

# **Exhibit A**

1 THE COURT: I'm not sure that I follow you.  
2 Do you have items --

3 MR. LEVIN: I have an exhibit I want to  
4 mark. I want to know if you want me to go in order  
5 of just one complete order, or do you want me to mark  
6 it Defense A?

7 THE COURT: "A" would be fine.

8 MR. LEVIN: All right. Thank you.

9 THE COURT: You don't have any items marked  
10 already?

11 MR. LEVIN: No.

12 THE COURT: "A" would be fine.

13 BY MR. LEVIN:

14 Q I'm marking an 8-1/2-by-11 sheet  
15 of paper Defense Exhibit A. I'd like to show you  
16 this.

17 Do you recognize that at all?

18 A Yes, I do, sir.

19 Q What is that?

20 A It's what's called an APR. Stands for  
21 all-points radio broadcast.

22 Q And what is an all-points radio  
23 broadcast?

24 A It's usually when there's a significant  
25 crime, vehicle theft or something, where you have  
26 some type of information that you want to let other  
27 officers know. Then you contact dispatch and have  
28 them put an APR out.

1 Q Did you put an APR out in this case?  
2 A Yes, I did, sir.  
3 Q Did you indicate suspects in your APR?  
4 A I could look at it and tell you.  
5 Q Please.  
6 A Okay.  
7 Okay, sir.  
8 Q Did you?  
9 A Yes, I did, sir.  
10 Q What were the suspects you put out in  
11 your APR?  
12 MR. BOZICH: Objection. Hearsay.  
13 Irrelevant.  
14 THE COURT: Sustained.  
15 BY MR. LEVIN:  
16 Q Were you looking for any particular  
17 type of suspects prior to your investigation?  
18 A I wasn't, sir. No, sir.  
19 Q Well, did you have information that the  
20 race of certain suspects was involved?  
21 A I believe I did, yes, sir.  
22 Q And would that include a white male?  
23 MR. BOZICH: Objection. Calls for hearsay.  
24 THE COURT: Sustained.  
25 MR. LEVIN: Just to go to his state of mind  
26 with respect to what he did or didn't do at the crime  
27 scene.  
28 THE COURT: All right. Again, ladies and

1 gentlemen, this testimony that you're now going to  
2 hear is not offered to prove the truth of the matter  
3 asserted in the statement but merely showing this  
4 deputy's state of mind at the time. And to that  
5 limited extent the objection is overruled.

6 BY MR. LEVIN:

7 Q Deputy, isn't it true that, while you  
8 were there, you had information that a white male was  
9 a suspect in this case?

10 A Yes, I did, sir.

11 Q Did you look at all for a white male in  
12 the vicinity of this crime scene?

13 A I don't recall, no -- well, no, sir, I  
14 didn't.

15 Q The people at the adjacent apartment on  
16 the landing to the left where you saw Miss Croudy  
17 coming out -- they were white, were they not?

18 A To the best of my knowledge, I -- no,  
19 they weren't, sir.

20 Q What race were they?

21 A They were Hispanic, sir.

22 Q Did you ever seek to identify those  
23 people?

24 A Yes, I did, sir.

25 Q And when you designate a white as a  
26 suspect, is that -- would that include a Hispanic, or  
27 would you designate a Hispanic as a Hispanic?

28 A Hispanic as a Hispanic, sir.

1 Q In any case, you put it in the  
2 envelope. What would you do with the envelope after  
3 you would put the swab in it?

4 A I was carrying around a small bag, and  
5 I would drop the coin envelope with the swab in it  
6 inside that bag. And I'd continue doing the same  
7 process for the rest of the possible bloodstains.

8 Q Well, after you would go do a possible  
9 bloodstain, you'd do the control swab?

10 A I'd do the control swab, and then I  
11 would do the swab with the possible stain.

12 Q And how would you collect the swab --  
13 how would you collect, rather, the possible blood  
14 with the swab?

15 A Same procedure would be used: Dipping  
16 the swab into the jar of water, shaking the excess  
17 water off the swab, and it's twirling or rubbing the  
18 swab on the stain itself to pick up as much of the  
19 stain as possible and then placing that stain swab in  
20 the coin envelope, folding the flap over and putting  
21 it in a small bag and going to the next item.

22 Q Again, at that point in time are you  
23 sealing the swab with the possible blood?

24 A No.

25 Q Are you taking -- where are you getting  
26 the Q-Tips -- or the swabs, as you call them?

27 A We store those in a glass jar.

28 Q And how many times would you use a

1 Q-Tip?

2 A Once.

3 MR. LEVIN: Objection. Vague.

4 THE COURT: Rephrase.

5 BY MR. BOZICH:

6 Q When you would go and try and do the  
7 control swab, would you use a new Q-Tip for that  
8 function?

9 A Yes.

10 Q All right. After you would collect  
11 whatever sample you wanted, you'd take that Q-Tip and  
12 put it in an envelope?

13 A Coin envelope, yes.

14 Q Would you then go get a new Q-Tip or a  
15 used Q-Tip to collect the blood?

16 A New Q-Tip.

17 Q Are you taking and dipping new Q-Tips  
18 into the water each time?

19 A Yes, I am.

20 Q As you went through and collected the  
21 control swabs and the swabs with the possible blood,  
22 did you always put them in this bag?

23 A Yes.

24 Q Did you take any precautions to make  
25 sure that they didn't come out of the envelopes or  
26 get mixed up?

27 A I wrote on the outside of the envelope  
28 whether it was a control swab or a swab of possible

1 blood and also the evidence marker designation for  
2 that, which includes the swab.

3 Q As you would collect a swab -- whether  
4 it was the control swab or a swab for possible  
5 blood -- the envelope that you put it into, would you  
6 write something on it?

7 A Yes.

8 Q And would you write basically  
9 designating what it was?

10 A What it was.

11 Q Would you write anything about the  
12 location you got it?

13 A I believe I would write on there the  
14 approximate location of where it came from and also  
15 the time that it was collected.

16 Q And would you write the letter  
17 designation that was given to each of these items?

18 A Yes.

19 Q Would you put the swab that had the  
20 possible blood and the swab that had the control  
21 sample in the same envelope or different envelopes?

22 A No. They're each in a separate  
23 envelope.

24 Q And, in general, what kind of envelopes  
25 are you talking about?

26 A They're small manila coin envelopes.

27 Q How long did it take you to collect all  
28 the possible bloody tissue samples that you have been

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A Yes. That's correct.

Q The evidence tags show them as being  
B and M?

A Yes.

Q Okay. You've got another smaller coin  
envelope; correct?

A That is correct.

Q All right. Can you hold it up so I can  
read it, please.

It's designated in red ink "Victim  
Valerie Arnold"? I'm just trying to identify things  
for the record. Is that what it says?

A It says "Victim" on it, and it also has  
Valerie Arnold's name.

Q All right. Can you set that aside,  
please.

A (Complied.)

Q Okay. Now, a smaller brown  
envelope -- okay -- I just want to read this into  
the record real quick; okay? Smaller brown envelope  
that has an item number, T-11; ~~is~~ is that correct?

A That is correct.

Q Okay. Set that aside, please.  
Another small brown envelope designated  
item number T-8; is that correct?

A That is correct.

Q Set that aside, please.  
Can I see -- you're holding three more

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1 coin envelopes; correct?

2 A That is correct.

3 Q Could you turn them so that I can read  
4 them, please. One has the name Orlando Watley. One  
5 has Jeremy Burris. And one has Robert Hogue?

6 A That is correct.

7 Q Could you take all of the items you  
8 took out of that larger brown envelope and put them  
9 back in that envelope except the two white ones.

10 A (Complied.)

11 Q The larger brown envelope you're now  
12 holding that has "DNA Samples" on it -- have you seen  
13 that before?

14 A Yes, I have.

15 Q Have you written on it anywhere?

16 A No, I have not.

17 Q Could you set that aside for a moment,  
18 and we'll get back to the two envelopes.

19 Start with the one with the sheriff's  
20 designation B, please. Could you turn it over for a  
21 moment on the other side.

22 A (Complied.)

23 Q Could you turn the -- I forgot to do  
24 something. Let me do it before I forget.

25 The larger brown envelope that all the  
26 smaller ones came out of has a court designation  
27 sticker on it designating it as Exhibit No. 169?

28 A That is correct.

1 Q That's on the larger envelope that all  
2 the smaller ones have been placed into?

3 A Yes, it is.

4 Q Let's go back to the larger white  
5 envelope then. That one has been designated by the  
6 sheriff's department as B?

7 A Yes, it has.

8 Q And, again, is this another one of the  
9 envelopes from the possible bloodstains and control  
10 samples you collected that morning?

11 A Yes, it is.

12 Q Is it filled out in the same manner --  
13 not only the evidence tag but the envelope -- as  
14 you've described you filled out previous ones?

15 A Yes, it is.

16 Q Is it presently sealed?

17 A It appears to be sealed.

18 Q All right. And does it appear there's  
19 a swab still inside or the swabs are still inside?

20 A There appears to be an object with the  
21 consistency of a swab inside.

22 Q All right. Could you take that and put  
23 it back inside the larger brown envelope, please.

24 Take the other white envelope. And  
25 does it have the designation by the sheriff's  
26 department of the letter M?

27 A Yes, it does.

28 Q Again, is that tag and envelope filled

1 out by you in the same manner you've already  
2 described you filled out the other envelopes?  
3 A Yes, it is.  
4 Q Does it appear there's a swab inside it  
5 right now?  
6 A There appears to be.  
7 Q And does this envelope appear that it's  
8 been opened since you last sealed it?  
9 A Yes, it does.  
10 Q Is it presently sealed?  
11 A Appears to be presently sealed.  
12 Q Okay. And, again, this one designated  
13 M and the other one we just looked at that was  
14 designated B by the sheriff's department were the  
15 swabs you collected at the scene with the same letter  
16 reference?  
17 A Yes.  
18 Q Would you go ahead and put that  
19 envelope, please, back into the brown one.  
20 A (Complied.)  
21 Q Have you done that?  
22 A I have done so.  
23 Q Would you take the brown one, please,  
24 and put it back into the plastic bag it came out of.  
25 A (Complied.)  
26 Q Have you done that?  
27 A I've done so.  
28 Q That one has some blue markings on it?

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A Yes, it does.

Q Go ahead and take that and put it back into the outer clear plastic bag.

A I've done so.

Q Could you put that back in the cooler, please.

A (Complied.)

Q I'm going to show you what's been marked People's No. 65 for identification. Do you recognize that? Let me get rid of this other one first.

A Yes, I do.

Q What is shown in those photographs?

A Shown is the south entrance to the apartment complex.

Q Is that at the -- is that at the Fred Waring entrance?

A That is the Fred Waring entrance.

Q Did you take the photographs?

A Yes, I did.

Q Do you recall when?

A I believe it was in 1995, the latter part.

Q The swabs that you collected of the possible blood at the scene when you were actually collecting the possible blood, not the control samples -- but did you use one swab to collect each of those possible bloodstains, no matter how many may

1 have been in each photograph or each letter  
2 designation?

3 A One swab for the letter designation for  
4 the number of stains that were there.

5 MR. BOZICH: I don't believe I have anything  
6 further, your Honor.

7 THE COURT: Should we go ahead and stop a  
8 few minutes early for lunch then?

9 MR. LEVIN: Whatever, your Honor, is your  
10 pleasure.

11 THE COURT: All right. We'll do the same as  
12 we did yesterday, ladies and gentlemen. We'll try  
13 and get started a little before 1:30, say about  
14 1:20. And we'll go ahead and stop now for lunch.  
15 Once again, assemble at the jury assembly room, if  
16 you would, and remember the admonitions.

17 Have a good lunch. We'll see you about  
18 1:20.

19 You may step down, Mr. Fisher. But you  
20 can come back?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 (The jury exited the courtroom.)

24 MR. BOZICH: Your Honor, may the witness  
25 also be excused?

26 THE COURT: Yeah.

27 All of the jurors have left.

28 Gentlemen, I just had a logistical

1 A That is correct.

2 Q Put that back in the bag it came out  
3 of, please.

4 A (Complied.)

5 Q Would you put that back in the cooler  
6 then.

7 Wait a minute. You looked at me kind  
8 of strange. Now I know why. L is in that bag;  
9 right?

10 A Yes.

11 Q Take out L, please.

12 A (Complied.)

13 Q Would you set that down for a moment.

14 Would you take what's been marked

15 People's No. 169 for identification and take out

16 just the envelope marked M -- or designated for the  
17 letter M.

18 A Place this back in the cooler?

19 Q You can put that back in the cooler for  
20 right now.

21 Mr. Fisher, as you went through the  
22 items in the collection of these items, some of them  
23 were only a couple of minutes apart?

24 A Yes.

25 Q How long does it actually take you to  
26 take a swab and collect the possible bloodstains in  
27 this case?

28 A It varies on how far apart the swabs

1 are, how quickly you can actually remove a swab from  
2 the container it's in, dipping it in the water,  
3 actual motion of collecting the stain and putting it  
4 back in the envelope.

5 Q In terms of L and M, which I'm showing  
6 you is marked on People's No. 8 for identification,  
7 are they right next to each other on the handrail?

8 A No.

9 Q Where are they?

10 A One is on the handrail, and I believe  
11 the other one is on the step.

12 Q Are they next to each other?

13 A Relatively close.

14 Q The time you have down for both of  
15 those is 9:40 for each?

16 A Yes.

17 Q Can you explain that.

18 A Relatively close proximity to each  
19 other. And when I actually looked at my watch, it  
20 could be that it just turned that minute. And then  
21 when I got to the next one, maybe the -- that minute  
22 hadn't turned over to the next minute between that  
23 time I actually saw my watch.

24 Q Did you completely put away the one  
25 swab with the possible blood before you went to the  
26 next one to collect?

27 A Yes.

28 Q Do you recall which one you actually

1 INDIO, CALIFORNIA; MONDAY, NOVEMBER 17, 1997

2 MORNING SESSION

3 --000--

4  
5 (The following proceedings were held  
6 out of the presence of the jury:)

7  
8 THE COURT: Good morning.

9 MR. BOZICH: Good morning, your Honor.

10 MR. LEVIN: Good morning, your Honor.

11 THE COURT: Call the People versus Watley,  
12 ICR 22535. Mr. Watley and all attorneys are  
13 present. No jurors are as yet present.

14 Well, gentlemen, we have ten minutes  
15 before we bring the jury in.

16 MR. BOZICH: I have a couple of matters, but  
17 I think Mr. Ulli -- Mr. McNulty -- excuse me --  
18 wanted to address the Court for a moment.

19 THE COURT: Mr. McNulty.

20 MR. McNULTY: Good morning, your Honor.

21 THE COURT: Good morning.

22 MR. McNULTY: I was going to ask the Court,  
23 when I talked to Mr. Levin, about releasing certain  
24 items of evidence to the custody of one of my  
25 investigators for the purposes of having them  
26 photographed to send to one of the experts in this  
27 particular case and get a duplicate set for Mr. Levin  
28 for his expert, as a matter of courtesy. I don't

3046

1 think Mr. Levin has any objection to that release,  
2 but they have been previously marked. They have been  
3 entered as evidence in a previous trial.

4 THE COURT: Have you identified those  
5 exhibit numbers that you want to Mr. Levin?

6 MR. McNULTY: Yes, I have.

7 THE COURT: Mr. Levin.

8 MR. LEVIN: No objection.

9 THE COURT: All right. Those -- assuming  
10 you folks know what numbers they are, that order will  
11 be approved.

12 MR. McNULTY: Do you want me to state them  
13 for the record?

14 THE COURT: You may as well.

15 MR. McNULTY: The items marked as 229  
16 through 241, 243, 247 through 254, 263 through 265,  
17 267 through 272, and then finally 280.

