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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 *96*

December 17, 1984, Pages 5005 through 5096

December 18, 1984, Pages 5097 through 5199

APPEARANCES:

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DONNA D. BEARD, CSR #1874  
Official Reporters  
San Diego County Superior Court  
220 West Broadway  
San Diego, California 92101

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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 17, 1984

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Official Reporters

COMPUTERIZED TRANSCRIPT

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1           1       SAN DIEGO, CALIFORNIA, MONDAY, DECEMBER 17, 1984 9:35 A.M..

2                               --oo0oo--

3  
4           THE COURT: Good morning, ladies and gentlemen.

5                       Counsel, it appears that we're all again assembled.

6                       What is next, please.

7           MR. KOCHIS: We would call at this time Charles Morton as  
8       our next witness, your Honor.

9           THE COURT: Charles Morton, please.

10  
11                       CHARLES V. MORTON,

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

14           THE CLERK: Thank you. Would you have a seat on witness  
15       stand.

16                       Would you state your full name for the record and  
17       spell your last name please.

18           THE WITNESS: Yes. My name is Charles V. Morton.  
19       M-o-r-t-o-n.

20  
21                       DIRECT EXAMINATION

22       BY MR. KOCHIS:

23           Q.       Mr. Morton, what is your current occupation or  
24       profession?

25           A.       I am a criminalist or scientist with the Institute  
26       of Forensic Science Criminalistics Laboratory in Oakland,  
27       California.

28           Q.       How long have you been employed in the field of



1 criminalistics?

2 A. Since about 1962.

3 Q. Do you have any area of specialization?

4 A. Yes. I specialize in trace analysis and firearms  
5 identification. Particularly in the hair analysis in trace  
6 evidence.

7 Q. Do you have any educational background in that  
8 area?

9 A. Yes, I do. I have some undergraduate work that I  
10 did when I was at the University of California at Berkeley where  
11 I studied in the criminalistics program, and received my  
12 bachelors degree.

13 I also did my master's dissertation or thesis on  
14 the Forensic Individualization of Hair and received my master's  
15 degree in 1971 from the University of California at Berkeley.

16 Q. Do you do any teaching in this particular area at  
17 the present time?

18 A. At the present time I'm not teaching. I have  
19 taught. I was in charge of the Forensic Science Master's  
20 Program at California State University for five years, where I  
21 taught various kinds of physical evidence, including hair  
22 analysis to undergraduate students, police officers,  
23 investigators going into or in public agencies, as well as those  
24 preparing for careers in those areas.

25 I also taught at the master's level of the people  
26 who are in public laboratories the techniques of examination and  
27 analysis of hair, and also people who are preparing for careers  
28 in that field.

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1 Q. Do you have any actual experience in the  
2 examination and comparison of hair?

3 A. Yes, I have been examining hairs on a consulting  
4 basis, as a consultant for Paul L. Kirk Associates when I worked  
5 with him from the time I was a senior at U. C. Berkeley, and  
6 then during my period of employment with him until 1969, and  
7 also as a consultant while I was at the California State  
8 University, and subsequently went to the Institute of Forensic  
9 Science in Oakland California and have been doing hair analysis  
10 there since '74.

11 Q. Is it fair to say that in the laboratory setting  
12 you've compared known hairs against unknown hairs in the past  
13 many times?

14 A. Yes.

15 Q. Is it possible to even estimate how many such  
16 examinations you have conducted?

17 A. I would say hundreds.

18 Q. Would you likewise be qualified as an expert in a  
19 court of law as to the results of your opinions on those  
20 analysis?

21 A. Yes. I have qualified in courts, in the federal  
22 courts here in San Diego, in Guam. I have testified in the  
23 state courts in Alaska, Washington, Oregon, California, Nevada,  
24 Arkansas, possibly a couple of others with regard to hair  
25 analysis.

26 Q. In the past have you been retained by both the  
27 prosecution and the defense in criminal cases?

28 A. Yes, I have.

018709

1 Q. Now, is it possible to distinguish hair from other  
2 fibers? For example, carpet fibers and other synthetic fibers?

3 A. Yes, it is.

4 Q. What type of examination do you perform to make  
5 that distinction?

6 A. It is generally microscopic examinations which  
7 consist of basically three parts: The overall screening  
8 examination with a stereo microscope, binocular microscope at  
9 fairly lower power, and that gives you a pretty good idea of  
10 whether your sample is a natural fiber or a synthetic fiber, or  
11 whether it is vegetable fiber or hair.

12 Then, the next step would be the compound  
13 microscope. That is the standard usual microscope the people  
14 think of which has higher power magnification which does not  
15 give you a three dimensional view.

16 Then I do a comparison with the comparison  
17 microscope which is two microscopes side by side, attached with  
18 a comparison bridge, bringing the images of the two microscopes  
19 side by side, or in this case, superimposed.

20 Q. Is it possible to distinguish human hair from  
21 nonhuman hair?

22 A. Yes, it is, in most cases.

23 Q. What type of examination would have to be conducted  
24 to make that determination?

25 A. That's a microscopic examination. Generally it  
26 does not require the comparison aspects. It is just a straight  
27 examination under the compound microscope looking at  
28 characteristics of the surface of the hair and the interior

1 structure of the hair which for many animals hair is quite  
2 distinctively different from human hair.

3 Q. Through an examination of human hair, are you able  
4 to reach a conclusion as to which part of the body the hair came  
5 from?

6 A. In some cases you can, yes.

7 Q. What factors do you take into consideration?

8 A. The configuration of the surface of the hair, the  
9 length of the hair, the configuration of the tip, the coloration  
10 along the shaft, the changes in dimension along the shaft can  
11 all be useful to characterize which area of the body it came  
12 from.

13 Q. If the quality of the hair you are examining is  
14 sufficient, is it possible to distinguish, for example, head  
15 hair from facial hair?

16 A. Yes.

17 Q. Head hair from body hair?

18 A. Yes.

19 Q. And then head hair from pubic hair?

20 A. That's correct.

21 Q. Are there certain characteristics that manifest  
22 themselves in human hair that vary among the races?

23 A. Yes.

24 Q. Would you perhaps outline that for the jury.

25 A. Yes. primarily the cross-sectional configuration  
26 of the hair is associated with the curliness of the hair and so,  
27 Oriental hair tends to be very round and cross-sectional and  
28 fairly coarse. Caucasian hair tends to be a little bit flatter,

1 in its cross-sectional, oval hair. Negroid has a ribbon like  
2 hair.

3 Also there are some differences in the character of  
4 the pigmentation which are typical of those three racial groups.

5 Q. In your particular field, when you conduct that  
6 comparison of human hair, for example, human head hair, does  
7 that involve comparing what is to have been called a questioned  
8 or an unknown hair against various standards that you have  
9 received that are taken actually from certain persons?

10 A. Yes, it does.

11 Q. Are those -- does that hair examination analysis  
12 allow you, for example, to exclude the possibility that a  
13 particular head hair came from a particular individual?

14 A. Yes.

15 Q. What are the limits of inclusion?

16 For example, can you say a particular hair, an  
17 unknown head hair, for example, definitely came from a person  
18 such as yourself?

19 A. No, you cannot.

20 Q. What are the limits of your conclusions?

21 A. Basically that you can say this hair cannot be  
22 excluded as possibly coming from this individual; that the  
23 characteristics that you observe -- and there are a fairly large  
24 number of those -- are all within the ranges that is found in  
25 the particular individual.

26 Q. So, the hair then, the most you can do is the hair  
27 would be consistent, for example, using yourself as an example,  
28 the head hair would be consistent with your head hair or with

1 the head hair of someone that had the same characteristics as  
2 you.

3 A. Yes.

4 Q. Now, did you conduct an examination of various  
5 pieces of hair that were submitted to you in this particular  
6 case, the Cooper case?

7 A. Yes, I did.

8 Q. And do you have your notes with you as to the  
9 results of your examinations?

10 A. Yes, I do.

11 Q. Did you compare certain unknown hairs to the known  
12 head and pubic hair of the defendant in this case, Kevin Cooper?

13 A. Yes, I did.

14 Q. Did you also compare hair that was found at various  
15 locations with the known hair of the victims, the Hughes boy and  
16 the Ryen family?

17 A. Yes.

18 Q. Starting first with a single hair that was removed  
19 from the Ryen station wagon, which I believe has the separate  
20 laboratory identification number of V-19.

21 Did you compare that against VV-7 and VV-4, the  
22 known head and pubic hair of Mr. Cooper?

23 A. Yes, I did.

24 Q. What type of examination did you conduct?

25 A. That was an examination that I have mentioned,  
26 initial examination with the stereo microscope, then with the  
27 compound microscope and then the comparison microscope.

28 Q. When you made the comparison of the hair that was

018713

1 removed from the Ryen station wagon, V-19, and VV-7, Mr.

2 Cooper's pubic hair, what did you discover?

3 A. Well, they're actually several hairs from the -- in  
4 the V-19 sample. Two of those were animal hairs, one of them  
5 about a 1.5 centimeter, little over half inch hair, which showed  
6 characteristics that were typical Negroid pubic hair and could  
7 not be distinguished from Mr. Cooper's pubic hair.

8 Q. Was that a single hair that you got when you  
9 received it? Was it in the form that it was mounted on the  
10 slide?

11 A. Yes.

12 Q. Would you then have conducted that comparison using  
13 the comparative microscope with that hair and the known pubic  
14 hair of Mr. Cooper?

15 A. That's correct.

16 Q. When you examined the pigment of V-19 and the  
17 pigment of Mr. Cooper's pubic hair, what did you find?

18 A. Found that it was rather coarse, and clumped, and  
19 could not be distinguished, what you find when you examine  
20 pigment that it is not uniform throughout the hair of a  
21 particular individual, and, so, you look to see what the range  
22 is of that character of distribution, the color, the form.

23 In some cases the pigment is very fine, in other  
24 cases it is fairly granular, rather coarse looking, and in some  
25 cases it is even streaky, in a streaked appearance. In other  
26 cases it may be clumped together forming rather coarse columns,  
27 and this varies from one individual, and then provide a range to  
28 compare, and I found that this particular hair was within Mr.

010714

1 Cooper's range.

2 Q. Would that have included the pigment color, the  
3 pigment form and the pigment distribution?

4 A. Yes.

5 Q. So in those areas V-19 was consistent with Mr.  
6 Cooper's pubic hair.

7 A. That's correct.

8 Q. What did you discover when you examined the hair  
9 for buckling?

10 A. I found that it showed significant buckling which  
11 is typical of pubic hairs.

12 Q. Did you examine the medulla of both V-19 and Mr.  
13 Cooper's pubic hair?

14 A. Yes.

15 Q. What did you discover?

16 A. I found that it could not be distinguished. The  
17 medulla can show various characteristics in terms of its  
18 distribution, and its ability to pass light. In some cases it  
19 is fairly transparent and forms a ghost-like image, in other  
20 cases, essentially black and can not be penetrated with usual  
21 illumination we use, and I found that the V-19 hair fell within  
22 the range of Mr. Cooper's hair.

23 Q. Now, did you compare that hair, V-19, with the  
24 known pubic hair of Mr. and Mrs. Ryen?

25 A. Yes, I did.

26 Q. Let me back-up for a minute, Mr. Morton.

27 Were you able to determine whether V-19 was a pubic  
28 hair, body hair, facial hair or head hair?

0108715



1           A.     It had all the characteristics of a pubic hair. It  
2     was a small fragment and did not have a root, nor a tip; it was  
3     split, and badly split. And I would say I could not absolutely  
4     rule out any other possibilities, but it was very typical of a  
5     pubic hair.

6           Q.     When you compared that hair to the pubic hair of  
7     the Ryens, Mr. and Mrs. Ryen, what did you find?

8           A.     I found it was distinctly different from theirs.

9           Q.     What did you compare that hair to? For example,  
10    the head hair of the various victim in this case.

11          A.     I did only a general comparison and eliminated  
12    those fairly readily on the basis of an examination with the  
13    stereo microscope. Quite different.

14          Q.     Are you familiar with how we shed hair?

15          A.     Yes.

16          Q.     And how does it come to pass that we lose hair?

17          A.     All of the hairs on the head, and other hairs on  
18    the body, go through several phases where they're growing and  
19    they're dormant.

20                 Then they go through a phase which the follicle is  
21    in a dormant phase preparing to generate the next hair, and  
22    during that period that the hair is dormant or the follicle is  
23    dormant, the hairs will fall out naturally.

24                 Actually, several weeks before that occurs the  
25    changes start taking place in the follicle in the way it  
26    generates hair, and you can see there are distinct differences,  
27    at the last about a centimeter of hair, that are typical of that  
28    hair that has fallen out or has been pulled out with a

018716

1 relatively minimal force.

2 What happens is the small percentage -- I forget  
3 again the exact numbers now -- maybe ten to twenty percent of  
4 hair. is in the telogen phase, that are capable of being ready  
5 to fall out. This results in a loss of head hairs of about  
6 hundred hairs a day just through this process of hair dying out  
7 and preparing to generate a new hair.

8 Q. The process by the way an individual would lose  
9 their pubic hair, is that the same?

10 A. It is similar. The difference is the time periods  
11 are much shorter and it grows out to a pretty good length and it  
12 stops, then it falls out.

13 Q. Would it be necessary then for an individual to be  
14 involved in a struggle at a particular location inside a car to  
15 leave their pubic hair car behind in a car?

16 A. No, not at all.

17 Q. Did you also compare a series of hairs which had  
18 the laboratory identification number of L-2 --

19 A. Yes, I did.

20 Q. -- hair that was removed from a hatchet with some  
21 of the people in this case?

22 A. Yes.

23 Q. When you compared that hair that was removed from  
24 the hatchet with Doug Ryen's known head hair, what you did  
25 discover?

26 A. I found two of the hairs were of fairly limited  
27 value because they were natural tips which were -- are not  
28 common in head hair and because they tend to be trimmed off, and

1 so were of limited value. But I could not say they definitely  
2 did not come from Doug Ryen.

3 One of the hairs I could not exclude from Doug Ryen  
4 showed a good deal more characteristic and showed the pigment  
5 and pattern of distribution in color which were characteristic  
6 of Doug Ryen and he could not be excluded.

7 The fourth hair had characteristics that were at  
8 the limit of also finer hairs, and were also at the limit of the  
9 coarser hairs of Joshua Ryen, and although they're at the limits  
10 of their range, I could not exclude them. But I am not  
11 comfortable saying that they -- you know, there's a strong  
12 likelihood then came from either one of them.

13 Q. The hair from the hatchet, L-2, did the results of  
14 your examination lead you to the conclusion that that was human  
15 hair?

16 A. Yes.

17 Q. The hair that you could not exclude as coming from  
18 Douglas Ryen, what were the condition of the ends of that hair?

19 A. They were natural tips.

20 Q. Did either of the ends of the hair that you could  
21 not exclude as coming from Mr. Ryen show you any evidence that  
22 it had been cut?

23 A. I'd have to refer to my notes. I don't recall.

24 Yes. The distal had a diagonal cut end that was  
25 worn. This is typical of head hair.

26 Q. Did you also compare some hair that was removed out  
27 of the shower in the Lease residence, the 2991 residence, that  
28 had a laboratory identification number of P-2?

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1 A. Yes, I did.

2 Q. When you compared P-2 to the known head hair of the  
3 victims, what did you discover?

4 A. I discovered one hair in P-2 was a body hair and I  
5 had no body hairs to compare those against.

6 The other was a head hair and I could exclude  
7 everyone but Doug Ryen as a source of that hair.

8 Q. So there was a hair that was removed from that  
9 shower that had characteristics that were similar with Doug  
10 Ryen's head hair?

11 A. Yes.

12 Q. Did you also examine some hair that was removed  
13 from the sink in the Lease house which had the laboratory  
14 identification number of HH-3?

15 A. Yes, I did.

16 Q. Was a presumptive test performed on some of that  
17 material to determine whether or not there was blood in the  
18 sink?

19 A. Yes. The ortho-tolidine test was performed to  
20 determine whether there was some debris associated with this hair  
21 that might contain blood and a positive ortho-tolidine test was  
22 obtained.

23 Q. Now, were there essentially two groups of hair in  
24 that particular laboratory identification number, one group  
25 which was clumped in some type of debris that indicated that it  
26 may have been in the sink trap for some period of time?

27 A. There was a matted portion of that, yes. It showed  
28 that appearance.

1 Q. Then was there another group of hair that was not  
2 matted?

3 A. That's correct.

4 Q. Did you compare both groups, for example, to the  
5 known head hair of the victim in this case?

6 A. Yes. I compared some from each of those.

7 Q. Among the groups of hair that was not matted in the  
8 debri, did you find hair that you could not exclude as coming  
9 from Jessica Ryen's head?

10 A. I found one hair that I could not exclude as coming  
11 from Jessica Ryen.

12 Q. So that particular hair had characteristics which  
13 were similar to the characteristics of Jessica's head hair?

14 A. Yes.

15 Q. Did you also perform a comparison of hair which was  
16 removed from one of the pillows in the bedroom in the Ryen home,  
17 which had the laboratory identification number of A-11?

18 A. Yes, I did.

19 Q. Were a number of those hairs nonhuman hairs?

20 A. Yes. Almost all of them were.

21 Q. They appeared to be animal hairs?

22 A. Yes.

23 Q. Were any of those hairs similar to the head hair of  
24 Peggy Ryen?

25 A. Yes. I found two of them that were comparable to  
26 Peggy Ryen's head hair.

27 Q. Did you also compare certain hair which was removed  
28 from Peggy Ryen's body which bore the laboratory identification

010720

1 number of B-8?

2 A. Yes, I did.

3 Q. Were some of those hairs nonhuman hairs, animals  
4 hair as well?

5 A. Yes.

6 Q. The human hairs that were removed from Peggy Ryen's  
7 body, were any of those consistent with her own head hair?

8 A. Yes. All of the human hairs that were removed from  
9 her body were consistent with being her head hairs.

10 Q. Were you able to exclude all of the human hairs  
11 from Peggy Ryen as to the other victims in this case, her son,  
12 her daughter, her father and her husband, excuse me, and Chris  
13 Hughes?

14 A. Yes.

15 Q. Directing your attention to hair which was removed  
16 from the body bag in which Mr. Ryen was transported to the  
17 morgue, D-12.

18 Did you compare a single dark hair removed from  
19 that bag?

20 A. Yes, I did.

21 Q. And did that have many characteristics which were  
22 similar to Mr. Ryen's pubic hair?

23 A. Yes.

24 Q. Was there other hair in D-12 as well?

25 A. I don't recall seeing other hairs in D-12. I would  
26 have to check my notes. I have just one hair in D-12.

27 MR. KOCHIS: Thank you, your Honor. I have no further  
28 questions.

018721

1 THE COURT: Mr. Negus. Cross-examine.

2

3

CROSS EXAMINATION

4

BY MR. NEGUS:

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6

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Q. Showing you Exhibit No. 288, a photograph of the body of Peggy Ryen, and asking you to look at the area of the knee. There is somewhat -- I believe we need a -- there is some hair draped over that knee, if you can see it there.

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A. I see a whole array of blood patterns, but I don't see anything I could necessarily characterize as hair.

Q. Let me see if I can find a better picture.

Showing you another picture, 283, which is a close-up of the same area, and directing your attention to a strand that moves just along on the picture there.

A. I see the dark line you're talking about, I can't adequately characterize it from hair just from the photograph.

Q. Okay. Assuming that it was, was any such hair of that general length submitted to you as part of the "B", as in boy, 8 exhibit?

A. No.

Q. When you received the hair that bore the laboratory number of B-8, did you also receive additional samples B-9 and B-10?

A. I did not receive a B-9 or a B-10.

Q. In the laboratory, in the laboratory No. B-8, what was the range of the length of those hairs that you received?

A. B-8?

Q. Yeah. The ones from Peggy Ryen. I think Page 1 of

018722

1 your notes.

2 A. Yes. Right. I was just looking to see the  
3 maximum. I believe one and a half, one and a half to nine and  
4 half inches in length.

5 Q. Were there -- in fact, some of those hairs that  
6 were not actually mounted for your examination though appeared  
7 to be considerably longer than the actual head hair samples of  
8 Jessica. Excuse me. Longer than the actual head hair samples  
9 of Peggy Ryen that you received, the known head hairs.

10 A. I would have to check the known head hair samples.  
11 Some of those are longer than the B-13 hairs that  
12 we characterized. *Peggy Ryen*

13 Q. Those -- specifically the ones that are -- that are  
14 ten-and-a-quarter and nine-and-a-half inches, there's a couple  
15 of hairs that are that long?

16 A. Yes.

17 Q. Did they -- could you exclude Jessica as being the  
18 donors of those longer hairs?

19 A. I don't believe we did a detailed analysis of those  
20 hairs, and I would not -- not be able to say which hairs we  
21 would exclude.

22 Q. Okay. You yourself actually -- let me just back  
23 up.

24 In your -- in your laboratory or your institute,  
25 you're the director of the institute; is that right?

26 A. That's correct.

27 Q. And you have two other criminalists who are expert  
28 in hair that work for you?

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1           A.     I have three other criminalists, two of them work  
2     with hair.

3           Q.     Mr. -- and in this particular case, some of the  
4     work was done by a Mr. Shaeffer that works for you; is that  
5     right?

6           A.     That's correct.

7           Q.     With respect to the B-8 samples, did you actually  
8     yourself prepare some slides for these microscopic examinations?

9           A.     No. Those were prepared -- either already mounted  
10    when I received them or were mounted by Mr. Shaeffer, I believe.

11          Q.     Could you look at Page 3 of your notes, that is the  
12    ones --

13          A.     I'm sorry. I did mount hairs from B-8.

14          Q.     Okay. And when did you -- you --

15                 You had three different slides, A, B, and C?

16          A.     That's correct.

17          Q.     And then on the different slides you numbered the  
18    individual hairs, that is, there would be more than one -- more  
19    than one hair per slide; is that right?

20          A.     That's correct.

21          Q.     So, I'd like to you look if you would at your hair  
22    that the "A" slide that you prepared of the -- of the hairs that  
23    were taken from the body of Peggy Ryen and the one that you have  
24    as No. 5 on that -- on that list.

25          A.     The "A" slide?

26          Q.     Yeah.

27          A.     Yes.

28          Q.     Is that -- is that hair, could that hair have come

018724

1 from Jessica Ryen?

2 A. Originally I thought it might, but I felt there  
3 were some differences. In going back and looking at more of  
4 Peggy Ryen's hair I felt it was compatible with her own hair.

5 Q. So, you -- you -- Well, could it have come from  
6 either?

7 A. There's a possibility it could have come from  
8 Jessica, but I would have to say that it -- it fell in the range  
9 of Peggy Ryen's hair.

10 Q. That particular hair, was it -- was it -- did it  
11 have a root?

12 A. It was cut or broken on both ends.

13 Q. The range that one's talking about in human hairs,  
14 can that be like quite broad, I mean, so that many people would  
15 have overlapping type hairs?

16 A. That's an area of some controversy in the field,  
17 just how many would have overlapping characteristics.

18 There is overlap between individuals. Just how  
19 common that is we don't have any good data to indicate.

20 Q. Well, for example, the color -- the color of Mr.  
21 Kottmeier's hair and the color of my hair is similar at least;  
22 would it be surprising to find that at least a few of the hairs  
23 of Mr. Kottmeier's head might match a few of the hairs in my  
24 head?

25 A. I would be surprised. We -- normally we can look  
26 at a fairly large group of people, a matter of dozens, and be  
27 able to distinguish between each one of those, but you could  
28 find some hairs that would overlap.

1 Q. Okay. So that obviously you wouldn't expect every  
2 hair in Mr. Kottmeier's head to match up with every hair in my  
3 head, but there might be one or two within the range that would  
4 overlap?

5 A. There could be.

6 Q. Similarly are you familiar with a criminalist named  
7 John Thornton?

8 A. Yes.

9 Q. And could it be, given his particular hair and  
10 mine, could there be hairs within his head that would overlap  
11 with hairs say in mine?

12 A. That would be a possibility, yes.

13 Q. And apparently in this particular case there were  
14 hairs of Doug Ryen that at least overlapped with Jessica's?

15 A. Yes.

16 Q. And also hairs of Doug Ryen's which overlapped with  
17 Josh's?

18 A. It could be at the extreme range of the two that  
19 there might be some overlap.

20 Q. Now, that -- that was not sort of a function of  
21 them being necessarily being related; it's just they just happen  
22 to have hairs that were similar; is that correct?

23 A. Yes. You -- I would say sometimes you see more  
24 similarities between individuals who are related than those who  
25 are not. So there may be a function of there being related but  
26 you don't necessarily see similarities between people who are  
27 related.

28 Q. In the hairs that you -- that you examined in the

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1 B-8 series, were there -- leaving aside the one No. 5 that we've  
2 talked about, were there essentially, looks like seven of them,  
3 that appeared to have come from Peggy Ryen?

4 A. I believe it's eight. Oh, if you leave out that  
5 one No. 5 hair it would be seven, yes.

6 Q. Seven others. And were -- did all of those appear  
7 to be cut, that is, at the root end?

8 Q. Most of them do. There are a couple that I have  
9 not made a notation on that.

10 Q. So all the ones that you did make a notation, they  
11 were cut by someone; is that right?

12 A. Yes.

13 Q. Can you tell by looking at a hair under the  
14 microscope whether the thing that cut it was a pair of scissors,  
15 a knife, a hatchet, or, you know, what sort of instrumentality  
16 was involved in the cutting?

17 A. Not normally. Sometimes you can get an idea of  
18 that.

19 Q. Did you try and do that in this particular case?

20 A. Yes, I did.

21 Q. Were you able to do that?

22 A. No.

23 Q. Were you able to get any idea of how sharp the  
24 instrument that did the cutting was, that is, distinguishing,  
25 for example, a dull knife or a sharp knife or something of that  
26 nature?

27 A. No, I could not.

28 Q. When -- when human beings shed hairs, you say that

018727

1 the number that's used is, the approximation is something like a  
2 hundred hairs a day?

3 A. Yes.

4 Q. That would just be head hairs; is that right?

5 A. That's correct.

6 Q. Now, the way it works is that one doesn't sort of  
7 shed one hair every 14 minutes, or however many -- whatever the  
8 average rate is during the day; is that right?

9 A. That's correct.

10 Q. Basically most of those hundred hairs, if not all,  
11 would be shed at the time that you either wash your hair or  
12 combed your hair?

13 A. That's correct.

14 Q. So, you wouldn't expect that just to have hairs  
15 falling out just normally during the day?

16 A. They could and -- but they are smaller in number,  
17 and if there's any kind of physical contact or activity that can  
18 enhance that loss.

19 Q. The hairs that you examined from the -- that had  
20 the numbers of HH-3, HH-4, and P-2, that is, hairs which were  
21 described as having come from a residence at 2991 English Road,  
22 were all of those hairs, did they all appear to be of the type  
23 that fell out rather than were cut?

24 A. I'd have to check my notes on that.

25 Q. Well, let's just limit it down a little bit then,  
26 forgetting all of the human hairs that the -- that came from the  
27 Lease residence. You were given a known sample from a person  
28 identified as Kathy Bilbia; is that right?

1 A. Yes.

2 Q. And the large majority of the hairs which were  
3 comparable were within her -- within her particular range; is  
4 that right?

5 A. That's correct.

6 Q. So, the two that were outside of her range would be  
7 the two that you spoke to Mr. Kochis about? The one from P-2  
8 and the one from HH-3?

9 A. Yes.

10 Q. The one from P-2 that couldn't be excluded from  
11 Doug Ryen, were there any -- any differences between that  
12 particular hair and the known hairs that you had received from  
13 Doug?

14 A. The P-2 hair which was characterized as being  
15 possibly from Doug Ryen?

16 Q. Yeah.

17 A. It tended to show more ovoid bodies which are  
18 prominent in that hair which were somewhat different than his.

19 Q. What does that mean? What's -- how do you see the  
20 ovoid bodies and where do you see them?

21 A. They are along the shaft of the hair and they are  
22 ovoid in shape, and they are sometimes prominent, sometimes only  
23 a few.

24 In Doug Ryen's hair there were a fairly wide range  
25 of what you would see. This one tended to have more than most.

26 Q. In doing the hair comparisons, because you can't  
27 individualized hair to a particular person it is important to  
28 have as complete a range of samples as possible, is that so?

1 Everybody who would be expected normally to have access to a  
2 sink or shower, would that be important to have -- all of those  
3 different hair samples so you could make your findings more  
4 meaningful?

5 A. Any time you have a potential source like that that  
6 could be accessed by other people, it's a good idea to have  
7 anyone who may have had access.

8 Q. Okay. Did you receive any hair samples from people  
9 who had been residing in that bedroom and using that shower  
10 other than Kathy Bilbia?

11 A. No.

12 Q. Was the hair that couldn't be excluded from being  
13 Doug's, was that an unusual type hair in any way? Would you --  
14 would that be an unusual hair to find in brown-haired  
15 Caucasians?

16 A. If you mean does it have any particularly odd  
17 characteristics that might set it well apart from the others?

18 ~~A.~~ No.

19 Q. The hair that came out of the sink --

20 Well, first of all, did you in addition to the  
21 ortho-tolidine test, did you also try to do some tests which  
22 would have allowed you to determine with more certainty whether  
23 or not the substance that was mixed in there was blood?

24 A. Well, the only test we did for detection of blood  
25 was the ortho-tolidine test.

26 Q. What about did you try and do some tests to  
27 determine the species of the -- of the blood, if in fact it was  
28 blood?

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1           A.    Yes.

2           Q.    And how did those come out?

3           A.    They were inconclusive because of some nonspecific

4 reactions.

