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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA BARBARA
3 SANTA MARIA BRANCH; COOK STREET DIVISION
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF)

8 CALIFORNIA,)

9 Plaintiff,)

10 -vs-) No. 1133603

11 MICHAEL JOE JACKSON,)

12 Defendant.)

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 THURSDAY, MARCH 24, 2005

20

21 8:30 A.M.

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23 (PAGES 3321 THROUGH 3375)

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27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 BY: Official Court Reporter 3321

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1 I N D E X

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"
on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on
index.

6 Mr. Sanger is listed as "SA" on index. Mr. Oxman is listed as "O" on
index.

7 Mr. Nicola is listed as "N" on index.

8

9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS

10

11 CANTU, Antonio A. 3324-SA 3339-A 3343-SA (Cont'd)

12 3352-A 3356-SA

13 (Further) (Further)

14 HEMMAN, Lisa Susan Roote 3361-N

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1 Santa Maria, California

2 Thursday, March 24, 2005

3 8:30 a.m.

4

5 THE COURT: Good morning.

6 COUNSEL AT COUNSEL TABLE: (In unison)

7 Good morning, Your Honor.

8 THE COURT: Wasn't there a witness?

9 MR. AUCHINCLOSS: Yes. Dr. Cantu, please.

10 THE COURT: You're still under oath. Please

11 be seated.

12 MR. SANGER: May I proceed, Your Honor?

13 THE COURT: Yes.

14 MR. SANGER: All right.

15

16 ANTHONY A. CANTU

17 Having been previously sworn, resumed the

18 stand and testified further as follows:

19

20 CROSS-EXAMINATION (Continued)

21 BY MR. SANGER:

22 Q. Dr. Cantu, you have expressed an interest in

23 countering the challenges that have recently come up

24 to fingerprint identification; is that correct?

25 A. I've been involved in discussions of that

26 nature, yes.

27 Q. And recent challenges have involved, for

28 instance, a fairly well-known court case in 3324

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1 Pennsylvania, where Judge Pollack ruled on
2 fingerprint admissibility?

3 A. Yes, sir.

4 Q. Okay. There have been some rather
5 remarkable issues regarding reliability of
6 fingerprint comparison, correct?

7 A. That's what I understand.

8 Q. You're aware of the Oregon attorney who was
9 accused of the Madrid terrorist bombing; is that
10 correct?

11 A. I'm aware of that.

12 Q. The people that did that fingerprint
13 comparison were in the FBI office in Washington
14 D.C.?

15 A. That's correct.

16 Q. Those are people you know, right?

17 A. No, I do not know them.

18 Q. Okay. That's fine.

19 In the context of this, you have expressed a
20 desire to see that the second part of what we have
21 been talking about -- we've been talking about the
22 first part, which is being able to see fingerprints
23 so you can look at them, and then presumably compare
24 them, right?

25 A. That's correct.

26 Q. And the second part is comparing them?

27 A. That is correct.

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28 Q. And you have indicated that you believe 3325

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1 there needs to be additional validation studies in
2 order to bolster the admissibility of fingerprint
3 evidence in this country, correct?

4 A. No, sir, that is not correct. I've been
5 involved in discussions of that nature, but I don't
6 think you've ever seen coming out of my mouth a
7 statement like that.

8 Q. Do you remember sending a communication to
9 Richard Rau, R-a-u, who's the senior program manager
10 at the National Institute of Justice?

11 A. He was.

12 Q. He was. And in February of 2000, did you
13 tell him, "It will not be long before more and more
14 cases come up where fingerprint testimony will be
15 challenged, and therefore we need to provide the
16 examiners with necessary hard data on validation to
17 counter challenges"?

18 A. I believe I did say that.

19 Q. Okay. All right. So when you're talking
20 about validation, additional hard data on
21 validation, you're talking about validating the
22 second part, which is the aspects of comparison,
23 that there's permanence, there's individuality, and
24 that comparisons can actually be made to come up
25 with a positive conclusion, right?

26 A. Well, that's what some people contend. I'm
27 not, as I mentioned earlier, in that area. My

28 particular expertise has been in the first part, 3326

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1 coming up with technology for the visualization of
2 fingerprints and advanced technology to be able to
3 detect fingerprints that would not be able to be
4 detected by the ordinary methods.

5 Q. Okay. I understand. And that's a science,
6 that's part of the science that you study; is that
7 correct?

8 A. Well, I'm a chemist.

9 Q. You're a chemist. You're a scientist,
10 right?

11 A. Yes, sir.

12 Q. And you're a very senior scientist for the
13 United States Secret Service, correct?

14 A. That is correct.

15 Q. How many times have you testified in court?

16 A. Probably in excess of 40 times.

17 Q. Okay. And how many times have you been
18 called to testify in court before a jury?

19 A. About that many times.

20 Q. About that many times. How many times have
21 you been called by the prosecution, U.S. Attorney,
22 or the District Attorney, or whatever the
23 prosecution --

24 A. Most of those times.

25 Q. Would it be all of those times?

26 A. I'd have to look at my records. I don't
27 have that. I believe it's most of those times.

28 Q. All right. You're pretty sure it's most of 3327

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1 those times, right?

2 A. Yes.

3 Q. All right. So you're trying to think, was
4 there a time or two that you may have been called by
5 a defense lawyer?

6 A. Yes, that's what I think.

7 Q. Can't think of one right at the moment?

8 A. No.

9 Q. Okay. And basically what you've come to

10 tell us is that there's a ninhydrin process which
11 makes it possible to visualize or see latent prints,
12 that is, prints that you can't really see on paper.

13 You use this ninhydrin, and they turn purple and you
14 can see them, right?

15 A. That's one of the processes.

16 Q. And that's been around since the '50s,
17 right?

18 A. That particular one has.

19 Q. And you developed actually a newer version
20 of that ninhydrin process, haven't you?

21 A. Several.

22 Q. Do you know what version of the process was
23 used here in Santa Barbara, Santa Maria, with regard
24 to Mr. Jackson's case?

25 A. Well, as far as the amino acid
26 visualization, it was ninhydrin.

27 Q. So you're aware of that?

28 A. Yes. 3328

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1 Q. All right. And then you've come to tell us
2 that the super glue fuming process is one that's
3 existed, I think you said, since the '80s; is that
4 correct?

5 A. I believe '70s, but --

6 Q. '70s or '80s?

7 A. It's been quite some time.

8 Q. Quite some time. And that's been around.

9 And that basically is another way of visualizing
10 these things, so you can actually see the ridge
11 marks, right?

12 A. Depends on the surface, of course. But yes,
13 in this particular case that's what was used.

14 Q. And you've been told that; is that correct?

15 A. Yes, I saw the evidence.

16 Q. Okay. Now, I think you said yesterday that
17 you had not evaluated any of the evidence in this
18 case?

19 A. No. I mean, I did say I had not evaluated
20 any of the evidence --

21 Q. All right.

22 A. -- as far as the comparison of fingerprints.

23 Q. So what you did is you looked to see what
24 technology they used to bring forth the fingerprints
25 so they were visual?

26 A. Correct.

27 Q. Okay. And then you talked about the

28 Scenescape, which is a device that uses the 3329

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1 ultraviolet light to make it easier to see

2 fingerprints; is that correct?

3 A. Yes, sir.

4 Q. All right. Now, there are a couple issues

5 that you're aware of -- let me see if this is true

6 or not. Let's talk about a couple. One, with

7 regard to the fuming technique, the fuming technique

8 can be done to excess; is that correct? If you

9 overfume the paper, you can lose some of the detail;

10 is that correct?

11 A. That is correct.

12 Q. And when you have a Scenescop, you can, in

13 fact, minimize the fuming, because the Scenescop is

14 going to be more sensitive in picking up the ridges

15 or the imprints of the ridges; is that correct?

16 A. There's some truth to that, yes.

17 Q. Okay. You also -- well, let me ask this:

18 Generally the Scenescop company, the company,

19 whatever its name was over a period of time that has

20 manufactured this Scenescop, recommends that film

21 be used rather than digital when taking the pictures

22 through the Scenescop; is that correct?

23 A. That's a recommendation, sir.

24 Q. Okay. And you're aware that using a digital

25 camera can actually filter out some of the detail;

26 is that correct?

27 A. No, that's not quite correct. It all

28 depends on the digital camera, its resolution, and 3330

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1 that's something that has to be taken into account.

2 And the people at Spex are fully aware that a good
3 digital camera will bring out the details that are
4 in a fingerprint.

5 Q. Their recommendation, however, is that you
6 use a 35-millimeter-film camera, correct?

7 A. Like you said, a recommendation.

8 Q. All right. And you're aware of studies
9 showing that -- that some of the detail,

10 particularly in between ridges or nonridge detail of
11 fingerprints, can be lost when using a digital
12 camera, correct?

13 A. No, I'm not aware of that.

14 Q. All right. Now, you told us that you
15 developed prints -- I mean, not oversimplify, you
16 told us that you're familiar with the technology
17 used to develop prints and, in fact, you've been --
18 you participated in improving that technology,
19 right?

20 A. Yes.

21 Q. Okay. Nevertheless, when you are dedicating
22 part of your career to this, you must understand
23 what it is that's going to be done with the
24 developed prints, correct?

25 A. Right.

26 Q. All right. So you know that one of the
27 things you're looking for, or a latent print

28 examiner, which you're not, I understand, but one of 3331

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1 the things that a latent print examiner is going to
2 be looking for are ridge details; is that correct?

3 A. Correct.

4 Q. So when you talk about ridge details, you're
5 talking about the parts of the skin that protrude
6 and form ridges?

7 A. Correct.

8 Q. All right. The people who are doing this
9 examination have begun to call themselves
10 ridgeologists; is that correct?

11 A. Yes, I've heard that term.

12 Q. Okay. Now, I'd asked you before, when it
13 goes from your part of the science to raising the
14 prints so they can be seen to the next step, the
15 next step is not scientific, is it?

16 A. I wouldn't say that.

17 Q. It's subjective, is it not, sir?

18 A. I cannot say that.

19 Q. You cannot say whether it's subjective or
20 not subjective?

21 A. It's not my area of expertise.

22 Q. Okay. But basically, you have people who
23 are going to look at what has been raised as a part
24 of your technology, let us say, and they're going to
25 compare it with a rolled print, you know that,
26 right?

27 A. Yes.

28 Q. And they are going to come to a conclusion 3332

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1 as to whether or not they believe it matches,
2 correct?

3 A. That is correct.

4 Q. All right. Now, in the course of doing
5 this, they'll be looking for the identification of
6 certain points from the latent fingerprint to the
7 known fingerprint; is that correct?

8 A. That's the way the comparison is done, yes.

9 Q. Okay. They'll also -- besides looking for
10 comparisons of ridge detail, they may also be
11 looking for pores; is that correct?

12 A. If they are present.

13 Q. All right. So that's one of the things that
14 you would like to bring out with your technology?
15 In other words, your effort to come up with the best
16 latent print that can be obtained, you would like to
17 have all the detail there that would be possible for
18 a print examiner to compare, correct?

19 A. That would be ideal, but it doesn't happen
20 all the time.

21 Q. Okay. Well, we'll get to what happens, but
22 your goal is to give them the best prints so that
23 you can -- you can compare it?

24 A. Well, I should add, even a rolled print that
25 you've been talking about, one that's carefully
26 done, sometimes does not contain any pores.

27 Q. All right. We're going back to pores, but

28 that's where I was going back, so you're right. 3333

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1 Okay.

2 Sometimes a rolled print doesn't even
3 contain all the ridges; is that correct? There can
4 be a fold in the paper, there can be some glitch in
5 rolling the print?

6 A. That's correct.

7 Q. All right. Now, digital imaging tends not
8 to pick up the pores as well as film imaging or a
9 film camera, correct?

10 A. I cannot say that. First of all, for
11 reasons that it's not part of my expertise.

12 Q. Now, let me just ask you about -- I know I'm
13 going to mispronounce it, but it looks like
14 1, 2-indanedione, known as IND, which would be my
15 preference, if we can call it that. Are you
16 familiar with that?

17 A. Yes.

18 Q. And is that an advancement in the
19 visualization or the ability to visualize latent
20 prints?

21 A. The amino acid portion, yes.

22 Q. Do you know if that was used at all in this
23 case?

24 A. No, it was not used.

25 Q. And that's something that you helped develop
26 here in the last ten years or so; is that correct?

27 A. Correct.

28 Q. All right. Now, let's just talk briefly 3334

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1 about prints in the demonstration that was given
2 here. You recall the demonstration that was given
3 yesterday?

4 A. Yes.

5 Q. And you sort of stood back and you let Mr.
6 Sutcliffe do it, I think; is that safe to say?

7 A. That's correct.

8 Q. You didn't have anything to do with putting
9 the fingerprints on the paper that was put under the
10 Scenoscope, did you?

11 A. No. I had nothing to do with it.

12 Q. Okay. So, you would agree that when
13 fingerprints are found in their natural state, for
14 lack of a better term, but at a crime scene or
15 wherever, you don't have -- for the most part, you
16 don't have people rolling their thumbprint on a
17 piece of paper, correct?

18 A. I'm sorry, could you repeat that question?

19 Q. Well, it's just a basic question. In other
20 words, when we saw the demonstration, I believe that
21 Mr. Sutcliffe at one point took his -- it may have
22 been his thumb or his finger, and he kind of rolled
23 it, pushed it onto the paper so it could be seen.
24 That's pretty much an ideal fingerprint, is it not?

25 A. Yes.

26 Q. And, in fact, I think he was wearing gloves
27 before he did that. He took the gloves off, and

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28 made a good, clean, print; is that right? 3335

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1 A. That's correct.

2 Q. And you had a chance to see it up on the
3 screen, correct?

4 A. I did.

5 Q. And it looked like a pretty good, clean
6 print, right?

7 A. That's correct.

8 Q. And were you to see that in actual -- in the
9 actual course of a case, you would say that is a
10 pretty good, clean print, right?

11 A. That's correct.

12 Q. What happens is you have generally partial
13 prints that are sometimes smudged, that are
14 sometimes just the tip of a finger or the side, or
15 the -- whatever, correct?

16 A. Correct.

17 Q. And so you try to develop whatever is on the
18 paper so that it can be seen?

19 A. Correct.

20 Q. Sometimes that fingerprint may be over
21 another fingerprint or over some other imperfection
22 in the paper, or whatever the substance is, that
23 makes it impossible to see the rest of the print,
24 correct?

25 A. It may.

26 Q. So the challenge is to take whatever you
27 have, and get as clear a picture of whatever that is

28 so the latent print examiner can make a comparison; 3336

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1 is that right?

2 A. Well, my role is to provide them with the
3 best possible tools to develop the print.

4 Q. Right. And actually, you don't go out in
5 the field and do this latent print development
6 yourself, do you?

7 A. Not recently.

8 Q. Okay. You've done it on occasion?

9 A. Yes.

10 Q. All right. Your job is really, as a
11 chemist, to -- for the United States Secret Service
12 to come up with the best technology you can to make
13 this work; is that right?

14 A. That is correct.

15 Q. And by "this" I mean the visualization of
16 these latent prints.

17 A. That is correct.

18 Q. And this has been something you've been
19 working on now for the last few years; is that
20 right?

21 A. I think I mentioned in excess of 20 years.

22 That's one of the areas that I get involved in.

23 There are other ones, of course.

24 Q. Originally you were with the ATF --

25 A. That's correct.

26 Q. -- Alcohol, Tobacco and Firearms, right?

27 And you've written a lot of papers; is that

28 correct? 3337

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1 A. Correct.

2 Q. You have written more papers, for instance,
3 on the subject of identifying ink or pencil lead,
4 those kind of markings on paper, than you have about
5 fingerprint development; is that correct?

6 A. I gave a number of -- when I was asked about
7 publications, and I think I said of 26 papers that
8 are, you know, published in peer-reviewed journals,
9 and nine of those are on fingerprints. And I've got
10 two that are in review right now. One is a chapter
11 in a book. And the other one is a publication on --
12 again, on fingerprints, that's going to be in the
13 Journal of Forensic Sciences. So that would be like
14 a total of 11.

15 Q. I thought you said seven and two for nine,
16 yesterday?

17 A. Seven and two, okay.

18 Q. All right. Well, whichever one it is,
19 that's a lot of papers. But you've written more
20 papers on ink, and documents, the identification of
21 ink and pencil lead and that sort of thing in
22 document review than you have on fingerprints,
23 right?

24 A. That is a fascinating area. Yes, I have
25 worked on the area of the analysis of items on
26 documents to be able to associate documents, date
27 documents, and this includes ink, paper, pencil,

28 erasure residue, and things like that. And 3338

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1 fingerprints is just one of the items that you find
2 on documents as well.

3 Q. Okay. But -- thank you. But the subject
4 matter of the papers on ink had nothing to do with
5 fingerprints, did they?

6 A. No.

7 MR. SANGER: Okay. Thank you. Okay.

8 I have no further questions. Thank you.

9 MR. AUCHINCLOSS: Very briefly, Your Honor.

10
11 REDIRECT EXAMINATION

12 BY MR. AUCHINCLOSS:

13 Q. As far as the use of digital cameras in
14 capturing a fingerprint on a piece of paper, have
15 you ever used a digital camera to do that?

16 A. We have tested some digital cameras for
17 doing that.

18 Q. And have you found them to be satisfactory?

19 MR. SANGER: I'm going to object as lack of
20 foundation.

21 THE COURT: Sustained.

22 Q. BY MR. AUCHINCLOSS: Have you used -- you
23 said you've used digital cameras to -- well, let me
24 back up.

25 Have you used digital cameras to photograph
26 fingerprints in the past?

27 A. Our laboratory has.

28 Q. And have you reviewed those photographs? 3339

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1 A. No, I have not had a chance to review them.

2 Q. All right. As far as the questions

3 regarding the protocol that was used in this case,

4 have you had an opportunity to talk to Detective Tim

5 Sutcliffe about the exact protocol that was used to

6 examine fingerprints in this case?

7 A. Yes, I did.

8 Q. And are you aware of the fact that they

9 initially looked at the magazines to see if they

10 could see anything with the naked eye or with a

11 loop?

12 MR. SANGER: I'm going to object that that

13 calls for hearsay.

14 THE COURT: Sustained.

15 Q. BY MR. AUCHINCLOSS: Then I'll ask it in

16 hypothetical form.

17 Assume that -- and this is a hypothetical.

18 Assume that a large number of magazines are being

19 looked at for latent fingerprints. Assume that the

20 first step is to use an alternative light source,

21 look at the magazines visually, see if you can find

22 any biological evidence, including fingerprints, on

23 those magazines.

24 Assume the next step is that you then fume

25 the magazines with the super glue. And then you

26 again look at the magazines using the Scenescop and

27 the alternative light source that's provided by the

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28 Scenescape. You identify notable prints, you circle 3340

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1 them, you have a system by which you identify those
2 prints, and then you take it a step further.
3 You use a ninhydrin solution and go on to a
4 second phase of looking for prints on these
5 magazines where -- or I should say a third phase,
6 where you're actually looking for identifiable
7 prints that are shown by the ninhydrin solution, and
8 you note those items, circle them, and document
9 their location on the individual pages.

10 In your opinion, do you have an opinion as
11 to the validity or integrity of such a protocol for
12 identifying and locating fingerprints on smooth
13 magazine paper surfaces?

14 MR. SANGER: I'm going to object that that's
15 an improper hypothetical, and it's vague as to "the
16 validity or integrity."

17 THE COURT: Overruled.

18 You may answer.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You may answer.

21 THE WITNESS: I gave an answer yesterday to
22 that effect when you asked me about smooth paper,
23 like on a magazine, and I indicated a protocol that
24 could be used. And I indicated that one would use
25 optical methods first, maybe use the ultraviolet
26 imaging source for the purpose of seeing if there's
27 any prints that it could bring out before any

28 processing. And then the super glue would be the 3341

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1 next step, and see if there's any prints visually
2 also using the Reflected Ultraviolet Imaging System.
3 And you find some -- let's say you find some
4 in that case, and you mark them. And then the next
5 step, "Let's go after the amino acids," and that
6 would be the use of a ninhydrin or other reagents.
7 But in this case, ninhydrin is the one that was
8 used.

9 So I did indicate that yesterday.

10 Q. BY MR. AUCHINCLOSS: And so what is your
11 opinion about the use of that type of protocol as
12 far as its validity in locating fingerprints on
13 smooth magazine paper?

14 MR. SANGER: I'm going to object. Asked and
15 answered.

16 THE COURT: Overruled.

17 You may answer.

18 THE WITNESS: No, I indicated that that's
19 what would normally be done.

20 Q. BY MR. AUCHINCLOSS: Is that the protocol
21 that you yourself would use to find fingerprints on
22 such an item?

23 A. Yes, we have used that protocol --

24 MR. SANGER: I'm going to move to strike.
25 That calls for speculation.

26 THE COURT: Overruled.

27 Q. BY MR. AUCHINCLOSS: You may answer.

28 A. Very well. 3342

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1 We had a similar case in our laboratory
2 where exactly the same protocol was followed.

3 MR. SANGER: I'm going to move to strike as
4 nonresponsive.

5 THE COURT: Sustained; stricken.

6 Q. BY MR. AUCHINCLOSS: I'll just ask you to
7 answer this question -- just to satisfy the rules,
8 to answer the question in a "yes" or "no" fashion.

9 Isn't this the type of protocol you yourself
10 would use if you were trying to locate fingerprints
11 on smooth magazine papers?

12 A. Yes.

13 MR. AUCHINCLOSS: Thank you. No further
14 questions.

15

16 RE-CROSS-EXAMINATION

17 BY MR. SANGER:

18 Q. Okay. Now, you said you have done this a
19 few times in actual cases; is that correct?

20 A. Yes, sir.

21 Q. Okay. For the most part, somebody else does
22 this in actual cases, does this -- bringing the
23 fingerprints up either through alternative light
24 source, fluorescence, ultraviolet, super glue,
25 ninhydrin, or one of the other means; is that
26 correct?

27 A. Yes, sir. They do it, but I consult with

28 them, and they consult with me, occasionally on the 3343

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1 technology that they're using.

2 Q. Okay. That's fine. And I didn't mean that
3 to be a demeaning-sounding question. I'm just
4 saying as a practical matter, you're not the one out
5 there putting on the rubber gloves and doing this in
6 real cases?

7 A. Well, I have done that, too.

8 Q. You have. For the most part, not, correct?

9 A. Correct.

10 Q. There you go. All right.

11 Now, nevertheless, you are aware that
12 fingerprints are the type of evidence that you want
13 to preserve at a crime scene, is that correct?

14 A. Right.

15 Q. Okay. And when I say "a crime scene," you
16 understand law enforcement, whatever type of law
17 enforcement, Secret Service, FBI, the Santa Maria
18 Police Department, sheriff's department here in
19 Santa Barbara, whatever, they go to a scene where
20 they think they may be recovering something that's
21 going to have evidentiary value, right?

22 A. Correct.

23 Q. And if there's any issue with regard to who
24 may have touched something, you would think, based
25 on your professional experience, that you would want
26 to preserve that very carefully so that if there are
27 any fingerprints there, they will be intact so that

28 they can be made visible and then evaluated by a 3344

1 latent fingerprint examiner, correct?

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2 A. Correct.

3 Q. All right. So you would not recommend, for
4 instance, that somebody seize an item and not note
5 for forensics that it should be preserved for
6 fingerprints, right? Is that clear? It was kind of
7 a negative.

8 Let me rephrase it.

9 MR. AUCHINCLOSS: I'm going to object as
10 vague.

11 MR. SANGER: Let me rephrase that.

12 MR. AUCHINCLOSS: Object as vague and beyond
13 the scope.

14 MR. SANGER: First of all, I'm withdrawing
15 it. So I can rephrase it, if I may.

16 THE COURT: Go ahead.

17 Q. BY MR. SANGER: You talked about the
18 protocol here. You just -- in response to Mr.
19 Auchincloss's question. Part of the protocol is to
20 preserve the evidence, right, so you can get -- you
21 can visualize -- you can make visible the prints
22 that are there, right?

23 A. Right.

24 Q. And you would expect that law enforcement,
25 when they are seizing something that may have
26 fingerprints, and fingerprints where identity may an
27 issue in the case, for whatever it's worth, you
28 would expect them to note for the purpose of 3345

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1 forensics that this item is being preserved for
2 fingerprints, correct?

3 A. I would expect that, yes.

4 Q. And then you would expect that that item
5 would be carefully handled until fingerprints are
6 taken, correct? When I say "taken" -- fingerprints
7 are developed?

8 A. Well, you are speaking about an area that we
9 call collection and preservation of evidence. It's
10 like a first part before we enter the part of the
11 development and the part of comparison. There's
12 actually another part if you do comparison with a
13 computer with a set of database. But in any
14 event --

15 Q. Let's stop there, because that's -- that's
16 like the AFIS system?

17 A. Yes.

18 Q. That's at the very end?

19 A. That's right.

20 Q. And I just want to focus so we don't lose
21 the jury here. We're at the very beginning?

22 A. The very beginning, the preservation and
23 collection of evidence. And I get involved in the
24 second phase.

25 Now, I know some of the rules and
26 regulations about conservation, preservation of
27 evidence, and that is, you know, first of all, don't

28 put your prints on there. Wear gloves. And put it 3346

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1 in a plastic bag. And all depends on the evidence
2 as well. Some people -- well, again, I'll just
3 leave it at that. There's some rules and
4 regulations about how to do this, and people that do
5 crime scene investigations are trained to be able to
6 do this.

7 Q. All right.

8 A. You always see them wearing gloves or
9 wearing a handkerchief and picking things up so that
10 they minimize the amount of handling. That's the
11 object.

12 Q. Because when you get involved as a
13 scientist, your part -- and we understand sometimes
14 you've done it, other times you've supervised, and
15 other times you've studied it. But your part is the
16 visualization of these prints, the science of trying
17 to make the prints more visible, okay? But you are
18 aware of the issue of contamination of evidence,
19 correct?

20 A. Yes.

21 Q. And that's something that comes up not only
22 in fingerprints, but comes up with documents, and
23 with fiber comparisons, and all sorts of things; is
24 that right?

25 A. That's correct.

26 Q. So the -- it's very important that evidence
27 be preserved as it is found, as best as possible, so

28 that the scientists and the examiner can do their 3347

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1 job, correct?

2 A. That is correct. That's also part of the
3 chain of custody. That's why we establish things
4 like that, to avoid things of that nature.

5 Q. When you say "chain of custody" -- we
6 introduced a term here that hasn't been fully
7 explained yet, so I'm going to ask you to do it.

8 When you say "chain of custody," each person
9 who touches the item, or takes the item somewhere,
10 should clearly record what they're doing and make
11 sure that they do not contribute in any way to
12 contamination of that item; is that correct?

13 A. That's part of the regulations of chain of
14 custody.

15 Q. All right. So at the very end, when
16 somebody comes into court and wants to say to the
17 Court, and to the jury, and counsel, and the
18 department, and everybody, "Here's this piece of
19 evidence," they can say, "Well, I took it out of the
20 evidence locker today, here it is, and prior to
21 that, I booked it into the evidence locker," or we
22 can bring in a series of people saying, "They were
23 booked in by me, it was taken out by the next
24 witness, it was put back in," so on, correct?

25 MR. AUCHINCLOSS: I'm going to object as
26 beyond the scope.

27 THE COURT: Sustained.

28 MR. SANGER: Okay. 3348

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1 Q. When you're talking about the protocol here,
2 the issue of evidence collection and preservation is
3 something that you're assuming or hoping would be
4 done properly before you would get involved in the
5 case, right?

6 A. That's correct.

7 Q. All right. Now, with regard to fingerprints
8 in particular, are you aware of -- let me withdraw
9 that.

10 Are you aware of an alternative light source
11 process to look at something to determine whether or
12 not there are bodily fluid stains?

