

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
SUCR 2000-10975
SUCR 2000-10977

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COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL
DAY FOUR

JASON ROBINSON
TANZERUS ANDERSON

* * * * *

TRANSCRIPT OF PROCEEDINGS

BEFORE: ROUSE, J

APPEARANCES:

ROBERT TOCHKA, Esquire, Assistant
District Attorney, for the Commonwealth

MICHAEL DOOLIN, Esquire, for Defendant Robinson

TIMOTHY FLAHERTY, Esquire, for Defendant Anderson

March 22, 2002
Boston, Massachusetts

Mary M. Wrighton
Official Court Reporter

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1 (Whereupon, the proceedings were
2 reconvened at 9:17 o'clock a.m., without the
3 jury.)

4 THE COURT: I'll see you at side bar,
5 please.

6 (Whereupon, the following discussion
7 occurred at side bar:)

8 THE COURT: Mr. Doolin, you had a
9 motion?

10 MR. DOOLIN: Yes, Your Honor. I have a
11 motion for mistrial based upon Mr. Tochka's
12 redirect and I say it with all respect towards
13 him, I suggest that there are three grounds, one
14 of which is attempting to offer the statement of
15 Eddie Gauthier into evidence.

16 THE COURT: Attempting to what?

17 MR. DOOLIN: Offer Mr. Gauthier's
18 statement into evidence. It was certainly denied
19 by the Court but the jury obviously heard that
20 attempt to offer Mr. Gauthier's statement.

21 THE COURT: What statement are you
22 talking about?

23 MR. DOOLIN: Mr. Tochka offered at some
24 point in the redirect the statement, I believe it

1 was the March 30 statement of Eddie Gauthier,
2 into evidence.

3 THE COURT: Yes.

4 MR. DOOLIN: It was denied by the Court
5 and respectfully --

6 THE COURT: You mean the objection was
7 sustained?

8 MR. DOOLIN: It was sustained. You
9 also sustained my objections respectfully on
10 several questions that were asked in front of the
11 jury where there was repetitive questions about
12 certain aspects of that statement. Those
13 questions, I would suggest, were inadmissible,
14 they were correctly ruled by the Court to be
15 inadmissible, and I appreciate that, but they
16 were read again in front of the jury. I would
17 suggest to the Court and that, taken with trying
18 to offer that statement into evidence, and also
19 the fact of putting that picture in front of Mr.
20 Gauthier at the end of his redirect,
21 respectfully, which got a reaction from Mr.
22 Gauthier where he got very emotional on redirect,
23 all of those things, I would suggest, denies our
24 clients a right to a fair trial.

1 I think that there has been substantial
2 and unfair prejudice to our clients as a result
3 of that and, respectfully, on behalf of Jason
4 Robinson, I move for a mistrial.

5 MR. FLAHERTY: On behalf of Mr.
6 Anderson, I also join in the motion for a
7 mistrial and I would like to direct the Court's
8 attention briefly to the third ground that Mr.
9 Doolin has mentioned, being shown to the witness,
10 what has been described to the jury by the Court
11 of the very graphic photos of the victim at the
12 crime scene, and I would suggest, Your Honor,
13 that it was done, with all due respect for the
14 government, it was done in an attempt to
15 prejudice the jury, to show the anticipated
16 emotional reaction of that witness, Eddie
17 Gauthier.

18 I think that, taken together with the
19 rhetoric in the opening statement, together,
20 combined, has prejudiced this jury and has denied
21 our clients their opportunity to a fair trial
22 constitutionally protected by both the United
23 States Constitution and the Massachusetts
24 Declaration of Rights and I would ask the Court

1 to grant a mistrial.

2 THE COURT: Mr. Tochka?

3 MR. TOCHKA: Your Honor, briefly as to
4 that particular photograph, that particular
5 photograph has already been introduced into
6 evidence. It has been shown to all the witnesses
7 who have testified and who have seen the body.
8 What my brothers brought out on cross
9 examination, I point out, I did not bring that
10 out on direct examination, it was only as a
11 result of their cross examination in which they
12 suggested Mr. Gauthier was the individual who
13 shot and killed the victim. I presented that
14 photograph to ask him if he would do that and I
15 suggest that was a relevant reason for doing
16 that.

17 As to the other point about the
18 statement, point one is Mr. Flaherty brought out
19 through the witness, Mr. Gauthier, suggesting
20 that he did not identify in the taped statement
21 Jason Robinson or Tanzerius Anderson running from
22 the back of that hallway, and I'd suggest that
23 was misleading because it was in the first
24 statement where he did specifically say he saw

1 them running from the back of the hallway. I
2 believe I should have been allowed to get into
3 that particular area. He read the transcript to
4 Mr. Gauthier on the April 7 transcript about how
5 he didn't say he saw them running from the area,
6 so I thought I had a right to read the transcript
7 of March 27 where he did say he saw them running.

8 And, finally, with respect to the other
9 questions about whether or not he told the police
10 that he saw the defendants in the McKinley Park
11 which I believe is where Mr. Doolin is going, my
12 understanding of their cross examination was that
13 they were bringing out not simply the particular
14 lie that Mr. Gauthier made about not having seen
15 the body, but they were bringing out that if Mr.
16 Gauthier was lying when he told the police the
17 lie that day when they found the body, that he
18 was lying to the police when he gave the taped
19 statement.

20 I suggest it wasn't offered simply for
21 that he was lying on that particular point, it
22 was offered that he was lying to the police then
23 and he was lying to the police in the earlier
24 time. I believe, as a result of that, I should

1 have been allowed to bring out the fact that he
2 was telling the truth as to the other matters
3 with the doctrine of completeness.

4 THE COURT: First, I know you are all
5 well aware of the rule which says that prior
6 consistent statements cannot generally be
7 admitted in the absence of a showing of recent
8 contrivance or fabrication. Because there are so
9 many statements that were being elicited and will
10 be elicited from witnesses and because some of
11 this gets very detailed about the number of
12 statements that each of these witnesses made to
13 the police officers, I would suggest that if
14 anyone has any doubt or concern about whether or
15 not there has been a requisite showing of recent
16 contrivance or fabrication, that we approach side
17 bar so that we can avoid any problems.

18 Secondly, with respect to your
19 particular comment about questions asked by the
20 prosecutor, first I would note that questions are
21 not evidence and the jury will be so instructed.
22 Motions to strike also of any evidence takes out
23 of the record anything that a witness responded
24 to any impermissible question and the jury will

1 be so instructed at the end of the case. I think
2 that the scope of the redirect was appropriate,
3 by and large, and so the motion for a mistrial is
4 denied.

5 A couple of other matters, one having
6 to do with your request, Mr. Flaherty, for a voir
7 dire with respect to statements made or testimony
8 by Mr. Gauthier as to any statements made by
9 Tanzerius Anderson. I don't believe that the
10 mere evidence, the testimony by Mr. Gauthier that
11 the group was smoking marijuana on the night of
12 March -- is it the twenty-seventh?

13 MR. TOCHKA: The twenty-seventh.

14 THE COURT: The twenty-seventh was
15 sufficient to raise the issue. Mere evidence of
16 ingestion of drugs or alcohol is not sufficient.
17 I direct your attention to Commonwealth versus
18 Murphy, 426 Mass. 395. There was no evidence of
19 intoxication and so, for that reason, I don't
20 think there was enough to trigger a voir dire on
21 that. The SJC has certainly preserved this
22 question but there has been no case law that has
23 required a trial judge either upon request of
24 counsel or on her own initiative to conduct a

1 voir dire on uncoerced statements made to a
2 civilian witness where there is just evidence
3 maybe of ingestion of, in this case, drugs.

4 With respect to the proposed testimony
5 of Joleena Tate and Heather Coady, who I
6 anticipate are going to be testifying about
7 statements the defendants made to them, Mr.
8 Tochka, will there be testimony proffered by
9 either one of those witnesses about statements
10 which one or both of the defendants made where
11 there is evidence of intoxication?

12 MR. TOCHKA: No. There is no more than
13 what the Court has heard from Eddie Gauthier.

14 THE COURT: Okay. Alright. If that
15 changes at any time I'd like you to bring it to
16 my attention or if you think in any way that my
17 consideration of the issue should be revisited.

18 MR. FLAHERTY: Okay. Just for the
19 record, Your Honor, on behalf of Tanzerius
20 Anderson, I would, under Travares, and I think
21 it's the first pocket decision, when
22 incriminating statements of the defendant, not
23 so-called full blown confessions to the police,
24 but incriminating statements by a defendant are

1 raised at trial and there is an issue of
2 voluntariness placed squarely before the jury,
3 and I would respectfully suggest that the
4 ingestion of marijuana in this case places an
5 issue of voluntariness before the Court, that the
6 Court should conduct, sui sponte, a voir dire
7 under the humane practice doctrine at this stage
8 of the proceeding.

9 I would suggest that at the request of
10 counsel, that raises the barrier even higher but
11 I understand the Court's ruling and I appreciate
12 the Court's courtesy in allowing me to raise it
13 again with the next witnesses. Thank you.

14 THE COURT: Let me just say that the
15 only evidence before the Court on any ingestion
16 of marijuana here was that the group was smoking
17 several blunts and not any consumption individual
18 to either one of the defendants, nor was there
19 anything about any of the defendants being under
20 the influence in any way.

21 So let's move on to another issue which
22 has to do with -- when is Joleena Tate coming?

23 MR. TOCHKA: She should be the first
24 witness after Duane.

1 (Whereupon, the discussion at side bar
2 was concluded.)

3 (Whereupon, a discussion occurred off
4 the record at side bar.)

5 (Whereupon, the jury was escorted into
6 the courtroom at 9:32 o'clock a.m.)

7 THE COURT: Ladies and gentlemen, I'd
8 like to welcome you back this morning. Before we
9 resume the trial I once again must inquire if you
10 have complied with the instructions I've given
11 you about the case which are that you were not to
12 talk about the case or visit any of the scenes or
13 locations we saw on the view or consult any
14 outside source of whatever kind. If you have not
15 so complied, please would you raise a hand?

16 THE JURY: (No response.)

17 THE COURT: Thank you very much. The
18 record should reflect no juror has. We are ready
19 to continue with the Commonwealth's case.

20 Mr. Tochka, your next witness, please.

21 MR. TOCHKA: Thank you. The
22 Commonwealth would call Sergeant Coleman. May I
23 proceed, Your Honor?

24 THE COURT: Yes.

1 DANIEL COLEMAN,

2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TOCHKA:

6 Q Sir, could you please introduce yourself to the
7 jury?

8 A Good morning. My name is Daniel Coleman and I am
9 a sergeant detective with the Boston Police
10 Department.

11 Q Could you spell your last name, please?

12 A My last name is spelled C-o-l-e-m-a-n.

13 Q How long, sir, have you been with the Boston
14 Police Department?

15 A Since 1985.

16 Q Can you tell the jurors where you're currently
17 assigned to?

18 A I'm assigned to the homicide unit, the day squad,
19 responding to incidents of death and serious
20 injury.

21 Q What are your duties and responsibilities as a
22 sergeant detective on the day squad?

23 A Basically we work on an on call status. When
24 requested by uniform and responding personnel, we

1 go out to scenes where serious incidents have
2 taken place or where deaths have been affirmed,
3 there is a possibility of suspicious involvement
4 in the death. As a detective sergeant I am
5 responsible for coordinating the efforts of a
6 number of different investigative units directed
7 at those types of incidents.

8 Q And, sir, how long have you been a sergeant
9 detective in the homicide unit?

10 A I have been in the homicide unit about three and
11 a half years, a little more.

12 Q And prior to the homicide unit, can you tell us
13 what other units that you have been assigned to?

14 A I was assigned as a sergeant detective to the
15 drug control unit, supervising a squad in the B-3
16 which is the Mattapan, Dorchester section of
17 Boston for about two and a half years. Prior to
18 that I was a uniformed sergeant for about four
19 years, since '92 to '96, patrolling Area A,
20 downtown Boston, Charlestown, East Boston, North
21 End, Beacon Hill area, and before that I was a
22 patrol officer assigned to patrol in plainclothes
23 duty to the South End, Lower Roxbury section of
24 Boston.

1 Q And, sir, for the several years that you have
2 been a sergeant detective in the homicide unit,
3 approximately how many homicides have you
4 investigated?

5 A Since being in that unit I have responded to and
6 investigated upwards of twenty-five homicides
7 since I have been in that unit.

8 Q And, sir, were you called to investigate the
9 homicide in this particular case?

10 A Yes, I was.

11 Q And when were you called?

12 A I was called March 28 in the early morning hours,
13 shortly after four a.m., about four twenty, four
14 fifteen a.m. that morning.

15 Q And what time did you arrive at the scene?

16 A It was a little bit after five o'clock, about ten
17 after five or so.

18 Q What were the weather conditions upon your
19 arrival?

20 A It was raining. As I was traveling to the scene
21 it was raining. It began to rain more heavily
22 when I arrived at the scene.

23 Q When you arrived at the scene, sir, who was in
24 control of the scene upon your arrival?

1 A Well, there was a uniformed sergeant, Sergeant
2 Brian Riley, assigned to the District 14 station
3 who is the patrol supervisor and he maintained
4 control until my arrival.

5 Q When you arrive on the scene, who takes charge of
6 the scene?

7 A That's my responsibility which I did in this
8 case.

9 Q And upon your taking charge of the scene, can you
10 tell the jurors what you did during the
11 investigation in the early morning hours?

12 A Well, I had a brief conversation with Sergeant
13 Riley who directed me to one of the uniformed
14 officers that I now know as Officer John
15 Rouvalis. He was the responding police officer
16 which is typical of most responses by me when I
17 get there. I immediately began making some
18 observations of the area.

19 The first thing that I made an
20 observation of was that there was a body on the
21 ground outside of the doorway of 89 Faneuil
22 Street. The body was covered by a yellow
23 plastic, what we call a trauma blanket. I was
24 informed that that had been put there, that that

1 was not the way the body was originally found. I
2 again continued to walk around the area, the
3 outside of 89 Faneuil, observed that there was a
4 gray Buick parked there, the driver's window was
5 down on the gray Buick. Again it was raining
6 heavily at that time.

7 At that time I basically had another
8 brief conversation with Sergeant Riley. I
9 contacted Captain Evans from the District 14
10 police station. I requested some additional
11 personnel.

12 Q And what did you request the additional personnel
13 for?

14 A Well, given the nature of the injury that I did
15 observe on the body, because I did move the
16 blanket to look at the body, I put some rubber
17 gloves on and moved the blanket to the side,
18 observed some injuries to the facial area of this
19 white male, appeared to be of an extremely
20 serious nature. At this point I began to
21 consider this as a suspicious crime, suspicious
22 incident. I needed additional personnel to help
23 me and assist me, especially that time of the
24 morning, with conducting a canvass.

1 Q Tell the jurors what a canvass is.

2 A A canvass is basically any number of officers
3 that I can make available to go around and knock
4 on doors in the area, to make their best efforts
5 at trying to locate or interview witnesses that
6 might know or have heard something relative to
7 this incident.

8 Q Okay. And approximately how many officers were
9 made available to you for the canvass?

10 A Throughout the course of that scene that morning
11 I had probably seven or eight different officers
12 and detectives that were made available to me
13 from the District 14 station.

14 Q And what did you direct them to do?

15 A I asked them to enter these buildings in the
16 development, knock on as many doors as they
17 could, if they got responses, to interview the
18 people there. If they didn't get responses, to
19 indicate so, and I asked them that, upon getting
20 any information that they felt was pertinent for
21 me to know, that they bring it directly back to
22 me so that I was aware of it immediately.

23 Q Are you aware of approximately how many
24 individuals were questioned in those early

1 morning hours?

2 A Over the course of that canvass there were more
3 than thirty, thirty-five people that were spoken
4 to that morning by the officers of District 14.

5 Q Now, you mentioned the trauma to the victim in
6 terms of his face. Have you, in the past, had
7 occasion to observe gunshot wounds?

8 A Yes, I have.

9 Q And looking at the victim in this incident, did
10 you form a conclusion as to whether or not that
11 appeared to you to be a gunshot wound??

12 A My immediate -- I did form an immediate
13 conclusion and it was actually, actually
14 completely contrary to a gunshot wound. It was -
15 - my first observation of that injury on the
16 face, my conclusion was that it was a machete or
17 a hatchet that had hit this individual.

18 Q So did you take some steps to determine what was
19 the cause of death?

20 A Yes, I did.

21 Q And what were those steps that you took that
22 early morning hours?

23 A Well, among other things that I was doing at this
24 scene that morning, I contacted the medical

1 examiner's office, as not necessarily happens on
2 every scene, but in this particular scene, I
3 requested that a medical examiner, a person
4 respond to the scene to assist us in examining
5 this body at the scene before it was moved.

6 Q And did the medical examiner arrive?

7 A Yes, he did.

8 Q And who was that?

9 A That was Dr. Zane of the medical examiner's
10 office.

11 Q Could you spell his name for the reporter,
12 please?

13 A Yes. It's Z-a-n-e, William Zane.

14 Q And upon the arrival of Dr. Zane, what was done?

15 A Well, when Dr. Zane arrived, while we were
16 awaiting the arrival, the scene was photographed
17 and I had placed some cones around some different
18 articles that I observed at the scene. At the
19 point that I determined that we were able to
20 touch this body or do anything further with this
21 body, I asked Dr. Zane to step in and make an
22 examination, preliminary examination, albeit at
23 the scene, and he did examine the area of the
24 face and the body was moved, rolled to the side

1 and Dr. Zane continued to make some observations
2 at that point.

3 Q And did you also make observations? Did he
4 direct your attention to particular areas of the
5 body?

6 A Yes. While I was standing with Dr. Zane he
7 pointed out to the back of the neck under the ear
8 area, there was another injury that he classified
9 as a potential bullet exit wound.

10 Q Sir, you said that you called the crime lab in
11 terms of -- I'm sorry. To take photographs, the
12 ID unit?

13 A That's correct.

14 Q Was that at your direction?

15 A Yes, it was.

16 Q What was photographed at the scene?

17 A Well, the entire scene, the typical way that it's
18 done was done in this fashion as well at this
19 scene. There are general area photographs taken
20 trying to, to best depict or document the way the
21 scene appears at that time. It was dark. It was
22 raining. There were some artificial lighting
23 sources in the area. After taking those general
24 area shots, we would typically move in, take more

1 specific shots of any articles that I requested
2 to be documented through photographs. That would
3 include the victim in this case as well as the
4 injuries that he sustained at that time.

5 Q Now, after the medical examiner had given you a
6 preliminary conclusion to this being a gunshot
7 wound, at that point in time did you attempt to
8 determine the identity of the deceased?

9 A Yes. Part of the processing at the scene, there
10 was a gray Buick parked a short distance away
11 from where the victim had been found on the
12 ground. Given the fact that the window was open,
13 I had also observed a set of keys on the steps
14 going into 89 Faneuil right near where the victim
15 was lying down, I had asked a couple of the
16 officers there to make sure that someone ran a
17 plate check on that car. That was done. A name
18 was obtained but I had no means of making an
19 positive identification at that time of this
20 individual that was injured and deceased at the
21 scene.

22 Q So the name that came back was of Iman Yazbek as
23 the owner of the car, is that correct?

24 A Yes, that's correct.

1 Q But your point is that you had no way to know if
2 the person that was lying there was Iman Yazbek?

3 A No, I did not.

4 Q Did you attempt to see if the person had any
5 identification on the body?

6 A That was done later on. There was an attempt to
7 check his pockets to see if there was a wallet or
8 anything there. There was no wallet nor
9 identification located in the clothing of Mr.
10 Yazbek.

11 Q Now, at some point, sir, and can you just explain
12 to the jury what's a primary scene?

13 A Well, primary scene is basically the area of your
14 primary focus. It's not necessarily the initial
15 area you go to but it's the area that you
16 determine to be -- that I would determine. As
17 the responding sergeant detective from the
18 homicide unit, that's part of my responsibility.
19 I look at the overall picture, I identify one
20 location or one area and I identify that as my
21 primary scene and in this case that was the, the
22 body of Iman Yazbek as well as the immediate
23 vicinity on the ground around him and the outer
24 perimeter around him, you know, would be probably

1 to within the twenty feet surrounding Mr.
2 Yazbek's body.

3 Q And now having learned that this was a potential
4 gunshot wound, did you look for ballistics
5 evidence?

6 A Yes, I did.

7 Q What's the reason for looking for ballistics
8 evidence?

9 A Well, I had obtained this information. You know,
10 being familiar with firearms through both my
11 experience as a police officer and an
12 investigator, you know, one of the obvious things
13 you are going to look for is to see if -- every
14 bullet has different segments, the bullet comes
15 out of the end of the firearm, certain firearms
16 will eject a shell casing, that shell casing
17 could be left on the ground or in the general
18 vicinity of an area where the shot was fired.
19 You know, there's damage associated, so that was
20 the intent of the efforts that I made and I
21 attempted at that time to locate shell casings,
22 to locate any kind of ballistics evidence that
23 might have been left at the scene.

24 Q Now, when you say different types of guns eject

1 shell casings as opposed to others which do not
2 eject shell casings, which types do not eject
3 shell casings?

4 A Semiautomatic firearms or automatic firearms
5 would eject the shell casing. As it fires the
6 bullet, it ejects the shell casing and it
7 automatically or semiautomatically loads another
8 round to be fired. In contrast to that, there is
9 a revolver which has a cylinder which would not
10 eject a shell casing. These revolvers basically
11 would hold a certain number of bullets, whether
12 it be five or six or eight, and as the cylinder
13 turns, the spent shell casing remains inside the
14 firearm. It does not get ejected from it.

15 Q And during the course of searching that crime
16 area, crime scene, did you find any shell
17 casings?

18 A No, sir, we did not find any shell casings.

19 Q Which led you to what conclusion, sir?

20 A I had a conclusion that a revolver was
21 potentially used in the incident.

22 Q Now, at some point, sir, did you become aware of
23 a person by the name of Heather Coady during
24 those early morning hours?

1 A Yes, I did.

2 Q And can you tell us when and how you became aware
3 of her?

4 A Well, I had, Detective Paul Mahoney from the
5 District 14 police station had arrived on scene
6 and was conducting part of the canvass. He
7 approached me and gave me some information.

8 Q And as a result of that information did you go
9 somewhere?

10 A Yes, I did.

11 Q Where did you go?

12 A I went to Heather Coady's house.

13 Q And what did you do when you went to her house?

14 A Well, I knocked on the door at 272, at the
15 location that was identified as her house,
16 knocked on the door. Her mother answered the
17 door. I explained to her we were looking to
18 speak with Heather. Heather came to the door and
19 then came out in the hallway.

20 Q And did you have a conversation with Heather?

21 A Yes, I did.

22 Q And what was the purpose of having the
23 conversation with her?

24 A It was to attempt to interview her, obtain any

1 information that she may have about this incident
2 that took place.

3 Q And can you describe her demeanor during this
4 conversation?

5 A She was very reluctant to speak with me, had
6 indicated that she, she did not want to speak
7 with me.

8 MR. FLAHERTY: Objection.

9 THE COURT: Sustained. I'll take that
10 as a motion to strike and allow it and the jury
11 is instructed to disregard the answer.

12 BY MR. TOCHKA:

13 Q I'm not asking you, sir, what she said, but can
14 you describe her demeanor?

15 A Reluctant.

16 MR. FLAHERTY: Objection.

17 MR. DOOLIN: Judge, I move to strike.

18 THE COURT: Allowed.

19 BY MR. TOCHKA:

20 Q Was Heather Coady brought somewhere?

21 A Yes, she was.

22 Q Where was she brought to?

23 A She was brought to the District 14 police station
24 which is approximately three blocks away from the

1 Faneuil Street development.

2 Q Sir, how long were you at that crime scene for?

3 A I was at that scene for -- from the time I
4 arrived shortly after five until after ten or ten
5 thirty in the morning, five to five and a half
6 hours I was at that scene.

7 Q And where did you go after that?

8 A After that I went to the District 14 station
9 which is where I met Heather Coady again and
10 shortly after that I went to the medical
11 examiner's office. I attended a portion of the
12 autopsy of Mr. Yazbek, had some conversation with
13 personnel at the medical examiner's office.

14 Q And what happened next?

15 A After that I went back to my office. I had an
16 opportunity to review some information that was
17 coming in and read some reports that were being
18 generated by some of the responding officers.

19 Q And then what happened?

20 A It was later in the day, I received another
21 telephone call at my office requesting that I
22 respond to another homicide scene that was
23 unrelated to this incident.

24 Q Now, sir, at some point during your investigation

1 of this case did you become aware of a person by
2 the name of Edward Gauthier?

3 A Yes, I did.

4 Q And can you tell us when and where -- when and
5 how you became aware of him?

6 A My first information about Edward Gauthier was at
7 the -- again at the scene when another officer
8 had approached me, actually I think Detective
9 Mahoney. It may have been the same officer
10 approached me and mentioned the name of Eddie
11 Gauthier. I had not met him or seen him at that
12 point and my next involvement with anything to do
13 with Eddie Gauthier was when I got a telephone
14 call at home. It was late on the twenty-ninth
15 and I was contacted by an officer of District 14.

16 Q Now, you arrived at the scene on the twenty-
17 eighth, correct?

18 A Yes, that's correct.

19 Q And then you get a call from the -- with respect
20 to Eddie Gauthier, you get a call when, sir?

21 A It was late on the evening of the twenty-ninth,
22 eleven o'clock or later.

23 Q The following day?

24 A That's correct.

- 1 Q And where were you when you got that phone call?
- 2 A I was at home.
- 3 Q Did you direct the officer who gave you the phone
- 4 call to do something?
- 5 A Yes, I did.
- 6 Q What did you direct them to do?
- 7 A To transport Eddie Gauthier and his mother to my
- 8 office and I was responding from my home.
- 9 Q And when you responded, did you call another
- 10 detective to respond with you?
- 11 A Yes, I did.
- 12 Q And who was that detective you called?
- 13 A That was Detective Paul McLaughlin. I called him
- 14 at home and instructed him to meet me at our
- 15 office.
- 16 Q What time did you arrive at your office?
- 17 A It was after midnight. It was, you know, right
- 18 around midnight, give or take ten minutes.
- 19 Q And your offices are located where?
- 20 A They're at Schroeder Plaza in Boston which is off
- 21 of Tremont Street by Ruggles Street.
- 22 Q Did you interview Eddie Gauthier?
- 23 A Yes, I did.
- 24 Q And was his mother present at some point during

1 this interview?

2 A Yes, she was.

3 Q How long did you speak with Eddie Gauthier for?

4 A It was approximately two hours in total that I
5 met with him that evening. It was into the early
6 morning hours of the thirtieth.

7 Q Did you eventually tape record the interview?

8 A Yes, I did.

9 Q During the interview, sir, did he identify
10 individuals that he had been running from the
11 back of the Faneuil Street development?

12 MR. DOOLIN: I object.

13 MR. FLAHERTY: Objection.

14 THE COURT: Sustained.

15 MR. TOCHKA: May I be heard at side
16 bar?

17 THE COURT: No. You may rephrase the
18 question.

19 BY MR. TOCHKA:

20 Q During the interview, sir, while interviewing Mr.
21 Gauthier, did you ask him -- what was the subject
22 matter concerning, sir?

23 MR. DOOLIN: Your Honor, I object.

24 THE COURT: He may answer that.

1 A The subject matter was concerning the incident
2 involving the death of Iman Yazbek.

3 Q And while you were questioning him regarding the
4 death of Iman Yazbek, did he identify any
5 individuals that he observed that night?

6 MR. DOOLIN: Judge, I object.

7 MR. FLAHERTY: Objection.

8 THE COURT: I will see you.

9 (Whereupon, the following discussion
10 occurred at side bar:)

11 THE COURT: Grounds for the objection?

12 MR. DOOLIN: It's hearsay, Your Honor,
13 respectfully. This is -- I don't know whether
14 Mr. Tochka was trying to elicit this as a prior
15 consistent statement. It's the same subject
16 matter that was gone over yesterday during the
17 redirect. We objected to it then.

18 MR. TOCHKA: It goes to identification,
19 Your Honor. It's a non-hearsay statement. It's
20 a statement to identify. It's not hearsay.

21 THE COURT: Okay. The question you've
22 asked was did he -- well, I'm not sure.

23 MR. TOCHKA: The question I had asked
24 him, and I would be more specific about it, the

1 question I did ask him was whether or not he
2 identified the individuals he had seen running
3 from the back of 89 Faneuil Street development.
4 I would rephrase it to say, did he identify
5 individuals he saw after he heard a shot running
6 from 89 Faneuil.

7 THE COURT: Anything further on this?

8 MR. FLAHERTY: Your Honor, just with
9 respect to Mr. Tochka's mentioning that this is
10 not a hearsay statement. This was not an
11 identification procedure. This is not non-
12 hearsay. This is absolutely hearsay, what I
13 would call basic hearsay. It's an out of court
14 statement offered to prove the truth of the
15 matter asserted in the statement, that Eddie
16 Gauthier saw these two people leaving and that
17 these two people were leaving. So I would
18 respectfully object.

19 MR. TOCHKA: Every time when a
20 detective is on the witness stand and is asked,
21 did somebody make an identification, yes, he
22 identified the defendant, James Jones, that's an
23 out of court statement.

24 THE COURT: The identification here is

1 not from the person who witnessed the crime.

2 MR. TOCHKA: By Sergeant Coleman, you
3 mean?

4 THE COURT: No, by Eddie Gauthier.

5 MR. TOCHKA: Right, that is a hundred
6 percent correct, Your Honor. It's not that he
7 saw the individual pull the gun, obviously, there
8 is no doubt. The only question in this case is
9 whether Mr. Gauthier is telling the truth or not.
10 I could ask him, did he identify the persons when
11 he made the statement that were involved in the
12 shooting of Iman Yazbek which is what they said
13 to him later, two days later. I suggest this is
14 more on point as to the shooting and who ran from
15 this building which goes to identity.

16 THE COURT: Was Mr. Gauthier shown any
17 photographs?

18 MR. TOCHKA: He was shown photographs
19 eventually, yes. He was shown photographs but
20 the point, both of my brothers objected to the
21 photographic arrays coming in because they said
22 that it was not an issue of identification.

23 THE COURT: I reserved that issue. I
24 didn't rule on the motion.

1 MR. TOCHKA: I apologize, Your Honor.

2 THE COURT: In fact, I'm not sure
3 whether I reserved or I denied it, but at any
4 rate at a minimum it's open and I said I would
5 give a limiting instruction in the event that I
6 did allow it to go forward, and explain that the
7 police have photographs for many different
8 reasons and so forth.

9 MR. TOCHKA: I thought Mr. Doolin had
10 filed the motion under the case law that
11 identification, where it is not a question
12 whether he knew the people, that it would be
13 impermissible for me to show a photo array.

14 THE COURT: That is so. I don't want
15 to make any decisions here about his familiarity
16 or lack of familiarity with one of the
17 defendants, but at any rate, I would like to know
18 the question you would pose to the witness.

19 MR. TOCHKA: The question I would want
20 to pose to him is, did he make a statement as to
21 whether or not he observed any individuals
22 running from the back, from 89 Faneuil, shortly
23 after the shot was fired.

24 THE COURT: And after that question,

1 where are you going?

2 MR. TOCHKA: Nowhere else on the
3 statement then. I don't intend to ask him any
4 other questions about what he said to him, just
5 for the identification.

6 THE COURT: Is there any issue that
7 this statement by Mr. Gauthier is being offered
8 as a prior consistent statement?

9 MR. TOCHKA: Well, that is the other
10 point that I had made earlier with Mr. Gauthier
11 and I can read the question where he was asked,
12 who did you see running and he identified the
13 individuals as Jason Robinson and Tanzerius
14 Anderson. My brother asked him, did you -- on
15 the April 7 statement, you didn't say any of that
16 stuff and so this is a prior consistent as well
17 as an identification.

18 THE COURT: The objection is going to
19 be overruled.

20 MR. TOCHKA: Thank you.

21 (Whereupon, the discussion at side bar
22 was concluded.)

23 BY MR. TOCHKA:

24 Q Sergeant Coleman, did you, during the course of

1 that interview, did you question Mr. Gauthier as
2 to whether or not he heard a shot on the evening
3 of March 27?

4 A Yes, I did.

5 Q And did you ask him, upon hearing that shot, what
6 he then saw?

7 A Yes, I did.

8 Q And can you tell this jury what he told you?

9 MR. DOOLIN: Your Honor, I object.

10 MR. FLAHERTY: Objection.

11 THE COURT: The objection is overruled.

12 A He stated that he turned and looked and saw two
13 persons, one known to him as Jason Robinson and
14 the other one known to him as Tee, running from
15 the area of the back of 89 Faneuil.

