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MEMORANDUM

To	The File
FROM	Ali Kazemi
DATE	November 19, 2004
RE	Wheeling Transcription of November 19, 2004 Conference Call 910536/2003 Tape 11/19/04

Steve Myers	EDTA. The fabric was removed from the fluid after the soak and put into a filtering basket and centrifuged for five minutes. Now any cells that came off of the fabric during that centrifugation process gather at the bottom of the microcentrifuge tube.
Judge Huff	Is this ... is this what had previously been referred to in other hearings as the "soak?"
Steve Myers	The soak is the process of having the fabric in the TDF.
Judge Huff	All right.
Steve Myers	And so after the soak, when the fluid is filtered from the fabric, as I said, cells that were on the fabric that fell off would gather at the bottom of the tube and now the fabric would be put aside, the fluid that was above the pellet, the PDF now in the EDTA dissolved in it is removed from above the pellet and then the remaining pellet contains cellular material which contains DNA.
Judge Huff	So, what — for purposes of the order, we would say transfer the fabric that was the subject of the ... what?
Steve Myers	The fabric that was the subject of the EDTA cells ...
Judge Huff	Yes.

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Steve Myers	... and the cell pellet that was obtained from that fabric.
Judge Huff	All right. Then let me ask for information then on the reference sample ...
Steve Myers	Yes.
Judge Huff	... the SQP-1, is that the one that was done in the ... we want to compare apples to apples, I believe - Is that the same reference sample that was done in the joint DNA testing agreement previously?
Steve Myers	That's correct.
Judge Huff	And you're sure about that?
Steve Myers	[unintelligible]
Judge Huff	Petitioner wanted to send three reference samples, but then that's three separate tests and so I would think that we only send one.
Steve Myers	Uh, well, ...
David Alexander	No, we didn't want to send ... oh well, all right, fair enough. [unintelligible]
Judge Huff	Reference samples.
David Alexander	Yes.
	So, uh, yes. The reference type of line from Kevin Cooper was STP-1. I prepared one stain from that. I extracted DNA from that.
Judge Huff	OK, so if in this order, I've done an order asking that Dr. Melton send back the — and that's already gone out — send back anything that she has back to DOJ, So DOJ would have the reference sample and then would send it if we're doing the test off-site somewhere else. If we're not doing it at DOJ.
	Correct, although the results... if the results were being limited to profiler-plus ...
Judge Huff	Yes.
	Any testing of reference samples would be redundant to work already done during the post-conviction DNA tests.

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Judge Huff	Explain that to me. So profiler-plus is already gonna have that?
	Yes. I already ... when, I did the post-conviction DNA testing, I ran the samples using the profiler-plus kit.
Judge Huff	All right.
	And, so those samples ... those results
Judge Huff	Are already done.
	Correct.
Judge Huff	I see. OK, great. So we would not then have to send a reference sample?
	Correct.
David Alexander	But, Your Honor, this is then not blind-testing by Dr. Myers is involved because he already knows what the results are.
Judge Huff	Well, but on the other hand, there's already been post-conviction testing and the expenditure of resources and it's ... and it's clear that it's up to the Court to decide in these capital cases whether to then go forward and expend additional resources. If, what would be done is what we really need to know for purposes of this order, what I'm interested in knowing is did the place where the test was done contain Kevin Cooper's blood. So, we don't need to redo the STR profiler test, if we already have the test results.
Steve Myers	That's correct, Your Honor. No matter who does the _____ that DNA testing on the stain, they can then just ultimately reference the results from the report.
Judge Huff	OK, then let me ask a further question about timing how this is done and this is relevant to whether we do all at one time or whether we do the test of the main stain and the control areas in sequence. So, previously it was represented that the whole process could be done in three weeks, but when you're actually doing the test, how long does the test take?
	Well, the extraction process is generally an overnight process.
Judge Huff	That's to extract from the fabric?

