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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOUGLAS GRANGE,)
)
 Defendant.)

No. 20138-4-III
(Stevens County
No. 00-1-00190-2)

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CLERK OF COURT OF APPEALS
STATE OF WASHINGTON III

DATES OF TRIAL: February 7, 8, 9, 12, 13, 14, 15,
16 and 17, 2001

BEFORE: Hon. REBECCA M. BAKER, Judge.

APPEARANCES:

For the Plaintiff:

For the Defendant:

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VOLUME 9 of 17
February 13, 2001
(Pages 993 through 1084)

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EXHIBITS

<u>Number</u>	<u>Item</u>	<u>Offered</u>	<u>Admitted</u>
Pl. #16	Miscellaneous papers belonging to Defendant	1048	1049
Pl. #73 thru #75	Photographs	995	995
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1 FEBRUARY 13, 2001

2 COURT RECONVENED WITH THE JURY SEATED

3 THE COURT: I believe we are ready for your next
4 witness, Mr. Wetle.

5 MR. WETLE: Yes, your Honor.

6 THE COURT: Okay, you may call your next witness.

7 MR. WETLE: Call Ben Paramore.

8 WITNESS IS SWORN

9 THE COURT: If you'll start by giving us your name,
10 please?

11 MR. PARAMORE: My name is Ben Paramore, P-A-R-A-M-O-R-E.

12 THE COURT: Thank you, and your current business
13 address?

14 MR. PARAMORE: P. O. Box 186, Colville, Washington
15 99114.

16 THE COURT: Thank you. Mr. Wetle?

17 MR. WETLE: Thank you, your Honor.

18 **BEN PARAMORE**

Being first duly sworn, on
oath testified as follows:

19
20 **DIRECT EXAMINATION**

21 **BY MR. WETLE:**

22 Q. Good morning, Detective Paramore. Could you please state
23 your occupation for the jury?

24 A. I'm a detective with the Stevens County Sheriff's office.

25 Q. And how long have you been so employed?

Ben Paramore - Direct (by Mr. Wetle)

993.

1 A. I've been with the Sheriff's office for almost six years.
2 Been a detective for three and a half of that.
3 Q. And were you involved in the investigation of a double
4 homicide in Stevens County on or about June 11, 2000?
5 A. Yes, I was.
6 Q. And what did you do?
7 A. I responded to the scene. After the initial assessment
8 was over, I videotaped the crime scene where the vehicle
9 was found prior to any officers approaching the vehicle.
10 I assisted in searching for evidence, gathering evidence,
11 and I was also in charge of sealing and logging all of the
12 evidence.
13 Q. Did you participate in any interviews as well?
14 A. I assisted in several interviews, yes.
15 Q. And did you take any photos of the skeletal remains at
16 Holy Family Hospital?
17 A. I did.
18 Q. And ask the bailiff to hand you what's been marked as
19 Exhibits 73, 74 and 75, and I'd ask if you can identify
20 those photographs?
21 A. Yes, I can.
22 Q. And what are they?
23 A. Exhibit 73 is a photograph of the human remains as they
24 were unbagged at Holy Family Hospital. Exhibits 74 and 75
25 are pictures of a lower jaw after it was reconstructed by

Ben Paramore - Direct (by Mr. Wetle)

994.

1 Dr. Morgan, also taken at Holy Family.

2 Q. And are those photos a true and accurate representation of
3 the remains?

4 A. Yes, they are.

5 MR. WETLE: We'd offer Exhibits 73 through 75, your
6 Honor.

7 MR. SIMEONE: No objection.

8 THE COURT: All right, did you want those passed
9 around?

10 MR. WETLE: I would just ask Detective Paramore maybe
11 to look-- If he could take Exhibit-- the three exhibits
12 and approach the jury box?

13 THE COURT: All right.

14 Q. With respect to Exhibit 73, could you show the jury what
15 that shows, Detective Paramore?

16 A. Exhibit 73 are the human remains that were recovered from
17 the right front portion of the vehicle. As the evidence
18 was collected we tried to keep the human remains separate
19 to each quadrant of the vehicle as it was discovered and
20 bagged that separately. When Dr. Lindholm examined the
21 bones he would have an idea of where they came from in
22 that vehicle.

23 Q. And with respect to Exhibits 74 and 75?

24 A. Seventy-four and 75 are the lower jaw that was recon-
25 structed by Dr. Morgan. Just two different views of the

Ben Paramore - Direct (by Mr. Wetle)

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same-- same item. It was photographed on a blue clip-board to give it a little bit of a contrast.

Q. And the red marks on the jaw bone, what is that?

A. That is the wax that Dr. Morgan used to reattach the pieces. It was actually in three separate pieces when we found it.

MR. WETLE: Thank you, Detective Paramore. I have no further questions, your Honor.

THE COURT: All right, Mr. Simeone, any questions of this witness?

MR. SIMEONE: I'll have to call him in my case, your Honor.

WITNESS STEPS DOWN BUT IS NOT EXCUSED

THE COURT: Mr. Wetle, you may call your next witness.

MR. WETLE: Call Dr. Lindholm.

1 Q. Could you please state your qualifications?

2 A. Very briefly, I have a Bachelor of Science degree from
3 Gonzaga University in Spokane, Washington. That was
4 followed by a master's degree in biological sciences from
5 the University of Alaska, followed by an M.D. or doctor of
6 medicine degree from the University of Washington in
7 Seattle. That was followed by four years of training in
8 anatomic and clinical pathology at the University of
9 Washington affiliated hospitals. That was followed by a
10 year of study at the King County Medical Examiner's Office
11 in Seattle, Washington, in forensic pathology. Subsequent
12 to that I took board examinations given by the American
13 Board of Pathology in all three disciplines, and I'm board
14 certified by examination in those disciplines. Briefly,
15 I spent two years in Alaska performing autopsies, but also
16 doing anatomic and clinical pathology. Moved to Belling-
17 ham, Washington, for two years and did the same thing.
18 And about 16 years ago I moved to Spokane, Washington,
19 where I've done all three disciplines until approximately
20 the last four to five years, when there was too much
21 forensic work and so I dropped out of the other disci-
22 plines. I'm currently licensed in Washington and Idaho.
23 Had previous licensure in Oregon and Alaska, and I'm
24 currently the Spokane County Medical Examiner.

25 Q. Thank you, Dr. Lindholm.

George Richard Lindholm - Direct (by Mr. Wetle)

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1 MR. WETLE: Your Honor, I'd tender Dr. Lindholm as an
2 expert in forensic pathology.

3 THE COURT: All right. Well, my policy on questions to
4 expert witnesses is it always depends on the question. If
5 you ask this witness about car mechanics, maybe we have to
6 reconsider.

7 MR. WETLE: Thank you very much.

8 Q. Dr. Lindholm, on October 2nd, year 2000, did you examine
9 the skeletal remains of a person later identified as
10 Nicholas Kaiser?

11 A. Yes, I did.

12 Q. And on that same day did you examine the skeletal remains
13 of a person believed to be Josh Schaefer?

14 A. Yes, I did.

15 Q. As opposed to a situation where you are presented with a
16 complete body for an autopsy, could you explain to the
17 jury sort of the process you go through to examine bodies
18 where you are presented with skeletal remains?

19 A. Basically this case presented, and I don't mean to be
20 crass about it, as multiple, separate submissions of
21 evidence. That is, bits and pieces, fragments of bone,
22 fragments of other debris, and also commingled in that
23 were a few animal bones. It came in multiple containers,
24 and so it was necessary initially to take-- open each of
25 the containers, lay everything out, describe what was in

1 that container, then those container labels were correlat-
2 ed with where the material was found at the scene. It was
3 alleged to me they were found around a vehicle that had
4 been burned, and then had been scattered out. So I took
5 each container, went by the labeling on the container so
6 we could relate back to the scene where it came from, if
7 necessary, examined each individual component that was in
8 each bag. And then at the end of that we went through, we
9 were looking for things that might help us either identify
10 the persons and/or person, and also to determine if we
11 could find any evidence of trauma. So at the end of
12 looking through all the bags--and this took several days,
13 actually--we then--

14 Q. If I could interrupt for a second, Dr. Lindholm.

15 MR. WETLE: Mr. Bailiff, if you could hand Dr. Lindholm
16 I think what's been marked as Exhibit 75. The first
17 exhibit for--

18 THE COURT: Seventy-three, 74 and 75?

19 MR. WETLE: Seventy-three then?

20 THE COURT: I can just hand them over here. I think
21 the top one is Exhibit 3. Seventy-three, rather.

22 Q. Detective Paramour took a picture, that picture. It's
23 already been offered and the jury has seen that picture,
24 but I wanted-- You hadn't see that, if you wanted to
25 comment a little bit about what he took at your office.

George Richard Lindholm - Direct (by Mr. Wetle)

1000.

1 A. Right. So this has been admitted, I assume?

2 Q. Yes.

3 A. And this is Exhibit labeled 73. You've seen this. This
4 is the typical sort of material that was present in the
5 various containers. Each container was photographed so
6 that the number and site from which it came from could be
7 seen, and then the materials were laid out in each case on
8 a clean background so we didn't contaminate anything or
9 lose anything, and each of these were sorted.

10 As you can see in this photo, for example, some of the
11 larger bones could be reasonably identified. However,
12 very small fragmentary portions of bone were much more
13 difficult.

14 Additionally, based on the exhibits passed to me,
15 Exhibit 74 shows the sort of thing that we were really
16 looking hard for. In this case 74 is the jawbone with
17 dental material.

18 The reason we look for this is people can be identified
19 on the basis of dental material, and so even in the little
20 fragments we were looking for pieces of teeth. This sort
21 of material was sorted from the rest and conveyed to a
22 forensic odontologist, that is a doctor skilled in
23 examining teeth for identification of persons, and you'll
24 probably hear about that later.

25 Q. So, Dr. Lindholm, you are going through the various bags

George Richard Lindholm - Direct (by Mr. Wetle)

1001.

1 and comparing it to where they were found at the scene?

2 A. That is correct. Sometimes the way animals will dismember
3 bodies will allow you, if you know where it came from the
4 in scene or the proximity to a thing, to be able to--
5 that's additional information that may help you put one
6 person back together, as opposed to remains that may have
7 been removed in another direction. So that's what we did
8 with every bag.

9 To continue and finish it out, during the course of
10 that we were able to identify the remains of at least two
11 individuals. And the reason we could say there were at
12 least two-- Remember, if there are a thousand pieces of
13 bone, it could be a thousand individuals. Unlikely, but
14 it could be. But the reason we can say at least two,
15 because we have found redundant structures. That is, for
16 example, in the neck there are bones, specific bones, in
17 the upper part of your cervical neck. Nobody has two sets
18 of them. We found two sets of those. One of those was
19 hooked to the base of a skull, and I'm sort of indicating
20 on myself the occipital region of the skull, the back, and
21 it surrounds the spinal cord. And we found two occipital
22 regions of skull.

23 Fortunately, a large number of the other pieces could
24 be pieced together with one of those, and just like
25 puzzles that we work on that you can buy in the store, put

1 the puzzles together, the bones fit congruently. And so
2 this allowed us to establish that two individuals were--
3 at least two individuals were represented here. One of
4 these, fortunately, because of the dental material, and in
5 an exhibit that's passed to me and admitted but not
6 previously talked about, is Exhibit 75, which shows the
7 mandible, and that's the lower jaw, and fillings. And
8 those fillings a forensic odontologist can use to identify
9 a person. So that allowed us to identify one of the
10 persons, because the jaw fit to the rest of the skull, and
11 so we knew for sure the identity of one, and we knew we
12 had a second person, and then, as you'll see as we go, I
13 was able to determine how each of those people presumably
14 died, based on a very significant finding of injury on the
15 skull of each individual.

16 Q. Okay, I'd ask the bailiff to hand you what's been marked
17 as Exhibits 77 through 88. Just take a moment and review
18 those, Dr. Lindholm.

19 THE COURT: Before you get them too organized, Doctor,
20 we'll probably have to mix them up when we hand them off
21 to Mr. Simeone here in a second.

22 MR. WETLE: As long as he keeps them in order, your
23 Honor, it'll be okay.

24 A. I've reviewed the material and can identify this material
25 as photographs taken under my direction by my assistant,

George Richard Lindholm - Direct (by Mr. Wetle)

1003.