18 THE COURT: 280?

19 MR. McNULTY: 280.

20 THE COURT: Very good. And to whom are we  
21 releasing them? Mr. Bowser?

22 MR. McNULTY: To Mr. Bowser.

23 THE COURT: All right. That will be the  
24 order then.

25 MR. McNULTY: Thank you, your Honor. That's  
26 all I have.

27 THE COURT: You're welcome, sir.

28 MR. BOZICH: As of this morning, I don't

1 MR. LEVIN: I have nothing further.

2 THE COURT: Mr. McNulty.

3 MR. MCNULTY: I have no questions.

4 THE COURT: Thank you, Miss Grossweiler.

5 THE WITNESS: Here's the sample, the 213  
6 back. Get myself in order a little bit.

7 THE COURT: There was an item Miss Grossweiler  
8 took from her personal notes. Is she going to be  
9 allowed to keep that?

10 THE WITNESS: This.

11 MR. LEVIN: I have no objection to her keeping  
12 that.

13 MR. MCNULTY: Absolutely, your Honor.

14 THE COURT: Mr. McNulty.

15 MR. MCNULTY: Thank you, your Honor. If I  
16 could have a second with Miss Grossweiler.

17 My next witness is Mr. Gregonis, Dan  
18 Gregonis.

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

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Please be seated.

26 State your full name spelling your last  
27 name for the record.

28 THE WITNESS: Daniel C. Gregonis,

1 G-R-E-G-O-N-I-S.

2 THE COURT: Mr. McNulty.

3  
4 DANIEL C. GREGONIS,

5 called as a witness by and on behalf of the People,

6 having been first duly sworn, was examined and testified

7 as follows:

8  
9 DIRECT EXAMINATION

10 BY MR. MCNULTY:

11 Q Good afternoon, Mr. Gregonis.

12 A Good afternoon.

13 Q If at any time I ask you a question you  
14 don't understand, will you let me know so I can  
15 rephrase it?

16 A Certainly.

17 Q Would you afford Mr. Levin the same  
18 courtesy?

19 A Yes, I will.

20 Q Who do you work for?

21 A I am employed by the San Bernardino  
22 Sheriff's Department in the scientific investigations  
23 division.

24 Q What do you do in the scientific  
25 division for the San Bernardino County Sheriff?

26 A I am a criminalist.

27 Q How long have you been a criminalist?

28 A Since July of 1979.

1 Q How long have you worked in the crime  
2 lab for the San Bernardino County Sheriff?

3 A Since July of 1979.

4 Q What's your title there within the  
5 laboratory?

6 A It's criminalist II is basically the  
7 title. I also hold other subtitles within the  
8 laboratory.

9 Q Let me ask you, are you also a sworn  
10 peace officer?

11 A Yes, I am.

12 Q What title? Deputy sheriff?

13 A Deputy sheriff.

14 Q How long have you been a deputy sheriff?

15 A Since July of 1979.

16 Q Did you have to go through some type of  
17 police academy or sheriff's academy to become a deputy  
18 sheriff?

19 A Yes, I did.

20 Q With respect to your performance on job  
21 duties as a criminalist or scientist, do you hold any  
22 formal education?

23 A Yes, I do.

24 Q Do you have any degrees?

25 A Yes, I do.

26 Q What degree or degrees do you hold,  
27 sir?

28 A I have a bachelor of science degree in

1 for math criteria. The other one is a study which we  
2 did on hat bands to see whether or not we could do DNA  
3 types on hat bands to identify the potential owner of  
4 the hat.

5 Q I wasn't sure that I heard hat band,  
6 meaning H-A-T space B-A-N-D.

7 A Hat band, yes, sir.

8 Q Would you expand what you mean by DNA  
9 typing on the hat band as it pertained to that  
10 particular paper. You mean taking DNA off the hat  
11 band?

12 A Simply in particular on a ball cap or  
13 something like that if you have a person's sweat, they  
14 have their cells in there and in the cells there's  
15 going to be some DNA but along with that there's going  
16 to be some bacteria and stuff, and bacteria will chew  
17 away the cells in the DNA eventually. Our question  
18 was whether or not we could actually type the DNA  
19 reliably out of the hat band, that we extracted from  
20 the hat band.

21 Q That paper was in fact published?

22 A Yes, it was.

23 Q How many times have you testified in  
24 the state of California as an expert regarding DNA?

25 A Eighteen times.

26 Q And if you recall regarding these  
27 particular results that you are going to testify to  
28 today, how many times have you testified in court?

1 A I believe a total of three.

2 Q What types, just by their names of  
3 tests, did you perform in this particular case?

4 A Generally there's two categories of  
5 testing, one of which is called RFLP testing. The  
6 other type or category of testing with based on what  
7 is known as PCR.

8 Q What does the PCR stand for?

9 A The PCR stands for polymerase chain  
10 reaction.

11 Q Was does the RFLP stand for?

12 A RFLP stands for restriction fragment  
13 length polymorphism.

14 Q With respect to the PCR method, did you  
15 look at any particular locations for the samples given  
16 to you?

17 A Locations meaning places on the DNA?

18 Q Correct.

19 A Yes, I did.

20 Q What location did you look at?

21 A There's a total of seven different  
22 locations. The first one is called D1S80 which is on  
23 chromosome Number 1. Then we go to one called  
24 DQ-Alpha or DQ-A1 which is on chromosome Number 6. We  
25 then take a look at LDLR which is, stands for low-  
26 density lipoprotein receptor which I'm not sure, it's  
27 either on chromosome Number 11 or 19. Then we have  
28 GYP-A or GYPA which located on chromosome Number 4.

1 What's on the TV monitor is simply showing the  
2 chromosomes 20 --or 23 pairs of chromosomes in humans.

3 Q Does that pretty accurately show what a  
4 human's chromosome looks like?

5 A Essentially, yes, it does.

6 Q Now, with respect to the PCR method in  
7 this particular case, did you do that on one occasion  
8 or more than one occasion?

9 A I on more than one occasion.

10 Q Do you recall roughly when the first  
11 occasion was that you performed that particular test?

12 A May I look at my notes?

13 Q Would that help refresh your memory?

14 A It certainly would.

15 Q Please do.

16 A As far as the first time that I started  
17 some PCR analysis was May 19th of 1994.

18 Q When did you perform your additional or  
19 second PCR analysis?

20 A There was additional PCR analysis --  
21 excuse me -- on January 31st, 1994. As well as  
22 additional work done August 26th of 1996.

23 THE COURT: Mr. Gregonis, would you give me  
24 the first two dates again, please.

25 THE WITNESS: Just in the order of my notes,  
26 it's May 19th, 1994, and then also I have a page dated  
27 January 31st, 1994.

28 THE COURT: So you did not give us the order

1 of times you looked at them. You just gave us the  
2 three dates that you looked at them.

3 THE WITNESS: Yes, I did, your Honor.

4 BY MR. MCNULTY:

5 Q Sir, I'm going to place up on the  
6 witness stand next to you the chart that's been marked  
7 227 for identification. See that, sir?

8 A Yes, I do.

9 Q It's labeled at the top "DQ-Alpha  
10 Alleles."

11 A Yes.

12 Q For the test, the PCR test conducted in  
13 1994, were those the available DQ-Alpha alleles?

14 A Yes, they were.

15 Q With respect to the manner in which you  
16 received your results, looking at the strips and going  
17 through the process of PCR, was there any type of kit,  
18 K-I-T, used?

19 A Yes. We used a kit that we purchased  
20 from Perkin-Elmer Corporation.

21 Q Is that kit pretty standardized in the  
22 industry?

23 A Yes, it is.

24 Q And from that kit, looking at the  
25 DQ-Alpha -- I want to add Number 225 for  
26 identification which has the word "PM Alleles" at the  
27 top. Do you recognize that?

28 A Yes, I do.

1 Q Did I correctly write down what it was  
2 you just testified to?  
3 A Yes, you did.  
4 Q What's the next item?  
5 A The next item is item M.  
6 Q M, as in "Mary"?  
7 A Yes.  
8 Q Okay. And how was that described to  
9 you?  
10 A Item M is described as blood from a  
11 handrail.  
12 Q And the next item?  
13 A The next item is T-8.  
14 Q And how was that described to you?  
15 A Bloodstain on a truck.  
16 Q And the next item?  
17 A Is T-11, which was also identified as a  
18 bloodstain from a truck.  
19 Q Did I correctly write that down, sir?  
20 A Yes, you did.  
21 Q With respect to item B, as in "boy,"  
22 you said you performed the DQ-Alpha. Was that once  
23 or more than once?  
24 A Just once.  
25 Q And when was that?  
26 A That was in March of 1994.  
27 Q And what was that result?  
28 A That is a 1.1, comma, 4.

1 A Yes, it is.  
2 Q And let's go down to T-11. Did you do  
3 the DQ-Alpha polymarker for that?

4 A Yes, I did.

5 Q And what is that result, please.

6 A That is a type 1.2, comma, 4.1.

7 Q And the polymarker?

8 A The LDLR is a type AB.

9 The GYP-A is a B or BB.

10 The HBGG is a type A or AA.

11 The D7S8 is an A or AA.

12 And the GC is a B or BB.

13 Q And, again, in terms of a person -- or  
14 the sample labeled for a particular person, would it  
15 be the same result as for M, that you could not

16 exclude --

17 A I could not exclude the sample labeled  
18 as A originating from Mr. Watley.

19 Q Okay. Did you have an opportunity,  
20 sir, to perform any other tests on sample, let's say,  
21 M?

22 A Yes.

23 Q What other tests did you do on sample  
24 M?

25 A Another test that I performed on sample  
26 M was the restriction fragment length polymorphism  
27 test or RFLP.

28 Q And did you perform that RFLP test on

1 INDIO, CALIFORNIA; WEDNESDAY, DECEMBER 10, 1997

2 MORNING SESSION

3 --000--

4  
5 THE COURT: Good morning. We'll call again.  
6 the matter of People versus Watley, ICR 22535.  
7 Mr. Watley, Mr. Levin, Mr. McNulty, all 17 jurors,  
8 and Mr. Gregonis are present.

9 Mr. Gregonis, you'll just remain under  
10 the same oath that you took yesterday, sir. Okay?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: All right.

13 Mr. McNulty.

14 MR. McNULTY: Thank you.

15  
16 DANIEL C. GREGONIS,

17 called as a witness by the People, having been  
18 previously duly sworn, was examined and testified as  
19 follows:

20  
21 DIRECT EXAMINATION CONTINUED

22 BY MR. McNULTY:

23 Q Welcome back, Mr. Gregonis.

24 With respect to item A that you  
25 analyzed using the PCR method, if you recall, was  
26 there enough of that sample left over for another  
27 test?

28 A Yes, there is.

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1 Q With respect to item M, do you recall,  
2 sir, whether or not there's enough left over for  
3 another PCR test?

4 A I believe for item M, I used up the  
5 entire sample that was given to me.

6 Q When you have extracted the DNA from  
7 the -- in this case, the blood source -- do you keep  
8 any of that extracted DNA?

9 A If I don't use it in my analysis, yes,  
10 I do.

11 Q Did you use all of the extracted DNA?

12 A For item M, yes, I did.

13 Q What about for item T-8?

14 A T-8 -- there is still remaining  
15 extracted DNA from that sample.

16 Q And what about for T-11?

17 A Also there is remaining DNA from that  
18 sample.

19 Q I want to go on, sir, to the D1S80  
20 location using the PCR method. In this particular  
21 case you mentioned you had performed D1S80 on certain  
22 samples?

23 A That is correct. I did.

24 Q Did you get a D1S80 result for those  
25 samples that you analyzed?

26 A Yes, I did.

27 Q And did you take photographs or some  
28 type of picture to memorialize the result that you

1 boxcar analogy is not really good.

2 Q Okay.

3 A However, the DQ-Alpha is smaller than  
4 any of these, including the 14. So if the sample is  
5 very degraded, the DQ-Alpha may still amplify, where  
6 you may not get anything from the D1S80.

7 Q So it would be fair to say that the  
8 D1S80 is more sensitive to degradation?

9 A Yes, it is.

10 Q Okay. And what's in lane No. 5?

11 A Lane No. 5 is another allelic ladder or  
12 yardstick, as you call it.

13 Q And why is there a ladder in lane No. 2  
14 and lane No. 5?

15 A It's simply the way that we set up the  
16 protocol. We want a standard -- standard ladder or  
17 yardstick next to every single sample. And it helps  
18 for diagnostic purposes.

19 Q Okay. And, again, is that ladder in 5  
20 inserted in the gel the same way the ladder in 2 is?

21 A Yes, it is.

22 Q So the ladder and the samples were all  
23 running at the same time?

24 A That is correct. Yes.

25 Q What was placed in lane No. 6, please?

26 A Lane No. 6 is item M.

27 Q Would that be the same item M you  
28 performed the PCR, DQ-Alpha, and polymarker tests

1 back in '94 and '96?

2 A Yes.

3 Q And what result did you get for item M?

4 A M is a 21, 31.

5 Q What, if anything, sir, was placed in  
6 lane 7?

7 A Lane 7 is a substrate control for item  
8 M.

9 Q And what, if any, result did you get  
10 there?

11 A I got no results from that sample.

12 Q And when you're analyzing a control, do  
13 you expect to see any type of result?

14 A Depends on what the sample really is.  
15 An item of clothing may actually show the background  
16 levels from the individual who wears the clothing,  
17 but, for instance, a swabbing of a sidewalk or  
18 something like that may not show anything and  
19 probably will not show anything.

20 Q What about if you assume a handrail  
21 that a person or persons may use to hold onto to walk  
22 down steps?

23 A That may show some background.

24 Q In this particular case did you have  
25 any background?

26 A I believe I had background in the PM,  
27 DQ-A1, or at least the DQ-Alpha work but not in the  
28 D1S80.

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Q At the top it says "What is DNA"?

A Yes.

Q You've already described DNA for us?

A Briefly, yes.

Q All right. The right-hand side then talks about the bases. Does this fact accurately give some pictorial representation of how the bases bond together?

A It's a good illustration of what on a microscopic level might be in the DNA strand.

Q In the center of this particular diagram it says "The Long Test." In some of the terms is RFLP considered a long test?

A It's long in the fact that it takes longer to perform in time than the PCR analysis.

Q How long does PCR analysis normally take?

A From the time I receive a sample to the time I actually have a result, I could potentially do that within a week.

Q How long normally does the RFLP process take?

A The RFLP process, because there's a lot of -- kind of incubation time, takes anywhere from five to six weeks.

Q What is the first step in doing the RFLP process?

A Well, once I've extracted the DNA --

1 extraction of the DNA is the same as for the PCR  
2 methods and also the quantification of the DNA --  
3 once I have the DNA out and I judge that there's  
4 sufficient quality and quantity of DNA to perform the  
5 RFLP test, the first thing I do is I take an amount  
6 of DNA and I put it in a test tube. And I also add  
7 a -- what's called a restriction enzyme to that test  
8 tube. This restriction enzyme is -- can be thought  
9 of as kind of molecular scissors, because it's a very  
10 specific molecular scissors that cuts at only certain  
11 sequences of the DNA.

12 Q So in the first illustration it shows,  
13 I guess, what would be blood and an arrow out talking  
14 about extracted DNA?

15 A Yes.

16 Q Then the next step -- it shows DNA  
17 fragments. Is that what you've talked about after  
18 the molecular scissors cut up the DNA?

19 A Yes.

20 Q For this particular procedure that you  
21 used, is there a specific enzyme that you use to cut?

22 A Yes, there is. It's called Hae III,  
23 H-a-e, a Roman numeral III.

24 Q Are there other enzymes that you could  
25 use to cut up the DNA?

26 A Sure, and they are used by different  
27 laboratories.

28 Q Is there any particular reason why your

1 laboratory uses the Hae III enzyme?