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	That's correct. The fabric and the cell pellets would be combined.
Judge Huff	Right.
Steve Myers	The extraction begins on one day, continues onto the next day. On that second day, generally also you can do the quantitation test. And so assuming that that all runs properly, then the next day you can prepare the amplification ...
Judge Huff	Right. That's the PCR?
Steve Myers	That's the PCR and then, again, if everything is going smoothly and everyone's coordinating well, you can even sometimes get the PCR products on the capillary electrophoresis instrument and that process can begin. So, but because these samples have already been cut from the shirt, etc., if everything goes perfectly, theoretically you could do this in three days to get it on the instruments. And then it would run for potentially a day or two on the instruments. Then the interpretation phase would begin.
Judge Huff	When do you know whether you have genetic material?
Steve Myers	After the quantitation step. So theoretically on Day 2 at the end of the day you would know how much genetic material you've obtained from that.
Judge Huff	Are you ... if you do ... if you then determine that you have genetic material on Day 2, does it ... is it worse for your sequence if then you then start another different – say the control shirt test?
Steve Myers	Well, ...
Judge Huff	Or are you doing the same steps along the line?
	You're doing the same steps. If you're, you know, given the number of samples, it would be dramatically more efficient to do the controls, the substrate controls, concurrent with the stain.

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Judge Huff	Now on the substrate control area; and let me ask this to respondent, what if we did concurrent control and we take one of the control areas that was above the stain extract, not the one at the right-hand lower side of the shirt and take the highest EDTA ranking on that one, and then just did that control. Wouldn't that get us our ... uh, the information that we need? As to whether there is blood there or not?
Holly Wilkens	Well, I think it would certainly _____.
Judge Huff	And so my point is why do we have to do five? Why couldn't we just do one?
Steve Myers	[unintelligible]
Steve Myers	Uh, really it's just to dispose of any argument that, well, while that one stain may not have shown that it had blood present. It may be the one next that does. It's really just to officially try and remove any questions about that.
Judge Huff	OK, and now, let me ask petitioner for you to comment on the issue of the control areas and whether we do it _____, whether it's at DOJ or at a private lab. The other side's going to be there, so they're going to have to be there longer if we don't do it concurrently. On the other hand, there is an additional expense.
David Alexander	Well, let me ... I don't mean to preclude obviously, Mr. Hile or Mr. Kazemi just let me make my first observations. I didn't know Mr. Myers and Mr. Kazemi were going to be on this call and I don't have the benefit of our experts to _____ to comment on the statements that have been made. But, let me respond. Number one, most importantly, I think given what we have experienced, it is very dangerous to go ahead in this situation and not retain some form ... or some amount of the material that is going to be tested. We have ... talking about very small amounts under any set of circumstances and I certainly would like to get the input of Mr. Taylor or Ms. Johnson or somebody as to exactly what the size is and what their view is on that. We already had, respectfully, the loss of all of 6-G, which was in violation of the joint forensic agreement and we had no explanation for why that was done. So, I would encourage very strongly, Your Honor, that we make every effort to retain some portion of material. And I don't pretend to be ... to have the expertise to assess the ability to do that. And that's number one. With regard to the question that you asked, since we know we're going to have um, tomorrow's Friday, by way of genetic material on the second day or so, why don't we wait until after that before we move on to do the sample?

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Judge Huff	Or, what we could do is the high sample and then I mean, just pick one so you're doing two. And then parted is if you want to do it at a private lab, then somebody from DOJ has to be there. If you want to do it at ... you don't, but if they want to do it at DOJ, then we're paying a daily rate for a private laboratory person to come there and be there and that may be more expensive than having it done at the private lab.
David Alexander	Well, it's up to Your Honor. If I understand what we're talking about is hopefully doing it either at DOJ or doing this at Mr. Taylor's lab, both of which are in California now.
Judge Huff	Well, I check ... I went back after the hearing and read the submissions including prior sworn testimony and based on the Court's review, the Court's disinclined to appoint Mr. Taylor. He ... he's already testified and he's testified and this is his opinion as late as 2003 and so, in any event, the Court thinks that given his close connection and the other related problems, then the Court is disinclined to appoint him. I did take a look at Bodey and I have your proposed budget from them that's slightly higher than ... although with economy scale you get a volume discount for the more you do. And what I would like you to do is go back to them and see whether they would agree to do it at the \$200 an hour. And then there's a \$200 an hour and then there's some other daily rate one. We did get, let's see, let's see — it's \$200 an hour and then there's also something per day.
David Alexander	Let me just comment on Bodey and then go back to Mr. Taylor. Number one, we can't get them to call us back. Mr. Kazemi spO.K.e to the person ... a customer service person from a line that you get at their facility when you call. I endeavored to call Mr. Holland that was listed on their website. And Mr. Kazemi tried. Neither of us have heard back. What we're told and again is that they do not allow monitoring of their work. Now, I ... I haven't been able to verify that, but I've been told that about them, so I don't know.
Judge Huff	That they wouldn't permit somebody from DOJ to be there?
David Alexander	They don't allow anybody to be there, other than themselves.
Judge Huff	Well, have you asked?
David Alexander	No, because they won't return my calls. I ... I ... I left that very message on a Mr., I think it's, Steven Holland person's name. You go on the website, he seems to be somebody who'd be able to respond to this information, I think.

