
7 adequately set aside and say that this just won't even be  
8 discussed or covered by the media because it's really very much  
9 the meat of the trial.

10 MR. NEGUS: Well, the problem with that is that first of  
11 all, we saw what happened when -- at the preliminary hearing  
12 when the media was allowed to tape Diane Williams. Even though  
13 they didn't use, supposedly use their tape over the air because  
14 that was -- that was forbidden by court order, they transcribed  
15 it and read portions of it and showed the picture of the tape --  
16 their tape machine running and a whole bunch of things like  
17 that. I just don't think that they can be trusted not to misuse  
18 the opportunity if they are allowed to set up their equipment.

19 THE COURT: You are asking the -- you are saying we owe  
20 some duty to edit the media over what they publish now?

21 MR. NEGUS: Though that's what I --

22 THE COURT: Open court proceedings can be taken down by  
23 them, can be edited in any way they wish.

24 MR. NEGUS: Fine. Fine. But the extended coverage is  
25 totally discretionary and it is not a media right. It's totally  
26 up to the judge. Many judges just flat out refuse it on -- on  
27 a, you know, one hundred percent refuse it. They have no right  
28 to -- they have a right to be present. They don't have a right

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1 to have their equipment in there.

2 And the -- the problem of the effect of Josh's  
3 voice coming out over the television I think is just as strong  
4 as his picture, and especially cause now what they're going to  
5 put out, they're going to put out when Josh is most graphic  
6 about describing -- hearing his mother screaming most likely, or  
7 things of that nature, the same kind of thing that Josh is  
8 actively trying to forget. I mean, there's -- he has been going  
9 to therapy for over a year now to try and forget this. And one  
10 of the -- one of the things that he, obviously when you talk to  
11 the kid and when you hear -- when his grandmother describes him,  
12 and based upon the testimony of Dr. Forbes last summer, is that  
13 he needs to forget it.

14 And nothing, I think, could be more unbeneficial  
15 for Josh at this point in time than to have his voice or his  
16 picture broadcast over the media because he's going to hear  
17 about it at school, he may hear about it himself. And it's just  
18 not the sort of thing that he needs to hear right now.

19 And, you know, the original order was that -- that  
20 nothing about Josh Ryen is going to get broadcast. That doesn't  
21 mean that they can't put their reporters in there and do a  
22 verbal thing. I think that that's -- you know, they are  
23 constitutionally protected on that. But they don't have a right  
24 to have their sensitive electronic equipment in there to pick up  
25 every, you know, -- every ounce of audio that comes through.

26 THE COURT: You don't feel strong way one way or the  
27 other about the audio of Joshua?

28 MR. KOTTMEIER: No, your Honor. As far as a video

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1     though, I do feel strong. The audio is another matter, and I

2     --

3             THE COURT: Well, the original order did prohibit either  
4     the video or the audio of Joshua.

5             MR. KOTTMEIER: I would agree to that. I think that the  
6     media could accurately and adequately cover, in their reporters  
7     comments and material that they gather themselves from their own  
8     recollection and efforts, the content of the conversation. That  
9     was the issue that I was hoping that we would not go that far  
10    on. In other words, when I was talking about arguments and so  
11    on, obviously I was interested in making sure that we didn't  
12    shut it down to where they couldn't even listen and then report.

13            MR. NEGUS: There is no --

14            THE COURT: I'm not sure I understand. Make sure what?

15            MR. KOTTMEIER: When I was discussing earlier, I was  
16    offering the thought that we should not limit them to their  
17    recollections and their notes and so on.

18            THE COURT: Counsel, they can take even, Mr. Negus will  
19    concede, they can take notes out there. They can perhaps get  
20    the reporter to read it back for them. It's open court, and  
21    they can print its verbatim in the paper.

22            MR. NEGUS: Fine. But I don't want them having the  
23    access to the audio.

24            THE COURT: I'm inclined to go along with that. As long  
25    as they can do the other thing they are not prohibited. We are  
26    not infringing on the media too much. We have got an out here:  
27    Both my original order and the commitment that you gentlemen  
28    have made with the the people involved; so let's stick to that.

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1 I will make some explanatory word to the media  
2 outside before we commence playing it then.

3 Okay, Mr. Negus?

4 MR. NEGUS: Okay. So they won't have any equipment in  
5 the room when Josh's stuff is being played?

6 MR. KOTTMEIER: They are -- What they have asked, and may  
7 be this will anticipate their objection, they have asked that  
8 they, even if they have no sound, they want to take a picture, a  
9 video picture of the Court set up with the cameras, with your  
10 Honor, the counsel, and the other parties present in the  
11 courtroom to visually show the setting.

12 They say that their reporter will report what  
13 happened, but they want to have this as the backdrop for that  
14 particular reporter.

15 THE COURT: So far I've had no defiance from the media in  
16 any way. They have been obedient as far as not photographing a  
17 particular matter. I was concerned with the traumatic effect  
18 upon Josh, if Josh testified live, to see a battery of cameras  
19 or the camera staring him in the face, that sort of thing. But  
20 if Josh isn't there live, I don't see any reason why I can't  
21 trust the media.

22 MR. NEGUS: Because I think the Diane Williams exhibit is  
23 a good example of why you can't do it, because they essentially  
24 made it seem as if they were playing the tape, and I'm sure they  
25 will do something just the same.

26 If they want to get a setup shot, why don't we go  
27 in there, Mr. Cooper, myself, prosecutors, all the cameras  
28 they -- you don't need the jury for this because they're not

1 allowed to take pictures of the jury anyway -- and let them get  
2 a shot that they can use.

3 THE COURT: Now, of course, you have all of -- this trial  
4 is nowhere near finished and they are not about to jeopardize  
5 the future extended coverage or permission by disobedience of  
6 the Court at this time, I wouldn't think.

7 What is it that you think they might do? If I say  
8 you are not to take pictures of the monitoring devices of Josh's  
9 image nor of his voice, what is you think they might do?

10 MR. NEGUS: I don't see -- I don't believe they won't  
11 take the audio, I mean, the machines, if the machines are in  
12 there they are going to take the audio and. I just don't  
13 believe they may not -- They may elect to hold it off and  
14 broadcast it later after the trial, or whatever, or I don't  
15 know, and I don't think that you can -- you can trust them.

16 THE COURT: I don't mind them picking up the audio for  
17 purposes of replaying it back to put it on the print media in  
18 some manner. I don't find anything wrong with that.

19 MR. MEGUS: The problem is that as soon as -- as soon as  
20 one person -- as soon as one station violates the order, then  
21 all of them will do it. And, you know, I just don't think --

22 THE COURT: Okay. I will go along with you up to that  
23 point. I'm not going to tell them to keep out all machines,  
24 either recording or filming. If they violate it, we've got our  
25 sanctions to impose and we've got future conduct to control. I  
26 don't think they will. Maybe I'm more naive than you, Mr.  
27 Negus. I simply don't think they will. They have been  
28 responsible heretofore.

018507

1 Anything further?

2 MR. KOTTMEIER: No, your Honor.

3 MR. KOCHIS: Yes. There are a number of further things  
4 to alert the Court.

5 After the video and the tape I have two witnesses  
6 that we don't anticipate will take very long. My remaining  
7 witnesses, as I mentioned yesterday are, the two criminalists  
8 that Mr. Negus is not prepared to examine until Monday.

9 THE COURT: Morton and Ogino?

10 MR. KOCHIS: Right. And we have the Negrette issue which  
11 I would like to find out this afternoon about, if we could  
12 litigate that. We have a matter of the exhibits, which we don't  
13 need the jury for.

14 And then Mr. Negus is going to have a request that  
15 has some ramifications that we perhaps should discuss today  
16 before the jury is dismissed to alert them to what may happen  
17 next week. Specifically he is going to request, I believe, a  
18 view of the crime scene by the jury sometime next week. And if  
19 we're going to discuss that and consider that possibility,  
20 that's something we might want to discuss today and check with  
21 the jurors today and see if they would be available. He has a  
22 particular time of day he wants them to view the scene, and that  
23 would be at night.

24 THE COURT: Outside of the -- outside of the video tape,  
25 what do you have today in the way of witnesses?

26 MR. KOCHIS: Mr. O'Campo and Mr. Clifford. I don't  
27 expect their combined testimony to take over half an hour.

28 THE COURT: Well --



1 MR. KOTTMEIER: Well, there is an additional tape. There  
2 is the video tape, then we will need to break to take it down,  
3 and then there is an audio tape which will take 45 minutes.

4 THE COURT: Let's do as much as we can today. I'm not  
5 going to get too disruptive.

6 MR. NEGUS: We will finish everything we have to do  
7 except Ogino and Morton today.

8 THE COURT: And that will be all you've got left as far  
9 as, you know, in your case in chief?

10 MR. KOTTMEIER: With the exception of the probation  
11 officer. After we litigate that, yes, your Honor, and the  
12 exhibits.

13 THE COURT: And then -- and then Brown and then all the  
14 corroborating witnesses, and the probation officer. We will  
15 take it up this afternoon.

16 MR. KOTTMEIER: Yes, your Honor.

17 (Chambers conference concluded.)

18

19 (The following proceedings were held in  
20 open court out of the presence of the jury:)

21 THE COURT: I have a few words that I want to state to  
22 the members of the various media that are here before we bring  
23 the jurors in this morning.

24 We have had a session back in chambers. I'm  
25 standing so that I can be seen over the video tape machine. We  
26 have had a session in chambers wherein I was persuaded to  
27 amplify a little bit on the order that I previously made back in  
28 October with reference to extended had coverage. Back in

1     October I made certain limitations on extended coverage, as you  
2     all no, no photographing of jurors, no photographing or  
3     recording of the minor, Joshua Ryen, and no closeup  
4     photographing of exhibits of deceased victims.

5             Circumstances have changed somewhat to the extent  
6     that we're going to use a video tape of Josh Ryen and an audio  
7     tape, two different tapes, in lieu of his live testimony.

8             And you might think that I would no longer be  
9     concerned with any proscription against the media photographing  
10    whatever is presented in court, but the same reasons still  
11    prevail.

12            So out of concern for the effect on Josha of seeing  
13    his image and voice coming over the television or radio, and  
14    also to be consistent with the prior order that I had made with  
15    limitations on extended coverage, and further, to corroborate  
16    counsel in some of their representations to Dr. Mary Howell and  
17    to her attorneys at one time in order to get an audio tape and  
18    to Joshua Ryen that the proceedings, the video taping are not  
19    going to come out over the air, for all of those reasons, ladies  
20    and gentlemen, you are free to be in court, to see and observe,  
21    and to print and to report, on in any manner you wish, except  
22    the prior rulings still apply.

23            Do not, please, in any manner show over the air or  
24    radio any recorded voice of Joshua Ryen or any image of Joshua  
25    Ryen. Otherwise I am not saying take your equipment out of the  
26    courtroom. It may be in here though. Report anything else you  
27    wish. You may record the voice of Joshua Ryen for accuracy in  
28    printing it. That's perfectly all right.

018590

1 MR. NEGUS: I thought that you had said -- we represented  
2 that that would not be done, your Honor.

3 THE COURT: You misunderstood me. I said that is where I  
4 differed with you.

5 MR. NEGUS: Then I would would like -- before we go ahead  
6 with it I would like to have an opportunity to get in touch with  
7 Dr. Howell, because I was -- I was under the impression --

8 THE COURT: Counsel, you perhaps misunderstood me. They  
9 may record it, but they may not play it back on the air or on  
10 the television.

11 MR. NEGUS: That was not my representation to Dr. Howell.  
12 I would like to have a chance, before I go ahead with the  
13 stipulation, to call her then because you're making a liar out  
14 of me. I believe that the media can live with just taking  
15 pictures without sound.

16 THE COURT: Anybody have any problem with that, if you do  
17 not record the voice of Joshua Ryen? If so, then we will go  
18 ahead and proceed with the other jurors. Otherwise I'm going to  
19 have to recess, let them make a phone call.

20 I'm generally desirous of giving you as broad a  
21 coverage as possible. Any problems? Any of you wish to be  
22 heard on the recording of the voice? Can you take it down? If  
23 so, otherwise we will go ahead and get started this morning.

24 MR. COHEN: What is the quality of the audio, the audio  
25 quality of the tape?

26 THE COURT: We will take a few minutes off the record.  
27 You can discuss it with --

28 (Colloquy between news media and counsel not

018591

1 reported.)

2 THE COURT: Let's get back on the record.

3 Counsel, apparently they are concerned with being  
4 able to accurately pick up without recording the voice of  
5 Joshua. Do you have any objection to furnishing them with any  
6 tapes or permitting them to --

7 MR. NEGUS: I'm not going to release any transcripts. To  
8 me that's -- What the prosecution and the Court does, that's  
9 something else; but I promised that I wasn't, and I'm not going  
10 to.

