

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10A
JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,]
]
 Plaintiff,]
]
 vs.]
]
 ERNESTO BEHRENS,]
]
 Defendant.]
 -----]

BROWARD COUNTY COURTHOUSE
ROOM 519
201 SOUTHEAST 6TH STREET
FORT LAUDERDALE, FLORIDA
SEPTEMBER 12, 2000

APPEARANCES: MICHAEL J. SATZ, STATE ATTORNEY
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Assistant State Attorney
Appearing on behalf of the Plaintiff

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PROCEEDINGS AT TRIAL
VOLUME VI

COPY

I N D E X

DATE	PROCEEDING	PAGE
09-12-00	Richardson Hearing	777 - 801
09-13-00	Trial	832 - 850

<u>WITNESS</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
Sharon Hinz	801	806	823	
Det. John Butchko	851	857		
Det. Steve Geller	859	868	874	876
Donna Marchese	878	946		

EXHIBITS ENTERED

State's Exhibit No. 18	759
State's Exhibit No. 19	799
State's Exhibit No. 20	806
State's Exhibit No. 21	913
State's Exhibit No. 22	915
State's Exhibit No. 23	915
State's Exhibit No. 24	916

1 They never took a -- they had the opportunity to
2 do so. They never did. Never expressed an
3 interest in that. Never did so.

4 THE COURT: Let me ask this and then
5 we'll come back to that. Was Ms. Hinz deposed?

6 MR. TERRELL: No, judge.

7 THE COURT: Okay. Let me ask this
8 question. Why don't you inquire of Ms. Hinz at
9 least to establish for the court as part of the
10 Richard hearing what in fact this piece of paper
11 is. Why don't you go ahead and --

12 MR. SEGAL: Okay. She already said a
13 couple of things before but I'll do it again.

14 DIRECT EXAMINATION

15 BY MR. SEGAL:

16 Q. This paper here is called a list for a
17 case number; is that correct?

18 A. Right.

19 Q. The case number is at the top of the
20 paper?

21 A. Right.

22 Q. Is that one of the case numbers that's
23 assigned to the homicides that were being
24 investigated?

25 A. Right.

1 Q. Okay. Now, the list contains what kind
2 of numbers and names on it?

3 A. It's just a probably fairly consecutive,
4 if not completely consecutive, listing of numbers
5 with the name next to it as Theresa Merit opened
6 the evidence packages. So this is just her
7 handwritten notes.

8 Q. The numbers, are they items numbers?

9 A. Yes. The numbers are items numbers and
10 then the names are the item number of -- the name
11 is the name that's on the package that corresponds
12 to the item number and the name on the property
13 receipt.

14 Q. Okay. And on this list is the number
15 232; is that correct?

16 A. Yes, it is.

17 Q. And the name next to 232 is what?

18 A. Ernesto Behrens.

19 Q. And was the same thing done all the way
20 through this as far as just the name who gave the
21 swabs and the item number assigned to the swabs?

22 A. Yes.

23 THE COURT: Let me just ask this
24 question, if I can, Ms. Hinz. Is this list part
25 of what began as some and became ultimately 3,000

1 odd, is this part of the consecutive listing of
2 just people who gave samples?

3 THE WITNESS: Yes.

4 THE COURT: Mr. Terrell, we'll come back
5 to completing the Richardson hearing in a moment
6 but do you have any question you want to ask her
7 at this point.

8 MR. TERRELL: Yes.

9 THE COURT: On this list?

10 MR. TERRELL: Yes.

11 CROSS-EXAMINATION

12 BY MR. TERRELL:

13 Q. Where are the rest of the pages to that
14 list, all 3,000 names the judge just spoke of?

15 A. All 3,000 names are on different lists in
16 different case folders.

17 Q. Where is the rest of that list?

18 A. The rest of that list -- well --

19 Q. The truth is, you don't know where the
20 list ends or stops or starts or ends, do you?

21 A. Well, I have -- everything that pertains
22 to this case, I have in this case folder.

23 Q. I understand that but where's the rest of
24 that particular list?

25 A. I imagine it's the sheets that fall

1 before it and the sheets that fall after it within
2 this case folder.

3 Q. Can I see that?

4 A. Now, whether -- some of this list is
5 prepared by me, some of the list is prepared by
6 Theresa Merit.

7 Q. But the list, the particular page that
8 you have, is not prepared by you; correct?

9 A. That's correct. The one that you've
10 seen.

11 Q. And you -- but the importance of this
12 particular list that you have, is that you used
13 that list to prepare the swabs to go to Detective
14 Geller to Broward; correct?

15 A. I would have looked at this list. I
16 would have looked at the property receipt. I
17 would have had to look at everything that had
18 number 232 on it in order to process the sample to
19 give to --

20 Q. So you did rely on that list in front of
21 you to prepare the swabs?

22 A. Yes. I would have checked the list
23 before I would have prepared the samples.

24 Q. Did you use the DNA transmittal --
25 evidence transmittal sheets to prepare the swabs

1 or did you use that sheet?

2 A. The DNA transmittal sheet, I prepared to
3 send the swabs to Roger Kahn. But then I also
4 used the evidence transmittal sheet to denote the
5 date that I retrieved them back again.

6 Q. And would you agree that the DNA
7 transmittal sheet with the same item numbers that
8 you have on the sheet have different names as
9 opposed to what you have on your sheet?

10 A. They have different names?

11 Q. Okay. Does 231 on that sheet have Angel
12 Fernandez?

13 A. Yes, it does.

14 Q. Okay. Does 230 have Jane Anus? It looks
15 like, A-n-u-s. Excuse me. I just asked you if
16 231 had Angel Fernandez on this sheet that you
17 relied on.

18 Does that have Angel Fernandez as 231?

19 A. No, it does not.

20 Q. Okay. Does that sheet have as 230,
21 Janey -- maybe it's, A-r-u-s.

22 A. No, it does not.

23 Q. Okay. So they're different sheets, with
24 different names?

25 A. They're not different names. It's the

1 fact that on this one sheet, it says no name and
2 on the other sheet it has a name so they're not
3 two different names. One has a name. One does
4 not have a name.

5 Q. They're not consistent, are they?

6 A. Well, because this is the actual name
7 that was on the swab packet. If there was no name
8 on it, then no, it would not be consistent. This
9 is a list of the swab packet, the name on the swab
10 packet.

11 Q. Okay.

12 A. If you can picture --

13 Q. So you're saying no name -- no name --

14 MR. SEGAL: Judge --

15 THE WITNESS: This says no name. It
16 means there was no name on the swab packet. In
17 that case, obviously, you have to rely on the
18 property receipt because there is no name on the
19 packet.

20 MR. TERRELL: Okay.

21 THE WITNESS: This is only to reflect
22 what the inner package says.

23 BY MR. TERRELL:

24 Q. And I assume you relied to that sheet as
25 opposed to this one to prepare it to go to

1 Detective Geller?

2 A. What sheet?

3 Q. The one you're holding in your hand.

4 A. This one?

5 Q. That's the one.

6 A. I would have looked at this. I would
7 have had to look at the property receipt. I would
8 have had to look at everything that had the number
9 232 on it to confirm that the samples all said:
10 232, Ernesto Behrens; 232, Ernesto Behrens.

11 Q. So it's fair to say, you didn't need that
12 sheet, this particular sheet right here, to
13 prepare it to go to Detective Geller? You didn't
14 need it and you didn't rely on it specifically?
15 You relied on these other sheets too?

16 A. I wouldn't say I didn't needed it. I
17 would say that I needed everything in order to
18 prepare the samples.

19 Q. Well, all the other sheets, this and the
20 other ones you're speaking of, had the exact same
21 thing.

22 Why would you need this handwritten sheet
23 by somebody else if you didn't rely on it?

24 A. I didn't say that I didn't relied on it.
25 I said I did rely on them. I said I relied on

1 everything that had the item number and the name
2 on it, to make sure everything was correct. If
3 there had been something that was different, then
4 that would have told me that there was a problem
5 and the sample would not have been able to be
6 transferred.

7 MR. TERRELL: Nothing further, judge.

8 THE COURT: Let me ask this. I do find
9 that what's been presented so far would suggest
10 there's been a discovery violation.

11 I would ask, Mr. Terrell, do you feel
12 that the violation was willful or inadvertent? Do
13 you have any input on that?

14 MR. TERRELL: I hate that question.

15 THE COURT: Sorry.

16 MR. TERRELL: Well, may I ask just one
17 more question of this witness?

18 THE COURT: Certainly.

19 BY MR. TERRELL:

20 Q. Didn't you just testify that you didn't
21 have the property receipt to rely on on these
22 swabs when they went to Detective Geller.

23 A. I said that I would not swear or affirm
24 that I had the property receipt in front of me but
25 that I would rely on -- on these -- I would not

1 swear that I had that in front of me at the
2 particular time I opened the package. I will not
3 swear to that.

4 Q. Can you swear that you relied on that
5 sheet, the one with all the names written by
6 somebody else?

7 A. No. I won't swear that I relied on any
8 particular sheet.

9 MR. TERRELL: Okay. Judge, it was
10 willful. It's only willful if the state had
11 knowledge of it and they didn't turn it over. If
12 she turned everything over to the state and I got
13 all the other pieces of paper except for this
14 list, if that's the situation, it's certainly
15 willful. If the state had not had knowledge, then
16 no, it was not.

17 THE COURT: Let me ask this question. I
18 mean, you've had an opportunity to request
19 Ms. Hinz about it. Based on your questioning of
20 her, can you tell me whether you feel that the --
21 the failure to have this document, is it trivial,
22 is it substantial? And tell me to what level you
23 feel you're prejudiced. Perhaps you may have
24 prepared yourselves differently.

25 MR. TERRELL: Again, this is yet another

1 document with this witness that she did not
2 prepare. This is hearsay. All of this is
3 hearsay. Now, we're getting into I think this may
4 be the third document that she did not prepare but
5 she relied on to put 232, Ernest Behrens, to
6 prepare those swabs to go to Broward. So it's not
7 trivial by any means because she relied on that
8 sheet.

9 I want the person who made that sheet.
10 Where did they get 232 for Ernesto Behrens? Did
11 they get it from the property receipt? Was it
12 pulled off the computer? Where did it come from?
13 And why did it go from Ernesto to Ernest Behrens.
14 So, judge, what I'm asking for is, to have the
15 witness who made these sheets who -- it's not
16 trivial and yes, it's prejudicial.

17 THE COURT: Ms. Hinz, the person who's
18 name you said was Terry --

19 THE WITNESS: Theresa Merit.

20 THE COURT: Who's Theresa Merit?

21 THE WITNESS: She is an analyst that used
22 to work in our laboratory, is now retired and
23 lives in North -- South Carolina or North
24 Carolina. I'm sorry. I don't remember at this
25 point.

1 THE COURT: How long -- did you work with
2 her?

3 THE WITNESS: Yes.

4 THE COURT: How long did you work with
5 her?

6 THE WITNESS: She retired, I think, two
7 years ago so -- and I've been there 11 years.

8 THE COURT: And are you familiar with her
9 handwriting?

10 THE WITNESS: Yes. And she's the only
11 one who prepared these other than myself because I
12 was -- I was called out of town on an emergency
13 and she filled in processing the swabs so that
14 they didn't back up because there were so many.

15 THE COURT: Is this list prepared in the
16 ordinary course of business as far as you know in
17 terms of the Crime Lab?

18 THE WITNESS: This is how I was keeping
19 track when I actually opened each individual
20 package so she just followed along. When I was
21 leaving, I said: This is what I do. As I -- you
22 know, I have a separate sheet of paper because we
23 have the property receipt, that this sheet is how
24 I'm keeping track. This is my handwritten notes.

25 So that's why -- we don't turn these over

1 for discovery, basically to answer part of the
2 other question that's coming up. We don't turn
3 these over. These are our handwritten notes. In
4 this case, I told Theresa before I was leaving, I
5 said: You put the item number and the person's
6 name that's on the inner packaging of the swabs.

7 THE COURT: Let me ask you this. As far
8 as you know, would this document have been
9 generated -- I mean, is this something that's
10 generated in -- as a matter of course or was it
11 only generated in Ernesto Behrens' case?

12 THE WITNESS: Oh, no. This was -- this
13 was documented this way for all the --

14 THE COURT: So this case --

15 THE WITNESS: -- 3,000 samples.

16 THE COURT: If this case that we're here
17 on today did not exist, this document would
18 nonetheless be here? You would -- it would still
19 be in existence? Do you understand my question?

