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MEMORANDUM

To	The File
FROM	Ali Kazemi
DATE	September 3, 2004
RE	Cooper Hearing September 3, 2004 910536/2003 Tape 2

	Number 7 on the calendar 2004 Civil, 656 Cooper vs. Brown Court Trial before the ____.
Judge Huff	State your appearances for the record.
	Yes, good morning, Your Honor. David Alexander on behalf of the Petitioner.
	Good morning, Your Honor. Holly Wilkins, Deputy Chief Attorney General on behalf of Respondent.
	Good morning, Your Honor. Deputy Attorney General Adriene Hall on behalf of Respondent.
Judge Huff	Welcome back to you all. We can call the Witness.
Holly Wilkins	Yes, Your Honor, we have Mr. Ballard.
Clerk	Raise your right hand, please. Do you solemnly swear that the evidence you're about to give in the cause now before the Court to be the truth, the whole truth and nothing but the truth, so help you God.
Mr. Ballard	I do.

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Clerk	Please be seated. Please state your name and spell your first and last name for the record.
Mr. Ballard	Kenneth Ballard. <u>K E N N E T H B A L L A R D</u> .
Judge Huff	You may proceed.
David Alexander	Thank you, Your Honor. Good morning, Mr. Ballard.
Kenneth Ballard	Good morning.
David Alexander	My name is David Alexander and uh we had occasion to uh meet out in the halls before the hearing, correct?
Kenneth Ballard	Yes, we did.
David Alexander	And, uh, can you tell us sir if at any time in your career you worked at the Chino Institution for Men?
Kenneth Ballard	Yes, I did.
David Alexander	And would you please tell us the years that you worked there?
Kenneth Ballard	I started in 1973 as a Correctional Officer and I worked there until uh 1986.
David Alexander	All right. Uh, and during the period of time that you were at uh ... I'll call it, CIM. You're familiar with that acronym?
Kenneth Ballard	Yes.
David Alexander	All right. Uh, were you initially a Correctional Officer I?
Kenneth Ballard	There was only one level of Correction Officer – it was just correction officer.
David Alexander	I see. All right. Thank you. Now, did you remain in the position of the Correctional Officer during the entire period of time of your employment uh at CIM?
Kenneth Ballard	No, I didn't.
David Alexander	Okay, then could you please tell us uh what additional positions you had, hopefully in the order in which you had them?

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Kenneth Ballard	I began as a Correctional Officer entry level. Promoted to a Correctional Case Manager which entailed doing the case work in addition to custody work. Then I got promoted to Case Worker Manager II. And then I was promoted to Lieutenant.
David Alexander	Uh, excuse me just very briefly -- what is the -- what are the responsibilities of a Correctional Case Manager?
Kenneth Ballard	O.k. It's called a CPS.
David Alexander	What does that stand for, please?
Kenneth Ballard	Correctional [laughs] we don't have the uh classification any more. What we did -- we did case work uh -- work up for the inmates in our units. And we did _____ reports _____.
David Alexander	_____ reports?
Kenneth Ballard	_____ reports. _____ prison term.
David Alexander	I see. All right. During what years if you recall were you uh ... what was then called the CPS or Case Worker?
Kenneth Ballard	_____. 7, I think.
David Alexander	I see. Uh,
Kenneth Ballard	'80, 81, I think.
David Alexander	Is when you began?
Kenneth Ballard	Yes.
David Alexander	Now, uh, if you recall, sir, what were your position at CIM in 1983 and 1984? There may be more than one position, but I'd like to know for those years. Do you recall?
Kenneth Ballard	I was the Correctional uh Criminal Activities Coordinator for both of those years.
David Alexander	For both of those years.?

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Kenneth Ballard	Yes.
David Alexander	And for all of both of those years?
Kenneth Ballard	Yes.
David Alexander	And did you remain in that position until you left uh working at uh CIM?
Kenneth Ballard	Yes, I did.
David Alexander	All right. Un, now, uh you're retired? Is that correct?
Kenneth Ballard	Yes.
David Alexander	And when ... and did you work for the California, I'm sorry, for the Department of Corrections until the date of your retirement?
Kenneth Ballard	Yes, I did.
David Alexander	And just very briefly, uh, from age ... when did you retire?
Kenneth Ballard	Oh. '90 ... '97, November 97.
David Alexander	All right. Just very briefly, from 1986 to 1997, can you tell us what your responsibilities were?
Kenneth Ballard	I worked in a uh Law Enforcement Leg Unit _____.
David Alexander	What is that sir?
Kenneth Ballard	That's an investigating unit for the Department of Corrections.
David Alexander	And, was that the entire period of time of '86 to '97?
Kenneth Ballard	No. '96 I went to Ironwood State Prison as an Associate Warden.
David Alexander	And that's where you were when you retired?
Kenneth Ballard	Yes.