16 BY MR. TOCHKA:

17 Q And when you say the back of 89 Faneuil, did he
18 describe to you what he meant by the back of 89
19 Faneuil?

20 MR. DOOLIN: I object.

21 MR. FLAHERTY: Objection.

22 THE COURT: He may answer that.

23 A He did describe for me what that was. He
24 clarified that, yes.

1 BY MR. TOCHKA:

2 Q And how did he describe it?

3 MR. FLAHERTY: Objection.

4 THE COURT: Sustained.

5 MR. DOOLIN: May we approach, Judge,
6 respectfully?

7 THE COURT: No, there is no question.

8 MR. DOOLIN: Okay.

9 BY MR. TOCHKA:

10 Q Sir, did you ask -- did you draw a map of the
11 area -- on the March 30 interview with Eddie
12 Gauthier, just yes or no, did you cause a map of
13 the area to be made?

14 MR. DOOLIN: I object.

15 THE COURT: He may answer that yes or
16 no.

17 A Yes.

18 BY MR. TOCHKA:

19 Q And who drew the map?

20 MR. DOOLIN: Judge, I object.

21 THE COURT: Overruled.

22 A It's a combination of my drawing and Eddie
23 Gauthier's drawing.

24 BY MR. TOCHKA:

1 Q Now, you've testified that Mr. Gauthier
2 indicated, after hearing the shot, he saw
3 individuals running from 89.

4 Did you ask him to point out on the map
5 where those individuals ran from?

6 MR. DOOLIN: I object.

7 MR. FLAHERTY: Objection.

8 THE COURT: He may answer that yes or
9 no.

10 A Yes.

11 BY MR. TOCHKA:

12 Q Is this the map, sir?

13 MR. DOOLIN: Can we approach, Judge,
14 respectfully?

15 THE COURT: He may answer that.

16 A That's a copy of it, yes.

17 BY MR. TOCHKA:

18 Q And on that map did he mark where he saw the two
19 individuals, Jason Robinson and the person he
20 knew as Tee, running from in connection to 89?

21 A Yes, he did.

22 MR. FLAHERTY: Objection.

23 THE COURT: I'll take it as a motion to
24 strike and deny it.

1 BY MR. TOCHKA:

2 Q And where was that, sir?

3 MR. DOOLIN: I object to that, Your
4 Honor.

5 THE COURT: Sustained.

6 MR. TOCHKA: I move to introduce this
7 map into evidence, Your Honor.

8 THE COURT: It may be marked for
9 identification.

10 MR. FLAHERTY: Objection to the motion.

11 THE COURT: It may be marked for
12 identification.

13 MR. FLAHERTY: Objection to the motion
14 into evidence as hearsay.

15 THE COURT: It may be marked for
16 identification. It may be marked for
17 identification only, sir.

18 (Exhibit C, being a map, as described
19 above, was produced and marked for
20 identification.)

21 BY MR. TOCHKA:

22 Q Sir, how long was the interview with Mr.
23 Gauthier?

24 A In total it was about an hour and thirty-five

1 minutes, an hour and a half, something like that
2 in total.

3 Q And during the course of that interview, can you
4 describe his demeanor?

5 MR. DOOLIN: I object.

6 THE COURT: He may answer that.

7 A He was somewhat subdued, sat rather quietly, was
8 emotional at different points. His voice was
9 low, his voice was soft. I had to repeatedly ask
10 him to speak up. He sat in the chair basically
11 slouched forward with his head down and again
12 speaking in a soft voice.

13 MR. DOOLIN: I move to strike.

14 THE COURT: Denied.

15 BY MR. TOCHKA:

16 Q At some point, sir, just yes or no, did you have
17 a conversation with him as to the identity of the
18 person who was shot in back of 89?

19 MR. FLAHERTY: Objection.

20 MR. DOOLIN: I object.

21 THE COURT: Sustained.

22 BY MR. TOCHKA:

23 Q Now, sir, after you had your conversation with
24 Mr. Gauthier, what happened next?

1 A Well, he was transported, he and his mother were
2 transported from my office and the next day we
3 again were reviewing the information and reports
4 that were generated.

5 Q When did you next hear from Mr. Gauthier?

6 A I heard from him -- he left me in the early
7 morning hours of the thirtieth after we completed
8 the interview and I heard from him again about
9 two thirty in the afternoon that same day. He
10 called -- I received a telephone call at my
11 office.

12 Q Now, when you were in your office and received
13 the telephone call, had you earlier in the
14 evening -- earlier in the early morning hours
15 spoken to Mr. Gauthier?

16 A Yes, I did.

17 Q And when you received this telephone call in the
18 afternoon now, did you recognize the voice?

19 A Yes, I did.

20 Q And whose voice was it?

21 A That was Mr. Gauthier, Eddie Gauthier's mother.

22 Q And what day of the week was that?

23 A That's, I believe it's the Thursday, the
24 thirtieth. The date was the thirtieth.

1 Q And not what you said, but did you have a
2 conversation with her?

3 A Yes, I did.

4 Q How long was the conversation?

5 A About two minutes.

6 Q And what happened next?

7 A Eddie got on the phone, Eddie Gauthier got on the
8 phone.

9 Q Did you recognize his voice?

10 A Yes, I did.

11 Q Did you have a conversation with him?

12 A Yes, I did.

13 Q As a result of that conversation did you advise
14 him to do anything?

15 MR. DOOLIN: I object.

16 MR. FLAHERTY: Objection.

17 THE COURT: Counsel, may I see you,
18 please?

19 (Whereupon, the following discussion
20 occurred at side bar:)

21 THE COURT: Grounds for the objection?

22 MR. DOOLIN: Grounds for the objection,
23 this entire line of questioning, I would suggest,
24 is --

1 THE COURT: Grounds for the objection
2 to this question, please.

3 MR. DOOLIN: It's going to lead to this
4 answer, Judge, respectfully, and the answer is
5 going to be that he was advised not to hang
6 around the projects or not to hang around these
7 people. This goes back to the issue of
8 Gauthier's safety and I would suggest to the
9 Court that it's irrelevant and prejudicial
10 towards our clients.

11 MR. FLAHERTY: My objection, Your
12 Honor, is that what this witness told another
13 witness to do is hearsay, much of this is
14 hearsay.

15 MR. TOCHKA: The offer of proof would
16 be, first, that he would say that he told him
17 that he should leave the development and I
18 suggest it goes to Eddie Gauthier's state of
19 mind. He then left the development and did not
20 return. Obviously, it's important in the case,
21 particularly where the defense is arguing that
22 Eddie Gauthier is the main suspect in the case,
23 and explains why that man left the development
24 and did not return was not because he was now a

1 target or suspect or whatever because it was
2 under his advice and as a result, he left, having
3 talked to the detective. So I suggest it goes to
4 his state of mind as to why he left.

5 THE COURT: I don't think his state of
6 mind is relevant, Mr. Tochka, number one, and
7 number two, it suggests that somehow he was at
8 risk for his safety and it suggests that these
9 are dangerous, bad individuals, and I think the
10 probative value this may have is far outweighed
11 by its prejudicial value.

12 MR. TOCHKA: That's fine. If I can
13 just put on the record, obviously there is a
14 suggestion, a concern by him as well as by the
15 detective for his safety because he was living in
16 the development where these individuals are
17 associating in the development.

18 THE COURT: But to have this officer
19 testify that this was his advice also suggests to
20 the jury that he has information about these
21 defendants, about their bad character. So I
22 think, for all those reasons, sir, it should be
23 excluded.

24 MR. TOCHKA: Thank you.

(Whereupon, the discussion at side bar
was concluded.)

BY MR. TOCHKA:

Q Now, sir, at some point during the course of your
investigation did you attempt to locate a person
by the name of Joleena Tate?

A Yes, I did.

Q And can you tell us what efforts -- how you came
to know to look for a person by the name of
Joleena?

A Well, it was through some interviews that were
conducted and information that was being
developed through the investigation.

Q And are you aware of a person by the name of
Veronica Blyakhman?

A Yes, I am.

Q And did you interview Veronica Blyakhman?

A Yes, I did.

Q Can you tell the jurors when you interviewed
Veronica Blyakhman?

A That was during the morning of the thirtieth, the
Thursday morning. I interviewed her at my office
with Detective Juan Torres.

Q And how did she get to your office?

1 A She was given a ride by us. She was picked up at
2 home and brought into our office.

3 Q And she was picked up from where?

4 A Newton, an address in Newton.

5 Q How long was that interview for?

6 A That interview was about thirty to forty minutes,
7 somewhere in that range.

8 Q What time did it begin, what time did it conclude
9 approximately?

10 A Shortly after eleven o'clock and then shortly
11 before noon time, in that general area. It was
12 late morning.

13 Q And after the interview, what did you do with
14 Veronica Blyakhman?

15 A She was transported back to the same address in
16 Newton, her home in Newton.

17 Q And approximately, sir, do you know what time
18 that you might have arrived at the address in
19 Newton on Thursday with Veronica Blyakhman?

20 A As far as dropping her off after the interview?

21 Q Yes.

22 A It would have been sometime after noontime.

23 Q During the course of your interview with Veronica
24 Blyakhman, were you also given the name by her of

1 Joleena?

2 A Yes, I was.

3 Q Did you attempt to locate -- at some point did
4 you learn Joleena, the name, Joleena, her last
5 name?

6 A Yes, I did.

7 Q What did you learn her last name to be?

8 A At various points I learned it to be Gonsalves,
9 Culgini, and Tate.

10 Q And do you know -- did you learn where she lived?

11 A Yes, I did.

12 Q Where was that?

13 A At 74 Dunboy Street in Brighton.

14 Q And do you know who she lived with?

15 A Yes.

16 Q And who was that?

17 A She lived with her grandmother on the second
18 floor and her mother had a separate apartment on
19 the first floor of the same house.

20 Q Do you know what her grandmother's last name is?

21 A Yes.

22 Q What was that?

23 A Gonsalves.

24 Q Did you know what her mother's last name was?

1 A Yes.

2 Q What was that?

3 A Culgini.

4 Q Now, sir, at some point in time, can you tell the
5 jurors, what efforts you made to locate her?

6 A Yes. Myself and Detective Paul McLaughlin went
7 to the address at Dunboy Street. I knocked on
8 the door at 74, I spoke to the woman at the
9 house, was told that that was -- that Joleena was
10 her granddaughter. She said that she was not at
11 home. The grandmother directed us to the first
12 floor door where I knocked on that door, spoke to
13 a woman who identified herself as Joleena's
14 mother, that, you know, she was not at that
15 location either. I left business cards at both
16 locations. I asked that if they heard from or
17 saw or spoke to Joleena to call, that she have
18 her contact me at my office relative to this
19 investigation, that we wanted to interview her.

20 Q At some point in time during the investigation
21 did you come in contact with Joleena's father?

22 A Yes, I did.

23 Q What's his name?

24 A His name is Alan Tate.

1 Q And can you tell us what efforts, if any, he made
2 in the effort to locate his daughter for you?

3 MR. DOOLIN: Judge, I object.

4 MR. FLAHERTY: Objection.

5 THE COURT: Sustained.

6 BY MR. TOCHKA:

7 Q Did you have a conversation, just yes or no,
8 about the whereabouts of his daughter?

9 A Yes, I did.

10 Q And how did he assist you?

11 MR. DOOLIN: I object.

12 MR. FLAHERTY: Objection.

13 THE COURT: Overruled.

14 A Well, he assisted in the location of his daughter
15 and he assisted in bringing her forward for
16 interview and furthering this investigation.

17 BY MR. TOCHKA:

18 Q Did you interview Joleena?

19 A Yes, I did.

20 Q And where did you interview Joleena?

21 A That was in the courthouse on May 18 of 2000.

22 Q And who was present during the interview?

23 A Present was myself, Detective Thomas Traylor of
24 the homicide unit, Sergeant Detective Tim Duggan

1 of the homicide unit, yourself, Mr. Tochka, from
2 the District Attorney's office, Joleena, and an
3 attorney representing Joleena by the name of
4 James Doyle.

5 Q Now, Detective Coleman, at some point during the
6 course of this investigation, did you have an
7 occasion to go to North Conway, New Hampshire?

8 A Yes, I did.

9 Q And can you tell us when you went there?

10 A I personally went there in March of 2001, just
11 about a year after this incident.

12 Q And what was your reason for going there?

13 A I wanted to locate the Yankee Clipper Motel in
14 North Conway, the area, Route 16. I wanted to
15 try to interview any persons that might have
16 worked at that location. I also made photographs
17 of that location.

18 Q And while you were at North Conway, New
19 Hampshire, the Yankee Clipper, how long did it
20 take you to drive from here to North Conway, New
21 Hampshire?

22 A About two and a half hours.

23 Q And at some point in time you said that -- and
24 who did you interview at North Conway, New

1 Hampshire?

2 A I interviewed, there was Cynthia McInerney who is
3 the manager of the place but I also interviewed
4 the woman who is the overnight desk clerk who had
5 been working on a particular night. I had made
6 prior arrangements to ask that she be there when
7 I got there so she was part of the primary reason
8 for going there that day.

9 Q And you said you also were attempting -- or did
10 you say you attempted to get some records there?

11 A Well, that was part of what I was doing with the
12 interviews and to ask them to review some records
13 for me, yes.

14 Q And what records did you ask them to review for
15 you, sir?

16 A They were hotel check-in receipts. They refer to
17 them as folios, f-o-l-i-o-s, just hotel register
18 folios.

19 Q On the first time you went up there, did you
20 obtain a folio in connection with this case?

21 A When I went there in March of 2001 I did -- I
22 only obtained a copy. I did not get the original
23 at that time.

24 Q And what did you learn where the original was?

1 A The original had been obtained by, at that time
2 Sergeant Dicey of the North Conway Police
3 Department, and he's since been promoted to
4 Lieutenant Dicey.

5 Q At whose request did he obtain that?

6 A That was at my request pursuant to a phone call
7 that I had with him, phone conversation.

8 Q Did you meet with Lieutenant Dicey the first time
9 you were up there?

10 A No, I did not.

11 Q Did you subsequently return?

12 A Yes, I did.

13 Q What was your reason for returning there?

14 A It was specifically to meet Lieutenant Dicey and
15 take custody of that original hotel receipt.

16 Q And do you have that original hotel receipt with
17 you today?

18 A Yes, I do.

19 Q And may I see that, please?

20 THE WITNESS: Your Honor, may I just
21 get it?

22 THE COURT: Yes, please.

23 BY MR. TOCHKA:

24 Q And, sir, what you have just given me, is this

1 the original receipt that you received from
2 Lieutenant Dicey?

3 A Yes, it is.

4 MR. TOCHKA: Your Honor, I ask to have
5 this marked for identification at this time.

6 THE COURT: It shall be marked.

7 (Exhibit D, being a receipt, as
8 described above, was produced and marked for
9 identification.)

10 BY MR. TOCHKA:

11 Q Now, Sergeant, at some point in time during this
12 investigation, did you make efforts to obtain
13 handwriting samples from the defendant, Tanzerius
14 Anderson?

15 A Yes, I did.

16 Q And can you tell us when you did that?

17 A That was in January 22, 2002, several months ago.

18 Q And who was present when you did that?

19 A It was myself, Tanzerius Anderson, and Attorney
20 Tim Flaherty.

21 Q And for how long of a period of time did this
22 process take obtaining the handwriting samples?

23 A The process to get them was two hours or a little
24 bit more.

- 1 Q And what does it involve?
- 2 A It involves Mr. Anderson completing a number of
- 3 documents, about forty pages, the documents that
- 4 needed to be completed for the exemplars.
- 5 Q And what was done with those exemplars?
- 6 A They were submitted to the FBI questioned
- 7 documents unit.
- 8 Q And how were they submitted?
- 9 A Well, after obtaining these samples from Mr.
- 10 Anderson, they were placed into a sealed
- 11 envelope. It was signed by myself and --
- 12 initialed by myself and Attorney Flaherty. There
- 13 were other documents that were placed in a
- 14 separate envelope and the hotel receipt that I
- 15 just brought was also placed in those separate
- 16 envelopes and all three envelopes were sent to
- 17 the questioned documents unit.
- 18 Q So as I understand your testimony, you sent the
- 19 exemplars that you took on that day with Mr.
- 20 Flaherty being present along with what's now been
- 21 marked Exhibit D for identification which is the
- 22 folio from the Yankee Clipper Hotel, along with
- 23 other exemplars that you had of the defendant's
- 24 signature?

1 A That's correct.

2 Q And were those items returned to you by the FBI?

3 A Yes.

4 Q Who were they sent to?

5 A They were sent to the FBI laboratory, questioned
6 documents section, in Washington D.C.

7 Q And at whose attention were they sent to?

8 A They were sent, attention to the questioned
9 documents's attention, but specifically they were
10 later assigned and I had conversation with Mr.
11 Bill Duane who works for the FBI laboratory in
12 New York City.

13 Q And at some point in time did you receive the
14 same documents that you forwarded back to you?

15 A Yes, I did.

16 Q And in what condition did you receive those
17 documents?

18 A They were in a sealed envelope. They were
19 delivered via, I believe it was Federal Express.
20 They are in the condition that they appear right
21 now. This third envelope was opened for the
22 first time right now since receiving it from the
23 FBI lab. These other two have remained sealed by
24 the FBI laboratory seals.

1 Q And, sir, can you open up those other two that
2 you referred to?

3 A (Complying.)

4 MR. TOCHKA: And, Your Honor, while
5 he's doing that, can we be heard at side bar?

6 THE COURT: Yes, sir.

7 (Whereupon, the following discussion
8 occurred at side bar:)

9 THE COURT: Yes, sir.

10 MR. TOCHKA: Two of the documents have
11 Miranda forms of the defendant, Tanzerius
12 Anderson, and at this point in time I just wanted
13 to -- I don't know how Mr. Flaherty feels. I
14 would just say that they were just documents
15 which Tanzerius Anderson had previously signed if
16 that's alright with Mr. Flaherty rather than say
17 they are Miranda.

18 THE COURT: The issue is not whether
19 it's okay with Mr. Flaherty.

20 MR. TOCHKA: I'm sorry, and with the
21 Court.

22 THE COURT: Let me just hear from Mr.
23 Flaherty first.

24 MR. FLAHERTY: Yes, Your Honor. I'm

1 not exactly sure, to be honest with you, I think
2 we are on thin ice. I think we are on thin ice.

3 THE COURT: Let me understand. The
4 Miranda forms which he has were ones which the
5 defendant signed?

6 MR. TOCHKA: The defendant signed.

7 THE COURT: At some other point in
8 time?

9 MR. TOCHKA: Right.

10 THE COURT: That is, a time different
11 from when he gave the exemplars?

12 MR. TOCHKA: Correct.

13 THE COURT: So at the time he gave the
14 exemplars, was he re-advised of his Miranda
15 rights?

16 MR. TOCHKA: He had counsel with him.
17 He had a court order.

18 THE COURT: I'm sorry. So what
19 relevance then is the Miranda forms?

20 MR. TOCHKA: It's not but what's going
21 to happen when the FBI gentleman speaks, he has
22 them on the board, not the Miranda form, he has
23 the signature, that those were the signatures
24 that were sent, they were all of the known

1 samples.

2 THE COURT: Those were the samples, the
3 only samples they took?

4 MR. TOCHKA: The only samples, Miranda
5 forms as well as having him re-sign his name at
6 various times during the exemplar. I just don't
7 want to get obviously that those are Miranda
8 forms. I will just stipulate that those are his
9 signatures.

10 THE COURT: Then it seems to me that
11 there should be, unless there is an issue, a
12 stipulation that the signatures which the FBI
13 used as exemplars were ones that were made by Mr.
14 Anderson.

15 MR. FLAHERTY: Well, most respectfully,
16 Judge, I can't stipulate that questioned
17 signatures in a first degree murder case
18 involving my client are his so I would suggest
19 maybe with respect to the Miranda documents that
20 the government had sent to the FBI, that maybe a
21 redaction of the entire document other than the
22 defendant's purported signature be used by the
23 FBI document examiner.

24 MR. TOCHKA: That's fine.

1 THE COURT: Okay. And then what you
2 need to do is that you obviously have to put into
3 evidence --

4 MR. TOCHKA: The actual Miranda form?

5 THE COURT: Well, no, that he watched
6 this defendant make this signature.

7 MR. TOCHKA: Right.

8 MR. FLAHERTY: What I would suggest,
9 Your Honor, is that we -- that the foundation be
10 laid, if that is what they are attempting to do,
11 that Coleman observed Anderson sign the document,
12 that that actual document be marked for
13 identification, and in a redacted form be
14 admitted in evidence.

15 THE COURT: I think that makes sense.

16 MR. TOCHKA: There's two documents.
17 The first one is the document that Coleman
18 observed him sign, the second one that Traylor
19 was present while he signed.

20 THE COURT: Traylor is coming in?

21 MR. TOCHKA: He's coming on but he was
22 coming on after.

23 THE COURT: On your good faith
24 representation that that will be the testimony, I

1 think we can proceed the way that Mr. Flaherty
2 suggested.

3 MR. TOCHKA: That's fine.

4 (Whereupon, the discussion at side bar
5 was concluded.)

6 BY MR. TOCHKA:

7 Q Now, Sergeant Coleman, you have opened up the
8 other two envelopes, correct?

9 A Yes.

10 Q And those other two envelopes contain the
11 signatures made by Tanzerius Anderson, correct?

12 A Yes, they do.

13 MR. TOCHKA: Your Honor, I would move
14 to introduce these for identification purposes at
15 this time, all three envelopes -- actually, two,
16 I'm sorry.

17 THE COURT: They may be marked for
18 identification.

19 (Exhibits E and F, being envelopes, as
20 described above, were produced and marked for
21 identification.)

22 BY MR. TOCHKA:

23 Q Now, sir, with respect to the investigation
24 surrounding New Hampshire, at some point at your

1 direction did you send detectives up to New
2 Hampshire earlier in the investigation?

3 A Yes, I did.

4 Q And when was that, sir?

5 A That was in the early, you know, within the first
6 month after this, this incident took place. I
7 requested that Detective McLaughlin and Detective
8 Thomas Traylor travel to the North Conway area.

9 Q And where specifically in North Conway?

10 A They went to the North Conway area, they went to
11 the Fryberg Academy, they made an effort to speak
12 to the North Conway Police Department.
13 Specifically they spoke with Sergeant Dicey.

14 Q Did they obtain any items from Sergeant Dicey?

15 A Yes, they did.

16 Q What items did they obtain?

17 A They obtained some fingerprint evidence that had
18 been obtained by Sergeant Dicey. They had taken
19 custody of some articles that were brought back
20 to the Boston Police Department latent prints
21 unit.

22 Q And did you forward those items to the latent
23 print unit?

24 A I instructed the officers that went up there to

1 submit those to the latent print unit, that's
2 correct.

3 Q Do you know what the result of that examination
4 was?

5 A Yes, I do.

6 MR. FLAHERTY: Objection.

7 THE COURT: That question may stand.
8 Another question, please.

9 BY MR. TOCHKA:

10 Q What were those items, sir, that were sent for
11 prints?

12 A They were some fingerprint lifts that were taken
13 from an area at North Conway. There was, I
14 believe, a handle or a doorknob there, with some
15 photographs that were brought back and there were
16 some other documents that they brought back to me
17 as well.

18 MR. TOCHKA: Thank you, sir. I have no
19 further questions.

20 THE COURT: Thank you. Cross
21 examination, Mr. Doolin.

22

23

24

CROSS EXAMINATION

BY MR. DOOLIN:

Q Good morning, sir.

A Good morning.

Q It's fair to say that you were the lead investigator into the circumstances of the death of Mr. Yazbek? Is that correct?

A Supervisory investigator, that's correct.

Q When you say that you are the supervising investigator, it's fair to say that you are the supervisor of a team of detectives with the homicide unit, is that right?

A Yes, it is.

Q Now, it's fair to say that the Boston Police homicide unit is made up of several teams, is that correct?

A Yes, that's correct.

Q Now, the team that you head up, you work during the day, is that right?

A Yes, that's correct.

Q There is also another squad of detectives who work during the day, is that right?

A Yes, there's always at least two squads working in the day, correct.

1 Q And at night there are several different squads,
2 is that your testimony?

3 A That's correct.

4 Q Now, at the time on March 27 who were the
5 officers who worked under you on your squad?

6 A At the time, March 27, my regular squad was
7 Detective Juan Torres.

8 Q Was Detective McLaughlin working with you?

9 A He was not assigned to my squad, no.

10 Q Whose squad was he on?

11 A He was assigned to the cold case squad with one
12 of the other sergeants.

13 Q And during that period of time was Detective
14 Traylor also assigned to the homicide unit?

15 A He was assigned to another day squad at the
16 homicide unit, yes, sir.

17 Q Whose squad was he on?

18 A He was assigned to Sergeant Detective Charles
19 Horsley's squad, just leading up to that time.

20 Q Now, it's fair to say that at various points in
21 this investigation that your squad has worked on
22 this case, is that right?

23 A That's correct, yes.

24 Q And also Detective McLaughlin has worked on it

1 with you as well?

2 A Yes, sir.

3 Q And Detective Traylor, is that correct?

4 A That's correct.

5 Q Now, the hours of the day that you work and the
6 hours of the day that the night squad works, it's
7 fair to say that no one is working at the
8 homicide unit from midnight until seven o'clock
9 in the morning? Is that right?

10 A Typically there is not a staffing during those
11 hours, that's correct.

12 Q When you say there is not a staffing, there are
13 no officers who are, in effect, working within
14 the City of Boston on the overnight shift, is
15 that right?

16 A For the homicide unit, they're not staffing the
17 office. We are on an on call status on the
18 overnight shift, that's correct.

19 Q Now, your testimony is that the Boston Police
20 Department has a series of different units who do
21 specified tasks, is that correct?

22 A Yes, sir.

23 Q There is an ID unit, is that right?

24 A That's correct.

1 Q Identification unit involves people who do
2 fingerprinting, is that right?

3 A Among other things, that's right.

4 Q Photography, is that right?

5 A Correct.

6 Q There is a lighting truck that is associated with
7 that unit, is that right?

8 A Not with that unit but there is a lighting unit
9 that's available; that's correct.

10 Q There is also a ballistics unit, is that right?

11 A Yes, sir.

12 Q And there are also officers who are detectives
13 who work in the various different areas of the
14 city, is that right?

15 A That's correct.

16 Q When we say the areas of the city, it's fair to
17 say that the Boston Police Department has various
18 stations and substations throughout the City of
19 Boston, is that right?

20 A That's correct.

21 Q In this case there were detectives who were
22 assigned to the Allston-Brighton district, is
23 that your testimony?

24 A There are detectives assigned to every district

- 1 in the city, yes.
- 2 Q Now, it's fair to say that in your role as an
3 investigating officer, in fact, as a supervisor,
4 that it is very important to create reports. Is
5 that right?
- 6 A Yes, it is, that's correct.
- 7 Q And a report, the Boston Police Department has a
8 variety of different forms that are used for
9 reports, is that right?
- 10 A Yes, that's correct.
- 11 Q There is a document that's called a one one, is
12 that right?
- 13 A That's correct.
- 14 Q And that's an incident report, is that correct?
- 15 A That's the police incident report, yes, sir.
- 16 Q And there is also a form twenty-six, is that
17 right?
- 18 A Yes, sir.
- 19 Q And a form twenty-six is a narrative version of
20 events after officers might interview a witness
21 or something of that nature, is that correct?
- 22 A That's correct also, yes.
- 23 Q And it's also fair to say that there are things
24 that are called FIO reports as well? Is that

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[redacted] right?

A Yes, sir, that's correct.

Q An 710 report is a field interrogation report, is that right?

A That's correct.

Q Now, as a result of your being the investigator in this case, it's fair to say that you have in your possession the various police reports that were generated by yourself, your team, and other officers on the case? Is that right?

A That's fair to say, that's correct.

Q And it's fair to say that documentation is one of the key things that you do as a sergeant detective, is that right?

A Yes, it is.

Q Now, on the morning in question it's fair to say that you arrived at the scene at 89 Faneuil at about ten past five? Does that sound fair to you?

A That's correct.

Q Did you arrive with Detective Traylor?

A We arrived separately but it was probably right around the same time.

Q And in the reports and in your conversation with

1 Officer Rouvalis that day, it's fair to say that
2 he arrived on the scene somewhere before four
3 o'clock? Is that right?

4 A That's correct, yes.

5 Q So it's fair to say that you would have arrived
6 somewhere in the vicinity of an hour to an hour
7 and a half after the first Boston Police officer
8 was on the scene? Is that right?

9 A That's correct, yes.

10 Q Now, it's fair to say that the officer who would
11 have been in charge of the scene before your
12 arrival was Sergeant Riley? Is that right?

13 A That's the patrol supervisor, correct.

14 Q And it's fair to say that Sergeant Riley would
15 have been the supervisor of Officer Rouvalis? Is
16 that right?

17 A That's my understanding of the situation, yes.

18 Q Now, is it your testimony that when you responded
19 that day, that you responded to the back of 89
20 Faneuil? Is that right?

21 A That's correct, yes.

22 Q And I think you said on direct examination with
23 Mr. Tochka that on your way to the scene from
24 your home that it began to rain. Is that right?

1 A That's correct, yes.

2 Q And it's fair to say that as the morning went on
3 that that rain became heavier, is that right?

4 A Yes, sir.

5 Q Now, when you arrived at the scene at 89 Faneuil,
6 it's fair to say that that area had been taped
7 off. Is that right?

8 A Yes. There was tape put up by people other than
9 myself.

10 Q And at this point in time it's fair to say that
11 there were a number of other officers who were at
12 the scene before your arrival? Is that right?

13 A I was aware of several anyway. I'm not sure
14 exactly how many but several.

15 Q And when you arrived at the scene, it's fair to
16 say that you made certain observations, is that
17 right?

18 A Yes.

19 Q Now, there has been some photographs that have
20 been shown to the jury that depict cones. Can
21 you describe to the jury, were those cones up
22 when you got there?

23 A No. I put those cones up myself.

24 Q And it's also fair to say that there are some

- 1 photographs that were taken of the crime scene
2 that day, is that right?
- 3 A Yes.
- 4 Q Were those photographs taken before your arrival
5 or after your arrival?
- 6 A Some of them may have been taken before my
7 arrival. Others were taken at my direction.
- 8 Q And when you arrived at the scene, it's fair to
9 say that it was raining fairly heavily? Is that
10 right?
- 11 A It began to rain fairly heavily shortly after my
12 arrival for sure.
- 13 Q Now, those items that were depicted in the cones
14 -- and it's fair to say that there was a car that
15 was located there, is that right?
- 16 A Yes, that's correct.
- 17 Q At no point in time was that area ever covered by
18 some sort of a canvas, is that correct?
- 19 A The entire area?
- 20 Q Yes.
- 21 A No, it was not covered.
- 22 Q So it's fair to say that the rain that came down
23 on the scene, that there was nothing that was
24 ever put up while you were there or before your

1 arrival that would have protected that scene from
2 the elements? Is that correct?
3 A It's not correct.
4 Q Well, there was no canvas that was put up over,
5 is that right?
6 A There was nothing put over the entire scene.
7 There were things put over parts of the scene and
8 I did that myself.
9 Q Did you put anything over the car?
10 A I did not put anything over the car, no.
11 Q Did you put anything over the glasses?
12 A I did not put anything over the glasses, no.
13 Q Did you put anything over the area of the steps?
14 A I did not put anything over the area of the
15 steps, no.
16 Q Did you put anything over the Wall Street Journal
17 that was found?
18 A I did not put anything over the Wall Street
19 Journal.
20 Q What did you put something over? You put an
21 extra blanket and a tarp over the body of Mr.
22 Yazbek?
23 A That's correct, yes.
24 Q And it's also fair to say that that was the only

- 1 -- that by putting the tarp and the blanket over
2 Mr. Yazbek, that was the only part of the crime
3 scene that there was anything put over? Is that
4 right?
- 5 A That was the -- that's correct, yes.
- 6 Q Now, when you got to the crime scene you
7 interviewed Officer Rouvalis, is that right?
- 8 A I had conversation with him.
- 9 Q You spoke to him?
- 10 A Correct.
- 11 Q Okay. And you spoke to him somewhere in the back
12 of 89 Faneuil, is that right?
- 13 A That's right.
- 14 Q And it's fair to say that one of the things that
15 you asked Officer Rouvalis to do was to run the
16 plate on the car? Is that right?
- 17 A At one point, yes.
- 18 Q And it's fair to say that that car was of
19 evidentiary significance to you because of the
20 fact that it was located near the body of Mr.
21 Yazbek. Is that right?
- 22 A That's not the reason it was of any significance
23 to me at that point.
- 24 Q But it was located in back of the building?