11 THE COURT: Well, any problem with them getting to the  
12 court reporter? I see none.

13 Go back to the court reporter if you want.

14 MR. NEGUS: I object.

15 THE COURT: Okay. Overruled.

16 Go back to the court reporter if you want,  
17 gentlemen and ladies.

18 With that I take it there's no strenuous objection  
19 from the media. Let's go ahead, get the jury.

20 Do not record the voice of Joshua Ryen as well.

21 You know, I consider -- I'm not going to lecture  
22 any of you people. You have been responsible heretofore, and  
23 I've tried to work with you. If there's a disobedience, of  
24 course, to any of the orders of the court, we have a lot of  
25 trial yet to go as you well know.

26 All right. Bring in the jurors, please.

27

28 (The following proceedings were held

0105072

1 in open court in the presence of the jury:)

2

3 THE COURT: Happy to see all of you here this morning.  
4 With all of the wind I wasn't sure you would be. I didn't think  
5 the wind blows this hard so far south of Cajon Pass.

6 Ladies and gentlemen, we're going to play a video  
7 tape for you this morning. First off, counsel, before we do  
8 that, I believe there was the further stipulation that was going  
9 to be stated, perhaps for the record, as to what this contains  
10 in some manner.

11 MR. KOTTMEIER: Well, your Honor, we can offer just a  
12 brief statement. I think the stipulations have been covered by  
13 our prior proceedings in chambers.

14 Exhibit No. 641, is the exhibit of the video tape  
15 that has been placed within the machine. We have placed on the  
16 board a new diagram, Exhibit 643, with plastic overlay 643-A,  
17 that is a diagram that is different from the earlier diagram in  
18 that none of the victims bodies are portrayed in it.

19 We have also placed on the board a group of  
20 photographs that will be referred to within 641. 641 the people  
21 present are Dr. Mary Howell, the grandmother, Josh Ryen, Josh  
22 Ryen, myself, and the defense attorney, Mr. Negus. No one else  
23 was present at the time the video tape was made.

24 In starting it, it starts right away, and as I  
25 start it I will have to turn the volume up because the volume on  
26 the machines has a lot of static unless there is something  
27 playing outside of that.

28 I see that we have covered everything that we need

01050677

1 to.

2 THE COURT: Without further adieu then, we're going to  
3 have to man the lights somewhere.

4 MR. KOTTMEIER: I don't think it is necessary to change  
5 the lighting at all, your Honor. I may be wrong but I don't  
6 think so.

7 THE COURT: Go ahead.

8  
9 (The following is a transcript of a video tape,  
10 reported, and made a part of this record.)  
11

12 MR. KOTTMEIER: This is Sunday, December 9th, 1984, about  
13 9:30 in the afternoon. We're here at the home of Dr. Mary  
14 Howell and her grandson, Joshua.

15 Josh, how old are you?

16 JOSHUA RYEN: 10.

17 MR. KOTTMEIER: 10? And what grade are you in?

18 JOSHUA RYEN: 5th.

19 MR. KOTTMEIER: 5th? I am going to ask your grandmother  
20 now to administer what we call the oath, and it is just an  
21 effort for you to tell the truth.

22 Dr. Howell.

23 MRS. HOWELL: You want me to stand?

24 MR. KOTTMEIER: Well, no, you can stay seated.

25 MRS. HOWELL: Joshua, raise your right hand.

26 Do you solemnly swear to tell the truth, the whole  
27 truth and nothing but the truth so help you God?

28 JOSHUA RYEN: I do.

018594

1 MR. KOTTMEIER: Dr. Howell, you've talked with Josh this  
2 morning also, telling him to tell the truth, the same as we've  
3 asked; that he only answer the questions in regard to what he  
4 can remember from his own mind. Is that correct?

5 MRS. HOWELL: That's correct.

6

7

DIRECT EXAMINATION

8

BY MR. KOTTMEIER:

9

Q. Josh, did your father or mom smoke?

10

A. No, just my dad.

11

Q. And your dad's first name was?

12

A. Doug.

13

Q. Your mom's first name?

14

A. Peg.

15

Q. And did you have any brothers or sisters?

16

A. My sister.

17

Q. And her first name?

18

A. Jessica.

19

Q. How old was Jessica?

20

A. Oh, 11.

21

Q. 11? Was she ahead of you in school?

22

A. Yeah.

23

Q. And did your father smoke?

24

A. Yeah. He smoked a pipe.

25

Q. And do you know what kind of tobacco he smoked?

26

A. No.

27

Q. Can you think of any way of identifying the kind of

28

tobacco he smoked?

018595

- 1 A. Had like an old pirate ship on it.
- 2 Q. On the package?
- 3 A. Package.
- 4 Q. Uh-huh. Did your dad smoke in the car?
- 5 A. Yes. Sometimes.
- 6 Q. Had anyone else smoked in the station wagon or
- 7 truck that you know of?
- 8 A. No.
- 9 Q. Have you ever seen anyone smoke a cigarette in the
- 10 station wagon?
- 11 A. No.
- 12 Q. At some point did your grandmother live next to
- 13 you?
- 14 A. Yes. She lived right next door, down the hill.
- 15 Q. When you say "down the hill", how would you get
- 16 there?
- 17 A. Walk.
- 18 Q. Well, all right. From your mom and dad's bedroom
- 19 where was your grandmother's house?
- 20 A. Well, like here's my mom's sliding door, my mom and
- 21 dad's sliding glass. You go down up on the grass, there was a
- 22 wooden fence like around -- and you hop that and you go down in
- 23 where the lunging room is. There's a little hill. Her house
- 24 was right there.
- 25 Q. Did you and Jessica ever take a shower at your
- 26 grandmother's house?
- 27 A. Yeah.
- 28 Q. In fact you had stayed there sometimes on weekends?



- 1 A. Yeah.
- 2 Q. Do you know when your grandma moved away from that
- 3 house?
- 4 A. No.
- 5 Q. Was it a long time ago?
- 6 A. This is the fourth year in --
- 7 Q. She's been in the house we're in today four years?
- 8 A. Uh-huh.
- 9 Q. You will have to answer yes or no, Josh.
- 10 A. Yes.
- 11 Q. And had your -- had your dad ever visited your
- 12 grandma's house?
- 13 A. Yeah.
- 14 Q. Had he ever stayed overnight at your grandmother's
- 15 house?
- 16 A. Why did he ever take a shower at your grandmother's
- 17 house?
- 18 A. Well, he used to come down here sometime when he
- 19 had to deliver a horse down here.
- 20 Q. Okay. You are talking about the house right here,
- 21 that we're in today.
- 22 What I'd like to know is about the house back up by
- 23 your house, your old house where your mom and dad used to live.
- 24 Did your dad ever spend the night at that house?
- 25 A. No.
- 26 Q. Did he ever take a shower at that house?
- 27 A. No.
- 28 Q. But you and Jessica did take a shower.

018597

1           A.     Yes.

2           Q.     Because you'd spend the night on weekends at your  
3 grandmother's house when she lived next door to you.

4           A.     Yes.

5           Q.     Okay. Josh, I'd like to show you a towel, and it  
6 is from Exhibit 160.

7                     Have you ever this Star Trek-type towel before?

8           A.     No.

9           Q.     In the living room there were some sliding glass  
10 doors.

11          A.     Yes.

12          Q.     Okay. And I would like to show you now photograph  
13 255. In this picture there is some cuts in the screen door by  
14 the living room. Had you seen those before?

15          A.     Yeah.

16          Q.     How were those caused?

17          A.     Well, right below us was the Edwards. Their dog  
18 used to try to get in our house. He used to scratch at the  
19 screen and rip it.

20          Q.     So, that screen had been ripped like that for quite  
21 awhile.

22          A.     Yeah.

23          Q.     In Photograph 197 we have a picture of the kitchen  
24 of your mom and dad's house where you lived.

25          A.     Yeah.

26          Q.     In that picture, there's what looks to be a lot of  
27 groceries by the stove.

28                     Were those purchased by your mom or your dad?

1 A. Uh-huh.

2 Q. Do you know when they were purchased?

3 A. No.

4 Q. Did your mom go to the store just before she was  
5 killed?

6 A. Uh, I -- yes.

7 Q. Any idea how long?

8 A. No.

9 Q. Okay. Whose job was it to put those groceries  
10 away?

11 A. Well, it was -- we'd switch off.

12 Q. Whose job was it this time that didn't get them put  
13 away?

14 A. I think my mom's.

15 Q. Josh, did your dad drink beer?

16 A. Yeah.

17 Q. Very often?

18 A. Yeah.

19 Q. What kind did he drink, if you know?

20 A. Lowenbrau.

21 Q. Lowenbrau?

22 A. Uh-huh.

23 Q. Did you ever see him drink Oly Gold?

24 A. Sometimes.

25 Q. Do you know if he had any beers to drink from the  
26 refrigerator of an Oly Gold type?

27 A. No.

28 Q. Do you know if your mom bought beer when they

- 1 bought the other groceries?
- 2 A. Yeah.
- 3 Q. She did buy beer.
- 4 Did you see your dad have any of those beers that
- 5 she bought?
- 6 A. Yeah. She used to keep them in the barn in the
- 7 little refrigerator.
- 8 Q. Oh, there was a refrigerator in the barn?
- 9 A. Yeah.
- 10 Q. Speaking of the barn, you are talking about that
- 11 area of your house that is right here virtually outside your
- 12 bedroom.
- 13 A. Yes.
- 14 Q. And at the barn was there a light right over the
- 15 main door?
- 16 A. Yeah.
- 17 Q. And would that light come on each time at night?
- 18 A. Yes.
- 19 Q. And when it would come on, would it light up the
- 20 yard around this area?
- 21 A. Just by the swing set.
- 22 Q. By the swing set?
- 23 A. Yeah.
- 24 Q. Now, Josh did you have curtains in your room?
- 25 A. No.
- 26 Q. Did Jessica have curtains in her room?
- 27 A. Nope.
- 28 Q. How about your mom and dad. Did they have curtains

1 in their room?

2 A. I can't remember.

3 Q. Okay. Would that light shine into the rooms?

4 A. No.

5 Q. Was it fairly light in your room, when you'd go to

6 sleep at night?

7 A. Sometimes.

8 Q. Um, had you had any problems before the attack on

9 your mom and dad with somebody breaking into your house?

10 A. No.

11 Q. Okay. Had you played outside with that light on by

12 the barn?

13 A. No, except when we got our new gocart and we'd test

14 ride it out in that big area, was the only time.

15 Q. Do you know where your mom and dad slept most of

16 the time?

17 A. Yeah. In their room.

18 Q. Well, all right. Did they sleep on one side of the

19 bed or the other?

20 A. Yeah. My mom slept on the left side and my dad

21 slept on the right.

22 Q. Okay. Can you tell me, was your dad closest to the

23 sliding glass doors in the bedroom or furthest away?

24 A. Furthest away.

25 Q. Your mom was closest to the sliding glass doors?

26 A. Yes.

27 Q. Okay. And did your mom and dad have closets in the

28 bedroom?

- 1 A. Yeah. Two.
- 2 Q. All right. And was one closet your mom's and one
- 3 your dad's?
- 4 A. Yes.
- 5 Q. Do you know which was which?
- 6 A. Yeah. The back one here was my mom's and this one
- 7 closest to the bed was my dad's.
- 8 Q. The one closest to the bed was your dad's closet?
- 9 A. Yes.
- 10 Q. And he slept closest to that closet at night?
- 11 A. Yes.
- 12 Q. Okay. We have a diagram here, Josh. What I would
- 13 like you to do is, first of all, I have shown you this diagram
- 14 just a minute, few minutes ago; is that correct?
- 15 A. Yes.
- 16 Q. I would ask your grandmother to hold those or hold
- 17 it. What I would like you to do, first of all, is take this
- 18 blue pen and if you would write "Josh Ryen" up there on that
- 19 piece of --
- 20 A. This piece?
- 21 Q. Yeah. Okay. And put today's date, "12-9-84".
- 22 A. (Witness complied).
- 23 Q. All right. Now, do you see around this diagram
- 24 where your mom and dad's bedroom is?
- 25 A. Right here.
- 26 Q. Okay. Would you write "dad" on the side of the bed
- 27 that he normally slept on. Is this the bed?
- 28 Q. Yes.