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David Alexander	Thank you. Now, let me go back to the period of 1983 and 1984 uh at the Chino Institution for Men. What involvement if any did you have in connection with the investigation of the uh Ryen-Hughes crimes which I'll represent to you were in June of 1983?
Kenneth Ballard	_____ that I had no connection. I only worked that case as a support for the custody staff for the escape of the _____.
David Alexander	And do you recall uh ... in ... uh ... what your ... what you did in connection with the escape as you described it?
Holly Wilkins?	Objection, 403.
Judge Huff	Uh, I'll give brief background ...
David Alexander	That's all I really want ... to find out what he did.
Judge Huff	Brief and then we'll see if we need to go further.
David Alexander	I'm not interested in getting into the escape, I simply wanted to know what this man did when he was involved in the Ryen-Hughes investigation.
Kenneth Ballard	We followed normal escape procedures. We canvassed the neighborhood, uh, conducted stakeouts on on-and-off ramps onto the freeway in the area, trying to uh apprehend the escapee.
David Alexander	All right. So, uh, am I correct then that your involvement in the Ryen-Hughes crimes was simply an effort to help find un, un an escapee who might be responsible?
Kenneth Ballard	Correct.
David Alexander	All right. You've had no other responsibilities in connection with the _____ or I'm sorry, no other involvement in connection with the Ryen-Hughes crimes?
Kenneth Ballard	Correct.
David Alexander	All right. Now, while you're at uh CIM uh did you know a Richard Krupp?
Kenneth Ballard	Yes, I did.

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David Alexander	And who did you know Mr. Richard Krupp to be?
Kenneth Ballard	_____ a Correctional Officer Krupp.
David Alexander	Un, and as part of your responsibilities at CIM, did you have interaction not on a social basis but in a professional capacity un with Mr. Krupp?
Kenneth Ballard	Yes.
David Alexander	And would you describe briefly uh, what the nature, and again this is in 1983 and 1984, I'm sorry I didn't limit it, if you recall that specifically, un what the nature of your interaction with Mr. Krupp was?
Kenneth Ballard	As the _____ of CIM, all information pertinent to gang members either entering the institution or withdrawing from the institution, were run by him. And, un as the counselor, became _____ a gang member coming into the system, then he would notify me and then I would in turn interview the gang member. So, there
David Alexander	So as I understand it, your interactions with Mr. Krupp involved both gang members already within the prison, is that correct?
Kenneth Ballard	Yes.
David Alexander	All right. And also if in the course of his interviewing an inmate for placement, he came across somebody who was a member of a gang, you would be involved also.
Kenneth Ballard	If he was a gang member, yes.
David Alexander	All right. Now do you have any recollections, sir, of conversation that you may have had with Mr. Krupp, uh, regarding the Ryen-Hughes murders?
Kenneth Ballard	No, I don't recall any conversations.
David Alexander	O.k. _____ All right, now. Was there a group or for lack of a better word, a unit, at CIM in 1983 into '84, uh that interacted with the Sheriff's Department in connection with the investigation of the Ryen-Hughes murders?
Kenneth Ballard	PSM would have been the institutional investigators.

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David Alexander	The institutional investigators?
Kenneth Ballard	Yes.
David Alexander	And can you tell us who the institutional investigators were? Identify the names?
Kenneth Ballard	The best I can recall, John Laddon was the Lieutenant. Teresa Cattula, Zeak Hernandez and Gary Murray.
David Alexander	And so it is your understanding sir uh, at the time that there was information relative to the Ryen-Hughes crimes, named by a person working at CIM, did that information was to go to this investigative team that you describe?
Kenneth Ballard	Correct.
David Alexander	This investigative routine, as you describe?
Kenneth Ballard	Correct.
David Alexander	Now, do you know where Mr. Lowden is today?
Holly Wilkins?	Your Honor, I object to this form.
Judge Huff	Sustained.
David Alexander	_____ together in visual terms?
Judge Huff	Is there no objection? Sustained.
David Alexander	All right. No further questions.
Judge Huff?	I guess you can answer yes or no whether you know where he is.
Kenneth Ballard	I don't know.
David Alexander	For anything?
Kenneth Ballard	No. What I said is correct. As far as I know.
David Alexander	Yes. Okay.