5           Q.    That is, when you tried to see whether or not, for

6 example, human blood would react with -- the human antiserum

7 would react with the blood, it didn't do it?

8           A.    It reacted with other things as well. It reacted

9 with antihuman I believe -- I mean anticow, and so there were

10 reactions going on there that were beyond the antihuman, human

11 reaction.

12          Q.    Did that indicate that it -- that the substances

13 could have been something other than blood?

14          A.    It indicated something was interferring with the

15 species test, yes.

16          Q.    And if you had something like that, a substance

17 that's been fished out of a drain, would it be surprising to

18 find a substance fished out of a drain reacting with

19 ortho-tolidine if it wasn't blood?

20          A.    You don't expect to see things that are not blood

21 to react. There are other chemicals that can react, but the

22 character of the test generally excludes those, both chemicals

23 and other oxidases. It could be other sources of blood. It

24 could be nonhuman blood.

25          Q.    How about slime, algae, fungi, that kind of stuff?

26          A.    Some bacteria can react with the test.

27          Q.    Sink slime I suppose?

28          A.    I don't know about slime specifically, but it could

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1 be something there that would react.

2 Q. The -- the clumped hair that was taken out of  
3 there --

4 First of all, hair is a fairly inert substance, it  
5 takes quite a bit to sort of break it down; is that right?

6 A. Yes.

7 Q. That particular hair, the clumped hair had been  
8 broken down considerably; is that right?

9 A. Yes. The surface showed a good deal of damage.

10 Q. Does that enable to you make inference as to how  
11 long it had been in there?

12 A. It only suggested that it had been in there for  
13 some period of time. I have no way of assessing what kind of  
14 period of time that would be.

15 Q. The hair that you couldn't exclude as being  
16 Jessica's, did that likewise have -- that one didn't have a cut  
17 root, right, I mean it had fallen out.

18 A. I would have to check that one.

19 The root was present on that and had a natural tip.

20 Q. So, that natural, indicating that it was of the  
21 type that would have been fallen out rather than plucked?

22 A. That's correct.

23 Q. You can also tell just by -- in addition to  
24 having -- looking at the feature of cut, you can also tell  
25 something if the hair root has been yanked out of a head, is  
26 that right, if it's still growing?

27 A. Yes.

28 Q. Now, in this particular hair that couldn't be

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1 excluded to Jessica's, did it have anything on it?

2 A. I don't recall anything being on it. I think there  
3 may have been some debris associated with the surface. That was  
4 true of many of the hairs in that sample.

5 Q. Okay. Well particularly did you label that one as  
6 HHH-3E.

7 A. Yes.

8 Q. Now, do you recall whether there was like  
9 considerable debris on the surface of that hair, including what  
10 appeared to be carbonates and other minerals?

11 And I'm referring to a chart, I think it was  
12 prepared by Mr. Shaeffer but it's dated 8-14-84, and it looked  
13 like to be Page 29 of his notes.

14 A. Yes. I see the notation on the bottom of that  
15 page.

16 There is considerable debris on the surface of that  
17 hair.

18 Q. And the minerals as well?

19 A. Yes.

20 Q. How long would it take for that kind of stuff to  
21 have accumulated on the surface of the hair?

22 A. It's hard to tell. You could have hair that had  
23 soap associated with it that could dry on the surface of the  
24 hair, and that would appear as he has there.

25 Q. Okay. So if somebody had been washing their hair  
26 in that particular sink, that could have been just what  
27 accounted for that?

28 A. Or if the hair came down in an area where there was

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1 that residue there in the water and then dried, that could  
2 become attached to the hair.

3 Q. Was that debris that was on the -- on the HH-3 the  
4 same type that was matted?

5 A. Yes.

6 Q. Could the degree of, I guess, degradation of the  
7 hair that occurred in the matted hair have occurred within a  
8 period of time of only four or five days?

9 A. Not the degradation, and I also can't say that some  
10 of that might not have occurred due to damage to the hair  
11 through application of various processes to the hair. So, you  
12 know, the damage that's there suggests that it's from having  
13 been in the drain in that matted sample for sometime. I  
14 wouldn't think that was the only source that would occur in four  
15 or five days.

16 Q. With respect, for example, to the hair that you got  
17 from the five victims in this case or from Kathy Bilbia, did any  
18 of those people have any hair processing or any other type stuff  
19 applied to their hair?

20 A. I did not see any evidence of that.

21 Q. The -- in the -- in the screening process that your  
22 lab did, did you go through all the hairs that were -- that were  
23 sent to you looking for ones that might have come from Mr.  
24 Cooper?

25 A. No. There were samples of hair from the vehicle  
26 and other places in which there were large quantities of hairs  
27 that we did not go through.

28 Q. So you just focused in on specific -- on specific

018734

1 ones?

2 A. Yes. I take that back. We did peruse them, the  
3 sample generally, to satisfy if there were any hairs that looked  
4 distinctly different as would be expected from Negroid hairs as  
5 opposed to the mass of Caucasian hairs and other fibers, animal  
6 hairs as well.

7 Q. When you were doing that --

8 Well, first of all, the only one that you found  
9 that you saw that couldn't be excluded from Mr. Cooper was  
10 that -- the little one from V-19?

11 A. That's correct.

12 Q. The -- there were a fair amount of animal hairs  
13 included in the sample; is that right?

14 A. I would say there were quite a few animal hairs  
15 yes.

16 Q. Probably the majority?

17 A. Yes, I would say so.

18 Q. Were most of those animal hairs consistent with  
19 having come from dogs?

20 A. I believe so. I didn't spend a lot of time looking  
21 at the animal hairs.

22 Q. The hatchet, or excuse me, L-2 that was received by  
23 you apparently from Mr. Thornton.

24 A. Yes.

25 Q. Then was labeled as fibers, I guess, from hatchet;  
26 were there fibers attached to that other than human hair?

27 A. Yes.

28 Q. And what kind of -- what kind of other fibers did

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1 you see?

2 A. There were animal hairs, synthetic fibers. And  
3 human hair fragments.

4 Q. Okay. What -- the synthetic fibers, do you  
5 remember what they looked to be?

6 A. I did not examine those, Mr. Schaefer examined  
7 them, and I don't recall. I did see them, but I did not pay  
8 much attention to them.

9 Q. How about the animal hairs, do you recall whether  
10 or not they appeared to be consistent with dogs?

11 A. I did not examine those.

12 Q. The -- there were three hairs on the hatchet that  
13 appeared to be human?

14 A. Yes.

15 Q. Were all those cut hairs, that is, cut towards the  
16 root end?

17 A. They all appeared to be cut or crushed or broken.

18 Q. So that would be essentially consistent with them  
19 having accumulated there by having the hatchet to be used as a  
20 weapon against somebody's head?

21 A. Yes, or something.

22 Q. Or something. Do you remember what animal hairs  
23 appeared to be cut?

24 A. No. I did not examine the animal hairs.

25 Q. As far as making a prediction as to the racial  
26 origins of particular hairs, is that most easy to do with head  
27 hairs?

28 A. I would say yes.

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1 Q. As you get to the -- as you get to other types  
2 of -- other areas of the body, do the characteristics of  
3 various -- of the various racial groups tend to merge?

4 A. I would say there's probably more similarity.  
5 There's still generally large differences that are typical of  
6 the head hairs as well, but they do tend to merge somewhat.

7 Q. Well, for example, hairs from the armpits and the  
8 pubic region, could they all tend to be somewhat more flat than,  
9 say, the Asian or the -- or the Caucasian head hairs?

10 A. In many Asian body hairs they are still quite  
11 round. The Caucasian head hairs tend to get flatter.

12 Q. You mean pubic hairs?

13 A. Pubic hairs, right.

14 Q. The V-19, that particular -- that particular hair,  
15 in terms of what you were able to analyze from that particular  
16 fragment, was the pigment the thing that was most prominent as  
17 far as giving you useful information?

18 A. I would say the pigment and the flatness and the  
19 splitting would be the three major characteristics.

20 Q. The splitting, that's -- that's a function of the  
21 fact that there was usually probably some sort of friction  
22 applied to the end of it?

23 A. I'm not sure exactly why it splits. I suspect it's  
24 largely from the nature of the structure of the hair itself  
25 because it seems to be quite common in Negroid pubic hairs.

26 Q. Were all of Mr. Cooper's known pubic hairs split?

27 A. Not all of them, no.

28 Q. In general do pubic hairs tend to split more in the

1 areas of the body where there's friction, like with the pants  
2 against the -- against your legs as opposed to the areas where  
3 there would be less friction?

4 A. I have never seen a study that deals with that  
5 directly.

6 Q. Is the splitting any different than abrading, does  
7 that mean the same thing?

8 A. Than abrading?

9 Q. Yes.

10 A. Yes.

11 Q. What's abrading mean?

12 A. Abrading would be surface effects on the hair that  
13 shows primarily in the medulla.

14 Q. Did the particular hair, V-19, have that  
15 characteristic?

16 A. I don't know that I would characterize it  
17 necessarily as abrading. I didn't see anything that was  
18 specifically typical of an abrading effect.

19 Q. The -- Well, that hair, V-19, did you say that that  
20 was definitely a hair from a Black person, or with the same  
21 degree of certainty that you could say that a head hair was or  
22 are there a range of people that could have been the donor of  
23 that hair?

24 A. I think there are a range of people that could be  
25 the donor of that hair.

26 Q. Were you also given from the car a couple of  
27 mounted slides -- a slide, excuse me, containing a couple of  
28 hairs that had been already mounted by our crime lab which had

1 the number of V-3 to it?

2 A. Yes.

3 Q. And were you particularly asked to compare the

4 hairs in that -- the two layers in that particular slide with

5 Mr. -- with Mr. Cooper?

6 A. Yes.

7 Q. Were either of them from Mr. Cooper?

8 A. No.

9 Q. Were they either of them from a Black person?

10 A. No.

11 Q. In the -- in the hairs that were -- that were

12 labeled A-11, that is, coming from a pillow, were there any

13 hairs that were outside the range of the victims?

14 A. Just the animal hairs.

15 Q. The three hairs that were on that pillow, none of

16 them could have come -- that were human, excuse me, none of them

17 could have come from Doug?

18 A. I don't believe so.

19 Q. They all could have come from Peggy?

20 A. Yes.

21 Q. Were they all -- Well, were two of them like

22 cleanly cut at the root end, mainly B and F?

23 A. B is apparently cut at the root end and F

24 apparently cut.

25 Q. And did F likewise have blood on it?

26 A. Yes.

27 Q. The other hair that was consistent with Peggy, did

28 that likewise lack a root?



1 A. Yes.

2 Q. Was the -- was the appearance of the hair such that  
3 it would be consistent with some sort of blunt force severing  
4 it?

5 A. It looked more to be cut. It's sometimes difficult  
6 to tell the difference between a broken end and a cut end. So,  
7 for example, if that were -- if -- it does not look to be  
8 crushed as you would get with a direct blow with a blunt  
9 object, but if you were to have a blunt object striking and  
10 pulling a hair off, then you could get a break that might look  
11 like a cut.

12 Q. So, this particular -- this particular hair didn't  
13 actually have the same sort of clean characteristic, but there  
14 was a certain amount of I guess what you might call ripping  
15 action involved?

16 A. Well, with hairs you don't -- it's not the clear  
17 distinction that you would see between something that's cut and  
18 broken as you -- as you might expect from cutting something of a  
19 larger size. The variation at the surface is irregular enough  
20 with a cut, and at a small level you might be able to  
21 distinguish some of those with a scanning electron microscope,  
22 but I've never used one for that and I don't know anyone that  
23 has really, although it's possible, but normally just with a  
24 standard transmitted light microscope it's difficult to make  
25 that distinction.

26 Q. Well, Mr. Schaefer made a distinction then  
27 between -- between -- he has drawn on his notes sort of what  
28 look to be square cuts on B and F, and much splitting with

1 little strands coming off on D; that's not a distinction that --  
2 that really has great significance as far as the nature of the  
3 instrument that caused it is concerned?

4 A. That's correct. The one that shows much splitting  
5 is a process that occurs to the hair itself. That's not the  
6 result of smashing or cutting or breaking. That's -- the hair  
7 tends to split up due to weakness in the cortex itself and will  
8 form that as you see in D.

9 But as far as the difference between a break and a  
10 cut, it's not that clearly defined. Sometimes it can be very  
11 clearly defined, but, for example, if it's at a sharp angle you  
12 could not get that from a break, but it could be characteristic  
13 of razor cut hair.

14 Q. Just returning to the hair E from the sink,  
15 laboratory number HH-3, that one that could have been -- could  
16 have been Jessica's, what was the difference that you saw  
17 between that hair and the hair samples you got from Jessica?

18 A. That hair showed a natural tip which we did not  
19 have in our known hairs and, therefore, that may have accounted  
20 for some of the differences we saw in the pigment. There's I  
21 think a little bit of difference in the coarseness of the  
22 pigmentatiaon, if I recall correctly.

23 Q. The kind of difference that you saw in the  
24 coarseness of the pigmentation at different stages of everyone's  
25 life, that is, as everyone gets older, especially with a kid, do  
26 those characteristics change?

27 A. I have not noticed changes in hair, but I have  
28 looked at individuals over their period of growth and I've not

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1 seen differences in the coarseness of the pigmentation.

2 MR. NEGUS: Thank you. I have nothing further.

3 THE COURT: Mr. Kochis.

4 MR. KOCHIS: Yes, your Honor.

5

6

REDIRECT EXAMINATION

7 BY MR. KOCHIS:

8 Q. Mr. Morton, V-19 again. Were you able to draw  
9 conclusions as to the race of the person from who, from whom the  
10 hair came?

11 A. I believe it is Negroid hair, yes.

12 Q. The P-2 hair, the hatchet hair, that was consistent  
13 with Doug Ryen's head hair, was that also cut toward the root  
14 end?

15 A. I believe so. Let me check. There was a P-2 hair?

16 Q. Yes.

17 A. No, it is a fallen root. It was cut or broken at  
18 the distal end.

19 Q. The HH-3 E hair that was consistent with Jessica  
20 Ryen's head hair, was that a hair which was not in the matted  
21 clump of hair that had the debri?

22 A. Yes, it was.

23 Q. Under a microscope --

24 A. I might qualify that a minute.

25 The number of the hairs in the nonmatted group, the  
26 debri associated with them, they were not -- it was just that  
27 they were not matted with the other group.

28 Q. Fine. Does hair appear lighter under a microscopic

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1 examination than it does when you examine it with the naked eye?

2 A. Yes.

3 Q. Why is that?

4 A. You are transmitting a great deal of concentrated  
5 light through the sample to you, so your description you deal  
6 with the hair generally will be much lighter; the description in  
7 your microscopic examination then will be transmitted or  
8 reflected light assessment.

9 Q. Can you see Mr. Cooper seated at counsel table?

10 Assuming he's the gentleman between the lawyer who  
11 is questioning you and the other gentleman wearing glasses and  
12 gray hair.

13 A. Yes.

14 Q. Does his hair appear to be black?

15 A. Yes.

16 Q. Under the microscope, did it appear to be dark  
17 brown to a reddish color?

18 A. Yes.

19 MR. KOCHIS: I have no further questions.

20

21 RE CROSS EXAMINATION

22 BY MR. NEGUS:

23 Q. With respect to the V-19 hair, the hair from the  
24 car with the split end, could you exclude other ethnic groups  
25 besides blacks as being the donor of that hair?

26 A. I cannot absolutely exclude another ethnic group  
27 possibly being the source of that hair.

28 Q. And as far as P-2 is concerned, the -- I guess it

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1 was P-2A, just to make it clear, the hair nearest the end  
2 nearest the root. had indicated that it was a hair that fell out  
3 naturally, or at least had been plucked out when it was ready to  
4 fall out naturally and the other end had been cut; is that  
5 right?

6 A. That's correct.

7 Q. Did that -- the cut on the other end, that is the  
8 way that most people who go to the barbers hair would appear?

9 A. Yes.

10 MR. NEGUS: Thank you. I have no go further questions.

11 MR. KOCHIS: Nor do I.

12 THE COURT: Mr. Morton, thank you very much, sir.

13 We will take the morning recess. Remember the  
14 admonition, please.

15 (Recess taken.)

16

17 THE COURT: What's next, Mr. Kochis?

18 MR. KOCHIS: Craig Ogino, your Honor.

19 THE COURT: Hello again. You are still under oath.

20 Just resume the stand and state your name.

21 THE WITNESS: My name is Craig Ogino. O-g-i-n-o.

22

23 CRAIG OGINO,

24 called as a witness on behalf of the People, having been  
25 previously duly sworn, resumed the stand and testified further  
26 as follows:

27

28 FURTHER DIRECT EXAMINATION

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1 BY MR. KOCHIS;

2 Q. Mr. Ogino, in your position as a criminalist, are  
3 you involved in the analysis of comparison?

4 A. Yes, sir.

5 Q. And from time to time does that involve comparing a  
6 standard or a known with an unknown?

7 A. Yes.

8 Q. To see if you can first of all exclude the unknown  
9 as coming from the standard?

10 A. Yes.

11 Q. Or to see if the unknown has many of the  
12 characteristics which are exhibited by its standard.

13 A. That's correct.

14 Q. What background, what educational background in the  
15 area of comparison do you have?

16 A. I have a bachelors of science degree in chemistry.  
17 I'm working on my masters of science in criminalistics. I've  
18 completed a course in polarized light microscopy at the McCrone  
19 Institute; a course in advanced forensic microscopy also from  
20 the McCrone Institute.

21 Q. How is the field of chemistry involved in the  
22 comparison of knowns with unknowns?

23 A. It deals with various scientific testing procedures  
24 that we use to make our comparisons from the knowns or standards  
25 to the unknowns.

26 Q. Would an example of one of those techniques be thin  
27 layer chromatography?

28 A. Yes.

1 Q. Is that used, for example, to examine and analyze a  
2 vegetable substance to see if it is tobacco or not?

3 A. Yes.

4 Q. How was the educational knowledge that you received  
5 in your master's program related to the science of comparison?

6 A. It dealt with the comparisons of a large number of  
7 types of physical evidence, and in particular using  
8 morphological characteristics in identification of different  
9 types of physical evidence.

10 Q. The term that you just used, the morphological  
11 comparison, what are we talking about when you use that term?

12 A. That involves either a visual comparison between  
13 knowns and unknowns, which can either be done by the naked eye  
14 or macroscopically, or through the microscope, or  
15 microscopically.

16 Q. What experience do you have in a laboratory setting  
17 in the area of comparison analysis?

18 A. I have experience in a large number of areas. Some  
19 of these include the comparisons of glass, fibers, paints,  
20 vegetable material, soil, and small particle identification.

21 Q. Can you give the jury an example of one of the  
22 particle comparison cases that you've worked on that would  
23 involve, for example, comparing unknown particles with certain  
24 known particles?

25 A. I once had a case which involved a burglar who cut  
26 into a safe using an instrument which looked similar to a  
27 circular saw. These particles that he cut into the metal came  
28 off in a very unusual shape, and the particles at the scene were

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1 compared morphologically with the particles found on his  
2 clothing, and were. in my opinion, consistent with one another.

3 Q. Now, do you also regularly read scientific  
4 literature which deals with the area of comparison analysis?

5 A. Yes.

6 Q. Would you give the jury, for example, some examples  
7 of the type of literature you read?

8 A. Journal of Forensic Science, the Journal for  
9 Forensic Science Society, Forensic Scientists International,  
10 Analytical Chemistry, Textile Fibers, Modern Photography, Photo  
11 Methods, and there's a large number in the laboratory that we do  
12 carry and circulate throughout the laboratory within the  
13 laboratory and through each criminalist.

14 Q. In this particular case did you examine what  
15 somewhat appeared to be, visually, vegetable debri, to determine  
16 if it was tobacco?

17 A. Yes.

18 Q. Directing your attention to a series of exhibits.

19 THE COURT: You want to hand me the photographs, Mr.  
20 Kochis, please, and get them out of your way.

21 BY MR. KOCHIS:

22 Q. Directing your attention to Exhibit 582, which  
23 bears the laboratory identification number J-28, and which  
24 appears to be a white rectangular box, and 582-A, which appears  
25 to be a clear plastic box which bears some identification on it,  
26 with 582-A, the writing on the outside of that.

27 Do you know whose writing that is?

28 A. Yes.

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1 Q. Is that your writing?  
2 A. Yes, sir.  
3 Q. And have you placed today's date, a particular  
4 time, and a laboratory identification number on that container?  
5 A. Yes.  
6 Q. Is the substance inside that container the  
7 substance that you took out of the white box from the Lease  
8 house, the 2991 residence, when that home was processed?  
9 A. Yes, it is.  
10 Q. Until today was that kept in the white box which  
11 has J-28 on it?  
12 A. As far as I know, yes, that's correct.  
13 Q. And was it placed in the clear plastic container to  
14 allow the jury later to examine it without crushing it or  
15 changing it?  
16 A. Yes.  
17 Q. Directing your attention to Exhibits 583, a white  
18 rectangular box which has a laboratory identification number of  
19 V-15, and 583-A, which also has some notation on it.  
20 583-A, is that likewise your writing on the clear  
21 plastic box?  
22 A. Yes.  
23 Q. And the substance in that particular item is the  
24 loose tobacco which was taken out of the Ryen station wagon when  
25 that car was processed.  
26 A. Yes.  
27 Q. Until this morning, to your knowledge, was that  
28 kept in the white box which has been marked for identification

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1 in this trial as 583?

2 A. Yes.

3 Q. And was it -- likewise, was the substance placed in  
4 that particular container, 583-A, so the jury could later  
5 examine it without crushing it or changing the shape?

6 A. Yes, sir.

7 Q. Directing your attention next to two items, one of  
8 which has been marked for identification as 584, it is a white  
9 envelope which contains a small brass cannister marked as V-12  
10 and 584-A.

11 Did you essentially take the contents of V-12,  
12 which are inside 584, and place them in 584-A?

13 A. Yes.

14 Q. And did you seal that with -- was that sealed with  
15 tape?

16 A. Yes.

17 Q. And does that contain the remainder of the tobacco  
18 and paper that was removed from the hand-rolled cigarette butt  
19 found in the Ryen station wagon?

20 A. Yes.

21 Q. During your attention to Exhibit 624A. Does your  
22 writing appear on that particular plastic box as well?

23 A. Yes, it does.

24 Q. And did you take a portion of Exhibit 624, some of  
25 the known state issued free tobacco from CIM, and place that in  
26 that particular plastic box?

27 A. Yes, I did.

28 Q. This particular item 624 white box, is it an item

3 1 that you referred to in your analysis in this case, as FF-2?

2 A. Yes.

3 Q. Now, the tobacco which came out of -- excuse me,  
4 the vegetable matter which came out of the Lease house, which  
5 was marked with your laboratory identification number of J-28,  
6 and the tobacco, the vegetable matter that came out of the Ryen  
7 car, V-12 and V-15, did you perform certain tests on that to  
8 determine whether or not it was tobacco?

9 A. Yes.

10 Q. What type of tests?

11 A. First of all I looked at it macroscopically, or  
12 with a naked eye. Then I looked at it microscopically, and then  
13 I performed a chemical test for nicotine.

14 Q. What were the results when you performed the  
15 nicotine tests, for example, on J-28?

16 A. It was positive.

17 Q. The nicotine results on V-15?

18 A. Again, that was positive.

19 Q. The nicotine results on V-12?

20 A. That was also positive.

21 Q. Did you also compare it visually to certain known  
22 tobaccos?

23 A. Yes.

24 Q. The items in those three containers, J-28, V-12 and  
25 V-15. Based on your chemical tests and your visual  
26 observations, do they appear to be tobacco?

27 A. Yes.

28 Q. Now, did you compare those unknowns against a

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1 number of known tobaccos in the laboratory?

2 A. Yes.

3 Q. Directing your attention to an exhibit which has  
4 been marked for identification as 635.

5 Is this one of the exhibits that you prepared to  
6 assist you in your testimony in this case?

7 A. Yes.

8 Q. Have you actually placed on the Exhibit 635 samples  
9 of known tobacco against which you have compared the three  
10 unknowns?

11 A. Yes.

12 Q. Is the Exhibit 635 in some way color coordinated?

13 A. Yes, it is.

14 Q. Have you listed under every sample of tobacco the  
15 name of the tobacco, for example?

16 A. Yes.

17 Q. The free state issue prison tobacco, appears on  
18 this chart in what color?

19 A. In red.

20 Q. And what designation have you given it in terms of  
21 the name?

22 A. CIM tobacco.

23 Q. Have you also referred to it by a particular  
24 laboratory identification number?

25 A. Yes.

26 Q. Which one is that?

27 A. FF-2.

28 Q. Now, is there, on this Exhibit 635, samples of

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- 1 tobacco which you have collected?
- 2 A. Yes.
- 3 Q. For example, on this exhibit is there samples of
- 4 tobacco that were collected by yourself from the Ryen home?
- 5 A. Yes.
- 6 Q. What laboratory identification number did you
- 7 assign to that tobacco?
- 8 A. Item Q.
- 9 Q. Does it appear on the chart to be in blue?
- 10 A. Yes, sir.
- 11 Q. Have you then, out on the chart in blue, the names
- 12 of the four different types of tobacco that you collected from
- 13 the Ryen home?
- 14 A. Yes.
- 15 Q. The tobacco in green, or the samples on the chart
- 16 of tobacco that have writing underneath them in green, where did
- 17 that tobacco come from?
- 18 A. From Sergeant Arthur.
- 19 Q. The tobacco on the diagram under which the writing
- 20 appears to be in red, and it has the laboratory identification
- 21 numbers of KK. Where did that tobacco come from?
- 22 A. That was received in our laboratory.
- 23 Q. By whom?
- 24 A. I believe it was from -- may I refer to my notes?
- 25 Q. Yes.
- 26 A. From Deputy Mascetti.
- 27 Q. Michael Mascetti?
- 28 A. Yes.

1 Q. The tobacco that Sergeant Arthur brought to the  
2 lab, was that assigned a particular laboratory identification  
3 number?

4 A. Yes.

5 Q. Was that four K's?

6 A. Yes.

7 Q. The black tobacco, or excuse me, the tobacco which  
8 on the chart has writing underneath it which is in black, where  
9 did you get that?

10 A. Those are tobacco standards which I personally  
11 collected for the laboratory.

12 Q. Where would you have gotten them?

13 A. From a number of places, a couple of tobacco shops  
14 and also Thrifty Drug Store.

15 Q. Directing your attention to an exhibit which has  
16 been marked for identification as Exhibit 636; do you recognize  
17 what's in that exhibit?

18 A. Yes, I do.

19 Q. Is that an exhibit that you prepared to assist you  
20 in your testimony at this trial?

21 A. Yes, it is.

22 Q. Does 636 consist of a series of color photographs  
23 which depict an enlargement of some of the tobaccos which are on  
24 635?

25 A. Yes, it does.

26 Q. And have you likewise used certain colors which are  
27 keyed in to the -- where you got the tobacco from?

28 A. Yes.

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1 Q. For example, on that exhibit, the tobacco which  
2 came from the men's prison in Chino, is that all in red?

3 A. Yes, it is.

4 Q. And then below that do you have in blue  
5 enlargements of photographs of the tobacco which you actually  
6 seized from the Ryen home?

7 A. Yes, that's correct.

8 Q. Now, in each photograph is there a ruler to give  
9 the jury an idea of what the scale, the size of the tobacco is?

10 A. Yes.

11 Q. The tobacco which is given to the inmates free of  
12 charge at the men's prison which you have the identification  
13 number of FF-2, did you compare that to the other types of  
14 tobacco which are available at the institution if they are  
15 purchased?

16 A. Yes, I have.

17 Q. And would that have included Bugler, Top, and  
18 Mixture No. 79?

19 A. Yes, that's correct.

20 Q. Did you conduct an examination, for example, of the  
21 Mixture 79 with the free tobacco to see if it was similar?

22 A. Yes.

23 Q. What type of examination?

24 A. It was a very critical morphological examination,  
25 which includes looking at color, cut, size, and just the overall  
26 appearance of the tobacco as a whole.

27 Q. Did you also consider the presence or absence of  
28 what is known as mid-rib veins?

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1 A. Yes.

2 Q. And the shape of the tobacco?

3 A. Yes, that's correct.

4 Q. Did you conduct an examination with your naked eye  
5 and a microscopic examination?

6 A. Yes, I did.

7 Q. Did you also examine the tobaccos in a three  
8 dimensional sphere, for example, how thick they were and things  
9 of that nature?

10 A. Yes.

11 Q. Is the Mixture 79, is it the same type of tobacco  
12 when you consider the cut, the shape, the size, as the free  
13 stuff that you get at the prison?

14 A. No, it is not.

15 Q. Can you exclude, for example, tobacco which comes  
16 from a package labeled Mixture 79 from the free stuff you get at  
17 the men's prison?

18 A. Yes, I can.

19 Q. Did you perform the same type of examination on the  
20 other two types of tobacco that you can purchase at the prison,  
21 the Top and the Bugler?

22 A. Yes.

23 Q. Are either of those types of tobacco, when we talk  
24 about color, shape, size, cut, are they the same as the free  
25 stuff from CIM?

26 A. No.

27 Q. How does Bugler, for example, differ from FF-2, the  
28 free tobacco you get at the men's prison?

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1           A.     Okay. For example, if you take a critical look at  
2     Bugler you can see the cut is very much different. You will  
3     notice a very thin ribbon-like cut versus the CIM tobacco up in  
4     the upper left-hand corner is more of a granular or what's  
5     called a flake cut. You can also see that it's more natural  
6     or more in a three dimensional plane rather than the CIM tobacco  
7     which is very, very flat or looks almost like oatmeal. It's  
8     very flat.

