

STATE OF MICHIGAN

IN THE 22nd CIRCUIT COURT FOR THE COUNTY OF WASHTEENAW

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff

Case No. 04-2017 FC

v

GARY EARL LEITERMAN,
Defendant

JURY TRIAL CONTINUED

BEFOR HONORABLE DONALD E. SHELTON, CIRCUIT COURT JUDGE

Ann Arbor, Michigan - Wednesday, July 20, 2005

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Ann Arbor, Michigan

Wednesday, July 20, 2005 - at 8:07 a.m.

JUDICIAL ATTORNEY: --Donald E. Shelton

presiding.

THE COURT: Bring in the jury.

JUDICIAL ATTORNEY: All rise to the jury, please.

THE COURT: Please be seated. I understand it

was a little complicated finding parking this morning.

9 But, I think it's under control now. Welcome. Good
10 morning. Are you ready to proceed?

MR. HILLER: Yes, Your Honor.

THE COURT: Call your next witness.

MR. HILLER: Ken Rochell

14 THE COURT: Sir, face the clerk, raise your right
15 and and be sworn.

MR. ROCHELL: I do.

COURT CLERK: Have a seat right up there.

20 (At 8:09 a.m., witness sworn in by clerk)

DIRECT EXAMINATION

22 THE COURT: State and spell both your first and
23 last names.

24 THE WITNESS: Kenneth Rochell. Kenneth, K-E-N-N-
25 E-T-H. Rochell. R-O-C-H-E-L-L.

1 THE COURT: Okay. Prosecutor.

2 MR. HILLER: Thank you, Your Honor. Good
3 morning.

4 THE WITNESS: Good morning.

5 BY MR. HILLER:

6 Q Please tell us by whom you're employed.

7 A I'm employed by the State - Michigan State Police.

8 Q In what capacity, sir?

9 A Detective Sargent.

10 Q How long have you been a police officer for the State of
11 Michigan?

12 A Approximately 19 years.

13 Q And how long have you been a Detective Sargent?

14 A Approximately--I'm going to say six years.

15 Q What's your assignment, Sargent Rochell?

16 A I'm currently assigned to Region 2, Criminal Investigation
17 Division, LAWNET Major Case Team and also Dignitary
18 Protection, Governor Security detail.

19 Q Sargent Rochell, have you conducted any investigation in
20 connection with the murder of Jane Mixer?

21 A Yes, I have.

22 Q Particular on November 23, 2004, did you have occasion to
23 participate in the execution of a search warrant on a home
24 in Gobles, Michigan?

25 A Yes, I did.

1 Q And, do you recall the address of that home?

2 A The address is 28495 Northern Bluff Drive, Gobles,

3 Michigan - Van Buren County.

4 Q And is it your understanding that that's the home of the

5 defendant, Mr. Leiterman?

6 A Yes.

7 Q During the search of Mr. Leiterman's home, did you find a

8 composition book?

9 A Yes, I did.

10 Q And where did you find that book?

11 A That composition book was located in the garage area of

12 the residence stored in a burgundy milk crate.

13 Q And, did there appear to be writing in the composition

14 book?

15 A Yes, it was. (sic)

16 Q Did you also find a spiral notebook?

17 A Yes, I did.

18 Q Where did you find that?

19 A That notebook was located in the master bedroom closet.

20 Q I'm going to show you people's proposed exhibit number 49.

21 Let me ask you if you recognize that.

22 A Yes.

23 Q What do you recognize that as?

24 A The composition book that I found in the garage of the

25 residence.

1 Q There are some loose pages here in the front of the book.
2 Were those pages loose when you found it?

3 A Not that I recall.

4 Q On those pages there are laboratory report number and
5 initials, are those yours?

6 A No, sir.

7 Q Other than those changes, does this appear to be in the
8 same conditions?

9 A Yes.

10 MR. HILLER: Your Honor, I'd move to the
11 admission of People's Exhibit #49.

12 THE COURT: Any objection?

13 MR. GABRY: Yes, Your Honor we'd objection and
14 without some foundation relayed that that document has
15 been identified as a known writing. My understanding and
16 in reviewing the reports that I've received from the
17 Michigan State Police that it's an assumption that this a
18 known writing.

19 THE COURT: Well that's a factual matter if it
20 was found in his garage. The jury can decide if it was
21 his or not. It's overruled. It's admitted.

22 BY MR. HILLER:

23 Q Let me show you Sargent Rochell a three-ring binder
24 containing a series of photographs that's been marked
25 collectively as people's proposed exhibit 51. Take a look

1 at that please and tell me if you recognize those being
2 photographs or anything that you've seen before.

3 A Yes, I do.

4 Q Where have you seen--well, first of all, what are those
5 photographs of?

6 A They appear to be the Stockwell notebook--spiral notebook
7 that I found in the master bedroom closet.

8 THE COURT: Appear to be what?

9 THE WITNESS: The spiral notebook.

10 THE COURT: Okay.

11 THE WITNESS: The Stockwell.

12 BY MR. HILLER:

13 Q And, are those photographs collectively a fair and
14 accurate representation of the notebook as you found it?

15 A Yes.

16 MR. HILLER: Your Honor, I'd move for the
17 admission of--I'm sorry, what's the number on that?

18 THE WITNESS: 51

19 MR. HILLER: --People's exhibit 51.

20 THE COURT: Let me see that.

21 MR. HILLER: Do we have something double-marked?
22 Your Honor, we're going to need to re-mark that. Sargent
23 Rochell, I'm going to re-mark this People's 65.

24 THE WITNESS: Okay.

1 MR. HILLER: And, Your Honor, I'd move for the
2 admission of 65.

3 MR. GABRY: Please the Court, Your Honor, I'm
4 going to object to the admission of people's proposed
5 exhibit 65. This is obviously a re-creation of something
6 the Court has heard testimony of. This isn't the original
7 spiral notebook. This notebook was in the custody of
8 Michigan State Police--retained in their custody.
9 Apparently they have lost it. We retained an expert. We
10 ask for and are able to obtain the same documents that
11 their expert relied upon in forming an opinion and when
12 asked to receive that and review the same thing that he
13 reviewed, we get Xeroxed copies. We believe, Your Honor,
14 that this is highly prejudicial. It's a re-creation of
15 something that they maintained in their custody and I
16 think the defendant is highly prejudice by not having the
17 original.

18 THE COURT: Is there going to be any expert
19 testimony that you have or that prosecution is going to
20 introduce that it makes any difference whether we're
21 looking at photograph or the original?

22 MR. GABRY: Well, the prosecutor's own report to
23 me on looking at an original photograph of the original
24 phonebook makes a statement that--

25 THE COURT: No, I'm talking about this exhibit.

1 MR. GABRY: Well, our expert is going to indicate
2 that certainly there's a difference in looking at a
3 photograph than it is of an original as it pertains to pen
4 stroke, pen pressure, ink flow, things of that nature.

5 THE COURT: Prosecutor?

6 MR. HILLER: Your Honor, first of all, the fact
7 that the phonebook--or that the spiral notebook is missing
8 is a result of inadvertence and in fact it went missing
9 during the procedure of providing the discovery to defense
10 counsel. So, it was not the result of any intentional
11 action to hide or destroy evidence in this case. It was
12 an oversight.

13 THE COURT: When were these photographs taken?

14 MR. HILLER: Those photographs were taken by
15 Lieutenant Riley at the State Police laboratory. I can't
16 tell you an exact date. But, they are high quality
17 photographic images of this notebook and they are--

18 THE COURT: Who's going to offer expert testimony
19 as to the handwriting comparison?

20 MR. HILLER: Lieutenant Riley.

21 THE COURT: All right. I'm going to withhold my
22 ruling on the admission until I hear the expert testimony.
23 relating to whether comparisons can be made based on
24 photographs.

25 MR. HILLER: Thank you, Your Honor.

1 BY MR. HILLER:

2 Q Sargent Rochell, as part of your investigation did you
3 also have occasion to obtain a DNA sample by buckle swab
4 from a man identified to you as Tim Leiterman?

5 A Yes, I did.

6 Q And, when and where did that take place?

7 A That took place on May 12, 2005. I drove to 528 West
8 Chicago Street in Coldwater, Michigan.

9 Q And what did you do with that buckle swab when you had
10 collected it?

11 A I brought it back to the Michigan State Police Post where
12 I turned it over to Detective Sargent Moore.

13 Q Did you also have occasion to--during the search of the
14 defendant's home, did you come upon a newspaper article
15 from 1967 bearing a photograph of the defendant?

16 A Yes, that was when the search warrant was being served on
17 December 14, 2004 at approximately 12:12 p.m.

18 Q I'm going to show you people's proposed exhibit 44. Do
19 you recognize that?

20 A Yes, I do.

21 Q What is that?

22 A It's a newspaper article. It appears to be in the Saline
23 Reporter dated December 13, 1967.

24 Q And does it show a picture of a person who's identified as
25 Gary Leiterman?

1 A Yes, it does.

2 MR. HILLER: Your Honor, I'd move for the
3 admission of people's proposed exhibit 44.

4 THE COURT: Let me see. Any objection?

5 MR. GABRY: Just object as to the relevance, Your
6 Honor.

7 THE COURT: Response?

8 MR. HILLER: Well, Your Honor, the relevance
9 shows the appearance of the defendant much closer to the
10 time of this event and he appears here in court today.
11 Also, the captain of the photograph does show his address.

12 MR. GABRY: Then Your Honor, we're getting into a
13 hearsay issue in addition to that. But, as far as
14 relevance certainly I could understand if Mr. Hiller had
15 witnesses from 1969 that were describing an individual
16 matching certain description that was seen with Jane
17 Mixer. We've certainly heard nothing to that extent. So,
18 I just don't see how it's relevant.

19 THE COURT: Well, with regard to the address I
20 think there already is some testimony I think with regard
21 to the firearms purchase of the Saline address. I'll
22 allow the photograph in merely to show the defendant's
23 physical appearance given the other testimony about the
24 circumstances of this event. I'll allow that to show the

1 defendant's physical appearance at the time of the alleged
2 incident.

3 MR. HILLER: Thank you, Your Honor.

4 THE COURT: 44 is admitted.

5 BY MR. HILLER:

6 Q Sargent Rochell, did you also have occasion to obtain a
7 blood sample from a person in the Michigan Department of
8 Corrections that you identified as John Ruelas?

9 A Yes, I did.

10 Q And, when and where did that take place?

11 A June 20, 2005 at approximately 11:00 a.m. I drove to
12 Carson City Correctional Facility, located in Carson City,
13 Michigan - Macomb County.

14 Q And did you--did you collect a blood sample from Mr.
15 Ruelas?

16 A When we--yes, when we arrived there we were escorted to
17 the on-site medical facility.

18 Q And what did you do with the blood sample once you had
19 collected it?

20 A It was transported back to the Michigan State Police post
21 in Ypsilanti where I logged it into evidence and placed it
22 inside of the locked evidence refrigerator.

23 Q And eventually was that transported to St. Joseph Mercy
24 Hospital for ABO blood testing?

25 A Yes, it was.

1 MR. HILLER: Your Honor, defense counsel and
2 myself have entered into a stipulation regarding the
3 results of that if I may read that to the jury at this
4 time.

5 THE COURT: Yes.

6 MR. HILLER: Parties hereby stipulate that if--
7 that a blood sample collected--parties hereby stipulate
8 that a blood sample of John Ruelas, collected by Detective
9 Sargent Kenneth Rochell of the Michigan State Police was
10 tested by technologist at the St. Joseph Mercy Hospital
11 Transfusion Services Unit in Ann Arbor and found to be
12 blood type A positive. If I may approach, Your Honor.

13 THE COURT: Is that your stipulation, Mr. Gabry?

14 Mr. Gabry: It is, Your Honor.

15 THE COURT: Ladies and Gentleman as with the
16 other stipulations you may consider this as evidence in
17 the case.

18 BY MR. HILLER:

19 Q Now, Sargent Rochell, did you also--well, first of all,
20 are you familiar with the photograph of the phonebook with
21 the words Mixer, Muskegon that's in evidence in this case?

22 A Yes, I am.

23 Q And did you try to find a--a--an actual copy of that
24 edition of the phonebook?

25 A Yes, I did.

1 Q And for what purpose were you trying to do that?

2 A To obtain a copy so that the handwriting exemplars could

3 be obtained from Gary Leiterman.

4 Q And when you say exemplar what do you mean by that?

5 A The--for the writing that's on the phonebook to be the

6 same proportions of the phonebook back in 1968 or in 69 at

7 the time will have the same size and so forth.

8 Q What did you do to try to find a copy of the phonebook?

9 A I contacted the Ann Arbor Public Library in which I found

10 a copy in the reference section.

11 Q And, do you recall what year that phonebook was?

12 A It was dated December 1968.

13 Q The photograph or the front of the phonebook, did it

14 appear the same as what is shown in the photographs that

15 we have had admitted here today or here during this trial?

16 A Yes, it was the same front cover of the phonebook.

17 Q What did you do once you had found a copy of this

18 phonebook?

19 A I made a Xerox copy of it and also I measured the

20 thickness, the length and width of the phonebook.

21 Q Did you make just one Xerox or did you make several?

22 A I made several Xeroxed copies of this phonebook.

23 Q Approximately how many?

24 A Maybe four or six, I think. Something like that.

25 Q Did--what did you do with those?

1 A I transported those back to the Michigan State Police Post
2 in Ypsilanti where I turned those over to Detective
3 Sargent Moore.

4 MR. HILLER: Thanks, Your Honor. I don't have
5 any further questions.

6 THE COURT: Cross-examination.

7 CROSS EXAMINATION

8 BY MR. GABRY:

9 Q Detective Rochell, what areas did you search in the
10 Leiterman property when you went out on the 23rd of
11 November 2004?

12 A 2004 in November it was the garage area and the master
13 bedroom and also the--in the basement of the residence I
14 searched also.

15 Q You did search down in the basement area?

16 A That is correct.

17 Q Do you recall seeing a desk that had a lot of fly-time
18 equipment on it?

19 A Yes I do.

20 Q Are you certain that they--the book you claim was in the
21 garage wasn't in fact right there on the top part of that
22 desk?

23 A I'm one hundred percent positive.

1 Q This photo of this phonebook you were able to track down,
2 did you maintain a copy--maintain that? Do you have that
3 with you?

4 A No, I did not take that from the library.

5 Q Did you try to? Did you ask if you could use it so we
6 could see it?

7 A No I did not.

8 Q Pardon me?

9 A No, I did not.

10 Q So, what we basically have then are covers--copies of the
11 cover of the phonebook that you saw out at what library
12 was it?

13 A Downtown Ann Arbor library.

14 Q Now, were you involved in the measuring and the weighing
15 of it and attempting to locate similar size and weight
16 phonebooks?

17 A I measured the phone book. It measured 9 inches wide, 11
18 inches long, $\frac{3}{4}$ inches thick. I measured the phonebook,
19 yes.

20 Q Did you see the phonebooks that were ultimately acquired
21 that copies of the front of the '68 phonebook were placed
22 on - if that made any sense?

23 A I did not obtain those phonebooks. Detective Sargent
24 Moore obtained those phonebooks.

1 Q So, you didn't get a chance to see if those phonebooks
2 matched the same quality of the one you saw in the library
3 with size or anything like that?

4 A No, I didn't.

5 MR. GABRY: Nothing further, Your Honor.

6 THE COURT: Further questions?

7 RE-DIRECT EXAMINATION

8 BY MR. HILLER:

9 Q The dimensions of the phonebook, did you also pass those
10 along to Sargent Moore?

11 A Yes, I did.

12 MR. HILLER: Nothing further.

13 THE COURT: Anything further?

14 MR. GABRY: No, Your Honor.

15 THE COURT: You may step down. You are excused,
16 sir.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MR. HILLER: George Harvey. Step right around
20 there.

21 THE COURT: Sir, face the clerk, sir. Face the
22 clerk. Raise your right hand.

23 COURT CLERK: So you solemnly swear or affirm to
24 tell the truth, the whole truth and nothing but the truth?

25 MR. HARVEY: Yes, I do.

COURT CLERK: Have a seat over there.

(At 8:34 a.m. witness sworn in by clerk)

3 THE COURT: Sir, state and spell both your first
4 and last names.

5 THE WITNESS: George G-E-O-R-G-E. Kenneth Harvey
6 H-A-R-V-E-Y.

7 THE COURT: Thank you. Prosecutor?

DIRECT EXAMINATION

9 BY MR. HILLER:

10 Q Thank you.

11 Sir, in what community do you live at this time?

12 A I live in Allogen, Michigan.

13 Q Where did you grow up?

14 A I grew up in Saline, Michigan.

15 Q Are you related to Gary Leiterman?

16 A Yes, I am. Gary's my cousin.

17 Q Do you see him in court?

18 A Yes, I do.

19

MR. HILLER: Point to him please.

20 THE WITNESS: Right there with the mustache.

21 MR. HILLER: Your Honor, may the record reflect
22 the identification of the defendant.

23 THE COURT: he did.

24 BY MR. HILLER:

1 Q Now, how is he your cousin? What's the actual
2 relationship?

3 A His mother is my Aunt Ruth. She's my father's sister.

4 Q Did you know Gary when you were growing up?

5 A Yes.

6 Q Were you familiar with his family--his immediate family?

7 A I was familiar mostly with my aunt, his mother. They
8 were--I don't know at what age Gary was when my aunt and
9 Gary's father were divorced but--but, my aunt is probably
10 my closest relative.

11 Q Do you know Tim Leiterman?

12 A I knew--I've met Timmy a couple of times but I do not know
13 him. I don't know of his whereabouts now and--

14 Q Who is Tim Leiterman?

15 A Tim is Gary's brother--half brother.

16 Q So, is it your understanding that Tim and Gary have the
17 same father?

18 A It's my understanding.

19 Q As far as you are aware, does Gary Leiterman have any
20 other brothers by his father?

21 A I--I knew Pete. But I--to be honest I don't know exactly
22 what the familiar relationship was. I--I--you know, that
23 was just not somebody that I saw very often - maybe three
24 times as a child.

25 Q Pete's last name was not Leiterman?

1 A I don't know - I thought it was.

2 Q Back in early 1969, did you live with Gary Leiterman for a

3 time?

4 A A short time, yes.

5 Q About how long?

6 A I would say I was still in Ypsilanti on New Years Day and

7 I think sometime thereafter I helped the guys I was living

8 with sublet my section of the apartment so I'm guessing

9 second or third week of January. I don't know when I--I

10 helped them secure a new renter as the semester began and

11 I was there with Gary--at Gary's house I believe until

12 about Mid-March. I'm not exactly sure of the dates. It

13 was just--it was a long drive and I moved out about Mid-

14 March I believe.

15 Q And where was that house?

16 A Wayne Westland area. I don't remember exactly the

17 address. I know I went down Michigan and turned left on

18 some big road. I don't know what it was called anymore by

19 the Ford Plant and went north a couple miles or so into

20 the subdivision. I don't remember the names of the

21 streets.

22 Q When you say Michigan are you referring to US-12, Michigan

23 Avenue?

24 A Yes.

1 Q Now you've indicated that Gary's mom was your closest
2 relative?
3 A Right. Other than my dad.
4 Q Back then where did she live?
5 A She lived on Fosdick Road - about 6980 actually.
6 Q 6980?
7 A Close to it. I was 6975.
8 Q And was that also off Michigan Avenue?
9 A Yes, near the corner of State Road and Michigan.
10 Q Would that have been a Saline mailing address?
11 A Yes.
12 Q (INAUDIBLE) people's exhibit number 44 asking you if you
13 recognize the person, the man in that photograph?
14 A Yeah, I guess that's Gary Leiterman - it is.
15 MR. HILLER: Mr. Harvey, I know it's been
16 difficult for you to come in here this morning. Thank
17 you, very much. I don't have any further questions.
18 THE COURT: Cross-examination?
19 CROSS EXAMINATION
20 BY MR. GABRY:
21 Q Thank you, Your Honor.
22 Mr. Harvey, what do you do now?
23 A Retired schoolteacher.
24 Q In the Allegon School District?

- 1 A No, I worked for Saline for two years and then Gobles
2 Public Schools for 29.
- 3 Q So, is Gobles somewhere close to Allegon?
- 4 A It's south of Allegon, north of Paw-Paw.
- 5 Q How long have you lived over in that area?
- 6 A Since August 14, 1974.
- 7 Q How frequently would you be in contact with Gary Leiterman
8 when you were younger before you started your college
9 years?
- 10 A Pretty much holidays only. Although my dad would
11 occasionally visit there and I would see him occasionally.
12 But, mostly--especially after I'd say my aunt remarried my
13 uncle that we would get together on holiday's - Christmas
14 especially but Thanksgiving, sometimes both.
- 15 Q So, when you were--around that time of your life, Mr.
16 Leiterman wasn't living with his mother?
- 17 A Not that I'm aware of. But, you know--I don't know
18 exactly how of--I mean he was there sometimes and we had
19 other extended family members--other cousins and they
20 would be sometimes at my--at my grandparents, sometimes I
21 would see Gary at his mom's, and occasionally we did visit
22 Gary and his dad.
- 23 Q Okay, as you--you graduated from what high school?
- 24 A Saline High School.
- 25 Q And, did you attend Gary's high school graduation?

1 A No.

2 Q Did he go to Saline High School?

3 A No.

4 Q Did you know where he went to school?

5 A I know he went to some place in Wayne. I don't know if it
6 was John Glen or--

7 Q After you graduated from high school did you go onto
8 college right away?

9 A Yes.

10 Q Where did you go?

11 A I went to Eastern Michigan University in the fall of '66
12 and then I attended Washtenaw Community College in the
13 interim and then went back and finished at Eastern
14 Michigan.

15 Q How was it that you ended up moving into Gary Leiterman's
16 house?

17 A In the fall of '68 I had worked for a guy over the summer
18 and he ended up not paying me so I got a little short of
19 cash in the fall. I was paying my own way through school
20 so I got a little over-extended and I'm sure we had a
21 discussion like I'm guessing at holiday--Thanksgiving,
22 Christmas or whatever and he had mentioned to me, hey if
23 you're strapped like hey, why don't you--you know you're
24 welcome to come and stay with me. I just charge you a
25 nominal fee for staying in there and it'll help save, you

1 know, the expense of renting an apartment which was pretty
2 stiff and cheap by today's standards but stiff at those
3 days.

4 Q There's been a document that's been admitted that shows a
5 purchase mortgage of a house on Rickham Court in Westland
6 in December--December 2nd I believe of 1968. Obviously,
7 the exhibit speaks for itself. But, would that be
8 consistent with your memory of when Mr. Leiterman obtained
9 possession of this house?

10 A Yeah, and I don't think he had been there too long, you
11 know, I'm thinking there wasn't a lot of furnishings as I
12 remember in the house when I got there. I had my own bed-
13 -mattress and a dresser and if I am not mistaken just--

14 Q Your own room?

15 A Yeah.

16 Q And, do you remember where you were on March 20th of 1969?

17 A No.

18 Q Do you remember what you would have been doing on that
19 Thursday night?

20 A I know what I would have most likely have been doing.

21 Q Doing what?

22 A I was probably with my girlfriend at the time, my wife now
23 and probably at friends.

24 Q What would you do at the house when you would be with Mr.
25 Leiterman at his house?

1 A Sleep--I went there--my wife and I were dating. I went
2 there you know, frequently later at night and would just,
3 you know, maybe grab something - a pop or something from a
4 fridge or whatever. I didn't eat a lot there.
5 Occasionally I'd fix something there but, you know, I
6 worked--full-time student, I was working 30 something
7 hours a week at (INAUDIBLE). I didn't have a lot of time
8 to hang around the house.

9 Q Did you have other relatives that stopped over at the
10 house? Somebody named Jane possibly?

11 A I had a cousin Jane, yes--have a cousin Jane.

12 Q Okay. And would she come over to the house with friends?

13 A I remember there--on at least one occasion maybe I think--
14 and again even after we were married--my wife and I were
15 married, I saw her there again once.

16 Q Do you know a Jane Mixer?

17 A No.

18 Q Until this case, have you ever heard that name?

19 A No.

20 Q Had you ever heard Mr. Leiterman speak of a Jane Mixer?

21 A No.

22 Q At the time you were living with Mr. Leiterman and then
23 those early months, you believe until the end of March?

24 A Middle to end of March. I'm not sure.

1 Q Now, you recall having an opportunity when the police came
2 and talked with you. Is that correct?

3 A Yes, they did.

4 Q Okay, I think they might have interviewed you back on
5 December 1, 2004?

6 A That's probably when it was.

7 Q That report indicates that you lived there until April of
8 '69. Would that be accurate?

9 A I'm just--I'm just--you know, again this was 36 years ago.
10 I was trying to recall dates and it's possibly correct. I
11 don't remember. I know it was very early spring when I
12 moved back to Saline.

13 Q At any point in time while you were there, did you ever
14 notice any changes in the behavior of Mr. Leiterman?

15 A No.

16 Q What kind of a housekeeper was he?

17 A Well, we didn't exactly--he didn't have a lot of stuff as
18 I remember. I think there was a sofa in the living room,
19 maybe a chair. I know he had managed to get some curtains
20 hung up and of course there were appliances in the
21 kitchen. I guess there was a dining table and some
22 furniture in the--there was light a family room off the
23 back and I think that was furnished more fully than the
24 living room if I mistake--remember correctly.

25 Q Did he drive a station wagon back then?

1 A Not to my knowledge, no.

2 Q Never saw him in a station wagon?

3 A No. I never remember a station wagon.

4 Q Do you recall whether or not Mr. Leiterman owned firearms?

5 A Yeah, we--you know, we had at least shot guns or whatever.

6 One of the things we did as friends/cousins was hunt.

7 Q What kind of hunting would you do?

8 A Partridge mainly. We went on a couple different trips.

9 One particular weekend we went up to Mantasee County

10 Partridge hunting at my grandma's - our grandmas and I

11 guess we went rabbit hunting a few times around Washtenaw

12 County.

13 Q Do you own any guns?

14 A Yes.

15 Q Do you ever recall, need not go into the conversation

16 itself, did Mr. Leiterman ever express any--is there ever

17 any conversations relative series of killings that

18 occurred in Ann Arbor in the summer of 1969 after you had

19 moved out?

20 A I don't remember any particular discussion.

21 Q Anything unusual occurring in those following months as it

22 would pertain to Mr. Leiterman and his behavior or

23 anything to that nature?

24 A No.

25 Q If I could have a moment, Your Honor.

1 At any point in time when you resided at the home or
2 even afterwards did you know or hear any shooting in the
3 house? Did you ever learn of a shooting range of some
4 sort being set up in the basement of this home?

5 A At that time did I ever learn of it, no.

6 Q This was a brand new house?

7 A Yes.

8 MR. GABRY: Thank you very much, Mr. Harvey.

9 THE COURT: Any further questions?

10 RE-DIRECT EXAMINATION

11 BY MR. HILLER:

12 Q Mr. Harvey, what's your cousin Jane's last name?

13 A Bredernitz.

14 Q Bredernitz? Can you spell that for us?

15 A I can try - B-R-E-D-E-R-N-I-T-Z.

16 Q And how old is she?

17 A Let's see, Jane is a year younger than I am. I don't know
18 her birth date but she was in the class of '67. So, I'm
19 56, I'm guessing she's 55 now.

20 Q So, that would have made her roughly 19 years old in 1969?

21 A Yeah, approximately.

22 Q What did you teach?

23 A I taught self-contained elementary school fifth and sixth
24 and fourth grade over a period of 16 years and then 14

1 years I was a middle school math teacher and social
2 studies teacher.

3 Q Once you moved out of the house over in Westland, how
4 often would you go back to visit?

5 A Not too often. I mean, I was going to school, working
6 full-time. My wife and I were seeing a lot of each other
7 and I went back seldom. I--the only night I remember
8 being there was the night before I was married. That
9 would have been September 6th '69.

10 Q Now, other than going back to visit Gary, how often after
11 you moved out--how often did you see him?

12 A Oh, I saw him sparingly. I was married in '69 and
13 actually Gary probably visited me on Fosdick Road you
14 know, I don't know, several times over the next few years.