2 A There's a couple of reasons. One is  
3 that this is kind of the standardized enzyme that's  
4 used in forensic -- or at least public forensic labs  
5 in the United States. And the reason why it was  
6 chosen is because of both characteristics of the  
7 enzyme, that it's very hardy and it works with  
8 forensic samples, as well as the fact that it cuts  
9 the fragments into smaller pieces.

10 Q What do you mean by hardy in terms of  
11 forensic science?

12 A Because forensic samples may be --  
13 come from different types of substrates -- you know,  
14 blue jeans, dirt, bedsheets, carpet -- whatever it  
15 might be. The enzyme has to be able to operate in an  
16 environment that has a lot of different contaminants  
17 in it, such as dyes and dirt, soils, other things  
18 like that.

19 Q If you look at the top right-hand  
20 corner as an example in this diagram, it shows along  
21 the horizontal portion a T, a T, a C, a G, and an A.

22 Did I recite that correctly?

23 A Yes, you did.

24 Q You mentioned the enzyme -- the Hae III  
25 enzyme -- looks for a particular sequence and then  
26 cuts at that particular sequence?

27 A That's correct.

28 Q What sequence does the Hae III enzyme

1 look for?

2 A The sequence is a GGCC, and it cuts  
3 between the G and the C.

4 Q So if we could picture a G, a G, a C,  
5 and a C, the enzyme would cut it right in the middle  
6 there?

7 A Correct.

8 Q Okay. So after you have the fragments,  
9 if you will, of the DNA, what happens next?

10 A The next thing that we do is we load  
11 that onto an electrophoresis gel. This gel is  
12 actually much thicker than the previous gel that I  
13 described. It's perhaps a half inch thick. And then  
14 we apply an electric field to separate the fragments.

15 Q Does that electric field work in the  
16 same fashion as the electric field in the D1S80?

17 A Yes, it does.

18 Q Is it done in the same procedure?

19 A It's done in a slightly different  
20 apparatus, but it's done essentially in the same way.

21 Q Do you have a gel in between a couple  
22 plates of something?

23 A It's -- actually the gel is between a  
24 couple of electrodes. And the electrodes and the gel  
25 are immersed in water or a buffer solution.

26 Q And is the DNA still negatively  
27 charged?

28 A Yes, it is.

1 the chart where you had the sequence of letters on  
2 one strand, they will recognize that sequence of  
3 letters on the strand. And they will bind kind of  
4 like Velcro to the piece of DNA that's on the  
5 membrane itself.

6 Q And is that premised upon the  
7 biological fact of DNA -- an A goes to a T and a G  
8 goes to a C?

9 A Yes.

10 Q With respect to the sequence that the  
11 probe is looking for, must it be particularly perfect  
12 for whatever the sequence the probe is?

13 A Under the conditions that we're  
14 operating, it doesn't have to be absolutely the same,  
15 but it has to be extremely close.

16 Q Okay. And what -- what are the -- in  
17 terms of being extremely close, you mean for the  
18 particular region that it binds to or for areas on  
19 either side of it?

20 A For the particular area that it binds  
21 to.

22 Q In this particular case did you run  
23 samples through the RFLP process?

24 A Yes, I did.

25 Q Do you recall what samples you went  
26 through in the RFLP process?

27 A Yes, I do.

28 Q And what samples did you go through?

1 A As far as the samples that I analyzed  
2 with RFLP, the -- of the ones that we talked about,  
3 item T dash 8 and T dash 11, as well as reference  
4 blood samples item A identified as coming from  
5 Watley, item C identified as coming from Hogue,  
6 item D as identified as coming from Burris, item E  
7 identified as coming from Arnold, a question  
8 bloodstain from the sidewalk, item B, and also  
9 item M.

10 Q In a moment I'm going to show you a  
11 couple autorads. In this particular case how many  
12 probes did you use in the RFLP method?

13 A I used four different probes.

14 Q And why did you use four different  
15 probes?

16 A First of all, the more -- four  
17 different probes gives us more information. The more  
18 probes, the more information. It is also pretty  
19 much -- that's our standard protocols. These are  
20 probes that are also used throughout the  
21 United States in RFLP analysis.

22 Q With respect to your protocol, is that  
23 sort of like a recipe of how to do the RFLP  
24 procedure?

25 A Essentially, yes.

26 Q Is that written down and available for  
27 review?

28 A Yes, it is.

1 Q With respect to the four probes, would  
2 you list the four probes for us.

3 A The four probes -- the first one is  
4 called YNH-24. The next one is called TBQ-7. The  
5 next one is called MS-1. And the last is PH-30.

6 Q With respect to the YNH-24 probe, do  
7 you know what chromosome number it looks to?

8 A That particular one looks at chromosome  
9 No. 2.

10 Q With respect to the TBQ-7, do you know  
11 what chromosome that looks to?

12 A That looks at chromosome No. 10.

13 Q With respect to the MS-1, what  
14 chromosome does that look to?

15 A Chromosome No. 1.

16 Q And the PH-30, what chromosome does  
17 that look to?

18 A Chromosome No. 4.

19 Q And with respect to the probes that go  
20 to each of those specific chromosomes, do they go to  
21 a particular site on that particular chromosome?

22 A Yes, they do.

23 Q I've got 278 for identification  
24 purposes. Let me hand it to you first so you get  
25 familiar with it.

26 Do you recognize that?

27 A Yes, I do.

28 Q Just focusing in on -- excuse me --

1 the red box which says "RFLP analysis autorad," you  
2 mentioned that one of the probes goes to the first  
3 chromosome?  
4 A That is correct.  
5 Q And what site or location of that first  
6 chromosome?  
7 A That is at -- labeled as D1S7.  
8 Q D1S7?  
9 A Yes.  
10 Q And earlier you did the D1S80?  
11 A Correct.  
12 Q Would that be on the same chromosome?  
13 A Yes, it is.  
14 Q But a different location?  
15 A That is correct. It is.  
16 Q You mentioned one of the tests that you  
17 did went to the second chromosome?  
18 A Yes.  
19 Q Any particular site?  
20 A The site is called D2S44.  
21 Q D2S44 to a site on the second  
22 chromosome?  
23 A Yes,  
24 Q You mentioned -- excuse me -- one of  
25 the other probes went to the fourth chromosome?  
26 A That is correct.  
27 Q Any particular location?  
28 A The location is called D4S139.

1 Q To a particular location on the fourth  
2 chromosome?

3 A Yes.

4 Q And the last one you said I believe  
5 went to the tenth chromosome?

6 A The tenth chromosome. That is D10S28.

7 Q D10S28.

8 If you include now the RFLP analysis  
9 with the D1S80 analysis with the DQ-Alpha analysis,  
10 how many chromosomes -- just looking at the DQ-Alpha  
11 plus the D1S80 and the RFLP -- how many different  
12 chromosomes have you looked at?

13 A Just looking at the DQ-Alpha plus the  
14 RFLP probes are five different chromosomes.

15 Q DQ-Alpha going to chromosome 6?

16 A Yes.

17 Q And then the sites you just mentioned  
18 previously?

19 A Yes.

20 Q If you add to that the polymarker tests  
21 which are not shown on this particular diagram, how  
22 many total chromosomes have you looked at? I don't  
23 know if it would help you to write it down in front  
24 of you.

25 A Yeah, I think it does.

26 That's a total of eight.

27 Q And how many different locations  
28 total? We know eight different chromosomes, but how

1 many different total locations with the DQ-Alpha,  
2 polymarker, and the RFLP?

3 A A total of 11 different locations.

4 Q I'm going to hand you what's been  
5 marked 252 for identification purposes. Take a look  
6 at that, if you would, please.

7 A Okay.

8 Q Do you recognize that?

9 A Yes, I do.

10 Q And how so?

11 A By the case number 57436, the date of  
12 8/4/94, and my initials which I placed on this item.

13 Q And what is that that you're holding?

14 A This is a copy of an autorad which has  
15 a number of samples pertaining to this case on it,  
16 and it's -- specifically it's to a probe called MS-1,  
17 which is the D1S7 locus.

18 Q And is this the actual size of the  
19 autorad that you produce in the laboratory?

20 A Yes, it is.

21 THE COURT: What court number is that  
22 again?

23 MR. McNULTY: 252.

24 Q If you would go over with us, sir, what  
25 the numbers across the top indicate.

26 A As far as the dark numbers, they  
27 indicate the lane numbers.

28 Q The same as with the D1S80?

1 paper towel. Sorry.

2 THE COURT: Okay.

3 BY MR. MCNULTY:

4 Q Lane 10?

5 A Lane 10 is item 33A1.

6 Q How was that identified to you as?

7 A As a bloodstain off an amp.

8 Q Amp? ---

9 A A-M-P.

10 Q Lane 11?

11 A Lane 11 is my blood -- my DNA control.

12 Q Why is your DNA placed in there?

13 A We use that as what's called an  
14 extraction control. I have bloodstains of uniform  
15 size to assure that I am extracting the sufficient  
16 quantity of DNA, that the extraction went well and  
17 also we noted the approximate sizes of all these bands  
18 so I know that the HAE III cut properly for those  
19 group of samples.

20 Q And lane 12?

21 A Lane 12 is item 33A2 which is  
22 identified as a bloodstain off an amp, A-M-P.

23 Q With respect to 33A1 and 33A2, are  
24 those two separate bloodstains off the same amplifier?  
25 Do you know?

26 A I don't know. They are two separate  
27 bloodstains. And from the description they -- for  
28 instance, 33A1 is described as swab with possible

1 Q Okay. And taking a look at 33A1 and  
2 33A2, who did those match with?

3 A Those samples match the reference blood  
4 sample identified as coming from Arnold.

5 Q Okay. Hand you what's marked 253 for  
6 identification. Do you recognize that?

7 A Yes, I do.

8 Q How's that?

9 A By the case number 7436, the date of  
10 3-3-94 and my initials which I placed on the -- of  
11 this copy.

12 Q What is it that you have in front of  
13 you?

14 A This is an autoradiograph of membrane  
15 that was performed in this case and it has to do with  
16 the locus on chromosome Number 4.

17 Q Okay. Across the top we see some  
18 writing. Can you tell us what that writing is,  
19 please.

20 A That is writing that I placed on there,  
21 an identification of the sample's item numbers in  
22 particular.

23 Q So in the lane marked B -- whoops --  
24 would that associate with the item -- excuse me -- B  
25 that you did DQ-Alpha on back in 1994?

26 A Yes, it does.

27 Q In the lane K562, what is that?

28 A That is once again a human cell line

1 control.

2 Q And M?

3 A M is the bloodstain from the handrail.

4 Q And would that associate with the same  
5 item M that you did the DQ-Alpha polymarker and D1S80  
6 on?

7 A Yes.

8 Q T-8.

9 A Once again that is the same blood  
10 sample I did the polymarker and D1S80 on and it is a  
11 bloodstain identified to me as coming from a truck.

12 Q T-11?

13 A T-11 is a bloodstain coming from a  
14 truck and I also performed the DQ-Alpha polymarker and  
15 D1S80 on that sample.

16 Q Looking at A?

17 A Item A is a reference blood sample  
18 identified as coming from Mr. Watley.

19 Q Did you write the name Watley on this  
20 particular autorad?

21 A Yes, I did.

22 Q For a moment I want to make sure.

23 Is that what you placed the name  
24 Watley on, the autorad?

25 A Yes.

26 Q For lane D?

27 A Lane D is reference blood sample  
28 identified as coming from Burris.

1 of blurred on this.

2 Q Would that be those two marks?

3 A Yes.

4 Q Right here?

5 A Yes, they are.

6 Q Okay. Let's talk about lane M.

7 Describe lane M for us, please.

8 A Lane M is the questioned blood sample  
9 from the handrail. It has two bands and both those  
10 bands match the reference blood sample identified as  
11 coming from Mr. Watley.

12 Q And which is -- which lane is  
13 Mr. Watley?

14 A Where it says A.

15 Q This band right here and this band  
16 right here?

17 A Correct.

18 Q Let's talk about T-8.

19 A T-8 is a blood sample identified to me  
20 as coming from a truck. Has two bands in it which  
21 match the band locations for item A, a blood sample  
22 identified as -- to me as coming from Mr. Watley.

23 Q And does T-8 match up visually with M?

24 A Yes, it does.

25 Q Let's talk about T-11 for a moment.

26 A T-11 is another questioned bloodstain  
27 identified to me as coming from a truck. There are  
28 two bands present in that sample which match the

1 reference blood sample item A identified as coming  
2 from Mr. Watley.

3 Q And matching with A in this direction.  
4 Is that accurate?

5 A Yes, it is.

6 Q Does T-11 match with T-8 and M?

7 A Yes, they do.

8 Q With respect to the RFLP run on --  
9 concerning sample R, the reference sample identified  
10 as Watley, with the sample M, T-8 and T-11, you  
11 identified this one autorad for the one probe. How  
12 many probes did you run?

13 A Four.

14 Q How many of those gave you results?

15 A For item M, four. For item T-8 as well  
16 as T-11, all four probes gave me results.

17 Q And for all four probes did you get the  
18 same result?

19 A Yes, I did.

20 Q What was that?

21 A That the DNA profile for all four  
22 probes match the item A reference blood sample  
23 identified as coming from Mr. Watley.

24 Q Over your career as a criminalist, sir,  
25 have you had occasions to respond to crime scenes to  
26 collect evidence?

27 A Yes, I have.

28 Q Approximately how many times?

1 A Yes, I am.

2 Q Not only by your lab but by labs all  
3 over the country have made mistakes with respect to  
4 analysis of DNA?

5 A Certainly.

6 Q And experts have come to court, have  
7 they not, with broad, vast credentials in the field  
8 and have testified that evidence that has been  
9 associated to a suspect through a DNA analysis in some  
10 cases has produced false results.

11 A I am not aware of any cases, per se,  
12 that an expert has testified that DNA matched a  
13 particular individual when in fact it did not.

14 Q Are you aware of any time when a person  
15 has said that DNA they have examined matched a person  
16 when in fact it did not?

17 A Not in court cases. I am aware of some  
18 proficiency tests that the wrong answer was gotten.

19 Q Proficiency tests are blind tests  
20 conducted by the government; correct?

21 A No. Actually proficiency tests are  
22 provided by private corporations and these private  
23 corporations employ different agencies, many of them  
24 government agencies, with blood or semen samples to  
25 analyze and compare to standard samples submitted in  
26 the same proficiency test.

27 Q So essentially a proficiency test is  
28 where a blood sample is sent blind to a laboratory and

1 from the people associated with the name on the  
2 envelope and the information associated with the item  
3 on the envelope, all the RFLP testing that you did on  
4 this case, okay, assume that for a moment that it's  
5 all true.

6 A Okay.

7 Q Item M as in Mary, was a bloodstain  
8 that had come from the handrail outside the location  
9 of those homicides; correct?

10 A That's how it was identified to me as.

11 Q And if I ask you also -- do you know  
12 this individual here?

13 A Yes, I do.

14 Q Who is that?

15 A I cannot remember his name but he works  
16 for Riverside.

17 Q Riverside Sheriff?

18 A I'm not sure.

19 Q If I ask you to assume that's the lead  
20 investigator of the case, Detective Yates, and he's  
21 pointing to a banister, can you look at the  
22 banister --

23 MR. MCNULTY: Your Honor, for the record can  
24 we have the identification --

25 MR. LEVIN: Exhibit 17.

26 THE WITNESS: Okay.

27 BY MR. LEVIN:

28 Q Do you see a letter number next to the

1 item on the banister?

2 A Yes, I do.

3 Q What is it?

4 A It appears to be item M.

5 Q Assume for a moment that that is the  
6 same item M that was identified to you as coming from  
7 the handrail. Okay?