13 A. I'm aware of that, yes.

14 Q. Okay. I'm not going to ask you to go into
15 that in detail, but tell me -- can you tell me how
16 that works in general?

17 A. Yes. An alternate light source came into
18 existence after the laser-induced fluorescence was
19 introduced, and that was -- probably goes back to
20 the '70s. But some people said, "I can get the same
21 effect by using a powerful light and just filtering
22 it at a particular color that I want using a device
23 that selectively picks out the frequency that you
24 want."

25 So the alternate light source is alternate
26 to the laser, basically. And the lights range
27 normally from the blue region all the way to the red

28 region. And depending on which one that you have, 3349

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1 some of them are very selective, like several
2 wavelengths at a time, and a very narrow band.
3 That's terminology used in optics. But in any
4 event, very precise colors is what I'm trying to
5 say.

6 And what happens with this thing is you
7 illuminate something, and it is possible that that
8 material may have something that glows. You
9 mentioned body fluids. Some of them actually have
10 fluorescence that use goggles that block the
11 illuminating light and you see any of the
12 fluorescence that comes out.

13 Q. All right. So what color light might you
14 have and what color of goggles, just so we have a
15 picture?

16 A. I mentioned yesterday that in fingerprints,
17 they usually have one that would be a blue-green
18 light and they use orange goggles.

19 Q. Just so we have a mental picture, without
20 going into a lot of detail, because I'm sure we'll
21 have more of this later, somebody's got these
22 goggles on that filters the light to a particular
23 wavelength, or filters out other light, however you
24 want to look at it, and they're looking with a light
25 and they're able to see some things you couldn't see
26 if you took the goggles out and just turned the
27 house lights on, correct?

28 A. That's correct. 3350

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1 Q. And is that destructive -- let's assume
2 we're looking at magazines. Is that destructive of
3 the magazine, do you --

4 A. Normally not.

5 Q. Okay. So you do not consume the magazine,
6 you don't interfere with subsequent tests like
7 fingerprint tests; is that correct?

8 A. That is correct.

9 Q. Okay. And that type of a test can be done
10 quickly, in a matter of minutes, or an hour, or a
11 couple of hours, right?

12 A. Yes.

13 Q. All right. So it's not something that takes
14 weeks or months to do?

15 A. Correct.

16 Q. All right. Now, in a case -- in a case
17 where there is -- the case is considered to be an
18 important case, let us say - I suppose all cases are
19 important to the people involved - you would expect
20 that fingerprint evaluation would take place sooner
21 rather than later, right?

22 A. Right.

23 Q. You certainly wouldn't want to take, for
24 instance, a container with all the materials, and
25 take it to a grand jury and book it into evidence
26 and then take it out months later and do
27 fingerprints, would you?

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28 A. Well, let me make a point here, if I may. 3351

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1 Q. Before you make the point, is that what you
2 would prefer to do, or not?

3 A. Not necessarily.

4 Q. Okay. You would prefer to do the
5 fingerprint evaluation first, before you go book
6 something into evidence before a body, whether it's
7 a grand jury, a trial court, or anything else,
8 right?

9 A. Yeah, you would expect to do the analysis
10 first.

11 Q. Okay. And were you aware that the
12 fingerprint analysis in this case wasn't done for
13 over a year after the items were seized?

14 MR. AUCHINCLOSS: Objection. Argumentative;
15 beyond the scope.

16 THE COURT: Overruled.

17 THE WITNESS: Very well.

18 First of all --

19 Q. BY MR. SANGER: Were you aware of that, was
20 the question, sir.

21 A. I was not aware that they were a year old.

22 MR. SANGER: Okay. Thank you. No further
23 questions.

24

25 FURTHER REDIRECT EXAMINATION

26 BY MR. AUCHINCLOSS:

27 Q. Dr. Cantu, assuming that an item of evidence

28 is properly handled with gloves -- and let's narrow 3352

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1 our hypothetical to magazines, all right?

2 A. Yes.

3 Q. -- bagged in paper or plastic at the scene,

4 and preserved in that fashion for a period of 8 to

5 12 months, would you expect the fingerprints that

6 might be located on that magazine to disappear

7 during that 8 to 12 months?

8 MR. SANGER: Your Honor, I'm going to object

9 that that is an improper hypothetical and misstates

10 the facts in evidence. Misstates any facts that may

11 be shown in this case.

12 MR. AUCHINCLOSS: That --

13 THE COURT: Overruled.

14 You may answer.

15 THE WITNESS: Fingerprints, I would not

16 expect it to go away. We have had cases -- perhaps

17 you have heard of a fingerprint that's -- you know,

18 a 50-year-old fingerprint. The FBI used to talk

19 about this quite a bit --

20 MR. SANGER: I'm going to move to strike as

21 nonresponsive.

22 MR. AUCHINCLOSS: That's fine. That's fine.

23 I'll --

24 THE COURT: Strike the second sentence.

25 MR. AUCHINCLOSS: All right.

26 Q. Dr. Cantu, why do you say that?

27 A. Which of the statements?

28 Q. You just said you would not expect the 3353

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1 fingerprints to disappear over that period of time,
2 and now I'm asking you to elaborate. Why do you say
3 that?

4 A. By experience.

5 Q. Okay.

6 A. We have studied how long fingerprints last
7 for the ninhydrin process or the amino acid process,
8 and for the physical develop process, which I
9 haven't gone into, but let's say the lipid portion
10 of the wax and oils of the fingerprint, and they
11 last a significant amount of time and can be picked
12 up by the chemical methods that we have mentioned.

13 Q. All right. And as far as contamination
14 goes, is it fair to say that if a fingerprint is --
15 well, let me strike that.

16 Assume you're looking for an individual's
17 fingerprint, a particular individual, Individual X
18 we'll call him.

19 Is contamination, any form of contamination,
20 going to affect whether or not that fingerprint
21 changes to look like someone else's fingerprint?

22 MR. SANGER: I'm going to object. The
23 witness -- it's beyond the scope of his professed
24 expertise to do comparison.

25 MR. AUCHINCLOSS: This is not a comparison
26 question. The question is chemical.

27 Q. Chemically, based upon --

28 MR. SANGER: Excuse me, Your Honor, there's 3354

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1 an objection pending.

2 THE COURT: I'm going to sustain the

3 objection.

4 MR. AUCHINCLOSS: I'm sorry?

5 THE COURT: I am sustaining the objection.

6 Q. BY MR. AUCHINCLOSS: Okay. Can a

7 fingerprint of one person morph into that of another

8 person with the passage of time or contamination?

9 MR. SANGER: Objection, Your Honor, it's

10 beyond the scope of his expertise.

11 THE COURT: He has stated that contamination

12 is not within his area of expertise, Counsel.

13 Q. BY MR. AUCHINCLOSS: Is there any chemical

14 process, irrespective of contamination, any physical

15 process that you are aware of that will cause a

16 fingerprint of one person to change and turn into

17 that of another's?

18 MR. SANGER: Objection. Comparison is

19 outside his scope.

20 MR. AUCHINCLOSS: I'm asking him a chemical

21 question. That is his area of expertise, the

22 chemical formation of fingerprints.

23 MR. SANGER: I object to speaking --

24 THE COURT: Sustained. The question will be

25 allowed.

26 You may answer. Do you want it read back?

27 Would you like the question read back? You may

28 answer it. 3355

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1 THE WITNESS: Okay. Sir, chemically, I
2 could only say that the chemicals of the fingerprint
3 residue can possibly change. But as far as the
4 pattern, I don't think so.

5 MR. AUCHINCLOSS: All right. Thank you.

6 MR. SANGER: I'm going to move to strike the
7 last part, which he said he doesn't do comparisons.

8 MR. AUCHINCLOSS: I'm talking -- well --

9 THE COURT: The objection is overruled.

10 Motion to strike is denied.

11 MR. AUCHINCLOSS: Thank you.

12

13 FURTHER RECROSS-EXAMINATION

14 BY MR. SANGER:

15 Q. Without belaboring this too much farther,
16 there is such a thing as degradation of evidence,
17 correct?

18 A. Yes.

19 Q. And degradation basically means that over a
20 passage of time, with or without other factors,
21 evidence can degrade so that the ability to analyze
22 that evidence becomes more difficult; is that
23 correct?

24 A. Not necessarily.

25 Q. Excuse me, let me -- I didn't ask
26 necessarily, so let me ask the question again so
27 it's clear.

28 Degradation involves something deteriorating 3356

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1 over time, correct?

2 A. Yes.

3 Q. Okay. And you're familiar with that in all
4 sorts of areas of evidence besides -- other than,
5 let's say, fingerprints, correct?

6 A. Correct.

7 Q. Okay. And degradation can take place
8 because the underlying material on which the
9 evidence is deposited starts to degrade, correct?

10 A. Correct.

11 Q. Degradation can take place because there is,
12 in fact, a chemical change in - we're talking about
13 fingerprints - the actual fingerprints that are left
14 on the item, correct?

15 A. Correct.

16 Q. And just based on degradation, you can end
17 up with a less clear latent print than you might
18 have had, say, a year before; is that correct?

19 A. Again, I'd say not necessarily.

20 Q. I didn't ask necessarily. I said, you
21 can --

22 MR. AUCHINCLOSS: Objection. He's answered
23 the question.

24 THE WITNESS: I would like to --

25 THE COURT: Just a moment.

26 Overruled.

27 Q. BY MR. SANGER: I'm asking, is that

28 something that's reasonably possible, that over a 3357

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1 period of time, there can be degradation of a
2 fingerprint, a latent fingerprint?

3 A. It is.

4 MR. AUCHINCLOSS: Objection; asked and
5 answered.

6 THE COURT: Overruled.

7 Answer.

8 THE WITNESS: It is possible.

9 Q. BY MR. SANGER: Okay. Now, in addition to

10 that -- or let me stop on that for a moment. Part
11 of what might happen over a period of time is that
12 you lose some part of a detail in a print that might
13 have been recoverable earlier; is that correct?

14 A. That may happen.

15 Q. All right. Now, in addition to that,

16 there's contamination besides just degradation of
17 underlying materials and chemicals. There's the
18 possibility of contamination, correct?

19 MR. AUCHINCLOSS: Objection; beyond this
20 witness's expertise.

21 THE COURT: Sustained. Sustained.

22 That's the same objection you made earlier.

23 MR. SANGER: It was, but I thought it was
24 overruled. I thought it was overruled on the
25 contamination issue. Maybe I'm wrong.

26 Q. In any event, one of the things that you
27 don't want to -- so we're not being too mystical

28 here with the use of the language, one of the things 3358

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1 that you -- as a scientist, if the question posed to
2 you is whose fingerprints were on this magazine on
3 November 18th, 2003, you would -- and you have --
4 and you know that there's certain people who are --
5 not by you, but eventually are going to be looked at
6 as possible donors for the fingerprint, you would
7 want to know that that person didn't handle the
8 items in between November 18th, 2003, and November
9 2004, correct?

10 MR. AUCHINCLOSS: Objection; ambiguous.

11 THE COURT: It's not ambiguous, but it is so
12 long --

13 MR. SANGER: That was my last question, too.

14 THE COURT: Would you ask --

15 MR. SANGER: I'll break it down.

16 THE COURT: Just ask the question.

17 MR. SANGER: Okay.

18 Q. Understanding for the moment that the task
19 before long --

20 THE COURT: Wait. Just ask him.

21 MR. SANGER: Okay.

22 THE COURT: The question was -- to get right
23 to the question --

24 MR. SANGER: Yeah.

25 THE COURT: Let me stop this thing.

26 "And you know that there's certain people
27 who are -- not by you, but eventually are going to

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28 be looked at for possible donors for the 3359

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1 fingerprint, you would want to know" --

2 Here's the question: "Do you want to know

3 that that person didn't handle the items between

4 November 18th, 2003, and November of 2004?" That's

5 the question, without the --

6 THE WITNESS: From the point of view of

7 developing fingerprints, I don't think it matters to

8 me. I just process the fingerprints.

9 Q. BY MR. SANGER: You talked about the -- you

10 talked about the protocol. And the protocol you

11 told us included all of these steps from the

12 beginning of collection of preservation onto the

13 point of comparison, and you're involved in the

14 middle. You said the protocol in this case looked

15 okay, from what you saw, right?

16 A. Yes.

17 Q. Okay. And my question is, you would want to

18 know that one of the subjects did not handle the

19 item in between the time it was seized and the time

20 you're searching for prints, right?

21 A. You would hope so.

22 MR. SANGER: There you go. Thank you. No

23 further questions.

24 MR. AUCHINCLOSS: No further questions.

25 THE COURT: Thank you.

26 THE WITNESS: Thank you, Your Honor.

27 THE COURT: You may step down

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1 THE COURT: Call your next witness.

2 MR. NICOLA: Lisa Hemman, Your Honor.

3 THE COURT: Come to the front of the
4 courtroom, please. When you get to the witness
5 stand, please remain standing. Face the clerk here
6 and raise your right hand.

7

8 LISA SUSAN ROOTE HEMMAN

9 Having been sworn, testified as follows:

10

11 THE WITNESS: Yes.

12 THE CLERK: Please be seated. State and
13 spell your name for the record.

14 THE WITNESS: Lisa Susan Roote Hemman;

15 L-i-s-a, S-u-s-a-n, R-o-o-t-e, H-e-m-m-a-n.

16 THE CLERK: Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. NICOLA:

20 Q. Good morning.

21 A. Good morning.

22 Q. How are you employed, ma'am?

23 A. I work for the Santa Barbara County
24 Sheriff's Department.

25 Q. And what's your current assignment?

26 A. I'm a senior identification technician in
27 the forensic unit.

28 Q. How long have you been with the sheriff's 3361

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1 office?

2 A. Eight years.

3 Q. How long have you been an identification

4 technician?

5 A. Eight years.

6 Q. Are you currently working a full assignment

7 with the sheriff's office?

8 A. No. Right now I'm on maternity leave.

9 Q. Congratulations.

10 A. Thanks.

11 Q. Were you involved in handling any of the

12 evidence from the Michael Jackson case?

13 A. Yes.

14 Q. When did you begin your maternity leave?

15 A. December 17th, I believe, was my last day.

16 Q. Of '04?

17 A. Of '04.

18 Q. And what period of time do you recall having

19 any contact with any of the evidence from the

20 Michael Jackson case?

21 A. I was at the initial search at the Neverland

22 Ranch in November of 2003.

23 Q. And what were your duties then?

24 A. I was assigned to search the arcade/cellar

25 building, and then the office that was part of the

26 security building.

27 Q. Okay. Did you seize any evidence yourself?

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28 A. No. My assignment during that time was to 3362

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1 photograph any evidence seized.

2 Q. Okay. When was the next time you had
3 contact with the evidence from that particular
4 search?

5 A. January 2004.

6 Q. Do you recall the circumstances around that?

7 A. Yes, I was asked to examine numerous items,
8 do a cursory search for possible trace evidence and
9 body fluids.

10 Q. Do you recall which items of evidence you
11 were asked to search?

12 A. Yes. Can I just pull them off my report so
13 I get them down correctly?

14 Q. Will it refresh your recollection?

15 A. Yes.

16 Q. Please do.

17 A. I was asked to examine Item 316, 317, 321,
18 363, and 364.

19 Q. Could you describe for us briefly what you
20 did with those items, the protocol you used?

21 A. I was -- I got each item independently,
22 opened up the evidence bag, examined them under
23 white light. They were books and magazines,
24 basically. And then I searched them through
25 ultraviolet light, looking for trace evidence, dried
26 body fluids, or anything that fluoresced that seemed
27 interesting that wasn't there when the book was, or

28 the magazine was originally published. And I 3363

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1 separated those items and sent them off to the
2 Department of Justice for further testing.

3 Q. When you handled 316, 317, 321, 363 and 364,
4 did you come across, within those evidence bags,
5 multiple items?

6 A. Yes.

7 Q. And in the circumstance of a multiple-item
8 bag, what did you do, if anything?

9 A. When I came across an evidence bag that had
10 multiple pieces of paper, magazines, or books, what
11 I did with them, as I took them out of the bag, I
12 put a small letter with an item number on the back
13 of them, starting with "A." So I put, say, 317 --
14 317-A for the first piece of paper. The next piece
15 of paper I came across, 317-B, and would go through
16 the alphabet. And once I completed the alphabet,
17 then I would start with "AA" and so on, and work
18 through.

19 So each individual piece, it could be a
20 magazine intact, or a clipping, anything that was
21 individual, got a letter put on the back side of it.

22 Q. How did you handle the magazines or loose
23 papers within those items?

24 A. I wore gloves, not to transfer anything of
25 mine onto -- I placed each piece of evidence down on
26 a clean piece of butcher paper, and then I examined
27 them with a light source.

28 Q. Did you at any time photodocument the items 3364

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1 within them?

2 A. Yes. When I originally took them out of the
3 bag, before I did the examination, I took a
4 photograph of it with a little post-it note saying
5 this is "Item 317-A," and then I'd take the next
6 picture when I examined the next piece of evidence.

7 Q. Okay. I have a number of exhibits here for
8 you to look at.

9 A. Okay.

10 MR. NICOLA: May I show these to her? These
11 are 634 through 709.

12 (Off-the-record discussion held at counsel
13 table.)

14 THE COURT: You can give her the documents,
15 but you have to come back to the stand to question
16 her. If you need to stand there for identification
17 of a particular exhibit or something, that's all
18 right.

19 BY MR. NICOLA:

20 Q. Do you recognize this item? It's 634.

21 A. Yes.

22 Q. How do you recognize it?

23 A. It's my handwriting saying it's 317-B, and
24 you can also see my handwriting on the bottom corner
25 piece of the paper, saying 317-B.

26 Q. And you took this picture?

27 A. Yes.

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1 A. Yes. It's 317-D, with my handwriting also
2 on the piece of paper.

3 Q. Okay. Exhibit 636?

4 A. 317-E, it's the same thing on the paper.

5 Q. Exhibit 637?

6 A. 317-G, and my handwriting would be on the
7 back side of the magazine.

8 Q. 632, a yellow sticky?

9 A. Yes, there's a yellow sticky right next to
10 it.

11 Q. 638?

12 A. 317-H, and I see my handwriting on the
13 bottom corner of the piece of paper.

14 Q. Okay. Exhibit 639?

15 A. 317-I, and it's another loose-leaf paper.

16 Q. Did you take this photograph as well?

17 A. Yes. 317-J, and it's another piece of paper

18 I photographed.

19 Q. It's Exhibit 640?

20 A. Yes.

21 Q. Exhibit 641?

22 A. 317-K, and it's a magazine that I
23 photographed.

24 Q. Exhibit 642?

25 A. 317-O, and it's the same.

26 Q. You photographed this as well?

27 A. I photographed it.

28 317-M, and I photographed that. 3366

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1 Q. Okay. That's Exhibit 643?

2 A. Yes.

3 Q. Exhibit 644 --

4 MR. SANGER: Your Honor, I have two
5 objections. One, counsel is down there and it's
6 hard to hear him. And secondly, I think this is
7 cumulative.

8 THE COURT: The exhibits are in evidence.

9 Is there some --

10 MR. NICOLA: There will be in a moment.

11 THE WITNESS: 317-O --

12 MR. NICOLA: Would you like me to examine
13 her from down there?

14 THE COURT: Well, except on specific exhibits
15 where you need to approach, I don't --

16 MR. NICOLA: I just want to run down through
17 the list so we can move to the next part, Your
18 Honor.

19 THE COURT: Okay.

20 MR. SANGER: Your Honor, I don't want to
21 make a speaking objection, but I think I understand
22 the next part. And I don't understand going through
23 every one of these pieces of paper for the next
24 part, which involves 19 pieces of paper.

25 THE COURT: Your objection is overruled.

26 MR. NICOLA: Okay.

27 THE COURT: But I would rather have you

28 question from here. The main reason is that the 3367

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1 audience has a hard time hearing, and we've tried to
2 have everyone speak where there's a microphone.

3 BY MR. NICOLA:

4 Q. If you could, please, just read the exhibit
5 number and then the item on the photograph, and let
6 us know whether or not you're the one that took that
7 picture.

8 A. Okay.

9 Q. What's the next one in order?

10 A. Exhibit 644, and I photographed 317-O.

11 654, and I photographed 317-P.

12 646, 317-Q.

13 Exhibit 647, and I photographed 317-R.

14 648, and I photographed 317-S.

15 649, and it's exhibit -- or Item No. 317-T.

16 650, and it's 317-U.

17 651, 317-B.

18 652, 317-W.

19 653, 317-X.

20 And this is Exhibit 654. I'm unsure what
21 this photograph is as far as what number it was.

22 Q. May have I see the front of that, please?

23 A. (Indicating.)

24 Q. Okay.

25 A. 655, 317-Z.

26 656, 317-AA.

27 657, and I'm unsure of what number it was in

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28 317, but I recognize it. 3368

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1 658, 317-DD.

2 659, 317-FF.

3 660, 317-HH.

4 MR. SANGER: Your Honor, I'm sorry, I'm
5 going to make a slightly different objection. I
6 think the witness is just reading from the exhibits,
7 and they speak for themselves.

8 THE COURT: She's saying that she took those
9 photographs. That's what I understood.

10 THE WITNESS: Yes. Yeah.

11 THE COURT: When she's saying, "I took this
12 photograph," she's just giving you a list. So
13 overruled.

14 MR. SANGER: All right.

15 THE WITNESS: Okay.

16 661, 317-II.

17 662, 317-JJ.

18 663, 317-KK.

19 664, 317-LL.

20 665, 317-MM.

21 666, 317-OO.

22 667, 317-PP.

23 668, 317-QQ.

24 669, 317-RR.

25 670, 317-SS.

26 671, 317-TT.

27 672, 317-UU.

28 673, 317-VV. 3369

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1 674, 317-WW.

2 675, 317-XX.

3 676, 317-YY.

4 677, 317-ZZ.

5 678, 317-AAA.

6 679, 317-BBB.

7 680, 317-CCC.

8 681, 617-FFF.

9 And then we moved on to a new item number

10 that I -- another bag I opened up, and this is --

11 Q. Let me stop you right there.

12 A. Okay.

13 Q. That's as far as I wanted you to go for now.

14 A. Okay.

15 Q. That long list of exhibits, which item did

16 they come from?

17 A. They came from 317.

18 Q. And do you recognize this item, which is

19 marked as Exhibit 470?

20 A. Yes.

21 Q. And can you tell us about that, please?

22 A. This is Item No. 317, and the way I can

23 recognize it is it has my initials on the evidence

24 tape that I sealed it up with after I examined it.

25 It's -- when I first got it, it had evidence tape on

26 it. I broke the evidence tape, opened it up,

27 separated all the items. And when I was finished

28 with it, I placed the items that I did not separate 3370

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1 out from this, put my evidence seal back on and
2 signed it.

3 Q. Okay. You mentioned something about
4 separating items out of 317.

5 Would you like me to get that out of the
6 way?

7 A. That's fine there.

8 Yes.

9 Q. Could you explain that for us, please?

10 A. I was asked to do a visual inspection of the
11 contents, and I used an alternate light source which
12 goes into the UV wavelengths. And when you look --
13 search for body fluids, they will fluoresce under UV
14 light, and anything that seemed to fluoresce, it
15 could be body fluids, but it could also be other
16 things.

17 My job was to find items that weren't on the
18 paper when they were published, they were placed
19 there later. It could be anything that fluoresced.

20 And I separated those items out for further testing.
21 And when I did that, I repackaged them into another
22 bag and I sent them to the Department of Justice Lab
23 to find out what those fluids or deposits were.

24 Q. How did you mark on a specific item where
25 you suspected there may be some kind of body fluid
26 or other substance that was foreign to that magazine
27 or picture?

28 A. I sent the entire item to be reinspected by 3371

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1 the Department of Justice. I also put a yellow tab,
2 a post-it note, on the page that I suspected, but I
3 also requested that the Department of Justice
4 reevaluate the entire magazine or piece of paper.

5 Q. Okay. And did you keep a log of the items
6 that you separated out of the briefcase?

7 A. Yes. I made a separate property form when I
8 separated items out.

9 Q. Would you please tell the jury which

10 items --

11 A. I --

12 Q. -- you sent to the DOJ and removed from the
13 briefcase?

14 A. Okay. I separated out 317-B, 317-G, 317-K,
15 317-L, 317-R, 317-S, 317-Y, 317-BB, 317-CC, 317-EE,
16 317-KK, 317-RR, 317-UU, 317-YY, 317-BBB.

17 Q. Okay. The first -- the first item, was that
18 317-B, as in "boy"?

19 A. Yes.

20 Q. How did you package those items to go to the
21 Department of Justice?

22 A. I repackaged them in a separate evidence
23 bag.

24 Q. Were any of those items in an evidence bag
25 aside from inside the briefcase?

26 A. I got them out of the briefcase, separated
27 them and placed them into another bag.

28 Q. So while they were in the briefcase, they 3372

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1 weren't in a bag?

2 A. No.

3 Q. Okay. I'd like to show you Exhibit No. 529,
4 please, and I'd ask you to open up that plastic bag
5 and take the contents out.

6 Do you recognize that item?

7 A. Yes.

8 Q. What is that?

9 A. This is the evidence bag I placed the
10 separated items into. I recognize it, because it's
11 my handwriting, and it should be my handwriting on
12 the seal on the top.

13 Q. Okay. On the front of that bag, did you
14 itemize the items that you had removed from the
15 original 317 and placed into that bag?

16 A. Yes. They are listed on the contents.

17 Q. Are you the first person to use that bag to
18 package evidence from 317?

19 A. Yes.

20 Q. Okay. Do you recall which date you sent it
21 to the Department of Justice?

22 A. On my report I specify it as 2-5-04.

23 Q. Do you have a signed receipt?

24 A. Yes.

25 Q. And what is indicated on the receipt?

26 A. 2-4-04.

27 MR. SANGER: Calls for hearsay.

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1 THE COURT: Just -- overruled. Next

2 question.

3 Q. BY MR. NICOLA: And how did you deliver the

4 item to the Department of Justice?

5 A. I delivered it by hand. It came directly

6 from our secure lab to their secure lab.

7 Q. And to whom did you hand the item?

8 A. Char Marie, who is a criminalist at the

9 Department of Justice.

10 THE COURT: All right. Let's take our

11 morning break.

12 MR. AUCHINCLOSS: May we have just a minute,

13 Mr. Sanger and I?

14 (Discussion held off the record at sidebar.)

15 (Recess taken.)

16 --o0o--

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE)

5 OF CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR,

13 CSR #3304, Official Court Reporter, do hereby

14 certify:

15 That the foregoing pages 3324 through 3374

16 contain a true and correct transcript of the

17 proceedings had in the within and above-entitled

18 matter as by me taken down in shorthand writing at

19 said proceedings on March 24, 2005, and thereafter

20 reduced to typewriting by computer-aided

21 transcription under my direction.

22 DATED: Santa Maria, California,

23 March 24, 2005.

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA BARBARA
3 SANTA MARIA BRANCH; COOK STREET DIVISION
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF)

8 CALIFORNIA,)

9 Plaintiff,)

10 -vs-) No. 1133603

11 MICHAEL JOE JACKSON,)

12 Defendant.)

13

14

15

16

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 THURSDAY, MARCH 24, 2005

20

21 8:30 A.M.

22

23 (PAGES 3376 THROUGH 3380)

24

25

26

27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 I N D E X

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"
on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on
index.