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Judge Huff	So the objection is withdrawn as moot. The Court's ruling is moot.
David Alexander	Thank you.
Holly Wilkins	Thank you, Your Honor. Uh, Mr. Ballard, were, were you the only gang coordinator at CIM during 1983 and 1984?
Kenneth Ballard	Yes.
Holly Wilkins	And, um, as gang coordinator did you have occasion to receive information from CIM counselors that you would pass along to local law enforcement?
Kenneth Ballard	Only as far as the gang was concerned.
Holly Wilkins	O.k., and when you indicated that you would pass on gang-related information, was that limited to having inmates with gang affiliations?
Kenneth Ballard	Yes.
Holly Wilkins	So, you weren't per se responsible for relating any information about gang activity to local law enforcement?
Kenneth Ballard	Uh, we met on a monthly basis. The gang coordinators statewide held a number of statewide gang organization _____ with _____.
Holly Wilkins	Would that include members of local law enforcement?
Kenneth Ballard	Yes.
Holly Wilkins	O.k., and when you say you shared information on gangs, was that so you would stay current with gangs?
Kenneth Ballard	Stay current with where the members were and possible activities were involved.
Holly Wilkins	Now, did you ever contact the San Bernardino Sheriff's Office in order to provide them with information received from an inmate at CIM indicating that persons were claiming responsibility for committing the Ryen murders?
Kenneth Ballard	No.

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Holly Wilkins	Were you ever present in any meeting with the CIM counselor wherein it was discussed ... it was discussed that information should be passed along to the San Bernardino Sheriff's Office relating to information received from a CIM inmate about persons claiming to have committed the Ryen murders?
Kenneth Ballard	No.
Holly Wilkins	Do you recall any discussion while at CIM with Mr. Krupp relating to three Hispanic males in the San Bernardino County Jail claiming responsibility for the Ryen murders?
Kenneth Ballard	No, I don't recall that.
Holly Wilkins	Do you recall any conversation with Richard Krupp about inmates of the San Bernardino County Jail indicating that the Ryen murders were drug-related?
Kenneth Ballard	No.
Holly Wilkins	Do you recall any conversation with Ted Fahey regarding an inmate, an inmate claiming that three Hispanics in the San Bernardino Jail were claiming responsibility for the Ryen murders?
Kenneth Ballard	No, I don't recall _____.
Holly Wilkins	Did you ever have any conversation with San Bernardino County Sheriff's Office relating to the Ryen murders?
Kenneth Ballard	No.
Holly Wilkins	Now, your position as a gang coordinator, was that state funded?
David Alexander	Your Honor, I object. It's irrelevant.
Holly Wilkins?	403.
David Alexander	It's not even 403, it's irrelevant. 403 seems relevant.
Holly Wilkins	In addition to meeting Mr. Alexander in the hallway this morning, you also had a telephone conversation with him, correct?
Kenneth Ballard	Correct.

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Holly Wilkins	And did you indicate to Mr. Alexander uh whether or not there was any communication between you and the San Bernardino County Sheriff's Department regarding the Ryen murders?
Kenneth Ballard	I told him that I had _____.
Holly Wilkins	No further questions, Your Honor.
Judge Huff	Is that all?
David Alexander	Just very briefly.
Judge Huff	Sure.
David Alexander	Um, I neglected to ask you, did you know at the time that you work at CIM, a Mr. Shepherd — Cornelius Shepherd?
Kenneth Ballard	Yes.
David Alexander	And do you understand him also to be an African-American man?
Kenneth Ballard	Yes.
David Alexander	Now, un when you answered ... uh, _____. Thank you, very much.
Judge Huff	O.k. Anything else?
Holly Wilkins	No, Your Honor.
Judge Huff	All right. You may step down. You're excused.
Holly Wilkins	Your Honor, Mr. Ballard was our only witness for today. Um, we have Captain Phillips scheduled for Tuesday.
Judge Huff	I understand that there's a medical situation with his wife ...
Holly Wilkins	Yes, and also um, we've managed to ascertain his role with respect to the case and he testified un four times in the case and un he originally testified on December 7th, 1983 and that's in Vol. 16, PRT at pages 109 to 121. His testimony ...