9           And if you take a closer look at the tobacco  
10    standards maybe during the break or whenever you can take a  
11    closer look, you will see that the CIM tobacco is much much  
12    flatter and it doesn't have that third dimension to it.

13          Q.     How is the free stuff from CIM different from  
14    Mixture 79?

15          A.     Again, Mixture No. 79, take a look at the cut. The  
16    cut does look somewhat similar; however, if you look at it very  
17    critically you're going to see a more chunky type tobacco. And  
18    it's more layered on top of one another.

19          Also take a critical look at color. In Mixture No.  
20    79 you'll see a lot of light colored looking tobacco, whereas in  
21    the CIM tobacco there is some, however, it's not as great as it  
22    is in Mixture No. 79.

23          Q.     Are the shapes of the flakes of tobacco in FF-2,  
24    the free prison tobacco, and Mixture 79 the same size?

25          A.     No.

26          Q.     How are they different?

27          A.     Mixture No. 79, the actual cut is larger than the  
28    CIM tobacco.

018756

1 Q. When we're examining -- when we're talking about  
2 the free prison tobacco, FF-2, what type of cut does that have?

3 A. It's called a flake cut or granular cut.

4 Q. How does that differ from, for example, shredded  
5 tobacco?

6 A. Shredded tobacco looks more like Top, the item KK.  
7 It's a very ribbon-like, looks like you're almost tearing paper  
8 and crumbling it up into tiny strips.

9 Q. Would that be an example of one of the differences  
10 between the free prison tobacco and the Top which you can buy at  
11 the prison?

12 A. Yes.

13 Q. Is it -- Let me back up.

14 Is the shredded Top tobacco, for example, easy to  
15 distinguish visually from the free stuff when you simply look at  
16 it?

17 A. Yes, it is.

18 Q. Did you also compare the free type of tobacco you  
19 get at the institution with the four samples of tobacco you  
20 removed from the Ryen home?

21 A. Yes, I did.

22 Q. Was the type of tobacco that you found in the bag  
23 labeled Don Pablo, was that consistent with the free stuff from  
24 CIM or could you exclude it?

25 A. I could definitely exclude it.

26 Q. Based on what characteristics?

27 A. Again looking at the cut and the size and  
28 especially the color. And also one other very important factor

1     which you can't see is moisture content. The Don Pablo, if you  
2     pinched it was very, very moist. It was kept in a pouch. And  
3     if you pinch the CIM tobacco it would crumble almost  
4     instantaneously. It was very, very dry.

5           Q.     The various factors we've talked about, when you  
6     take those factors into consideration and compare the Captain  
7     Black, which was also found in the Ryen home, with the free  
8     stuff from CIM, is it the same or is it different?

9           A.     It's definitely different.

10          Q.     In terms of characteristics, what are the  
11     differences?

12          A.     Again look at the cut, it's different. The color  
13     is somewhat different. And the moisture, that was also very,  
14     very moist and did not crumble.

15          Q.     The Borkum Riff, is that distinguishable from the  
16     CIM free tobacco or when you consider all the characteristics  
17     did they appear to be consistent?

18          A.     That is also distinguishable.

19          Q.     Based on which characteristics?

20          A.     Oh, number. The cut especially, and again the  
21     Borkum Riff was a lot moister than the CIM tobacco.

22                 If you look at it you will see more of long stringy  
23     type cut rather than a flake cut in the CIM tobacco.

24          Q.     The Scandinavak, I believe, if that's a close  
25     pronunciation, in terms of the various characteristics we've  
26     talked about is that inconsistent or different from the free  
27     tobacco at CIM or the same?

28          A.     That is also different.

018758

1 Q. In which classes?

2 A. Again in a number of classes. Looking at the cut  
3 and somewhat the color, if you look at it critically actually,  
4 on the standard board you can see that it's different in color.  
5 Again it's more of a ribbon cut. It's long and skinny. And  
6 it's again more three dimensional than the CIM tobacco. And the  
7 moisture content in that was also -- it was very moist rather  
8 than a dry tobacco.

9 Q. Now, directing your attention to an exhibit which  
10 has been marked for identification as Exhibit 644. It is a  
11 manila envelope and it contains a white plastic Thrifty bag  
12 which has the case No. 42376 and an item identification number  
13 of quadruple L, I believe, four L's. in a row.

14 Did you examine the tobacco in that exhibit?

15 A. Yes.

16 Q. Did you compare each and every type of tobacco in  
17 that Exhibit with the tobacco you get free of charge at the  
18 state prison, FF-2?

19 A. Yes, I did.

20 Q. Were they all different from the free tobacco?

21 A. Yes, they were.

22 Q. Directing your attention to the next exhibit in  
23 order after 636, 637, is that a photo chart display that you  
24 also prepared to assist you in your testimony at the trial?

25 A. Yes.

26 Q. Does that contain color enlargements of certain  
27 known tobacco samples?

28 A. Yes, it does.

1 Q. And have you placed the name of the known tobacco  
2 samples underneath each of the photographs?

3 A. Yes.

4 Q. Did you also compare, for example, the eight types  
5 of tobacco which appear on that particular, Exhibit 637, with  
6 the free tobacco that is given to the inmates at CIM, PF-2?

7 A. Yes, I did.

8 Q. Is the free tobacco different from each of the  
9 known tobaccos depicted on 637?

10 A. Yes, it is.

11 Q. How is it different, for example, from the Prince  
12 Albert blend?

13 A. Okay. Again the cut is different. The Prince  
14 Albert blend you see some very straightedged cuts if you look at  
15 it very carefully. Also dimensionwise the Prince Albert is more  
16 of a naturally or a three dimensional type tobacco rather than a  
17 flat tobacco like the CIM tobacco.

18 Q. How is it different from the Export?

19 A. Well, quite dramatically. Just by looking the cut  
20 is very, very thin and also it is a ribbon-like cut.

21 Q. Is it the same type of tobacco as the Kite or is it  
22 different? K-i-t-e, I don't know if I pronounced it correctly.

23 A. Is the Export the same as the Kite?

24 Q. No. I'm sorry is the free stuff from CIM the same  
25 as the Kite?

26 A. No.

27 Q. How is it different?

28 A. Again, cut is very much different. It's a very

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1 thin ribbon-like cut and can be excluded very easily just by  
2 looking at it.

3 Q. Is the Drum the same as the free stuff or can it be  
4 excluded?

5 A. No, that definitely can be excluded.

6 Q. Based on what characteristics?

7 A. Again you will see a fine very thin cut of tobacco  
8 Again, this is more of a stringy three dimensional tobacco  
9 rather than the flat flake cut as the CIM tobacco.

10 Q. What characteristics show different when you  
11 compare the American Spirit with the free stuff from CIM?

12 A. That's a little bit harder to distinguish. The  
13 biggest difference is size. Again, American Spirit, that is  
14 also a flake cut, and the major difference is the size of the  
15 standard American Spirit tobacco.

16 Q. Is one of the differences between the free tobacco  
17 from CIM and the Pipemate the cut of the tobacco itself?

18 A. Yes.

19 Q. Is the Pipemate somewhat shredded and not  
20 granulated?

21 A. Yes.

22 Q. What would be the difference in terms of  
23 characteristics between Tree Castles tobacco and the free  
24 tobacco from CIM?

25 A. Again, just looking at it you can tell that the cut  
26 is different, and again you have a more of a three dimensional  
27 type tobacco rather than the flat tobacco.

28 Q. The tobacco, the known tobacco which appears right

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- 1 above, Tree Castles, how would you pronounce that?
- 2 A. Tiedmans Gul.
- 3 Q. Are their differences between what we have talked
- 4 about in tobacco and the free stuff from CIM?
- 5 A. Yes.
- 6 Q. What type of differences?
- 7 A. The same differences as we discussed before. The
- 8 cut is different. And again, you have more of a three
- 9 dimensional type tobacco.
- 10 Q. Directing your attention to Exhibit 638, is that an
- 11 exhibit you prepared for this trial?
- 12 A. Yes, it is.
- 13 Q. As with 637, does that contain a series of eight
- 14 color enlargements of various known tobaccos you prepared in
- 15 this case against the free tobacco that is issued to the inmates
- 16 at CIM?
- 17 A. Yes.
- 18 Q. Do each of the photographs contain a scale, a
- 19 ruler, to give the jury some idea of the size of the
- 20 characteristics we're talking about?
- 21 A. Yes.
- 22 Q. Did you compare all of the known tobaccos on 638
- 23 with FF-2, the state-issued tobacco given out at CIM?
- 24 A. Yes, I did.
- 25 Q. Based on the characteristics that we have
- 26 discussed, can you distinguish all eight of the known tobaccos
- 27 on that particular exhibit from the state-issued tobacco that's
- 28 given out at CIM?

1 A. Yes, I can.

2 Q. For example, with the Argosy Black, the Velvet, or  
3 the Edgeworth, and the Granger, can you distinguish those types  
4 of tobaccos and the state-issued tobacco based on cut alone?

5 A. Yes.

6 Q. Are those all examples of a shredded type of  
7 tobacco?

8 A. Yes.

9 Q. Is it also possible to distinguish the state-issued  
10 tobacco from Five Brothers, for example, based on the cut alone?

11 A. Yes.

12 Q. Are Carter Hall and Half and Half similar in cut to  
13 the state-issued tobacco?

14 A. Well, from the picture it does appear to be  
15 similar; however, if you look at it very closely, the Half and  
16 Half, you will see some very straightedge cuts or more of a riff  
17 type cut.

18 Q. How about the Carter Hall?

19 A. Again, the picture doesn't really show you the  
20 three dimensions of the tobacco. If you look at that also on  
21 the chart itself you will see see that it's more of a chunky  
22 type tobacco rather than a flake tobacco.

23 Q. And when you talk about the chart, you are  
24 referring to 635 that has on it a portion of the sample itself?

25 A. Yes.

26 Q. Based on an examination then is it possible to  
27 exclude Half and Half and Carter Hall from or to distinguish it  
28 from the free stuff at CIM?

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1 A. I could, yes.

2 Q. Directing your attention to Exhibit 639, are the  
3 top four photographs pictures, enlargements of some of the known  
4 tobaccos in this case you compared against the free state-issued  
5 CIM tobacco?

6 A. Yes.

7 Q. Is it possible to tell the difference, to  
8 distinguish between all four of those tobaccos from the  
9 state-issued tobacco?

10 A. Yes.

11 Q. For example, the Amphoria, can you do that on cut  
12 alone?

13 A. Yes, definitely.

14 Q. The Black and Mild, can you make that distinction  
15 based on the size of the flakes and the color?

16 A. Yes.

17 Q. How is the Sir Walter Raleigh distinguished?

18 A. Again, by cut and somewhat by color.

19 Q. Now, does Bull Durham appear to be similar to CIM  
20 tobacco?

21 A. Somewhat similar, yes, it does.

22 Q. Is it possible to distinguish Bull Durham from the  
23 CIM free tobacco?

24 A. I feel it is possible, yes.

25 Q. Based on what characteristics?

26 A. Based on the fact that the Bull Durham tobacco  
27 itself is a lot smaller than the CIM tobacco. If the Bull  
28 Durham tobacco just happened to have been larger and by

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1 manipulation could have gotten smaller, then I would not have  
2 eliminated that particular brand of tobacco because it is  
3 similar in color and in cut; but due to the fact that it's  
4 smaller tobacco, it cannot get larger.

5 Q. Directing your attention to three of the  
6 photographs that appear toward the bottom of Exhibit 639 which  
7 have orange lettering under them, J-28, V-15, and V-12; is J-28  
8 an enlargement of the tobacco which was removed by yourself from  
9 the closet at the residence at 2991 Old English Road?

10 A. Yes.

11 Q. Is the photograph which underneath has "V-15" an  
12 enlargement of the tobacco which was loose and taken out of the  
13 Ryen car, the front seat?

14 A. Yes.

15 Q. And is V-12 an enlargement of the tobacco which was  
16 taken out of the hand-rolled cigarette butt which was removed  
17 from the Ryen car?

18 A. Yes, it is.

19 Q. Now, did you compare that tobacco, those three  
20 types of tobacco against, for example, every type of known  
21 tobacco that you removed from the Ryen home?

22 A. Yes.

23 Q. Were these -- for example, was J-28 consistent with  
24 any of the tobacco you took out of the Ryen home or could you  
25 distinguish it from each of the four types?

26 A. It was not similar to anything I took out of the  
27 Ryen home.

28 Q. Did you also compare the characteristics of J-28

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1 with the tobaccos, the known tobaccos in LLLL, all of those  
2 tobaccos?

3 A. Yes.

4 Q. Were any of those tobaccos consistent in terms of  
5 characteristics with J-28?

6 A. No.

7 Q. Did you compare V-15, the tobacco from the Ryen  
8 vehicle with the four types of known tobacco you took out of the  
9 Ryen home?

10 A. Yes.

11 Q. Could you distinguish V-15 from the tobacco you  
12 took out of the Ryen home or was it similar?

13 A. I can distinguish it.

14 Q. Did you also compare the characteristics of V-15  
15 with the tobacco in front of you on the witness stand, which has  
16 been marked for identification in this hearing as 644?

17 A. Yes.

18 Q. Was it the same or was it different from all that  
19 tobacco?

20 A. It was similar.

21 Q. V-15 was similar to the tobacco in the white bag?

22 A. Oh, no. I'm sorry.

23 Q. Do you understand that LLLL came out of the bag in  
24 front of you?

25 A. Okay.

26 Q. Is that the same as V-15 or is it different?

27 A. That was -- I was able to distinguish that from any  
28 tobacco that was in LLLL.

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1 Q. Same question in regard to V-12, that tobacco  
2 similar to any of the tobacco in the LLLL series?

3 A. No.

4 Q. Is it similar to any of the tobacco you took out of  
5 the Ryen home yourself, the four samples?

6 A. No.

7 Q. Did you compare those three types of tobaccos, by  
8 that I mean the tobacco out of the Lease house in the closet,  
9 the tobacco out of the Ryen car loose on the floor and the  
10 tobacco that came from the hand-rolled cigarette butt in the  
11 Ryen car with the other known tobaccos you've testified about  
12 here this morning, samples of which appear on Exhibit 635,  
13 photographs of which appear on Exhibits 636 through 639?

14 A. Yes.

15 Q. Putting aside for a moment the tobacco that you get  
16 free of charge from the state prison which appears on Exhibit  
17 636 which has been labeled FF-2, putting that type of tobacco  
18 aside for a moment, and considering the other knowns, can you  
19 distinguish the three types of tobacco on that Exhibit 639,  
20 J-28, V-15 and V-12 from all the other standards?

21 A. Yes.

22 MR. KOCHIS: Would this be a good time to break?

23 THE COURT: If it's convenient for you.

24 All right. We will take the noon recess. Please,  
25 remember the admonition and don't talk about the case. Don't  
26 let others discuss it with you. Don't suppress or form any  
27 opinion on the matter until we finally submit it to you.

28 Enjoy your lunch and return at 1:30 again. Thank  
29 you.

(Noon recess taken.)

COMPUTERIZED TRANSCRIPT

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1           1       SAN DIEGO, CALIFORNIA, MONDAY, DECEMBER 17, 1984 1:40 P.M..

2                               --oo0oo--

3  
4           THE COURT: Please continue, Mr. Kochis.

5  
6                               CRAIG OGINO,

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                           DIRECT EXAMINATION (Resumed)

11       BY MR. KOCHIS:

12           Q.     Mr. Gregonis (sic), directing your attention to an  
13       exhibit which has been marked for identification as Exhibit 640.

14                   Is that another exhibit that you prepared to assist  
15       you in your testimony on tobacco comparisons?

16           A.     I am Mr. Ogino.

17           Q.     It is always after the lunch hour.

18           A.     Yes, that is

19           Q.     Let me start again.

20                   We're on tobacco; is that right?

21           A.     Yes.

22           Q.     And you are Mr. Ogino.

23                   640, is that a series of photographs which includes  
24       an enlargement of some side-by-side comparisons with the  
25       state-issued free tobacco from CIM, FF-2 and two known tobaccos,  
26       additionally, the known tobacco American Spirit and "Bull"  
27       Durham?

28           A.     Yes.

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1 Q. In your analysis of the state-issued free tobacco  
2 FF-2, when you performed both a visual and a microscopic  
3 examination side-by-side comparison of those two tobaccos, for  
4 example, American Spirit and the CIM state issue, are you able  
5 to distinguish between those types of tobaccos?

6 A. Yes.

7 Q. Based on what qualities?

8 A. On the actual size of the cut. If you take a look  
9 at the CIM tobacco the flakes are very much larger than the  
10 American Spirit cut?

11 Q. Same type of question on a side-by-side comparison  
12 with the state issued free tobacco from CIM and a "Bull" Durham  
13 type of known tobacco, is it possible, through analysis,  
14 including a microscopic analysis, to distinguish the CIM tobacco  
15 from "Bull" Durham?

16 A. Yes.

17 Q. Based on what characteristics?

18 A. Again, the cut and the size of the particles. The  
19 particles from "Bull" Durham are very much smaller, if you take  
20 a look at each individual particle, than they are in the CIM  
21 tobacco.

22 Q. Are the bottom three photographs on Exhibit 640,  
23 are those side-by-side photographic comparisons of the three  
24 unknown tobaccos in this case, J-28 from the Lease house, V-15  
25 from the Ryen car, and V-12 from the cigarette butt in the Ryen  
26 car, all compared side-by-side with the free tobacco from state  
27 prison?

28 A. Yes.

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1 Q. Did you perform both a macroscopic and a  
2 microscopic examination of the unknown tobaccos in comparing  
3 them with the state-issued tobacco from CIM?

4 A. Yes.

5 Q. What factors did you take into account; what  
6 characteristics when you made the comparisons between the known  
7 CIM state-issued tobacco and those three unknown tobaccos?

8 A. First of all the cut, the color. Not only the  
9 color as it lies on the paper there but the color of each  
10 tobacco leaf or particle itself.

11 The actual configuration of the flake, the flatness  
12 of the flake versus, for example, the coarseness of the other  
13 standards that we have previously talked about.

14 I have also taken into consideration the size of  
15 the particles, and then going back and looking at it just  
16 visually, how it actually just looked visually side-by-side to  
17 one another.

18 Q. Did you examine the unknowns under a microscope for  
19 presence and or absense of mid-rib vein?

20 A. Yes.

21 Q. When you did these comparisons of the tobacco from  
22 the Lease home, the 2991 residence, J-28, with FF-2, the free  
23 tobacco from the prison, what did you find?

24 A. In my opinion they are very consistent with one  
25 another.

26 Q. In what characteristics?

27 A. All of the characteristics I previously stated.

28 Q. When you compared the tobacco that's given free of

1 charge at state prison to V-15, the loose tobacco that was found  
2 on the front seat of the Ryen car, what did you discover?

3 A. Again, they are very consistent with one another.

4 Q. In the qualities that you have mentioned before?

5 A. Yes. That's correct.

6 Q. For example, color, cut, size?

7 A. Yes.

8 Q. Do you have an opinion as to whether or not J-28,  
9 the tobacco from the Lease home, and V-15, the tobacco from the  
10 Ryen station wagon in the front seat, are the same type of  
11 tobacco?

12 A. Yes.

13 Q. What is your opinion?

14 A. Those two are also consistent with one another.

15 Q. And consistent with the free stuff from CIM?

16 A. Yes.

17 Q. Now, when you examined on the side-by-side  
18 comparison basis V-12, the cigarette tobacco that was removed  
19 from the hand-rolled cigarette in the Ryen car, and compared it  
20 to the state-issued tobacco, what did you discover?

21 A. There was slight differences in V-12 versus the CIM  
22 tobacco.

23 Q. Did that include the color portion of the tobacco?

24 A. Yes.

25 Q. How was there a color difference?

26 A. There appeared to be a burnt part of the tobacco  
27 from the hand-rolled cigarette from the Ryen car, it did appear  
28 to be slightly burnt and slightly darker.

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1 Q. Did you see V-12 before it was taken apart for a  
2 serological testing.

3 A. Yes.

4 Q. Have you examined a photograph of V-12 prior to  
5 your testimony today?

6 A. Yes.

7 Q. Was one end of that hand-rolled cigarette butt  
8 charred as if it had been smoked at one time?

9 A. Yes.

10 Q. And was the color on the tips of some of the leafs  
11 of tobacco in V-12 consistent with having been burned?

12 A. Yes.

13 Q. Was there some difference in size in the particles  
14 of granulated tobacco in V-12 and the FF-2 state prison tobacco?

15 A. Yes.

16 Q. Which were smaller?

17 A. The tobacco I recovered from the cigarette from the  
18 Ryen car was smaller than the CIM tobacco.

19 Q. In the laboratory setting did you take some of the  
20 CIM tobacco and handle it as you would to hand roll a cigarette?

21 A. Yes.

22 Q. What happened?

23 A. What that does, since the CIM tobacco is so  
24 brittle, it will break very, very easily upon manipulation; as  
25 you roll the tobacco to roll it into the hand-rolled cigarette,  
26 the tobacco is breaking down and becoming in smaller pieces.

27 Q. The tobacco that you found in V-12, was that  
28 consistent with, for example, taking tobacco such as V-15 and

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1 rolling it into a hand-rolled cigarette causing the particles to  
2 become somewhat smaller, smoking it and causing some of the  
3 particles to become burnt?

4 A. Yes. I actually did that and observed that.

5 Q. When you did that to some of these state-issued  
6 tobacco, were the results consistent with V-12?

7 A. Yes.

8 Q. Assuming, hypothetically then that V-12 came from a  
9 hand-rolled cigarette which had been smoked, causing the  
10 particles to get charred on the outside, and be broken smaller  
11 while they're rolling, assuming that hypothetically, is V-12  
12 also consistent with FF-2, the state-issued free tobacco?

13 A. Yes.

14 Q. Then all three of the unknown tobaccos, J-28, V-15  
15 and V-12 are consistent in terms of the qualities we have  
16 discussed with the free tobacco from CIM, FF-2?

17 A. Under the certain conditions you stated with V-12?  
18 Yes, that's correct.

19 Q. Even putting those conditions aside, J-28 and V-15,  
20 that tobacco is consistent with the free tobacco from CIM.

21 A. Yes.

22 Q. And the tobaccos listed on 635, all of those known  
23 tobaccos, including the tobaccos taken from the Ryen home, those  
24 are all, with the exception of the state-issued free tobacco,  
25 those are all different from the tobacco which came out of the  
26 Lease home.

27 A. Yes.

28 Q. The tobacco which was found loose in the Ryen car

1 V-15.

2 A. Yes.

3 Q. And the tobacco which came out of the hand-rolled  
4 cigarette, the Ryen car, V-12.

5 A. Yes.

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

7 THE COURT: Mr. Negus.

8

9

CROSS EXAMINATION

10 BY MR. NEGUS:

11 Q. The standards that you decided to compare with the  
12 CIM tobacco against, where did you get those? How did you  
13 decide those particular standards were the ones you were going  
14 to use?

15 A. I bought all the available tobacco that I could  
16 find.

17 Q. Didn't get any Pall Mall's.

18 A. Well, I got all of the loose tobacco that I could  
19 found.

20 Q. Well, did you consult the catalog as to what was  
21 available?

22 A. I don't know of a catalog.

23 Q. Did you consult anybody in the tobacco industry as  
24 to what kinds of granulated tobacco there are?

25 A. I went to a tobacconist, yes.

26 Q. Does that mean a guy who has a tobacco store?

27 A. Yes.

28 Q. Did he tell you how many types of granulated

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1 tobacco he had in his store?

2 A. He didn't have any in his store. He suggested that  
3 I go to Thrifty's to try and find that.

4 Q. How many of those tobaccos that you compared the  
5 cigarette tobacco from CIM with were cigarette tobaccos?

6 A. Approximately -- approximately half.

7 Q. Which were the ones that are significant tobaccos?

8 A. Sergeant Arthur collected the cigarette tobaccos,  
9 the cigarette tobacco "Bull" Durham is also a cigarette tobacco,  
10 and I believe Flying Dutch -- Five Brothers is a cigarette  
11 tobacco.

12 Q. So the "Bull" Durham, Five Brothers and what other  
13 one?

14 A. The tobaccos Sergeant Arthur collected.

15 Q. All the KK ones?

16 A. Yes.

17 Q. KKKK.

18 A. And of course the tobacco from CIM, the Buglar and  
19 Top.

20 Q. The tobacco that is labeled V-15, I think you and  
21 Mr. Kochis were speaking that tobacco as coming from the front  
22 seat of the car.

23 It didn't actually come from the seat, did it?

24 A. No, sir.

25 Q. That was actually on the floorboard over near the  
26 door.

27 A. Near the passenger door, yes.

28 Q. What was the difference between V-12 and "Bull"

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1 Durham?

2 A. Well, there's a particle size, somewhat of a  
3 particle size difference, and there's -- also V-12 is darker  
4 probably due to burning.

5 Q. As far as the particle size, the biggest particle  
6 in the V-12 was like twenty-eight one hundredth's of an inch in  
7 diameter; is that right?

8 A. Yes, that's correct.

9 Q. And the biggest particle in the "Bull" Durham was  
10 twenty-seven one hundredth's of an inch in diameter; is that  
11 correct?

12 A. Twenty-six.

13 Q. The biggest -- backwards. The big one American  
14 Spirit would be twenty-seven one hundredth's of an inch in  
15 diameter.

16 A. Twenty-five one hundredth's.

17 Q. So, did you think that the fact that there was a --  
18 what, two or three one hundredth's of an inch largest piece was  
19 significant?

20 A. Well, what you are considering here is that in V-12  
21 it was rolled in a hand-rolled cigarette.

22 If the "Bull" Durham or the American Spirit was  
23 subjected to the same process, I would think that that process  
24 would also decrease the size, the average size to a smaller size  
25 just like it did in the CIM tobacco.

26 Q. Did you try?

27 A. Yes.

28 Q. Did in fact the "Bull" Durham only end up being

1 smaller?

2 A. Yes.

3 Q. What was the biggest piece that you had in "Bull"  
4 Durham after you rolled it?

5 A. I didn't actually do a particle size distribution.  
6 I just visually noted that the majority of the particles were  
7 breaking down into smaller sizes.

8 Again, because the American Spirit and "Bull"  
9 Durham is also very, very dry brittle tobacco.

10 Q. Is it possible to make a cigarette without crushing  
11 up the tobaccos like that, roll your own without doing that?

12 A. It might be, but I -- the first time I did that I  
13 tried to do that and it was -- it came out very, very loose. It  
14 wasn't very tight packed.

15 Q. Well, was it your assumption then that -- did you  
16 measure the biggest piece when you tried to roll your own from a  
17 CIM tobacco?

18 A. No.

19 Q. Your theory would be that all of the big pieces --  
20 well, the biggest piece in the CIM tobacco that you measured,  
21 you had your size distribution on that, how big was it?

22 A. On which tobacco?

23 Q. FF-2.

24 A. Thirty-eight thousandth's of an inch. Thirty-eight  
25 hundredth's of an inch.

26 Q. So, you figured that all the big pieces got  
27 crumpled up?

28 A. Not necessarily.

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1 Q. In V-12 I guess all the big pieces would have got  
2 crumpled up because there is none.

3 A. Not necessarily. You could still see some large  
4 particles, but the average size was smaller.

5 Q. But there weren't any that were bigger than  
6 twenty-eight one hundredth's, right?

7 A. In FF-2?

8 Q. In V-12.

9 A. In V-12, that's correct.

10 Q. What was the smallest particle that you saw in the  
11 "Bull" Durham?

12 A. Well, the smallest particle I measured was five one  
13 hundredth's of an inch.

14 Q. And what was the smallest particle in the J-28?  
15 V-12. Excuse me.

16 A. Five one hundredth's of an inch.

17 Q. What was the smallest particle in the FF-2?

18 A. Seven one hundredth's of an inch.

19 Q. What about in the J-28?

20 A. Six one hundredth's of an inch.

21 Q. Well, did you assume that none of the smaller  
22 particles in the FF-2 broke into half when it got rolled up?

23 A. I don't understand the question.

24 Q. Well, if the V-12 cigarette, I mean, were in fact  
25 the reason it was -- that it was -- that tobacco was within the  
26 same size range as an American Spirit and "Bull" Durham as  
27 opposed to being the same size range, and the CIM tobacco was  
28 that it got -- somehow was broken apart, when it was rolled,

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1 wouldn't you expect that the smaller pieces would get broken up  
2 as well as the big pieces?

3 A. Possibly, yes.

4 Q. But you didn't see any smaller pieces in the V-12?

5 A. I didn't measure after I rolled it. I didn't do a  
6 particle size distribution.

7 Q. No. I'm talking about the V-12. You didn't roll  
8 this, did you?

9 A. No.

10 Q. There weren't any smaller ones in the actual  
11 cigarette butt, right?

12 A. Well, there were, I just didn't measure them.  
13 Because if you start measuring the extremely small particles,  
14 you have a sampling error where a small particle will count just  
15 as much as a large particle, and this particle size  
16 distribution, it will skew it one way.

17 Q. Well, show me some of the small particles here in  
18 the picture that you didn't count.

19 A. For example, that particle there.

20 Q. There's one. How many others?

21 A. There were several. They're probably underneath  
22 the larger particles.

23 Q. You just ignored those?

24 THE COURT: Keep your voice up, gentlemen.

25 THE WITNESS: Yes.

26 BY MR. NEGUS:

27 Q. Did you take a -- did you take a different bottom  
28 line for each of the -- for each of the cigarettes, or did you

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1 just arbitrarily pick one as the area where you wanted one size  
2 for?