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Judge Huff	Well, have you asked Dr. Melton to call him?
David Alexander	Uh, I have not asked Dr. Melton to call him. I've not asked anybody else to call them so I just assume ...
Judge Huff	Well, based on what I've seen, it does appear that they are ones that is a potential that the Court may approve, so after this hearing in any event there's some additional questions I have — you can further pursue chatting with them. And then, ...
David Alexander	Now, one other thing about Mr. Taylor, now excuse me for my ignorance. I should know this, but I guess I don't. I wasn't aware that Mr. Taylor had testified in this proceeding.
Judge Huff	Not in this proceeding.
David Alexander	Oh, oh, I see.
Judge Huff	I went back and looked at the submissions that include — not in this ...
David Alexander	Not in this proceeding ... in this case?
Judge Huff	He hasn't testified in <i>this</i> case, no. But, I went back and looked at the submissions from the respondent that include testimony in other cases and well, include reference in opinions about prior testimony and, say you were the defense expert in <i>that</i> case and now your expert contradicts what he said in a prior case. That's just going to be problematic.
David Alexander	yeah, I'm not sure ... what specifically other than his comments relating to the profiler-plus and I think you know he has the ... we have the declaration from Mr. Taylor in that regard for what, . . . for more than for what it's worth we had similar attacks on Dr. Ballard and now he has been embraced by others.
Judge Huff	Well, I don't have ... if you could fax to me ...
David Alexander	Yes.
Judge Huff	... his declaration. I don't have it, but the timing still is an issue to the Court and maybe respondent can if after ... if you get the declaration then you can evaluate it.

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David Alexander	I think it was sent to, uh ... Ali, do you know?.
Ali Kazemi	Yeah, if you would, faxed down to our service in San Diego this morning. We just received a signed declaration from Mr. Taylor this morning.
David Alexander	Well, then it should be there, Your Honor. I'm sorry.
Holly Wilkens	Your Honor, I have read the declaration and it doesn't profiler-plus and analyze paragraph 8 and validate it and the declaration really doesn't ameliorate all those concerns.
Ali Kazemi	Um, in Paragraph 7, this is Ali Kazemi, he does say he believes DNA analysis using the AVI profiler-plus is an accurate, reliable and highly informative technique for genetic profiling.
Holly Wilkens	Well, um, my concern is ... that his prior testimony and he differentiates between the _____ so obviously that's of great concern because pretty much pretty much _____.
David Alexander	I find that surprising because I had a phone conversation with him when we asked him for the declaration, he had no issues with mixer with regard to profiling-plus except that it is, and I don't think anybody disputes it, it's more complicated than obviously a single source of _____.
Judge Huff	Well, I will ... since I have it, I will go for a ruling on that because I would like to take a look at his declaration, but I did go back and look at the submission and you still have the problem that here is some expert that has testified to the contrary in cases ... other cases ... other matters and in relatively recent opinions, that testimony has been noted and commented upon by the Court. But, I will take a look at that and then we also have a further complication which is the reason the Court has ... in part why the Court has gone in here before about all of his connections to the players in this matter, plus his credentials are obviously ... I mean if he gets \$200 an hour with having no degree, certainly if somebody has a Ph.D., the \$200 an hour seems a little more valid than somebody that doesn't have a degree.
David Alexander	Maybe I can ask Mr. Myers, uh, to express his view as to Mr. Taylor's comments.
Judge Huff	I don't think, this is the time to do that because the respondent has already said that they've got concerns about using Mr. Taylor, but let me review his ...