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Judge Huff	The PRT means the Pre-Trial ...
Holly Wilkins	Yes, Your Honor.
Judge Huff	Thank you.
Holly Wilkins	<p>And his testimony related to moving the bedroom furniture and carpeting out of the Ryen bedroom. He then testified a second time on March 21st, 1984, again with respect to pre-trial motions ... I'm sorry, motions and that's Vol. 9 of the Motions Recorder's Transcript at pages 882 to 886. On that occasion he testified to Mr. Sivits approaching him on June 7th and he spoke to him about the hatchet sheet in the hideout house. He then testified a third time on June 26th, 1984 and this is in Vol. 41 of the Motions Recorder's Transcript at pages 4325 to 4335. His testimony again related to the hideout house and his contact with Mr. Sivits in relation to the hatchet sheet. He then testified at trial on October 31, 1984 and this is found at Vol. 87 of the Trial Transcript at pages 2902 to 2911. On that occasion he again testified to being approached by Mr. Sibit on June 7th with respect to the hatchet sheet and entering the hideout house. Uh, there are two ... actually there were two Phillips with the department. The other one was Sergeant Jack Phillips and he was assigned to the Glen Helen Jail in Devor at the time of the Ryen-Hughes crimes. He was subsequently assigned to the West End Station in September of 1983. He has no relocation whatsoever of any involvement in the Ryen-Hughes investigation. He has been shown the blue slip relating to Mr. Stark. He does not recognize any handwriting on the slip. Captain Phillips — there is no record of his ever interviewing any bar patrons including Mr. Stark. He has reports that show that he wrote down license plate numbers at the funeral of Christopher Hughes. There are reports reflecting that he interviewed Mr. Sivits regarding the hatchet. There are reports that he interviewed friends of Mr. Cooper in the Long Beach area and there are reports indicating Captain Phillips' presence at CIM when he led the _____ escapees for purposes of the investigation. So we have no indication that Mr. Phillips has any involvement with Mr. Stark or the bar patrons. He is not able to recognize the blue slip — he does not recognize the handwriting on the blue slip. And, so his testimony on Tuesday was to relate to the blue slip because the word "Phillips" is written on the slip.</p>
Judge Huff	Do you know who took the blue slip? Who wrote the blue slip?
Holly Wilkins	No, Your Honor.

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Judge Huff	Who's handwriting is on the blue slip?
Holly Wilkins	I don't believe we've established that. We have no idea.
Judge Huff	Is he prepared to submit a Declaration?
Holly Wilkins	Yes, Your Honor. He will cooperate fully. It's just, he has a situation with ... it's really a hardship to come on Tuesday.
Judge Huff	O.k. I'd request a Declaration detailing his involvement from ... and um finding out whether he recalls or doesn't recall the blue slip and then um have you shared with Counsel the nature of the medical situation?
David Alexander	I don't need to know. I need _____ his privacy ...
Judge Huff	And so we'll withdraw him as a witness for Tuesday at this time. Maybe in the ... are you thinking of calling Mr. Negus or somebody on the ... whether they got the logs?
David Alexander	We're putting that together and um ...
Judge Huff	Why don't you bring Mr. Negus on Tuesday as to whether they got the logs or not. Mr. Negus or Mr. Forbush or ... Is Mr. Forbush still around?
Holly Wilkins	Yes. Your Honor, Mr. Negus affirmed to the Trial Judge in open court on record that he had in fact, received the logs.
Judge Huff	Is there in a ... is that in a ... in the trial record?
Holly Wilkins	Yes, Your Honor. We've provided the citation in our paperwork and it's a long silique with the Court. He affirms receiving it in open Court and under those circumstances, I don't know how his testimony 21 years later as to whether or not he received something is of benefit.
David Alexander	I know, Your Honor, and I'll talk to Mr. Negus again because we're obviously discussing this.
Judge Huff	Okay, so you should look at the trial record and see the trial transcript. I haven't focused on that. And then see whether if you believe that you are going to call him, then Tuesday would be a good time to do that.
David Alexander	I will ... I will try to do that.

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Judge Huff	... for that purpose as to the logs. Whether it be him or Mr. Forbush.
David Alexander	Okay, I do have another matter. Excuse me, do you have another matter that Your Honor ask us to be prepared to address regarding other um possible places and uh, even though we scrambled and I have the information, I'm happy to present at least on behalf on the Petitioner.
Judge Huff	Now what is the situation? Does Dr. DeFor ... does ... he had time issues and some other issues. Does he still want to go forward or is there another more local uh lab that's available? Not the XY.
David Alexander	O.k. I thought everybody would like that because
Judge Huff	Of course she obviously has time now to do that, but ...
David Alexander	Well, that's the question. Um, but in any event, uh let's go to Dr. DeForest. He's still interested in participating and I don't know about ... I mean I've heard 'cause I've got a call about a call he had with Mr. Myers. All I received or sent in was [laughs] uh was that he ... somebody called him to find out when you would look at the shirt so they could get together and that's the extent of it.
Judge Huff	Um, hum. Correct So, what I need is, if he's going to participate, he has to comply with the Court Order ...
David Alexander	Sure. Of course.
Judge Huff	Uh, if he complies with the Court Order, then I need to know how much time does it take whether it's 8 hours or whatever to do that. And then is he avail... there was some time restrictions after our status conference phone call, I put in the Order to accommodate his time situation — the time that you had requested.
David Alexander	Yes, Your Honor.
Judge Huff	So, um, if it's a time issue or a compliance with the Court, he is way over there and there are other labs that could possibly do it.
David Alexander	... wha ... uh ... um ...
Judge Huff	And then there's also the presumptive rate issue ...