15 Q So, you lived on Fosdick Road also?

16 A Yes.

17 Q Is that how you know the 6980 number?

18 A Yes.

19 Q Is that your own address?

20 A I was 6975.

21 Q You were 6975 and your aunt lived--

22 A --Just almost next door. There was one empty space
23 between us.

24 Q So, I'm sorry. How often would you see Gary from the time
25 you moved out?

1 A You know, not a lot. We were pretty busy. My wife and I
2 were both full-time students and I worked at--you know,
3 full-time job as well as attending school full-time. But,
4 you know, occasionally holidays I think we saw each other
5 still. And, I know we went over and visited on one
6 occasion in the fall after we were married in Westland.
7 But, that's the only time I remember being there is once.

8 Q Certainly was not a day to day event?

9 A No, I probably saw him more as I got older when my son was
10 born.

11 Q When was your son born?

12 A March 1, 1974--March 30th--30--the last day of March.

13 Q So, when you told Mr. Gabry that you didn't notice any
14 changes in the defendant's behavior after you moved out,
15 you--would it be fair to say you really didn't have that
16 much contact with him?

17 A No, I didn't see him a lot. No, I don't remember. I know
18 like I said I saw him the one time before for sure and I'm
19 sure, you know, it's possible we went back and visited. I
20 just don't recall. You know, like I said, it was a very
21 busy period in my life. It's--I might have seen him five
22 times but I--

23 Q Over what period of time?

24 A Well, in March of--or April 1st or whenever it was that I
25 did move out. I mean I don't recall exactly, you know, I

1 went back again on the night that I--you know I was living
2 in Saline around my family community, it's possible that I
3 saw him three or four more times. I--we didn't have a,
4 you know, any reason not to get together and run into each
5 other at my mom and dad's who were still alive--both of
6 them were alive at the time and it's just, you know, we
7 were family so it wouldn't--definitely had not been
8 unheard for us to have crossed pass at different places.

9 Q I'm not suggested you were (INAUDIBLE).

10 A Right. I know.

11 Q I'm just trying to get a gage of approximately how many
12 times you would have been in contact with him to be able
13 to judge his behavior. And you say it's possible you may
14 have seen him four or five more times and my question is
15 over what period of time are you referring to?

16 A Well, from the time I left there until--until I was
17 married. I know there was--we had to have been in
18 contact. I know I asked him to stand up for me at my--or
19 guest at my wedding as an usher or whatever. I mean, I
20 know it wouldn't have just been like a phone call. I
21 would have seen him--I would have had to have seen him to
22 have asked him that. I don't think I would have asked him
23 over the phone. I mean--

24 Q Ok, so we're talking about the time period between when
25 you left and when you were married?

1 A Yeah.

2 Q With respect to his behavior before you moved out, when
3 you were living with him. Actually, I'll withdraw that
4 question. Before you moved in with him, how much con--how
5 often would you see Gary?

6 A It was, you know, kind of spartan actually. There was
7 times, I think as I recall, you know, tried to recall in
8 the fall of '67, you know, I bought a car and I needed his
9 advice on the purchase on that automobile and there was a
10 period of time when--when I saw him, you know, more often
11 because he was helping me out with a test rolled it, you
12 know, that type of thing. But, and that was a time when I
13 was working long hours and long shifts at night and just--
14 and that fall of '67 I believe after I saw Gary more
15 regularly than other periods.

16 Q That was because of the car purchase?

17 A Yeah, it was kind of a comorodory thing and I'm sure
18 hunting season might have touched base. Again, that was
19 fall.

20 Q So, did you see him--it doesn't sound like you saw him
21 regularly.

22 A No, I mean regularly over, you know, like I say there was
23 times when I probably saw him like three or four times in
24 maybe one month and then some months might go by and I
25 might not, you know, see him a lot. I had other friends

1 as well as Gary as and you know, we did things
2 occasionally.

3 Q Now, when you were living together, you were able to
4 observe his behavior better I suspect than before and
5 after. Is that fair?

6 A Yeah, I guess for as much time as I was there.

7 Q Did during the time that you were living together, did
8 Gary ever ask you to get dates for him?

9 A No, I don't remember that. No.

10 Q Do you remember telling Sargent Moore that?

11 MR. GABRY: Your Honor, I'm going to object.

12 We're going beyond the scope of cross-examination. This
13 is Mr. Hiller's witness we called on.

14 THE COURT: (INAUDIBLE)

15 MR. HILLER: Your Honor, defense counsel asked if
16 there were changes in his behavior. I think it's relevant
17 to inquire into his behavior.

18 THE COURT: All right. Just a couple of
19 questions and then lets move on here.

20 BY MR. HILLER:

21 Q Do you recall telling Sargent Moore that he asked you to
22 get dates for him?

23 A No, I do not recall telling him that.

24 MR. HILLER: Let me direct your attention. Now
25 counsel, I'm showing the witness Sargent Moore's report

1 dated December 16, 2004. On the second page I am
2 direction him to the second paragraph from the bottom. If
3 you just read that to yourself please and let me know if
4 that refreshes your memory.

5 THE WITNESS: To be honest with you, no it
6 doesn't. I don't remember ever suggesting that he
7 specifically asked me to get dates for him. Especially at
8 that time. I--before--I was, you know, pretty much seeing
9 my wife a lot solely after from like Halloween '68. That
10 period in my life was pretty much dominated by the woman
11 who became my wife. So, I wasn't--

12 BY MR. HILLER:

13 Q It does not refresh your recollection?

14 A No, sir. It doesn't.

15 MR. HILLER: Thank you, Mr. Harvey. I don't have
16 anything further.

17 THE COURT: Anything further, Mr. Gabry?

18 MR. GABRY: No, Your Honor.

19 THE COURT: You may step down, sir. You are
20 excused.

21 THE WITNESS: Thank you.

22 MR. HILLER: Mary Sombrano.

23 THE COURT: Ma'am, come up here, please. If you
24 would stop there, face the clerk and raise your right
25 hand.

1 COURT CLERK: Do you solemnly swear or affirm to
2 tell the truth, the whole truth and nothing but the truth?

3 THE WITNESS: I do.

4 COURT CLERK: Have a seat right there.

5 (At 9:06 a.m., witness sworn in by clerk)

6 THE COURT: State and spell both your first and
7 last names.

8 THE WITNESS: Mary Sambrano. M-A-R-Y S-A-M-B-R-
9 A-N-O.

10 THE COURT: Thank you. Prosecutor?

11 MR. HILER: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. HILLER:

14 Q Ma'am, do you know Gary Leiterman?

15 A Yes.

16 Q Do you see him in court?

17 A Yes.

18 MR. HILLER: Point to him please. Your Honor,
19 may the record reflect identification of the defendant?

20 THE COURT: She did.

21 BY MR. HILLER:

22 Q Thank you, ma'am.

23 How do you know Gary Leiterman?

24 A My mother was married to his father.

25 Q And, what was your mother's name?

1 A Mary Voris.

2 Q I'm sorry, Mary--

3 A Mary Voris - V-O-R-I-S. That was her name--maiden name.

4 Westinbarger. Which name did you want?

5 Q Well, ultimately was she Mary Leiterman?

6 A Yes.

7 Q Now, are you a blood relative of Gary Leiterman?

8 A No.

9 Q You are familiar with--are you familiar with his family

10 from being around your mother and his father?

11 A Yes.

12 Q Do you know who Tim Leiterman is?

13 A Yes.

14 Q Who is Tim Leiterman?

15 A His half brother.

16 Q Is it your understanding that they share a common father?

17 A Yes.

18 Q And who was that father?

19 A Nicholas Leiterman.

20 Q How long were your mother and Nicholas married?

21 A Approximately 25 years.

22 Q To your knowledge did Nicholas have any other sons?

23 Biological sons?

24 A Just Tim and Gary.

1 MR. HILLER: Thank you, ma'am. I don't have
2 anything further.

3 THE COURT: Cross-examination, Mr. Gabry?

4 CROSS EXAMINATION

5 BY MR. GABRY:

6 Q Ms. Sambrano, your--excuse me, your mother was Mr.
7 Leiterman's third wife?

8 A Right.

9 Q All right.

10 Back in 1969, where were you living?

11 A In Garden City.

12 Q Do you remember what house you were in?

13 A On Valmoral.

14 Q Do you remember where you were on Thursday, March 20,
15 1969?

16 A No.

17 MR. GABRY: Thank you. I don't have anything
18 further, Your Honor.

19 THE COURT: Anything further?

20 MR. HILLER: No, Your Honor.

21 THE COURT: You may step down. You're excused
22 ma'am. Thank you.

23 THE WITNESS: Thank you.

24 MR. HILLER: Patrick Moore, Your Honor.

1 COURT CLERK: Do you solemnly swear or affirm to
2 tell the truth, the whole truth and nothing but the truth?

3 THE WITNESS: Yes, I do.

4 COURT CLERK: Have a seat right up there.

5 (At 9:09 a.m., witness sworn in by clerk)

6 THE COURT: State and spell your first and last
7 names.

8 THE WITNESS: Patrick Moore. P-A-T-R-I-C-K M-O-
9 O-R-E.

10 DIRECT EXAMINATION

11 BY MR. HILLER:

12 Q Good morning, sir. Could you tell us by whom you're
13 employed?

14 A The Michigan Department of State Police.

15 Q In what capacity?

16 A I'm a Detective Sargent assigned to the Ypsilanti State
17 Police Post.

18 Q How long have you been a police officer for the State of
19 Michigan?

20 A Over 12 years.

21 Q And how long have you been a Detective Sargent?

22 A Over two years.

23 Q Sargent Moore, did you have an occasion to--first of all,
24 meet and obtain a DNA sample by a buckle swab from a
25 Donald Defrates?

1 A Yes, I did.

2 Q And who is Donald Defrates?

3 A Donald Defrates is--he is Ramona Deliras real father. She
4 is John Ruelas' brother. They both share the same mother.

5 Q Did you also send some evidence to ReliaGene in New
6 Orleans?

7 A Yes, I did.

8 Q What did you send to ReliaGene?

9 A I sent what is item number six, described as a packet
10 containing blood from the left hand of the victim to
11 ReliaGene.

12 Q Okay, how did you send that down to them?

13 A I sent it--I took the envelope--the evidence envelope that
14 it was in. I placed it in a larger evidence envelope,
15 sealed it with evidence tape and sent it to ReliaGene on
16 5/19 of this year through a company called DHL Express and
17 it was sent overnight delivery.

18 Q Let me show you people exhibit 83. Let me ask you if
19 that's a photograph of the items you sent down to
20 ReliaGene.

21 A Yes, it is.

22 Q Now, Sargent Moore, did you also receive some information
23 from--well, first of all, did you receive some photocopies
24 of a phonebook from Detective Sargent Rochell?

25 A Yes, I did.

1 Q Do you recall about how many photocopies--Pardon me, how
2 many photocopies you received?

3 A I don't remember the exact number. He brought back quite
4 a few. I then made copies--more copies from those.

5 Q And did--Detective Sargent Rochell also give you
6 dimensions of the phone book that he had measured?

7 A Yes, he did.

8 Q And, with that information what did you do?

9 A I then attempted to locate a phonebook that most closely
10 was the same as the dimensions that Detective Rochell had
11 given me.

12 Q And, for what purpose were you doing this?

13 A In talking with the handwriting analysis examiner with the
14 State Police we thought it would best to try to most
15 closely re-create the writing surface that matched the
16 phonebook from 1968.

17 Q And, this was ultimately for what purpose?

18 A To obtain handwriting examples from Gary Leiterman.

19 Q And if you're aware was there a Court order requiring
20 those samples?

21 A Yes, there was.

22 Q Were you able to find a phonebook that approximated the
23 dimensions of the phonebook that Sargent Rochell had found
24 at the public library?

1 A Yes, I did - the Greater Lenawee Phonebook matched it
2 pretty close. It was just over three-quarters of an inch
3 thick. Detective Rochell told me the original was three
4 quarters of an inch thick. It was, I believe eight and
5 one quarter inches wide. The original was nine inches
6 wide. It was ten and seven-eighths inches long and the
7 original I was told was eleven inches long. So, I thought
8 that was pretty close.

9 Q Is that the closest you were able to find?

10 A Yes, it was.

11 Q And, were you able to find multiple copies of that
12 phonebook - the Lenawee County phonebook?

13 A Yes, I was.

14 Q Where did you find those?

15 A From there--I got them from the Adrian Chamber of
16 Commerce.

17 Q And how many copies of that phonebook did you collect?

18 A I believe I got 26 copies.

19 Q And, once you had the 26 copies of the phonebook, what did
20 you do?

21 A I took the photocopies off of the original phonebook and I
22 securely taped the photocopies to both the front and back
23 of the Greater Lenawee County phonebooks so that if you
24 flipped it over it would be like looking at the front of
25 the phonebook. That in theory--my theory was that would

1 then provide me with over 50 examples for Gary Leiterman
2 to provide.

3 Q And then what did you do?

4 A On the 24th, I obtained writing examples from Gary
5 Leiterman.

6 Q And, can you describe for the jury please the method you
7 used to have the defendant put his handwriting on the
8 phonebooks?

9 A For--I numbered the examples. For examples one and two, I
10 provided Gary Leiterman just simply with the instructions
11 to write "Muskegon Mixer" on the phonebook. For examples
12 three through nine, I asked him to print "Muskegon Mixer"
13 on the phonebook. Number 10 I accidentally skipped. That
14 one did not get written on. Numbers 11 through 30 I
15 pointed to the area that I wanted Gary Leiterman to write
16 which was along the left-hand side. I also told him I
17 wanted him to spell "Muskegon" as it was spelled on the
18 original phonebook, spelled "M-U-S-K-E-G-E-O-N". I also
19 told him that I wanted him to underline "Muskegon" and
20 "Mixer". And then for examples 31-52, I asked him to
21 write cursive, which Gary described was script in that
22 same spot along the left hand spine, I also asked him to
23 underline "Muskegon" and "Mixer". And I obtained these at
24 the Washtenaw County Jail in the presence or Mr. Gabry,
25 the defense attorney.

1 Q Now, once you had obtained the exemplars, what did you do
2 with them?

3 A I took them back to the State Police post where I cut the
4 covers off the phonebooks and then packaged them up.

5 Q Why did you cut the covers off?

6 A Because to transport 26 phonebooks to the lab and give
7 them to the lab, that was at the direction of the
8 handwriting examiner. He suggested that I do that instead
9 of taking in 26 phonebooks.

10 Q So, the purpose of the phonebooks was for taking the
11 writing?

12 A Correct.

13 Q There's nothing in the--there was no writing on the inside
14 of the phonebook at all?

15 A No.

16 MR. HILLER: Sargent Moore, let me show you
17 people's exhibit, proposed exhibit number 50. Can you
18 look at that and please inspect the contents.

19 THE WITNESS: Okay. Those are the exemplars or
20 examples that I obtained from Gary Leiterman and then sent
21 to the lab.

22 MR. HILLER: Your Honor, I move to admit people's
23 exhibit number 50?

24 THE COURT: Any objection?

25 MR. GABRY: No, Your Honor.

1 THE COURT: 50 is admitted.

2 MR. HILLER: Sargent Moore, I don't have any

3 further questions.

4 THE COURT: Cross-examination?

5 MR. GABRY: Thank you.

6 CROSS EXAMINATION

7 BY MR. GABRY:

8 Q Sargent Moore, did you have access to the--and I'm not
9 sure we know who took it but the original picture of the
10 cover of the phonebook discovered back sometime in '69?

11 THE WITNESS: The original photograph?

12 MR. GABRY: Yes.

13 THE WITNESS: I personally have not held the
14 original photograph.

15 BY MR. GABRY:

16 Q So, you have been working off of a Xeroxed copy of that
17 picture?

18 A That and then later a full blown one-to-one photograph.
19 You know, I don't think it was the original but one-to-
20 one.

21 Q Now, you indicated in your direct testimony that you
22 talked with Tom Riley who is a document examiner with
23 Michigan State Police?

24 A Yes, I do.

1 Q And, he was involved in trying to design this experiment
2 to try to most clearly re-create the writing surface is
3 what you said?

4 A He's the expert so I consulted him prior to obtaining the
5 handwriting samples.

6 Q You didn't indicate to the jury what kind of an instrument
7 Mr. Leiterman used to write with.

8 A He used--I provided the pen. It was a Bic, round stick,
9 non-retractable, black ink, ball pen.

10 Q How did you choose that pen?

11 A The Lieutenant Riley suggested that I used a medium point
12 ballpoint pen.

13 Q As far as the color of the ink, are you aware of whether
14 any determination was made as to what color ink the
15 original was written in?

16 A No, sir. I don't know that.

17 Q The original picture is in black and white, correct?

18 A Yes, sir.

19 Q Now, in attempting to re-create the writing surface,
20 Sargent Moore, you actually did not re-create the writing
21 surface because you had him write on a regular piece of
22 copy paper, correct?

23 A It was written on regular copy paper, yes.

24 Q The actual writing surface was the harder stock or glossy
25 stock of a phonebook, correct?

1 A Correct.

2 Q And you had those phonebooks with you, correct?

3 A Yes, I did.

4 Q But, you chose to have him write on regular, I'm not sure
5 what weight or whatever. But, it was the copy paper in
6 the State Police Post copy machine?

7 A Yes. That was discussed with Lieutenant Riley as well and
8 the surface of the phonebooks of the ones I obtained
9 really did not have a good area anywhere on the cover in
10 the area the original was written on where somebody could
11 write with a pen. It had--it was I believe they were
12 yellow and had writing on them. I don't remember what the
13 back was like. But, there was writing in those areas.

14 Q But, you were aware, were you not, from your conversations
15 with Detective Rochell that a phonebook did in fact exist
16 that would have re-duplicated the exact writing surface?

17 A Yes.

18 MR. GABRY: Nothing further, Your Honor.

19 THE COURT: Anything further?

20 MR. HILLER: No, Your Honor.

21 THE COURT: You may step down, sir.

22 THE WITNESS: Thank you.

23 MR. HILLER: Your Honor, the people call Rob

24 Rayer.

1 THE COURT: Sir, stop there if you would, face
2 the clerk and raise your right hand.

3 COURT CLERK: Do you solemnly swear or affirm to
4 tell the truth, the whole truth and nothing but the
5 truth?

6 THE WITNESS: I do.

7 COURT CLERK: Have a seat right up there.

8 THE COURT: Sir, state and spell both your first
9 and last names.

10 THE WITNESS: Yes, sir. Robert R-O-B-E-R-T.
11 Rayer R-A-Y-E-R.

12 THE COURT: Thank you. Prosecutor?

13 MR. GABRY: I just want to indicate to Mr.
14 Hiller, Your Honor, that I did haven an opportunity
15 of Mr.--Officer Rayer and for purposes of what I
16 understand his testimony will be we'll stipulate that
17 he's an expert I guess in firearms identification.

18 THE COURT: Is that what you're offering him for?

19 MR. HILLER: Yes.

20 THE COURT: All right. By that stipulation we
21 will allow the expert testimony.

22 DIRECT EXAMINATION

23 BY MR. HILLER:

24 Q By who are you employed, sir?

1 A The Michigan Department of State Police Forensic Science
2 Division.

3 Q And, you're a firearms examiner?

4 A Yes, sir.

5 Q What does that entail? What kinds of work do you do?

6 A The basis of firearms identification is determining
7 whether ammunition components being that of cartridge
8 cases, fire bullets and other related evidence such as
9 shot gun shells, if we can relate that to a particular
10 firearm, some of the additional duties that we do in the
11 Firearms Identification Unit are identifying particular
12 firearms such as make, models and caliber's - whether its
13 spinning altercations to those firearms. And also whether
14 or not there are certain components of a firearm that are
15 consistent with a certain manufactual or if they will fit
16 a particular firearm brought in by the officer in charge
17 of the particular case.

18 Q In connection with this investigation, did you have
19 occasion to look at a revolver cylinder?

20 A Yes, sir. I did.

21 Q Let me show you people's exhibit 40. Do you recognize
22 that?

23 A Yes, sir. I do.

24 Q What is that?

1 A This is a revolver cylinder of 22 caliber which is
2 consistent with the construction and design of being a
3 Ruger single 6 22-revolver cylinder.

4 Q Now, as part of your work do you self-reference work
5 regarding various makes and models of firearms?

6 A Yes, sir. I do.

7 Q And, were you able to determine whether or not the Ruger
8 single 6 came with more than one cylinder?

9 A Yes, sir. The Ruger single 6 is a 22-caliber single
10 action revolver. It is manufactured and sold with two
11 different cylinders. The first being a 22 long rifle
12 cylinder which will take various 22 rim fire caliber's and
13 it also is manufactured and sold with a 22 Winchester
14 magnum cylinder.

15 Q What's the difference between a magnum or a long rifle?

16 A The difference is, is basically they're approximately--
17 well, they are the same caliber. The difference is the 22
18 long rifle is a shorter cartridge and the 22 Winchester
19 magnum rim fire is a longer cartridge. It has more
20 velocity - more powder in the cartridge case.

21 Q Now, were you able to determine which of the two cylinders
22 that one was?

23 A Yes, sir. That particular cylinder there is consistent
24 with being a 22 Winchester Magnum cylinder.

1 Q You described the Ruger Single 6 as a single action
2 revolver. Can you explain what you mean by a single
3 action revolver?

4 A Yes, sir. I have a dermosogin if I could use that - a
5 photograph.

6 MR. HILLER: With the Court's permission.

7 THE COURT: That's fine. Any objection?

8 MR. GABRY: I can't see it, Your Honor. Well,
9 Your Honor, it's not a Ruger Single 6.

10 MR. HILLER: I guess--

11 THE COURT: Well, he was using it to demonstrate
12 what a single action revolver is. For that limited
13 purpose you can use it.

14 THE WITNESS: If that's the case, I've got a
15 picture of a Ruger Single 6.

16 THE COURT: Use that one instead.

17 MR. GABRY: Makes sense to me.

18 THE COURT: Go ahead.

19 THE WITNESS: Can I approach the jury so they can
20 see?

21 THE COURT: Let's find a way to do this. We'll
22 get the prosecutor to hook you up with all this modern
23 technology that he's so adapt at.

24 MR. HILLER: You're setting the bar awfully high
25 for me, Your Honor.

1 THE COURT: Why don't you step to the podium, Mr.
2 Rayer, and then you can lay the exhibit there and speak to
3 the jury from there. Walk around this way.

4 THE WITNESS: A single action revolver--

5 THE COURT: No, you need to come back to the
6 podium.

7 THE WITNESS: Oh, back to the podium so they can
8 hear. I'm sorry.

9 THE COURT: All right.

10 THE WITNESS: The single action revolver is this
11 is a Ruger Single 6 right here. The reason why they call
12 it a single action is because you have to manually cock
13 the hammer back each time you want to fire the weapon.
14 The manual cocking of the hammer back and the pressing the
15 trigger fires this and then rotates the cylinder around
16 hence the name revolver because it rotates around it.
17 This differs than a double action revolver is the double
18 action revolver you can fire it and the single action
19 (INAUDIBLE) by cocking the hammer back and pressing the
20 trigger or you can also press the trigger and the hammer
21 will come back and rotate the cylinder. That's why it's
22 called a single action revolver because it takes one
23 action to fire the firearm.

24 MR. HILLER: Thank you.

25 BY MR. HILLER:

1 Q Looking at the cylinder that you were shown earlier, is
2 there any way to identify that cylinder alone with a fired
3 bullet?

4 A With a fired bullet the likelihood of doing that with a
5 cylinder is very remote.

6 Q And, I'm sorry. I don't think I asked you, are you
7 enlisted?

8 A Yes, sir. I'm a Detective Sargent.

9 MR. HILLER: Sergeant Rayer, Thank you. I don't
10 have any further questions.

11 THE COURT: Cross-examination.

12 MR. GABRY: Thank you.

13 CROSS EXAMINATION

14 BY MR. GABRY:

15 Q Sargent Rayer, you lost me a little bit when you were
16 describing what you have. You said that this was
17 consistent with the 22-magnum cylinder?

18 A Yes, sir.

19 Q Which--is that the one that fires the shorter bullets or
20 the longer bullets?

21 A Actually, it can fire both, sir.

22 Q So, what's the distinction between the two cylinders then?

23 A I can show you if you'd like. I have a photograph or do
24 you want--

1 MR. GABRY: I would just like you to explain to
2 me the--

3 THE WITNESS: Basically, the only difference
4 between the 22 long rifle cylinder and 22 magnum is
5 there's a cut out and a recess at the top. The 22 magnum
6 is slightly larger and so it would fit in down into there
7 where a 22 longer rifle cylinder you can't do the reverse.
8 You can't fire a 22 magnum in it because it is--it is too
9 large. The magnum is too large to fit in 22 long rifle
10 cylinder while you can do the reverse with the magnum.
11 You can fire both the magnum and the long rifle.

12 Q So, that's--that's the multiple firing cylinder. The one
13 that you have can fire both kinds?

14 A Yes, it's designed for the magnum--Winchester magnum rim
15 fire but it can fire a 22 long rifle in it.

16 Q How many of these Ruger single 6's are in the market?

17 A Millions.

18 Q How long has this Ruger single 6 been in production?

19 A Since 1953.

20 MR. GABRY: Thank you, Your Honor.

21 THE COURT: Anything further?

22 MR. HILLER: Nothing further, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 You are excused.

1 MR. HILLER: Your Honor, People call Reinhard
2 Pope.

3 THE COURT: Sir, come forward. Stop there if you
4 would. Face the clerk and raise your right hand.

5 COURT CLERK: Do you solemnly swear or affirm to
6 tell the truth, the whole truth and nothing but the truth?

7 THE WITNESS: Yes, ma'am. I do.

8 COURT CLERK: Have a seat right up there.

9 THE COURT: Sir, state and spell both your first
10 and last names.

11 THE WITNESS: My name is Reinhard Pope. R-E-I-N-
12 H-A-R-D. Last name spelling, P-O-P-E.

13 MR. HILLER: Where were you--

14 THE COURT: P-O-P-E

15 THE WITNESS: P-O-P-E

16 THE COURT: Thank you. Prosecutor?

17 DIRECT EXAMINATION

18 BY MR. HILLER:

19 Q By whom are you employed?

20 A I am employed by the Michigan Department of State Police,
21 assigned to the Lansing Forensic Science Laboratory
22 Firearms Unit.

23 Q Are you enlisted or are you a civilian?

24 A I'm an enlisted officer with the State Police. I hold the
25 rank of Detective Sargent.

1 Q What training have you received in the field of firearms
2 identification?

3 A Well, our department has a two-year training for firearm
4 examiners. It's basically an apprenticeship type program
5 where when entering the laboratory system you're assigned
6 to work with a Senior Firearms Examiner. You work cases
7 along side of him. There are several training exercises
8 you have to go to until you demonstrate proficiency in the
9 different areas of firearms identification. We also
10 attend various schools that are put on by other
11 laboratories such as the FBI Crime Laboratory and the
12 Bureau of Alcohol, Tobacco and Firearms. I've been
13 through the FBI Crime Lab gunshot and Primer Residue
14 School. Alcohol, BATF Laboratory School on serial number
15 restorations. We also go to ongoing training that's put
16 on by an organization called AFTE, which is the
17 Association of Firearms and Toolmark Examiners which is
18 the professional organization that we belong to.

19 Q You've successfully completed all the training that is
20 required in order to do the job of firearm examining?

21 A Yes, sir.

22 Q And, how long have you been with the State Police?

23 A About 19 $\frac{1}{2}$ years.

24 Q And, how long have you been a firearms examiner?

25 A It will be 10 years in August.

1 Q Have you testified as an expert in the field of Firearms
2 Identification prior to today?

3 A Yes, sir. I have.

4 Q On approximately how many occasions?

5 A A little over a hundred times.

6 Q And are you able to estimate the number of firearms, fired
7 bullets, shell casings that you've examined over the past
8 10 years?

9 A I work on approximately 300 cases a year. So, over 10
10 years that would be 3,000 cases. The many cases have
11 multiple fired bullets and cartridge cases so, it's
12 certainly in the thousands.