8 A Okay.

9 Q Does that appear to be a handrail?

10 A Yes, it does.

11 Q Do you see a red substance clearly  
12 visible on the handrail associated with item M?

13 A Yes, I do.

14 Q As a criminalist with your experience,  
15 does that appear to be a lot of blood?

16 A It's a fair amount of blood, yes.

17 Q And it looks like it extends from the  
18 bottom of the letter marked M down the handrail a ways  
19 and you can still see the red going down the handrail;  
20 correct?

21 A Yes.

22 Q Now, that would also, as you testified  
23 before when you were shown the bloodstains from the  
24 back of the truck, you said that would be appropriate  
25 for an individual to swab the entire area as you did  
26 on the truck; correct?

27 A Well, that particular pattern I would  
28 say, yes.

1 and nothing from any other blood mark or mark that's  
2 labeled as coming from the handrail or from the  
3 sidewalk or from a wooden bridge, none of that you  
4 examined for RFLP and found that it came back to  
5 Mr. Watley?

6 A Well, as far as the samples I examined  
7 for RFLP, that's a limited number of samples. The  
8 only three that came back are M, T-8 and T-11.

9 Q But I wanted to make it clear so we are  
10 operating from the same basis of questioning that the  
11 only item that was examined for RFLP by you or your  
12 laboratory was item M from both inside and outside the  
13 crime scene that came back to Mr. Watley?

14 A Specifically at the crime scene, yes.

15 Q Now, item M was fully consumed by your  
16 laboratory; correct?

17 A Yes, it was.

18 Q So there's no possibility at all that  
19 anyone could check the DNA of item M?

20 A Assuming also that I received all of  
21 item M from D.O.J. laboratory.

22 Q Now, is there a way or that you can  
23 express an opinion as to how it could be possible that  
24 you received an insufficient amount of DNA if you  
25 assume that item M is the item that is held up by  
26 Detective Yates?

27 MR. MCNULTY: Your Honor, I'm going to  
28 object. It mistates the testimony.

1 THE COURT: May I have the question reread,  
2 please.

3 (The requested portion of the record was  
4 read.)

5 MR. LEVIN: I mean insufficient for a retest,  
6 your Honor.

7 THE COURT: To that extent the objection is  
8 overruled.

9 Did you wish to be heard further,  
10 Mr. McNulty?

11 MR. MCNULTY: Perhaps rephrase the question to  
12 include that. It lost me now.

13 THE COURT: Do you understand the question as  
14 it is now posed?

15 THE WITNESS: Not really, your Honor.

16 BY MR. LEVIN:

17 Q Okay. Taking a look at Exhibit 17, and  
18 the size of that approximate ten-inch stain clearly  
19 visible on the handrail and assuming that that's the  
20 stain that was being utilized to produce the swab that  
21 you looked at for RFLP -- before I ask you the  
22 question. This is the only one that you looked at for  
23 RFLP where you didn't have anything left over, any DNA  
24 left over for retesting; correct?

25 A No, that is incorrect. Item B, there  
26 was also not enough left for retesting.

27 Q That was the cigarette pack?

28 A No, that is a blood sample from a

1 sidewalk whose DNA profile matches Burris.

2 Q Okay. That came from, apparently from  
3 Mr. Burris and that's not available for retest for  
4 RFLP?

5 A That is correct, yes.

6 Q But others that you did look at with  
7 respect to your test were available for retest?

8 A Item T-8 and T-11, I believe there's  
9 probably sample left of those.

10 Q All right. My question to you is  
11 looking at the photograph and assuming the  
12 hypothetical that I give you, that that actually is  
13 the item that produced the blood contained in M, how  
14 would it be possible that you would not be able to  
15 receive or not have enough blood evidence, DNA  
16 evidence available for a retest if that was the actual  
17 stain that came from the handrail which formed -- or  
18 came from the swab marked M?

19 A Well, there's a couple possibilities.  
20 One is that there was not as much blood there in the  
21 first place that there appears and just very thin  
22 surface on the handrail. Another possibility of  
23 course is that not all the bloodstain was collected  
24 for analysis.

25 Q When you receive a swab, are you  
26 consuming the entire swab in your test?

27 A Really depends on the condition of the  
28 swab. If it is very darkly stained and obviously has

1 a lot of blood on it I will take, for instance, half  
2 the swab.

3 Q And in this case how much of the swab  
4 did you take?

5 A Item M, I consumed all the swab that  
6 was submitted to me.

7 Q Did you do it all at one time or do it  
8 in various stages?

9 A For the extraction purposes I consumed  
10 all of it at one time.

11 Q Could you look at the autorad and be  
12 able to tell the quality and the quantity of the DNA  
13 that you tested?

14 A To some extent, sure.

15 Q You can look at the, at the photograph  
16 to tell the intensity upon which the bars light up to  
17 determine the quality of it?

18 A To some extent, yes.

19 Q Well, does not part of your testing  
20 include the looking -- I believe you said you look at  
21 the evidence to see what its quality is?

22 A That is correct, yes.

23 Q And how is it, how is the quality  
24 expressed?

25 A In our laboratory we give it a grading  
26 scale from 1 to 4. One's -- 0 to 4. Zero being very  
27 degraded, Number 4 being very good, in very good  
28 shape.

1 Q What was M?

2 A A 3.

3 Q What does the 3 on a scale of 0 to 4

4 mean?

5 A Means it's slightly degraded.

6 Q I think the autorad, I believe the

7 autorad is Exhibit 253. May I have that? Are all

8 the exhibits -- thank you.

9 That's 253. Is this the correct

10 autorad?

11 A Yes, as far as showing item M.

12 Q Yes?

13 A Yes.

14 Q And M is in the second column?

15 A M if you couldn't -- over there, the

16 left is in Number 4.

17 Q It really -- I don't know about your

18 monitor but it really does not show up good on mine.

19 I don't know if the jury is seeing a very blurry -- it

20 appears under M the top of the autorads are all

21 blurred together. That's not the way it actually is,

22 is it?

23 A It you look at the ladder lanes in

24 particular, those are very intense so they appear to

25 be blurred together on the Elmo.

26 Q Okay. I'm not going to use the Elmo,

27 your Honor. I am going to have the witness hold it up

28 like an x-ray.

1 here.

2 Q All right. Could you render an opinion?

3 A Sure.

4 Q What is that?

5 A As far as item M is concerned, it's --  
6 appears that it's very good shape, that there's not a  
7 lot of sign of any appreciable degradation there at  
8 all.

9 Q Do you maintain the -- we can turn the  
10 lights on.

11 Do you maintain the swab that you -- I  
12 guess is a better question is what do you mean by  
13 "consume"?

14 A That all the, all the sample was used  
15 for extracting the actual DNA that was present on  
16 there. The actual substrate, the cotton substrate we  
17 retain.

18 Q The cotton substrate which had the DNA  
19 on it?

20 A Yes.

21 Q But you've extracted it all?

22 A Yes.

23 Q Did you make any mistakes with respect  
24 to M which caused it to be consumed?

25 A No.

26 Q Did you lose any of that particular  
27 item that caused it to be unavailable for retest?

28 A No.

1 Q Did you con -- or did you have M in  
2 your possession the entire time of the test?

3 A It was either in my personal possession  
4 or in a locked freezer.

5 Q How many swabs were associated with M?

6 A As far as what I received, I received  
7 one swab.

8 Q Would that be consistent with --  
9 Mr. McNulty.

10 MR. MCNULTY: Go ahead, sir. I am listening.

11 MR. LEVIN: Are you going to be changing the  
12 exhibit?

13 MR. MCNULTY: Are you going to use this?

14 MR. LEVIN: Yes.

15 MR. MCNULTY: No.

16 THE COURT: Mr. McNulty, why don't you let  
17 Mr. Levin conclude his --

18 MR. MCNULTY: I was going to check something,  
19 your Honor. I haven't seen him talking about that. I  
20 don't see a need -- I can't use it?

21 MR. LEVIN: I have no objection.

22 MR. MCNULTY: I was going to check.

23 Thank you.

24 MR. LEVIN: Could you perhaps return --

25 MR. MCNULTY: Sure.

26 MR. LEVIN: Thank you.

27 MR. MCNULTY: Do you remember what page it  
28 was?

1 swabbing it with a moist cotton swab.

2 Q And you would have collected the entire  
3 stain?

4 A Yes.

5 Q And when you perform your test, you are  
6 mindful, are you not, of the importance of having the  
7 ability to do a retest?

8 A Yes, I am.

9 Q If it's possible at all, your  
10 preference would be not to consume the entire sample.  
11 Would that be correct?

12 A That is correct, yes.

13 Q But in this case it was impossible for  
14 you to retain sufficient DNA of M for retest?

15 A That is true.

16 Q Now, we have heard testimony concerning  
17 the two processes of RFLP and PCR. Is it true that  
18 PCR is not designed as a test to identify a person  
19 where RFLP is?

20 A I disagree. I think PCR has certainly  
21 the potential of identifying somebody eventually.

22 Q Do scientists in your area that are  
23 considered to be experts routinely disagree on the use  
24 of PCR?

25 A I wouldn't --

26 MR. MCNULTY: I am going to object to the form  
27 of the question as vague, your Honor.

28 THE COURT: Overruled.

1 INDIO, CALIFORNIA; WEDNESDAY, DECEMBER 10, 1997

2 AFTERNOON SESSION

3 --000--

4  
5 THE COURT: Good afternoon. (Go back on the  
6 record in People v. Watley. Mr. Watley, Mr. Levin,  
7 Mr. McNulty are present. All 17 jurors are present.  
8 Mr. Gregonis is back on the stand.

9 Mr. Levin.

10 MR. LEVIN: Thank you, your Honor.

11 Q Deputy Gregonis, I want you to take a  
12 look again at the item on the handrail in the  
13 position it is marked, M, and for a moment assume  
14 that -- hypothetically that a person who deposited  
15 that particular bloodstain had injured themselves  
16 while inside the apartment at the top of the stairs  
17 and had left the apartment and was coming down the  
18 stairs when they deposited the bloodstain on the  
19 handrail.

20 Could you as a criminalist render an  
21 opinion which hand probably touched the handrail?

22 A I would render an opinion as to which  
23 one was more likely than the other.

24 Q All right. Which one would be more  
25 likely, as a criminalist and as a deputy sheriff,  
26 would you say that touched the handrail?

27 A If the person is going down the stairs  
28 and is walking in a normal type of way, I would say

4915

1 it's more likely to be the right hand than the left  
2 hand.

3 Q Thank you. With respect to  
4 contamination of a sample placed in an envelope, is  
5 the proper protocol for a criminalist who has  
6 collected blood onto a swab and placed it into a coin  
7 envelope -- is the proper protocol to lick the  
8 envelope when sealing it?

9 A No, it is not.

10 Q Why is that?

11 A Because they're collecting the sample  
12 for the purposes of analyzing the physiological fluid  
13 on it. You don't want to have any other person's  
14 physiological fluid close to it, even though the  
15 chances of it transferring are extremely small.

16 Q And if several swabs are used --  
17 different swabs collecting -- or collecting blood  
18 from different sources -- is the proper protocol to  
19 put them all unsealed in the same location?

20 A Depends on what you mean by location.  
21 They certainly can be in close proximity to -- with  
22 each other, say an inch or two inches apart, but  
23 they're not going -- if you put them all in the same  
24 envelope, I would say that's incorrect.

25 Q Well, what about taking swabs --  
26 putting one swab inside a coin envelope and not  
27 sealing that envelope and placing many swabs in that  
28 same fashion in a brown -- or in a bag all together,

1 envelope. Do you see what appears to be possible  
2 blood on that?

3 A Yes, I do.

4 Q Did you do an RFLP test on that item or  
5 any item identified as being a letter such as that?

6 A No.

7 MR. LEVIN: I have a photograph, your Honor,  
8 of what appears to be carpet. I ask that it be  
9 marked Defendant's T.

10 THE COURT: All right.

11 BY MR. LEVIN:

12 Q Showing you Defense T, which appears to  
13 be a carpet, I ask you to look in the center of that  
14 photograph and ask you if it appears to be a  
15 bloodstain or possible blood.

16 A Yes, it does.

17 Q Did you examine any item of that sort  
18 identified to you in this case for RFLP?

19 A No, I did not.

20 Q Now, with respect to item M, that was  
21 identified to you as having come from a handrail; is  
22 that correct?

23 A Yes. That is correct.

24 Q Did you examine for RFLP a bloodstain  
25 identified to you as A, coming from a wood bridge?

26 A No, I did not.

27 Q Did you examine a stain identified to  
28 you as C, coming from a sidewalk?

1 A No.

2 Q -And, likewise, looking at the DIS80  
3 results, any indication of any cross-contamination  
4 from two different sources?

5 A No.

6 Q Looking at the case that was submitted  
7 to you from the moment you received it until the  
8 moment you completed your analysis, anything in your  
9 review of this case that gives you cause for concern  
10 as a scientist about contamination in this case?

11 A As far as the samples?

12 Q Yes.

13 A No.

14 Q Looking at the exhibit which is No. 17  
15 for identification, I believe there's at least been  
16 testimony regarding Exhibit No. 56 for identification  
17 purposes. And I want to direct your attention to  
18 what's labeled in big letter D and then the writing  
19 bloodstain M.

20 Do you see that?

21 A Yes, I do.

22 Q I ask you to become familiar with that  
23 for just a second as you look at it. Go ahead and  
24 set it down, and I'll ask you a couple questions and  
25 then we'll get back to it.

26 Regarding the amount of the biological  
27 sample left behind -- in this case let's call it  
28 blood -- how much or what size, if you can give us

1 INDIO, CALIFORNIA; WEDNESDAY, DECEMBER 17, 1997

2 DEPARTMENT 3N

3 MORNING SESSION

4  
5 THE COURT: We'll call the matter of People  
6 versus Watley. ICR 22535. Mr. Watley, Mr. Levin,  
7 Mr. McNulty are all present. No jurors are present.

8 This is a continuation of the  
9 out-of-the-jury's-presence hearing regarding  
10 statistical calculation methods.

11 Mr. McNulty.

12 MR. MCNULTY: Thank you, your Honor. Good  
13 morning. The People call Dr. Ranajit Chakraborty,  
14 please.

15 THE CLERK: You do solemnly swear the  
16 testimony you are about to give in the cause now  
17 pending before this Court shall be the truth, the  
18 whole truth, and nothing but the truth, so help you  
19 God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Please be seated.  
22 State your full name, spelling your first name and  
23 last name for the record.

24 THE WITNESS: My name is Ranajit Chakraborty.  
25 The first name Ranajit is spelled as R-A-N-A-J-I T.  
26 And the last name is C-H-A-K-R-A-B-O-R-T-Y.

27 THE COURT: Mr. McNulty.  
28

1 groups.

2 Q So, for instance, a population that  
3 would be suitably defined would be Caucasians?

4 A Depends on the situation where you are  
5 asked to do the computation. If, for example, there  
6 was a crime in Papua New Guinea Highland again, then  
7 you using San Bernardino database would not be a  
8 relevant database. There we have to define  
9 populations which is affine, A-F-F-I-N-E, group,  
10 relevant group to that population.

11 Q Then in certain situations where you  
12 look at an autoradiograph and you see just one band,  
13 is there some concern or some consideration taken in  
14 the product rule for that one band if you are not sure  
15 if it's one band or two bands?

16 A Sure, yes.

17 Q What is that?

18 A Well, the -- you have to remember that  
19 the computation that you are doing is on an  
20 observation which is a biological observation. Anyone  
21 who does not understand that nor want to discuss that  
22 has no business in carrying out any computation  
23 whatsoever.