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David Alexander	_____ concerns about Mr. Myers.
Judge Huff	Pardon me.
David Alexander	You have those same concerns about Mr. Myers.
Judge Huff	No, and the DOJ was saying that if still want \$56 an hour if we do the testing there; but I'm inclined to do the testing at a private lab because otherwise we're going to incur the expense — a daily expense — of somebody having to go to DOJ. And so I'm inclined to probably do it at a private lab. Let me then ask some additional questions. On, um ... If we refer to the EDTA stain extract, would that be the extracted fabric in cell pellets?
Steve Myers	You're talking to me, Steve Myers?
Judge Huff	Yes.
Steve Myers	The EDTA stain extract would probably more refer to a PDF extract, some of which were sent to the various chemistry testing labs.
Judge Huff	So that ... you would think of would refer to the vials? The liquid from the vials?
Steve Myers	PDF with extracted ionic compounds like EDTA.
Judge Huff	All right. Then, do the parties agree that the ... so the ... would they be doing the STR profiler-plus on the fabric in cell pellets?
Steve Myers	That's correct to me, Your Honor.
David Alexander	Which fabric, which cell pellet is my question, Your Honor. I don't ... I've gotta say I'm not sure Your Honor knows Mr. Hile, had the same reaction to that. I sure would like to bounce this off of somebody who has more expertise than I on this, and perhaps we can get somebody like that down the line and do this ... and complete this a little later today.
Judge Huff	Um, we'll take that under advisement.
David Alexander	Thank you, Your Honor.

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Judge Huff	On the ... so, of the ... the way that you would envision doing the test, then we would send – have Dr. Maddox send — the fabric of the main ... what I call the main stain area and the control areas to the lab ...
Steve Myers	Plus the cell pellets.
Judge Huff	Plus the cell pellets. And then you _____ you or somebody from respondent would be there during the testing.
Steve Myers	If that's the Attorney General's long distance wish, than yes.
Judge Huff	All right. And then ... or if the Court ordered.
Steve Myers	If the Court ordered, certainly.
David Alexander	Your Honor, if you're going to have another lab _____ and then if you decide not to use Mr. Taylor, do you have any objection to our having Mr. Taylor be our observer there.
Judge Huff	Not, that's double expense. That's the point.
David Alexander	Well, then we get no independent person of our selection to be there?
Judge Huff	Yes, you do. You have suggested — the Court is not required to go with somebody who has got connections to other people in the case, and if you want somebody, then to do this test, than you have your own alternative expert. There is no right to have an expert that the Court finds doesn't have the credentials and has connections that otherwise would not — and has prior testimony noted in 2003 that raises an issue with the Court, so then you would have somebody there.
David Alexander	[unintelligible] Who would our person be, Your Honor?
Judge Huff	You suggested either Bodey or the Dr. Steirpah.
David Alexander	We certainly do not suggest Bodey, all right. That was somebody I believe you ... asked for some names. We said we have no information on _____.
Judge Huff	No, you said Dr. Melton suggested Bodey and you suggested Bodey.

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David Alexander	Right and we have not been able to make any determination about who they are except that they don't allow monitoring and Dr. Taylor's view is that they were sloppy.
Norman Hile	Your Honor, this is Norm Hile. Is the Court decided against using Dr. Sinpah?
Judge Huff	No, that's a possibility; but Dr. Sinpah is in Louisiana and ...
David Alexander	Bodey's in Springfield, Virginia.
Judge Huff	Yeah, but all the current evidence is in Virginia at Cellmark.
Norman Hile	That's in Maryland.
Judge Huff	Oh! It's close by. It's in that region. So, it's not somewhere half-way across ... that one, and also if you take a look at the information on Bodey, they appear to be reliable and good. I haven't been able to do a verification as to your other ... Sindah, Sinhah? Dr. Sinhah?
Norman Hile	Yes, Your Honor _____.
Judge Huff	And does ... has petitioner respondent and had a chance to take a look at them?
Holly Wilkens	Your Honor, I was going to ask about Mr. Myer and some of the _____ reliable information we can expect and whether or not Bodey can _____ observation. I think that's _____ into the record. But in terms of the private laboratory, um, we still want to have that identified. There's really no big difference. We still have concerns about joining a private lab because very (unintelligible).
Judge Huff	But as far as Synhah, I'm saying him wrong I know.
Norman Hile	No, I think that's exactly right.
Judge Huff	O.K. Good. Do you have any objection to their lab?
Holly Wilkens	Bodey?
Judge Huff	No, Synhah.