13 Q And can you explain for the Court and the jury what
14 Firearms Identification is?

15 A Well, there are different areas of Firearms
16 Identification. Mainly, what we do is examine fired
17 bullets and cartridge cases. We're looking at microscopic
18 marks on them in order to associate them or disassociate
19 them with a particular firearm. We also do things like
20 bullet classifications where we will take a fired bullet;
21 look at it, determine the caliber of that fired bullet;
22 we'll examine the rifling impressions to determine the
23 types of firearms that could have fired that bullet; we'll
24 look at ammunition components to determine perhaps what
25 brand they are; we do identifications, identify bullets or

1 eliminate bullets as having been fired by a certain
2 firearm. We do that with cartridge cases as well. We'll
3 do serial number restorations. We also do gunshot residue
4 testing on victims clothing to determine or mussel to
5 target distance. We do function testing of firearms to
6 determine whether they're functioning properly or whether
7 they're defective or whether they've been modified in some
8 way.

9 Q What is the theory behind identification of a fired bullet
10 to a particular firearm?

11 A Well, the theory is that because firearms are objects that
12 are manufactured, you will have manufacturing marks that
13 are left behind. No--no two objects are exactly the same.
14 The manufacturing process--there are certain
15 characteristics that we'll call class characteristics.
16 Those are things that are designed by the manufacturer.
17 The diameter of the barrel, the length of the barrel -
18 those kinds of things--there are manufacture
19 specifications for those. But, during machining, you'll
20 have marks that are left behind that are just incidental
21 to the manufacturing process. Those marks would be unique
22 to that particular firearm. Plus you have different
23 experiences the firearm would go through during its
24 lifetime. For example, if a cleaning rod is pushed down
25 the barrel of the firearm, that could add scratches or

1 those kind of things to the barrel which would make it
2 even more unique. What happens when a firearm is
3 discharged, you have a lot of pressure that's built up.
4 The gas pressure pushes the bullet down the barrel of the
5 firearm. Now, the firearm will have what's called--or a
6 rifle or handgun will have what's called rifling in the
7 barrel. Rifling is basically grooves that are cut into
8 the barrel in a spiral twist. Either a left twist or a
9 right twist. You'll have a certain number of these
10 grooves depending on the particular make and model of
11 firearm. There are also certain dimensions of those.
12 Those things are specified by the manufacturer so that
13 there's an actual specification for those. Because the
14 bullet is made of a softer material than the firearm, the
15 imperfections that are in the barrel leave marks on the
16 softer material of the bullet. If a bullet is then
17 submitted into the laboratory, we can look at the marks on
18 the bullet. If a firearm is also submitted, we can take
19 test shots from that firearm and compare the marks on the
20 test shots to one another to see the type of marks that
21 are produced by that firearm. Then--we can then compare
22 the evidence bullet to the test bullet and determine
23 whether or not it was fired from that particular firearm
24 or perhaps we could eliminate it.

1 MR. HILLER: Your Honor, at this time I'd ask
2 that Sargent Pope be allowed to testify as an expert in
3 the field of Firearms Identification.

4 THE COURT: Any objections?

5 MR. GABRY: No, Your Honor.

6 THE COURT: We will receive expert testimony from
7 this witness.

8 BY MR. HILLER:

9 Q Sargent Pope, what can affect the ability of a firearm
10 examiner such as yourself to identify a fired bullet with
11 a particular gun?

12 A First of all, the experience level of the person that's
13 doing the examination. The more experience you have, the
14 more you could tell about a fired bullet. If a bullet is
15 submitted along with a firearm, you have to look at the
16 condition of the bullet. Bullets are traveling at a high
17 rate of speed and they're also rotating very fast, high
18 RPM. So, if they strike an object, they will deform. If
19 they strike a hard object they'll tend to deform even
20 more. During that--that striking of something, the
21 individual characteristics could be--could be totally
22 destroyed. Sometimes a bullet hits something and is
23 basically totally destroyed to where you just have tiny
24 fragments. Sometimes only the nose of the bullet may
25 deform. If the bullet is deformed you don't have anything

1 to work with. Also, some firearms don't mark bullets
2 consistently for whatever reason. And, it could just be
3 something in the manufacturing process. But, they just
4 don't mark very well. Also, certain types of ammunition
5 don't seem to be very conducive to marking well.

6 Q Sergeant Pope, let me show you People's exhibit--People's
7 exhibits numbers 41, 42 and 43. If you could take a look
8 at those please and tell me if you've seen those objects
9 before.

10 A Yes, sir. I have.

11 Q Where have you seen those?

12 A They were brought into the Crime Laboratory in Lansing by
13 Eric Shroader.

14 Q And he's a Detective Sergeant up in Lansing?

15 A I'm not sure where he's assigned now. He is a Detective
16 Sergeant with the State Police.

17 Q And did you inspect the contents of those jars?

18 A Yes, sir. I did.

19 Q And what did you find inside of them?

20 A Well, they're--one of the jars which was labeled "brain",
21 contained a small heat-sealed plastic bag which contained
22 a portion of a fired bullet. Then there was a second jar
23 that was labeled "left temp", which I've labeled item F2,
24 that contained a lead fragment. There was a third small

1 jar that contained a heat-sealed bag that contained four
2 additional small lead fragments.

3 Q Now, the fragments that you found, did you inspect those?

4 A Yes, sir. I did.

5 Q And, were you able to draw any conclusions from your
6 inspection of those?

7 A They really did not have enough class characteristics for
8 me to tell what they were. They're lead with a sort of
9 metallic coating on them that's commonly found on .22
10 caliber bullets. So, it's possible that they would be
11 part of a .22-caliber bullet. However, just looking at
12 them independently they're small jagged pieces of lead.
13 So, I can't say with certainty what they are.

14 Q What are lands and grooves?

15 A The--well, grooves in a barrel, a groove is just that. A
16 groove that's cut into the barrel of a firearm. The land
17 is a leftover portion of the barrel because if you cut a
18 groove, you're going to have basically mountains and
19 valleys if you look at it. So, the land is the raised
20 part that's leftover. The groove is the groove that's cut
21 into the barrel.

22 Q And what's the purpose for cutting those in the firearm
23 barrels?

1 A The purpose for the rifling in the barrel is to in part a
2 spin onto the bullet so that it's stable in flight and
3 more accurate.

4 Q When a bullet is fired then does it pick up information
5 from the lands and grooves in the barrel?

6 A Yes, sir.

7 Q Now, the other item that you described as a portion of a
8 fired bullet. Can you tell me the exhibit number on that,
9 please?

10 A It would be People's exhibit 43.

11 Q And could you remove the contents, please? Is that the
12 bullet portion that you examined?

13 A Yes, sir. It is.

14 Q Did you examine that?

15 A Yes, sir.

16 Q And, what was the result of your examination?

17 A Well, this--this item is consistent with being a portion
18 of a 22 caliber fired bullet. The rifling impressions
19 that I observed, there are six landing groove impressions
20 with a right twist.

21 Q Explain the twist for us, please.

22 A Well, the grooves and the barrel don't go straight down
23 the barrel. They're--they're cut in a spiral twist -
24 either a clockwise twist or counter-clockwise twist.

1 Clockwise would be referred to as a right twist, counter-
2 clockwise would be a left twist.

3 Q Now, in order to make an identification with a particular
4 firearm, well--let me--let me back up. First of all, is
5 there sufficient information on the fired bullet that you
6 have that would allow you to make an identification with a
7 particular firearm?

8 A It's possible. My opinion is probably not.

9 Q Why is that?

10 A Well, the bullet is heavily damaged. Also, the type of
bullet it is, it's got a metallic coating on there - a
gold colored metallic coating that's commonly what's seen
on Remmington 22's as well as a couple of other companies.
That particular coating does not seem to mark as well as
say a plain lead bullet would.

16 Q As of now, you have not been able to identify that fired
17 bullet with a particular firearm. Is that correct?

18 A That's correct.

19 MR. HILLER: Your Honor, with the Court's
20 permission, I'd like to publish the fired bullet to the
21 jury so they could take a closer look at it.

22 THE COURT: Why don't you put it up on the screen
23 if you want. We'll try it that way.

24 THE WITNESS: Did you want the container, too, or
25 no?

1 THE COURT: Can we get any closer with that?

2 There you go. You lost your light. You lost your light
3 somewhere, Mr. Hiller. There you go.

4 MR. HILLER: Your Honor, I really don't think
5 that this can be used.

6 THE COURT: Well, let me see the other part. If
7 you hold it still it would probably not make us sick. All
8 right. Well, ladies and gentleman, I'm going to allow
9 this to be passed among you. Just take it, look at it
10 briefly and pass it on. As with all exhibits, you'll have
11 an opportunity to examine them during your deliberations
12 if you'd like.

13 MR. HILLER: Sargent Pope, while the jury is
14 looking at that with the Court's permission, we can
15 continue questioning.

16 THE COURT: Why don't we let them look and then
17 we'll--

18 MR. HILLER: Very well.

19 THE COURT: --to listen. For the record, this is
20 43 only that's being circulated. Is that correct?

21 MR. HILLER: This is contents of the vicle marked
22 43, Your Honor.

23 THE COURT: Now we can proceed.

24 BY MR. HILLER:

1 Q Sargent Pope, have you been able to determine how many
2 makes and models of 22 caliber firearms could have fired
3 that bullet?

4 A Yes, sir.

5 Q And, how many?

6 A Well, according to the resource book called The General
7 Rifle and Characteristics Manual that's published by the
8 FBI Crime Laboratory, there are at least three dozen
9 firearms that have the same class rifling characteristics
10 as this fired bullets and could have fired it. Those are
11 just the firearms that the FBI is aware of. There is a
12 possibility that there are other firearms that they're not
13 aware of. It's a fairly comprehensive book. But, there
14 have been firearms that have been manufactured in other
15 countries and whatnot that aren't in the book. But, there
16 are at least three dozen.

17 Q And, do you have any idea how many total fire--individual
18 firearms in the United States that would account for?

19 A No, sir. It's at least in the hundreds of thousands
20 because of those there are particular models - a one model
21 alone that they made several hundred thousand of, just
22 that one particular model. And, like I said, there are
23 about three dozen different models.

24 Q Is one of those models that could have fired this bullet,
25 the Ruger Single 6?

1 A Yes, sir.

2 Q Now, Sergeant Rayer--you know Sergeant Rayer?

3 A Yes, sir.

4 Q And, he testified earlier this morning and his estimate
5 was that it could have been in the millions of possible
6 firearms that could have fired this bullet. Would you
7 disagree with that?

8 A No, sir. That's quite possible.

9 Q Sergeant Pope, let me also show you People's exhibits 81
10 and 82. I'll collect these from you while I'm up here.
11 You recognize those, Sergeant?

12 A I recognize this one last bag. The second plastic bag,
13 which is marked People's exhibit 82, I don't believe that
14 I've seen before.

15 Q Are you able to tell what's in that, People's 82?

16 A Looks like three 22 long rifle caliber Remington
17 cartridges.

18 Q Can you tell us, Sergeant Pope, if any of the bullets that
19 you have in front of you, either in 81 or 82, are
20 consistent with the bullet that was just passed to the
21 jury a few moments ago?

22 A Well, they're the same caliber. These are 22 caliber
23 bullets. However, the fired bullet in this particular
24 case has a--sort of a gold tone finish on it. Whereas

1 these bullets are either plain lead bullets or they have a
2 copper wash on them. So, they have a different finish.
3 Q Okay, so they're not of the same kind?
4 A No, they're the same caliber but they have a different
5 finish on them.
6 Q How many different kinds, sizes--I shouldn't use the word
7 "kinds" cause that's a little too general. How many
8 different sizes of 22 caliber bullets do you have in those
9 bags? And, if you're able to tell, how many makes?
10 A The--well, from my prior examination, this particular bag
11 labeled People's exhibit 81 contains all Winchester Brand
12 ammunition. We have 22 shorts, 22 long rifles, 22
13 Winchester Magnum Rim Fire, and also some 22 short caliber
14 blanks in here.
15 Q And the other bullets you've identified as a Remington 22
16 caliber?
17 A Yes, sir - in the bag that's marked People's exhibit 82.
18 Q Do you know if Remington made--makes or made a gold tone
19 ammunition similar to what you've observed with the fired
20 bullet?
21 A Yes, they do.
22 Q Are there other manufactures that also make that kind of
23 bullet or ammunition?

1 A There's Hertenberger and Aguila, which is a Mexican
2 company that have--they have not made a lot of it. But,
3 they have used that process themselves as well, yes.

4 MR. HILLER: Nothing further. Thank you, sir.

5 THE COURT: Cross-examination.

6 MR. GABRY: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. GABRY:

9 Q Now, I believe you mentioned when you were speaking to Mr.
10 Hiller that People's exhibit 81 which is a number of
11 different cartridges, bullets was something that you
12 examined?

13 A Yes, sir.

14 Q This was submitted to you for what purpose?

15 A I actually picked it up at the Ypsilanti Post from
16 Detective P.J. Moore and he requested that I compared that
17 ammunition to the fired bullet on this particular case
18 which I call item F1 in order to determine whether any of
19 that ammunition was similar to the fired bullet in this
20 case.

21 Q All right. And, by the notes on here it looks like your
22 signature dated 6/30 of 05?

23 A Yes, sir.

24 Q Is that when you would have picked it up?

25 A Yes, sir.

1 Q And then you would have completed your report and
2 submitted that to the Prosecutor, when?

3 A The date that I--July the 5th is when I completed the
4 examination.

5 Q Okay.

6 People's 82, I don't see your signature anywhere on
7 the, I guess property receipt.

8 A That's correct.

9 Q We've heard testimony that these were obtained back on
10 November 23rd of 2004. You've never been asked to examine
11 these by the prosecutor?

12 A Not until this morning.

13 Q And that was you just looking at them and describing what
14 kind they are?

15 A That's correct.

16 Q Can you tell how old these bullets are?

17 A No, sir.

18 Q Can you tell when these bullets were made?

19 A No, sir.

20 Q Can you tell the jury how many Remington Gold Tone bullets
21 are in the marketplace?

22 A Not specifically, no. It's--it's in the--feasibly it
23 could be in the billions of individual bullets.

24 Q This is a highly marketed bullet?

25 A Yes, sir.

1 Q Popular with both outdoorsmen and target shooters?

2 A I believe so, yes.

3 Q And, its been on the market for years?

4 A Yes, sir.

5 Q Going back about when, do you know?

6 A I couldn't tell you the specific year, no.

7 Q Now, when you became involved in this case, do you--do you
8 remember your first--when you first became involved in
9 firearms identification related to this case?

10 A It was January the 4th of this year.

11 Q And was that--I'm going to ask you to--you know Detective
12 Eric Shroader, is that correct?

13 A I know who he is, yes sir.

14 Q And, do you recall having a conversation with him in which
15 he asked you as to what the evidentiary value of these
16 bullets would have been?

17 A Which bullets are you referring to, sir?

18 Q The firearm, I'm sorry - the evidentiary value of any 22
19 caliber weapon associated with this case?

20 A Not specifically, no.

21 Q Do you recall having conversations with the detectives
22 prior to actually examining the bullets or the F1, which I
23 believe is 43?

24 A There was a time--someone called me on this particular
25 case, I didn't write it down, and asked if there was any

1 new technology that we had today that they wouldn't have
2 had back in 1969 that maybe would allow us to, I don't
3 know, do a more effective examination than what they did
4 back then because of technology has increased in other
5 areas like DNA, that wasn't even available back then. Now
6 we do it routinely and so my comment was at the time was,
7 things haven't changed that much in firearms. We do have
8 somewhat better optics. If they need me to look at it, I
9 can look at it. But, if it's just the same evidence, I'm
10 probably not going to be able to tell them a lot more than
11 what was told back then.

12 Q All right. Now, this case goes back 36 years to when the
13 two exhibits - the fragments and then what remains as the
14 portion of a fired bullet, 43 were recovered from Jane
15 Mixer's body. Did the State Police maintain a file on the
16 particular fired bullet? In other words, is--are all
17 examinations done with the desire or the aim to
18 identifying that bullet maintained in a file? A shooting
19 jacket or a case log?

20 A Reports, sir?

21 Q Well, exactly. I guess a report in which an analyst over
22 the past 36 years would have looked at a submitted firearm
23 in relationship to the portion of the fired bullet?

24 A Yes, sir. Records are kept of all examinations that are
25 done at the laboratory.

1 Q And do you recall how many times examinations have been
2 done on exhibit 43 and the one that is now fragmented?

3 A I'm only aware--I've seen one laboratory report of an
4 examination done prior to me examining the bullet. I have
5 no way of knowing what happened to the bullet between that
6 time and when I received it.

7 Q The bullet apparently, at least the fragments have broken
8 down even further. Is that fair to say?

9 A I don't know if they are or not, sir.

10 Q Okay.

11 The report that you're referring to, would that have
12 been the report signed by Bennett Versailles in Larson
13 back in 1969?

14 A Yes, sir.

15 Q And, that report identified the portion of the fired
16 bullet as being one consisting of six lands and grooves
17 and characteristic of Remington Gold Tone ammunition. Is
18 that correct?

19 A Yes, sir.

20 Q You then examined it after Gary Leiterman had been
21 identified as a suspect in January of when?

22 A January of 2005.

23 Q And, at that time you were made aware of the fact - or
24 were you - that Mr. Leiterman had been a registered owner
25 of a Ruger Single 6 firearm?

1 A I was not aware of that when I initially examined the
2 evidence. When I called them with the results of my
3 examination, there was an additional request made--they
4 asked if Ruger Single 6 had those rifling characteristics.
5 If I could tell them whether it did or not and I told them
6 that there were a multitude of firearms that had those
7 rifling characteristics, but a Ruger Single 6 was one of
8 them.

9 Q And, when we're talking about rifling characteristics,
10 what we mean are the six lands and the six grooves for
11 starters?

12 A With the right twist. Yes, sir.

13 Q The right twist was not noted in the original report.
14 Would you agree with me?

15 A I--Larson and Versay?

16 Q The original signed ballistics report.

17 A Yes, sir.

18 Q Now, can you explain for me again the difference in this
19 ammunition? We talked about coloration of something?

20 THE WITNESS: The difference between which
21 ammunition?

22 Q Remington is what you consider to be a gold tone?

23 A Some of it is. Some bullets and we'll just talk about 22
24 caliber bullets specifically. Some of them are just plain
25 lead so they're gray colored. They've developed different

1 coatings to put over the lead to reduce fowling in the
2 barrel. Because lead is very soft and as it moves
3 throughout the firearm, it will tend to--some of it will
4 smear off in different surfaces in the firearm and cause
5 fowling. So, they developed different types of coating.
6 Sometimes it's a sort of a copper wash - almost like a
7 metallic paint that they'll put over it. Remington has a
8 process where it's actually a powderized metal--powderized
9 brass that they coat the bullet with. So, Remington makes
10 bullets that are just plain lead and they also make coated
11 bullets of various kinds. Gold tone is one of the types
12 of coated bullets that they make.

13 Q And, so when you read the report in 1969, based on your
14 own experience, you had at least an idea of what the
15 report writer was referring to as far as the bullet being
16 characteristic of Remington Gold Tone ammunition?

17 A Yes, sir.

18 Q And, is Remington Gold Tone ammunition distinctive from
19 you described a lead bullet?

20 A Yes, sir.

21 Q Is it distinctive from a copper washed bullet?

22 A Yes, sir.

23 Q Okay.

24 And, your purpose in conducting the examination - the

1 initial one, at the request of Detective Schroader was to
2 look at these bullets and make your own conclusions. Is
3 that fair to say?

4 A Yes, sir.

5 Q You complete a report and along with the report you make a
6 Michigan State Police bullet worksheet out. Is that
7 correct?

8 A Yes, sir.

9 Q And, did you do one of those in this case?

10 A Yes, I did.

11 Q And, isn't it true that in that State Police bullet
12 worksheet, you described F1, being exhibit 43, the bullet
13 that you referred to as being characteristic of Remington
14 Gold Tone ammunition, you described that finish type as
15 copper washed lead?

16 A Yes, sir. I did.

17 Q You were wrong?

18 A I should have--what I did at the time, I used that as sort
19 of a generic term as for a coated bullet and since that
20 time I've talked to George Cass, who is a technical or a
21 technical advisor for AFTE about the process and it
22 actually is not copper, it's a brass powder wash, rather
23 than a copper wash. And, actually on any of this, I don't
24 do an elemental analysis of any of the coatings. They
25 call it a copper wash or brass but, none of them are 100%

1 copper or 100% brass. It's a proprietary formula that the
2 companies come up with. So frankly this morning when I
3 looked at that, I realized that I should probably refer to
4 that in a different way than copper wash. For--those are
5 my notes for my purposes, it really means that it's not a
6 plain lead bullet but it's a coated lead bullet.

7 Q And you don't make any distinction between F1 and the
8 remaining pieces as far as finish or type, correct?

9 A That's correct.

10 Q Is it your testimony then that even if you obtained the
11 murder weapon, you don't believe based on what remains of
12 the fired portion of the bullet, exhibit 43, you probably
13 would not be able to make an identification?

14 A That's correct.

15 Q So, all we know is that this could have been a Ruger
16 Single 6 that fired that bullet?

17 A Yes, sir.

18 Q And, it could have been anywhere up to hundreds of
19 thousands to millions of other firearms that are in the
20 marketplace?

21 A Yes, sir.

22 Q Now, I want to make it clear that when you indicate - and
23 I saw it in your notes - three dozen firearms, we're not
24 talking about 36 guns our there?

25 A No, sir. Three dozen separate models of firearms.

- 1 Q Three separate firearm companies?
- 2 A Different models. There could be numerous models
3 manufactured by the same company. For example, Ruger
4 makes several different firearms that could have fired
5 that bullet. There's a Ruger 1022, which is a semi-
6 automatic rifle that could have also fired that bullet.
7 But, that's a different firearm than a Ruger Single 6.
8 So, if you want to look at different models of firearms,
9 there are at least three dozen different models that I
10 found in the FBI book that could have fired that bullet.
- 11 Q And, those manufacturers continue to churn out those
12 particular models?
- 13 A Some of them. Some of them are older models that are no
14 longer made and some of them are newer models. And, some
15 of them have continued on.
- 16 Q And, as far as ammunition, there's no way to trace back--
17 there's no markings. There's no numbers or anything to
18 identify lots or consistency or any identifying
19 characteristics as to these bullets other than they appear
20 to be Remington Gold Tone?
- 21 A Those bullets from that bag are not Remington Gold Tone.
22 There are no Remington Gold Tone bullets that I looked at
23 all other than the fired bullet.
- 24 Q Thank you.
- 25 A They're just Remington bullets. They are not Gold Tone.

1 Q So, these are not even Remington Gold Tone?

2 A No, sir.

3 MR. GABRY: Nothing further, Your Honor.

4 THE COURT: Anything further Mr. Hiller?

5 RE-DIRECT EXAMINATION

6 BY MR. HILLER:

7 Q Mr. Gabry asked you if anybody from any of the
8 investigators contacted you about the evidence revalue of
9 the firearms in this case and you said you don't recall
10 that. Do you recall if you were asked to see if the
11 bullet--if you were asked to look at the bullet to
12 determine if in your opinion it was identifiable?

13 A That wasn't specifically asked at the time. When I
14 answered his question I believe that was in reference to
15 prior--prior to me examining this whether I was asked
16 about the evidentiary value of a particular firearm. We
17 had some discussion about whether or not there was some
18 new techniques that we could use and my response was, if
19 you want to bring it in, I will look at it to see if
20 having updated optics, because now we have scopes that are
21 actually much better than they did back then, if that
22 makes some type of difference. But, there's still at that
23 time was no firearm to compare it to.

24 Q And that remains the case today?

1 A I actually did--a firearm was brought to me in a few weeks
2 ago for me to examine. I guess it was last week. For me
3 to examine against the fired bullet.

4 Q And it was not identifiable?

5 A I couldn't identify that particular firearm. No, sir.

6 Q And, I understand you don't ever want to give up on
7 something like this but, it's your belief that it's
8 unlikely that you would ever be able to make an
9 identification on that bullet?

10 A That's correct. There's just not very much detail - very
11 few individual characteristics on the fired bullet. If I
12 did get a firearm in and all of the individual
13 characteristics that I see on this fired bullet all
14 reproduced--were all reproduced by that firearm, it may be
15 possible to identify one. But really there are so few
16 intact individual characteristics on the bullet that from
17 my experience in looking at bullets, I don't think it's
18 likely that we would ever be able to identify a firearm.
19 But, I won't say that it's impossible without actually
20 looking at test shots and comparing them.

21 MR. HILLER: May I have a moment, Your Honor?

22 THE COURT: Yes. Let's go.

23 MR. GABRY: We need to speak to you, Your Honor.

24 THE COURT: All right. Come on.

25 (At 10:26 a.m., bench conference)

(At 10:27 a.m., court resumes)

2 MR. HILLER: Sargent Pope, I don't have any
3 further questions for you. Thank you, very much.

4 THE COURT: Any further questions, Mr. Gabry?

5 MR. GABRY: No, Your Honor. I don't have
6 anything further.

7 THE COURT: All right. You may step down.

8 You're excused, sir. We're going to take our morning
9 break at this time. Ladies and Gentleman, we'll be in
10 recess for about 15 minutes. Please go with Ms.
11 Washington.

12 JUDICIAL ATTORNEY: All rise, please.

13 (At 10:27 a.m., court in recess)

14 (At 10:55 a.m., court reconvenes)

15 JUDICIAL ATTORNEY: Washtenaw County Trial Court
16 is now back in session.

17 THE COURT: Bring in the jury.

18 JUDICIAL ATTORNEY: All rise for the jury,
19 please.

20 THE COURT: Please be seated. Call your next
21 witness.

22 MR. HILLER: Thank you, Your Honor. The People
23 call Greg Michaud.

24 THE COURT: Sir, stop there if you would. Face
25 the clerk. Raise your right hand.

1 COURT CLERK: Do you solemnly swear or affirm to
2 tell the truth, the whole truth and nothing but the truth?

3 THE WITNESS: I do.

4 COURT CLERK: Have a seat right up there.

5 THE COURT: Sir, state and spell both your first
6 and last names.

7 THE WITNESS: Gregoire Michaud - M-I-C-H-A-U-D.

8 THE COURT: Okay.

9 COURT CLERK: First name?

10 THE WITNESS: Gregoire is G-R-E-G-O-I-R-E.

11 DIRECT EXAMINATION

12 BY MR. HILLER:

13 Q By whom are you employed?

14 A I'm employed by the Michigan Department of State Police.

15 Q Are you enlisted or are you a civilian?

16 A I'm enlisted. I carry the rank of Detective First
17 Lieutenant.

18 Q How long have you been a police officer for the State of
19 Michigan?

20 A I'm in my 16th year.

21 Q What is your current assignment, sir?

22 A My current assignment is at the Lansing Forensic
23 Laboratory. I'm a supervisor of the Latent Fingerprint
24 Unit there. I'm also program coordinator for the State of
25 Michigan, Michigan State Police for the Latent Fingerprint

1 discipline. Those requirements are that I do audits of
2 the six other laboratories within the State of a Latent
3 Print Units.

4 Q How long have you been working as a Latent Print examiner
5 - a fingerprint examiner for the Michigan State Police?

6 A A little over 12 years now.

7 Q Can you tell the jury, please, your education and training
8 that is pertinent to your job as a fingerprint examiner?

9 MR. GABRY: Your Honor, I'd offer to stipulate
10 that Mr. Michaud is an expert in fingerprint
11 identification.

12 MR. HILLER: That's fine, Your Honor.

13 THE COURT: All right. The witness will be
14 allowed to give expert testimony, fingerprint examination.

15 THE WITNESS: Thank you.

16 BY MR. HILLER:

17 Q Lieutenant Michaud, can you explain briefly to the jury
18 the theory behind latent fingerprint identification?

19 A The (INAUDIBLE) behind latent print identification is that
20 during the third or fourth month of gestation period, our
21 fingerprints begin to form in the womb. And, those
22 fingerprints and/or palm prints, the rich characteristics
23 that make up those are how unique to each of us throughout
24 our lives until we die and decomposition sets in. So, we
25 all have our unique fingerprints and they remain constant

1 throughout life. Nobody has identical fingerprints - not
2 even on your own same hands.

3 Q And, through your training are you able to examine
4 fingerprint s and identify certain characteristics that are
5 unique to those prints?