1 Mr. Schaver. I was present at the time the photographs
2 were taken. The purpose of the photograph is to-- photo-
3 graphs are to demonstrate the presence of two individuals
4 and the presence of gunshot wounds to the head of each of
5 these individuals.

6 Q. Are these photos a true and accurate representation of the
7 bones when they were taken?

8 A. Yes.

9 Q. And do these photos fairly and accurately depict the scene
10 as it appeared when taken?

11 A. Yes.

12 MR. WETLE: Your Honor, we'd offer Exhibits 77 through
13 88.

14 MR. SIMEONE: No objection to that.

15 THE COURT: All right, 77 through 88 are admitted.

16 MR. WETLE: Mr. Simeone needs to see those photographs.

17 THE COURT: He's already seen them and he doesn't
18 object.

19 MR. WETLE: No objection?

20 Q. If you want to take the photographs, Dr. Lindholm, and
21 approach the jury box.

22 DR. LINDHOLM: May I approach the jury?

23 THE COURT: Yes, that'd be fine.

24 Q. You can take all the photos if you want. Okay, Dr.
25 Lindholm, I'd ask you to identify the photo that you're

George Richard Lindholm - Direct (by Mr. Wetle)

1004.

1 discussing, and maybe walk through how you recreated each
2 body, and then how you reached your conclusions.

3 A. The first thing we need to establish is that two individu-
4 als, at least, were present, and that's demonstrated in
5 Exhibit 87. I'm going to try to orient this so it makes
6 some sense to you. But we can see over to the left of the
7 photo, this is a spinal column. This is the base of a
8 skull that hooks to this spinal column, and the reason I
9 knew it belongs here is because the other one on the right
10 is also the base of a skull, and here the bones remain
11 stuck to the base of the skull. This particular-- The
12 first and second cervical-- Human bodies have a unique
13 configuration. It's because of the way we swivel our
14 neck. And so because the one on the right already has it,
15 I-- and because all of these other bones are the spinal
16 column on the person on the left is all hooked together,
17 I knew this had to belong with this skull, and it fit
18 perfectly to the base of the skull, whereas we have the
19 same basal part of the skull on the right of the second
20 individual, so the point becomes simple. This photo alone
21 establishes two persons present.

22 Now, the other thing that was unique is that the jaw of
23 this particular person fit to the base of this skull. And
24 so this jaw belongs with this portion of skull and with
25 this cervical group of bones. This part of the skull with

George Richard Lindholm - Direct (by Mr. Wetle)

1005.

1 the cervical bones belonged to a separate individual, so
2 we have two persons. Fortunately, as a forensic dentist
3 will tell us later, due to-- it was possible to identify
4 this person definitively because of this jaw so we know
5 that these bones and this portion of skull and this
6 portion of spine belongs to the individual by the name of
7 Nicholas Kaiser.

8 Q. Dr. Lindholm, the exhibits that you were talking about to
9 show the fact that you had more than one body present,
10 what was the number of that, for the record?

11 A. For the record, again, that was Exhibit Number 87.

12 Q. After establishing you had more than one body present, did
13 you go through the various bones, or assembling the
14 various bones, to look for evidentiary significance?

15 A. Yes.

16 Q. And what did you do there?

17 A. Well, we were able to establish that each of the individu-
18 als, Nicholas Kaiser plus the other party known as John
19 Doe, had each been shot in the head with a gun.

20 Q. And how were you able to determine that?

21 A. Exhibit Number 88 shows the back head region of these two
22 individuals. You've also already seen portions of it.

23 To continue our analogy, and I've got the photos set
24 the same way as I showed you the first one, the materials
25 over here on the left are Nicholas Kaiser. Again, we see

George Richard Lindholm - Direct (by Mr. Wetle)

1006.

1 the spinal column. And here I've put enough of the head
2 together for you to see a hole in the back of the skull.
3 This is the back curvature of the skull that you're
4 seeing. There's a hole there. There's some details of
5 that we'll come to later that are important.

6 On the other party, the John Doe to this date, again we
7 have the back side portion of the skull, and again,
8 against the background I hope you can see that there's a
9 hole in there. It shows through as blue. We'll talk
10 about those holes because they have specific features that
11 identify them as gunshot wounds.

12 Q. Thank you, Dr. Lindholm. What further evidence were you
13 able to discern from the assembly of the skeletal remains?

14 A. Well, if you look at Nicholas Kaiser, if we confine
15 ourself to Nicholas Kaiser, the identified person, in
16 Exhibit Number 77, you're somewhat familiar with this
17 material, and for refreshing your memory, we have the
18 spinal column, we have the jaw, and we have a gunshot
19 wound of entrance there. And I'll show you it's a
20 peculiar one.

21 State's Exhibit Number 78 shows it to further advan-
22 tage. The previous exhibit giving you the overall
23 appearance. And we start to look at the gunshot wound, it
24 looks like the old fashioned-- If you've been around old
25 homes, it looks like the old keyholes that the big long

George Richard Lindholm - Direct (by Mr. Wetle)

1007.

1 keys with the prongs on them, and you stick it in there.
2 And that's exactly what that's called. It's called a
3 keyhole gunshot wound. It's important because that tells
4 us some potential things.

5 This is the entrance wound of the gunshot wound. We're
6 looking at the inside of the skull in Exhibit 78, and the
7 reason we know it's an entrance wound is because it breaks
8 inward. It bevels inward. It gets wider on the inside of
9 the bone than it is on the outside.

10 For example, in Exhibit 82, we actually see the outside
11 of the skull. Now it's charred and burned and difficult,
12 perhaps, but I've got my finger on, again, the entrance
13 wound which looks, if I tip it for you, like the keyhole.
14 Like you could put the key in and turn it. The old
15 fashioned door keys. That's the external surface of
16 Nicholas Kaiser's skull.

17 Finally, as shown in State's Exhibit 79 and 80, I'm
18 putting a pencil to a breaking bone that is somewhat
19 charred up that I was able, by the puzzle method, if you
20 like, of putting bones together to hook this up to the
21 rest of Mr. Kaiser's skull. And what this shows is a
22 smooth, curved line along the bone. That bone is breaking
23 away to the outside. That's a feature of an exit of a
24 bullet. So for Mr. Kaiser, we have a keyhole entrance
25 wound in the back of the head, and we have an outward

George Richard Lindholm - Direct (by Mr. Wetle)

1008.

1 breaking or exit wound toward the front of _____ in a
2 fragment of bone.

3 The keyhole gunshot wound is important to consider
4 because it may-- This-- There's two possible interpre-
5 tations. One would be that two bullets are fired right
6 close enough together where they hit to make two separate
7 entrances that communicate.

8 The alternate possibility with a keyhole is that the
9 angle at which the bullet is fired is so obtuse that the
10 bullet goes in and breaks out. It doesn't even have to
11 enter the head. That seem-- It may also occur that the
12 bullet angle is such that it can go in and instead of
13 breaking out it can barely get underneath and go into the
14 skull and go along the inside of the skull.

15 I can't tell you with absolute certainty which is which
16 from simply seeing the entrance wound. This-- I am
17 suspicious that it may not be a keyhole gunshot wound, and
18 the reason I say that is because I found an exit, as we
19 saw in Exhibit 80, where I know a bullet went through the
20 head and broke out. So I just leave you, and somewhat
21 mysteriously, that one thing that needs to be fixed in
22 everybody's mind is unequivocally this person was shot in
23 the head. No question. Whether once or twice, I can't
24 tell you with absolute certainty. But unequivocally, the
25 features here are gunshot wounds of entrance and one--

George Richard Lindholm - Direct (by Mr. Wetle)

1009.

- 1 one or possibly two entrances, and one, for sure, exit.
- 2 Q. Dr. Lindholm, could you tell the jury, based on the
- 3 location of those holes in the bone that you found, where
- 4 those wounds would be?
- 5 A. Well, the entrance wound is unequivocally in the back of
- 6 the head. And this-- Whether one or two bullets, it's
- 7 unequivocally right in the back of the head. The back
- 8 part of the head. The entrance wound.
- 9 Q. And that's where the keyhole is?
- 10 A. That is correct.
- 11 Q. And the exit, were you able to, by piecing the bone
- 12 together to look at the exit wound, could you tell what
- 13 part of the skull that would have been?
- 14 A. Yes. The portion of the skull it was in is frontal bone.
- 15 That's your forehead. And so the exit-- the entrance is
- 16 in the back of the head, the exit was in the front part of
- 17 the head. It went through the head and came out the
- 18 front.
- 19 Q. For the jury as they look at those photos at a later time,
- 20 when we're talking about Nick Kaiser, I know you have
- 21 broken up the photos and I think it's-- Is it a 96 and
- 22 a 95, and one is 0095, one is 0096, for Nicholas Kaiser
- 23 with the keyhole, what numbers are associated with him?
- 24 A. I'll kind of put these in order real quickly.
- 25 Q. And you can take those yellow stickies off if-- You don't

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1010.

1 have to. If you want to.

2 THE COURT: The exhibits are officially marked on the
3 back, so if those are in your way, the yellow ones, you
4 can take them off or leave them on, if it's easier.

5 A. For the jurors and for the record, the exhibits I have
6 talked about that are unequivocally the materials from
7 Nicholas Kaiser are Exhibits 77, 78, 79, 80, 82, 88, and
8 just to mess things up, 87. I got one out of order.

9 Q. If you want to hand that to Juror Number 6 and they can--
10 Those represent Nick Kaiser?

11 A. That is correct.

12 Q. Then, Dr. Lindholm, I'd like you to take the exhibits that
13 represent the other person, later believed to be Josh
14 Kaiser (sic) and ask if you can show to the jury the
15 analysis you went through with respect to his remains.

16 A. For the record, I will show the party that I call John
17 Doe. The remains are demonstrated on Exhibits 81, 83, 84,
18 85, and 86.

19 Exhibit 81 shows a portion of skull. It's badly
20 charred, and there's a-- I'm indicating with my finger,
21 this is the back area of the skull. I'm indicating on my
22 body also approximate location. And very hard to see
23 here, because of the charring, but there's a gunshot wound
24 of entrance in the back of the skull.

25 It is shown to better advantage slightly in Exhibit 83,

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1011.

1 which is a little closer up, and let's you see that
2 there's a defect. It's right at the tip of my left index
3 finger. It becomes much more obvious on the inside of the
4 skull where there was not the charring, and that is
5 Exhibit 84. And I think even the jurors at the back, the
6 blue background is clearly visible through the hole in the
7 back of the skull. This photograph also demonstrates the
8 fact that the bone breaks inward, and as it comes inward
9 toward the skull. In other words, if I have weapon-- if
10 my hand were a weapon and I was holding the skull up, I
11 would fire in this direction, the bone breaks inward, so
12 this is unequivocally a gunshot wound of entrance in the
13 back of the skull.

14 Q. Dr. Lindholm, is that like if you were to hammer a nail
15 through a piece of wood, for those people that have done
16 carpentry work? Where it goes in is smooth? What happens
17 on the back side?

18 A. Right. The back side where the nail comes out, you see
19 the wood splinter out and break away from the nail. Same
20 thing. Very simple. It works the same with a bullet
21 passing through bone. It breaks an open wedge in the
22 direction that it's traveling.

23 Finally, Exhibits 85 and 86 are set against a blue
24 background to show the back of the skull, and again, this
25 shows the inside as the bullet would be breaking through.

George Richard Lindholm - Direct (by Mr. Wetle)

1012.

1 It is an entrance wound in the back of the head.

2 In this particular case there are no more exhibits as
3 to exit because I couldn't find an exit and I couldn't
4 find the rest of the bone fragments to put the front of
5 the head together.

6 Q. If you want to hand-- order those, and also you could pass
7 that to Juror Number 6.

8 Dr. Lindholm, based on your autopsy of Nicholas Kaiser,
9 were you able to form an opinion within the bounds of
10 reasonable medical certainty as to the cause of death?

11 A. Yes.

12 Q. And what is that opinion?

13 A. I believe this individual died of a gunshot wound to the
14 head.

15 Q. Doctor, based on your autopsy of a person believed to be
16 Josh Schaefer, were you able to form an opinion within the
17 bounds of reasonable medical certainty as to the cause of
18 death?