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David Alexander	Yes ...
Judge Huff	... which I'm now fully on notice of and so now that I'm on notice of, the presumptive rate is different than the rate that he was claiming and I didn't know whether that would be a factor or not.
David Alexander	That's right. That's the other matter you asked us to address and what we intend to do in that regard is to submit declarations as to how they get to that rate. I didn't negotiate the rates with all of them. Um ...
Judge Huff	But, I'm inclined to apply the presumptive.
David Alexander	Well, I understand, of course. I understand.
Judge Huff	Now. As far as past work, past work is ...
David Alexander	Done.
Judge Huff	... done. And that would be at the rate that we already said. For future work, this is the rate, it goes up to the Judicial Counsel, it requires some deviation and some good cause and um, so I'm gonna apply the presumptive rate.
David Alexander	All right. Now, um, _____ the record will submit whatever their justification is ...
Judge Huff	You may and then I'll consider that as well.
David Alexander	Now, the other matter and, um, is there's another individual um, who I think and I have his resume and material that maybe particularly suited to this situation and, if I might present that to both Your Honor and to Ms. Wilkins.
Judge Huff	And is he local and able to go?
David Alexander	Uh, he's able to go and willing to come here, all right. His name if I'm _____ information, is Barton Epstein for 30, I'll hand out his resume, but for 32 years he was the uh, I guess assistant, well he had several positions including ...
Judge Huff	Well, if I say let's to come here, it means — does he have the lab necessary to do the work, to get it done by the time that we said, September 13th?

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David Alexander	Um, I don't know wh ... well, he has a lab, yes in Minnesota. Whether he has one out here ... he actually proposed perhaps doing it at the California Department of Justice Lab. In fact ... he was
Holly Wilkins?	[laughs]
David Alexander	No?
Holly Wilkins	No, they don't allow outsiders to work in their lab.
Judge Huff	O.k.
David Alexander	All right, well then, we may then we may be able to make some arrangements and ties into ... Let me do this one at a time before I get ahead of myself ...
Judge Huff	Hm, mm.
David Alexander	His name is Barton Epstein — 32 years he worked in several positions including Assistant Director for the State of Minnesota, the Bureau of Criminal ... they call it, Minnesota Bureau of Criminal Apprehension Laboratory and Professor of Criminal Justice and he also has his own forensic consulting practice. And, interestingly, his name was brought to my attention, by uh coincidentally, a fraternity brother of mine who I had lost contact with, and who is now President of the ... I can't think of the name of the large company ... but in any event I was talking about this matter, and he suggested Mr. Epstein. And Mr. Epstein has actually written a rather substantial piece on the blood-stain pattern analyses. So he is quite familiar with looking at blood stains on clothing ...
Judge Huff	And is he able to then look at this one area ...
David Alexander	And his time is good, um, I haven't gotten the protocol from _____, 'cause I just got hold of him, but it's going today.
Judge Huff	Hm, so why don't we take a break, call him and see ... make sure he's received the protocol so that we don't get into the situation where we send out the shirt and then, uh, have a problem.
David Alexander	Sure.

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Judge Huff	So why don't you go call him, talk to him, you can talk to Ms. Wilkins, she can review the information at the break and then we'll resume at 11 o'clock.
Holly Wilkins	O.k., we also have other options to present to the Court ...
Judge Huff	And since they're, you can share those with Counsel and then Dr. DeForest is a possibility, too, but there was a time issue — there's a rate issue and then there was a substantive issue.
Holly Wilkins	There's also a lab issue from what I understand. Dr. DeForest is indicating to the O. J. that he would require a lab facility to do the work and I don't know why that is, I don't
David Alexander	I don't either. Because in his place, he has a lab right there.
Holly Wilkins	Yeah, I thought it was issues with what's in his lab or I don't know.
Judge Huff	So, why don't you call and then find out so that he needs to see the Order, read it and say, yeah I can do this.
David Alexander	O.k.
Judge Huff	And ... then we can ... because we've held off shipping the shirt but we need to get this going. So why don't you call ...
David Alexander	O.k., I'll do that. I'll go down and get my phone from the security and then I can call.
Judge Huff	See, you're not required to use your own phone.
David Alexander	No, mine does — even though I don't know how to use it given my ...
Judge Huff	I do not ... we do not impound camera phones, so I don't know why they make you impound your camera phone.
David Alexander	No, they make me do it ...
Judge Huff	And the Court will give you an Order that you do not have to impound your phone.
David Alexander	That would be a welcome Order, Your Honor.