- 1 A It was.
- 2 Q There was a window, is that right?
- 3 A That's correct.
- 4 Q And you made inquiry as to whose car that was, is
- 5 that right?
- 6 A Absolutely, that's correct.
- 7 Q At some point that day you had that car towed, is
- 8 that right?
- 9 A Yes, I did.
- 10 Q And you had it towed to the identification unit,
- 11 is that right?
- 12 A Boston Police headquarters at One Schroeder
- 13 Plaza. It was put in a garage, that's correct.
- 14 Q What time of the day was it towed?
- 15 A It was shortly after I left that scene so it was
- 16 probably around eleven o'clock, give or take some
- 17 time, but generally late morning.
- 18 Q So that car stayed at the scene for approximately
- 19 six hours, is that right?
- 20 A Yes.
- 21 Q From the time that you got there until the time
- 22 you had it towed?
- 23 A That's correct, yes.
- 24 Q And all during that time it was uncovered, is

1 that right?

2 A It was uncovered, that's correct.

3 Q And all during that time or for a substantial
4 period of that time it was raining, is that
5 right?

6 A Yes, heavily raining.

7 Q And it's also your testimony, is it not, that you
8 had several officers who came to the scene at
9 your direction to do a canvass? Is that right?

10 A That's correct, yes.

11 Q Now, you're the officer who, as the investigating
12 officer in the case, you have all the police
13 reports, do you not, about the documentation of
14 the canvass of that area?

15 A That's -- there are reports supposed to be
16 directed to me, that's correct, yes.

17 Q Now, you had officers canvass the building at 89,
18 is that right?

19 A 89 was canvassed, yes.

20 Q The building that's across the way which I
21 believe is 284 North Beacon, was that canvassed?

22 A To my knowledge it was, yes.

23 Q And it's fair to say that you have documentation
24 that shows that 89 Faneuil Street was canvassed,

1 is that right?

2 A That's correct, yes.

3 Q And that 284 North Beacon was canvassed, is that
4 right?

5 A That's also correct, yes.

6 MR. DOOLIN: May I approach the
7 witness, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. DOOLIN:

10 Q I show you this photograph. Do you recognize
11 what's depicted in that photograph?

12 A Yes, I do.

13 Q And what's depicted in that photograph?

14 A This is, looks to me to be from the back of 89
15 Faneuil Street standing by the green fence area
16 looking straight up the driveway towards Faneuil
17 Street.

18 Q Is that a fair and accurate representation of the
19 way that area looks?

20 A The way it looks, yes.

21 MR. DOOLIN: I offer it into evidence,
22 Your Honor.

23 MR. TOCHKA: No objection.

24 THE COURT: It shall be marked and

1 admitted.

2 (Exhibit No. 23, being a photograph, as
3 described above, was marked and admitted into
4 evidence.)

5 BY MR. DOOLIN:

6 Q Officer -- I'm sorry, Sergeant Detective, as you
7 come into the driveway of 89 Faneuil Street, it's
8 fair to say that there was a building that's
9 right here? That's 85 Faneuil, is that right?

10 A That's correct, yes.

11 Q How far away is 85 Faneuil Street from the area
12 where the car was and the area where Mr. Yazbek's
13 body was discovered??

14 A I'd be guessing but I'm going to take a guess
15 that it's approximately somewhere about a hundred
16 and twenty feet or so approximately.

17 Q And it's fair to say that at that address of 85
18 Faneuil Street, as it is depicted in the aerial
19 photograph which I believe is the first exhibit,
20 that there are windows to these apartments that
21 look out to the back of the dumpster area and the
22 area where that car was. Is that correct?

23 A The windows certainly overlook that alleyway.
24 What you can see, I don't know.

1 Q Okay.

2 A But there are windows there, certainly.

3 Q Do you have any documentation with you of a
4 canvass of 85 Faneuil Street which is a hundred
5 and twenty feet away?

6 A I don't believe I have anything from 85 Faneuil
7 Street, no, sir.

8 Q Do you know which officer may have gone into 85
9 Faneuil Street that day?

10 A I don't know right now, no. I don't know if any
11 officers went in there that day, to be honest
12 with you.

13 Q So your testimony is that a building that's a
14 hundred and twenty feet away from the crime
15 scene, that no officer went in there that
16 morning, is that right?

17 A To my knowledge no one went in there, that's
18 correct.

19 Q It's fair to say, sir, is it not, that there is a
20 building that is off to the side here that runs
21 right along on Goodenough Street that backs up to
22 the area of the crime scene? Is that right?

23 A There is a commercial building there, that's
24 correct.

1 Q Do you know what the name of the businesses that
2 are there are?

3 A I do not know the names of those businesses, no.

4 Q If I told you that one of the names was Boston
5 Light and Sound, does that mean anything to you?

6 A No, it does not.

7 Q Is it fair to say their property is a very short
8 distance away from the crime scene?

9 A It is, yes.

10 Q Did any officer go into the property of Boston
11 Light and Sound or whatever this business may be
12 over here and interview anybody?

13 A Not at my direction, they did not, no.

14 Q Did you make any inquiry at Boston Light and
15 Sound of whether they have a night watchman?

16 A I did not, no.

17 Q Now, it's fair to say that up here on the corner
18 of Goodenough Street and Faneuil Street, there
19 are two houses. Is that right?

20 A That's correct, yes.

21 Q And in the photograph that we've just taken a
22 look at which is Exhibit No. 23, it's fair to say
23 that there is a house that's depicted in that
24 photograph. Is that right?

1 A Yes, there is, on the righthand side. That's
2 correct.

3 MR. DOOLIN: I'd ask that that be
4 published to the jury, Your Honor.

5 MR. TOCHKA: No objection.

6 BY MR. DOOLIN:

7 Q These two houses, the one which is depicted in
8 the photograph and the house that's depicted here
9 on the corner of Faneuil Street and Goodenough
10 Street, it's fair to say that those houses are a
11 very short distance away from the scene? Is that
12 right?

13 A Very short is a relative term but they are
14 certainly right up the street, yes.

15 Q Okay. And these houses, it's fair to say, are 91
16 and 39 Faneuil Street, is that right?

17 A I'm not aware of those exact addresses. I
18 wouldn't know.

19 Q In this case had you ever interviewed an
20 individual who lives at 91 Faneuil named William
21 Messenger?

22 A I have not interviewed William Messenger, no.

23 Q Have you ever interviewed an individual who lives
24 at number 95 Faneuil Street named Catherine

1 Coffey?

2 A I have not interviewed Catherine Coffey, no.

3 Q And it's fair to say that on this morning when
4 you had all of those police officers who
5 responded to the scene and area detectives who
6 also responded, that this house and this house up
7 on the corner of Goodenough and Faneuil, that
8 nobody went into there and asked any questions of
9 any of those people? Is that correct?

10 A No one went in there, certainly not at my
11 direction, no. No, they were not considered.

12 Q I asked a question, sir, about this area over
13 here at McKinley playground. Are you familiar
14 with that area?

15 A Yes. I am now, yes.

16 Q At any point during this investigation did any
17 officer ever go into the area on Goodenough
18 Street as it comes down and runs across Faneuil,
19 these houses that I point to here that border
20 McKinley playground?

21 A No.

22 Q So you never went into 52 Goodenough Street and
23 interviewed Ms. Tempetto (phonetic spelling), did
24 you?

1 A No, I didn't. Any of those houses that abut
2 McKinley, we never went to any of those.

3 Q You never interviewed a Mr. McGriffey who lives
4 at 54 --

5 MR. TOCHKA: Objection, Your Honor.

6 THE COURT: He may answer that.

7 MR. TOCHKA: May I be heard at side bar
8 on that?

9 (Whereupon, the following discussion
10 occurred at side bar:)

11 MR. TOCHKA: Mr. Doolin has put into
12 evidence that such and such a person lives at
13 such and such an address where there is no
14 evidence of that. He can ask whether they
15 interviewed anyone in the houses, that's fine,
16 but by coming up with names, he can look in the
17 phone book, but as to these individuals, there is
18 no evidence they did live there.

19 THE COURT: What's your good faith
20 basis for asking the questions?

21 MR. DOOLIN: We have ascertained who
22 those people are.

23 THE COURT: That may be, sir, but that
24 does not make it evidence and there has to be a

1 way for the jury to determine whether the content
2 of the question you're asking is -- can be
3 evaluated by them. The fact that you're saying
4 it doesn't make it so. Will there be some
5 evidence put into the trial as to those names?

6 MR. DOOLIN: I don't anticipate that.
7 I'm just asking whether he interviewed people who
8 lived at those places. I will confine my
9 questioning to that.

10 THE COURT: Okay. Thank you.

11 (Whereupon, the discussion at side bar
12 was concluded.)

13 BY MR. DOOLIN:

14 Q Just so we're clear, none of the houses up on
15 Goodenough Street were entered and no one talked
16 to anyone who lived there, is that right?

17 A Not to my knowledge, that's correct.

18 Q You have been in the McKinley playground, is that
19 right?

20 A Yes, I have.

21 Q It's fair to say that there are windows on the
22 back of all of these houses that come out onto
23 the area where there is a playground and play
24 apparatus, is that right?

- 1 A I have gone in the playground but I didn't look
2 at the backs of those houses. I would assume
3 there are windows. They are residential
4 buildings, that's correct.
- 5 Q Alright. Now, the Faneuil Street development,
6 it's fair to say that there are two, three, four,
7 five, six, seven, eight, nine, ten buildings? Is
8 that correct?
- 9 A Yes, that's correct.
- 10 Q Alright. And on the morning in question, I think
11 you have said that you have documentation that
12 the officers went into 89 and 284, is that
13 correct?
- 14 A That's correct, yes.
- 15 Q Now, the buildings which I believe are numbered
16 starting at 51 and going down to the area of 89,
17 were any of these buildings entered by members of
18 the Boston Police Department and canvassed?
- 19 A I think one of the other buildings, it might have
20 been 75, would have been entered. I don't
21 believe any of the other buildings further down
22 the street were entered.
- 23 Q Over here on North Beacon, these buildings that
24 face North Beacon with backs that come out onto

1 the play area, were any of these buildings
2 entered by members of the Boston Police and
3 canvassed for potential witnesses on this case?

4 A The back of that 284, 282 and I think that 280,
5 there might have been something done at 280 as
6 well.

7 Q Who went into 280?

8 A I wouldn't know right now.

9 Q Did you go into 280?

10 A I did not personally, no. I did not personally
11 go into much of these buildings during the
12 canvass.

13 Q And it's fair to say that some of these
14 buildings, 89 and, as you come down to 75, 65,
15 that these face that play area, is that right?

16 A Virtually every building there borders the play
17 area. It's a courtyard. That's basically what
18 it's there for.

19 Q And you would agree with me that the majority of
20 these buildings that the police didn't go in and
21 canvass at all, is that correct?

22 A The ones further away, that morning, the ones
23 further away from the area where the body was
24 found, no, they did not.

1 Q Well, how about number 65 Faneuil Street? Did
2 officers go into that building?

3 A I don't know if they went in there or not. I'm
4 not aware of it right now.

5 Q Are you aware of whether any officers in the
6 investigation have ever gone into 65 Faneuil?

7 A I'm not aware of it right now, no, sir.

8 Q And it's fair to say that 65 Faneuil is right
9 across here from 75 Faneuil? Is that right?

10 A That's fair to say, that's correct.

11 Q And that there is a parking lot that is right in
12 the middle, is that correct?

13 A That's also correct.

14 Q And there are a lot of windows up there on 65
15 Faneuil and windows up on 75 Faneuil that look
16 down into that parking lot, is that right?

17 A The development has the same windows on every one
18 of the buildings. There's a number of windows
19 there, that's correct.

20 Q And your testimony is that, to your knowledge,
21 that nobody ever went into 65 Faneuil at any
22 point in time and made inquiry about witnesses to
23 this case? Is that right?

24 A That's correct, yes.

- 1 Q Now, the evidence that was here at the scene, you
2 made mention that the car was towed from the
3 scene, is that right?
- 4 A That's also correct, yes, sir.
- 5 Q Was an inventory performed of that car?
- 6 A I am not aware of an inventory being performed,
7 other than the items that were collected pursuant
8 to that vehicle being towed.
- 9 Q The Boston Police Department has an inventory
10 policy, do you not?
- 11 A Yes, we do.
- 12 Q It's a written inventory policy, is it not?
- 13 A Yes, it is.
- 14 Q And the inventory policy says that when a car is
15 searched that the inventory of that car has to be
16 documented, is that right?
- 17 A When it's searched, when it's inventoried, that's
18 correct.
- 19 Q Do you have a police report with you or any sort
20 of documentation as to the search of that car?
- 21 A I have receipts from the latent print unit, from
22 Detective Sharon Wong.
- 23 Q Do you have anything from any officer from the
24 homicide unit who participated in that search?

1 A [REDACTED] No, I do not.

2 Q Did any member of the homicide unit, to your
3 knowledge, participate in the search of the car
4 that was found near the back of 89?

5 A Not that I'm aware of. [REDACTED] Detective Sharon Wong at
6 [REDACTED] my instruction reviewed the vehicle to collect
7 [REDACTED] certain items.

8 Q [REDACTED] There is a specific Boston Police inventory slip,
9 [REDACTED] though, is that correct?

10 A [REDACTED] For a towed motor vehicle, yes, sir.

11 Q [REDACTED] Was one of them filled out in this case?

12 A [REDACTED] Not to my knowledge, no, sir.

13 Q [REDACTED] When was that car given back to Mr. Yazbek's
14 [REDACTED] family?

15 A [REDACTED] It was sometime later, some period of time later
16 [REDACTED] it was returned to his brother, Riad.

17 Q [REDACTED] When you say it was sometime later, it's fair to
18 [REDACTED] say that that was only a matter of several days,
19 [REDACTED] is that right?

20 A [REDACTED] It was within a week, yes.

21 Q [REDACTED] At any point in time did you or other members of
22 [REDACTED] your squad examine that car for any evidentiary
23 [REDACTED] value?

24 A Of my squad?

1 Q Yes.

2 A Not my squad, no.

3 Q So all you know that was in that car was done by
4 Detective Wong, is that correct?

5 A As far as I know, that's correct.

6 Q And Detective Wong's specialty is fingerprinting,
7 is that right?

8 A At that time she was assigned to the latent print
9 unit, that's correct.

10 Q And it's fair to say that now she's assigned to
11 the District Attorney's office, is that right?

12 A Yes, she is. That's correct.

13 Q Now, at the time you asked Detective Wong to
14 fingerprint that car, is that right?

15 A I asked her to review that car for fingerprint
16 evidence, that's correct.

17 Q Do you have a report with you of Sharon Wong's
18 analysis of that car?

19 A No, I don't.

20 Q Because one wasn't done, was it?

21 A I did not receive one, no, sir.

22 Q The car that was found right next to the scene,
23 several feet away from Mr. Yazbek's body, you
24 have no documentation that that car was ever

1 [REDACTED] fingerprinted, do you, Sergeant Coleman?

2 A [REDACTED] I have no report about processing for

3 [REDACTED] fingerprints on the car. However, there were

4 [REDACTED] items collected from the vehicle. I have

5 [REDACTED] receipts for those things.

6 Q [REDACTED] The receipts that you have is a water bottle, is

7 [REDACTED] that right?

8 A [REDACTED] Yes.

9 Q [REDACTED] Anything else?

10 A [REDACTED] Not that I'm aware of.

11 Q [REDACTED] So the only thing of evidentiary value that was

12 [REDACTED] ever fingerprinted in that car was a water

13 [REDACTED] bottle, is that right?

14 A [REDACTED] That's my understanding, yes.

15 Q [REDACTED] You have no idea what else was found in that car,

16 [REDACTED] do you?

17 A [REDACTED] No, sir.

18 Q [REDACTED] You have no inventory to detail and tell this

19 [REDACTED] jury what was found in the car, do you?

20 MR. TOCHKA: Objection. Asked and

21 answered.

22 THE COURT: He may have it.

23 BY MR. DOOLIN:

24 Q [REDACTED] Do you, sir?

1 A [REDACTED] Would you repeat it for me?

2 Q [REDACTED] Do you have any sort of inventory forms or
3 anything else that we can detail to the jury what
4 was found in that car?

5 A [REDACTED] The Boston Police Department inventory form that
6 would simply be filled out for a towed motor
7 vehicle was not completed for the vehicle. To my
8 knowledge I do not have one. It was not
9 completed to my knowledge.

10 Q [REDACTED] And this was a vehicle that was towed from the
11 scene of a homicide, is that right?

12 A [REDACTED] This was a vehicle that was towed from a scene
13 yes, of what was later determined to be a [REDACTED] *Homicide detective*
14 homicide. That's correct. *immed. after*
Colman's
arrival
He called me

15 Q And to this day, as far as you know, there has
16 been no report written by Detective Wong
17 detailing what fingerprints may have been on that
18 car and what fingerprints may not have been on
19 that car. Is that right?

20 A I have no report from Detective Sharon Wong about
21 the car at all.

22 Q So if that car was touched by an assailant or
23 possible assailant that night, you have nothing
24 to show here today whether any fingerprints were

1 left on that car? Is that right?

2 MR. TOCHKA: Objection, Your Honor.

3 THE COURT: He may answer.

4 A The car was not processed, to my knowledge. I
5 have no report regarding the processing of that
6 vehicle so I wouldn't know what was or was not
7 there, that's correct.

8 BY MR. DOOLIN:

9 Q And it's fair to say that fingerprinting is an
10 important thing, isn't it? In your role as an
11 investigator?

12 A In certain incidents, in certain cases and at
13 certain times at my determining in my
14 investigation, that's correct.

15 Q And in your determining that the fingerprinting
16 of a motor vehicle that was found next to the
17 body of Mr. Yazbek, that is not enough to have it
18 fingerprinted?

19 MR. TOCHKA: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. DOOLIN:

22 Q Do you know where in the car the water bottle was
23 found?

24 A I believe it was found in the front seat area.

1 Q Who found it?

2 A Who found it?

3 Q Who found it?

4 A I think it was collected by Detective Wong.

5 Q Did Detective Wong come to the scene?

6 A No, she did not.

7 Q Do you have a report from Detective Wong
8 detailing where that water bottle was found?

9 MR. TOCHKA: Objection, Your Honor.

10 Asked and answered.

11 THE COURT: I believe we have covered
12 that, sir.

13 MR. DOOLIN: Sorry, Your Honor.

14 BY MR. DOOLIN:

15 Q Did you observe the water bottle in the car?

16 A I made no observations of the vehicle at that
17 scene due to the fact of other things that were
18 going on. It was simply secured. It was removed
19 from the scene intact and it was later processed
20 by a person who is trained for that.

21 Q Well, Sergeant, you have been on the job for
22 seventeen years now, haven't you?

23 A Yes, sir.

24 Q And you, that day, didn't go over and look into

1 that car to make any observations of what was
2 there?

3 MR. TOCHKA: Objection, Your Honor.
4 Asked and answered.

5 THE COURT: I believe he has, sir.
6 Move on, please.

7 BY MR. DOOLIN:

8 Q Well, it's fair to say that there was a Wall
9 Street Journal that was found at the scene, is
10 that right?

11 A That's correct, yes.

12 Q And that Wall Street Journal was in several of
13 the photographs that were shown to the jury, is
14 that right?

15 A That's also correct, yes.

16 Q Was that Wall Street Journal recovered by the
17 Boston Police Department?

18 A It was recovered by a detective, yes, it was.

19 Q And it's fair to say that there was a cone that
20 was put out there to document where that Wall
21 Street Journal was found, is that right?

22 A I placed that cone to document it, yes, I did.

23 Q And it's fair to say that the Wall Street Journal
24 had on it a label that said that it was going to,

1 I believe, an individual named Jennie Woo who
2 lived at 89 Faneuil, is that right?

3 A 89 Faneuil, yes, sir, that's correct.

4 Q And you would agree with me that documentation of
5 your investigation in this case is very
6 important, is that right?

7 A Yes, sir.

8 Q Were any calls made to individuals from the Wall
9 Street Journal relative to the delivery of that
10 newspaper?

11 A I made a telephone call to a distributor, yes, I
12 did.

13 Q Did you document that in a police report?

14 A I did not write a police report about it, no,
15 sir.

16 Q When did you do it?

17 A I made the call probably within the weeks
18 following the occurrence of this incident.

19 Q Did you determine who would deliver the Wall
20 Street Journal on a regular basis in that area?

21 A I did, yes..

22 Q Did you interview that person?

23 A I spoke briefly to him on the telephone, yes.

24 Q What's the person's name?

- 1 A [REDACTED] I don't recall his name right now.
- 2 Q [REDACTED] You didn't document that in any police report
- 3 [REDACTED] did you?
- 4 A [REDACTED] No, sir.
- 5 Q You can't tell this jury who it is, is that
- 6 right?
- 7 A Not at this moment, I cannot, no, sir.
- 8 Q There was an eyeglass lens that was recovered in
- 9 the area of 89 Faneuil, is that right?
- 10 A On the step area, yes, sir.
- 11 Q And that eyeglass lens, it's fair to say, that
- 12 was sent to the crime lab, is that right?
- 13 A It was collected by the crime lab at the scene.
- 14 I had requested that they come out to the scene
- 15 and collect certain items.
- 16 Q The items that were collected by the crime lab
- 17 include the eyeglasses, is that right?
- 18 A Yes, that's correct.
- 19 Q The eyeglass lens, is that right?
- 20 A That's also correct.
- 21 Q And the eyeglass lens when it was sent to the
- 22 crime lab, was it ever sent to Detective Wong or
- 23 other members of the identification unit for
- 24 fingerprinting?

1 A Not to my knowledge, no.

2 Q There was a set of keys that were recovered,
3 several feet away from the body of Mr. Yazbek, is
4 that right?

5 A That's correct, and also in the stairway area.

6 Q A set of keys were discovered that morning, is
7 that correct?

8 A Yes, they were.

9 Q Those keys were sent to the crime lab, is that
10 right?

11 A They were collected at the scene by the crime
12 lab, yes.

13 Q Were those keys sent to be fingerprinted by
14 Detective Wong?

15 A Not to my knowledge, they weren't. Not at my
16 request certainly.

17 Q And it is your testimony that there was a set of
18 eyeglasses that were found right next to Mr.
19 Yazbek, is that right?

20 A That's also correct, yes.

21 Q Now, you have -- strike that. The eyeglasses of
22 Mr. Yazbek, were those sent to the crime lab?

23 A The eyeglasses were collected by the crime lab at
24 the scene, yes.

1 Q [REDACTED] were they sent to be fingerprinted?

2 A [REDACTED] Not at my direction, they were not, no.

3 Q Is it fair to say that there were several
4 batteries that were also recovered at the crime
5 scene?

6 A There were batteries that were recovered, that's
7 correct.

8 Q And the batteries that were recovered at the
9 crime scene, it's fair to say that they were
10 recovered in back of 89 Faneuil, is that right?

11 A They were in that general area outside of the
12 back of 89 Faneuil, yes, on the ground.

13 Q Those batteries that were recovered, it's fair to
14 say that they were documented in some of the
15 pictures that were taken that day?

16 A I also placed cones near those to assist in
17 documenting and photographing and they were
18 collected by members of the crime lab at the
19 scene, that's correct.

20 Q Were those batteries collected by the crime lab
21 at the scene?

22 A They were.

23 Q Were they sent to be fingerprinted?

24 A [REDACTED] Not at my direction, they were not sent for any

1 [REDACTED] fingerprinting.

2 Q Now, on the day in question, it's fair to say
3 that the lighting truck appeared and came into
4 the area of the crime scene, is that right?

5 A The lighting truck did not appear at that area.

6 Q Is it your testimony that the lighting truck was
7 never there?

8 A The lighting truck was notified and I was
9 contacted by a member of the headquarters staff
10 asking if I needed the lighting truck. I
11 explained to them that the daylight is going to
12 be here so I didn't need them. They did not come
13 into the immediate area. I didn't utilize the
14 lighting truck that morning.

15 Q Okay. But there were a series of photographs
16 that were taken of the outside of 89 Faneuil, is
17 that right?

18 A Yes. They were part of the original photographs,
19 that's correct.

20 Q And just so it's clear, there was never anybody
21 from the identification unit, fingerprinting unit
22 who showed up at 89 Faneuil or was called to 89
23 Faneuil that day, is that right?

24 A I did not request fingerprint processing at that

1 scene, that's correct.

2 Q It's fair to say that there was a door that goes
3 into 89 Faneuil, is that right?

4 A That's correct.

5 Q That door was never fingerprinted, was it?

6 A I didn't request any fingerprint resources at
7 that scene that morning, that's correct.

8 Q So obviously the handle to the door wasn't
9 fingerprinted either, is that right?

10 A ~~Nothing at the scene was fingerprinted. I didn't~~
11 ~~request any of that that morning, that's correct.~~

12 Q Okay. At some point that morning you, yourself,
13 went in 89 Faneuil, is that right?

14 A Yes, I did.

15 Q And when you went into 89 Faneuil, one of the
16 places that you went to was the apartment of that
17 gentleman who testified the other day, Mr.
18 Laureano, is that right?

19 A Edmund Laureano, that's correct.

20 Q And he lives at apartment 256, is that right?

21 A That's correct.

22 Q Would you agree that there are ten apartments
23 within 89 Faneuil Street?

24 A That sounds about right.

1 Q How many apartments did you, yourself, as the
2 lead investigator go into that day?

3 A I went to one apartment, Mr. Edwin Laureano's. I
4 was directed there by Officer Rouvalis.

5 Q Do you have any documentation of interviews that
6 you did that day with Mr. Laureano and Mrs.
7 Laureano?

8 A I had a brief conversation with him and there was
9 no documentation of that given the nature of my
10 contact with him.

11 Q Did you interview Mrs. Laureano about what she
12 may have seen or heard that day?

13 A I had a brief conversation more relative to her
14 husband's appearance at home.

15 Q Sure. Did you document anything about your
16 interview with Mrs. Laureano or your talk with
17 her?

18 A I wouldn't characterize it as an interview. I
19 did not do a report on my very limited
20 conversation with her.

21 Q But she lives right there at 89 Faneuil, several
22 floors up above where the homicide happened, is
23 that right?

24 A That's correct. 89 Faneuil is, in essence, part

1 of that area, that's correct.

2 Q And there is no documentation of any talk with
3 her, is that right?

4 A I did not document my brief encounter with her,
5 no, I did not.

6 Q And you went into those apartments or you had
7 other officers go into those apartments at number
8 89 Faneuil, is that right?

9 A That was part of the canvass responsibilities,
10 that's right.

11 Q And one of those apartments that you went in or
12 that was canvassed by the police on that day was
13 apartment number 252 where the Laing family
14 lives, is that right?

15 A 252 would be the Laings, I believe, that's
16 correct.

17 Q And Yolanni Laing was an individual who lived at
18 that apartment pursuant to being ascertained by
19 the Boston Police on that morning, is that right?

20 A I know that she was spoken to in that apartment
21 that morning, yes.

22 Q And as a result of that you became aware that
23 there was some information that Yolanni Laing had
24 given to the Boston Police, is that right?

- 1 A That information was eventually relayed to me,
2 that's correct, yes.
- 3 Q Did you ever go back there to talk to Yolanni
4 Laing?
- 5 A Yes, I did.
- 6 Q When was that?
- 7 A Probably within the last month and a half, five
8 weeks, maybe.
- 9 Q Does she still live there?
- 10 A She was actually moving the day that I was there.
- 11 Q Did you talk to her?
- 12 A Briefly, yes.
- 13 Q Do you know where she lives now?
- 14 A I have an address recorded for her in the file
15 somewhere, yes.
- 16 Q Does she live down in Norwood?
- 17 A That sounds right, yes.
- 18 Q When you went to see her several weeks ago and
19 you had this brief conversation with her, it was
20 about the events of March 27 and into March 28,
21 is that right?
- 22 A That's correct, yes, it was.
- 23 Q Did you write a report about that one?
- 24 A About the meeting I had with her a couple weeks

1 ago?

2 Q Yes.

3 A No, I did not.

4 Q So you didn't document what was said during that
5 interview?

6 A No, I did not.

7 Q And she wasn't spoken to by the Boston Police at
8 any point in time between the morning of the
9 twenty-eighth of the year 2000 and five weeks
10 ago, is that right?

11 A She was spoken to on that morning and there was
12 not a need to speak to her again until the
13 preparation for this proceeding, that's correct.

14 Q She was never shown any photographs, was she?

15 A She was never shown any photographs by me, sir,
16 no.

17 THE COURT: Mr. Doolin, we are going to
18 take the morning recess at this time, sir. Would
19 you step down, please, Sergeant Detective?

20 Ladies and gentlemen, please leave your
21 notes on your seats in your envelopes and we will
22 have some coffee brought in for you. We'll see
23 you after the recess.

24 (Whereupon, the proceedings were

1 recessed at 11:10 o'clock a.m., and reconvened at
2 11:31 o'clock a.m.)

3 (Whereupon, the following discussion
4 occurred at side bar:)

5 MR. TOCHKA: I wanted to see the Court
6 at side bar in connection with my direct
7 examination of the officer. At one point I think
8 we had marked for identification, which was C,
9 and I didn't want to come before the Court at
10 this point because I know the Court wanted to
11 proceed with the jury in the box so I waited
12 until the break to do it.

13 Your Honor, on my redirect I want to
14 have permission to go into the identification in
15 terms of, this is the map which Eddie Gauthier
16 wrote, this was the map which was drawn and these
17 are the X's which he put where he saw the
18 individuals leaving 89, only because it's
19 important because the testimony was, he said to
20 Detective Coleman it was the back exit and there
21 is the back exit and he put the X's there.
22 Otherwise the jurors are going to believe
23 incorrectly that he was saying to Detective
24 Coleman that he saw the two defendants running

1 out this exit which I assume to be the back exit.
2 I guess if you live there, this is the back exit,
3 that he saw them running out of the back exit.
4 So it goes to the identification issue and it
5 completes the identification as to what he said.

6 THE COURT: Mr. Tochka, all of that may
7 be so, sir, but first of all, the testimony from
8 Sergeant Detective Coleman is that this C which
9 has been marked for identification was a
10 combination of efforts between himself and Edward
11 Gauthier. There is nothing on the record, and
12 tell me if I heard the testimony incorrectly,
13 that Mr. Gauthier drew this chart, number one.

14 Number two, if you wanted to have it
15 admitted, it seems to me that it should have been
16 presented to Mr. Gauthier so that he could lay
17 the foundation that he drew this or he saw this
18 and he affirmed it as, at least, an accurate
19 sketch of the Faneuil Street development and that
20 it was his X's which were placed in that place so
21 it --

22 MR. TOCHKA: Well, Your Honor, in terms
23 of, on the transcript it does say, could you
24 then, using the pen, could you put the X's in the

1 area that you saw the two individuals.

2 THE COURT: What transcript?

3 MR. TOCHKA: On the transcript of Eddie
4 Gauthier.

5 THE COURT: I'm sorry? His testimony?

6 MR. TOCHKA: No, his transcript. So --

7 THE COURT: His statement?

8 MR. TOCHKA: His first transcript which
9 I'm putting in for prior consistent statements
10 when my brother impeached him at the trial. So
11 when the detective is allowed to testify, he'll
12 say he said they came from the back entrance.
13 Did he describe for you the back entrance? Yes,
14 he did, the other side of where the body was.
15 That's all I'm asking. I'm not introducing the
16 map, only that he said that the persons came from
17 the other side of where the body was.

18 THE COURT: First of all, we haven't
19 completed cross examination.

20 MR. TOCHKA: Right.

21 THE COURT: Is there anything either
22 one of you wants to say about this?

23 MR. FLAHERTY: Not now.

24 THE COURT: So as I understand it, sir,

1 the only thing that you're seeking my permission
2 to do is, upon the completion of cross
3 examination when you would redirect you wish to
4 elicit from Sergeant Detective Coleman that it
5 was Mr. Gauthier who placed those X's on that
6 particular chart?

7 MR. TOCHKA: Correct.

8 THE COURT: But you do not want to
9 introduce the chalk. So what evidentiary value
10 would it have to the jury?

11 MR. TOCHKA: You're right. All I
12 wanted to show was the X's and introduce the map
13 or simply to say, did he describe, when he said
14 the hallway where they exited, did he describe
15 the hallway, yes, the opposite area of where the
16 body was located. That's it.