19 A. Yes.

20 Q. And what is that opinion?

21 A. I believe this individual also died of a gunshot wound to
22 the head.

23 Q. And to any particular portion of the head?

24 A. The back of the head. One has to be just a little
25 careful, because in that particular individual I had a

George Richard Lindholm - Direct (by Mr. Wetle)

1013.

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substantial portion of head missing, the bone. One could alternately have additional entrances or exits in that area and wouldn't be able to say anything about it.

MR. WETLE: Thank you, Dr. Lindholm. I have no further questions, your Honor.

THE COURT: All right, Mr. Simeone?

MR. SIMEONE: Thank you, your Honor.

1 **GEORGE RICHARD LINDHOLM**

2 **CROSS EXAMINATION**

3 **BY MR. SIMEONE:**

4 Q. Good morning, Dr. Lindholm.

5 A. Good morning.

6 Q. How you doing?

7 A. Fine.

8 Q. Good. You didn't find a bullet among the remains that you
9 examined, did you?

10 A. No, I did not, and any areas where there was substantial
11 pieces that one might not see a bullet, I X-rayed. There
12 was no bullet recovered by myself from any of those
13 materials, and additionally, I examined some stool
14 material from animals and X-rayed it on the long shot I
15 might find a bullet, and I did not find a bullet from any
16 of the materials I examined.

17 Q. So you looked thoroughly, it's fair to say.

18 A. I did the best I could.

19 Q. And from what you know, the police scoured the area for
20 evidence of bullets, isn't that right?

21 A. They would have to testify to that. I'm not aware of how
22 they handled the search.

23 Q. You're not aware of any such thing, are you, that they
24 found any such evidence?

25 A. That has not been conveyed to me to this date if they did.

George Richard Lindholm - Cross (by Mr. Simeone)

1015.

1 Q. That's fine. And your conclusion is gunshot wound to the
2 head was cause of death, right?

3 A. That is correct.

4 Q. You have no conclusion as to where the death occurred?

5 A. That is also correct.

6 Q. And I am curious, can you be sure as to whether or not
7 there was a cause of death that preceded gunshot wounds?

8 A. That's a very good question, and scientifically speaking,
9 the answer is no. For example, suppose a person had been
10 stabbed in the chest multiple times, for the sake of
11 illustration. The person dies. Subsequently, for reasons
12 that I wouldn't understand, but subsequently if somebody
13 decides to make sure or something, and shoots them in the
14 head, it is theoretically possible then that the person
15 could already be dead and subsequently be shot after
16 death.

17 Q. Same analysis with regards to other cause of death, such
18 as oxygen deprivation or poison?

19 A. It would be-- I would consider it unusual. For example,
20 oxygen deprivation, if a person were smothered would be
21 one way. Another way would be drowned.

22 Q. Or poisoned?

23 A. Or poisoned. And then subsequently shot. It's hypotheti-
24 cally possible.

25 Q. But it's gunshot wounds that you see in the skull for

1 sure.

2 A. Definitely those are unequivocally gunshot wounds.

3 Q. Number of times the bullets-- Or number of bullets to the
4 head you wouldn't know either, would you?

5 A. I know that each sustained at least one gunshot wound. I
6 know it's possible that Mr. Kaiser sustained two gunshot
7 wounds. There could be multiple additional gunshot wounds
8 which would not show up in the materials because portions
9 of the skull of both parties are missing.

10 Q. Okay, so the answer here is at least one gunshot wound,
11 and we can't be certain as to more?

12 A. At least one gunshot wound to the head to each individual;
13 possibility of a second one to Nicholas Kaiser; cannot be
14 sure about whether more may or may not have existed.

15 Q. Got it. The direction of the shots, can you clarify for
16 me, for each individual?

17 A. I can clarify for Nicholas Kaiser. I know the entrance is
18 in the back of the head for one of the gunshot wounds. I
19 found a piece of frontal bone that's from the front of the
20 head. So for Mr. Kaiser, unequivocally one of the gunshot
21 wounds--or maybe there was only one--it goes from the back
22 to the front of the head.

23 For John Doe, the other party, I know unequivocally
24 there is an entrance in the back of the head. One may not
25 specify where that may have exited, if it ever exited,

1 because you don't have the exit wound, therefore, to
2 illustrate. It could theoretically go from back to front.
3 If the weapon were angulated-- And by the way, I'm
4 putting my finger up next to the skull. Do not-- I am
5 not implying that the muzzle of the gun had to be next to
6 the skull. But at any rate, if the bullet could come in
7 the back, and suppose the bullet angled in, it could come
8 out the side. If it was-- If the gun were angled up, it
9 could come out the top. And additional, angled the other
10 way, it could come out the opposite side. So all we know
11 with John Doe is that there is unequivocally an entrance
12 in the back of the head.

13 Q. Did you make a determination as to the angle of the line
14 of fire for Nick Kaiser?

15 A. No.

16 Q. Did you make a determination as to the angle of the line
17 of fire then for John Doe?

18 A. No.

19 Q. Could be--

20 A. The reason is important for the jurors to understand.
21 This is a mobile object. If the juror in the green
22 sweater wants to shoot me, shoot straight at me, one would
23 expect-- or shoot straight through the back. One would
24 expect the bullet to come and come out the front, perhaps.
25 But what if I turn my head like this? The juror could be

1 holding the exact same gun in the exact same position, and
2 it would come in here and go out here. Or if I was
3 leaning way back, in theory, it could come in the top of
4 my head and go out the bottom. So from an entrance wound
5 alone, or from an entrance and exit wound alone, you
6 cannot definitively reconstruct the scene. You need the
7 bullet to go through and get stuck in another object. And
8 once you have three points, then you can definitively
9 arrange the configuration. But without that third point,
10 you can't do a thing.

11 Q. Can't do it here?

12 A. Not here.

13 Q. Similarly, you touched upon a point that I wanted to raise
14 about the distance the shooter was from these victims.

15 A. Distance of gunshot wounds can be easily determined on
16 persons who have not been thermally charred or otherwise
17 altered. What happens is, especially in gunshot wounds to
18 the head, if the gun is up against the head, as the bullet
19 goes in gas goes in too. The bullet makes a hole in the
20 skull, but the gas goes underneath the skin. It rips the
21 skin around the edges. So you have like a star, it
22 appears, at the entrance. It's ripping skin. The skin at
23 the edges will be dirty gray from the gun powder. So the
24 contact gunshot wound, as it's called when the muzzle's
25 against the head, one can see that.

1 As one backs away from the target, the bullet will go
2 in and gunpowder will still reach the skin and leave
3 what's called a tattoo. It permanently imbeds itself in
4 the skin and will leave a permanent tattoo, if the person
5 lives. As one gets still further away, only the bullet
6 gets to the target. The powder doesn't, and you simply get
7 a hole with no tattooing and no splitting around the
8 edges, if you're shooting, for example, at a head that is
9 a target. So those are the features that are used when
10 you have an intact body.

11 Now, if you-- If the skin has been charred away, as
12 has happened here, the-- the skin is what you want to see
13 to determine the range of fire. Once in awhile, if you're
14 very lucky, the outside of the skull will get some gray
15 sooty material around it and you can tell then that it was
16 a contact wound because the soot was blown in as it split
17 the skin and stuck on the skull. But when the materials
18 have been burned, and there is darkening of some of the
19 materials around here, one cannot tell in that setting.
20 So categorically I do not know the range that the muzzle
21 of the weapon was from the head of either of these
22 individuals at the time the weapon was discharged.

23 Q. Similarly, Doctor, categorically you do not know the
24 caliber of the gun that was used in the shooting?

25 A. That's another forensic no no. You never try to estimate

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caliber of a weapon by the size of the hole. It is true that in general you can separate small caliber from large caliber, but it's not one to one and always perfect, so on the stand I would never attempt to estimate the caliber from the size of the hole in the bone.

Q. Similarly, and I'm sure I know your answer to this, you do not know who the shooter was, do you?

A. I wasn't there, I do not know.

MR. SIMEONE: I have no further questions. Thank you.

THE COURT: And Mr. Wetle, any redirect?

1 GEORGE RICHARD LINDHOLM

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Dr. Lindholm, if a person were lying on the ground face
5 down and were shot in the back of the head, and that
6 bullet exited, where would you expect the bullet to go?

7 A. If the party firing the arm (sic) was directly over the
8 person, or relatively over, fired into the back of the
9 head, one expects it to either remain in the head, or if
10 it does exit, to come out, relatively speaking, toward the
11 front side of the head.

12 Q. And then into the ground somewhere?

13 A. That would-- If the person is face down on the ground,
14 then the ground would be the area where the bullet would
15 lodge.

16 MR. WETLE: Thank you. I have no further questions,
17 your Honor.

18 MR. SIMEONE: Yes, I do, your Honor.

19 THE COURT: All right.
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1 **GEORGE RICHARD LINDHOLM**

2 **REXCROSS EXAMINATION**

3 **BY MR. SIMEONE:**

4 Q. If that were the case though, if we're using Mr. Wetle's
5 hypothetical and you're talking about a victim who's lying
6 down, face down, a bullet would lodge in the ground, isn't
7 that right, if there were an exit from the frontal lobe of
8 the skull?

9 A. That is exactly what I testified to. That if it went from
10 back to front, with the person face down, the bullet would
11 end up reasonably in the ground.

12 Q. You would expect and there would be remains of the bullets
13 found in the ground, wouldn't you, in that instance?

14 A. It might be possible with a metal detector to locate
15 remnants of a bullet.

16 **MR. SIMEONE:** Thank you. No further questions.

17 **WITNESS IS EXCUSED**

18 **THE COURT:** Mr. Wetle, you may call your next witness.

19 **MR. WETLE:** I'd call Dr. Frank Morgan, your Honor.

1 A. A certified forensic odontologist is one that is certified
2 by a board examination from the American Academy of
3 Forensic Sciences, which sponsors a board called the
4 American Board of Forensic Odontology. So it's passed by
5 certification by exam.

6 Q. And are you licensed as a dentist in the State of Washing-
7 ton?

8 A. Yes, I am.

9 Q. And, Doctor, what are your-- what is your professional
10 training?

11 A. I graduated from the University of Washington School of
12 Dentistry in 1969, and then went on and took extra
13 training in forensics after that.

14 Q. And did you attend the University of Washington and-- Oh,
15 I'm sorry. Yes. And to what professional organizations
16 do you belong?

17 A. I'm a member of the American Society of Forensic Odontolo-
18 gy and the American Academy of Forensic Sciences, and I'm
19 a member of the Diplomatic Board of-- American Board of
20 Forensic Odontology.

21 Q. And could you talk about--

22 MR. WETLE: And you may have to get closer to that
23 microphone, Dr. Morgan.

24 ADJUSTMENTS TO MICROPHONE

25 Q. With respect to the experience areas that you have worked

Frank Morgan - Direct (by Mr. Wetle)

1025.

1 in, could you talk about what groups you've been affiliat-
2 ed with since the late seventies, Doctor?

3 A. The same groups that I mentioned previously, the national
4 groups, and then also I work with the State Mass Disaster
5 Dental Identification Team in the State of Washington.

6 Q. And you work with the Medical Examiner in Spokane, and any
7 other local--

8 A. Yes, I'm the Chief Forensic Odontologist for Spokane
9 County.

10 Q. How many identification cases have you been involved in?

11 A. Somewhere around 225, 230 at this point.

12 Q. And have you qualified as an expert before in this area?

13 A. I have.

14 Q. And testified in court before?

15 A. Yes, I have.

16 Q. Generally, what leadership roles have you had in your
17 associations?

18 A. I was president of the American Society of Forensic
19 Odontology. I've been on their Board of Governors. I'm
20 currently on the Board of Governors of the American Board
21 of Forensic Odontology.

22 Q. And it says you're a diplomate on that board?

23 A. Yes, I'm a diplomate. That's what they call people that
24 are certified by the Board, are diplomates.

25 Q. Thank you, Dr. Morgan. On October 2nd, year 2000, did you

Frank Morgan - Direct (by Mr. Wetle)

1026.

1 receive an evidence package from Dr. Lindholm containing
2 the dental records of a person later identified as Nick
3 Kaiser?