20 THE WITNESS: Right.

21 THE COURT: If this case didn't exist,
22 would that document exist?

23 THE WITNESS: As far as if I didn't --
24 never turn out -- as far as this --

25 THE COURT: It's probably not a great

1 question.

2 THE WITNESS: Right. Because if I never
3 got Ernesto Behrens' sample, this list would still
4 be here. It just wouldn't have Ernesto Behrens'
5 sample --

6 THE COURT: Okay.

7 THE WITNESS: -- number on it. If I
8 received Ernesto Behrens' sample by itself in a
9 case; no, I would not have prepared this because
10 it would have been one item and it actually just
11 would have been an entry in --

12 THE COURT: Well, that's on a big list
13 because it was part of that --

14 THE WITNESS: Right. This is a one huge
15 long list because it was one huge long --

16 THE COURT: And the last question I just
17 want to know is, why is there -- off the list
18 Mr. Terrell was asking you before, why were there
19 on some number like 230 or 231, why are there no
20 names written down and names written on other --

21 THE WITNESS: Right. Anywhere where it
22 says no name meant that the inner packaging didn't
23 have a name on it. Like, most of the swab samples
24 that you'll see and because of the list, there's
25 almost a name for everybody.

1 So on the inner packet, that was the one
2 request that I had because there were so many
3 samples coming through, that they labelled the
4 inner packaging of the swab so that when you
5 opened up -- like, the outer package has the name
6 on it. And actually, at that point, it wouldn't
7 have the item number. The outer packaging has an
8 inventory number. It's got all the information
9 for that case on the outer packaging.

10 And then when you open up the inner
11 packaging, I wanted to see the person's name again
12 on the inner packaging. So that the outer
13 packaging had the name on it. The inner packaging
14 had the name on it and the property receipt.
15 Sometimes, that wasn't always done. The detective
16 would not write the name on the inside package.
17 So that's why anywhere it says no name meant there
18 was no name on the package inside.

19 THE COURT: Mr. Terrell or Mr. Segal,
20 anything else on this discovery issue?

21 MR. SEGAL: Judge, just a couple of
22 points. One, for the court, Rule 3.220d(B), lower
23 case d, capital B.

24 THE COURT: Let me get there.

25 MR. SEGAL: Which is on page 11 and 12,

1 11 and 13 if you're using the 2000 West Florida
2 Rules.

3 THE COURT: Which rule specifically?

4 MR. SEGAL: 3.022D. I'm sorry. Number
5 1, upper case B. Judge, what I'm referring to is,
6 one of the discovery obligations is to provide
7 police and investigative reports of any kind but
8 not notes from which reports are compiled. These
9 are notes, therefore, under that rule, I'm not
10 obligated to provide that in discovery.

11 However, if you go down to subsection K
12 under lowercase d(1)(K), it says: Any tangible
13 papers or objects the prosecuting attorney intends
14 to use in the hearing or trial. This -- I only
15 know that I needed to use this based on what
16 occurred during the -- in the middle of the trial
17 here.

18 I had no expectation that the defense was
19 going to attack these swabs as not belonging to
20 the defendant. They didn't do it in the prior
21 trials against this defendant. Mr. Terrell nor
22 Ms. Shelowitz ever advised me that they were going
23 to allege or contend that these swabs were not the
24 defendant's. I had no way of knowing that. It
25 only became clear now, right in the middle of

1 trial, right this second. Therefore, that's when
2 I got it and went to show it and use it.

3 So therefore, again it was not a
4 discovery violation originally because it was not
5 obligated to be provided in discovery. It only
6 became something to provide in discovery when I
7 intended to use it at trial. I had no knowledge
8 that I needed to use that because I never had a
9 clue that they were going to contend that these
10 were not the defendant's swabs that were given to
11 the Plantation Police.

12 MR. TERRELL: Judge, if I may respond?

13 THE COURT: Yes.

14 MR. TERRELL: They must turn over all
15 police and investigative reports. She just told
16 you that this is the report that she does, either
17 her or Theresa Merit. Especially in this
18 particular case, these are the reports that they
19 made. They made a report of everybody whose swabs
20 came in and whose names were on the packages.

21 THE COURT: What -- pardon me for a
22 minute.

23 MR. TERRELL: Yes.

24 THE COURT: What is that paper, ma'am?

25 THE WITNESS: This is just my -- in this

1 case, this is Theresa's handwritten notes. This
2 is not a report. We issue a different report.

3 THE COURT: Okay. What is the report
4 that is ultimately generated from your office? Do
5 you have it with you?

6 THE WITNESS: I have a copy of the report
7 for this case on the evidence items only, not for
8 the listing of names.

9 THE COURT: Is that report what's already
10 been marked and introduced and copied?

11 THE WITNESS: No. Because the report I
12 have, the only report I have in this case, is the
13 evidence items relating -- relating to the
14 homicide, the clothing, the rape kit, that type of
15 evidence.

16 THE COURT: Okay.

17 THE WITNESS: It doesn't include any
18 names of any individuals because again this was
19 3,000 names so there was not a list -- a report --

20 THE COURT: I understand.

21 THE WITNESS: There wasn't a final report
22 with the typed names on it. You can see the
23 report but it has nothing to do with this -- this
24 case. It's only got items one through six on it.

25 MR. TERRELL: Judge, may I inquire of the

1 witness? Did you leave the office of Miami-Dade
2 Crime Lab for a period of time? You keep saying
3 that, in my absence, Theresa Merit would do this.

4 THE WITNESS: No. I was just gone for
5 about a week's period.

6 MR. TERRELL: Okay. So the report you
7 think was generated during the week that you were
8 gone, the one that you have right --

9 MR. SEGAL: Objection. It's not a
10 report.

11 THE WITNESS: Right. It's not a report.

12 THE COURT: We're talking with that
13 listing. Okay. Anything else on the issue?

14 Okay. Based on what the witness has
15 testified to, I think Mr. Segal's correct. I
16 don't see it as being a discovery violation. I
17 see it being the notes internally to this Theresa
18 that were generated from which later reports may
19 have come on those homicides cases.

20 All right. Bring the jury back in,
21 please.

22 MR. TERRELL: You know a hearsay
23 objection is coming, judge.

24 THE WITNESS: I have to be back in Dade
25 County.

1 THE COURT: By 5:00?

2 THE WITNESS: No. Not by 5:00; no. I'm
3 saying if I don't leave here by about 5:00, I'm
4 going to run into a problem.

5 THE COURT: Well, I think -- you know,
6 let's -- let's address that.

7 MR. TERRELL: I think we can do it.

8 THE COURT: You think you can do it.
9 Okay.

10 [WHEREUPON, the jury panel entered the
11 courtroom]

12 THE COURT: Welcome back, ladies and
13 gentlemen. Thank you for your patience again.
14 These are parts of a trial that they don't show
15 you on court TV.

16 THE COURT: You may proceed, Mr. Segal.

17 DIRECT EXAMINATION

18 BY MR. SEGAL:

19 Q. Again, Ms. Hinz, I'm showing you what's
20 been marked State's Exhibit U for identification?

21 What is that?

22 A. This is listing of items that was
23 prepared by Theresa Merit. It has the case number
24 of the master case that corresponds to the
25 homicide in Dade County so it's just listing with

1 item numbers and the names of the person
2 associated with that item number that came from
3 the actual packaging, the inner packaging, of the
4 evidence.

5 Q. Okay. And that's just one page of a
6 running list of item numbers under that case
7 number?

8 A. That's correct.

9 Q. And does this contain the item 232
10 notations?

11 A. Yes.

12 MR. SEGAL: Your honor, enter Exhibit U
13 for identification into evidence.

14 MR. TERRELL: Judge, that's clearly
15 hearsay. She testified to somebody else's notes.

16 THE COURT: May I see you again just very
17 briefly, please.

18 [WHEREUPON, the following sidebar
19 discussion was had]

20 THE COURT: I think it was done while the
21 jury was out but I think in front of the jury,
22 you're going to have to lay a predicate in terms
23 of her familiarity with --

24 MR. TERRELL: It's not on there?

25 THE WITNESS: You need to establish all

1 that in front of the jury. Assuming you do that
2 in front of the jury, you can certainly --

3 MR. TERRELL: And she's not an expert in
4 handwriting.

5 THE COURT: It's a question of
6 familiarity. Thank you.

7 [WHEREUPON, the sidebar discussion was
8 concluded]

9 THE COURT: So at this time, I'm going to
10 sustain the objection.

11 You may proceed, Mr. Segal.

12 BY MR. SEGAL:

13 Q. Ms. Hinz, State's Identification U for
14 identification, who wrote all these names and
15 numbers in there?

16 A. That would have been Theresa Merit.

17 Q. Who is Theresa Merit?

18 A. She is -- was a criminalist that was
19 assigned to the same position that I was, that she
20 examined evidence when it first came into the
21 laboratory and then would prepare the samples for
22 DNA. She's no longer with our laboratory. She
23 retired about two years ago, I think it was.

24 Q. Okay. And she lives out of Florida
25 somewhere?

1 A. Yes, she does.

2 Q. Now, how do you know that's her
3 handwriting?

4 A. I recognize her handwriting. And then
5 also, she has her initials on the property receipt
6 to show that -- that she also saw those samples
7 and the property receipt.

8 Q. But how long did you work with Theresa
9 Merit?

10 A. I've been there almost 11 years and I
11 think it was two years ago she retired so I would
12 have known her for about actually nine years that
13 I was working there permanently and then I knew
14 her for a couple of years before that when I
15 worked in college as an internship.

16 Q. With the Crime Lab?

17 A. I've known her longer than eight years.

18 Q. Okay.

19 A. I mean, longer than 11 years. I'm sorry.

20 Q. Okay. Of the 11 years or so years that
21 you've known her, have you seen her writing on an
22 ongoing basis for that 11 years?

23 A. Yes.

24 Q. And is there any doubt in your mind that
25 the handwriting on here is Theresa Merit's --

1 A. No.

2 Q. -- from the 11 years that you've seen her
3 writing?

4 A. No, no doubt.

5 MR. SEGAL: Your honor, at this time, I'd
6 move this into evidence.

7 THE COURT: Mr. Terrell?

8 MR. TERRELL: Same objection.

9 THE COURT: Okay. I'm going to overrule
10 the objection and State's U for identification
11 will be admitted as State's No. 19.

12 [STATE'S EXHIBIT NO. 19 admitted into
13 evidence]

14 MR. SEGAL: Thank you.

15 BY MR. SEGAL:

16 Q. And again, in the lower right-hand
17 portion of this running list, it has 232, Ernesto
18 Behrens?

19 A. It has number 232, Ernesto Behrens; yes.

20 Q. Okay. And was that item one of the items
21 you probably used in preparing the card that the
22 Plantation Police picked up?

23 A. I would say yes, that I relied on any of
24 the items that had number 232 on them in order to
25 formulate that this item 232 must be from Ernesto

1 Behrens and then prepared the card.

2 Q. Okay. Any irregularities between all the
3 items that you had that had the number 232 on
4 there as far as the name assigned to that number?

5 A. No.

6 Q. Okay. Then you prepared a card with two
7 swabs for Detective Geller?

8 A. Yes, I did.

9 Q. Okay. And did Detective Geller
10 subsequently come and pick up that item from the
11 Metro Dade Police Department Crime Lab?

12 A. Yes, he did.

13 Q. Do you have the date that he came and
14 picked it up?

15 A. Yes. It was June 12th, 1997.

16 MR. TERRELL: Objection, judge. Could I
17 have the copy of the paper that she's reading
18 from. I don't know what --

19 THE WITNESS: This is the property
20 receipt that I prepared in order to transfer the
21 evidence.

22 MR. SEGAL: Your honor, it is a property
23 receipt that he does have a copy of.

24 THE COURT: Thank you.

25 BY MR. SEGAL:

1 Q. Does that reflect the time that he picked
2 it up?

3 A. Yes, it does. 11:45.

4 Q. A.m., I assume; right?

5 A. It would have been a.m. I wasn't there
6 at 11:45 p.m.

7 Q. At least you'll testify to that?

8 A. Okay.

9 MR. SEGAL: Okay. Nothing further of
10 this witness.

11 THE COURT: Cross-examination?

12 MR. TERRELL: Yes, judge.

13 CROSS-EXAMINATION

14 BY MR. TERRELL:

15 Q. All right. Ms. Hinz, I know things got a
16 little bit confused and we got a little bit off
17 track here. Just so we can make it very clear for
18 the ladies and gentlemen of the jury.