17 THE COURT: I think we, quite
18 respectfully, have covered it and my response,
19 and I don't think upon this record at this time
20 that my ruling will change. I'll continue to
21 listen to cross examination and if you feel that
22 there are matters which we did not discuss at the
23 prior conference or at this one, before you
24 redirect you may come to see me but I still have

1 concerns about that testimony.

2 MR. TOCHKA: Okay. Thank you.

3 (Whereupon, the discussion at side bar
4 was concluded.)

5 MR. DOOLIN: May I begin, Your Honor?

6 THE COURT: You may.

7 BY MR. DOOLIN:

8 Q [REDACTED] Sergeant Detective Coleman, at any point in time
9 [REDACTED] in the five hours or thereabouts that you were in
10 [REDACTED] this area on March 28 did you observe a
11 [REDACTED] Timberland watch within the crime scene?

12 A [REDACTED] No, I did not.

13 Q [REDACTED] Are you aware of a Timberland watch being
14 [REDACTED] recovered from the crime scene?

15 A [REDACTED] There was no Timberland watch recovered from that
16 [REDACTED] scene.

17 Q Now, in the canvass that was done that day of 284
18 and 89 Faneuil, it's fair to say that you are
19 aware that there were certain people who did not
20 respond and certain people who apparently were
21 not home during that canvass? Is that correct?

22 A That's correct. During the canvass, that's
23 correct.

24 Q Did yourself or other officers ever go back in

1 the days afterward to ascertain whether people
2 lived in those apartments?

3 A I did not go back personally. I had asked that
4 some officers follow up on that. I got no
5 further correspondence on any of those locations
6 that might have been attempted.

7 Q One of those locations was apartment number 258
8 at 89 Faneuil, is that right?

9 A I'm not certain about that, sir, no.

10 Q Well, it's fair to say that there was at least
11 one apartment within 89 Faneuil Street that there
12 was nobody home that morning, is that right?

13 A I can't say that's fair to say because I'm not
14 certain of it right now.

15 Q Have you reviewed the police reports of Officers
16 Kelly and Whitkens?

17 A Have I reviewed them?

18 Q Yes.

19 A Over the course of this investigation, yes,
20 certainly.

21 MR. DOOLIN: May I approach the
22 witness, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. DOOLIN:

1 Q I show you this document. Do you recognize it?

2 A I do.

3 Q Do you have it in your possession in your
4 investigatory file?

5 A It's part of the file. Yes, I do.

6 Q Now, did you ever review this to make a
7 determination as to what apartments in 89 Faneuil
8 and what apartments in 284 Faneuil that there was
9 no response in?

10 A I reviewed all of the reports for that effort,
11 that's correct.

12 Q It's fair to say that it indicates that apartment
13 258, that there was no one who answered, is that
14 right?

15 MR. TOCHKA: Objection, Your Honor.

16 THE COURT: He may answer that.

17 A This report says apartment 258, no one answered
18 after repeated knocking, correct.

19 BY MR. DOOLIN:

20 Q Now, apartment number 258 again is within 89
21 Faneuil? That's what we're talking about, is
22 that right?

23 A That's 89 Faneuil, apartment 258, that's right.

24 Q And that's one of only ten apartments that were

1 inside that building, is that right?

2 A I believe that sounds right.

3 Q And as far as your investigation into the case,
4 did you ever go up and bang on the door at 258,
5 apartment 258 at 89 Faneuil?

6 A I went to apartment 256 and that's the only
7 apartment that I personally visited during this
8 canvass.

9 Q And as we stand here two years later, it's fair
10 to say that you have no documentation of any
11 Boston Police officer going back to 258 Faneuil
12 Street to ascertain who lived there?

13 MR. TOCHKA: Objection, asked and
14 answered.

15 THE COURT: Sustained. We have been
16 over this, sir.

17 BY MR. DOOLIN:

18 Q It's fair to say that there were certain people
19 who were not home at 284 North Beacon, is that
20 right?

21 A That would be fair to say.

22 Q Did you yourself ever go into 284 North Beacon to
23 ascertain individuals who were not home that
24 morning?

- 1 A I went into 284.
- 2 Q Did you go to those apartments that no one had
3 responded in?
- 4 A I went to -- I went to specific apartments and
5 they weren't the ones that no one responded.
6 There were specific apartments with a specific
7 purpose for being back there.
- 8 Q But it's fair to say that in the time after this
9 incident that nobody went back to those
10 apartments that no one responded in, is that
11 right?
- 12 A Not to my knowledge, they did not, other than the
13 ones that I went to as I just described.
- 14 Q Okay. You went to some of the apartments, is
15 that right?
- 16 A That's correct.
- 17 Q And did you go interview an individual named
18 Oscar Vega?
- 19 A Yes, I did.
- 20 Q Did you interview an individual named Joanne
21 Constable?
- 22 A I spoke with -- I did not interview. I spoke
23 with Joanne Constable, yes.
- 24 Q Who did you speak with Oscar Vega with?

1 A [REDACTED] It was Detective Wayne Rock of the Boston Police
2 [REDACTED] Department.

3 Q [REDACTED] And who did you speak to Joanne Constable with?

4 A [REDACTED] I was there with Mr. Tochka, the district
5 [REDACTED] attorney, Mr. Udana (phonetic spelling) from the
6 [REDACTED] District Attorney's office, and I believe Mike
7 [REDACTED] Devane, my new partner, Mike Devane was there.

8 Q [REDACTED] When did you interview -- did you go into those
9 [REDACTED] apartments on March 28?

10 A [REDACTED] On March 28 I didn't go to any apartments at all
11 [REDACTED] except apartment 236 and to the front doorway,
12 [REDACTED] hallway of Heather Coady's apartment at 282 North
13 [REDACTED] Beacon Street.

14 Q [REDACTED] So it's fair to say that on March 28 you, as the
15 [REDACTED] lead investigator, did not interview either Oscar
16 [REDACTED] Vega or Joanne Constable? Is that right?

17 MR. TOCHKA: Objection, Your Honor.

18 [REDACTED] THE COURT: He may answer the question.

19 A [REDACTED] As the lead investigator I did not participate in
20 [REDACTED] the canvass. I delegated the canvass to other
21 [REDACTED] detectives and officers that I requested at that
22 [REDACTED] scene. Among the many things that I do at a
23 [REDACTED] scene is to coordinate the best efforts that we
24 [REDACTED] can of the resources available to me. So along

1 [REDACTED] those lines, I do not necessarily participate in
2 [REDACTED] every single interview of every single person.
3 [REDACTED] It's just not physically possible. It just can't
4 [REDACTED] be done.

5 BY MR. DOOLIN:

6 Q Again, in answering my question, did you
7 interview Oscar Vega --

8 MR. TOCHKA: Objection.

9 THE COURT: Sir, the objection counsel
10 is rising to make is sustained and I'd ask that
11 you move on, please.

12 MR. DOOLIN: I will, Your Honor.

13 BY MR. DOOLIN:

14 Q Now, on the date in question when you went up to
15 apartment 256, obviously you went through the
16 hallway at 89, is that right?

17 A I entered the hallway at 89, yes, I did.

18 Q Was that photographed that day inside the
19 hallway?

20 A There were some photographs taken inside, yes.

21 Q Did you yourself make any observations on March
22 28 of any blood inside the hallway, first floor
23 landing, at 89 Faneuil Street?

24 A While I was inside it was pointed out to me, yes.

1 Q Was the area where the blood was photographed?

2 A Yes, it was.

3 Q The blood that was on the wall, sir, inside 89
4 Faneuil Street, can you describe to us the
5 locations of that blood?

6 A It was on the wall. It was a -- there were small
7 spatter substance. Other than having it pointed
8 out to me, that was the end of any involvement
9 with it because I had the crime lab personnel
10 there and directed them to do what they thought
11 appropriate upon their response to my scene.
12 Again, I had a lot of other things going on that
13 I was delegating the lab responsibility to the
14 lab personnel at that scene.

15 Q The blood that was found inside the hallway at 89
16 Faneuil Street on March 28, was that blood in any
17 way preserved?

18 A That, to my knowledge, the lab made some
19 collections of some blood at this scene, yes.

20 Q [REDACTED]
21 [REDACTED]

22 A [REDACTED]
23 [REDACTED]

24 Q [REDACTED]

- 1 A I can't be certain what the lab did with that,
2 [REDACTED]
- 3 Q It's also your testimony that yourself and other
4 officers at your direction would have canvassed
5 or would have examined the crime scene for
6 ballistics evidence, is that right?
- 7 A Well, I was there March 28. I participated in
8 and I directed other officers to conduct a search
9 of that area for ballistics evidence, that's
10 correct.
- 11 Q And on March 28 of the year 2000, it is fair to
12 say there was no ballistics evidence that was
13 recovered in this area? Is that right?
- 14 A There was none recovered in that area, that's
15 correct, on March 28.
- 16 Q Now, you went back to the scene on March 31, is
17 that right?
- 18 A That's incorrect.
- 19 Q Is it the thirtieth?
- 20 A I did not go back to that scene.
- 21 Q So your testimony is that on the thirty-first of
22 March that you yourself did not go back to that
23 scene? Is that right?
- 24 A I had other officers go back out to that scene.

1 Q And that would be Detective Torres and Detective
2 [REDACTED] McLaughlin?

3 A That's correct.

4 Q Now, in your role as the chief investigating
5 officer on this case, it's fair to say that you
6 would try to ascertain the identity and
7 whereabouts of individuals who had information as
8 to the death of Mr. Yazbek, is that correct?

9 A Well, I wouldn't characterize my role as the
10 chief investigator but as a supervisor assigned
11 to this unit, yes. That's the purpose of the
12 investigation is to obtain any information that
13 we can about the incident.

14 Q Who is the chief investigator?

15 A I don't know the term, chief investigator. We
16 don't use that in the Boston Police Department.

17 Q Who was in charge?

18 A I was the supervisor in charge of the homicide
19 squad investigating this case.

20 Q Now, I think you said on direct examination of
21 Mr. Tochka that on March 28 of the year 2000,
22 that you yourself went to talk to Heather Goady,
23 Is that right?

24 A That's correct, yes.

- 1 Q And Heather Coady came to the headquarters with
2 you, is that right?
- 3 A She came to District 14 police station in
4 Brighton.
- 5 Q How long did you talk to her on March 28?
- 6 A Five to ten minutes at District 14.
- 7 Q Did you ever write a report about that?
- 8 A I didn't need to write a report about that.
- 9 Q Did you ever write a report that she came to the
10 station to talk to you on March 28?
- 11 A I didn't need to write a report about my
12 conversation with Heather Coady on that day.
- 13 Q And I assume that's because she was
14 uncooperative, is that right?
- 15 A It's because she offered nothing at that point.
- 16 Q But there was no documentation that you even
17 talked to her, was there, Sergeant?
- 18 A There's no documentation that I spoke to a lot of
19 people. It's -- what I document is determined by
20 what I feel needs to be part of this case and
21 when it's a matter of someone saying nothing, I
22 can't -- I simply can't sit and document the fact
23 that people said nothing to me. It's just
24 impossible.

1 Q [REDACTED] You had her come to the station, didn't you?

2 MR. TOCHKA: Objection. Let him finish
3 his answer.

4 THE COURT: Move on, please.

5 MR. DOOLIN: I'm sorry.

6 BY MR. DOOLIN:

7 Q [REDACTED] In your role as the investigating officer on this
8 [REDACTED] case, did you ever interview a person by the name
9 [REDACTED] of Amy Harr?

10 A [REDACTED] I did not but other officers spoke to her, yes.

11 Q [REDACTED] And it's fair to say that Amy Harr was an
12 [REDACTED] individual who was at one point friendly with
13 [REDACTED] Joleena, is that right?

14 MR. TOCHKA: Objection, Your Honor.

15 THE COURT: Lay the foundation for his
16 knowledge, please.

17 BY MR. DOOLIN:

18 Q [REDACTED] It's fair to say that Amy Harr was an individual
19 [REDACTED] who was ascertained -- you ascertained the
20 [REDACTED] identity of Amy Harr during your investigation,
21 [REDACTED] is that right?

22 A [REDACTED] I became aware of her name, yes.

23 Q [REDACTED] And through your role as investigating officer,
24 [REDACTED] you were looking for Joleena during the period of

1 [REDACTED] time after this incident, is that right?

2 A [REDACTED] Yes, that's correct.

3 Q [REDACTED] It's fair to say that there was a report that was
4 [REDACTED] generated in May by another officer concerning
5 [REDACTED] Ms. Harr, is that right?

6 A [REDACTED] That's correct, yes.

7 Q [REDACTED] And it also concerned Joleena, is that right?

8 A [REDACTED] That's accurate, yes.

9 Q [REDACTED] In May of 2000, did you yourself go interview Ms.
10 [REDACTED] Harr?

11 A [REDACTED] I never spoke to Amy Harr personally. I had
12 [REDACTED] other officers speak with her.

13 Q [REDACTED] It's also fair to say that you have in your
14 [REDACTED] possession and you had in your role as a
15 [REDACTED] investigating officer on this case a police
16 [REDACTED] report that concerned the interview of Amy Harr,
17 [REDACTED] is that right?

18 A [REDACTED] There's a report, that's correct, report of that
19 [REDACTED] conversation.

20 Q [REDACTED] And one of the things that you were doing, one of
21 [REDACTED] the things that the Boston Police Department was
22 [REDACTED] doing in early May of 2000 was, you were trying
23 [REDACTED] to ascertain the whereabouts of Joleena Tate, is
24 [REDACTED] that right?

1 A [REDACTED] That's correct, yes.

2 Q And any associates of Joleena, is that right?

3 A In an effort to locate Joleena, the associates
4 would be helpful, that's correct.

5 Q [REDACTED] In that effort, did Amy Harr give a name of a
6 [REDACTED] person named Jamie LeClaire?

7 MR. TOCHKA: Objection, Your Honor.

8 THE COURT: If he knows, he may answer.

9 A [REDACTED] I'm aware of the name, Jamie LeClaire.

10 BY MR. DOOLIN:

11 Q [REDACTED] And was there also information as to an
12 [REDACTED] individual named Devante (phonetic spelling)?

13 MR. TOCHKA: Objection.

14 THE COURT: If he knows he may answer.

15 A [REDACTED] I'm aware of the name, Devante, appearing in a
16 [REDACTED] report, yes.

17 BY MR. DOOLIN:

18 Q [REDACTED] Now, as to Joleena, did you ever go interview
19 [REDACTED] Jamie LeClaire?

20 A [REDACTED] I did not speak to Jamie LeClaire, no.

21 Q [REDACTED] Did you ever try to ascertain where Jamie
22 [REDACTED] LeClaire was?

23 A [REDACTED] There were efforts made to try to locate Jamie
24 [REDACTED] LeClaire, yes.

1 Q [REDACTED] in the last two
2 years been able to locate Jamie LeClair?

3 A [REDACTED] have not been looking for her in the last two
4 years. Initially I made some effort to locate
5 her and then, quite frankly, it became
6 unnecessary in my opinion to locate her.

7 Q When you went looking for Ms. LeClair in May of
8 2000, it was important to you at the time, is
9 that right?

10 A In the early stages of this investigation, it was
11 important to me, yes.

12 Q And even though she was important at that time,
13 to this day you have never ascertained where she
14 is, is that right?

15 MR. TOCHKA: Objection, Your Honor.

16 THE COURT: It's been asked and
17 answered, sir, please.

18 BY MR. DOOLIN:

19 Q Did you ever try to ascertain the identify of
20 this person named Devante?

21 A Yes.

22 Q And in your efforts to ascertain who Devante was,
23 it's fair to say that you called up other
24 officers who work in downtown Boston, is that

1 right?

2 A Those were among the efforts that I made, yes,
3 that's correct.

4 Q Were you ever able to ascertain the identity of
5 Devante?

6 A I was never able to identify Devante.

7 Q It's fair to say that in the days in April of
8 2000, that you and other officers went to the
9 home of Erica Butler, is that right?

10 A I did not but other officers did, that's correct.

11 Q Did you conduct an interview with Erica Butler?

12 A I did, yes.

13 Q And when you interviewed Erica Butler, it's fair
14 to say that you did so as a result of
15 investigating this case, is that right?

16 A It was part of this investigation, yes, that's
17 correct.

18 Q Was there some clothing that was taken from Erica
19 Butler's apartment?

20 A She actually delivered, gave some clothing over,
21 some articles over to a couple detectives, yes.

22 Q The clothing was delivered by Erica Butler to the
23 Boston Police Department. Did you have reason to
24 believe that that was Jason Robinson's clothing?

1 MR. TOCHKA: Objection, Your Honor.

2 THE COURT: He may answer that.

3 A I had reason to believe that some of it was
4 clothing and that others were articles left by
5 him at her residence.

6 BY MR. DOOLIN:

7 Q So it's fair to say you came into possession of
8 Jason Robinson's clothing on April 5 of the year
9 2000, is that right?

10 MR. TOCHKA: Objection, Your Honor.

11 Objection.

12 THE COURT: He may answer that.

13 MR. TOCHKA: May I be heard at side
14 bar?

15 THE COURT: Is it necessary?

16 MR. TOCHKA: Yes, Your Honor.

17 (Whereupon, the following discussion
18 occurred at side bar:)

19 THE COURT: What is your objection?

20 MR. TOCHKA: There is no evidence that
21 this was Jason Robinson's clothing. Basically
22 this is just a back door way --

23 THE COURT: Excuse me. He just
24 answered it was Jason Robinson's.

1 MR. TOCHKA: No, he didn't. He said I
2 had reason to believe when I objected. He can
3 only believe what Erica Butler is saying.

4 THE COURT: What good faith basis do
5 you have?

6 MR. DOOLIN: This report, Your Honor.
7 It's a report that's done by -- or it's a taped
8 statement, I should say, of Erica Butler and in
9 the report they talk about clothing that is Jason
10 Robinson's clothing. I can probably find the
11 right page.

12 MR. TOCHKA: I agree that she says it's
13 Jason Robinson's clothing. She is not here to
14 say it's the clothing.

15 THE COURT: I'm going to strike all
16 this, sir, if that's the only basis you have.

17 MR. DOOLIN: Can I just be heard,
18 Judge? Just to make a record, what I'm going to
19 try to do with this officer is, as a result of
20 taking this clothing, five or seven days after
21 this incident happened, that this clothing was
22 never analyzed for any -- this is allegedly Jason
23 Robinson's clothing. It's taken a very short
24 period of time after this. It's left at a house

1 and at this point no analysis at all is done on
2 it.

3 THE COURT: Who said it was Jason
4 Robinson's clothing?

5 MR. DOOLIN: They have it. They seized
6 it, and they didn't do any testing on it, Judge.

7 MR. TOCHKA: Erica Butler handed them a
8 bag and said, these are Jason Robinson's
9 clothing.

10 THE COURT: You don't have any evidence
11 that this was Jason Robinson's clothing, that
12 they have some grounds to believe that, other
13 than that somebody told them?

14 MR. DOOLIN: Well, Your Honor, I'm
15 asking him.

16 THE COURT: You're not listening to
17 what I'm saying.

18 MR. DOOLIN: I'm listening.

19 THE COURT: You asked him whether or
20 not he had reason to believe. You must put
21 before the jury what the grounds for his belief
22 were, let the jury assess that. Then you may
23 proceed.

24 MR. DOOLIN: Okay.

(Whereupon, the discussion at side bar
was concluded.)

BY MR. DOOLIN:

Q Did you receive some items from Erica Butler on
April 5?

A Yes.

Q Did you have a conversation with Ms. Butler?

A Yes.

Q Did she give you some clothing?

A Yes.

Q Did she tell you that it was Jason Robinson's
clothing?

A She told me it was left by Jason Robinson at her
house.

Q Did it appear to be the clothing of a male?

A Yes.

Q Did you bring it to the crime lab?

A Did not submit that to the crime lab, no.

Q Never analyzed, was it?

A There was no need to analyze it. I did not
submit it to the crime lab. Not everything that
I take into possession goes to the crime lab.

Q But clothing that's seized a week after this
incident is never taken to the crime lab to be

1 analyzed for the presence of blood?

2 A Clothing that I came into custody of, not that
3 was seized but that I came into custody of with
4 no direct link to this crime would not have been
5 submitted to the crime lab, no.

6 Q So they didn't even look at it, is that right?

7 A I viewed it, yes. I viewed it.

8 Q The crime lab didn't, though, is that right?

9 A I would not submit it to the crime lab unless it
10 had some evidence that would require further
11 testing. I did not submit it.

12 MR. DOOLIN: I don't have any further
13 questions.

14 THE COURT: Mr. Flaherty?

15

16 CROSS EXAMINATION

17 BY MR. FLAHERTY:

18 Q Detective Sergeant Coleman, my name is Timothy
19 Flaherty. I'm an attorney. I represent Mr.
20 Anderson.

21 If I ask you anything you don't
22 understand or if I confuse you, please tell me
23 and I'll try and rephrase it. Okay?

24 A Very good.

1 Q Sir, there is a statute in Massachusetts, is
2 there not, that states the district attorney's
3 office has the obligation of investigating all
4 homicides? Correct?

5 A The statute, right. The statute gives
6 jurisdiction or authority to the DA's office for
7 death investigations, that's correct.

8 Q And are you familiar with the acronym, CPAC?

9 A CPAC, yes, I am familiar with it.

10 Q And that stands for crime prevention and control
11 unit, correct?

12 A Actually, I never knew exactly what it stood for
13 but I'm familiar with the term, CPAC. That's a
14 Massachusetts State Police outfit as far as I'm
15 aware.

16 Q And in the eleven District Attorney's offices in
17 the Commonwealth of Massachusetts, every one has
18 a CPAC unit, isn't that correct?

19 A That's my understanding. I'm not a state police
20 officer but that's my understanding, yes.

21 Q Is it your understanding, sir, that the City of
22 Boston is the only local police department that
23 conducts death investigations?

24 MR. TOCHKA: Objection, Your Honor, as

1 to relevance.

2 THE COURT: I'll allow him to answer
3 the question.

4 A Actually, it's my understanding that there are
5 other municipalities that have -- although not
6 exclusive jurisdiction, have a great deal of
7 involvement in investigations of homicides and
8 deaths in their jurisdiction.

9 Q Right. The locals work with the state police but
10 the death investigation is in their jurisdiction
11 everywhere else in the Commonwealth except for
12 Boston, right?

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. FLAHERTY:

16 Q Well, in Boston and in this investigation
17 specifically, was the state police involved?

18 A In this investigation specifically, no, they were
19 not involved. They would have no jurisdiction to
20 be involved in the investigation.

21 Q And is it your understanding, sir, that the
22 Boston Police has the jurisdiction of death
23 investigations in the City of Boston?

24 A In the City of Boston, with certain exceptions

1 that are outlined through an agreement with the
2 DA's office that, you know, where the state
3 police would have jurisdiction.

4 Q And that would be Revere, Winthrop, Chelsea,
5 those areas and the areas that border Boston?

6 A Well, they are not in the City of Boston and
7 there are areas within the City of Boston,
8 Suffolk County DA's office does, in fact, have a
9 CPAC unit made up of city police officers and
10 investigators. The City of Boston specifically
11 has a homicide unit within the City of Boston.

12 Outside of my own primary jurisdiction,
13 there are some areas where the state police would
14 have jurisdiction such as the Southeast
15 Expressway which travels through the City of
16 Boston or certain port properties or certain
17 roadways that were formerly Metropolitan District
18 Commission roadways patrolled by those police
19 agencies, on the banks of the Charles River,
20 although they are well within the city limits,
21 they are state jurisdiction for death
22 investigations.

23 Q And other than the areas you outlined, the Boston
24 Police has sole jurisdiction over death

1 investigations in every other part of the City of
2 Boston, right?

3 A As determined, if there is any kind of a
4 question, it's determined by the DA's office but
5 generally, yes, the Boston Police Department
6 investigates Boston homicides with certain
7 exceptions, that's correct.

8 Q And as far as you know, sir, there is not another
9 city in the Commonwealth that does it that way,
10 right?

11 MR. TOCHKA: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. FLAHERTY:

14 Q Sir, you testified on cross examination in
15 response to a question regarding an interview,
16 correct me if I'm wrong, your response, your
17 reason was, words to the effect of, what I
18 document is what I feel should be part of this
19 case. Is that right?

20 A That's accurate to what I said, yes.

21 Q Sir, are you suggesting that you decide what's
22 evidence in the case and what's not evidence in
23 the case?

24 A I decide what is important at the time that I'm

1 listening to it, at the time that I'm doing it.
2 As far as whether it's evidence or not, only the
3 case will determine whether something becomes
4 evidence. If there is something with relevance
5 and whether or not it's important may not have
6 been the accurate word to use, but based on what
7 I know at a given time and based upon the
8 information being given to me, assuming that
9 there is information being provided, that's when
10 I would decide whether or not a report is
11 necessary.

12 The fact that someone says something or
13 said something that's already been repeated
14 several times to other police officers, would I
15 document that? Quite frankly, no, only because
16 it becomes unnecessary, becomes redundant and
17 it's physically not possible to write down every
18 person that says nothing. It's not possible.

19 Q And isn't it fair to say that you are the chief
20 officer in the case or chief investigating
21 officer?

22 A I don't use the term chief. I'm a sergeant
23 detective assigned to the homicide unit. Among
24 my responsibilities is to supervise and

1 coordinate investigations which can consist of
2 the efforts of a number of investigators,
3 civilian personnel from the crime scene,
4 photographers, outside agencies. We don't use
5 the term chief. I'm reluctant to characterize
6 anything to do with chief investigator.

7 Q Does the buck stop with you, Detective Coleman?

8 MR. TOCHKA: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. FLAHERTY:

11 Q Is the ultimate responsibility of the case yours,
12 Detective Coleman? Is that a fair statement?

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: He may answer.

15 A In terms of the investigation, I wouldn't say the
16 buck stops with me but I am the person whom all
17 the other people will come back to. I am, you
18 know, for lack of a better term than the buck
19 stops with me, it does not stop with me but as a
20 sergeant detective, part of my role is to make
21 certain decisions and I make those decisions when
22 they're warranted. That's my position.

23 BY MR. FLAHERTY:

24 Q And those decisions, according to your testimony,

1 are determining what is relevant, correct?

2 A In certain cases, that's right.

3 Q Determining what is important? You are the one

4 who makes that decision, correct?

5 A Important in terms of its relevance to the case,

6 yes.

7 Q Determining what information is recorded and what
8 information is not recorded, correct?

9 A Not necessarily, no. I make that determination
10 of what's recorded on my own contacts with
11 people. Other officers will document things and,
12 quite often, they'll document things that are
13 pretty unnecessary but they're documented. Those
14 decisions that I make on my own encounters or
15 contacts with people are what I talk about,
16 whether I document it physically or not.

17 Q When you use the phrase, unnecessary, sir, that's
18 your characterization of what's necessary or
19 unnecessary, correct?

20 A It's not necessarily that it's unnecessary but
21 it's -- it has no bearing or relevance as to the
22 case or the investigation as it is developing at
23 that point, that's correct. I have to make a
24 determination at certain points. Part of my

responsibilities is to make decisions. I make the decisions. That's the nature of what I do. I have to make decisions. Could I possibly document every single thing that's done? If that's done, there's a lot of things that are going to be sacrificed because of it and that's my decision that I have to make in the best interests of the case.

Q On March 27 or, I should say, March 28, in the early morning hours when you responded to 89 Faneuil Street, you made several decisions, correct?

A I made many decisions that day.

Q The decisions you made were to contact the Boston Police Department crime laboratory, right?

A That's correct.

Q You contacted photography personnel, right?

A They were contacted basically as part of a general notification unit. They are contacted when I'm contacted.

Q You contacted crime scene personnel, Christine Stevens?

A That's the crime lab. That's the crime lab.

Q She brought an assistant, Susan Coyne, with her,

1 right?

2 A They also respond in pairs, that's correct.

3 Q And you made a decision not to contact the
4 fingerprint specialist, correct?

5 A That's my decision, that's correct.

6 Q And that decision was made by you?

7 A That's my decision, yes. It was made by me.

8 Q Now, you have training and experience in crime
9 scene investigation, right?

10 A Yes, I have.

11 Q Has that training and experience that you've
12 received, Sergeant Detective Coleman, encompassed
13 the field of study known as blood splatter
14 evidence?

15 A I have not been trained on blood spatter evidence
16 or interpretation. I am aware that it exists.
17 I'm aware that I have seen it through my own
18 experience at a number of scenes. I'm aware of
19 it but I have not been trained in it.

20 Q Did you make a decision -- well, does the Boston
21 Police Department crime laboratory have a blood
22 spatter person?

23 A The crime laboratory has a number of different
24 areas that they specialize in. That's why we

1 utilize them. That's why I leave certain things
2 to them, what they do.

3 Q Did you make a decision that day, March 28, to
4 contact any blood spatter technician to come to
5 the scene at 89 Faneuil?

6 A I had the crime lab respond to 89 Faneuil and I
7 asked them to look around the scene. I defined
8 for them what the areas of interest were. [REDACTED]
9 [REDACTED] brought to my attention that there was some
10 substance that appeared to be some blood spatter
11 on one of the interior walls of 89 Faneuil. As I
12 stated earlier, I became aware of, but, quite
13 frankly, moved on because that's someone else's
14 responsibility and they were tending to it and I
15 moved on with it. That's the nature of what I
16 have to do.

17 Q Did you summons or did you make a decision one
18 way or the other to summons a ballistics or a
19 person for ballistics recovery to 89 Faneuil
20 Street in the early morning hours?

21 A [REDACTED] There was no ballistics to recover so I did not
22 need a ballistics or anyone from the ballistics
23 unit to respond there.

24 Q That's not accurate, is it, Detective Coleman?

1 MR. TOCHKA: Objection, argumentative.

2 THE COURT: Sustained.

3 BY MR. FLAHERTY:

4 Q Well, you directed certain police officers to go
5 back to 89 Faneuil Street several days after your
6 investigation of the crime scene, right?

7 A I did.

8 Q Alright. Now, when you first responded to 89
9 Faneuil Street, I think you used the term primary
10 crime scene, is that right?

11 A That's right, yes.

12 Q And your definition of primary crime scene is
13 immediate twenty feet or so around what you
14 observe, right?

15 A Well, in this case that's about what I determined
16 it was, about twenty feet or so. That's not
17 necessarily true of every case. A primary could
18 be a lot bigger, could be a lot smaller.

19 Q The interior hallway of 89 Faneuil, was that
20 within the bounds of your primary crime scene as
21 you determined it relevant that day?

22 A The interior hallway was not necessarily part of
23 what I considered my primary crime scene. My
24 primary scene consisted of the outside doorway,

1 of the body of Iman Yazbek and items that I
2 marked outside with the cones, and I considered
3 that immediate area as my primary crime scene.

4 Q Did the gray Buick Skylark fall within the
5 boundaries of your primary crime scene?

6 A It wasn't in the immediate part of the primary
7 crime scene but certainly it was an area of next
8 concern right there, yes.

9 Q Now you're familiar, are you not, with the
10 different ways that we conduct crime scene
11 investigations, right? Crime scene searches?

12 A Am I familiar with crime scene searches?

13 Q Right. There's different patterns of searches
14 that we use, right?

15 A Yes, I'm familiar with a number of different
16 patterns or techniques or strategies used for
17 crime scene.

18 Q And are you familiar with the practice of
19 deciding which type of crime scene search pattern
20 you'd use prior to searching the crime scene?

21 A I'd ask you to clarify whether we're talking
22 about an indoor or outdoor, whether it's a -- you
23 know, what kind of terrain.

24 Q Let's talk about 89 Faneuil Street.

1 A Okay.

2 Q In the early morning hours of March 28, 2000,
3 when you responded, you're familiar with the
4 crime scene search known as a swoop search,
5 right?

6 A That's right.

7 Q A stripe search, right?

8 A That's correct.

9 Q A grid search, right?

10 A That's correct.

11 Q A circle search, right?

12 A Correct.

13 Q A spiral search, right?

14 A Correct.

15 Q And a wheel search, correct?

16 A A wheel search, that's correct.

17 Q The reasons we use these different patterns of
18 searches is so we uncover or discover any
19 evidence that the investigating officer may deem
20 important or relevant in the course of the
21 investigation, right?

22 A These search patterns are a number of different
23 patterns that are suggested and identified in
24 textbooks and readings on crime scene

1 investigation. The best efforts that you make in
2 a reality situation, in all likelihood, and as
3 the textbooks actually suggest, in all likelihood
4 you're using a combination of two or more of
5 those suggested patterns. Specifically
6 regarding 89 Faneuil Street, given the terrain
7 that we had, the perimeter that I established as
8 my concerns, I would not be able to identify one
9 single pattern. We used a number of different
10 techniques out there to look for things.

