

1 BY MR. DER OHANNESIAN (Continuing):

2 Q Would it be fair to say you have no information on what  
3 happened to the camera prior to the time that you examined it?

4 A Well, with the evidence sheet, we know a path of who has  
5 gotten the evidence at any point in between me and it actually  
6 being obtained out in the field.

7 Q And who was it that had access to the camera or the box  
8 prior to the time of your examination of it?

9 A I don't have that evidence sheet in front of me to be  
10 able to refer.

11 Q If you had that evidence sheet, could you answer that  
12 question?

13 A Yes, I could.

14 Q And with respect to Government Exhibit 524, the LEXAR  
15 card, was that submitted to you in a bag of some sort?

16 A Yeah, it was a cellophane bag.

17 Q Was it a sealed cellophane bag?

18 A No, it was not.

19 Q Was Government Exhibit 524, LEXAR datacard, in the box?

20 A Yes, it was.

21 Q The box you previously described with the camera?

22 A Yes.

23 Q Was there a separate piece of paper which would identify  
24 who, if anyone, had access to that datacard prior to your  
25 examination of it?

1 A Any time we have a piece of evidence and it obtains other  
2 evidence in it -- say you have a laptop and you have a CD-ROM  
3 inside. We always package up the extra evidence that we've  
4 obtained from the device in with the original evidence.

5 We don't always modify or change and put it on  
6 separate chains. We keep it all together to show that it's  
7 reflective of coming through that item. We put a NYC barcode  
8 number to identify it as something that came from the parent.

9 Q The NYC barcode, is that applied by someone like  
10 yourself, Mr. Booth, in the CART lab?

11 A Yes, it is.

12 Q That's not applied by an agent in the field.

13 A No, it's only by CART examiners.

14 Q So, only when it gets to CART does that NYC CART number  
15 get on the device.

16 A Yes.

17 Q Have you produced your notes and records to the  
18 prosecution in this case concerning the condition of these  
19 items when you received it?

20 A No, I did not.

21 Q Were you ever asked by the prosecution in this case to  
22 produce the notes and records pertaining to your evidence  
23 collection and examination in this case?

24 A I was asked if I had notes, but, at this point, my notes  
25 aren't complete. So, my report is my notes. My report won't

1 be done until all processing is complete, and processing was  
2 ongoing up until a couple days ago with some of these items.

3 MS. HAJJAR: Your Honor, can we have a sidebar?

4 THE COURT: All right.

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6 (Continued on the following page.)

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1 (The following occurred at sidebar.)

2 MS. HAJJAR: I just don't want there to be any  
3 misunderstanding with the jury. He's saying CART notes. He  
4 means the CART examiner under him, Virginia Donnelly, the  
5 primary examiner. I don't want there to be a  
6 misunderstanding that Mr. Booth -- that these are his notes.  
7 I think he's referring to them as CART's notes with respect  
8 to the receipt of this evidence and chain of custody.

9 It's fine if we're moving on, but I don't want there  
10 to be a misimpression with respect to that.

11 MR. DER OHANNESIAN: He said he had notes that would  
12 answer these questions. That's the reason they have notes, to  
13 know the condition of the evidence. They haven't been  
14 produced, and I think the defense is entitled to them,  
15 certainly after the direct examination, at least.

16 And I specifically asked for them this morning  
17 because when I read his testimony yesterday, there were other  
18 references to there probably may be notes in this case. I  
19 didn't realize this existed also. That's why we'd be entitled  
20 to that.

21 And I think there are some important issues and I've  
22 only scratched the surface of it. And I didn't realize this  
23 problem until a second ago. I think I'm entitled to it,  
24 whether his assistant made it or he did.

25 MS. HAJJAR: We don't have the notes, your Honor.

1 They're Ms. Donnelly's 3500. We can obtain them, but they're  
2 not -- he testified yesterday he received the forensic image  
3 from Ms. Donnelly and he testified that he was not -- he never  
4 said I was the one who imaged the devices.

5 Those notes that reflect the way that they were  
6 obtained by CART are in Ms. Donnelly's possession. If the  
7 defense wants to call Ms. Donnelly, we can obtain the notes  
8 and we can complete the circle if that's an issue.

9 MR. DER OHANNESIAN: I'm not asking to call anybody,  
10 I want the prosecution to fulfill its obligation under  
11 Rule 16, 3500.

12 And I don't want them to show up later as a response  
13 to my cross-examination. I think it's grossly unfair to say  
14 oh, we do have evidence, that it was sealed --

15 THE COURT: You've just been told they don't have  
16 that evidence.

17 MS. HAJJAR: We don't have them currently, but if  
18 this is an issue we can ask -- we do not have them, but we can  
19 ask Ms. Donnelly if she has the notes, if you'd like them, or  
20 call Ms. Donnelly to establish --

21 MR. DER OHANNESIAN: I think the testimony also  
22 referred to photographs, which was my first indication that  
23 there may be more than we were given. That's why I checked  
24 again last night.

25 Are there photographs?