6 Mr. Sanger is listed as "SA" on index. Mr. Oxman is listed as "O" on
index.

7 Mr. Nicola is listed as "N" on index.

8

9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS

10

11 HEMMAN, Lisa Susan Roote 3389-SA 3424-N 3428-SA

12 3462-N 3465-SA

13 (Further) (Further)

14 MARIE, Charlene 3468-N 3475-SA

15 MARTINEZ, JR., 3479-N 3482-SA Heriberto

16 SUTCLIFFE, 3487-A

17 Timothy

18

19

20

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23

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28 3378

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1 E X H I B I T S

2 FOR IN PLAINTIFF'S NO. DESCRIPTION I.D. EVID.

3

4 723 Document re: protocol for latent fingerprint processing

5 of magazines 3491 3491

6 725-726 Photos of fingerprints 3505 3510

7 728 Photo of fingerprints 3505 3510

8 729-734 Photos of fingerprints 3506 3510

9 735-740 Photos of fingerprints 3507 3510

10 741 Photo of fingerprints 3508 3510

11 766 Two pages of photos of front

12 cover of each item in evidence bag Exhibit No. 529 taken by

13 Charlene Marie 3472 3474

14 767 Michael Jackson's fingerprint card 3480 3480

15 768 Clear plastic with grid for 3516 3516

16 fingerprinting

17

18

19

20 DEFENDANT'S NO.

21 5006 Timeline (Lisa Hemman) 3397 3423

22

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1 THE COURT: Go ahead, Counsel.

2 MR. NICOLA: Thank you, Your Honor.

3 May I approach the witness again?

4 THE COURT: Yes.

5 Q. BY MR. NICOLA: There was one item out of

6 317 I believe I didn't give to you. Exhibit No.

7 681.

8 A. That is 317-FFF.

9 Q. That's also one of the photographs that you

10 took?

11 A. Yes.

12 THE BAILIFF: Mr. Nicola, can you make sure

13 the microphone's on?

14 Now it's on. Thanks.

15 Q. BY MR. NICOLA: You mentioned that you used

16 an ALS light source, alternate light source --

17 A. Uh-huh.

18 Q. -- on the magazines looking for biological

19 fluids during the break.

20 Is there a reason for doing that prior to

21 checking for latent fingerprints?

22 A. Yes, we wanted to preserve any, if there was

23 any DNA evidence, and some of the processing for

24 fingerprints could possibly damage or destroy any

25 DNA evidence. So if you want to search for DNA, you

26 search for that first prior to doing any processing

27 for fingerprints.

28 Q. Do you do any DNA testing at the Santa 3380

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1 Barbara County Sheriff's Lab?

2 A. No, we send that off to the Department of
3 Justice.

4 Q. Okay. Regarding the items that you did not
5 put in the evidence bag that you've described
6 earlier, what did you do with the rest of the items
7 that came out of the briefcase, 317?

8 A. The items that I did not separate went back
9 into the briefcase. I sealed the briefcase and sent
10 it back to the Santa Barbara Sheriff's property
11 room.

12 Q. And at the time you placed the remaining
13 items back into the briefcase, were they now marked
14 with the numbers that -- the numbers and letters
15 that you had assigned each of the magazines or
16 pieces of papers?

17 A. Yes.

18 Q. Okay. Do you recall when you began your
19 examination of Item 317, the black briefcase?

20 A. I started my examination on 1-20-04.

21 Q. How long did it take you to completely
22 photodocument and number what was in there?

23 A. I completed the entire task when I delivered
24 them to the Department of Justice on 2-5-04.

25 Q. Okay. So it took you approximately a week
26 and a half?

27 A. Couple weeks. Yeah.

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28 Q. Okay. While you were processing each of the 3381

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1 items that were in 317, and then you had to go home
2 at night, what would you do with all the evidence?

3 A. I'd place them there in -- all evidence that
4 I took out of the property room goes into our secure
5 lab. The only personnel that has keys are the three
6 people that work in our unit.

7 And then I place them in my cupboard which
8 is assigned to me and place a piece of evidence tape
9 over the top of the -- the door so I know that I was

10 the one who sealed them in there. In the morning,
11 the seal was still complete, so I would know that no
12 one has ever looked at them between when I left them
13 that evening and came back the next morning.

14 Q. And you kept this going for a couple of
15 weeks until your task was complete?

16 A. Yes.

17 Q. What did you do with the -- it's going
18 around.

19 What did you do with the briefcase, Item
20 317, when you finished putting the material that you
21 were not going to send to the Department of Justice
22 back into?

23 A. It went back to the property room at the
24 Santa Barbara office.

25 Q. Did you place any kind of seal on it?

26 A. Yes.

27 Q. Is that the one that you pointed out for the

28 jury earlier? 3382

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1 A. Yes.

2 Q. And again, what are your initials on that
3 seal?

4 A. It will be LSRH 2696. 2696 is my assigned
5 body number by the sheriff's department. My I.D.
6 number.

7 Q. Did you also process Item 321?

8 A. Yes.

9 Q. And are those pictures in front of you?

10 A. Yes. Would you like me to read --

11 Q. I think there's only a few of them.

12 A. There's seven, I believe.

13 Q. Could you tell us the exhibit number?

14 A. Yes.

15 Q. And confirm with the item number whether you
16 took the picture?

17 A. Okay. It's Exhibit No. 682, Item No. 321-A.

18 Exhibit No. 683, Item No. 321-B.

19 684, 321-C.

20 685, 321-D.

21 686, 321-E.

22 687, 321-F.

23 688, 321-G.

24 Q. Could you please take a look at the
25 photograph depicted in Exhibit 685?

26 A. Okay.

27 Q. That's Item 321-D?

28 A. Yes. 3383

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1 Q. And what is that magazine, please?

2 A. It's called "Hawk," and it was published in
3 February 2003.

4 Q. And do you recall the date that you
5 processed that particular magazine?

6 A. Not without going back to looking at the
7 file in the forensic computer as far as the date I
8 filed them.

9 Q. And the pictures?

10 A. In the pictures, yeah. Or the original
11 placard that would have been my first picture.

12 Q. Could you give us a time frame?

13 A. It was between 1-20-04 and 2-5-04.

14 Q. Okay. And Exhibit No. 687, please?

15 A. This is a "Finally Legal" magazine published
16 in February 2003.

17 Q. That was tough.

18 Okay. 321-D, Exhibit 557, for the record,
19 would you please open up that binder? Is that the
20 magazine that you marked 321-D?

21 A. Yes. I placed the numbers on the back lower
22 corner unless that cover was black, and then I would
23 put the number on the inside of the back cover.

24 Q. Okay. The page numbers on the sleeves were
25 placed there, I assume, afterwards?

26 A. By someone else. Yes.

27 Q. Would you please place that back into its

28 exhibit bag? Can you reach the next bag or did I -- 3384

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1 thank you.

2 Is that Exhibit 687?

3 A. No. This one is Exhibit 559.

4 Q. I understand what I did. The picture is

5 687, right? Okay. Exhibit 559 is which?

6 A. It's Item No. 321-F.

7 Q. Okay. Would you open that up, please? Is

8 that the same magazine you photographed between

9 January 20th and February 5th --

10 A. Yes.

11 Q. -- of 2004?

12 Okay. Does that also have your markings on

13 it?

14 A. Yes, on the back corner. Right down here.

15 Q. Would you mind putting those items back in

16 their bags, please?

17 Would you please tell us which other

18 magazines you processed?

19 A. The next item was 363, and I'm missing "A,"

20 but do you want me to read the list?

21 Q. Just tell us what the exhibit is.

22 A. Okay. The exhibit number is 689, 363-B.

23 690, 363-C.

24 691, 363-D.

25 692, 363-E.

26 693, 363-F.

27 694, 363-G.

28 695, 363-H. 3385

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1 696, 363-I.

2 697, 363-J.

3 698, 363-K.

4 699, 363-L.

5 Q. And you processed all those magazines?

6 A. Yes.

7 Q. I'd like you to take a look, please, at

8 Exhibit 518. Do you recognize the contents of 518?

9 A. Yes.

10 Q. What is that?

11 A. This is 317-R. It's a magazine, a "Barely

12 Legal Hard-Core," published by Hustler that I

13 examined during the time I was there.

14 Q. Between February 20th -- excuse me --

15 January 20th --

16 A. January 20th and February 5.

17 Q. Of last year?

18 A. Of last year.

19 Q. Okay. Do you see any of the post-it notes

20 that you have placed on that magazine initially when

21 you had sent it to DOJ still on there?

22 A. Yes, there's one actually on the first page.

23 MR. NICOLA: May she publish to the jury,

24 Your Honor?

25 THE COURT: Just -- the way we do that is --

26 MR. NICOLA: Do you want me to do it up

27 here?

28 THE COURT: Yeah, use the -- 3386

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1 MR. SANGER: I'm going to object if it's
2 publishing hearsay, for the truth of the matter. I
3 don't know what's being shown.

4 THE COURT: Show counsel.

5 MR. SANGER: That's not the receipt?

6 MR. NICOLA: No.

7 MR. SANGER: Okay, that's fine.

8 Q. BY MR. NICOLA: This is a --

9 A. It's a yellow post-it note that I placed
10 there to direct DOJ to examine this page especially,
11 because I felt that there was something on this page
12 that fluoresced and could possibly have DNA evidence
13 on it.

14 Q. Okay. Did you notice other pages of post-it
15 notes on there?

16 A. Yes.

17 MR. NICOLA: Mr. Sanger?

18 MR. SANGER: That's fine.

19 THE COURT: You should state the exhibit
20 number when you show it.

21 MR. NICOLA: This is all of 317-R.

22 THE COURT: The individual pages aren't
23 separately marked.

24 Q. BY MR. NICOLA: Page number three?

25 A. Yes.

26 Q. And there's the page number.

27 Did you process any of these items after

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28 they came back from the Department of Justice any 3387

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1 further?

2 A. No.

3 Q. Okay. If you could please identify for the
4 record the remainder of those photographic exhibits
5 if you do recognize them.

6 A. Okay. This first picture was not taken by
7 me.

8 Q. Okay. That's 363-M?

9 A. And it's Exhibit No. 700.

10 Q. Okay. Is that 363-M?

11 A. It's 363-M.

12 Q. Okay.

13 A. And Exhibit No. 701, 363-N, as in "Nora."

14 Three -- Exhibit No. 702, 363-O.

15 Exhibit No. 703, 363-P.

16 704, 363-Q.

17 705, 363-R.

18 706, 363-S.

19 707, 363-T.

20 708, 363-U.

21 709, 363-V.

22 THE COURT: Again, she's testifying that she
23 took those pictures?

24 THE WITNESS: Yes.

25 MR. NICOLA: Yes, Your Honor.

26 Okay. I have no further questions, Judge.

27 THE COURT: Cross-examine?

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1 CROSS-EXAMINATION

2 BY MR. SANGER:

3 Q. Hi.

4 A. Hi.

5 Q. What is your exact title with the sheriff's
6 department?

7 A. I'm a senior identification technician.

8 Q. So you're in the forensic --

9 A. Yes.

10 Q. -- lab?

11 A. Yes.

12 Q. And what kind of duties do you have in
13 general?

14 A. My basic duties are crime scene
15 investigation, latent print searches, latent print
16 comparisons, shoeprint comparisons. I run the Cal.
17 I.D. section. I process evidence. I photodocument
18 victims or suspects. I collect evidence.

19 Q. Okay. Do you do any other kinds of forensic
20 or scientific tests on evidence?

21 A. We collect what we think is possible
22 evidence, like body fluids, off -- like blood at a
23 crime scene, stuff like that that could be possibly
24 blood, and then it is sent to the Department of
25 Justice for testing.

26 Q. Okay. Now, the Department of Justice, we're
27 talking about the California Department of Justice?

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28 A. Yes. 3389

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1 Q. Is that correct? That's a state agency?

2 A. Yes.

3 Q. It's not the United States Department of

4 Justice?

5 A. No, it's California.

6 Q. And the California Department of Justice has

7 regional labs; is that correct?

8 A. Yes.

9 Q. And they have one in Goleta?

10 A. Yes.

11 Q. And so when you said you hand-delivered

12 something to the lab, does that mean you went over

13 to Goleta?

14 A. Yes, I just deliver it to the Goleta lab.

15 Q. And your office is located in Santa Maria or

16 is it in Santa Barbara?

17 A. Santa Barbara.

18 Q. So you basically came across the freeway and

19 took it to the people there?

20 A. Yes.

21 Q. All right. The Department of Justice Lab is

22 their Department of Law Enforcement Bureau of

23 Criminalistics, right?

24 A. Yes.

25 Q. So they're a lab that's set up to assist law

26 enforcement, like yourself, in doing criminal

27 investigations; is that right?

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28 A. Yes. 3390

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1 Q. All right. Now, besides -- you mentioned
2 you're a latent print examiner?

3 A. Yes.

4 Q. Is that correct?

5 And did you participate in fingerprint
6 examinations in this case?

7 A. Yes, I did.

8 Q. And did you do comparisons?

9 A. Yes.

10 Q. All right. When you were out at the ranch,
11 you said you were at the search at Neverland Ranch
12 on November 18, 2003, is that correct, to start
13 with?

14 A. Yes.

15 Q. And your job was to do what again?

16 A. I was to photodocument any evidence seized
17 during -- I was assigned to a search team, and
18 anytime they found a piece of piece of evidence that
19 they wanted to seize, I photographed it before it
20 was seized.

21 Q. And what location were you in?

22 A. I was in the arcade cellar and then the
23 office that's adjoined in the security building.

24 Q. Okay. Mr. Jackson's office?

25 A. Yes.

26 Q. And it's -- sometimes people called it a
27 museum as well?

28 A. Yeah, a museum/office. 3391

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1 Q. A lot of artifacts?

2 A. A lot of memorabilia.

3 Q. Did you go into Mr. Jackson's bedroom?

4 A. No.

5 Q. Therefore you didn't photodocument anything

6 in the main residence; is that correct?

7 A. No.

8 Q. As far as seizing evidence, did you actually

9 seize, touch, package evidence, or just photograph

10 it?

11 A. Just photograph it.

12 Q. Now, you were aware that your unit, the

13 forensics unit at the Santa Barbara Sheriff's

14 Department, was going to be involved in some

15 follow-ups based on the evidence that was seized at

16 Neverland; is that correct?

17 A. Yes.

18 Q. Did you go to the briefing that was held

19 before the officers went to Neverland?

20 A. Yes.

21 Q. And when was that briefing?

22 A. That briefing was in the -- I think it's the

23 veterans hall that's adjoined in the -- in Solvang.

24 Q. Okay. Was that the day before?

25 A. No.

26 Q. When was it?

27 A. It was at 6 a.m. the morning of the search.

28 Q. Okay. The actual morning of the search. 3392

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1 And at that time you were given a
2 description by Sergeant Robel and others of the
3 general nature of the investigation; is that
4 correct?

5 A. Yes.

6 Q. So you know what kind of investigation it
7 was?

8 A. Yes.

9 Q. What kind of case? You also were given the
10 names of some of the possible individuals involved
11 in the case; is that correct?

12 A. Yes.

13 Q. Given the name, for instance, of Gavin
14 Arvizo and Star Arvizo?

15 A. Yes.

16 Q. And you were aware that Mr. Michael Jackson,
17 my client, was the focus of this investigation; is
18 that correct?

19 A. Yes.

20 Q. In fact, at that time you were advised that
21 the sheriff's department had already obtained an
22 arrest warrant for Mr. Jackson; is that correct?

23 A. I believe so, yes.

24 Q. All right. So when you went out there to
25 the scene, how many -- approximately how many
26 officers went out to the scene, to the Neverland
27 Ranch, with you?

28 A. I'm not quite sure. Probably 50. 3393

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1 Q. Okay. However many it was, this was a big
2 operation, right?

3 A. Yes.

4 Q. All right. And you understood the need to
5 be careful with the evidence and so on?

6 A. Uh-huh. Yes.

7 Q. In any case, you want to be careful of
8 evidence, right?

9 A. Yes, you always wear gloves and you bag it.

10 Q. In this particular case after you got
11 through photodocumenting evidence at the scene at
12 Neverland, did you return to the sheriff's
13 department?

14 A. Yes, I did.

15 Q. That very day?

16 A. Yes, that evening.

17 Q. That night.

18 What did you do with at the sheriff's
19 department?

20 A. We secured anything that we had in our
21 forensics vehicle as far as equipment. We didn't
22 have any evidence with us. And we went home for the
23 night. It was a long day.

24 Q. All right. Sounds like a good idea at the
25 time.

26 The point being that when you went back to
27 the sheriff's department, you had equipment. You

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28 had what you started out with? 3394

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1 A. Yes.

2 Q. But you didn't come back -- you, in your
3 unit, did not come back with any evidence?

4 A. No.

5 Q. So the other deputy sheriffs and detectives
6 had custody of whatever evidence you had seen and
7 photodocumented at the time; is that correct?

8 A. Yes. Yes.

9 Q. When was the next time that you actually saw
10 any evidence in this case?

11 A. I'm not quite sure. I was never assigned to
12 work on any evidence until January 20th, but other
13 people in our unit were assigned to conduct searches
14 or photodocument things, and in passing, I could
15 have seen some evidence and --

16 Q. Okay. Did you -- okay. So you could have
17 seen somebody have something on their desk at the
18 lab or somewhere?

19 A. Well, inside our lab, that's where we kept
20 most of our evidence.

21 Q. But you were not assigned to do anything
22 with it; is that correct?

23 A. No.

24 Q. So you didn't do anything?

25 A. I was not assigned to do any work on it
26 until January 20th.

27 Q. All right. So just to -- other than a

28 passing glance or some casual look at something, you 3395

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1 didn't have any formal contact with any evidence in
2 this case until January 20th of 2004; is that
3 correct?

4 A. Yes. The only evidence would be
5 photographs, you know, detectives requesting
6 photographs that were taken at the scene, or
7 prior -- or during the investigation, I may have
8 printed them out or downloaded them onto a CD.

9 MR. SANGER: Okay. Your Honor, what I'd
10 like to do is ask that an exhibit be marked next in
11 order, and we had a gap. We could use that gap, or
12 whatever the clerk wants to do.

13 THE CLERK: That would be 5005.

14 MR. SANGER: Okay. Thank you.

15 And what I'd like to do, with the Court's
16 permission, is first of all approach the witness and
17 hand this to the witness.

18 THE COURT: All right.

19 Q. BY MR. SANGER: I placed before the witness,
20 with the Court's permission, Exhibit 5005. And what
21 I'd like to do is put a blank copy, it's just a
22 timeline, up on the screen so we can follow along,
23 if there's no objection.

24 THE COURT: All right.

25 MR. SANGER: Oops, you know what? I have
26 the wrong timeline. That will happen. Sorry. We
27 can leave 5005 marked, because I will use it with

28 another witness. Ask that we have this marked as 3396

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1 5006.

2 THE COURT: Okay.

3 MR. SANGER: It's that one, sorry.

4 Okay. Thank you. May I approach again,

5 Your Honor?

6 THE COURT: Yes.

7 Q. BY MR. SANGER: I'm going to trade you

8 exhibits there, and give you 5006, and we'll save

9 5005 for another witness.

10 All right. Does that make sense to you?

11 It's a timeline. Do you have your --

12 A. Yes.

13 Q. Okay. If you look at the board, I have a

14 blank version up there going through February,

15 March, April. Actually, it's a little cut off, but

16 it starts with January of 2003 and goes through

17 2004.

18 The first thing I'd like you to do is, on

19 your copy which is the actual exhibit - this is just

20 up on the board as a blank - I'd like you to put

21 your name up there where it says "Witness," if you

22 would, please.

23 A. Do you have a pen?

24 Q. Do I have a pen? Yes, I do. May I

25 approach?

26 THE COURT: Yes.

27 MR. SANGER: Thank you.

28 Q. All right. And do I understand that your 3397

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1 first contact with the evidence was in November, on
2 November 18th of 2003?

3 A. Yes.

4 Q. And so that would be right about there
5 somewhere; is that correct?

6 A. Yeah. Yes.

7 Q. Could you please make a notation there,
8 however you want to do it. Just a line, and above
9 it maybe say "Search," or "First contact," whatever
10 you'd like, and then tell me what you wrote.

11 A. "Search."

12 Q. Okay. The next formal contact you had with
13 the evidence was then in January of 2004; is that
14 correct?

15 A. Yes.

16 Q. So, could you make a notation there? And
17 how would you describe that contact? That's when
18 you were assigned to do the ALS?

19 A. The visual search.

20 Q. Okay. All right. Now, in between -- in
21 between November the 18th and January, when you
22 checked the evidence out that you told us about, did
23 you determine that anybody else had broken the seal
24 on the bag, or, say, broken the seal? Had, for
25 instance, cut another side open to open it up and
26 look at it?

27 A. The first time I saw that evidence was

28 January, so between November and January, I wouldn't 3398

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1 know, because the first time I ever saw it was
2 January 20th.

3 Q. I see. So you can't tell us whether or not
4 somebody else checked the evidence out in between to
5 inspect it, or look at it, or do something with it?

6 A. There should be the original seals. You
7 never take another person's seal off an evidence
8 item number. So whoever's opened that briefcase
9 will have their seal on the briefcase, and so you
10 can -- and -- so --

11 Q. All right. You're saying "briefcase." And
12 you're looking somewhere. Is it right down there?

13 A. Yeah, it's the briefcase.

14 Q. It's underneath the table?

15 A. But in the evidence bag, every time you open
16 the evidence bag, you got to open it an original
17 way. You can't open up someone else's seal. So you
18 cut it down the sides, on the bottom. You got to be
19 creative when it gets opened multiple times, but
20 there's always a new seal every time you open it and
21 close it back up.

22 Q. You start out with a bag; has no seals on
23 it. Whoever puts it in first, puts a seal on it,
24 right?

25 A. Yes.

26 Q. And then the next person to open the bag
27 would cut the side or the bottom or someplace where

28 there's -- 3399

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1 A. Different.

2 Q. -- there's otherwise not an opening?

3 A. Yes.

4 Q. Right? And then when they're through, if

5 they do it right, they'll seal it up and put their

6 initials and date on it, right?

7 A. Yes.

8 Q. They should document all this in reports; is

9 that correct?

10 A. Yes.

11 Q. So my question was, based on your

12 observations, if you can remember -- and we can take

13 Exhibit 470, which is the briefcase, Sheriff's Item

14 317.

15 A. Yeah.

16 Q. Okay. And you looked at that for the first

17 time, the first time ever you looked at that was

18 January of 2004, correct?

19 A. Yes.

20 Q. January 20th?

21 A. Yes.

22 Q. All right. When you looked at it, my

23 question was -- and perhaps I wasn't clear. When

24 you looked at it on January 20th, 2004, did you

25 determine that more than one person had sealed the

26 bag up?

27 A. I would have to look at my original -- I

28 also photographed it prior to opening it, so I would 3400

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1 have to look at my photograph to determine that.

2 Q. Can you -- is that possible? Would that
3 refresh your recollection?

4 A. Yes.

5 Q. Do you have it here where you can look at
6 it?

7 A. Uh --

8 Q. It's one of the exhibits?

9 A. I don't have it with me, no.

10 Q. Okay. All right.

11 So for the purposes of the jury, or anybody
12 else that wants to look at it, we could look at the
13 bag, and presumably there would be some other seal
14 on there if somebody else looked at it in between?

15 A. Right.

16 Q. All right. Now, when you opened -- let me
17 withdraw that.

18 As you sit here today, then, you cannot tell
19 us whether or not anybody did anything with that
20 evidence between seizure on November 18 and January
21 20th of 2004, correct?

22 A. No.

23 Q. Okay. At the time that you inspected the
24 contents of Exhibit 470, which is Item 317 --

25 A. Yeah.

26 Q. -- you opened the bag, right?

27 A. It was not in the bag at the time. It was

28 just a briefcase with the seals over the locks. 3401

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1 Q. I see. Okay. So you would have to look at
2 the seals on the locks on that, not on the bag?

3 A. Yes.

4 Q. Okay. Well, then we have the briefcase --

5 A. But there's probably been multiple ones
6 after me, maybe. I don't know.

7 Q. Let's start with 470. Is it under the table
8 here someplace?

9 MR. NICOLA: It's right in front, Mr.

10 Sanger.

11 MR. SANGER: May I approach and retrieve it?

12 THE COURT: Yes.

13 Q. BY MR. SANGER: Okay. I'm going to just

14 hand you 470 and go back to where I was.

15 I'd ask you to inspect that.

16 A. Okay.

17 Q. And see if, by looking at the whole thing,
18 you can tell what happened between November 18 and
19 January 20th of 2004.

20 A. Okay. This would be the last seal on it,
21 and this was 12-03-04, because it's the last one on
22 the outside. Let me work down.

23 Q. So while you're doing that, in other words,
24 the bag doesn't help you answer the question --

25 A. No.

26 Q. -- because that's a later addition.

27 A. There's a seal from 11 -- and unfortunately,

28 it's 11-03, and it's after the initial ones, and I 3402

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1 can't quite tell whose it is.

2 There's one on 1-14-04.

3 And then there's one on mine, which I sealed
4 up on 1-26-04.

5 And then the one -- oops, sorry.

6 And then the top one, 11-26-03.

7 Q. And so the first seal --

8 A. The first seal is the yellow one that's
9 underneath all the red ones.

10 Q. So you would -- based on your experience,
11 you would say that the yellow seal represents --

12 A. The original seal.

13 Q. -- the sealing on November 18, 2003?

14 A. Yes.

15 Q. And then you see at least one seal from
16 later in November of 2003; is that correct?

17 A. Yes.

18 Q. So that implies, or suggests to you, based
19 on your training and experience, that somebody broke
20 the yellow seal, opened the briefcase --

21 A. Yes.

22 Q. -- and then resealed it?

23 A. Resealed it.

24 Q. And how many other -- or were there any
25 others between then?

26 A. Yes, there's one other. 1-14-04.

27 Q. Okay. So on the 14th of January, 2004,

28 somebody else apparently did the same thing, which 3403

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1 was at least open the briefcase and then reseal it?

2 A. Yes.

3 Q. And you don't know what any of those people
4 did with the contents of the briefcase during those
5 two incidents in between the original seizure and
6 January 20th?

7 A. No.

8 Q. Looking at your seal on there, does that
9 refresh your recollection when you concluded working
10 with that evidence?

11 A. Yes, I sealed it back up on 1-26-04.

12 Q. So you had the evidence for about a week; is
13 that correct?

14 A. Yes.

15 Q. Took it out on 1-20, opened it up, did the
16 things we'll talk about, which we'll go into in a
17 moment, and then you resealed it on the 26th?

18 A. Yes.

19 Q. So you delivered it to the Department of
20 Justice crime lab across the freeway, you said, on
21 February --

22 A. 5th.

23 Q. -- 5th, but it was already sealed for a week
24 or so by the time you delivered it, right?

25 A. Yes. Well, this would have gone back to the
26 property room. The separated items were kept in our
27 secure lab behind my cupboard until I finished

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28 processing all the other items in there. 3404

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1 Q. And then you went back to the property room
2 and checked that out? No?

3 A. No. This did not go to the Department of
4 Justice.

5 Q. Oh, that did not go to the Department of
6 Justice. Okay.

7 So the other items -- I'm sorry, the other
8 items you took out went to the Department of
9 Justice?

10 A. Yes.

11 Q. And this -- on the 26th, then, this just --

12 A. Got returned to the property room.

13 Q. This was -- this was returned to your
14 property room in the sheriff's department?

15 A. Yes.

16 Q. Okay. Good.

17 So now, having refreshed your recollection
18 with all that, as far as Item 317 of the sheriff's
19 department, Exhibit 470, it took you about a week to
20 go through all the evidence in there and photograph
21 it and number the back of each item; is that
22 correct?