11 Q That's a housing development, right?

12 A It's a housing development, right.

13 Q Brick and mortar, right?

14 A That's correct.

15 Q You are a Boston Police homicide detective,
16 right?

17 A That's correct.

18 Q You have been to housing developments in the
19 past, right?

20 A As a homicide investigator and well before it.

21 Q And you're very familiar with them, right?

22 A Very familiar.

23 Q Nothing unusual with this crime scene, right?

24 A There was plenty unusual about this crime scene.

1 Q Well, is it fair to say that in your
2 investigation on March 28 of 2000 there were
3 certain items that were not retrieved, not
4 recovered?

5 A I know there were items that were not recovered
6 in that area of 89 Faneuil Street.

7 Q Okay. Now, when you were present, there were a
8 number of police officers present as well, right?

9 A At various times, yes, there were.

10 Q There was Police Officer Tommy Pettus from the ID
11 unit, right?

12 A That's correct.

13 Q Was he the photographer?

14 A Yes, he was.

15 Q Now, at some point I'm sure, Detective Coleman,
16 that the interior of 89 Faneuil Street, that
17 hallway, from the body of Iman Yazbek, that
18 hallway, that became relevant in your mind in the
19 investigation, right?

20 A Yes.

21 Q And did you direct the photographer, Pettus, to
22 go in and take pictures in the morning of March
23 28, 2000?

24 A I don't know if Pettus took them but I know that

1 there were some photographs taken inside that
2 hallway.

3 Q My question is, did you direct Pettus to take
4 photographs in the hallway?

5 A And my answer is, I don't know if Pettus took
6 them.

7 Q My question is, do you know if you directed
8 Pettus to take the pictures in the hallway?

9 A My answer would be, I don't know if I directed
10 him to take those pictures.

11 Q You saw what was in the hallway, correct?

12 A I made some observations in the hallway, yes.

13 Q And the observations you made in the hallway, did
14 they fall within the category of relevance in
15 your mind as the investigating officer?

16 A Yes, they did.

17 Q Did they fall within the category of importance
18 in your mind as an investigating officer?

19 A Well, relevance, yes. Importance is more
20 determined as the case proceeds.

21 Q Exactly, because what's in there needs to be
22 further analyzed by scientific tests, right? To
23 determine whether or not it's important?

24 A That's not necessarily -- you characterize things

1 as important as you see how the case develops and
2 you decide whether it has an increased relevance
3 or a decreased relevance. The importance is
4 determined by the investigation. The scene
5 itself doesn't tell you anything until you've
6 developed an investigation to the point where you
7 can now interpret things certain ways. So the
8 investigation is my primary concern at this point
9 although evidence is a significant part of the
10 investigation.

11 Q It's your testimony that the scene itself tells
12 you nothing in an investigation?

13 A That's not my testimony. That's not at all what
14 I just said.

15 Q Okay. Maybe I misunderstood.

16 A I think you did. That's not at all what I said.

17 Q ~~You are familiar with DNA evidence, right?~~

18 A ~~Familiar, yes.~~

19 Q You're familiar with blood sampling and typing
20 evidence, right?

21 A ~~Blood evidence can be typed and DNA eventually~~
22 ~~can be drawn from it, yes, certainly.~~

23 Q You're familiar with blood spatter and blood
24 stain interpretation at crime scenes, correct?

1 A I'm familiar that it can be done. I'm not
2 trained in it.

3 Q You're familiar with fingerprinting evidence such
4 as lifting latent prints from items and objects
5 and areas at a crime scene, right?

6 A I'm familiar with that it can be done, yes. It
7 can be done.

8 Q Are you familiar, sir, with the use of certain
9 chemicals such as leuco crystal violets?

10 A No, I'm not.

11 Q Do you know what the purpose of leuco crystal
12 violet is at a crime scene?

13 A I am not familiar with it, sir.

14 THE COURT: May I see you at side bar?

15 (Whereupon, the following discussion
16 occurred at side bar:)

17 THE COURT: Mr. Flaherty, again, is
18 there going to be put before the jury an
19 explanation of what these terms are?

20 MR. FLAHERTY: I expect from Christine
21 Stevens, the criminalist, who will testify. I'm
22 hoping, Your Honor, she understands what leuco
23 crystal violet is.

24 THE COURT: Is she testifying, sir?

1 MR. TOCHKA: I don't believe she is
2 going to be.

3 MR. FLAHERTY: I'll call her as a
4 witness if she is not testifying for the
5 government.

6 THE COURT: I am advising you of this,
7 there has to be a good faith basis for your
8 questions unless you can show a connection in
9 some way that there is going to be some
10 explanation put before the jury about what these
11 things mean or whether they are relevant to this
12 case.

13 MR. FLAHERTY: Most respectfully, Your
14 Honor, this man has identified himself as a
15 sergeant detective supervisor in the homicide
16 unit of the Boston Police Department. He is the
17 one making decisions as to importance, relevance
18 of evidence at a crime scene, and I think it's
19 proper cross examination to determine the basis
20 of his training and experience and what tools
21 were available to him when he made those
22 decisions at a crime scene.

23 THE COURT: There is no doubt about
24 that, sir. That's not what I'm saying. What I'm

1 saying is that these questions about, is he
2 familiar with this, is he familiar with that,
3 there is no demonstrated relevance to the case at
4 this point and I'm asking you whether you have a
5 good faith basis to show that there is or that
6 these terms will be explained by someone.

7 MR. FLAHERTY: My good faith is, Your
8 Honor, there was a criminalist from the Boston
9 Police Department crime lab who was summoned to
10 the scene by the name of Christine Stevens who
11 filed a report of collection and preservation and
12 amplification of certain evidence in her report.
13 In my opinion there are glaring instances of
14 voids of things that she did not do.

15 THE COURT: That may be so. I don't
16 want to repeat myself and I think you understand
17 the point.

18 MR. FLAHERTY: I understand the point.

19 THE COURT: So you may continue with
20 that caution that there has to be some way for
21 the jury to evaluate what it is that you're
22 asking, and to throw these terms out, and he has
23 indicated he is not an expert in this, so I will
24 leave it at that. You will have to have some

1 tie-in to this case and some explanation that's
2 going to come before the jury what these tests
3 are and what they would yield if, in fact, they
4 were used.

5 MR. FLAHERTY: That's my point. Under
6 Commonwealth versus Bowden, if they were not
7 performed, then we are entitled to that. I would
8 respectfully suggest that I'm trying to inquire
9 about that with Detective Coleman, whether or not,
10 certain tests were performed.

11 THE COURT: I will say this just once
12 more, there has to be a demonstrated relevance
13 here. There are many, many tests that can be
14 performed. The issue is whether or not they
15 should have been performed here, not what the
16 test results are but whether the kind of results
17 these tests would have yielded had they been
18 performed.

19 MR. FLAHERTY: Exactly, Judge, and
20 that's why I'm asking this investigating officer
21 if he even knows of the existence of these tests,
22 Your Honor.

23 THE COURT: And you are going to later
24 show whether these tests would have been helpful.

1 in this investigation through evidence or
2 testimony?

3 MR. FLAHERTY: Exactly.

4 (Whereupon, the discussion at side bar
5 was concluded.)

6 BY MR. FLAHERTY:

7 Q Are you familiar, Detective Coleman, with the use
8 of any reagents that can be applied to blood to
9 enhance, enhance their visibility?

10 A I am familiar that there are certain chemicals
11 that the crime lab will utilize to help them in
12 their efforts to develop certain things, yes.

13 Q And you saw in the interior of 89 Faneuil Street
14 what you believed to be some blood stain
15 evidence, right?

16 A That was pointed out to me, yes.

17 Q Did you direct anyone in the crime lab or make
18 any requests of them in the early decisions you
19 were making to bring any of the chemicals that
20 may be used to illuminate blood evidence or trace
21 evidence?

22 A I did not suggest it nor did I request any of
23 that to be done, no.

24 Q Are you familiar with foot impression evidence?

1 A Slightly, not formally trained in it but I'm
2 aware of it. I'm familiar with it.

3 Q And are you familiar with the understanding that
4 foot impression evidence basically means that
5 footprints may be left somewhere at a scene? The
6 possibility of it?

7 A At its simplest form, that's correct. Things
8 could be left, shoe impressions, foot
9 impressions.

10 Q And does the Boston Police Department crime
11 laboratory have a person that has studied foot
12 impressions, the study and amplification of foot
13 impression evidence?

14 A There are people within the lab, personnel within
15 the lab, as I stated, who have a number of
16 different expertise areas. I'm aware that
17 several have expertise in the area of footwear
18 and footwear impression collection.

19 Q Did you summon any of those persons to the scene
20 on March 28, 2000?

21 A I had no need of that.

22 Q And is that because you determined that there was
23 no importance to find out if there was any foot
24 impression evidence?

1 A I can't call someone to collect something that's
2 not observed at a scene. If it's not seen at a
3 scene or there isn't any kind of an indication
4 that something is there, I wouldn't simply call
5 out every single person that has any kind of an
6 expertise, you know, unless there is some
7 evidence. I go by what is there and you make a
8 decision on what type of people you need there.

9 Q Are you familiar with the phrase or the term,
10 occult blood?

11 A I'm not familiar with that, no.

12 Q You're not familiar that occult blood is blood
13 that's not visible to the human eye?

14 A Not familiar with the phrase, occult blood.

15 Q Now, you testified that you were delegating
16 responsibility at the scene, right?

17 A That's among the things I do, that's correct.

18 Q I'm correct, you were delegating the criminalist
19 people to do what they thought was important,
20 right?

21 A Well, I asked them to review the scene and to
22 look for things that, you know, that they
23 determine might have some relevance there and get
24 back to me on those things, that's correct.

1 That's one of the things.

2 Q And you were delegating other officers to obtain
3 witness statements, correct?

4 A To conduct a canvass of the buildings and the
5 units in that area, that's correct.

6 Q You delegated other officers to search for
7 ballistics, correct?

8 A I participated in that with some other officers
9 later on in the scene, that's correct.

10 Q So that was your role, participating in the
11 search for ballistics evidence?

12 A That was one of the roles I had, yes, that's
13 correct.

14 Q A light truck was available to you at that time,
15 correct?

16 A The light truck is always available to us as we
17 are there. They are on a twenty-four hour on
18 call and if they're necessary, they can be
19 brought out, that's correct.

20 Q Was the light truck at 89 Faneuil Street?

21 A I did not see them at 89 Faneuil Street. I am
22 aware that they were notified and I was asked if
23 I wanted them and I instructed the person I spoke
24 to that I didn't need them because it would be

1 daylight so I didn't need a lighting truck in the
2 daylight.

3 Q When you conducted your search for ballistics
4 evidence, was it daylight?

5 A Yes, it was.

6 Q And how many officers were with you when you
7 conducted the search for ballistics evidence?

8 A Probably two, in addition to myself.

9 Q And you covered the area using one of the
10 patterns, one of the crime scene patterns, right?

11 A No. I covered the area using a reasonable search
12 effort, walking back and forth, looking on the
13 ground, looking in areas in that general area.

14 Q Is it a fair statement, Detective Coleman, that
15 your reasonable search efforts failed?

16 A That it failed?

17 Q Yeah.

18 A I would say that my reasonable search efforts and
19 probably more than reasonable search efforts
20 produced no ballistics evidence at that scene. I
21 wouldn't say -- I wouldn't characterize it as
22 failing.

23 Q You knew at that time that this was a gunshot
24 wound, right?

- 1 A At the time I made that search I absolutely knew
2 that it was a gunshot wound suspected as a result
3 of Dr. Zanes' preliminary examination of Iman
4 Yazbek's body at that scene.
- 5 Q And that's in the early morning hours of March
6 28, 2000, right?
- 7 A It's early to late morning.
- 8 Q Prior to any autopsy being performed?
- 9 A That's correct.
- 10 Q No question in your mind this is a gunshot
11 victim, right?
- 12 A Based on the information I got from Zane, I'm not
13 going to question the medical examiner's
14 observations at a scene. That's why I made those
15 efforts to look for ballistics evidence.
- 16 Q As far as crime scene investigation, Detective
17 Coleman, you understand the importance of the
18 integrity of a crime scene, right?
- 19 A Yes.
- 20 Q That's why you used the rubber gloves when you
21 approached the body of Iman Yazbek, right?
- 22 A That's one of the reasons, that's correct.
- 23 Q And that's also one of the reasons why I think
24 you testified you put additional covering over

1 the body of Iman Yazbek, right?

2 A That's one of the reasons I did it, that's

3 correct.

4 Q And I think that's also probably one of the
5 reasons why you placed the cones in certain areas
6 at the scene, correct?

7 A Well, the cones are placed as a means of helping
8 to identify and document certain articles that
9 are scene. You basically try to depict the area
10 as best you can in the condition that you first
11 observe it. Certain articles are small enough
12 that you want to put a cone next to them so you
13 can see that they're there in a photograph.
14 That's more documentation.

15 Q It's important also to preserve the scene, right?
16 That's why crime scene tape goes around it?

17 A Yes, securing the scene to keep people from
18 entering it needlessly. That's what the yellow
19 tape is for, that's correct.

20 Q Because you don't want any persons or any
21 elements to disturb the scene, right?

22 A Well, the yellow tape isn't going to keep
23 elements off but it hopefully will keep people
24 out.

- 1 Q What did you do with respect to the gray Buick
2 automobile in order to preserve the integrity of
3 what might be inside the gray Buick automobile?
- 4 A Well, it was eventually towed.
- 5 Q It was towed for the purpose of processing it at
6 the crime lab?
- 7 A It was towed for the purpose of reviewing it
8 because at the time it was towed, like a lot of
9 the articles at that scene, I had no direct
10 relationship between this incident and that
11 vehicle other than a gray Buick parked right
12 there next -- in the area next to the primary
13 scene with a window down, coming back to an
14 individual from Watertown, and based upon the
15 information I was getting from the canvass, I had
16 no indication that it belonged in that area.
17 That's why it was towed. I didn't know, quite
18 frankly, I didn't know, other than a review of
19 that vehicle, what the future held for that
20 vehicle.
- 21 Q Did you find the keys at the scene?
- 22 A There were keys found at the scene, yes. There
23 were keys on a key ring found.
- 24 Q Keys in the car?

- 1 A I didn't see any keys in the car that I had
2 observed.
- 3 Q Keys ten feet away from the car with no keys in
4 it?
- 5 A There were keys. I don't know that I'd say ten
6 feet but they were on the doorstep of 89. There
7 were a set of keys recovered by the crime lab.
- 8 Q Fifteen feet away from the car with no keys in
9 it?
- 10 A Yes, fifteen to twenty feet is probably accurate.
- 11 Q ~~The car with no keys in it and keys on the steps~~
12 ~~near a dead body?~~
- 13 A ~~Exactly.~~
- 14 Q Buick keys?
- 15 A I don't know that they were Buick keys. They
16 were collected by the lab. I had no opportunity
17 to review every key on that key ring at that
18 time.
- 19 Q You took a look at the keys, right?
- 20 A I took a look at a key ring that was on the
21 ground. I saw them.
- 22 Q Based on the keys, the Buick, and the body in
23 between them, there was some significance in your
24 mind in the early morning hours of March 28,

1 2000, as to the Buick, wasn't there, Detective
2 Coleman?

3 A [REDACTED]
4 [REDACTED]
5 [REDACTED] That's the
6 [REDACTED] whole reason for taking it.

7 Q And the follow-up to towing it to the Boston
8 Police garage, is it not, for proper crime scene
9 investigation to process the vehicle, right?

10 A Yes.

11 Q A fair, logical statement, is it not?

12 A Well, processing is kind of a very generic term.
13 It's certainly to review it and see what
14 significance it may have or what, what things can
15 be done to this car.

16 Q Like, for instance, to fingerprint the steering
17 wheel, right?

18 A You could fingerprint anything.

19 Q You might even apply some of the chemical
20 reagents to the interior of the car to see if
21 there is blood or trace evidence inside the car?

22 A If there was a need to do certain things, you
23 could absolutely do a lot of different things.

24 Q And in your mind, sir, based on your observations

1 March 28, 2000 of the car with no keys, the keys
2 on the opposite side of the body, the glasses,
3 the lens, the batteries, and the body of Iman
4 Yazbek, in your mind did you feel it was
5 important to process that automobile?

6 A It's not necessarily in my mind. It's what the
7 investigation developed into. There was not a
8 significant need to further process other than
9 what was done on that car.

10 Q Your opinion, right, Detective Coleman?

11 A That's my opinion based on this investigation,
12 yes.

13 Q It's true, is it not, that had the vehicle been
14 processed, that evidence may have been found?

15 MR. TOCHKA: Objection, Your Honor.

16 THE COURT: Rephrase the question, sir.

17 BY MR. FLAHERTY:

18 Q Well, the vehicle was never processed, was it?

19 A I did not have that vehicle processed other than
20 to have Detective Sharon Wong review it and
21 collect certain items that might be of some
22 significance.

23 Q And you also never had the door leading inside 89
24 Faneuil Street processed for blood or trace or

1 fingerprint evidence, right?

2 A I did not request the fingerprint person to the
3 scene. I had no indication that there was a
4 doorway involved there. You know, it's a project
5 doorway with a number of people coming and going
6 from it. The fact that there would be or could
7 be certain fingerprints on there may have zero
8 significance to this case. As I say, anything
9 can be fingerprinted. You need to follow the
10 investigation to determine what should be
11 fingerprinted.

12 Q Wouldn't it be good in following the
13 investigation to fingerprint everything?

14 A Would it be good?

15 Q Sure.

16 A There is a lot of things that would be good that
17 just aren't realistic.

18 Q It was raining that morning, wasn't it?

19 A ~~It was pouring that morning.~~

20 Q Was that a reason why things weren't
21 fingerprinted?

22 A No it was not.

23 Q How about the clothes from Mr. Yazbek? I think
24 they are Exhibit 17 and Exhibit 16. Were they

1 processed for trace evidence?

2 A They were submitted to the lab from the medical
3 examiner's office, yes.

4 Q And after the lab, when they went from the
5 medical examiner's office to the lab, did you
6 ever request anyone in the lab to process the
7 clothes of Mr. Yazbek for any trace evidence?

8 A I asked them to do certain blood testing on it,
9 to just look at the blood on it.

10 Q Was it determined to your mind whether or not
11 blood was on Mr. Yazbek's clothes or if it was
12 Mr. Yazbek's blood at all?

13 A I did not ask for anything further than typing on
14 the blood. I did not ask for further DNA. It
15 just wasn't necessary in this case in my opinion.

16 Q Detective Coleman, you asked for a typing of the
17 blood on the clothes?

18 A I asked that the blood be examined -- that the
19 blood be examined. It may not necessarily have
20 been typed but that it be examined, the lab look
21 at the blood.

22 Q And did you receive any information as to what
23 was contained on the clothes recovered from Mr.
24 Yazbek?

1 A Yes, I did.

2 Q Was it processed for saliva, do you know?

3 A I did not ask that it be processed for anything

4 further than to look at the blood.

5 Q The yellow trauma blanket that you say was on top

6 of Mr. Yazbek when you showed up, was that placed

7 there by whom, to your knowledge?

8 A To my knowledge it was by the EMT's that

9 initially responded.

10 Q And was there anything else placed over the body

11 of Mr. Yazbek?

12 A Eventually there was, yes.

13 Q And what was that, sir?

14 A I placed another yellow trauma blanket that I

15 took from the trunk of my car, placed that on top

16 and I also placed a white sheet on top of that.

17 Q Now, in your investigation, you found the Wall

18 Street Journal outside, right?

19 A I observed a Wall Street Journal outside, that's

20 correct.

21 Q How was the Wall Street Journal collected?

22 A It was collected by a detective from District 14

23 after I had left the scene. It was not -- it was

24 intentionally not collected by me or it was not

1 at my direction to collect it because, again,
2 there are things at the scene that are documented
3 through photographs, they are documented through
4 a report, and weren't collected. That was
5 brought to me by another detective.

6 Q It wasn't collected by anyone in the crime lab,
7 right?

8 A That's correct.

9 Q And do you know whether or not it was processed
10 at any time by anyone in the crime lab?

11 A That was given to me and I did not submit it to
12 the lab because it was not collected for any
13 purpose other than this other detective, after I
14 had already left the scene, wanted to bring it to
15 my office. It was left there intentionally by me
16 at the scene.

17 Q And when you did not submit it to the crime lab,
18 is that because this is one of the decisions you
19 made that this was not important or relevant in
20 the investigation?

21 A Submitting it to the crime lab, I don't know what
22 I would submit it to the crime lab for.

23 Q Detective Coleman, you made some efforts at some
24 point to try and determine who the person was

1 that may have delivered the paper that morning?

2 A I made a phone call, that's correct.

3 Q Did you go out and interview the person?

4 A Spoke to the person on the telephone.

5 Q And when did that take place in relationship to
6 March 28, 2000?

7 A It was in the week -- in the first couple of
8 weeks after the investigation.

9 Q And there is no report of your interview of this
10 person who delivered the paper?

11 A There is no report of the three to five minute
12 phone conversation I had with that person, that's
13 correct.

14 Q Are you aware that the paper -- what time it was
15 delivered?

16 A It was early morning hours. It was probably
17 prior to the arrival of the first officer, John
18 Rouvalis.

19 Q Now, during your investigation you spoke or you
20 had officers who spoke with Eddie Gauthier,
21 correct?

22 A I spoke with him, yes, sir.

23 Q You also spoke with Heather Coady, right?

24 A I spoke with her that morning briefly, that's

1 correct.

2 Q And you also spoke with Joleena Tate, right?

3 A Yes, I did.

4 Q Was Eddie Gauthier ever fingerprinted?

5 A Eddie Gauthier was not fingerprinted.

6 Q Was Heather Coady fingerprinted?

7 A Heather Coady was not fingerprinted relevant to
8 this case. Neither was Eddie Gauthier.

9 Q Was Joleena Tate ever fingerprinted?

10 A Joleena was fingerprinted at a later time
11 relevant to this case.

12 Q Were there any comparisons made with Joleena's
13 fingerprints to anybody?

14 A There were prints submitted to the latent print
15 unit and as far as I'm aware there were no
16 matches made as a result of any comparisons, no
17 matches made to any of the items that were
18 printed.

19 Q The morning of March 28, 2000, did you go around
20 the corner on Goodenough Street, Goodenough
21 Street, however you pronounce it, and speak to
22 anyone at the tow yard there, Fries Tow Service?

23 A Did I?

24 Q Or did you direct anyone to go over there?

1 A I did not nor did I direct anyone to go around
2 the corner. We were focusing, at that time
3 focusing attention in that area of that 89
4 Faneuil scene.

5 Q You did a canvassing of the housing project,
6 right?

7 A I directed that that be done, right. Yes.

8 Q And it's a fair statement, is it not, that
9 there's hundreds of windows with sight lines to
10 various locations within the housing project,
11 right?

12 A Yeah. I mean, every building there has hundreds
13 of windows and as far as that 89 Faneuil Street,
14 there were a number of areas that had partial
15 views of the area outside of 89 Faneuil Street.

16 Q And the apartment located directly above 89
17 Faneuil, the Laings, you made efforts to speak
18 with those people, right?

19 A That's right. They were spoken to as part --

20 Q Joanne Constable was spoken to, is that right?

21 A Joanne Constable was part of the canvass as well.

22 Q And Oscar Vega was spoken to across the way?

23 A Oscar Vega was spoken to as part of the canvass
24 and then he was interviewed on tape later on,

1 that's correct.

2 Q At some point did you receive some information
3 from Lieutenant Donahue from District 14?

4 A I received a report from Lieutenant Donahue, yes,
5 I did.

6 Q And with respect to the report that you received
7 from Detective Donahue, there was some
8 information contained in there regarding Mr.
9 Gauthier, among others, right?

10 A Among other things that were in that report was
11 the name, Eddie.

12 Q Okay. And with the name, Eddie, this report that
13 you received was on, is it fair to say, March 29,
14 2000 at about six o'clock in the evening?

15 A If that's the date on the report. I know it was
16 in the days following this incident. I'm not
17 exactly sure of the day of that exact report.

18 Q Did you fingerprint Eddie Gauthier after March
19 29?

20 A I did not need to fingerprint Eddie Gauthier at
21 that time.

22 Q No relevance or importance in your mind in this
23 investigation?

24 A It was not necessary to fingerprint him at that

1 time.

2 Q The clothes that were given to you by Erica
3 Butler that she told you were Jason Robinson's,
4 they were never processed by the crime lab?

5 A I did not submit them to the crime lab. After
6 looking at them, there was no need to submit them
7 to the crime lab.

8 Q Because in your mind there was no relevant or
9 important information on the clothes based upon
10 your observation?

11 A It's not in my mind. It's clear to see when you
12 look at them.

13 Q Again you are not familiar with the phrase
14 occult, occult blood, right?

15 THE COURT: It's been asked and
16 answered. Move on, please.

17 BY MR. FLAHERTY:

18 Q At some point, sir, Mr. Anderson and Mr. Robinson
19 were charged, right?

20 A Yes, they were.

21 Q You had information, did you not, that there was
22 a green Mazda used belonging to Mr. Anderson,
23 right?

24 A I had information about a green Mazda that

1 belonged to Mr. Anderson being involved, yes

2 Q You also had information this was a gunshot case,
3 right?

4 A Yes, I did.

5 Q You know from your familiarity with blood spatter
6 evidence that there may be blood evidence
7 transferred from one item to the next through
8 what's called high velocity splatter, right?

9 A That's correct.

10 Q And based upon your conversations and discussions
11 with Dr. Chirnov you believed this to be a close
12 contact wound, right?

13 A Later on I became aware of that fact, that's
14 correct. Yes.

15 Q And did you or any member of the crime lab
16 process the green Mazda belonging to Mr.
17 Anderson?

18 A At the time this investigation developed to the
19 point where there was substantial information
20 which linked that Mazda --

21 MR. FLAHERTY: Objection, objection.
22 Not responsive.

23 MR. TOCHKA: I believe he is trying to
24 answer the question.

1 THE COURT: I'll take it as a motion to
2 strike and allow it and it's stricken. Another
3 question, please.

4 BY MR. FLAHERTY:

5 Q My question, and please, if I'm confusing you,
6 tell me and I'll try and rephrase it --

7 MR. TOCHKA: Objection. Objection.

8 THE COURT: Just a question, please.

9 BY MR. FLAHERTY:

10 Q Did anybody process the green Mazda at any time
11 in the investigation?

12 A We never had possession of the green Mazda so it
13 was never processed.

14 Q You are familiar with search warrants, right?
15 You're a sergeant detective?

16 A Yes. Yes, I am.

17 Q You never applied for a search warrant for the
18 green Mazda?

19 A Search warrants are based upon probable cause in
20 an affidavit in writing and --

21 MR. FLAHERTY: Your Honor --

22 A (continued) I am an investigator, that's
23 correct.

24 MR. FLAHERTY: Your Honor.

1 THE COURT: Put another question.

2 MR. FLAHERTY: May I instruct the
3 witness to answer my question?

4 THE COURT: You may put another
5 question.

6 MR. FLAHERTY: Let me try again.

7 MR. TOCHKA: Objection to the
8 argumentative nature.

9 THE COURT: No comments, please, Mr.
10 Flaherty. Just a question.

11 BY MR. FLAHERTY:

12 Q Did you ever apply for a search warrant for the
13 home of Tanzerius Anderson? Yes or no.

14 A No.

15 Q Did you ever apply for a search warrant to search
16 any places, residences associated with Jason
17 Robinson?

18 A No.

19 Q There were some credit cards found in the Faneuil
20 housing development, right?

21 A Found on the street outside the Faneuil Street
22 area, that's correct.

23 Q Is it fair to say they were found at 51?

24 A That's what's been reported to me, yes.

1 Q And 51 is the last building, right?

2 A That's correct, yes.

3 Q Detective Coleman, you retrieved at the direction
4 of William Duane handwriting exemplars of Mr.
5 Anderson, correct?

6 A Yes, I did.

7 Q And you had never done that before, right?

8 A I had never done that before, that's correct.

9 Q And you're familiar -- well, I'll ask you, are
10 you familiar, sir, that the conditions under
11 which handwriting exemplars are obtained are
12 important in the comparison of handwriting?

13 A The conditions in what sense?

14 Q Of how they are obtained, how the handwriting
15 exemplar is filled out and how the person is
16 asked to sign the sheets.

17 A The instructions that I was given pursuant to
18 this particular exemplar --

19 Q Not the instructions, Detective Coleman, but are
20 you familiar that the way it is done is
21 important? The conditions under which the
22 exemplar is obtained is very important in making
23 a comparison?

24 Are you familiar with that? Yes or no.

1 A I don't quite understand the question, Mr.
2 Flaherty.

3 Q Well, at some point you were directed, were you
4 not, by Mr. Duane to obtain handwriting
5 exemplars? Right?

6 A Actually it was not at Mr. Duane's direction. He
7 was the resource that I utilized with reference
8 to those exemplars but I am a little confused at
9 so when you say conditions. I'm just not sure
10 what you mean by conditions.

11 Q Well, let me ask you this way. In your mind when
12 you obtained the handwriting exemplars from Mr.
13 Anderson, were you aware that it was important to
14 do it properly?

15 A Absolutely, yes.

16 Q And were you aware that the relative conditions
17 of obtaining the exemplars bears on the ultimate
18 comparison?

19 A I don't understand the question of relative
20 conditions, Mr. Flaherty. That's the only
21 confusion I have right now.

22 Q Alright. And it's fair to say that this is the
23 first time -- is this the only time you have ever
24 done it?

1 A ~~It's the only time I've ever done it, yes.~~

2 MR. FLAHERTY: Your Honor, I have no
3 further questions for Detective Coleman.

4 THE COURT: Thank you. Any redirect?

5 MR. TOCHKA: Yes, Your Honor.

6
7 REDIRECT EXAMINATION

8 BY MR. TOCHKA:

9 Q Detective Coleman, with respect to what's been
10 marked Exhibit E for identification, do those
11 things -- do those consist of two handwriting
12 samples of the defendant, Tanzerius Anderson?

13 A Yes, they do.

14 Q And were those samples made while you were in the
15 presence of Mr. Flaherty and Mr. Anderson or were
16 they made sometime prior to that?

17 A These were made prior to that.

18 Q And do you know how long prior to that those
19 samples had been made?

20 A One of them was made April 4 of 2000 and the
21 other one was made on July 17 if 2000.

22 Q And the samples that you took while Mr. Flaherty
23 was present, when were those taken?

24 A Those were taken in January of 2002.

1 Q Mr. Doolin has asked you repeatedly questions
2 about whether or not you interviewed or caused to
3 be canvassed any houses on Goodenough Street.

4 Did you canvass any houses on
5 Goodenough Street overlooking the McKinley Park?

6 A No.

7 Q Why didn't you do that?

8 MR. FLAHERTY: Objection.

9 THE COURT: He may answer that.

10 A Because of the distance away from this scene,
11 where it was, and basically if they overlook the
12 park -- I mean, it's a park used by a lot of
13 people. You need to evaluate what, you know,
14 what opportunities, what significance these
15 houses are going to be of. They were not close
16 to this area of 89 Faneuil Street.

17 BY MR. TOCHKA:

18 Q Let me ask you, at the time when you were there
19 on the morning of March 28 and those canvasses
20 that you've talked about were conducted, what
21 information relative to the death of the decedent
22 did you have at that time?

23 A I had -- I didn't even know that it was Iman

24 Yazbek at the time. ~~I had that scene on March~~

1 28. I had no information other than the fact that
2 I had a white male who had suffered a serious
3 facial injury which had been characterized by a
4 responding M.E. as a gunshot wound. That's all I
5 had. That's it.

6 Q So when you conduct a canvass, what buildings
7 were canvassed at your direction?

8 A The ones right around that immediate vicinity of
9 89 Faneuil.

10 Q So did you canvass the building at the end of
11 Faneuil Street closest to Market Street?

12 A No.

13 Q Why not?

14 A It wasn't --

15 MR. FLAHERTY: Objection.

16 THE COURT: Overruled.

17 BY MR. TOCHKA:

18 Q Did you canvass the building located on Beacon
19 Street where I'm pointing to right now?

20 MR. FLAHERTY: Objection.

21 THE COURT: Overruled.

22 A No, I did not.

23 BY MR. TOCHKA:

24 Q Why not?

- 1 A Because of the distance away from the immediate
2 scene where Iman Yazbek's body was found.
- 3 Q Did you canvass the second building in next to
4 Beacon Street I'm pointing to now?
- 5 A No, I did not.
- 6 Q Why not?
- 7 A Because of the distance away from Iman Yazbek's
8 body.
- 9 Q And isn't that the same for the buildings here on
10 Faneuil Street, the second building in as well?
- 11 A Yes.
- 12 Q As well as the third building in?
- 13 A Yes.
- 14 Q As well as the third building in on the Beacon
15 Street side?
- 16 A That's correct, yes.
- 17 Q And isn't that the reason why you didn't canvass
18 these buildings on Goodenough Street, because
19 they were a block away from where the body was
20 that you didn't even know who the name was at the
21 time lying there?
- 22 A That's correct, yes.
- 23 Q Mr. Doolin has asked you things that you didn't
24 do in those five hours while you were at the

1 scene, while you were at this crime scene, sir.