4 A. Yes, I did.

5 Q. And I'd ask the bailiff to hand you what's been marked as
6 Exhibits 4 and 5, and I would ask if you could identify
7 those two sets of x-rays?

8 A. Yes, these are the two that came to me from Dr. Lindholm's
9 office.

10 Q. And how are they labeled?

11 A. One is labeled Nicholas Kaiser, dated 4/8/91, and Dr.
12 Robert Zimmermann's name is on it. The other is labeled
13 Nicholas Kaiser, dated 1/24/94.

14 Q. In the evidence package that Dr. Lindholm sent you, there
15 was more than just the x-rays labeled Nicholas Kaiser,
16 weren't there?

17 A. Yes.

18 Q. And what else did you get with respect to that evidence
19 package?

20 A. With the x-rays came two photographs. There were actually
21 four items in that envelope.

22 Q. Okay, and besides the photographs, did you get any
23 remains?

24 A. I did.

25 Q. And what did you get--

Frank Morgan - Direct (by Mr. Wetle)

1027.

- 1 A. I think, as I recall, there were seven bags of miscella-
2 neous remains that were recovered.
- 3 Q. And all seven bags were then delivered to your office?
- 4 A. That's correct.
- 5 Q. And what did you do with those items of evidence?
- 6 A. The first thing we do is we catalog those and take a look
7 in each bag and see what's there. There were some non-
8 dental structures, there were some dental structures, and
9 sometimes they send me the whole group of things so that
10 I can pick out the dental structures and deal with that.
- 11 Q. I'd ask the bailiff to hand you what's been marked as
12 Exhibit 73. This is a photograph that was taken by
13 Detective Paramore at Holy Family. Does that resemble the
14 nature of the items that you received in the seven
15 packages?
- 16 A. Yeah. I've never seen this photograph before. It's hard
17 for me to tell.
- 18 Q. Okay.
- 19 A. The ones that I received were segregated out of a group of
20 things, and I haven't seen this before.
- 21 Q. No, that's true. That was taken at Holy Family. I just
22 wondered if in your seven packages if that was similar to
23 the type of material you received.
- 24 A. Yes, it is.
- 25 Q. So as you start to go through that type of material, what

1 is your process?

2 A. The process is that I look for anything that's obviously
3 dental. Anything that has to do with the tooth-- teeth
4 or maxilla, which is the upper jaw, or the mandible, which
5 is the lower jaw. I then select those pieces out and
6 clean those pieces, and clean everything off so that I can
7 thoroughly examine what might be left. This is a burn
8 case, of course, and so some of the material can't be
9 cleaned as well as you'd like because it crumbles some-
10 times if it's been heat treated like that. So we do as
11 well as we can in separating out the dental material and
12 the facial material from the rest of the material that's
13 presented.

14 Q. So once you got the dental material separated out, what
15 were you able to do?

16 A. Once we get the dental material separated out and cleaned,
17 then we examine the material and chart whatever fillings
18 or restorations or identifying characteristics that might
19 be there. Abnormalities. People have abnormalities with
20 their teeth, and those become identifiers on the things
21 that we do. That's charted, and then we also x-ray
22 everything that we can.

23 Q. During that process, do you ever reconstruct the-- I
24 mean, I assume all the bones don't come in one piece.

25 A. Yeah, a lot of times bones don't come in one piece, and in

1 this particular case they didn't, and so we do have to
2 reconstruct what, in this case, the lower jaw as it would
3 be in life, so that we can take x-rays as though we were
4 in a dental office, to compare with those x-rays.

5 Q. And I'd ask the bailiff to hand you Exhibits 74 and 75.
6 These are also photos taken by Detective Paramore. And
7 those pictures have already been admitted, so the jury has
8 seen those. I would ask you whether those pictures
9 demonstrate the-- I guess the process you go through to
10 reconstruct?

11 A. Yes. These pictures demonstrate the fact that this lower
12 jawbone came in three different pieces to me, in three
13 different bags, and so as we identified that, then we
14 matched where those were split, and they were split in
15 such a way that you could put it back together just like
16 a puzzle.

17 Q. Could you hold those up--

18 A. Sure.

19 Q. --just to remind the jury what--

20 A. Sure. And what we do in this particular case, when we
21 reconstructed this, is we have a wax we call sticky wax.
22 It's very orange and a very sticky kind of a wax that
23 holds things together, but yet it can be separated if you
24 need it to be separated. And this demonstrates that
25 sticky wax as we put that on both sides to associate all

1 of those in the manner they would be in life.

2 Q. So that jaw would have come in three pieces?

3 A. It came to me in three pieces, yes.

4 Q. And it was reconstructed?

5 A. Yes.

6 Q. And what's the purpose for reconstructing the jaw?

7 A. Reconstructing it is so that we can take proper x-rays.
8 If you're in a dental office-- If you go to your dentist
9 right now, you'll find that you bite-- probably bite on
10 an x-ray. That's called a bite wing x-ray. Or you can
11 have another type where you could take just a single x-ray
12 of a tooth or a segment that goes deeper than the bite
13 wing x-ray, and that's called a periapical x-ray. And
14 what the object of this is is if we're going to compare
15 with an x-ray taken in life, is we have to recreate the
16 jaw as it was in life and then take an x-ray in a similar
17 manner so that we can then compare the two x-rays.

18 Q. And that's what you did in this particular process?

19 A. That's what we did in this case, yes.

20 Q. So after piecing the jaw together, Dr. Morgan, did you
21 then take x-rays of that particular jaw?

22 A. I did. We took x-rays of the upper and the lower.

23 Q. And, Dr. Morgan, during your professional experience, have
24 you had considerable experience in taking, developing and
25 interpreting x-rays?

Frank Morgan - Direct (by Mr. Wetle)

1031.

1 A. Yes, I have.

2 Q. And do you recall when you-- or where and when you made
3 the pictures, x-ray pictures, of this jaw?

4 A. It was on the day that they were brought to me, on October
5 2, 2000.

6 Q. And were these pictures made by you?

7 A. Yes, they were. I took the photographs.

8 Q. And does this x-ray film, what I believe is going to be
9 marked as State's Exhibit 101, truly and accurately
10 portray the jaw which it purports to show?

11 THE COURT: Well, let's--

12 MR. WETLE: Let's hand him--

13 THE COURT: --let him see it.

14 MR. WETLE: Yes. Exhibit 101.

15 THE COURT: The numbers are on the back, Doctor.

16 A. Okay, this would be 101.

17 Q. And I would ask you whether the x-ray films marked in
18 State's 101 truly and accurately portray the jaw in which
19 it depicts in that photograph?

20 A. They do. I did the bottom ones. These are the ones that
21 I took.

22 Q. Dr. Morgan, after you took the x-rays, from Exhibit 4
23 and-- After you had the x-rays from Exhibit 4 and 5,
24 which are the ones you got from Penn-- from Dr. Lindholm,
25 came from Dr. Zimmerman's office, and then you took x-rays

Frank Morgan - Direct (by Mr. Wetle)

1032.

1 of the jaw that you had created?

2 A. That's correct.

3 Q. And then what did you do with those small x-rays?

4 A. The small x-rays that I took?

5 Q. Yes.

6 A. I have a copy of those, and I believe I gave you a copy of

7 those.

8 Q. Okay, and then did you enlarge those x-rays at any time?

9 A. I did.

10 Q. And could you-- And what's represented on that particular

11 board?

12 A. On this particular board is represented x-rays. These are

13 x-rays that I received from Dr. Zimmerman.

14 Q. But did you take pictures of the x-rays?

15 A. I did not take pictures of the x-rays.

16 Q. What pictures--

17 A. These pictures were made from the x-rays being used as

18 negatives, so these are direct-- direct enlargements of

19 the x-rays themselves.

20 Q. And do those pictures or enlargements of those x-rays

21 truly and accurately depict the teeth at the time they

22 were taken?

23 A. They do. The only difference between this and an x-ray

24 you would see in a dental office is the fact that since

25 the dental x-ray was used as a negative, things come out

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black and white different. So a white filling will appear black on this, and the black and whites are reversed. But it is an accurate representation of the x-ray.

MR. WETLE: Your Honor, we'd offer State's Exhibit 101.

MR. SIMEONE: Is there any possibility-- Excuse me, your Honor.

1 FRANK MORGAN

2 VOIR DIRE EXAMINATION

3 BY MR. SIMEONE:

4 Q. Is there any possibility for variation in what you have--
5 Would you call that a positive, then?

6 A. I'd call this a positive, yes.

7 Q. Is there any possibility for variation in what you see in
8 the positive from the negative?

9 A. Not really. I worked in photography labs earlier in my
10 career, and whatever you use as the negative, as you
11 enlarge that, is-- represents what's on the negative. So
12 a negative and a positive, it wouldn't make any differ-
13 ence. The detail would be the same. Just the colors
14 would be reversed.

15 Q. Did you ever take the additional step of looking at the
16 actual x-ray negative and comparing it to the positive to
17 see if they look the same?

18 A. That's-- That's-- We always use the negative in our
19 comparison in our reports. For demonstration purposes we
20 do it this way. But no, they would be the same. There's
21 no reason why they shouldn't be the same.

22 MR. SIMEONE: I have no objection to the exhibit being
23 admitted, your Honor.

24 THE COURT: All right, Exhibit 101 is admitted.

25

1 FRANK MORGAN

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. I'd ask the bail-- You have Exhibit 102?

5 A. Yes, I do.

6 Q. Then I would ask if you could identify that?

7 A. Exhibit 102 is a display I put together to demonstrate how
8 we put the jaw together and the condition that I received
9 the material in.

10 Q. And do those photos substantially and accurately reflect
11 the scene at the time the photos were taken?

12 A. They do.

13 MR. WETLE: We'd offer Exhibit 102, your Honor.

14 MR. SIMEONE: No objection.

15 THE COURT: One-o-two is admitted.

16 Q. Dr. Morgan, I'd ask if you could step to the jury box, and
17 I'm not sure whether you would like-- You want to hold
18 those, or we can bring the easel out to hold them so you
19 can show the jury--

20 A. Might be better to use the easel.

21 Q. Thank you. So if you can bring the two exhibits?

22 EASEL IS SET UP

23 Q. With respect to Exhibit, I think, 102, Dr. Morgan, can you
24 show the jury what process you went through?

25 A. This is the material as I received it. This is the upper

1 jaw from looking at the front. You can see the material
2 has been burned in a lot of areas, but this is relatively
3 intact. In a lot of burn cases the material is intact
4 because-- actually the skin actually covers the teeth and
5 so even though the outside might be charred and burned,
6 the inside is relatively preserved, as you can see here.

7 This is the front jaw, the upper jaw, as it's looking
8 toward you. This is a picture of both the lower, as it
9 was reconstructed, from a biting view, so you can see
10 fillings associated with that. And this is the upper jaw
11 from the biting view so that you can see what the biting
12 view looked like.

13 On the lower part is the reconstruction of the lower
14 jaws from the left side. You can see the sticky wax I was
15 talking about here. This segment was bonded to this
16 segment. From the right view, the same is true. This is
17 the back segment. It was bonded to the front segment.
18 You can also see the significant burn marks that were on
19 the bottom, but yet the teeth are still preserved.

20 Q. Thank you, Dr. Morgan. And then with respect to Exhibit
21 101, the x-rays? Can you show the jury, and you may even
22 want to move that closer to them, if you need to, but for
23 general purposes can you show what you're attempting to
24 show in those--

25 A. _____ okay?

Frank Morgan - Direct (by Mr. Wetle)

1037.

1 Q. In that exhibit.

2 A. Generally, what we're trying to show here, these x-rays,
3 or these are prints of x-rays that were sent to me by Dr.
4 Zimmerman's office. These are dated, I believe, 4/8/91.
5 This is 1/24/94, and this one is also 1/24/94. The idea
6 is that I present up here what was presented to me as
7 antemortem, or as he were living, information. So as he
8 went in to the dentist they took x-rays. That's what we
9 call antemortem, or before death, x-rays.

10 Postmortem x-rays, of course, are taken in my office
11 then as I receive the fragments, then I take x-rays as
12 though it were in life, and these x-rays down here, these
13 prints of x-rays, then represent the x-rays that I took in
14 my office. So the idea of this chart is to show you some
15 correlations which I'll point out in a few moments between
16 fillings so that you can make the kind of comparisons you
17 need to to identify.