23 A. Yes. Along with this -- I did this during
24 that week, and then the other items after that.

25 Q. Okay. So your answer was correct?

26 A. Yeah.

27 Q. -- to the question that I asked?

28 A. Yeah. 3405

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1 Q. You took about a week to go through this
2 particular item, 470, Exhibit 470, Item 317, right?

3 A. Yes.

4 Q. And during the time that you went through
5 there, what kind of a test did you do? This is when
6 you did your alternate light source?

7 A. Well, I first opened it up, noticed that
8 there was numerous items inside the briefcase. And
9 I like to assign them a letter, and we discussed it
10 with the other people processing other evidence that
11 we would assign it a letter so it would be a
12 reference number for us so we could identify each
13 piece individually in that item number.

14 I went through from top to bottom, labeled
15 them all with 317-A, on through FFF, I believe. And
16 then took each piece, photographed it, and then
17 examined it under white light and then under the
18 alternate light source, using goggles, and searching
19 each page by page.

20 Q. All right. So when you got through doing
21 that, you put it back in the briefcase. Did you put
22 it back in the same order or --

23 A. Yes.

24 Q. You didn't shuffle it up?

25 A. I did not shuffle it up.

26 Q. Okay. So, you put it -- do you remember
27 which magazine was on top?

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28 A. Not offhand. I think it was a loose piece 3406

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1 of paper or something, yeah.

2 Q. Okay. In any event, whatever it was, you
3 put it back in the same order, and then you sealed
4 it, right? Sealed the actual --

5 A. I wouldn't seal the briefcase. I sealed my
6 cupboard, because I was -- it was open so I could
7 examine each piece. We would have a bazillion --

8 Q. All right. Thank you.

9 A. So I --

10 Q. I may not be communicating well.

11 A. When I finished with it for the day, I would
12 place it, with the seal broken, inside the cabinet
13 and then I'd place a seal over my cabinet door.

14 Q. All right. I understood that, so what I was
15 asking, though, is when you were through at the end
16 of the week's time on the 26th, you then resealed,
17 put your own tape on the briefcase itself?

18 A. Yes.

19 Q. And took that back to the sheriff's booking;
20 is that correct?

21 A. The property room, yes.

22 Q. Or -- sorry, the property room where you
23 book the evidence in, right?

24 A. Yes.

25 Q. So could you indicate "January 26th" on your
26 timeline there, "returned," wherever you want to put
27 it there in January 2004, and that's when you

28 returned the item to the sheriff's evidence room? 3407

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1 A. Yes.

2 MR. SANGER: Okay. Your Honor, I believe

3 Exhibit 86 was already received into evidence. And

4 I would like to put that on up the board for the

5 purpose of asking questions.

6 THE CLERK: On March 7th.

7 THE COURT: Yes, it was.

8 MR. SANGER: May I do that?

9 THE COURT: Yes.

10 MR. SANGER: Thank you.

11 Q. This is Exhibit 86. Do you recognize the

12 subject matter in Exhibit 86 that's in evidence?

13 A. Yes.

14 Q. Does that appear to be the contents of the

15 briefcase?

16 A. Yes.

17 Q. Is that the way it looked when you opened

18 the briefcase the first time on January the 20th of

19 2004?

20 A. Well, I can't say the order, because it's

21 been a long time, but there was loose papers and

22 things up in the top area where there's a divider,

23 and then there was papers and magazines in the

24 entire briefcase, yes.

25 Q. And you remember there being some loose

26 pages --

27 A. Yes.

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28 Q. -- of the magazines on top of the actual 3408

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1 stack of magazines in the briefcase, correct?

2 A. Yes.

3 Q. So therefore this was not -- this was not
4 the way that it looked when you opened it up on the
5 20th?

6 A. Well, the top -- what I consider the top is
7 the pocket right up on the top. There's a little
8 divider pocket. That's what I considered the top,
9 and I cannot see that in this picture.

10 Q. Okay. I'm asking about the magazines
11 stacked in there. I think earlier you said you
12 believed there was some loose papers on top of the
13 stack of magazines.

14 A. Yes, but I consider the top being the
15 closest to the top of the briefcase.

16 Q. So you mean in the top pocket of the
17 briefcase?

18 A. Yeah. I started up there with "A" and
19 worked through.

20 Q. Okay. Do you recall what magazine was on
21 the top of the stack of magazines in the briefcase?

22 A. No.

23 Q. All right. So you did not take this
24 picture, did you? You don't know if you did or not?

25 A. No, I did not.

26 Q. So you don't know when that was taken --

27 A. No.

28 Q. -- or what it represents, except it appears 3409

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1 to be generally the same briefcase, right?

2 A. Yes.

3 Q. Okay. Do you know -- actually let me just
4 put that up one more time. This "Barely Legal"
5 magazine that's on the top, do you know what number
6 you gave that?

7 A. Not without looking at it back on my
8 original photographs.

9 Q. Can you do that easily?

10 A. There's a stack of photographs right there.

11 MR. SANGER: May I approach, Your Honor?

12 THE COURT: Yes.

13 THE WITNESS: I believe there was 58 pieces
14 of either magazines or evidence in 317, so I cannot
15 remember the order.

16 Q. BY MR. SANGER: Okay. Is that -- by the
17 way, you looked at the materials in the briefcase?

18 A. Yes.

19 Q. While you're looking, I'll ask you a
20 question here.

21 The materials in the briefcase are lawful to
22 possess by an adult in California; is that correct?

23 A. I believe so, yes.

24 Q. Most of it's commercially available in one
25 sense or another?

26 A. In one sense or another, I guess, yeah.

27 Q. In other words, some you can buy at a

28 newsstand. Others you might have to buy at a 3410

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1 specialty store of some sort, but they're available,
2 right?

3 A. Yes.

4 Q. Were you able to find that -- yeah. Were
5 you able to find the magazine that I asked about?

6 A. I believe so, if you can show me that
7 original photograph.

8 Q. Sure.

9 A. Do you mind if I put this back up? It's

10 Exhibit 86.

11 THE COURT: You may.

12 Q. BY MR. SANGER: Thank you. I'm showing you

13 Exhibit 86. By the way, do you know who took this
14 photograph?

15 A. I did.

16 Q. Oh.

17 A. Oh, not that. I took this photograph. I
18 didn't take that picture. I do not know who took
19 that photograph.

20 Q. Okay. For the record, when we say "this"
21 and "that," it later makes absolutely no sense if
22 anybody wants to read it.

23 So Exhibit 86 that we put up on the board
24 that you're referring to, you do not know who took
25 that photograph, correct?

26 A. No.

27 Q. And I said "correct." Let me try it again.

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28 Do you who took Exhibit 86? 3411

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1 A. No, I do not.

2 Q. And then you have in front of you a
3 photograph.

4 A. And this is Exhibit 644, and this is a
5 photograph I took.

6 Q. Okay. And you took that photograph?

7 A. And this is 317-O.

8 Q. Okay. 317-O. So based on the lettering
9 system that you had, if you started lettering from
10 the pocket of the briefcase --

11 A. Yes.

12 Q. -- can you tell us whether or not that was
13 on the top of the stack?

14 A. No.

15 Q. Okay. So you either had -- I don't know
16 what letter of the alphabet O is, somebody will yell
17 it out probably, but A through O --

18 A. A through -- yeah.

19 Q. Or A through N, and then it could or could
20 not have been in the pocket, but they preceded your
21 documenting that one. Okay.

22 All right. I've removed 86, so we still
23 have the timeline up there. And if the Court wants
24 the lights turned on for a moment, we can proceed
25 and come back to this in a moment.

26 Okay. Now, the alternative light source
27 that you used during that one-week period from

28 January 20 to January 26th was for the purpose of -- 3412

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1 oh -- was for the purpose of determining whether or
2 not there was bodily fluids?

3 A. Or any trace evidence, hair, fibers.

4 Q. And an alternative light source, can you
5 describe that briefly?

6 A. Yes. What --

7 Q. Let me stop you for a second. We've already
8 had a little testimony. What color is it, and did
9 you wear goggles, or was there a different color?

10 What did you do?

11 A. Yes, it's basically a light source that goes
12 through numerous wavelengths, mainly in the UV, and
13 I wore orange goggles which narrows the band down
14 and helps you see things fluoresce, or absorb the
15 light, turn dark. And so basically I just went page
16 by page, wearing those orange goggles, and using the
17 UV light and examining each piece of paper.

18 Q. All right. Is this destructive of the
19 evidence to do that?

20 A. No. The CSS -- the light source has dials
21 on it, which dial each wavelength, and the CSS is
22 the one that we use mainly for searching for body
23 fluids, and that one is not, as far as I know,
24 destructive to DNA evidence.

25 Q. Okay. It's not destructive to the paper?

26 A. No.

27 Q. Okay. So when you do an alternative light

28 source examination of that sort, you can then do 3413

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1 other tests on the materials --

2 A. Yes.

3 Q. -- freely thereafter, right?

4 A. It's harmless to the evidence that we looked
5 at.

6 Q. All right. Now, you are a latent print
7 examiner, you told us?

8 A. Yes.

9 Q. And that means that you have training and
10 experience in examining fingerprints and then
11 comparing them to known prints; is that correct?

12 A. Yes.

13 Q. Did you examine these documents for
14 fingerprints?

15 A. I did not examine -- I looked for
16 fingerprints, visible fingerprints, but until you --
17 I did find one fingerprint on, I think it was UUU,
18 or -- I can't remember. But it was just a partial
19 print. I don't think it was comparable.

20 Q. Okay. So with regard --

21 A. It was visible. A latent print is something
22 that you can't see without processing.

23 Q. I was just going to let you explain that.

24 You have three kinds of prints that you
25 find. One would be a visible print, where somebody
26 sticks their finger into wet paint or blood or
27 something, and it's just sitting there and you can

28 see it with your eyeballs, right? 3414

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1 A. Yes.

2 Q. And then you have a plastic print where
3 somebody puts their print into clay, or -- well,
4 silly putty wouldn't last very long, would it? Or
5 clay or putty of some sort, and it actually reflects
6 the ridges in three dimensions; is that correct?

7 A. Yes.

8 Q. And then you have the latent prints?

9 A. Yes.

10 Q. And the latent print -- the latent print,
11 you're likely to find more latent prints than you
12 are the other two varieties; is that correct?

13 A. Most of the time, yes.

14 Q. Okay. And in order to determine if there
15 are latent prints, you can use various technologies
16 to try to develop those prints, either using light
17 sources or using chemical technology; is that
18 correct?

19 A. Yes.

20 Q. All right. Now, you did not use any
21 chemical technology in January of 2004 to attempt to
22 find fingerprints on these documents?

23 A. No.

24 Q. And did you use a RUVIS system or a
25 Scenescop system in January?

26 A. I used a -- no, not a Scenescop. I used
27 their alternate light source that they provide us.

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28 Q. There's a company that makes Scenescape. 3415

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1 They've had different names, but it was Crimescope
2 at one time, right?

3 A. Yes.

4 Q. And the official brand name, or whatever it
5 is, of Scenescop is their RUVIS system; is that
6 right?

7 A. Yes.

8 Q. You are referring to something.

9 A. Yes. This is actually the manual to the
10 Scene -- the ALS that I used.

11 Q. Okay. And what was -- now you've --

12 A. This is made by Jovinyvon --

13 Q. Okay. The court reporter is going to want
14 to know how to spell that. You may as well spell it
15 now, while you have a chance.

16 A. It's J-o-v-i-n-y-v-o-n, and the bottom name
17 is H-o-r-i-b-a.

18 MR. SANGER: May I approach, Your Honor, and
19 look at that?

20 THE COURT: Yes.

21 MR. SANGER: Don't put it away until I look
22 at it. I just want to get a quick look of what you
23 referred to, if I may.

24 THE WITNESS: I need to have it back.

25 That's the only one I have.

26 MR. SANGER: I'm not going to take it.

27 Q. All right. Having refreshed your

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28 recollection on that, that is a -- the brand name 3416

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1 for that particular alternative light source is the
2 Crimescope, right?

3 A. Yes.

4 Q. And, in fact, that was a mini Crimescope?

5 A. Yes.

6 Q. All right. So Crimescope alternative light
7 source. Scenescop is the special UV fingerprint
8 scope; is that correct?

9 A. Yes.

10 Q. All right. So, you did not use the
11 Scenescop in January of 2004?

12 A. No. I did not use the Scenescop, no.

13 Q. When you were using the Crimescope -- after
14 you used the Crimescope, do you know if anybody had
15 requested that you or another sheriff's department
16 employee do a fingerprint examination on these
17 documents?

18 A. Yes.

19 Q. When did that occur?

20 A. It started in late spring, summer, 2004.

21 Q. All right.

22 A. I believe.

23 Q. Okay.

24 A. Not by myself, so I'm not quite sure of the
25 date.

26 MR. SANGER: Okay. Can we put the light
27 back on; if that's all right? And I have the blank

28 form up here. It's Exhibit.... 3417

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1 Q. Were you aware that there was a grand jury
2 proceeding in this case?

3 A. Yes.

4 Q. Do you know roughly when that was?

5 A. April?

6 Q. March and April of 2004 --

7 A. Yeah.

8 Q. -- something like that?

9 Could you mark on your chart there, in the

10 general vicinity of March and April 2004, "Grand

11 jury"?

12 A. I'm marking "Grand jury."

13 Q. All right. Thank you.

14 And do you know if Exhibit 317 -- let me

15 withdraw that.

16 Did you take possession of Exhibit 470,

17 which is Sheriff's Item 317, at any time between

18 January the 26th, 2004, and the time of the grand

19 jury?

20 A. No.

21 Q. Do you know if anybody else did?

22 A. Not offhand --

23 Q. All right. Were you --

24 A. -- no.

25 Q. Were you aware that Exhibit 470 and its

26 contents was introduced into evidence at the grand

27 jury?

28 A. Not personally. I -- 3418

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1 Q. Did you come to be aware of that later?

2 A. Yes.

3 Q. All right. So it's your best understanding
4 right now that it was an exhibit in the grand jury;
5 is that correct?

6 A. As far as I know, but I don't know
7 personally.

8 Q. Okay. Now, when you got through on January
9 the 26th of 2004 with your examination, other than
10 the items that you took out, separated out, to take
11 to the crime lab, the rest of the items were simply
12 put back in the briefcase, correct?

13 A. Yes.

14 Q. There was no individual packaging?

15 A. No.

16 Q. There weren't -- each item wasn't put in a
17 plastic sleeve or anything like that?

18 A. No.

19 Q. They were put in, much like we saw in
20 Exhibit 86?

21 A. Yes.

22 Q. After the grand jury, when did you next see
23 Exhibit 470, Item 317, or its contents?

24 A. I was never assigned to do anything with 317
25 after I finished with it. I know it was processed
26 for fingerprints later, late spring, August, by
27 other people in my unit, but I had nothing to do

28 with it at that point. 3419

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1 Q. Okay. Did you have anything to do with the
2 fingerprint comparison?

3 A. Yes. And those were photographs.

4 Q. You took photographs?

5 A. No, I examined photographs of latents.

6 Q. I'm sorry. So you were presented with
7 latent prints by way of photographs?

8 A. Yes.

9 Q. And were they digital photographs or filmed?

10 A. Digital.

11 Q. And was it your understanding, based on what
12 you were asked to do, that you were presented with
13 photographs that were taken with the assistance of
14 the Scenescop?

15 A. Yes.

16 Q. Did you have anything to do with the super
17 glue fuming or ninhydrin process in developing this
18 paper?

19 A. No, I was pregnant at the time and trying to
20 avoid the chemicals.

21 Q. Okay. That's a good idea. Okay.

22 So your next involvement was then looking at
23 photographs, and when was that, do you recall, that
24 you were asked to look at the photographs of latent
25 prints?

26 A. I started late summer, early fall examining
27 photographs that were taken by other members of the

1 Q. Did you have meetings with other members of
2 the forensic team to discuss the photographs?

3 A. Yes.

4 Q. Now, you say you're a latent print
5 investigator by training and experience; is that
6 correct?

7 A. Examiner, yes.

8 Q. What did I say?

9 A. "Investigator."

10 Q. I meant "examiner," I'm sorry. LPE, Latent
11 Print Examiner.

12 Do you have any certifications in that
13 regard?

14 A. No, I have --

15 MR. NICOLA: I'm going to object. It's
16 beyond the scope, Your Honor.

17 THE COURT: Sustained.

18 Q. BY MR. SANGER: Following the time that you
19 looked at the photographs as a latent print
20 examiner, did you have any other contact with
21 Exhibit 470 or the contents, which would have been
22 Item 317?

23 A. No. Other than photographs, no.

24 Q. Okay. Other than looking at photographs,
25 you didn't take more photographs?

26 A. No.

27 MR. SANGER: May I have just one moment,

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1 Q. Oh, by the way, the DNA, you said you sent
2 some things off for DNA testing; is that correct?

3 A. Yes.

4 Q. And you are aware that subjects that were
5 being compared to anything that may or may not have
6 been found, or anything that may have been found,
7 included Gavin and Star Arvizo; is that correct?

8 A. Yes.

9 MR. NICOLA: Objection; compound.

10 THE COURT: Sustained.

11 Q. BY MR. SANGER: Were you aware that one of
12 the subjects who was a subject to compare any
13 substances found was Gavin Arvizo?

14 MR. NICOLA: Objection; lack of foundation.

15 THE COURT: Overruled.

16 You may answer.

17 THE WITNESS: When I sent these off to the
18 lab, I believe my request was to be compared to the
19 defendant.

20 Q. BY MR. SANGER: Do you know if that original
21 request was superseded?

22 A. I don't know.

23 Q. So you're not aware of whether or not Gavin
24 Arvizo's DNA was searched for in various items of
25 evidence in this case?

26 A. No.

27 Q. Same question pertaining to Star. Would I

28 get the same answers? 3422

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1 A. Yes.

2 Q. You're not aware of any matches that have
3 been made to Gavin or Star Arvizo's DNA in this
4 case, are you?

5 A. No, I do not.

6 Q. Okay. Thank you.

7 Subject to re-call on those issues that we
8 can't go into now, I have no further questions at
9 this time.

10 THE COURT: All right.

11 MR. SANGER: Excuse me. And I would move --
12 5006 I believe is up there. I'd move that in
13 evidence, if I may, please.

14 THE COURT: It's admitted.

15 MR. NICOLA: May I see it first, please,
16 Your Honor?

17 THE COURT: Yes, you may.

18 MR. SANGER: That was kind of a pig in a
19 poke. I didn't look at it either. So maybe I
20 should look at it.

21 THE COURT: It's too late. It's in evidence.

22 (Laughter.)

23 MR. NICOLA: (To the witness) You could
24 have been a doctor.

25 May I project 5006, Your Honor?

26 THE COURT: Yes.

27 //

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1 REDIRECT EXAMINATION

2 BY MR. NICOLA:

3 Q. I can't write on that diagram so I'll just

4 ask you some questions about it.

5 In between -- excuse me. In between

6 January 26, when you sealed up Item 317, the

7 briefcase --

8 A. Yes.

9 Q. -- and the grand jury --

10 A. Yes.

11 Q. -- do you know where the evidence items were

12 that you removed and had sent to the Department of

13 Justice?

14 A. I --

15 MR. SANGER: Calls for speculation.

16 THE COURT: She can answer that "yes" or

17 "no."

18 THE WITNESS: As far as I know, I left it --

19 THE COURT: Just "yes" or "no." Do you know

20 where they were?

21 THE WITNESS: Yes. Yes.

22 Q. BY MR. NICOLA: Were they in the briefcase?

23 A. No.

24 Q. Do you know where they were?

25 A. They were sent to the Department of Justice

26 Lab in Goleta.

27 Q. So as far as you know, Exhibit No. 518,

28 which you've previously identified as being in the 3424

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1 bag that went to the Department of Justice, as far
2 as you know, that didn't go to the grand jury in
3 that briefcase?

4 A. It was separated out from the briefcase, so
5 it couldn't have gone in the briefcase.

6 MR. SNEDDON: Excuse me.

7 Q. BY MR. NICOLA: I'd like to show you Penal
8 Code Section 313.1, and ask you to read it to
9 yourself, subparagraph (a).

10 MR. SANGER: I'm sorry, I -- is this to
11 refresh recollection? If it's not, it's improper.

12 THE COURT: It's improper to read in court?

13 MR. SANGER: That's such a good straight
14 line, there's got to be an answer, but I don't have
15 one, Your Honor.

16 It's not proper to have the witness read
17 something unless there's a foundation laid
18 refreshing recollection. She's being asked to read
19 a law book.

20 THE COURT: I've never heard that objection.

21 Q. BY MR. NICOLA: Have you read it?

22 A. Sort of.

23 MR. SANGER: Object. Irrelevant; "Have you
24 read it?" It's got to be relevant to something,
25 refreshing recollection.

26 MR. NICOLA: It will be, Your Honor. And if
27 it's not, then the Court won't let me ask the

28 question, I'm certain. 3425

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1 THE COURT: The objection is overruled.

2 THE WITNESS: Okay.

3 Q. BY MR. NICOLA: Finished reading?

4 A. Yes.

5 Q. Okay. Mr. Sanger elicited from you the

6 opinion that possessing the kind of material that

7 you found in the briefcase is generally lawful. You

8 gave him the opinion that you thought it was.

9 A. Lawful to own by an adult.

10 Q. If that material were shown to a minor --

11 A. I believe --

12 MR. SANGER: Objection, Your Honor. Calls

13 for a legal conclusion.

14 THE COURT: It's rebuttal to your question,

15 Counsel.

16 THE WITNESS: It would be illegal --

17 THE COURT: You may answer.

18 THE WITNESS: It would be illegal to the

19 minor.

20 Q. BY MR. NICOLA: And that's Penal Code

21 Section --

22 A. One -- 313.1(a).

23 Q. When you -- when you participated in the

24 fingerprint work in this case later on in 2004, were

25 you the partner of anybody in particular?

26 A. Yes. I was partnered up with a retired

27 sergeant, Bob Spinner.

28 Q. And is he the person tasked with making the 3426

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1 analysis of the fingerprint comparisons in this
2 case?

3 A. Yes. He was the initial and I was the
4 verifier.

5 Q. And is that a standard protocol?

6 A. Yes. We used -- every time we've made a
7 fingerprint, we always have two people examine it
8 independently. That way we hopefully won't make a
9 mistake.

10 Q. To your knowledge, were the fingerprints of
11 any minors recovered from Item 317-R?

12 A. I'll need to check a list.

13 MR. SANGER: I'm going to object that
14 there's a lack of foundation at this point.

15 THE WITNESS: Yes.

16 THE COURT: Just a moment.

17 MR. SANGER: I'm going to withdraw the
18 objection, Your Honor.

19 THE COURT: All right.

20 THE WITNESS: Yes, there were some.

21 MR. NICOLA: Okay. It's a "yes" or "no."

22 THE WITNESS: Yes.

23 MR. NICOLA: Okay. I have no further
24 questions, Your Honor.

25

26 RE-CROSS-EXAMINATION

27 BY MR. SANGER:

28 Q. Well, first of all, before we get into the 3427

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1 last area, the identification of the fingerprints -
2 and I think we can turn off the screen if you - the
3 District Attorney asked you to read a section out of
4 the Penal Code, I guess. Is that what he did?

5 A. Yes.

6 Q. All right. And you would agree that you're
7 not a lawyer, right?

8 A. Yes.

9 Q. And -- you could be, actually. I shouldn't
10 have put it that way. But you aren't, it turns out.

11 A. I'm not a lawyer.

12 Q. Okay. And you're not offering an opinion as
13 to what Mr. Jackson is charged with in this case,
14 are you?

15 A. No.

16 Q. And as far as you know, he is not charged
17 with the code section that you were asked to look
18 at?

19 A. As far as I know, no.

20 Q. Okay. And in fact, the kind of material
21 that if adults possess it - that's all I asked was
22 if adults possessed that kind of material - there's
23 nothing illegal about simply possessing that kind of
24 material, true?

25 A. True.

26 Q. Okay. Now, going back to your fingerprint
27 testimony, I would like to ask you some questions,

28 then, about your experience and training in 3428

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1 fingerprints. So are you certified by any
2 organization? I think you told us that you are, by
3 training and experience, a latent print examiner.

4 A. I am trained in -- with experience, a latent
5 print examiner.

6 Q. So are you certified by anybody or any
7 association as a latent print examiner or anything
8 else in that category?

9 A. No.

10 Q. Are there bodies that certify people as
11 latent print examiners?

12 A. Yes.

13 Q. And what bodies are those, for instance?

14 A. International Association of Identification
15 I'm a member of, but I have not taken the test
16 through them. It's not a requirement of our
17 department.

18 Q. Okay. Are you familiar with SWGFST,
19 S-W-G-F-S-T?

20 A. Yes.

21 Q. And what's that?

22 A. Scientific Working Group, Finger -- I
23 can't -- it's a fingerprint group --

24 Q. Okay.

25 A. -- that sets basically the guiding rules of
26 fingerprint examiners.

27 Q. Sets forth the standards for --

1 Q. Right. And are there any other groups that
2 you're aware of that are specifically oriented
3 towards fingerprint examiners?

4 A. Yes. There's SCAFO, which is Southern
5 California Association of Fingerprint Officers.
6 There's numerous -- IAI State Division. There's the
7 California Division of IAI. IAI is International
8 Association of Identification, but they have little
9 subgroups, and then in any major city you find
10 smaller groups.

11 Q. So people, latent print examiners, kind of
12 get together and they have seminars from time to
13 time?

14 A. Yes.

15 Q. Talk about what they're doing; is that
16 correct?

17 A. Yes.

18 Q. And you're not certified by any of those
19 organizations or licensed; is that correct?

20 A. No, but I do go to their meetings.

21 Q. Okay. Now, in that regard, there are three
22 aspects to latent print examination; is that right?

23 Let me back up before we get to that. There are
24 three -- there are three principles to the
25 underlying concept of latent print comparison; is
26 that right?

27 MR. NICOLA: Objection, Your Honor; beyond

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1 THE COURT: Overruled.

2 THE WITNESS: As far as --

3 Q. BY MR. SANGER: Well, let me suggest, the
4 reason that you examine latent prints and compare
5 them to what's called a known print --

6 A. Yes.

7 Q. -- is to try to make a determination, the
8 best you can, as to whether or not the same person
9 gave the latent print who gave the rolled print,
10 right?

11 A. Yes.

12 Q. And generally when you have a rolled print,
13 that means you had somebody there with -- a law
14 enforcement officer rolling their prints?

15 A. Yes.

16 Q. Okay. And so there's some form of
17 identification, often a picture, right?

18 A. Yes.

19 Q. So that way, you want to be pretty sure that
20 the rolled prints belong to the person that --

21 A. Yes. They're usually -- there's the
22 demographical information attached to the card.

23 Q. So that's rolled prints.

24 Now, the latent prints are the ones that
25 randomly show up in evidence that you're asked to
26 inspect; is that correct?

27 A. Yes.

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28 Q. And those prints may be partial prints; is 3431

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1 that correct?

2 A. It can be partial. They mainly are partial.

3 Q. That's what I was going to say. You

4 don't -- what you call a "ten print," whereas you

5 have somebody who's got ten fingers, they do the

6 whole --

7 A. Yeah, you roll from nail to nail. And

8 usually you don't go and pick up pieces of paper and

9 items going like this (indicating). You touch it,

10 and that way you get a partial print.

11 Q. And sometimes partial prints are obscured by

12 imperfections in the surface; is that right?

13 A. Yes.

14 Q. And sometimes partial prints are obscured

15 because somebody has smeared the print?

16 A. Yes.

17 Q. All right. Now, the basic principles I was

18 getting at are that, number one, fingerprints are

19 more or less permanent for an individual; is that

20 correct?

21 A. Yes. They start at 12 weeks in the womb and

22 they're the same until you die.