24 Given that comment, I would say that a  
25 single band seen on a Southern gel electrophoresis --  
26 southern as northern and southern but a person's  
27 name -- gel, G-E-L, electrophoresis. A single band  
28 seen in a Southern gel electrophoresis can be true

1 homozygote or, in other words, two copies of the same  
2 allele. Could be two alleles that are so close to  
3 each other that they did not get separated during the  
4 process of electrophoresis; or, third, they could be  
5 two different alleles. One of that size, the other  
6 very short or very long did not get measured at all in  
7 the experiment.

8 So given that consideration, the  
9 single-band profile frequency should not be computed  
10 by the application of the strict product rule. What  
11 instead the committee recommends, which was in place  
12 in 1989, they treat the other allele as unknown. Give  
13 it a frequency of a hundred percent. So that you have  
14 a band of a given size, get it's frequency, not  
15 exactly it's frequency, it's frequency in allele  
16 nearby being the allele and the use that other allele  
17 as a hundred percent frequency and multiply that by  
18 two. So by that process you got a number which is  
19 from product rule which is not strictly from product  
20 rule but a number which is much more common than the  
21 frequency of that single-band profile in the database.

22 Q So if the band were a in fact true  
23 homozygote, the genotype frequency would be that  
24 number times itself?

25 A Correct.

26 Q Or call it P squared?

27 A Correct.

28 Q But under the science one of these

1 A I will not answer your question if you  
2 ask a homozygote. Yes, I saw a single-band pattern.

3 Q Where did you see that?

4 A I believe it is. Let me not misquote  
5 the data.

6 Q In fact perhaps I can rephrase the  
7 question and then we can get back to it.

8 A For the D2S44 locus, we had a  
9 single-band profile.

10 MR. LEVIN: I'm sorry, I didn't hear that  
11 answer?

12 THE WITNESS: D2S44 locus in the evidence  
13 sample that match Watley's profile, we have a  
14 single-band profile.

15 BY MR. MCNULTY:

16 Q For what sample is that?

17 A Well, that is the sample labeled as M  
18 or T-8 or T-11.

19 Q Okay. In any calculation that you did,  
20 did you use that 2P rule?

21 A Yes, I did.

22 Q Was that the only locus, the D2S44,  
23 that you had a single-band issue, so to speak?

24 A As far as comparison with this  
25 defendant concerned, yes.

26 Q For a situation where the exact  
27 genotype is known, that is you have the two bands, is  
28 there a formula that is espoused in the NRC-II report?

1 A The answer is no. I can.

2 Q Now, do you attempt as part of your  
3 background to infer to a jury that there are no  
4 laboratory errors in any given case?

5 A I never give any testimony like that.

6 Q Well, you've testified twice in this  
7 particular case, haven't you?

8 A Yes.

9 Q And in both those trials didn't the  
10 District Attorney ask you many questions with respect  
11 to looking at the work of Cellmark with respect to  
12 their particular work in this case?

13 A Yes, there were questions.

14 Q And you were looking at Lisa  
15 Grossweiler's work; correct?

16 A Yes

17 Q And the truth is you don't know if Lisa  
18 Grossweiler even looked at these samples, do you?

19 A The answer is yes, I have indications  
20 that from the bench notes are hers.

21 Q But you don't have personal knowledge  
22 with respect to her doing anything?

23 A No.

24 Q You don't know whether or not  
25 laboratory errors were made in this case, do you?

26 A I -- I can rule out several errors by  
27 looking at the case work notes.

28 Q But there are several other errors you

1 can't rule out, can you?

2 A Yes.

3 Q When you testified in this case the  
4 full truth would be - is you really don't know if there  
5 are laboratory errors in this case; right?

6 A The full truth, these are the steps of  
7 my examination of this case work and based on those  
8 examinations I did not see any indication of a  
9 laboratory error.

10 Q But --

11 A And that had been my testimony in this  
12 case and elsewhere every time.

13 MR. LEVIN: Your Honor, I notice Mr. McNulty  
14 has a habit of nodding in agreement or disagreement  
15 with the testimony or questions. I ask he not do that  
16 because I think it's a matter of -- I am not  
17 suggesting he's signaling Mr. Chakraborty but I would  
18 like to get the answers to our questions without  
19 having any approval by the People, or disapproval,  
20 with the answer or question.

21 THE COURT: I don't interpret any such body  
22 movements in that manner. I will decline that.

23 BY MR. LEVIN:

24 Q Dr. Chakraborty, it was never your  
25 intention and it is not your intention to suggest in  
26 this case that no laboratory errors were made; is that  
27 correct?

28 A As far as I could see, I can answer

1 that question there are no.

2 Q Is it possible laboratory errors were  
3 made in this case?

4 A Of which I did not see any indication.

5 Q Pardon me?

6 A Of which I did not see any indication.

7 Q All right. Now, you said you can  
8 detect several types of laboratory errors by looking  
9 at the case work?

10 A Correct.

11 Q You will agree there's many laboratory  
12 errors that could have occurred that you don't -- you  
13 can't know because you didn't look at the case work;  
14 correct?

15 A I don't know whether I will call them  
16 many. Yes, there are some possible.

17 Q Okay. What are they?

18 A Well, the sample may be mislabeled  
19 before they came to the laboratory.

20 Q It may have been mishandled?

21 A Yes.

22 Q It may have been contaminated?

23 A Contamination sign would be seen in  
24 some aspects of the case work.

25 Q Well, cross-contamination with transfer  
26 of the DNA from one sample to another, you wouldn't  
27 see that, would you?

28 A We can -- we can see that.

1 THE CLERK: You do solemnly swear the  
2 testimony you may give in the cause now pending  
3 before this court shall be the truth, the whole  
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Please be seated.  
7 Please state your full name, spelling  
8 your first and last name for the record.

9 THE WITNESS: My name is Ranajit  
10 Chakraborty. The last name is Chakraborty, spelled  
11 as C-h-a-k-r-a-b-o-r-t-y. And the first name is  
12 Ranajit, R-a-n-a-j-i-t.

13 THE COURT: Mr. McNulty.

14  
15 RANAJIT CHAKRABORTY,  
16 called as a witness by the People, having been first  
17 duly sworn, was examined and testified as follows:

18  
19 DIRECT EXAMINATION

20 BY MR. McNULTY:

21 Q Good afternoon, Doctor.

22 A Good afternoon.

23 Q If at any time I ask you a question  
24 that you're not clear what it is I'm asking, will you  
25 let me know so I can rephrase it?

26 A I'll surely do.

27 Q And will you do -- afford the same  
28 courtesy to Mr. Levin?

1 A Of course, yes.

2 Q I refer to you as a doctor. What is  
3 your doctorate in, sir?

4 A I have a Ph.D. degree -- so I'm not a  
5 medical doctor -- in the area of human population  
6 genetics and biostatistics.

7 Q You have a bit of an accent and you  
8 tend to speak quickly. Please speak slowly, if you  
9 can.

10 A I'll try to. Thank you.

11 Q What is the area of -- you said  
12 population genetics?

13 A Yes.

14 Q What is that area?

15 A Population genetics is the  
16 subdiscipline of the general subject of genetics  
17 which is whereby the study of inheritance or, in  
18 other words, how characteristics are passed on from  
19 parents to the children.

20 Now, in population genetics we use  
21 those genetic principles to study genetic variation  
22 between individuals within a population as well as  
23 across populations and use those cumulative knowledge  
24 in applications such as finding disease genes,  
25 counseling individuals for genetic diseases, applying  
26 them for parentage testing, forensic identification  
27 of individuals, tissue transplantation, et cetera.

28 Q All of those areas that you talked

1 A Yes.

2 Q Did you receive some laboratory notes  
3 from an individual identified or known to you as  
4 Daniel Gregonis?

5 MR. LEVIN: Objection. Calls for  
6 speculation. Hearsay.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 BY MR. McNULTY:

10 Q In fact, do you know Mr. Gregonis on a  
11 personal level as well as professional level?

12 MR. LEVIN: Objection. It's irrelevant.

13 THE COURT: Sustained.

14 BY MR. McNULTY:

15 Q The information received from  
16 Mr. Gregonis -- was that with respect to some work  
17 performed at the San Bernardino crime laboratory?

18 MR. LEVIN: Object. Assumes facts not in  
19 evidence that it was from Mr. Gregonis, in fact.

20 THE COURT: May I have the question reread,  
21 please.

22 (The requested portion of the record  
23 was read by the court reporter.)

24 THE COURT: No. Overruled.

25 You may answer.

26 THE WITNESS: Yes.

27 BY MR. McNULTY:

28 Q Are you familiar, sir, with the phrase

1 "protocol"?

2 A Yes.

3 Q What does that mean generally when  
4 referring to this area of science?

5 A In a single word, it could be called a  
6 recipe.

7 Q Did you have an opportunity to review  
8 the protocol for the PCR method employed at Cellmark  
9 Laboratories?

10 A Yes.

11 Q Did you, sir, have an opportunity to  
12 review the protocol regarding the PCR method at the  
13 San Bernardino crime laboratory?

14 A Yes.

15 Q Did you have an opportunity to look  
16 at the protocol for the RFLP method at the  
17 San Bernardino crime laboratory?

18 A Yes.

19 Q Incidentally, have you ever testified  
20 before on behalf of the defense or called as an  
21 expert for the defense?

22 A Yes.

23 Q When was that?

24 A That happened three times: Once in --  
25 about four years back and the last two within the  
26 last year and a half.

27 Q Where was the one about three years  
28 ago?

1                   A     In Houston, Texas.

2                   Q     And where was the other two about a  
3 year and a half ago?

4                   A     One in Houston. The other is -- was in  
5 Victoria, a city between Houston and Corpus Christi  
6 in South Texas.

7                   Q     Okay. In your particular field are you  
8 familiar, yourself, with the method of doing the  
9 actual science or chemical work in the PCR method?

10                  A     Yes.

11                  Q     Have you done that procedure yourself,  
12 sir?

13                  A     Yes.

14                  Q     With respect to the actual science or  
15 chemical procedures for the RFLP, are you familiar  
16 with that?

17                  A     Yes.

18                  Q     And have you actually performed that  
19 particular procedure yourself?

20                  A     Yes.

21                  Q     With respect to your training and your  
22 knowledge in the area of PCR, when you reviewed the  
23 protocol for Cellmark, was there anything that you  
24 noted that was unusual or would lead to an erroneous  
25 result?

26                  MR. LEVIN: Objection. No foundation. No  
27 knowledge.

28                  THE COURT: I think with respect to the

1 portion of the question that addresses "or that would  
2 lead to an erroneous result" I'm going to sustain  
3 that objection. The remainder of the question,  
4 however, the objection is overruled.

5 BY MR. McNULTY:

6 Q Are you familiar, sir, with the general  
7 accepted method of doing a PCR test in your  
8 scientific community?

9 A Yes.

10 Q Did you compare that particular recipe  
11 in your community with the protocol or recipe from  
12 Cellmark?

13 A Yes, I did.

14 Q Did you notice what you would consider  
15 to be any significant differences?

16 MR. LEVIN: Objection. No foundation,  
17 unless he has personal knowledge.

18 THE COURT: Overruled.

19 THE WITNESS: No, I did not find any.

20 BY MR. McNULTY:

21 Q With respect to your knowledge, your  
22 training, and your experience of the protocol  
23 or recipe for the RFLP method in your general  
24 scientific community, did you notice anything what  
25 you would call significantly different from the --  
26 San Bernardino's recipe?

27 MR. LEVIN: Objection. No personal  
28 knowledge.

1 THE COURT: No. Overruled.

2 THE WITNESS: No, I did not find any.

3 BY MR. McNULTY:

4 Q Did you have a chance to review the  
5 notes from Mrs. Grossweiler to review the steps or  
6 processes that she underwent?

7 MR. LEVIN: Objection. No personal  
8 knowledge. Calls for speculation.

9 THE COURT: Under the theory that experts  
10 may rely on hearsay in forming their own opinions,  
11 I'll overrule that objection.

12 MR. McNULTY: Thank you, your Honor.

13 Q Did you have a chance to do that, sir?

14 A Yes.

15 Q And as you were going through them, did  
16 you have a critical eye toward anything, sir?

17 A Yes. I had a critical eye towards  
18 things that I would consider to make some  
19 interpretation.

20 Q Okay. And did you find anything that  
21 you would consider significant as you were reviewing  
22 her laboratory notes?

23 A No.

24 MR. LEVIN: Objection. Vague with respect  
25 to what "significant" means.

26 THE COURT: Sustained.

27 BY MR. McNULTY:

28 Q Did you find anything that you would

1 specimens that they have typed in the context of this  
2 case.

3 MR. LEVIN: I would object, your Honor, that  
4 that calls for speculation, a conclusion this witness  
5 cannot make.

6 THE COURT: Again, that's overruled.

7 BY MR. McNULTY:

8 Q Are those pictures often referred to as  
9 pictures of dot-blot strips?

10 A Yes.

11 Q And have you, yourself, been involved  
12 with dot-blot strips?

13 A Yes.

14 Q You've had experience in reading or  
15 interpreting dot-blot strips?

16 A Yes.

17 Q Did you in this particular case do an  
18 independent reading of the dot-blot strips based upon  
19 the photographs provided to you?

20 A I didn't get your question.

21 Q Okay. Did you, yourself, look at the  
22 photographs of the dot-blot strips and then determine  
23 what the results were from those photographs?

24 A Yes.

25 Q With respect to Mr. Gregonis's work,  
26 did you get some pictures from Mr. Gregonis?

27 A Yes.

28 Q Would those include pictures of the

1 consider to be outside of the protocol established by  
2 Cellmark in her notes?

3 A No, I did not.

4 Q Did you find anything in her notes that  
5 you would consider -- given your training and  
6 experience and knowledge in this area -- that you  
7 would even term as unusual in her methodology?

8 A No..

9 Q With respect to the work -- the  
10 laboratory notes given to you by Mr. Gregonis, did  
11 you look at his notes with a critical eye?

12 A Yes, I did:

13 Q Did you notice anything that you would  
14 consider to be unusual given the protocol of his  
15 laboratory?

16 A No, I did not find any.

17 Q In addition to the laboratory notes --  
18 the laboratory (pronunciation) notes -- I've been  
19 doing this since 8:30 today -- in addition to looking  
20 at the lab notes, were you supplied with some  
21 Polaroid photographs?

22 A Yes.

23 Q And what -- from Cellmark?

24 A Yes.

25 Q What did, generally, those Polaroid  
26 photographs depict that you received from Cellmark?

27 A Those Polaroid pictures are photographs  
28 of the end results of the laboratory typing of the

1 reverse dot-blot strips?

2 A Yes.

3 Q Would that include pictures of a  
4 process known as -- or the location known as D1S80?

5 A Yes.

6 Q And did you get some pictures or things  
7 that we have referred to earlier as autoradiographs?

8 A Correct.

9 Q You have some experience, training, or  
10 knowledge in the area of reading gels with -- the  
11 pictures of gels for D1S80?

12 A Yes.

13 Q And you have some experience in reading  
14 the autoradiographs?

15 A Yes.

16 Q With respect to reading, let's say, the  
17 autoradiographs, is that done also in the course of  
18 your research?

19 A Yes. During the 1974 to '78, that was  
20 my research.

21 Q And, likewise, have you had an  
22 opportunity to look at autoradiographs in the context  
23 as a consultant or expert in courtroom cases?

24 A Yes.

25 Q Approximately how many times?

26 A I have reviewed over 200 court cases up  
27 to now.

28 Q Have you reviewed court cases for the

1 prosecution of those 200?

2 A As I said, there were three that went  
3 to trial where I reviewed the similar materials for a  
4 defense. And there were three or four others I  
5 reviewed which did not go to the court that were for  
6 defense as well.

7 Q Okay. In this particular case, did you  
8 see anything that led you to have some type of  
9 professional concern about what you saw on the  
10 dot-blot strips for Cellmark?