2 How many individuals at your direction
3 were questioned at this crime scene?

4 A On the morning of the twenty-eighth?

5 Q Simply on the morning of the twenty-eighth.

6 A In excess of thirty, thirty-five people, maybe
7 upwards close to forty people that were
8 documented and are in reports and brought to my
9 attention.

10 Q And what's the purpose of that initial
11 canvassing?

12 A It's a best effort or attempt at that time to
13 obtain information.

14 Q And is it in the purpose to develop leads?

15 A Yes.

16 Q And as a result of that canvassing, did you
17 develop some leads?

18 A Yes, we did.

19 Q And was Heather Coady one of those leads?

20 A Yes, she was.

21 Q Was Eddie Gauthier one of those leads?

22 A Yes, he was.

23 Q And the process, as you left that particular
24 development, did you then meet with Eddie

1 Gauthier?

2 A Yes.

3 Q How many times did you meet with him?

4 A Over the course of this investigation he's been
5 met with, you know, maybe eight, nine times.
6 Seven, eight, nine times.

7 Q During the week following the investigation, how
8 many times did you meet with him?

9 A During the week following I met with him on the
10 thirtieth or the twenty-ninth into the thirtieth.
11 I spoke to him on the telephone on the thirtieth.
12 Detective McLaughlin and Traylor met with him
13 again shortly after that at my direction. I
14 spoke with his mother frequently on the phone
15 after that. You know, in the week following I
16 would say contacts, I probably had five different
17 contacts with him in various forms.

18 Q And in the weeks following, as a result of the
19 lead that was developed on that morning, as a
20 result of the canvass at your request that you
21 came up with Heather Coady, was she spoken to
22 again?

23 A Yes, she was.

24 Q How many times was she spoken to again?

1 person of Iman Yazbek and the leads that you had
2 relative to Heather Coady and the leads that you
3 had to Eddie Gauthier, did you then develop a
4 lead to an individual by the name of Joleena
5 Tate?

6 A Yes, I did.

7 Q And in the course of your investigation is there
8 a Detective Paul -- do you know a detective named
9 Paul McLaughlin?

10 A Yes.

11 Q Is he a homicide detective?

12 A Yes, he is.

13 Q Did he assist you in the investigation of this
14 case?

15 A Yes, he did.

16 THE COURT: Just a little slower,
17 please.

18 MR. TOCHKA: I'm sorry.

19 BY MR. TOCHKA:

20 Q Is there a Detective Juan Torres?

21 A Yes, there is.

22 Q And where was he assigned to back then?

23 A At that time he was my partner, he was assigned
24 to the homicide unit.

1 Q Did he interview witnesses in connection with
2 this case?
3 A Yes, he did.
4 Q And is there a Detective Thomas Traylor?
5 A Yes, there is.
6 Q And where was he assigned to back then?
7 A At that time he was assigned to the homicide unit
8 as well and was assigned to this case.
9 Q And did he interview individuals at your request?
10 A Yes, he did.
11 Q Did Detective Paul McLaughlin go anywhere as a
12 result of your direction?
13 A Yes, he did.
14 Q Where did he go?
15 A On two occasions he went to North Conway,
16 independent of my two trips to North Conway, to
17 conduct interviews.
18 Q Was there a Detective Wayne Rock involved in the
19 investigation of this case?
20 A Yes. Wayne Rock is another detective from the
21 homicide unit that was involved in this case.
22 Q And in connection with the individuals that you
23 interviewed in connection with this case after
24 this morning, the five hours that you spent at

1 the 89 Faneuil Street development, do you know a
2 person by the name of Roletta Helvadjian?

3 A Yes, I do.

4 Q Did you interview her in connection with this
5 case?

6 A Yes, I did.

7 Q And was a report made?

8 A It was a taped statement. It was a taped
9 statement made.

10 Q And can you explain to the jurors why at this
11 point there is not a written report of a
12 conversation with an individual? Why sometimes
13 there is a written statement and sometimes there
14 is a taped statement?

15 A Well, over the course of interviews at certain
16 times during interviews, as a means of
17 documenting and memorializing particular
18 interviews, you can opt to make a taped interview
19 or you can opt to write a report. In this
20 particular investigation there were a number of
21 people who were put on taped interviews for the -
22 - basically for the logistical sense of it, to
23 just continue moving forward. It's a lot quicker
24 and simpler to just put these things on tape and

1 move on. It's a convenience to me as the
2 investigator to be able to get these things done
3 and move on.

4 Q It's fair to say, sir, that you cannot tape
5 record somebody unless they give you permission
6 to do so?

7 A That's correct, yes.

8 Q During the course of your investigation following
9 that morning that you were at 89 Faneuil Street,
10 did you come across or did you interview or did
11 you cause to be interviewed a person by the name
12 of George Wahbed, W-a-h-b-e-d?

13 A Yes, he was interviewed.

14 Q Did you cause to be interviewed or did you
15 interview a person by the name of Antrki
16 Helvadjian?

17 A Yes, he was interviewed.

18 Q Did you cause or were you present during an
19 interview of a person by the name of Mary Coady?

20 A Mary Coady was interviewed as well.

21 Q Was there an interview of a person by the name of
22 Veronica Blyakhman?

23 A She was interviewed as well.

24 Q And was she also tape recorded?

- 1 A Yes, she was.
- 2 Q Were you present or were you involved in an
3 interview of a person by the name of Jonathan
4 Simms?
- 5 A He was interviewed, yes.
- 6 Q And were you present or was an interview
7 conducted of an Erica Butler?
- 8 A She was interviewed on tape, yes.
- 9 Q And you've already talked about Eddie Gauthier
10 and Susan Gauthier. You've already talked about
11 Joleena Tate, correct?
- 12 A That's correct.
- 13 Q You have already spoken about Heather Coady?
- 14 A Yes, that's correct.
- 15 Q Was an interview conducted of a person by the
16 name of Jeffery Fitzgerald in connection with the
17 investigation into the death of Iman Yazbek?
- 18 A He was interviewed in connection to this
19 investigation, yes.
- 20 Q Was a person spoken to by the name of Brian
21 Wilson in connection with the investigation into
22 the death of Iman Yazbek?
- 23 A Yes, he was.
- 24 Q Was a person by the name of Donna Robinson spoken

1 to as a result of the investigation into the
2 death of Iman Yazbek?

3 A Yes, she was.

4 Q And these are not the people that were spoken to,
5 the thirty-five or forty you've already talked
6 about who were spoken to on that particular
7 morning, correct? These are in addition?

8 A These are in addition to the canvass of that
9 morning, yes.

10 Q Was a Cynthia McInerney spoken to?

11 A Yes, she was.

12 Q And was she spoken to up in North Conway, New
13 Hampshire?

14 A Yes, she was.

15 Q Was an Alexandra Perry spoken to?

16 A Yes, she was.

17 Q And was she spoken to up in North Conway, New
18 Hampshire?

19 A Yes, she was.

20 Q Was there a person by the name of Thong Dam?

21 A Yes.

22 Q And was he spoken to?

23 A Yes.

24 Q Was there a person by the name of Pierre Nassif,

1 N-a-s-s-i-f?

2 A Yes.

3 Q Was he spoken to in this investigation?

4 A That's correct. He was spoken to and an
5 interview was taped with him.

6 Q Was there a person by the name of Jennifer Stacey
7 spoken to in the investigation?

8 A Yes, she was spoken to and her interview was
9 taped.

10 Q Was there a person by the name of Ricardo
11 Rousaleh spoken to in connection with the death
12 of Iman Yazbek?

13 A He was interviewed on tape, yes.

14 Q Was there a person by the name of Ana Culgini --

15 THE COURT: You're going to have to
16 slow down.

17 BY MR. TOCHKA:

18 Q Was a person by the name of Ana Culgini spoken
19 to?

20 A It's C-u-l-g-i-n-i.

21 Q Was she spoken to as a result of the
22 investigation into the homicide of Iman Yazbek?

23 A Yes, she was.

24 MR. TOCHKA: I have no further

1 questions.

2 MR. DOOLIN: Your Honor, I don't have
3 any questions.
4

5 RECROSS EXAMINATION

6 BY MR. FLAHERTY:

7 Q With the taped interviews, you said that it's a
8 quicker and simpler means of conducting
9 interviews, right?

10 A In some cases it's a quicker and simpler means of
11 documenting the interview.

12 Q But you don't conduct an interview and then after
13 you conduct the interview, you request if we can
14 tape it?

15 A We do a pre-interview. Usually my practice is to
16 tell someone that I'm interviewing that I'd like
17 to go through a quick interview and before we
18 finish, I'd like to have a statement made on tape
19 and I put the tape recorder on the table during
20 the pre-interview but it's not running.

21 Q Doesn't that double the time of the interview
22 essentially, Detective Coleman?

23 A Not necessarily because almost every interview I
24 do, I try to go over the facts twice. It's just

1 my practice.

2 Q And so there are some occasions where you do --
3 you choose not to tape record your initial
4 interview, right?

5 A There are some cases, right.

6 Q And that's not because of convenience, right?

7 A Yes. Sometimes it's because of convenience.

8 Q At other times it's for other reasons, right?

9 A What's for other reasons?

10 Q You choose not to tape for reasons other than
11 convenience?

12 A Whenever I make a decision not to tape an
13 interview, it's purely based on my own issues
14 going on right at the moment. On occasions
15 people don't want to be interviewed on tape. On
16 occasions there isn't enough really there that
17 wants putting a tape there and then submitting it
18 for transcription, it's simpler to just write the
19 report. When you get into long interviews and
20 you get into long statements, yes, absolutely,
21 it's more convenient to have it done on tape and
22 have it transcribed later, but not every case is
23 that way, not every interview is that way.
24 Sometimes it's easier to write a report if it's

1 only a page and a half long.

2 Q And the decisions to tape are very similar to the
3 decisions you make at a crime scene regarding
4 technicians and forensic?

5 What is deemed in your mind to be
6 relevant and important in the investigation as it
7 appears to you, you make the appropriate
8 decisions based upon the information known to you
9 at that time. Is that fair to say?

10 A Absolutely not fair to say.

11 Q Well, it is fair to say that you're the one that
12 makes the decision?

13 A On a given interview, if I'm involved in the
14 interview, I make that decision, yes. At a scene
15 when I make certain decisions, they're not made
16 out of convenience. They're made out of
17 education based on what I see in front of me.

18 Q Being complete and thorough, correct?

19 A All of my efforts are based on being complete and
20 thorough. That's what i do for work.

21 MR. FLAHERTY: Thank you, Detective.

22 THE COURT: Thank you very much, sir.

23 You may step down.

24 Ladies and gentlemen, we are going to

1 take the luncheon recess at this time. Leave
2 your notes in your envelopes on your seats. Do
3 not discuss the case over the lunch hour. We'll
4 see you at two p.m.

5 (Whereupon, the proceedings were
6 recessed at 1:00 o'clock p.m., and reconvened at
7 2:12 o'clock p.m., without the jury.)

8 THE COURT: May I see counsel, please?

9 (Whereupon, the following discussion
10 occurred at side bar:)

11 MR. TOCHKA: In terms of whether I can
12 inquire of the individual from the FBI lab,
13 whether or not his --

14 THE COURT: What's before the Court is
15 the defendant's motion to preclude the testimony
16 of William Duane from the Federal Bureau of
17 Investigation who the government proposes to --
18 from whom the government proposes to elicit
19 opinions about hand writing?

20 MR. TOCHKA: Correct.

21 THE COURT: The Court has conducted a
22 hearing on this. It was a motion made by Mr.
23 Flaherty on behalf of Mr. Anderson. The Court,
24 for the record, I make the following -- they are

1 not really findings but statements, that the
2 motion was not accompanied with anything but a
3 copy of the decision of Judge Gertner in the
4 Federal District Court here from 1999 and a
5 reference to a case in another federal district,
6 The Eastern District of Pennsylvania by Judge
7 Pollock. There was no affirmative evidence in
8 the motion or accompanying papers; that is to
9 say, there were no affidavits from any experts,
10 there were no transcripts or excerpts of
11 transcripts from depositions of experts putting
12 in issue anything under Dauber and Lannigan.
13 There was subsequently filed by Mr. Flaherty his
14 own affidavit, unsigned, in which he proffered
15 some opinions about handwriting.

16 I do not believe that that was
17 sufficient submissions to raise for the Court an
18 issue under Dauber and Lannigan. There was no
19 request for a hearing at which affirmative
20 evidence would be put before the Court.
21 Additionally, I would note that on March 31 Judge
22 Pollock reversed his decision in the case that
23 was cited to me and did permit the fingerprint
24 expert not only to testify about similarities and

1 dissimilarities in the latent prints and the
2 actual prints, he also permitted the expert to
3 testify about his opinion about a match between
4 the lifted or latent prints and the known
5 exemplar.

6 At any rate, for all those reasons, I'm
7 denying the defendant's motion in limine.

8 MR. FLAHERTY: May I be heard?

9 THE COURT: More than you have?

10 MR. FLAHERTY: Please.

11 THE COURT: Something other than we've
12 already said.

13 MR. FLAHERTY: Just to make the record
14 clear, I think you said that the original motion
15 as it was filed with the Plaza decision --

16 THE COURT: No, the Hines decision,
17 Judge Gertner's decision.

18 MR. FLAHERTY: Then it was supplemented
19 with an affidavit along with the investigative
20 reports of Duane citing his comparison and the
21 photocopy of the hotel receipt that is the
22 questioned document and the questioned signature
23 thereon, and I would submit that the defendant is
24 not the proponent of this evidence, that the

1 Commonwealth is the proponent of this evidence.

2 THE COURT: You did say this before.

3 MR. FLAHERTY: And for purposes of
4 admissibility, the factors under Dauber and
5 adopted by Lannigan must first be met.

6 THE COURT: As I say, I am not shifting
7 any burden to the defendant but there is a burden
8 on the person making the motion, a burden of
9 production. -- I'm saying that the burden of
10 production was not sufficient here for the Court
11 to conduct any affirmative hearing and you,
12 yourself, said that you were not requesting any
13 evidentiary hearing so the submissions that you
14 did supplement, your unsigned affidavit, I will
15 note again --

16 MR. FLAHERTY: Can I sign the affidavit
17 while we're here, Your Honor, just to make the
18 record clear?

19 THE COURT: You can do that, sir. It
20 is somewhere here but I did receive an unsigned
21 copy, number one. Number two, those other
22 submissions did not present to the court any
23 issue as to why there was an issue raised under
24 Dauber. The exemplar -- there was no report,

1 there was nothing from any expert that put it in
2 issue. The papers are what the papers are. The
3 appellate courts will have them and I'm denying
4 your motion to exclude the testimony. It doesn't
5 mean that in the course of the testimony, if you
6 have objections that go to foundation or anything
7 else, that you shouldn't raise them.

8 MR. FLAHERTY: Well, I appreciate that,
9 Your Honor, I will raise them at that particular
10 time but my point is that the objection with the
11 motion in limine as to the admissibility is
12 simple and specific and that's all a defendant
13 need do when an opponent is attempting to
14 introduce evidence against a defendant at a
15 criminal trial.

16 I will also say, and I think the Court
17 directly stated, I'm not saying the Court is
18 attempting to burden shift here. I'm saying that
19 the procedure by which expert opinion evidence
20 must be received by a Court is that the proponent
21 of that evidence has to meet the factors under
22 Dauber and Lannigan. I'm not suggesting that the
23 Court is shifting the burden to the defendant.

24 THE COURT: I would further note that

1 the motion was untimely under 13.82. I may not
2 have the correct cite but it's Rule 13B. We did
3 have a hearing on motions and, at any rate, let's
4 just move forward and your objections are noted.
5 MR. FLAHERTY: Just for the record, I
6 think it's 13C2 that says it shall be filed prior
7 to trial if there is an issue that must be
8 determined pretrial which the motion was, just
9 for the record.

10 THE COURT: Are you ready to go then?

11 MR. TOCHKA: Yes, I am.

12 THE COURT: Let's go.

13 (Whereupon, the discussion at side bar
14 was concluded.)

15 (Whereupon, the jury was escorted into
16 the courtroom at 2:22 o'clock p.m.)

17 THE COURT: Ladies and gentlemen,
18 welcome back. We are ready to continue.

19 Call your next witness, please, sir.

20 MR. TOCHKA: Thank you, Your Honor.
21 The Commonwealth would call Cynthia McInerney.
22 May I proceed, Your Honor?

23 THE COURT: You may, sir.

24 MR. TOCHKA: Thank you.

1 CYNTHIA MCINERNEY,

2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TOCHKA:

6 Q Ma'am, would you please introduce yourself?

7 A Cynthia McInerney.

8 Q Would you please spell your last name?

9 A It's M-c-I-n-e-r-n-e-y.

10 Q And, ma'am, where are you employed?

11 A Yankee Clipper in North Conway, New Hampshire.

12 Q And what's your occupation there?

13 A General manager.

14 Q And where is the Yankee Clipper located?

15 A It's right on Route 16, also known as White
16 Mountain Highway.

17 Q And is it a hotel?

18 A Yes, it is.

19 Q And how long have you worked at the Yankee
20 Clipper?

21 A I have been employed there for twenty-three
22 years.

23 Q And your current position is the general manager?

24 A Yes, it is.

- 1 Q How long have you been a general manager?
- 2 A For twenty years.
- 3 Q Can you describe for the jurors the layout of the
- 4 Yankee Clipper motel?
- 5 A The Yankee Clipper has sixty-eight units in it
- 6 altogether. There's the main section of the
- 7 motel, it faces on -- runs parallel with Route
- 8 16. There's two buildings in the back and
- 9 there's ten units in each one so there's forty-
- 10 eight in the main section of the hotel and ten in
- 11 two buildings in the back so we have sixty-eight.
- 12 Q And can you describe to the jurors what your
- 13 responsibilities are as a general manager?
- 14 A I have a lot of responsibilities. I hire
- 15 employees, fire employees, I do the bookkeeping,
- 16 I fill in as a desk clerk, I could be a hostess
- 17 in the restaurant. I do just about everything.
- 18 Q Do part of your duties as a general manager
- 19 include maintaining the records that are kept by
- 20 the Yankee Clipper motel?
- 21 A Yes.
- 22 Q And that includes the business records, correct?
- 23 A Yes, um-hum.
- 24 Q And can you tell us whether or not the Yankee

1 Clipper maintains records of all individuals who
2 rent rooms in the Yankee Clipper Inn?

3 A Yes.

4 Q And by the way, is it the Yankee Clipper motel or
5 inn?

6 A It's call the Yankee Clipper Motor Inn.

7 Q And can you describe for the jurors the procedure
8 that's followed when an individual checks in to
9 the Yankee Clipper motel?

10 A Yes. Actually people come in through the front
11 door, the lobby. The desk clerk is behind kind
12 of a table like this here and they would say that
13 they wanted to rent a room and so on. The clerk
14 would ask, smoking or non-smoking, and they would
15 reply either smoking or non-smoking. We have six
16 units in the main building that are smoking units
17 only and the rest is non-smoking, and then we
18 have a building in the back and that has ten
19 units in it and those are smoking units. They
20 would say whether they wanted smoking or non-
21 smoking and we would look on our register to see
22 what was available. At that point if they said
23 non-smoking, then we would put them, look and
24 see, put them in a non-smoking room, or if they

1 said smoking, we'd put them in the smoking room
2 and we would ask -- we would see what was
3 available, smoking or non-smoking, and ask for
4 their last name, put that in our register, put
5 their --

6 Q You put their last name in a register?

7 A Yes. We have a daily register. We do most
8 everything by hand. We have a daily register.

9 Q And what's the purpose of doing that?

10 A Pardon me?

11 Q What's the purpose of doing that?

12 A So we know what rooms are taken and who is in
13 what rooms.

14 Q Then what do you do?

15 A At this point we put them in the proper room that
16 they wanted and then give them a folio which is
17 like a registration card and it also has the
18 receipt on it, and have them fill out their name,
19 address, make of car and license plate number and
20 put their signature on the bottom.

21 Q And then what would happen?

22 A After that they would pay their bill, either by
23 cash, credit card, and we'd ring it into our cash
24 register and, in turn, give them the key to the

1 room that we had assigned.

2 Q And then what is done with the folio that you
3 referred to?

4 A It's a two-part folio and the first part, the top
5 part of it is -- has a carbon on it and that gets
6 -- everything stays together. You ring it into
7 the cash register. Once it's rung into the cash
8 register, it's perforated and it's separated. We
9 have one small slip would be for -- we have a
10 file for, if you got telephone calls, they would
11 ask for Mr. Smith, whatever, we'd look for Smith
12 and it would say the room number and then there's
13 another part of it, the part that they fill out
14 that has their name and address and make of car
15 and license plate number and the signature on it,
16 that gets put in a slot. The key is opposite the
17 slot so you take the key out, give them the key,
18 that registration card gets put in there and then
19 we also have a tube file that's numerical and if
20 somebody had any charges or whatever, it would
21 just add onto the register receipt.

22 Q And what is the policy in checking out?

23 A You'd come to the front desk, return your key,
24 and get your receipt.

- 1 Q And do individuals always come to the front desk
2 when they check out?
- 3 A No, not all the time. If someone has paid cash,
4 then they would just maybe leave their key in the
5 room or come to the front desk and drop their key
6 off and out the door they go.
- 7 Q And then what's done with that folio?
- 8 A The folios are all -- the next day, if someone
9 checked in on the first, say, it was the second,
10 if they were checking out, everybody that checks
11 out, the folios would all be put together, all
12 banded and numerically, like room one would be on
13 the top and room five oh one would be on the
14 bottom and it's banded with the date of check-
15 out.
- 16 Q And then where is that folio kept?
- 17 A The folios are all kept in a box behind the desk.
- 18 Q And the desk is located where?
- 19 A In the lobby of the hotel.
- 20 Q And whose responsibility is it to maintain those
21 records?
- 22 A Mine.
- 23 Q Ma'am, let me show you what's been previously
24 marked as D for identification.

- 1 A I just want to get my glasses.
- 2 Q And do you recognize that?
- 3 A Yes. That's our part of our check-in procedure
- 4 card.
- 5 Q And what part of -- is that part of the folio?
- 6 A Yes, it's -- the bill portion of it is attached
- 7 to this and this is the part that they would fill
- 8 in name, address, make of car and sign the bottom
- 9 of it.
- 10 Q And you said that there is another part?
- 11 A Yes.
- 12 Q And do you have that part with you?
- 13 A Yes, I do.
- 14 Q And could you please take that out?
- 15 A Okay. It's right here. It's perforated like
- 16 that.
- 17 Q Now, these two particular documents were at one
- 18 point one, correct?
- 19 A Right.
- 20 Q And that's what you referred to when you told us
- 21 -- when you spoke about the folio, correct?
- 22 A Yes, exactly.
- 23 Q And let me ask you, that particular document, is
- 24 that maintained in the regular course of your

1 business?

2 A Yes, it is.

3 Q And is it the regular practice of your business
4 to maintain those particular records?

5 A Yes, it is.

6 Q And that particular -- or those folios, that
7 folio, the information that's contained on them,
8 is that made at or near the time of the incident?

9 A No. At check-in.

10 Q At check-in time. The information that's
11 contained --

12 A When they check in.

13 MR. TOCHKA: Your Honor, the
14 Commonwealth would move to introduce what's been
15 previously marked D for identification as well as
16 the second sheet that she referred to as
17 exhibits.

18 MR. FLAHERTY: May I be seen at side
19 bar, Your Honor?

20 THE COURT: Very briefly, sir.

21 (Whereupon, the following discussion
22 occurred at side bar:)

23 THE COURT: Yes?

24 MR. FLAHERTY: This is not an objection

1 to the record, Your Honor. My objection is to
2 the hearsay contained on the record. This
3 witness testified that this is a record that's
4 kept in the normal course of business. One of
5 the prerequisites, however, is that it be made in
6 good faith. There is no showing that this person
7 is the person. In fact, the showing is that the
8 person who makes the entries on this record is
9 not the witness testifying on the stand.

10 THE COURT: Doesn't have to be.

11 MR. FLAHERTY: Well, Your Honor --

12 THE COURT: As long as she can testify
13 to that.

14 MR. FLAHERTY: She has testified that
15 in the routine at the Yankee Clipper hotel the
16 person who -- the guest, I'll call it the guest,
17 makes the entries on the document. The entries
18 on the document are not made by the keeper or by
19 anyone associated with the inn. I'm talking
20 about what's previously been marked as Exhibit D
21 for identification.

22 THE COURT: You're not talking about
23 this?

24 MR. FLAHERTY: I would be talking --

1 I'm not talking about this.

2 THE COURT: Alright. So there is no
3 objection to that one?

4 MR. FLAHERTY: There is no objection to
5 the document that was just produced by the
6 witness.

7 THE COURT: I'm sorry. What you're
8 talking about it this handwritten one, is that
9 right?

10 MR. FLAHERTY: Correct, Your Honor.

11 THE COURT: Okay. Go ahead.

12 MR. FLAHERTY: All of the writing
13 contained on this document which is being offered
14 as a business entry is hearsay and at this stage
15 of introduction by the Commonwealth, no exception
16 to the hearsay rule has been offered for the
17 admission of the hearsay which appears on the
18 face of the document.

19 THE COURT: Okay. I understand your
20 argument, sir. Mr. Tochka?

21 MR. TOCHKA: Your Honor, I suggest it's
22 a business record at this point in time. She has
23 told us that -- how these records are maintained,
24 how they are kept, and how they are made and the

1 question becomes as to who made them. I'm not
2 saying that it's the defendant. I suggest it's
3 for the jury at some point when they see the
4 signatures and would like to make that comparison
5 and make the decision. It's a business record at
6 this point in time. It's the regular practice
7 for the business, for her as the general manager
8 to keep these records.

9 MR. FLAHERTY: Your Honor, just for the
10 record, where records contain multiple hearsay,
11 purported business records, each level of hearsay
12 must satisfy the hearsay exception to the hearsay
13 rule. That's Wingate versus Emery Air Freight,
14 385 Mass. 402, Kelly versus O'Neil, 1 Mass. App.
15 313.

16 THE COURT: What we are going to do is
17 this. We will have that as the next exhibit.
18 This portion which is handwritten, as of yet
19 unidentified handwriting, we will mark it for
20 identification and you may move it again later.
21 It may be referred to by the subsequent
22 witnesses, unless you want to lay some greater
23 foundation for it. At this time you may mark it
24 for identification. I assume that this is the

1 signature which you are going to have Duane
2 compare?

3 MR. TOCHKA: Correct.

4 THE COURT: Okay.

5 MR. TOCHKA: As well as the information
6 that's on there. I suggest that is relevant
7 because it comes back --

8 THE COURT: Okay.

9 MR. TOCHKA: The information that's on
10 there.

11 THE COURT: He's going to give an
12 opinion that that's Tanzerius Anderson's
13 signature and handwriting, is that right?

14 MR. TOCHKA: Yes.

15 THE COURT: Okay. You may mark that
16 for identification. It may be used in connection
17 with the testimony of the next two witnesses and
18 then I will consider your motion again at the
19 conclusion of their testimony.

20 (Whereupon, the discussion at side bar
21 was concluded.)

22 (Exhibit No. 24, being a document, as
23 described above, was marked and admitted into
24 evidence.)

1 BY MR. TOCHKA:

2 Q Ma'am, I'm showing you what's been marked as
3 Exhibit 24 and can you tell us what that is?

4 A This is the two-part folio. It's, like I said,
5 when someone comes to check into a room, they
6 assign the room number. This is the top here and
7 the person's name and then it's put through our
8 cash register, the room number, the date, and
9 time and the amount of the room and how payment
10 is made, cash or credit card.

11 Q And does that indicate what room number?

12 A It does, in two places, yes.

13 Q And what room number was that?

14 A Three oh two.

15 Q And does that indicate the name of the person who
16 checked in?

17 MR. FLAHERTY: Objection.

18 A Yes. Yes, it does.

19 BY MR. TOCHKA:

20 Q And what is that?

21 THE COURT: She may answer.

22 A Anderson.

23 BY MR. TOCHKA:

24 Q And does that indicate whether or not the bill

1 was paid in cash or in credit card?

2 A It indicates that it was paid in cash.

3 Q And how much cash?

4 A Fifty-two dollars and ninety-two cents.

5 Q Now, the other identification -- the other
6 document that you have before you, can you tell
7 me what that is?

8 A This is the second part of the folio that's
9 perforated and torn off and put into a file where
10 the keys go.

11 Q And is that folio connected to -- was that
12 originally connected to what's marked Exhibit 24?

13 A Yes, it is.

14 Q And how do you know that?

15 A It has folio numbers that are correlated by a
16 company that we buy our folios from.

17 Q What's the folio number on Exhibit 24?

18 A Which one is Exhibit 24? This one here?

19 Q Correct, that one.

20 A The folio number?

21 Q Yes.

22 A 008521.

23 Q And what's the folio number on the one marked for
24 identification?

1 A 008521.

2 Q Now, I want to show you a photograph and ask you
3 if you recognize what that's a photograph of.

4 A This is a photograph of the Yankee Clipper motel.

5 Q And is that a fair and accurate representation as
6 to how the building appears, the front of the
7 building?

8 A Yes, it is.

9 MR. TOCHKA: And let me show this to
10 defense counsel. Your Honor, I ask if I could
11 have this marked as an exhibit, this photograph.

12 MR. DOOLIN: No objection.

13 MR. FLAHERTY: No objection.

14 (Exhibit No. 25, being a photograph, as
15 described above, was marked and admitted into
16 evidence.)

17 BY MR. TOCHKA:

18 Q Ma'am, let me now show you this photograph and
19 ask you to identify that.

20 A This is part of the motel, this is one of the
21 buildings in the back of the motel.

22 Q And does that indicate room three oh two?

23 A Yes, it does.

24 MR. TOCHKA: Your Honor, I'd ask to

1 have this marked as an exhibit.

2 MR. FLAHERTY: No objection.

3 THE COURT: No objection.

4 (Exhibit No. 26, being a photograph, as
5 described above, was marked and admitted into
6 evidence.)

7 MR. TOCHKA: And with the Court's
8 permission, if I can publish this on the screen
9 to the jurors?

10 THE COURT: Yes.

11 BY MR. TOCHKA:

12 Q What is it that I'm placing on the screen right
13 now, which is Exhibit 25?

14 A It's the front of the motel and room sixteen is
15 where the cars are.

16 Q Now I'm putting Exhibit 26, and what is that?

17 A That is the building in the back of the motel
18 right behind the main building and it's what --
19 we call it the three and four building. It's
20 number three hundred and four hundred, three
21 hundred being on the first floor and four hundred
22 being on the second.

23 Q So three hundred is on the first floor and which
24 one is three oh two?

1 A It's the second blue door from the right.

2 Q Second blue door from the right?

3 A Um-hum.

4 Q Why don't you step down and point to it, with the
5 Court's permission. If you could just step over
6 here.

7 A This would be the first.

8 THE COURT: Please keep your voice up,
9 Ms. McInerney.

10 THE WITNESS: This here would be the
11 first, this would be the second door, three oh
12 two.

13 MR. TOCHKA: Thank you.

14 BY MR. TOCHKA:

15 Q Can you tell us, ma'am, on Exhibit 24, what is
16 the date of the check-in there?

17 A March 25 of the year 2000.

18 Q And what time is that?

19 A One fifty-four a.m.

20 Q And are you familiar as to who was working at the
21 Yankee Clipper on that day?

22 A Yes. Her name is Alexandra Perry.

23 Q And what are her hours?

24 A She works the eleven at night to seven a.m.

1 shift.