3 Did you take the same same arbitrary bottom line as  
4 far as size are concerned for all of the different tobaccos that  
5 you measured?

6 A. It was around four or five one hundredth's of an  
7 inch.

8 Q. Well, on the American Spirit, you were measuring  
9 one that was three, right?

10 A. Yes, that's correct.

11 Q. I mean. There was no rhyme or reason to what you  
12 took as the bottom limit.

13 A. It was -- when I started measuring this in the  
14 American Spirit, the average size was much narrow than, for  
15 example, the CIM tobacco; the range was a lot narrower and I  
16 felt that I could include one or two at the smaller end.

17 Q. Well, when you take different -- when you take  
18 different standards for judging your size particles, doesn't it  
19 make it a little bit arbitrary in making a comparison as to  
20 size?

21 A. Well, in this particular case, no, because you are  
22 going to have a sampling problem, if you start measuring the  
23 very, very tiny particles.

24 For example, in this package here, if I just took  
25 the tobacco that was right on the bottom, this is only going to  
26 be the extremely small particles in this package.

27 Q. Well, don't you have a sampling problem if you  
28 don't include those?

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1           A.    Well, that is why some of them were included in  
2    here.

3           Q.    But, when you arbitrarily include some with some  
4    brands and you don't with the other, doesn't that make your  
5    whole conclusions a little bit suspect?

6           A.    Well, they were all included in here.

7           Q.    All of them have all the small particles included?

8           A.    Yes.

9           Q.    So there weren't any tiny particles that you didn't  
10   measure on any of your size distribution?

11          A.    No, there was. There was also very small particles  
12   which I didn't measure.

13          Q.    What do you mean by "very small"?

14          A.    Approximately one one hundredth's of an inch.

15          Q.    So you didn't have then any particles between one  
16   one hundredth's of an inch and five one hundredth's of an inch  
17   in the the V-12 cigarette?

18          A.    No, there were.

19          Q.    You didn't measure those.

20          A.    No. That's correct.

21          Q.    Didn't count them?

22          A.    That's correct.

23          Q.    Why didn't you?

24          A.    Because of the -- again, the sampling error. You  
25   are going to have a lot more very, very small particles than you  
26   are larger particles. If you start measuring all these, giving  
27   these particles counts -- for example, if each one of these was  
28   one. worth one count, you are going to be way over towards the

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1 smaller end because there's just so many fragmented particles.

2 Q. We couldn't see them when we looked in the  
3 photograph, right?

4 A. That's correct.

5 Q. We have no idea as to how many there were.

6 A. Well, you could just take a look and see in the box  
7 here.

8 Q. The box has been blown apart and handled and one  
9 thing since then; is that right?

10 A. I don't know.

11 Q. Well, when you were here last week, the tobacco was  
12 was blown out onto the witness stand and one another; is that  
13 right?

14 A. Yes.

15 Q. People have been handling that tobacco in the  
16 laboratory and on the witness stand.

17 A. Yes.

18 Q. So, well let me just -- with the American Spirit  
19 then, there -- are there particles under three one hundredth's  
20 of an inch that you didn't measure?

21 A. Yes.

22 Q. And the CIM, there were some that were under seven  
23 one hundredth's that you didn't measure?

24 A. Yes.

25 Q. "Bull" Durham, some that were under six one  
26 hundredth's that you didn't measure, that was the bottom line on  
27 that, I think. Whatever it was.

28 A. Five one hundredth's. Five.

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1 Q. And on each of these unknowns there was some that  
2 were under whatever the number was that you took as your  
3 arbitrary bottom line, right?

4 A. Yes.

5 Q. And in your opinion it doesn't create a sampling  
6 error if you take a different arbitrary bottom line for each  
7 sample?

8 A. Well, you have an error in measuring, so even  
9 though the cut-off was either say four, five or three, you are  
10 measuring, you have a relative measuring error in the plus or  
11 minus, say two one thousandth's of an inch. So, that didn't  
12 bother me, no.

13 Q. Well, isn't it, isn't it generally thought that  
14 when you are in the general field of sampling small particles,  
15 that people may make errors, there may be errors in your  
16 measurements but it is important to make the same errors all the  
17 way through so you have some degree of consistency?

18 A. That's correct.

19 Q. You didn't do that, right?

20 A. Well, I didn't feel changing the bottom line from  
21 one or two one thousandth's of an inch would make a tremendous  
22 difference and it didn't in this case.

23 Q. Well, how do you know if you didn't measure it?

24 A. Because the majority of the particles are -- or the  
25 majority of the size distribution fell well away from that  
26 range.

27 Q. Well, let's just check. In the CIM tobacco there  
28 were only nine -- of the parcels that you counted that were

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1 under nine one hundredth's of an inch there was only three,  
2 right?

3 A. Yes.

4 Q. Okay. Then with the American Spirit, for example,  
5 there were many, many that were under nine; is that right?

6 A. Yes.

7 Q. With the Bull Durham there were many, many that  
8 were under nine; is that right?

9 A. That's correct.

10 Q. And with the V-12, there were many, many that were  
11 under nine; is that right?

12 A. There weren't as many as there are in the American  
13 Spirit or Bull Durham proportionately.

14 Q. Did you -- you kept a total of those -- of those of  
15 your counting of the parcels, is that right, and you passed  
16 those on to Mr. Kochis and through Mr. Kochis to myself by way  
17 of discovery?

18 A. Yes.

19 Q. Is this -- this particular technique that you used,  
20 counting the particles, is that a standard technique in tobacco  
21 comparison?

22 A. It's a standard technique used in forensic  
23 microscopy, and this is a technique used to compare to similar  
24 or to discount whether they could be similar. It's a comparison  
25 between two particles.

26 Q. Used in particle size --

27 A. It's called a particle size distribution.

28 Q. How did you pick the diameter that you measured?

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1 A. It was a maximum diameter of each particle.

2 Q. How many tobacco comparisons had you done before  
3 this one?

4 A. This was my first one.

5 MR. NEGUS: Nothing further.

6

7 REDIRECT EXAMINATION

8 BY MR. KOCHIS:

9 Q. How many comparisons have you done on vegetable  
10 like material, for example, including marijuana?

11 A. Over 500.

12 MR. KOCHIS: I have nothing further.

13

14 RECROSS-EXAMINATION

15 BY MR. NEGUS:

16 Q. Looking at marijuana is a little bit different than  
17 looking at tobacco, right?

18 A. Yes.

19 Q. I mean, what you're doing with the looking at the  
20 marijuana is you're just trying to identify a particular species  
21 of plant; is that right?

22 A. Yes.

23 Q. And you do that by looking at the, in this case,  
24 little hairs that appear on the leaf of the marijuana plant; is  
25 that right?

26 A. The morphology of the leaf, yes.

27 Q. And it doesn't have anything to do with particle  
28 distribution or any of the techniques that you used in this

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1 particular case; is that right?

2 A. That's correct.

3 Q. Thank you.

4 Nothing further.

5 MR. KOCHIS: I have no further questions.

6 THE COURT: Thank you again, sir.

7 THE WITNESS: Thank you, your Honor.

8 MR. KOCHIS: Your Honor, the next bit of evidence is  
9 going to take -- is going to take the form of a series of  
10 stipulations which I've already gone over with Mr. Negus and I  
11 believe there is no dispute.

12 MR. NEGUS: True.

13 MR. KOCHIS: I would like to read those into the record  
14 at this time in front of the jury.

15 THE COURT: Have you discussed with your client, Mr.  
16 Negus?

17 MR. NEGUS: I think so.

18 I forgot to. Let me just have a second.

19 THE COURT: Take your time.

20 MR. KOCHIS: Your Honor, perhaps the record could reflect  
21 they have been reduced to writing. I have given Mr. Negus a  
22 copy so he can go over them with his client one at a time.

23 MR. NEGUS: I have. It's agreeable with Mr. Cooper.

24 THE COURT: Okay. Do you want to read them?

25 MR. KOCHIS: Yes, your Honor.

26 The first would be that Exhibit 624, which is the  
27 sample of tobacco on the witness stand from CIM, was picked up  
28 by Deputy Mike Mascetti on June the 13th of 1983 from the men's

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1 prison in Chino and subsequently delivered to the crime lab.

2 And would I so stipulate.

3 MR. NEGUS: So stipulated.

4 MR. KOCHIS: Second would be items KK which appear both  
5 on Exhibit 635 and the photographs appearing on the other  
6 exhibits were samples of tobacco picked up by Deputy Mike  
7 Mascetti on 6-13-83 from the CIM store and were delivered to the  
8 crime lab.

9 Mr. Negus.

10 MR. NEGUS: So stipulated.

11 MR. KOCHIS: The third stipulation would be items KKKK  
12 were delivered to the crime lab on the 16th day of November of  
13 1984 by Sergeant Bill Arthur.

14 MR. NEGUS: So stipulated.

15 MR. KOCHIS: That Exhibit 644 consisting of various types  
16 of tobacco were collected at the Ryen house by Dr. Mary Howell  
17 after the homicides. They were subsequently delivered on  
18 December the 9th of 1984 to Dennis Kottmeier in the presence of  
19 David Negus.

20 MR. NEGUS: So stipulated.

21 MR. KOCHIS: And finally, the blood samples listed on  
22 Exhibits 589 and 596 were drawn from the individuals whose names  
23 appear on the charts.

24 MR. NEGUS: So stipulated.

25 THE COURT: Mr. Cooper, in each of those cases, if you  
26 agree to the stipulation you're waiving your right to face and  
27 confront the witnesses and to cross-examine them through your  
28 attorney or to ask questions of them.



1 Do you do that, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right.

4 The stipulation is accepted and approved and the  
5 jurors may consider the evidence in the stipulation.

6 MR. KOCHIS: Your Honor, we have no further witnesses to  
7 call or stipulations at this point.

8 There is the matter of some of the exhibits which  
9 we need to discuss, and I believe Mr. Negus may have a motion  
10 which by its nature we usually discuss out of the presence of  
11 the jury. Once the remainder of the exhibits are addressed it  
12 would be our position to rest.

13 THE COURT: You don't have any witnesses available for  
14 today. I haven't discussed this with counsel so -- I can excuse  
15 the jurors now. We can take a recess to do some of these things  
16 then you can commence calling --

17 MR. NEGUS: I would suggest we excuse the jurors now  
18 because it will probably take is awhile to get through all those  
19 exhibits. We have a fair amount of work we have to do on that.  
20 And my first witness is available in the courtroom, but I think  
21 probably, rather than have them wait around for 45 minutes or an  
22 hour we could just excuse them.

23 THE COURT: And resume tomorrow at 9:30, is that  
24 satisfactory?

25 MR. NEGUS: Fine with me.

26 THE COURT: Any objections from the jurors?

27 All right. We anticipated this somewhat last week  
28 when I spoke about it. So, ladies and gentlemen, we will excuse

1 you the rest of the day then.

2 Please, remember at all times the admonition,  
3 particularly in the latter part of the case. And don't let  
4 anybody discuss it with you nor form opinions on the case.

5 Return tomorrow at 9:30 if you would, please. Have  
6 a nice evening.

7 Counsel, I will give you time to discuss it  
8 privately in open court, and then when you when you get ready I  
9 will come out and we will get on the record.

10

11 (The following proceedings were held in  
12 open court out of the presence of the jury:)

13 THE COURT: Now we are here, the defendant and all  
14 lawyers without the presence of the jury.

15 Counsel, I would suggest the best way to do it  
16 would be to have you read in the uncontested matters. Let's get  
17 everything in to which there is no objection and then we will  
18 get into the matters of dispute.

19 MR. KOCHIS: That was our intention.

20 MR. NEGUS: We've whittled that down considerably.

21 MR. KOCHIS: The following is a list of exhibits I've  
22 gone over with Mr. Negus, and in addition to the exhibits we  
23 offered into evidence on Thursday I would offer the following.  
24 There is no objection to these.

25 10, 11, 17, 59, 61, 62, 165, Exhibits 263 through  
26 and including 265, Exhibits 288 through and including Exhibit  
27 290. Exhibit 477, 499, Exhibits 516 through and including 521,  
28 Exhibits 523 and 524, Exhibits 636 through and including of 640,

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1 Exhibit 644, 624-A, 682-A, -- I'm sorry, 582-A, 583-A, 584-A.

2 We would offer all those into evidence at this  
3 time.

4 MR. NEGUS: No objection.

5 THE COURT: They will be received.

6 (Exhibits No. 10, 11,  
7 17, 59, 61, 62, 165,  
8 263 through 265, 288  
9 through 209, 477, 499,  
10 516, 521, 523, 524,  
11 582-A, 583-A, 584-A,  
12 624-A, 636 through 640,  
13 644, were received in  
14 evidence.)

15 MR. KOCHIS: There appears to be only three exhibits that  
16 the People would offer into evidence that there is an objection  
17 to. Those are exhibits 13, 14, and 15.

18 THE COURT: Let's take 13 first. Inmate Trust Ledger  
19 under the name of David A. Trautman.

20 What's the relevancy?

21 MR. KOCHIS: Well, your Honor, as the Court is aware part  
22 of our theory of the case is that the evidence circumstantially  
23 establishes that Mr. Cooper was in the closet in the Lease  
24 house. His fingerprints in the house, his footprint is in the  
25 shower, and we have the makeshift bed in that closet with semen  
26 that's comparable to his.

27 Also in that closet is J-28, which is tobacco that  
28 Mr. Ogino has testified is consistent with the free tobacco from

1 the state prison, as is tobacco from the car, V-15 and V-12, and  
2 our theory is circumstantially that establishes Mr. Cooper's  
3 presence in the Ryen car and the Lease closet.

4 THE COURT: Where did this come from? I've forgotten.

5 MR. KOCHIS: That is an exhibit that Teresa Cordua  
6 testified to that trust ledgers are kept at the men's prison and  
7 they show the amount of money that an inmate has while he is in  
8 the institution.

9 The PF-2 is tobacco that is issued free of charge  
10 to the inmates.

11 And Mr. Taylor testified that Mr. Cooper smoked and  
12 would smoke that from time to time.

13 Yolanda Jackson testified that Mr. Cooper was a  
14 cigarette smoker and she would give him money for cigarettes.

15 It's our position that circumstantially the type of  
16 person you would expect to smoke a low-grade type of tobacco  
17 such as state prison tobacco would be, one, a person in state  
18 prison who is a smoker who doesn't have the money to buy  
19 anything else, and that establishes that circumstantially Mr.  
20 Cooper was a person in state prison without funds.

21 THE COURT: All right. Mr. Negus?

22 MR. NEGUS: Well, as near as I can tell Mr. Kochis went  
23 on for many, many minutes about the evidence and the case, but  
24 known of which had to do with that particular piece of paper and  
25 the -- Mrs. Cordua didn't really testify as to how that  
26 particular document was kept, nor do I think the fact that you  
27 have a blank piece of paper with the name that Mr. Cooper went  
28 to prison on proves much of anything about whether he had

1 tobacco.

2 THE COURT: What he is trying to prove is a lack of funds  
3 with which to buy tobacco.

4 MR. NEGUS: But we had testimony from the prosecution's  
5 own witness that there were people there willing to buy him  
6 tobacco two days before he escaped, three days before he  
7 escaped, whatever it was, so I don't think that was particularly  
8 probative.

9 THE COURT: Did she -- this hasn't even got an entry on  
10 it. It says it's the inmate trust ledger for the date of  
11 4-29-83 but it never shows --

12 MR. KOCHIS: There's no -- I believe she testified that  
13 the record indicates that he had no funds while he was at  
14 prison. There is no entry that he came in with any money.

15 THE COURT: This is simply to corroborate her oral  
16 testimony?

17 MR. KOCHIS: Yes.

18 THE COURT: It's really not prejudicial in any way.

19 MR. NEGUS: Well, there is a bunch of blank papers that  
20 they have there at the prison which they went and put Mr.  
21 Trautman's name on, or that was the name he put on them. And if  
22 you -- if we ever got into how they kept Mr. Cooper's records  
23 while he was in the prison, you would find that nobody can  
24 testify as to whether his particular records were at any given  
25 time -- in fact, there was a big Grand Jury monkey shine on it,  
26 and I just don't think that they have established the requisite  
27 grounds for that particular type of record.

28 THE COURT: Well, counsel, I fail to find any prejudice

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1 to the defendant. I find the probative value slight, but it's  
2 there arguably. I will overrule the objection. That will be  
3 admitted.

4 MR. NEGUS: It wasn't -- it was a foundational objection  
5 I was making primarily, not just relevance foundation.

6 THE COURT: I didn't understand that. I understood that  
7 Teresa Cordua in effect indicated that each, as I recall each  
8 inmate has a trust account record through which is reflected all  
9 monies received by them and disbursed to them.

10 MR. NEGUS: She is an investigator. I mean, she doesn't  
11 know anything about that.

12 MR. KOCHIS: Well, it was my understanding --

13 THE COURT: What's the foundation?

14 MR. KOCHIS: She testified they are records kept at the  
15 prison, a trust record upon which are kept entries of any funds  
16 that an inmate has while he is in the prison, that she had the  
17 original with her in Court, that the exhibit which has been  
18 marked was a Xeroxed copy of Mr. Trautman's trust ledger, and  
19 that the inmate -- the institution keeps such a ledger on each  
20 inmate, and that showed what the amount of money was that Mr.  
21 Trautman had while he was at the prison.

22 THE COURT: She is associated closely enough, has access  
23 to all those things. I find there was sufficient foundation,  
24 Mr. Negus. Overruled.

25 (Exhibit No. 13 was  
26 received in evidence.)

27 THE COURT: No. 14, Daily Record of Housing and  
28 Employment Changes. What's this Mr. Kochis.

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1 MR. KOCHIS: Both 14 and 15 are the same things, your  
2 Honor. They are Xerox copies of movement sheets from CIM that  
3 show when Mr. Cooper came over to minimum, where he was placed,  
4 which bed number he was assigned, and who checked him in. And  
5 it's my position that those records corroborate the testimony of  
6 Mr. Fletcher. Mr. Roberts, Mr. Rojo who have testified as to  
7 certain movements, dates and times as to Mr. Trautman or Mr.  
8 Cooper.

9 MR. NEGUS: They are cumulative -- it's cumulative about  
10 evidence which is not in dispute. There is stuff written on  
11 there which might be prejudicial. And it's mostly got to do  
12 with people who have no involvement in this particular case. I  
13 think it's would be just confusing, cumulative, and unnecessary,  
14 not in dispute.

15 THE COURT: Any confusion would only enure to the benefit  
16 of your client.

17 MR. NEGUS: Not necessarily. I don't see how that  
18 follows. I mean, the confusion is going to be to the benefit of  
19 the prosecution. It's clear that he didn't do it.

20 THE COURT: Well, that's the Bible for advocacy, as far  
21 as I have known has been for the prosecution to try and make  
22 clear and simplify, for the defense to confuse.

23 MR. NEGUS: But we are doing it differently in this case.  
24 So I don't see that it is confusing and they don't need it.  
25 They've got the -- they've got the time and place of the  
26 movements into evidence. We are not disputing it, so why  
27 confuse the jurors.

28 THE COURT: We have an awful lot of records, Mr. Kochis,

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1     why complicate it?

2             MR. KOCHIS: Well, I believe that there's going to be an  
3     attack on the credibility of most of the witnesses called by the  
4     prosecution, including the people that were called from CIM.  
5     And I think Mr. Negus is going to argue -- is going to argue  
6     that the evidence shows circumstantially they didn't know what  
7     they were talking about, that they made mistakes, that Fletcher  
8     and Shephard didn't see Mr. Cooper leaving with any jacket on,  
9     and things of that nature.

10            THE COURT: This has nothing to do with the testimony of  
11     Mr. Shephard, for instance.

12            MR. NEGUS: Or Mr. Fletcher.

13            MR. KOCHIS: I would disagree as to Mr. Fletcher.

14            THE COURT: I can't recall what Fletcher testified.

15            MR. NEGUS: Mr. Fletcher said he saw Mr. Cooper the  
16     morning of June the 2nd.

17            MR. KOCHIS: Out of bounds wearing particular clothing.

18            MR. NEGUS: Right. But that -- but there's no dispute as  
19     to what -- that Mr. Cooper moved from R.C. West to Minimum on  
20     June 1st, 1983, no dispute whatsoever, and that's the maximum  
21     that can prove, and it's -- there's lots of confusing stuff.

22            THE COURT: Let's do it this way, counsel. Right now it  
23     does appear to me to be cumulative and we've got heaven knows  
24     enough exhibits in this case. Save it. Offer it again in  
25     rebuttal if he in some manner attempts to amplify on those  
26     witnesses' credibility in some manner. But I will sustain the  
27     objection at least at this time as to 14 and 15.

28            MR. KOCHIS: That concludes the exhibits.

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1 MR. NEGUS: No, there is one other. Actually we should  
2 put on the record that Exhibit 500 was bifurcated by Mr. Kochis  
3 in my presence with my consent over the break and has now been  
4 numbered 500 and 500-A. Some 20 odd pages I believe of it  
5 approximately are now 500-A. They will be offered into evidence  
6 by the prosecutor, to which I have no objection, and the exhibit  
7 which has been marked 500 will not go into evidence.

8 MR. KOCHIS: That's correct. Yes, sir.

9 THE COURT: All right. Then only 500-A is admitted.

10 MR. KOCHIS: That's what I'm moving into evidence at this  
11 time.

12 THE COURT: 500-A?

13 MR. KOCHIS: Yes.

14 THE COURT: It is admitted, and 500 will not be admitted  
15 for the jurors perusal.

16 MR. NEGUS: Did we get that right, by the way?

17 MR. KOCHIS: Your Honor, so there is no confusion for the  
18 record, 500-A was the section of 500 that some of the witnesses,  
19 the criminalist, Mr. Stockwell, Mr. Ogino referred to when they  
20 testified from the witness stand, and it will now be 500-A.

21 MR. NEGUS: It's the original laboratory report dated  
22 June 14th and the supplement dated August 1st, and all the other  
23 supplements aren't coming in.

24 THE COURT: All right. It's received.

25 (Exhibit No. 500-A was  
26 marked for  
27 identification and  
28 received in evidence.)

3

1 THE COURT: Now it's been my -- I always have a concern,  
2 I've seen it happen many times in the past, when counsel have  
3 many exhibits that you go ahead and admit them like this and  
4 later on we discover something prejudicial in with the matters  
5 that are admitted and we try to excise or maybe we discover too  
6 late. So at sometime, gentlemen, I'm simply suggesting that you  
7 review what he has sorted out, set over to one side the matters  
8 that are not going over to the jury. We will hear the ones  
9 going over to the jury, take a look at it again before we submit  
10 it to the jury to see if we made any mistakes.

11 MR. KOCHIS: There is one exhibit in particular of that  
12 nature. It's the exhibit the Court considered as a foundational  
13 basis as to whether or not the people had met their burden of a  
14 waiver of confidentiality. It was a series of police reports  
15 dealing with interviews of Mr. Negrette and Mr. Brown we have  
16 not offered that into evidence and do not intend to. That  
17 should not go to the jury at any time.

18 THE COURT: Was it ever marked?

19 MR. NEGUS: Yes. It is Exhibit 613 I believe.

20 THE COURT: I may even have that in chambers. I will  
21 check it out for you later today.

22 MR. NEGUS: Is 613 described as police reports in your  
23 records there?

24 THE CLERK: Yes, police reports.

25 MR. NEGUS: That's the one.

26 THE COURT: I don't recall seeing the exhibit label on  
27 it, but I will look for it. Make sure I give it to you  
28 tomorrow.

018797

1 Can we expect full days the next three days?

2 MR. KOCHIS: Your Honor, we would rest.

3 THE COURT: I want you to do that formally before the  
4 jury.

5 MR. KOCHIS: I think Mr. Negus would make a motion when  
6 we do that formally or informally. It's the type of motion we  
7 handle outside the jury's presence.

8 THE COURT: All right. You do it now, I will just tell  
9 the jurors you have rested.

10 MR. KOCHIS: I can do it again in their presence.

11 THE COURT: The District Attorney's has rested.

12 Mr. Negus?

13 MR. NEGUS: Make a motion under 1118.1 under all counts.

14 THE COURT: Do you wish to amplify?

15 MR. NEGUS: No.

16 THE COURT: Your motion is denied.

17 With that it is now 3:20 roughly and we will resume  
18 tomorrow morning at 9:30 at which time you will call your first  
19 defense witness.

20 MR. NEGUS: That's true.

21 THE COURT: Anything else?

22 MR. KOCHIS: Not from the People at this time.

23 THE COURT: Are you sure you?

24 I'm sure you sorely need the time that you have, so  
25 we will break it at this time until tomorrow. Thank you.

26 (Adjournment.)

27 --ooOoo--

28

Copy

1

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 18, 1984

APPEARANCES:

For the People:

DENNIS KOTTMEIER  
District Attorney  
WITH: JOHN P. KOCHIS  
Deputy District Attorney  
1540 Mountain Avenue  
Ontario, California 91762

For the Defendant:

DAVID L. McKENNA  
Public Defender  
BY: DAVID E. NEGUS  
Deputy Public Defender  
1060 West Sixth Street  
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ROBERT L. ROACH, CSR #1727  
DONNA D. BEARD, CSR #1874  
Official Reporters

COMPUTERIZED TRANSCRIPT

018799

INDEX OF WITNESSESFOR THE DEFENDANT:

Direct \_\_\_\_\_ Cross \_\_\_\_\_ Redirect \_\_\_\_\_ Recross \_\_\_\_\_

ARTHUR, Bill  
Voir Dire - 5107  
(Mr. Negus)

5110

010000

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	Bill Arthur		

018801

1           1       SAN DIEGO, CALIFORNIA, TUESDAY, DECEMBER 18, 1984, 9:32 A.M.

2

3

--ooOoo--

4

(Chambers conference reported.)

5

THE COURT: Briefly we are in chambers with all counsel.

6

Are you going to call Sergeant Arthur?

7

MR. NEGUS: Yep.

8

THE COURT: Are you going to object to any leading  
9 questions, counsel?

10

MR. KOCHIS: That was my intention.

11

THE COURT: Do you submit that you can examine as if on  
12 cross-examination, Mr. Negus?

13

MR. NEGUS: Yep.

14

THE COURT: On what basis?

15

MR. NEGUS: Adverse witness.

16

THE COURT: Evidence Code Section 776: "A party to the  
17 record of any civil action," and again, 776(d) refers to adverse  
18 witness.

19

That does not appear to apply to a criminal action  
20 in a criminal case. As I understand it you have to, in fact,  
21 make a preliminary showing of hostility before you may examine  
22 as if on cross.

23

MR. NEGUS: I don't think it's hostility, it's just  
24 adversity.

25

THE COURT: Well, I've done any research. I'm prepared  
26 to give the authorities in front of me. If you have any other  
27 citation, let's do it now before we get before the jury.

28

MR. NEGUS: Well, have you got Jefferson somewhere?

1 THE COURT: No, it's outside.

2 MR. NEGUS: Well, I didn't realize that this was coming  
3 on me, so I didn't bring any of my materials on that.

4 THE COURT: Well, you can run outside and do some  
5 checking if you wish, otherwise I will sustain the objection.

6 As far as preliminary foundation is concerned, as  
7 I've seen it in all of his examination heretofore he's not shown  
8 hostility, he appears to be a candid, responsive witness to you.  
9 So that's the way I see it. I'm just trying to avoid problems  
10 before the jury.

11 MR. NEGUS: Well, okay. You know, without having notice  
12 that this was coming up, it's a little hard for me to reply  
13 because my stuff on that is back in my apartment.

14 THE COURT: You are calling the witness. Do you wish to  
15 take a few minutes to research?

16 MR. NEGUS: Well, I suppose I will try.

17 THE COURT: Or do you wish to abide by the Court's  
18 ruling?

19 MR. NEGUS: No --

20 (Recess taken.)

21 THE COURT: We are again in chambers, defendant, all  
22 counsel.

23 Mr. Negus.

24 MR. NEGUS: I believe, your Honor, that there's more  
25 authority that can be cited. There's a case that's involved  
26 which was in the new Jefferson, but Mr. Forbush is going to  
27 fetch that. I don't have that yet. I don't think how long it's  
28 going to take for him to bring it to back from my apartment.



1 But I would point out that what I believe the  
2 authority is going to say, the same thing it says in the CEB  
3 book, that is to say, that the definition of hostility is not  
4 whether or not the witness is charming in his demeanor or snarls  
5 at you or not, but it also has to do with -- that's one --  
6 that's one thing that his demeanor, his hostility.

7 But it says in CEB that a preliminary showing of  
8 hostility maybe made on the basis of the identity of the  
9 witness, his connection with the case, or the nature of his  
10 proposed testimony.

11 Obviously, his connection with the case is the  
12 basis of Mr. Arthur's hostility. And, you know, if you wish I  
13 will -- I mean, I suppose I could elicit that in greater detail  
14 from him, but I can see that that has certain 352 dangers  
15 involved.

16 In addition, if you look at the old Jefferson,  
17 which is all we have right here at the moment, it indicates  
18 that:

19 "If leading questions were permitted under all  
20 circumstances it would result in a substantial speed up  
21 of the time required for trials. Such a procedure,  
22 however, would be contrary to the effective truth  
23 ascertainment goal of trials. Leading questions are  
24 considered objectionable under certain circumstances  
25 because of the danger that the witness may acquiesce in a  
26 false suggestion. When this danger is presented leading  
27 questions should be prohibited. When it is absent  
28 leading questions should be allowed."

018804

1                   Their rationale explains the rule of thumb  
2   incorporated in Evidence Code 767. So I think it's foolish in  
3   the extreme to say that there is any danger that I'm going to  
4   lead, by the suggestibility of my questions I'm going to lead  
5   Mr. Arthur to give falls answers.