11 MR. LEVIN: Objection. Vague.

12 THE COURT: No. Overruled.

13 THE WITNESS: I -- I did not find any that  
14 I -- would cause myself professional concern.

15 BY MR. McNULTY:

16 Q Did you see any of the photographs for  
17 the San Bernardino crime laboratory that caused you  
18 some type of professional concern?

19 A No.

20 Q With the photographs of the D1S80 or  
21 the results that were photographed, anything there  
22 that you saw cause you concern?

23 A No.

24 Q And, lastly, with the results of the --  
25 that you saw on the autorads, anything that caused  
26 you concern?

27 A No.

28 Q In this particular case there has been

1 same for these samples listed on page, I believe, 3  
2 of 301?

3 A Yes.

4 Q Down at the bottom I'll write "same as  
5 Watley."

6 And would that hold true, sir, for  
7 T-12, or Cellmark 9, and T-13, or Cellmark 4?

8 A Yes.

9 Q Looking at page 2 of what's been marked  
10 307 for identification, take a moment and become  
11 familiar with that, sir.

12 A Yes.

13 Q In this particular case, yesterday I  
14 think we talked about you looking at some dot-blot  
15 strips --

16 A Yes.

17 Q -- from San Bernardino?

18 A Yes.

19 Q And you looked at some D1S80 photos  
20 from San Bernardino?

21 A Yes.

22 Q And some autoradiographs from  
23 San Bernardino?

24 A Correct.

25 Q Taking a look at items M, T-8, and T-11  
26 up to the profiles excluding the word "4 probes" --  
27 do you see that?

28 A Yes.

1 Q Based upon your independent review, do  
2 you concur with those results, sir?

3 A Yes, I do.

4 Q I'm looking for my yellow pad.  
5 With respect to the -- were you able,  
6 given your training and experience, to calculate a  
7 profile frequency for the profile 1.2, comma, 4.1,  
8 all the way through to 21, 31 from the D1S80?

9 A Yes.

10 MR. LEVIN: Referring to T-8 and T-11?

11 MR. McNULTY: T-8, T-11, and as well that  
12 would be M.

13 Q And let me back up. As you look at A,  
14 the whole bloodstain identified as Watley -- the 1.2,  
15 4.1, AB, BB, AA, AA, BB, 21, 31 -- does that appear  
16 to match with M, T-8 and T-11, sir?

17 A Yes.

18 Q So with respect to the profile  
19 frequency for, let's call it sample A, were you able  
20 to calculate a frequency for an individual chosen at  
21 random would be African-American in that particular  
22 setting?

23 A Yes.

24 Q And what would that be, sir?

25 A That one, two, three...  
26 That seven-locus profile, DQ-Alpha  
27 through D1S80, is expected to occur in  
28 African-Americans 1 in every 132,600 individuals.

1 Q 132,000 you said?  
2 A Yes, 132,600.  
3 Q -600, okay.  
4 How about for the Caucasian population?  
5 A 1 in every 15 million.  
6 Q I've written that in green 1 in 15  
7 M-i-l, C-a-u-c, to represent Caucasian. Did I write  
8 that accurately?  
9 A Yes.  
10 Q And what about for Hispanic?  
11 A 1 in every 29 million.  
12 Q And converting 1 in 132,000  
13 African-American individuals chosen at random that  
14 are unrelated -- what would that exclusion be, sir,  
15 for African-American?  
16 MR. LEVIN: Objection under 352. It's  
17 irrelevant, misleading, and confusing.  
18 THE COURT: Overruled.  
19 THE WITNESS: 99.999 percent.  
20 BY MR. McNULTY:  
21 Q 99.99- --  
22 A -999 percent.  
23 Q Did you have an opportunity sir, to do  
24 the same for the Burris?  
25 A Yes.  
26 Q And what result did you get, if you  
27 recall, for the DQ-Alpha, polymarker, and D1S80 as it  
28 pertained to a frequency for the Caucasian

1 population?

2 A For Caucasian population it would be  
3 1 in every 79,000.

4 Q And, for the record, I've written 1 in,  
5 I believe, 79,000, C-a-u-c, the abbreviation of  
6 Caucasian. Did I write that accurately?

7 A Yes.

8 Q What about for African-American?

9 A 1 in every 6.7 million.

10 Q And, again, I've written, I believe,  
11 that number in green with A-f-r, A-m-e-r for  
12 African-American. Did I write that correctly?

13 A Yes.

14 Q And how about for the Hispanic?

15 A 1 in every 216,000 -- two one six zero  
16 zero zero.

17 Q Can you convert the 1 in 79,000  
18 Caucasians into the number -- into a percentage  
19 number of Caucasians that would be excluded if chosen  
20 at random who are unrelated that would match at that  
21 profile?

22 A Yes, I can. Give me a minute.

23 That would be 99.999 percent again.

24 Q All righty. And now I want to ask you  
25 if you had an opportunity in calculating a  
26 statistical profile that included the DQ-Alpha, the  
27 polymarker, the D1S80, and the four VNTR probes used  
28 in the RFLP.

5742

1 A Yes.

2 Q With respect to the African-American  
3 population for this particular profile and match at  
4 the four probes, what was the number that you  
5 received for the African-American?

6 A For African-American, that 11-locus  
7 profile is expected to occur 1 in every 84 trillion  
8 people -- expected to occur in every 1 in every  
9 84 trillion individuals.

10 Q 84 trillion African-Americans. Again,  
11 I've written that in green, abbreviated trillion as  
12 T-r-i-l, and African-American as A-f-r, A-m-e-r.

13 What about for -- excuse me -- the  
14 Hispanic -- let's go Caucasian. Keep it the same  
15 order -- in the Caucasian population?

16 A 1 in every 130 billion people.

17 Q And what about for the Hispanic?

18 A 1 in every 355 billion people.

19 Q And with respect to the statistical  
20 frequency for T-8 and T-11, would they be the same as  
21 we just -- you testified to as M?

22 A Yes.

23 Q Okay. I'm just trying to write the  
24 "same as M."

25 With respect to the numbers that you  
26 calculated, including the RFLP loci, did you look at  
27 those autorads to determine independently if they  
28 matched with the sample identified from Watley at

1 those same four VNTR loci?

2 A Yes, I did.

3 Q Okay. Is the visual inspection of the  
4 physical result an important component in your  
5 analysis or evaluation of a case?

6 A Yes.

7 Q Did you have an opportunity, sir, to  
8 visually inspect likewise the dot-blot strips from  
9 Cellmark that was identified as, I believe, T-4?

10 A Yes, I did.

11 Q I've placed before you what I believe  
12 is part of 301 for identification on -- I think it's  
13 page 4 -- I'm not certain, though -- the profile  
14 associated with T-4, or Cellmark 3.

15 Do you see that?

16 A Yes.

17 MR. McNULTY: I'm requesting No. 280 for  
18 identification purposes. And I'll -- for this  
19 limited time I'll just use the ELMO on this one  
20 particular picture.

21 Q And, Doctor, I want to hand you what's  
22 been marked 280 for identification and point to what  
23 it is. I'm concerned about that's marked Cellmark 3.  
24 Take a moment and look at that and become familiar,  
25 if you will.

26 Have you had a chance to look at that,  
27 sir?

28 A Yes.

1 84 trillion African Americans would have the same  
2 genetic profile as the sample marked Mr. Watley, you  
3 are, in essence, projecting that out from some other  
4 number; correct?

5 A Yes.

6 Q Not all African Americans in this  
7 country have had their DNA checked; correct?

8 A Correct.

9 Q And not all Caucasians or Hispanics  
10 have likewise?

11 A Correct.

12 Q So there's a population database that  
13 statisticians work from; correct?

14 A Correct.

15 Q What was the database that you were  
16 working from?

17 A This number came from three different  
18 databases.

19 Q And what databases were they, if you  
20 could name them simply for me?

21 A Well, for the RFLP part of the  
22 eleven, of the eleven-locus profile, the database is  
23 from San Bernardino crime laborabory. D1S80 came from  
24 peer review publications relating to Caucasians. The  
25 DQ-Alpha and polymarker database came from a  
26 validation study done by scientists at FBI.

27 Q All right. The San Bernardino  
28 population database was the only actual database used

1 in this case by you in your computation?

2 A I don't understand your word "actual"  
3 in the context of this question.

4 Q For the RFLP?

5 A All of them are actual databases.

6 Q But the San Bernardino population  
7 database was used for the RFLP?

8 A Yes.

9 Q And how large is that population  
10 database?

11 A That RFLP database consists of 293  
12 Caucasians, 251 African Americans, and 227 Hispanics.

13 Q So what you are telling us is that your  
14 one in 84 trillion prediction comes from the  
15 examination of 251 African Americans?

16 A No, that would be wrong interpretation  
17 because I said that for a three components of that  
18 eleven-locus profile three different databases. You  
19 can't use one size of one database to make inference  
20 regarding the combined number I have given you.

21 Q I am speaking in the simplest of  
22 terms. Mr. Watley's sample, his profile, if we assume  
23 that it was accurate, there were no laboratory  
24 mistakes or no problems with cross-contamination?

25 A Yes, I can make that assumption.

26 Q Or whatever it is that could have went  
27 wrong with it, was compared to a number of 251 African  
28 Americans?

1 the crime scene, you're talking about Apartment 3714;  
2 is that right?

3 MR. LEVIN: Yes, both the inside and the  
4 outside.

5 THE COURT: I guess there is a question  
6 pending, is there not?

7 MR. BOZICH: Yes.

8 THE COURT: And the objection to that  
9 question is overruled.

10 So you may answer the question.

11 THE WITNESS: I don't know that.

12 THE COURT: Would you like it read back? Do  
13 you have the question in mind?

14 THE WITNESS: Yes.

15 THE COURT: And can you answer it?

16 THE WITNESS: Yes. I don't know that that  
17 is the only one.

18 MR. LEVIN: I just need a moment, your  
19 Honor.

20 THE COURT: Sure.

21 BY MR. LEVIN:

22 Q All right. Showing you what's been  
23 marked as People's 19. Directing your attention to  
24 the top of the stairwell, on the banister there's a  
25 red marking that appears to be blood. I believe that  
26 there was actually a picture of -- I can't find it  
27 right now -- with you standing next to it with  
28 evidence marker M.

1                   Do you recall that? The blood was  
2 slightly higher than the area you indicated with your  
3 pen.

4                   Do you recall the picture -- and  
5 perhaps I'll find it in a moment -- where you were  
6 standing on the stairwell with the evidence marker M?

7                   A    Yes.

8                   Q    Now, do you recall in this case the  
9 testimony with respect to the testing of that stain,  
10 that it was -- there was RFLP testing conducted on  
11 that stain? Do you recall that?

12                  A    Yes.

13                  Q    And with respect to all the other items  
14 of blood that were collected in this case from inside  
15 Apartment 3714 and outside 3714, did you direct any  
16 of that evidence to be tested for RFLP by Cellmark?

17                  A    No.

18                  Q    Or at the other laboratories?

19                  A    Specifically for RFLP, no.

20                  Q    Now, did you see that stain or were you  
21 present when that stain M was collected?

22                  A    Yes.

23                  Q    You were also aware from the testimony  
24 in this case that the entire sample item M was  
25 consumed in the test?

26                  A    I believe so.

27                  Q    So would I be correct in stating that  
28 from both inside 3714 and outside the crime scene,

1                   And I found the passages that I think  
2 the Court was -- might be interested in or at least  
3 was referring to as to the testimonies of  
4 Dr. Chakraborty at the two different -- one at the  
5 402 hearing and then one at the trial.

6                   THE COURT: Okay. Yeah, I would be  
7 interested in seeing those.

8                   MR. McNULTY: With respect to the trial,  
9 it's on page 5778 of the transcript. And I believe  
10 it's Mr. Levin's cross-examination, starting at  
11 line 15.

12                   The question is: "What was the  
13 database that you were working from?"

14                   The answer: "This number came from  
15 three different databases."

16                   Question: "What databases were they,  
17 if you could name them simply for me?"

18                   Answer: "Well, for the RFLP part of  
19 the 11, of the 11-locus profile, the database is from  
20 San Bernardino crime laboratory. D1S80 came from  
21 peer review publications relating to Caucasians. The  
22 DQ-Alpha and polymarker database came from a  
23 validation study done by scientists at FBI."

24                   And then on page 5779 Mr. Levin goes on  
25 to talk about actual databases, and Dr. Chakraborty  
26 says: I don't know what you mean by actual -- he  
27 used actual databases.

28                   And line 13, question: "So what you

1 are telling us is that your 1 in 84 trillion  
2 prediction comes from the examination of 251  
3 African-Americans?"

4 Answer: "No, that would be wrong  
5 interpretation because I said that for a three  
6 components of that 11-locus profile three different  
7 databases. You can't use one size of one database to  
8 make inference regarding the combined number I have  
9 given you."

10 So he used three different databases,  
11 and he outlined those as such.

12 I believe on the transcript dated  
13 Wednesday, December 17th, 1997, probably from  
14 pages 5489 --

15 THE COURT: I'm sorry. I didn't get the  
16 page.

17 MR. McNULTY: 5489 to about 5494 is the  
18 testimony about his research, et cetera. And then  
19 it's kind of interspersed throughout that day's  
20 testimony.

21 THE COURT: Well, that information tells us  
22 that Dr. Chakraborty did testify to the fact that he  
23 used different databases in making his calculations,  
24 but there isn't any discussion that I'm aware of that  
25 says that that's a scientifically accepted and sound  
26 procedure to do that.

27 MR. McNULTY: Not in those exact words,  
28 which is what -- when we came in and we were talking

1 about the 11-loci result, that's what Dr. Risch's  
2 testimony was about, was the product rule under this  
3 circumstance. I mean, that is what the number  
4 generated from -- was from the 11-loci. I mean, that  
5 was clear from previous testimony, from the  
6 information provided through discovery. That is what  
7 the People have relied upon since 1995.

8 And so when Dr. Risch came in and  
9 testified about that, I didn't ask specifically those  
10 questions because I made an assumption that we were  
11 all on the same page talking about 11 loci.

12 And so when Dr. Risch testified, yes,  
13 here's -- the product rule is acceptable,  
14 Hardy-Weinberg, linkage; when Dr. Chakraborty  
15 testified -- I didn't ask them specifically the  
16 question you're asking, because I assumed we were all  
17 on that same page. And when I provided documentation  
18 to this Court in my motion, you'll note it discusses  
19 the RFLP/VNTR issue as to the product rule and  
20 linkage equilibrium and Hardy-Weinberg, because  
21 that's where the focus has been.

22 THE COURT: Right.

23 MR. McNULTY: To say that this is not  
24 accepted in the scientific community when it has  
25 been -- because there's been no dispute about the use  
26 of it -- there isn't anything published about it  
27 because it is accepted and it's not been considered  
28 in the same context that we are considering it.

1 THE COURT: I am looking at my notes on  
2 Mr. Gregonis but I don't see it, although that chart  
3 -- of course it looks familiar. I've seen it.

4 MR. BOZICH: Mr. Behnke and I both have it  
5 checked up. He's attempting to look at the transcript  
6 right now.

7 THE COURT: Let's come back to that, 246.

8 MR. BOZICH: Okay. Moving on for the moment,  
9 your Honor, 247 through 251 we would not offer.  
10 252 and 253 we would offer.

11 THE COURT: All right. 252 and 253 will be  
12 received.

13 (People's Exhibits 252 and 253 were received  
14 in evidence.)

15 MR. BOZICH: 254 through 259 we would not  
16 offer.

17 THE COURT: Those be excluded.

18 MR. BOZICH: 260 through 262 we would offer.

19 THE COURT: All right. I do have 261 and 262.  
20 I don't have 260.

21 MR. BOZICH: My recollection is those are the  
22 negatives I showed to Mr. Spreyne that helped him  
23 remember the date he took the aerial photographs  
24 from.