1           A.     Okay. And your mom on the side she normally slept  
2     in.  
3           A.     (Witness complied).  
4           Q.     Great. Did either your mom or dad wake up easy at  
5     night?  
6           A.     My mom.  
7           Q.     Your mom would wake up easy?  
8           A.     Yeah. If she heard a cricket.  
9           Q.     It would wake her up?  
10          A.     Yeah.  
11          Q.     How about Jessica. Did she wake up easy?  
12          A.     Pretty easy.  
13          Q.     And how about yourself?  
14          A.     Sorta.  
15          Q.     Sometimes?  
16          A.     Yeah. Sometimes I would wake up early and  
17     sometimes not.  
18          Q.     When I say easy, not necessarily waking up early in  
19     the morning, but if you heard something in the night, who would  
20     normally wake up?  
21          A.     My mom.  
22          Q.     And --  
23          A.     And sometimes me.  
24          Q.     Okay. And how about your dad. Was he a heavy  
25     sleeper?  
26          A.     Yeah.  
27          Q.     Could you explain whose room is whose in the  
28     diagram.

1 A. Like the whole thing, or just the rooms?  
2 Q. Do you see your room in there?  
3 A. Yeah. It is right here.  
4 Q. Okay. Could you write "Josh" in that room.  
5 A. (Witness complied).  
6 Q. And do you see Jessica's room?  
7 A. Right here.  
8 Q. Would you write "Jessica" in that room.  
9 A. (Witness complied).  
10 Q. Okay. You can sit up back on the seat again,  
11 please, Josh.  
12 I'd like to take you back for just a moment to that  
13 Saturday before your mom and dad and Chris and Jessica were  
14 killed.  
15 Did you get up early that morning?  
16 A. Saturday?  
17 Q. Yes.  
18 A. Yes.  
19 Q. And after you got up, what did you do?  
20 A. I dressed.  
21 Q. All right. When you got dressed, what did you do  
22 next?  
23 A. Eat breakfast.  
24 Q. And after that breakfast, what did you do?  
25 A. Watched television.  
26 Q. When you had breakfast, did you have any dishes for  
27 breakfast? Where did you put them?  
28 A. We put them in the cabinet.

0186004



1 Q. Did you wash them all?  
2 A. Yes.  
3 Q. And after you watched television, did you have any  
4 chores that you did?  
5 A. Yeah.  
6 Q. And what chores were those?  
7 A. Clean my rabbits cage, and than make my bed, clean  
8 my room, and sometimes I would feed the dogs and the cats.  
9 Q. When you talk about the dogs, how many dogs did you  
10 have at your house?  
11 A. Four.  
12 Q. Do you know their names?  
13 A. Ruffy, Charlie, J.J. and Pipes.  
14 Q. What kind of a dog was Ruffy?  
15 A. Irish Setter.  
16 Q. And Charlie  
17 A. Golden Retriever.  
18 Q. Golden Retriever. And J.J.?  
19 A. Lhasa Apso.  
20 Q. Never heard of it.  
21 A. Lhasa Apso.  
22 Q. You may be right?  
23 A. Lhasa Apso.  
24 Q. Big dog or little dog?  
25 A. Small, little house dog.  
26 Q. And Charlie? Or did he --  
27 A. Golden Retriever. J.J.  
28 What was the other?

1 A. Pipes.  
2 Q. Pipes.  
3 A. Bearded Collie.  
4 Q. Did any dogs stay in the house?  
5 A. Yes.  
6 Q. Which dogs?  
7 A. All four of them.  
8 Q. All four. Were they friendly dogs?  
9 A. Yeah.  
10 Q. Did they ever bite anyone?  
11 A. No.  
12 Q. Did they bark a lot in the house?  
13 A. Sometimes.  
14 Q. When they barked, would somebody tell them to shut  
15 up?  
16 A. Yeah.  
17 Q. Who?  
18 A. I would just hear "shut up".  
19 Q. Let me stop for just a second. You just hear "shut  
20 up"?  
21 A. Yes.  
22 Q. Would they shut up when they were told to shut up?  
23 A. Well, they'd bark a few times after that, then  
24 they'd be quiet.  
25 Q. Okay. Did you have lunch that Saturday after you  
26 had done your chores and fed the animals and everything?  
27 A. Yes.  
28 Q. Do you recall what you had for lunch?

- 1 A. Pancakes rolled up in sugar.
- 2 Q. Who made pancakes for you?
- 3 A. Well, it was left over from Saturday morning when
- 4 we had pancakes, and we had leftovers, so I rolled them up in
- 5 sugar and eat them.
- 6 Q. After lunch, did you go down to Chris' house?
- 7 A. Yes.
- 8 Q. And do you know Chris' last name?
- 9 A. Hughes.
- 10 Q. He was a good friend of yours?
- 11 A. Yeah.
- 12 Q. Okay. And how did you get down to Chris' house?
- 13 A. Bike.
- 14 Q. And what kind of bike did you have?
- 15 A. Schwinn.
- 16 Q. What kind?
- 17 A. Schwinn.
- 18 Q. Schwinn brand, yes. But was it a racing bike,
- 19 motorcross bike?
- 20 A. Oh, just a BMX.
- 21 Q. BMX. After you rode down to Chris' house, what did
- 22 you do?
- 23 A. We played with his slot machine.
- 24 Q. And what else?
- 25 A. And his remote control car.
- 26 Q. Did you go to the creek?
- 27 A. A lot of times.
- 28 Q. Did you go that Saturday?

018607

1           A.     I -- yep.

2           Q.     And did you walk, ride bikes, take a car, how did  
3 you get to the creek?

4           A.     We rode bikes.

5           Q.     Anyone else go with you besides Chris?

6           A.     No. Just me and Chris.

7           Q.     When you came down back to Chris' house, what did  
8 you do?

9           A.     Played Atari?

10          Q.     Can you recall the games?

11          A.     We played, Pitfall, Donkey Kong and Centipede.

12          Q.     How did you do in Pitfall?

13          A.     Just about got to the goal.

14          Q.     Didn't quite make it?

15          A.     No. Scorpion got me.

16          Q.     At some point during the afternoon, when you were  
17 playing with Chris, did he ask his mom and dad to go to the  
18 Blade Barbecue with you and stay over at your house?

19          A.     Yep. We first went up and asked my mom and she  
20 said, yep. So we rode back down and his mom said yes.

21          Q.     So, did Chris take anything up to your house to  
22 spend the night with?

23          A.     Yes. A book bag with some clothes in it.

24          Q.     Do you recall what kind of clothes he took?

25          A.     Just regular clothes.

26          Q.     Your trip backup to the house, about what time was  
27 that?

28          A.     Oh, around maybe 3:00, 2:00, around there.

1 Q. What time were you supposed to go to the barbecue  
2 at the Blades?

3 A. What time did it start, or what time we had to  
4 leave? It started at 7:00 and we left like around here at 6:30.

5 Q. When you said "around here", you mean at your old  
6 house?

7 A. Yes.

8 Q. I would like to show you a picture now, 233. Do  
9 you see your bike in that picture Josh?

10 Would you write "Josh" next to that.

11 A. (Witness complied).

12 Q. Do you see Jessica's bike?

13 A. Right there.

14 Q. Would you write "Jessica".

15 A. (Witness complied).

16 Did you -- do you see Chris's bike in that picture  
17 there?

18 A. Right there.

19 Q. Would you write "Chris" by it.

20 A. (Witness complied.) What's that?

21 Q. That's a Sheriff's patrol car.

22 Did everyone get ready to leave to go to the Blade  
23 barbecue?

24 A. Um, what time?

25 Q. Well at some point in the evening.

26 A. Yeah.

27 Q. At some point in the evening, either before you  
28 went -- or excuse me. Before you got dressed or after you got

1 dressed, did somebody come up to your place looking for work?  
2 A. Yep.  
3 Q. And who was that?  
4 A. Three Mexicans.  
5 Q. What were they driving, if anything?  
6 A. Like a little -- you know, the kind of like not  
7 really a truck, but a car that has like a truck back end.  
8 Q. And was there anything --  
9 A. Blue with a white camper shell.  
10 Q. Okay. A very small truck?  
11 A. It was a car, but it had like a back end like a  
12 truck.  
13 Q. And did those three Mexicans talk to anyone?  
14 A. Yeah. They talked to my dad.  
15 Q. And anyone else?  
16 A. No.  
17 Q. Did your dad say anything after he talked to the  
18 Mexicans?  
19 A. No. Just looking for work.  
20 Q. Okay. Did you talk about the Mexicans with your  
21 mom or your dad after that?  
22 A. No.  
23 Q. Hear either of them talk about them?  
24 A. Nope.  
25 Q. Had you ever seen those three Mexicans before?  
26 A. No.  
27 Q. Had your dad said that he had seen the three  
28 Mexicans before?

010610

1 A. No.

2 Q. Or your mom?

3 A. No.

4 Q. Or anyone else?

5 A. No.

6 Q. Okay. Was that before you got dressed to go to the

7 Blade barbecue or after?

8 A. After. Just when we were leaving.

9 Q. Just as you were leaving.

10 When you went to the Blade barbecue, what did you

11 drive in?

12 A. The truck.

13 Q. I would like to show you picture 214. Do you

14 recognize this truck?

15 A. That's ours.

16 Q. Is that the truck that you drove in?

17 A. Yeah.

18 Q. Where were the keys for this truck when you left?

19 A. Uh, you mean under the seat?

20 Q. Is that where they were normally kept?

21 A. Sometimes.

22 Q. Now, when you went to the barbecue, who went with

23 you?

24 A. My mom, my dad, my sister and me and Chris.

25 Q. And while you were at the barbecue, what did you

26 do?

27 A. Played tag.

28 Q. With who?

1 A. Some other kids.

2 Q. And what did you have to eat?

3 A. I had a piece of watermelon, and hamburger, a coke,

4 and that's it.

5 Q. What did your mom and dad have?

6 A. I don't know because I was playing.

7 Q. Okay. Did you see what Jessica had?

8 A. No.

9 Q. Did you see your mom have any wine to drink at the

10 party?

11 A. Uh, not that I know of.

12 Q. How about your dad?

13 A. Yes.

14 Q. He had a glass of wine?

15 A. Yeah.

16 Q. Okay. And then you came back home after the party

17 or the barbecue at the Blade house, right?

18 A. Yes.

19 Q. And when you got back home, did you see what your

20 dad did with the keys to the truck?

21 A. No.

22 Q. All right. When you came home, was the station

23 wagon still in the driveway?

24 A. Yes.

25 Q. I would like to show you 181. Do you recognize the

26 car in that picture?

27 A. Yeah.

28 Q. Whose car is that?



- 1 A. My dad's.
- 2 Q. And where were the keys to this car kept?
- 3 A. Normally?
- 4 Q. Yes.
- 5 A. Sometimes in the ignition, sometimes under the
- 6 seat, sometimes on the dashboard and sometimes in the bedroom.
- 7 Q. But most of the time where would you find the keys
- 8 to the car?
- 9 A. In the bedroom.
- 10 Q. Do you know where the keys to the car were the
- 11 night that you went to the barbecue at the Blades house?
- 12 A. No.
- 13 Q. After you returned home, who was the first to go
- 14 into the house?
- 15 A. My mom.
- 16 Q. Was the door locked or unlocked?
- 17 A. Locked.
- 18 Q. And did you see her unlock the door?
- 19 A. Yes.
- 20 Q. Do you normally keep the doors around the house all
- 21 locked when you are gone or are they left unlocked?
- 22 A. Unlocked.
- 23 Q. And after you got into the house, did anyone have
- 24 anything else to eat?
- 25 A. No.
- 26 Q. Did you see anyone have anything to drink?
- 27 A. I had a glass of water and that's it.
- 28 Q. Did you see your mom and/or dad have any wine?

018613

1 A. No.

2 Q. Were the dishes in the sink when you had your glass  
3 of water?

4 A. Yes.

5 Q. Do you know where the dishes came from?

6 A. Yeah.

7 Q. Were they left over from breakfast?

8 A. Yeah.

9 Q. At that point in time when you came in, was anyone  
10 bleeding from a cut of any kind?

11 A. No.

12 Q. No one had any injuries to themselves?

13 A. No.

14 Q. After you got in the house, where did you go, after  
15 you had your drink of water?

16 A. My room.

17 Q. And did Chris go with you?

18 A. Yes.

19 Q. What did you do when you got to your room?

20 A. Uh, talked and looked at magazines.

21 Q. What did you talk about?

22 A. Getting new bikes,

23 Q. And where did you sleep that night?

24 A. On the floor.

25 Q. Okay. I would like to show you a couple pictures.  
26 First of all, Photograph 200. Do you recognize the bed in that  
27 picture.