19 The swabs, this one that you're saying is
20 232 --

21 MR. SEGAL: Well, I apologize, your
22 honor. I forgot to do something. If I could
23 finish up before --

24 THE COURT: Go ahead.

25 DIRECT EXAMINATION

1 BY MR. SEGAL:

2 Q. Prior to coming here and testifying
3 today, did you go down to the Broward Sheriff's
4 Office Crime Laboratory and pick up the swabs that
5 you had prepared for Detective Geller?

6 A. Yes, I did.

7 Q. Do you have those with you? Your honor,
8 for the record, Mr. Terrell, I'm going to see -- I
9 wanted to see and open them now.

10 THE COURT: Okay.

11 BY MR. SEGAL:

12 Q. Open the bottom of envelope. And I'm
13 going to take -- I'm showing you what's been
14 marked State's V for identification.

15 Do you recognize what that is?

16 A. Sure. That's the card that I prepared.
17 Again, it has our case --

18 Q. Don't -- don't show them. Just -- that's
19 fine.

20 A. That's the card; yes.

21 Q. Okay. Does that card have your writing
22 on there reflecting the work that you did in
23 preparing the card?

24 A. Yes.

25 Q. Where is your writing on the card?

1 A. On the bottom. There's a case number at
2 the top that corresponds to our case and item --
3 the item number and the name associated with the
4 item number.

5 Q. Okay. The case number you're talking
6 about in the upper right-hand portion of the card?

7 A. Yes.

8 Q. Who's writing is that?

9 A. That's mine.

10 Q. Okay. The writing in the lower left-hand
11 portion of the card, there's a number and a name;
12 is that correct?

13 A. Yes.

14 Q. Who wrote that in there?

15 A. I did.

16 Q. Okay. And what number is written in
17 there?

18 A. Number 232.

19 Q. Okay. And what name is written there?

20 A. Ernest Behrens.

21 Q. And there's some more writing there that
22 you didn't put; is that correct on --

23 A. That's not mine.

24 Q. -- on the right-hand side of it?

25 A. That's correct.

1 Q. Okay. Except for the writing on the
2 right-hand side of the card, is that in the same
3 and substantially similar condition as it was when
4 Detective Geller picked it up from the Metro Dade
5 Police Department Crime Lab?

6 A. Yes.

7 MR. SEGAL: Your honor, I'm going to
8 submit State's Exhibit V for identification into
9 evidence.

10 THE COURT: Any objection?

11 MR. TERRELL: Yes, judge. We would
12 object and ask for a brief sidebar.

13 [WHEREUPON, the following sidebar
14 discussion was had]

15 MS. SHELOWITZ: At this time, they're
16 trying to put in evidence the same item that we
17 have been discussing from the beginning that they
18 have not established chain of custody on.

19 THE COURT: Let me see the -- which is
20 the handwriting she cannot identify? It's this
21 here?

22 MR. TERRELL: This is a different index
23 card, judge. This one is not the same index card
24 that we've been arguing about.

25 THE COURT: I understand that. Anything

1 else?

2 MS. SHELOWITZ: Basically, the chain of
3 custody has not been established. She does not
4 have any personal knowledge of these swabs and
5 where they have been until the time that she took
6 them out and now to, put them into evidence, when
7 we are alleging that it is not his, possibly given
8 all the errors and the fact that this card says
9 Ernest Behrens, it should not be admitted.

10 THE COURT: What's all this?

11 MR. SEGAL: That's from a previous trial.
12 I didn't realize that was on there.

13 MR. TERRELL: This swab's been all over
14 the place.

15 MR. SEGAL: The only thing that was
16 relevant to the fact that it's been all over the
17 place is owed only to them. They're the ones --
18 they've seen these things four or five times. For
19 them to raise it as an issue should not be
20 taken -- it's taking advantage. It's --

21 MS. SHELOWITZ: We had the -- we are
22 talking about years before we even knew about this
23 case.

24 THE COURT: First of all, the backside of
25 it is somehow going to have to be taken off,

1 whatever was used in a prior trial. Otherwise,
2 I'm going to overrule your objection and admit it
3 into evidence as the next state's exhibit number.

4 [WHEREUPON, the sidebar discussion was
5 concluded]

6 THE COURT: Okay. State's Exhibit V is
7 going to be admitted into evidence over objection
8 as State's No. 20.

9 [STATE'S EXHIBIT NO. 20 admitted into
10 evidence]

11 MR. SEGAL: I'm just going to show this
12 to the jury and I'll be done.

13 THE COURT: Yes.

14 MR. SEGAL: Now, I swear I'm done.

15 THE COURT: Mr. Terrell?

16 MR. TERRELL: Yes. What did he do with
17 those?

18 THE COURT: I think Karen has the most
19 recent one.

20 CROSS-EXAMINATION

21 BY MR. TERRELL:

22 Q. All right. Ms. Hinz, again, just so
23 we're absolutely clear.

24 There was thousands and thousands and
25 thousands of swabs that were being handled during

1 this period of time back in 1995; correct?

2 A. Yes.

3 Q. Okay. And you processed the swab, if I
4 understand it right, what you do is, you take it
5 into the lab.

6 You separate the swabs from the property
7 receipt; correct?

8 A. I don't particularly do that; no.

9 Q. Okay. But they are separated?

10 A. Right.

11 Q. Okay. And at one point or another, these
12 swabs were separate -- I'm sorry -- those swabs
13 were separated from the property receipt that it
14 came in with; correct?

15 A. Right, right.

16 Q. Somebody takes those swabs and they
17 attach them to a three by five index card;
18 correct?

19 A. Right.

20 Q. So that we're absolutely clear. You did
21 not do that to those swabs; correct?

22 A. Right.

23 Q. Somebody else handled those swabs?

24 A. Right.

25 Q. We see two of those on the index card;

1 correct?

2 A. Right.

3 Q. But that's not the number of swabs that
4 came into the lab; is that correct?

5 A. Right.

6 Q. Okay. Detective Moore submitted only two
7 swabs to the Miami-Dade Police Department Crime
8 Lab; correct?

9 A. No. He -- I believe there were either
10 three or four swabs submitted.

11 Q. Are you sure he submitted three or four
12 swabs as opposed to two swabs?

13 A. Yes. There were have been two swab
14 packets but there would have been within each
15 packet two one or two swabs because some packets
16 we did see only had one swab in it so we only
17 received three swabs total.

18 Q. If you didn't receive the swabs and
19 you did not process the swabs and Detective Moore
20 says he submitted two swabs, how can you say that
21 there's three or four swabs ?

22 MR. SEGAL: Your honor, I'm going to
23 object to him asking Ms. Hinz to characterize
24 somebody's else testimony.

25 THE COURT: I'm going to overrule the

1 objection. I don't think that's what he's asking.

2 THE WITNESS: I'm sorry. Can you repeat
3 it?

4 BY MR. TERRELL:

5 Q. Okay. If -- if Detective Moore submitted
6 two swabs to the laboratory and you did not
7 process those swabs but now you're saying that
8 there's three or four swabs, how can you say the
9 number of swabs that came into Miami-Dade?

10 A. I can tell you the number -- if I look at
11 the card, I can tell you how many we have on our
12 card and how many are on that card.

13 Q. Well, how many do you have on your card?

14 A. There's either one or two left on my
15 card.

16 Q. Where's your card?

17 A. My card is in the laboratory.

18 Q. Okay. You didn't bring your card?

19 A. No.

20 Q. So you're absolutely positively, there
21 was more than two swabs submitted by Detective
22 Moore?

23 A. Yes.

24 Q. No matter what anybody says, you're
25 positive of that?

1 A. Yes. Because --

2 Q. Would you agree that if Detective Moore
3 only submitted two swabs and yet you say: Well, I
4 gave two to Broward and I kept one or two to
5 myself, which makes three or four, then there's a
6 problem?

7 MR. SEGAL: Objection.

8 THE COURT: Sustained.

9 THE WITNESS: I wouldn't say there's --

10 THE COURT: No. Just wait, ma'am.

11 THE WITNESS: Oh, I'm sorry.

12 BY MR. TERRELL:

13 Q. Would it be normal for a person to submit
14 two swabs and then they multiply while they're at
15 the lab?

16 A. I would say they didn't multiply. I
17 would say that if you ask most detectives how many
18 swabs they submit, routinely they might say two
19 when there's actually four because they refer to
20 swab packets and they do not realize that there
21 are two packets in a packet. That's from my
22 experience, having been there almost 11 years.

23 Q. Okay. But you're certainly not sitting
24 there, suggesting that that's exactly what
25 Sargeant Moore did, are you?

1 A. No. I would have to say that he could go
2 back and look at the packets and see because if
3 you refer back to the original packaging, you will
4 see how many sticks remain and that would
5 correspond to how many swabs are present.

6 Q. And at this point, you're just guessing
7 because you have no idea because you didn't
8 process those swabs; correct?

9 A. I would not say I have no idea; no,
10 because I know how these samples were submitted.
11 I know that we asked for four swabs per
12 individual, two swab packets, two swabs to a
13 packet. Some packets from the manufacturer only
14 had one swab so some packets only came in as three
15 swabs.

16 Q. Okay. I'm not talking about some
17 packets. I'm not talking about the other 3,000
18 packets. I'm talking about the packets we're
19 dealing with today.

20 Can you say that you received those into
21 property at the Crime Lab, those particular swabs,
22 you personally, Ms. Merit?

23 A. Ms. Hinz.

24 Q. I'm sorry. Ms. Hinz.

25 A. I can say I signed the property receipt.

1 I signed the evidence in. I did not open the
2 package but I, yes, received the evidence --

3 Q. So you --

4 A. -- as the outer package, the evidence. I
5 did not open and break the seal. But yes, I did
6 receive the evidence.

7 Q. Okay. But you didn't look at the swabs
8 inside, is what we're getting at?

9 A. No. I did not see the swabs inside.

10 Q. You didn't process the swabs?

11 A. I did not process the swabs originally.

12 Q. The swabs or at least the index card has
13 232 on it.

14 You did not assign that number to those
15 swabs or to that index card; correct?

16 A. Right.

17 Q. You were not present when 232 was
18 assigned to any index card; correct?

19 A. I'm not present when there's any number
20 assigned to any evidence. It is not done by
21 somebody that's sitting next to me in the
22 laboratory. It's done by one person that's in a
23 separate part of the laboratory and that is their
24 total function, is to sit and put evidence into a
25 computer and assign the numbers to it. That's

1 their job.

2 Q. So if there were multiple swabs or if
3 there was a problem with the swabs when they're
4 assigning numbers, you would have no idea about
5 it, would you?

6 A. If there's multiple swabs?

7 Q. Yes.

8 A. Multiple swabs in a package?

9 Q. Correct. And they assigned the wrong
10 number to it, you wouldn't know?

11 A. There -- they can't assign a wrong number
12 because they're assigning the next number in line.

13 Q. Okay.

14 A. So they're taking number two -- when the
15 computer comes up and says 232 is next and they're
16 sitting there with a property receipt that says
17 Ernesto Behrens, they say: Okay. 232 is next and
18 I have Ernesto Behrens without a number. Ernesto
19 Behrens is now 232.

20 Q. It's impossible to make a mistake on
21 that, isn't there?

22 A. I don't know if they can make a mistake
23 on that or not.

24 Q. Many people handle these swabs; correct?

25 A. Many people handle the swabs?

1 Q. I asked you first.

2 A. The outer packaging, the inner packaging,
3 you're talking about the swab itself?

4 Q. I'm talking about all of it.

5 A. I would say the outer packaging was
6 handled by different people. The inner packaging
7 has a strict log of who -- who actually handled
8 that.

9 Q. You were not the data processor on this?
10 In other words, you didn't process the information
11 in a computer on these swabs; correct?

12 A. No. That's correct.

13 Q. Okay. So if a mistake was made anywhere
14 during that process, you wouldn't have knowledge
15 of it? You wouldn't have personal knowledge of
16 it?

17 A. That's correct.

18 Q. What was the date you handled those
19 swabs?

20 A. That I signed for the swabs?

21 Q. The date that you handled the swabs?

22 MR. SEGAL: Your honor, if he could
23 specify because she said she handled it on one or
24 more occasions.

25 THE COURT: Why don't you be more

1 specific.