6                   So the -- under the -- under the rationale for  
7   the -- for the rule of law which is set forth in Jefferson and  
8   under the definition which is set forth in the CEB -- in the CEB  
9   book, under either situation I think that leading questions are  
10   permitted.

11                  I believe, if I recall correctly from a previous  
12   time that we went through this at the Hitch motion, that there  
13   were actually some cases that incorporated this by reference in  
14   their discussion, but I thought we had resolved that issue at  
15   the Hitch motion and I didn't realize that it was going to be  
16   rebrought up again.

17                  THE COURT: I think at the time your citation to me was  
18   simply as an adverse witness and I acquiesced and permitted it  
19   along that basis.

20                  MR. NEGUS: Well, if you look at -- if you look at the  
21   Evidence Code though, I mean, that is, you look at the way they  
22   set it up, according to Jefferson there is -- there is -- there  
23   is different exceptions.

24                  A hostile witness or an adverse witness, he has is  
25   (d) and that's the definition that I gave to you right there.

26                  There is also calling of an adverse party under  
27   Evidence Code Section 776, and I never purported to rely on that  
28   basis. I mean, the only person -- I agree that's got to do with

1 civil cases and doesn't apply, but nonetheless the rationale of  
2 the rule here is clear that Arthur is not about to acquiesce in  
3 any false suggestions or any other suggestion that I make.

4 And the -- and he also comes under the definition,  
5 not of the adverse party but of the hostile witness, which is in  
6 the books. I mean the hostility, that's sort of actually  
7 somewhat a sloppy term, because the definition of hostility has  
8 not got to do with snarling exclusively, but also with who the  
9 person is and his relationship to the case.

10 THE COURT: Okay. Response?

11 MR. KOCHIS: Well, your Honor, the first quote that Mr.  
12 Negus gave the Court was from a book --

13 THE COURT: Yes, I have it before me as well.

14 MR. KOCHIS: -- for which there is no authority. Within  
15 the paragraph that Mr. Negus cited to the Court there's no  
16 reference to a case cite, to a statutory cite. The only  
17 reference, any authority within that particular heading is 776,  
18 I believe, of the Evidence Code, which is which the Court has  
19 already pointed out deals with civil lawsuits and not  
20 particularly this case.

21 776 also sets out the categories of persons to whom  
22 leading questions maybe proposed on direct examination. And I  
23 would submit that Sergeant Arthur does not fall within any one  
24 of --

25 THE COURT: If I measured under 776, he is the  
26 investigating officer of this case, he is certainly identified  
27 with the prosecution's side, so if I use 776 you will lose, Mr.  
28 Kochis.

1 MR. KOCHIS: Well, your Honor, he is calling Mr. Arthur  
2 as his own witness to elicit testimony in some of the areas that  
3 we have not introduced any evidence on. It's hard for me to  
4 reconstruct a fact situation in which he is nothing but Mr.  
5 Negus' witness and he is not hostile to Mr. Negus' position and  
6 he's not favorable to our position.

7 He has testified on approximately four or five  
8 separate days, two at the preliminary hearing which the Court  
9 has read when it ruled on the 995, and on four separate days in  
10 Superior Court, two on the search warrant issue hearing days in  
11 March I believe, and on two separate days on the Hitch issues.  
12 He has never demonstrated any hostility toward Mr. Negus.

13 If you accept Mr. Negus' definition, anybody who is  
14 employed by a law enforcement agency in any capacity would be a  
15 hostile witness to a defendant. And there is no case which  
16 stands for that proposition, nor is there any statute which  
17 stands for that proposition.

18 It's our position that when the code talks about  
19 persons who by their position have an interest which would be  
20 favorable to a party, in this case, it could be someone like Mr.  
21 Hughes, Mrs. Hughes, perhaps the people in Chino Hills that are  
22 close associates with the victims, although they are not  
23 technically related to a party, they are relate to a victim and  
24 certainly are sympathetic to his viewpoint.

25 THE COURT: Okay. Anything else?

26 MR. NEGUS: Well, if you'd like to have a preliminary  
27 showing of hostility, I suggest -- I mean, if you think that  
28 demeanor is critical, which I think it's not, we should have a

1 hearing outside the presence of the jury --

2 THE COURT: We are having it.

3 MR. NEGUS: -- with Mr. Arthur under oath because -- and  
4 giving me a certain amount of time to bring him back on some  
5 materials, because Mr. Arthur has been quoted in the press a  
6 saying all kinds of nasty things about Mr. Cooper. And I would  
7 think that it wouldn't be too difficult if we have to show it on  
8 the basis of personal prejudice that he does have strong  
9 personal prejudices against Mr. Cooper.

10 Again, not knowing that was going to come up this  
11 morning I didn't bring the newspaper articles and what have you,  
12 the stuff on that particular -- on that particular issue to  
13 court because I think that it's involved in all kinds of  
14 leading -- it could -- I wasn't planning on using it as part of  
15 my -- of my case.

16 Mr. Kochis' comment that Mr. Arthur has testified  
17 before, I don't see how that's relevant to whether he is an  
18 adverse witness or not.

19 The basic -- the basic principles that Mr.  
20 Jefferson talks about and the CEB talk about are obviously,  
21 Jefferson is probably the most -- the leading authority on -- on  
22 evidence in the State of California, and if one -- if one had to  
23 one could find innumerable Supreme Court and Appellate Court  
24 decisions which so cite him. And the --

1  
25 The theory that -- that the Evidence Code Assembly  
26 Committee on the judiciary who wrote the comment to the Evidence  
27 Code was that it says except under the actual 776 -- the actual  
28 767 says:

1 "Except under special circumstances where the  
2 interest of justice otherwise require, a leading question  
3 may not be asked of the witness on direct examination."

4 And they say: "The exception permits it where  
5 there is little danger of improper suggestion or where  
6 questions are necessary to obtain relevant evidence."

7 And then it goes on to say this will permit leading  
8 questions for a bunch of things, including hostile witnesses,  
9 and the definition of hostile witness is only one that comes  
10 from the treatises. I mean, they don't have any particular  
11 cases cited.

12 And it also says:

13 "That the court may forbid the asking of leading  
14 questions on cross-examination where the witness is  
15 biased in favor of the cross examiner and would be unduly  
16 susceptible."

17 So I would suggest in this particular case, for  
18 example, that the police officer witnesses would be biased, are  
19 in fact biased in favor of the prosecution, and would be unduly  
20 susceptible. So the leading question is the only reason for the  
21 leading question.

22 The rule about direct versus cross is that there's  
23 a sort of, I suppose, a presumption that's involved that a  
24 witness called by a party is favorable to that party. As a  
25 matter of fact, in most lawsuits that's not in fact the case.  
26 There's lots of time when you have to call people who are  
27 adverse. And I can't imagine anybody more adverse to Mr. Cooper  
28 than Mr. Arthur.

1           THE COURT: All right. Conceivably I will change my  
2     ruling as things develop, but right now, considering all of his  
3     prior testimony, the method of examination, his demeanor on the  
4     stand and the nature and quality of his prior answers, I find no  
5     hostility in fact. I find no propensity to be an advocate for  
6     the District Attorney's side. He has not been personally  
7     impeached, either his integrity nor his prior testimony in any  
8     substantial degree. His conviction as to the defendant's guilt,  
9     if in fact he has that, and his prejudice in that regard as a  
10    law officer is quite understandable, but is not to be confused  
11    with his propensity to lie or fudge under oath.

12           I simply don't find it, sir. The dangers involved  
13    are not quite the same when you were -- had your motions before  
14    me. The suggestibility danger is twofold: One, to the witness;  
15    second, to the trier of fact. The jurors can be influenced  
16    greatly by the nature of questions as well as the witness.

17           Mr. Negus, I will simply sustain the objection in  
18    general. When a specific one comes along, depending upon what's  
19    displayed and the nature of the question, I may go with you.

20           MR. NEGUS: Can I ask him some questions outside the  
21    presence of the jury then, because --

22           THE COURT: No. I can see where that's going to take an  
23    extensive amount of time unless you indicate it's going to be a  
24    very short matter. I think you should have anticipated this.

25           MR. NEGUS: How can I anticipate when you've ruled in my  
26    favor when he made these objections in the past and didn't give  
27    me notice?

28           THE COURT: I won't argue with you, but I'm going to deny

1 it.

2 MR. NEGUS: I want to ask him if he has biases against  
3 Mr. Cooper.

4 THE COURT: I will accept that. I have already indicated  
5 that I can accept that. I can understand that any officer of  
6 the law that's worked in his position is going to have a certain  
7 amount of pride in his work, but I find -- now with some other  
8 witnesses that you've examined heretofore, without my naming by  
9 name, my goodness, I would permit you to lead to a fair thee  
10 well, but I have to consider each individual witness at this  
11 time.

12 MR. NEGUS: Let me start with a couple of brief questions  
13 by Sergeant Arthur. He has previously been sworn out of the  
14 presence of the jury, and I think it that it would be pretty  
15 quick to show that in fact he has exceedingly strong feelings  
16 about this case which have not to do with --

17 THE COURT: All right. I will permit brief inquiry.  
18 Why don't you have a seat, Sergeant.

19 Has he been sworn?

20 MR. NEGUS: He was sworn at one point in time outside the  
21 presence of the jury.

22 THE COURT: You are still under oath.

23 Go ahead.

24  
25 BILL ARTHUR,  
26 called as a witness on behalf of the Defendant, having been  
27 previously duly sworn, resumed the stand and testified further  
28 as follows:



1

2

## VOIR DIRE EXAMINATION

3

BY MR. NEGUS:

4

5

6

Q. Sergeant Arthur, in your particular career does this particular case stand out as a case which you have continually strong feelings about?

7

A. One of the cases.

8

9

Q. And is that based upon partly in fact because of the nature that children were killed in this particular case?

10

A. Partly.

11

12

13

14

Q. And when you have gone up to the Ryen house with me and Mr. Kottmeier, for example, did we even have a discussion about you had such strong feelings about this case this case really got to you?

15

A. Not in those words.

16

Q. Words to that effect?

17

18

19

A. I think the words were that I was tired of listening to the testimony about the chops and the hacks and viewing the photographs of the victims.

20

21

22

Q. In this particular case do you have -- do you have feelings that are more than just a -- against Mr. Cooper which are more than just a conviction that he did the crimes?

23

A. No.

24

Q. You have no feelings of that kind?

25

A. No.

26

MR. NEGUS: If I could just have a second?

27

THE COURT: Sure.

28

For the record, Mr. Forbush came in and gave Mr.

1     Negus some books that he desired.

2             MR. NEGUS: Could I just ask -- the cases -- whatever I  
3     was looking for is not immediately obtainable in the Jefferson,  
4     but they do, as they do in the other case, indicate a separate  
5     category for the hostility to the direct examiner as opposed to  
6     776 and don't indicate any distinction between those two. So  
7     776 and my position is that 776 codifies one particular special  
8     circumstance. It's the same essential test for the hostility.

9             THE COURT: Counsel, I think that there's certainly room  
10    for a court to identify a law officer with a side and to say  
11    that there is inherit hostility there to where the defense  
12    counsel should be able to cross-examine that person many, many  
13    times.

14            I simply, in examining Mr. Arthur and in  
15    anticipating the objection, I do not find it in this witness.

16            The indicated ruling will stand.

17            Let's go out and proceed.

18            MR. NEGUS: Could I just ask him a couple more questions?

19            THE COURT: All right.

20

21    BY MR. NEGUS:

22            Q.     Sergeant Arthur, during the course of this  
23    particular case have you on many occasions become personally  
24    angry with me in the way that I was attacking the integrity of  
25    the Sheriff's Department?

26            A.     I'm not sure. Personally, no. It certainly I  
27    think upsets -- upsets me to hear constant attacks on something  
28    that I know is unfounded.

1 Q. And when you testified in this particular --  
2 assuming that the subject of your testimony that -- today and  
3 tomorrow and the next day will be concerned with the attack on  
4 the investigation and integrity of the Sheriff's Department,  
5 will you feel a strong emotion and try to defend it?

6 A. I don't think I'm here to defend it.

7 Q. You don't think that you -- you're going to try and  
8 defend it in your testimony?

9 A. What's been done has been done. I'm here to talk  
10 about it.

11 Q. Have you tried to defend it outside the presence of  
12 the courtroom?

13 THE COURT: That's basically irrelevant. That's all.  
14 I've heard enough. Let's go out outside and proceed in the  
15 usual manner. Let's go.

16 (Chambers conference concluded.)

17

18 (The following proceedings were held in  
19 open court in the presence of the jury:)

20 THE COURT: Good afternoon. I'm sorry for the delay this  
21 morning. We were working.

22 Everybody is present. In your absence yesterday  
23 afternoon we concluded the work on exhibits, and following that  
24 the District Attorney rested.

25 Is that correct, Mr. Kochis?

26 MR. KOCHIS: Yes, it is.

27 THE COURT: Mr. Negus, you may proceed.

28 MR. NEGUS: The first witness called by the defense would

1 be Bill Arthur.

2 THE COURT: Come forward, please.

3

4

BILL ARTHUR,

5 called as a witness on behalf of the Defendant, having been duly  
6 sworn, testified as follows:

7 THE CLERK: Thank you. Would you state your full name  
8 for the record and spell your last name.

9 THE WITNESS: Bill Arthur. A-r-t-h-u-r.

10 THE CLERK: Thank you.

11

12

DIRECT EXAMINATION

13 BY MR. NEGUS:

14 Q. Mr. Arthur, what's your occupation?

15 A. I am employed with the County of San Bernardino  
16 Sheriff's Department and I'm currently assigned to homicide.

17 Q. How many years have you worked for the homicide  
18 department, or division?

19 A. Approximately eleven.

20 Q. And of those eleven years, how many have you been a  
21 sergeant?

22 A. I have been a sergeant now I believe four years,  
23 excluding a year and half in the field. I had some broken time.

24 Q. In the Sheriff's Department, the -- what are the  
25 duties of a homicide sergeant with respect to an individual  
26 crime investigation?

27 A. It would depend on the individual crime. Each  
28 crime is treated somewhat differently.

1 Q. In the Ryen homicide, what were your duties?

2 A. Basically to coordinate the investigation as to the  
3 scene and the coordination of the scene.

4 Q. Does that mean that you were -- you were the person  
5 that was in charge?

6 A. I was in charge. Rather than taking a role of an  
7 active investigator, I was in charge of making assignments.

8 Q. A sergeant is -- that is the immediate supervisory  
9 rank in the Sheriff's department. I mean, that is the person  
10 that tells detectives and deputies, do this and do that, right?

11 A. Yes.

12 Q. That was your job with respect to this particular  
13 case?

14 A. Yes.

15 Q. You had to answer to your -- be responsible to your  
16 superiors but you were the one that was actually doing the  
17 telling and making the decisions.

18 A. Basically, yes.

19 Q. You used the word "scene".

20 Does that have a technical meaning within the  
21 Sheriff's department, crime scene?

22 A. That would be -- yes.

23 Q. What is that technical meaning?

24 A. That would be the area of an obvious crime; the  
25 crime occurred in a certain location, and the area of that would  
26 be what I would classify as the scene.

27 Q. In the case of the Ryen homicide, what was the  
28 scene? How would you define that particular area?

1           A.     The scene would be the portion of the hallway, the  
2 bathroom, and the bedroom area, extending somewhat to the spa,  
3 the patio area.

4           Q.     Anything beyond that?

5           A.     I don't think anything beyond that, in that  
6 particular scene or location, could be described as a scene.

7           Q.     What about the the Lease house?

8           A.     Well, certainly evidence was found there, but as  
9 far as that being a homicide scene, it was not; wasn't a  
10 homicide scene.

11          Q.     Well, was it referred in your department as a  
12 second crime scene?

13          A.     Yes, it was.

14          Q.     Well in that definition of second, when people were  
15 using the word second crime scene, what did that definition have  
16 to do with this particular case?

17          MR. KOCHIS: Objection, it is going to call for  
18 speculation on his part. Depending who was using.

19          THE COURT: It may have a technical meaning in the field.  
20 I will permit him to testify his understanding of the words.

21          THE WITNESS: I'm not quite -- I am not quite sure I  
22 understand exactly -- would you restate your question.

23 BY MR. NEGUS:

24          Q.     Did you, yourself, use the term "second crime  
25 scene" to describe the Lease house?

26          A.     I may have.

27          Q.     What did you mean by that?

28          A.     As the hideout house, as 2991, as the Lease-Lang

1 house. It all, at some point, runs together.

2 Q. Was that a different definition of crime scene than  
3 you gave us earlier?

4 A. I would not consider the Lease house a crime scene  
5 at all.

6 Q. So that was just loose talk when you referred to it  
7 that way?

8 A. I don't consider it loose talk, I think it is a way  
9 of describing possibly a location or as a second one, as the  
10 second most important areas in this case.

11 Q. Well, what do you call the area from which evidence  
12 about the crime can be taken, may be discovered?

13 A. Depends on the area you're talking about.

14 Q. In the context of the Ryen homicide and the Chino  
15 Hills, what do you call the area from which evidence of the  
16 crime was retained?

17 A. Well, certain areas would be just that, areas where  
18 evidence was located, such as the hatchet, the car.

19 Q. Well, is that a common definition for a crime scene  
20 in any area from which evidence of a crime may be taken?

21 A. No, I don't think so.

22 Q. When you were investigating the Ryen crime scene,  
23 and the Ryen crimes, did you establish, on June the 5th, 1983,  
24 any territorial limits to the areas where you expected to find  
25 evidence of that particular crime?

26 A. No.

27 Q. On that date you set up a couple of road blocks; is  
28 that right?

1 A. Yes, sir.

2 Q. One was down near the Edwards and one was at Peyton  
3 and English Road; is that right?

4 A. Yes.

5 Q. As far as the one that was in front of the Edwards  
6 house, that road block -- that road block was to keep out  
7 anybody except Sheriff's, Coroner's, District Attorneys, any law  
8 enforcement officials; is that right, or anybody that law  
9 enforcement officials might bring up there with them.

10 A. That's correct.

11 Q. Was the purpose of that road block to preserve any  
12 physical evidence that might be found around the house?

13 A. I don't believe that was the sole purpose, no.  
14 Certainly any officer who saw evidence would report that.

15 If there was evidence at the road block, and the  
16 officer saw it, it would be reported.

17 Q. Well, what was the purpose of keeping people. Was  
18 the purpose of the road block to stop people?

19 A. Well, we had residences other than our crime scene  
20 there; we certainly wanted to control that. We wanted to  
21 control other residences in the area that wasn't sealed off by  
22 the road block at Peyton and Old English.

23 Q. The Peyton and Old English Road block residents  
24 could get through as well as Sheriff's personnel; is that right?

25 A. Yes.

26 Q. And so the one at the Edwards house was more  
27 restricted.

28 A. Yes.



1 Q. Giving you a black sharpie, could you put your name  
2 up on the name plot, part of Exhibit 3-B there.

3 A. (Witness complied).

4 Q. And we have had pretty loose-lipped testimony about  
5 this photograph.

6 Do you recognize the area there where the road  
7 block was set up?

8 A. I do.

9 Q. Could you put an "RB" there.

10 A. I never did see it, where it was. I never saw it  
11 set up.

12 Q. Approximately where was it then?

13 A. (Witness complied).

14 Q. So, that would be down then at the -- at the  
15 entrance to the fork in the road that leads up the hill to  
16 the -- eventually to the Ryen house.

17 A. That's correct.

18 Q. Was there an area in the Chino Hills there that you  
19 were trying to keep folks out of so that evidence that might be  
20 there wouldn't be trompled under foot?

21 A. At a point in time, yes.

22 Q. Well, what point in time was that?

23 A. When the bloody hatchet was found.

24 THE COURT: Pull the microphone a little closer.

25 BY MR. NEGUS:

26 Q. And that's when you set up the road block at Peyton  
27 and Old English Road?

28 A. Approximately that time, yes.

1 Q. Before that you weren't?

2 A. Was that a question?

3 Q. Yes.

4 A. That's correct.

5 Q. When you first arrived at the Ryen crime scene,

6 were you made aware that, for example, there was a bloody rope

7 in the driveway there?

8 A. Not when I first arrived.

9 Q. How long was it after you first arrived you found

10 out about the bloody rope?

11 A. I believe within the first hour, hour and a half.

12 Q. At some point in time did you find out about a shoe

13 impression on the spa cover?

14 A. Yes.

15 Q. When was that?

16 A. My first knowledge of that was when I saw it, when

17 I was being briefed by Sergeant Gilmore about the shoe

18 impression, the bloody shoe impression that had been left by a

19 paramedic.

20 Q. So that would have been about the first half hour

21 of your arrival?

22 A. I believe so.

23 Q. Did you -- did -- at that point in time when you

24 found out there was potential evidence outside the house, as

25 well as in, did you do anything to try and initiate an extensive

26 search of the outside area?

27 A. Certain persons were used to do a search.

28 Q. Who were those persons?

1           A.     Sergeant Roper was used when he arrived, Assistant  
2     Sheriff Follett was used, Captain Don Meyers did some, some of  
3     the looking around, searching. I did. Lieutenant Bellomy did,  
4     or correct me. Correction. Lieutenant Baird did.

5           Q.     Lieutenant Baird. That is Bill Baird?

6           A.     Yes. That is all I can think of right now.

7           Q.     Did you attempt to keep a list of the -- after you  
8     found that there was a shoe impression that might be significant  
9     in the case, did you attempt to keep a list of who was walking  
10    around the grounds then?

11          A.     No. After we found that there was a shoe  
12    impression that was for sure involved in the case, we identified  
13    as many people as we could as being in the vicinity.

14          Q.     Okay. Wait a minute. Did you keep a list?

15          A.     Which day?

16          Q.     Well, on June the 5th.

17          A.     I did not personally keep a list.

18          Q.     Did you direct anybody else to do that?

19          A.     No.

20          Q.     Well, you say that at some point you tried to  
21    identify as many people as you could.

22          A.     Yes.

23          Q.     How did you do that?

24          A.     By word of mouth. Contacting those persons that we  
25    knew were present at a particular time by photograph. In that  
26    manner.

27          Q.     Was that essentially at the request of Mr. Kochis  
28    after he became involved in the case and Mr. Cooper was

1 arrested?

2 A. I don't know if that was Mr. Kochis' request or  
3 your request.

4 Q. Assuming it wasn't at my request, was --

5 A. I don't know.

6 Q. -- was whatever it was relayed to you by Mr.  
7 Kochis?

8 MR. KOCHIS: Objection, it would be irrelevant.

9 THE COURT: Yes. Sustained.

10 BY MR. NEGUS:

11 Q. Did you attempt then to find out, as best you could  
12 at that -- two months afterwards, what people had been wearing  
13 on their feet that particular --

14 MR. KOCHIS: Objection, that assumes a fact not in  
15 evidence.

16 THE COURT: I don't understand your objection.

17 MR. KOCHIS: When he sat down and tried to do a list.

18 THE COURT: Ask your question again, counsel. Maybe I  
19 missed something.

20 MR. NEGUS: Well, I think that other folks, to wit, young  
21 Mr. Stockwell --

22 MR. KOCHIS: Your Honor, I am going to object to Mr.  
23 Negus' editorial argumentative points.

24 THE COURT: Mr. Kochis, Mr. Negus, I don't recall your  
25 specific question enough to rule upon the objection. So, ask  
26 your question again and rephrase it as you wish, okay?

27 BY MR. NEGUS:

28 Q. Two months later, when the list was attempted to be

1 drawn up, did you go around and attempt to find out what shoes  
2 the different people had been wearing on that day?

3 MR. KOCHIS: That was the question I objected to.

4 THE COURT: All right. Establish a foundation first,  
5 sustained.

6 MR. NEGUS: He doesn't remember. Mr. Stockwell testified  
7 it was two months later.

8 THE COURT: Sergeant, do you know, of your own knowledge,  
9 whether or not a list was later prepared, approximately two  
10 months later?

11 THE WITNESS: I am not sure of the time. The list was  
12 prepared.

13 THE COURT: All right then, overruled. Go ahead.

14 BY MR. NEGUS:

15 Q. The question then is, did you attempt, two months  
16 later, to find out what shoes they had been wearing back in  
17 June?

18 A. I did not.

19 Q. Did you have somebody else under your command do  
20 that?

21 A. Yes.

22 Q. How many photographs -- did you photograph some of  
23 the shoes that people thought that they were wearing on that  
24 day?

25 A. Yes.

26 Q. How many different photographs were taken?

27 A. I don't know.

28 Q. Do you know how many people were -- well, leaving

1     aside the hatchet for a moment. Just up -- just up here, in the  
2     area that is shown on this Exhibit 3-B, could you take the black  
3     pen and draw a perimeter around the area, all the different  
4     areas, a circle or whatever shape it would be, around all the  
5     different areas where evidence was found that pertained to this  
6     particular case on that photograph.

7             A.     Including the house?

8             Q.     Sure.

9             A.     And what day are you talking about?

10            Q.     During the course of the investigation.

11            A.     Some areas are not depicted there.

12            Q.     Right. Well, I'm just -- I understand that this --

13            MR. KOCHIS: Your Honor, I would object as not being  
14     relevant. If the issue is going to be steps that were taken on  
15     the 5th, evidence that may have been discovered four or five  
16     weeks later would not be relevant as to the officer's mental  
17     state on the 5th.

18            MR. NEGUS: I thought I was prohibited from talking about  
19     their mental state on the 5th. That was ruled we weren't  
20     supposed to talk about that.

21            THE COURT: Don't argue on that objection.

22                    I will overrule the objection. Proceed.

23     BY MR. NEGUS:

24            Q.     Go ahead and draw a circle of the perimeter.

25                    Of course evidence was found in the area  
26     encompassing the house, this location, this location.

27            A.     There were other areas where evidence was located.

28            Q.     They would not appear on the photograph 3-B then.

1 A. Yes, sir.

2 Q. How many people, of your knowledge, passed through  
3 those areas prior to the last piece of evidence that was  
4 collected from each of them being collected?

5 MR. KOCHIS: Objection, vague as to time, and not  
6 relevant.

7 THE COURT: All right. Sustained.

8 BY MR. NEGUS:

9 Q. Let's break it down as Mr. Kochis says.

10 And I'm going to label these 1, 2, 3 and 4, the  
11 circles which are drawn there.

12 Now, as to Circle 1, when was the last item of  
13 evidence collected from within that particular circle?

14 A. I'm not sure, but I believe the 30th of June.

15 Q. Okay. And 2? The circle I have labeled No. 2 up  
16 there.

17 A. Um, I believe that would be the 5th.

18 Q. And No. 3?

19 A. I don't know.

20 Q. Approximately June 6th at 4:30 or 5:00 o'clock in  
21 the afternoon sound approximately right?

22 A. No.

23 Q. Would it be after that?

24 A. Excuse me. 3 would be on the 5th, 2 would be I  
25 believe on the 6th.

26 Q. Okay. When on the 5th what time was 3 collected?

27 A. In the afternoon sometime.

28 Q. While it was still light?

1 A. I believe it was.  
2 Q. What about 4?  
3 A. 4? I don't recall.  
4 Q. Let's just take June the 5th.  
5 Do you know all the officers and persons other than  
6 officers that were in the area No. 1 on the 5th of June?  
7 A. At this time I don't believe I do.  
8 Q. Did you ever?  
9 A. I am fairly sure I did, yes.  
10 Q. Well, were there -- on the 5th of June, were there  
11 essentially, during the time that you were at the Ryen scene on  
12 the 5th, and into the early morning hours of the 6th, were  
13 there, for example, three different shifts that were on and off  
14 duty at the West End Sheriff's station?  
15 A. That's correct.  
16 Q. And did a person from each one of those shifts,  
17 come up and go into that area No. 1 there?  
18 A. I am not sure of the first shift on June the 6th.  
19 I am not sure of that shift. The other two shifts, yes.  
20 Q. Let's assume that the first shift that would have  
21 been on duty that day would have been Mr. Hoops and Mr. Beltz  
22 and Mr. Gilmore.  
23 A. Yes, sir.  
24 Q. So, people from that shift were there in the area.  
25 A. Certainly.  
26 Q. And then from the second, the 3:00 to 11:00 shift  
27 there were people in the the area from that shift.  
28 A. I am sure there was. I seem to remember one.



1 Q. And also from the graveyard there were people in  
2 the area from that one?

3 A. I don't remember anyone from graveyard being there.

4 Q. Do you know a Sergeant Gary Hobbs?

5 A. Yes, I do.

6 Q. Was Sergeant Hobbs up in that circle on either the  
7 late night of June the 5th or the early morning of June the 6th?

8 A. I don't know.

9 Q. Did you prepare, yourself, a report of your  
10 observations and what you did on June the 5th?

11 A. No.

12 Q. There's been a fair amount of testimony in this  
13 particular case about Sheriff's office reports.

14 Can you explain how those are prepared?

15 A. Well, there's several different ways they're  
16 prepared. They are transcribed in the field, there are notes  
17 taken in the field. Those notes and/or transcriptions then  
18 would be either dictated and/or turned over to a secretary for  
19 typing.

20 Q. After they're turned over to a secretary for  
21 typing, do they -- are they checked again by the officer for  
22 accuracy?