28 A. Yeah, it's mine.

1 Q. And also Photograph 199. Are those yours and  
2 Chris' sleeping bags on the floor?  
3 A. Yes.  
4 Q. Which one is yours?  
5 A. The blue one.  
6 Q. The blue one, and Chris' is the white one?  
7 A. Yeah.  
8 Q. Is that how your bed looked that night?  
9 A. Yeah.  
10 Q. You didn't make it?  
11 A. No.  
12 Q. Do you know where your mom slept that night?  
13 A. Yes.  
14 Q. Where?  
15 A. In her room.  
16 Q. You're dad?  
17 A. Same.  
18 Q. And Jessica?  
19 A. In her room.  
20 Q. Everybody go to bed about the same time?  
21 A. My dad stayed up a little longer.  
22 Q. Do you know what he was doing?  
23 A. No. Watching television.  
24 Q. And where did he watch television?  
25 A. In the living room.  
26 Q. Did he have a chair he normally sat in?  
27 A. The rocking chair.  
28 Q. Towards the back that you just pointed to?

018615

1           A.    Yeah. Right there.

2           Q.    Where is the television in that room, if you see an  
3 outline of it that you can recognize.

4           A.    Right here.

5           Q.    Okay. Do you know what time your dad went to bed?

6           A.    No.

7           Q.    Were you and Chris still talking after the  
8 television was turned off?

9           A.    No. We fell asleep.

10          Q.    Can you hear the television from your room?

11          A.    No.

12          Q.    All right. And there was some bedding in the  
13 living room. I'm showing you Exhibit 187, looks like a Raggedy  
14 Ann and Andy type of sleeping bag, and maybe blanket.

15                Have you seen those before?

16          A.    Yeah.

17          Q.    Do you know what they were doing in the living  
18 room?

19          A.    No.

20          Q.    Is one of the dogs picture on the coffee table  
21 there?

22          A.    Right there.

23          Q.    Uh-huh. Who was that?

24          A.    J.J..

25          Q.    GiGi?

26          A.    J.J.

27          Q.    J.J. Would you write "J.J." over the dog.

28          A.    On top of it?

018616

- 1 Q. Well, maybe you can put right here in the bedding  
2 next to it so it would just show up. Put an arrow that points  
3 to him.
- 4 A. (Witness complied).
- 5 Q. Had anyone stayed over at your house before that  
6 night and left the bedding in the living room?
- 7 A. No.
- 8 Q. Had your mom slept out in the living room before  
9 that night?
- 10 A. No.
- 11 Q. Did you kiss your mom and dad good night that  
12 night?
- 13 A. Yes.
- 14 Q. Where did you do that?
- 15 A. In the room.
- 16 Q. In your room? Did they come in and see you before  
17 you went to sleep?
- 18 A. Yes.
- 19 Q. And did you hear them saying "good night" to  
20 Jessica next door?
- 21 A. Yes.
- 22 Q. And then you went to sleep?
- 23 A. Yes.
- 24 Q. What was the next thing that you can remember?
- 25 A. When?
- 26 Q. After you went to sleep?
- 27 A. Waking up again.
- 28 Q. And what was it that caused you to wake up?

1 A. I wasn't sure.

2 Q. I think we may be getting a shadow, Dr. Howell. If

3 you could turn the lamp on. Great.

4 After you woke up, what was the next thing that you

5 remember hearing, seeing or doing?

6 A. Turning over on my side.

7 Q. And then what?

8 A. Falling back to sleep.

9 Q. And what happened after that?

10 A. Waking up again.

11 Q. And what caused you to wake up again?

12 A. Uh, scream.

13 Q. Could you recognize the voice of the scream?

14 A. No.

15 Q. What did you do after you heard the scream?

16 A. Got up.

17 Q. And then what?

18 A. Walked.

19 Q. Where did you go walk?

20 A. Through the hall.

21 Q. Showing you the diagram again. Would you please

22 point the direction that you walked through the hall.

23 A. Okay. We were sleeping on the floor, and we came

24 along like that and we stopped here at laundry room and then,

25 uh, then I don't know.

26 Q. When you say "we", who was with you?

27 A. Me and Chris.

28 Q. All right. Did he wake up at the same time you

010618

1     did?

2           A.     No.

3           Q.     Did you wake him up?

4           A.     Yeah, in the bedroom.

5           Q.     What did you say to him?

6           A.     "Get up".

7           Q.     And what else?

8           A.     "I heard something".

9           Q.     And did he go with you?

10          A.     Yes.

11          Q.     When you got to the hallway by the laundry room,

12     what did you see?

13          A.     Dark.

14          Q.     And what happened next?

15          A.     Um, I don't remember.

16          Q.     And after you got there towards the laundry room,

17     did you go on towards your mom and dad's room?

18          A.     Yes.

19          Q.     And what happened after that?

20          A.     I don't know.

21          Q.     What was the first thing you remember seeing as you

22     went toward your mom and dad's room?

23          A.     A wall.

24          Q.     And then what?

25          A.     A door.

26          Q.     And what was in the door?

27          A.     Nothing.

28          Q.     What happened next?

010619

1 A. I don't know.  
2 Q. Did you see Jessica?  
3 A. Yeah.  
4 Q. Where was she?  
5 A. Right by the door. Here's the door and here's her.  
6 Q. Can you point on the diagram to where she was.  
7 A. Is this -- yeah. She's right here.  
8 Q. Would you write "Jessica" in that area.  
9 A. (Witness complied).  
10 Q. Where were you when you saw Jessica in that  
11 position?  
12 A. Right here.  
13 Q. And from that position could you reach up and touch  
14 her?  
15 A. No.  
16 Q. Did you walk up close enough to touch her?  
17 A. No.  
18 Q. What did you do after you saw Jessica there?  
19 A. Started walking.  
20 Q. And where did you go?  
21 A. A little closer.  
22 Q. Got a little closer. Could you see anything else  
23 besides Jessica in the hallway?  
24 A. No.  
25 Q. At some point in time could you see your mom or dad  
26 in the bedroom?  
27 A. No.  
28 Q. When you got by Jessica, and looked in the bedroom,

018620



1     what did you see?

2             A.     Um, dark.

3             Q.     And what else?

4             A.     I don't remember.

5             Q.     Did you hear any sounds in the house after you got

6 Chris up and started to walk down the hall?

7             A.     No.

8             Q.     Any screams from anybody?

9             A.     (Witness shaking head).

10            Q.     Any words? Nothing?

11            A.     No.

12            Q.     After you saw Jessica, what was it that you and

13 Chris did next?

14            A.     I don't remember.

15            Q.     At some point in time did you walk away from

16 Jessica?

17            A.     Um, I don't remember.

18            Q.     Did you go into the laundry room?

19            A.     I looked in there but I didn't go in.

20            Q.     Did you hide?

21            A.     Um, well we started getting a little scared.

22            Q.     And what did you do then?

23            A.     Then I started to look around.

24            Q.     And what happened next?

25            A.     I don't remember.

26            Q.     After you saw Jessica in the doorway, did you hear

27 Chris call your name at all?

28            A.     No.

1 Q. What was the next thing that happened after Jessica  
2 was seen by you in the doorway? What can you recall, if  
3 anything?

4 A. Nothing that I can --

5 Q. At that period of time, where was Chris when you  
6 looked at Jessica?

7 A. Uh, right here right beside me.

8 Q. Right beside you?

9 A. Yeah.

10 Q. Did he leave your side?

11 A. Yeah. He came up to this side.

12 Q. And then what happened?

13 A. I don't remember.

14 Q. After seeing Jessica, do you remember anything else  
15 at all?

16 A. Just waking up.

17 Q. Do you remember being hit?

18 A. No.

19 Q. Did you ever see your mother or your father?

20 A. When I woke up.

21 Q. And where were they?

22 A. Right next to me there. It was my mom, and my dad  
23 was right over a little ways.

24 Q. When you say over a little ways, do you see in the  
25 diagram where he was located?

26 A. Right there. On the bed right there.

27 Q. Right where you wrote "Dad"?

28 A. Uh-huh.

01080625

1 Q. Do you see in the diagram where your mother was?  
2 A. Right here.  
3 Q. Would you write "Mother" where you saw her.  
4 A. (Witness complied).  
5 Q. And do you see in that diagram where Chris Hughes  
6 was when you woke up?  
7 A. Um, right here.  
8 Q. Would you write "Chris".  
9 A. (Witness complied).  
10 Q. And do you see where you were?  
11 A. Right here.  
12 Q. Would you write "Josh" there.  
13 A. (Witness complied).  
14 Q. Were you ever in your mom and dad's bathroom that  
15 evening after you heard the screams?  
16 A. No.  
17 Q. Did you ever see Chris injured that evening?  
18 A. Nope.  
19 Q. Did you see your father leaning up against the bed  
20 at all before you were hit?  
21 A. No.  
22 Q. And before you were hit, did you see your mother  
23 laying in the middle of the room?  
24 A. Nope.  
25 Q. Do you know if you were hit before or after Chris?  
26 A. I don't know.  
27 Q. You don't know?  
28 A. No.

1 Q. Did you hear Chris call out or say anything to you?  
2 A. Huh-uh.  
3 Q. Do you know how you got from where Jessica is in  
4 the doorway to the place where you have written your name in the  
5 bedroom?  
6 A. No.  
7 Q. Showing you 194. a picture. Do you recognize that?  
8 A. It is the laundry room.  
9 Q. Were you ever in the laundry room?  
10 A. When?  
11 Q. That night.  
12 A. No.  
13 Q. Do you remember the paramedics coming?  
14 A. No.  
15 Q. What was the first thing you remember after waking  
16 up?  
17 A. Uh, hearing Bill Hughes say, "Can you open the  
18 door?"  
19 Q. And where was he standing?  
20 A. Right there.  
21 Q. Would you write "Bill Hughes" in that area.  
22 A. What should I write, "Bill?"  
23 Q. All right. That would be fine.  
24 A. Just write "Bill".  
25 A. (Witness complied).  
26 Q. After you saw him at that door, what's the next  
27 thing that you remember?  
28 A. Um, being picked up.

010624

- 1 Q. In what way?
- 2 A. I don't remember.
- 3 Q. When you say "picked up", you mean people picking
- 4 you up or what? Lifting up your head or lifting up your whole
- 5 body?
- 6 A. I felt my head go like that.
- 7 Q. In that point in time, do you know how many people
- 8 were around you?
- 9 A. No.
- 10 Q. Do you know what they were doing to you?
- 11 A. No.
- 12 Q. Could you feel anything?
- 13 A. Just my head going up.
- 14 Q. Did you feel any injuries?
- 15 A. No.
- 16 Q. Were you taken from your house at that time?
- 17 A. Yeah.
- 18 Q. How were you taken?
- 19 A. I don't remember.
- 20 Q. Do you remember being taken on a helicopter?
- 21 A. Yes.
- 22 Q. And do you remember people talking to you?
- 23 A. No.
- 24 Q. Do you remember anything you said?
- 25 A. No.
- 26 Q. Do you have some injuries?
- 27 A. Yeah.
- 28 Q. What kind of injuries?

1 A. What do you mean?  
2 Q. Well, where did you hurt? Where were you hurt?  
3 A. My ear, my back, my neck, and that's it.  
4 Q. Do you remember which injury or which pain you got  
5 first?  
6 A. No. I couldn't even feel them.  
7 Q. The first time when you were knocked out?  
8 A. No, I couldn't feel them when they were -- I was  
9 flying in the chopper.  
10 Q. No. What I'm concerned about now, Josh, is back  
11 when you were looking at Jessica, do you remember where you were  
12 hit or hurt first as you were looking at her?  
13 A. No.  
14 Q. Okay. Just kind of as though you could see her at  
15 one point and another point you were out?  
16 A. Yes.  
17 Q. How long did you spend in the hospital?  
18 A. I don't know.  
19 Q. Any idea? Days? Weeks?  
20 A. Maybe two weeks, or more.  
21 Q. Have you recovered now?  
22 A. Yeah.  
23 Q. Do you still have any scars?  
24 A. Yeah.  
25 Q. Where did you have your scars?  
26 A. In my ear. And you can barely see one on my back  
27 and on my neck.  
28 Q. Do you have scars on your head?

1           A.    Yeah. Right here.

2           Q.    Right at the top. You are pointing to your kind of

3 left side now.

4           A.    Yeah. Right here.

5           Q.    And when you say to your ear, where on your ear do

6 you have the scar?

7           A.    Right back here.

8           Q.    And do you still have a scar on your throat?

9           A.    Yeah.

10          Q.    Where is that?

11          A.    Right here.

12          Q.    Have you tried to forget what happened that night?

13          A.    Yeah.

14          Q.    What effort have you made? What have you done to

15 try and forget?

16          A.    Think happy thoughts.

17          Q.    All right. Let me stop and change the tape at this

18 point. Stop for just -- we still have a few minutes left on the

19 same tape, so we will continue. We also moved you over in

20 between the lights to try and get some lighting on you.