6 A Yes, sir. That's the majority of what our training
7 consists of is in the comparison process of link
8 fingerprint s to what we call known ink finger impressions.
9 The known ink finger impressions - a good example of that
10 would be the fingerprint cards where an individual has
11 some ink applied to their finger or palms and then their
12 fingerprint s are taken. We take those known ink
13 compressions and we compare them against the latent
14 prints. Let me explain what a latent print is. The word
15 "latent" is Latin for the word "hidden". So, there's
16 several types of latent prints we look to develop on
17 evidence. There are those that are visible latent prints
18 that we can see with our naked eyes. An example of those
19 prints would be the ones that perhaps your children have
20 put their fingerprint s on your windshields or on your
21 mirrors at home. So, you can basically see those latent
22 prints. The second example would be a semi-visible latent
23 print. Perhaps a print that was pushed into some sort of
24 wax or candle where with some oblique lighting and you're
25 able to see that rich structure from your fingerprint s in

1 that medium. And then the third type, of course, are the
2 "invisible prints that we need some sort of chemical or
3 some sort of powder to make those fingerprints visible for
4 us to record or document to begin the comparison process.
5 Once we've developed up our latent prints and recorded
6 them either through lifting them or if they're
7 photography, then we can get into the comparison process.
8 When we take those latent fingerprints and we analyze
9 those fingerprints to see if they're of identification
10 value. There's three level of detail that we look for in
11 a latent fingerprint to determine if it's identifiable.
12 Level one detail is the pattern-flow that we see in those
13 fingerprint or palm print. We all--all of our
14 fingerprints can be classified into three patterns -
15 loops, cartridges or whorls. So, we look at the level one
16 detail, see if we've got enough ridge flow there to
17 determine pattern type, perhaps get us started in the
18 comparison process. The level two detail is meat of the
19 comparison process takes place. Although our fingerprint
20 patterns can be classified into three groups, it's that
21 ridge detail that makes up those patterns that make our
22 fingerprints specific to ourselves and unique. So, that
23 level two detail that we look for, there's ridge
24 characteristics which we can define as (INAUDIBLE)
25 details. I'm sure they have several names. But, the

1 detail can be classified as ridge endings, bifurcations,
2 short ridges. If you're able to look at your fingerprints
3 you can actually see some of these types of detail in your
4 fingerprint patterns. It's this detail that we look for
5 in level two during the comparison process that we hope to
6 make an identification. If we need to go into level
7 three, which is when we start looking at the pores on
8 those ridges, that's exactly what our ridges are in our
9 fingerprint patterns is that during that third/fourth
10 month in the gestation period, the sweat pores push up
11 through the epidermal and diurnal areas of our skin. And
12 so when we sweat pores push up, they then fuse together
13 and they start making these ridges and that's how we get
14 unique fingerprints is that there's no way--nature doesn't
15 produce itself, identical--the same. So, when we're
16 talking about ridges being formed, if you can picture
17 these sweat forms pushing up and fusing together, it's
18 impossible for identical fingerprints to be created. So,
19 when these sweat pores fuse together and make these
20 ridges, it also produces these unique characteristics that
21 we look for. If we find a sufficient number of these--
22 this level two detail, level one detail, there's a
23 continuously consecutive agreement with that. We can go
24 into level three detail if we need to. Again, which is

1 looking at these unique pore shapes and the shapes of the
2 ridges in that level to effect identification.

3 Q Physically when you look at a latent fingerprint, other
4 than the one you've explained about leaving an impression
5 in wax for instance, but if one were to touch a hard
6 surface and leave a fingerprint behind or a piece of
7 glass, physically what are you looking at?

8 A You understand that we define latent fingerprints and paw
9 prints as a chance impression. Just because we touch a
10 surface doesn't necessarily mean we're going to leave a
11 fingerprint or a paw print behind. These ridges that we
12 have that make up our fingerprint patterns and paw prints,
13 we need to have a secretion. Whether it's a sweaty
14 secretion, which is--comes from our eccroring glands and
15 that's the normal type of latent fingerprint that we
16 develop are the sweaty, eckring sweat prints. You can
17 also have a sebaceous gland print which are the greasy
18 prints if you were to touch your fingers to your forehead
19 near your hair follicles, you'll get a really heavy greasy
20 sebaceous content on your fingerprints. That's another
21 type of latent fingerprint that can be left behind. But,
22 just because you touch a surface doesn't necessarily mean,
23 again you're going to leave that fingerprint or paw print
24 behind. There's a lot of factors that come into play. A
25 fingerprint is probably the most sensitive piece of

1 evidence that we deal with in the crime laboratory because
2 of its fertility and its loss to evaporation very quickly.
3 What contributes to the loss to evaporation, mind you a
4 eckring or perspiration print is about 90-95% water. So,
5 to give you an example, if we were to touch a surface such
6 as the wood surface here, the surface tension will hold
7 that fingerprint in place until it's lost to evaporation.
8 The smoother, the flatter the surface, the more surface
9 tension there is and the longer that latent print will
10 stay there. However, if the surface is ruff, if it's not
11 as smooth then that surface tension is less, it will break
12 apart and of course evaporation will (INAUDIBLE) much
13 quicker. So, for us to develop a latent fingerprint there
14 are a lot of factors that come into play. You're talking
15 about the surface on which it was deposited; the surface
16 area - is there enough surface area for a latent
17 fingerprint to exist. You also have factors such as time.
18 Time is the biggest factor because of the evaporation of
19 those latent prints. You also have characteristics of
20 humidity and temperature change. That also evolves to the
21 loss of fingerprints.

22 Q Is that why if you find fingerprints, you preserve them
23 either through lifting or through photography?

24 A Absolutely. When we go through our processing techniques
25 to detect latent fingerprints whether we're dealing with a

1 piece of non-coarse evidence or coarse piece of evidence.
2 A coarse piece of evidence is simply a piece of paper that
3 when you touch that, those fingerprints that you may be
4 leaving behind absorb into that medium. Okay? So, and
5 there they can remain a little bit more stable than those
6 latent prints that are left on non-coarse pieces of items.
7 Non-coarse pieces of items are basically everything but
8 paper in which those latent prints again exist on the
9 evidence like your glass and your metals and plastics.
10 Those are the fingerprints that are subject to evaporation
11 a lot quicker than those latent prints that are left on a
12 coarse piece of evidence. When we develop out these
13 latent prints, either through chemical means or through
14 powders, then we have to record them. If we're using a
15 chemical to develop these latent prints with respect to a
16 coarse piece of evidence, we photograph for recording
17 purposes and documentation purposes. And, it's those
18 negatives in those photographs that we use in our
19 comparison process. If we're using powder to develop out
20 those latent prints, we then will take some lifting tape
21 and actually lift those powder latent prints off of that
22 evidence to record them and document them in that matter.
23 It's important that we do this. Otherwise, we will
24 eventually lose that latent print over time with respect

1 to the development fading or the powder just being brushed
2 off that piece of evidence.

3 Q Now, is there a difference between an identifiable and
4 non-identifiable print?

5 A Yes, absolutely. When I mentioned briefly about the three
6 levels of detail that we look for, we develop up a
7 restructure numerous times when we're processing evidence
8 that isn't identifiable. There has to be enough
9 individual characteristic present in that print in order
10 to identify it and we make that determination by going
11 through the three levels of detail that I briefly
12 explained to you. So, if we don't have enough sufficient-
13 -enough characteristics or sufficient characteristics in
14 that print, then we will call that print unidentifiable.
15 So, just because we develop up some restructure, it
16 doesn't necessarily mean that we're going to identify that
17 print.

18 Q So, we don't leave prints behind every time we touch
19 something?

20 A That is correct.

21 Q And, every time we leave a print it's not necessarily
22 identifiable?

23 A That's correct.

1 Q Now, did you personally process any of the evidence in
2 connection with the homicide of Jane Mixer to see if there
3 were any identifiable latent prints present?

4 A Yes, sir. There was a suitcase that was resubmitted for
5 analysis on this case that I did take a look at and
6 process for latent prints. However, in my visual
7 examination of the suitcase, I did not observe any
8 identifiable latents and when I processed it further I did
9 not develop any latent prints on that piece of evidence.

10 Q Were there other latent prints developed by other
11 fingerprint examiners of days past that are still on file
12 with the State Police in connection with this case?

13 A Yes, sir. There are numerous photographs and a handful of
14 latent lists. Again, latent lists are those that powder
15 was used to develop that print and a piece of tape was
16 used to lift that print off the evidence. So, there are
17 photographs of latent prints that were developed by the
18 examiners at the time this case occurred.

19 Q Lieutenant Michaud, I'm going to show you People's exhibit
20 35. Let me just ask you if that's the suitcase that you
21 processed?

22 A Yes, sir. This is the suitcase I processed in this case.
23 The laboratory, number and my initials and the date appear
24 on the packaging of this piece of evidence.

1 Q Now, Lieutenant Michaud, was there a fingerprint or some
2 kind of a print developed from this piece of evidence by
3 other examiners?

4 A Yes, sir. If it's the photograph's that I looked at.
5 There is a photograph of the suitcase handle in which
6 there appears to be restructure--restructure that could
7 possibly be a palm print. However, in looking at the
8 restructure of that--in that photograph it's
9 unidentifiable. There's just not enough characteristics
10 or ridge detail present to make an identification.

11 Q Now you've indicated that there are other identifiable
12 fingerprints that were on file in connection with the
13 homicide of Jane Mixer. Can you tell the jury, please as
14 best you can where those fingerprints were located - on
15 what piece of evidence?

16 A Back in 1996, prior to the 1970's the Lansing Laboratory
17 was the only laboratory in the state that responded to do
18 crime scenes. So, when I was working at the East Lansing
19 Laboratory there were numerous homicides up in the
20 storage--up in the attic of our laboratory. So, in
21 attempt to archive that database that was one of the
22 project that I undertook, began going up there to archive
23 those databa--those homicide files from the early 1930's
24 up to 1985. I came across this one during the archive
25 process, my normal procedure would be to see if the case

1 had been solved. If not, if there were latent
2 fingerprints on this case that we would make an effort to
3 search them through our Automated Fingerprint
4 Identification System.

5 Q What is that?

6 A The acronym is AFIS. I'm going to refer to it as AFIS
7 instead of having to say Automated Fingerprint
8 Identification System. So, the AFIS system is our
9 computer database that allows us to search latent
10 fingerprints and known ink compressions against the
11 convicted offenders database of fingerprint cards in the
12 State of Michigan. There are approximately a million and
13 a half sets of these fingerprint cards in our database and
14 it's a--it's very much an investigative tool for us to use
15 to develop suspects on cases where there are none that
16 exist. Because of the power of this database, that is why
17 we started archiving these homicides and seeing if there
18 are latent fingerprints that we could search to develop up
19 suspects on these cases. In this case when we did a
20 review of the latent fingerprints I noticed that there
21 were several latent fingerprints that could be searched.
22 They were of quality to be searched through our database.
23 The latent prints were subsequently searched through our
24 database and the system provided a list of candidates back
25 on each latent fingerprint that they thought matched this

1 fingerprints or these latent prints that we entered into
2 the system. At that point when the system provides this
3 list of candidates for us, then we have to go in and do a
4 manual comparison against those individuals that the
5 system brings back for us to look at. On one of these
6 latent fingerprints that we did search the system did
7 provide a candidate which we were able to effect
8 identification to on three of the latent fingerprints.

9 Q Where were those fingerprints located - on what piece of
10 evidence?

11 A These latent fingerprints that we were able to identify
12 were located off the photograph, there's a tag on the
13 photograph that reads, *Ann Arbor-Ypsilanti Area Bell*
14 *Telephone Book*.

15 Q Does it give anymore information about the Bell Telephone
16 book?

17 A It mentions--I believe it mentions off the back cover--
18 inside cover. Then it has the laboratory number and the
19 date the photograph was taken.

20 Q And, whose fingerprint did you find those to be?

21 A The fingerprints I was able to affect identifications to,
22 all three were identified to a gentleman whose name is
23 Garry Kaberle.

24 THE COURT: Gary what?

25 THE WITNESS: Kaberle.

1 THE COURT: Kaberle.

2 MR. HILLER: Can you spell that?

3 THE WITNESS: K as in King-A-B, boy-E, Edward-R,
4 Robert-L, Lincoln-E, Edward.

5 BY MR. HILLER:

6 Q All right. Are there any other identifiable quality
7 fingerprints that was--that had been obtained from the
8 evidence in this case that remain although identifiable,
9 unidentifiable.

10 A There were a few additional latents that we did search
11 through that did not get identified. So, they continued
12 to sit in our databases, our unsolved latent database and
13 they continue to be searched against new ink impression to
14 get added into the system. So, there are some very good
15 quality latent fingerprints and palm prints that were made
16 unidentified on this case that we continue to look at.

17 Q Can you tell us on what pieces of evidence those latent
18 prints were found?

19 A A good portion of these latent fingerprints and paw prints
20 appeared to have come from the same phonebook in which I
21 made the identifications to Mr. Kaberle to. There are
22 additional latent prints that exist on pieces of evidence
23 such as Hudson's bag, manila folder and a wallboard from
24 what I can decipher from the photographs.

1 Q Lieutenant Michaud, there has been testimony in this case
2 about two phonebooks being seized by detectives the day of
3 shortly after the discovery of Jane Mixer's body. From
4 the information that you have, are you able to tell which
5 phonebook had identifiable fingerprints on them or if they
6 both did, which prints go with which phonebook?

7 A I've never personally seen either of the phonebooks and am
8 yet to date been able to determine which phonebook these
9 fingerprints actually came off of.

10 Q Did you make a comparison of known impressions of the
11 defendant with the identifiable fingerprints in this case?

12 A Both the identifiable fingerprints and the identifiable
13 paw prints on the case, yes I did.

14 Q and, what were the results of your examination?

15 A The results of my examinations were that no
16 identifications were made to those latent fingerprints and
17 latent paw prints.

18 Q Can you tell me lieutenant, approximately how many
19 identifiable fingerprints we have that have not been
20 identified?

21 A Both fingers and palms combined, latent prints there's got
22 to be approximately 10-12 that exist out there that are
23 identified. And again, that's a combination of both
24 fingers and palm prints.

- 1 Q And, of that number, how many of them came from one or the
2 other of the phone books?
- 3 A Well, it appears from the description in these photographs
4 on these tags that they all appeared to have come from the
5 same phonebook based on the date the photographs were
6 taken and the description of the phonebook. Those are all
7 identical. And of those 10-12, there's probably 90% of
8 them--of 8 or 9. It appeared to have come from that one
9 phone book in which I effected the three identifications.
- 10 Q And, how many off the Hudson's bag remain unidentified?
- 11 A With respect to the Hudson's bag, manila envelope and
12 wallboard, none of those I recall as being of very good
13 quality. I believe they're identifiable because I did do
14 comparison work against them. The remaining two to three
15 latent fingerprints come off of those remaining items.
16 The remaining two or three of those latent prints were
17 developed on those items. That's what--
- 18 Q Are you able to tell us, for instance how many came off
19 the Hudson's bag?
- 20 A I'd have to do a review of the photographs in order to get
21 an accurate number for ya on those.
- 22 Q Would you mind doing that for us, please?
- 23 A I have reviewed the photograph. There appears to be one
24 partial palm print from the wallboard. There appears to
25 be one identifiable fingerprint off the manila folder and

1 then there looks to be a couple--one identifiable perhaps
2 a second one that looks to be identifiable off of the
3 Hudson's bag.

4 MR. HILLER: Lieutenant Michaud, thank you. I
5 don't have any further questions for you.

6 THE WITNESS: Thank you.

7 THE COURT: Cross-examination?

8 MR. GABRY: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. GABRY:

11 Q So basically Lieutenant, you've reviewed all of the latent
12 print evidence that's been obtained through the
13 investigation conducted back in March of 1969?

14 A That's correct, sir.

15 Q And you have been unable to connect Gary Leiterman to any
16 of these unknown prints?

17 A That's correct.

18 Q And that includes a print that's on what's you've
19 described as a Hudson's bag?

20 A That is correct sir, yes.

21 Q And as far as what that bag might be or any other
22 descriptive remarks, there's nothing that's provided to
23 you?

24 A I have no direct knowledge of how these pieces of evidence
25 come into play in this investigation.

1 Q And, as far as whether there was one, two or three
2 phonebooks, the information that's been provided to you
3 does not detail a number of phonebooks or where phonebooks
4 were located - anything of that nature?

5 A Just through word of mouth from the detectives and the
6 investigating agency in this case. When I did contact
7 them and let them know that I had (INAUDIBLE) some
8 identifications off a phonebook, I do recall a
9 conversation starting occurring as that there existed two
10 phonebooks and did they know--or did I know from the
11 description in those photographs which phonebook I was
12 making a reference to.

13 Q Let me go there a minute. I'd like to ask you. You've
14 also--I mean through the years you've been with the State
15 Police in Latent Print Identification, is it fair for me
16 to assume that you actually did field work, too - going
17 out and lifting prints?

18 A Yes, sir. I did.

19 Q If an item of evidence is obtained that bares some unknown
20 handwriting on it - a book or piece of paper or whatever.
21 Is there a way for the State Police to deal with that
22 evidence so that both disciplines, both forensic document
23 examining and latent print identification have an
24 opportunity to view that piece of evidence?

1 A I can only testify as to what our policies are to date
2 with respect to turning over evidence to different
3 disciplines for analysis work. Thing were done a little
4 bit differently with respect to the latent print unit back
5 in the 60's. The latent print units appeared to be its
6 own entity and they would take their own laboratory
7 numbers it appears on certain cases. And so they would
8 keep their cases separate from the rest of the laboratory
9 analysis work being done on that evidence from the
10 different disciplines. But, hopefully there was something
11 established that yes, if an analysis needed to be done on
12 a piece of evidence by another discipline within the
13 laboratory that that evidence was turned over to that
14 discipline according to procedures and policies.

15 Q Which might explain why a good quality photograph would be
16 taken of a document maintained by forensic document
17 examiners because the fingerprinting process would tend to
18 destroy the handwriting sample, would it not?

19 A It all depends what type of fingerprint processing that
20 was going to occur. Usually the fingerprint discipline to
21 analysis evidence because a lot of the processing methods
22 that we do do with respect to porous items being our paper
23 products, a lot of those chemical processing treatments
24 will destroy handwriting.

1 Q What did they use on the phonebook that you've talked
2 "about?

3 A It appears they used ninhydrin. There's also a chemical
4 called silver nitrate. Usually these two chemicals react
5 with different components of the fingerprint residuals.
6 The ninhydrin reacts with the amino-acids that are left
7 behind in a fingerprint and then the silver nitrate reacts
8 with the salts. Each one form a color reaction so we can
9 visualize the fingerprints so we can record them. And,
10 that appears that the only two methods that were used that
11 I can see from the photographs.

12 Q But, you're unable to determine whether or not any
13 fingerprints were identifiable to a phonebook that had
14 some unknown writing on it or whether or not they even
15 made an effort to try to lift fingerprints off of a
16 phonebook that had unknown writing on it?

17 A Again, all I can testify to are the photographs that I
18 have in my possession that I can look at. And, I don't--
19 and the reports that exist here, sir. And, so nor the
20 reports that I have in my possession show a second
21 phonebook that was processed for latent prints and then
22 the photographs that I show appear to only have the
23 description of one phonebook.

24 Q Where was the latent print on the Hudson's bag?

1 A Oh, that's difficult to tell, sir. It's a one-to-one
2 photograph. So, I don't have the photograph of the full
3 bag. All's I have is that one-to-one photograph of that
4 latent and so all I have is that latent fingerprint
5 against the background of that bag. And so it's only a
6 portion of the bag that I see and I'm not able to
7 determine any edges, or tops or bottoms from that
8 photograph.

9 Q But, you were able to determine that it wasn't Gary
10 Leiterman's fingerprints that made that mark?

11 A That is correct, sir.

12 Q Now, the folder that you referred to, do you have any way
13 to make reference to where that folder was?

14 A No, sir. I have no--no knowledge of how that folder or
15 the Hudson's bag comes into play in this investigation.

16 MR. GABRY: Okay. Nothing further, Your Honor.

17 THE COURT: Any further questions, Prosecutor?

18 MR. HILLER: None, Your Honor.

19 THE COURT: You may step down, sir. You are
20 excused.

21 THE WITNESS: Thank you.

22 MR. HILLER: Your Honor, the People call Gary
23 Kaberle.

24 THE COURT: Sir, come up here if you would. Stop
25 there. Face the clerk and raise your right hand.

1 COURT CLERK: Do you solemnly swear or affirm to
2 tell the truth, the whole truth and nothing but the truth?

3 THE WITNESS: I do.

4 COURT CLERK: Have a seat right up there.

5 THE WITNESS: Thank you.

6 THE COURT: First state and spell both your first
7 and last names?

8 THE WITNESS: My name is Gary, G-A-R-Y, Kaberle,
9 K-A-B-E-R-L-E.

10 THE COURT: Prosecutor?

11 MR. HILLER: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. HILLER:

14 Q Mr. Kaberle, who was Marilyn Swartz?

15 A My wife--former wife - divorced now.

16 Q And where did you meet her?

17 A When I was going to Michigan State. One of my roommates
18 was a good friend of hers. She was coming--came off of
19 law school and I met her through him.

20 Q What law school did she attend?

21 A University of Michigan.

22 Q Ultimately, did you also attend school at the University
23 of Michigan?

24 A Yes, sir.

25 Q Was that law school or another--

1 A Another school.

2 Q Was Marilyn still in law school when you attended school
3 here?

4 A Yes, sir.

5 Q Where did she live?

6 A Law quad when I first met her. She lived on a different
7 street and then she moved into the law quad actually when
8 I first met her.

9 Q So, she lived--she didn't live in the law quad--

10 A Not when I first met her, no.

11 Q But, she did move to the law quad later?

12 A Yes, sir.

13 Q When did she graduate from law school?

14 A It would be a guess--probably--71.

15 Q Was she in law school in March of 1969?

16 A Yes, sir.

17 Q And were you in school here at that time?

18 A Yes, sir.

19 Q Did you know a person named Jane Mixer?

20 A A little.

21 Q How did you know Jane Mixer?

22 A She had an apartment in the law quad right above where my
23 wife lived.

24 Q Did you ever come to the law quad to visit your wife?

25 A I studied there almost every day in the evenings.

1 Q In her room?

2 A No, in the library.

3 Q Why would you study at the law school library?

4 A Great place to study. It was quiet - big tables to spread

5 your stuff out on and also it had some stacks if you

6 wanted to be a little more private you'd go down to the

7 stacks and study down there. It was a great place to

8 study.

9 Q Are you aware of whether or not there were any telephones

10 in the law library?

11 A I don't think any in the library.

12 Q In the building where the law library was?

13 A Yeah, there'd be some downstairs. There's a lounge

14 downstairs. I think there was a pay phone. That was long

15 before cell phones.

16 Q Did you ever use those pay phones?

17 A Yeah--Yes, I would have.

18 Q Can you give us an estimate of how frequently you might

19 have used those pay phones?

20 A Well, my father had died probably a year or so ago--before

21 and my mom was having some problems so I checked in with

22 either my mother or my grandmother probably almost every

23 day.

24 Q Do you recall if you ever went to Jane Mixer's apartment

25 in the law quad?

1 A No. I can't say I remember doing that.

2 Q But her apartment was--was it immediately below your

3 fiancé's apartment--or above your fiancé's apartment?

4 A I'm not sure--you know, everything was 35 years ago. From

5 what I'm thinking or it sounds like it was above her

6 apartment.

7 Q How do you remember?

8 A I really don't. You know, I just know that she--Jane was

9 either above or below.

10 Q Would you ever see Jane around the law quad?

11 A Oh yeah, I was around there quite a bit - especially in

12 the evenings. Not during the day but the

13 evenings/weekends. I was always at Marilyn's apartment.

14 So, just in passing.

15 Q Do you ever recall seeing her at the law library?

16 A Oh yeah, sure.

17 Q How late would you typically study at the law library?

18 A Pretty late--until--I'm not sure what time it closed.

19 But, I needed to get some rest so I'm sure it was 11 or

20 past. You know, I pretty importantly did as good as I

21 could so I spent a lot of time studying.

22 Q Now, do you remember when Jane Mixer was murdered?

23 A Oh yeah. Yes. Certainly, sir.

24 Q Do you remember being at the law quad the night before her

25 body was found?

- 1 A I do.
- 2 Q How is it that you remember that day?
- 3 A Because I stayed at my future wife's apartment over night
- 4 to study. I pulled an all-nighter.
- 5 Q What were you studying for?
- 6 A I think it was gross anatomy.
- 7 Q And you were in the dental school?
- 8 A Yes, sir.
- 9 Q Did they have the same examination schedule as the law
- 10 school?
- 11 A I really don't know. I just know what I had as far as the
- 12 classes I had. As I hear later, it sounds like Marilyn
- 13 might have been done with her term but I still had an exam
- 14 to go yet.
- 15 Q Now you have stated that you spent the night in Marilyn's
- 16 apartment at the law quad?
- 17 A Yes, sir.
- 18 Q How--do you recall how late you studied that night?
- 19 A Most all night.
- 20 Q Your exam was the next day?
- 21 A Yes, sir.
- 22 Q Do you recall anything--hearing anything unusual?
- 23 A The phone rang all night.
- 24 Q In Marilyn's apartment?

1 A No, above or below. I didn't know where it was ringing
2 "from. But, it rang all night like every half-hour or so.
3 It just rang all night.

4 Q Now, did you spend the entire evening and overnight in
5 Marilyn's apartment studying or did you study at the
6 library first?

7 A Well, I started at the library then probably came over to
8 her place after the library closed.

9 Q Do you recall if you ever helped Jane carry books back
10 from the library to her apartment or anything like that?

11 A I--I, you know. I have done that, you know, for other
12 people too. Yeah, I would do that. I'm--I would help
13 somebody if they needed it. When you go to law school you
14 have piles of books and if I was going in the same
15 direction I'd sure help them.

16 Q Do you ever recall using a phonebook in Jane's apartment?

17 A No, I don't.

18 Q Do you ever recall using a phonebook in the basement of
19 the law school?

20 A Oh I'm sure I had to of, yeah.

21 Q Did Marilyn have a phonebook in her apartment as well?

22 A I can't tell. I'm sure she probably did.

23 Q Did you kill Jane Mixer?

24 A Absolutely not.

25 Q Did you have any part in her murder?

1 A Absolutely not.

2 MR. HILLER: Thank you, I don't have any further
3 questions.

4 THE COURT: Cross-examination.

5 MR. GABRY: Thank you.

6 CROSS EXAMINATION

7 BY MR. GABRY:

8 Q The apartments that you call an apartment, these are like
9 residents hall, dorm rooms?

10 A Yes, sir.

11 Q They didn't have a number of rooms like a kitchen or
12 anything, it was basically your bed, your study area?

13 A I didn't see many of them. I think Marilyn's had like a
14 large dining room and bathroom, bedroom or two. I think
15 she had a couple roommates. It must have been a couple
16 bedrooms.

17 Q I understand Marilyn might have been in a suite, does that
18 ring any bells?

19 A I don't know what a suite would be - how you would define
20 that.

21 Q Where is--where is--are these residence in relationship to
22 the law library?

23 A Right straight across. It's across and to the left. (sic)

24 Q And when we say right straight across, we're talking about
25 actually--

1 A North. Probably north.

2 Q The law quad is a series of building with a big courtyard

3 in the middle, correct?

4 A Yes, sir.

5 Q So, you go out of the building and then to get to the law

6 library you would have to cross--would you kiddie-corner

7 the quad?

8 A You mean from Marilyn's apartment?

9 MR. GABRY: Sure.

10 THE WITNESS: Yeah. You'd have--you would come

11 out the door - probably go down a little bit to the left.

12 Maybe 50 - 60 feet and go straight across right into the

13 big large walk-in entrance.

14 BY MR. GABRY:

15 Q And we're talking about the library back in '69 before

16 they went under--

17 A Yes, sir. I've not been there since.

18 Q All right. You'd go up these big imposing steps to the

19 big doors from--

20 A Yes, sir.

21 Q --face the outside.

22 A It's a wonderful library.

23 Q And then when you would open those doors, where would you

24 have to go to go to the student lounge?

1 A I think you went down stairs. I think we went to the
2 right--I think maybe right and maybe left as you went in.
3 You went straight up. You went into the library.

4 Q All right. Is there a ride board down there?

5 A I don't know.

6 Q You don't recall ever seeing one?

7 A No.

8 Q All right. But, you do recall that there were phone
9 booths down there?

10 A I know I used one down there. I don't know if it was a
11 booth or booths.

12 Q Now, back in 1996, the police came to speak to you about
13 the finding of fingerprints on a phonebook. Is that
14 correct?