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Judge Huff	Thank you.
Holly Wilkins	Well, hopefully, if Counsel could inquire as to availability too because ...
David Alexander	The availability is the first thing I check with because of the urgency of the matter.
Judge Huff	Availability, rate and then substance.
David Alexander	O.k.
Holly Wilkins	And a specific date because we have travel arrangements ...
Judge Huff	Because you also need to .. what ... and then how long will it take him?
David Alexander	And I think that's why he wants to see the protocol.
Judge Huff	O.k.
David Alexander	Now, uh, just while I'm on this, I know you've already addressed Ms. Johnson, but in that connection ... Ms. Johnson was, until very recently although she still uses the last facilities, uh, with a lab where Mark Taylor is in Ventura, you had asked for something local and I think it's called Forensic ...
Holly Wilkins	It's uh, Technical Associates.
David Alexander	Technical Associates, 4125 Market Street.
Judge Huff	And she would not be involved, it would only be Mark Taylor?
David Alexander	Well, that's the other thought. Now, I put another call into Mr. Taylor and I haven't gotten a response back from him since I learned yesterday ...
Judge Huff	'Cause I think there's an appearance issue on the x-wife.
Holly Wilkins	Also, we would object to Mr. Taylor because he is co-author of Dr. Ballard's paper on EDTA testing.
Judge Huff	I think that ... that's an issue.
David Alexander	I didn't know that, or maybe I did. But, I hadn't thought about that.

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Judge Huff	I think it's ... well it's her lab.
Holly Wilkins	Well she was associated — I'm not sure she's associated today, but she was recently associated with Dr. Taylor's laboratory, but Dr. Taylor — it's his laboratory and he co-authored an article of Dr. _____'s ...
Judge Huff	Well, why don't you take your break and you could call Dr. DeForest or you can pursue this other one and then report back to the Court. I guess we could say 11:15 if you need that much time, or whenever you're ready to come back.
David Alexander	O.k.
Judge Huff	O.k. Thank you.
David Alexander	I'll do my best.
	[BREAK]
Clerk	_____ come to order. The United States District Court is again in session.
Judge Huff	Thank you. We're back in session. Uh, Mr. Alexander, we've been unsuccessful in reaching your people?
David Alexander	If I might report what I've done. The answer to that is, yes. First of all with regard to Dr. Epstein, uh, the only number I have is a home number which is where I think he works from and I called that and got no answer. Then I called my assistant ...
Judge Huff	Well, then I'm not inclined to give some ... if he works from a home and we need a lab and ...
David Alexander	No, he has a lab, well, I don't know if it's a lab ...
Judge Huff	I'm not inclined ... I'm not inclined to do that.
David Alexander	I ... I ... Your Honor, I don't know. I will tell you Dr. DeForest's lab is right adjacent to his home and I don't think it minimizes his ...

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Judge Huff	Well, he's not available and ready to commit to this project today.
David Alexander	No. Well, I don't know that and let me see if I might _____ move this along. My assistant sent the protocol and confirmed with him early this morning that he received it and that he was then leaving for the weekend but will be back on Sunday, so I will call ...
Judge Huff	And he has no cell phone, no method of being attached.
David Alexander	I do not have a cell phone number for him, all right.
Judge Huff	So, we're ...
David Alexander	I wish I did. I then called Dr. DeForest on two numbers: the number at his lab, his home, and then his cell phone. I got no answer on the number at his lab and I got not available on the cell, and so I don't know if he is around and I will call him later on today again. Then because Your Honor had asked about Mr. Negus, I figured I'd give him as much notification as possible. I called him at his 909 area code number, left a message saying if by chance you should pick up, I related that you wanted him here on ...
Judge Huff	I didn't say necessarily, I said that was a possibility. I've now had an opportunity to review what he said to the Court and based on what he said to the Court in 1983, we don't need him to say that he didn't say that to the Court.
David Alexander	No, he's not going to say that he didn't say that to the Court, but he has no way of knowing what logs he got and didn't get.
Judge Huff	He represented to the Court that he received the daily logs, so I'm not going to have him come and testify as a witness on that.
David Alexander	Well, Your Honor, I think he can explain because I talked to him about it including the blue shirt daily log.
Judge Huff	I had an opportunity to review his trial ... what he said at his trial ... at the trial to the Judge and so I'll decline to have him appear as a witness and I'll stay with what he represented to the Court.