21                Josh, do you remember talking to a Sheriff's deputy

22 or detective in the hospital?

23          A.    O.C. Bill Arthur.

24          Q.    And when you talked to them, do you remember

25 telling them that you hid in the laundry room?

26          A.    I'm not sure.

27          Q.    Did you hide in the laundry room?

28          A.    No. But like -- see, like here's the laundry room.

1 I went in a little ways and looked, and then I went just back  
2 out.

3 Q. When you went in the laundry room, did you leave  
4 Chris out in the hallway? You will have to answer outloud.

5 A. Yep.

6 Q. Okay. And when Chris was in the hallway, did you  
7 hear him call "Josh, Josh, Josh"?

8 A. No, no, no.

9 Q. All right. Did you tell that to Bill Arthur and  
10 Hector O'Campo?

11 A. They didn't ask me.

12 Q. Did you make any statements about hearing Chris  
13 Hughes run around the center of the house?

14 A. No.

15 Q. By "the center", I mean through the hallway.

16 A. No.

17 Q. You can virtually run a great big circle by just  
18 running the hallway, right?

19 You don't recall hearing Chris run through the  
20 hallway then.

21 A. No.

22 Q. Do you recall telling O.C. or Billy Arthur that you  
23 saw your dad, after you saw Jessica, leaning up against the bed?

24 A. No. They didn't say anything.

25 Q. Do you recall telling Billy Arthur that after you  
26 went into the laundry room, you came back out, saw Jessica, your  
27 dad, in the same position, and your mom, now, on the other side  
28 of Jessica, and Chris Hughes on the other side of your mom?

01085700



1 A. Uh-huh.  
2 Q. Did you tell them that?  
3 A. Yes.  
4 Q. Was that true?  
5 A. Yes.  
6 Q. When did you see that?  
7 A. I don't know the exact time.  
8 Q. Well, was it before you were hid or after?  
9 A. After.  
10 Q. When you were laying down on the floor?  
11 A. Uh-huh.  
12 Q. Yes or no.  
13 A. Yes.  
14 Q. Okay. And while you were laying on the floor and  
15 saw Chris Hughes, did you ever hear any sounds that were like he  
16 was still alive?  
17 A. No. Nothing.  
18 Q. Is there anything that you want to add to what  
19 happened that night; any part of the story that we may have left  
20 out?  
21 A. No.  
22 MR. KOTTMEIER: I have nothing further to ask.  
23 MR. NEGUS: I just have one or two questions.  
24  
25 CROSS EXAMINATION  
26 BY MR. NEGUS:  
27 Q. Did you get to know O.C. when you were in the  
28 hospital?

01005929

1 A. Yep.

2 Q. Was he a nice guy?

3 A. Well, yeah.

4 Q. Did he like talk to you about baseball and things  
5 like that?

6 A. Yes.

7 Q. Did you also talk to him about what had happened to  
8 you?

9 A. Yes.

10 MR. NEGUS: Thank you. That's all I have.

11

12 REDIRECT EXAMINATION

13 BY KOTTMEIER:

14 Q. Just one other factor that we may have covered in  
15 my earlier questions. I just want to make sure we have it down.

16 Did you ever see anybody in the house that didn't  
17 belong there?

18 A. I can't really tell at night, 'cause it could be  
19 anyone. It could be my mom or something.

20 Q. And I guess what I am asking you is, did you see  
21 anyone that you knew shouldn't be in your house?

22 A. No, because it could have been someone like my mom  
23 or something. You can't really tell in the dark.

24 Q. And when you say it could have been someone like  
25 your mom, who are you talking about, or what did you see that --

26 A. I don't really -- saw like a shadow or something.

27 Q. Where did you see the shadow?

28 A. Like the bathroom was here. I saw it right like

0  
1  
8  
6  
3  
0

1 the bathroom.

2 Q. By the bathroom?

3 A. Yeah.

4 Q. When did you see the shadow?

5 A. When I saw my sister.

6 Q. And how many shadows did you see?

7 A. Just one.

8 Q. Just the one?

9 A. Could you see what that shadow by the bathroom was

10 doing?

11 A. No.

12 Q. Did you hear any talking at that point?

13 A. No.

14 Q. Just to make sure we're somewhat clear as to

15 where -- let's do it this way.

16 When you were by Jessica, this is before you got

17 hit, right?

18 A. Yep.

19 Q. You saw a shadow somewhere in the bathroom or

20 bedroom.

21 A. Right here.

22 Q. You are indicating right here?

23 A. That's where I saw the shadow on the wall.

24 Q. Would you write "Shadow" in that area.

25 A. How do you spell it?

26 Q. S-h-a-d-o-w.

27 A. (Witness complied.)

28 Q. But you don't know who that was?

010531

1           A.     No.

2           Q.     When you saw a shadow, do you know whether it was  
3     the person standing here or a person somewhere in the room?

4           A.     It -- I don't really know, because the shadow could  
5     be from a far distance or right there.

6           Q.     Could you see any light at that point?

7           A.     No.

8           Q.     It was dark.

9           A.     Yeah. It was pretty -- the sun was just like  
10    coming up. Just like almost dusk.

11          Q.     All right. You don't know what time it was when  
12    you heard your mother scream though, do you?

13          A.     No.

14          Q.     Do you know if it was your mother who screamed?

15          A.     No.

16          Q.     So you have no idea who it was you heard scream.

17          A.     No.

18          Q.     Could it have been Jessica?

19          A.     It could have been. I don't know.

20          MR. KOTTMEIER: Okay, Josh. I have no further questions,  
21                 Dr. Howell, is there anything that you'd like to  
22    ask Josh?

23          MRS. HOWELL: No.

24          MR. KOTTMEIER: Thank you very much, Josh.

25          THE COURT: Ladies and gentlemen, we're going to have a  
26    recess that will permit them to take down the equipment, and I  
27    think next you will hear an audio tape of another interview.

28                 So, remember particularly the admonition I have

010532

1 given you during this recess.

2 MR. NEGUS: Before the jurors go, I think we neglected to  
3 tell them that this interview took place last Sunday.

4 THE COURT: The date came out in it.

5 MR. NEGUS: Oh, it did? I'm sorry.

6 THE COURT: That would be the 9th of December. Yes. All  
7 right.

8 (Recess.)

9  
10 THE COURT: Before we resume, one of the jurors indicated  
11 to me as he passed out at the last recess that a cameraman had  
12 taken pitcures of the jurors. I spoke with the cameraman and  
13 that was due to some misunderstanding.

14 No pictures will be taken of your nor printed,  
15 ladies and gentlemen.

16 Counsel, is there some laying a foundation or  
17 further stipulation that we should have?

18 MR. KOTTMEIER: Yes, your Honor. We would offer the  
19 following stipulation:

20 Exhibit No. 642 is a tape recording of Josh Ryen  
21 and Dr. Lorna Forbes recorded December 1, 1983, a year ago this  
22 December, at her office.

23 Dr. Forbes is a psychiatrist who specialized in  
24 treating children who have survived the murder of a family  
25 member.

26 She began treating Josh Ryen during October 1983  
27 and has continued treating him to the present.

28 Areas of questioning were given to Dr. Forbes by

0-18577

1 the defense attorney, Mr. Negus. Dr. Forbes made up the  
2 questions and tape recorded Josh Ryen's answers without anyone  
3 else present.

4 The stipulation may be considered as evidence by  
5 the jury in the case of People versus Kevin Cooper.

6 MR. NEGUS: So stipulated.

7 THE COURT: Thank you.

8 MR. NEGUS: We would also stipulate, your Honor, that we  
9 will provide to the Court the transcript for this particular  
10 part of the proceedings and that the official court reporter  
11 need not take it down.

12 THE COURT: But might incorporate the transcript?

13 MR. NEGUS: Well, they apparently don't want to do that,  
14 so we will just provide, Mr. Kottmeier and I will provide a  
15 record, which we will have marked at a suitable time later on,  
16 as soon as we get it here, which should be this afternoon, I  
17 think, or something.

18 MR. KOTTMEIER: Well, it will take longer than that to  
19 have it retyped. We will have it retyped and presented Monday  
20 morning.

21 THE COURT: All right. Very well.

22 MR. KOTTMEIER: It's a transcript that has been reviewed  
23 and agreed upon.

24 THE COURT: Yes. So stipulated?

25 MR. NEGUS: So stipulated.

26 MR. KOTTMEIER: Yes, your Honor.

27 THE COURT: All right. Accepted.

28 MR. KOTTMEIER: With that foundation we would request the

0-1009774

1 opportunity to play Exhibit 642.

2 THE COURT: Go ahead.

3 (At 11:17 Exhibit 642, a tape recording, was played  
4 for the jury but not reported as per stipulation  
5 of counsel.)

6 MR. KOTTMEIER: We have approximately maybe 20 minutes or  
7 so left on the tape, your Honor. If you want to break now or we  
8 can continue, whatever is your pleasure.

9 THE COURT: Now is a fine time.

10 Ladies and gentlemen, this may have an emotional  
11 impact on you. Be mindful of that, and particularly mindful of  
12 the admonition. Don't talk about the case amongst yourselves  
13 nor with anybody, nor let anybody discuss it with you, nor  
14 express or form an opinion on the matter until we finally submit  
15 it to you.

16 Let's be in recess until the hour of 1:30.

17 Counsel, do we need to have anything before lunch?

18 MR. NEGUS: We don't need to have anything before lunch,,  
19 but sometime before we get too much further we need to go over  
20 some matters so you can announce plans to the jury for them --

21 THE COURT: Perhaps you could come back a few minutes  
22 before we resume at 1:30.

23 MR. NEGUS: Fine.

24 THE COURT: We will take the noon recess..

25 (Noon recess taken.)

26

27

28

018635

1           1       SAN DIEGO, CALIFORNIA, THURSDAY, DECEMBER 13, 1984. 1:28 P.M.

2  
3                   (Chambers conference reported.)

4           THE COURT: Okay. We are in chambers, all counsel.

5                   What were we going to do now?

6           MR. NEGUS: I wanted to request that we go to the scene.

7           THE COURT: That we do what? Go to the scene?

8           MR. NEGUS: Go to the scene. I was going to suggest we  
9           can next Wednesday because there is --

10          THE COURT: Why go at all?

11          MR. NEGUS: Well, because until you've actually been out  
12          there and seen the lighting conditions, you can't judge Josh's  
13          story, and you can't judge a whole bunch of different things.  
14          You really need to have -- be able to see how much you are able  
15          to see in that house at night. It's just -- it's just amazing  
16          when you see it as opposed to trying to visualize it when all  
17          the lights are off inside the house.

18          THE COURT: Would you propose we have an experiment out  
19          there and go at night and turn lights off?

20          MR. NEGUS: Yes, that's exactly what I was going to  
21          suggest.

22                   What I would like to try and do is like get out  
23          there about 4:00 o'clock in the afternoon, visit the Lease house  
24          first cause I want to be able to demonstrate -- the photographs  
25          don't adequately depict the nature of the terrain there, and I  
26          want to be able to point out where the Lease house is in  
27          relation to the Ryen house, and also where it is in relationship  
28          to coming up from CIM.



1           Now Dennis feels that as long as we're out there we  
2    should go inside -- show them inside of the Lease House. I have  
3    no strong feelings about that one way or the other. I don't  
4    object to it, but that's sort of an additional proposal by the  
5    prosecution.

6           Then I'd like to go up to the Ryen house. And it  
7    will probably get dark -- so if we start doing the Lease house  
8    by 4:00. we should be able to get up to the Ryen house by dark  
9    and then do some -- show them what it's like with the barn  
10   lights on, with additional lights that are shown in the  
11   photographs as being on, and then just so they can -- they can  
12   see what is visible and what is not visible from different parts  
13   of the house.

14          And I tried to take pictures, and actually the film  
15    didn't work on my camera on some of them, but I don't think they  
16    can -- photographs can't adequately depict. And, you know, if  
17    we do it, otherwise, we have -- we've got a real problem of, you  
18    know, trying to get -- you can't paint a word picture of it with  
19    testimony. Technically I am informed that it can be done.

20          Mr. Cooper and I have discussed this. I don't want  
21    him out there. He doesn't want to be there. He will waive his  
22    presence. So whatever technological problem that might solve  
23    won't appear in this particular case.

24          And that in essence is a full court day, just going  
25    out to the scene and back, even though it would be a somewhat  
26    different court day. So what I want to do was it would probably  
27    involve meeting here the jurors here at 1:00 o'clock and getting  
28    back probably around 9:00 or 9:30 that night. I just want to

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1 check with the the jurors to make sure if we do do that that  
2 that would be okay. Plus, in order to get the arrangements made  
3 we need to have a decision now.