2 MR. TERRELL: Sure.

3 BY MR. TERRELL:

4 Q. The dates that you handled the swabs?

5 A. Okay. The date I signed for the swabs on
6 the property receipt was March 15th of 1995.

7 Q. Okay.

8 A. Then the next time I wrote -- I signed my
9 name and I took possession of the swab, that
10 just -- that particular sample was on June 9th,
11 1997, when I retrieved it from the freezer.

12 Q. So you were not the one that handled the
13 swabs on March 9th, 1995; correct?

14 A. March 9th. No, I was not.

15 Q. Okay. And you were not the person who
16 handled these swabs and every other swab at that
17 time -- I shouldn't -- excuse me.

18 You were not the person that handled
19 these swabs on March 10th, 1999 -- I'm sorry --
20 1995; correct?

21 A. That would be the property receipt. That
22 would not be handling the -- that's just the
23 property receipt and the packaging.

24 Q. How about March 17th, 1995, did you
25 handle the swabs then?

1 A. Again, that's just the outer packaging.
2 And at that point, it doesn't have the swabs
3 inside of the packaging anymore.

4 Q. Okay. Where are the swabs at this
5 point?

6 A. They would be in our evidence freezer.

7 Q. With the thousands of other swabs?

8 A. Yes.

9 Q. Okayl. The index card that was just
10 introduced into evidence does not say Ernesto
11 Behrens on it, does it?

12 A. No, it does not.

13 Q. In fact, it says Ernest Behrens, doesn't
14 it?

15 A. Yes.

16 Q. Okay. Do you have a list of every single
17 swab that was brought in during this situation
18 within 1995?

19 A. Yes.

20 Q. Okay. Have you reviewed all 3,000 names
21 on that?

22 A. No, I have not.

23 Q. Okay. But you're in agreement that it's
24 not the same name that's on that card as there
25 is -- I'm sorry.

1 You would agree that the property receipt
2 does not have the exact same name as on that index
3 card; correct?

4 A. No. Because the property receipt says
5 Ernesto and the card says Ernest.

6 Q. Do you know Ernest Behrens?

7 A. No, I do not.

8 Q. Ernest Behrens, did he also submit swabs?

9 A. I'm sorry?

10 Q. Did Ernest Behrens also submit swabs?

11 A. Ernest Behrens is the name that's on the
12 evidence card because at some point, O was left
13 off.

14 Q. So somebody made a mistake at some point?

15 A. Well, I wouldn't say it's a mistake. I
16 would say that an O was left off. And then I --
17 which, it's not clear where it was left off at or
18 if that's the result of the detective calling me
19 and asking me for Ernest Behrens' sample or not.

20 Q. And you're sitting here making the
21 assumption or you're speculating that somebody
22 just left the O off, aren't you?

23 A. Well, that would be my speculation since
24 at one point, it says Ernesto and the next time it
25 says Ernest. So obviously, at some point, there's

1 an O that was left off.

2 Q. Okay. But you're assuming, unless you
3 know for a fact that there was no Ernest Behrens
4 that submitted any swabs?

5 A. I'm saying if there was an Ernest Behrens
6 that submitted swabs, he would have been under a
7 different item number at a different time so that
8 would not have anything to do with this case.
9 Number 232 in this case remains 232 whether it's
10 Ernesto Behrens or Ernest Behrens.

11 Q. And that list of all the names that
12 another lady wrote down on a piece of paper --
13 Thank you. It's State's 18. I'm sorry. It's
14 State's 19. Let me show it to you.

15 It is different between 230 and 232 on
16 that sheet than 230 and 231 on the evidence sheet;
17 correct?

18 MR. SEGAL: Your honor, object.
19 Referring to something that's not in evidence. If
20 he wants to put it into evidence, that's fine.

21 THE COURT: Well, at this time, why don't
22 you -- if you have something, why don't you mark
23 it for identification so she can review it.

24 MR. TERRELL: Can I mark this for
25 identification, please.

1 BY MR. TERRELL:

2 Q. Ms. Hinz, would you agree that if the
3 number of swabs submitted to your lab regarding
4 Ernesto Behrens has a different number than the
5 number of swabs that you eventually sent off,
6 would you agree, then that there's a mistake?

7 MR. SEGAL: Objection to the question,
8 your honor.

9 THE COURT: Overruled. He may ask the
10 question.

11 THE WITNESS: Can you repeat it?

12 MR. TERRELL: Yes.

13 BY MR. TERRELL:

14 Q. If the number of swabs that were
15 submitted into Miami-Dade in 1995 were different
16 from the number of swabs that you say there were
17 in 1997, there's a different number of swabs,
18 would you agree that there's definitely a mistake?

19 A. I would say there is no mistake. I would
20 say that there is a misperception or the way that
21 the question was asked and answered, there's a
22 problem.

23 Q. Okay.

24 A. Because again, I am stating as a fact
25 that I've worked there almost 11 years, that when

1 a detective says one thing about how much swabs, a
2 lot of times they mean swab packets and not
3 individual swabs either because they don't know
4 any better or they're confused about it.

5 Q. Did you hear the sargeant testify today
6 as to the number of swabs he placed in?

7 A. No, I did not.

8 Q. Okay.

9 A. I don't need to hear him testify to know
10 that we've had that on other cases as well.

11 Q. Of course not. And what you're
12 testifying to is, then you have better knowledge
13 of the number of the swabs than the sargeant who
14 took the swabs; correct? You have a better
15 knowledge than he does?

16 A. I wouldn't say I had a better knowledge.
17 I would say like I said before. If -- if you go
18 back to the evidence and you were to look at it,
19 basically, that would confirm how many swabs there
20 were to begin with. I don't -- I don't have a
21 problem in saying that I know that when I looked
22 at the card, there was more than two swabs there
23 and that I submitted two swabs. And then we have
24 tested swabs so obviously there had to have been
25 more than two swabs to begin with.

1 Q. I'm happy with that answer. Thank you.

2 We already went over the fact that you
3 didn't put any of the information into the
4 computer; correct?

5 A. As I never do on any case. That's
6 correct.

7 Q. When, for example, those swabs lump
8 sum -- when the swabs went to I think it's Dr.
9 Khan down there?

10 A. Yes.

11 Q. When the swabs go, do they go
12 individually or do they go many swabs at once?

13 A. They go in groups.

14 Q. In groups of how many?

15 A. However many he wanted to take at that
16 particular time.

17 Q. Well, in 11 years, what do -- what do you
18 say that he usually takes at one time?

19 A. Again, this was an isolated case because
20 you're about, in this case, we had thousands of
21 swabs. This in no way relates to any case that we
22 had even since then.

23 Q. Okay.

24 A. So he took however many he wanted to in
25 groups according to the DNA transmittal form. He

1 would take one form or he might take three forms
2 or he might take six forms at a time. And however
3 many were on that form is however many he took.

4 Q. Well, I'm showing you what's marked
5 Defense Exhibit N for identification.

6 Do you recognize that?

7 A. Yes, I do.

8 Q. And is that the DNA evidence transmittal
9 form you were just speaking of?

10 A. Yes, it is.

11 Q. Okay. And would you agree that at least
12 at this particular time, 15 swabs were handled at
13 the same time? I guess I should be showing you
14 this.

15 A. Yes, there are 15.

16 Q. Usually, when swabs are moved in groups
17 at a time; correct, unless it was a situation like
18 it went specifically to Detective Geller? Other
19 than a situation like that, when swabs are moved
20 down there, they're moved in bulk at a time;
21 correct?

22 A. In this particular case; yes, they were
23 moved in multiple but -- in this particular case;
24 yes.

25 Q. Isn't there a place at one point in time

1 where all three or 4,000 swabs are put together?

2 A. Is there one place now where there --

3 Q. No. Where they were kept together, in a
4 evidence cooler?

5 A. They were kept in different places, in
6 different boxes, in different evidence coolers;
7 yes.

8 MR. TERRELL: Okay. Thank you. No
9 further questions.

10 THE COURT: Mr. Segal?

11 RE-DIRECT EXAMINATION

12 BY MR. SEGAL:

13 Q. Okay. I'm showing you the evidence
14 transmittal form that Mr. Terrell is referring to,
15 Defense Exhibit N.

16 Under 232, what -- how is that written in
17 ink? Can you tell if that's Ernest or Ernesto
18 according to the little tag on the last --

19 A. Right. That's my handwriting. That
20 would be Ernest. It wouldn't be Ernesto because I
21 know that's just me looping back on the T.

22 Q. Okay. But it was the same number as on
23 the property receipt that's in evidence, on that
24 list that's in evidence and here as well; correct?

25 A. Right.

1 Q. All saying 232?

2 A. Right. All 232 under that particular
3 case number; yes.

4 MR. SEGAL: Nothing further.

5 THE COURT: Mr. Terrell, anything
6 further?

7 MR. TERRELL: Nothing further.

8 THE COURT: Thank you, ma'am. You may
9 step down.

10 [WHEREUPON, the witness was stood down]

11 THE COURT: Who does that belong to?
12 That's in evidence I think.

13 MR. SEGAL: Yes. Thank you.

14 THE COURT: Thank you, Ms. Hinz.

15 Can I see you up here one second counsel.

16 [WHEREUPON, an off-the-record discussion
17 was had]

18 THE COURT: Okay. Ladies and gentlemen,
19 I was just discussing with the attorneys a little
20 bit about our scheduling. I think the next
21 witness would take up a little longer this evening
22 than I would be comfortable with so I think this
23 is the time we're going to break for the day. A
24 couple of comments.

25 First of all, don't leave any personal

1 items in the courtroom. Take your personal things
2 with you. Don't discuss this case among
3 yourselves. Don't discuss it with anybody else.
4 And certainly don't form any definite or fixed
5 opinion about the merits of this case.

6 Schedule-wise, we'd like to start
7 tomorrow morning at 9:00 a.m. so please arrange
8 yourselves to be outside the jury assembly room no
9 later than 8:45 and somebody will escort you up
10 here. We would like to start as promptly as
11 possible so everybody's cooperation in that regard
12 will be appreciated. With that in mind, anybody
13 have any question about our scheduling?

14 Okay. We'll see you tomorrow morning
15 outside the jury assembly room no later than 8:45.
16 Thank you very much. Have a nice evening.

17 [WHEREUPON, the jury panel left the
18 courtroom]

19 THE COURT: All right. Let the record
20 show that the jury's left the courtroom.
21 Mr. Behrens, all counsel are present.

22 Let me suggest that tomorrow, we'll
23 convene at 8:45 ourselves. And I would like to
24 address with a view towards conquering the issue
25 on Dr. Khan. I think that's important, that we

1 try to make every effort to do that.

2 MR. SEGAL: Should I tell Detective
3 Geller to be here at 9:00.

4 THE COURT: Yeah. That's fine, 9:00.

5 MR. SEGAL: Or 8:45 so I can or somebody
6 can go over with him how to testify?

7 THE COURT: I'll leave that up to you. I
8 mean, certainly go over the items we discussed
9 but, you know, at nine o'clock -- my hope is that
10 you will each have given some thought to
11 Dr. Khan's testimony. I mean, I imagine you've
12 spoken, if not briefly, you've spoken somewhat
13 among yourselves.

14 But again, I'd like to be able if we can
15 to -- to have a stipulation drawn up. From what I
16 gather, it would be somewhat short in nature but
17 if we can't, I'd like to be able to have it drawn
18 up and at an appropriate time, I'll just read it
19 to the jury.

20 MR. TERRELL: Judge, can we address it
21 real quick?

22 THE COURT: Absolutely.

23 MR. TERRELL: Now, that the swabs are in
24 evidence and we've past the chain of custody and
25 now it's just a matter of Don Marchese testifying,

1 is his evidence really necessary? And, if so,
2 fine but --

3 THE COURT: I don't really know because I
4 really don't --

5 MR. TERRELL: I thought they needed chain
6 of custody.

7 MR. SEGAL: Judge, if -- if Mr. Terrell
8 is telling this court that he's not going to argue
9 in final argument to the jury that there's some
10 problem with the swabs based on what occurred when
11 Dr. Khan was dealing with them, then probably no
12 reason to put him in there. I'm not going to
13 leave myself open to it.

14 THE COURT: I think that's a fair
15 comment. I think Mr. Segal makes a fair comment.

16 MR. TERRELL: Yeah. Sure. If the
17 question is, am I going to challenge Dr. Khan
18 tainting the evidence in any way? No.