15 A No. I came to them. They had called me four or five
16 times trying to connect to come up to where I lived. They
17 wanted to interview me about this and I said--it just
18 didn't work out for some reason another they didn't make
19 it and then I said, well I'm headed to a meeting in
20 Cleveland and they said, well we have a post down in
21 Toledo if you'd stop by there, you know, we'd appreciate
22 that. So, I did. I went to them.

23 Q Okay.

24 They reached out and tried to get a hold of you and
25 you guys made arrangements to talk?

1 A Yeah, two or three times but they didn't connect so they
2 said, well--I said, well I can stop and see them on my way
3 down. So, I did.

4 Q And, as you have now, back then you indicated that you had
5 not been in her room to your recollection.

6 A You know, it was 35 year ago. I don't remember.

7 Q What about writing on any of the phonebooks. Did you ever
8 write on any of the phonebooks down in these booths you'd
9 used?

10 A I wouldn't think I had a reason to.

11 Q Did anyone ever ask you for handwriting samples?

12 A Oh they did when they interviewed me.

13 Q Did you provide them with some handwriting?

14 A Yes, sir. I did.

15 Q I might understand from your testimony then that you
16 believe you would have left the law library on the
17 Thursday night sometime around 11?

18 A I don't know what time - towards the end of the night
19 because I could study the best there. And then I would
20 have gone into Marilyn's apartment. Yes, sir.

21 Q Did you go into Marilyn's apartment because you had to
22 leave the law library because it was closing?

23 A That was 35 years ago, sir. I really can't tell you. I
24 wish I could.

1 Q And then it's your testimony that you spent the rest of
2 "the night in her room?
3 A Yes, sir.
4 Q Who else were her suitemates or who else was associated
5 with that room?
6 A She had a roommate named Diane. I think another one named
7 Corky.
8 Q Were they there?
9 A I can't remember. I presume so.
10 Q Did you see Jane Mixer that evening?
11 A No.
12 Q As you were coming back from the law quad, did you see
13 anyone standing around or waiting around the residence
14 area?
15 A I don't remember, sir. But, nothing unusual. It was just
16 normal.
17 Q You were interviewed by the police around the time of the
18 murder?
19 A I think so afterwards. I think I was - a minimal
20 interview. I know my former wife was interviewed a little
21 more at length.
22 Q And, is it fair to say that back then events would have
23 been fresher in your mind?
24 A Oh yes, sir.

1 Q And, other than hearing the phone ring that evening, you
2 had no recollection of any altercation or seeing Jane
3 leaving?

4 A No--I--I no. The only thing--exactly--

5 Q Of helping Jane move any articles that evening?

6 A No.

7 Q Do you have any explanation as to how your fingerprint may
8 have appeared on a phonebook associated with this case if
9 it pertained to her room?

10 A You know, I was around there all the time. My wife even
11 said she thought it may be possibly her phonebook. In the
12 lounge downstairs people go down there and have coffee -
13 the girls played bridge - those kind of things. I was
14 down there a lot when they'd take a break. To say, you
15 know, I certainly could have carried her books back to her
16 room. A number of ways. But, I was around there all the--
17 I was around there six days a week.

18 Q Were you around and in her room six days a week?

19 A If I was--in her room that would have been minimal cause,
20 you know, I didn't--I don't know Jane but just kind of to
21 be pleasant.

22 MR. GABRY: Nothing further, Your Honor.

23 THE COURT: Further questions, Prosecutor?

24 MR. HILLER: None, Your Honor. Thank you.

1 THE COURT: You may step down, sir. You are
2 excused.

3 THE WITNESS: Okay. Thank you, sir.

4 MR. HILLER: Your Honor, the People call Paul
5 Esper.

6 THE COURT: Sir, come in here please. If you
7 would stop there, face the clerk and raise your right
8 hand.

9 COURT CLERK: Do you solemnly swear or affirm to
10 tell the truth, the whole truth and nothing but the truth?

11 (At 11:46 a.m., witness sworn in by clerk)

12 THE WITNESS: I do.

13 COURT CLERK: Have a seat right up there.

14 THE COURT: State and spell both your first and
15 last names.

16 THE WITNESS: My name is Paul Esper, P-A-U-L E-S-
17 P-E-R.

18 THE COURT: Prosecutor?

19 MR. HILLER: Thank you, Your Honor. Good
20 morning, sir.

21 THE WITNESS: Good morning.

22 DIRECT EXAMINATION

23 BY MR. HILLER:

24 Q Mr. Esper, in what community do you now reside?

25 A I live here in Ann Arbor.

1 Q Can I ask you to speak up loud?
2 A I live here in Ann Arbor.
3 Q How long have you lived in this area?
4 A 32 years.
5 Q In Ann Arbor?
6 A I originally moved Ypsilanti for a little while, in this
7 area though for that long. (sic)
8 Q Do you know a person named Gary Leiterman?
9 A Yes, I do. I was a--I lived with him for a while.
10 Q Do you see him in the courtroom?
11 A Yes, I do.

12 MR. HILLER: Point to him, please. Your Honor,
13 may the record reflect identification of the defendant?

14 THE COURT: He did.

15 BY MR. HILLER:

16 Q When did you meet Gary Leiterman?
17 A I met Gary sometime during late '67, '68. He was living
18 with his cousin, Ken Harvey. Or, I wasn't living with
19 him, I knew him through another roommate who I lived with
20 from Saline.
21 Q Who was that?
22 A Keith Seaker.
23 Q And, did there come a time when you shared a house with
24 Gary Leiterman?

1 A Yes, he invited myself and a couple other people to move
2 into Westland to a house he had just purchased.

3 Q And, can you tell us approximately when that was?

4 A There's some discrepancy, I thought it was going on when
5 my leases usually ran out in late August or September. I
6 was informed that the house wasn't ready for occupancy
7 until later in '68. So, it was somewhere as late as '68
8 when I moved in there.

9 Q What do you remember about it? I mean, what do you
10 remember about when you moved - not what other people have
11 told you.

12 A What do I remember--I thought it was warmer weather.
13 That's what basing it on. (sic) And, like I say, the fact-
14 --I'm pretty sure my lease had ran out at my other place
15 and either end of August or end of September.

16 Q On any event, you moved in with Gary Leiterman and were
17 you living with him in the spring of 1969?

18 A Yes, I was.

19 Q And, how long did you live with Gary Leiterman?

20 A I estimate about a year and a half. It could have been a
21 little longer, little shorter. It was all of late '60's--
22 '68, all of '69 and part of '70 and perhaps into
23 springtime of '70.

24 Q What was the arrangement that you had with Gary in terms
25 of money?

1 A That was the attraction. It was very low rent at the
2 time. None of us really had too much money. We were all
3 students. Twenty-five dollars a month is what sticks to
4 my mind and with the arrangement--with the understanding
5 we were supposed to help him put in a law and that kind of
6 stuff to make up the rent because this was quite a drive.
7 We were all going to school here in Ann Arbor. But, gas
8 was cheaper and it was a good deal and it was a nice new
9 house.

10 Q Brand new house at that time?

11 A Yes.

12 Q Who else lived there?

13 A I moved in with Bruce Finkbeiner and Ken Harvey.

14 Q And, who lived there the longest?

15 A I did.

16 Q How long did Ken Harvey stay?

17 A My memory, Ken wasn't there very long. Ken was--was
18 Gary's cousin and I don't recall--I just remember I came
19 home one day and they had had an argument or something and
20 Ken had left. I don't want to say an argument necessarily
21 but something was going on. I really not sure what. And
22 then Bruce stayed I'm estimating about half a year -
23 somewhere in that range before he left.

24 Q Once those two moved out, were there other roommates who
25 came and left during the time you were there?

1 A No, just myself.

2 Q Did you have your own room in the house?

3 A Yes, I did.

4 Q Did you start out when Ken and Bruce were there, did you

5 start out with your own room?

6 A I believe in the beginning that Bruce and I shared one of

7 the bigger rooms and Ken had a room by himself and I'm

8 guessing that after Ken moved out, I took he or one of us

9 moved into another room. I think I stayed in the bigger

10 room. I know I did.

11 Q Were you working at that time?

12 A Yes, I was working here in Ann Arbor.

13 Q Where were you working?

14 A Krogers in Arborland--Arborland Shopping Center.

15 Q And, were you also going to school?

16 A Yes, I was.

17 Q Where were you going to school?

18 A I was going to Cleary College.

19 Q How old were you at that time?

20 A I would have--I turned 21 in September of '69.

21 Q Do you recall, sir, if Gary would talk about girls?

22 A Well, we were young. We all talked about girls. As far

23 as--

24 Q Well, let me ask you this - Do you recall if he dated a

25 lot?

1 A I--I only recall one date--one actual date that he had
2 during that time.

3 Q Now, did Gary own firearms?

4 A To my knowledge he had a pistol, yes. He bought a pistol
5 while we were living there. I don't think it was--I don't
6 think I moved in with him--I'm pretty sure he bought it.

7 Q But, you recall a pistol being in the house?

8 A Yes.

9 Q Do you know the difference between a semi-automatic
10 handgun and a revolver?

11 A Actually no. I don't have very much knowledge of guns. I
12 guess I would know that.

13 Q Do you know if--

14 A A revolver would have bullets in and the clip would be
15 automatic? Is that what we're looking for as--

16 Q The revolver has the cylinder that goes around that has
17 the bullets in it.

18 A Okay.

19 Q Was the handgun that you saw in the house, was that a
20 revolver or a semi-automatic?

21 A I'm trying to remember that. I'm not real sure. But, I
22 don't remember it having a clip. I--so I think it was a
23 revolver.

24 Q Where did he keep the gun?

1 A I'm not real sure. I never saw it in a certain place in
2 the house.

3 Q Did--did you ever fire the gun?

4 A Yes, I fired a gun in the shooting range he had set up in
5 his basement.

6 Q Now, how long had you lived there when he set up the
7 shooting range?

8 A I'm not really sure.

9 Q Do you recall if Bruce and Ken were still living there
10 when this occurred?

11 A I don't think so. I was the only one that shot it with
12 him so I'm assuming they weren't there.

13 Q How did you come to shoot it with him?

14 A He asked me if I wanted to shoot the gun. I said, I
15 really didn't and after some prompting I shot the gun a
16 couple times.

17 Q How many times did he ask you before you shot the gun?

18 A I think he asked me a couple times. You know, this had
19 happened other times, being a non-gun guy. Since then,
20 I've had a couple friends who've, you know, wanted to
21 shoot the gun - no I really don't want to. This time he
22 asked me a couple times so I went and did it.

23 Q Now, would you ever borrow clothes from Gary?

1 A He was a salesman - dressed up in a suit wise and I did
2 borrow sport coats from him from time to time. One sport
3 coat I remember borrowing from him a couple times.
4 Q When you--when you would borrow clothes from him, or
5 borrow a sport coat from him, where would you get it from?
6 A It was in his closet in his room.
7 Q Do you recall and incident where you went to borrow a
8 sport coat from his closet and found something unusual?
9 A Yes, I found some newspapers with articles on the John
10 Norman Collins murders that were taking place during that
11 time.
12 Q Where were these newspaper articles--where were these
13 newspapers?
14 A They were in his closet. When I opened his door I just
15 noticed them laying--there was some other things on the
16 floor. Leave through them just to see what they were.
17 (sic)
18 Q And the newspapers all had articles about the string of
19 killings?
20 A Yes.
21 Q Did you think that was strange at the time?
22 A Oh, yes I did.
23 MR. GABRY: Your Honor, I'll object to the
24 relevance of his opinion.
25 THE COURT: Any response?

1 MR. HILLER: Your Honor, may we approach?

2 (At 11:58 a.m., bench conference)

3 (At 11:59 a.m., court resumes)

4 BY MR. HILLER:

5 Q Mr. Esper, back then did you tell anybody about these
6 newspapers?

7 A No.

8 Q Why not?

9 A I thought it was a little strange maybe. But, not you
10 know, nothing to be alarmed about really. You know, I
11 save newspapers, too - different things.

12 Q When you say--

13 A I didn't then but--

14 Q When you say newspapers, why do you say that?

15 A What comes to mind is--

16 MR. GABRY: Your Honor, I'm going to object as to
17 the relevance of this.

18 THE COURT: It's sustained.

19 MR. HILLER: Mr. Esper, thank you. I don't have
20 any further questions.

21 THE COURT: Cross-examination?

22 MR. GABRY: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. GABRY:

1 Q Mr. Esper, you had an opportunity to talk with the
2 Michigan State Police, I believe at length on December 2nd
3 of 2004. Is that correct?

4 A Yes, sir.

5 Q You actually called up the Washtenaw County Prosecutor's
6 office on that day after seeing something in the
7 newspaper?

8 A Yes.

9 Q I also understand before you went and talked to the
10 Washtenaw County Prosecutor, sir, you and your wife did
11 some research on the internet?

12 A She did, yes.

13 Q And shared that information with you before you went to
14 the Washtenaw County Prosecutor, correct sir?

15 A I think so, yes.

16 Q In fact, you told the detectives then that Ken was only at
17 the house for a couple of weeks.

18 A That was my memory, yes.

19 Q When you moved in?

20 A Yes.

21 Q Two weeks?

22 A Yes.

23 Q So, when you moved in, Mr. Harvey left two weeks later?

24 A That is my recollection, yes.

25 Q Where were you sub-leasing?

1 A That's kind of my problem. I don't know. I don't recall
2 that I stayed at another place. That's why I had
3 originally thought I moved in in like September rather
4 than later in the year. I recall not staying any place--I
5 recall moving from where I was living to the house.

6 Q Were you one of the people that was living in the same
7 apartment or apartment complex with Ken Harvey?

8 A And when Mr. Harvey indicates that he had to make
9 arrangements for his so his roommates to get somebody to
10 sub-lease, he left you and Bruce Finkbeiner staying at
11 your apartment until that lease ran out. Isn't that
12 correct, Mr. Esper?

13 A I stand corrected if that's the case. I don't recall. I
14 don't recall that part.

15 Q So, in fairness realizing this 36 years ago, you don't
16 have any idea when you moved into Gary Leiterman's house,
17 do you?

18 A Not an exact date. No.

19 Q Fairness to you, you have no idea when you saw, based on
20 your testimony, newspapers in his closet?

21 A That is correct.

22 Q You're unable to relate that to any of the facts that
23 occurred in 1969 including when Man walked on the moon in
24 July, correct?

1 A I did mention in my interview, I remember watching that
2 with Gary.

3 Q So, you know that you were living there then?

4 A Yes.

5 Q You don't have any idea when this gun shooting--and let me
6 understand this. You're saying that he was shooting his
7 gun in his brand new house in the basement?

8 A Yes.

9 Q Is this something that had been going on for a while?

10 A I don't think it was too long, no.

11 Q No? More than a day?

12 A Yes.

13 Q A few days?

14 A It seems like it was set up for a couple weeks or
15 something, yes.

16 Q So, for a couple of weeks, you're staying upstairs hearing
17 somebody shooting--

18 A He didn't shoot everyday, no. But, he did do target
19 practice down there.

20 Q But, did you kind of freak when it happened the first
21 time?

22 A I--he must have informed me of what he was doing.

23 Q Describe the shooting range to the jury. How do you
24 remember that?

1 A It ran the length of the basement - the long ways from one
2 end to the other and he had a target on the end. And, I
3 don't remember too much else about it.

4 Q No? And you shot at it correct?

5 A Uh huh.

6 Q So, did the bullet bounce off the back concrete wall and
7 hit you?

8 A No, he must have had something behind it.

9 Q You don't know or recall what it was?

10 A No, I never looked at what it was.

11 Q What color was the gun - bright shiny chrome?

12 A It wasn't chrome, no.

13 Q How big was the gun?

14 A It wasn't a large gun. It wasn't a small or large -
15 medium. Probably--maybe an eight inch barrel.

16 Q And, it's your recollection that he had just bought this
17 gun?

18 A Yes.

19 Q What kind of a housekeeper were the two of you?

20 A We were single guys. We kind of kept the living area up
21 and bedrooms were bedrooms.

22 Q Kept the living area up in case people came over and threw
23 the junk in your respective rooms?

24 A I guess that's accurate, sure.

25 Q A lot of us were in that same situation years ago.

1 A Yup.

2 Q Wasn't unusual for there to be newspapers around the

3 Leiterman house? Isn't that correct, Mr. Esper?

4 A Not at all.

5 Q Did you read a newspaper back then? There were some

6 differences between you and Gary - politically,

7 philosophically. Is that not correct?

8 A As I recall it there was, yes.

9 Q You've viewed yourself as more of a free spirit, hippie-

10 like where Gary was pretty conservative and straight?

11 A I believe that's accurate, sure.

12 Q He was a veteran as far as you knew?

13 A Yes.

14 Q And had discussions occurred about the war in Vietnam at

15 your house?

16 A I'm sure we did, yes.

17 Q Did Gary appear to be an individual that had a pretty good

18 command of facts or new a lot?

19 A Yes.

20 Q Did he read a lot?

21 A I don't want to say a lot. I do remember seeing him

22 reading.

23 Q Did you guys hand out much?

24 A Not too much.

1 Q You had your own world back at Cleary in Ypsilanti,
2 correct?

3 A Yes.

4 Q A lot of friends that were still at school back in Ypsi?

5 A Sure.

6 Q And Westland was quite a distance from there?

7 A Yes, it was.

8 Q In addition to that, you worked at Kroger I understand as
9 "a stocker?"

10 A Yes, I did.

11 Q Now, that was the Kroger that was operating out at
12 Arborland back in the late '60's?

13 A Yes, sir.

14 Q How long had you worked there?

15 A I was at Kroger 11 years. So, I started there in--here we
16 go again with the dates--

17 Q Were you working there in the summer--

18 A Mid '67.

19 Q In the summer of '69 were you working there?

20 A Yes.

21 Q Were you aware of a young lady--one of the crimes as far
22 as somebody being last seen over by Arborland?

23 A I don't recall that, no.

24 Q Were you reading up on the homicides?

1 A Yeah, I think that everyone was following them. It was
2 that kind of thing in the community.

3 Q You say you rif--well, you've--I'm sorry--leafed through
4 them, I believe you said. Did you look at each paper?

5 A No.

6 Q Did you look to see if it was a paper?

7 A Yes.

8 Q There was a paper with the front page that had an article
9 about the homicide, correct?

10 A Yes.

11 Q These were not clippings cut out of a paper?

12 A No.

13 Q This wasn't information that was hidden. It was laying on
14 top of something you said in the closet?

15 A Yes.

16 Q Did you ask Mr. Leiterman to go into his closet to borrow
17 his clothes?

18 A Yes, as I recall he allowed me to use his sport coat, yes.

19 Q So, he would have known that you would have been going
20 into that closet to get a coat?

21 A Yes, he would have.

22 Q Gary Leiterman did not drive a station wagon back in 1969,
23 did he?

24 A According to my recollection he did not.

1 Q He owned some--at least one dog while you were living
2 there. Is that correct?

3 A That is correct.

4 Q And that was not the best-behaved dog. Is that correct?

5 A No, not at all.

6 Q Would that dog ride in vehicles - be in cars?

7 A He must have. I don't recall that being an often thing,
8 no.

9 Q Did you know George or Ed Messingham?

10 A I knew Ed Messingham.

11 Q And how do you know him?

12 A Through Gary. He was a neighborhood guy. He did some
13 work on my car. He was a great mechanic.

14 Q Him and Gary spend a lot of time together?

15 A More time than with anyone else I thought, yes.

16 Q More time than with you, correct Mr. Esper?

17 A I think that would be accurate, sure.

18 Q You're schedule at Cleary College, given where you were
19 living in Westland, would you come over and be over here
20 for the entire day?

21 A Usually.

22 Q Were you going to school in the summer of 1969?

23 A Yes, I was.

24 Q So basically you would have been out the house most of the
25 time. Is that fair to say?

1 A Yes.

2 Q Did you have other friends that you would stay with that
3 would not even result in you coming back the same evening?

4 A I think I usually went home.

5 Q And by home you mean Gary Leiterman's house that he sublet
6 a room to you for twenty-five dollars a month?

7 A Yes, sir.

8 Q I was going to back and try to focus on when you moved in
9 and do I understand that one of the reasons you felt you
10 moved in in the summer when you were originally told the
11 police officers in June or September of '68, was that
12 because when you moved in you could tell that the yard
13 wasn't even done yet?

14 A Yes.

15 Q Mr. Esper, I'm getting the sense and correct me if I'm
16 wrong, but you wouldn't argue if--with me if I indicated
17 that you probably moved in sometime in the spring of 1969?

18 A I don't know what arguing. But--

19 Q Would you disagree with that?

20 A Yes, I would.

21 Q So you would--

22 A Only from my recollection. You know, I'm not saying that
23 I'm right or wrong. From my recollection that's when I
24 moved in.

1 Q Did I understand you correctly that you thought it was
2 warmer when you were moving in?

3 A Yes.

4 Q Spring-like?

5 A I thought fall-like.

6 Q The house was not--the mortgage paperwork indicates the
7 house wasn't purchased until December 2nd of 1968. That
8 would be well beyond fall, would it not?

9 A That's what I heard, yes.

10 Q I believe you described his dogs as--his dog as high
11 strung and uncontrollable?

12 A That's right.

13 Q And, you recall that he was driving an actual company car?

14 A Yes.

15 Q Did you indicate to the detectives that you were not real
16 good friends with Gary Leiterman?

17 A I don't think I wanted to give that impression, no.

18 MR. GABRY: If I may have a second, Your Honor.

19 BY MR. GABRY:

20 Q When you were trying to relate to the detectives when Man
21 was on the moon, what circumstance were you relating to
22 that event?

23 A I was just trying to remember instances where I remember
24 doing something with Gary.

25 Q Okay.

1 So again, you're unable--your recollection is that no
2 other roommates were living in the house when this firing
3 range was being utilized?

4 A Yes.

5 Q And you have no idea in the sequence of things when you
6 might have gone in and borrowed a sport coat and seen the
7 newspaper?

8 A No.

9 Q And you recall one time, from what Mr. Hiller asked you,
10 that Gary had one date at least that you were aware of
11 while you were living there?

12 A Yes.

13 MR. GABRY: Thank you, Your Honor. Nothing
14 further.

15 THE COURT: Further questions?

16 RE-DIRECT EXAMINATION

17 BY MR. HILLER:

18 Q Mr. Esper, you told Mr. Gabry that your wife had done some
19 research before you called the Prosecutor's Office?

20 A Yes. Well--I yes. I'm not--it was around that time if he
21 said beforehand, I--that must be when it was. But, I had
22 some knowledge before I went in there, yes.

23 Q Okay.

24 Why did she do the research?

25 A That's just the way she is.

1 Q And what did you have knowledge of that you had gained
2 from your wife? Let me ask--let me rephrase the question.
3 Things that you've come here to testify about today, the
4 things that happened in 1969 while you were living with
5 Gary, are those things that you learned in result of your
6 wife's research or are those things you remember
7 happening?

8 A No, those were the things I remembered.

9 Q Now, with respect to the borrowing of clothes from Gary
10 Leiterman, I want to be clear on whether or not each time
11 you borrowed a sport coat whether you asked Gary's
12 permission or whether it was just understood that you had
13 permission to borrow a sport coat if you needed it?

14 A Well, there were a couple occurrences I may not have asked
15 him each time and one time he told me I could - for the
16 first time and I may have done it again.

17 Q Do you recall whether or not you asked him--his permission
18 to borrow his sport coat on this specific time that we're
19 talking about when you found the newspapers?

20 A I couldn't say for sure.

21 MR. HILLER: Thank you, sir. I don't have any
22 further questions.

23 THE COURT: Further questions, Mr. Gabry?

24 RE-CROSS EXAMINATION

25 BY MR. GABRY:

1 Q Do you remember what the reasoning was you needed to
2 borrow his sport coat?

3 A No, sir.

4 Q Do you remember where you were on March 20, 1969?

5 A No, sir.

6 MR. GABRY: Nothing further, Your Honor.

7 THE COURT: You may step down, sir. You are
8 excused. Counsel, let me see you regarding scheduling.

9 (At 12:16 p.m., bench conference)

10 (At 12:17 p.m., court resumes)

11 THE COURT: All right. Ladies and gentleman,
12 we're going to break for lunch as we did last Wednesday.
13 This is going to be a little extended lunch for you. You
14 can go spend all of your juror pay on art downtown - that
15 might get you a little sign for your dog house, I don't
16 know but that's about it. We will reconvene at 2:30.
17 Please return here ready to come back out at 2:30 this
18 afternoon. Remember my instructions about not having any
19 contact with any of the participants in the case. Okay?
20 You're excused until 2:30.

21 JUDICIAL ATTORNEY: All rise, please.

22 (At 12:18 p.m., court in recess)

23 (At 2:49 p.m., court reconvenes)

1 JUDICIAL ATTORNEY: The Washtenaw County Trial
2 Court is now in session. The Honorable Donald E. Shelton
3 presiding.

4 THE COURT: Bring in the jury.

5 MR. GABRY: Your Honor, could Mr. Hiller and I
6 approach while we're waiting?

7 THE COURT: Quickly.

8 (At 2:50 p.m., bench conference)

9 (At 2:50 p.m., court resumes)

10 THE COURT: Please be seated. All right. Call
11 your next witness, Prosecutor.

12 MR. HILLER: Thank you, Your Honor. The People
13 call Thomas Riley.

14 THE COURT: Sir, face the clerk, raise your right
15 hand and be sworn.

16 COURT CLERK: Do you solemnly swear or affirm to
17 tell the truth, the whole truth and nothing but the truth?

18 THE WITNESS: Yes.

19 COURT CLERK: Have a seat right there.

20 THE COURT: Sir, state and spell both your first
21 and last names.

22 THE WITNESS: My name is Thomas Riley, T-H-O-M-A-
23 S R-I-L-E-Y.

24 THE COURT: Thank you. Prosecutor?

1 DIRECT EXAMINATION

2 BY MR. HILLER:

3 Q Thank you, Your Honor.

4 By whom are you employed?

5 A I'm employed by the Michigan Department of State Police.

6 Q How long have you been with the State Police?

7 A Since 1987.

8 Q And, what do you do now for the State Police?

9 A I am a Detective Lieutenant assigned to the Question
10 Document of the Crime Laboratory in Lansing. I serve that
11 unit as the Unit Supervisor and as the Program Coordinator
12 for Question Document Services throughout the State of
13 Michigan.

14 Q How long have you been assigned to the Question Document
15 Unit?

16 A I was assigned to the Crime Lab in March of 1990.

17 Q And, what are your duties as a Forensic Document Examiner?

18 A As a Forensic Document Examiner my duties are to receive
19 and examine evidence that's documents in nature.
20 Documents can be a very broad term. It could be a
21 traditional piece of paper. I could also be spray
22 painting on a building. Generally anything that conveys a
23 message is considered a document. That type of evidence
24 is what my responsibilities are in the Crime Lab.

- 1 Q How much of your time on a day to day basis or weekly
2 basis is devoted to the examination of question documents?
- 3 A My job as a Forensic Document Examiner or Question
4 Document Examiner, that is the primary function of my duty
5 in the laboratory. I also as a young supervisor serve to
6 supervise two other individuals who are assigned to the
7 unit. I also receive the quality control issues and
8 proficiency tests and things of that nature. So, most of
9 my job--or most of my time is spent on the examination of
10 documents.
- 11 Q Can you tell the Court and the jury your educational
12 background?
- 13 A I hold a bachelor's science degree from Florida
14 International University in Miami. All Question Document
15 Examiners for the Michigan State Police are required to
16 have a minimum of a bachelor's degree. That is to begin
17 the training program and actually to come into the unit.
18 That is sort of the minimum level of education.
- 19 Q And is there any specialized training for Document
20 Examination beyond the bachelor's degree?
- 21 A The specialized training begins once a person is assigned
22 to the unit and in my case I--actually the training
23 program is a three year training program. In my case I
24 began that in March of 1990. The training program is much
25 like an apprenticeship program where you are under the

1 direct supervision of a qualified Document Examiner - day
2 to day, on the job, learning. That is augmented by
3 training through various organizations and workshops put
4 on throughout the United States. Those workshops and
5 courses are, for example, the United States Secret Service
6 puts on a Question Document course in Glencoe, Georgia. I
7 attended that as part of my training. Federal Bureau of
8 Investigation also puts on a course - a Question Document
9 course at Quantico, Virginia at their training facility. I
10 was also assigned to attend that. Workshops by the
11 Academy of Forensic Sciences, American Society of Question
12 Document Examiners, Midwestern Associations of Forensic
13 Scientists - those are scientific organizations that hold
14 annual meetings but they also put on workshops on various
15 topics within the field. So, as a--as part of that three
16 year training process in addition to the day to day on the
17 job teaching from your Senior Examiner, you're also--or I
18 was also sent to quite a number of courses. Those courses
19 continue as the career goes on and it's part of a
20 continuing education process.