4 THE COURT: Spell out for me again what this would -- how  
5 it would enlighten us over just oral testimony by witnesses to  
6 go out there.

7 MR. NEGUS: Because -- because you cannot describe  
8 adequately what you can see and what you can't see in that house  
9 with the lights off.

10 THE COURT: What are we proving or disproving, only the  
11 testimony of Josh?

12 MR. NEGUS: Well, I think that's probably the main thing,  
13 yeah. He's the only eye witness. And I think that probably  
14 both sides, that that would also impact upon both sides'  
15 attempts to reconstruct the crime because obviously the  
16 assailants, what the assailants can see is also a matter of some  
17 concern, that is, it's not so dark in there that you can't --  
18 It's just impossible I think to adequately convey. But it  
19 certainly also is, you know, Josh is our most important witness,  
20 and its impact is upon his particular testimony.

21 That's the reason for being in the Ryen house. The  
22 reason for doing the other stuff is -- I don't think I would  
23 necessarily make the request to go to the Lease house if I  
24 didn't think it was important to go to the Ryen house, but as  
25 long as we are out there we might as well.

26 THE COURT: As far as identification, Josh doesn't  
27 identify --

28 MR. NEGUS: Well, of course, you know, my evidence, my

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1 case is different than their case. He described three white  
2 guys, and I wanted to -- to Mr. Gamundoy and to Mr. Sharp, and I  
3 want to be able to demonstrate that in fact, you know, before  
4 his -- before his mind was changed -- I mean, he could in fact  
5 perceive three white guys attacking his family, and I don't see  
6 any way else of doing it.

7 THE COURT: Okay. Response?

8 MR. KOTTMEIER: I have a couple of concerns. Number one,  
9 the amount of time that it takes in light of the remoteness of  
10 the issues there Mr. Negus hopes to settle; and secondly, I  
11 don't see any way of doing it in a form that virtually the  
12 entire countryside wouldn't be aware that we were coming, which  
13 creates a whole series of potential difficulties as far as being  
14 able to take the jury in and out of that small community without  
15 some potential adverse influence, whether it's the presence of  
16 TV or neighbors or whatever out there at that particular time.

17 MR. NEGUS: We can keep the TV out just like they did  
18 when -- what I did at the beginning, you set up road blocks. I  
19 mean, there's only one way in and out.

20 THE COURT: I can control my courtroom; I can't control  
21 the whole countryside.

22 MR. NEGUS: Well, I think we can keep the people out of  
23 there just temporarily.

24 MR. KOCHIS: Your Honor, the one other issue that comes  
25 to mind is, if we are attempting to give the jury a firsthand  
26 impression of the lighting conditions at the scene, I'm not sure  
27 the conditions at 5:30 or 6:00 p.m. are going to be the same as  
28 the lighting conditions between 12:30 a.m. and 3:00 a.m. when

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1 the killing may have taken place.

2 MR. NEGUS: Well, given the fact that the lighting inside  
3 the house is primarily artificial lighting, and we know what  
4 that lighting was once it's dark, I think you'll find that it  
5 doesn't matter. I mean, the primarily light comes from external  
6 lights around the property, which we can demonstrate by the  
7 evidence we are on at the time.

8 MR. KOTTMEIER: Well, not necessarily because we can  
9 demonstrate the barn light. The difficulty with even the fact  
10 that the lights are on in some of the photographs is that you  
11 don't know whether the assailant turned the lights on after the  
12 attack.

13 MR. NEGUS: I think one can make inferences about that.

14 THE COURT: I don't remember from anybody's statement  
15 Josh ever saying he saw three white guys in the house.

16 MR. NEGUS: Yes, he did, according to Mr. Sharp's  
17 statement and --

18 THE COURT: He said, "Who did it? It was three white  
19 guys," that type of thing.

20 MR. NEGUS: There was about: "Did you see anybody in the  
21 house that didn't belong there?" And that was the way -- I  
22 believe the question was asked at one point in time.

23 MR. KOTTMEIER: That's not my recollection.

24 MR. NEGUS: We will have to get it out.

25 MR. KOTTMEIER: That's not my recollection.

26 MR. NEGUS: He said he saw three attackers and they were  
27 white guys.

28 THE COURT: I thought you kind of depended upon

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1 inferences to that, Mr. Negus?

2 MR. NEGUS: I know the question was asked: "Did you see  
3 three attackers?" And where else would he have seen the  
4 attackers but inside the house, three white guys.

5 THE COURT: Well, I don't consider this -- these  
6 statements and the testimony of Josh to make it the usual type  
7 of identification case. I further consider the conditions too  
8 difficult to duplicate. I think the probative value is  
9 questionable. I think it's too expensive and disruptive  
10 considering the time and distance. I think we have adequate  
11 diagrams, pictures, chart. You can have your investigator test  
12 the water, so to speak, and describe it to the jury.

13 MR. NEGUS: Well, my investigator wasn't there when we  
14 went out there. Mr. Kottmeier attempted to take televised  
15 pictures, they didn't work. It's the heart of the defense case.

16 THE COURT: Okay. Again I'm considering all of those  
17 things in the balancing act of 352 and deny your request.

18 Anything further?

19 MR. NEGUS: There's a bunch of other stuff I want to do  
20 before we finish. It doesn't have to be done before we talk to  
21 the jury, except I think it would be -- I expect that the  
22 prosecution's case will finish on Tuesday the way we're going.

23 MR. KOCHIS: I will either rest, depending on how long  
24 the examination of the two criminalists and the ruling on the  
25 probation officer, we finish Monday or Tuesday.

26 THE COURT: Counsel, let's go ahead and not keep the  
27 jurors waiting at this time, and then we will have another  
28 similar session perhaps after that. And we're going to get into

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1 the question of Negrette statements, then we can discuss this  
2 other thing.

3 MR. NEGUS: Okay. All I was going to ask was that if --  
4 was that the jurors might -- if you're going to grant my request  
5 to allow me to begin the defense -- to begin the defense case  
6 after the holidays, the jurors might appreciate the advance  
7 knowledge.

8 THE COURT: Monday will be time enough.

9 MR. NEGUS: Okay. Thank you.

10 THE COURT: Do you have -- you have O'Campo and somebody  
11 after the tape?

12 MR. KOCHIS: I have John Clifford first, O'Campo. They  
13 will both testify on a limited issue about the boat, property  
14 taken from the boat.

15 MR. KOTTMEIER: We will be done this afternoon with jury  
16 presentation of evidence by the first break.

17 THE COURT: Are you -- I can see you going with O'Campo  
18 for some time.

19 MR. NEGUS: No, I'm not going to put -- I'm not going to  
20 ask any questions of O'Campo or any questions of Clifford today.  
21 I'm going to bring them back at a later time.

22 THE COURT: That's what I meant. That's what I was  
23 thinking of. I didn't know when you might do it. Today is not  
24 going to be extensive then.

25 MR. NEGUS: No. We were going to try and do exhibits  
26 after the jury goes because there is a whole bunch of exhibits  
27 we have to do.

28 THE COURT: Let's finish with the jurors and have them

1 back on Monday. Then I will step off the bench and you can do  
2 whatever marking you want. Then we can get back on the record  
3 in chambers and take up these various things.

4 MR. NEGUS: Okay. If we're going to do the hearing on --  
5 if we are going to actually have evidence on the Negrette issue  
6 on Monday, which is what we were planning on, we might -- I  
7 don't know how you --

8 THE COURT: What do you want to do? They've got the  
9 laboring oar. Mr. Negus, don't anticipate problems. They are  
10 going to have to show me more than what they have done so far.

11 MR. NEGUS: Okay. That's what I wanted to know.

12 (Chambers conference concluded.)

13  
14 (The following proceedings were held in  
15 open court in the presence of the jury:)

16 THE COURT: Everybody is present. Do you want to  
17 conclude with the tape?

18 (At 1:44 counsel continued playing Exhibit No. 642,  
19 a tape recording; not reported as per stipulation  
20 of counsel.)

21 MR. KOTTMEIER: Your Honor, in regard to this particular  
22 exhibit, 642, I believe both sides are willing to stipulate that  
23 this is in effect a copy of a group of cassettes that were taken  
24 by Dr. Forbes. She did not copy everything on one cassette, and  
25 that's why you hear some breaks at times as the cassettes are  
26 being shifted over to try and give one complete statement on a  
27 single tape as opposed to the three original cassettes  
28 apparently that she made the tape recordings on.

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1 MR. NEGUS: So stipulated.

2 THE COURT: Accepted. I believe we have two relatively  
3 short witnesses this afternoon.

4 Mr. Kochis, are you going to call them.

5 MR. KOCHIS: Yes, I was. The first would be Detective  
6 John Clifford.

7 THE COURT: Ask him in, please.

8 THE CLERK: Raise your right hand.

9  
10 JOHN T. CLIFFORD,  
11 called as a witness on behalf of the People, having been duly  
12 sworn, testified as follows:

13 THE CLERK: Thank you. Would you have a seat in the  
14 witness stand.

15 Would you state your full name for the record and  
16 spell your last name.

17 THE WITNESS: John T. Clifford, C-l-i-f-f-o-r-d.

18 THE CLERK: Thank you.

19

20 DIRECT EXAMINATION

21 BY MR. KOCHIS:

22 Q. Mr. Clifford, who do you work for?

23 A. For the Sheriff's Office for the County of San  
24 Bernadino.

25 Q. And how long have you worked for San Bernadino  
26 County as a deputy sheriff?

27 A. Since 1971.

28 Q. On July the 31st of 1982, did you work on that

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1 particular day?

2 A. Yes, I did.

3 Q. What division were you assigned to back in July of  
4 1983?

5 A. The Central Detective Division, the Homicide  
6 Detail.

7 Q. On that day were you involved in the investigation  
8 of the Ryen-Hughes homicides?

9 A. Yes, I was.

10 Q. Did you end up in a county other than your own on  
11 that day?

12 A. Yes, I did.

13 Q. Was that Santa Barbara?

14 A. Yes, it was.

15 Q. On Sunday, July the 31st of 1983, did you  
16 participate in the search of a boat in the Santa Barbara area?

17 A. Yes, I did.

18 Q. Do you remember the name of the boat?

19 A. I believe it was the Illa Tika, which was docked at  
20 the Santa Barbara Marina.

21 Q. And did you learn that that was owned or at least  
22 occupied by the Handy family?

23 A. Yes, it was.

24 Q. Directing your attention to an exhibit, which has  
25 been marked for identification as Exhibit 626. It's behind you  
26 at the moment.

27 Do you recognize the boat in that picture?

28 A. That's the boat that I searched.

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1 Q. Were you the only person that searched the boat?

2 A. I was one of the three sheriff's personnel that  
3 went on board the ship.

4 Q. Directing your attention to another photograph,  
5 which we've marked for the trial as Exhibit 628; is that a  
6 picture of a portion of the boat that you helped search?

7 A. Yes, it is.

8 Q. Was -- were certain items removed from the boat in  
9 your presence on that day in July?

10 A. Yes, they were.

11 Q. And were you among the people there from the  
12 Sheriff's Office, were you the one that was given the  
13 responsibility of putting them in bags and taking them back to  
14 San Bernadino County?

15 A. I took charge of all the items which were taken off  
16 and placed them into one of five different bags and took them  
17 back to San Bernadino.

18 Q. Directing your attention to a green bag, which  
19 we've marked for identification as Exhibit 103; have you seen  
20 this brag prior to today?

21 A. Yes.

22 Q. Is this one of the items that you took possession  
23 back in July in Santa Barbara off that boat?

24 A. Yes, it is.

25 Q. Directing your attention to a smaller item, which  
26 is an exhibit we have marked for identification as Exhibit 159,  
27 which is an envelope containing smaller envelope in which is a  
28 brown glove; have you seen that item prior to today?

1 A. Yes, I have.

2 Q. Was that one of the other items that was taken into  
3 custody by yourself back in July from that boat?

4 A. Yes, it is.

5 Q. Directing your attention to Exhibit 110, a  
6 short-sleeved blue Costa Rican T-shirt; did you see this T-shirt  
7 in Santa Barbara on the 31st of July?

8 A. Yes, I did.

9 Q. And did you bring that back with you into San  
10 Bernadino County?

11 A. Yes, I did.

12 Q. Directing your attention to two pair of pants, one  
13 of which has been marked for identification as Exhibit 119; did  
14 you see these pants in Santa Barbara on that Sunday?

15 A. It was one of the article of clothing, yes.

16 Q. And did you take that back to San Bernadino with  
17 you?

18 A. Yes, I did.

19 Q. Directing your attention to Exhibit 105, a pair of  
20 light-colored pants; did you see these taken from the boat in  
21 Santa Barbara?