18 Q. Thank you, Dr. Morgan, and if you could then proceed to
19 show the things you look for to make comparisons.

20 A. Okay. The things that we look for in making comparisons,
21 Number One, are fillings. As you look at fillings, and
22 they appear black here as I explained, because this is a
23 positive of a negative, or a negative of a positive, I
24 guess. The idea is to look at fillings. Each filling has
25 a characteristic shape. You might have a lot of little

1 grooves that you have filled with a filling. You might
2 have a different depth in a filling where decay was. And
3 as a result, each filling takes a characteristic shape.

4 If you look at this filling, for example, right here on
5 Tooth Number 30, and I might say that teeth are numbered
6 in the United States, at least, from Number 1, which is
7 the upper right, goes around to Number 16, then Number 17
8 and goes around to Number 32. So if I'm talking about
9 Tooth Number 19 here, a dentist in New York is-- Tooth
10 Number 19 is the same tooth. It's a fairly common system
11 that we use here, standardized in the United States.

12 At any rate, on Tooth Number 30, which would be the
13 lower right, you see a kind of a characteristic shape, and
14 as you look at this--I'll just point at it with my
15 finger--you'll see kind of a wing up here with some
16 depressions and a little pointy part here. You'll see a
17 long straight part here. You'll see a nice smooth round
18 part here, and then it comes down into kind of a valley
19 with some different shapes. Those are the kind of shapes
20 we use to compare.

21 If you'll look down here at the x-rays that I took, the
22 postmortem x-rays, you'll find that we still have the same
23 wing, we have the same flat areas, we have the same
24 general roundness, we have the same valley, and basically
25 the shapes are identical. And part of the comparison,

1 sometimes if the x-ray direction is exactly right, you can
2 get a direct comparison and even make a tracing, which
3 I've done in these particular cases as part of my own
4 evaluation, and you can move the tracing so that it's
5 right over the other filling. And it's very easy to
6 demonstrate that that filling and that filling are the
7 same.

8 Now, what about the other fillings? If things are
9 going to be comparable, then the other fillings should
10 compare too, with no discrepancies. If you'll look at
11 Tooth Number 30 you'll see this filling is a little
12 shorter in this dimension. This particular x-ray didn't
13 capture all of that because I wasn't presented with a
14 whole picture; you just have to take what you're presented
15 at times. But you can see enough to see the projections,
16 to see the little indentations, the little mountains and
17 the little valleys that, as you get close to this, you can
18 see that they are comparable.

19 On the other side, on Tooth Number 19, maybe it's
20 better to demonstrate this one. You'll see there are two
21 lateral wings. There's a little hump here, and then
22 there's some depressions and valleys here. If you go up
23 here, as you look closely you'll find that those same
24 depressions and valleys are in there.

25 So the bottom line of that is we've got three teeth

1 here that have fillings that look exactly alike in life
2 and in death. And the other thing I might say that wasn't
3 on this chart was the fact that I did-- Since there were
4 two victims involved, and I didn't know the remains would
5 be from the same victim, we did put these two teeth in a
6 _____. You and I, when we bite together, we have a
7 certain way our teeth mesh. They only go together in one
8 way. In the same way you can put these two things
9 together, the upper jaw and the lower jaw, and they match
10 perfectly, so you know that they're both from the same
11 individual.

12 The other thing that was interesting to me is if you
13 look at the age, and I don't recall, I think the age was
14 maybe 21, 20, around that area?

15 Q. Mid-twenties.

16 A. This is consistent with wisdom tooth development which
17 comes in at 18, 19, 20, 21, so forth, so as I looked at
18 the x-rays and saw the wisdom tooth development, it's
19 consistent with the age of the victim.

20 Q. In terms of other identification, besides the fillings,
21 Dr. Morgan, are you able to discern other things from the
22 teeth and the gums and things that help identify, make a
23 comparison?

24 A. We can-- We can use items in bone, we can use condensing
25 bone, we can use all kinds of things like that, which I

Frank Morgan - Direct (by Mr. Wetle)

1041.

1 did not use in this case because they weren't comparable
2 with the material I was presented.

3 MR. WETLE: Thank you, Dr. Morgan. You can retake the
4 stand.

5 Q. Dr. Morgan, upon reviewing Nicholas Kaiser's-- Well,
6 actually, you didn't get a chance to see that. Would you
7 like to see Exhibit 6, which is the dental chart?

8 A. I would, yes.

9 Q. I'd ask the bailiff to hand you what's marked as Exhibit
10 6. Have you seen a copy of that, Dr. Morgan?

11 A. I have, yes.

12 Q. And what-- How would that particular dental chart aid you
13 in your examination-- or reaching your conclusion?

14 A. We had-- We had already reached our conclusion, because
15 I didn't receive this until just lately. But as we
16 received this I went through and I actually yellowed all
17 of the dental work that had been done, and the fillings
18 that were noted on this dental chart are exactly the same
19 areas of fillings that we noted on the postmortem materi-
20 al.

21 Q. Thank you. So, Doctor, upon reviewing his dental chart
22 and the x-rays from Dr. Zimmerman and the x-rays that you
23 made from the jaw found at the scene, were you able to
24 make a positive identification from the comparison of the
25 antemortem and postmortem information as to the identity

Frank Morgan - Direct (by Mr. Wetle)

1042.

1 of the remains?

2 A. Yes, I was.

3 Q. In your opinion, who was represented by the teeth present-

4 ed to you by Dr. Lindholm?

5 A. The material I was presented represents Nicholas Kaiser.

6 Q. And on what do you base that opinion?

7 A. From the dental comparisons, there are no discrepancies

8 here. The antemortem and postmortem information matches

9 exactly.

10 Q. Thank you, Doctor. Did you look at the other dental items

11 that were received from Dr. Lindholm?

12 A. Yes. I x-rayed the rest of the material to make sure that

13 I got all the dental items.

14 Q. And once you had taken out the Nicholas Kaiser remains,

15 did you have other remains left that-- to analyze?

16 A. I did.

17 Q. And did you attempt to do identification on those?

18 A. I did.

19 Q. And what happened?

20 A. The piece that I was handed was-- I didn't even hardly

21 recognize the teeth inside, but when we took x-rays we

22 found the teeth. We took the x-rays and the best dimen-

23 sion that we could as it were in life of these two

24 particular teeth, and one of them was a fragmented back

25 molar, probably a second molar. It was one of the upper

1 ones on the upper right or the upper left, and also there
2 was a complete tooth right behind that, so I would say, in
3 what we had discussed, it was 1 and 2 or 15 and 16, those
4 teeth. That's the only dental structures that I found in
5 the remaining material.

6 Q. And from that you conclude that there were at least two
7 people involved?

8 A. Yes.

9 Q. Were you able to make any identification based on that
10 material?

11 A. Nothing that I would say is positive, but I would probably
12 classify it as possible. I was supplied an x-ray also
13 from Dr. Lindholm's office of the other victim, and it was
14 a panorex x-ray, which is a large-- large x-ray. It's
15 not a small singular x-ray like this, and there really
16 wasn't enough information that I could say yes, those two
17 teeth belong to that x-ray. But, in fact, there was a
18 root curvature that was correct, and there were some other
19 structures that looked like they'd be correct. So I'd say
20 it was consistent with the x-rays that I saw, but I
21 wouldn't be able to say it's a positive identification at
22 all.

23 Q. And just for the record, those other x-rays were of who?

24 A. I think Josh Schaefer.

25 Q. Josh Schaefer.

Frank Morgan - Direct (by Mr. Wetle)

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A. Uh-huh.

MR. WETLE: Thank you very much, Dr. Morgan. I have no further questions, your Honor.

THE COURT: All right, Mr. Simeone?

MR. SIMEONE: Yes, thank you.

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FRANK MORGAN

CROSS EXAMINATION

BY MR. SIMEONE:

Q. Dr. Morgan, good morning.

A. Good morning, sir.

Q. You can't positively identify the second specimen, can you?

A. Not positively, no.

Q. Can you positively identify from what you saw that it's male or female?

A. I cannot.

Q. Do you know of any evidence to the effect of whether it's male or female?

A. I don't. I wasn't supplied any information either.

MR. SIMEONE: Thank you. I have no further questions.

THE COURT: All right, Mr. Wetle, any redirect?

MR. WETLE: No, your Honor.

WITNESS IS EXCUSED

COURT REQUESTS COUNSEL TO MEET IN CHAMBERS

COURT RECESSED

Frank Morgan - Cross (by Mr. Simeone)

1046.

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COURT RECONVENED WITH THE JURY SEATED

THE COURT: Mr. Wetle, you may call your next witness.

MR. WETLE: Thank you, your Honor. We'd call Sergeant Caruso.

WITNESS IS SWORN

THE COURT: If you'll start by giving us your full name, please, and spell your last name for the record?

MR. CARUSO: James B. Caruso, C-A-R-U-S-O.

THE COURT: Thank you, and your current business address?

MR. CARUSO: 215 South Oak, Colville, Washington.

THE COURT: Thank you, and, Mr. Wetle, you may inquire.

MR. WETLE: Thank you, your Honor.

JAMES B. CARUSO

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Could you please state your occupation for the court and the jury?

A. I'm a Sergeant with the Stevens County Sheriff's office.

Q. And how long?

A. I've been a Sergeant for two and a half years.

Q. And how long have you been involved in law enforcement?

A. Started in 1994 in the City of Brewster, here in Washington. Lateraled over as a road deputy to Stevens County.

James B. Caruso - Direct (by Mr. Wetle)

1047.

1 Promoted to Detective, and thereafter promoted to Ser-
2 geant.

3 Q. Did you have occasion to go to the Crown Creek cabin to
4 look for evidence on October 2nd, year 2000?

5 A. Yes, I did.

6 Q. I'd ask the bailiff to hand you what's been marked as
7 Exhibit 16, and I'd ask if you can identify what's in
8 Exhibit 16?

9 A. Without opening it, it-- it's labeled as a bank card and
10 insurance paperwork. And it's for a John Grange.

11 Q. Miscellaneous papers?

12 A. Uh-huh.

13 Q. And are they in substantially the same condition as when
14 you seized them?

15 A. Yes, they are.

16 MR. WETLE: And, your Honor, we'd offer Exhibit 16.

17 THE COURT: All right, if you'll show those to Mr.
18 Simeone. You want to open them, Mr. Simeone?

19 MR. SIMEONE: I think so. Do we need to rip it?

20 COURT AUTHORIZES COUNSEL TO OPEN PACKAGE

21 MR. SIMEONE: May I voir dire the witness, your Honor?

22 THE COURT: Yes, you may.

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JAMES B. CARUSO

VOIR DIRE EXAMINATION

BY MR. SIMEONE:

Q. The location where these were found, Sergeant?

A. In the Crown Creek cabin, in one of the downstairs living areas.

Q. And in this condition, substantially?

A. Yes.

Q. What I'm talking about, but I mean particularly, I see some cards here that are apparently ripped in half.

A. Correct.

Q. And a credit card that appears to be broken in two?

A. Yes.

Q. Is that the condition in which you found those items?

A. The exact condition.

MR. SIMEONE: I have no objection, your Honor.

THE COURT: All right, Exhibit-- I'm sorry, what was that number?

MR. WETLE: Sixteen, your Honor.

THE COURT: Sixteen is admitted.

1 JAMES B. CARUSO

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Sergeant Caruso, I'd ask if you could take Exhibit 16,
5 step to the jury box, and show the jury what you found in
6 the Crown Creek cabin.

7 A. This is a Eubank check card, cut in half when we found it,
8 and it is-- The name on that, it's hard to read here, but
9 it does say John D. Grange. It's a VISA.

10 THE COURT: You want to just pass it around, Sergeant,
11 instead of--

12 MR. CARUSO: Should I do that?

13 THE COURT: Yeah, just start it with this juror here,
14 and then--

15 MR. CARUSO: Okay.

16 Q. Just hold it up and identify it and then pass it.

17 A. Okay. This is also-- it's torn in half. It's a State
18 Farm policy insurance card. It's handwritten, effective
19 date of January 7, 2000, expires June 19, 2000, for John
20 Grange. Policy number on that.

21 This is an Oregon insurance card, also for a John
22 Grange, torn in half, insuring a 1993 Dodge Intrepid, and
23 the date on that is also January 7, 2000, effective to
24 June 19, 2000.