23 Q. All right. Now, there are some ways to --

24 for fingerprints to actually change during the

25 course of somebody's life; is that correct?

26 A. Change -- you add things to it, like scars,

27 marks, you know, warts can alter, but they're not

28 altering the fingerprint. They're just -- they're 3432

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1 adding to the --

2 Q. All right. It's a matter of semantics, I
3 suppose. But the ridge lines, when you're talking
4 about fingerprints, those are sometimes what are
5 called friction ridges; is that correct?

6 A. Yes.

7 Q. And those are the ridges, when you look at
8 the pictures on the screen there, you'll see that
9 they go -- it's not there. We have seen the picture
10 up there. You might see hoops or whorls.

11 A. Loops, whorls or arches.

12 Q. I'm sorry. Loops, whorls or arches. I said

13 "hoops." All right. Loops, whorls, or arches.

14 Those are the three main configurations of prints?

15 A. Yes.

16 Q. And then you're going to see a lot of
17 individual characteristics; is that correct?

18 A. Yes, which we call minutia.

19 Q. So, for instance, something like 65 percent
20 of the population have whorls; is that right?

21 A. No, loops.

22 Q. Loops. Okay.

23 35 percent whorls. See if I get that right.

24 A. Yes. Approximate. In that area.

25 Q. But large parts of the population have loops
26 or whorls, so that isn't going to get you too far,
27 right, in making an actual comparison?

28 A. No. That's your initial pattern of 3433

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1 recognition.

2 Q. And then to get to a better comfort level to
3 say that you have some kind of identification, you
4 need to look at the minutia, which are the very
5 small individual characteristics; is that correct?

6 A. Yes.

7 Q. Now, those small individual characteristics
8 can change, as you indicated, based on scarring or
9 warts or some other kind of deformity over a period
10 of time?

11 A. They don't change. They're more -- the scar
12 is actually added into the original pattern.

13 Q. All right. But one of the basic premises is
14 that if somebody has fingerprints at some point in
15 their life, that's pretty much going to be their
16 fingerprints --

17 A. For the rest of their life.

18 Q. Okay. Now, the next principle that's
19 involved in doing an examination and a comparison is
20 that fingerprints are pretty much unique to an
21 individual?

22 A. Yes.

23 Q. Now, that proposition is somewhat
24 controversial, is it not?

25 A. Yes.

26 Q. Okay. We had a recent example with the
27 Madrid bombing case; is that correct?

28 A. Yes. 3434

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1 Q. You're familiar with that?

2 A. Yes.

3 Q. And can you tell the jury just briefly what

4 that's about?

5 MR. NICOLA: Objection; relevance.

6 THE COURT: Sustained.

7 Q. BY MR. SANGER: Okay. Without going into

8 the details -- I don't want to run afoul of the

9 Court's ruling, but without going into the details,

10 can I ask you this: Was there a lawyer in Oregon

11 who was accused of being involved in a terrorist

12 bombing in Madrid based on a fingerprint?

13 MR. NICOLA: Objection. What is the

14 relevance of that?

15 MR. SANGER: Validation studies. I won't

16 say any more.

17 THE COURT: Can you approach that issue

18 without raising another case?

19 MR. SANGER: Let me go back and see if I

20 can -- if I can go back and see if we get to this

21 point or not. Let's do it this way.

22 THE COURT: Thank you.

23 Q. BY MR. SANGER: Within the last ten years or

24 so, there has been writings raising the question of

25 whether or not there's sufficient differentiation

26 between any two given fingerprints in the world to

27 make positive identifications; is that correct?

28 A. Yes. 3435

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1 MR. NICOLA: I'm going to object as

2 compound, Judge.

3 THE COURT: Overruled.

4 Q. BY MR. SANGER: And there has been, among

5 other things, some litigation in various courts

6 around the country regarding what we might call

7 validation, validating that prints are unique enough

8 to make positive identifications?

9 A. Yes.

10 Q. And you're aware of Judge Pollack's decision

11 in the Eastern District of Pennsylvania?

12 MR. NICOLA: Objection. Relevance; lack of

13 foundation.

14 THE COURT: Overruled.

15 You can answer that "yes" or "no."

16 THE WITNESS: Yes, I know of it.

17 Q. BY MR. SANGER: Okay. And without going

18 into detail, Judge Pollack raised serious questions

19 about the validity of fingerprint examination and

20 its admissibility in court, correct?

21 MR. NICOLA: Objection, Your Honor. Calls

22 for hearsay.

23 THE COURT: Sustained.

24 Q. BY MR. SANGER: In response to Judge

25 Pollack's decisions, have there been increasing

26 efforts on the part of the fingerprint examining

27 community to validate their techniques?

28 A. Yes. 3436

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1 Q. All right. And that brings us to the Madrid
2 bombing case, which I'd just like to ask briefly
3 about, if I may.

4 MR. NICOLA: I'm going to make the same
5 objection, Your Honor. I don't know how that's
6 relevant.

7 THE COURT: Well, I think I have to let you
8 ask the question before I know whether I'll let you
9 ask the question.

10 MR. SANGER: Okay.

11 (Laughter.)

12 Q. BY MR. SANGER: Okay. I'll try to do it as
13 simply as I can, or as summarily as possible, so we
14 don't get into too much detail.

15 You're aware that a number of fingerprint
16 examiners that were doing the Madrid bombing case
17 had made a positive identification of the
18 fingerprint of a lawyer in Oregon. Are you aware of
19 that?

20 MR. NICOLA: Objection; relevance.

21 THE COURT: You may answer that "yes" or
22 "no."

23 THE WITNESS: Yes.

24 Q. BY MR. SANGER: And in that particular case,
25 the experts found in excess of 16 points of
26 identification when they made that, what turned out
27 to be a false positive identification, correct?

28 A. I don't -- 3437

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1 MR. NICOLA: Assumes facts not in evidence,

2 Your Honor.

3 THE COURT: You were going to say, "I don't

4 know"; is that right?

5 THE WITNESS: Yeah.

6 MR. SANGER: Okay.

7 THE COURT: I'll allow the answer and the

8 question.

9 Q. BY MR. SANGER: Now, as a result of that

10 particular case, has there been even more

11 intensification of the efforts on the part of the

12 fingerprint examining community to validate their

13 techniques?

14 MR. NICOLA: Objection. That calls for

15 speculation; lack of foundation.

16 THE COURT: Sustained; foundation.

17 Q. BY MR. SANGER: Okay. Are you aware -- you

18 participate in these various organizations. Are you

19 aware -- let's just make it real simple: The Madrid

20 bombing case and the false identification in that

21 case of the fingerprint --

22 MR. NICOLA: Objection, Your Honor. Counsel

23 is assuming facts not in evidence. He's testifying.

24 Q. BY MR. SANGER: Well, was there a false

25 identification of a fingerprint in the Madrid

26 bombing case?

27 MR. NICOLA: Objection, Your Honor. Asked

28 and answered. 3438

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1 THE COURT: Overruled.

2 THE WITNESS: Yes. Yes.

3 Q. BY MR. SANGER: All right. And as a result
4 of that false identification -- do you know when
5 that was, by the way, when that occurred?

6 A. Last year.

7 Q. Okay. Sometime in 2004, right?

8 A. Yes.

9 Q. As a result of that incident, in addition to
10 all the others, has there been additional concern in
11 the fingerprint examination and comparison community
12 that you are involved in, to your personal
13 knowledge?

14 MR. NICOLA: Objection, Your Honor, the
15 question is compound; it inserts facts not in
16 evidence; and it lacks foundation.

17 THE COURT: I think there's a more basic
18 question you have to ask her before you can ask
19 that, which is a foundational question.

20 MR. SANGER: All right.

21 Q. Has that case been discussed in -- amongst
22 fingerprint examiners in your presence?

23 A. Yes.

24 Q. Has it been discussed at seminars? Have you
25 been to a seminar since that case came down?

26 A. Yes, I've been to a seminar. It wasn't
27 discussed directly, but it was referred to.

28 Q. And it was a topic of conversation at the 3439

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1 coffee machine at the break?

2 A. Don't drink coffee.

3 Q. Okay. That's right. Okay. You're taking a

4 very healthy approach.

5 All right. In any event -- and then do you

6 read periodicals and other literature regarding

7 fingerprint examination?

8 A. Yes.

9 Q. And has that case been the subject of

10 significant discussion in the periodicals relating

11 to fingerprint examination?

12 A. Yes. And I haven't quite finished reading

13 that one article.

14 Q. Okay. As a result of this -- of these

15 concerns, has there been an increased effort to --

16 let me withdraw that. As a result -- let me

17 withdraw that.

18 What are validation studies?

19 MR. NICOLA: Objection. Lack of foundation,

20 Your Honor.

21 THE COURT: Overruled.

22 You may answer.

23 THE WITNESS: They're tests for competency.

24 Q. BY MR. SANGER: Has there been an effort to

25 enhance the validation studies in order to prove

26 the proficiency of fingerprint examiners?

27 A. I don't know of any official ones, but we

28 always try to be perfectionists. 3440

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1 Q. All right. Now, in the areas -- I'm trying
2 to think of a one-minute question, so I don't launch
3 into something.

4 THE COURT: That's kind of you.

5 Q. BY MR. SANGER: But in the area of
6 fingerprint examination, there were -- there's a
7 fellow by the name of Galton who really pioneered
8 all of this in the 1880s; is that correct?

9 A. Yes.

10 Q. And to this day, there's a reference to
11 Galton when you talk about Galton points; is that
12 correct?

13 A. Galton's details. And that's basically
14 minutia, which are points of reference.

15 Q. So you look at points -- Galton looked at
16 points of reference which would be actual details of
17 the ridge lines in the fingerprint; is that correct?

18 A. Yes.

19 Q. All right.

20 THE COURT: All right. We'll --

21 MR. SANGER: Being so bold as to take 20
22 seconds extra here.

23 (Recess taken.)

24 THE COURT: You may proceed.

25 MR. SANGER: Thank you, Your Honor.

26 Q. Okay. Just before the break, we were
27 talking about validation studies, and one of the

28 aspects that you talked about was proficiency 3441

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1 testing, I think; is that right?

2 A. Competency.

3 Q. Competency. Are there blind proficiency
4 tests that are issued to latent print examiners?

5 A. If your agency requests one, yes.

6 Q. Have you been involved in such a test?

7 A. No.

8 Q. Now, you're aware that over the last few
9 years, that various agencies have tested where they

10 send out prints and ask that they be compared and

11 that they found both false negatives and false

12 positives; is that correct?

13 MR. NICOLA: Objection; compound.

14 THE COURT: Overruled.

15 THE WITNESS: Not personally, but I know of

16 proficiency tests, yes.

17 Q. BY MR. SANGER: So you have not been tested

18 at all?

19 A. No.

20 Q. All right. In this particular case, in this
21 particular case involving Mr. Jackson, you went over

22 the original set of prints that were compared, and

23 you participated in confirming the conclusion that

24 either there was an identification or there wasn't;

25 is that correct?

26 A. Yes. There would be three results. There

27 would be a positive, meaning it was an I.D., a

28 negative, meaning it did not match, or inconclusive, 3442

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1 meaning that it could, but we couldn't rule out and
2 we couldn't rule in.

3 Q. All right. And when you make a positive
4 identification, is it your understanding under the
5 rules that govern latent print examiners -- let me
6 withdraw that.

7 Are there any formal rules and regulations
8 that govern latent print examiners in California?

9 A. There's no formal rules, but our agency uses
10 the ACE-V method, which is analysis, comparison,
11 evaluation, and then verification.

12 Q. All right. You're familiar with the rules
13 of ethics that have been promulgated by SWGFST?

14 A. I've read them.

15 Q. Well, do you feel they're appropriate for
16 the profession?

17 A. Yes.

18 Q. All right. And they reflect, pretty much,
19 what the latent print examiners as a group are
20 striving towards --

21 A. Yes.

22 Q. -- is that right?

23 When you make a positive identification, it
24 is supposed to be just that, positive?

25 A. Positive.

26 Q. And it's -- there's no room -- if you say
27 positive, you're expressing the opinion that there's

28 no possibility that anybody else could have left 3443

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1 that print; is that correct?

2 A. It has to be 100 percent. If it's 99.9,
3 it's inconclusive.

4 Q. All right. And in this particular case,
5 there were two prints that you had expressed an
6 opinion on which were later determined by others not
7 to be a correct evaluation; is that correct?

8 A. Which ones?

9 Q. Are you -- okay. After you got through
10 looking at the fingerprints, you did that with
11 Detective Spinner; is that correct?

12 A. Yes.

13 Q. And you and Detective Spinner each formed an
14 opinion as to whether or not there was a positive
15 identification or not; is that correct?

16 A. Yes.

17 Q. And you then reduced these opinions to
18 written reports; is that correct?

19 A. I did not write any reports.

20 Q. Detective Spinner did?

21 A. Yes.

22 Q. Did you review his reports?

23 A. Not every one of them, but I -- I verbally
24 talked to him about everything.

25 Q. So you were aware that he was filing reports
26 that reflected your conclusions that either a print
27 was positive or inconclusive or negative; is that

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28 correct? 3444

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1 A. Yes.

2 Q. Are you aware of two prints that later were
3 determined by other examiners not to be correctly
4 evaluated?

5 MR. NICOLA: I'm going to object. It
6 assumes facts not in evidence. There's a lack of
7 foundation as to her personal knowledge.

8 THE COURT: I'll sustain the foundation.

9 Q. BY MR. SANGER: All right. Let's take it
10 one at a time. Were you aware that 317-L -- you had
11 formed an opinion, along with Detective Spinner,
12 that the print was inconclusive; is that correct?

13 A. I --

14 MR. NICOLA: Objection; vague. There were a
15 number of prints on 317.

16 MR. SANGER: Okay. Let's get the exact one
17 here.

18 Q. While I'm looking for it, let's just do
19 this: Were you aware that, with regard to 317-L,
20 that one of the prints that you determined was
21 inconclusive, other examiners have come back and
22 said that there is a positive match?

23 A. We --

24 MR. NICOLA: Objection. Lack of foundation
25 as to who the other examiners might be.

26 THE COURT: Overruled. But the question --

27 THE WITNESS: This is --

28 THE COURT: The question is, "Are you aware 3445

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1 of other opinions?"

2 THE WITNESS: Yes. Can I --

3 THE COURT: No, you can ask your next
4 question.

5 MR. SANGER: Okay.

6 THE WITNESS: Can I --

7 Q. BY MR. SANGER: And we are talking
8 specifically about Fingerprint No. 1, on page 31 of
9 Evidence Item 317-L, which would have been -- well,
10 anyway, evidence Item 317-L. Are you familiar with
11 that print?

12 A. Yes.

13 Q. And you and Detective Spinner decided that
14 that was inconclusive; is that correct?

15 A. At the time of -- when we did all the
16 comparisons, we did 24,000 comparisons, we figured,
17 approximately. We couldn't spend a lot of time
18 really evaluating --

19 MR. SANGER: Your Honor, I move to strike
20 the answer. Not responsive.

21 THE COURT: Sustained. It's stricken.

22 MR. SANGER: Could you answer that question?

23 THE COURT: Have it read back.

24 (Record read.)

25 THE WITNESS: May I explain a little, other
26 than a "yes" or "no"?

27 MR. SANGER: I have to have an answer first.

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1 Q. BY MR. SANGER: You found that to be
2 inconclusive?

3 A. At that time, yes.

4 Q. Later, there was a determination made by
5 somebody other than you that that should be
6 classified as a print belonging to Star Arvizo; is
7 that correct?

8 A. We did it together, yes.

9 Q. Okay. So you filed your original report, or
10 Detective Spinner filed his original report on that
11 particular item around the end of June of 2004; is
12 that correct?

13 A. Approximately, yeah.

14 Q. Okay. And that's roughly when you concluded
15 your work making the comparisons; is that right?

16 A. With that particular latent?

17 Q. Yes, I'm sorry. But with regard to that
18 particular --

19 A. Amongst thousands, yes.

20 Q. With regard to that particular item, 317-L,
21 which was a particular magazine; is that correct?

22 A. Yes.

23 Q. With regard to that magazine, you concluded
24 your work towards the end of June of 2004; is that
25 right?

26 A. I don't think it was 2 -- in June, no.

27 Q. When was it?

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28 A. It was sometime in the fall. 3447

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1 Q. Okay. All right. In any event, fall 2004?

2 A. Yes.

3 Q. All right. And then in February, or let's
4 say January and February of 2005, you looked again
5 at Item 317 with Detective Spinner; is that correct?
6 317-L?

7 A. I think it was in January, yes.

8 Q. January 2005?

9 A. Yes.

10 Q. Okay. We're in the middle, at that time, of
11 pre-trial motions in this case; is that correct?

12 A. I guess so, yeah.

13 Q. Jury's about to be --

14 A. Well, it was the beginning of January 2005,
15 because I -- I was still pregnant.

16 Q. Okay. All right. And at that time you had
17 already -- by that time, you had already filed this
18 report saying that print, that being Fingerprint
19 No. 1, developed on page 31 of Evidence Item 317-L,
20 was inconclusive?

21 A. I did not file a report.

22 Q. Detective Spinner filed the report with that
23 conclusion, correct? Your unit filed a report with
24 that conclusion, correct?

25 A. Inconclusive in November, October. And then
26 we filed another report I believe in January.

27 Q. Yes, ma'am. And then -- actually, the

28 report that you filed -- do you have that report in 3448

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1 front of you, by the way?

2 A. I did not file a report. It's all -- it's

3 Spinner.

4 Q. Detective Spinner filed it, right?

5 A. Yes.

6 Q. And you and he were working together in your

7 unit, the forensic unit, Bureau of Criminalistics

8 for the sheriff's department analyzing these prints,

9 correct?

10 A. Not -- I was on maternity leave at that

11 time. I came in on a -- for a couple hours one day

12 to meet with him.

13 Q. One day when?

14 A. In January.

15 Q. Okay. So when he says that you concurred

16 with him that this print should be reclassified, you

17 concurred with him based on a two-hour consultation?

18 A. Well, I would think it was more than two

19 hours, but I can't say exactly. I didn't have a

20 stopwatch with me. It was an afternoon. It was a

21 print that was -- we couldn't spend the time on it,

22 as I recall.

23 Q. What I want to ask you is how much time,

24 now. What you're saying is maybe more than two

25 hours, but it was an afternoon?

26 A. It was an afternoon, yes.

27 Q. All right. And in the course of that

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28 afternoon, did you review other prints other than 3449

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1 the one that we just referred to, Print No. 1 on
2 page 31 of 317-L?

3 A. Yes, I believe we reviewed all the
4 inconclusives.

5 Q. All of them?

6 A. Yes.

7 Q. And you determined in this case, between the
8 two of you in that period of time, that your
9 previous inconclusive should be now reported as a
10 positive for Star Arvizo; is that correct?

11 A. Yes. There's -- as an examiner, you always
12 go on the edge of caution, so you want to make sure
13 it's a positive-positive. If you have any -- if you
14 want -- if you want to rush a job and you don't --
15 if you don't want to rush a job, you make it an
16 inconclusive.

17 Q. How many weeks did you work on the
18 fingerprint examinations prior to coming back in
19 January?

20 A. Oh, a few months.

21 Q. Few months?

22 A. At least, yeah.

23 Q. And when you said -- I forgot what the
24 number was, some thousands of comparisons?

25 A. Yes. You have ten fingers on each hand, and
26 we had three people to compare it to, and I believe
27 there was over 700 latents, so that makes

28 approximately 21,000 comparisons. 3450

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1 Q. So you're comparing the 700, more or less,
2 700 latent prints --

3 A. Approximately.

4 Q. -- to three people, each of whom had ten
5 fingers?

6 A. Yes.

7 Q. All right. And you said you never want to
8 make a positive identification unless you're 100
9 percent positive, correct?

10 A. Yes.

11 Q. And you said if you're rushing things, you
12 definitely don't rush into a positive. You'd rush
13 into an inconclusive?

14 A. Yes, so you can spend the time later
15 re-examining, if you have the time.

16 Q. In that same January time period, it was
17 determined that your positive identification of
18 Fingerprint No. 1 on page seven of Evidence Item
19 317-0 where Mr. Jackson was positively identified by
20 you earlier, that that should have been
21 inconclusive; is that correct?

22 A. We didn't make it a positive, because I
23 still feel it's a positive. Bob feels it's more of
24 an inconclusive. And so we can't come to a
25 conclusion, so it's still an inconclusive.

26 Q. So "Bob" is Detective Spinner; is that
27 correct?

28 A. Detective Spinner, yeah. 3451

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1 Q. But once again, that had been written up as
2 a positive prior to January and February of 2005,
3 correct?

4 A. By "Bob," by Bob Spinner, yes.

5 Q. So fingerprint identification is really
6 subjective; is that correct?

7 A. Yes.

8 Q. In other words, it's up to somebody who has
9 training or -- in other words, or whatever their
10 background is, to look at the latent and look at the
11 rolled print and make a subjective determination
12 that they believe that it's the same person; is that
13 right?

14 A. Yes, with training.

15 Q. And we have indicated with a couple of
16 examples, and I won't go into any more particular
17 ones with you right now, but there have been a
18 number of other notable misidentifications of prints
19 in recent years, have there not?

20 A. Yes.

21 Q. All right. Now, you talk about the ACE-V
22 analysis. And the ACE-V analysis was actually put
23 together really by Sergeant Ashbaugh of the Royal
24 Canadian Mounted Police?

25 A. Yes.

26 Q. And Sergeant Ashbaugh was a sergeant in the
27 RCMP?

28 A. Yes. 3452

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1 Q. And he decided that, oh, 20 years ago or so,
2 that fingerprint analysis needed to be upgraded and
3 have a more scientific vocabulary; is that correct?

4 A. He was one of the many people, yes.

5 Q. And he, in fact, coined the phrase
6 "ridgeology"?

7 A. Yes.

8 Q. Do you consider yourself a ridgeologist?

9 A. To a certain point, yes.

10 Q. And he wrote a book with that name in the
11 title, I think.

12 A. Yes.

13 Q. When you say "ridgeologist" or "latent print
14 examiner," you're talking about looking at the
15 ridges and trying to see what you got in that
16 latent, if it matches the ridges of the rolled
17 print; is that right?

18 A. Yes.

19 Q. Now, prior to Sergeant Ashbaugh's arrival on
20 the scene and his writing and whatnot, the Galton
21 points were given a tremendous amount of weight; is
22 that correct?

23 A. Yes.

24 Q. And by "Galton points," we sometimes hear
25 there's so many points of identification where you
26 look at a particular image on the magazine or from
27 the Scenescop or the super glue or the ninhydrin,

28 and then you look at the rolled print, and you say, 3453

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1 "Ah-hah, that looks like the end of that line ends
2 just about exactly the same place on both prints."

3 Would that be an example of a Galton point?

4 A. Yes.

5 Q. And at one time it was thought that simply
6 counting the number of Galton points was a good way
7 to make a positive identification; is that correct?

8 A. A long time ago. They need to be the same
9 orientation, too.

10 Q. All right. So we've gone from just
11 counting, where somebody says, "Oh, we've got 12
12 points of identification," for instance, to looking
13 at more than just the 12 points of identification?

14 A. Yes.

15 Q. Ultimately, when you do your analysis, the
16 first thing that you need to feel comfortable with
17 is that you have a -- a valid print; that is, a
18 latent print is a print that was, in fact, preserved
19 properly and enhanced, or whatever was done to make
20 it visible, that all of that was done in a reliable
21 fashion; is that correct?

22 A. Yes.

23 Q. And then you do an analysis of the print to
24 see if there's going to be enough of a print and
25 enough of a coherent print to do a comparison,
26 correct?

27 A. Yes.

28 Q. You could have one print over another that 3454

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1 might cause problems; is that right?

2 A. That's one of our problems, yes.

3 Q. And you can have a print that's on paper

4 that's crinkled, or there's some other problem with

5 it so you don't get enough of a print?

6 A. Yes.

7 Q. You could have a print where just the edge

8 of somebody's finger hit the paper and that's the

9 only thing that will show up?

10 A. Yes.

11 Q. So the first thing is, you try to analyze

12 the print and make sure you got enough to go with.

13 If there are danger signs, do you reject the print?

14 A. Yes.

15 Q. All right. So, for instance, if there are

16 too many -- there's too much pressure, there's a

17 smear or something like that, it may render the

18 print really unusable; is that correct?

19 A. Yes.

20 Q. Now, assuming you find a partial print,

21 which is a portion of that otherwise ideally rolled

22 print that's sufficient, you go to the comparison

23 stage; is that right?

24 A. Yes.

25 Q. So we're actually doing this ACE-V thing.

26 A. You do the analysis. Can I give a quick

27 description?

28 Q. We did analysis, right? 3455

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1 A. Yeah.

2 Q. Now we're going to comparison. That's C,

3 AC?

4 A. You have missed a few things in the

5 analysis.

6 Q. Go ahead. Okay.

7 A. You also look at the general pattern. If

8 the pattern -- the subject you're comparing to is a

9 known, your suspect, has all whorls, and the print

10 that you're comparing it to is a loop, you can

11 eliminate him right then.

12 You don't have to go any further than that.

13 So you've got to look at the overall latent print as

14 far as the pattern, the details in the -- in the

15 latent, and you can do some quick evaluation, right

16 then and there, that you don't need to continue on

17 to the comparison process.

18 Q. All right. So whether that's part of

19 analysis or the first part of comparison, you do a

20 basic overall comparison of the known or rolled

21 prints with the latent --

22 A. Yes.

23 Q. -- is what you're saying, and then you go to

24 a more detailed comparison if you feel we're still

25 in the ball game. You got enough to look at, you

26 think, and then there's a general agreement that

27 it's either a whorl or a loop or an arch or

28 something, right? 3456

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1 A. Yes.

2 Q. So when you get to comparison, tell me what
3 you do besides count Galton points.

4 A. You look at the three levels of detail.

5 There's the general pattern, then ridge flow of the
6 fingerprint or palm print.

7 Then the next layer of detail is Galton's
8 details or minutia, which is what we call it now,
9 and those are ridge endings, where the ridge will
10 just go up and end, or bifurcation, where the ridge
11 goes up and it separates into two. There's short
12 ridges, which are just little short ridges in
13 between the row of other ridges. There's dots,
14 which are just a little dot. And there's scars,
15 marks, warts, you know, other things. You look at
16 those and see if they line up in the same
17 orientation.

18 And then you can go down to the third level
19 of detail, which is ridgeology of -- the edges of
20 the ridges, like edgeoscopy they call it, and it's
21 the actual way the ridges form, if there's a bump in
22 it, or if it flows a certain different way. And you
23 can also look at the poreoscopy, the actual
24 placement of the pores along the ridges.

25 Q. Okay. In order to get to what you're
26 calling the edgeoscopy or the poreoscopy, you have
27 to have a very good latent; is that correct?

28 A. Yes. 3457

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1 Q. Most latents -- for instance, on a magazine,
2 most latents you're not going to be able to see that
3 kind of detail to make that kind of comparison; is
4 that correct?

5 A. Most of them, yes. But some are clear
6 enough, yes.

7 Q. And you talked about the Galton points. For
8 instance, at one time it was thought that maybe 12
9 points of identification would assure an absolute
10 positive identification; is that correct?

11 A. By some agencies, yes.

12 Q. In fact, some agencies went as low as seven
13 or nine points of identification; is that correct?

14 A. I don't know.

15 Q. And we were talking about this lawyer who
16 was falsely identified based on a fingerprint in
17 Oregon in the Madrid bombing case, that there were
18 over 16 points of identification that were
19 established by the FBI in that case; isn't that
20 correct?

21 A. I don't know how many points they went off.
22 I looked at the print itself and I wouldn't I.D. it,
23 so --

24 Q. In any event, whatever it was, it was enough
25 for the FBI to say there was sufficient points of
26 identification, correct?