22 A. Yes, I did.

23 Q. Did you likewise bring them back into San Bernadino  
24 County?

25 A. Yes, I did.

26 Q. Were -- among the items that were removed from that  
27 boat were there a couple pair of sunglasses?

28 A. There was two pair of sunglasses, yes.

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1 Q. Other than the items of clothing that I've shown  
2 you here this afternoon, were there items of clothing in  
3 addition to that?

4 A. Yes, there were.

5 Q. When you came back into San Bernadino County, did  
6 you take all five bags of property to a particular location?

7 A. Yes, I did.

8 Q. Was that the Sheriff's Homicide Division.

9 A. Yes, it was.

10 Q. On the following day, on Monday, August the 1st,  
11 did you give the clothing to another member of your department  
12 to inventory?

13 A. Yes, I did.

14 Q. Was that Hector O'Campo?

15 A. Yes, it was.

16 Q. Now, in June of 1983, were you also involved in the  
17 investigation of the Ryen homicides?

18 A. Yes, I was.

19 Q. For this trial did you prepare certain diagrams for  
20 the witnesses to use?

21 A. Yes, I did.

22 Q. Directing your attention first to an exhibit which  
23 has been marked for identification as Exhibit 6, the diagram of  
24 the Ryen home, is this a diagram that you yourself prepared?

25 A. Yes, it is.

26 Q. Were you in the Ryen home on Sunday, June the 5th  
27 of 1983?

28 A. Yes, I was.

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1 Q. Were you in the house prior to the time the  
2 deceased victims were removed?

3 A. Yes, I was.

4 Q. Is this Exhibit 6 drawn to scale?

5 A. Yes, it is.

6 Q. And approximately does one-half inch on the diagram  
7 equal one foot in the Ryen home?

8 A. Yes, it does.

9 Q. Did the figures on Exhibit 6 represent the  
10 approximate location that the victims were in when you saw them  
11 on that Sunday back in June?

12 A. Yes, they are.

13 Q. Oh directing your attention to Exhibit 643; did you  
14 prepare this diagram as well?

15 A. Yes, I did.

16 Q. Is it also to scale?

17 A. Yes, it is.

18 Q. Is the scale on 643 the same scale that was used on  
19 Exhibit 6?

20 A. Yes, it is.

21 Q. And Exhibit 643, did you place on the diagram major  
22 pieces of furniture, for example, beds and couches that you  
23 observed inside the Ryen home?

24 A. Yes, I did.

25 Q. Did you put every article of personal property that  
26 you saw inside the home on the diagram?

27 A. No, I did not.

28 Q. During your investigations in this case did you

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1 also in the month of June go into the Lease residence?

2 A. Not during the month of June. It was several  
3 months later that I entered.

4 I stood at the front and walked around this house  
5 in June, but did not enter until several months later.

6 Q. Directing your attention to Exhibit 5; is this a  
7 diagram that you also prepared for this trial?

8 A. Yes, it is.

9 Q. And is it a result of measurements you took inside  
10 the residence at 2991 old English Road?

11 A. Yes, it is.

12 Q. Is it likewise drawn to scale?

13 A. Yes, it is.

14 Q. And is the scale one-half inch on the diagram  
15 equals approximately one foot inside the residence of 2991 Old  
16 English Road?

17 A. Yes, it is.

18 Q. Thank you.

19 No further questions, your Honor.

20 MR. NEGUS: No questions.

21 THE COURT: Thank you very much, sir.

22 MR. KOCHIS: Hector O'Campo, your Honor.

23 THE CLERK: Raise your right hand.

24

25 HECTOR O'CAMPO,

26 called as a witness on behalf of the People, having been duly  
27 sworn, testified as follows:

28 THE CLERK: Thank you. Would you have a seat on the

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1 witness stand.

2 Would you state your full name for the record and  
3 spell your last name?

4 THE WITNESS: Hector O'Campo, O-apostrophe-C-a-m-p-o.

5

6 DIRECT EXAMINATION

7 BY MR. KOCHIS:

8 Q. Mr. O'Campo, are you currently employed by the  
9 County of San Bernadino as a deputy sheriff?

10 A. Yes, I am.

11 Q. Do you work in any particular division?

12 A. I'm assigned to the Homicide Detail.

13 Q. And in the summer of 1983, were you involved in the  
14 investigation of the Ryen-Hughes homicide?

15 A. Yes.

16 Q. On August the 1st of 1983, as one of your duties  
17 did you conduct an inventory of certain property that was  
18 brought into the office by Detective John Clifford?

19 A. Yes.

20 Q. And did you prepare a typewritten list of all the  
21 items that he brought into the office?

22 A. Yes.

23 Q. And have you reviewed that prior to testifying  
24 today?

25 A. I have.

26 Q. Directing your attention to Exhibit 159, an  
27 envelope containing a brown glove, was that one of the items  
28 that you inventoried that Mr. Clifford brought in on the 1st of

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1 August?

2 A. That's correct.

3 Q. Did you essentially inventory five bags of  
4 clothing?

5 A. Yes.

6 Q. If you could move your -- I'm going to show you a  
7 series of exhibits: A pair of pants which have been marked for  
8 identification as Exhibit 105, light colored; a darker pair of  
9 pants which have been marked for identification as 119; a pair  
10 of light blue denim pants which has been marked for  
11 identification marked as Exhibit 118; a pair of green Army  
12 fatigues, which does not appear to have a tag on it at this  
13 time.

14 These pants, were these among the items of clothing  
15 that you inventoried that were brought in by Mr. Clifford on  
16 August the 1st?

17 A. Yes, they were.

18 Q. The green and yellow bag which has been marked as  
19 Exhibit 103, did you recognize that item?

20 A. That was also with the property Detective Clifford  
21 brought.

22 Q. Were there some sunglasses as well?

23 A. Yes. There were I believe two pair.

24 Q. And directing your attention to Exhibit 116, a dark  
25 pair of sunglasses, and Exhibit 95, a pair of Zeiss sunglasses;  
26 were those in the bags that Mr. Clifford brought in from Santa  
27 Barbara as well?

28 A. Yes, they were.

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1 Q. The Zeiss blank case, Exhibit 96, do you recognize  
2 that?

3 A. Yes.

4 Q. Was that among the items in the bags that Mr.  
5 Clifford brought back from Santa Barbara?

6 A. Yes.

7 Q. Was there anything inside the Zeiss case when you  
8 examined it?

9 A. I believe there was a razor blade.

10 Q. Directing your attention to a series of shirts  
11 which has been marked for identification as 110, a short-sleeved  
12 powder blue T-shirt; 107, a long-sleeved multi-colored dress  
13 shirt; and 109, a tan short-sleeved knit-type shirt; were those  
14 among the items that you removed from the property Mr. Clifford  
15 brought back from Santa Barbara as well?

16 A. Yes.

17 Q. And finally Exhibit 117, a pair of light blue sweat  
18 pants, was that one of the items of clothing that you removed  
19 from the property Mr. Clifford brought back from the boat search  
20 in Santa Barbara?

21 A. Yes.

22 MR. KOCHIS: I don't have any other questions, your  
23 Honor.

24 MR. NEGUS: No questions.

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

26 MR. KOCHIS: Your Honor, we have two additional  
27 witnesses, and pursuant to our discussion in chambers we are  
28 going to call those Monday.

1 THE COURT: Yes. That's not just travel time, it's more  
2 preparation that needs to be made before those witnesses can be  
3 examined. So one of them was here yesterday and we sent that  
4 person back to return again on Monday, ladies and gentlemen.

5 We have things to do this afternoon. When we break  
6 with you counsel and I have a hearing to go into, but we have no  
7 more evidence for to you day. So hopefully the wind will calm  
8 down and the weekend will be nice for you. And you can return  
9 on Monday at 9:30, and we hope at some point next week that the  
10 prosecution will rest their case.

11 Be have mindful of the admonition. Enjoy your  
12 weekend. We will see you next Monday.

13 Counsel, whenever you're ready.

14 (Recess taken.)

15

16 (Chambers conference reported.)

17 THE COURT: Counsel, on the record. We're in chambers,  
18 all counsel and the defendant.

19 Did you excise out the puff of hair?

20 MR. NEGUS: Yep.

21 MR. KOTTMEIER: Isn't that what you wanted?

22 THE COURT: You never said anything about it.

23 MR. KOTTMEIER: Oh, okay.

24 MR. NEGUS: I think you did.

25 THE COURT: I just kept listening for it and I never  
26 heard it.

27 MR. KOCHIS: Well, I think the state of the record was,  
28 you expressed some concern about that, and something that we

1 never did resolve, because we never resolved if, one, Josh Ryen  
2 was going to testify, two, if it was going to be in person or in  
3 video, and we never actually -- that would be an area that  
4 caused you the most concern. We never in concrete said no.

5 MR. NEGUS: That is -- but it was sort of a tentative  
6 ruling.

7 THE COURT: I am not trying to raise any issue.

8 MR. KOTTMEIER: We ought to go back and start this whole  
9 issue again.

10 What we have tried to do, your Honor, is resolve,  
11 as you suggested, between ourselves, the best way to present the  
12 issue.

13 THE COURT: All right. Let's go into the question of Mr.  
14 Negrette.

15 MR. KOCHIS: Yes, your Honor.

16 THE COURT: That causes me some concern.

17 MR. NEGUS: I haven't had a chance to research that, like  
18 I said, until Monday. But you have indicated they have an  
19 uphill battle and so I'm --

20 THE COURT: Well, I have done my own research. I think  
21 that's correct. I have read your Cox and Poulin case,  
22 P-o-u-l-i-n, and it seems to me that a matron at the jail, a  
23 courtroom bailiff will be more quote "...ostensible or apparent  
24 to the person who gives...", the waivor, than we have in this  
25 case.

26 As far as we can tell from the record, Mr. Cooper  
27 was not so aware of Mr. Negrette as Mr. Negrette was of him, at  
28 least on the state of the record now. It seems that you are not

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1 going to meet the test of those two cases or of the code  
2 sections.

3 MR. KOCHIS: Well, your Honor, I think Poulin points out,  
4 specifically on Page 64, that the burden of establishing any  
5 confidential nature of the conversation, the burden of showing  
6 that it is privileged, is on the party that is trying to  
7 suppress the conversation.

8 THE COURT: That's right. You've got --

9 MR. KOCHIS: I am not the party trying to suppress it.

10 THE COURT: No, no, no, counsel. Evidence Code section  
11 952 says that in effect there was a presumption of  
12 confidentiality. You've got -- you have got the burden to get  
13 around that presumption.

14 MR. KOCHIS: Well, but up on Page 64, at the bottom, "The  
15 burden of establishing the privileged nature of confidential  
16 conversation between an attorney and client is upon the parties  
17 seeking to suppress the evidence." It is on Page 64 at the  
18 bottom. It is the last sentence which appears in a quote.

19 And, factually, upon reading Poulin and looking at  
20 the facts in this case, it would appear that in that case the  
21 expectation of confidentiality would be greater, and that in  
22 that case the comment was made to a defendant, was made to an  
23 attorney by a defendant during the preparation apparently of  
24 evidence during a trial, where certainly if you are just going  
25 to use it on a presumption basis, some feeling of  
26 confidentiality, there had been a presumption that a defendant,  
27 talking to his lawyer in a courtroom about a comment an  
28 eyewitness made, would be privileged, and the Court in that case

1 felt that it was not.

2 In this case we have a jail setting, we have some  
3 individuals that Mr. Negrette thought might be an attorney, does  
4 not recognize Mr. Negus; you have an open door; you have the  
5 door to an interview room apparently open, in no way closed; you  
6 have the voice being spoken loud enough so that Mr. Negrette,  
7 without any efforts on his part to eavesdrop, to sneak up, to  
8 put his ear against a window, sitting there conducting his own  
9 interview, because of no efforts on his own part he hears  
10 statements, admissions made by this defendant because of the  
11 nature in which Mr. Cooper was raising his voice, and the fact  
12 that the door to the room was open.

13 And in that case I would submit that there is less  
14 of a presumption of confidentiality than there is in Poulin  
15 where you have a client talking to his attorney during trial  
16 about the testimony of a witness.

17 THE COURT: With the bailiff obviously right there close  
18 by. Obviously close by.

19 MR. KOCHIS: In the same room.

20 THE COURT: No, no.

21 MR. KOCHIS: ~~At the~~ At the end of the jury box. If a  
22 communication is made so that it can be overheard by a third  
23 person, it obviously is not calculated to insure  
24 confidentiality. I'm not quite sure how close the bailiff is to  
25 them. But a bailiff is very obvious by his presence throughout  
26 a trial in a criminal case.