25 Then there are four pieces of paper here. These were

James B. Caruso - Direct (by Mr. Wetle)

1050.

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in the same general vicinity as those items. I'm not really sure, I believe that one of them said Dodge on it. Since the one card did say Dodge Intrepid, we took that. This was in the same pile as these items that you see here, and it's just basically four pieces of paper on a notice of transaction submitted with the Oregon Department of Motor Vehicles.

THE COURT: Mr. Wetle, would you be so kind as to hand the sack up to Juror Number 14, and then he can put them all in there when he gets them all?

MR. WETLE: Thank you, Sergeant Caruso. I have no further questions.

THE COURT: Actually, I guess we need to make sure they make it through the back row there too. Excuse me. No further questions?

MR. WETLE: Yes.

THE COURT: All right, Mr. Simeone, any questions of this witness?

MR. SIMEONE: Yes, I do, your Honor.

1 JAMES B. CARUSO

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Sergeant Caruso, where exactly in the cabin were those
5 items located?

6 A. They were located on the main floor, as you walk in the
7 main floor to the left, so it would be a south-- I
8 believe it was a southwest location. I don't know if you
9 can call it a bedroom or what, but it was somewhat of a
10 living area.

11 Q. Main floor to the left, so you think that would be south-
12 west?

13 A. Yeah, you go forward toward the back of the house, and
14 turn left. Not-- If you were to turn left immediately
15 you'd go into a kitchen area.

16 Q. Right.

17 A. Past that there was a room back there.

18 Q. Farther away from the kitchen area?

19 A. Correct.

20 Q. Were they in a garbage can?

21 A. No, I don't believe they were. I think they were on a--
22 like a-- a dresser-type area.

23 Q. Do you know--

24 A. It was quite a mess in there.

25 Q. In your investigation, has there been any dispute that

James B. Caruso - Cross (by Mr. Simeone)

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you're aware of that Mr. Grange stayed in that Crown Creek cabin on occasion?

A. No.

Q. As a result of any of these items of evidence, do you have any further proof of his involvement in the incident resulting in the death of these boys?

A. No.

MR. SIMEONE: Okay, thank you. I have no further questions at this time.

THE COURT: Mr. Wetle, any redirect?

MR. WETLE: No, your Honor.

WITNESS STEPS DOWN

THE COURT: You may call your next witness, Mr. Wetle.

MR. WETLE: Call Brian Nehring.

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WITNESS IS SWORN

THE COURT: State your name into that microphone, please.

MR. NEHRING: My name is Brian Nehring.

THE COURT: And, sir, if you would spell your last name for the record?

MR. NEHRING: N-E-H-R-I-N-G.

THE COURT: And your current business address, sir?

MR. NEHRING: 1301 Clay Street, Oakland, California.

THE COURT: Thank you. Mr. Wetle?

MR. WETLE: Thank you, your Honor.

BRIAN NEHRING

Being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. WETLE:

Q. Good morning, Mr. Nehring. Could you please state for the court and the jury your occupation?

A. I'm a special agent with the Drug Enforcement Administration.

Q. And how long have you been so employed?

A. Approximately ten years.

Q. And has all of that been in the Oakland area, or do you-- transferred around?

A. Yes, in the San Francisco division.

Q. Could you give the court and the jury your background with

Brian Nehring - Direct (by Mr. Wetle)

1054.

1 respect to narcotics investigation?

2 A. Well, I've been a DEA Agent for ten years. I attended the
3 DEA training academy in Quantico, Virginia, the FBI
4 Academy. I've attended numerous federal and state
5 training classes over the last ten years. I've authored
6 over 300 search warrants, specifically for narcotics.
7 I've executed over a thousand search warrants, buy a lot
8 of dope, arrest a lot of people.

9 Q. On February 9th, year 2000, did you execute a search
10 warrant for a residence in Oakland?

11 A. Yes, I did.

12 Q. And what were the circumstances leading up to the execu-
13 tion of that warrant?

14 A. For approximately a year prior to that warrant we'd been--
15 my group, my enforcement group in San Francisco, had been
16 conducting an investigation in the LSD trafficking activi-
17 ties of an individual named Jerry Ashworth. During the
18 course of that investigation Mr. Ashworth was subsequently
19 indicted for conspiracy to distribute LSD in the eastern
20 district of Virginia, the D.C. area. We subsequently
21 identified a location in Oakland where we believed he was
22 living and conducting his LSD trafficking activities, and
23 I obtained a warrant for that residence.

24 Q. Based on that information?

25 A. Based on that information, yes.

Brian Nehring - Direct (by Mr. Wetle)

1055.

1 Q. And at that time there was a warrant outstanding for him,
2 as well?

3 A. There was a federal warrant out for his arrest for LSD
4 trafficking at that time, yes.

5 Q. Do you have any background in terms of his associations,
6 people that he was association-- in association with down
7 there?

8 A. ~~Well, during the course of that investigation we spoke to~~
9 several informants, competent sources, who identified
10 various people that Mr. Ashworth was trafficking LSD to
11 throughout the country, and we-- Most of these people
12 were identified by nicknames. Some of those people we
13 actually identified by their true identities. And we
14 determined that he was mailing LSD to numerous states
15 throughout the United States, New York, Florida, Michigan,
16 and that Mr. Ashworth was primarily living in the San
17 Francisco Bay area, the Washington, D.C. area, and going
18 back and forth between Hawaii and the Portland area.

19 Q. Did you have any mailings going into the Portland area?

20 A. Some of the informants we-- Some of the competent sources
21 that we spoke to indicated that the acid that Mr. Ash-
22 worth's associates was mailing to them, some of those
23 ~~packages had Portland postmarks.~~

24 Q. Who are the people that are involved? What type of people
25 are we talking about?

Brian Nehring - Direct (by Mr. Wetle)

1056.

1 A. ~~We call them tour kids, because these--~~ It's a group of
2 people, a loose association of people that basically
3 follow all the different festivals and concert tours, and
4 make-- meet people, make relationships, they go to
5 concerts like Mountain-air Festival for their tour, Fish
6 Festival, Reggae by the River, and they basically just
7 travel around and finance their travels through the sales
8 ~~of LSD.~~

9 Q. So you--

10 A. We call them tour kids.

11 Q. They're what?

12 A. We call them tour kids.

13 Q. And is it-- Is it confined to LSD, or are there other
14 drugs that they're involved with as well?

15 A. These individuals were also dealing in-- according to our
16 sources of information and some of the things that we
17 seized, were dealing in primarily LSD, but also marijuana,
18 supposedly called _____ marijuana, and psilocybin mush-
19 rooms, some Ecstasy.

20 Q. Agent Nehring, could you tell the jury what happened as
21 you proceeded to execute the warrant at 1540 34th Street
22 in Oakland?

23 A. Prior to us executing the warrant, we were briefing the
24 group that was going to execute the warrant when our
25 surveillance units observed three people exit the resi-

Brian Nehring - Direct (by Mr. Wetle)

1057.

1 dence. We proceeded to the residence and stopped those
2 people as they were standing on the sidewalk in front. We
3 detained them, and then we entered the residence, found no
4 other individuals inside.

5 Q. Who were the three people that were detained?

6 A. The three people were identified as Michael Watkins,
7 Joshua Schaefer, and Kimberly Kerpin, and Ms. Kerpin had
8 a small child with her at the time.

9 Q. What did you do after they were detained?

10 A. We searched the residence.

11 Q. And what did you find?

12 A. During the search of the residence we located a large
13 amount of glassware and equipment and chemicals consistent
14 with a methamphetamine laboratory located throughout the
15 residence in a downstairs walk-in closet and an upstairs
16 closet, and items pretty much strewn throughout the
17 residence that were consistent with a methamphetamine
18 laboratory. In one upstairs bedroom that contained
19 indicia in the name of Mr. Watkins and Mr. Ashworth,
20 paperwork, we located a large amount of blotter paper, LSD
21 blotter paper.

22 Q. What is blotter paper?

23 A. Blotter paper is a carrier medium that's utilized to-- to
24 measure out a dosage unit of LSD. It's basically fiber
25 paper that you immerse in a solvent that contains LSD

Brian Nehring - Direct (by Mr. Wetle)

1058.

1 that's suspended in that solvent, and the blotter paper
2 will absorb the LSD and then they dry the blotter paper
3 and then you got, you know, like a sheet, a thousand count
4 sheet, a thousand hits.

5 Q. So if you take-- Does the blotter paper-- Is it cut off
6 or peeled off, or how does it--

7 A. It's perforated. Basically it's kind of cut, but you can
8 tear it, long strips, 'cause it's been perforated into
9 little squares. There's various kinds of mediums used for
10 distributing LSD. Blotter paper's the most popular one,
11 but we also see what we call microdots. Small, little
12 tiny things of magnesium styrate and milk flour, and we
13 see gelatin tablets, which are _____ suspended in a
14 gelatin that's been hardened and cut up. Those are the
15 three most popular forms.

16 Q. So if you get one of these little strips of blotter paper,
17 how long would that strip be, usually?

18 A. It depends. People make-- will make their own blotter
19 paper. There's no set size. Most of these-- We're
20 talking about squares that are very tiny, like a, you
21 know, a couple centimeters by a centimeter wide. But I've
22 seen really big sheets and really small sheets.

23 Q. Okay, and what do you do when you get those little-- What
24 do you do with the little squares?

25 A. Well, you ingest them and, you know, put them on your

1 tongue and you get acid in your system and then you're
2 high.

3 Q. So it comes from the paper?

4 A. Yes. The LSD is absorbed into the paper.

5 Q. So you're going through the residence and you find blotter
6 paper and--

7 A. We found four-- forty 1000 count sheets of blotter paper
8 in a lock box in an upstairs bedroom, along with several
9 ___ glass and plastic vials that contained liquid that was
10 consistent with what we believed to be LSD. That was in
11 a room that contained indicia in the name of Mr. Watkins
12 and Mr. Ashworth. In the room immediately to the right of
13 that we located additional blotter paper and additional
14 little plastic vials, they're like breath mint vials or
15 Visine vials that contained liquid, and in that room we
16 found indicia in the name of Mr. Schaefer and Ms. Kerpin.

17 Q. Did you find any LSD in their rooms? ___ blotter pa-
18 per?

19 A. Blotter paper and the vials contained liquid. All those
20 items were subsequently submitted to the DEA Western
21 Regional Laboratory in San Francisco, and they pretty much
22 all tested positive for the presence of LSD.

23 Q. Okay, after you searched the residence, what did you do?

24 A. I placed all three individuals under arrest for violation
25 of the California Health and Safety Code, 11.378, which is

Brian Nehring - Direct (by Mr. Wetle)

1060.

1 possession of a controlled substance for sale, and
2 11.379.6, which is manufacture of methamphetamine. And
3 then I had those individuals, three individuals, trans-
4 ported to our Oakland resident office while I processed
5 the meth lab and seized all the evidence.

6 Q. At that day or a later time, were you able to obtain a
7 statement from Josh Schaefer?

8 A. I was present when a statement was taken from Mr. Schaefer-
9 er, and I spoke to him at length, yes.

10 Q. Do you recall what Mr. Schaefer said about Mr. Ashworth?

11 A. ~~Mr. Schaefer stated that he had observed Mr. Ashworth in~~
12 possession of large quantities of LSD crystal in the past,
13 and that the LSD in the house belonged to Mr. Ash-- was
14 supplied by Mr. Ashworth.

15 Q. That was found in his bedroom?

16 A. Yes.

17 Q. Okay.

18 A. And Mr. Schaefer stated that he had purchased marijuana
19 and LSD from Mr. Ashworth previously for resale.

20 Q. How about mushrooms?

21 A. He stated that he did obtain mushrooms from him too,
22 ~~psilocybin mushrooms.~~

23 Q. And those items were obtained for what purpose?

24 A. For resale.

25 Q. ~~What would a gram of crystal LSD be like in terms-- if~~

Brian Nehring - Direct (by Mr. Wetle)

1061.

1 you were to describe that to the jury. Does it come as
2 a-- Is it a lump of something, is it a powder? Is it--
3 What do you mean when you're talking one gram of crystal
4 LSD?