27 A. At that time, yeah, I guess so.

28 Q. Okay. In 2004? 3458

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1 A. Yeah.

2 Q. And they were aware of this additional --
3 the more than just Galton's 1886 approach to
4 counting points. They were aware of all the
5 advances that had been made in fingerprint
6 identification?

7 MR. NICOLA: Objection; assumes facts not in
8 evidence.

9 THE COURT: Sustained.

10 MR. SANGER: May call for speculation,
11 actually. Let me withdraw that.

12 Q. Have you worked with the FBI before?

13 A. No.

14 Q. Now, once you get through with the analysis
15 and comparison, you then go to the evaluation, which
16 is the E --

17 A. Yes.

18 Q. -- part of ACE?

19 A. Yes.

20 Q. And that, as we just said, is not a matter
21 of counting points of identification, correct?

22 A. No.

23 Q. So -- I did that again, I said "correct."

24 Is evaluation merely a matter of counting the points
25 of identification?

26 A. We don't count points.

27 Q. Okay. In other words, it's a subjective

28 determination? 3459

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1 A. Yes.

2 Q. That's, for instance, where Bob says, "Oh,
3 317-0 was Michael Jackson's print," and you say you
4 don't think it was, or you don't think there was
5 enough to make that determination, right?

6 A. It's actually reversed.

7 Q. Whichever way it went. Whichever way it
8 went. I'm sorry if I got it backwards. But there's
9 a disagreement, because it's subjective?

10 A. It's -- yeah.

11 Q. There's no scientific way of absolutely
12 verifying the point, is there?

13 A. Well, we strive to, as this is an applied
14 science.

15 Q. But -- it's an applied science, but it
16 ultimately is your subjective opinion, correct?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. Now, the last -- it's ACE, and then usually
21 puts a dash and a "V," I suppose.

22 A. Yes.

23 Q. And the "V" is for verification; is that
24 right?

25 A. Yes.

26 Q. And that means that ordinarily you would
27 have another examiner look at your work, or you

28 would look at another examiner's work? 3460

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1 A. Yes, independently.

2 Q. And see if you come up with the same

3 conclusion; is that right?

4 A. Yes.

5 Q. And you're aware that many cases where there

6 have been false positives involve just that. There

7 was verification by two or more people in addition

8 to the regular, or the original examiner, correct?

9 A. Not personally, but by reading, yes.

10 Q. By reading about other examples and --

11 A. Yes.

12 Q. -- and discussing them.

13 Your Honor, since this witness has not gone

14 into any more specifics, slides, pictures, I am

15 going to ask for leave to bring her back at that

16 time, if those are introduced into evidence, rather

17 than attempt to take the People's evidence and put

18 it up on the screen and go through it, if that's

19 acceptable to the Court.

20 THE COURT: All right.

21 MR. SANGER: Okay. Thank you. I have no

22 further questions at this time.

23 MR. NICOLA: I'll be brief.

24

25 FURTHER REDIRECT EXAMINATION

26 BY MR. NICOLA:

27 Q. You've mentioned the word "subjective" a few

28 times when you're talking about fingerprint 3461

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1 comparisons.

2 When you go through the ridges and pick out
3 the minutia, what you're trained to do, is it your
4 belief that those items are there, or is that
5 something that other people, you hope, can pick out
6 as well?

7 A. Well, I hope that other people can come to
8 the same conclusion that I came to.

9 Q. And you've used the word "applied science."

10 A. Yes.

11 Q. Is your craft one that, I hope, can be
12 replicated by others doing the same fingerprint
13 comparison?

14 A. It should be.

15 Q. Okay.

16 A. If I did a comparison and I hand it off to
17 another examiner, they should come to the same
18 conclusion I did. And that's what an applied
19 science is.

20 Q. That suggests some objectivity to this?

21 A. Yes.

22 MR. SANGER: Objection; leading.

23 THE COURT: Sustained.

24 MR. SANGER: Move to strike.

25 THE COURT: Stricken.

26 Q. BY MR. NICOLA: Did you want to explain that
27 inconclusive that you and Mr. Spinner went back to

28 take a look at? 3462

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1 A. Yes. Fingerprint comparisons --

2 MR. SANGER: I'm going to object as, first

3 of all, the question is vague. Secondly, that seems

4 to be nonresponsive.

5 MR. NICOLA: Can I rephrase?

6 THE COURT: Yes.

7 Q. BY MR. NICOLA: Okay. Mr. Sanger brought up

8 an inconclusive fingerprint on Item 317-L.

9 A. Yes.

10 Q. What can you tell us about that one?

11 MR. SANGER: Objection; calls for a

12 narrative.

13 THE COURT: Sustained.

14 Q. BY MR. NICOLA: Can you explain what an

15 inconclusive means?

16 A. It means it's a difficult print, and you

17 can't rule the person to be a positive I.D., and you

18 can't rule him out to be a negative I.D. With

19 further time examining it and spending time running

20 the ridges and working with the print, you can turn

21 it into a positive or you can turn it into a

22 negative.

23 But at the time of evaluation at that time,

24 we wanted to leave it as an inconclusive, and come

25 back to it, because it was a more difficult print to

26 make an I.D. of.

27 Q. Okay. With respect to that particular

28 print, an inconclusive fingerprint is one that you 3463

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1 believe belongs to a particular person?

2 MR. SANGER: Objection; leading.

3 MR. NICOLA: I'll rephrase it, Your Honor.

4 Q. Did you have a belief as to who that

5 fingerprint was made by, even when you labeled it

6 inconclusive?

7 A. Yes.

8 MR. SANGER: Objection. Objection; that's

9 an opinion without an adequate foundation.

10 THE COURT: It's overruled. She's already

11 testified that she had an opinion separate from the

12 other person, so I'll allow the question.

13 MR. NICOLA: Do you want it read back?

14 THE WITNESS: Yeah.

15 (Record read.)

16 THE WITNESS: Yes.

17 Q. BY MR. NICOLA: And what was that?

18 A. As Star Arvizo.

19 Q. Okay. You mentioned that you reviewed all

20 the inconclusives with Detective Spinner. Were

21 there many inconclusive fingerprints?

22 A. I don't have the complete list, but there

23 weren't that many.

24 Q. And in fact, there weren't very many

25 positive fingerprints either, were there?

26 A. No.

27 MR. SANGER: I'm going to object --

28 withdrawn. 3464

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1 THE COURT: Did you withdraw that?

2 MR. SANGER: I withdrew it. I'm sorry, Your
3 Honor.

4 Q. BY MR. NICOLA: Can you explain to us what
5 you meant by fingerprint examining being an applied
6 science?

7 MR. SANGER: Asked and answered.

8 THE COURT: Overruled.

9 You may answer.

10 THE WITNESS: An applied science is
11 something that can be repeated by someone of the
12 same level of proficiency that you are at. So if I
13 did a comparison and gave it to another examiner,
14 they should come to the same conclusion that I came
15 to.

16 MR. NICOLA: Okay. Thank you very much. I
17 have no further questions.

18

19 FURTHER RECROSS-EXAMINATION

20 BY MR. SANGER:

21 Q. One of the rules articulated by SWGFST is
22 you don't express an opinion on an inconclusive
23 other than it's inconclusive, right?

24 A. Yes, but you still have a gut feeling as to
25 what you -- what you feel.

26 Q. And according to SWGFST, according to their
27 rules of ethics, it's inappropriate to come into a

28 courtroom and testify as to who you believe an 3465

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1 inconclusive print may belong to. They deem that
2 unethical, do they not?

3 A. I guess so.

4 Q. Okay. Now, as far as your explanation of
5 this applied science business, I understand that you
6 come to this by certain training and experience, but
7 when you put the actual prints up on the board -
8 when I say "the board," the screen, for instance,
9 behind you - and show them to a jury or a group of
10 intelligent people, they should be able to follow
11 your analysis in coming to the conclusion that there
12 either is or is not a match, correct?

13 A. On -- yeah. Yes. With some explaining and,
14 you know, some basic training in the courtroom,
15 yeah.

16 Q. All right. In other words, it's not -- it's
17 not -- you're not seeing something that other people
18 cannot see. You are appreciating things that you
19 have learned to appreciate from your training and
20 experience, correct?

21 A. Yes.

22 Q. So when it's up there, the jury or anybody
23 else in the courtroom can look to see the points of
24 identification or the other characteristics of the
25 print, the latent print and the rolled print, and
26 they should be able to visually see the same things
27 that you can see, correct?

28 A. They should -- 3466

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1 MR. NICOLA: Objection, Your Honor, that

2 calls for speculation.

3 THE COURT: Overruled.

4 THE WITNESS: They should, you know, with

5 some explaining from the examiner, you know,

6 pointing out the details, be able to see everything

7 we see.

8 Q. BY MR. SANGER: It's not reading tea leaves

9 or something --

10 A. No.

11 Q. -- or where there's something mystical about

12 it.

13 A. No, they're there.

14 MR. SANGER: All right. Thank you. No

15 further questions.

16 MR. NICOLA: I have nothing further, Your

17 Honor.

18 THE COURT: Thank you. You may step down.

19 Call your next witness.

20 MR. NICOLA: Yes, Your Honor. Char Marie.

21 THE COURT: Raise your right hand, please.

22 CHARLENE MARIE

23 Having been sworn, testified as follows:

24

25 THE WITNESS: I do.

26 THE CLERK: Please be seated. State and

27 spell your name for the record.

28 THE WITNESS: My name is Charlene Marie; 3467

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1 C-h-a-r-l-e-n-e, M-a-r-i-e.

2 THE CLERK: Thank you.

3

4 DIRECT EXAMINATION

5 BY MR. NICOLA:

6 Q. Did you bring my binder?

7 A. I did.

8 Q. Well, good afternoon.

9 A. Good afternoon.

10 Q. Can you please tell the jury who you're
11 employed by?

12 A. I work for the California Department of
13 Justice at the Santa Barbara Regional Crime
14 Laboratory. I'm a senior criminalist there.

15 Q. How long have you been employed by that
16 agency?

17 A. Just about 15 years.

18 Q. How long have you been a criminalist?

19 A. 15 years.

20 Q. Do you, on occasion, receive requests from
21 the Santa Barbara County Sheriff's Office to process
22 evidence on their behalf?

23 A. I do.

24 Q. And what is the procedure in getting the
25 evidence to you to process?

26 A. The procedure is that someone from the
27 sheriff's office will bring in the evidence. We

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28 also accept evidence via UPS, or in the mail. We 3468

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1 serve San Luis Obispo and Santa Barbara Counties, so
2 some of our agencies ship their evidence in to us.
3 And sometimes we go to the scene and help collect
4 evidence.

5 Q. On or about February 4th of 2004, did you
6 receive some evidence --

7 A. Is that the question?

8 Q. I lost my place -- from a Lisa Hemman?

9 A. May I look at my notes?

10 Q. If that refreshes your recollection,
11 certainly. On or about February 4th, did you
12 receive an item of evidence from Lisa Hemman of the
13 sheriff's office?

14 MR. SANGER: May I approach to see what
15 notes are being looked at to refresh?

16 THE COURT: Yes.

17 MR. SANGER: Thank you.

18 THE WITNESS: These are submission forms.

19 So, yes, I did. I received evidence. And
20 did you ask me what did I receive?

21 Q. BY MR. NICOLA: Not yet.

22 A. Okay.

23 Q. What did you receive?

24 A. I received Item 317, and various subsets of
25 that, 317-B, G, K, L, R, S, Y, double B, double C,
26 double E, double K, double R, double U, double Y,
27 and triple D. 15 items.

28 Q. Okay. Did you note the date on a form 3469

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1 anywhere when that evidence came to you?

2 A. I did, on the submission form. Lisa Hemman
3 signed it off. I made a notation, "IP," which means
4 to us "in person," and my signature, and then I
5 wrote the date.

6 Q. Okay. If she testified earlier that she
7 dropped it off on February 5th of 2004, is that in
8 conflict with your record?

9 A. I --

10 MR. SANGER: Objection; leading. And calls
11 for speculation as to when it was received.

12 THE COURT: Calls for a conclusion;
13 sustained.

14 Q. BY MR. NICOLA: What did you do with the
15 item when you received it from Ms. Hemman?

16 A. I locked it -- well, we logged it into the
17 lab, and then I locked it in my evidence locker in
18 the evidence vault.

19 Q. Did you mark the bag in any fashion?

20 A. Yes, we put the case number on it, my
21 initials would be on it, and the date that I
22 received it.

23 Q. I've just placed in front of you Exhibit No.
24 529; is that correct?

25 A. Yes.

26 Q. Would you please remove the contents of
27 Exhibit 529 and tell the jury if you recognize what

28 the contents of that exhibit are? 3470

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1 A. I recognize it. It's a sealed brown paper
2 bag and this is my writing on the bag that has our
3 lab case number for this case. That's my signature,
4 and that's the date that I put on the bag.

5 Q. Is this the bag that you received on
6 February 4th from Lisa Hemman?

7 A. Yes.

8 Q. Okay. Did you open that bag immediately
9 upon receipt?

10 A. I did not.

11 Q. When did you first open that bag?

12 A. I'm going to check my notes. That's okay?

13 I first examined Item 317, the contents of
14 this bag, in July, July 27th.

15 Q. And from the time that you received it on
16 February 4th until July 27th, where did that bag
17 remain?

18 A. The bag was in my evidence locker in the
19 evidence vault from the time I received it until May
20 20th. On May 20th, Detective Al Lafferty of the
21 S.O. picked it up and he returned it the next day,
22 on May 21st.

23 Q. So from February 4th until May 20th of
24 2004 --

25 A. It was in -- sorry.

26 Q. -- it was in your evidence locker?

27 A. Yes.

28 Q. Did anyone else have access to your evidence 3471

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1 locker?

2 A. No.

3 Q. No?

4 A. No.

5 Q. Okay. When you did open the bag in July --

6 A. In July.

7 Q. -- did you make a photographic record of the

8 contents?

9 A. I did.

10 Q. Okay. Did you also write notes on the

11 photographic record explaining what you did at the

12 time that you did it?

13 A. Yes, I did.

14 MR. NICOLA: I'm going to mark this next in

15 order, 766. May I have this two-page document....

16 Q. Do you recognize Exhibit 766?

17 A. Yes, I do.

18 Q. Can you tell the jury what is depicted in

19 that?

20 A. I took a photo of the front cover of each

21 item that was in the brown paper bag after I opened

22 it, so at the top is my writing saying that I

23 removed the taped, sealed bag from the vault and

24 that there were 15 items in the bag. I list them,

25 and then I started taking photographs of what I saw

26 in the bag with their item numbers on these two

27 pages. So there are 15 -- 15 photos printed out on

28 these two pages. 3472

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1 Q. Is Exhibit 766 an accurate depiction of --

2 A. Yes.

3 Q. -- the record of your file?

4 A. Yes.

5 Q. Does it accurately depict the magazines that
6 were within Exhibit -- what is the exhibit number on
7 the bag? I'm sorry.

8 A. 766.

9 Q. I need to look at the bag.

10 I'm sorry, I'll ask that question again.

11 Is 766 an accurate depiction of what was
12 inside the bag, Exhibit 529, when you received it
13 from Lisa Hemman on February 4th, 2004?

14 A. Yes.

15 MR. NICOLA: May I publish, Your Honor?

16 THE COURT: Any objection?

17 MR. SANGER: Is he offering to admit it, I
18 suppose, first before he publishes?

19 THE COURT: Yes.

20 MR. SANGER: No objection.

21 MR. NICOLA: Move to admit and publish.

22 THE COURT: All right. It's admitted.

23 Q. BY MR. NICOLA: These are just the
24 photographs of the front pages, correct?

25 A. Yes.

26 Q. And there's a page two?

27 A. Yes, there's a second page.

28 Q. The yellow stickies, post-it notes, that are 3473

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1 visible in this Exhibit 766, in particular
2 protruding from 317-R and 317-UU, were those in
3 place at the time that you received this evidence
4 item?

5 A. They were.

6 Q. Okay. When was Exhibit 529 and its contents
7 released to the sheriff's office for good?

8 A. On July 29th of '04.

9 Q. Okay. So essentially you had that item for
10 almost six months?

11 A. Yes, but for the one day that it went to the
12 sheriff's office and came back.

13 Q. For that period of time, was there -- excuse
14 me. During that period of time, was there any
15 period that you were unavailable to work on this
16 case?

17 A. Yes.

18 Q. Explain to the jury why that was.

19 MR. SANGER: I'm going to object, relevance,
20 Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Last spring I spent seven weeks
23 as a juror on a civil trial down in Santa Barbara.

24 MR. NICOLA: Trial lasting seven weeks.

25 THE COURT: It's a short one.

26 THE WITNESS: I thought it was long.

27 MR. NICOLA: I have no further questions.

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1 CROSS-EXAMINATION

2 BY MR. SANGER:

3 Q. All right. How are you doing?

4 A. I'm a little nervous.

5 Q. Really?

6 A. Otherwise fine, thank you.

7 Q. Excuse me. Now it's caused me to choke.

8 Sorry about that.

9 (Laughter.)

10 Q. BY MR. SANGER: To everybody's dismay, I

11 have recovered, however, so -- all right, just a few

12 questions here.

13 The exhibit that you identified, 766, which

14 is the photographs that you took of the various

15 items, first of all, are those all of the items that

16 you took?

17 A. On the whole case?

18 Q. In this bag. You said there was a bag of

19 items that you received. Excuse me. Were those all

20 of the items? Are all of the items depicted in that

21 exhibit?

22 A. I believe so. I counted 15 items.

23 Q. Okay. And there are 15 here?

24 A. 15 photos, uh-huh.

25 Q. And this is from -- what you understand --

26 when you say it's 317, you understand this to be

27 Sheriff's Item 317; correct?

28 A. That's right. 3475

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1 Q. You never saw Sheriff's Item 317 itself, did
2 you?

3 A. This is what I saw, this tape-sealed paper
4 bag that had 15 things in it.

5 Q. So if I were to take the time to find it
6 here and hold up a black briefcase that was Item
7 317, you would say, "I never saw that"?

8 A. Right, I haven't seen that.

9 Q. Okay. And similarly, you mentioned that you
10 had B -- I won't read them all because it makes it
11 difficult for the court reporter, among other
12 things. But you have the various letters you wrote
13 down after each item there, correct?

14 A. Yes.

15 Q. 317-B, and then BB, et cetera --

16 A. Yes.

17 Q. -- that applies to you, does it not, Miss
18 Marie? That there were probably other items that
19 were labeled with letters that you never saw?

20 A. It's quite possible, yes.

21 Q. Okay. The sequence that you saw goes as far
22 as 317-DDD, correct?

23 A. Well, I have a triple D. I also have a
24 double Y.

25 Q. Assuming it went through the alphabet, it
26 went through a double alphabet and then went through
27 a triple alphabet. It went at least up to 317-DDD,

28 it seems. 3476

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1 A. Yes. In that case, there were a lot of

2 other items that were named that way.

3 Q. Okay. And your job was to look at that with

4 an alternative light source, correct?

5 A. Yes.

6 Q. Did I ask you this? On 766, that's your

7 handwriting on the notes around the pictures?

8 A. It is.

9 Q. All right. And when you looked at the

10 alternative light source, looked at the items with

11 the alternative light source, did you find any

12 suspected DNA to sample and analyze?

13 A. Well, the light source is just a presumptive

14 searching tool, and all it's going to tell you is if

15 something's glowing. If something's glowing,

16 biologicals do glow, so that's one area that you

17 might want to test.

18 Q. Okay. Is that what you were looking for?

19 A. I was looking for biological material, yes.

20 Q. Bodily fluids, pretty much?

21 A. Correct.

22 Q. The question is, did you find any?

23 A. I did not.

24 Q. So as far as you could tell, there was no

25 DNA to be tested from the materials you were sent?

26 A. Well, there's no seminal material.

27 Q. There's nothing you felt -- just to make it

28 clear, I'm not trying to trap you here, but there 3477

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1 was nothing that you found and you said, "Ah-hah, we
2 ought to send this off to Sacramento or have a DNA
3 lab do a further analysis of this"; is that correct?

4 A. That's right.

5 Q. You pretty much packaged it back up and sent
6 it back to Santa Barbara?

7 A. I did, yes.

8 MR. SANGER: All right. Very good. Thank
9 you. No further questions.

10 MR. NICOLA: No questions, Your Honor.

11 THE COURT: Thank you. You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: See, all that worrying for
14 nothing.

15 THE WITNESS: I know. Thank you.

16 MR. SANGER: Your Honor, while we're waiting
17 for the witness, may Mr. Nicola and I approach
18 briefly?

19 THE COURT: Yes.

20 (Discussion held off the record at sidebar.)

21 THE COURT: When you get to the witness
22 stand -- when you get to the witness stand, remain
23 standing.

24 Face the clerk here and raise your right
25 hand.

26

27 HERIBERTO MARTINEZ, JR.

28 Having been sworn, testified as follows: 3478

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1 THE WITNESS: I do.

2 THE CLERK: Please be seated. State and

3 spell your name for the record.

4 THE WITNESS: My name is Heriberto Martinez,

5 Junior. That's spelled H-e-r-i-b-e-r-t-o; last name

6 Martinez, M-a-r-t-i-n-e-z; and the suffix Junior,

7 J-r.

8 THE CLERK: Thank you.

9

10 DIRECT EXAMINATION

11 BY MR. NICOLA:

12 Q. Good afternoon, sir.

13 A. Good afternoon.

14 Q. Where are you employed, sir?

15 A. I work for the County of Santa Barbara in

16 the sheriff's department.

17 Q. And have you ever seen the defendant before?

18 A. I have.

19 Q. Have you seen him in person before?

20 A. Yes, I have.

21 Q. Do you recognize the exhibit I put in front

22 of you?

23 A. It's a fingerprint card.

24 Q. Okay. Turn it over. Did you make that

25 fingerprint card with Mr. Jackson?

26 A. I took these fingerprints.

27 Q. Okay. Is the date written on the back?

28 A. Yes, it is. 3479

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1 Q. Okay. And that's Exhibit 766?

2 A. It's 767.

3 Q. 767. You took those fingerprints on which
4 date?

5 A. On November 20th, 2003.

6 Q. And are they the fingerprints of Mr.
7 Jackson?

8 A. To my knowledge, they are.

9 Q. Okay. Are those inked fingerprints?

10 A. These fingerprints are -- I took them on a
11 Livescan machine.

12 Q. Do you recall that?

13 A. Yes.

14 Q. How does the Livescan machine work, just
15 generally?

16 A. When you take a fingerprint, it's on a glass
17 plate, and it shows up on a monitor, computer
18 monitor, immediately as you take the fingerprint.

19 As you roll the fingerprint from one side -- the
20 finger from one side to the next, it shows
21 immediately what you're taking a picture of.

22 Q. Okay. Do all these images stay up on the
23 screen for some period of time?

24 A. Each one will show up individually. At the
25 end of the taking the set of fingerprints, it will
26 display as it displays here, with all fingerprints
27 showing.

28 Q. Okay. Did you take Mr. Jackson's 3480

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1 fingerprints on that date?

2 A. I did.

3 Q. Okay. And does that record reflect that

4 those are Mr. Jackson's fingerprints on the writing

5 on the back of that exhibit, 767?

6 MR. SANGER: Objection; calls for hearsay.

7 MR. NICOLA: It's an official record.

8 THE COURT: Overruled.

9 You may answer.

10 THE WITNESS: I may answer?

11 Q. BY MR. NICOLA: Yes, you may answer.

12 A. Repeat the question, please.

13 Q. The question was, does the back of that

14 document, 767, with the writings, indicate that

15 those are Mr. Jackson's fingerprints?

16 A. Yes, it does.

17 Q. Okay. And is your name and body number also

18 on that document?

19 A. My last name and my body number are on the

20 document.

21 MR. NICOLA: Okay. Your Honor, I move 767

22 into evidence.

23 MR. SANGER: No objection.

24 THE COURT: It's admitted.

25 MR. NICOLA: No other questions.

26 THE COURT: Cross-examine?

27

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1 BY MR. SANGER:

2 Q. Okay. Mr. Martinez, how are you?

3 A. Very well. How are you, sir?

4 Q. I'm doing fine. Thank you for asking.

5 You are a sworn peace officer, or not?

6 A. I'm a sworn officer, yes.

7 Q. Are you 24-hours-a-day sworn or when you're

8 on duty?

9 A. Only when I'm on duty.

10 Q. So you're a correctional officer with the

11 sheriff's department; is that correct?

12 A. That's correct.

13 Q. You're not a deputy who patrols or a

14 detective, that sort of thing; is that right?

15 A. That's right.

16 Q. Okay. And one of your duties at the jail,

17 excuse me, from time to time, is to book people in

18 who come in?

19 A. Yes, sir.

20 Q. And you have other duties there as well; is

21 that correct?

22 A. That's correct.

23 Q. Sometimes you patrol various areas of the

24 jail?

25 A. I work in most areas of the jail, yes.

26 Q. So you've done pretty much anything that a

27 correctional officer would do in the jail, I take

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1 A. Yes, that's correct.

2 Q. There you go.

3 And you're not trained as a latent print

4 examiner, are you?

5 A. No, I'm not.

6 Q. And you -- when you're taking these prints

7 from people and using this Livescan device, you

8 received some training on that from some source?

9 A. Yes, I did.

10 Q. It was on-the-job training?

11 A. I was working at the time I was trained, but

12 it was provided by the Department of Justice.

13 Q. Okay. Somebody from the crime lab in

14 Goleta?

15 A. No, it was a -- may I check my note I have

16 here?

17 Q. Well, okay.

18 A. It was from the state. Somebody -- I took a

19 15-hour class on fingerprints.

20 Q. Okay. And based on that 15-hour class,

21 that's where you learned how to put people's hands

22 in this machine and get the prints up on the screen?

23 A. The actual using the Livescan itself was

24 on-the-job training.

25 Q. That's what I was asking about. So you had

26 a 15-hour class as part of your training to book

27 people in the jail. You had a 15-hour class on how

28 to roll fingerprints, correct? 3483

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1 A. That is correct.

2 Q. All right. And then you had the on-the-job
3 training to learn how to use that Livescan device,
4 right?

5 A. Yes, that's correct.

6 Q. So one of your supervisors or colleagues
7 said, "Okay, we've got this machine. This is how
8 you do it"?

9 A. Yes, that's correct.

10 Q. All right. And you said you were -- to the
11 best of your knowledge, those were Mr. Jackson's
12 prints. Do you have any question as to whether or
13 not those belong to Michael Jackson?

14 A. As I stated earlier, I'm not an expert
15 witness on the fingerprints, so I know I took his
16 fingerprints on the day noted here.

17 Q. Okay.

18 A. If these are, in fact, the same ones, then,
19 yes, they are his prints.

20 Q. It looks familiar to you is what you're
21 saying?

22 A. Yes.

23 MR. SANGER: All right. I have no further
24 questions.

25 MR. NICOLA: No redirect, Your Honor.

26 THE COURT: Thank you. You may step down.

27 THE WITNESS: Thank you.

28 MR. NICOLA: Alicia Romero. 3484

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1 THE COURT: When you get to the witness
2 stand, please remain standing. Face the clerk and
3 raise your right hand.

4

5 ALICIA ROMERO

6 Having been sworn, testified as follows:

7

8 THE WITNESS: Yes, I do.

9 THE CLERK: Please be seated. State and

10 spell your name for the record.

11 THE WITNESS: My name's Alicia Romero;

12 A-l-i-c-i-a, R-o-m-e-r-o.

13 THE CLERK: Thank you.

14 MR. SANGER: Your Honor, I have an objection

15 to proceeding. It's somewhat technical, but could

16 we just have a moment? I know you --

17 THE COURT: They can't hear you in the

18 courtroom.