19 THE COURT: I think the position of
20 Mr. Segal goes perhaps a little step further which
21 is, not only with Dr. Khan so-called tainting the
22 evidence but I gather that there's a period of
23 time and I don't know whether it's an hour or a
24 month but whatever period of time this person has
25 control, if you will, over this evidence, that

1 that would not be challenged in argument. In
2 other words, whatever that period of time is.

3 MR. TERRELL: We'll agree with that. The
4 period of time that they were in the possession of
5 Dr. Khan, we won't challenge because it already
6 came out that it was tested and he was excluded
7 from any wrongdoing. So the period of time that
8 Dr. Khan physically had control of them, we won't
9 challenge.

10 THE COURT: With respect to his testing
11 or chain of custody during that time? I just want
12 to make sure that we're all on the same page
13 because, you know, I don't want to tell you folks
14 how to try your case.

15 MR. TERRELL: I know. Well, we're trying
16 to be convenient to all parties. Is that the
17 state's concern, while it was in the possession of
18 Dr. Khan, whether we're going to attack the --

19 THE COURT: Attack the testing or the
20 chain of custody.

21 MR. SEGAL: Right. Testing or chain of
22 custody. Not so much the testing because I'm
23 not -- the testing he did had nothing to do with
24 this case .

25 THE COURT: Right.

1 MR. SEGAL: It's the period of time that
2 Dr. Khan --

3 THE COURT: I guess it would be the chain
4 of custody and/or the issue of tampering while in
5 his custody would not be challenged. That would
6 be the issue I think.

7 MR. TERRELL: Okay. And I think we can
8 work with that. If the state tomorrow morning
9 comes to me and says: Well, this is what he'll
10 testify to, then I'll -- I'm in a position, I
11 think we can agree to that.

12 THE COURT: Okay. So what I'm going to
13 do is, I'm not going to ask you to bind yourselves
14 in blood this morning. I am going to ask you that
15 tomorrow morning though, to bind yourselves in
16 blood, if you will, on that issue. So to give you
17 an opportunity to think about it among yourselves
18 and we'll readdress it first thing in the morning.

19 MR. SEGAL: Do you still need me to draw
20 up a stipulation?

21 THE COURT: I don't think so because I
22 don't think it even need -- if -- if -- my
23 understanding is, if the defense is willing to
24 stipulate that they will not in closing argument
25 or through witnesses they may call on their side

1 of the case challenge either the testing and/or
2 the issue of tampering or the chain of custody
3 during Dr. Khan's tenure with this evidence, then
4 I don't think their needs to be anything even
5 presented to the jury, if it's an issue that
6 doesn't come up.

7 MR. SEGAL: Through any witness they
8 present or any witness the state presents.

9 THE COURT: Okay. We'll discuss it first
10 thing in the morning.

11 MR. SEGAL: Okay.

12 THE COURT: Thank you. See everybody at
13 that time.

14 [WHEREUPON, the proceedings were
15 adjourned]

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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10A
JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,]
]
 Plaintiff,]
]
 vs.]
]
 ERNESTO BEHRENS,]
]
 Defendant.]
-----]

BROWARD COUNTY COURTHOUSE
ROOM 519
201 SOUTHEAST 6TH STREET
FORT LAUDERDALE, FLORIDA
SEPTEMBER 13, 2000

APPEARANCES: MICHAEL J. SATZ, STATE ATTORNEY
BY: Dennis Segal, Esq.
Assistant State Attorney
Appearing on behalf of the Plaintiff

TYRONE TERRELL, P.A.
BY: Tyrone A. Terrell, Esq.
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Fort Lauderdale, Florida 33309
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Appearing on behalf of the Defendant

PROCEEDINGS AT TRIAL
VOLUME VI

1 Whereupon, the following proceedings were had:

2 THE COURT: All right. Let the record
3 show that Mr. Behrens is present. Mr. Segal,
4 Mr. Terrell, Ms. Shelowitz are present.

5 Before I bring the jury up, let's just go
6 back to a couple of housekeeping matters. One,
7 let me readdress with you the issue, that I think
8 Mr. Segal raised a substitute rebuttal witness
9 from the airlines or something. I don't know if
10 I'm -- is my memory correct?

11 MR. SEGAL: Right. There's a -- right.

12 THE COURT: And I just wanted to clarify.
13 Was there any defense concern with that witness
14 being substituted in for one they already had?

15 MR. TERRELL: As long as I can speak to
16 that witness before that witness testifies because
17 the state turned over the documents.

18 THE COURT: Okay. That'll be arranged, I
19 assume?

20 MR. SEGAL: Sure. I'm not sure --
21 Mr. Terrell talking about an informal conversation
22 outside before he testifies. Obviously, that's
23 fine.

24 MR. TERRELL: That's all.

25 THE COURT: Okay. Then let's -- I think

1 the only other issue is, I wanted to readdress
2 Dr. Khan.

3 MR. SEGAL: Judge, there is one other
4 thing before that.

5 THE COURT: Sure.

6 MR. SEGAL: If the court will recall, on
7 Monday before the trial began, I brought the issue
8 about one of their defense experts and the errata
9 sheet from their deposition.

10 THE COURT: Correct. They were going to
11 check that out.

12 MR. SEGAL: They were supposed to have
13 contacted that expert and get an explanation of
14 what the error was.

15 THE COURT: Ms. Shelowitz, Mr. Terrell.

16 MS. SHELOWITZ: Judge, given our hours,
17 we're doing the best we can to get somebody to get
18 ahold of him. Before he testifies, we'll of
19 course get it taken care of. I don't think we
20 even have a copy of that errata sheet to even ask
21 him, when we do get ahold of him, what it's about.
22 But before he would testify, we can -- you can
23 definitely ask him before.

24 MR. TERRELL: Judge, if I can follow up
25 on that. Today at noon, I predict that we'll

1 start hopefully the defense tomorrow morning.
2 We're going to call the doctors and we're going to
3 call all the witnesses today at noon to arrange
4 and start them bringing them down. I will make
5 contact with him today.

6 THE COURT: Okay. Let me ask you this
7 and while we're on this topic, let's just talk
8 about our schedule today. How many witness do you
9 anticipate the state has left.

10 MR. SEGAL: I believe four, judge, is my
11 guesstimate.

12 THE COURT: Okay. Do you think that's
13 going to run through the day or do you think
14 you'll finish it before the end of the day?

15 MR. SEGAL: I can't predict the
16 cross-examination. It'll probably take up a good
17 portion of the day because I would imagine two DNA
18 experts will take a little bit of time.

19 THE COURT: Okay. And you have Detective
20 Geller, is he your first witness?

21 MR. SEGAL: No. Somebody else that's
22 based on what they were doing yesterday --

23 THE COURT: Okay.

24 MR. SEGAL: -- I have a different witness
25 coming.

1 THE COURT: Okay. It sounds like it may
2 be, and I certainly don't know, but it's possible
3 it could be mid-afternoon meaning three o'clock,
4 3:30, the state may finish their case. And my
5 conversation is not to suggest any predisposition
6 to motions that the defense may want to raise but
7 with that in mind, you may want to have witnesses
8 ready to go today.

9 I mean, we talked about this earlier in
10 the week that, you know, when -- when it's time to
11 hit the ground running, we want to be able to do
12 that so you want to have your witnesses ready to
13 go.

14 MR. TERRELL: I should be calling them
15 now, judge.

16 THE COURT: Then that may be something
17 you and Ms. Shelowitz may want to do.

18 MR. TERRELL: Okay.

19 THE COURT: But, you know, I don't
20 know --

21 MS. SHELOWITZ: Some of them are here.
22 It shouldn't be a problem to get ahold of them and
23 then we can --

24 THE COURT: Again, sitting here at nine
25 o'clock in the morning, I don't know how the day

1 is going to play out but I just want to know that
2 if we're ready to go to the defense side of the
3 case, if you decide to put on a case, I want that
4 first witness ready to go.

5 MR. TERRELL: Okay. If I can just have a
6 couple of minutes, I need to make some calls then.

7 THE COURT: Okay.

8 MS. SHELOWITZ: I have a couple issues
9 anyway.

10 THE COURT: Okay. Let's -- let's --
11 let's address Dr. Khan. Having had the evening to
12 think it over, is the defense prepared to
13 stipulate with respect to Dr. Khan and if so, what
14 would you stipulate to?

15 MS. SHELOWITZ: With respect to Dr. Khan,,
16 I would just ask that if there be no mention of
17 Dr. Khan then, we're not going to make an issue in
18 our closing in any way or form. We won't even
19 reference his name. I don't think his name should
20 even come up. I don't think that he's even at
21 issue.

22 There's several names on that list.
23 They're not calling anybody else. If they want us
24 to leave that name out of closing, then we can do
25 that. We won't make an issue of Khan.

1 MR. SEGAL: That covers the ground
2 discussed yesterday.

3 THE COURT: Well, I think that the --
4 what we talked yesterday was -- and we can be a
5 tad more specific -- is that there would be no
6 reference of Dr. Khan not only by name in closing
7 but also with respect to the issues of any
8 tampering and/or chain of custody issues while
9 this evidence was within his domain, if you will,
10 or his custody.

11 MS. SHELOWITZ: Right.

12 MR. SEGAL: Or contamination issues.

13 MS. SHELOWITZ: Right. And I would say
14 that we would argue -- we -- we probably will be
15 arguing an issue of tampering but we will not
16 specifically ever say, you know, look at the
17 property of Dr. Khan's name and it happened with
18 Dr. Khan during that period. We won't do that.

19 THE COURT: So -- so any argument of
20 tampering that you may make will not have anything
21 to do with Dr. Khan.

22 MS. SHELOWITZ: Specifically.
23 Absolutely.

24 THE COURT: Any problem with that,
25 Mr. Segal?

1 MR. SEGAL: As long as they don't build
2 an argument that in any way has Dr. Khan's
3 involvement as being in any way part -- as long as
4 whatever --

5 THE COURT: In other words --

6 MS. SHELOWITZ: That name won't even come
7 out of my mouth.

8 THE COURT: As I understand it and I
9 don't want to -- and I don't anticipate anybody's
10 playing a game. I don't anticipate anybody would
11 do this but I think what we're saying is that
12 it's -- it's -- the issue of tampering is not
13 going to be addressed in any way such that there
14 was, you know, no tampering with these witnesses
15 and no tampering with these witnesses and that
16 there was just a gap which necessarily would be
17 the gap that Dr. Khan would fill.

18 And I think we're all on the same page in
19 that regard so let's address other issues while
20 Mr. Terrell uses the phone. Ms. Shelowitz, you
21 had something else you wanted to address?

22 MS. SHELOWITZ: On the issue of,
23 Mr. Behrens has been declared indigent before in
24 Judge Rothschild's courtroom. There was a part of
25 the transcript ordered by tomorrow morning so

1 that we could have for closing. I just wanted to
2 see if we could get an order because I don't know
3 what our orders say specifically to what kind of
4 transcript. I know that we've ordered them in the
5 past but I just want -- and I can draw it up,
6 whatever -- an order just allowing us to have him
7 declared indigent for the purpose of rushing this
8 transcript overnight so that we can have it
9 tomorrow morning.

10 THE COURT: Let me ask you this. Are you
11 talking about the whole trial or a particular
12 witness?

13 MS. SHELOWITZ: Just one witness. One
14 short witness, actually.

15 THE COURT: Okay. The direct and cross
16 or just --

17 MS. SHELOWITZ: The direct and cross.

18 THE COURT: Okay. You have no input on
19 that, do you, Mr. Segal?

20 MR. SEGAL: No, your honor.

21 THE COURT: Okay. If you'll prepare an
22 order consistent with that, I think that would be
23 appropriate.

24 MR. SEGAL: Yeah. If the court reporter
25 could be asked that whatever transcript is

1 ordered, that they provide me a copy.

2 THE COURT: That's certainly fine.

3 Anything else, Ms. Shelowitz?

4 MS. SHELOWITZ: One other matter. We did
5 touch on it yesterday but I do want it reiterated
6 that I -- you know, in our opinion, we're coming
7 to a part of a trial -- and I don't know who the
8 other witnesses are that he's going to call but
9 it's -- the same would apply to him or her.

10 But Detective Geller is a dangerous
11 witness in our eyes in that he has testified
12 before. He is in prior hearings. And I don't
13 trust 100 percent without true cautionary
14 instructions to him by the state that he is not to
15 make any mistakes because no mistakes will be
16 accepted.