21 Q Are you--is there certification or accreditation for
22 Document Examiners?

23 A There is. The American Society of Forensic Sciences in
24 the late '70's brought together a consortium of
25 individuals to develop some type of accreditation process

1 for Forensic Document Examiners. Out of that was born the
2 American Ward of Forensic Document Examiners which is the
3 only certifying body for Forensic Document Examiners in
4 North America that is sponsored by the American Academy of
5 Forensic Sciences - the American Society Question Document
6 Examiners and the Canadian Society of Forensic Sciences.

7 Q And, are you certified or accredited by that organization?

8 A Yes I am. I'm a diplomat of the American Board of
9 Forensic Document Examiners.

10 Q Are you a member of any other professional organizations?

11 A I'm a member of the American Academy of Forensic Sciences.
12 I'm also a member of the American Society of Question
13 Document Examiners. I'm also a member of the American
14 Society for Testing Materials which is a standardization
15 body for publishing guidelines--acceptable guides for use
16 within the Forensic Document Community.

17 Q Have you written or published any literature and made any
18 presentations - conducted any research in the field of
19 Question Documents?

20 A I have research and presenting research is considered a
21 part of the process of remaining active in the field. In
22 my case I've authored three research papers and co-
23 authored two research papers. These research items are
24 presented at regional meetings or national meetings of the
25 Sciences orangizations--Forensic Science organizations

1 I've mentioned - the American Academy of Forensic
2 Sciences, The American Society of Question Documents and
3 there's two of those research articles have also been
4 published in the Journal of Question Document Examiners,
5 the International Journal of Forensic Document Examiners
6 is actually the title of it.

7 Q Do you teach or have you taught in the field?

8 A I am regularly asked to teach for the State Police
9 training programs, Crime Scene Technician Schools,
10 Homicides Schools where detectives or Crime Scene
11 Technicians are brought in. I'm regularly asked to do
12 that. And teach them about the area of Question Document
13 Examination. I'm also--I've also been a guest lecturer at
14 the Institute of the Militia and Volger (INAUDIBLE), an
15 institute--the Chinese People's Public Security University
16 in Beijing, China. And, Central Michigan University and
17 Michigan State University. So, I've been asked to teach
18 at all those locations.

19 Q Being in Ann Arbor we regard those as all good foreign
20 institutions.

21 A I would hope so, yes.

22 Q Have you ever testified as an expert in the field of
23 Question Document?

24 A Yes, I have.

25 Q And, on how many occasions?

1 A Fifty occasions.

2 Q What courts have you testified in?

3 A I've testified in Federal Court, in State Circuit Courts,
4 State District Courts, Administrative Law Hearings and
5 other judicial proceedings.

6 Q Can you tell us, please, the theory or basis behind
7 handwriting identification?

8 A Handwriting identification is based upon the fact that no
9 two people write alike. Under normal circumstances and
10 writing naturally an individual's person or individual
11 nature - the fact that we're all different beings; that we
12 have different muscular skeletal structures; that we write
13 and see what we write differently; we also learn
14 differently. How we're actually able to transmit what we
15 see as how writing should look to the writing instrument
16 or the hand if you will. All those individual things
17 about the human being reflect themselves in the writing.
18 And, it's--the fact that no two people actually write
19 alike is what the theory in handwriting identification is.

20 MR. HILLER: Your Honor, at this time I'd ask
21 that Lieutenant Riley be able to testify in the field of
22 Question Document Examination and Handwriting
23 Identification.

24 MR. GABRY: No questions, I'd leave it to the
25 Court.

1 THE COURT: So--all right. So, it's going to be
2 "a--in forensic examination of documents and question
3 documents? Is that what you want?

4 MR. HILLER: Question Documents and Handwriting
5 Identification. Yes, sir.

6 THE COURT: All right.

7 THE COURT: We'll receive expert testimony in
8 those areas from this witness.

9 BY MR. HILLER:

10 Q Lieutenant Riley, when you examine handwriting - trying to
11 determine an origin for the handwriting, what
12 characteristics do you commonly look for?

13 A Handwriting characteristics that I look for in that
14 process are varied from the vary--the actual overall
15 appearance of the writing - the initial appearance, the
16 writing style, the letter formations, the height
17 relationships of the letters, the "t" forms, the "t"
18 crossings, the "I" dots, the pen pressure variation within
19 the line as it moves through the paper. Is the writing
20 fluently written - executed in a manor that can be clearly
21 seen. Looking for variations within the letterforms and
22 variations within the writing styles themselves.

23 Q And, when you are present with evidence, how do you go
24 about making a comparison?

1 A The process of comparison begins with an examination of
2 the question document if you will. Or whatever the item
3 is that is in question. Generally in terms of handwriting
4 comparisons the question is, did a particular individual
5 write a piece of writing or did they not write a piece of
6 writing. The examination begins with the question
7 document for a number of reasons. The first reason is
8 that if the writing for example is not naturally executed
9 or fluidly written, if it exhibits signs of having been
10 traced onto a document - copied onto a document. If the
11 writing is very slow or exhibits other signs of not being
12 natural, the writing process or the examination process
13 beyond that point may be hindered. To compare writing
14 that is not fluidly naturally executed and normally
15 written, in most instances the comparison would stop at
16 that point - there would be no need to go on. If there--
17 the question writing is of such a nature that it can be
18 compared with known writing, then the process begins of
19 organizing the known writing that is submitted. Generally
20 what it--what occurs is that writing of a particular
21 individual or individuals is submitted for comparison with
22 that question item. So, I would organize those materials
23 so that they can be examined and compared side by side
24 with the question writing and looking for those
25 characteristics I described earlier and the fine features

1 of writing. To be able to make a side by side comparison,
2 normally I would lay out the writing of a particular
3 individual and compare the question writing with the known
4 writing. That process of examining the known writing in
5 that process I also would look at the known writing or
6 look at the known writing to determine; is this writing
7 consistent with what I would expect to see as writing of
8 one individual or does it appear to be more than one
9 individual? Does it appear to be several different styles?
10 Is it one style? Is it limited? What type of writing is
11 it - is it cursive writing or is it printing? Those types
12 of things to be able to make a comparison with that known
13 writing. Is the writing sufficient to be able to move to
14 the next phase of this process, which would be to actually
15 make the comparison between the characteristics and the
16 question writing to the comparison of the characteristics
17 found in the known writing.

18 Q As you are making your comparisons, do you have any
19 specialized equipment that you use that allows you to give
20 a better view than you would get with the naked eye?

21 A Yes, the specialized equipment exists within the
22 laboratory in the Document Unit to allow me to view items
23 at a higher magnification. These range from just a small
24 handheld magnifying glass up to and including microscopic
25 examinations of writing. There are also imaging

1 techniques in terms of scanning an image of the questioned
2 or known document to be able to enlarge those and do
3 comparisons and that type of thing. So, there are a wide
4 variety of comparison implements if you will available to
5 it - to make those types of examinations.

6 Q Now you mentioned imaging techniques. Is it part of your
7 procedure to routinely make images, photographs or
8 computer images of the documents that you're examining?

9 A Yes, it is. We--at the minimum what is made are
10 photocopies of documents that are received. Often the
11 evidence is also scanned at high resolution or
12 photographic quality - a resolution to be able to use the
13 images for the examination process in the event that in
14 some cases items are submitted to the Question Document
15 Unit where the handwriting examinations may need to occur
16 after other processes in the lab have taken place. For
17 example, in a check case a suspect may have not been
18 developed yet. But, the check has to be preserved in some
19 fashion to be able to make a handwriting comparison later
20 on. So, items are imaged for that purpose - to record or
21 have a permanent record of that evidence as it was
22 received in the Question Document Unit and also in the
23 event it becomes necessary in the future to be able to
24 make those comparisons--side by side comparisons with
25 known writing. So, there--the evidence that is received

1 by the Question Document Unit at a minimum is photo copied
2 and at the other end of it, the high-resolution images are
3 made of the item.

4 Q If for instance the check that you were talking about --
5 after--after it were imaged it had to go to the
6 fingerprint section, are there times when the processing
7 for fingerprints or other processing is done on evidence,
8 for instance DNA, will alter it or even destroy the
9 writing that needs to be imaged?

10 A The processing of other units can often destroy the
11 writing. The chemical processes used to develop
12 fingerprints on documents have an adverse effect on
13 writing inks. To a large extent they'll cause them to
14 blur. Everything from minor blurring to completely
15 obliterating the writing ink. The DNA processes that are
16 used in terms of document cases often just destroy the
17 evidence. For example, in a case where an envelope is
18 submitted as you know, an item that was anonymously sent
19 to someone, the processes that occur in the DNA unit are
20 they would snip portions of that envelope and those would
21 be consumed in the process of their analysis. So, the
22 process can destroy potential evidence that may exist in
23 the documents themselves. So, they're submitted to the
24 Question Document Unit generally first and then
25 distributed throughout the laboratory.

1 Q Can you make a comparison of questioned writing and known
2 writing using images such as you make in the Question
3 Documents Unit?

4 A Yes. Generally speaking, the images that are scanned or
5 copied are of sufficient quality to be able to make a
6 handwriting examination later or in the future in the
7 event that becomes necessary.

8 Q And, do you do that on a regular basis?

9 A Yes.

10 MR. HILLER: If I may have a moment, Your Honor.
11 Your Honor, at this time I'd renew my motion to admit
12 People's exhibit 51, which is the photographic copy of the
13 spiral notebook.

14 THE COURT: Mr. Gabry?

15 MR. GABRY: I will just go on my regular
16 objection, Your Honor.

17 THE COURT: I'm going to admit it. If any
18 question await it would be left to the jury. 51 is
19 admitted.

20 MR. HILLER: Thank you, Your Honor.

21 MR. GABRY: What number?

22 MR. HILLER: 51.

23 THE COURT: Oh, now we--that's the one we had to
24 re-number.

25 MR. HILLER: That's right. It's 65.

1 THE COURT: That's right. It's 65 not 51 being
2 admitted.

3 MR. HILLER: We probably won't ever get that
4 straight, Your Honor.

5 THE COURT: All right.

6 BY MR. HILLER:

7 Q Now, Lieutenant Riley, were you provided with some pieces
8 of evidence in connection with the investigation of the
9 "murder of Jane Mixer?"

10 A Yes, I was.

11 Q I'm going to show you People's exhibit 52. I want to see
12 if that was one of the items that you can describe.

13 A People's exhibit 52 is an image of the--or a photograph of
14 a front cover of an Ann Arbor/Ypsilanti phonebook. It is
15 an image that I produced in the laboratory of the
16 documents--the document in question - the phonebook in
17 question here.

18 Q Now, do you actually have the phonebook?

19 A I do not have the phonebook.

20 Q What do you have?

21 A I have a photograph of the phonebook cover. I actually
22 have two photographs of the phonebook cover. One is--this
23 image that you have shown me and the other is an
24 enlargement of the writing--the area of writing that
25 contains the entries "Muskegon" and "Mixer".

1 Q May I have this marked?

2 A Sure.

3 Q I've had that marked as People's exhibit 53. Is that a
4 fair and accurate representation of that area of the Ann
5 Arbor/Ypsilanti phone directory?

6 A As People's exhibit 50--actually it's 85.

7 MR. HILLER: Correction, Your Honor. For the
8 record it's 85.

9 THE WITNESS: People's exhibit 85 is an
10 enlargement of the writing in the area on the front cover
11 of this phonebook. I believe is a fair and accurate
12 representation of that writing.

13 MR. HILLER: Your Honor, I'd move to the
14 admission of 85.

15 THE COURT: Any objection?

16 MR. GABRY: No Your Honor as an enlargement I
17 guess. It's--

18 THE COURT: All right. It's admitted. Counsel,
19 let me see you at the bench momentarily.

20 (At 3:16 p.m., bench conference)

21 (At 3: 17 p.m., court resumes)

22 BY MR. HILLER:

23 Q Lieutenant Riley I'm going to show you some other exhibits
24 I'd like you to look through and tell me if you recognize
25 those. It's 65, 48, 51, 47, 49, 79 and 80. Can you just

1 take a minute to inspect those and tell me if you've
2 received those?

3 A People's exhibit 50 is a clear evidence envelope that
4 contains the request writing of Glenn Blares. These
5 writing samples are taken at the request or generally
6 taken at the request of or during an investigation in the
7 attempt to reproduce the questioned writing conditions.
8 Would you like me to count them now for--while I'm here?

9 MR. HILLER: I don't think you need to count
10 them. Thank you.

11 THE WITNESS: Number--People's exhibit 51 is
12 again a evidence envelope--I should go back to 50. 50 was
13 received by me in the laboratory on May 25, 2005. This
14 was a portion of the writing that was provided to me as
15 known writing of Mr. Leiterman. People's exhibit 51 is a
16 journal. It's got a piece of tape on the front cover. It
17 says, guns registration into 10/10/ of 73. It starts
18 1966. If I can look at my notes here for just a second I--
19 --this was also submitted to me as containing known writing
20 of Mr. Leiterman. On pages--on three different pages in
21 this book, page number 41, page number 135 and page number
22 59. People's exhibit number 47 is in another evidence
23 envelope containing a green covered journal. The cover
24 has a piece of green tape on it that says, Shell's through
25 February of 1970. This was provided or submitted as

1 containing known writing of Mr. Leiterman. This was also
2 submitted on May 25th of 2005. As known writing Mr.
3 Leiterman and the writing is on page number 19 of the
4 document. People's exhibit number 49 is another sealed or
5 another heat sealed envelope contains a green and white
6 covered composition book. This document was also
7 submitted to be as containing known writing of Mr.
8 Leiterman on various pages throughout the book. So,
9 submitted as part of Mr. Leiterman's known writing on May
10 25th of 2005. People's exhibit number 48 is a heat sealed
11 envelope containing a single sheet of paper. There's two
12 separate written entries. The upper one, if I can refer
13 to my notes--the upper writing begins the planning,
14 started in January when we and goes on from there in the
15 lower writing it says, "Dear Fritz". This was also
16 submitted to me as known writing of Mr. Leiterman and it
17 was submitted to the laboratory on May 25th of 2005.
18 Number 79, is copies of documents, People's exhibits 79
19 and I'm not going to count these right now, or I can if
20 you care for me to do that--

21 MR. HILLER: No, I don't think we need to count
22 them.

23 THE WITNESS: It's a bundle of documents that
24 were contained items that were provided to me as known
25 writing of Mr. Leiterman. They're letters and various

1 correspondents. People's exhibit number 80 is another
2 bundle of correspondents or letters--copies of letters
3 that were provided to me as known writing by Ms. Solly
4 Leiterman - not Mr. Gary Leiterman. In People's exhibit--
5 there's two stickers - one says 51, the other says 65.

6 MR. HILLER: 65 is the one we're looking at.

7 THE WITNESS: So, People's exhibit 65 is a three
8 ring binder. This three ring binder contains images of an
9 item that was submitted to the laboratory on May 25th of
10 2005. It was a Stockwell, one subject college-ruled
11 notebook. The cover of it is on the front cover of this
12 notebook. This three-ring binder contains images that I
13 generated in the laboratory from the--the case images of
14 this particular piece of evidence. It contains writing in
15 two different groupings. The first set of writing is from
16 page--from page 1 through 35. And the second group of
17 writing--these are various notes and appear to be medical
18 notes and things of that nature. The second groups of
19 writing is further in the back of the book and they date
20 from February 11, 2002 until November 20th and there is no
21 year date. But, they're in sequential order. These--this
22 notebook was actually initially provided to me as known
23 writing of Mr. Gary Leiterman. I've subsequently learned
24 that the front entries of this notebook - the first 35
25 pages which are of a--contain the entries of medical notes

1 and of that type of thing. The writing style was actually
2 such that I have discovered that this writing actually
3 belongs to - or appears to belong to Ms. Solly Leiterman
4 and they are not writings of Mr. Gary Leiterman. The
5 diary entries however, at the back of this book, depicted
6 in these images are known writings of Mr. Gary Leiterman.
7 There are a number of entries in that book. These images
8 were all generated by me in the laboratory and placed in
9 this notebook.

10 BY MR. HILLER:

11 Q Now, you've indicated that some of those documents are
12 documents that Gary Leiterman's signature - the firearms
13 journal have his signature in them I believe.

14 A Yes, they do.

15 Q The letters that were taken from the jail also bare his
16 signature?

17 A Yes.

18 Q There are other documents that you are treating as known
19 writing of Gary Leiterman that do not have his signature
20 such as the spiral notebook and the composition book. How
21 are you able to determine that those are known writing?

22 A The comparison of the known writing as I described earlier
23 - the examination process included examining the writing
24 for writing styles, overall writing style; does this
25 writing--do these writings fit together as one--would

1 appear to be a group of writing or are there indicators of
2 separate sub-styles or separate writers. In this case,
3 the writing that I've described to you, the composition
4 book - there are no dates placed in the green composition
5 book. The--there is a process that in the laboratory that
6 allows me to recover impressions of writing. There were
7 pages that had been removed from that document. I
8 processed using this instrument in the laboratory called
9 an "Ezda", Electrostatic Detection Apparatus. I processed
10 a number of documents from that particular composition
11 book and recovered entries that date from 1966. The
12 writing in that book exhibits two different styles. One
13 is a much more formal style. However, the habits that
14 appear in that writing appear to be that of Mr. Leiterman.
15 There's also entries in there that roll--fall more in line
16 with his writing style as seen in his writing across the
17 time leading up to today's writing. The Stockwell
18 Notebook, the smaller spiral notebook that is here in it's
19 form in image form, the front of that notebook contained a
20 writing style that was a printed cursive writing style
21 that was clearly--if it was Mr. Leiterman's it was a
22 subset of his writing style that was--did not fit with the
23 rest of the group. But, was considered--I considered it
24 as a writing style of his until I compared it with Ms.
25 Solly Leiterman's writing and I could see clearly that

1 it's her writing, not his. So, there's an inter-
2 comparison process that occurs with the known writing to
3 determine, does this writing go together or does it not go
4 together.

5 Q Will a persons writing change over time?

6 A Yes.

7 Q Does that prevent you from using later examples of writing
8 to make a comparison for example, that came--from a
9 "question document that came before?"

10 A The--the quick answer is that it could. The changes that
11 occur in time are different for each one of us. And, some
12 individual habits change very little over the course of
13 time. Other's individuals habits can change dramatically
14 over the course of time. Whereas, writing from one period
15 may not be identifiable with another period of writing.
16 So, there's a wide range in there of possibility in terms
17 of what happens with an individuals writing over the
18 course of time. In this particular case we see--or I see
19 writing from Mr. Leiterman ranging from 1966 to 2005.
20 And, there are changes in the writing that occur in that
21 time period. There are also consistencies within that
22 time as well. So--

23 Q Now, you mentioned that there are two different styles
24 that you observe. Is that an unusual circumstance for a
25 person to have two different styles of writing?

1 A It's not unusual at all for an individual to have
2 different styles of writing. And, some--most of us have
3 more formal styles of signatures that we would use on
4 documents - legal documents, those types of things. We
5 may have a signature that we use only on our credit card
6 slip. We may have another signature when we're writing to
7 a friend and that also occurs in writing styles. You may
8 see one writing style from an individual while they're
9 "taking notes in a classroom and another writing style from
10 that same individual when they sit down to write a letter
11 at home. So, it really is not unusual at all to see
12 different writing styles in one person.

13 Q Can a person's writing also be effected by the
14 circumstances that the writing is made in - whether it's a
15 confined space, an open space, what they're writing with,
16 what they're writing on, those sorts of things?

17 A What they're--the--the conditions under which writing is
18 executed can and do play a part in how the writing
19 appears. It can have an effect, for instance, if you're
20 seated and holding a tablet on your lap as opposed to
21 standing at the counter with the tablet laid out or seated
22 as a desk. Or, the surface on which your writing can have
23 an effect. The writing instrument can have an effect.
24 The--are you moving, ya know, ca--if you're in a moving
25 vehicle or someone bumps your hand. If the space is

1 confined it can also play a part because we tend to write
2 with movement of our arm, not just our hand. So, if you
3 restrict the space of an individual has the--the ability
4 to move in, it can and does have a part in what the
5 writing may or may not look like.

Q Lieutenant Riley, did you make an comparison of the known writing of Gary Leiterman that you have with the question writing on the phonebook "Mixer Muskegon"?

9 A Yes, I did.

10 Q And, after comparing all of those, were you able to reach
11 an opinion as to whether or not Gary Leiterman wrote the
12 words "Mixer Muskegon" on that phonebook?

13 A Yes, I was.

14 Q Lieutenant Riley, I'm going to ask you at this point to
15 please explain to the Court and to the jury what forms the
16 basis of your opinion. And, Your Honor, with the Court's
17 permission, Lieutenant Riley has prepared a slide
18 presentation and I'd ask the Court if he could come down
19 to the podium so--

20 THE COURT: As long as he stands at the podium.

21 Take your slides down there.

22 BY MR. HILLER:

23 Q Lieutenant Riley, can you tell us please what forms the
24 basis of your opinion in this case?

1 A The power point presentation that you're about to see is
2 an explanation of the process, not only of the comparison,
3 you'll also be reintroduced to the evidence that--that I
4 used in this examination process. You'll also be shown
5 closer images of the writing. I'm going to go through
6 this process and explain in further detail the comparison
7 between the writing depicted in the photographs of the
8 entries "Muskegon" and "Mixer" in comparing those writ--
9 those entries to the writing of Mr. Gary Earl Leiterman.
10 This writing on the phonebook was initially submitted to
11 the laboratory on April 4th of 1969. At that time it was
12 the telephone directory of the University of Michigan Law
13 Library. A telephone directory from the University of
14 Michigan Law Library was submitted to the MSP Laboratory
15 in East Lansing. The phone directory contained writing
16 possibly linked to the homicide of Jane Louise Mixer.
17 Written along--on the phonebook, along the bound edge were
18 the words, "Muskegon" and "Mixer". The original telephone
19 book--original telephone directory baring the questioned
20 writing no longer exists. The original telephone
21 directory was photographed while it was in the laboratory.
22 The photographs of the phonebook cover were used to
23 conduct the examination. A level of quality of these
24 photographs of this writing in question is sufficient to
25 conduct these examinations and to render an opinion. This

1 is an image of the front cover of the phonebook. The word
2 "Mixe" appears in this area and the word "Muskegon".
3 This is a closer view of that writing. The known writing
4 samples are--you've heard me talk about known writings and
5 samples were submitted of Gary Earl Leiterman's writing.
6 These were the form of collected samples and requested
7 samples. Collective samples--this type of known writing
8 sample is collected from a person's normal daily affairs.
9 Writing samples were collected from Mr. Leiterman's daily
10 affairs dating from 1966 to 2005. The known writing
11 samples by Gary Earl Leiterman were submitted under
12 Laboratory record number 05-02563. This was MSP items
13 number 10, 21, 25, 28 and 29. And also under record
14 number 05-03343 and 05-03410. No MSP item numbers were
15 assigned to the items that were submitted under those
16 record numbers. The known writing samples exhibit
17 internal consistency within a normal range of variation.
18 MSP item number 10 is the sheet of paper baring the upper
19 writing that begins the planning started in January. When
20 we--in the lower writing which began, "Dear Fritzie". The
21 date this item was written is unknown. This is an image
22 of that particular item, MSP number 10 and this is an
23 image of the writing on this particular document - the
24 upper writing entries. This is an image of the lower
25 writing - the entry of the lower portion of that

1 particular sheet of paper. Excuse me but do you have a
2 laser pointer? MSP item number 21 was the composition
3 book, which was the green and white cover. It contains 93
4 pages. The pages in the book that contained writing are
5 the inside front cover, page number 3, page number 20,
6 page number 21, page number 31, page number 78 and page
7 number 104. Impressions in this book as I described
8 earlier, the impressions were already removed the pages
9 "from the book and recovered impressions from 1966. This
10 is an image of the front cover of that composition's book.
11 The writing on the inside front cover which is numbers and
12 "Joses". This is writing on page 3. This is writing on
13 page 20. This is writing on page 21. Let's see. I think
14 I just misspoke. This is page 31. This is page 78. This
15 is the writing on page 104. MSP item number 25 was the
16 green spiral notebook that contains 72 pages of ruled
17 paper. A number of these baring written entries. The first 35
18 pages contained various notes, which were not written by
19 Mr. Leiterman. The remaining entries are diary type
20 entries, which were written by Mr. Leiterman, and the
21 entries written by Mr. Leiterman date from 2002. This is
22 an image of the front cover of that spiral bound notebook.
23 This is entries on page number--item number 25. This is a
24 2-11-02 entry.