23 A. Normally that's true, but not in all cases.

24 Q. When reports are written, are the times usually put  
25 in military time?

26 A. Not always.

27 Q. When times are put in reports are they supposed to  
28 be accurate?

1 A. As close as possible.

2 Q. Did you prepare a report in this particular case  
3 that was entitled "Cooper's Ambidextrous Nature"?

4 A. Yes, I did.

5 Q. And does that report have a series of observations  
6 that you made during the preliminary hearing of Mr. Cooper?

7 A. Yes.

8 Q. As to each observation, there is a precise date and  
9 time; is that right?

10 A. I am not sure as to each observation. I tried to  
11 do that.

12 Q. Do you have that report there with you?

13 A. I do.

14 Q. Could you sort of check that out.

15 A. It appears that I have put the date and time on  
16 each observation.

17 Q. And during the course of this particular case, with  
18 a few rare exceptions, you've been in court at the counsel table  
19 throughout the preliminary hearing and various evidentiary  
20 motions and the trial; is that right?

21 A. Yes.

22 Q. And at various points in time I've requested all  
23 notes of investigations by Sheriff's officers in this particular  
24 case; is that right?

25 A. That's correct.

26 Q. Did you ever provide the notes on which that  
27 particular report is based?

28 A. No. I think I have them here if you'd like them.

1 Q. The actual date of that report is 10-5-84; is that  
2 right?

3 A. That's correct.

4 Q. The times in that, did you make those up?

5 A. No, sir. That was for -- those were taken at the  
6 time of the observation in the notes I kept at counsel table.

7 Q. The first time that you have is 9:27 on November  
8 the 7th, 1983.

9 A. Yes.

10 Q. And that was an observation you made at the counsel  
11 table at the preliminary hearing.

12 A. That's correct.

13 Q. The second was the same date, at 12:09.

14 A. Yes.

15 Q. So, we were still in session at 12:09, that would  
16 be nine minutes after noon on November 7th, 1983.

17 A. Whether we were in session, or Cooper was just  
18 setting there waiting to be moved, I don't recall that.

19 Q. And then you also have observations for November  
20 8th at 9:23, 10:05 and 11:22; is that right?

21 MR. KOCHIS: Your Honor, I would object as not being  
22 relevant.

23 THE COURT: Overruled.

24 THE WITNESS: That's correct.

25 BY MR. NEGUS:

26 Q. Is that correct?

27 A. Yes.

28 THE COURT: Again, ladies and gentlemen I simply rule on

1 the admissibility of evidence, I do not attempt to give personal  
2 weight to it at all, that is for you determination, if any.

3 BY MR. NEGUS:

4 Q. Sergeant Arthur, the observations that you made,  
5 Mr. Kochis has indicated I may have misspoken, those were  
6 November the 7th and November the 8th, 1983; is that right?

7 A. I believe that's correct.

1  
8 MR. NEGUS: Your Honor, I have a copy of the court file  
9 here. It's the docket of the Municipal Court preliminary  
10 hearing. I would like to you take judicial notice that we were  
11 not in session on November 7th or November 8th, 1983, and in  
12 fact the prelim began on November 9th.

13 MR. KOCHIS: Well, your Honor, I think the records  
14 reflect when the prelim started. I'm not sure they reflect when  
15 we may have been in session on other matters.

16 MR. NEGUS: We were not -- the record reflects every day  
17 that we were in session.

18 THE COURT: You can argue the meaning of the record. I  
19 can take judicial notice of the record and the content.

20 The records show that on November 4th,  
21 apparently --

22 MR. NEGUS: Some documents were filed, but there was no  
23 court session.

24 THE COURT: But a hearing was set for November 9th. The  
25 next date indicates that on November 9th before Judge Merriam  
26 defendant was present with you and that proceedings were had.

27 It shows nothing between the 4th and the 9th, Mr.  
28 Negus.

1 BY MR. NEGUS:

2 Q. In terms of -- in terms of evaluating evidence  
3 collected at a crime scene, is it important to be able to  
4 document what the possible sources of contamination of the crime  
5 scene are?

6 A. Again, that depends on the crime scene.

7 Q. In this particular one?

8 A. Yes.

9 Q. The -- what time was it that you arrived at the  
10 Ryen house?

11 A. I think I arrived there about 1:40 in the  
12 afternoon.

13 Q. Do you have any way of ascertaining those times  
14 accurately?

15 A. At some point in time through my reviews I have  
16 ascertained those times, whether it was from a radio log or  
17 transmissions on tape recordings over the air, I have recorded  
18 those times.

19 Q. Other than approximately 1:40 in the afternoon, are  
20 there any other times that you can be certain of as to when a  
21 particular event occurred on June the 5th?

22 A. Other than reading reports and making those  
23 observations --

24 Q. From your own personal knowledge.

25 A. No.

26 Q. And you did not take any notes on June the 5th?

27 A. I took notes of assignments, et cetera, but no  
28 investigative notes.

1 Q. Do you know how many people were inside the Ryen  
2 house on June the 5th?

3 A. Not an exact number, no.

4 Q. Did you personally make a decision as to who -- as  
5 to each person who was either allowed or not allowed to come in  
6 the house?

7 A. At a point in time, yes.

8 Q. Okay. What point in time was that?

9 A. When we first made the assignments. I assigned  
10 certain designated persons to do certain jobs inside the house.

11 Q. Okay. And that assignment took place, what, a  
12 little after 2:00 in the afternoon?

13 A. Yes.

14 Q. After that did you have any -- did you yourself  
15 control who went in and out of the house?

16 A. For a period of time, yes.

17 Q. How long a period of time was that?

18 A. Until around dusk.

19 Q. Okay. During the period of time that you yourself  
20 were controlling who went in and out of the house, who did?

21 A. The investigators that had been assigned to do the  
22 scene in the bedroom, the identification personnel, crime lab  
23 personnel, and some of my superiors.

24 Q. What was dusk, approximately 8:00 o'clock on June  
25 the 5th, 1983, in the Chino Hills?

26 A. Approximately 7:40 I believe, and I may be  
27 corrected on 7:40.

28 Q. By dusk you mean the time that the sun sort of went

1 down -- from the time the sun went down till the time it got  
2 dark?

3 A. At a point in time where I couldn't see outside by  
4 the car any more.

5 MR. NEGUS: If we're going to take a break, this would be  
6 a convenient time while I put the charts up.

7 THE COURT: Since we started late, however, let's hold  
8 the break to 15 minutes.

9 Remember the admonition.

10 And may I inform the jury and counsel that today  
11 the staff and I are going to lunch together, and we are going to  
12 break between 12:00 and 2:00 and the courtroom will be locked.

13 So, counsel, you're going to be away from your  
14 books and exhibits and things like that.

15 All right. We will take the morning recess.

16 (Recess taken.)

17

18 THE COURT: Go ahead.

19

20 DIRECT EXAMINATION (Resumed)

21 BY MR. NEGUS:

22 Q. Returning for a minute to the report entitled  
23 "Cooper's Ambidextrous Nature".

24 Those observations were directed towards the issue  
25 of how many assailants there were in the crime; is that right?

26 A. No.

27 Q. That was irrelevant to those particular  
28 observations?

1           A.    No. I was looking at -- I was watching his hands  
2 because he appeared very -- appeared to use both hands quite  
3 well.

4           Q.    All right. The reason why you thought that that  
5 was relevant and worth writing 5 Pages on it had to do with the  
6 issue of how many assailants there were in the crime scene.

7           A.    I'm sorry. Yes.

8           MR. KOCHIS: It is leading, it is argumentative, I'd  
9 object.

10          MR. NEGUS: You can ask leading questions when you are  
11 trying to impeach a witness.

12          MR. KOCHIS: It is also argumentative.

13          THE COURT: Why are the two of you arguing? The witness  
14 has already answered.

15          MR. KOCHIS: I move to strike the answer on the basis of  
16 the grounds of my objection.

17          THE COURT: The motion will be granted. The answer is  
18 stricken, the jurors are ordered to disregard it.

19                 Now, you wish to be heard?

20          MR. NEGUS: Yes. I think it should come in because, one,  
21 when you have a witness who -- I have the ability to impeach a  
22 witness even if -- particularly if I'm the one that called him.

23          THE COURT: I will sustain the objection. Proceed.

24 BY MR. NEGUS:

25          Q.    Well, what then -- if you can answer yes or no --  
26 was the questionnaire that you -- was your report about, your  
27 observation of Mr. Cooper's hands designed to answer the  
28 question -- I will withdraw that and ask it another way.



1                   Was the report that you prepared on Cooper's  
2    ambidextrous nature, so-called, intended to be relevant on the  
3    question of the number of assailants?

4                   MR. KOCHIS: Objection, it is irrelevant what it is  
5    intended for.

6                   THE COURT: Counsel, I frankly find his state of mind to  
7    be irrelevant at this stage.

8                   MR. NEGUS: Well --

9                   THE COURT: His motivations are really, I think --

10                  MR. NEGUS: I think -- well, I have to -- I'm sort within  
11   a rock and a hard place.

12                  THE COURT: I won't permit argument on it.

13                  MR. NEGUS: It goes to bias.

14                  THE COURT: Counsel, I will sustain the objection. I've  
15   overruled your point about bias. Proceed. I don't want you to  
16   get into argument before the jury on the point.

17                  MR. NEGUS: Can I be heard out of the presence?

18                  THE COURT: Later on, perhaps at the next recess, but not  
19   now.

20                  MR. NEGUS: I'm thinking we're --

21                  THE COURT: Counsel, I'm not going to argue with you  
22   anymore. Proceed on another point, if you wish, but I sustain  
23   the objection on that point.

24   BY MR. NEGUS:

25                  Q.   Well Mr. Arthur, do you have any biases in this  
26   case?

27                  A.   Some.

28                  Q.   Against Mr. Cooper?

- 1 A. Not necessarily against Mr. Cooper.
- 2 Q. Are you on the side of the prosecution?
- 3 A. Certainly.
- 4 Q. You want to get a conviction?
- 5 A. Certainly.
- 6 Q. Do you have any biases on the issue of whether one  
7 or more than one person was responsible for this crime?
- 8 A. No.
- 9 Q. When -- directing your attention to the exhibit  
10 behind you that's on the board, Exhibit 225.
- 11 Um, let's see. When you arrived at the Ryen crime  
12 scene there was Mr. Hall, Mr. Gilmore, Mr. Beltz, Mr. Hoops,  
13 that were already there from the Sheriff's Department.
- 14 A. Yes, sir.
- 15 Q. And were those four individuals the only people who  
16 were actually in area No. 1 when you arrived?
- 17 A. Yes.
- 18 Q. After you arrived did you send Mr. Beltz down to  
19 the area where the road block was originally?
- 20 A. He was sent. I don't recall whether I did that or  
21 not.
- 22 Q. He departed and took off down there.
- 23 A. Yes.
- 24 Q. The others remained.
- 25 A. No. I believe deputy -- or Deputy Hoops went to  
26 interview Mr. Hughes.
- 27 Q. Okay.
- 28 A. Sergeant Gilmore, Mike Hall remained as did I.

1 Q. When -- after you arrived there, did you  
2 immediately go into the house?

3 A. No.

4 Q. How long was it before you went into the house?

5 A. Well, I was briefed by Sergeant Gilmore in regard  
6 to what he had seen and what had occurred, and at some point  
7 after that I went in 10 or 15 minutes.

8 Q. So, would it, say, be like somewhere between 1:45  
9 and 2:00?

10 A. That's a possibility.

11 Q. Then if you could -- let's see. Underneath your  
12 name here, where it says "C-1430", could you then put "C-1350"  
13 as an average time.

14 A. (Witness complied).

15 Q. Did Mr. Hall go in with you at that time?

16 A. No.

17 Q. Who, just Mr. Gilmore?

18 A. Just Gilmore.

19 Q. And did you go throughout the house?

20 A. Yes.

21 Q. At that point in time did you, yourself, like make  
22 a thorough search of the house, or was it just through just a  
23 walk-through?

24 A. A combination thereof, search and walk-through.

25 Q. When you got through with that, that was what, five  
26 or ten minutes.

27 A. No, I think it would be longer than that.

28 Q. Approximately how long?

1 A. Maybe 15 minutes.

2 Q. Okay. When you got -- when you got back outside,  
3 was there anybody else that had arrived?

4 A. I'm not sure whether they -- Duffy had arrived at  
5 that time or not. I don't think he had though. And at that  
6 time I had requested additional personnel respond. I am not  
7 sure who was there when I walked back outside.

8 Q. Okay. When you went back outside, did you  
9 eventually have a meeting of various people who were there on  
10 the patio?

11 A. Prior to allowing anyone into the house, I had a  
12 meeting.

13 Q. Okay. When was the -- who was the next person that  
14 went into the house after you and Mr. Gilmore came out?

15 A. I believe that would be -- well, I returned a  
16 second time prior that meet, I believe, by myself. Then we had  
17 the meeting, and I had Deputy Duffy go in for photographs.

18 Q. So, did he go in alone?

19 THE COURT: Just a second. I prefer the witness be  
20 facing the jurors unless you need him at the board.

21 MR. NEGUS: Okay. Somehow I'm going to have to bounce  
22 back and forth, I guess.

23 THE COURT: Okay.

24 MR. NEGUS: Maybe if I go back over here he can face me  
25 then turn around to the chart.

26 THE COURT: Thank you.

27 BY MR. NEGUS:

28 Q. Okay. So when Duffy went back in there he went in

1 alone first; is that right?

2 A. Yes.

3 Q. When -- did you go in with him and show him around  
4 or just him?

5 A. It is possible that I went into show him around to  
6 let him know what I had seen in the areas that I wanted  
7 particular attention paid to.

8 Q. Okay. Did Mr. Duffy go throughout the rest of the  
9 house besides the master bedroom, hall near Jessica and master  
10 bathroom?

11 A. I was not with him, I don't know.

12 Q. Before he went in there, was he on the patio  
13 outside the master bedroom?

14 A. Yes.

15 Q. Under Mr. Duffy on the chart, could you put a check  
16 mark on the patio.

17 A. (Witness complied).

18 Q. The next person after Mr. Duffy that went in the  
19 house would have been Mr. Hall?

20 A. Yes.

21 Q. What time did Mr. Hall go in?

22 A. I don't know.

23 Q. Did -- before he went in, was he -- excuse me, I  
24 can't -- and did anybody go in with Mr. Hall?

25 A. I believe Mr. Hall went in at the time Duffy was in  
26 there, but by himself.

27 Q. Did Mr. Baird go in the house while you were there?

28 A. I don't remember seeing Mr. Baird in the house.

1 Q. Did Mr. -- did, well, Mr. Wilson, Tim Wilson was a  
2 detective assigned to the homicide division on that particular  
3 date; is that right?

4 A. Yes.

5 Q. Was he at the Ryen house?

6 A. He was at the driveway area where we made  
7 assignments.

8 Q. Did you actually ever see him inside the house?

9 A. No, I did not.

10 Q. I'm talking about any time on June the 5th.

11 A. Yes. Yes, I did see him inside the house at any  
12 time. Around midnight the 5th, or early morning hours of the  
13 6th I did see him.

14 Q. Was that in both the master bedroom and the rest of  
15 the house?

16 A. I saw him I believe in the living room area and  
17 then at the barn area.

18 Q. Could you then put for rest of the house, "6-5" and  
19 under Tim Wilson's name there, No. 15.

20 A. (Witness complied).

21 Q. Now, you mentioned earlier a Mr. Bellomy. Did you  
22 see him in the house?

23 A. I don't believe I saw Mr. Bellomy in the house.

24 Q. Did you see him at the scene?

25 A. I have some doubt about that. I think I saw him at  
26 the scene, yes.

27 Q. But you are not sure.

28 A. No, I am not at this time.

1 Q. Previously you had testified that he was at the  
2 scene.

3 A. I believe that's correct.

4 Q. Then you also heard him testify that he wasn't.

5 A. I heard him testify. I don't recall that.

6 THE COURT: You may be seated.

7 BY MR. NEGUS:

8 Q. Now, basically you don't have -- after the initial  
9 group arrived, the criminalists arrived at some point in time as  
10 well, Stockwell and Schechter.

11 A. Yes, sir.

12 Q. And you had briefed them before they went into the  
13 house as well?

14 A. Yes.

15 Q. After their -- after their entrance, do you have  
16 any idea of who went into the house when and where; who went in  
17 the house at what point in time that day?

18 A. No.

19 Q. By the way, there on this chart there is EMT James.  
20 How -- do you know that person's last name?

21 A. No, sir, I don't.

22 Q. While you were -- while -- you were essentially  
23 directing a whole bunch of different activities on that  
24 particular day; is that right.

25 A. That's correct.

26 Q. I mean, there was processing of the crime scene,  
27 there was an area search of the various neighbors to see if  
28 anybody had seen anything, and some attempts to develop a

1 suspect as well; is that right?

2 A. That's correct.

3 Q. So essentially people were coming and going all the  
4 time reporting to you about what they had done, and then getting  
5 additional assignments.

6 A. Not necessarily coming and going. I was on the  
7 phone to them, to some people, and as some people would finish  
8 they would return to the location for another assignment, yes.

9 Q. The phone that you were -- that you were using, was  
10 that in your Sheriff's car or was that out in the barn?

11 A. That was in my car.

12 Q. Your car was rather set up as a command center for  
13 a time; is that right?

14 A. The car I called my car, it is the Sheriff's unit  
15 that is equipped and assigned to homicide with a telephone in  
16 it, and it is an initial response vehicle for our purpose to use  
17 as a command center until one is established.

18 Q. Okay. Where was that car parked?

19 A. I believe it was parked on the -- as you approach  
20 the house on the left, portion of the dirt driveway, you know,  
21 the kind of wishbone area there.

22 Q. That would appear on this Exhibit 3-B?

23 A. Yes, sir.

24 Q. Could you put in "car" then for that spot hopefully  
25 without having to lift the thing up.

26 A. (Witness complied).

27 Q. Now, at some point in time did you assign Hector  
28 O'Campo to go into the master bedroom?



1           A.     I am not sure I saw him personally or he was needed  
2     there.  
3           Q.     Did you see him enter the master bedroom?  
4           A.     No.  
5           Q.     I did not see him enter.  
6           Q.     When was the first time that you saw him enter?  
7           A.     I believe the first I saw of O'Campo was after  
8     dark.  
9           Q.     Did you at some point in time assign Mr. Clifford  
10    to go in?  
11          A.     Yes, I did.  
12          Q.     When was that?  
13          A.     After he and O'Campo came back from interviewing  
14    the Blades in regards to the party.  
15          Q.     When was that?  
16          A.     I don't I don't know the time.  
17          Q.     Before Mr. Clifford went into the house was he also  
18    on the patio outside the master bedroom?  
19          A.     I believe that's correct.  
20          Q.     Could you put a check mark then under 21 there,  
21    patio outside master bedroom for Mr. Clifford.  
22          A.     (Witness complied).  
23          Q.     Did you see Dr. Irving Root in parts of the house  
24    other than the master bedroom, hall near Jessica and master  
25    bedroom?  
26          A.     Yes.  
27          Q.     Could you put a check mark then under him for that.  
28          A.     (Witness complied).

1 Q. No. 24 there. Where all did you see Dr. Root?

2 A. I saw him come in the front door. I briefed him  
3 and walked him back to the location of the bodies.

4 Q. Um, are you familiar with a person from Southwest  
5 Transfer, Transport Service named Bob Glenn?

6 A. Yes.

7 Q. Did you see him in other parts of the house beside  
8 the master bedroom, hall near Jessica, and master bedroom?

9 A. No, I did not.

10 Q. You know a Phil Dana, a detective that works the  
11 West End Sheriff's Department; is that right?

12 A. Yes.

13 Q. And on that particular date you assigned Detective  
14 Dana to go out and interview neighbors and stuff like that; is  
15 that right?

16 A. I'm not sure if he was assigned to interview  
17 neighbors or assigned to go to CIM, and Boys Republic. I  
18 believe he went to CIM.

19 Q. Prior to his going to CIM, did he come inside the  
20 house?

21 A. I don't recall him coming into the house prior to  
22 that. I do remember that testimony.

23 Q. Do you remember being in the house at some point in  
24 time on that day?

25 A. Yes.

26 q. And in the master bedroom, as well as the rest of  
27 the house.

28 A. I do not remember seeing him in the master bedroom.

1 I'm fairly sure I remember seeing him in the entryway of the  
2 house. I don't remember seeing him in the living room or  
3 anywhere else.

4 Q. Could you under "Rest of House", could you just put  
5 "6-5" for Phil there under No. 27.

6 A. (Witness complied).

7 Q. Now, Mr. Glenn, from the the Southwest Transport  
8 Service, he had with him another individual who was assisting  
9 him; is that right?

10 A. Yes.

11 Q. Did you know that individual's name as Rodney  
12 Parish?

13 A. I believe you are correct.

14 Q. Could you put "Rodney Parish" there for No. 40.

15 A. (Witness complied)

16 Q. No. 37, Sheriff Tidwell. Do you know what time the  
17 Sheriff arrived?

18 A. No, sir.

19 Q. When did you first see him?

20 A. I believe it was after dusk.

21 Q. Where was that?

22 A. In the driveway.

23 Q. Had you seen him before then?

24 A. I could have, I don't remember.

25 Q. During the daylight hours before it got to be dusk,  
26 did you have a conference with the Sheriff inside the living  
27 room of the house; room of the Ryen house?

28 A. I believe so.

1 Q. What time would that have been, about 5:00?

2 A. I think it was after 5:00. I think it was -- it  
3 was closer to 7:00, 7:30.

4 Q. When the Sheriff was at the scene, did you  
5 personally take him down and show him the master bedroom and did  
6 you personally take him down and show him the master bedroom and  
7 the bodies of the various victims?

8 A. I believe I took him into the hallway, but not into  
9 the bedroom.

10 Q. When was that?

11 A. I would say -- I don't honestly remember when it  
12 was, whether it was prior to dusk, right after dusk. I don't  
13 recall.

14 Q. But it was on June the 5th.

15 A. Yes.

16 Q. Did you -- could you put a "6-5" then under master  
17 bedroom for the Sheriff there.

18 MR. KOCHIS: Your Honor, I am going to object. That is a  
19 misstatement. He testified he didn't take the Sheriff in the  
20 master bedroom, he took him in the hallway.

21 MR. NEGUS: Well, I am just trying to abbreviate it.

22 THE COURT: Go ahead.

23 THE WITNESS: (Witness complied).

24 Q. And what about Deputy Eugene Majors, did he go into  
25 that particular area where the victims were?

26 A. I didn't see him in there.

27 Q. Did you see your immediate supervisor, Lieutenant  
28 Jimmy Bradford?

- 1 A. No.
- 2 Q. What about -- what about Assistant Sheriff Charles
- 3 Follett, did you see him at the scene?
- 4 A. No. Yes, I saw him at the scene.
- 5 Q. Where did you see him?
- 6 A. In the living room area.
- 7 Q. Could you put an "6-5" an check mark under "rest of
- 8 house" for him?
- 9 A. (Witness complied.)
- 10 Q. Did you ever see him inside the area where the
- 11 victims were?
- 12 A. No.
- 13 Q. The -- in the Sheriff's department when you have a
- 14 murder there's at least -- there's several different divisions
- 15 of the Sheriff's Department that would be involved in a -- in
- 16 the Ryen murder investigation; is that right?
- 17 A. That's correct.
- 18 Q. One of those would be the West End Sheriff's
- 19 Department?
- 20 A. Yes.
- 21 Q. Was the -- was the commander of that -- of that
- 22 particular department in June of 1983 a man named Monty Davis?
- 23 A. Yes.
- 24 Q. And was he at the crime scene on June the 5th?
- 25 A. Yes.
- 26 Q. Where was he?
- 27 A. In the driveway.
- 28 Q. Could you put "Monte Davis" in No. 42 and "6-5" for

- 1 "the driveway"?
- 2 A. (Witness complied.)
- 3 Q. Do you know if he every came inside the house?
- 4 A. No, I do not.
- 5 Q. How long -- when did you see him then?
- 6 A. In the afternoon. It was still daylight.
- 7 Q. Did you see him just on one occasion or --
- 8 A. I may have seen him on more occasions. That's the
- 9 one I remember.
- 10 Q. On the -- on the 3:00 to 11:00 swing shift, that
- 11 particular day was there a senior deputy working by the name of
- 12 Roger McCoy?
- 13 A. I don't know.
- 14 Q. Do you remember seeing Roger up at the house that
- 15 day?
- 16 A. No, I don't.
- 17 Q. Who did you see from the -- from the swing shift at
- 18 the house?
- 19 A. Harry Hatch.
- 20 Q. Would you write then "Harry Hatch" --
- 21 A. Oh, excuse me. From swing shift I saw -- no, I saw
- 22 Harry I believe after swing shift, but I'm not sure on that.
- 23 Q. Okay. Well, leaving aside what shift Harry was
- 24 working, you did see Harry at the house?
- 25 A. Yes.
- 26 Q. Okay. Could you put No. 43 "Harry Hatch"?
- 27 A. (Witness complied.)
- 28 Q. And that was on 6-5?

1 A. Yes.

2 Q. And that was outside?

3 A. 6-5 or 6-6, outside in the driveway.

4 Q. Okay. Could you put then "6-5/6-6" for Harry?

5 A. (Witness complied.)

6 Q. And he's a deputy that's assigned to West End

7 patrol; is that right?

8 A. That's correct.

9 Q. Anybody else that you remember from the West End

10 Substation that you saw up there that we haven't already covered

11 still on that same day?

12 A. Not that comes to mind.

13 Q. The -- the task of finding out, you know, what

14 shoes these people were wearing, did you do any of that task

15 yourself?

16 A. Well, other than identify the shoes I was wearing,

17 no.

18 Q. Okay. Did you delegate that to somebody else?

19 A. Yes.

20 Q. Who was that?

21 A. Detective Woods.

22 Q. That would be Gary Woods from homicide?

23 A. That's correct.

24 Q. He was not there on June the 5th; is that right?

25 A. That's correct.

26 Q. During the rest of that particular -- that

27 particular week that followed the Ryen murders, that is, the

28 week of June 5th through June the 12th, how many different days

1 did you come back to the Ryen -- to the Ryen house?

2 A. I think I only returned one time that week.

3 Q. Okay. When was that?

4 A. I believe that was the night the luminol was being  
5 sprayed.

6 Q. So that would have been June the 10th, Friday?

7 A. I believe that's correct.

8 Q. Who was present in the house at that point in time?

9 A. Persons I remember there at that point were  
10 Sergeant Swanlund, Detective Stroup, the two criminalists, Ogino  
11 and Stockwell, and myself.

12 Q. There were other people there but you don't know  
13 who they were?

14 A. I don't remember any other people there.

15 Q. Do you remember any of the CCD people running in  
16 and out turning on lights and stuff?

17 A. No, I do not. I was there but just a brief period.

18 Q. Were there people from any other law enforcement  
19 agencies that came up to the house while you were there on June  
20 5th and 6th?

21 A. I don't believe so.

22 Q. When you arrived and went on your first walk  
23 through the house, did you encounter any animals inside the  
24 house?

25 A. Yes.

26 Q. How many different animals did you encounter?

27 A. I only remember a small -- a small dog and a  
28 turtle.



1 Q. Was the turtle in a bowl or a box?  
2 A. A box.  
3 Q. In Josh's bedroom?  
4 A. That's correct.  
5 Q. And the small dog?  
6 A. Excuse me. There were cats also.  
7 Q. Some kittens?  
8 A. Some kittens.  
9 Q. And were they near the kitchen area?  
10 A. In the trophy room.  
11 Q. They were just sort of playing there in the trophy  
12 room on the floor?  
13 A. They were there. I don't know what they were  
14 doing.  
15 Q. Outside the house were there any dogs that you saw?  
16 A. I've seen those dogs several times. I don't  
17 remember whether I saw them that day or after or -- I'm not  
18 sure.  
19 Q. That particular day, did you have anybody look at  
20 the dogs to see whether or not there was anything of evidentiary  
21 significance on them?  
22 A. No.  
23 Q. The position that Jessica was in in the -- in the  
24 hallway when you found her, was that such that basically you had  
25 to sort of go over her in order to get from hallway into  
26 bedroom?  
27 A. Around her.  
28 Q. Well, did you have to go over her? I mean, you

1       couldn't -- you --

2               A.     I did not have to go over her. I did not go over  
3       her.

4               Q.     I shouldn't have -- if one was to move from the  
5       hallway through that door into the master bedroom one would have  
6       to go over Jessica; is that correct?

7               A.     That's correct.

8               Q.     And there were various smear marks on her legs, did  
9       you observe those, in blood?

10              A.     Some of them.

11              Q.     Did you attempt to do anything to determine whether  
12       or not the dogs could have caused those smear marks?

13              A.     Personally, no.

14              Q.     Did you assign anybody to do that?

15              A.     Not necessarily assign. I think as a matter of  
16       course that would have been done had it been observed, had  
17       something been observed by the pathologist or Detective Peterson  
18       covering the autopsies, I believe he would have brought that to  
19       my attention.

20              Q.     I was asking you did you --

21                      Well, the smear marks on Jessica's legs -- on June  
22       the 5th you had no information from any autopsies as to what  
23       caused them, right?

24              A.     No. But that kind of information would have been  
25       looked at better at the autopsy. In other words, if they had  
26       seen a paw print or something of that nature indicating a dog  
27       had stepped on her, then, yes I would have been told about that,  
28       or if they had seen matted animal hair.

1 Q. Let me -- did you do anything at the scene while  
2 the dogs were still there to determine if like the dogs had any  
3 blood on them?

4 A. No.

5 Q. Did you order anybody to do that?

6 A. No.

7 Q. Showing you Exhibit 187 and pointing to the little  
8 dog that's been identified by Josh as J. J., is that the little  
9 doing that you saw in the house?

10 A. I don't know.

11 Q. Was that little dog left in the house while you all  
12 were processing the scene?

13 A. Well, apparently he was photographed. Our normal  
14 way, if he's in a crime scene, is to chase him out of the crime  
15 scene so they don't track or disturb anything. I'm really sure  
16 they weren't in the crime scene itself, but in the house, we  
17 probably tried to chase him out. I don't recall that.