17 THE COURT: Are you saying with respect
18 to other cases?

19 MS. SHELOWITZ: With respect to his other
20 cases. And it would be very easy for him in some
21 of the questions that I might ask -- and I'm
22 already warning, I will talk about the probable
23 cause. It's no surprise to the state. We've had
24 prior hearings on the issues of this probable
25 cause before.

1 He should be able to testify as to this
2 case alone and there shouldn't -- we should not
3 end up in a mistrial because I think that we're --
4 we have enough caution beforehand that he needs to
5 stick to this case and this case alone in his
6 answers.

7 THE COURT: You've spoken to your
8 witness?

9 MR. SEGAL: I've spoken to him, judge.
10 But on the same token, Ms. Shelowitz asks a
11 question that opens a door to other things, he's
12 allowed to answer questions in full if she opens
13 the door to. And I can't instruct him to
14 basically disregard part of the answer that she
15 requests. She'll have to gage her questions
16 accordingly. We can't basically give her carte
17 blanche to ask question that necessarily call for
18 answers from other cases and then not mention
19 them. That just can't be done. I've never
20 instructed him to that effect.

21 THE COURT: Well, let me suggest this.
22 And I think both of you raise very valid points.
23 Certainly, I assume you're going to do the cross?

24 MS. SHELOWITZ: Yeah. I understand that.

25 THE COURT: Okay. So you obviously are

1 permitted to ask leading questions so -- and
2 you'll do that to try to narrow the expected
3 answer as much as possible. The only thing I can
4 do and if you'll remind me when the witness comes
5 in -- perhaps I'll send the jury out -- and I'll
6 instruct the witness not only not to discuss other
7 cases but if he feels that an answer to your
8 question necessitates him to reference another
9 case, at that point, he can somehow let me know
10 that, you know, he needs to address a matter with
11 me and I'll send the jury out and we can -- we can
12 handle it.

13 MS. SHELOWITZ: Well, and I'll proffer to
14 the court some of my questions have already been
15 asked in other hearings that deal with the
16 probable cause report. I don't know if he's going
17 to want to hear an answer and I know some of them,
18 he's already claimed at deposition taken of him,
19 that they were mistakes that were pointed out to
20 him from the state attorney. He might want his
21 answer to -- he may just say he got confused with
22 all the other cases. And I'm going to ask him a
23 yes or no question, either he put something in the
24 probable cause or he did not. I'm not asking him
25 why.

1 THE COURT: Well, Mr. Segal has spoken to
2 him presumably. I will speak to him also. And I
3 think the point is -- I mean, if -- and I'm not
4 here to tell you how to cross-examine the witness
5 but I do think that if a question is asked that
6 calls properly for a reference to other cases,
7 then the witness is going to be permitted to
8 answer the question. You're obviously not going
9 to knowingly do that, I assume.

10 MS. SHELOWITZ: Right.

11 THE COURT: So therefore, I'm going to
12 talk to the witness without the jury here and I'll
13 let him know that if he feels that an answer's
14 going to require him in his mind to go into other
15 cases, that he let me know that we need to address
16 this matter privately outside the jury's presence
17 and we'll conquer it at that point and I'll hear
18 your respective arguments and I'll either let him
19 answer it or not let him answer it relative to
20 other cases because I certainly don't want a
21 mistrial in this case either.

22 MS. SHELOWITZ: Right. And I can tell
23 the court, I'm not asking him any questions that
24 he hasn't already answered at least twice --

25 THE COURT: Okay.

1 MS. SHELOWITZ: -- in the past.

2 THE COURT: Okay.

3 MS. SHELOWITZ: One thing I am going to
4 bring up is that there is -- he put in his police
5 report that there was semen found on the slip
6 dress.

7 THE COURT: Okay. What's the anticipated
8 question?

9 MS. SHELOWITZ: Isn't it true that you
10 put in your police report that -- that there was
11 semen on the slip dress. In fact, we learned
12 later in the trial, there was no semen on the slip
13 dress.

14 THE COURT: Well, I mean, there again,
15 that's a question that ought to, as you couched
16 it, ought to just call for a yes or no answer.

17 MS. SHELOWITZ: Exactly. That's all I'm
18 going to be asking. If that's going to be the
19 answer, that's really the only one I'm very
20 concerned about. And I think there was one other
21 about the point of entry is also in his police
22 report as incorrect. I'm asking for a yes or no.
23 I'm not asking him to explain it. And that should
24 not, as long as -- I'm not hearing any argument at
25 this point -- should not open the door.

1 THE COURT: Why don't we ask Detective
2 Geller to come in. Let's address it right now.
3 I'm going to send Karen down to bring the jurors
4 up.

5 Just bring them and tell them to wait out
6 there. You can just bring them up.

7 All right. The record will show Mr.
8 Behrens, Ms. Shelowitz, Mr. Terrell, Mr. Segal are
9 present.

10 Detective Geller.

11 DETECTIVE GELLER: Yes, sir.

12 THE COURT: Good morning. You can just
13 have one of these seats right up here for a
14 second. We just want to preliminarily go over a
15 couple of things.

16 DETECTIVE GELLER: Okay.

17 THE COURT: Thank you for being as timely
18 and prompt as you are. The issue -- some issues
19 have been raised relative to your testimony and I
20 want to clarify a couple of things. First of all,
21 I have learned that you have an involvement with
22 Mr. Behrens not only in this case but perhaps in
23 working on other cases also

24 DETECTIVE GELLER: Yes.

25 THE COURT: As you can appreciate, we're

1 here only trying this case.

2 DETECTIVE GELLER: Okay.

3 THE COURT: So therefore, when questions
4 are asked of you -- and I can understand that
5 there -- there may be some interplay of thinking
6 between cases -- keep in mind that we do not want
7 you to testify as to other cases.

8 So if Ms. Shelowitz or Mr. Segal ask you
9 a question, the best thing for you is to -- if the
10 question can be answered with a yes or no, answer
11 the question directly yes or no.

12 If, in your mind, you feel that the only
13 way you can answer a question truthfully and
14 accurately is by referencing your other
15 investigations, then what I want you to do in that
16 situation is just turn to me and say, you know,
17 your honor, I'd like to speak to you about this.

18 DETECTIVE GELLER: Okay.

19 THE COURT: And I'll send the jury out
20 and we'll discuss what your answer might be.

21 MR. SEGAL: Your honor, can he -- can he
22 be allowed to refer to your honor, I need to
23 discuss an issue --

24 THE COURT: Of course.

25 MR. SEGAL: -- so the jury doesn't think

1 that he's trying to be evasive?

2 THE COURT: Absolutely. I'm just talking
3 off the top of my head, okay. Yes. What
4 Mr. Segal says is perfectly acceptable. You know,
5 as you told me, your honor, I need to address
6 something with you. Okay.

7 DETECTIVE GELLER: Okay.

8 THE COURT: In other words, I don't want
9 you addressing the other cases in front of this
10 jury.

11 THE WITNESS: Absolutely, sir.

12 THE COURT: Unless there's something that
13 you feel you have to do and then I want an
14 opportunity to talk about it outside the jury's
15 presence. And so I think therefore, the best
16 theory is, as best you can, just respond yes or no
17 and directly to the question.

18 DETECTIVE GELLER: Yes, sir.

19 THE COURT: Anything else we want to
20 address with the detective before the jurors come
21 up?

22 MS. SHELOWITZ: No.

23 MR. TERRELL: No.

24 THE COURT: Thank you, detective. If
25 you'll wait outside, we'll have you in here as

1 soon as we can.

2 DETECTIVE GELLER: Thank you.

3 THE COURT: Appreciate that.

4 Ms. Shelowitz, any other matters that you
5 need to bring up?

6 MS. SHELOWITZ: No, there's not, your
7 honor.

8 THE COURT: By the way, if there's other
9 exhibits that the defense knows that they're going
10 to want marked, just, you know, let Karen have
11 them as you can so she can premark them to save
12 that effort.

13 MR. TERRELL: There are but we haven't --
14 they haven't come into the court yet.

15 THE COURT: Okay. I don't think there
16 were any remaining discovery or loose end issues
17 that we had to discuss. I think we've got
18 everything pretty much covered at this point.

19 MR. TERRELL: I think so too.

20 MS. SHELOWITZ: I think the only other
21 issue is Dr. Doran. I don't have word that he
22 does in fact have his license reinstated. I don't
23 have any documents yet in my hand and I don't know
24 what the state requires. They said in '99, it was
25 suspended and then --

1 MR. SEGAL: Something beside words, judge.

2 THE COURT: Well, in other words, let's
3 look at it this way. If the state asks the doctor
4 the question, you know, are you a licensed
5 physician in the State of Florida and if the
6 doctor says, yes, then if the state wants to
7 impeach that, then that burden, if you will, is on
8 the state to present something of impeachment
9 value. I mean, absent some documentation or
10 rebuttal witness somewhere, then the state's going
11 to be held to the naked answer, if you will, that
12 the doctor gives. There's nothing else you can do
13 on the issue.

14 MR. TERRELL: Judge, if I understand, I
15 don't know if it's captain now or sargeant
16 Butchko. I believe he's the next witness to come
17 in. The same cautionary instruction to him. He
18 knows nothing about the facts of this case but he
19 worked on Tamiami case. At no time should he
20 refer to Mr. Behrens as a suspect in that case
21 because he was never a suspect in that case.

22 THE COURT: Why don't you instruct him,
23 Mr. Segal.

24 Okay. The record will show Mr. Behrens,
25 Ms. Shelowitz, Mr. Segal and Mr. Terrell are

1 present.

2 Bring in the jury, please.

3 Folks in the back, I ask that you rise
4 when the jurors come in. Thank you.

5 THE SHERIFF: Jury coming in, your honor.

6 [WHEREUPON, the jury panel entered the
7 courtroom]

8 THE COURT: Good morning, ladies and
9 gentlemen. Welcome back. I do find on trials
10 that take a couple of days like this, that there's
11 a certain ease with which people come in, find
12 their seats and get themselves comfortable. I
13 hope you had a nice evening last night.

14 Mr. Segal, you may call your next
15 witness, please.

16 MR. SEGAL: Thank you, your honor.
17 Detective John Butchko.

18 THE COURT: Everybody has their juror
19 button on which I see.

20 Good morning. If you'll please come up
21 to the witness stand. You'll come around, stand
22 and raise your right hand. Karen will swear you
23 in.

24 Whereupon,

25 JOHN BUTCHKO, a witness herein, and

1 having been first duly sworn by the court clerk
2 and cautioned to tell the truth of HIS knowledge
3 as to the within matters, was thereupon examined
4 and testified upon HIS oath as follows:

5 THE CLERK: Please be seated. State your
6 full name and spell your last name for the record.

7 THE WITNESS: My name is John Butchko.
8 It's spelled, B-u-t-c-h-k-o.

9 DIRECT EXAMINATION

10 BY MR. SEGAL:

11 Q. Okay. Sir, how are you employed?

12 A. I'm a detective with the Miami-Dade
13 Police Department in the Homicide Bureau.

14 Q. Okay. How long have you been with the
15 Miami-Dade Police Department or whatever its
16 earlier names were?

17 A. Yes. It was called the Metro Dade Police
18 Department. Actually, when I first started, it
19 was 1980. It was called the Public Safety
20 Department. Two years later, it changed to the
21 Metro Dade Police Department. And now currently,
22 it's the Miami Dade Police Department. I started
23 there in -- in -- I'm sorry -- in July, 1980.

24 Q. So whatever name it was, you've been
25 working for them for 20 years?

1 A. Yes, sir.

2 Q. Okay. And your current assignment is a
3 homicide detective?

4 A. Yes, sir.

5 Q. How long have you been had that position?

6 A. Since November 22nd, 1982.

7 Q. So that's approximately 18 years or 17
8 and a half years --

9 A. Yes, sir.

10 Q. -- almost 18.

11 Okay. During the course of time that you
12 were a homicide detective, did you become one of
13 the or the lead investigator into serial murders
14 that were taking place in Tamiami area back in the
15 1995 or so timeframe?

16 A. Yes. I was assigned as a lead detective
17 in the case and I had a co-lead on the case.

18 Q. Okay. Now, as the lead case in the case
19 or lead investigator in the case, were you
20 responsible for looking at all the leads and
21 possible people that were contacted to provide DNA
22 in your investigation?

23 A. Yes, sir.

24 Q. And did you familiarize yourself with all
25 the people that were -- that were contacted to

1 give DNA swabs for the investigation?