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Holly Wilkens	Are they in Louisiana?
Judge Huff	Yes.
Holly Wilkens	No.
Judge Huff	No objection?
Holly Wilkens	Not from there.
Judge Huff	All right. O.K. Well, we're gonna ship this all over and hope that the Fed-Ex or UPS works out. Uh, ...
Holly Wilkens	May I serve for the record someone suggested work at Cellmark. Is it my understanding that when the testing is performed, that Mr. Alexander did not exclude the proper testing process and have recommended this lab _____.
Judge Huff	What do you mean?
Holly Wilkens	Well ...
Judge Huff	Yeah, you mean if we go with Dr. Sinhah?
Holly Wilkens	Yes.
Judge Huff	That would be his expert.
David Alexander	Well, _____ our expert is Mr. Taylor _____ and I believe the Court has allowed or disallowed has allowed him for the reasons that you expressed ...
Judge Huff	And ordered you to come up with an alternative. That's under submission ...
David Alexander	I came up with two other people, not because it's our preference for the like, but because we wanted to be responsive to the Court.
Judge Huff	That would then be your expert. You suggested him. There's more than one person in the world that does DNA testing.

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David Alexander	Well, uh, we've been consistent with our experts throughout. We've stuck by Dr. Ballard's. I respectfully submit that I think our judgment in this area given the experts that we've had from the other side where we have perceived problems have been much more problematical and I would reserve the right at least if we can to see if we can visit this issue of Dr. ... of Mr. Taylor.
Judge Huff	Well, I
David Alexander	And ... and ... and
Judge Huff	I would say in taking a look at his work, Dr. Synhah's resume, Ph.D. versus junior college ...
David Alexander	Your Honor, I think the junior college is very frankly a ... not a fair issue. this man has been doing this for years and years and years and I think if you ask Mr. Taylor to comment, I think he would certainly vouch Mr. Myers, he would certain _____ for Taylor's high capabilities.
Judge Huff	Well the respondent has already submitted — in writing — concerns, and the Court shares those concerns. I will defer ruling until I have a chance to see his declaration, but we do have a ... we do have reference to Court cases — relatively recent — where there are issues, unnecessary issues raised, plus he has all kinds of connections to the participants in the matter. So, in any event, let me go on to my questions. Then on ... do the parties agree that it would be the STR profiler-plus by capillary electrophoresis testing of the fabric in cell pellets? Hello?
David Alexander	If you're asking on the petitioner, Your Honor, I can't ... unless that's exactly what was prescribed in our protocol, I'm not in a position to answer that until I make sure that's precisely what our consult would say is appropriate and we can do that fairly . . . with a phone call and get back to the Court, but I don't feel comfortable. Unless that's already what is covered in a protocol _____.
Holly Wilkens	Your Honor, are you just asking?
Judge Huff	Pardon me?
Holly Wilkens	Are you just asking if materials are going to be provided at the DNA analysis?
Judge Huff	Correct, by the STR profiler. Yes, we're putting together the Court order ...

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Holly Wilkens	And this was in the protocols by both parties ____ Right?
Judge Huff	There's a difference of wording in the two matters. Is Mr. Myers there?
Mr. Myers	Yes ma'am. I'm sorry, what's the question?
Judge Huff	Is it correct that what would be ... what the Court would be ordering was STR profiler-plus by capillary electrophoresis testing of the fabric and the cell pellet for the main stain area and any control areas that the Court elects to do.
Mr. Myers	Well, certainly if you want to exactly duplicate what was done in the joint testing agreement that would be correct. I think the kind of key element is that the testing occur using the profiler-plus kit.
Judge Huff	So, profiler-plus kit. Does that already ... if you use the profiler-plus kit, does that have those ... the code numbers that are in there?
Mr. Myers	It has the exact same genetic markers as were used during the original joint testing agreement.
Judge Huff	And if we said, STR profiler-plus kit, then those markers are already in the kit. Is that right?
Mr. Myers	That's correct.
Judge Huff	O.K. So one expert that uses STR profiler-plus kit would know exactly what he or she is supposed to do.
Mr. Myers	That's correct, Your Honor.
Judge Huff	O.K.
David Alexander	May I ask, Mr. Myers, Your Honor, who manufacturers that kit? Is it ... so we can tell if we're talking about the same?
Mr. Myers	Applied Biosystems
David Alexander	Applied Biosystems – thank you.
Judge Huff	O.K.