18 Q. Is it possible he might have been in the house till  
19 Tuesday?

20 A. No, I don't think so. I think he was taken out by  
21 neighbors. I think all the animals were cared for that evening.

22 Q. Was it the Edwards family that lives just down the  
23 road that took care of the animals?

24 THE COURT: Counsel, does your solicitude have any  
25 particular bearing upon the case in some way? I fail to see the  
26 relevancy of this. Is there any relevancy say to what happened  
27 to the dogs, sir?

28 MR. NEGUS: Yes.

1 THE COURT: Proceed.

2 BY MR. NEGUS:

3 Q. Was that the Edwards family?

4 A. Could I have the question again, please.

5 Q. The people that took care of the animals, was that  
6 the Edwards family?

7 A. I don't know.

8 MR. NEGUS; If I could read, your Honor, from -- Volume  
9 XIV of the preliminary hearing, Page 7, and actually just the  
10 only relevant portions is starting at the sentence that begins  
11 on Line 7 through Line 12.

12 MR. KOCHIS: I have that.

13 MR. NEGUS: Oh, wait, excuse me. I was looking at the  
14 wrong spot. Never mind. I take it back, withdraw the -- no.  
15 Right. I would like to go ahead with it now that I see again.

16 MR. KOCHIS: Well, your Honor, I don't believe it's  
17 inconsistent with what he said. He's testified that a  
18 particular Sheriff's deputy was in the hallway of the Ryen home.

19 MR. NEGUS: No. I think he did not say that. He  
20 indicated that this would be Mr. Majors and this is to put Mr.  
21 Majors in the hallway near Jessica, which we don't have.

22 THE COURT: You can clarify if you wish.

23 MR. KOCHIS: Your Honor, I don't believe he was asked  
24 about Mr. Majors. He was asked about Mr. Myers.

25 THE COURT: Overruled.

26 BY MR. NEGUS:

27 Q. Let me just ask, if I neglected ask I will ask:  
28 Was Mr. Majors in the part of the house where the victims were

1 found master bedroom, hall near Jessica, master bathroom?

2 A. At this time I don't remember seeing him in the  
3 master bathroom. I did see him in the hall.

4 Q. Right next to Jessica?

5 A. In that vicinity.

6 Q. Okay. Could you put "6-5-83", then a check for him  
7 then?

8 A. (Witness complied.)

9 MR. NEGUS: Could we stop now and take up the issue I  
10 want to raise outside the presence of the jury?

11 THE COURT: Sure. Give you a long lunch period, ladies  
12 and gentlemen, till 2:00 o'clock.

13 Please, remember the admonition, however, at all  
14 times.

15  
16 (The following proceedings were held in  
17 open court out of the presence of the jury:)

18 THE COURT: Before you commence, would you bring me back  
19 to where we were? Refresh my memory.

20 MR. NEGUS: There was several questions that were -- what  
21 I wanted to bring up was that there was questions that was  
22 sustained which had to do with Mr. Arthur's state of mind, that  
23 is, whether he was attempting to prove things about how many  
24 assailants there were.

25 THE COURT: The ambidextrous nature of Mr. Cooper?

26 MR. NEGUS: Yeah. But the particular issue that I was  
27 trying to focus in on was his particular predilections towards  
28 one result or the other with that.

1           Mr. Kochis made an objection as to, that his state  
2 of mind on that issue is irrelevant. But I feel I'm sort of  
3 between a rock and a hard place. On the one hand you tell me  
4 that the record is insufficient as to Mr. Arthur's bias in order  
5 to ask him leading questions, but on the other hand the  
6 objections -- the questions which are designed to get at that  
7 bias are sustained, so I --

8           THE COURT: That question is over with at the moment  
9 until some better foundation comes out, so I did not understand  
10 that in any way you were back to that point again. We handled  
11 that in chambers.

12           MR. NEGUS: No. I intend during the course of my  
13 questions of Sergeant Arthur, I mean to try and bring in his  
14 biases.

15           THE COURT: I'm simply not going to have a three day  
16 hearing on his biases for that particular point, sir. At some  
17 point, if at some point if it becomes apparent to me that he is  
18 indeed hostile as the law recognizes --

19           MR. NEGUS: But if it's irrelevant what his state of mind  
20 is on these issues, you know, whether he wants a certain result  
21 or not, how am I ever going to get that information out?

22           THE COURT: We have had our hearing. I am not going to  
23 continue to have 402 or 403 type hearings on that. You are now  
24 before the trier of fact. Let's stick to matters that are  
25 relevant to them.

26           MR. NEGUS: His biases are relevant for them. His biases  
27 are relevant for anybody. And essentially I'm not allowed to  
28 ask questions about his biases because Mr. Kochis says it goes

1 to his state of mind.

2 MR. KOCHIS: Well, that's certainly a misstatement of  
3 what's been going on this morning and the nature of my  
4 objections. When he asks specific questions about bias that  
5 would go to his credibility as a witness, I didn't object; but  
6 whether he thinks a hatchet was used, I don't think Mr. Negus  
7 can stretch that to say that's an area of bias. Whether he felt  
8 there was blood on a driveway, that, certainly you can't stretch  
9 that to whether or not there was bias. Whether or not when he  
10 examined some blood visually on a driveway he thinks that may be  
11 human blood, I think we are going far afield.

12 And the same with the number of assailants. If he  
13 has a theory that's not evidence of his bias, his bias is: I  
14 don't like Mr. Cooper. He is Black. I don't like Mr. Negus.  
15 He is a defense lawyer.

16 THE COURT: Oh, no. Oh, no. People can take positions  
17 or something like that and be antagonistic to the other side  
18 which can color their testimony. I recognize that.

19 MR. KOCHIS: I do, too. But if he has a particular  
20 theory or mental framework at a period of time, that doesn't  
21 necessarily go to his issue of bias.

22 THE COURT: What's the specific question, Mr. Negus?

23 MR. NEGUS: It had to do he was -- the questions had to  
24 do with his observations of Mr. Cooper's ambidextrous nature.  
25 What I want to establish was that his bias colored that.

26 THE COURT: What was the question?

27 MR. NEGUS: Did you intend -- were you trying to make  
28 observations about Mr. Cooper's ambidextrous nature on the issue

1 of relevancy -- on the issue of the number of assailants.

2 MR. KOCHIS: And I objected on three grounds: That it  
3 was argumentative, that it was leading, and that it was  
4 irrelevant.

5 MR. NEGUS: I reframed it so it wasn't leading, and  
6 then --

7 THE COURT: Well, what he thinks is relevant is really  
8 immaterial. That's not at issue at all.

9 MR. NEGUS: What he thinks about the three white guys,  
10 though, or the number of assailants, and whether or not -- he  
11 made a bunch of observations. Included in those observations  
12 are things which I believe I have proved, and we can get Judge  
13 Merriam down to even further prove, if necessary, were made up  
14 times and dates. They were times and dates where Cooper was in  
15 San Bernadino County Jail, Judge Merriam was in New York, I was  
16 in Berkeley, and I don't know where Mr. Arthur was. So, you  
17 know, he has all these supposed observations which he is using.

18 THE COURT: Why don't you cross-examine in the usual  
19 manner as you have already to some extent?

20 MR. NEGUS: I know. But what I'm asking is to be able to  
21 bring out that he is trying to show that only one person could  
22 have done the crime by these things and he made up stuff to do  
23 that, and I think that's relevant to his biases.

24 THE COURT: And in the manner that you put it the  
25 objection will continue to be sustained.

26 Anything further.

27 Take our noon recess.

28 (Noon recess taken.)



1 SAN DIEGO, CALIFORNIA, TUESDAY, DECEMBER 18, 1984 2:00 P.M..

2 --00000--

3  
4 THE COURT: You people get a lot of wet snow down here  
5 for Christmas.

6 Detective Sergeant Arthur is still under oath.

7  
8 BILL ARTHUR,

9 called as a witness on behalf of the Defendant, having been  
10 previously duly sworn, resumed the stand and testified further  
11 as follows:

12  
13 DIRECT EXAMINATION (Resumed)

14 BY MR. NEGUS:

15 Q. I would like to read from Page 2412, Lines 5 through  
16 15.

17 MR. KOCHIS: I need a transcript of the volume number.

18 MR. NEGUS: I'm sorry, it is in the motions, whatever day  
19 2412 was.

20 MR. KOCHIS: I have found that.

21 MR. NEGUS: (Reading)

22 "Question: How did you define crime scene?

23 "Answer: The areas where evidence were found or  
24 evidence of the crime.

25 "Question: That included everything, all the  
26 grounds of the Ryen house, all the grounds of the  
27 Lease house next door, and the vacant house next  
28 door, did it not?

1 "Answer: Well, it could have even included parts  
2 of Peyton, parts of Old English Road. At some  
3 point you have to allow not only supervisor and  
4 citizens in for briefings -- not supervisor, but  
5 supervisors in for briefings, but you have to  
6 allow citizens into a crime scene area, per se, to  
7 carry on their life."

8 Q. Sergeant Arthur, is it a fundamental rule of crime  
9 scene investigation that you try to keep a minimum number of  
10 persons that you allow into a crime scene while it is being  
11 processed?

12 A. Yes.

13 Q. Is it also a fundamental maxim that more crime  
14 scenes are ruined by curious policemen than any other cause?

15 A. Would you please repeat that.

16 Q. Is it also a fundamental rule of investigation that  
17 curious policemen tromping through a crime scene are a major,  
18 major problem?

19 A. I don't know that it is fundamental, but that is a  
20 problem.

21 Q. In this particular case, did you -- well, in,  
22 people who have a rank of lieutenant and above in the Sheriff's  
23 department, are they often referred to as the brass?

24 A. I suppose they are, yes.

25 Q. Um, and did you try and keep the brass away from  
26 this particular crime scene?

27 A. To some extent the brass didn't go into the crime  
28 scene.

1 Q. Well, by the definition that you, that you gave at  
2 the prior motion, the brass were in that kind of crime scene,  
3 were they not?

4 A. By that definition, the brass were actually in a  
5 crime scene the minute they got into the Chino Hills area.

6 Q. And they -- and when they got outside the Ryen  
7 house where evidence was found they with in the crime scene?

8 MR. KOCHIS: Objection, it is leading.

9 THE COURT: Yes, sustained.

10 MR. NEGUS: It is for impeachment purposes.

11 THE COURT: Sustained, Mr. Negus.

12 BY MR. NEGUS:

13 Q. Were they in a crime scene when they got in the  
14 area where evidence was found on the outside of the Ryen house?

15 A. I don't necessarily consider that a crime scene,  
16 certainly not the major crime scene.

17 Q. Why did you define it that way when you testified  
18 before?

19 A. I suppose the way possibly it was asked and the  
20 questions preceding that, or that came before that, that had me  
21 in a certain frame of mind.

22 Q. I think -- do you think I suggested the answer to  
23 you at that point time?

24 A. I don't know that you suggested it to me or I just  
25 perceived it that way.

26 Q. Well, on June the 10th, 1983, did you all spray the  
27 outside area of the house with luminol?

28 A. Yes. Some areas.

1 Q. What areas were those?

2 A. Well, I specifically remember the area where the  
3 bloody rope was found in front of the driveway, and I saw it  
4 there. We -- someone had found a spot of blood near where the  
5 patrol unit, the command car had been parked. That was sprayed,  
6 and I saw an area light up. And so I assume by your question  
7 that that is outside the residence and that was sprayed.

8 Q. Well, not just -- not just where you still got a  
9 reaction after everybody was tromping around, but where there  
10 were other areas sprayed where you didn't get a reaction  
11 outside.

12 A. I wasn't there for all the spraying.

13 Q. Did you have a problem with the brass putting  
14 footprints where you didn't want them to be?

15 A. I had a problem with Captain Meyers stepping in an  
16 area, and I had to identify his shoe. Yes.

17 Q. Did you tell him to get out of the area?

18 A. I told him it had not been cleared yet and to move.

19 Q. Were the members of the brass that were there, were  
20 they anxious to get inside the house to see what had happened?

21 A. No.

22 Q. Before they went in the house did you have the  
23 brass out in the patio looking in the sliding glass door?

24 A. I had cleared a portion for people to walk back and  
25 forth. That is a possibility, that maybe -- maybe there was  
26 some brass in there.

27 Q. What do you mean by "cleared"?

28 A. Well, I established a route from near where the

1 driveway ends to the patio door so that we could use that as a  
2 common walkway so not to disturb any evidence that may be in  
3 there.

4 Q. Did you like put little ropes out or --

5 A. A ribbon. A Sheriff's line, "Do not cross" ribbon,  
6 yellow in color.

7 Q. That went from where.

8 A. That went from near where the driveway, the dirt  
9 driveway started, at the wishbone area, up to at least the palm  
10 trees near the patio area.

11 Q. Take that orange marker here, and the best exhibit  
12 I have for that is 3-B. Could you draw the line there where you  
13 had the yellow ribbon.

14 A. The ribbon was tied to the front bumper of the car  
15 at approximately this location, came up and around the back side  
16 of this tree, around up in here, into here, and was tied over --  
17 it would be back on the back side of the palm trees in the  
18 center back side of actually all of these, the side closest to  
19 the house, off to the bumper here.

20 Q. Okay. What area were you keeping people away from?

21 A. Well, we had blocked this area off with units.  
22 People were instructed to park in the field area, in this area  
23 here. And the driveway items, the areas that had already been  
24 contaminated with fire trucks, et cetera. Therefore, the  
25 original briefing took place about this location, and we  
26 utilized this area for an area of common contact.

27 Q. All right. Let's -- could you sort of then in  
28 green put a circle around that for the whole area that you used

1 for briefing and common contact.

2 A. (Witness complied).

3 Q. Okay. Now, did you allow people to sort of go back  
4 up around here to the spa and peek?

5 A. At a point in time I would take people and direct  
6 them to where to proceed to in the safe area.

7 Q. What was the safe area?

8 A. To the right of the ribbon; between the house and  
9 the ribbon on the grass, into that area.

10 Q. Okay. So, you had -- you had established there was  
11 nothing of evidentiary value in that particular --

12 A. There was nothing that could be seen of evidentiary  
13 value in that area.

14 Q. When was it that you -- when you saw the foot  
15 impression on the spa cover, when was that?

16 A. That was at the time Sergeant Gilmore briefed me in  
17 regards to the bloody fireman's shoe impression on the patio  
18 cover.

19 Q. And at that point in time did you point it out to  
20 anybody?

21 A. I pointed that out to Duffy.

22 Q. At that point in time?

23 A. No, later on when Duffy arrived. I had seen it  
24 prior to Duffy arrived.

25 Q. When Duffy arrived at 2:07, or whenever it was, you  
26 pointed it out to him then?

27 A. Prior to him going into the house I pointed it out  
28 to him.

1 Q. When Mr. Duffy testified that he didn't know about  
2 it until O.C. pointed it out to him later, do you think he's  
3 incorrect about that?

4 MR. KOCHIS: Objection, it calls for hearsay, speculation  
5 on his part. It is not relevant as to what someone else  
6 testified to.

7 THE COURT: Anything? Otherwise, sustained on all  
8 grounds.

9 BY MR. NEGUS:

10 Q. Could it have been like after O.C. and Clifford got  
11 back from talking to the Blades that you had first saw it?

12 A. That I first saw it?

13 Q. Yes.

14 A. No.

15 Q. Could it have been after Clifford and O.C. got back  
16 from talking to the Blades that you pointed it out to Duffy?

17 A. No.

18 Q. When you pointed it out to Duffy, did he take a  
19 picture of it?

20 A. I don't believe he did at the time. I did not see  
21 him take a picture of it.

22 Q. Did you point it out to Mike Hall?

23 A. I believe Mike Hall was there.

24 Q. Did you point it out to him?

25 A. Specifically to Mike Hall? I probably did, I don't  
26 recall. But I recall telling Duffy of it.

27 Q. At the previous hearings you testified that you did  
28 point it out to Mike Hall, right?

1 A. I believe that's correct.

2 Q. Now, was -- the times that you were taking the  
3 brass between the orange line and the house and up to the spa,  
4 was that before O.C. and Clifford got back from the Blades house  
5 that night?

6 A. I feel that some members of the administration went  
7 up there before then.

8 Q. Do you know which ones?

9 A. Lieutenant Bradford, Captain Meyers,

10 Q. Those the only two?

11 A. No. Lieutenant or Criminalist Baird. That's the  
12 only ones I recall.

13 Q. On prior occasions, some of the other witnesses  
14 have discussed the spa cover, and apparently in some -- do you  
15 recall in some of the photographs the spa cover appeared to be  
16 dislodged and others it appeared to be not dislodged?

17 A. I recall that.

18 Q. Now, with Photo 173 here in the dislodged  
19 conditioned. When you first, when you were there with Mr.  
20 Gilmore, and you first saw this, was the spa cover in the lodged  
21 or dislodged condition?

22 A. Well, it was flat down and proper not like it is  
23 here.

24 Q. What I'm calling the lodged condition for  
25 shortness.

26 A. I wasn't sure of that.

27 Q. Then did you ever notice -- did you ever notice it  
28 in that dislodged position?



3  
1 A. I certainly was aware that it was. But offhand,  
2 specifically remembering it like that, independent of the  
3 photographs and the testimony, I don't remember.

4 Q. When you first noticed the shoe impression on  
5 there, was the sun shining on the spa cover?

6 A. Well, it was daylight. It was bright enough I  
7 could see it. As far as direct sunlight, I don't recall that.

8 Q. You don't recall then whether it was in the shadow  
9 or in the direct sunlight.

10 A. I am reasonably sure that there was no shadows at  
11 that time.

12 Q. With the sunlight coming down on it directly you  
13 had no trouble in seeing it?

14 A. I was looking at an oblique angle, I was not  
15 looking directly on top of it until I approached it closer.

16 Q. How did you happen to notice it to begin with?

17 A. It was right in line with where the bloody print  
18 was, and at the time I was -- the print was pointed out, I  
19 looked at that, Gilmore pointed that out to me, I was standing  
20 to the back side of the patio.

21 In fact, I was in the grass at that time, and it  
22 was just in a direct line. It was almost as if you couldn't  
23 miss it.

24 Q. Were there any footprints inside the barn?

25 A. Yes, sir.

26 Q. Did you like especially mark some of those to be  
27 photographed?

28 A. Yes, I did.

1 Q. Were they ever photographed?

2 A. I can't answer that.

3 Q. Okay. Well, in all of the photographs that you  
4 collected in your photo albums, and which you have given copies  
5 to me, there are no photographs of footprints from the barn,  
6 right?

7 A. I can't answer that without going through each  
8 individual photograph again. I -- we have photographs of  
9 shoeprints, whether those were from the barn, I believe they  
10 are. There are some shoeprints there.

11 Q. From the barn?

12 A. I don't -- I don't know that I could distinguish  
13 from the barn versus from some of the other areas. I think I  
14 could.

15 Q. Maybe we can do that over the break.

16 When the decision was made to let the brass inside  
17 the house, did you make that decision?

18 A. I did.

19 Q. And what time did you say that was?

20 A. Dusk. Just prior to dusk. It was getting dark  
21 outside.

22 Q. Could it have been as early as 5:00 o'clock?

23 A. I don't believe so.

24 Q. When they were allowed inside the house, were they  
25 allowed into a particular area or were they given the run of the  
26 house?

27 A. They were allowed only in at first into the living  
28 room area, and then that was expanded later on.

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1 Q. Well, where was it expanded to?  
2 A. The dining room table area.  
3 Q. And any other place?  
4 A. At a later time it was expanded into the restroom,  
5 next to Josh's room.  
6 Q. Okay. Let's -- using the orange marker, could you  
7 sort of sketch on the diagram the area they were allowed into on  
8 the first go-round.  
9 A. The first area would encompass this area.  
10 Q. Could you put a big "1" in that area then.  
11 The record should reflect we're on Exhibit 6-I the  
12 plastic overlay to Exhibit 6. Could you put an orange No. "1"  
13 there.  
14 A. (Witness complied).  
15 Q. Then add the extension when they were allowed into  
16 the dining room.  
17 A. (Witness complied).  
18 Q. And could you put a "2" for that area.  
19 A. (Witness complied).  
20 Q. And then the third extension. Could you do that.  
21 A. (Witness complied).  
22 Q. Okay. Could you put a "3" for that area.  
23 Now, were they ever allowed into the kitchen?  
24 A. Well, this is almost a common kitchen with the  
25 dining area. There was some entry in and out here through the  
26 kitchen by investigators.  
27 Q. How about --  
28 A. It wasn't that strictly out of bounds as a common

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1 walkway to exit to the outside.

2 Q. Okay. How about -- would part of the people sort  
3 of be standing around there in the kitchen talking.

4 A. No, there wasn't that many people to stand around.  
5 In fact, the table I think had four chairs. There was three or  
6 four of us sitting there writing.

7 Q. The Sheriff was there, was he not?

8 A. At points in time he was there. I don't ever  
9 remember seeing him in the kitchen. I remember him vaguely in  
10 the living room.

11 Q. And the other members of the brass were all in  
12 there, were all in that area at one point time or t'other; is  
13 that right?

14 A. The area of 1, 2, 3?

15 Q. All.

16 A. Certain individual members of the brass were in all  
17 areas but not all at one time.

18 Q. Were the brass -- well, at some point in time that  
19 evening, like around 9:00 o'clock, did the Sheriff leave for a  
20 time and then come back?

21 A. I recall the Sheriff leaving several times and  
22 coming back.

23 Q. Leaving the actual premises there?

24 A. Leaving my presence.

25 Q. Okay. Well, was there a time when he went down to  
26 Peyton and Old English Road for a press conference?

27 MR. KOCHIS: Objection, that is going to call for  
28 speculation unless he was with the Sheriff.

1 THE COURT: You can testify of your own knowledge. If  
2 you know otherwise, you don't know.

3 THE WITNESS: I don't know.

4 THE COURT: Sustained.

5 BY MR. NEGUS:

6 Q. Well did you ever see him leave, drive away in his  
7 car?

8 A. No, I didn't.

9 Q. Except for that -- except for a period around, say,  
10 9:00 o'clock in the evening or so, were the other members of the  
11 brass there pretty much until after midnight?

12 A. No. I believe the members that stayed, that were  
13 there for the longest period of time, would be Lieutenant  
14 Bradford, Captain Meyers, and I believe Deputy Chief Majors.

15 Q. But basically all the brass was gone fairly early?

16 A. Well, before midnight. Certainly before midnight.

17 Q. What time was it that you expanded it to Area 2?

18 A. I don't know.

19 Q. How about Area 3?

20 A. Area 2 and Area 3 were opened up probably about at  
21 the same time, sometime after dark. I think they had been there  
22 five or six hours.

23 Q. Is it possible that Area 3 was opened up at 6:30 in  
24 the evening?

25 A. That's a possibility.

26 Q. When it was still light out?

27 A. Yes.

28 Q. Was that before the criminalists had a chance to go

1 in and look at it?

2 A. Well, no.

3 Q. Did you check with the criminalists before you  
4 opened up those areas?

5 A. Yes, I did.

6 Q. Previously you have testified that the criminalist  
7 you checked with was Mr. Baird, right?

8 A. I believe that's correct.

9 Q. Mr. Baird wasn't even there after 4:00, correct?

10 A. I'm not sure at this point in time when he left.

11 Q. Are you sure at this point in time that it was Mr.  
12 Baird you checked with before you opened it up?

13 A. I had a discussion with Mr. Baird and several other  
14 investigators there about the fact that I had inspected certain  
15 areas of the house, I had not seen anything of evidentiary  
16 nature, and asked them if they had a problem with me utilizing  
17 that as an area that I could set up some kind of a briefing  
18 area.

19 Q. And you are sure that Mr. Baird was one of those  
20 people?

21 A. I believe so.

22 Q. Did you check with Mr. Stockwell to see whether he  
23 had had a chance to look for things of evidentiary value in  
24 those areas before you did it?

25 A. On an individual basis, no; cumulative, yes.

26 Q. What does that mean?

27 A. I remember stepping into the area where they were  
28 processing the scene and advising them that I was about to do

1 this, was everybody through, was there any need for me to keep  
2 people out any longer, I have looked at it, et cetera, and I got  
3 no response. No "Don't do it", nothing like that.

4 Q. Well, at the time you stepped in there, were they  
5 still working on the bed?

6 A. I don't know what they were working on at that  
7 time.

8 Q. Were the bodies of the victims still in place?

9 A. Yes, they were.

10 Q. When you were there on June the 10th, did you see  
11 some luminol reactions which were consistent with footprints  
12 ascending the stairs, on these stairs between the -- I guess you  
13 call it the foyer area and the living room?

14 A. I don't remember whether I saw that or I remember  
15 it from testimony in the photographs.

16 Q. Did you ever see any of the brass like sitting on  
17 those stairs at the area where the reaction was developed?

18 A. No.

19 Q. Were the members of the brass walking up and down  
20 those stairs as they moved about in the house coming in and out?

21 A. Yes.

22 Q. Was the -- was the little dog still in there at  
23 that time or do you know?

24 A. When the brass was there?

25 Q. Yeah.

26 A. I don't believe so.

27 Q. When you made your inspection before you opened up  
28 the second bathroom, had you personally given it a thorough

1 examination to see if there was any blood in there?

2 A. Yes, I did.

3 Q. Did you see any specs of blood around the basin?

4 A. No, I didn't.

5 Q. Did you turn the light on?

6 A. No, I don't believe I did.

7 Q. Before you opened up the area around the kitchen or  
8 the area where people had access to the kitchen, the kitchen  
9 door, had you checked the inside of the refrigerator?

10 A. No.

11 Q. Had anybody pointed out to you that there was what  
12 looked to be blood in there?

13 A. No.

14 Q. Based on what you know now, do you think you made a  
15 mistake in opening up the living room to the brass when you did?

16 MR. KOCHIS: Objection; irrelevant.

17 THE COURT: Yes. Sustained.

18 BY MR. NEGUS:

19 Q. In the photograph, which I think is still in front  
20 of you on the witness stand there, Exhibit No. 187, there  
21 appears to be some bedding.

22 Did you process that -- did you look at that  
23 bedding before you opened up the place for the brass?

24 A. Yes.

25 Q. And did you do anything with it? Did you sieze it?

26 A. I saw no need to sieze it. There was nothing of an  
27 evidentiary nature that I could see there.

28 Q. Did you see any evidence that any of the victims



1 had been, for example, outside the house during the attack?

2 A. No.

3 Q. Did you exclude that possibility in trying to  
4 preserve the scene, just say that didn't happen, sort of figure  
5 it hadn't happened?

6 A. I did not feel that there was any movement by the  
7 victims outside the residence.

8 Q. Did that feeling influence the decisions you made  
9 about the degree of thoroughness of search that you did outside  
10 the residence?

11 A. No. We found the rope in the driveway; that was as  
12 a result of a search. The beer can in the field was a result of  
13 a search. No, it didn't. That's what the people were there  
14 for.

15 Q. How many different vehicles drove through the  
16 driveway at the Ryen property on June the 5th that you saw?

17 A. None.

18 Q. How many were on the driveway area?

19 A. I have no way of knowing.

20 Q. The -- Showing you Exhibit 4-A, the large what  
21 seems to be telephoto photograph of the 2991 residence and the  
22 Ryen house, the area where the -- where Sheriff's units or cars  
23 were parked, is that depicted on that photograph?

24 A. Yeah.

25 Q. Could you take again the orange marker and on that  
26 plastic overlay indicate the areas where the units were parked  
27 that are in fact visible on that photograph?

28 A. What time frame are you talking about?

1 Q. On June the 5th.

2 A. Okay. In the -- at certain hours along June the  
3 5th vehicles changed as needed.

4 Q. Give me the maximum then.

5 A. Orange did you say?

6 Q. Please.

7 A. In this general area in front of the front door to  
8 the driveway -- the dirt drive, where the dirt driveway  
9 intersects with the pavement, and out into the field around  
10 things, palms, and then I don't know what was parked down below  
11 toward the edge of the place.

12 Q. So, at least some vehicles were parked in an area  
13 that would be on the hillside leading down towards the Lease  
14 house, at least one of the ways you go down toward the Lease  
15 house?

16 A. That's correct.

17 No. Excuse me. Lease house or Edward house?

18 Q. Lease, 2991.

19 A. No.

20 Q. It's kind of hard to figure out exactly the layout  
21 of the place from the pictures, but is it a fairly --

22 Well, first of all, is this, as you drive up this  
23 road that leads up to the Ryen house, is that a fairly steep  
24 road?

25 A. I think the photograph pretty accurately depicts  
26 the steepness of that road.

27 Q. How easy is it to get from the Ryen house down to  
28 2991?

1           A.     It's a short walk across this lunging area down  
2 here and right here.

3           Q.     And is that all? I mean you can't really tell the  
4 slope in the photograph, is it basically flat?

5           A.     I believe that area is fairly flat with some slope,  
6 sloping down.

7           Q.     This particular picture, the vegetation in the area  
8 in June is considerably less green and wet than it is in this  
9 particular picture; is that right?

10          A.     Well, that appears to be approximately what I  
11 remember in June.

12          Q.     Was there -- are there sort of like plants with  
13 burrs on them in this general area?

14          A.     Yes.

15          Q.     Can you recall exactly where they would be?

16          A.     No, I can't because I remember that there were  
17 burrs here and I think right -- well, I didn't go over there  
18 that day. I was there later and there were burrs there.

19          Q.     The two areas that you indicated, one, the area  
20 where the Sheriff's cars were parked and, two, which is the near  
21 the area which I believe has been referred to in previous  
22 testimony as the lunging area, the area between the Lease house  
23 and the Ryen house?