2 A. Yes, sir.

3 Q. Okay. And while you were doing that, did
4 you note that one of the detectives working on the
5 case had contacted an Ernesto Behrens?

6 A. Yes. That's correct.

7 MR. TERRELL: Your honor, I'm going to
8 object. He has no personal knowledge of this.
9 This is all hearsay at this point.

10 THE COURT: I'm going to sustain the
11 objection unless you can otherwise establish his
12 personal knowledge.

13 BY MR. SEGAL:

14 Q. Okay. Did you review reports,
15 investigations, et cetera, that established that
16 an Ernesto Behrens had been contacted?

17 A. Yes.

18 MR. TERRELL: Objection, judge. It's
19 hearsay.

20 THE COURT: Sustained. It sounds like
21 that's based on hearsay.

22 BY MR. SEGAL:

23 Q. Okay. Do you work with Detective Archie
24 Moore.

25 A. Yes, sir, I do.

1 Q. Were you working with Detective Archie
2 Moore on that case?

3 A. Yes, sir.

4 Q. Okay. Now, as part of your review of all
5 the invest -- the people that had been contacted,
6 did you ever see a person by the name of Ernest
7 Behrens who was ever contacted to be provided
8 swabs?

9 A. Yes.

10 Q. Ernest Behrens?

11 A. No, no. I'm sorry. Ernesto Behrens.

12 Q. Okay. Ernesto --

13 MR. TERRELL: Your honor, object and
14 sidebar at this point.

15 THE COURT: You may come up.

16 [WHEREUPON, the following sidebar
17 discussion was had]

18 MR. TERRELL: Judge, at this time, I'm
19 moving to strike all this testimony and moving to
20 strike this witness. He had absolutely no
21 personal knowledge of the facts of this case. He
22 has never met Ernesto Behrens. None of this goes
23 to DNA. It's irrelevant. We ask that it be
24 excluded.

25 MR. SEGAL: I didn't ask him one question

1 about this case. I asked him if there was an
2 Ernest Behrens that ever provided swabs in the
3 Tamiami case investigation. Big deal about the O
4 being left off of something. And they're
5 intimating that there is an Ernest Behrens that
6 provided these swabs. I'm asking him questions,
7 which is perfectly permissible, to show there was
8 never an Ernest Behrens that was contacted for
9 swabs in that case.

10 MR. TERRELL: First of all, unless he
11 took the swabs from all 5,000 people, then
12 anything he would have read off of sheets is
13 hearsay, simply hearsay. As far as the Ernest
14 Behrens, that's on the card. And we're getting
15 into the -- we're getting into the facts of the
16 Tamiami case. That's ridiculous.

17 He has -- again, unless he has personally
18 taken swabs from every single person of the 5,000
19 people, that if he read any reports that says,
20 well, I never -- I read the reports and I didn't
21 see an Ernest Behrens, it's hearsay unless he
22 generated the reports.

23 MR. SEGAL: Your honor, the absence of
24 something is not hearsay. The absence of
25 something is hearsay if a statement is admitted

1 for the truth of the matter therein. We're
2 talking about the absence of anything. That is
3 not a hearsay assertion.

4 THE COURT: Well, based on the -- what I
5 gather is the scope of your inquiry is the Ernest
6 Behrens/Ernesto Behrens question. I'm going to
7 overrule your objection. I'm not trying those
8 Tamiami cases and I'm not going to go into those
9 cases.

10 MR. SEGAL: I'm not asking one --

11 MS. SHELOWITZ: But his testimony is
12 based on hearsay. If they wanted to bring in
13 somebody who personally knew who was on those
14 lists, how does he know. He doesn't have the
15 lists here. He's just -- again, this case is
16 being tried on people who are testifying to
17 protocol.

18 Yesterday, we sat through Hinz who had no
19 personal knowledge of anything except protocol and
20 today again we're allowing it. At this point,
21 we're highly prejudiced. Nobody has come in here
22 with any personal knowledge. Everybody is
23 testifying as to what generally happens and this
24 case cannot be tried in a vacuum that way.

25 Either the states brings in witnesses

1 with personal knowledge or it should be sustained
2 and struck from this trial.

3 THE COURT: I'm going to overrule the
4 objection.

5 [WHEREUPON, the sidebar discussion was
6 concluded]

7 BY MR. SEGAL:

8 Q. Again, Detective Butchko, the
9 investigation into those serial murders, was there
10 ever an individual by the name of Ernest Behrens
11 that was ever contacted to provide a swab?

12 A. No, sir. Not by the name of Ernest; no.

13 MR. SEGAL: Okay. Thank you very much.

14 CROSS-EXAMINATION

15 BY MR. TERRELL:

16 Q. Detective, can you tell us the number of
17 swabs that were collected?

18 A. The exact number?

19 Q. Yes.

20 A. I couldn't. It was in excess of 3,000.
21 We had 5,000 leads.

22 Q. Are you -- it's -- and, in fact, you
23 received almost 5,000 swabs total; is that
24 correct?

25 A. I don't recall the exact number.

1 Q. When was the last time you reviewed the
2 list of the 5,000 people that were talked to in
3 this case?

4 A. Approximately eight months.

5 Q. About eight months ago. And you reviewed
6 all 5,000 people on that list?

7 A. I -- I at one point have seen all people
8 that have been swabbed. I've seen their names.

9 MR. TERRELL: Okay. No further
10 questions.

11 THE COURT: Anything else, Mr. Segal?

12 MR. SEGAL: No, your honor.

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

15 THE WITNESS: Thank you.

16 [WHEREUPON, the witness was stood down]

17 THE COURT: Call your next witness,
18 please.

19 MR. SEGAL: Detective Steve Geller.

20 THE COURT: Good morning. If you'll
21 please come up to the witness stand, just stand,
22 raise your right hand and be sworn in.
23 Thereupon,

24 DETECTIVE STEVE GELLER, a witness herein,
25 and having been first duly sworn by the court

1 clerk and cautioned to tell the truth of HIS
2 knowledge as to the within matters, was thereupon
3 examined and testified upon HIS oath as follows:

4 THE CLERK: Please be seated. State your
5 full name and spell your last name for the record.

6 THE WITNESS: My name is Steve Geller,
7 G-e-l-l-e-r.

8 DIRECT EXAMINATION

9 BY MR. SEGAL:

10 Q. Okay. Sir, how are you employed?

11 A. I'm employed as a police officer with the
12 City of Plantation.

13 Q. And how long have you been employed by
14 the City of Plantation Police Department?

15 A. It'll be ten years.

16 Q. And what's your current assignment with
17 them?

18 A. I'm in the Criminal Investigations
19 Division as a detective.

20 Q. Okay. And how long have you held that
21 position?

22 A. Approximately four years.

23 Q. Now, in 1997, did there come a time
24 where, detective, you became involved as a lead
25 detective in the investigation of the sexual

1 battery of [REDACTED] [REDACTED]

2 A. Yes.

3 Q. Now, before you became the lead detective
4 into it, had there been a previous lead detective?

5 A. Yes.

6 Q. And who would that have been?

7 A. Brian Hager.

8 Q. Now, when you first got involved in the
9 case, would that have been somewhere in early
10 1997?

11 A. Yes.

12 Q. And did you begin to conduct an
13 investigation after you assumed the lead detective
14 of the case?

15 A. Yes.

16 Q. Okay. Now, as part of your
17 investigation, did there come a time when your
18 investigation revealed that Ernesto Behrens was a
19 suspect in the case?

20 A. Yes.

21 Q. Okay. Based upon Ernesto Behrens
22 becoming a suspect in the case, did you then
23 commence doing an investigation to try to locate
24 the defendant?

25 A. Yes.

1 Q. And as part of that investigation, did
2 you speak to a number of different people?

3 A. Yes.

4 Q. One second. Okay. During the the course
5 of the investigation that you were conducting in
6 contacting people, did you have a conversation
7 with a man named Dave Grayson?

8 A. Yes.

9 Q. What day did you have that conversation?

10 A. June 6th, 1997.

11 Q. Okay. As a result of that conversation,
12 did you then make contact with the Metro Dade
13 Police Department?

14 A. Yes.

15 Q. And what was your purpose in contacting
16 the Metro Dade Police Department?

17 A. To obtain whether they had any DNA.

18 Q. And what day did you contact the Metro
19 Dade Police Department?

20 A. That would be June 9th, 1997.

21 Q. Okay. And as a result of that
22 conversation, did you travel down to the Metro
23 Dade Police Department Crime Laboratory?

24 A. Yes, I did.

25 Q. And what date did you go to the Crime

1 Laboratory?

2 A. June 12th, 1997.

3 Q. And did you pick up something from the
4 Crime Laboratory when you went down there on June
5 12th, 1997?

6 A. Yes I did.

7 Q. What did you pick up?

8 A. A DNA swab.

9 Q. When you picked it up, was it packaged or
10 was it open in any way?

11 A. It was packaged.

12 Q. Who did you pick it up from?

13 MS. SHELOWITZ: Judge, I'm going to
14 object to any reference to notes. He needs to
15 have a memory of it first.

16 THE COURT: I'll sustain the objection.
17 If you need something to refresh your
18 recollection, be it your notes or report, let us
19 know that. Otherwise, try to answer from the --
20 your personal recollection.

21 THE WITNESS: Okay. May I refresh my
22 memory by looking at my notes --

23 THE COURT: Yes.

24 THE WITNESS: -- for this question?

25 THE COURT: Yes.

1 THE WITNESS: The name of the person is
2 Sharon Hinz.

3 BY MR. SEGAL:

4 Q. Okay. And do you remember about what
5 time it was that you picked it up from Sharon Hinz
6 on June 12th of '97?

7 A. I remember it was the morning.

8 Q. Okay. And what did you do with it after
9 you picked it up?

10 A. I immediately went back to my police
11 department, went to get a form to fill out that
12 I -- that I would need for teh Broward Sheriff's
13 Office to submit it and then immediately proceeded
14 to the Broward Sheriff's Office with it.

15 Q. And the Sheriff's Office Crime
16 Laboratory?

17 A. Yes.

18 Q. Okay. At the time that you picked up
19 those swabs and delivered them to the Crime
20 Laboratory, did you happen to have with you a
21 container or a vial of Mr. Behrens' semen?

22 MS. SHELOWITZ: Objection. Leading.

23 THE COURT: Sustained.

24 BY MR. SEGAL:

25 Q. What semen, if any, did you have of

1 Mr. Behrens when you took that -- when you took
2 the swabs to the Crime Laboratory

3 MS. SHELOWITZ: Objection. Assuming
4 facts not in evidence.

5 MR. SEGAL: That's exactly. He didn't
6 have any, your honor.

7 THE COURT: Overruled.

8 MS. SHELOWITZ: Objection to the speaking
9 objection and move to strike any comments by the
10 state.

11 THE COURT: Overruled. You may ask that
12 question. Restate the question.

13 BY MR. SEGAL:

14 Q. Okay. What semen, if any, did you have
15 in your possession of Mr. Behrens when you picked
16 up those swabs and took them to the Crime
17 Laboratory?

18 A. None.

19 Q. Okay. Now, the defendant was
20 subsequently arrested for his involvement in this
21 case; is that correct?

22 A. Yes.

23 Q. Okay. And you filled out what's called a
24 probable cause affidavit?

25 A. Yes.

1 Q. And the probable cause affidavit is a
2 report that's filed with the court concerning the
3 arrest, kind of a brief statement of the facts of
4 the arrest; correct?

5 A. Yes.

6 Q. Or the facts of the case?

7 A. Yes.

8 Q. Now, in your probable cause affidavit,
9 did you make any mistakes as to what you wrote in
10 there?

11 A. Yes.

12 Q. Okay. First of all, did you make a
13 reference to where the DNA was found that was
14 compared to the defendant's DNA?

15 MS. SHELOWITZ: Objection. Leading.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 BY MR. SEGAL:

19 Q. What did you put in the probable cause
20 affidavit?

21 A. The probable cause affidavit, I put that
22 evidence was obtained from a slip dress.

23 Q. And what caused you to put that in there?

24 A. From reading past --

25 MS. SHELOWITZ: Objection. Hearsay and

1 inadmissible.