5 MR. SIMEONE: Your Honor, I'm going to object to this
6 whole line of testimony as irrelevant.

7 THE COURT: It is getting a little bit far afield, Mr.
8 Wetle. Relevance?

9 MR. WETLE: Just to let the jury understand what a gram
10 of crystal LSD is, which was found at the residence, your
11 Honor.

12 MR. SIMEONE: I don't think it has anything to do with
13 this case. That's my objection.

14 MR. WETLE: This is where Mr. Schaefer was living, and
15 his paramour, Kim Kerpin, and this is the basis for
16 giving-- them giving a statement, and the repercussions
17 from cooperating.

18 THE COURT: Well, all right, I'll allow this question,
19 but I don't want to get too far off on this tangent
20 because of time constraints, Mr. Wetle.

21 MR. WETLE: Okay. The only other-- I was going to do
22 that question, your Honor, and then what the value of that
23 gram would be. Those are my two questions.

24 ^{The Court} MR. WETLE: Well, ask this question first, and then
25 we'll see if there's an objection to your next one.

1 MR. SIMEONE: There will be.

2 THE COURT: All right, go ahead with this question
3 first. Restate this question.

4 Q. How would you describe a gram of crystal LSD, Mr. Nehring?

5 THE COURT: What was the question?

6 Q. How would you describe a gram of crystal LSD?

7 MR. SIMEONE: I'm going to object as to ambiguous.
8 What does he mean, describe as in terms of its chemical
9 structure, describe in terms of its strength, or-- There
10 should be some narrowing down of that question.

11 THE COURT: Yes. What are you getting at, Mr. Wetle?

12 Q. How would that gram of crystal LSD be packaged?

13 A. Well, a gram of LSD comes in various forms, but most of
14 the time anybody that's trafficking in that large amount
15 of LSD, crystal LSD is a-- Well, it's crystal by its very
16 nature. Normally it will come in a vial. Most people
17 won't want to buy LSD that's already been diluted in
18 liquid because you never know what you're getting. They
19 want to actually see the powder. So if you say I'm going
20 to buy a gram of crystal, you want to see crystal. So
21 they'll usually come in a plastic or-- I've seen it in
22 black film canisters or in brown glass vials that con-
23 tained white crystalline powder. And value, is that what
24 you're--

25 Q. Yes. And the next--

Brian Nehring - Direct (by Mr. Wetle)

1063.

1 MR. WETLE: Wait, wait.

2 MR. SIMEONE: Wait, there's a new objection to that,
3 your Honor.

4 THE COURT: Hold on. Pardon?

5 MR. SIMEONE: Objection as to the relevance of that
6 same objection.

7 THE COURT: Mr. Wetle?

8 MR. WETLE: Your Honor, I think it's-- I don't know
9 how-- I would-- I don't-- The jury knows how-- what
10 we're talking about when we're talking about a gram of
11 crystal LSD, and I thought that with this background--

12 THE COURT: True, but your question about the value,
13 the relevance is what?

14 MR. WETLE: The question as to value goes to what's at
15 stake in this business. I mean are we talking a \$25 hit,
16 are we talking \$50 hits? Why do people care, why do
17 people get murdered, why do they have to enforce silence
18 in the ranks? And that all goes to the importance of what
19 we're talking about in terms of this industry.

20 THE COURT: All right. Mr. Simeone, anything further?

21 MR. SIMEONE: Same objection.

22 THE COURT: All right, objection is overruled and you
23 may answer the value question.

24 A. Right now the value of a gram of LSD is anywhere between
25 four thousand to \$8,000. A gram of LSD will generate,

Brian Nehring - Direct (by Mr. Wetle)

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1 once it's distributed out onto either blotter or gel
2 tabs-- A gram of decent quality LSD will-- could be
3 stretched out to either 10,000 or 20,000 hits of blotter
4 paper. Somewhere around 9,000 to 18,000 hits of gel. And
5 each one of those-- If sold at wholesale, you're talking,
6 you know, a buck a hit, so you're talking anywhere from
7 ten thousand to \$20,000 wholesale from that gram. But
8 each individual hit-- you know, you're talk-- If you're
9 talking about--

10 Q. Well, wait a minute.

11 A. --being distributed street level, you're talking about--

12 Q. I'm sorry. The one gram would go to how much wholesale?

13 A. Well, if you sold it-- One gram of LSD would be distrib-
14 uted out into-- would generate 10,000 to 20,000 hits of
15 blotter paper. That's generally accepted, from all the
16 people I've talked to.

17 MR. SIMEONE: Your Honor, I'm going to object as non-
18 responsive. I think Mr. Wetle's question was what was the
19 gram of LSD worth wholesale.

20 MR. WETLE: And what does that break down to street
21 value.

22 THE COURT: Well, your question, though, was what is it
23 worth wholesale, so if you could answer that question
24 first.

25 A. Wholesale, a gram of just crystal LSD, as I said, is

Brian Nehring - Direct (by Mr. Wetle)

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1 anywhere between 4,000-- I've heard of it up to 10,000,
2 but usually it's between 4,000 and \$8,000.

3 Q. And what would you reasonably expect that gram to generate
4 in terms of retail?

5 A. Retail? Right now--

6 MR. SIMEONE: Your Honor, I'm going to object here
7 again. I think it becomes farther afield. They're
8 talking about apparently a wholesale operation, so I don't
9 understand what the connection is to his line of testimo-
10 ny.

11 THE COURT: Overruled. He may answer.

12 A. Right now an individual hit of LSD, at least in the San
13 Francisco Bay area, is usually around \$5 a hit, so you
14 figure 10,000 to 20,000 times five, you're talking
15 anywhere from, you know, half a million to a million. Is
16 that right? No, that's not right.

17 Q. Hundred thousand--

18 A. I mean 50,000 to 100,000.

19 Q. If you had 20,000 at \$5 a hit, that'd be 100,000.

20 A. Yeah, that's-- No one single individual realizes all
21 that profit, but yeah, that's what it ends up generating.

22 Q. For one gram?

23 A. ___ quality, yeah.

24 Q. And that was found at that Ashworth residence?

25 A. Well, we found what we-- We found quite a-- When we

Brian Nehring - Direct (by Mr. Wetle)

1066.

1 spoke to Mr. Schaefer, he said he observed Mr. Ashworth in
2 possession of gram quantities. We found 40,000 hits of
3 blotter paper. Some of it was treated, some of it wasn't,
4 but all the vials contained acid in liquid solution, that
5 they were treating the blotter paper with.

6 Q. Then, Agent Nehring, what happened on February 10th in
7 2000 with respect to Mr. Watkins?

8 A. The United States Attorney in the Eastern District of
9 Virginia obtained an arrest warrant for Mr. Watkins for
10 conspiracy to distribute LSD as a result of the items that
11 we located in the residence, and Mr. Watkins waived his
12 identity hearing and was transported back to Virginia to
13 face the federal charges, LSD charges.

14 Q. What happened to Mr. Ashworth?

15 A. Mr. Ashworth is still a federal fugitive right now.

16 Q. He was not at the residence and nor was he arrested?

17 A. He wasn't arrested, and he's still at large.

18 Q. How was Mr. Schaefer's name used in that prosecution?

19 A. Well, the statements that were obtained from Mr. Schaefer
20 and Ms. Kerpin were utilized in the complaint to obtain
21 the arrest warrant by the U. S. Attorney, and during
22 subsequent discovery leading up to Mr. Watkins pleading
23 guilty--

24 Q. When you talk about subsequent discovery, what do you
25 mean?

Brian Nehring - Direct (by Mr. Wetle)

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A. ~~The reports, the statements that Mr. Schaefer and Ms. Kerpin~~ gave following my arrest of them was turned over by the United States Attorney to Mr. Watkins and Mr. Watkins' attorney during the course of the court proceedings against him.

Q. So they could see what Mr.-- or Josh Schaefer and Kim Kerpin stated?

A. ~~I believe so, yes.~~

MR. WETLE: Thank you very much, Agent Nehring. I have no further questions, your Honor.

THE COURT: Mr. Simeone?

1 BRIAN NEHRING

2 CROSS EXAMINATION

3 BY MR. SIMEONE:

4 Q. Hi, Agent Nehring. How are you doing?

5 A. Fine, thank you.

6 Q. How long were you with the DEA now?

7 A. Coming on ten years.

8 Q. Is the DEA getting tired yet of attacking the supply side
9 of the equation in its war on drugs?

10 A. What? I don't understand what you're saying.

11 Q. I'll strike the question. This is a San Francisco
12 investigation, primarily, that you're relating to the
13 jury, isn't it?

14 A. My end of it is. Excuse me, that's kind of loud. My end
15 of it is, but it stretches all over.

16 Q. But your-- the investigation that we're talking about
17 here that's centered on Mr. Ashworth, that was a San
18 Francisco based kind of investigation, wasn't it?

19 A. San Francisco and Washington, D.C.

20 Q. And Washington D.C.?

21 A. Yes.

22 Q. That would be distinct from Portland, is that correct?

23 A. Yes.

24 Q. Okay. Now, you're talking about some packages that you
25 recovered when you were doing your undercover work, and

Brian Nehring - Cross (by Mr. Simeone)

1069.

1 they-- Did they ever-- Do you remember that part of
2 your direct examination?

3 A. No.

4 Q. Did people testify that they had seen some addresses on
5 different packages or different mailing envelopes or
6 something like that in your investigation?

7 A. People didn't testify. We were informed by various
8 sources of information.

9 Q. Okay, informed, not testified.

10 A. Yeah.

11 Q. Did you ever specifically get any names on those packages
12 or on those labels that you recovered that led to any
13 further hits?

14 A. I don't think I understand the question.

15 Q. Well, did that lead to any further investigation that was
16 fruitful?

17 A. I really can't discuss that right now.

18 Q. Okay. Nevertheless, your testimony is that your-- your
19 arrest there led to Josh Schaefer, correct?

20 A. My arrest led to Josh Schaefer?

21 Q. Well, your original investigation led you to Joshua
22 Schaefer. Correct?

23 A. Yes. Well, he was arrested during execution of the search
24 warrant, yes.

25 Q. Right. Did he give you Nick Kaiser's name?

Brian Nehring - Cross (by Mr. Simeone)

1070.

1 A. No.

2 Q. Did John Grange's name ever surface in the course of your
3 investigation into the Ashworth matter?

4 A. No, not to my knowledge.

5 Q. You're aware of a group referred to as the Rainbow Family?

6 A. I've heard the name, yes.

7 Q. Have you investigated into it or its workings?

8 A. When you say investigated into the Rainbow Family, I mean
9 I've investigated people that I've been told were associ-
10 ated with those folks.

11 Q. Okay, it's an organization that might have people associ-
12 ated with it that you've investigated? Is that right?

13 A. When you say investigated, I've talked to people about
14 folks that were associated with that.

15 Q. Did you ever investigate the Rainbow Family as an entity
16 though, itself?

17 A. No.

18 Q. Okay, so you-- Do you have any awareness or knowledge of
19 whether or not the Rainbow Family has given affiliations
20 in different parts of the country?

21 A. When you say given affiliations, you mean like--

22 Q. Local organizations of the-- or local-- locals of the
23 Rainbow Family around the country.

24 A. No. The people that I've spoke to that have identified
25 people as being associated with those folks have told me

Brian Nehring - Cross (by Mr. Simeone)

1071.

1 various locations that those particular people lived
2 around the country. But I've never been told-- If your
3 question to me is have I ever been told that they're--
4 the Rainbow Family is given associations to--

5 Q. The local-- Local groups of the Rainbow Family around the
6 country.

7 ~~THE COURT:~~ Would you restate your question, Mr.
8 Simeone. I'm having trouble understanding.

9 MR. SIMEONE: I'm sorry. It's got a little bit changed
10 over the course of the exchange.

11 Q. Are there local branches, I guess is one way of talking
12 about it in a very mundane way. Are there local branches
13 or affiliate groups of the Rainbow Family around the
14 country?

15 A. Well, there's people that are supposedly associated with
16 the Rainbow Family all over the country, but I don't--
17 you know, when you say branches, you make it sound like
18 there's a bank. But I mean there's just people--

19 Q. Okay.

20 A. --that are associated with this family all over the place.

21 Q. Well, that's-- That basically answers my question. You
22 can't talk about the Rainbow Family then as an integrated
23 kind of an organization, can you, from your knowledge?