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Norman Hile	Your Honor, it's Norm Hile for the petitioner. This just points out the problem that the petitioner has. We did not know that respondent would have her expert called on this call so we did not arrange for our's to be on to help us to make these decisions.
Judge Huff	Well, uh, obviously, we've had a hearing. Mr. Myers has been present, we've had submissions by both of the parties, and now the Court has advised the parties that the Court's in the process of doing an order. I have some questions about it and so the Court would believe that at this point in the process that the parties have knowledge about what is to be included in the Court order, following this telephonic conference call, the parties can then chat with whomever and then the Court can send the ... take additional information if this is necessary and then, so we don't need to say profiler-plus testing utilizing D-3-S-1358 WVA or ...
Mr. Myers	You don't need to specify the individual _____, particularly because as long as you're saying the implied copy of this profiler-plus kit, everyone in the field knows exactly what that is.
Judge Huff	O.K. and so, Mr. Hile and Mr. Alexander and Mr. Kazemi, you'll ... you will have a chance to then check with your people on these issues while obviously the Court has commented before that we wanted to get the process going. Unlike some of the other ... the mitrochondrial or the EDTA, — the DNA using the profiler-plus is a process that's known in the industry and so, there's not just one person in the nation that knows how to do it.
David Alexander	Dr. Susdak said that EDTA was straightforward too. My only point, Your Honor, is if we could make this a proposed order so we could get back to the Court either later this afternoon or the first thing Monday just so that we can run this by so we feel comfortable with it. We have no other motivation whatsoever.
Judge Huff	I do agree. I do agree. O.K.?
Holly Wilkens	You Honor, perhaps the Court has a preference to duplicate what we've done about the last day-a half not have to replicate. Let's get a reference sample. I just wanted to ask Mr. Myers if he _____
Mr. Myers	Uh, the simplest way for me personally to review the data and to have something that would run on a 310 capillary electrophoresis unit, but I don't want to try and say that is the only valid instrument.

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Judge Huff	Well, that was my next paragraph. And this may ...
	[unintelligible]
Judge Huff	This may have come up from petitioners — capillary electrophoresis on a 310 genetic analyzer. Could the parties then check out ... this is something that Mr. Alexander, Mr. Hile and Mr. Kazemi, you can check out whether that is what we want to do.
David Alexander	If that's the equipment, it should be O.K.
Judge Huff	Correct. Or whether we need to specify that or not specify that.
David Alexander	Yes, Your Honor.
Holly Wilkens	Your Honor, may I inquire of the laboratories ... the laboratories we will use.
Judge Huff	Yes.
Holly Wilkens	Do we have that indicated _____?
Judge Huff	O.K.
Mr. Myers	That would probably be the best way to go then.
David Alexander	Your Honor, may I ask one other question? Or did I ask it and you can decide whether to ask two.
Judge Huff	Sure, go ahead.
David Alexander	Uh, in viewing the — and this was something that was raised by one of the consultants, — in viewing the shirt it struck me as, and maybe I was alone in this, _____ as just remarkably clean and I'm wondering whether or not that we know the chain of custody that that shirt has been in and whether it's been washed at any time.
	[unintelligible]
David Alexander	Yes, do you know?
Mr. Myers	Is this a question Your Honor would like me to answer?

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Judge Huff	Why don't you consult and then you can do that at a later time, but I would think that it's been in chain of custody.
David Alexander	That's O.K., I raised that and the consultant answered the question. It just was with my visual observation that it was remarkably clean for a shirt that was on the side of the road etc. 20-some years ago.
Judge Huff	Well, Ms. Wilkens?
Holly Wilkens	That certainly wasn't my instruction — to do laundry.
David Alexander	Well, I was certainly hoping that . . .
Holly Wilkens	I think it ridiculous – something that's been in custody had been laundered.
David Alexander	I just want to know whether it has or hasn't. Whether it was ridiculous or not.
Judge Huff	Ms. Wilkens?
Holly Wilkens	You're your Honor. He's always raising questions that are to disprove nonexistent explanations.
David Alexander	All you'd have to do is determine that it hasn't been washed.
Holly Wilkens	What do you mean, determine that it hasn't been washed?
David Alexander	Ask people who were in custody of it whether or not it's been washed since the time it was found.
Judge Huff	Do you have information that it was, Mr. Alexander?
David Alexander	I told Your Honor right from the beginning, that I had never seen the shirt. But, when I saw the shirt in Court; I was surprised at how uniformly clean it appeared to be.