1 MR. GABRY: Your Honor, can we approach?

2 THE WITNESS: 2-13-02.

3 THE COURT: Just a moment.

4 (At 3:42 p.m., bench conference)

5 (At 3:42 p.m., court resumes)

6 THE COURT: Please continue.

7 THE WITNESS: This if February 22nd of '02.

8 February 25th of '02. This is March 11th of '02. March
9 25th. April 16th of '02. July 22nd. There are other pages
10 within that book that--that do have writing. I did not
11 show all the diary entries. This is the item--MSP item
12 number 28, which is the green journal. There's a green
13 sticker with writing (INAUDIBLE) through February of 1970.
14 There are 76 journal pages, numbered on both sides. Entry
15 to name "Gary E. Leiterman" is on page 19. Entry is dated
16 2-22-69. Down in this area here--this one right here--
17 this one right here - this is an enlargement of that
18 particular line. This is MSP item number 29 which is the
19 other green covered journal. There's a piece of masking
20 tape as I had testified earlier. There are also 76
21 journal pages numbered on both sides. Entries in the name
22 of "Gary E. Leiterman" are on the following pages - 41,
23 59, and 135. This is the entry on page 41. Entry on page
24 59 and page 135. 31 copies of letters and envelopes were
25 submitted. These are correspondents that I've described

1 to you earlier. They are photocopies and they date from
2 March and April of 2005. This is an image of one of the
3 copies of the envelopes. This is an enlargement of the
4 return address portion. This is an enlargement of the
5 address portion. This is a copy of one of the letters and
6 an enlargement of one of the letters. Requested known
7 writing samples were by Gary Earl Leiterman. This type of
8 known writing sample is produced by an individual during a
9 course of investigation at the request of the
10 investigator. Samples attempt to reproduce the question
11 writing conditions. Request samples were taken on
12 phonebook covers duplicating the phonebook in question on
13 May 24, 2005. These items were submitted as MSP item
14 number 27. If there were 50 cover pages from the
15 phonebooks with a copy of the front cover of a December
16 1968 Ann Arbor/Ypsilanti Area Phonebook taped to each
17 cover. It was on the front and back of the book. During
18 a question writing exemplars and these exemplars are 1
19 through 9, 11 through 19, and 21 through 52 - there are--
20 were on the covers. I received one copy of the front
21 cover of the 1968 area phonebook. It was a single sheet
22 of paper and it was request exemplar number 20. And then
23 one cover page from a phonebook that did not bare writing
24 sample and that was number 10. It's blank. These are the
25 writing exemplars--enlargements of the writing exemplars

1 and the number 1 through 9 and 11 through 17. This is an
2 enlargement of 24 through 30 and then 31 through 38. This
3 is 11 through 26; 31 through 46; and this is 46 through
4 52. Original and copies of known writing samples by Gary
5 Earl Leiterman were submitted. The known writing samples
6 by Mr. Leiterman demonstrated a normal range of variation.
7 The known writing samples encompass the period of time
8 from 1966 to 2005. The known writing samples are
9 "sufficient in quality and quantity to render a conclusion.
10 Examinations and comparison of the question to known
11 writing. Examinations of--begin with the overall writing
12 style and the range of variations seen in the known
13 samples I've described this process to you. I'm also
14 describing it here. I didn't know that I'd be doing that
15 twice. But, so you understand, it starts with the process
16 of examining the overall writing style and a range of
17 variation. Examinations of side by side comparisons of
18 letter formations, letter heights, letter relationship,
19 along with a wide range of features and characteristics.
20 Microscopic examinations in comparisons of subtle features
21 of writing. An evaluation of the presence or absence of
22 characters, unexplained features or any significant
23 differences. Characteristics - I've put a list together
24 here of just some of the characteristics. You'll hear me
25 talk about more as I testify. Characteristics of the

letter forms themselves, the shape of the letter forms but
not only the shape but also the construction and movement
of the pen in the constructing of that particular
letterform. The height relationships of letters - how
tall is the letter; how tall is the--are the upper case
letters to the lower case letters. How tall are the
actual letters to themselves and the portions of the
letters to themselves. Pen pressure and the pen pressure-
-in the variations of pen pressure. As we write on a
sheet of paper, our hand is not only moving across the
page but it's also moving up and down. Those pen pressure
variations can be seen within the line. The "I" dot - how
is the "I" dotted; how is it placed; is it--is it moving;
is it an "I" dot that someone actually just places the dot
down on the paper or are they moving when they dot the
"I"; what shapes does that take. Pen movement to the "I"
dot itself. The drags of a pen. A pen drags from one
letter to the other. Pen drags from one word to the
other. Underlining - does the person underline? If they
do, what type of underlining is that? Hooks in terms of
writing are little formations at the beginning or the
ending of lines. It may be anything from a circle to a
small loop to just a fine pen drag. It may be on the line
and may be off the line. They maybe retraced through the
line. Pen lift - does the person pick up the pen and move

1 it to the next letter or do they drag it to the next
2 letter? The baseline - how is the baseline? How are the
3 words aligned on a baseline? Sometimes the baseline can
4 be present. Sometimes a baseline is what we call an
5 imaginary baseline. Perhaps you have had in your own
6 experience where you've seen someone who somehow writes
7 just above a baseline and consistently stays that distance
8 above a baseline. Some people may have an upward sloping
9 baseline and maybe a downward sloping baseline. What is
10 the baseline placement? How does an individual place the
11 writing on a particular line? Space issues - how does an
12 individual--how does the writing get placed on the paper?
13 Does a person adhere to margins? Do they lose margins?
14 Do they indent a certain way? Those types are things are
15 considered characteristics of the writing itself. The
16 proportions of the letters again, and this goes along with
17 the construction and height relationships but, you know,
18 how wide are the letters and you know, wide apart or are
19 they close together? Are they tall? Are they short?
20 What are the actual proportions of these letters? What is
21 the position on the book? What is the position - where
22 did this particular individual decide to place these
23 entries on this phonebook? This is an enlargement of just
24 the entry of "Muskegon" and you'll notice that it has been
25 rotated so that the baseline is actually the line that was

placed underneath the entry. Some of the characteristics that I want you to begin to focus on as we go through this--these next slides are the characteristics I've just described to you about the height relationships of the letters, the overall construction of the letters. What is the baseline like? What are the--what are these--these slight lightening of the lines are variations in the pressure of the pen. I'll show you more of those as we go through this--these slides. The pen is clearly moving through this paper and lightening and darkening the line in various spots. This is a comparison with the requested writing exemplars to the question entry of "Muskegon" and some of the characteristics of a comparison of characteristics between the question entry itself and the overall appearance and the appearance of letter formations in the known exemplars. These known exemplars again are the request exemplars that were taken this year by Mr. Leiterman. The known sample numbers correspond to the numbers that are actually on the sheet of paper that the sample is and the numbers appear up here on page 39 through 42 and page 43 through 46. I want to take you through these letterforms and focus now even more closely. We've looked at the letters and the word from somewhat of a distance. Now we've gotten closer in the process. I want to focus on this particular letter "M". Now the

1 capital letter "M" in the word "Muskegon" and what
2 characteristics are in this particular letter form itself.
3 Relationship of--of two the underlined on the relationship
4 of where does the letter start - the underline and its
5 placement. What is this relationship here and where is it
6 at? So, this portion of the left side of the baseline is
7 there or the underline. In this particular case the--the
8 left hump of the "M" is shorter than the right hump and
9 you'll see in the word "Mixer" that the--it's the exact
10 opposite. The right hump is shorter than the left hump
11 and that is a variation in the writing and it's a
12 variation that is not--that is seen in the known writing
13 of Mr. Leiterman as well and that he varies that height
14 relationship of letter form--the actual humps of the "M"
15 itself. Pen pressure variation is present in the left
16 staff here. This is the lightening and the darkening of
17 the line. There's a downward stroke of the left side of
18 this left hump is--is sharp. The angle is sharp and it
19 goes down to the baseline - almost to the baseline but not
20 quite to the baseline in this particular area. The center
21 of the "M" is slightly open and almost to the baseline.
22 The right hump is closed in angular. It angles off to the
23 right and it's closed or considered a re-trace. A re-
24 trace is nothing more than a pen moves up and down in the
25 same line, or from one side to the other in the same line.

1 There's a slight re-trace or hook at the terminal stroke
2 and you'll hear me talk about terminal strokes and initial
3 strokes. A terminal stroke is nothing more than the end
4 at the end of a word or letter. An initial stroke is at
5 the beginning of the letter. But, this terminal stroke
6 has a slight hook or pen drag in this area dragging the
7 pen towards--upwards towards the next letter. I want to
8 move into this area into the wor--into the "USK" portion
9 "of the "Muskegon". I selected several of the samples to
10 show you how Mr. Leiterman actually forms his "S"
11 formation and the proportions of that "S". You'll see
12 that this particular area is closed more than this area.
13 This is a variation that I see in the known writing of Mr.
14 Leiterman. That area - the proportions of that particular
15 closing actually range from being completely closed where
16 there is no opening to being completely open. This stroke
17 occurring almost to the edge of the "S", all the way over
18 to the "S" slightly. There is slight, if you will, change
19 in direction of stroke back to the right where there's
20 just a slight angle to the right of that base of the "S"
21 form and a change in that direction of the movement of the
22 pen which is seen in this particular "S" form. There is c
23 change in the direction of the pen moving to the left and
24 down and flattening off this base portion of the letter
25 "S" - the lower case "S".

1 THE COURT: There is that left? Where's the
2 document on the left from? Which one is that?

3 THE WITNESS: On the--this particular entry, Your
4 Honor?

5 THE COURT: Yes.

6 THE WITNESS: It is from--it is from the--I
7 believe from the green spiral notebook - the diary type
8 entries at the back or in the back of that book.

9 THE COURT: All right. Thank you.

10 THE WITNESS: Now, I wanted to talk about the
11 letter "K" and the formation of the letter "K". This "K"
12 in this portion is from the word "kids" in one of those
13 entries in the diary entries in the green spiral notebook.
14 But, the overall formation of this "K" and the proportions
15 of this "K" in comparison to the overall formation of this
16 "K" in "Muskegon". The height relationship here between
17 this portion of the "K" and this portion is a variation
18 that I see a fairly wide range of variation in Mr.
19 Leiterman's known writing. He varies this formation
20 actually varies the way he makes the "K" formation itself
21 - a fairly wide range of variation in that particular
22 letterform. I want you to see this particular area and I
23 will go back to it again in a future slide but I wanted to
24 at least give you an up close view of the "E" and "G" and
25 then when I'm calling this "E" formation here at the end

1 where you see the top part of this relationship of the "E"
2 formation to the "G" that they almost like a funnel
3 formation where the relationship is going away from each
4 other slightly. The pen pressure variation can be seen in
5 this--this line starting here in the "E" formation. The
6 "G" is made with a stroke that comes underneath the bowl
7 and down to form the bowl and then down to form the--the
8 descender of the "G". This formation is also a variation
9 seen in Mr. Leiterman's writing. The lower stroke
10 formation of that bowl of the "G", Mr. Leiterman makes a
11 "G" form in a variety of ways. In his own writing you'll
12 see that this letterform is made in that fashion as well
13 as with a slight overhand of movement. This--bringing the
14 pen to a close--almost to a stop and then moving upward
15 and down and around and forming that what has been turned
16 in an "E" formation after the "G". I also wanted you to
17 see the up close area of the "O" and the "N" and the way
18 the "O" is formed. The line goes through it and then
19 looped around and the "N" formation is tight to the "O"
20 and then the ending stroke of that "N" is downward. I also
21 want to follow your attention to the--this upward sloping
22 baseline, which I see as a characteristic in Mr.
23 Leiterman's writing starting the word or starting a word
24 on a baseline and then sloping upward as he writes the
25 word. There are characteristic hooks at the beginning and

1 the end of this underlining. The underlining is a
2 characteristic that Mr. Leiterman continues to use in his
3 writing. The--the looped portion of the left side - and
4 there is a slight pen drag back to the left--from the
5 right to the left at the end of this line. This entry is
6 actually from one of the diary entries, I believe in the
7 spiral notebook. This hook--loop at the beginning of the
8 line and a backward or re-trace slight pen drag this way.
9 You'll also notice that even though the baseline is here,
10 "it's--there's a slight upward slope to the letter--or that
11 word. There are more pronounced examples of that in the
12 writing and we'll see those. This is an enlargement, or
13 an up close view of the word "Mixer". Highlight the "M"
14 formation and call your attention to some of the
15 characteristics that are present in this particular
16 letterform. The letterform starts and intersects at the
17 baseline that's there. There pen pressure variation,
18 there are slight--there are pen pressure variations where
19 the line actually lightens and comes back and darkens
20 again at the same or in the same region of area. A sharp-
21 -again, a sharp angle towards the center angled downward.
22 The center of the "M" is slightly opened and it's not to
23 the baseline. The left hump, you'll notice is slightly
24 higher than the right hump of the formations of the "M"
25 and there's a slight hook at the terminal stroke. A hook

1 moving the pen towards the next letter formation. This is
2 -an up close--focus on the--just the "I X" portion of the
3 word "Mixer". There's no initial stroke on the--the "I".
4 Pen pressure variations in the "I" at this point and at
5 this point at the base of the "I" going up into the "X".
6 This formation here of the "X" is angular. There's a pen
7 drag at the--from the base of the right side of the "X" up
8 to the top portion to begin the down stroke. The overall
9 proportions of this letter, the "I X" with the descend--or
10 the "X", the left side of the "X" descending further than
11 the below slightly. That's a--we talk about the same pen
12 drag--this being the pen drag from the base and this being
13 the pen that drags to this point at the top of forming the
14 next down stroke. The pen drag movement of the "I" dot
15 and the shape is, pen drag is being dragged towards from
16 right to left on the paper and movement from the--of the
17 pen itself to make the "I" dot--to form the "I" dot. This
18 is an image of the word "airport" from the known exemplars
19 .of--and I put this slide in here just to show you that the
20 pen lift--there is a pen lift here at the top of this "A"
21 stroke and then the "I" is formed with a separate movement
22 and the pen is actually put down on the paper. It's not a
23 connected form. It's actually two separate forms and
24 there's pressure variations within this "I" as the pen
25 moves up towards the next letter. The pressure variation

1 here in this "I" formation and again here in this "I"
2 formation and also you can see pen pressure variation at
3 that same point after the "R" in "airport". It's
4 essentially the same movement. Again, this is--this
5 particular sample that you're looking at here is from the
6 requested exemplars that were taken on the phonebook
7 cover. This is just showing you the overall proportions
8 of the "X" itself, the formation and looking at the "I"
9 "dot somewhat that it's moving--moving in from left--or
10 right to left, excuse me. There are also pen pressure
11 variations here in this letter moving towards the next
12 letter. That same characteristic occurs here and there's
13 pen pressure variation after the "E". This is another
14 requested exemplar demonstrating some of the same
15 characteristics or similar characteristics. And, a
16 variation to this particular area or formation. This angle
17 here you'll see Mr. Leiterman varies how he makes that
18 particular angle significantly closing this a little more
19 in this area. Also leaving it open as in the above entry.
20 This slide also shows that pen drag--pen being dragged to
21 make the "I" dot. This is on the word "Alexis" in the
22 diary entries. Also, the proportion of the overall
23 descender of the "X". There's another "X" formation. I
24 wanted to show you where the pen is dragged from the
25 baseline of the bottom or down stroke dragged up to the

1 top of this "X" and then again brought down to form--form
2 the "X" formation. This--this slide shows you variations
3 to the "I" dots - how the "I" dots are made. This is some
4 of the "I" dots that Mr. Leiterman makes in his writing
5 moving the pen, dragging it across, smaller, larger.
6 Variation is a natural occurrence in writing. It's an
7 expected part of writing. We don't write like machines.
8 We write individually and if some variation within how we
9 write. Here's another, just a demonstration of that "I"
10 dot and the movement of the "I" dot. Also, just
11 noteworthy, the formation of this "G" being below the
12 baseline and bringing this pen movement, showing the
13 variation of how Mr. Leiterman forms his "G's". Just in
14 this word alone we see two formations of the "G". One
15 with a terminal stroke. One without. One with an
16 underhanded formation. One with almost an "E" Formation
17 before it. That's just some of the variations in the
18 formation of the letter "G". The comparison of where did
19 Mr. Leiterman chose to write the entries on the
20 phonebooks, the placement of it, this is just an overlay
21 showing you where that placement is and where the entries
22 were placed when given a notebook--or phonebook and told
23 to write an entry in a particular area and this just shows
24 you what it looks like. The white righting beneath this
25 darkened area is actually an overlay or underlay of the

1 questioned writing. I've placed that there so you could
2 see just the overall position of where those particular
3 entries are in the requested samples that were taken of
4 Mr. Leiterman's writing. In this area also on the white
5 writing is the phonebook. The phonebooks are not exactly
6 to scale. The images of them so they're pretty--in close
7 proximity to one another but they're not exactly to scale.
8 This slide--I took various entries, some from the diary
9 entries, some from the requested exemplar, some from the
10 entries in the journals with the signatures. Just to show
11 you some of the characteristics, this is a smaller image
12 of the "Muskegon" and "Mixer" entries and it was not
13 rotated. It's left in its original configuration in the
14 photograph and in the photograph along the top you can see
15 the binding of the book in relationship of the words to
16 that binding. The left and right enlargements show you
17 rotated images of "Muskegon" and "Mixer" rotated to be
18 more in line with these exemplars. And, some of the
19 things that I put in this slide just to give you some idea
20 of the writing similarities or things--characteristics
21 that I examined and compared. For example, the
22 relationship of these "E's" to one another in relationship
23 to the "E" and the "G", which is this "G" is actually
24 formed with an "E" for the bowl. This--the "S" formations
25 and the variations of the "S" formations in Mr.

1 Leiterman's writing, cursive writing--the cursive "S"
2 forms, the "K" form, the variation of the "K" form and
3 how that's constructed in proportion we see in this
4 particular area here where the "K" form is actually--the
5 second portion of the "K" form is actually formed away
6 from the staff and proportioned similar to an "S"
7 formation. The--this formation where this is actually on
8 the staff and drawn up close to it. Mr. Leiterman varies
9 that formation to a large extend. The formations of the
10 ending strokes, Mr. Leiterman tends to bring this stroke
11 down and then--then drag it off to the right somewhere.
12 So, the end stroke - the proportions of the "N" to the "O"
13 range from similar to this area where we see closer to the
14 "O" to further away with a longer stroke away from the
15 "O". Excuse me a minute. Examples with underlining with
16 pen drags and slight hooks at the end. You saw this entry
17 earlier in an earlier slide, I believe the (INAUDIBLE)
18 comes from that. Upward sloping baselines are seen in Mr.
19 Leiterman's words. The "X's" and the variation of the
20 "X's" on the variations of the "I" dots. The formations
21 in proportions of the "R". The formations and proportions
22 of the "G" - the construction of the "G". Those
23 characteristics in comparison with the entries of
24 "Muskegon" and "Mixer". Characteristics in common between
25 the question and known writing. Letter forms and their

1 variations. The letter forms that are seen in the
2 questioned writing in particular the capital "M's" appear
3 to be a mixture of the printed and cursive forms of Mr.
4 Leiterman's writing. The remaining letterforms are
5 cursive letters that were--that were written and either
6 connected or disconnected. The construction in the pen
7 movement in these particular letter forms that are in
8 comparison, the "M-U-S-K-E-G-E-O-N" and then the "M-I-X-E-
9 R", the construction and pen movement of those. The
10 height relationships of those letters and letter forms to
11 one another and within themselves. Pen pressure--pen
12 pressure variations, "I" dots, the movements of the "I"
13 dot, pen movement to dot the "I" - the dragging of the pen
14 to dot the "I". The shape of the "I" dot - the variation
15 of that shape. Pen drags - the underlining. There are
16 hooks--and slight hooks or re-traces at the beginning and
17 at the end of those underlines. Pen lifts in relationship
18 to where the pen was picked off the paper and put back
19 down. The upper baseline. The placement--overall
20 placement on the exemplars themselves. The use of the
21 space - how far apart are the words? How close are they?
22 Those kinds of things. Proportions of the letter. The
23 position of the words on the book. Fundamental
24 differences and I need to define that--

1 THE COURT: Let me interrupt you right there.
2 We're going to take a short break. I do want to finish
3 this witness's testimony up today, ladies and gentleman.
4 So, let's take a short recess and we'll come back for the
5 conclusion of this testimony. Please go with Ms.
6 Washington.

7 JUDICIAL ATTORNEY: All rise, please.

8 (At 4:21 p.m., court in recess)

9 (At 4:32 p.m., court reconvenes)

10 THE COURT: Thanks. Okay.

11 JUDICIAL ATTORNEY: All rise for the jury,
12 please.

13 THE COURT: Please be seated. Riley, you're
14 still under oath, please proceed.

15 THE WITNESS: Okay. I was explaining that the
16 process of giving weight to the characteristics that I've
17 seen I find no differences fundamental to the writing.
18 The characteristics that I see are not different from the
19 writing between the questioned and the known. But, the
20 questioned writing on a phonebook does exhibit some
21 victorial variation to the writing of its appearance.
22 These variations are within the range of variations
23 demonstrated in the known writing samples by Gary Earl
24 Leiterman. Fundamental differences would be the
25 difference that would cause me to believe there was--it

1 was a different writer - somebody different wrote a
2 particular characteristic. So, I found none of the
3 fundamental difference. Considering factors such as the
4 passage of time, the conditions under which the writings
5 were executed. When I talk about that, what I'm talking
6 about is it was written on a phonebook binding at the bend
7 of the binding, possibly executed in a confined or
8 restricted space and these slight variations in appearance
9 are not significant. (INAUDIBLE) demonstrating--
10 demonstrated in the writing characteristics of Mr.
11 Leiterman agree significantly with the writing in
12 question. As far as my opinion and as much as it's
13 possible to examine writing from photographs, it's my
14 opinion that it's highly probable that Gary Earl Leiterman
15 wrote the "Muskegon" and "Mixer" entries on the questioned
16 phonebook cover. This is per section the language for
17 highly probable comes from section 4.1 of the ASTM which
18 is the American Society for Testing Materials. It is
19 where the guidelines that are for forensic document
20 examination are published. And, the guideline that I'm
21 utilizing to express this conclusion is E1658 of 04 -
22 standard terminology for expressing conclusions of
23 forensic document examiners and it's ASTM international
24 says and it defines "highly probable" saying, it's a
25 strong probability, highly probable or very probable the

1 evidence is very persuasive yet some critical feature or
2 quality is missing so that identification is not in order.
3 However, the examiner is virtually certain that the
4 questioned and known writings were written by the same
5 individual.

6 THE COURT: All right. Resume to the stand
7 please. Turn the lights back on.

8 BY MR. HILLER:

9 Q I just want to clarify a couple of things, Lieutenant
10 Riley. On the photograph that has been admitted as
11 People's exhibit I believe it is 85--Do you have that up
12 there?

13 A Yes, I do.

14 Q Can you hold that up so the jury can see that please?
15 And, if you can direct their attention to the portion that
16 says I believe it's "Mixer" and then it's underlined.
17 There appear to be perhaps three underlines. Do you
18 attribute those--the lower of the three marks that appear
19 to be underlines as having been written in connection with
20 the word "Mixer"?

21 A I did not attribute those underlines to having been
22 written with the word "Mixer".

23 Q Why not?

24 A First of all, the underline--

25 THE COURT: Can you see?

1 THE WITNESS: Excuse me?

2 THE COURT: From where you are? No, I didn't

3 think so.

4 THE WITNESS: Can you hand that to them?

5 MR. HILLER: What we can do--

6 THE COURT: Oh Riley, just go down there and show

7 it to them and then come back and talk. Anyone else want

8 to look at it? All right.

9 BY MR. HILLER:

10 Q Why don't you attribute those two marks to the word

11 "Mixer"?

12 A Overall, the appearance of those two marks, first of all

13 the lines are shorter than the underline of "Muskegon".

14 Moreover, the--I attributed them to the word or the entry

15 of 11/3. I did not attribute them to an underline or two

16 or three underlines of the word "Mixer". I attributed

17 them to the entry 11/3 based on the photograph and only

18 considered the dash or underline under the word "Mixer".

19 Q And there are various other things written on that

20 telephone book cover not connected with "Mixer Muskegon" -

21 at least not apparently so?

22 A There are a number of entries written on the cover, lines

23 drawn on it - numbers. That type of thing, yes.

1 Q Now, you--you--in the presentation you talk about the
2 position of the writing in the exemplars relative to the
3 binding on the book?

4 A Yes.

5 Q And, had you been advised that in fact for some of those
6 exemplars, Detective Moore had indicated an area where the
7 defendant was to write?

8 A Yes, I had consulted with Detective Moore before the
9 taking of the exemplars and explained to him to not give
10 instruction and take some and if need be, construct the
11 individual to at least give them the general area. The
12 position on that book in terms of the exemplars is just an
13 overall consideration. It's not necessarily a
14 characteristic that under these conditions I could put a
15 lot of weight on in terms of the actual value of it. I
16 was told that I believe Detective Moore told me that he
17 pointed to a general area and said, put them there.

18 Again, the position is not something that is--it's
19 something that is certainly there to consider but is not
20 something I put a lot of weight on in terms of my opinion.

21 Q You've indicated the--that when you make the opinion that
22 the writing--that it's highly probable that the writing on
23 the phonebook was made by Gary Earl Leiterman, that that
24 is a technical term that is used and is a standardized
25 term that used by the Document Examiner--people who do

1 document examination--I don't want to say document
2 examiner community but--

3 A That's--it is--it is a term or terminology that's used--
4 that's been developed by Document Examiner's throughout
5 the country that came together as an organization to
6 standardized--or attempt to standardize the language that
7 we use and the manner in which opinions get expressed.
8 So, it is language that comes from the forensic document
9 community if it's all right to use that term.

10 Q And how many levels of identification or exclusion are
11 there?

12 A The opinion scale ranges from an identification, highly
13 probably, probable, indications and no conclusion on the
14 identification side of the scale and on the elimination
15 side of the scale. So, it's what's considered or called a
16 9-point scale if you will. So, highly probable road has
17 an equal opponent on the--or equal conclusion on the
18 elimination end of the scale so highly probable did not--

19 Q Now, you wrote that it is much as it is possible to
20 examine writing from photographs. Can you explain that
21 please?

22 A That is a--that is a qualification to the opinion. The
23 explanation for it is, I never saw the original writing.
24 There are--the quality of these pictures of the writing
25 certainly is good and was taken under laboratory

1 conditions years ago. However, I never saw the original
2 writing. There are examinations that would allow me to
3 microscopically examine the original writing but I
4 couldn't in the photograph. I could enlarge them and did
5 enlarge them as you saw to be able to see the
6 characteristics. But, it's in as much as it's possible to
7 discern evidence from an image or a photograph. There are
8 limitations to that. The same language is used if a
9 photocopy is submitted for examination and that's the only
10 thing that exists is a photocopy. A similar language is
11 used just because there are examinations that can't be
12 conducted on that original document.

13 Q And in the interpretation of the standard highly--for
14 highly probable, it indicates that some critical feature
15 or quality is missing so that an identification is not in
16 order. Can you explain what critical feature or quality
17 is missing in this case that prevents you from saying it's
18 an identification?

19 A The critical feature that I feel is missing is actually a
20 compound with the fact that I examined the question as a
21 photograph. I also have limited amounts of writing of Mr.
22 Leiterman from the period of time when this writing
23 occurred. Although I do have some writing from that time
24 period as evidence by the documents that were submitted, I
25 don't have a lot of comparison sample from that time

1 period. I feel that's a feature or component of this
2 examination that I have to address and give weight to in
3 terms of what I can say in my conclusion.

4 Q With that understanding, your testimony here today is that
5 it's virtually certain that Gary Earl Leiterman wrote the
6 words "Mixer" and "Muskegon" on the phonebook?

7 A Based upon the characteristics that I see in the writing
8 of Mr. Leiterman, yes. It's my opinion that it's highly
9 probable he wrote those two entries on that phonebook.

10 MR. HILLER: Lieutenant, thank you. I don't have
11 any further questions.

12 THE COURT: Cross-examination.

13 MR. GABRY: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. GABRY:

16 Q First of all Mr. Riley, is it my understanding that at
17 least you had some kind of a note that indicated that a
18 phonebook came to the Forensic Document Unit in April of
19 1969?

20 A Yes.

21 Q April 6th I think you showed us on one of your slides?

22 A I believe the date I had was April 4th. I'd have to check
23 the records or the--look at the slide. But, that's the
24 earliest record I have in the file of that particular book

1 being in the laboratory submitted to the Questioned
2 Document Unit.

3 Q Is there--and there's no indication or no note in there,
4 where that phonebook was prior to you receiving it? Or
5 you were--or the old unit receiving it?

6 A I don't recall there being anything in there about where
7 that was before that time period.

8 Q Are you able to tell the jury what kind of writing
9 instrument was used in 1969 by the person who wrote
10 "Muskegon Mixer" on that phonebook?

11 A No. I need to clarify that answer to a certain extent.

12 Q Can I ask--I mean the answer is, no you cannot. Correct?

13 A I can say that it's not pencil. It appears to be pen.
14 But, I can't say what kind of pen it is.

15 Q Can you tell us what color ink it would have been?

16 A No.

17 Q Can you tell us whether the pen would have been running
18 out of ink?

19 A No.

20 Q Do you have any samples available to you to examine that
21 were actually written on the same surface that the
22 original writer of this "Muskegon Mixer" used or wrote on?

23 A No.

1 Q Did you instruct Detective Sargent Moore to just have
2 "copies made of the, I guess, picture of the phonebook from
3 back then?

4 A I did not instruct Sargent Moore to do that, no.

5 Q Would you agree with me that issues such as pen pressure,
6 lifts, things of that nature would be effected by writing
7 on a glossy or slippery surface than they would on normal
8 piece of white paper?

9 A I would say that I can't agree that it would be effected.
10 There's a possibly that it could effect that. However,
11 what's visible in this are pen pressure variations in this
12 particular--these photographs and the movement of the pen
13 actually on the paper. It's possible it could have effect
14 it. However, based upon what I see in the photograph I
15 can clearly see pressure variations within the inquiry.

16 Q Now is pressure variations going to be different depending
17 on the position of the writer that is writing the words?

18 A It could be different based on position.

19 Q And we have no idea what position the writer used back in
20 1969, correct?

21 A I have no knowledge of that at all, no.

22 Q Now sir, you used the term "fundamental difference". Is
23 that correct?

24 A Yes.

- 1 Q Is that the same as significant difference and that
2 "terminology is set forth by the ASTM?"
- 3 A Yes.
- 4 Q Why do you not call it significant differences?
- 5 A I believe in the language for th--either the standard or
6 the terminology it talks about it being fundamental to the
7 writing. But, I--it's just a matter of semantics.
- 8 Q Well, significant difference - is it not an
9 individualizing characteristic that is structurally
10 divergent between handwritten items?
- 11 A Yes.
- 12 Q And is outside the range of variation of the writer and
13 cannot be reasonably explained?
- 14 A That's correct.
- 15 Q Now, help the jury and me understand the art your field of
16 expertise allows for you to make a determination as to
17 whether something's a variation of a writing style or
18 outside a variation. Is that correct?
- 19 A That's correct.
- 20 Q How many "K's" numberwise did you look at in all of the
21 writings that you were provided?
- 22 A The letter "K's" I did not count.
- 23 Q You did not count? How many are what you call to be
24 variations within the range of Mr. Leiterman's normal "K"?