24 A. I'm not trying to be difficult, but I-- I just don't
25 understand what you mean by integrated.

Brian Nehring - Cross (by Mr. Simeone)

1072.

- 1 Q. Is it one group that's organized around this country? I
2 don't know how to make it any clearer. I'm sorry. Maybe
3 I'll try again if you don't understand--
- 4 A. My understanding is that these are people that work
5 together, but when you say a group, you know, it's--
6 They're structures as there are in any drug trafficking
7 organization as far as the source of supply, traffickers,
8 people that distribute. But I-- I-- We've never
9 investigated it as a group, a particular group.
- 10 Q. Because is it-- Are you-- You're not an expert then in
11 issues regarding the Rainbow Family, and I gather that
12 from our questioning here.
- 13 A. Well, an expert's just somebody that knows more than the
14 average person, so I guess I do know more than the average
15 person, but I'm not an expert on the organization of the
16 Rainbow Family, no.
- 17 Q. Okay, well, if that's the case then, you will agree that
18 the Rainbow Family has more than just one objective than
19 drug distribution, won't you?
- 20 A. That's the only end I was ever interested in.
- 21 Q. Well, your-- I think your testimony was that the people
22 you knew, or the people you've investigated, may have been
23 affiliated, or you knew some people that may have been
24 affiliated with, isn't that right?
- 25 A. Well, when you say somebody's affiliated with, there's not

1 a roster they put out, it's--

2 Q. That's basic--

3 A. Even with the Hell's Angels, you say that guy's a Hell's
4 Angel--

5 Q. Okay.

6 A. --but it's not like they publish a magazine and say hey,
7 we're all Hell's Angels, you know.

8 Q. Okay, that's basically my question. It's not so-- It's
9 not so well defined a group as to say the people are
10 members, isn't that right?

11 A. I wouldn't say that. I mean say--- You know, people say
12 he's part of the Rainbow Family, but nobody-- there's not
13 a "notarized certificate" saying this guy's an official
14 member of the Rainbow Family. It's just during the course
15 of these various investigations, people would say this
16 individual's associated with these people, this individ-
17 ual's associated with these people. And that's basically
18 the extent of it.

19 Q. Okay, and some of those people might be Rainbow Family
20 members who are involved in the drug trade, is that right?

21 A. Yes.

22 Q. And some might be Rainbow Family individuals who aren't
23 involved in drug trade, isn't that right?

24 A. Well, the only people that I talk to are talking about
25 people in the drug trade.

Brian Nehring - Cross (by Mr. Simeone)

1074.

- 1 Q. So you get-- I mean we're starting from the standpoint--
2 You get to your result first, and they might be associated
3 or affiliated with the group, because the people you're
4 investigating are drug related people.
- 5 A. Correct.
- 6 Q. And they might be associated with the family?
- 7 A. Yes.
- 8 Q. Okay, but you-- What I'm getting at here is you can't say
9 that everybody who's affiliated with the Rainbow Family is
10 a drug related individual, or drug--
- 11 A. No, I couldn't say that, no.
- 12 Q. Okay. It took a long time to get to that. None of the
13 information you garnered as a result of your various
14 investigations have associated-- or has associated Mr.
15 Grange with individuals called-- named Rob Schultz, have
16 they?
- 17 A. No.
- 18 Q. Has the name Shadow been linked to Mr. Grange and your
19 investigation?
- 20 A. I never investigated Mr. Grange.
- 21 Q. Okay, have those names come across your screen? Rob
22 Schultz?
- 23 A. No.
- 24 Q. Shadow?
- 25 A. No.

1 Q. Okay, you haven't investigated into them or their drug-
2 related-- or any alleged drug-related activity?
3 A. No.
4 Q. Okay. Do you work hand in hand with Officer Cummings,
5 Agent Nehring?
6 A. No.
7 Q. You don't really know what he does in a given-- You don't
8 know what his work involves, basically?
9 A. Which officer are you talking about?
10 Q. Agent-- Special Agent Sean Cummings.
11 A. From Spokane?
12 Q. Yeah. Do you paths cross at all?
13 A. I've spoken with him, yes.
14 Q. Are you aware of his investigation regarding an individual
15 named Gabe?
16 A. No. I haven't spoke to him about that, no.
17 Q. Okay, are you aware of an investigation in the San
18 Francisco area regarding an individual named Gabe?
19 A. Not in the San Francisco area, no.
20 Q. Are you aware of whether or not as a result of any
21 information Mr. Schaefer gave you or the government, any
22 arrests in the San Francisco area resulted?
23 A. No.
24 Q. Are you aware of whether or not as a result of any of your
25 investigation or--

Brian Nehring - Cross (by Mr. Simeone)

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1 A. Well, actually, can I go back to that question?
2 Q. Yeah.
3 A. One of the reasons the U.S. Attorney back in the Eastern
4 District of Virginia went ahead and got an arrest warrant
5 for Mr. Watkins was somewhat based on the statements that
6 Mr. Schaefer gave following his arrest.
7 Q. But that's Virginia.
8 A. Yeah, but he was arrested in San Francisco. I mean you
9 asked me if they arrested anybody in San Francisco. He
10 was arrested in the Bay area and transported back to
11 Virginia.
12 Q. How about the same question with regard to a Nicholas
13 Kaiser?
14 A. If any statements that Mr. Schaefer gave--
15 Q. Right.
16 A. --resulted in--
17 Q. Or no, any statements that Mr. Kaiser gave. Did they
18 result in any arrests at all?
19 A. I don't know.
20 Q. Are you aware of any plots for the demise of Mr. Schaefer
21 as a result of any information he gave you?
22 A. No.
23 Q. Same question regarding Mr. Kaiser?
24 A. I don't know Mr. Kaiser. I know what's occurred subse-
25 quently, but I never investigated Mr. Kaiser.

Brian Nehring - Cross (by Mr. Simeone)

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MR. SIMEONE: I think that's all the questions I have
for the witness. Thank you.

THE COURT: All right, Mr. Wetle?

MR. WETLE: Thank you, your Honor.

1 BRIAN NEHRING

2 REDIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Agent Nehring, you said that the indictment was issued--
5 the federal arrest warrant was issued on February 10,
6 2000. Do you know the date that Michael Watkins pled
7 guilty to conspiracy to distribute LSD?

8 A. ~~I know it was in October, 2000. I don't know the exact~~
9 ~~date. Well, I think maybe he was sentenced in October.~~

10 Q. ~~That's true. That's when he was sentenced.~~

11 A. ~~All right, yeah. I think he was sentenced in October, but~~
12 ~~I-- Oh, he pled guilty in April. That was it, April,~~
13 ~~2000, and he was sentenced in October last year.~~

14 Q. ~~Okay, that's correct. You don't happen to remember the~~
15 ~~day in April?~~

16 A. No, I don't.

17 Q. Okay.

18 MR. WETLE: Your Honor, we have that date in the offer
19 of proof that was submitted to the court earlier.

20 THE COURT: Well--

21 MR. WETLE: Could I show that to him to refresh his
22 memory as to what day in April?

23 THE COURT: I don't think that would refresh his memory
24 if it's generated by you, Mr. Wetle.

25 MR. WETLE: That's true, your Honor. May I approach

1 the witness, your Honor?

2 THE COURT: Yes.

3 Q. I hand you a report that you submitted to the U. S.
4 Attorney's Office respecting this particular case, and
5 having-- Can you identify that report?

6 A. This report was generated by Task Force Officer Thomas
7 Garrity of the Washington-- or Washington Division office
8 that assisted me in this investigation.

9 Q. And having reviewed that report, does it refresh your
10 memory as to the exact date that Mr. Watkins pled guilty
11 in Virginia?

12 A. Yes, it does.

13 MR. SIMEONE: Wait a minute, your Honor. I'd like to
14 voir dire the witness--

15 THE COURT: All right.

16 MR. SIMEONE: --and I don't really like the whole
17 procedure here.

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1 BRIAN NEHRING

2 VOIR DIRE EXAMINATION

3 BY MR. SIMEONE:

4 Q. Did you know of independent information that you had
5 before what date it was, or are you relying upon what you
6 see there?

7 A. I was told before by Task Force Officer Garrity, but I
8 didn't remember the exact date. I knew it was in April.
9 He called me and said hey, the guy pled guilty, and I was
10 contacted again in October saying he's being sentenced.

11 Q. But if it were not for the date that you see on the paper
12 there, would you know what day that was now?

13 A. Now?

14 Q. Right.

15 A. Probably not, no.

16 NOON SIREN GOES OFF

17 Q. We know it's 12:00 o'clock.

18 A. But I'll probably forget it later.

19 Q. But would you know without looking at that paper what day
20 it was?

21 A. Honestly, probably not, no.

22 MR. SIMEONE: Your Honor, it's not past recollection
23 refresh, you know, it's-- Or it's past recollection--
24 what it is is he's using the paper. He's using an old
25 writing to testify, and it's not just refreshing memory.

Brian Nehring - Voir Dire (by Mr. Simeone)

1081.

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THE COURT: Sustained. You want to go on with the past recollection recorded, Mr. Wetle? I don't know if it falls under that one, but it doesn't qualify under past-- under the refreshing of the recollection.

MR. SIMEONE: I don't think it qualifies, your Honor. We can cut short that argument because I don't think it's his recording.

THE COURT: Maybe it isn't. Is it-- Is it this witness's recording?

MR. WETLE: This witness's recording? I don't think--

THE COURT: This witness's report?

1 BRIAN NEHRING

2 CONTINUATION OF DIRECT EXAMINATION

3 BY MR. WETLE:

4 Q. Agent Nehring, you did not write that particular state-
5 ment? Was that in your report or was it--

6 A. No, I contacted Task Officer Garrity, and I actually made
7 a notation of the date the guy got-- the guy pled and the
8 guy got sentenced. But this is his report. I didn't--
9 This isn't a report I generated, no.

10 Q. In any of your reports there do you recall writing down
11 the date that he actually pled guilty?

12 A. Not in these reports. I mean I took notes when I talked
13 to him on the phone, because I have to generate reports
14 later on when I close this case. Sometime. That, you
15 know, what dates these guys-- And he told me the exact
16 dates that he pled and that he was sentenced, but I don't
17 remember now.

18 Q. Without--

19 MR. SIMEONE: Same objection, your Honor. It's not his
20 report. I think we're treading on dangerous ground if we
21 continue the voir dire.

22 THE COURT: Well, I already sustained your objection on
23 the recollection refreshed exception. It doesn't apply.
24 So anything else, Mr. Wetle?

25 MR. WETLE: Your Honor, I was under the understanding

Brian Nehring - Redirect (by Mr. Wetle)

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1 that we had admitted this under the 801 rule under in
2 furtherance of a conspiracy, under the pre-trial offer of
3 proof. I could hand the court that document.

4 THE COURT: No, not the-- Not the particular date.
5 We're talking about the generalized information, but the
6 particular date has to-- you know, whatever the informa-
7 tion is has to come out on the witness stand.

8 MR. WETLE: Okay.

9 Q. Agent Nehring, to the best of your recollection, you can
10 only know that he pled guilty in April based on your own
11 knowledge?

12 A. Yes.

13 MR. WETLE: I have no further questions, your Honor.

14 Q. Oh, that was April of 2000?

15 A. Correct.

16 MR. WETLE: I have no further questions.

17 THE COURT: And Mr. Simeone--

18 MR. SIMEONE: I have no further questions.

19 THE COURT: --any cross?

20 MR. SIMEONE: No further questions of the agent. Thank
21 you, your Honor.

22 THE COURT: All right, thank you, Agent Nehring. You
23 may step down, and thank you for your testimony. And is
24 this witness free to be excused then?

25 MR. WETLE: Yes, Your Honor.

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THE COURT: All right, then, it is the noon hour, as we heard by the noon whistle. Counsel, would you be ready to resume at 1:10, say?

MR. WETLE: One-fifteen?

THE COURT: One-fifteen? All right. Then, ladies and gentlemen, we'll have you recess until 1:15. No discussion about the case, no looking at news reports, listening to the radio, et cetera. Very important reminders to you. No discussions at all or any kind of review of media coverage. All right? Court will be at recess until 1:15.

COURT RECESSED FOR LUNCH

1084-A