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Judge Huff	You're not a witness in the matter, but from ... but on that issue, we're ... I've got a jury that is already ... I mean, we're in final argument and we've taken a break to go over this order where I gave full notice to the parties that we were going to discuss the DNA and EDTA at the time of your hearing and then ... and been wanting to get this out, so what I'll do. I think that those are the issue areas that the Court had in mind and then, it's probably not necessary. Let me ask respondent, you wouldn't need to be physically present when the evidence is sent to the private lab, is that right?
Holly Wilkens	Oh, no, when it's transferred from Orchid Cellmark to Louisiana?
Judge Huff	Right.
Holly Wilkens	Oh, no.
Judge Huff	And then, would you anticipate that somebody from DOJ would be there to observe the testing?
Holly Wilkens	Yes, Your Honor.
Judge Huff	And you are requesting that?
Holly Wilkens	Yes, Your Honor.
Judge Huff	O.K.
Holly Wilkens	_____
David Alexander	Your Honor, I would point out for the record that with regard to Stain "A" on that shirt when there was efforts to DNA testing off of that, they were unable to find any DNA and so, my question about washing or anything else as suggested.
Holly Wilkens	Your Honor, I really try not to respond to all of Mr. Alexander's statements when we have these conference calls because I know that your time is very short, and so he has a suitable reputation throughout the conversation as he always has and I take exception to each and every one of them and this is the kinds of things he has where he comes up with speculation and then he asks me to disprove his speculation.

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Judge Huff	Well, I'm interested in issuing the DNA testing order and what I'll do is permit Mr. Hile, Mr. Alexander, and Mr. Kazemi to talk to their individuals. If I disallow Mr. Taylor, then your expert would be Dr. Sinhah and as far as the timing, would you check in the meantime with Dr. Sinhah to, uh . . . if the Court continues to disallow Mr. Myer, uh Mr. Taylor, about timing of this because we would be anticipating it and getting this done in the next time frame.
David Alexander	Yes, Your Honor.
Judge Huff	All right. And then I may ... do you want to reassemble later this afternoon by phone or do you want to do this on ... Monday, in the morning, Monday or ...
Holly Wilkens	Monday might be preferable depending on how late it is. I have to
Judge Huff	O.K., how about Monday morning at 11 o'clock?
Holly Wilkens	Your Honor, that's the best time for me. (unintelligible)
Judge Huff	That's what I'm still thinking about. But I'm thinking of doing at least one of the control areas simultaneous. And I'm thinking of just doing one.
Holly Wilkens	Your Honor, I completely agree (unintelligible).
Judge Huff	Well, I'm just saying that if you take the highest value and if that area which is in the adjacent area to the other one doesn't show blood, then the theory is disproved, and yes you could do four more to confirm that again, but you might not need to do that. On the other hand, if alternatively we don't have genetic material in the one area, or we have blood in the control area, then we have to then evaluate where we go from there.
David Alexander	And also there is a result that could occur is that we simply don't have enough genetic material to make a determination. We've had that experience.
Judge Huff	Do you think though with the PCR that we're going to have enough or is that what we're going to find out?

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David Alexander	Well, that's why I would hope that, again, that you're _____ size of piece of material, that we're getting from Cellmark that's one of the important things you want to look into because I'm really loathe to not have something remaining, depending on, we've had enough unforeseen events in this kind, we must proceed very cautiously.
Judge Huff	Well, Mr. Alexander, at the get-go, I do recall — I'm sure the transcripts will bear that out — that I did raise the issue long ago, that what we're embarking on is destructive testing.
David Alexander	And, of course ...
Judge Huff	And, so that the more testing you do, the more destruction there is.
David Alexander	That's why I would like to proceed as cautiously and to the extent we can get a determination that we don't need to use _____ we should try. . . .
Holly Wilkens	Your Honor, I put very early on in the process possibility of getting objections to leave a sample because it reduces the possibility of a DNA profile. Mr. Alexander had that _____.
David Alexander	I did not expect _____.
Judge Huff	We're not ... this isn't ... you know what, Mr. Alexander, this is not the time and place for that. I've got a jury that's been sitting and waiting and we're in the middle of final argument in a case that's a mandatory minimum case. So, I think I need to get back to my jury. Monday is a very busy time, so by Monday I want clean, crisp answers and no interruption and no accusations and a productive discussion about the proposed Court Order with you checking already with Dr. Sinhah to verify that he's available for time if the Court decides not to use Mr. Taylor. All right. Thank you.
[END OF SIDE 1]	
[SIDE 2 CONTAINS NO RECORDING]	