1 A I'm not sure what you're asking me there. I didn't count
2 them so I'm not sure--

3 Q You've looked at all of these writing, correct?

4 A Yes.

5 Q You've read all of his letters to his family, to his wife?

6 You've read all of those?

7 A Yes.

8 Q You've read journal entries from 2002. How many times out
9 of all of those writings does the letter "K" appear like
10 it does on that phonebook? How many times?

11 A There are at least two or three within the body of writing
12 that show me that variation.

13 Q Two or three and you can't tell us how many--out of how
14 many, correct?

15 A I can't.

16 Q The letter "G". How many "G's" are written in various
17 combinations of letters in all of the documents you've
18 examined?

19 A Again, I didn't count the letters.

20 Q And how many "G's" are outside Mr. Leiterman's normal--and
21 I'll call it normal--you've seen a lot of "G's" in that
22 paperwork, correct?

23 A There are a lot of "G's" in the paperwork, yes.

24 Q And Mr. Leiterman's normal way of writing a "G" is to go
25 over the top. Is that not correct?

1 A Well, your definition of normal and mine are perhaps
2 different here.

3 Q How many times do you see Mr. Leiterman--well, do you see
4 in these writings a "G" that does not go over the top?

5 A Well again, I didn't count. However, I see that Mr.
6 Leiterman forms a "G" a variety ways. Some are formed by
7 going over the top, some are formed by going underneath -
8 he uses that formation in variations of both those types
9 of formations in his letterform "G".

10 Q Can you show me some of those variations? Show me--can
11 you show me all of the variations you've seen in his
12 "G's"?

13 A I cannot.

14 Q Can you show me all the variations--can you show this jury
15 right now all of the variations in his "K's"?

16 A Well, I showed in the display variation in the "K" form on
17 quite a number of the slides. There were "K's" that
18 ranged in variation from type of construction and
19 proportion. Similarly, the "G's" they were also shown
20 variation of how they were formed - the letterforms were
21 made.

22 Q And yet you testified that there were at least two or
23 three variations in the "K"?

24 A I testified that there were at least two "K's" that were
25 made like the "K" in "Muskegon".

- 1 Q How many--how many times did you show the jury that "K" in
2 the slideshow?
- 3 A I can't--well first of all, which "K" are we talking
4 about?
- 5 Q The one you're talking about?
- 6 A I showed you a variety of "K's" in the words--both in the
7 request samples and the collected samples. They contained
8 the letter "K" in variations of those forms and variations
9 to how those forms are made and proportion.
- 10 Q How many times did you repeat showing us the same letters
11 in that slide - say the "K". Did we see a different "K"
12 every time we looked up there?
- 13 A The--I'm not sure where you're talking about when you look
14 up.
- 15 Q Okay. Then let's forget it. It's late. This isn't the
16 first time you've examined handwriting on this case. Is
17 that correct?
- 18 A No, it's not.
- 19 Q In fact, you've examined some handwriting that had been
20 provided to you by someone by the name of Gary Kaberle.
21 Is that correct?
- 22 A That's correct.
- 23 Q Now, in that particular case those were presented to you
24 as known writings of Mr. Kaberle?
- 25 A Yes.

1 Q And you had some historical writings of Mr. Kaberle?

2 A Yeah, as I recall. I haven't--I haven't looked at that
3 case in a long time. But as I recall, yes.

4 Q And you formed an opinion that looking at what you had
5 been provided that there were indications which is another
6 one of those terms out of the 9 that he could have been--
7 that he may have written the questioned writing on the
8 cover of the Ann Arbor telephone book?

9 A As I recall that--those submissions, there were two
10 submissions. One was of collected writing of Mr.
11 Kaberle's that I issued an opinion which is a less than
12 conclusive opinion saying there were some indications that
13 he may have written it. Subsequent submission of writing
14 taken from Mr. Kaberle yielded no further information and
15 I believe I reported that my opinion remains unchanged.
16 There was no--ever any further conclusion regarding him
17 being the writer of the "Muskegon" or "Mixer" entries.

18 Q I'm showing you your report, all right. I guess the first
19 question I have is take a second to review that if you
20 would, please.

21 A Okay.

22 Q My question is, are you indicating that you then received
23 additional writings after this and created another report?

24 A I believe I did receive additional writing of that
25 particular--of that individual and issued a report that

1 said, my opinion remains unchanged as reported under that
2 record number.

3 Q In other words that there were indications that he may
4 have written the questioned writing but the evidence was
5 not conclusive based on the information you received?

6 A Yes.

7 Q When you began your testimony you began by describing a
8 list of exhibits and you indicated that these were
9 presented as known writings of Gary Leiterman. They
10 consisted of a composition book, spiral notebook, a couple
11 of gun journals. Who indicated to you that those were
12 known writings of Gary Leiterman?

13 A To my knowledge it would have been whoever submitted them
14 to the laboratory?

15 Q What does a known writing mean to you, sir?

16 A Well, a known writing is writing that is known to have
17 been written by a particular individual.

18 Q So, when this information was presented to you, somebody
19 represented to you that these were the known writings of
20 Gary Leiterman?

21 A That's correct.

22 Q You didn't conduct your own examination to determine
23 against anything whether or not that in fact is Gary
24 Leiterman's handwriting when you received it?

1 A When I received that from the examination process as I've
2 described to you, the comparison of what was submitted as
3 a body of known writing by Mr. Leiterman was compared for
4 internal consistency.

5 Q Except the known body of writing, Mr. Leiterman that we've
6 heard of, refers to a series of letters that you just
7 received when, sir?

8 A The--well, I received letters--I don't know--

9 Q Last week?

10 A Yes.

11 Q Last week. And you issued your opinion when?

12 A Actually, there are--I received three submission in this
13 case if you recall, there were three separate record
14 numbers and three separate lab reports issued regarding
15 the known writings that were submitted. The copies of
16 letters, which you are referring to that I, received last
17 week and I believe some even this week. So, those were
18 separate reports produced under separate record numbers.

19 Q So in order to determine that the author of the documents
20 that were represented to you as known writing--let me make
21 sure this is correct because what had been indicated was
22 that you had actually determined that those were known
23 writings? In particular I think I'm talking about the
24 spiral notebook.

1 A The spiral notebook as I've testified earlier, I compared
2 the document for internal consistency. The first 35 pages
3 were of a style of writing that were a different style
4 than the remaining writing I had of Mr. Leiterman. They
5 were considered--however, they were also printed forms but
6 they were considered his known writing or a subset of his
7 known writing until I was provided with exemplars of Ms--
8 Mrs. Leiterman's writing. Whereas it was clear to me that
9 that subset was actually her writing and not known writing
10 of Mr. Leiterman.

11 Q And that was what - that was two nights ago that you
12 received Ms. Leiterman's letters?

13 A Yes.

14 Q And prior to that you had in fact looked at the first
15 pages in this--what we have--what we've received, a little
16 green book that says "Solely" and you had made notations
17 and indications of similar characteristics in Mrs.
18 Leiterman's handwriting to support your opinion, did you
19 not?

20 A Actually made notations to consider those characteristics.
21 I did not necessarily use those to form my opinion. They
22 were of a style that wasn't of value for the comparison.

23 Q You had made notations relative--the formation of "M's"?

24 A Correct.

1 Q And, when asked to present your notes to an expert
2 retained by the defense, those were designated, marked and
3 included as your material that you relied on. Correct?
4 A Yes.
5 Q Thank you. And then you learned that, no that's Mrs.
6 Leiterman's writing. Correct?
7 A Yes.
8 Q How do you define then the range of variation?
9 A Range of variation is defined or I define it as the range
10 of manner in which the letters are formed or constructed,
11 proportioned or the characteristics that are contained
12 within the letters and those variations within the
13 letters.
14 Q Do you find it acceptable to alter--to look at the written
15 handwriting. Not the unknown but what we'll call the
16 compatibles or the--I'd hate to call them known. I guess
17 we'll call them known because that's what you call them.
18 You've made in fact series of notes and you set forth some
19 limitations relative--the capital "M" is that correct?
20 A If I could see what you're referring to or--
21 Q Did you examine--first of all, did you make the finding
22 that by removing the initial stroke found on a cursive
23 capital "M" formations, the remainder of the letter
24 exhibits proportional information similarity to the
25 questioned letter?

- 1 A Yes.
- 2 Q Do you find it acceptable variation to change or remove
3 handwriting characteristics to form your opinion?
- 4 A What that refers to is what's called--the terminology for
5 that is called, similar letter substitution. By looking
6 at the portion of the letter, for instance, the capital
7 "M" without the initial stroke--the initial left formation
8 of that capital "M", looking at the remainder of the
9 capital "M" in comparison with the questioned capital
10 "M's" is more formation and proportionally similar to the
11 questioned letter formation. What that means is that that
12 individual is capable or writing a letter that's
13 proportioned and formed in that manner - with or without
14 the initial stroke. The initial stroke on the capital "M"
15 does not show up in the printed formations, which tells me
16 the writer has the ability to form a capital "M" without
17 that initial stroke. So, it's not necessarily removing it
18 literally. It's looking at the remainder of the formation
19 that's there to determine is that writing that's there and
20 present within the range of variation of the writer or is
21 it different from the writer.
- 22 Q Am I--but I'm reading your words correctly, removing the
23 initial stroke. Found the cursive capital "M" formations,
24 the remainder of the letter--the remainder of the letter

- 1 does exhibit proportional and formation similarity to the
2 questioned letter.
- 3 A My notes--those are my notes to--so that I can understand
4 the process of comparison and how I compared that
5 particular letter formation. My notes do say that.
- 6 Q You also had some concern or limitation regarding the
7 terminal stroke of the letter "R". Is that correct?
- 8 A That's correct.
- 9 Q The terminal stroke is the ending of whatever the
10 sentence, the phrase, the word would be. Is that fair to
11 say?
- 12 A The sentence, the phrase, the word or the letter formation
13 itself - the end of the stroke.
- 14 Q And Mr. Leiterman's writings that were identified to you
15 as known, he--in how many cases ends with a terminal
16 stroke going out and slightly up?
- 17 A Mr. Leiterman's--the "R's" that I see in his writing tend
18 to end with the terminal stroke moving off to the right.
- 19 Q And the same goes for the "N's", does it not?
- 20 A Yes. Again, the terminal stroke on the "N", he tends to
21 drag off to the right.
- 22 Q If an individual does that on a consistent and repeated
23 and frequent basis, is it not considered a habit?
- 24 A It is considered a habit.

1 Q But, you don't consider it significantly different from
2 the questioned writing that you displayed to the jury?

3 A As--as I described before, that terminal stroke--the
4 terminal stroke of the "N" and the "R" are some of the
5 considerations when looking at the terminal strokes of the
6 "N's" and the "R's" in his known writing from the period
7 of time that I had available to me to examine, the ending
8 strokes of those letters are part of the consideration
9 that I had to--to put forth in particular was there
10 constriction to--excuse me--

11 MR. GABRY: (INAUDIBLE)

12 THE WITNESS: Was there some restriction to the
13 movement of the space to cause a person to write with
14 their hand as opposed to being able to move their arm.

15 BY MR. GABRY:

16 Q And upon what information do you have that indicates that
17 there was any restriction to the space?

18 A Well, I--the only information I have is that it was a
19 phonebook. I don't have any information about whether or
20 not it was restricted in the space. It's a consideration
21 that I had, was the phonebook in a phone booth? Was it
22 laying on a table somewhere? I don't know. It's
23 something that I had to consider and weigh in examining
24 those letterforms - terminal strokes to the letter.

1 Q Page three of the composition notebook shows three words
2 "with the line through them, "to me she". "To me she" and
3 then it looks like another letter. Is that correct?

4 A Yes.

5 Q How many terminal strokes do you see on those?

6 A They've got a terminal stroke--actually in each letter
7 that connects to the next letter and then you've got the
8 ending strokes of the words.

9 Q Okay.

10 Page 20 of the composition book. And by the
11 composition book if I understood your testimony--if I
12 understood you're saying--telling the jury this is the
13 closest we have, you believe--it's represented to you as
14 being Mr. Leiterman's known writing from the time
15 period of 1969?

16 A Yes, sir.

17 Q And that's based on some impression you lifted that had a
18 date of '67 in it?

19 A Actually '66.

20 Q In looking at page 20 of that exhibit--

21 A Yes, page 20.

22 Q Same terminal strokes?

23 A Well, the--the consideration--one thing that I need to put
24 forth about these particular writings is, there are a lot
25 of terminal strokes in there. However, the style of this

1 writing is more formal style, composition. So, the
2 writing isn't executed in a manner that is exactly similar
3 to the questioned. So, format wise alone the overall
4 style is different found in this composition book. 1966
5 is three years before--roughly three years before this
6 writing would have occurred in a more formal style. So,
7 the comparability of those two items again is part of the
8 limitation that I had to consider in my writing
9 examinations.

10 Q How do the "G's" look in that document all over the top?

11 A Well, it's hard for me to say sitting here on the stand to
12 go through each and every "G" with anything that I
13 consider to be accurate--

14 Q Then can I ask you if you did in fact do that?

15 A Well, certainly I considered the "G's".

16 Q Well, but did you look at that full page as you were
17 performing your analysis and go over all of that and look
18 at those "G's"?

19 A Certainly.

20 Q And do you find any of those variations in there? I see
21 no notes or any indication--

22 A Well again, this style is more formal. So the fact that
23 Mr. Leiterman does write with an overhanded "G" to form
24 the bowl with his movement going over the bowl of the "G",

1 that I would find "G's" on this particular page that would
2 have that overhand formation does not surprise me.

3 Q Okay.

4 I also see a significant number of what we call
5 approach stroke. In other words, there's a stroke before
6 one starts the letter. Is that a good definition of an
7 approach stroke? You probably have a better one.

8 A Well, it's--approach stroke's not really a term I use but
9 it's an initial stroke. So--

10 Q Okay, that will work. A lot of initial strokes in there,
11 correct?

12 A Correct.

13 Q Any initial stroke in the "Muskegon" or the "Mixer"?

14 A No.

15 Q Now, in your slide presentation, you made a number of
16 references - I would say at least two or three. Two in
17 fact that you found it significant that Mr. Leiterman had
18 written--and I believe this starts with number 12 from
19 exhibit 50--had written "Muskegon Mixer" underneath the or
20 along the binding, correct?

21 A Well, I made mention to the fact of the overall position
22 not that it was along the binding necessarily. But,
23 considering the overall position of the words and the
24 words--the spacing between the words. I did make mention
25 to that. I believe we clarified that that is just one of

1 things that--to be considered in those particular
2 "exemplars.

3 Q You've clarified after the break, correct?

4 A Correct.

5 Q Now, in your notes there was another characteristic in
6 these exemplars that you've found to be significant in
7 this day as one of the similarities upon which you've
8 formed your conclusion - and I'm referring to the way the
9 word "Muskegon" was spelled commencing with--looks like
10 maybe 13. No, 12--11 - with number 11. Did you make that
11 note?

12 A I believe I did.

13 Q Indicating that it was misspelled and that Detective
14 Moore's supplement indicated no spelling and/or
15 misspelling instructions were given. Did you also find
16 out that that wasn't actually accurate? I'm referring to
17 8B as you have listed similarities under the word
18 "Muskegon".

19 A Correct.

20 Q On the first nine phonebook covers, where the handwriting
21 is up in the upper corner, the word "Muskegon" that was
22 Mr--Detective Sargent Moore directed Mr. Leiterman to
23 write "Muskegon Mixer". He spelled it correctly, is that
24 correct?

25 A One through nine.

1 Q And then when Sargent Moore told him to spell it the way
2 it appears on the phonebook photograph, that's when we
3 began to see all of these extra "E's" in the word
4 "Muskegon".

5 A Correct.

6 Q But, you didn't know that or you just made an assumption
7 based on--or you didn't review the report or why would you
8 find that to be a similarity?

9 A I believe the similarity I'm noting there is not
10 necessarily the spelling error as much as the formation of
11 that particular form. Moore's sub does--I don't believe
12 indicates whether or not spelling was given. I believe it
13 says, no spelling instruction was given. But the spelling
14 itself really is not a significant characteristic in terms
15 of the overall opinion anyways - the actual writing
16 itself. So--

17 Q In your listing of similarities under the "E" form after a
18 "G" you make note not only of the formation and
19 construction of the letter but then in a separate sub-
20 category you put, "misspelled".

21 A Right.

22 Q When did you commence your initial forensic examination of
23 the "Muskegon Mixer" phonebook cover for this case?

24 A In this instant case, I'd have to look. The items were
25 submitted to the laboratory on May 25th of 2005.

- 1 Q And when were the known handwriting exemplars, in other
2 words the copies of the phonebook cover, when were those
3 presented to you?
- 4 A It was May 25th of 2005.
- 5 Q So, prior to May 25th, none of the composition books or any
6 of the other material had been presented to you?
- 7 A No, sir.
- 8 Q And you have continued to review this matter up until at
9 least last night or the night before when Mr. Hiller
10 forwarded more writings to you?
- 11 A There have been two supplemental submissions. One was the
12 night before last.
- 13 Q When did you form the opinion, sir that it was highly
14 probable in your mind that Gary Leiterman wrote "Muskegon
15 Mixer" on that phonebook?
- 16 A The date on my report was June 10th of 2005.
- 17 Q So, nothing that has been presented to you relative to
18 these letters had any bearing on your opinion?
- 19 A That's correct.
- 20 Q And what your opinion then was based on was solely the
21 composition book, the spiral notebook, the exemplars, the
22 single sheet and some journal entries where the signature
23 of Gary Leiterman appears?
- 24 A I'm not sure you listed everything.

1 Q I'll try that again. Lets start with the easy thing -
2 some signatures. I'm not sure whether there is three or
3 four. Gary Leiterman and wanting a book with shell and
4 another one with a book with guns - two green journal
5 books. Did you have those before June 10th?
6 A I did not have them before June 10th, no.
7 Q So, those did not enter into your--
8 A Excuse me--excuse me. I misspoke myself. I received
9 those on May 25th as well.
10 Q Okay, so you considered those in your opinion?
11 A Yes.
12 Q And then you had the single sheet of paper--
13 A Yes.
14 Q --that's got the two paragraphs. Then you had the
15 composition book and the spiral book?
16 A Yes.
17 Q And then you received the exemplars?
18 A Well, they're all considered exemplars as far as I'm
19 concerned but yes.
20 Q To me the exemplar is when the police officer comes up to
21 you and tells you to write this out and you write it out
22 with the police officer watching you - that's a
23 handwriting exemplar.
24 A Those are the request samples.
25 Q And they're done in a number--why are 50 done?

1 A Do be able to get as much of a range of variation or a
2 view of the range of the variation as possible.

3 Q From the idea that if somebody is trying to be deceptive
4 they're going to slip? People fall into they're old
5 habits with repetition?

6 A That is--that is another consideration for the number. It
7 varies--it depends upon the amount of writing that's in
8 question that we're trying to compare. The--a small
9 amount of writing might require more exemplars. An
10 extended letter might require less if it was requested.
11 But, it is for the purpose of trying to get as much of a
12 picture of the range of variation of the writer along with
13 preventing an individual from being able to disguise the
14 writing the exemplar.

15 Q What do you consider to be the significant similarities?
16 Can you do a--first of all, define that for me. In your
17 terms, when you say significant similarities, what does
18 that mean?

19 A Well, significant similarity is a characteristic that
20 demonstrates individuality in the writing. Class
21 characteristic for example might be something that a lot
22 of people do - that everyone in the jury makes and "X"
23 with two cross marks. But, a significant characteristic
24 might be the pen pressure variations within those two
25 lines - whether or not you drag the pen and connect one to

1 the other, how you proportion them, where you place them
2 on the baseline, how far down the next line goes down or
3 the "X" line goes down - the relationship of all of them.
4 Those could be individual characteristics and significant
5 towards that - the purpose of identification or
6 elimination.

7 Q The fact that someone underlines a word for purposes of
8 emphasis would fit in what category?

9 A Well, just the mirror fact of underlining itself, the act
10 of underlining would be a class characteristic that maybe
11 a lot of individuals would use. We all underline at
12 different points in our writing.

13 Q Okay.

14 And what are the significant similarities in
15 underlining in Gary Leiterman's known samples and the ones
16 that we see in the "Muskegon Mixer" phonebook?

17 A Well, the underlines - first of all they're present.
18 Second of all there are hooks and pen drags to the left
19 and the right at least in the "Muskegon" entry. The
20 placement of the word or the writing above that underline
21 on the relationship of the writing to the underline and
22 the position of where the underline crosses the beginning
23 of the word. Those types of things are more individual.

24 Q I'm sorry. I don't want to take up everybody's time and
25 dig through. We've got the book here if you want to see

1 it but the notation that you put up on the board a number
2 of times, the word "angry"?

3 A Yes.

4 Q --underlined? And, I've got my copy here 4/16/02. I
5 don't know if you want to look in there. But, I'd ask you
6 to look at it and tell the jury if you see that--this is
7 putting that up there--do you see that loop in that
8 underline consistent with the loop under the word
9 "Muskegon"?

10 A I believe that's--that--the one you just showed me may not
11 be the one that was shown in the display. It appears as I
12 recall several times in those diary entries, the word
13 "angry" with an underline underneath it.

14 Q Oh. So, in other words, there's a number of times when he
15 underlines when there is no loop under the starting
16 letter?

17 A Yeah and that would be considered variation in that
18 particular writing characteristic.

19 Q So, how many loops did you count out of all of his
20 writings?

21 A I didn't count the loops in the writing.

22 Q You basically just look for one that's similar and then
23 put it on the board for the jury?

24 A No--

25 Q No?

1 A There's consideration given to that. But, it wasn't just
2 find one and put it up.

3 MR. GABRY: No? Okay. Thank you, Your Honor.

4 THE COURT: Mr. Hiller?

5 RE-DIRECT EXAMINATION

6 BY MR. HILLER:

7 Q Now, Lieutenant Riley, look at the enlargement of the
8 words "Mixer" and "Muskegon" that you have in front of you
9 and pay particular attention to the underlining there. Is
10 that hook present on both of those underlines that you
11 observed?

12 A No it's not.

13 Q So, there's variation even in the questioned sample?

14 A Yes there is.

15 Q One underline has the hook, one underline doesn't?

16 A Yes.

17 Q Do you see that present in Mr. Leiterman's writing?

18 A Yes.

19 Q Now Mr. Gabry talked to you about the initial stroke in
20 "Mixer" and "Muskegon" and the lack of an initial stroke
21 on the "M" in "Mixer" and "Muskegon"?

22 A Right.

23 Q Is that a variation that you find in Mr. Leiterman's
24 writing?

1 A The variation in terms of the "Mixer" entry, I believe I
2 showed he does vary that. He does pick up the pen to--and
3 put down the pen on the "I" to make that particular
4 formation. The "U" formation, I don't have the initial
5 stroke or--I'm sorry--I don't have the lack of initial
6 stroke on the "U" in the "Muskegon" entry found in the
7 known writing.

8 Q But, you do have it on other lettering including "I's"?

9 A Yes.

10 Q You indicated that--in cross-examination that Mr.
11 Leiterman's "R's" and "N's" tend to drag off to the right?

12 A They do.

13 Q But, did you find the downward terminal stroke variation
14 in his known writing?

15 A The downward stroke in his known writing is--is something
16 that occurs. He brings the "N" down and then drags it off
17 to the right. So, I don't have exact replicas of that
18 particular "N" form with that ending stroke down--straight
19 down like that. However, the significance of the
20 proportion of the letter, the connection of the letter,
21 the formation of the letter all agree with Mr. Leiterman's
22 writing.

23 Q And, at one point Mr. Gabry characterized the known body
24 of writing that you had as being the letters. First of
25 all, the handwriting that Detective Sargent Moore had, Mr.

1 Leiterman place on the copies of the phonebook covers,
2 there's no question that that was his writing, correct?
3 A Correct.
4 Q And that's something that you did have in the initial
5 submission?
6 A Yes.
7 Q So, in doing that, the internal check of the known writing
8 to see if that--to see if it was consistent, you did have
9 those known exemplars to use as a reference?
10 A That's correct.
11 Q Would you also look--is it ever appropriate for a Document
12 Examiner's in trying to determine the provenance of
13 writing--whether it's known writing from a particular
14 person or not, to look at the content of the writing?
15 A The content of the writing is something that falls outside
16 of what I consider my responsibility. The responsibility
17 for validating or that type of information is up to other
18 individuals, not me.
19 Q So, you don't look at the content of the writing in
20 determining whether or not it's known writing of Gary
21 Leiterman, but if other people do and pass that
22 information along, that's something you consider?
23 A It's actually--more falls on the shoulders of the
24 investigator to--to verify that the writing is what it
25 proports to be and who it belongs to. Those types of

1 follow-up information - trying to determine that type of
2 information would be something that somebody else would
3 have to do and then present it to me as known writing of
4 that individual.

5 MR. HILLER: Nothing further.

6 THE COURT: Further questions, Mr. Gabry?

7 MR. GABRY: No, Your Honor. Thank you.

8 THE COURT: You may step down, sir. You are
9 excused.

10 (At 5:36 p.m., witness excused)

11 MR. HILLER: Your Honor, at this time I'd ask the
12 Court to admit People's proposed exhibit 84 which is the
13 certified documents from the Michigan State Police
14 indicating (INAUDIBLE).

15 THE COURT: Any objection?

16 MR. GABRY: No, Your Honor.

17 THE COURT: 84 is admitted without objection.

18 (At 5:38 p.m., People's exhibit 84 admitted)

19 MR. HILLER: If I may have a moment to--

20 THE COURT: Yup.

21 MR. HILLER: --review my exhibit list, Your
22 Honor. Your Honor, I'm not certain that People's exhibits
23 67 and 68 were admitted. I couldn't verify that with the
24 Court this afternoon and I don't have a notation. Those

1 are the certified warranty deeds for 38233 Rickham Court
2 in Westland.

3 THE COURT: They were not.

4 MR. HILLER: I would move the admission of those
5 documents.

6 MR. GABRY: No objection, Your Honor.

7 THE COURT: 67 and 68 are admitted.

8 (At 5:38 p.m., People's exhibits 67 and 68
9 admitted)

10 MR. HILLER: With that, Your Honor, the People
11 rest.

12 THE COURT: I will give you some rest. Tomorrow-
13 -well first of all, one of the reasons why I pushed
14 through today is that it is still my hopes and intention
15 that we will complete this trial this week. Tomorrow, the
16 bad news is that we're going all day. The good news is
17 that you get a little later start. I do have some matters
18 that I need to take up with the attorney's and I will do
19 that before you arrive tomorrow. So, you need to report
20 here ready to come out at 9 a.m. instead of 8. So, you
21 get an hour more on the alarm clock in the morning if you
22 want to. We're getting close in this case. Please
23 remember my instructions about not discussing the case
24 with anyone or having any contact with any of the
25 participants. Tomorrow when you do report, don't stop by

1 the courtroom. Report directly to the jury room back here
2 and be ready to go at 9:00. You're excused until tomorrow
3 morning. Please go with Ms. Washington.

4 JUDICIAL ATTORNEY: All rise, please.

5 THE COURT: Mr. Hiller? Please be seated. You
6 indicated earlier at the bench, Mr. Gabry that you intend
7 to make a motion. You may do that in the morning. We
8 will convene with the two of you at 8:30 tomorrow morning
9 to hear your motion. We will also at that point have some
10 preliminary discussions in chambers regarding possible
11 instructions. So, as far as you're concerned we're
12 adjourned until 8:30.

13 COURT DEPUTY: All rise.

14 (At 5:41 p.m., proceedings concluded)

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1 STATE OF MICHIGAN)

2 COUNTY OF WASHTENAW)

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5 I certify that this transcript, consisting of 219 pages,
6 is a complete, true and correct transcript to the best of
7 my ability, of the proceedings held in this case on
8 Wednesday, July 20, 2005, before the Honorable Donald E.
9 Shelton, Circuit Court Judge.

10

11 Dated: November 28, 2005

12 Katherine Tait

13 Katherine Tait (CER 7308)

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