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David Alexander	Well, Your Honor, I really don't think that that is the complete answer to the issue particular in light of representation of both Mr. _____ who we've never heard and didn't even think the shirt existed and now that we know that it did, and number 2, by um Mr. _____ who I've spoken to, who said that he never saw any log entry or heard anything about the blue shirt so that leads me to question whether or not he did in fact get all of the logs.
Judge Huff	The Court will ... the Court will rely on it's representation to the Court and not ...
David Alexander	... and establish ...
Judge Huff	and not whether and when to have an evidentiary hearing is discretionary with the Court based on the Court's ability over the break to then track down his representation to the Court, the Court declines to have him come back again and testify. I did have an opportunity to hear from him early on in the first petition.
David Alexander	Well, certainly not on this specific issue, Your Honor, which wasn't an issue, but I, I understand your Order and _____. But, I disagree with it, respectfully. The next thing that I did to try ... well, it's immaterial now. You're not going to let us call Mr. Negus. I did try and call his wife who has pneumonia, he was at PT to see if I could locate him, but that's just by way of information.
Judge Huff	I do appreciate that as far as scheduling a witness on short notice, that's always problematic. But, now that I've had a chance to take a look at what he said to the Trial Court, the Court's satisfied on that issue.
David Alexander	Well.
Judge Huff	Now, with respect to ... um we did have an Order ... this was ... we discussed this, we had a timeframe, and now we've got some procedural issues about whether we go forward with Dr. DeForest or not. The Attorney General has some proposed alternatives and who are your proposed alternatives?
David Alexander	Your Honor, I don't know ... excuse me, I didn't mean to interrupt. I don't know that we have a problem with Dr. DeForest — I can't get hold of him today and um, you know I feel pretty confidently that nothing going to happen between now and Tuesday ...
Judge Huff	Yes. We have to ship the shirt.

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David Alexander	Well ...
Judge Huff	The shirt was suppose to by Court Order be shipped yesterday.
David Alexander	Ummm.
Judge Huff	So.
David Alexander	I thought by Court Order that you had asked that it not be shipped, Your Honor, until we had this resolved.
Judge Huff	Yesterday, it was suppose to be ... it had to be received by Tuesday. In order to get it received by Tuesday, in order to have a recipient there not on the holiday it's preferable to ship it on Thursday.
David Alexander	But, if it's ...
Judge Huff	When the issue came up about the rate, the time and um not being able to pin down a date ... pin down a time for Mr. Myers, the Court then said we'll discuss it today.
David Alexander	Well, Your Honor, um what I would request in this regard is a date for this ... for the cuttings to be sent, I believe it's the 13th.
Judge Huff	Correct.
David Alexander	Whether or not it was shipped yesterday or whether it is shipped over the weekend or on Monday, um ...
Judge Huff	Monday's a holiday.
David Alexander	Right. Tuesday....
Judge Huff	Shipping is a problem.
David Alexander	Whatever it is. If it's done by the 13th, that seems to me to comply with your Order whether it's technically shipped, um, or not, um yesterday.
Judge Huff	I don't want to ship it and then have Dr. DeForest say, well I'm not going to comply with the Court Order,
David Alexander	Well, of course ...

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Judge Huff	So what I need to know is, is he going to comply with the Court Order or not.
David Alexander	And I tried to get that answer as best I could and I will continue to try this afternoon, and if not this afternoon, um, tomorrow. And I will continue each day and I assume I will be able to get him on his cell at some point. I don't know if he's in a dead zone or what the situation is. Um, so that's my view — or my position as to that. Let me return a moment if I might just briefly to Mr. Negus ...
Judge Huff	So how 'bout this. On that issue, why don't we hold off on shipping until <i>Tuesday</i> , it could then be received on <i>Wednesday</i> , and Dr. Myers or whoever is gonna be the observer still would have time to get there. There's probably gonna be a lot of rain in that area um, over by that time, un then you could affirm: can he comply with the Court Order and is the rate ... he withdraws because of the rate.
David Alexander	O.k. Very well.
Judge Huff	And then, if not, than you're here on ... do we have any witness on Tuesday or not?
David Alexander	Well, I ... that was another matter I wanted to address ... because I am trying to make use of the time even if things don't go.
Judge Huff	Hm, mm.
David Alexander	Well, now let me go back to Mr. Negus for one brief second, o.k.? That log and these logs have none of the document numbers that you've heard about.
Judge Huff	They were subpoena ducas tecum.
David Alexander	Yes, apparently according to Mr. _____ hand and Mr. _____ was ...
Judge Huff	No, according to the trial transcript.
David Alexander	Yes, there's a transcript, o.k., but we don't know what logs and what I'd like to do ... was Mr. _____ involved in that production. If not, let's find the person who produced those logs from the DA's Office or make that effort and find out if they produced those, or what they produced. Mr. Negus will tell you about the nature of the production of documents.