2 Q And in the particular area where the Yankee
3 Clipper is located, is that open twenty-four
4 hours?

5 A Yes, it is.

6 Q Is that unique to that particular area?

7 A Actually I believe we're the only one that is
8 open twenty-four hours in that area.

9 Q Now --

10 A Most people close at eleven.

11 Q Now, ma'am, when you drove down here, you drove
12 down from North Conway, correct?

13 A Yes.

14 Q Which route did you take?

15 A I took Route 16 to Route 95.

16 Q And approximately how many miles is that?

17 A I'd say about a hundred and fifty miles.

18 Q And approximately how long does it take you to
19 travel that route?

20 A To get from there to here?

21 Q Yes.

22 A About three hours -- I'm sorry, two and a half.

23 Q Let me show you this chart, this map actually. I
24 showed you this map outside, correct?

1 A Yes.

2 Q Okay. Are you familiar with what that is a map
3 of?

4 A It's a map of New Hampshire.

5 Q And does that show the route from Boston to North
6 Conway?

7 A Yes, it does.

8 MR. TOCHKA: And with the Court's
9 permission, if I can ask the witness to step to
10 that map?

11 THE COURT: Yes.

12 BY MR. TOCHKA:

13 Q Ma'am, using this pointer, and you have to keep
14 your voice up so the jurors can hear you and the
15 stenographer as well, can you show us the route
16 from North Conway to Boston?

17 A Starting right here and this is Route 16 and our
18 motel is on this route, and all the way down to
19 here, picking up Route 95 in Portsmouth into
20 Boston.

21 Q And are you familiar with the route from
22 Manchester to Boston?

23 A Manchester to Boston? Somewhat. I think it's
24 Route 93.

- 1 Q Have you traveled that route where Manchester is
2 before?
- 3 A From North Conway to Manchester, I've done but
4 not Boston to Manchester.
- 5 Q Okay. And do you know how long the route is from
6 Manchester to North Conway? How many miles that
7 is?
- 8 A I don't know how many miles but it takes about
9 two hours.
- 10 Q And the route that one would take from North
11 Conway to Boston, would that be the same route
12 that one would take from Manchester to Boston?
- 13 A No.
- 14 Q Why not?
- 15 A Because you can't get there.
- 16 Q Good reason.
- 17 A No.
- 18 Q Now let me also ask you whether or not you are
19 familiar with a condominium complex known as the
20 Cranmore Birches.
- 21 A Yes.
- 22 Q And where is that located?
- 23 A It's on the way to Mount Cranmore.
- 24 Q And in relationship to the Yankee Clipper motel,

1 approximately how far away is that condominium
2 complex, what's called Cranmore Birches, to the
3 Yankee Clipper Inn?

4 A It's approximately two miles.

5 Q And what route would you take from the Cranmore
6 Birches to the Yankee Clipper?

7 A You'd be going south on Route 16.

8 Q And can you point that out on the inset?

9 A It's upside down, though. Actually, we're here.

10 Q And you're pointing where the arrow is that's at
11 the top of the chart, correct?

12 A Right, and this is -- Cranmore Birches is here.

13 Q And that's approximately two miles, right?

14 A It may be two and a half but it's around that.

15 MR. TOCHKA: Thank you, ma'am. You can
16 resume the stand.

17 Your Honor, the Commonwealth moves to
18 introduce this chart as an exhibit.

19 MR. FLAHERTY: Objection.

20 THE COURT: You may have it marked for
21 identification.

22 (Exhibit B, being a chart, as described
23 above, was produced and marked for
24 identification.)

1 MR. TOCHKA: I have no further
2 questions. Thank you.

3 MR. DOOLIN: Your Honor, I have no
4 questions.

5 MR. FLAHERTY: Just a few.

6
7 CROSS EXAMINATION

8 BY MR. FLAHERTY:

9 Q Ms. McInerney, my name is Timothy Flaherty. I
10 have a couple of questions.

11 If I ask you anything you don't
12 understand, just let me know. Okay?

13 A Sure.

14 Q This is what has been marked Exhibit B for
15 identification, the chalk or the chart that Mr.
16 Tochka just showed you.

17 A Um-hum.

18 Q This insert, this box, can you see it from where
19 you are?

20 A Yes, I can.

21 Q Did you say this is upside down?

22 A Yes.

23 Q So this map is not accurate, this portion right
24 here?

1 A It's accurate if you tip it upside down.

2 Q If you tip it upside down, it's accurate?

3 A Yes.

4 Q So, in fact, as it appears it's not accurate?

5 MR. TOCHKA: Objection, Your Honor.

6 THE COURT: She may answer.

7 BY MR. FLAHERTY:

8 Q As it appears, it's not accurate?

9 A It's not right.

10 Q So you said you have to travel south and this
11 depicts north, right?

12 A I'm confused. Say that again.

13 Q Well, the map is upside down?

14 A Yes. From Yankee Clipper you would have to go
15 north to what's called the Cranmore Birches.

16 Q Okay. Did you ever see either one of these
17 fellows sitting here before, Jason Robinson or
18 Tanzerius Anderson?

19 A No.

20 Q And as I understand it, nobody from Yankee
21 Clipper -- well, strike that.

22 MR. FLAHERTY: No further
23 questions, Your Honor.

24 THE COURT: Anything more, sir?

1 MR. TOCHKA: No further questions.

2 THE COURT: Thank you very much. You
3 may step down.

4 MR. TOCHKA: The Commonwealth would
5 call William Duane.

6
7 WILLIAM DUANE,
8 called as a witness, being first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. TOCHKA:

12 Q Sir, good afternoon.

13 A Good afternoon.

14 Q Would you please tell us your name?

15 A Excuse me. William Duane, D-u-a-n-e.

16 Q What is your occupation, sir?

17 A I'm an examiner of questioned documents with the
18 FBI laboratory in Washington, D.C.

19 Q How long have you been employed by the FBI?

20 A About seven and a half years.

21 Q How long have you been an examiner of questioned
22 documents?

23 A About twenty-nine years.

24 Q Can you tell the jurors what the nature of your

1 work is?

2 A As an examiner of questioned documents or
3 disputed documents, I'm involved with the
4 examination and comparison of handwriting, hand
5 printing type writing, printing methods such as
6 offset printing or copy machines. I also use
7 photography as a tool in my trade.

8 Q And would you briefly state for the jurors your
9 training and experience before being employed by
10 the FBI?

11 A My initial training and experience was with the
12 New York City Police Department crime laboratory.
13 I underwent a two-year apprenticeship and a two
14 year supervised case assignment. Subsequent to
15 this I returned and I maintained a private
16 practice on a part time basis and I went to the
17 State of Connecticut where I was with them for
18 ten and a half years in their forensic science
19 laboratory until my appointment with the FBI.

20 Q Have you testified previously as an examiner of
21 questioned documents?

22 A Yes, I have, approximately seventy times.

23 Q And can you tell us some of the states in which
24 you've testified?

- 1 A I have testified in New York State, both in the
2 local courts when I was with the New York City
3 Police Department and also as a representative of
4 the FBI. I've testified in Mississippi,
5 California. I've also testified years ago in
6 Massachusetts when I was with the State of
7 Connecticut. I've testified in Los Angeles,
8 Mississippi, New York State, Connecticut,
9 Massachusetts.
- 10 Q And are you a member of any professional
11 organizations?
- 12 A Yes. I'm a member of the American Society of
13 Questioned Documents Examiners. I'm also a
14 member of the Northeast Association of Forensic
15 Scientists and I've been certified by the
16 American Board of -- I'm sorry, American Board of
17 Forensic Document Examiners. I'm a provisional
18 member of the American Academy of Forensic
19 Science, their questioned document unit.
- 20 Q Can you tell the jurors whether you continue to
21 remain current on the developments in the field
22 of questioned documents?
- 23 A Yes. Almost every other year or so I go to the
24 meetings of those organizations that I just

1 mentioned. I was out in Seattle, Washington last
2 February attending an American Academy of
3 Forensic Sciences meeting.

4 Q Have you presented yourself any papers in your
5 field to any of the organizations that you have
6 just mentioned?

7 A Yes: I have presented a half a dozen papers in
8 the field of questioned documents at the American
9 Society of Questioned Documents and also in
10 meetings of the Northeast Association of Forensic
11 Scientists.

12 Q Can you tell the jury something about your
13 academic background?

14 A I have a bachelor of arts in deviant behavior
15 from John Jay College of Criminal Justice in New
16 York City.

17 Q Can you explain to the jurors the basis for
18 handwriting identification?

19 A The concept is that no two individuals will write
20 exactly the same way and no one individual, when
21 writing the same material, will write the same
22 way. There's variation in their writing, and
23 depending on the person's ability, they cannot
24 surpass their own ability to write, like a poor

1 writer cannot write well, whereas a good writer
2 can write badly, and because writing is habitual
3 and repetitive in nature, there are, identifying
4 characteristics can be found in a writing.

5 Q And can you tell us how your examination and
6 comparisons are made?

7 A Yes. It's a side by side comparison of a
8 questioned writing compared with samples or
9 exemplars of known writings.

10 Q And let me hand you now, sir, Commonwealth
11 Exhibit E for identification, F for
12 identification, and D for identification, and ask
13 if you have seen them before.

14 A Commonwealth D, my initials appear on it. It's a
15 Yankee Clipper Motor Lodge registration form.
16 May I unseal?

17 Q You can open that, sir, yes, please.

18 A Commonwealth Exhibit F are sample writings and
19 exemplar writings of Tanzerius Anderson.

20 Q Okay.

21 A They were presented to me as known samples.

22 Q Did you conduct an examination of these exhibits?

23 A Yes, I did.

24 Q And what was the purpose of your examination?

1 A To determine if the known writer of samples or
2 the exemplars prepared the questioned signature
3 which appears on Exhibit D.

4 Q And as a result of your examination of these
5 exhibits, have you reached an opinion?

6 A Yes, I have.

7 Q And do you have photographic enlargements
8 prepared or did you prepare photographic
9 enlargements to demonstrate your findings?

10 A Yes.

11 MR. FLAHERTY: Your Honor, objection.

12 THE COURT: He may use that, sir, to
13 assist him, I assume, in his testimony?

14 MR. TOCHKA: At this point, yes, Your
15 Honor.

16 THE COURT: Yes, he may do that, sir.
17 I think you probably need to move it closer to
18 the jurors, sir. Were you going to have the
19 witness step down? You can leave it there if you
20 want but at some point I think we need to move
21 it.

22 MR. TOCHKA: Your Honor, may I have it
23 parked for identification at this time?

24 (Exhibit H, being a chart, as described

1 above, was produced and marked for
2 identification.)

3 THE COURT: Let me see counsel just a
4 moment.

5 (Whereupon, a discussion occurred off
6 the record at side bar.)

7 BY MR. TOCHKA:

8 Q Sir, could you step down to that chart? Again,
9 sir, can you tell us how this document was
10 prepared or this exhibit?

11 A Yes. It's an enlargement of the questioned
12 specimen and these are samples, samples and
13 exemplars of Mr. Anderson's writing.

14 Q And the two samples that are under the known,
15 that are in a shaded area, what's the
16 significance of that?

17 A They were given to me as known writings by the
18 Boston Police Department, the samples as compared --
19 to exemplars. Exemplars are requested. These
20 were just given to me as being known samples.

21 Q Okay. And are these enlargements, are they fair
22 and accurate representations of the items that
23 have been marked for identification that you
24 observed?

1 A Yes, they are.

2 Q And would you identify them for the Court,
3 please?

4 A What samples they are?

5 Q Yes.

6 A Where they're from?

7 Q Yes.

8 A I have to go to a chart. May I go to my notes?

9 Q Yes.

10 A The first one on my right side, your left side
11 came from a sample dated 4/4/2000. The one
12 opposite on the right side came from a sample
13 dated 7/17/2000, and in the exemplar, they were
14 all marked one right, two right, three right, and
15 some of them have one or two signatures on them
16 and this particular signature here is the second
17 right, it's the top signature, the signatures lay
18 on a page. On the bottom, there's one up here
19 and one down here and the top would indicate the
20 top right, this signature is number one, four
21 right, this signature is number one, five right,
22 this signature is number two, second right, this
23 signature is one right and this signature is two
24 right.

1 Q And do you know when those last six that you've
2 just referred to were created, those signatures?

3 A I'm sorry. I believe January 2, 2000.

4 Q Thank you. Sir, will you, by the use of these
5 enlargements, demonstrate your findings to the
6 Court and the jury and please state your opinion?

7 A Yes.

8 THE COURT: We are going to break that
9 down.

10 MR. TOCHKA: Pardon me, Your Honor?

11 THE COURT: We're not going -- break it
12 down, please.

13 BY MR. TOCHKA:

14 Q Sir, did you compare -- can you explain to the
15 jurors how you compare the signature?

16 A Yes. What I look for in the questioned signature
17 and the known signatures is an overall pictorial
18 similarity, whether there was one present or not
19 present, and if the style of writing is similar
20 overall without getting into any in-depth
21 analysis.

22 Then what I did, I started going
23 through the characters, the seven like T
24 appearing in the beginning of the signature which

1 also appears in all the known standards and it
2 has a slight curve on the right top side and each
3 one of these -- this particular signature is a
4 little variation, the T has an introductory
5 stroke and a little less round ending and this
6 one has again a rounded beginning, top like a
7 seven. And in the questioned signature, this
8 item here, the introductory stroke for the T
9 comes out, downwards and there is a slight
10 perceptible hump before it goes in the body, and
11 it appears right here in this one, and there is a
12 slight perceptible pen movement in this one, and
13 the downward stroke as it comes up again. It
14 appears here and in this particular signature, it
15 doesn't appear at all. It's not present. It's
16 just that Y-like Z so there is that variation.

17 Right after that there is an end-like
18 motion, and as the Z is performed, the loop is
19 made, the writer stops or may continue in a
20 forward, same pen motion, and there's breaks or
21 gaps and there's a slight perceptible gap in here
22 under the microscope. This is a sample of a
23 larger gap, right after the Y-like motion. This
24 is a continuation together. This is where

1 there's a break. This is where, a definite
2 break. This one, there is a continued pen
3 motion. This one has a break. So does this one,
4 and right after the end-like motion, there's a
5 straight line that comes across representing the
6 letter forms in the name. That appears on each
7 of the sections of the known standards.

8 Then the A, there's a C-like motion in
9 the questioned without a righthand side. That C-
10 like motion appears in each of the known
11 standards, and there is a perceptible
12 introductory stroke on to the C which is a speed
13 motion, the pen hits the paper before the letter
14 is formed. That appears in the questioned and it
15 also appears in one of the knowns on the right
16 side. Again on the right side. And this one it
17 appears on the left side, just as the questioned
18 does.

19 There is a slight hook right after the
20 C-like motion which introduces that triangle.
21 That hook appears here. The triangle has an open
22 loop on the top here with a sweep coming down all
23 the way to the right back to the left, and each
24 of the standard signatures has a introductory

1 stroke. Some of them have an N in the middle, a
2 scribbled N, and some of them don't. They just
3 have the hook coming up and into that triangle
4 thing, and with the sweep to the right and over
5 to the left, and there is a variation in this
6 particular form. Some of them are on the top,
7 some of them are on the middle, some of them
8 around it, some of them are triangular, and it's
9 based on characteristics I found in the
10 questioned signature and the known standards that
11 I was able to come to an opinion.

12 THE COURT: I'll see you at side bar.

13 (Whereupon, the following discussion
14 occurred at side bar:)

15 THE COURT: Are you going to argue why
16 the opinion should come in?

17 MR. TOCHKA: Why what should come in?

18 THE COURT: The opinion.

19 MR. TOCHKA: Your Honor, I suggest,
20 based on the background and training, based upon
21 his expertise testifying in several different
22 courts, based on his training and background as
23 an expert, he has reviewed handwriting and what
24 he has just demonstrated to the jury in terms of

1 the variations and the like, that he should be
2 allowed to come to an opinion.

3 THE COURT: Is there anything more you
4 want to say on this, Mr. Flaherty?

5 MR. FLAHERTY: I'm objecting, Your
6 Honor. The witness has testified to his observed
7 similarities and I would ask, I would urge the
8 Court not to allow him to enter is, what he
9 believes -- his ultimate opinion is that this is
10 the signature of the known writer.

11 MR. TOCHKA: Your Honor, I would
12 suggest that he can give his opinion. Obviously
13 the jury can also come to their own opinion but
14 I'd suggest that his experience in over thirty-
15 two years of looking at questioned documents
16 gives him an expertise, particularly in this case
17 where he looked at these particular documents.

18 THE COURT: The issue is not his
19 expertise, although he has not stated anything
20 about what it means to be a certified examiner or
21 anything else. There has been no challenge by
22 Mr. Flaherty or Mr. Doolin to his expertise and I
23 find as a preliminary matter that he can go
24 ahead, but this testimony, he has not explained

1 the basis upon which matches can be made and what
2 kinds of things lead him to conclude that there
3 is a match, so to speak, between a known exemplar
4 and a questioned exemplar. In other words, he
5 has not explained it.

6 MR. TOCHKA: He has explained that
7 based upon his training and experience that no
8 two are alike but there's always going to be
9 slight variations as a result of repetition, that
10 despite the fact that there will always be slight
11 variations, there are always going to be
12 consistent characteristics and he has
13 demonstrated for the jury those consistent
14 characteristics with the variations as well.

15 THE COURT: And I take it you want to
16 elicit his opinion. Were you then going to ask
17 him what the basis for his opinion is?

18 MR. TOCHKA: I'll ask him what the
19 basis is.

20 THE COURT: How many similarities does
21 there have to be, is there any kind of --

22 MR. TOCHKA: I think he just gave the
23 basis for his opinion, Your Honor.

24 THE COURT: His observations?

1 MR. TOCHKA: His observations which is
2 the same. That is the same, Your Honor, as if I
3 had my wife here and I had her signature and I
4 know her, I would be able to review her
5 signature, I would be able to testify as to her
6 signature. What he has done in the thirty-two
7 years, by looking a person's signature, as he has
8 done in this particular case, and in the past,
9 the experience that he has developed, and the
10 like, along with the fact that he also has
11 signatures made by Tanzerius Anderson, he is in a
12 position to give an opinion, just as I would if I
13 had seen the signature as a lay person, I would
14 be able to.

15 MR. FLAHERTY: Well, that's the
16 difference, Your Honor. Mr. Tochka may testify
17 as a lay person to his familiarity with his
18 wife's signature but this witness should not be
19 allowed to testify as an expert with the
20 imprimatur of the Court allowing him to testify
21 as an expert beyond the knowledge of a normal lay
22 person, without having him testify to quality
23 assurances, any peer review, any reason for the
24 opinion or --

1 THE COURT: That doesn't exist here.

2 MR. FLAHERTY: Furthermore, this
3 witness, to testify as to his opinion, he has not
4 laid out why his opinion should be accepted.

5 MR. TOCHKA: And I would suggest he
6 has, Your Honor. When the Court gives
7 instructions on expert opinions, the instructions
8 say that they can take into account the person's
9 opinions, they can disregard that, they can take
10 into account, looking at the signature, whether
11 to take into account the characteristics --

12 THE COURT: Mr. Tochka, that's not the
13 issue. I'm going to allow you to go forward with
14 the opinion. Your objection is noted for the
15 record.

16 MR. TOCHKA: Your Honor, what I'd ask
17 at this point is to introduce as an exhibit the
18 documents at this point in time that he's used,
19 the documents, the signature of Mr. Anderson.

20 THE COURT: He's only opining about the
21 signature, however. He is not opining about the
22 print, is he?

23 MR. TOCHKA: No, I'm not going to ask
24 him anything about the print.

1 THE COURT: How does that come in,
2 where the printed name and the address appears?
3 First of all, let me just say as a preliminary
4 matter and because it's a criminal case, on the
5 record I find that, based on Ms. McInerney's
6 testimony, who testified and I credit it, that
7 the business records here were made in the
8 ordinary course of business, that they were made
9 in good faith, that they were made before
10 litigation -- what is the other one? Good faith,
11 ordinary course of business, before litigation,
12 and that they are made at or near the time that
13 the record was created. I find all of those have
14 been established. Whether or not we will put
15 that before the jury will be upon request of
16 defense counsel also, to determine whether the
17 jury will be asked to determine those findings
18 have been satisfied.

19 You may go ahead with the opinion. I
20 will await the admission of -- until the cross
21 examination, the admission of the folio and the
22 writing samples. I'm talking about the document
23 with handwritten --

24 MR. TOCHKA: Right.

1 THE COURT: That's part of the folio.
2 That's not the whole folio?

3 MR. TOCHKA: Correct.

4 THE COURT: You can move that in after
5 the cross examination has been completed.

6 (Whereupon, the discussion at side bar
7 was concluded.)

8 BY MR. TOCHKA:

9 Q Sir, as a result of your comparison of the
10 questioned document signature with the known
11 signatures on the bottom, what was your opinion?

12 A It is my opinion that the writer of the known
13 signatures, the specimens, exemplars, prepared
14 the questioned signature that appears on the
15 exhibit.

16 MR. TOCHKA: Thank you. No further
17 questions.

18 MR. DOOLIN: Your Honor, I don't have
19 any questions.

20 MR. FLAHERTY: If I may, Your Honor?

21 THE COURT: Yes.
22
23
24

CROSS EXAMINATION

BY MR. FLAHERTY:

Q Sir, my name is Timothy Flaherty. I'm an attorney. I represent Mr. Anderson.

If I ask you anything you don't understand, just let me know and I'll try and rephrase it. Okay?

A Yes, sir.

Q Now, I note from your resume sir, that you have attended some specialized training.

A Yes.

Q And when's the last time you went to a training seminar or workshop in the field of signature comparison, sir? I note there is no date on your curriculum vitae.

A August of last year.

Q August of last year?

A Yes.

Q And, sir, I note the last time you presented a paper is 1994, is that right?

A There's one that's not on the resume. About two years ago I presented one at an event that had to do with an unusual check question.

Q Okay. Nothing to do with signatures?

1 A No.

2 Q And, in fact, none of the papers that you've
3 presented, the half dozen or so papers you have
4 presented in your twenty-nine years, have
5 anything to do with signatures. Is that a fair
6 statement, sir?

7 A No, it's not. I believe there is one about
8 simulations which is a type of forgery. There is
9 one about tracing which is a type of forgery.
10 There is one about marked degeneration that has
11 to do with people who have muscular degeneration
12 and how they write. The Connecticut paper had to
13 do with a court case that involved handwriting
14 samples.

15 Q It's fair to say, sir, that all of those papers
16 were presented more than a decade ago?

17 A I believe the last one was '94. I'd have to look
18 at it.

19 Q That last one, 1994, one was entitled bar code?

20 A That was not a hand writing.

21 Q Anything to do with signatures or handwriting was
22 more than a decade or more then, sir?

23 A That's probably correct.

24 Q You testified on direct examination that no two

1 people write the same, right?

2 A Yes, sir.

3 Q There is no data base such as fingerprints,
4 correct, for handwriting exemplars or
5 handwriting?

6 A There was a paper presented where a thousand
7 writers were looked at and in that particular
8 case, no one individual wrote -- they all wrote
9 differently.

10 Q So they looked -- there was a paper that said
11 there were a thousand people wrote and they wrote
12 differently, right?

13 A Yes, correct. They wrote the same material.

14 Q You wouldn't accept that, sir, as scientific,
15 would you?

16 A I'm not a statistician and I don't know if there
17 is a statistical analysis done with that
18 particular paper.

19 Q In fact, sir, isn't it true that there is no
20 independent institution such as academia that
21 accepts handwriting as a science, right?

22 A That is correct.

23 Q In fact, sir, all of what you testified to,
24 handwriting comparison, is a subjective field?

1 A Yes, it is.

2 Q And all of it depends upon the handwriting, I
3 guess, person who does the handwriting analysis
4 himself, right?

5 A Yes.

6 Q Because there's no way to test the opinion of a
7 handwriting comparison person, right?

8 A Well, if it appears contested, other examiners
9 can also come to the same or a different
10 conclusion.

11 Q At the FBI, sir, is there a quality assurance
12 plan where there are certain points that need to
13 be met?

14 A Yes, there is, and, in fact, each and every case
15 that I -- I work out of the New York office and I
16 have to send back my work and it's reviewed for
17 both technical and for administrative review by
18 another expert.

19 Q And when you send your work back, you send it
20 back with your opinion, with your findings,
21 right?

22 A Yes, there is a written opinion.

23 Q And every time you send it back, sir, do you send
24 a test with it? Do you send like a dummy

1 signature that doesn't belong there?

2 A No. That's not part of the problem.

3 Q So there's nothing in there, there's no control,
4 I should say, in the review that the FBI does to
5 assure that the person who checks your work
6 checks it accurately?

7 A No. There's only one control. However, we are
8 tested twice a year using samples, either
9 signatures or typing or whatever the problem
10 might be.

11 Q You're not tested outside the FBI though,
12 correct?

13 A I haven't been since I left Connecticut. They
14 used an independent organization.

15 Q And when you say you left Connecticut, you mean
16 the Connecticut State Police in 1994?

17 A Yes. They had an outside service doing forensic
18 problems and for, the questioned documents
19 problems were part of their testing procedure.

20 Q So you have not been independently tested in
21 about eight years, is that a fair statement?

22 A Only by the FBI in-house. By an outside group,
23 no..

24 Q And the FBI in-house, when they test, they have

1 your opinion, they look at it and they check and
2 see whether or not they agree with your opinion,
3 right?

4 A Well, it's a test that they already know the
5 answer to and they find out if I agree or
6 disagree with their answer.

7 Q With respect to the chalk, sir, this blow-up, you
8 made a comparison of the handwritten portion and
9 attempted to make a comparison as to the printing
10 up top, right?

11 A That's correct.

12 Q You were not able to say that the printing on the
13 top was caused by the person who signed the known
14 documents below, right?

15 A I could not make a definitive opinion although I
16 did make an opinion.

17 Q Okay. But a definitive opinion is one that you
18 would testify to?

19 A Yes or no.

20 Q Yes or no.

21 A I did not make the yes or no answer.

22 Q Is it fair to say that you were not present at
23 any time these so-called known signatures were
24 obtained?

1 A That's correct, I was not present.

2 Q It's also fair to say, it's very important when
3 you obtain exemplars from a subject, to make
4 certain that the writing conditions are good?

5 A It depends. It would be nice to have it, yes.
6 In a real world, I don't know that it exists.

7 Q Well, when you do a handwriting exemplar, you're
8 trying to do it in a controlled environment,
9 right?

10 A For example, if I'm at a bank and I'm looking at
11 a bank robbery note, most bank robbers fill it
12 out at the counter. When you ask for examples or
13 exemplars, we'd like the suspect to write on a
14 counter to try and duplicate the circumstances
15 under which it was written.

16 Q And it's fair to say that on the questioned
17 document, this is a so-called receipt signature,
18 right?

19 A That is correct.

20 Q And a receipt signature is an unusual type of
21 signature, right?

22 A Not necessarily.

23 Q Well, isn't it fair to say that receipt
24 signatures are classified as those signatures

1 that are not made under optimal conditions, like,
2 for instance, when somebody signs for a package?

3 A Well, I just signed for a package for United
4 Parcel, and I signed on a machine and my
5 signature is all over the place.

6 Q Right. And that's --

7 A That's because the individual is holding it, he
8 was shaking and I was shaking.

9 Q Right. And that's the reason why receipt
10 signatures are classified differently from other
11 types of signatures, right?

12 A I don't classify them differently.

13 Q Does the literature classify them differently?

14 A Not necessarily.

15 Q Are you familiar with Ordway Hilton (phonetic
16 spelling)?

17 A Yes.

18 Q Scientific Examination of Questioned Documents?

19 A Yes, I am.

20 Q Are you familiar with the section, chapter,
21 identification --

22 THE COURT: Side bar.

23 (Whereupon, a discussion occurred off
24 the record at side bar.)

1 BY MR. FLAHERTY:

2 Q This text, sir, this document, Scientific
3 Examination of Questioned Documents by Ordway
4 Hilton, is this literature that's accepted in
5 your field?

6 A Yes, it is.

7 Q Is this literature you're familiar with?

8 A Yes.

9 Q Is this literature that you've studied?

10 A I have read it several times.

11 Q Literature that handwriting comparison people
12 look at from time to time? You've read it
13 several times?

14 A Yes. I own a copy.

15 Q Okay. And with respect to it, sir, you're
16 familiar with chapter nine that there's a section
17 called receipt signatures, right?

18 A I'm not familiar with the exact --

19 MR. FLAHERTY: May I approach, Your
20 Honor?

21 THE COURT: Yes.

22 BY MR. FLAHERTY:

23 Q Showing you page one seventy-seven.

24 A Okay.

1 Q And it's fair to say that that section discusses
2 what receipt signatures are, correct?

3 A Yes.

4 Q And are those signatures that are not made under
5 optimal conditions? Right? Ones that are made
6 when a person is just hastily signing their name,
7 like you did for your Federal Express package?

8 A It's been my experience that receipt signatures
9 may or may not show -- may be scribbled and not
10 show the characteristics of the writer or they
11 may be very readable and show the
12 characteristics. So some are good and some are
13 bad.

14 Q And when we're talking about characteristics,
15 we're talking about pen motion, we're talking
16 about demarcation, pen pressure, things of that
17 nature, right?

18 A Yes, we are.

19 Q Jerky motions, flow, right?

20 A Correct, smoothness of the writing.

21 Q Continuations, stop patterns, right?

22 A Yes.

23 Q And you testified, sir, that the T that you
24 observed in the known signatures had a continuous

1 pattern, I think - correct me if I'm wrong - a
2 continuous flow pattern sort of like the T that
3 you see on the questioned document, right?

4 A That's correct.

5 Q But aren't there a number of characteristics,
6 sir, on the questioned document and the known
7 exemplars that are different from one another?

8 A No. . Actually, all the details of the
9 characteristics I found in the questioned also
10 are present in the known.

11 Q Well, wouldn't you agree with me, sir, just
12 glancing at the chalk for identification, that
13 the known signatures on their face appear
14 different from one another?

15 A Your term of difference and mine are entirely
16 different. A difference is something that's
17 totally alien in my view. A variation, as I
18 mentioned, the oval form coming off the ending
19 stroke showed some variation and I pointed that
20 out.

21 Q So when you say that no two people write the
22 same, are you also saying that no one person
23 writes differently?

24 A No. One person will write differently if they're

1 writing the same matter.

2 Q And isn't it true, sir, that when we want to
3 make, in the examination of signatures, when we
4 want to make a comparison between a receipt
5 signature and known signatures, it's best
6 practice to get exemplars of receipt signatures?

7 A Which I did have.

8 Q Okay. Now, were you present when the signature
9 portions, those bottom six were taken?

10 A No.

11 Q And were you present when the top two were taken?

12 A No.

13 Q So it's your testimony -- well, correct me if I'm
14 wrong, but do you have any idea whether or not
15 these are receipt signatures on the bottom?

16 A Those particular signatures are not but I have --
17 of the twenty-seven that I did use, there are
18 samples written on receipts, blank receipts,
19 similar to the questioned.

20 Q There are samples on blank receipts similar to
21 the questioned document?

22 A Just a signature, the outline of the questioned
23 signature appears, the receipt, and there's known
24 signatures put in the same spot where it appears

1 on the questioned.

2 Q In this case, sir?

3 A In this case, in these known writings.

4 Q The ones that you put up there on the board are
5 not receipt signatures, right?

6 A No. They came off samples. I just took the
7 first six signatures that appeared in my grouping
8 as representative of all the signatures.

9 Q Would you agree with me, sir, that this fellow,
10 Ordway Hilton, believes that consequently, to
11 answer the problem accurately, it is normally
12 necessary to locate known signatures of the same
13 class meaning receipt signatures?

14 A No. I had them, counsel.

15 Q Okay. But they're not on your chart though,
16 right?

17 A No, they're in the known standards.

18 Q The comparison that you testified to here in
19 court is from what you show on the chalk?

20 A I used those particular signatures on the known
21 as demonstrative samples of how the individual
22 wrote. I could have used any of the others.
23 There's eight there out of twenty-seven. I could
24 have used any of them.

- 1 Q You'll agree with me, will you not, that receipt
2 signatures are different from other signatures?
- 3 A They may or may not be.
- 4 Q Okay. Will you agree with me that in order to
5 make a comparison of a receipt, a questioned
6 receipt signature, the best practice is to use a
7 known receipt signature?
- 8 A They can be exemplars or samples from prior
9 writing.
- 10 Q And you will agree with me that on this chalk the
11 only receipt signature that appears is on the
12 questioned document?
- 13 A That's correct.
- 14 Q Do you have any idea what the potential rate of
15 error -- do you accept, do you understand the
16 phrase as I used it, potential rate of error?
- 17 A Yes, I do.
- 18 Q Do you have any idea what the potential rate of
19 error is for document examiners or handwriting
20 examiners?
- 21 A There are two tests performed over the last ten
22 years or so. One was seven FBI agents took a
23 handwriting comparison test by, presented by Dr.
24 Hamm (phonetic spelling) from Drexel University

1 and the error rate was less than one percent and,
2 because it was only a small number of examiners,
3 subsequently, about seven or eight years later,
4 about eighty or ninety examiners took a test at
5 one of these meetings I went to and the error
6 rate was six and a half percent.