19 MR. SANGER: I say, could we just have a

20 moment at the bench? I know you don't prefer that,

21 but I think it's a technical --

22 THE COURT: All right.

23 MR. SANGER: Thank you.

24 (Discussion held off the record at sidebar.)

25 MR. NICOLA: Your Honor, since we will not

26 be prepared to go forward with this witness, we'd

27 like to excuse her pending re-call.

28 THE COURT: We won't excuse you, but we'll 3485

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1 re-call you. You may step down.

2 Sorry. We won't excuse you, we'll re-call

3 you.

4 MR. NICOLA: May we make notice to

5 Miss Romero at her office? It probably won't be

6 today.

7 THE COURT: Yes. Remain on call.

8 THE WITNESS: May I leave for today?

9 THE COURT: Yes.

10 She can return to work today, correct?

11 MR. AUCHINCLOSS: Your Honor, we'll call

12 Detective Tim Sutcliffe as our next witness. He's

13 downstairs.

14 THE COURT: When you get to the witness

15 stand, please remain standing. Face the clerk and

16 raise your right hand.

17

18 TIMOTHY SUTCLIFFE

19 Having been sworn, testified as follows:

20

21 THE WITNESS: I do.

22 THE CLERK: Please be seated. State and

23 spell your name for the record.

24 THE WITNESS: My name is Timothy Sutcliffe;

25 S-u-t-c-l-i-f-f-e.

26 THE CLERK: Thank you.

27 MR. AUCHINCLOSS: Technical difficulties.

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1 DIRECT EXAMINATION

2 BY MR. AUCHINCLOSS:

3 Q. Good afternoon, Detective Sutcliffe.

4 A. Good afternoon.

5 Q. Who do you work for?

6 A. Santa Barbara County Sheriff's Department.

7 Q. What do you do for the sheriff's department?

8 A. Currently right now, I'm assigned as a

9 detective in the forensics unit, the Criminal

10 Investigations Division.

11 Q. Are you a law enforcement officer?

12 A. Yes, I am.

13 Q. How long have you been a law enforcement

14 officer?

15 A. Approximately 16 years.

16 Q. Have you worked with the Santa Barbara

17 Sheriff's Department that entire time?

18 A. Yes, I have.

19 Q. And what did you say your current assignment

20 is?

21 A. I'm a detective in the Forensics Bureau of

22 the sheriff's department. Criminal investigations.

23 Q. All right. Tell me what the duties of a

24 detective in the Forensics Bureau are.

25 A. Respond to crime scenes, do crime scene

26 investigation, evidence collection, searching for

27 latent evidence, booking of property, seize the

28 crime scenes, and sketching. All the facets of 3487

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1 crime scene investigation.

2 Q. Have you had any special training in
3 procedures for locating latent fingerprints?

4 A. Yes, I have. I had -- my duties as a patrol
5 officer included also crime scene investigation,
6 responding to take general dusting prints of latents
7 at the scenes of auto burglaries and such.

8 Also, I attended a 40-hour crime scene
9 investigation course in 1999 that dealt with crime
10 scene investigation. Also delved into latent print
11 recovery techniques.

12 I attended a class in 2003 at the Department
13 of Justice in California regarding latent print
14 techniques.

15 I also attended a class regarding latent
16 print comparisons, 40-hour class, also taught by the
17 Department of Justice.

18 And I also took a 24-hour course regarding
19 the identification of palm prints.

20 Q. Have you had experience in the field and in
21 the lab concerning locating and identifying latent
22 fingerprints?

23 A. Yes, I have.

24 Q. Can you briefly describe that for us?

25 A. In the lab we do print techniques dealing
26 with using the alternate light source, Scenescope
27 techniques, using chemical processes to develop

28 latent fingerprints, and also using super gluing 3488

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1 techniques, as well as fluorescent powder dusting,
2 magnetic powder dusting and the like.

3 Q. So have you personally used ninhydrin
4 solution to locate fingerprints?

5 A. Yes, I have.

6 Q. And have you personally done cyanoacrylate
7 ester fuming, if I pronounced that correctly, to aid
8 in the detection of fingerprints?

9 A. Yes, I have.

10 Q. Have you personally used the Scenescop in
11 the detection of latent fingerprints?

12 A. Yes, I have.

13 Q. Did you participate in establishing a
14 protocol for finding latent fingerprints in the
15 Jackson -- People v. Jackson case?

16 A. Yes, I did.

17 Q. Who else participated in establishing that
18 protocol?

19 A. At that time, I believe it was I.D.
20 Technician Torres, myself, and Detective Albert
21 Lafferty.

22 Q. And can you briefly tell the jury, or --
23 yes, just briefly tell the jury what protocol was
24 decided upon to look for fingerprints on magazines
25 that were seized pursuant to a search warrant of
26 Neverland.

27 A. Based on the type of magazines that we had,

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28 mostly of a semi-glossy, glossy nature, it was 3489

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1 decided, after lots of consideration, that we would
2 use the super gluing technique, followed by a
3 Scenescape search for latents after the super glue
4 technique.

5 And once that was completed, we would then
6 do a ninhydrin chemical process to hopefully further
7 develop some prints.

8 Q. And did your department prepare a Power
9 Point presentation to guide us through this protocol
10 that was established for this particular case?

11 A. Yes, they did.

12 MR. AUCHINCLOSS: Your Honor, could we have
13 the lights dimmed? And I'd ask that you provide me
14 with "Input No. 1."

15 For the record, this is a Power Point
16 presentation. I presented a copy to the Court
17 marked as an exhibit and provided a copy to defense
18 counsel.

19 MR. SANGER: What exhibit is it?

20 MR. AUCHINCLOSS: Madam Clerk, could you
21 help me with that?

22 THE CLERK: 723.

23 MR. AUCHINCLOSS: 723. Okay.

24 Q. All right. Detective, I'm going to ask you
25 about each of these slides and ask you to tell me
26 exactly what they depict, okay?

27 A. Very well.

28 Q. Let's begin. 3490

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1 A. This is a demonstration of the original
2 photography recording protocol. Each magazine was
3 placed on a copy stand, photodocumented page for
4 page. This included the loose pages which were not
5 part of a complete magazine, which might be some of
6 the inserts such as the little subscription cards
7 you might send in to get another copy, that sort of
8 thing.

9 Q. Were there also some pages that were
10 standing alone, some pages that had been torn out?

11 A. Yes.

12 Q. All right.

13 A. Once that process was done, a digital camera
14 was connected to the computer, the pictures were
15 automatically downloaded and stored onto our
16 forensics computer.

17 Q. Now, was this before any examination of the
18 magazine was done, before any alternate light
19 source, anything of that nature?

20 A. Actually, we had completed some alternate
21 light source examination of this prior to this
22 process taking place.

23 Q. All right. So the magazines were intact
24 when you first looked for biological materials using
25 the alternate light source?

26 A. That's correct.

27 Q. So then the magazine was taken apart after

28 that portion of the protocol was completed? 3491

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1 A. That's correct.

2 Q. Okay.

3 A. As a matter of fact, here is showing the
4 separation of the magazine after the photographs are
5 taken. They were cut down the middle and separated
6 into individual pages. And this is to facilitate
7 the processes that we were going to be using to
8 develop the latent prints.

9 Each item was retained, pending the next
10 process, altogether as one item.

11 Q. I'm not sure what that means. Do you mean
12 you kept the magazines together?

13 A. No, each magazine was kept, all pages
14 together, before they were put into the next
15 process.

16 Q. I see. Okay.

17 A. At that time, they were subjected to a
18 cyanoacrylate ester fuming process, and that's
19 referred to as super glue fuming, and each separate
20 page was hung in a fuming tank. In this case we
21 have some aquariums which work quite well for that.
22 Just need an airtight container.

23 The pages were exposed for approximately 15
24 minutes, allowed to dry for approximately 30
25 minutes. And then they were individually placed
26 into plastic sheet protectors which were placed into
27 binders.

28 Q. Now, where was this process done, the 3492

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1 fuming?

2 A. The fuming was done in our lab at our Santa
3 Barbara station.

4 Q. Okay. And who was it that was assigned the
5 task of fuming all of these magazines?

6 A. Detective Spinner did the majority of the
7 fuming. And I believe that he was assisted, at
8 times, by Technician Shelly.

9 Q. All right. Scenescop. Tell us about that.

10 A. Moving on to --

11 Q. Tell us about that.

12 A. Moving on to the Scenescop, which is -- the
13 actual scientific name for the instrument is a
14 RUVIS, which is Reflective Ultraviolet Imaging
15 System. Scenescop happens to be a trade name for
16 the particular company that we use, but it's
17 commonly referred to as that.

18 Q. And you use the Scenescop after the fuming
19 is completed?

20 A. That's correct.

21 Q. And where was the Scenescop -- or
22 Scenescoping of these individuals pages done?

23 A. We actually, excuse me, had two -- used two
24 Scenescops, one at our Santa Barbara main station
25 lab and also in our Santa Maria station lab.

26 Q. What does this slide depict?

27 A. This is showing I.D. Technician Torres just

28 demonstrating the Scenescoping process. Each page 3493

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1 was examined for latent prints using the Scenescop.
2 We had it hooked to a monitor, just as was displayed
3 yesterday, but obviously a lot smaller, so that we
4 could scan the -- each page individually. And as we
5 came across what might be a usable print, we then
6 marked and identified that print with the use of a
7 permanent marker.

8 We had a numbered grid that we used to
9 reference the location on the page. To get into a
10 ninhydrin process, it can run ink, so we wanted to
11 make sure we still had enough area of location of
12 the print in case that happened.

13 Q. So tell me a little bit more about this
14 grid. I see a picture of it in the lower right-hand
15 corner. Is that correct, there's a grid on that
16 page?

17 A. Yes, there is.

18 Q. And -- go ahead.

19 A. Excuse me. The grid is just a transparency
20 that was -- it was a transparency divided into 20
21 squares, and that grid was used to help mark the
22 location of any known prints that we had developed.

23 Q. So did you have a separate number for each
24 of those squares, 1 through 20?

25 A. That's correct.

26 Q. All right. And if you located a print in
27 one of those quadrants, you would mark it as 1, 2,

28 3, depending upon the quadrant? 3494

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1 A. That's correct. And we used the template
2 and always aligned it to the bottom and outside
3 uncut edge so we'd have a clear edge to do our
4 locations.

5 Q. Were there times when a fingerprint
6 overlapped a quadrant?

7 A. Yes.

8 Q. What did you do in that instance?

9 A. In that instance, we referred to that area
10 in our report as an intersection of whatever
11 particular quadrant it was.

12 Q. And after you noted the quadrant, assuming
13 you found a fingerprint using the Scenescape, did
14 you further mark it in any fashion?

15 A. The print was marked using the marking pen
16 as illustrated here. Also, we would note if there
17 was -- the first latent on the print -- on the
18 actual magazine page would be listed as L-1. If we
19 came across another latent print, it would be marked
20 as L-2. They were circled with the permanent marker
21 showing the location.

22 Q. So you'd actually -- now, you'd actually
23 circle the print with the permanent marker on the
24 page?

25 A. On the page itself.

26 Q. On the page itself. All right.

27 And you would identify the latent print as

28 L-1 through however many prints you found on that 3495

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1 page?

2 A. That's correct.

3 Q. And what would determine whether a print was
4 designated 1, 2, 3, 4, et cetera?

5 A. At the time we found it, whatever sequence
6 we were in. So if we'd already found two and came
7 across the next one, it would be 3.

8 THE COURT: Let's take our break.

9 MR. AUCHINCLOSS: Thank you.

10 (Recess taken.)

11 THE COURT: You may proceed.

12 MR. AUCHINCLOSS: Thank you, Your Honor.

13 If we could go back to "Input No. 1."

14 Q. All right. Detective, I have -- I believe
15 where we left off, we were describing how the
16 individual fingerprints were marked.

17 The next step is photography. Describe
18 what's going on here for us.

19 A. Yes. We use a Canon G2 digital camera,
20 which is attached to the Scenescop, and that allows
21 us to photograph the images. It's mounted on the
22 top. And each usable latent print was
23 photodocumented.

24 Q. Why did you use the digital camera?

25 A. This particular digital camera allows us to
26 view with the T.V. monitor, for one reason, and also
27 all of our digital images for all cases. That's the

28 standard camera that we're using. 3496

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1 Q. Is this a high-resolution digital camera?

2 A. This particular one is a four megapixel.

3 Q. And that would be?

4 A. Four million -- it's mid-range to upper --
5 it's mid-range.

6 Q. For resolution?

7 A. For resolution.

8 Q. And how does it compare to regular film?

9 MR. SANGER: Objection; lack of foundation.

10 THE COURT: Sustained.

11 Q. BY MR. AUCHINCLOSS: Okay. Detective, can

12 you -- have you had a chance to ever use normal film

13 photography with the Scenescope? Have you ever

14 tried that out?

15 A. No, I have not.

16 Q. Is there a reason why you use a digital

17 camera with it as opposed to a regular film camera?

18 MR. SANGER: Asked and answered.

19 THE WITNESS: A regular --

20 THE COURT: Just a moment.

21 THE COURT: Overruled.

22 You may answer.

23 Q. BY MR. AUCHINCLOSS: Go ahead.

24 A. With a regular film camera, a single-lens

25 reflex does not allow us to scan the item to search

26 for the prints, where in this case, the digital

27 camera, we can hook the T.V. monitor up to it, see a

28 live video feed through the camera and be able to do 3497

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1 our scanning of the particular pages.

2 Q. All right. Now, I notice in the photograph
3 to the right, there appears to be something like a
4 ruler there. What is that?

5 A. Yes. Every photograph that we take with a
6 fingerprint, we have a ruler for size measurement.

7 And also attached to the ruler is depicting the
8 actual item number, the page number that that latent
9 print was found on, and also the latent number.

10 Q. And who prepares that tag that's to the left
11 of that photograph?

12 A. In our case, while I was Scenescoping;
13 scanning the items, I.D. Technician Torres was also
14 inputting into the computer, logging the prints that
15 were found. So she would mark in the actual
16 location onto a post-it and attach it for me, and
17 then the photo was taken.

18 Q. So this little note was written by I.D. Tech
19 Torres; is that what you're telling us?

20 A. Yes, in that particular example it was. And
21 likewise, while she was Scenescoping, I would write
22 the post-it notes.

23 Q. Did you work in a team with I.D. Tech Torres
24 in this protocol?

25 A. Yes, I did.

26 Q. And during the time that you were working
27 with her to examine these various pages, were you

28 always working with I.D. Tech Torres? 3498

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1 A. Yes.

2 Q. All right. Let's look at the next slide.

3 A. This is depicting Identity Technician Torres
4 inputting the results that we got onto our reports.
5 Again, they're referenced via the page location and
6 number and entered into the computer. After we
7 completed the photodocumentation of each page, we
8 then returned that page to its original sleeve and
9 continued with the next page.

10 Q. All right. Next slide.

11 A. Once we had completed the photodocumentation
12 through the Scenescopex with the particular item, it
13 was then subjected to a ninhydrin chemical process,
14 and that's when we went to the fume tank.
15 Each item was removed from a page protector,
16 again that same binder, submerged in a liquid
17 solution, ninhydrin, hung to dry.

18 Q. Okay. And ninhydrin is?

19 A. Ninhydrin is a chemical that reacts with the
20 amino acids in your body, skin, and what's
21 transmitted onto papers or other items when you
22 transfer a fingerprint. And so the ninhydrin reacts
23 with the amino acids that are left in that item from
24 your transfer.

25 Q. All right.

26 A. After the ninhydrin process, each page was
27 resleeved, and placed back into the binder in its

28 original location. 3499

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1 It takes a couple days for the ninhydrin to
2 fully develop. You can speed it up with heat, but
3 it's better to just let it cure by itself for a few
4 days. Then we go back and look for development. It
5 will develop a purple color, usually red to purple.
6 So that's what we're doing right now is an
7 examination of each page to see if we have any
8 prints that have developed with that process.
9 Q. All right. Let's look at the next slide.

10 A. Any usable latent prints developed with the
11 ninhydrin process were marked again with a permanent
12 marker. And we used the numbered grid again to
13 locate the point on the page for reference.
14 And this is an example of a ninhydrin print.
15 You'll notice it's marked "No. 1-N," standing for
16 "ninhydrin," and that's -- if we had latent prints
17 on the page as well as ninhydrin prints, we would
18 distinguish between the two. So Latent 1 would be
19 ninhydrin, "Latent No. 1," and the -- or, excuse me,
20 "Latent No. 1-N" would be ninhydrin, and just
21 "Latent 1" for the super glued fingerprint.
22 The fingerprint images were saved into the
23 forensics digital imaging system. We made copies of
24 the images, and they were placed onto compact disks.
25 And once those were compiled for each magazine, or
26 group of magazines, they were then given to our
27 Santa Barbara fingerprint examiners for evaluation.

28 Q. All right. So the photographs were placed 3500

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1 on a CD-Rom format?

2 A. Correct.

3 Q. Okay. Would you also photograph the

4 ninhydrin-developed prints?

5 A. The ninhydrin prints were scanned as opposed

6 to photographed.

7 Q. What do you mean by "scanned"?

8 A. The particular page was placed onto the

9 scanner, computer scanner, and -- with a ruler, and

10 the image was scanned into the system.

11 Q. Okay. So a digital image was created by

12 means of a scanner as well?

13 A. That's correct.

14 Q. And then these images were provided to the

15 examiners for comparison purposes?

16 A. That's correct.

17 Q. All right.

18 Thank you, Your Honor.

19 Do you know -- and I'll ask for an estimate,

20 if you don't off the top of your head. How many

21 pages in this process were examined?

22 A. I don't know the exact number of pages that

23 we scanned, but I would say a thousand.

24 Q. Was this a time-consuming process?

25 A. Very time-consuming.

26 Q. Can you tell me about that, expand upon

27 that?

28 A. We started, I believe, processing somewhere 3501

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1 near the end of August. Specifically in Santa
2 Maria, we had 74 separate items that we were tasked
3 with doing the processes on. The majority of those
4 were magazines. There were several individual pages
5 or centerfolds that had separated by themselves and
6 were not with magazines. Individual manila folders
7 and the like. But once the process started, it's --
8 while you're scanning each page, you have to take
9 usually about seven scans per page on one side, you
10 then flip the page and scan again.

11 Q. What do you mean "seven scans"?

12 A. Basically you're taking your page, and the
13 Scenescop while you're scanning only allows you to
14 do an area that's maybe three inches or two inches
15 in width, so you're scanning across the top of the
16 page, moving down, scanning back, moving down,
17 scanning across. And as you come across anything
18 that's fluorescing, ridge detail that's been
19 subjected to the super glue, then we have to analyze
20 it, look at it, see if we're going to use it as a
21 print. If not, move on, and continue scanning --
22 the scanning process. So a magazine would take us a
23 full day of -- depending on the number of pages, of
24 course, of scanning and just doing the Scenescoping.

25 Q. Just doing the Scenescoping. Not including
26 the fuming or ninhydrin?

27 A. The fuming had already been done, but the

28 ninhydrin process still had to be completed. 3502

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1 Q. How time-consuming is the fuming process?

2 A. The fuming process is, as we depicted
3 earlier, for each magazine, they have to hang them
4 in the tanks, fumed -- the fuming process itself is
5 15 minutes, then they let them dry and they
6 continue.

7 So it's just a matter of hanging the
8 magazine pages into the fuming tanks, which they
9 were using three. But we're limited. Each tank has
10 a certain size, so it's just the number of pages
11 that would fit in each particular tank.

12 Q. What about ninhydrin, is that also
13 time-consuming?

14 A. The ninhydrin process itself is not as
15 time-consuming as the Scenescope, because we're just
16 removing the pages, dipping them into the solution,
17 and letting them air dry. And once we fill up our
18 fume hood with the number of pages, then we have to
19 go back, resleeve those items, and then continue on
20 through the magazine with the remaining items. So
21 it would be -- just the process itself would
22 probably be an hour to an hour and a half, but then
23 you have to let it, like I say, sit for a couple of
24 days and then go back and do the analysis on it.

25 Q. In your experience as a law enforcement
26 officer, have you ever undertaken or even heard of a
27 fingerprinting protocol that involved materials of

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28 this magnitude? 3503

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1 A. No, I have not.

2 MR. SANGER: I would object. Move to strike
3 the answer and object. It was compound. Has he
4 been involved in it, as opposed to --

5 THE COURT: Sustained. Stricken.

6 MR. AUCHINCLOSS: All right.

7 Q. Have you ever been involved in a fingerprint
8 analysis that involved materials of such a large
9 quantity?

10 A. No, I have not.

11 Q. Anything remotely this large?

12 A. No, I have not.

13 Q. Have you ever heard, in your experience as a
14 law enforcement officer, of a fingerprint analysis
15 that involves such large quantities?

16 A. No, I have not.

17 Q. Did the sheriff's department have to bring
18 in extra help to complete this task?

19 A. Yes, we did.

20 Q. Do you know if there were any time
21 constraints on you?

22 A. Yes.

23 Q. And you said that you were part of a team.
24 Where did your team operate?

25 A. I.D. Technician Torres and I worked out of
26 our Santa Maria station.

27 Q. Okay. And who were the other members of the

28 sheriff's department that worked on that protocol? 3504

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1 A. Detective Spinner. Detective Wittenbrock.

2 And Technician Shelly.

3 Q. All right. Detective, at this time I'd like
4 to show you some cards that have been prepared, and
5 we'll go through them one by one.

6 This card appears to be -- this is Exhibit
7 No. 725. It appears to be Card 02 on the lower
8 right-hand corner. Can you identify that card for
9 me, please?

10 A. Yes, I can. That's a photograph of a
11 fingerprint taken from Item No. 317-L, which is a
12 "Finally Legal" magazine, December 2000 issue, and
13 that's from -- the latent print is from page 31,
14 Quadrant 15, Latent 1.

15 Q. Okay. Showing you Exhibit No. 726, itemized
16 as 03 in the lower right-hand corner. Similar
17 card?

18 A. Yes. This is a photograph from Item 317
19 Lincoln, L, "Finally Legal" magazine, December 2000
20 issue, page 126. It was in Quadrant 9, and it's
21 identified as "Latent," the number "1."

22 Q. Exhibit No. 728, identified as 05 in the
23 lower right-hand corner.

24 A. Yes. This is from Item 317-R, which is a
25 Hustler "Barely Legal Hard-Core," prior -- it was --
26 it was printed prior to October 2000, page 54,
27 Quadrant 6, Latent 1-N. That would be a ninhydrin

28 print. 3505

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1 Q. Exhibit No. 729, identified in the lower
2 right-hand corner, 06.

3 A. This is Item 317-R, as well, Hustler,
4 "Barely Legal Hard-Core," and again, prior to
5 October 2000. Page 92, Quadrant 1 and 2, Latent 1.

6 Q. Exhibit No. 730, identified in the lower
7 right-hand corner 07.

8 A. This is Item 317-R, Hustler "Barely Legal
9 Hard-Core," prior to October 2000. Page 92,
10 Quadrant 2, 6 and 7 is the intersection, and it's
11 labeled as Latent 2.

12 Q. Exhibit No. 731, noted as 08 in the lower
13 right-hand corner.

14 A. This is from Item 317-R. It's a Hustler
15 "Barely Legal Hard-Core" prior to October of 2000,
16 page 92, Quadrant 6, Latent No. 4.

17 Q. Exhibit No. 732, identified as 09 in the
18 lower right-hand corner.

19 A. This is Item 317-S. It's a "Penthouse,"
20 page 63, Quadrant 15 and 20, and it's identified as
21 Latent No. 1.

22 Q. Exhibit No. 733, identified as "10" in the
23 lower right-hand corner.

24 A. Yes, this is Item 317-S. It's a Penthouse,
25 page 87, Quadrant 7, Latent No. 1.

26 Q. Exhibit No. 734, identified as 11 in the
27 lower right-hand corner.

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28 A. This is Item No. 317-T, "Visions of Fantasy, 3506

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1 a Hard Rock Affair," September '93 issue, page 3,
2 Quadrant 4 and 5, Latent No. 1.

3 Q. Exhibit No. 735, identified as No. 12 in the
4 lower right-hand corner.

5 A. This is Item 317-U, "Visions of Fantasy, Sam
6 Jose's Black Starlett," April 1993, page ten,
7 Quadrant 16, and Latent No. 1.

8 Q. Item No. 736, identified as 13 in the lower
9 right-hand corner.

10 A. This is from Item 317-YY, "Al Golstein's 100
11 Best Adult Videos," page A, Quadrant 15, Latent 1.

12 Q. Exhibit No. 738, identified as 14 in the
13 lower right-hand corner.

14 A. This is Item 321-A, "Playboy, Special
15 Editions, Girlfriends," August 2003, page three,
16 Quadrant 15 and 20, Latent No. 1.

17 Q. Exhibit No. 738, identified as 15 in the
18 lower right-hand corner.

19 A. This is Item 321-A, "Playboy, Special
20 Editions, Girlfriends," August 2003, page 29,
21 Quadrant 15 and 20, Latent No. 1.

22 Q. Exhibit No. 739, identified as 16 in the
23 lower right-hand corner.

24 A. This is Item 321-E, "Girls of Barely Legal,"
25 page one, Quadrant 2 and 3, Latent No. 1.

26 Q. Exhibit No. 740, identified as 17 in the
27 lower right-hand corner.

28 A. This is Item 321-E, "Girls of Barely Legal," 3507

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1 page seven, Quadrant 15, Latent No. 1.

2 Q. And Exhibit No. 741, identified as 18 in the
3 lower right-hand corner.

4 A. Yes, this is Item No. 321-F, "Finally
5 Legal," February 2003, page 11, Quadrant 15,
6 Latent 1.

7 Q. All right.

8 THE COURT: Counsel, would -- I think you
9 have two 738s.

10 MR. AUCHINCLOSS: I'm sorry.

11 THE COURT: You identified two exhibits as
12 738. I don't know where the error is, whether you
13 have two --

14 MR. AUCHINCLOSS: I'm sorry. 736, 738, I'm
15 sorry, that was my mistake. 14 -- that is a seven.
16 So why don't we repeat that.

17 Q. What is Item No. 321-A?

18 A. Item 321-A, "Playboy, Special Editions,
19 Girlfriends," August 2003, page three, Quadrant 15
20 and 20, Latent 1.

21 MR. AUCHINCLOSS: Thank you, Your Honor.

22 Q. That is 737.

23 And 738, just so we're clear, is Item 321-A,
24 "Playboy, Special Editions, Girlfriends," August
25 2003, page 29, Quadrant 15 and 20, Latent 1; is that
26 correct?

27 A. That's correct.

28 Q. Sorry for that. 3508

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1 Detective, I'm going to leave these up here

2 with you.

3 Did you participate in the location and

4 identification -- just for purposes of analysis, but

5 not that you had analyzed them yourself, did you

6 participate in the location of latent fingerprints

7 on these particular magazine pages?

8 A. Yes, I did.

9 Q. And there is some information at the bottom

10 of those various cards. Have you reviewed those

11 cards for accuracy in terms of who the individual

12 members of the protocol team were that participated

13 in those various tasks?

14 A. Yes, I did.

15 Q. And are they accurate?

16 A. Yes, they are.

17 Q. Okay.

18 MR. AUCHINCLOSS: Your Honor, by

19 stipulation, we are going to -- well, actually, if

20 there's no objection, I would ask to move these

21 items into evidence at this time.

22 THE COURT: That would be --

23 MR. SANGER: Just so it's clear, there was

24 not a stipulation. I don't know what "that" meant.

25 MR. AUCHINCLOSS: Okay.

26 MR. SANGER: Which items are we talking

27 about?