24          A.     Yes.

25          Q.     At night can you when you're outside there  
26 between --

27                   Were you ever outside between the Ryen house and  
28 the Lease house at night, is that so, in that lunging area?

- 1           A.     I don't recall if I was.
- 2           Q.     Can you see the Lease house from the Ryen house?
- 3           A.     Yes.
- 4           Q.     How much of it can you see?
- 5           A.     Parts of it.
- 6           Q.     What part can you see?
- 7           A.     The roof, some of the -- I think a corner portion
- 8 of the game room area.
- 9           Q.     Can you see it from the Ryen's bedroom?
- 10          A.     I believe you can.
- 11          Q.     Do you have a better view of it from the living
- 12 room?
- 13          A.     I think the living room puts you at a different
- 14 angle, and if you're down in the sunken living room I don't
- 15 think you could see it; but I do think you could see it from the
- 16 top of the stairs.
- 17          Q.     When did you become aware of the presence of the Ly
- 18 Oly Gold beer can in the fields between the Ryen house and the
- 19 Lease house?
- 20          A.     I believe that was around dusk also. I think
- 21 either Roper or Follett brought my attention to it.
- 22          Q.     Did you -- at that point in time did you become
- 23 aware that there was Oly Gold inside the Ryen refrigerator?
- 24          A.     I don't recall that.
- 25          Q.     Did you ever look in the -- was there a small
- 26 refrigerator in the barn?
- 27          A.     Yes.
- 28          Q.     Did you ever look in that refrigerator to see

1 whether or not there was any Oly Gold in that?

2 A. No, there was not -- Yes, I did look. There was  
3 not. There was drugs for horses in there, penicillin, things of  
4 that nature.

5 Q. Was the barn floor dirt?

6 A. Yes, it was.

7 Q. Was it raked?

8 A. Yes, it was.

9 Q. Other than -- well, you've -- other than the  
10 footprint you wanted photographed, were there any other  
11 footprints that you could see on that ground?

12 A. Well, you could readily see those footprints. We  
13 were to establish -- we established a path in there for people  
14 to come in and feed the stock that those people could use. You  
15 could readily see them.

16 Q. Let's -- I think I'm not being very clear here.

17 Were you the person that first went to the barn as  
18 far as you know?

19 A. As far as I know I was.

20 Q. And when you first went in the barn before anybody  
21 went --

22 This was before anybody was allowed up to feed the  
23 stock, right?

24 A. Yes.

25 Q. And at that point in time how many footprints could  
26 you see in the raked area of the barn?

27 A. I remember one or two because I circled them.

28 Q. Was the barn floor raked in such a fashion that you

1 could see that nobody -- that you could exclude the possibility  
2 of people having walked through there other than those  
3 particular footprints?

4 A. I think it was raked in such a fashion that I felt  
5 that the raker had done that.

6 Q. The -- in order to get to that refrigerator would  
7 you have had to have crossed the raked portion of the floor?

8 A. Yes.

9 Q. Do you recall if you became aware of the presence  
10 of Olympic Oly Gold beer cans in the Ryen residence on June the  
11 5th, June the 6th, or at some later occasion?

12 A. I did become aware of it.

13 Q. At that point in time did you attempt to draw a  
14 line from the Ryen house to the Oly Gold beer can that Rick  
15 Roper found and then extend it beyond to try and search in that  
16 area for further evidence?

17 A. No. I believe the whole area was searched, not  
18 just from a line, an imaginary line or something like that.

19 Q. The whole area was searched?

20 A. I think the whole area was searched.

21 Q. That would that have been on June 7th when some  
22 people from the Sheriff's training academy were brought out in  
23 buses?

24 A. That would have been June 5th, 6th, and 7th.

25 Q. Was it searched before people started parking in  
26 the field there?

27 A. No.

28 Q. No?

1           A.     No.

2           Q.     The -- the number of people that were inside the  
3     Ryen house on June the 5th, had you ever been to a crime scene  
4     before where there were that many Sheriff's Officers inside a  
5     house where a murder had taken place?

6           A.     Yes. Not a murder, a suicide.

7           Q.     Was it unusual to have that many?

8           A.     Absolutely.

9           Q.     Of the ones that were in there, was it fair to say  
10    that no more than six of them were actually processing the  
11    scene?

12          A.     I -- I believe that's true, processing the scene.  
13    The rest of the people weren't in the scene.

14          Q.     Well, even in your limited definition of processing  
15    the scene, the hallway where A-41 and Jessica were found would  
16    be considered part of the scene, right?

17          A.     Yes, it would.

18          Q.     And most, if not all, of the brass were in that  
19    hallway?

20          A.     That's correct.

21          Q.     And other persons such as Shelby Gaul?

22          A.     I don't remember seeing Shelby there.

23          Q.     Tim Wilson?

24          A.     Tim wasn't there.

25          Q.     How about Phil Dana?

26          A.     I don't recall.

27          Q.     You actually -- Phil Dana was actually in the  
28    bedroom, was he not?

1           A.     I remember hearing Phil testify to that. I don't  
2 remember him there.

3           Q.     Page 2429, whatever that volume was we last had,  
4 Lines 7 through 13 only.

5           MR. KOCHIS: I found it.

6           BY MR. NEGUS: (Reading)

7                   "Question: How many people did you allow into that  
8 master bedroom during that period of time in the  
9 processing just to look who were not actually  
10 engaged in the taking of evidence?

11                  "Answer: I believe maybe three in the bedroom.

12                  "Question: Was Phil Dana one of those?

13                  "Answer: Yes, he was."

14           Q.     Did you see, on June the 10th when you were at the  
15 Ryen house when they were doing the luminol again, some what  
16 appeared to be shoe impressions with a zig-zag pattern in the  
17 foyer area there?

18           A.     I believe I did.

19           Q.     How many different people who were not processing  
20 the crime scene were allowed into that particular area on June  
21 5th?

22           A.     Everybody.

23           THE COURT: Counsel, if it wouldn't disrupt you too much.

24           MR. NEGUS: Fine.

25           THE COURT: Let's take a brief recess. All right. Try  
26 and hold it to 15 minutes, bailiff, please.

27                   Take the afternoon recess. Remember the  
28 admonition.



1 (Recess taken.)

2

3 THE COURT: Everybody is present, counsel.

4 BY MR. NEGUS:

5 Q. As far as the homicide people were concerned that  
6 were working on the house, Mike Hall was the person that had the  
7 actual responsibility?

8 A. Of the scene, yes.

9 Q. Do you know what time it was that Mike processed  
10 the living room area?

11 A. I believe around 9:30 at night.

12 Q. That was after the brass had been in there for some  
13 period of time?

14 A. Yes.

15 Q. During the time that you were in the Ryen master  
16 bedroom, were there up to ten or more people in there at some  
17 periods of time, that is, live people who were -- who were  
18 there, not the victims?

19 A. The closest -- the only time there would have been  
20 a number of people in there, I don't believe it was ten, would  
21 have been when the bodies were being moved.

22 Q. Okay. Well, then at that point in time there were  
23 four people that were essentially coroner's type people, Dr.  
24 Root, Mr. Hammock, and the two people from Southwest Transport,  
25 right?

26 A. Yes, sir.

27 Q. Two criminalists?

28 A. I'm not sure that both them were there. I think

1       they were.

2               Q.     Two I.D. people?

3               A.     Again, I think they were there. I'm not sure.

4               Q.     Yourself?

5               A.     I'm positive that there was an I.D. man there, but  
6 whether both of them were there or not. Myself, yes.

7               Q.     And Mr. Clifford was there making measurements, was  
8 he not?

9               A.     Yes.

10              Q.     And Mr. O'Campo was there helping him, was he not?

11              A.     I don't recall seeing O'Campo at the time the  
12 bodies were being moved in the bedroom.

13              Q.     And Mr. Hall was in there?

14              A.     Yes.

15              Q.     So, that's at least ten to twelve, right?

16              A.     Yes.

17              Q.     Then at other periods of time there were -- there  
18 were periods of time when just Mr. Hammock and Mr. Root and all  
19 those people were in their; is that right?

20              A.     I don't think there was a time that just Mr.  
21 Hammock and Root was there by themselves.

22              Q.     Excuse me. That was a sloppy question.

23                     There were times when all those people that you  
24 just mentioned as being there when the bodies were removed were  
25 in there with the exception of the two people from Southwest  
26 Transport; is that true?

27              A.     Yes.

28              Q.     And did some of the brass actually go into the

1 bedroom?

2 A. I'm not sure.

3 Q. During the period of time that there was ten to  
4 twelve folks in there, was it crowded? I mean, sort of like you  
5 had to sort of stand -- difficult finding places to stand?

6 A. Any time you went in there it was difficult not  
7 to -- you had to watch what you were doing.

8 Q. Okay. When -- when you had all those ten to twelve  
9 folks in there, did you sort of like clear off any areas of  
10 the -- of the carpet or put any protective things down or do  
11 anything to sort of protect the scene from being tromped on?

12 A. At this point I don't recall what we did in regards  
13 to that. The bodies were picked up and I believe placed in body  
14 bags and put on stretchers and carried out.

15 Q. Well, what I'm asking was, during this period of  
16 time when you had ten to twelve people in there, was there a  
17 problem finding physical space for all those folks to stand?

18 A. Well, the people would not have been standing  
19 around where we would have been working. They would have been  
20 back and away.

21 There are certain things that have to be done upon  
22 removing a body such as rolling, photographing, loading,  
23 transporting out. Those people -- As far as I'm concerned there  
24 was nobody that was told to move out of the way because they  
25 were in the way, they were interfering. Certainly it wasn't a  
26 situation of great open space.

27 Q. Was there -- was there any -- any hurry to have the  
28 bodies of the victims removed from the place on that particular

1 night?

2 A. Yes.

3 Q. What was that hurry?

4 A. The bodies were starting to decay. There was  
5 certain evidence on a body that we are able to -- that providing  
6 we are able to refrigerate the body it enhances collecting that  
7 evidence.

8 Q. So you wanted to -- was it particularly -- so the  
9 idea was to get them out of there as quickly as possible because  
10 of the decay?

11 A. If you call eight or nine hours quickly. I don't  
12 think that's real quick.

13 Q. Did you collect, or did you have collected evidence  
14 in that room in such a way as to sort of clear a path for the  
15 removal of the bodies by the body people?

16 A. I'm not sure how that was done. I didn't direct  
17 that.

18 Q. After the bodies of the victims had been removed  
19 and transported to the county morgue, then was there any  
20 particular rush to get done?

21 A. No. I don't think we rushed.

22 Q. Was there any particular time constraints on you?

23 A. No.

24 Q. Did the crime lab people, Mr. Stockwell and Ms.  
25 Schechter, did they leave about 1:00 o'clock in the morning?

26 A. They left sometime after midnight. For some reason  
27 I feel it was closer to 2:00 or 2:30.

28 Q. Whatever. After they -- after they had left you

1 remained for a period of time; is that right?

2 A. That's correct.

3 Q. You were there till 3:30 or 4:00 in the morning?

4 A. That's correct.

5 Q. Did you inspect the -- the bedroom after the crime  
6 lab people had left to determine whether there was anything left  
7 behind by you thought should have been seized?

8 A. No. I had made some decisions to seize additional  
9 things, so I knew that we were going to take the bedroom.

10 Q. When you say "take the bedroom" what do you mean?

11 A. I was going to take the carpeting, all the  
12 furniture, bedding, and strip the room out.

13 Q. Before you removed those large items did you  
14 inspect to see whether there was any smaller items of  
15 evidentiary significance which should have been collected before  
16 the bigger items were moved?

17 A. I wasn't totally sure what had been collected at  
18 the time the crime lab left, therefore, it wouldn't have done me  
19 a lot of good to walk in and second-guess what they had already  
20 done.

21 Q. Well, -- Well, let me just give you -- you say it  
22 wouldn't have done you any good, did you look to see whether  
23 there were the teeth of any of the victims laying on the carpet  
24 anywhere?

25 A. I can only say I didn't see any teeth.

26 Q. Some of the victims had lost teeth during the  
27 attack it appeared; is that right?

28 A. We had recovered some teeth.

1 Q. You recovered a crown; is that right?

2 A. Yes, a crown.

3 Q. And in addition to the crown the victims had  
4 actually had their teeth knocked out during the attack; is that  
5 right?

6 A. I'm not sure I was aware of that at that time.

7 Q. Well, at any rate, you didn't inspect the carpets  
8 to determine whether there was any items like teeth that the  
9 crime lab had missed?

10 A. I wasn't looking for that kind of evidence. I left  
11 that collection up to the crime lab. Had I seen anything that I  
12 felt was absolutely necessary to have been taken, at that time I  
13 would have called them back and had them take it.

14 Q. But you didn't really inspect for that purpose?

15 A. No. I was in there momentarily from time to time,  
16 but for just exactly what reason, I don't know.

17 Q. During the initial briefing that you had with Mr.  
18 Stockwell and Ms. Schechter before they began their work, did  
19 you indicate to them that you wanted any particular item of  
20 evidence seized?

21 MR. KOCHIS: Objection. That's going to call for  
22 hearsay.

23 MR. NEGUS: Not offered for the truth of the matter  
24 asserted.

25 MR. KOCHIS: Then how is it relevant?

26 THE COURT: I will overrule the objection. Go ahead.

27 THE WITNESS: I don't know if I indicated specific items.  
28 I indicated what I had seen.

1 BY MR.NEGUS:

2 Q. Well, did you indicate, for example, that you  
3 wanted representative samples of all the different blood  
4 distributions seized?

5 A. Yes, I did.

6 Q. Did you indicate that you wanted any significant  
7 trace evidence seized as, that is, anything that appeared to  
8 have evidentiary significance as trace evidence?

9 A. I left that up to their discretion and the scene  
10 investigator's discretion.

11 Q. Had you ever worked with Mr. Stockwell and Ms.  
12 Schechter on a crime scene before that date?

13 A. Yes, I had.

14 Q. On how many occasions?

15 A. One or two.

16 Q. Were they complicated inside crime scenes?

17 A. No, they weren't.

18 Q. When the -- when you decided you wanted to take the  
19 things out of the bedroom, did you make a decision as to what to  
20 do with them once you got them out?

21 A. I believe I either made that decision or entered  
22 into that decision.

23 Q. What did you decide to do with them or what  
24 decision was made?

25 A. Well, they were to be stored, and whether that  
26 storing took place in the I.D. Bureau or at the crime lab, I  
27 didn't really care.

28 Q. Did you indicate when you made the decision stored

1 for what purpose?

2 A. I felt that -- No, I did not indicate that.

3 Q. In the particular procedure that was used in  
4 removing the victims from the Ryen house on June the 5th, was  
5 particular care taken to make sure that any trace evidence that  
6 was on the victims was placed with the body into the body bag?

7 A. I believe that care was taken.

8 Q. And was there also care taken not to allow anything  
9 that wasn't like adhering to the victims to get in the body bag  
10 with them, that is, to keep outside contamination from getting  
11 in there?

12 A. I don't understand how outside contamination can  
13 get in there when you unzip a bag and place a body in it.

14 Q. Well, I mean make sure that you don't, like if  
15 there's hair on the floor or something like that, that you don't  
16 take -- that's hair that's not on the victims, and dump it in  
17 there with the victims?

18 A. I saw nobody pick up evidence or hair on the floor  
19 and put it in the bag with the victim.

20 Q. Was there some procedure about putting the victims  
21 into the bag to make sure that it was done with as little  
22 contamination as possible?

23 A. I think -- I think that they are always handled  
24 that way with the understanding that bodies are very hard to  
25 handle to place in those bags.

26 Q. I understand. So, in this particular case, and  
27 then I guess, I suppose in all cases, care was taken to do that  
28 with as little contamination as possible?



1 A. I believe so.

2 Q. On June the 5th, 1983, did you become aware that  
3 there were isolated drops of blood in the hallway on either side  
4 of Jessica?

5 A. On the walls and in the hallway, yes.

6 Q. How many different drops of blood did you become  
7 aware of?

8 A. The drop that we now know as A-41 I was aware of.

9 Q. Did you see that yourself or was it pointed out to  
10 you?

11 A. It was pointed out to me.

12 Q. By whom?

13 A. I don't recall.

14 Q. Any others?

15 A. I saw blood near where Jessica was. That was  
16 common with where Jessica was.

17 I don't recall right now any others.

18 Q. So, just like then on the walls, the only like  
19 isolated drops of blood that you were aware of was A-41; is that  
20 right?

21 A. That's the only one I recall.

22 Q. While you were there in the house did you ever look  
23 behind the door that led from the hallway into the living room?

24 A. No, sir.

25 Q. Did you on any other occasions?

26 A. No.

27 Q. When you decided what was to be, as it were, taken  
28 out of the house and stored, did you include the hallway that

1 was between Jessica and A-41, the carpet in the hallway that was  
2 between Jessica and A-41?

3 A. I did not include that. I did not make myself  
4 clear in that area. I wanted the carpet under her taken and  
5 that's all I got.

6 Q. On June 13th did you become aware that as far as  
7 the -- as the prosecution's theory of the case was concerned  
8 that A-41 was going to be significant?

9 A. I believe it was around June 13th, yes.

10 Q. Between the time that you -- when you were there on  
11 June the 10th at the house, did you note that the carpet between  
12 approximately where Jessica's foot was and that hallway door had  
13 not been -- not be taken away with the rest of the --

14 A. What date?

15 Q. June 10th, I think. That's the only date that I  
16 knew that you were back there in that time period.

17 A. Yes.

18 Q. Okay. So then on June 13th when you -- when you  
19 found out that -- about A-41, did you send somebody back to the  
20 house to try and sieze it at that time?

21 A. No.

22 Q. Was that carpet ever seized by the Sheriff's  
23 Department?

24 A. No, it was not.

25 Q. Was the carpet taken out when the house was  
26 redecorated in September, or whatever it was, 1983, and thrown  
27 in a dump?

28 A. Yes.

1 MR. KOCHIS: Objection. That calls for speculation  
2 unless he has personal knowledge.

3 THE COURT: I assume that whenever you answer any  
4 question you are only going to answer from your personal  
5 knowledge unless otherwise asked. Implied, Mr. Kochis.

6 You can answer if you can.

7 MR. KOCHIS: By that I mean that he saw it.

8 THE COURT: You may answer, sir.

9 THE WITNESS: I have no personal knowledge that that did  
10 in fact occur.

11 Excuse me. I don't know quite how to answer that.  
12 I do know that I was told that that occurred, yes, I was told.

13 THE COURT: You didn't have to volunteer, sir.

14 MR. KOCHIS: Your Honor, I move --

15 THE COURT: Answer to that question is not responsive.

16 MR. KOCHIS: I move to strike. The answer is not  
17 responsive.

18 THE COURT: Yes. It's already stricken. The jurors are  
19 admonished to disregard it.

20 Just answer the question, Mr. Arthur.

21 BY MR. NEGUS:

22 Q. Did you ever go out to a dump and try and find it?

23 A. No, sir.

24 Q. Did you go back to the house and determine that it  
25 was no longer there?

26 A. No.

27 Q. Did you speak to a Mr. Johnson about the carpet? I  
28 think that's his name.

1 A. I don't recall the name.

2 Q. Did you speak to a friend of Dr. Mary Howell who  
3 was remodeling the house for her about the carpet?

4 A. Yes.

5 Q. And do you remember when that was?

6 A. No. It was at some point in time after the arrest.

7 Q. Come again?

8 A. At some point in time after the arrest of Kevin  
9 Cooper.

10 Q. After I asked for it.

11 A. That's correct.

12 Q. On June the 5th, 1983, did you become aware of the  
13 presence of the press in the area of the Ryen home?

14 A. Yes, I did.

15 Q. At what point in time was that?

16 A. It was still light, daylight. They were flying  
17 around in a helicopter above us.

18 Q. Did you also determine that there was a bunch of  
19 press people down at the road block at the intersection of Old  
20 English Road and Peyton?

21 A. Around that same time, yes.

22 Q. When was the -- well, the spa cover that was here  
23 was ultimately carted off to the I.D. bureau as well; is that  
24 right?

25 A. That's correct.

26 Q. Were you there when that happened?

27 A. No.

28 Q. Were you present at the Ryen crime scene when any

- 1 members of the press were allowed to come in and photograph it?
- 2 A. No.
- 3 Q. Did you ever measure the distance between the Ryen
- 4 house and the Lease house?
- 5 A. Yes, I did.
- 6 Q. And how far is it?
- 7 A. Without referring to my notes, I would only be
- 8 guessing.
- 9 Q. Did you do a report on that approximately in May of
- 10 1984?
- 11 A. Yes.
- 12 Q. Do you have that with you?
- 13 A. I believe so.
- 14 Q. Would that help you to refer to that?
- 15 A. I do not seem to have that report.
- 16 Q. Showing you -- okay -- a page of discovery which is
- 17 titled "Measurements taken between the Ryen and Lease
- 18 Residence."
- 19 That is the report to which you are referring?
- 20 A. Yes, it is.
- 21 Q. Okay. Okay. On this diagram, which is almost
- 22 destroyed, again 3-B, could you, first of all, in using a blue
- 23 marker, draw a line for the distance that you in fact measured
- 24 that is showing from where it went to where it went.
- 25 A. It went from the Ryen patio door to the 2991 front
- 26 door.
- 27 Q. Okay. How far was that?
- 28 A. That was 126 yards.

1 Q. Would you write that in there on the Exhibit 3-B  
2 there.

3 A. (Witness complied).

4 Q. That was done by you and Mr. Gregonis there working  
5 together.

6 A. That's correct.

7 Q. You actually had a tape measure that you sort of  
8 strung one support to the t'other.

9 A. Yes.

10 Q. If you were to go on foot that particular distance  
11 you'd have to sort of go out of your way maybe ten or fifteen  
12 yards extra to do that; is that right?

13 A. That's correct.

14 Q. In this -- let's see, the particular incline that  
15 is indicated sort of as a brown path on this photograph, where  
16 the driveway sort of backs up against the side of the hill, is  
17 that approximately fifteen to twenty feet up that incline to the  
18 top of that?

19 A. I measured that. I would assume fifteen feet,  
20 maybe.

21 Q. If you are standing on top of it you are looking  
22 over the roof of the 2991 residence; is that right?

23 A. I believe so.

24 Q. I mean, you went up there and actually took some  
25 photographs with Mr. Lease from that particular vantage point  
26 overlooking it; is that right?

27 A. I'm not sure exactly where I did take those  
28 photographs.

1 Q. Well, at some point Mr. Lease came around and  
2 pointed out that Mr. Forbush had taken photographs and you went  
3 and took photographs of those spots.

4 A. That's right.

5 Q. Anyway, to climb up there it is quite a steep climb  
6 either up or down; is that right?

7 A. I didn't find it any problem, as far as climbing  
8 it.

9 Q. It's not impossible, it's not steep, but it's not  
10 something you can run up, you have to sort of scramble up,  
11 right?

12 A. Yes.

13 Q. And then between there and there, if someone were  
14 running from the Ryen bedroom towards the Lease house, until you  
15 got to that particular spot there would be no fences or other  
16 obstructions that, for example, a young girl couldn't overcome.

17 A. Oh, I think she'd have great problems with this  
18 berm. There was a built up railroad-type berm here around that  
19 road.

20 Q. How high is the berm?

21 A. I'd say two feet.

22 Q. Is that something you have to climb over and jump  
23 down?

24 A. I don't think you could run over it. Your question  
25 was running. I don't think you could run over that; a little  
26 girl could run over that.

27 Q. Did you ever see any pictures taken by anybody --  
28 Oh, here it is.

1                   Showing you the little picture that's Exhibit 257.

2       Does that show what you are talking about?

3           A.     Yes, sir.

4           Q.     And so basically where Mr. McCarty, the gentleman  
5       with the white pants is seated, that's approximately the  
6       distance one would have to go to sort of jump down if --

7           A.     Now that I see it, yes, it is.

8           Q.     Then there's another little wooden thing on the  
9       other side of the driveway one would have to hop over.

10          A.     That's correct.

11          Q.     Approximately how high is the wooden thing one  
12       would have to hop over?

13          A.     The wooden thing, that's approximately ten to  
14       eleven inches.

15          Q.     Any other obstruction going between the Ryen master  
16       bedroom and the 2991?

17          A.     Except for the fence, I don't believe so.

18          Q.     Except for the what?

19          A.     Except for the fence, I don't believe so.

20          Q.     What fence was that?

21          A.     There's a fence between the Lease house and the  
22       lunging area, the chain link fence.

23          Q.     Let's see. That particular fence we're talking  
24       about -- it doesn't show it very well. You can see it in -- you  
25       can see it in Exhibit 4-A.

26                   Is that the fence that you're talking about that's  
27       shown there, this chain link fence that's sort of depicted in  
28       that particular photograph?



1 A. Yes.

2 Q. So that would end at the area where you'd drop down  
3 into the driveway at 2991; is that right?

4 A. Yes.

5 Q. So, if you are going to come that way, which is the  
6 only practical way to get there, there is no fence that's an  
7 obstruction; is that right?

8 A. That's correct.

9 Q. When you were at the scene on June the 5th, 1983,  
10 did you happen to notice whether or not the exterior lights on  
11 the Ryen house were on or off on that day?

12 A. I didn't notice.

13 Q. Since that time we have gone through a bunch of  
14 pictures of various types trying to figure out at least what the  
15 state of the lights were at the time of the pictures; is that  
16 right?

17 A. That's right.

18 Q. There are -- are there essentially outdoor, outdoor  
19 lights on the beam, the top of the beam -- that is where I'm  
20 pointing here on photograph 4-A, that is the -- I guess the  
21 crest, the crest of the roof or the pointed part of the roof  
22 outside the master bedroom.

23 A. Not at that location.

24 Q. Where would they be?

25 A. It would fall down to the edge of the roof itself,

26 Q. Here?

27 A. No. The opposite side.

28 Q. Opposite side.

1           A.     Yes, it is near -- you cannot see it in that  
2 photograph.

3           Q.     Those particular lights, have you been out there  
4 when they have been on?

5           A.     Yes.

6           Q.     And do they illuminate the I guess what you might  
7 call the backyard area, down sort of -- you can see all the way  
8 to the driveway, fairly good light?

9           A.     Well, provided they were working, on that occasion.

10          Q.     I mean, when you saw him.

11          A.     When I saw them?

12          Q.     Yes.

13          A.     I believe you can see -- okay.

14          Q.     The fact they're quite bright; is that right?

15          A.     Yes.

16          Q.     You don't -- it is hard to pick them out of the  
17 trees there.

18                 But, showing you Exhibit 173, there appears to be  
19 an orange circle of light right up showing through the trees,  
20 near the crest of the roof, right where I'm pointing my fingers,  
21 another one a little bit down from those.

22                 Would those appear to be lights?

23          A.     I wouldn't swear to it.

24          Q.     Let me find another picture.

25                 First of all, showing you a little Photograph 243.  
26 And I'm pointing to a little orange dot up near the peak of the  
27 roof.

28                 Does that appear to be one of the floodlights?

- 1 A. That would be in the correct location.
- 2 Q. And it appears to be there is something orange  
3 glowing.
- 4 A. There is something there.
- 5 Q. That would be again right up in the area where I  
6 was pointing before on the picture.
- 7 A. Yes. Behind the trees there.
- 8 Q. When we've looked in the photographs there is also  
9 depicted at various times, I mean, there's also depicted in the  
10 photograph four different lights being on in the area of the  
11 eaves over the living room; is that right?
- 12 A. I remember a light being on, I don't remember four.
- 13 Q. Well, these lights on the eaves, are they sort of  
14 like spotlights that would be, one them being one way, the other  
15 one goes the other way, sort of pointing a little bit down and  
16 parallel to the line of the house?
- 17 A. On the eave near the bedroom?
- 18 Q. Right.
- 19 A. There appear to be two lights there, one pointed  
20 back towards the barn and one pointing out toward the open area  
21 in the yard.
- 22 Q. Okay. Showing you Exhibit 247, which is again  
23 little picture of the eaves over the roof on the living room  
24 eaves there, right out there on the palm tree there is a glowing  
25 little orange circle, and in fact that's a spotlight; is that  
26 correct?
- 27 A. That's correct.
- 28 Q. And if you go around the other side of that

1 spotlight you'd see an equal, an opposite spotlight going in the  
2 other direction; is that right?

3 A. Yes.

4 Q. Then there's also depicted as being on this, in  
5 this particular photograph underneath the eave there, two other  
6 lights that are sort of spotlights pointing down; is that  
7 correct?

8 A. That's correct.

9 Q. Now, during the time that you were at the crime  
10 scene, did you personally ever turn off, turn -- excuse me --  
11 turn on those lights after you arrived and before Mr. Duffy took  
12 those pictures?

13 A. No.

14 Q. And did you ever see anybody else do it?

15 A. No.

16 Q. When you were there in the daylight, was it, were  
17 those nightlights particularly noticeable?

18 A. No.

19 Q. When you are there at night, are they quite  
20 noticeable?

21 A. Yes.

22 Q. And do the living room lights likewise illuminate  
23 the whole lawn area out here and even to the other side of the  
24 road?

25 A. The inside living room lights?

26 Q. No. The one outside the two eaves and two under,  
27 do they illuminate the whole area out on the lawn out to the  
28 driveway and then the other side?

3

1           A.     I wasn't paying that much attention to them.  
2           MR. NEGUS: That would be a convenient spot.  
3           THE COURT: Okay. You will have to return tomorrow.  
4                   We will have to resume at 9:30 tomorrow morning.  
5     Remember the admonition and drive carefully, if you drive.  
6     Goodnight.  
7                               --oo0oo--  
8                   (Adjournment.)  
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