7 Q And the error rates that you talk about have
8 never been accepted outside the groups or
9 associations that work with document examiners,
10 right?

11 A There are a, a dissenting group of lawyers that
12 do not accept anything.

13 Q Well, just for the record I don't believe -- I'm
14 not in a group like that.

15 THE COURT: No comments, please, sir.

16 BY MR. FLAHERTY:

17 Q You don't have a medical journal or a scientific
18 journal that accepts the papers or the studies
19 that you talk about, right?

20 A Oh, yes.

21 Q There's a medical journal, sir, that --

22 A Not a medical journal but scientific journals.
23 The Journal of American -- Academy of American --
24 I'm sorry. The Journal from the Academy of

1 Forensic Science.

2 Q Well, are you telling the Court, sir, that the
3 Journal of American Academy of Science --

4 A Forensic Science.

5 Q Forensic Science accepts handwriting exemplars as
6 a science?

7 A No. They accept articles --

8 Q Right.

9 A -- that are published, they publish articles from
10 forensic document examiners based on signatures
11 and other questioned document problems.

12 Q But they --

13 A They're there for peer review.

14 Q My point is, sir, this is not a science like
15 blood typing or DNA or even fingerprint
16 classification, correct?

17 A Well, I have to backtrack on fingerprints because
18 there's some controversial issues now, but I
19 agree with you on the first two. It's not.

20 Q Handwriting is also a controversial issue, isn't
21 it?

22 A Yes, it is.

23 Q And the reason why it's controversial is because
24 of the fact that the peer review publication,

1 whether or not there's any quality assurance
2 plans, whether or not there's a general data base
3 of handwriting exemplars, aren't all those
4 reasons why handwriting exemplars are now very
5 controversial?

6 A Basically they were accepted for over a hundred
7 years and they just became controversial and some
8 of the reasons you gave are present. I don't
9 know exactly which ones.

10 Q Are they controversial now because lawyers are
11 questioning them?

12 A Yes, but lawyers question everything.

13 MR. FLAHERTY: Nothing further, Your
14 Honor.

15 THE COURT: Anything more, Mr. Tochka?

16 MR. TOCHKA: Yes.

17
18 REDIRECT EXAMINATION

19 BY MR. TOCHKA:

20 Q Sir, how many exemplars of the signature of
21 Tanzerius Anderson, bearing the writing of
22 Tanzerius Anderson, did you receive?

23 A I received forty, twenty-seven of which were
24 written normally and two samples, and the --

1 twenty-five were written with the right hand and
2 the remaining were prepared with the left hand.

3 Q And are those in the documents that you have
4 before you right here --

5 A Yes, they are.

6 Q -- that have been marked for identification?

7 A Yes.

8 MR. TOCHKA: Your Honor, at this point
9 in time the Commonwealth would move to introduce
10 what's been marked Exhibit D for identification
11 into evidence.

12 MR. FLAHERTY: Same objection, Your
13 Honor.

14 THE COURT: I'll hear you later when
15 the jury leaves.

16 MR. TOCHKA: Your Honor, the
17 Commonwealth would also move to introduce what's
18 been marked E and F for identification at this
19 time into evidence.

20 MR. FLAHERTY: Could I just take a look
21 at them for a second, Your Honor?

22 THE COURT: Counsel, we can probably do
23 this after the jury leaves.

24 MR. FLAHERTY: Yes.

1 THE COURT: Thank you. Anything more
2 with this witness, sir?

3 MR. TOCHKA: No, other than, Your
4 Honor, the Commonwealth would move to introduce
5 the chalk into evidence.

6 THE COURT: Anything more?

7 MR. TOCHKA: Not other than that.

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

10 THE WITNESS: May I be excused, Your
11 Honor?

12 THE COURT: You may.

13 THE WITNESS: Thank you.

14 MR. TOCHKA: Your Honor, do you want me
15 to call the next witness at this time?

16 THE COURT: Yes.

17 MR. TOCHKA: The Commonwealth would
18 call Alan Tate.
19
20
21
22
23
24

1 ALAN TATE,

2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TOCHKA:

6 Q Sir, would you please introduce yourself?

7 A My name is Alan Tate.

8 Q And, Mr. Tate, could you spell your last name?

9 A T-a-t-e.

10 Q Can you tell the jurors what your occupation is?

11 A I'm a licensed private detective.

12 Q And prior to -- before being a licensed -- how
13 long have you been a licensed private detective?

14 A Since 1983.

15 Q And prior to that, what was your occupation?

16 A I was an EMT with the City of Boston from '73
17 through '78 and from '79 to '83, I owned an
18 ambulance company.

19 Q And how old are you, sir?

20 A Forty-nine.

21 Q Do you have any children?

22 A One.

23 Q What's your child's name?

24 A Joleena Tate.

1 Q Can you tell the jurors where Joleena Tate grew
2 up?

3 MR. DOOLIN: Judge, I object.

4 THE COURT: Overruled.

5 BY MR. TOCHKA:

6 Q Where did she grow up?

7 A She grew up in Brighton.

8 Q Whereabouts in Brighton?

9 A 76 Dunboy Street.

10 Q Did you live with her there?

11 A For a time.

12 Q And for what period of time?

13 A For the first three years of her life.

14 Q And after you -- at some point in time, sir, when
15 you left the house, where did you go to?

16 A I moved to Breck Avenue which is the other side
17 of Oak Square, about a mile from Dunboy Street.

18 Q Did you have any legal position as to Joleena
19 Tate at that time?

20 A Not at that time, no.

21 Q Okay. At some point in time did you?

22 A Yes, I did.

23 Q And what was that?

24 MR. FLAHERTY: Objection.

1 THE COURT: He may answer that.

2 BY MR. TOCHKA:

3 Q What was that, sir?

4 A In 1991 I obtained legal custody through the
5 Suffolk probate court.

6 Q And legal custody gave you the right to do what,
7 sir?

8 A I could make decisions for her life, schooling,
9 medical care, day to day things.

10 Q And where did Joleena Tate continue to live while
11 you had this legal right?

12 A She lived at 74 Dunboy Street with her
13 grandmother.

14 Q And in terms of 74, is that also 76?

15 A It's the same house. It's a two family house.
16 74 is the second floor, 76 is the first floor.

17 Q And who lived in 76?

18 A Her mother.

19 Q And what's her mother's name?

20 A Ana Culgini.

21 Q And do you know where Joleena went to middle
22 school?

23 MR. DOOLIN: Your Honor, I object.

24 THE COURT: Move on, sir.

1 BY MR. TOCHKA:

2 Q At some point in time -- what's Joleena's date of
3 birth?

4 A April 27, 1983.

5 Q At some point in time, sir, did you exercise your
6 rights that you've just expressed in terms of
7 moving her to another school?

8 A Yes.

9 Q And when was that, sir?

10 A That was in 1996.

11 Q And what school had she been attending?

12 A She had been attending the Edison Middle School.

13 Q And do you know what grade she was in at that
14 time?

15 A She was in the seventh grade.

16 Q And what did you do in terms of exercising your
17 rights?

18 A I moved her to the St. Anne's School.

19 Q And where is that located?

20 A That's in Brighton.

21 Q Was there a reason why you did that, sir?

22 MR. DOOLIN: Your Honor, I object.

23 MR. FLAHERTY: Objection.

24 THE COURT: Sustained.

1 BY MR. TOCHKA:

2 Q How long did she attend St. Anne's School, sir?

3 A She attended from 1996 to 1997 and graduated.

4 Q And graduated to what, sir?

5 A She went on to Mount St. Joseph.

6 Q And where is that located?

7 A Cambridge Street in Brighton.

8 Q And is that a high school?

9 A Yes, it is.

10 Q And at some point in time did you once again
11 exercise your legal rights there and move her
12 from that high school?

13 A Yes, I did.

14 Q And when was that, sir?

15 A That was after the Christmas break, to begin
16 another school in January of 1998.

17 Q How old was she then?

18 A I believe fifteen -- fourteen.

19 Q And was there a reason why you did that, sir?

20 MR. FLAHERTY: Objection.

21 THE COURT: Sustained.

22 BY MR. TOCHKA:

23 Q And exercising your rights, sir, where did you
24 send her to school?

1 A To Fryberg Academy.

2 Q Where is that located?

3 A Fryberg, Maine.

4 Q How far away is that from Brighton?

5 A About a three-hour car ride.

6 Q And is that a private academy?

7 A Yes, it is.

8 Q And what's the situation there, sir?

9 MR. FLAHERTY: Objection.

10 THE COURT: Sustained.

11 BY MR. TOCHKA:

12 Q How long did she attend that school?

13 MR. DOOLIN: I object.

14 THE COURT: Sustained. What's your
15 next question?

16 MR. TOCHKA: I'm not sure which ones
17 they're objecting to.

18 BY MR. TOCHKA:

19 Q Who paid for her tuition?

20 MR. DOOLIN: Your Honor, I object.

21 MR. FLAHERTY: Objection.

22 THE COURT: Sustained.

23 BY MR. TOCHKA:

24 Q How long did she attend that school for?

1 MR. DOOLIN: I object.

2 THE COURT: He may answer that.

3 A She finished out the 1998 year, she re-enrolled
4 for '98-99, and then I think she left the school
5 in '99.

6 BY MR. TOCHKA:

7 Q And when she left the school, sir, do you know
8 where she went to? Was she living up in Maine
9 during that time except for the summer?

10 A Correct.

11 Q And do you have a condominium in New Hampshire,
12 sir?

13 A Yes.

14 Q And how far away is that from Fryberg Academy?

15 A About a twenty-minute car ride.

16 Q And when she left in 1999, sir, was there a
17 reason why she left?

18 MR. DOOLIN: Your Honor, I object.

19 THE COURT: Sustained.

20 BY MR. TOCHKA:

21 Q And that brought us into 2000, correct? She left
22 when in 1999, sir?

23 A I believe she left December of 1999.

24 Q And where did she go to live after that?

1 A She went to her grandmother's house.

2 Q And can you describe your relationship with her
3 at that time?

4 MR. DOOLIN: I object.

5 MR. FLAHERTY: Objection.

6 THE COURT: Time period, please.

7 MR. TOCHKA: In January of the year
8 2000.

9 THE COURT: Overruled.

10 BY MR. TOCHKA:

11 Q What was your relationship at that time?

12 MR. FLAHERTY: I object again, Your
13 Honor.

14 THE COURT: The objection is overruled.

15 A Could you perhaps make that a little more clearer
16 for me.

17 BY MR. TOCHKA:

18 Q When she left Fryberg Academy -- did you have a
19 relationship with her prior to her leaving
20 Fryberg Academy?

21 A Yes.

22 Q And how did that relationship change or stay the
23 same after she left?

24 A When she left the school she came back down to

1 Brighton and wasn't re-enrolled in a school down
2 here and our relationship became strained. I
3 insisted that she stay in school and she did not
4 want to.

5 Q During those months of January into February of
6 the year 2000, how often would you see her?

7 A I didn't see her at all those two months.

8 Q How about March of 2000?

9 A No, I didn't.

10 Q Prior to that, prior to January, February and
11 March of 2000, going into the months before that,
12 December and November and October, how often
13 would you see her?

14 A I would see her every vacation period, I would
15 see her every weekend.

16 Q At Fryberg Academy?

17 A At Fryberg or she would come with me back to
18 North Conway, New Hampshire.

19 Q Now, sir, you said that you have a condominium in
20 New Hampshire, correct?

21 A Correct.

22 Q And where is that condominium located?

23 A It's in a complex called Cranmore Birches.

24 Q And are you familiar with a hotel called the

1 Yankee Clipper Inn?

2 A I'm aware of where it is, yes.

3 Q And approximately how far away is that from your
4 condominium?

5 A About three miles or so.

6 Q And, sir, that condominium, how often would you
7 go up to that condominium back in March and April
8 of the year 2000?

9 A I usually go there every weekend. I volunteered
10 as a ski patroller at Mount Cranmore.

11 Q I want to direct your attention, sir, to the
12 weekend of April 1. Do you recall what day of
13 the week that was?

14 THE COURT: What year?

15 MR. TOCHKA: I'm sorry. Thank you.

16 BY MR. TOCHKA:

17 Q Of the year 2000. If I show you a calendar --

18 A I believe it might have been a Friday.

19 Q -- would that assist you, sir?

20 A Saturday.

21 Q And that weekend, sir, the thirty-first, March 31
22 of 2000, and Saturday, April 1 of 2000, did you
23 go up to your condominium?

24 A Yes, I did.

1 Q And prior to that, when was the last time that
2 you had been at the condominium?

3 A Two weekends before that.

4 Q And do you know what weekends that would have
5 been? If I show you a calendar, would that help
6 you?

7 A Yes. It would have been the weekend of the
8 seventeenth, eighteenth and nineteenth, a Friday,
9 Saturday, Sunday.

10 Q So from the weekend of the seventeenth,
11 eighteenth and nineteenth until March 31,
12 Saturday, April 1 and the second, you missed a
13 weekend in between, correct?

14 A Yes.

15 Q And what weekend is it that you did not go to
16 North Conway?

17 A Twenty-fourth, twenty-fifth and twenty-sixth.

18 Q When you went up on the weekend of March 31,
19 April 1 -- did you go up March 31 or April 1? A
20 Friday or a Saturday?

21 A I believe it was -- I believe it was Saturday.

22 Q And when you went to the condominium, did you
23 notice anything unusual?

24 A The only thing I initially noticed was that, the

1 front door has two locks and the top lock which
2 is a dead bolt wasn't secured.

3 Q Was that anything unusual at that time, did you
4 think?

5 A I wasn't sure at the time because of the
6 maintenance people having access to the oil
7 burner and probably the cleaning person who
8 cleans the condominium.

9 Q So you proceeded going into your condominium?

10 A Yes.

11 Q While you're in there, did something unusual
12 attract your attention or did you observe
13 something that was unusual?

14 A Yes.

15 Q What was that?

16 A When I went up to the master bedroom which is
17 where I sleep I noticed that one of the drawers
18 in a chest of drawers to the right of the bed was
19 open partially.

20 Q And what would you normally keep there, sir?

21 A It's an underwear drawer but it's also a drawer
22 where I keep a firearm.

23 Q And what kind of firearm did you keep there, sir?

24 A Colt Python.

1 Q And what type of Colt Python is that, sir? Can
2 you describe it?

3 A A three fifty-seven magnum, four inch barrel,
4 blue steel.

5 Q And is that a revolver or a semiautomatic?

6 A A revolver.

7 Q When is the last time prior to the thirty-first
8 or April 1, rather, that you had seen that three
9 fifty-seven four inch barrel revolver?

10 A The prior weekend that I was up there.

11 Q And that would have been March 17?

12 A Seventeenth, eighteenth, nineteenth.

13 Q Do you know if your daughter knew where you kept
14 that gun?

15 MR. FLAHERTY: Objection.

16 THE COURT: He may answer if he knows.

17 A She knew that that was in the house but
18 specifically, I don't know.

19 BY MR. TOCHKA:

20 Q Now, do you have -- when did you purchase that
21 gun?

22 A 1977.

23 Q And do you have a license to carry a firearm?

24 A Yes, I do.

1 Q Did you notice anything else missing from your
2 house?

3 A After further checking I went through the rooms,
4 the closet in the same master bedroom had a green
5 duffle bag missing, Army-type duffle bag missing
6 from the closet.

7 Q And what did you keep in that duffle bag?

8 A There was an assortment of ammunition, holsters,
9 there were some empty shells, there was a gun
10 cleaning kit, and recently I was made aware that
11 there was another -- a firearm in that bag.

12 Q What type of firearm was that?

13 A It was a twenty-two rifle.

14 Q And that twenty-two rifle, when did you come into
15 possession of that?

16 A That's actually a friend of mine's firearm that I
17 have probably been holding for twenty-seven
18 years.

19 Q Now, did you make any observations as to the
20 means in which individuals or an individual
21 entered your house?

22 A Well, after walking through the house I called
23 the police as soon as I saw the gun missing.

24 Q And is that the New Hampshire police?

1 A Conway Police Department.

2 Q And did you walk with the North Conway Police

3 Department officers through the house?

4 A Yes.

5 Q And what observations did you make about means of

6 entrance?

7 A It appeared that there was entry made on the

8 second floor bedroom slider.

9 Q And how was that entrance made?

10 A It appeared that the lock was forced or jimmied

11 by some kind of an item.

12 Q And whose bedroom is that?

13 A That was Joleena's bedroom.

14 Q Did you observe, in terms of windows or the

15 doorways, any other attempts that appeared to get

16 into the house?

17 A There was a screen on the first floor screened in

18 deck that was damaged, that was either cut or

19 torn. There were scrape markings around the

20 slider locks on the first floor screened in deck,

21 the first floor open deck, and the ground level

22 slider, and these marks were cut in like a square

23 as if someone might be trying to cut glass.

24 Q While you were at your house at this point in

1 time in the condominium, did you receive a
2 telephone call?

3 Did you speak with a Detective Thomas
4 Traylor, if you recall?

5 A I believe at some point I did talk to Detective
6 Traylor and I'm just trying to think. I spoke
7 with a Conway detective and I did speak with
8 Detective Traylor, yes.

9 Q Did you, as a result, at some point begin a
10 search for your daughter?

11 A Yes.

12 Q What efforts did you make to locate your
13 daughter?

14 A Detective Traylor and I had spoken and --
15 initially he wouldn't talk to me on the phone. I
16 did have a meeting with him in person at One
17 Schroeder Plaza.

18 Q And did you make some efforts on your own to
19 locate your daughter?

20 A Yes. I reported her missing, I believe it was
21 either April 2 or 3 with the Braintree Police
22 Department who, I guess, entered her onto the
23 system. I went to Quincy District Court and got
24 a CHINS warrant.

1 Q What's a CHINS warrant?

2 A Child in need of services. She was still a minor
3 so the Court would issue a warrant for a runaway.

4 Q And what else did you do, sir?

5 A I contacted the National Center for Missing and
6 Exploited Children who forwarded me some
7 paperwork to do and they issued a missing -- I
8 think it's called an endangered runaway poster
9 that's put up nationally.

10 Q And what else did you do, sir?

11 A I got a call from Detective Traylor sometime in,
12 I believe it was very early May, saying that
13 Joleena had been picked up and placed into
14 custody but that she had used another name and I
15 asked him where she was, you know, picked up. I
16 was attending a conference in Davenport, Iowa at
17 the time. I called back to a friend of mine that
18 owns a private detective agency in Braintree. He
19 put together a group of about twenty odd private
20 investigators and the following night they
21 situated themselves throughout the Combat Zone in
22 Boston.

23 Q And at some point was your daughter located, sir?

24 A She was located by a couple of the investigators

1 coming out of a taxicab.

2 Q And when was that, sir?

3 A Excuse me?

4 Q When was that, do you recall?

5 A It was either May 3 or 4.

6 Q And did you at some point then see your daughter?

7 A No. I was in Iowa and I -- I did fly back.

8 Q And since then, sir, have you seen your daughter?

9 MR. DOOLIN: Your Honor, I object.

10 THE COURT: He may answer that yes or

11 no.

12 BY MR. TOCHKA:

13 Q Have you seen your daughter, sir?

14 A Oh, yes.

15 Q And what's your relationship with your daughter?

16 MR. DOOLIN: I object.

17 THE COURT: Sustained.

18 BY MR. TOCHKA:

19 Q How often do you see your daughter?

20 A I see her every week.

21 MR. TOCHKA: Thank you, sir. No

22 further questions.

23 THE COURT: Mr. Doolin?

24 MR. DOOLIN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. DOOLIN:

Q Mr. Tate, your recollection is that it was April 1 that you went to your condo up in North Conway?

A Yes.

Q And when you went into the condo, it's fair to say that at some point that day that you looked around and you discovered that your three fifty-seven was taken, is that right?

A Yes.

Q Now, the three fifty-seven that you had, there was also a holster that went with that, is that right?

A Yes.

Q And can you describe that holster for the jury, please?

A It was a -- I don't know the name of the manufacturer but it was a dark brown molded holster.

Q And it's fair to say that this was the holster that that weapon would fit into, is that right?

A Correct.

Q And that holster was also taken, is that right?

A Correct.

1 Q When you called the North Conway police, it's
2 fair to say that during that day of April 1 that
3 several officers came to your house?

4 A Yes.

5 Q And when they came to the house, it's fair to say
6 that they dusted for fingerprints, is that
7 correct?

8 A I believe so.

9 Q Did they also, to your knowledge, take any shoe
10 impressions?

11 A I don't know.

12 MR. DOOLIN: I don't have any further
13 questions, Your Honor.

14 THE COURT: Mr. Flaherty?

15

16 CROSS EXAMINATION

17 BY MR. FLAHERTY:

18 Q Mr. Tate, my name is Timothy Flaherty. I
19 represent Tanzerius Anderson.

20 If I ask you anything you don't
21 understand, just tell me. I'll try and rephrase
22 it. Okay?

23 A Thank you.

24 Q The investigation the North Conway Police

1 Department did at your condominium was for a
2 burglary, right?

3 A I don't know how they classified it. I called it
4 in as a stolen gun, as a break-in.

5 Q It was never classified, to your knowledge, as a
6 homicide investigation, right?

7 A Not that I know of, right.

8 Q And were fingerprint technicians at your
9 condominium?

10 A There was a detective there. I don't know what
11 his qualifications were.

12 Q Okay. He printed upstairs, right, by what you
13 determined to be the point of entry?

14 A I'm not exactly sure where he did it. I know he
15 printed things from three floors, doors, screen
16 doors, and handles.

17 Q Doors, screen doors, handles?

18 A Right.

19 Q He removed handles, right?

20 A Yes, he did. Correct.

21 Q Those handles were put into an evidence bag and
22 taken with him, right?

23 A I never saw them again.

24 Q Did you see people take photographs inside your

1 condo?

2 A Yes.

3 Q They took photographs of foot impressions in the
4 condominium, right?

5 A I think they did take some photos in Joleena's
6 bedroom, yes.

7 Q You were present when the photographs were taken?

8 A I was in the hallway.

9 Q Did they tell you that they were taking pictures
10 of foot impressions that they saw?

11 A I believe one of the detectives said that there
12 was some impressions on the rug but I don't know
13 anything other than that.

14 Q Okay. Did you know that they used a ruler to
15 measure them?

16 A No.

17 Q Did you ever see anybody with a ruler in the
18 condominium during the time that the photographs
19 were taken of the impressions on the rug?

20 A The detective had a bag similar to the attorney's
21 bag here. I don't know what was in there.

22 Q They noted the existence of a ladder outside,
23 right?

24 A Yes.

1 Q Did they fingerprint the ladder as well?

2 A I didn't see that.

3 Q At the very least, they fingerprinted areas on
4 three floors, removed some evidence, took
5 photographs, and measured what appeared to be
6 impressions, right?

7 MR. TOCHKA: Objection, Your Honor.

8 THE COURT: You have more than one
9 question there, sir. Would you break it down?

10 BY MR. FLAHERTY:

11 Q Well, as far as you know they took fingerprint
12 evidence from your condominium?

13 A Yes.

14 MR. TOCHKA: Objection. Asked and
15 answered.

16 THE COURT: Another question, sir.

17 BY MR. FLAHERTY:

18 Q They took something, photographs of the interior
19 of your condominium?

20 A Yes.

21 Q They removed items such as door handles from the
22 condominium?

23 MR. TOCHKA: Objection. Asked and
24 answered.

1 THE COURT: We have been over this, Mr.

2 Flaherty.

3 BY MR. FLAHERTY:

4 Q After you reported one firearm missing, right?

5 A Correct.

6 Q And at some point, sir, you were told there was
7 another firearm that was -- it was brought to
8 your attention?

9 A Correct.

10 Q And you did not report the second firearm stolen?

11 A No.

12 Q And at the time you were there, sir, you didn't
13 know who -- when you went and discovered your
14 condominium apparently had been broken into, you
15 didn't recall that you had a second firearm in
16 the house?

17 A No.

18 Q You don't keep your firearms locked up?

19 A The condominium is locked.

20 Q But I mean, the firearms themselves, you don't
21 have a locking mechanism on the firearm itself?

22 A No.

23 Q A trigger lock?

24 A No.

1 Q You didn't keep them locked in a safe in the
2 house? In New Hampshire, you didn't do it?

3 A No.

4 Q You are a licensed private investigator presently
5 today, right?

6 A Correct.

7 Q Your daughter, sir, was arrested in the Combat
8 Zone, is that right?

9 A Yes.

10 Q And subsequent to that -- it's subsequent to that
11 that the private investigators that you are
12 familiar with found her getting out of a taxicab?

13 A Correct.

14 MR. FLAHERTY: No further questions for
15 the witness, Your Honor.

16 THE COURT: Anything more, Mr. Tochka?

17 MR. TOCHKA: No further questions.

18 THE COURT: Thank you very much, sir.
19 You may step down. May I see counsel, please?

20 (Whereupon, a discussion occurred off
21 the record at side bar.)

22 THE COURT: Ladies and gentlemen, we
23 are going to adjourn for the day and the weekend.
24 Before you go, once again please leave your notes

1 in your envelopes on your seats. The schedule
2 Monday will be nine until four.

3 Once again, before you go, I must
4 remind you of your continuing obligations in the
5 case not to discuss the case with anyone or allow
6 anyone to talk to you about it, not to revisit
7 any of the scenes or locations we saw on the
8 view, and not to consult any source, whether it
9 be book, treatise or internet, about any issue or
10 matter raised in the trial. Again, you must base
11 your verdict only on the evidence given to you in
12 the courtroom through the witnesses' testimony
13 and the exhibits.

14 We thank you again for your close
15 attention today. We will see you Monday at nine
16 o'clock. Have a good weekend.

17 (Whereupon, the jurors were escorted
18 from the courtroom at 4:10 o'clock p.m.)

19 THE COURT: Alright. What we have is
20 an exhibit which has been marked for
21 identification. And you're moving it into
22 evidence, Mr. Tochka?

23 MR. TOCHKA: Yes, I am.

24 THE COURT: Okay. The grounds for the

1 objection, please?

2 MR. FLAHERTY: That the writing
3 contained thereon does not fall within business
4 entry exception and the writing contained thereon
5 is hearsay.

6 THE COURT: Let's be clear. When you
7 say writing, sir, you mean -- are you just
8 referring to the --

9 MR. FLAHERTY: I'm referring to the
10 handwriting.

11 THE COURT: The print?

12 MR. FLAHERTY: My understanding, Your
13 Honor, was from the testimony of McInerney, that
14 this section of the so-called folio was filled
15 out by the guest.

16 THE COURT: All of it?

17 MR. FLAHERTY: All that appears on the
18 hotel receipt and for those reasons, Your Honor,
19 the writing which appears on that business entry
20 is hearsay and must be redacted from the
21 document.

22 THE COURT: Mr. Doolin?

23 MR. DOOLIN: Judge, I just join with
24 Mr. Flaherty, rest on his argument.

1 THE COURT: Now, as I understand it,
2 Mr. Duane's testimony, he could not make a match
3 of the writing which appears in print. When I
4 mean print, as opposed to script, as in the name,
5 Tanzerius Anderson, and the address.

6 MR. TOCHKA: No, I believe he said he
7 had an opinion but he wasn't -- he wouldn't put
8 it out as an expert opinion. He said he had an
9 opinion of it.

10 THE COURT: He said that he could not
11 make a definitive opinion which, since I don't
12 know what that means and since he is required to
13 opine to a degree of certainty which is accepted
14 in the field, there was no opinion offered.

15 MR. TOCHKA: Correct.

16 THE COURT: So did you have anything,
17 Mr. Tochka, to say about that?

18 MR. TOCHKA: Number one, I would
19 suggest it's not hearsay, that the fact that that
20 was filled out -- I'm not going to belabor it but
21 you have heard the testimony that this record is
22 kept in the normal course of business before any
23 litigation or the like. The signature now has
24 come in so I suggest a reasonable person can

1 infer that is a signature of Tanzerius Anderson
2 and that whole document goes in as part and
3 parcel of his statement which I'm using at this
4 point against him. I don't at this point -- it
5 goes in as a business record, I'd suggest, number
6 one.

7 It also, if the Court isn't inclined to
8 admit it as a business record, I don't think it's
9 a hearsay statement. The name, Tanzerius
10 Anderson, there is no statement in there, there
11 is no statement as written there. I suggest now
12 once the signature comes in with the name,
13 Tanzerius Anderson, that then -- I can argue that
14 it's Tanzerius Anderson's signature and therefore
15 the information that's on there is relevant in
16 this particular case.

17 THE COURT: Okay.

18 MR. FLAHERTY: Your Honor, my objection
19 is to it as being made by Tanzerius Anderson

20 MR. TOCHKA: Since the testimony has
21 been, the person who signs that is the person who
22 fills that out and there's been testimony now
23 that the person who signed that was Tanzerius
24 Anderson so the jurors can infer, based upon the

1 evidence, the person who filled that out is
2 Tanzerius Anderson.

3 MR. FLAHERTY: Your Honor, my objection
4 extends to not just the printed matter but the
5 signature as well on the receipt.

6 THE COURT: Well, for the record, I
7 have previously made my findings under the
8 business record exception to the hearsay rule
9 with respect to the document, that it was -- the
10 testimony was that it was made in the ordinary
11 course of business of the Yankee Clipper Motor
12 Lodge, that it was obviously made before the
13 course of this prosecution, that it was made in
14 good faith at or about the time that the record
15 was made, indicates it was made about March 25 of
16 the year 2000.

17 Whether or not the jury accepts the
18 opinion of Mr. Duane with respect to whether or
19 not that is Tanzerius Anderson's signature is
20 going to be for the jury to decide. The fact
21 that the printed name, Tanzerius Anderson, and
22 address and some information about the date and
23 make of car that is indicated there, again just
24 appears on the record. Whether or not that was -

1 - there's been no connection that Mr. Anderson
2 made the entry here but that this was accepted by
3 the Yankee Clipper as a business record at the
4 time it was made on March 25.

5 There can be no argument, therefore,
6 that it was Tanzerius Anderson who filled this
7 out and you can argue what Mr. Duane has said,
8 whatever his opinion is concerning the signature.
9 There's been no connection with this and the
10 defendant and that he filled it out or that he
11 lives at 25 Bearse Street.

12 MR. TOCHKA: I intend to put in a
13 registration of motor vehicle certificate that
14 indicates Tanzerius Anderson with an address of
15 25 Bearse Ave. with a license of such and such.

16 THE COURT: That's other evidence which
17 you can argue but it will go in as the next
18 exhibit and your objection is noted.

19 MR. FLAHERTY: As I understand it, the
20 handwriting and the signature, according to the
21 Court's ruling, is not being redacted from the
22 business record?

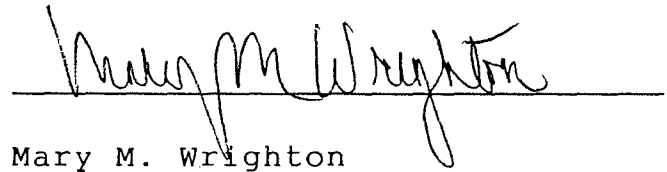
23 THE COURT: It's not being redacted and
24 the reason it is not being redacted is because I

1 find that even though there is handwriting there
2 and there's been no opinion offered that the
3 entry was made by Tanzerius Anderson, under the
4 business records exception to the hearsay rule,
5 the person who did testify about the
6 circumstances under which the record was made did
7 not turn out to be the person who filled it out
8 or who observed it to be completed, but that that
9 is information that is kept by the business, they
10 rely on this for various purposes, and I think
11 it, therefore, meets all the other exceptions to
12 the hearsay rule as a business record, but on the
13 state of this record, I have instructed Mr.
14 Tochka he cannot argue that it was Mr. Anderson
15 who filled out that top part, only that the
16 signature was, in the opinion of Mr. Duane, that
17 of the defendant. Okay.

18 (Whereupon, the proceedings were
19 adjourned at 4:16 o'clock p.m.)
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24

C E R T I F I C A T E

I, Mary M. Wrighton, do hereby certify
that the foregoing transcript, pages 1 through
292, is a complete, accurate and true record of
my stenographic notes as taken by me in the
aforementioned matter to the best of my skill and
ability.


Mary M. Wrighton