28 THE COURT: I think he's talking 722 through 3509

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1 741. Is that right?

2 THE CLERK: No.

3 MR. AUCHINCLOSS: Yes.

4 MR. SANGER: That would be all of the --

5 THE CLERK: There was 725 and 726, and there
6 was no 727.

7 MR. AUCHINCLOSS: We have three that will be
8 identified by other witnesses. 742, 727, and 724.

9 THE COURT: Okay. Otherwise, 722 through
10 741, with the exception of those three.

11 MR. SANGER: Okay. The -- we're talking
12 about the --

13 THE CLERK: 725, not 722.

14 MR. SANGER: With regard to the poster
15 boards that were shown to the witness, and
16 identified, I have no objection to those coming in.

17 THE COURT: Okay. That's 725 through 741
18 with the three exceptions.

19 MR. AUCHINCLOSS: Yes.

20 THE COURT: Those are admitted.

21 MR. AUCHINCLOSS: All right. Could I have
22 the projection again, Your Honor, "Input 1"?

23 Q. All right. Detective, can you help us out
24 with the exhibit number of that particular exhibit?

25 I'm sorry. And I am going to move back one. There
26 we go.

27 Please look at the cards in front of you,

28 and tell me, what is the exhibit number of this 3510

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1 particular image?

2 A. Exhibit 725.

3 Q. Okay. And how did you participate in the
4 location of this particular fingerprint?

5 A. I was doing the Scenescoping analysis at the
6 time that this print was identified.

7 Q. All right. And you located this print?

8 A. I located the print. I marked the print,
9 and put -- took the photo of the print.

10 Q. There is a little black outline that we can
11 see on the upper midsection of the photograph, and
12 it appears to disappear behind the ruler and then
13 continue down to the lower midsection of the
14 photograph. What is that?

15 A. That is the outline of the permanent marker.

16 Q. Did you put that marker there?

17 A. Yes, I did.

18 Q. All right. And you made this photograph.

19 And what did you do with it?

20 A. The photograph was made and subsequently
21 placed on our forensics computer, and then a copy of
22 that was made and sent to our Santa Barbara
23 examiner.

24 Q. And after taking this photograph, did you
25 and Detective Torres do any further processing of
26 this particular page in this particular magazine?

27 A. Once the -- this particular latent print,

28 Latent No. 1, if there were additional prints, we 3511

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1 would then continue through the page and mark those,
2 and also photograph.

3 Q. And did you do ninhydrin processing of this
4 page?

5 A. We did after we were completed Scenescoping.

6 Q. So did you super glue this page?

7 A. No, I did not.

8 Q. Did it come to you already super glued?

9 A. Yes, all the items came to us super glued.

10 Q. And I believe you previously stated that was
11 all done in Santa Barbara?

12 A. That's correct.

13 Q. And that was done in Santa Maria, this
14 photograph?

15 A. That's correct.

16 Q. All right. Let's go to 317-L, "Finally
17 Legal," December 2000. Can you share with us the
18 exhibit number of that image?

19 A. This is Exhibit No. 726.

20 Q. And what did you do in -- concerning the
21 protocol to locate fingerprints on this particular
22 magazine?

23 A. Again, I was using the Scenescop at this
24 time, and located the fingerprint. I marked the
25 fingerprint with a permanent marker. Took a
26 photograph. And it was subsequently downloaded onto
27 our computer and a copy forwarded to our Santa

28 Barbara office. 3512

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1 Q. And subsequently, you did the ninhydrin on
2 this page and --

3 A. That's correct.

4 Q. And for what it was worth, located other
5 prints as well, but were not concerned about those
6 at this time?

7 A. That's correct.

8 Q. Same question on this. This would be 727;
9 is that correct?

10 A. I show 728 right now.

11 Q. All right.

12 A. I believe 727 is one of the other displays.

13 Q. Okay. Let me just go back one here. Okay,
14 yes. Actually, I'm sorry. I'm sorry, my mistake,
15 Detective.

16 This will be -- that one will be introduced
17 through another witness. We'll deal with that
18 later.

19 Okay. Let's go to 728.

20 A. Yes. 728 is the 317-R, Hustler "Barely
21 Legal."

22 Q. All right. Tell me what you did to locate
23 this particular print.

24 A. On this particular page, this was a print
25 that was the result of a ninhydrin process. After
26 we had done our Scenescoping, the entire magazine
27 was placed in a ninhydrin bath, dried, as we

28 mentioned before, and this particular print had 3513

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1 developed as a result of the ninhydrin process.

2 Q. Okay. And I see the black line there. Is
3 that the line you drew around the fingerprint?

4 A. That's correct.

5 Q. And you photographed this? Or, actually, I
6 guess you scanned these images?

7 A. Yes, this was scanned.

8 Q. All right. Let's look at 729, Exhibit 729.

9 What did you do to participate -- or how did
10 you participate in locating this fingerprint?

11 A. Again, I was Scenescoping at the time this
12 print was located. I did the Scenescop
13 photography. I marked the location of the latent.
14 It was downloaded onto our computer, and then
15 forwarded off to our Santa Barbara examiners. And
16 also a ninhydrin bath was done on this particular
17 item, as well, after.

18 Q. But this item is a fuming Scenescop latent?

19 A. This is a super glued and Scenescop item,
20 yes.

21 Q. Let's look at 730, I believe. We should do
22 that. Is that right?

23 A. That's correct. Again, this is off the same
24 317-R. This is a Latent No. 2. I was Scenescoping
25 this page. I located the print, marked the print
26 with a permanent marker. Again, it was downloaded
27 onto our photographs and downloaded onto our

28 computer and forwarded to Santa Barbara. 3514

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1 Q. All right. 731?

2 A. 731 is also from the 317-R, Hustler "Barely
3 Legal," page 92, Latent No. 4. I also was
4 Scenescoping at the time this was taken. It was
5 from the same page as the previous. I marked the
6 image, photographed it, downloaded it to our
7 computer, and a copy was forwarded to our examiners
8 in Santa Barbara, and thus, along with all the
9 others on the same page, were part of the ninhydrin
10 process after this was done.

11 Q. All right. 732?

12 A. 732 is the Item 317-S, "Penthouse." This
13 latent print was also Scenescoped by myself. I
14 marked it. Photographed it. It was subsequently
15 downloaded and forwarded to our examiners in Santa
16 Barbara.

17 Q. Okay. And the quadrants -- I don't think
18 I've asked you, but the quadrants notated on each of
19 these cards, are they an accurate depiction of the
20 quadrant you located that fingerprint in?

21 A. Yes, they are.

22 Q. Did you bring with you an example of a
23 quadrant?

24 A. Yes, I did.

25 Q. Okay. Could you -- do you have that with
26 you?

27 A. It's in my notes. Can I get that?

28 Q. If you can pull it out. 3515

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1 A. It's marked up.

2 Q. Do you need some back?

3 A. No.

4 Q. All right.

5 MR. AUCHINCLOSS: Your Honor, I have what

6 appear to be a clear piece of plastic with various

7 crosshatch and grid on it, and numbers. I'm marking

8 it 768.

9 Q. I show you Exhibit 768, Detective. Is that

10 one of the quadrant labeling devices that you used

11 to locate fingerprints?

12 A. Yes, it was.

13 Q. You actually used that in this case?

14 A. That's correct.

15 MR. AUCHINCLOSS: All right. Move to move

16 that exhibit into evidence at this time.

17 MR. SANGER: No objection.

18 THE COURT: It's admitted.

19 Q. BY MR. AUCHINCLOSS: Okay. So I believe we

20 are now at 733. Tell us what you did in terms of

21 locating this fingerprint.

22 A. Actually, this particular fingerprint was

23 Scenescoped by I.D. Technician Torres. I assisted

24 with that.

25 Q. Okay. So is -- whose writing is that in the

26 left portion of the Scenescop photograph?

27 A. That would be my writing.

28 Q. Okay. So you would write when Technician 3516

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1 Torres was using the Scenescoper, and she would write
2 the little post-it note when you were doing it; is
3 that fair to say?

4 A. Correct.

5 Q. All right. Let's look at 734. What did you
6 do to assist in locating this latent?

7 A. Again, I was with I.D. Technician Torres
8 when she was using the Scenescoper on this particular
9 item.

10 Q. And again, you wrote the card?

11 A. That's correct.

12 Q. And participated in the ninhydrin process of
13 this particular exhibit?

14 A. That's correct.

15 Q. All right. 735. What did you do to assist
16 in locating this fingerprint?

17 A. On Item 735, I did the Scenescoping, and
18 marked the location of the print, and photographed
19 the item, and was downloaded onto our computer and
20 forwarded to Santa Barbara, and also worked on the
21 ninhydrin process after this process.

22 Q. 736.

23 A. Item 736 was an item that was Scenescoped by
24 I.D. Technician Torres, and I assisted her with the
25 ninhydrin process after that.

26 Q. Okay. Same questions for Exhibit 737.

27 A. Item 737, I did the Scenescoper locating of

28 the print. I marked the print with a permanent 3517

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1 marker, photographed it, and then downloaded it onto
2 our computer and forwarded it to Santa Barbara.

3 Also, the ninhydrin process was completed again on
4 this particular item after the fact.

5 Q. All right. And how did you help find Item
6 No. 7 -- or Exhibit No. 738?

7 A. 738 was also an item that I Scenescope'd,
8 located the fingerprint. I, excuse me, downloaded
9 the item onto our -- marked it, photographed it, and
10 downloaded the item onto our computer to be
11 forwarded to Santa Barbara.

12 Q. 739?

13 A. 739 was also an item that I did the
14 Scenescoping on, locating the prints, marked the
15 print, photographed the print, and downloaded it
16 onto our computer, and it too was forwarded to Santa
17 Barbara.

18 Q. 740, same question.

19 A. Item 740 was Scenescope'd by I.D. Technician
20 Torres. I assisted her with that. And we both
21 worked on the ninhydrin process following that.

22 Q. And this was photographed and downloaded, as
23 was the other prints; fair to say?

24 A. Correct.

25 Q. Okay.

26 A. And it is my writing there.

27 Q. 741?

28 A. Item 741 is also an item that I Scenescoped, 3518

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1 and marked the photograph, photographed the item,
2 and download it and saved it onto the forensics
3 computer.

4 Q. Okay. Now, I notice a disparity on this
5 particular card. It appears to say, in the upper
6 left-hand corner, upside down, "321-D." Is that
7 accurate?

8 A. That's correct.

9 Q. And the title of this card at the top of the
10 page says "321-F"?

11 A. That's correct.

12 Q. How do you explain that disparity?

13 A. Prior to us receiving the items from Santa
14 Barbara, the items were, as was mentioned, placed in
15 binders. The binders were marked with just some
16 placards with just the number of the items, not the
17 actual title of the item. And we discovered that
18 the magazine covers had been -- the placards had
19 been reversed on two magazines.

20 Q. Okay. And of these prints that I've shown
21 you today, how many prints did that affect?

22 A. That affected this particular print on this
23 magazine.

24 Q. Only one?

25 A. That's correct.

26 Q. Who caught this error?

27 A. I did.

28 Q. Okay. And is it -- is the card as it is 3519

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1 noted above Item 321-F, "Finally Legal," is that the
2 correct magazine that that print was obtained from?

3 A. That is correct.

4 Q. And it was obtained from page 11, Quadrant
5 15, and it's Latent No. 1; is that correct?

6 A. Correct.

7 Q. After noting this error, did you go back and
8 check all the other prints that I've just shown you?

9 A. That's correct. I.D. Technician Torres and

10 I went through every one of our processed items to
11 make sure that no other mislabeling errors had
12 occurred.

13 Q. Okay. Were there any other mislabeling
14 errors?

15 A. No, there were not.

16 Q. Detective, I'd now like to run you through
17 some more photographs, and ask you some particulars
18 about the exact location of these prints.

19 And I think what I'd like to do, Your Honor,
20 is to have you black out the screen for a moment
21 while I change presentations.

22 Thank you.

23 MR. SANGER: And, Your Honor, I'm going to
24 object to showing this next presentation. It's
25 cumulative, and unnecessary to the presentation. If
26 we could approach, I could explain it.

27 THE COURT: What is it?

28 MR. AUCHINCLOSS: It is a run-through of 3520

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1 showing the exact location on the exact page that
2 these prints were found.

3 THE COURT: The objection is overruled.

4 MR. AUCHINCLOSS: All right.

5 MR. SANGER: There's a 352. I don't know if
6 I expressly said that, but as the Court will see
7 when it starts, perhaps Your Honor will understand
8 what I'm saying.

9 MR. AUCHINCLOSS: This will take just a
10 moment.

11 THE COURT: Your 352 objection is the undue
12 use of time?

13 MR. SANGER: Well, it's that, and the
14 subject matter of the pictures is to simply put up
15 more pages of magazines for no apparent reason.
16 They've already been identified coming out of
17 certain magazines.

18 MR. AUCHINCLOSS: These are graphic images,
19 Your Honor, and the Court should be aware of that,
20 but they are also graphic images with the
21 fingerprints which we will ultimately show are
22 particularly relevant to this case. And I think
23 it's important that the --

24 THE COURT: All right. The objection is
25 overruled.

26 MR. AUCHINCLOSS: All right. Thank you.

27 Q. All right. We're going to go through this

28 relatively quickly, but I'm going to ask you if the 3521

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1 item -- I'm going to start with 317-L, which is
2 No. 2, and ask you if this is the location where
3 that print was found that you located. Okay?

4 A. All right.

5 Q. Okay. If I could have just one more moment.

6 All right. If I could have the "Input 1"
7 put on.

8 Detective, there is a fingerprint image,
9 Item No. 317-L, with an arrow drawn and a circle.

10 Is that where you found that fingerprint?

11 A. That is correct.

12 Q. There is a fingerprint with an arrow drawn,
13 and it's rather blacked out, but the arrow is to a
14 particular location on that photograph. Is that
15 where you found the fingerprint on Item 317-L, page
16 126, Quadrant 9, Latent 1?

17 A. Yes, it is.

18 Q. Let's see. There is a fingerprint noted on
19 that page. It appears to be a ninhydrin
20 fingerprint. Is that the fingerprint you found on
21 Item 317-R, "Barely Legal Hard-Core," prior to
22 October 2000, page 54, Quadrant 6, Latent 1-N?

23 A. That's correct.

24 Q. There is a fingerprint with an arrow to it.
25 Is that the fingerprint that you found on Item
26 317-R, Hustler, "Barely Legal Hard-Core" prior to
27 October 2000, page 92, Quadrant 1 and 2, Latent

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1 A. Yes, it is.

2 Q. There's a fingerprint noted with an arrow to
3 it. Is that the fingerprint that you found on Item
4 317-R, Hustler, "Barely Legal Hard-Core," prior to
5 October 2000, page 92, Quadrant 2, 6 and 7,
6 Latent No. 2?

7 A. Yes, it is.

8 Q. There's a fingerprint with an arrow to it.
9 Is that the fingerprint that you found on Item
10 317-R, Hustler, "Barely Legal Hard-Core," prior to
11 October 2000, page 92, Quadrant 6, Latent 4?

12 A. Yes, it is.

13 Q. There is a fingerprint with an arrow drawn
14 to it. Is that the fingerprint that you found on
15 Item 317-S, page 63, Quadrant 15 and 20, Latent
16 No. 1?

17 A. Yes, it is.

18 Q. I'm going to skip the next two. I'm sorry.
19 There is a fingerprint noted on Item 317 --
20 I'm sorry, on Item 317-U, "Visions of Fantasy, Sam
21 Jose's Black Starlett," April 1993, page ten,
22 Quadrant 16, Latent No. 1.

23 Is that the fingerprint that you found on
24 that page?

25 A. Yes, it is.

26 Q. Skipping one more.

27 There's a fingerprint noted with a green

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28 arrow. Is that the fingerprint that you found on 3523

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1 Item 321-A, "Playboy Special Editions Girlfriends,"

2 August 2003, Quadrant 15 and 20, Latent 1?

3 A. Yes, it is.

4 Q. All right. I'm sorry. There's a

5 fingerprint located with a green arrow to it. Is

6 that the fingerprint that you found on Item 321-A,

7 "Playboy, Special Editions, Girlfriends," August

8 2003, page 21, Quadrant 15 and 20, Latent 1.

9 A. Yes, it is.

10 Q. There's a fingerprint noted with a green

11 arrow. Is that the fingerprint that you located on

12 page one of Item 321-E, "Girls of Barely Legal,"

13 Quadrant 2 and 3, Latent No. 1?

14 A. Yes, it is.

15 Q. All right. And finally, there is a

16 fingerprint located with a green arrow. Did you

17 find that fingerprint at that location, Item 321-F,

18 "Finally Legal," February 2003, page 11, Quadrant

19 15, Latent 1?

20 A. Yes, I did.

21 Q. Thank you.

22 MR. AUCHINCLOSS: I have no further

23 questions.

24 THE COURT: Counsel, cross-examine?

25 MR. SANGER: Can I have a moment with

26 counsel?

27 (Off-the-record discussion held at counsel

28 table.) 3524

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1 MR. SANGER: May I proceed, Your Honor?

2 THE COURT: Yes.

3

4 CROSS-EXAMINATION

5 BY MR. SANGER:

6 Q. Okay. I'm going to start at the end,

7 because unfortunately you're going to have to come

8 back tomorrow, I think. But since we have the

9 technology hooked up, we'll do that.

10 Would it be all right to have the screen --

11 And this was -- this was -- this was

12 presented to you earlier. And this reflects the

13 same photographs that you have in the set of hard

14 board exhibits in front of you; is that correct?

15 A. That's correct.

16 Q. All right. Now, when you look at these

17 photographs, all of the photographs in this set are

18 super glue fumed and Scenescope'd with the exception

19 of one; is that right?

20 A. That's correct.

21 Q. And that one is No. 5 here.

22 For the record, could you find that in the

23 set of boards there in front of you?

24 A. Certainly, yes.

25 MR. SANGER: All right. And just so the jury

26 is oriented, Your Honor, could the witness just hold

27 it up so they can get an idea of what we're looking

28 at? 3525

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1 Okay. Same thing.

2 Q. All right. Now, that particular image was
3 developed by virtue of the ninhydrin process, right?

4 A. That's correct.

5 Q. And you showed everybody - and I think
6 everybody's become an expert in this - you take the
7 thing, dip it the ninhydrin solution, you hang it up
8 on the clothesline, and it dries in a couple of
9 days, if you don't use artificial heat, correct?

10 A. Correct.

11 Q. When it dries, you come up with purple
12 prints?

13 A. Correct.

14 Q. All right. The other thing about the
15 ninhydrin print is that it is scanned into the
16 computer; is that correct?

17 A. That's correct.

18 Q. Now, with the super glue, you -- first of
19 all, you do the super glue fuming, put it in one of
20 those fish tanks?

21 A. Correct.

22 Q. And then once the super glue fuming is
23 concluded, you then use the Scenescope, and that's
24 where you come up with these green digital images;
25 is that correct?

26 A. That's correct.

27 Q. So those are digital images taken by a

28 digital camera through a Scenescape, through a 3526

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1 scope, right?

2 A. That's correct.

3 Q. Whereas this one, whatever number it is, the
4 ninhydrin print you just showed us, 317-R, page 54,
5 Latent 1-N, that ninhydrin print is readily visible
6 to the eye, correct?

7 A. That's correct.

8 Q. And, in essence, the picture that you have
9 there is what you see is what you get. You would
10 see that on at page, if the page were here?

11 A. That's correct.

12 Q. All right. Now, the issue with regard to
13 producing these particular images when you're
14 dealing with the Scenescop and the super glue
15 fuming, you have to be careful in super glue fuming
16 not to overfume, correct?

17 A. That's correct.

18 Q. Because if you overfume, then you can lose a
19 lot of the detail in the print itself?

20 A. That's true.

21 Q. And in the course of the Scenescop, you are
22 taking a picture through a digital camera; is that
23 correct?

24 A. That's correct.

25 Q. Now, the reasons you gave us for a digital
26 camera --

27 And we can now turn this off, I think, if

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28 that's all right. 3527

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1 Thank you, Counsel, for letting me borrow
2 it.

3 The reasons you gave for using the digital
4 camera are primarily reasons of convenience,
5 correct?

6 A. Yes.

7 Q. In other words, you're aware that the
8 company Spex that manufactures the Scenescop
9 recommends that you use a film camera; is that
10 correct?

11 A. Actually, I'm not aware of that. I
12 understand that they offer -- I don't know if they
13 still do, but they actually offered a camera package
14 with their Scenescop, which is a digital camera,
15 and they do also offer a 35-millimeter camera.

16 Q. So do you know whether or not Spex, the
17 company that makes this device, recommends that you
18 use a 35-millimeter-film camera?

19 A. That was not expressed to me, no.

20 Q. Do you know that -- and what you might do -
21 I know it's the very end of the day - but if you
22 could turn a little more towards the microphone,
23 because you're fading out just a bit there.

24 Are you aware of the studies and literature
25 in the area that suggests that a digital camera will
26 not capture some of the detail that a film camera
27 will capture?

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28 A. That's correct. 3528

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1 Q. You use a digital camera because it is
2 easier to scan. In other words, rather than taking
3 a whole bunch of film pictures, you can scan on your
4 monitor and hone in on what you want before you
5 click the picture, true?

6 A. There would no way that we could accomplish
7 the task of going through the photos that we have by
8 using a single-lens reflex camera in the time span
9 that we had.

10 Q. Okay. The question was, though, that you
11 used the digital camera because it allows you, I
12 think you told us on direct examination, to scan
13 with the monitor --

14 A. Correct.

15 Q. -- right?

16 So, in fact, in real time, as your
17 Scenescop goes around the page and you find
18 something you like, you can make sure you got it
19 centered, and once it's centered, based on what
20 you're looking at in your monitor, you can click the
21 picture?

22 A. That's correct.

23 Q. If you were going to use a film camera, you
24 would either have to take pictures of the entire
25 page, or you'd have to look through the Scenescop,
26 figure out what you're going to take a picture of,
27 and then click the picture; is that correct?

28 A. That's correct. 3529

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1 Q. All right. You also said that the digital
2 camera is a mid-range camera as far as the
3 definition; is that correct?

4 A. That's correct. At the time that camera was
5 purchased, it was the top of the line that our
6 agency would be able to -- be able to afford.

7 Q. Okay. And like everything else, after 18
8 months, you need to buy a new one; is that right?
9 Everything else electronic, it seems.

10 All right. But in any event, it's about
11 mid-range as far as the definition; is that correct?

12 A. Correct.

13 Q. And you also indicated that it was a matter
14 of convenience that you could take the digital
15 pictures and then you could simply download them to
16 a disk, correct?

17 A. They were downloaded to a hard drive and
18 then a copy was made, correct.

19 Q. So the first step is, you downloaded it onto
20 the hard drive for your forensic computers that you
21 have there?

22 A. Right.

23 Q. And then you would make a disk from the hard
24 drive?

25 A. Correct.

26 Q. So it's a matter of convenience.

27 Now, you're aware that there are some

28 aspects -- let me back up just one second. I'm 3530

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1 trying to do a two-minute subject here without going
2 into detail at the moment.

3 Are you certified as a latent print
4 examiner?

5 A. I am not certified.

6 Q. Okay. And do you do latent print
7 examinations yourself?

8 A. I do latent print examinations which are
9 verified, that's correct, with another examiner.

10 Q. By somebody else. You did not do these
11 latent print examinations or comparisons yourself?

12 A. Correct.

13 Q. Okay. But in other cases, you've done that
14 from time to time; is that right?

15 A. That's correct.

16 Q. And how long have you been doing latent
17 print comparisons?

18 A. Approximately a year. Well, a year where
19 I've been doing it with another examiner. I've been
20 doing comparisons before that were then reviewed by
21 other, more senior technicians.

22 Q. All right. So, are you considered a latent
23 print trainee at this point, or latent print
24 examiner?

25 A. I don't know the status.

26 Q. You don't have any organization that
27 certifies you one way or the other, that examines

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1 A. No.

2 Q. Do you belong to SWGFST?

3 A. No, I do not.

4 Q. All right. Now, in the minute remaining,

5 let me just ask you about this, about the digital

6 camera issue.

7 As -- I know you didn't do examinations or

8 comparisons in this case, but when you're developing

9 prints, you are doing that with the intention of

10 developing something that a latent print examiner

11 can compare, is that correct?

12 A. That's correct.

13 Q. So you want to try to get the best product

14 you can for your examiner, correct?

15 A. That's correct.

16 Q. And in that regard, you know that you --

17 that it can be very helpful to an examiner to look

18 at pores, correct?

19 A. That's correct.

20 Q. And also to look at the shape of ridges, if

21 possible; is that correct?

22 A. Third-level detail, correct.

23 Q. Yeah, third-level detail. So we're not just

24 talking about where they go and how they're laid

25 out, but the actual shape of the actual ridge; is

26 that correct?

27 A. If needed, yes.

28 THE COURT: All right. Counsel, let's take 3532

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1 our break.

2 MR. SANGER: I have one more.

3 THE COURT: Do you want to ask one more?

4 MR. SANGER: Yes. Then I don't have to

5 start over tomorrow.

6 I made everybody mad in the whole courtroom

7 at once, all right.

8 Q. With the digital camera, you tend to not be

9 able to pick up the pores and the shape of the

10 ridges as well as a film camera; isn't that correct,

11 sir?

12 A. Actually, we were able to get several prints

13 with this camera that did show pore detail.

14 Q. In general, a film camera is better at

15 getting the pores and the ridge shapes than the

16 digital camera, correct?

17 MR. AUCHINCLOSS: Object as to foundation.

18 THE COURT: Sustained.

19 MR. SANGER: Ahh. There you go.

20 MR. ZONEN: Your Honor, could the Court and

21 counsel remain just one more moment after the jury's

22 excused?

23 THE COURT: Yes.

24 //

25 //

26 //

27 //

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1 (The following proceedings were held in
2 open court outside the presence and hearing of the
3 jury:)

4

5 MR. ZONEN: Thank you, Your Honor.

6 I just wanted to notify the Court, we were
7 able to resolve one of the issues that was pending
8 before the Court.

9 Over the last break, I spoke with Mr. George
10 Blancarte, who is George Lopez's attorney, and we
11 are agreeing they are withdrawing their opposition
12 to the subpoena that had been issued by the defense.

13 In fact, Mr. Lopez will be testifying for the
14 prosecution, we expect, on Monday.

15 THE COURT: Who's going to testify tomorrow?

16 MR. ZONEN: We do have a list. Would you
17 like to know the list for tomorrow?

18 THE COURT: Yeah, I'd like to know.

19 MR. SNEDDON: Well, we'll finish this
20 witness's testimony, Your Honor, and then perhaps
21 Miss Romero, and then Detective Spinner with the
22 fingerprints. And we figured that would take us
23 through the day. And I think we talked in chambers
24 about if we didn't have all the way through the day,
25 that that was okay with you.

26 THE COURT: Okay.

27 MR. AUCHINCLOSS: We also have some other

28 fingerprint techs that will be testifying. 3534

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1 MR. SNEDDON: They're minor. They're short

2 witnesses.

3 THE COURT: All right. Thank you.

4 MR. ZONEN: Thank you.

5 (The proceedings adjourned at 2:30 p.m.)

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE)

5 OF CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR,

13 CSR #3304, Official Court Reporter, do hereby

14 certify:

15 That the foregoing pages 3380 through 3535

16 contain a true and correct transcript of the

17 proceedings had in the within and above-entitled

18 matter as by me taken down in shorthand writing at

19 said proceedings on March 24, 2005, and thereafter

20 reduced to typewriting by computer-aided

21 transcription under my direction.

22 DATED: Santa Maria, California,

23 March 24, 2005.

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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