25 THE COURT: All right.

26 MR. BOZICH: He would have been one of the  
27 very first witnesses.

28 THE COURT: I do recall that having occurred

1 THE COURT: Ladies and gentlemen, because  
2 some of the evidence was presented to you in the case  
3 from a different district attorney than Mr. Bozich,  
4 that district attorney will now argue that portion of  
5 the case to you. As you know, obviously, that was  
6 Mr. McNulty.

7 MR. McNULTY: Your Honor, I'm going to need  
8 just a few minutes to take some of the stuff  
9 Mr. Bozich has down, about five minutes, just to set  
10 up.

11 Would it be appropriate with the Court  
12 if we took about a five-minute stretch break?

13 THE COURT: That's fine. We'll take a  
14 five-minute-or-so break, ladies and gentlemen. Once  
15 again, remember the admonitions.

16 (Recess held.)

17 THE COURT: All right. Mr. McNulty.

18 MR. McNULTY: Thank you, your Honor.

19 The blood profile from item M, that  
20 piece of blood on the handrail outside the apartment  
21 where the three victims were found, matches the blood  
22 profile of the defendant, Orlando Watley.

23 The good thing about evidence -- in  
24 this particular case, blood -- is that it is what it  
25 is. We heard Mr. Bozich talk about, when talking  
26 about witnesses -- and he talked a little bit about  
27 that instruction, about the credibility of witnesses,  
28 bias, motives, opportunity to remember, the manner in

1 which they relate the information back -- blood  
2 evidence doesn't have that same concern. And that's  
3 why I say: It is what it is.

4           Once it's analyzed and two labs have  
5 analyzed the blood in this case and it matches, those  
6 results confirm one another and you now know that  
7 Mr. Watley, the defendant -- Watley's blood is, in  
8 fact, at that crime scene. The numbers, the  
9 statistics, 1 in 84 trillion African-Americans --  
10 unrelated African-Americans -- that number is what it  
11 is. It too has no motive, no interest, no bias. It  
12 is predicated upon the experts who testified.

13           Now, that's not to say because you have  
14 that number -- 1 in 84 trillion unrelated  
15 African-Americans -- to say that that is an exact,  
16 100-percent, perfect match because you heard that we  
17 cannot yet completely sequence the entire human DNA.

18           But what that does tell you, ladies and  
19 gentlemen, is the rarity -- how rare that profile is,  
20 that we expect that the scientific community experts  
21 to find that exact same profile, Defendant Watley's  
22 profile, the profile at the crime scene on that  
23 handrail, in another African-American who is not  
24 related to Mr. Watley. That's why I say the numbers  
25 are what they are.

26           Now, in order to get to the first part,  
27 to talk about the blood is what it is, I want to go  
28 over with you briefly the procedure that is used in

1 others. That's the benefit, the power, of DNA  
2 evidence.

3 But that wasn't enough. The People of  
4 the State of California went further, and they tested  
5 with the particular sample of a handrail right  
6 outside the apartment four different locations. And  
7 they tested those by using more discriminating tests  
8 of RFLP.

9 And how does RFLP work? Well, it's  
10 along the same principles to the extent of the  
11 extraction process. If you'll recall, Mr. Gregonis  
12 said the extraction process is a standardized  
13 chemical extraction. It's the same extraction  
14 whether it's PCR or it's RFLP. There's no  
15 difference. And it's standardized in that there is a  
16 method to get the DNA out of the nucleus, and that's  
17 the method that is used. Once they have extracted  
18 it, they check it for its quality and for its  
19 quantity to make sure that it's a usable sample.

20 And then they introduce to it what we  
21 call a restriction enzyme. A better analogy, I  
22 think, is molecular scissors. It takes a look at the  
23 sequence along the horizontal of the individual. And  
24 in this case wherever it sees a G and a G next to a  
25 C and a C, it cuts it right in the middle. So you've  
26 got GG on this side and CC on this side, regardless  
27 of whatever else is attached to that long chain.  
28 Anywhere there's a GG, CC, those four, whoosh, it

1 cuts it.

2                   And so what that's like is like along  
3 the interstate highway, wherever we see a McDonald's  
4 on the off-ramp between here and San Francisco, we'll  
5 take that segment of highway as a segment, and  
6 anywhere that we see Carl's, Jr., we'll take that as  
7 a different segment. One Carl's, Jr., to the next  
8 Carl's, Jr., is this long. It's this far between the  
9 McDonald's and it's this far between the  
10 Burger Kings. That's all it is, basically.

11                   And once they've cut them by size, they  
12 put them into a gel. They do the electrophoresis.  
13 So they know where the big ones go. They know where  
14 the little ones go. The little ones go further. The  
15 big ones stay behind. So after you've run it through  
16 the electric field, you can't see it.

17                   I think Mr. Gregonis -- I know  
18 Mr. Gregonis said they put an indicator dye in there  
19 so they can at least see that the stuff has moved,  
20 that the electric current has forced the items  
21 through. Then they take it and say: Now we need to  
22 look at it. They again affix it to a nylon membrane  
23 using the southern-blotting technique, which then  
24 puts those DNA fragments in place. It affixes them  
25 there. And then they need to develop that just like  
26 film. They introduce radioactive probes that  
27 recognize a certain sequence. Those probes go  
28 there. They attach themselves -- excuse me --

1 process, about the results, about the final  
2 conclusion." That says a lot.

3 The defense's witness couldn't tell you  
4 anything about that. In fact his statement was, "I  
5 assume a match."

6 Then, lastly, in this area about the  
7 expertise, Dr. Chakraborty told you no, lab error  
8 rates have no place in a statistical calculation for  
9 two reasons. One, how do we define error? We heard  
10 about errors in transcription, but is there really an  
11 error in the science or is that an error in someone we  
12 can catch at some point which we did. Whether the  
13 Kocak case, that counsel may likely argue, or Donna  
14 Dowden error in the proficiency test, we can at least  
15 check that and make sure we find those errors. So to  
16 compute a frequency of lab error rate really is  
17 inappropriate because how do we define error, and,  
18 second, does it really matter?

19 The question for you, ladies and  
20 gentlemen, is, is there error in this case? That's  
21 really the issue. Is there a problem in the  
22 methodology to get these frequencies, these profiles?  
23 If the blood was analyzed correctly, if the product  
24 rule is acceptable, there's no error. Who cares about  
25 the error rate?

26 When you compare Dr. Chakraborty and  
27 Dr. Mueller, I mean no disrespect to Dr. Mueller in  
28 any shape or form -- it's like you need a heart

1 Dr. Chakraborty testified as humans we share much of  
2 the same DNA. That's what makes you human. That's  
3 why we are human species, human. That's why we have  
4 arms and legs and we have, you know, our eyes are a  
5 certain way, our ears are a certain way. You walk  
6 upright because our DNA is a certain way. And it's  
7 the same for all of us.

8 But forensically speaking we look at  
9 those areas with the most polymorphisms, the greatest  
10 variation, so when we talk about the Surai and Mayan  
11 matching across six loci, only two are forensic. The  
12 other four were not. That's not surprising to us that  
13 four match because we're human. Forensic loci,  
14 eleven match him.

15 I suspect you will hear about lab error  
16 rate, which we talked about for just a little bit, but  
17 it was categorized as really human error. As I said  
18 earlier, look to see if there is any error in this  
19 case. Was there any evidence that Lisa Grossweiler  
20 has ever failed a proficiency test? Was there any  
21 evidence Dan Gregonis ever failed a proficiency test  
22 or for that matter made a mistake? No. Is there any  
23 evidence in this case that happened?

24 The only documented cases that we have  
25 really of error rates don't have anything to do with  
26 the science. The molecular biology or the molecular  
27 genetics of every error we ever documented has been a  
28 transcription error by a person writing it down. And

1 are we hiding that? Is the prosecution or the People  
2 or the science hiding that? No. They do that because  
3 they want to try to achieve perfection. So lab error  
4 rate again is a nonissue.

5 And is there any type of transcription  
6 problem or error in this case? Well, Dr. Chakraborty  
7 said he read the dot blots himself, read the autorads  
8 himself, read the D1S80 gels himself, and his  
9 conclusions were the same as the criminalist, as the  
10 other scientist, which then I suggest to you means you  
11 need to go back and see, or suggest to you actually,  
12 that the science was done correctly. Because  
13 San Bernardino's DQ-Alpha matches Cellmark's DQ-Alpha;  
14 San Bernardino's polymarkers matches Cellmark  
15 polymarkers. So the only question you have is was  
16 there an error made in the collection process? And I  
17 believe Mr. Bozich will probably talk about that.

18 But what the state of the evidence is,  
19 I don't believe that's the case. The evidence doesn't  
20 suggest that to you. And then you think about the  
21 criminalist reviewing their notes at least on three  
22 previous occasions. If there was a problem between  
23 the peer review that occurs, the review in court and  
24 the cross-examination, we would have heard about it.

25 I suspect you will also hear, well,  
26 the fact that we get a result does not mean we got the  
27 right result. To that we would respond, well, it does  
28 mean you did the chemistry correctly, that is, the

1 bench work correctly. In fact, I think it was  
2 Mrs. Grossweiler who put it succinctly in that these  
3 kits are idiot-proof. I mean they come with -- they  
4 tell you how much of this to put in there; they spell  
5 out how much of this to take out. They give the  
6 primers and the buffers to mix. I mean essentially  
7 it's almost like baking a cake although you are using  
8 scientific instrumentation but it is not a difficult  
9 process.

10 So if we know we've done the bench work  
11 correctly; check for transcription error, there isn't  
12 any; and check the collection process; mismarking;  
13 tampering, no. Well, we don't have mismarking. We  
14 don't have tampering. The collection is okay with the  
15 exception of one area; that is, we used a hose, a  
16 garden hose attached to a faucet. And we don't know  
17 what, I think the questioning was, what substance came  
18 out of that hose or what biological matter came out of  
19 that particular hose because the sheriff's department,  
20 the prosecution didn't save the sample. It's water.  
21 It's garden water that the expert told you,  
22 Dan Gregonis told you, maybe there's some bacterial  
23 DNA, maybe there's some flora, plant DNA, but we're  
24 specific for human DNA. And that based upon my  
25 training and my experience, which includes two papers  
26 that he published, same number as Dr. Mueller, I  
27 suppose it's not going to affect the outcome. Not to  
28 mention Dan Gregonis also ran controls on his RFLP for

1 item M and item B.

2 With each of those tests -- I digress  
3 for a moment -- there were internal controls.  
4 Remember the positives and the negatives -- and you  
5 will see them on the dot blot photos -- make sure the  
6 process ran correctly, so in terms of the collection  
7 of the evidence, the marking of the evidence, the  
8 tampering of the evidence.

9 The -- Investigator Bowser  
10 hand-delivered the evidence collected off the truck to  
11 Cellmark. It doesn't get much less tamper-proof than  
12 that unless you think he tampered with evidence.

13 Well, I suspect you will hear, well,  
14 you know, given all that, there's still no  
15 standardized protocol. Well, what about the questions  
16 I asked about the American Society of Crime Lab  
17 Directors. What about TWGDAM and the accreditation  
18 process. What about the kits, the standard kids in  
19 the industry. What about the testimony of the, each  
20 of the witnesses who perform the test that talked  
21 about the same procedures that they followed. What  
22 about Dr. Chakraborty who says it was acceptable  
23 protocol. What about the California Association of  
24 Crime Lab Directors we talked about. And then damned  
25 if you do and damned if you don't situation. If it is  
26 all standardized, let's assume all across the world,  
27 same governmental standards.

28 The defense argues but mine is a unique

1 that's not true. We know four articles came out  
2 criticizing the NRC-II but did they criticize the  
3 product rule? No. Those four articles talked about  
4 lab error rate and how lab error rate might be used or  
5 considered. But that had nothing to do with the  
6 product rule at all.

7 In fact, who are the people criticizing  
8 it? One was a population geneticist. Okay. But not  
9 talking about product rule where we talk about  
10 Hardy-Weinberg and linkage equilibrium which is where  
11 the population genetics is at. He criticized it on  
12 another aspect. One was a business professor. One  
13 was a doctor at U.C. Irvine where Dr. Mueller works  
14 and happens to be a lawyer. Gee, I wonder why he is  
15 criticizing? And the last one was a statistician who  
16 is merely dealing with statistics. And what journal  
17 is it in? It's in the journal of Jurimetrics which is  
18 not a scientific journal. It is a journal that deals  
19 with statistics as it applies to courtrooms. So we're  
20 not dealing with a scientific setting now.

21 The bottom line to all of this is, is  
22 that a product rule is the state of the art. The  
23 product rule is acceptable. The product rule has been  
24 presented to you and the product rule tells you,  
25 ladies and gentlemen, that across those eleven  
26 forensic loci this defendant's blood matches the blood  
27 at M. And that the frequency that we expect to find  
28 that same profile in another African American not

1 related to him is one in 84 trillion. Our world  
2 population is about six billion. What does that tell  
3 you? It's unique. It's his blood. And when you  
4 apply those statistics to everything that Mr. Bozich  
5 told you about the witnesses saying he cut his hand,  
6 about bandaging, Mr. Burris's blood being found  
7 outside, and the fact that he was cut, it dovetails in  
8 beautifully.

9                   And now, last but not least, I want to  
10 talk just a minute about if for some reason, some  
11 unexplained reason you ignore the product rule and you  
12 make some type of determination that you want to be  
13 conservative. Because there was testimony about this  
14 particular aspect, and I thought this chart was a good  
15 idea when I started it.

16                   The modified ceiling principle. The  
17 most conservative, the most utilized from 1992, if you  
18 will, to 1996. Based upon the NRC-I documentation  
19 using Dr. Mueller's computation across the same eleven  
20 loci, one in 580 million. And I suggest that that's  
21 actually conservative because as we had argued --  
22 argued is not the right word -- as we flushed out in  
23 our cross-examination, it does not take into  
24 consideration what we know at the genetic level. Just  
25 using this conservative approach that the counsel  
26 agreed upon so we could use it in court, one in  
27 580 million. It's his blood. It's his blood.