27 MR. KOCHIS: My position would be in an interview room,  
28 where you are in a jail, not in someone's home, you are in an

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2 office where the door is left open, some people are speaking in  
a loud voice, certainly it is reasonable to assume your  
conversation is going to be overheard.

THE COURT: Mr. Negus, even though you haven't fully  
prepared, you still might assist. Anything?

MR. NEGUS: Well, if we were to get to a factual  
situation, I think this would be fine. Several things.

First of all, the only place I'm allowed to  
interview Mr. Cooper when he's in custody is in the San  
Bernardino County Jail. The only interview room I'm allowed to  
talk in is Interview Room No. 1, which has a cage in the back  
for high security prisoners. I do not have control over where,  
who was sitting next to me or what they're doing when they're  
sitting next to me.

I think also if -- if there were evidence taken, I  
would expect Mr. Mishook or Mr. Zavidow to stay there. Mr.  
Mishook and Savidow say they came in, talked to Mr. Cooper, and  
just essentially say, "Hello." Then they closed the door and  
left. Most of the conversations that took place between Mr.  
Cooper and myself on August the 1st, 1983, until the deputy came  
in and dragged Mr. Cooper away to have his blood samples and  
what have you taken, was just between himself and myself with  
the door closed.

If we ever got to it, and we had to discuss the  
contents of the conversation, I'm sure I'd have to testify that  
Mr. Negrette is a liar. So, we have another problem. I don't  
wish to go into actually what was said, but I would have to say  
he's a liar.

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1 I would -- if we have -- if we have further  
2 evidence on the subject, that's the only -- I think the evidence  
3 would show that's the only place that I'm allowed to see my  
4 particular client, in the jail, and I have no control over who  
5 else is in the rooms around him.

6 The other thing is that they -- that I don't know  
7 if you have ever been to the official interview rooms at the  
8 jail, but they are set up -- it is -- you have to take what you  
9 get, and we've always had an understanding in San Bernardino  
10 County, I have been told by deputies in the positions of  
11 bailiffs, that the facilities there are not very good, and they  
12 maintain that they don't listen, and when you ask for a place to  
13 interview somebody in a confidential manner, will tell you, we  
14 won't listen, blah, blah, and sit there. The actual back of  
15 that particular room doesn't have a doorway, as far Mr. Cooper  
16 is concerned, it is just a wire cage, but one has to do as best  
17 one can.

18 THE COURT: Anything further?

19 MR. KOCHIS: Well, I don't think I would dispute Mr.  
20 Negus' contention that when someone is in custody the only place  
21 to interview them would be in the County Jail. The rest of his  
22 statements I believe indicate that there may be, there was a  
23 conflict in terms of an offer of proof, between what the factual  
24 setting was in which the statement was made.

25 MR. NEGUS: Another thing is that that particular day I  
26 suppose was Mr. Cooper's arraignment and was also the first  
27 opportunity that I had had to speak with him.

28 Mr. Mishook had spoken to him earlier. The first

1 time I did speak to him, if I recall, was in the middle of jury  
2 trial in a robbery at the time and had to rush out there after  
3 lunch, and we weren't given much choice as to where we could  
4 talk. There was lots of folks outside with cameras, et cetera.

5 THE COURT: The quoted part at the bottom of Page 64 of  
6 the Poulin case is little bit confusing.

7 Reading from California Trial Objections, from the  
8 CDB book, "The claimant of the privilege has the burden of  
9 proving the existence of a lawyer-client relationship and that  
10 the offered evidence is a communication within that  
11 relationship. The opponent of the privilege, that is the  
12 proponent of the offered evidence" -- such as Mr. Kochis -- "has  
13 the burden of proving that it was not confidential based upon  
14 Evidence Code section 917. The opponent's burden of proving an  
15 exception may present difficulties."

16 "When the exception, depending upon the contents of  
17 the allegedly privileged information --", no, that is different.

18 I think you have the burden of proving that there  
19 was a waiver in this case. I simply -- counsel, I think that  
20 this is dangerous in the extreme. There is no evidence other  
21 than the fact that Negrette says that he could hear fairly easy.  
22 The balance of the evidence from Brown doesn't indicate that it  
23 was at all that easy.

24 I'm simply not at all -- there is nothing obvious  
25 about Cooper's knowledge as to whether or not he was aware of  
26 the existence of Negrette, that is, Negrette was ostensibly  
27 present and thus is distinguishable from Cox and Poulin. I  
28 don't think you have overcome the burden.

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1                   952 says, "It is confidential when disclosed to a  
2   third person as far as a client is aware other than those  
3   present to further the interest of the client."

4                   Negrette could control the situation. I can  
5   distinguish between the two situations. He could stop  
6   interviewing Brown and listen. Cooper, nor his client, nor his  
7   attorney, actually, was not similarly in control and able to  
8   stop and listen, nor was he similarly motivated since Negrette  
9   was not as famous or notorious as Mr. Cooper was at the time.

10                  When I considered the factors under 352 as well, I  
11   can see that this was, would cause a bunch of witnesses, require  
12   a bunch of witnesses, and the value of it is somewhat  
13   questionable considering the lack of corroboration from Brown  
14   and considering also the much lapse of time. I recognize the  
15   description of Mr. Mishook.

16                  Factually, counsel, I think it is just opening a  
17   can of worms of little value. I will deny your request to put  
18   it on, Mr. Kochis.

19                  Anything further?

20                  MR. KOCHIS: Could we have ten to fifteen minutes to  
21   figure out how we would organize the exhibits? We would like to  
22   do that and move many of them into evidence so we don't overlook  
23   something next week.

24                  THE COURT: Certainly.

25                  MR. NEGUS: One last thing, and I will try your patience  
26   a little bit.

27                  I have been -- my driver's license expires on  
28   December 22nd. I got the only appointment I could get. I have

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1     been trying for some time to get, to take the test. I have  
2     already had one extension, so I have to take the test December  
3     17th, which is Monday, at 8:30. They told me if I could get in  
4     a little bit early, they promise I would be able to get down  
5     from Hillcrest by 9:30. If I'm a few minutes late, that's why.

6             THE COURT: That's okay. Let's go. Do the best you can.

7             MR. NEGUS: I will -- I think they told me I could do it.

8             THE COURT: Let's stay here for just another second.

9             You know, I'm just -- let's get to your request to  
10    go over until after the first year. What I'm thinking about,  
11    I'm disinclined to do it. I have been persuaded on other issues  
12    regarding time, but what looks to be two full days -- I put  
13    through a memo to Judge Ziebarth, our presiding judge in  
14    Ontario, indicating my presence for particular days, three days,  
15    and the inability to try other things in Ontario during the  
16    forthcoming time.

17            I have told the jurors when they're going to work.  
18    That is a rather long time. It is a rather long trial, the  
19    meter is running here all the time. We're tying up their  
20    courtroom.

21            You may have read this morning's paper that San  
22    Diego was expecting six more judges, something like that. I  
23    have received several calls from Judge Woodworth. I mean, they  
24    are just very nice to me, very hospitable to me, but I'm aware  
25    that they want their court.

26            MR. NEGUS: I understand. I can tell you that based on  
27    my current forecast, the defense will probably rest around  
28    the -- a little after the 1st of February, maybe even a day or

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1 two before that.

2 So, I think that at least as far as the progress of  
3 the case is concerned, unless something else pops up that we  
4 don't know about, we will -- at least the defense will have  
5 rested after a month, and I really -- I would -- I know the  
6 problems.

7 As I indicated before, I certainly will not be  
8 surprised if you deny my request. The only reason that I am  
9 making it is because I think, I mean, I would like to be able to  
10 present my evidence in what I had considered to be the same  
11 logical manner that the prosecution has, but I would never allow  
12 the prosecution to have twelve days in the middle of Mr.  
13 Cooper's testimony to think about it. I don't think it is  
14 going -- if you do it, it will really change the length of the  
15 trial.

16 THE COURT: That's just the nature of the season of the  
17 year, nothing that is calculated. No favoritism, it is just  
18 part of the calendar that we all deal with.

19 MR. KOTTMEIER: I would imagine realistically we are  
20 probably talking about three days.

21 THE COURT: If you rest Monday.

22 MR. KOTTMEIER: Yes. And I can't see any reason that we  
23 would not rest Monday, based upon the content of the material  
24 that we're dealing with.

25 THE COURT: That's too long really. So let's plan on  
26 having your witnesses ready. You have made your opening  
27 statement. Whenever they rest their case, we will go into the  
28 defense. You may want to reconsider who you put on first, Mr.

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1 Negus, that's up to you.

2 MR. NEGUS: But I am not going to put Mr. Cooper on  
3 first. I mean, I will fill -- you know, the order, I will fill  
4 the three days, but it won't be with Mr. Cooper.

5 THE COURT: Do you what you wish, sir. We will proceed  
6 with the defense immediately after the prosecution, or if it is,  
7 you know, if we go half day or day, something like that, we need  
8 sometime, it doesn't have to be a precise moment.

9 But other than that I don't want you to waste two  
10 or three days. There's too many things that have already been  
11 predetermined.

12 Okay, that issue is settled. Go out and get your  
13 exhibits in order I will come back out on the record.

14 (Chambers conference concluded.)

15  
16 (The following proceedings were held in  
17 open court out of the presence of the jury:)

18 THE COURT: All right. Mr. Cooper and all counsel are  
19 still here.

20 With reference to exhibits?

21 MR. KOCHIS: Yes, your Honor. At this time I would offer  
22 the following exhibits into evidence. Those would be Exhibits 1  
23 through 9, to which I understand there is no objection.

24 MR. NEGUS: True.

25 MR. KOCHIS: I also intend to move into evidence on  
26 Monday, 10 through 17. Mr. Negus needs time to look at those  
27 before he can decide. I don't to overlook those Monday and have  
28 waived those.

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1 I would also move into evidence Exhibit 38, to  
2 which I understand there is no objection.

3 MR. NEGUS: True.

4 MR. KOCHIS: Exhibits 40 through 51, inclusive, 53  
5 through 56, inclusive, which I understand there is -- there's no  
6 objection.

7 MR. NEGUS: True.

8 MR. KOCHIS: I want to offer into evidence 58 through 62.

9 Mr. Negus needs to look at those before he makes a  
10 decision. I don't want --

11 THE COURT: Counsel, I think the better way of doing it  
12 is just to tell me all of those to which there is no objection  
13 and let's admit those.

14 MR. KOCHIS: Fine. 63 through 65, 69 through 115, 117  
15 through 163, 168, 170 through 205, 207 through 223, 233, 479  
16 through 490. 533 through 536 --

17 THE CLERK: I'm sorry, 500 --

18 MR. KOCHIS: -33 through 536, 565 through 579, 582  
19 through 597, 614 through 630, 632, 641 through 643, and that --  
20 to which I understand there is no objections.

21 MR. NEGUS: True.

22 THE COURT: All right. All of those then would be  
23 admitted into evidence without objection.

24 MR. KOCHIS: And in reference to exhibits, I believe, 5  
25 and 6, the diagram of the Ryen home and the Lease home, there  
26 are a number of clear plastic overlays which have been -- for  
27 example, A through G, and I would offer into evidence at this  
28 time the clear plastic overlays which have accompanied the

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1 testimony of the various witnesses in this case, whether they  
2 were marked by Mr. Negus or myself, and I understand there's no  
3 objection to those.

4 MR. NEGUS: My objection to all -- My understanding as to  
5 the admission of evidence is to all the exhibits that had  
6 plastic overlays is that would include any plastic overlay going  
7 with the exhibits, and I don't object.

8 THE COURT: Well, the underlying charts --

9 MR. NEGUS: Right.

10 THE COURT: All right. They will be received.

11 MR. KOCHIS: And then sometime on Monday I would like to  
12 be heard further on a half dozen exhibits MR. Negus may have an  
13 objection to.

14 THE COURT: Very good.

15 MR. KOCHIS: That's it.

16 MR. NEGUS: I had 10 through 17 and 58 to 62 --

17 This doesn't have to be on the record.

18 THE COURT: That's all you want on the record?

19 MR. NEGUS: Yes.

20 THE COURT: Okay. See you back on home turf. Everybody  
21 enjoy your weekend.

22 (Exhibits No. 1 through  
23 9, 38, 40 through 51,  
24 53 through 56, 63  
25 through 65, 69 through  
26 115, 117 through 163,  
27 168, 170 through 205,  
28 207 through 223, 233,

018666

1 479 through 490, 533  
2 through 536, 565  
3 through 579, 582  
4 through 597, 614  
5 through 630, 632, 641  
6 through 643, including  
7 plastic overlays  
8 thereto, were received  
9 in evidence.)

10

11 (Adjournment.)

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