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Judge Huff	I'm going to rely upon the representations of trial counsel to the trial judge. Certain things were requested and he represented to the trial judge that they were received.
David Alexander	All right.
Judge Huff	<i>21 years later</i> , I'm going to rely upon what he said back at the time.
David Alexander	Well, Mr. _____ 21 years has no recollection of that entry or even the shirt existing. So un I understand Your Honor's Order and I am bound by it. And I'll very respectfully disagree with it. Now, um, with regard to witnesses, um, we are still endeavoring and I have some information about uh the uh "Al Warren" who was a bartender ...
Judge Huff	I looked at your request for evidentiary hearing and "Al Ward" is listed on your request for evidentiary hearing as one of the bar patrons that you wanted to have here. Al Warren, your request for evidentiary hearing says, was not present the night of the hearing ... the night of ...
David Alexander	That's not true ... it does not say that.
Judge Huff	I'll, I'll ... I've got your request ...
David Alexander	Al Warren was not the bartender that night, but he was ... we understand he was present. Let me give you the circumstances.

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Judge Huff	<p>Just a minute. Let me get your own written request to the Court. Page 13, line 1 and I'll start with page 12, the beginning of the sentence, "Perhaps more importantly, however, during the course of the testimony provided at the June 28-29 evidentiary hearing, several key witnesses were referred to but were not present at the hearing to provide testimony, potentially material to Petitioner's claim including but not limited to: Curtis Lee Ward, a San Bernardino Sheriff who interviewed witnesses at Canyon Corral Bar and may possess material information regarding the timing and extent of his interactions with witnesses who testified at the hearing as well as other potential witnesses who's names have not been disclosed to petitioner and other information relevant to the investigation of the incident. Carlos Montanas, Mary Wolfe's boyfriend, who Petitioner believes could provide testimony to corroborate Wolfe's testimony, Nancy Simindich, the Sheriff Dispatcher on June 5, 2004 who may possess material information regarding the timing and phone calls placed to San Bernardino Sheriff's Department regarding the incident at the Canyon Corral Bar, Paul Beltz, the San Bernardino Sheriff's Department Deputy who first responded to the Canyon Corral Bar investigation and who may possess material information regarding the timing and extent of his interactions and with witnesses who testified at the hearing as well as other potential witnesses who's names have not been disclosed to Petitioner, and other information relevant to the investigation of the incident. Shirley Gillian's son, Larry and Randy Mansfield, Bob Beckencourt, <i>Al Ward</i>, and Fred Dean. All of whom may have been present at the Canyon Corral Bar and can provide material testimony regarding the incident. Canyon Corral Bar witness Lu Rupehart and her husband, Don, both of whom can provide material testimony regarding the incident and <i>Al Warren</i>, a Canyon Corral Bar bartender who was not present on the night of the murders, but was presumably privy to extensive discussion of the incident through his employment at the Bar." My recollection and representation of what was contained in your own request for evidentiary hearing is accurate. It does contain the name of Al Ward, it does contain the name of Al Warren, and it represents that he was not present that night.</p>
David Alexander	Now, let's
Judge Huff	I'm not calling Al Warren.
David Alexander	Let me tell you what has developed since then and you'll see it in our reply. All right. And I'll document this also. When the ...
Judge Huff	What reply?

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David Alexander	We're planning a reply today on the evidentiary hearing. To respond to ...
Judge Huff	No.
David Alexander	... to respond to their opposition.
Judge Huff	Did I request a response? Do the rules provide for a response?
David Alexander	I understand they ... in a motion that they allow a reply to their opposition.
Judge Huff	Have you looked at the rules as to whether there is a reply?
David Alexander	I have not personally, but ...
Judge Huff	Have I authorized a reply?
David Alexander	I don't know, Your Honor. I don't know. But, let me relate some information then that is in there just so you know on this matter. When Mr. Al Ward, the African-American gentlemen who appeared here last ...
Judge Huff	When was the response given? This was July 13th. Your response was a long time ago. There's no date that the Court set for any reply. There's been a problem on both sides ... we have an orderly presentation of material and there's been a problem on both sides of people just unilaterally deciding that I'd like to make a comment and statement and filing materials with the Court when there's no scheduling document to support that. The Supreme Court of the United States on the most significant matters requests parties to adhere to procedure for the orderly presentation of matters. So, I'll take a look at the Court's Scheduling Order, I'll take a look at the rules and we'll see whether if any reply is authorized and if so, at what point in time.
David Alexander	The reply simple brings to the Court's attention information not available at the time we filed our motion, but has been developed subsequently through witnesses ...
Judge Huff	Any request ...(tape broke off in middle of sentence)
[END OF SIDE 1]	
[SIDE 2 CONTAINS NO RECORDING]	

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