28                   Well, we can't use all eleven loci,

005009

COUNTY OF RIVERSIDE - STATE OF CALIFORNIA  
SPECIAL CRIMINAL GRAND JURY

FILED  
JUN 15 1995  
By: [Signature]  
Case No. ICR-~~22536~~  
1022535

PEOPLE OF THE STATE OF CALIFORNIA, )  
Plaintiff, )  
vs. )  
ORLANDO DONTECE WATLEY, )  
Defendant. )

REPORTER'S TRANSCRIPT OF SPECIAL CRIMINAL GRAND JURY PROCEEDINGS

Held June 5, 6 & 8, 1995  
Riverside Consolidated Courts, Department 52  
Indictment Returned Before Hon. Ronald Taylor

APPEARANCES:

For the People: OFFICE OF THE DISTRICT ATTORNEY  
BY: CHARLES STAFFORD,  
Deputy District Attorney  
County Administrative Center  
Indio, CA 92201

Also Present: SERGEANT JERRY YATES

Reported by: Katherine G. Smith, CSR #1685  
Official Court Reporter  
Riverside Consolidated Courts

CHRONOLOGICAL WITNESS INDEXPROCEEDINGS OF MONDAY, JUNE 5, 1995, PAGES 1 - 57

KEVIN MANUEL	
Direct Examination .....	8
MARVIN SPREYNE	
Direct Examination .....	19
THOMAS FISHER	
Direct Examination .....	26
THOMAS MICHNA	
Direct Examination .....	35
JIMMIE LEE NUTE	
Direct Examination .....	48

PROCEEDINGS OF TUESDAY, JUNE 6, 1995, PAGES 58 - 139

DAVID ORTLOFF	
Direct Examination .....	60
ALMA DAVIS	
Direct Examination .....	68
ROSA DAVIS	
Direct Examination .....	81
CHARITY ZIMMERLY	
Direct Examination .....	89
KANDI CROUDY	
Direct Examination .....	108
JULISSA ESPINOZA	
Direct Examination .....	121
LISA SMALLING	
Direct Examination .....	126

CHRONOLOGICAL WITNESS INDEX CONTINUEDPROCEEDINGS OF THURSDAY, JUNE 8, 1995, PAGES 140 - 245

LISA BANASIAK	
Direct Examination .....	142
DARRYL GARBER, M.D.	
Direct Examination .....	149
ELLISSA MAYO	
Direct Examination .....	161
DANIEL GREGONIS	
Direct Examination .....	169
JULIE A. HARDING	
Direct Examination .....	189
DAMION JOHNSON	
Direct Examination .....	197
JERRY YATES	
Direct Examination .....	204

EXHIBIT INDEX

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1	Diagram of Crime Scene	17	212
2 - 7	Photographs of Crime Scene Area	22	212
8 - 10	Photograph of Mazda Truck	46	212
11 - 13	Photographs of Blood Spots	65	212
14	Photograph of Nathaniel Brown	71	212
15	Photograph of Jerome Holland	71	212
16	Photograph of Watley	71	212
17	Photograph of Jim Davis	104	212
18	Criminalist Mayo's Chart	165	212
19	Gregonis RFLP Chart	174	212
20	Photograph of Kerry Parker	184	212
21	Enlargement of Watley Drawing	210	212

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PROCEEDINGS OF MONDAY, JUNE 5, 1995

(Judge Ronald Taylor presided over the selection of a 19-member special criminal grand jury. Those proceedings were not transcribed at this time. The following proceedings took place at 10:45.)

\* \* \* \* \*

MR. STAFFORD: Mr. Foreman, I will waive an informal statement if the foreman can swear in the court reporter and take roll of the grand jury?

GRAND JURY FOREMAN DRUM: Okay. The grand jury shall now come to order.

(Katherine G. Smith, certified shorthand court reporter, was sworn to take and transcribe and not divulge the contents of these proceedings.)

GRAND JURY FOREMAN DRUM: Will the secretary now please call the roll?

GRAND JURY SECRETARY PITZER: Daniel Boring?

GRAND JUROR BORING: Here.

GRAND JURY SECRETARY PITZER: Donald Moore?

GRAND JUROR MOORE: Yes, ma'am.

GRAND JURY SECRETARY PITZER: Elspeth Thornton?

GRAND JUROR THORNTON: Here.

GRAND JURY SECRETARY PITZER: Mary Rodriguez?

GRAND JUROR RODRIGUEZ: Here.

GRAND JURY SECRETARY PITZER: Stacy Frazee?

GRAND JUROR FRAZEE: Here.

GRAND JURY SECRETARY PITZER: Horacio Trujillo?

GRAND JUROR TRUJILLO: Yes.

1 GRAND JURY SECRETARY PITZER: Neil Weintraub?  
2 GRAND JUROR WEINTRAUB: Here.  
3 GRAND JURY SECRETARY PITZER: Gerald Drum?  
4 GRAND JURY FOREMAN DRUM: Here.  
5 GRAND JURY SECRETARY PITZER: Irene Castor?  
6 GRAND JUROR CASTOR: Here.  
7 GRAND JURY SECRETARY PITZER: William Risko?  
8 GRAND JUROR RISKO: Here.  
9 GRAND JURY SECRETARY PITZER: Theresa Hunter?  
10 GRAND JUROR HUNTER: Here.  
11 GRAND JURY SECRETARY PITZER: Amanda Knox?  
12 GRAND JUROR KNOX: Here.  
13 GRAND JURY SECRETARY PITZER: Kimberly Vorck?  
14 GRAND JUROR VORCK: Here.  
15 GRAND JURY SECRETARY PITZER: Janet Ramirez?  
16 GRAND JUROR RAMIREZ: Here.  
17 GRAND JURY SECRETARY PITZER: Linda Guthery?  
18 GRAND JUROR GUTHERY: Here.  
19 GRAND JURY SECRETARY PITZER: David Weiss?  
20 GRAND JUROR WEISS: Here.  
21 GRAND JURY SECRETARY PITZER: James Campbell?  
22 GRAND JUROR CAMPBELL: Here.  
23 GRAND JURY SECRETARY PITZER: Deborah Gelsomino?  
24 GRAND JUROR GELSOMINO: Gelsomino, here.  
25 GRAND JURY FOREMAN DRUM: I am missing the document  
26 that -- Deana told me she would have this filled out for me, but  
27 I don't have it.  
28 MR. STAFFORD: I can do that; I can make a statement of

1 Now, the technologies that I used here actually when we  
2 are replicating it, put a piece of DNA in there, that helps us  
3 detect it so that it ends up being the end result, visually, is  
4 a bunch of colored dots that will tell us which genetic type it  
5 actually is.

6 Q. The control sample that you had from Mr. Watley in  
7 the three specimens T-8, T-11 and M, what did you do first with  
8 them?

9 A. Okay. As far as my -- on T-8 and T-11, as well as  
10 M, I extracted those on the 25th of January, 1994, made an  
11 evaluation as to their actual type, and then what I proceeded to  
12 do both RFLP as well as one of the PCR technologies.

13 Q. What was your findings when you did the typing on  
14 Hogue's three specimens and Mr. Watley control sample?

15 A. The findings overall for both the RFLP as well as  
16 the PCR technique that I used were that the Item T-8, T-11 and  
17 M, first of all, showed there's human DNA present and it is a  
18 bloodstain and that the DNA profile for Item T-8, T-11 and M  
19 matches the DNA profile that I determined for the standard blood  
20 sample from Watley.

21 Q. And, based on your findings and results, using both  
22 PCR and RFLP, are you able to state an opinion as to how  
23 prevalent that particular finding is in the normal population?

24 A. Yes, I can. Using population statistics as well as  
25 consensus -- well, the, what's called a TWGDAM consensus, as  
26 well as published consensus on calculating the population  
27 percentages or frequencies in a Caucasian population for all  
28 three of these profiles, the handrail, the T-8 from the truck

1 and also T-11 from the truck, occur in one in 79 million  
2 Caucasians, approximately one in 490 million Hispanics,  
3 approximately one in 25 million blacks. And then a very  
4 conservative number, which is to account for any statistical  
5 error that there may be in sampling, is that it is one in 1.2  
6 million individuals.

7 MR. STAFFORD: People have nothing further.

8 GRAND JURY FOREMAN DRUM: Does the jury have any  
9 questions?

10 MR. STAFFORD: I have nothing further.

11 GRAND JURY FOREMAN DRUM: All right. You are ordered not  
12 to discuss or disclose the questions asked of you and your  
13 answers or any information learned from this grand jury. And we  
14 appreciate your testimony this morning. Thank you very much.

15 THE WITNESS: Thank you.

16 MR. STAFFORD: That concludes the witnesses for the  
17 morning session. I would ask that we return at 1:30. We have  
18 probably four witnesses. They will go very quickly, and I  
19 suspect we will probably finish within an hour, hour and a half,  
20 after we start.

21 GRAND JUROR HUNTER: And that is it for today?

22 MR. STAFFORD: That will be it for today, and you will  
23 probably have time to deliberate today.

24 GRAND JUROR HUNTER: Wonderful.

25 GRAND JURY FOREMAN DRUM: Until 1:30, then?

26 MR. STAFFORD: Yes.

27 (Noon recess)

28 MR. STAFFORD: We are ready, if we can start.

CONSOLIDATED SUPERIOR AND MUNICIPAL COURTS  
INDIO BRANCH

001528

PEOPLE OF THE STATE OF CALIFORNIA

CASE NO: ICR22535

-vs-

DEFENDANT: ORLANDO DONTECE WATLEY

MINUTE ORDER

\*\*\*\*\*  
DEPT:3N HEARING DATE: 01/08/98  
PROCEEDINGS: Jury Trial  
\*\*\*\*\*

CHARGES: 1) 187 PC-F A, 2) 187 PC-F A, 3) 187 PC-F A

Honorable THOMAS N. DOUGLASS Presiding.

Clerk: M. Ramirez.

Court Reporter: B.Kohler/J. Middaugh

People Represented By D. BOZICH/J. BEHNKE/U. McNulty, DDA.

Defendant Represented By B. LEVIN.

Sgt. J. Yates present.

Defendant Present.

38th DAY OF TRIAL

At 9:10, the following proceedings were held:

Out of the Presence Of the Jury, the following proceedings were held:

Court and Counsel Confer regarding: exhibits to be admitted.

(TRJI)

People's Exhibit(s) #1 and #2 is/are Admitted in evidence.

People's Exhibit(s) #5 thru #20 is/are Admitted in evidence.

People's Exhibit(s) #23 thru #26 is/are Admitted in evidence.

People's Exhibit(s) #39 thru #42 is/are Admitted in evidence.

People's Exhibit(s) #44 and #45 is/are Admitted in evidence.

People's Exhibit(s) #47 is/are Admitted in evidence.

People's Exhibit(s) #49 thru #57 is/are Admitted in evidence.

People's Exhibit(s) #59 is/are Admitted in evidence.

People's Exhibit(s) #62 thru #67 is/are Admitted in evidence.

People's Exhibit(s) #70 and #71 is/are Admitted in evidence.

People's Exhibit(s) #92 is/are Admitted in evidence.

People's Exhibit(s) #100 and #101 is/are Admitted in evidence.

People's Exhibit(s) #109 and #110 is/are Admitted in evidence.

People's Exhibit(s) #144 thru #153 is/are Admitted in evidence.

People's Exhibit(s) #155 is/are Admitted in evidence.

People's Exhibit(s) #157 thru #166 is/are Admitted in evidence.

People's Exhibit(s) #168 thru #173 is/are Admitted in evidence.

People's Exhibit(s) #193 and #194 is/are Admitted in evidence.

People's Exhibit(s) #196 thru #207 is/are Admitted in evidence.

People's Exhibit(s) #212 thru #215 is/are Admitted in evidence.

People's Exhibit(s) #220 is/are Admitted in evidence.

People's Exhibit(s) #223 thru #234 is/are Admitted in evidence.

Motion By Defense Regarding mistrial is called for hearing.

1/09/98

Page: 2

Case Number : ICR22535

People vs. ORLANDO WATLEY

Motion DENied.

People's Exhibit(s) #238 thru #240 is/are Admitted in evidence.

People's Exhibit(s) #243 is/are Admitted in evidence.

People's Exhibit(s) #246 is/are Admitted in evidence.

Motion By Defense Regarding mistrial is called for hearing.

Motion DENied.

People's Exhibit(s) #252 and #253 is/are Admitted in evidence.

People's Exhibit(s) #260 thru #262 is/are Admitted in evidence.

People's Exhibit(s) #269 thru #272 is/are Admitted in evidence.

People's Exhibit(s) #277 thru #280 is/are Admitted in evidence.

People's Exhibit(s) #295 thru #298 is/are Admitted in evidence.

People's Exhibit(s) #308 is/are Admitted in evidence.

People's Exhibit(s) #310 is/are Admitted in evidence.

Identification/Exhibit numbers 313 through 399 were not used.

People's Exhibit(s) #400 thru #402 is/are Admitted in evidence.

People's Exhibit(s) #404 thru #415 is/are Admitted in evidence.

Defendant's Exhibit(s) B thru P is/are Admitted in evidence.

Counsel Stipulate: foundation may be layed for exhibits Q thru T.

Motion By Defense Regarding mistrial is called for hearing.

Motion DENied.

Defense withdraws exhibits Q thru T.

AT 11:54 THE ABOVE PROCEEDINGS CONCLUDED

At 13:43, the following proceedings were held:

Out of the Presence Of the Jury, the following proceedings were held:

Court and Counsel Confer regarding: exhibits to be admitted.

(TRJI)

Defendant's Exhibit(s) U is/are Admitted in evidence.

Defendant's Exhibit(s) W thru Y is/are Admitted in evidence.

From 2:08 PM to 4:10 PM the Court and Counsel

review the Jury Instructions on the record.

Motion By Defense Regarding Caljic instructions is called for hearing.

The Court will rule on Caljic instruction request on 1-9-98.

Court and Counsel Confer regarding: how to proceed with closing arguments. (TRJI)

AT 16:30 THE ABOVE PROCEEDINGS CONCLUDED

Trial (IN PROGRESS) Adjourned to 01/12/98 at 8:30 in Dept. 3N.

Bail To Remain as fixed.

Remains Remanded To custody of Riverside Sheriff.

\*\*HEARING CONCLUDED\*\*

CLERK OF THE CONSOLIDATED COURTS - RIVERSIDE COUNTY

LIST OF EXHIBITS  
ICR22535

CASE NO. \_\_\_\_\_

PEOPLE

ORLANDO D. WATLEY

-VS-

PLAINTIFF'S

DEFENDANT'S

EXH	IDENT	DESCRIPTION	EXH	IDENT	DESCRIPTION
225	225	Chart - PM Alleles			
226	226	Chart - DQ Alph			
227	227	Chart - DQ Alph Alleles			
228	228	Blood Sample from Tom Fisher			
229	229	Photo of DNA Strips			
230	230	Photo of DNA Strips			
231	231	Photo of DNA Strips			
232	232	Photo of DNA Strips			
233	233	Photo of DNA Strips			
234	234	Photo of DNA Strips			
	235	Photo of DNA Strips			
	236	Photo of DNA Strips			
	237	Photo of DNA Strips			
238	238	Photo of DNA Strips			
239	239	Photo of DNA Strips			
240	240	Photo of DNA Strips			
	241	Photo of DNA Strips			
	242	Chart - DNA (McNulty)			
243	243	Photo of DNA Strip #38			
	244	Genotype Possibilities Pg 3&4			
	244A	Genotype Possibilities Pg 2			
	245	DNA Profile of Truck Bed			
	245A	DNA Profile of Truck Bed T-4 Evid Sample			
246	246	Enlarged DNA RFLP			
	247	Auto Rad			

LIST OF EXHIBITS  
ICR22535

CASE NO. \_\_\_\_\_

PEOPLE

-VS-

ORLANDO D. WATLEY

## PLAINTIFF'S

## DEFENDANT'S

EXH	IDENT	DESCRIPTION	EXH	IDENT	DESCRIPTION
	248	Auto Rad			
	249	Auto Rad			
	250	Auto Rad			
	251	Auto Rad			
252	252	Auto Rad			
253	253	Auto Rad			
	254	Auto Rad			
	255	Photo of Richard Burris			
	256	Photo of Tommy L. Johnson			
	257	Photo of Tommy L. Johnson			
	258	Blood Sample of Tommy L. Johnson			
	259	DNA Card of Tommy L. Johnson			
260	260	8 Aerial - Photo Negatives			
261	261	8x10 Photo of Theodis Brown			
262	262	Blood Sample from Theodis Brown			
	263	Photo of PCR Strip SBSO: A,M,T-8,T-11			
	264	Photo of PCR Strip SBSO: C,D,E			
	265	Photo of PCR Strip SBSO: F,G,H,I,J			
	266	Diagram Compiling Exh #263-265/269-271			
	267	Photo of PCR Strip: K(C)-K(F),L(A)-L(D)			
	268	Photo of PCR Strip SBSO: L(E),L(F),N			
269	269	Photo of D1S80 SBSO: A,M,T-8,T-11			
270	270	Photo of D1S80 SBSO: C,D,E			
271	271	Photo of D1S80 SBSO: F,G,H,I,J			
272	272	Photo of D1S80 SBSO: K(C)-K(F),L(A)-L(F),N			

LIST OF EXHIBITS