2 THE COURT: Well, if it's based on
3 something that somebody else told you, then I'm
4 going to sustain the objection.

5 MR. SEGAL: Okay. It's not -- do you
6 want to come sidebar?

7 THE COURT: Yeah. Could we.

8 [WHEREUPON, the following sidebar
9 discussion was had]

10 MR. SEGAL: It was based on him reading
11 something which he basically misinterpreted. He
12 read or thought he read somewhere that --- I'm
13 sorry. What it was based on was police reports
14 that said -- because he didn't do any personal
15 contact with these people. It was based on him
16 reading that the slip dress was used to wipe the
17 DNA and he assumed therefore that the DNA was
18 gotten from the slip dress. In fact, it came from
19 the Queen fitted sheet.

20 MS. SHELOWITZ: Again, he is testifying
21 to hearsay. He was not there. He never talked to
22 the victim. He read police reports, I mean.

23 THE COURT: Well, he's not going to be
24 able to testify to what he read in other police
25 reports. Now, he can testify that, you know, did

1 you read other reports and everything and the
2 answer presumably would be yes. And, you know, if
3 he came to wrong conclusions, he can testify he
4 came to wrong conclusions but he's not going to
5 testify to what other reports may have said.

6 MS. SHELOWITZ: Okay.

7 MR. TERRELL: Okay.

8 MR. SEGAL: Okay.

9 [WHEREUPON, the sidebar discussion was
10 concluded]

11 BY MR. SEGAL:

12 Q. And also in your probable cause
13 affidavit, did you make a reference to the entry
14 into the -- Ms. [REDACTED] place being the sliding
15 patio door?

16 A. If I can refresh my memory?

17 Q. Sure.

18 A. Yes.

19 Q. Was that a mistake?

20 A. Yes.

21 Q. Now, you yourself, you didn't participate
22 in the investigation of this case back on May 12th
23 of '95 when it occurred?

24 A. No, I did not.

25 Q. And when you assumed the case in 1997,

1 did you yourself ever go out and speak to Ms. [REDACTED]
2 or any of the other witnesses involved in the
3 case?

4 A. No.

5 Q. What was your knowledge of the case based
6 upon when you assumed -- knowledge of the facts of
7 the case?

8 A. Based on police reports.

9 Q. Okay. And these two errors, what were
10 they -- how did they occur?

11 A. Based on reading the reports, my
12 assumptions.

13 MR. SEGAL: Okay. Nothing further at
14 this time, your honor.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MS. SHELOWITZ:

18 Q. Detective, before you were a detective,
19 you were in fact a school resource officer;
20 correct?

21 A. Yes, ma'am.

22 Q. So you worked in the schools?

23 A. Yes.

24 Q. And you were sort of an officer friendly?
25 Is that -- sometimes, friends with the kids, help

1 the kids in the school?

2 A. I served as a police officer in the
3 school.

4 Q. Okay. And actually at the time that you
5 were working on this case, in early of '97, you
6 were still a school resource officer; correct?

7 A. In '97?

8 Q. Correct. In early '97, in April?

9 A. No.

10 Q. Isn't it true that you in fact didn't
11 become a detective until November of '97?

12 A. I don't recall the exact date. I know
13 that I was a detective at the time that I began
14 this case.

15 Q. Okay. If I gave you your deposition,
16 would that help refresh your recollection as to
17 when you became a detective?

18 A. If I did state that in my deposition,
19 that -- the exact month that I came a detective
20 may have been wrong. But I know that I was a
21 detective at the time that I began reviewing this
22 case.

23 Q. Okay. If you gave a different answer to
24 that -- do you remember ever giving a different
25 answer to that specific question, as to whether,

1 when you assumed the case, that you were a
2 detective? Do you remember giving a different
3 answer to that question?

4 A. In my depo, I may have said -- I know
5 that it was a month into the school year that I
6 received word that I was being made a detective so
7 I'd only been into that school year for maybe
8 September, October and --

9 Q. Of '97?

10 A. Perhaps it was '96.

11 Q. Okay. So maybe you were mistaken, that
12 you actually became a detective in '96. Is that
13 what your testimony is?

14 A. That sounds -- yeah. That sounds --

15 Q. So when you gave sworn testimony and you
16 were asked two separate questions about when you
17 became a detective and whether you were a
18 detective, in fact, when you were working on the
19 ██████ case and you said no, I was a school resource
20 officer, you were incorrect then?

21 A. I thought that the question was
22 phrased -- the original incident.

23 Q. Not at the time of the original incident.
24 At the time that you were working on the ██████
25 ██████ case, whether you were a detective or not

1 yet?

2 A. When I began working on this -- that
3 case; yes, I was a detective.

4 Q. Okay. And you don't remember ever giving
5 a different answer to that question or are you
6 saying it's possible that you did. And I'm asking
7 if you want to refresh your recollection?

8 A. Yes. I want to refresh my recollection.

9 MS. SHELOWITZ: May I approach?

10 THE COURT: Yes.

11 BY MS. SHELOWITZ:

12 Q. Page four and page eight.

13 A. In the context of the questions that you
14 were asking, you state, if I may: When you had
15 the [REDACTED] [REDACTED] case, you were not a school
16 resource officer? I took that to mean at the time
17 of the actual incident, was I a school resource
18 officer. And the answer I put was yes.

19 Q. The actual question was, when you had,
20 not when it occurred, when you had the [REDACTED] [REDACTED]
21 case, you were not a school resource officer? And
22 your answer was: I was.

23 A. And I misunderstood your question.

24 Q. Would you then though, after refreshing
25 your recollection, agree that you did say that you

1 were approximately November of '97, which is late
2 '97, that you were in fact a school -- just became
3 a detective?

4 A. Yes. I -- I did say that; yes.

5 Q. Okay. And we talked a little bit -- you
6 talked a little bit on direct about the fact that
7 you wrote a police report in this case; correct?

8 A. Yes.

9 Q. This is actually called a probable cause
10 affidavit; correct?

11 A. Yes.

12 Q. And it is sworn to?

13 A. Yes.

14 Q. And it's -- would you agree that it is
15 important that it is accurate?

16 A. Yes.

17 Q. And it's your testimony as the detective
18 in this case that you put in your report that a
19 slip dress was used to wipe the semen and that
20 that slip dress in fact had semen on it. And that
21 was later submitted and tested but I don't want
22 you to get into that, the hearsay portion.

23 But I'm just asking you if that's what
24 you put in your report?

25 A. May I review my report?

1 Q. Sure. Do you have a copy of it or --

2 A. I've got it. Yes, I did.

3 Q. You also did a supplement in this case in
4 addition to that probable cause where you also
5 referenced to the fact that there was semen on the
6 slip dress; correct?

7 A. Yes.

8 Q. Okay. In fact, you didn't even catch
9 this mistake until it was pointed out to you in
10 December of 1999.

11 Isn't that true?

12 A. Yes.

13 Q. You also put into your report that the
14 point of entry in this case was through a rear
15 sliding glass door which was pried open; correct?

16 A. Yes.

17 Q. Okay. And you've never done a supplement
18 to correct that, have you?

19 A. No.

20 Q. You're just being told that you're
21 incorrect?

22 A. Yes.

23 Q. But you don't have any personal knowledge
24 as to whether you were incorrect because you
25 weren't actually at that scene, were you?

1 A. Correct.

2 Q. In fact, you never went to [REDACTED] [REDACTED]
3 home?

4 A. No.

5 Q. You never spoke with [REDACTED] [REDACTED]

6 A. No.

7 Q. When you went down to Miami to collect
8 these swabs, you weren't alone, were you?

9 A. I was trying to remember if I was alone
10 and I don't believe I was.

11 Q. Okay. In fact, you believe that you were
12 with Detective Tye, weren't you?

13 A. I think I may have been; yeah.

14 Q. How many swabs did you pick up?

15 A. I just picked up a package. I didn't --

16 Q. You have no idea?

17 A. No, I haven't.

18 Q. You didn't do anything else in this case,
19 did you?

20 A. Up to what we've talked about; no.

21 MS. SHELOWITZ: Nothing further.

22 THE COURT: Anything else, Mr. Segal?

23 RE-DIRECT EXAMINATION

24 BY MR. SEGAL:

25 Q. You put in your probable cause affidavit

1 that the entry was an unpermitted entry through
2 the patio door; correct?

3 A. Yes, I did.

4 Q. In fact, there was an unpermitted entry
5 into that house; correct?

6 A. Yes.

7 Q. So that part was accurate?

8 MS. SHELOWITZ: Objection on lack of
9 personal knowledge. He's never talked to the
10 victim. He's never talked to anybody.

11 THE COURT: Overruled.

12 BY MR. SEGAL:

13 Q. That part is accurate; correct?

14 A. Yes.

15 Q. You just put the wrong place that the
16 entry came in from or came in through; correct?

17 A. Yeah.

18 Q. Now, you also put in there about there
19 being a DNA match but you put to the slip dress;
20 correct?

21 A. Yes.

22 Q. Okay. You subsequently learned that
23 there was a DNA match but it was just to another
24 item in her bedroom; correct?

25 A. Yes.

1 Q. Which was the fitted sheet?

2 A. Yes.

3 MR. SEGAL: Okay. Nothing further.

4 THE COURT: Ms. Shelowitz?

5 BY MS. SHELOWITZ:

6 Q. You don't have anything in your police
7 report about any kind of semen on the sheet, do
8 you?

9 A. No.

10 Q. In fact, you're only testifying it's a
11 mistake because that's what you're being told it's
12 in fact a mistake because you don't have any
13 personal knowledge and you haven't seen any of the
14 evidence? You weren't there at the time that it
15 occurred, were you?

16 MR. SEGAL: Your honor, there's about
17 four questions wrapped up in that. If she could
18 just break it down to one question.

19 THE COURT: Why don't you restate your
20 question.

21 BY MS. SHELOWITZ:

22 Q. In fact, you are basing your opinion that
23 it was a mistake on the reports that you have
24 read; correct?

25 A. Yes.

1 Q. You have no personal knowledge of the
2 evidence in this case because you were not there
3 at the home the night that this occurred; correct?

4 A. Correct.

5 MS. SHELOWITZ: I have nothing further.

6 THE COURT: Thank you, detective. You
7 may step down.

8 [WHEREUPON, the witness was stood down]

9 THE COURT: Call your next witness,
10 please.

11 MR. SEGAL: Your honor, can we approach
12 sidebar for a second?

13 THE COURT: Sure.

14 [WHEREUPON, the following sidebar
15 discussion was had]

16 MR. SEGAL: Judge, the next witness is
17 Donna Marchese. There's one aspect of her
18 testimony that I have not warned her about that I
19 need to. I haven't had the opportunity. I just
20 came --

21 THE COURT: is it just a couple of
22 minutes you need with her?

23 MR. SEGAL: Yeah. The only thing I need
24 to tell her about is, part of the work she did was
25 running the DNA profile from the sheet to the

1 data, DNA data. I need for her not to testify to
2 that.

3 THE COURT: Why don't you go talk to her.

4 [WHEREUPON, the sidebar discussion was
5 concluded]

6 MR. SEGAL: Your honor, may I be excused
7 for one second?

8 THE COURT: Yes. Okay. Call your next
9 witness.

10 MR. SEGAL: Donna Marchese.

11 THE COURT: Good morning.

12 THE WITNESS: Good morning.

13 THE COURT: If you'll please come up to
14 the witness stand and then raise your right hand
15 and you'll be sworn in.

16 Thereupon,

17 DONNA MARCHESE, a witness herein, and
18 having been first duly sworn by the court clerk
19 and cautioned to tell the truth of HER knowledge
20 as to the within matters, was thereupon examined
21 and testified upon HER oath as follows:

22 THE CLERK: Please be seated. State your
23 full name and spell your last name.

24 THE WITNESS: Donna Marchese,
25 M-a-r-c-h-e-s-e.

1 DIRECT EXAMINATION ON VOIR DIRE

2 BY MR. SEGAL:

3 Q. Okay. Ma'am, how are you employed?

4 A. The Broward County Sheriff's Office Crime
5 Laboratory.

6 Q. And what do you do for the Crime
7 Laboratory?

8 A. I'm a forensic serologist, DNA
9 specialist.

10 Q. And what does that mean?

11 A. The serology part basically is the
12 identification of bodily fluid. And then the DNA
13 part would be to, once you've determined what type
14 of bodily fluid, we use DNA to attempt to
15 ascertain identity.

16 Q. You use the term forensic when you say
17 forensic serologist.

18 What does the term forensic mean?

19 A. Forensic is basically the analysis of
20 evidence that pertains to the law or to criminal
21 cases.

22 Q. Okay. The use of science that is
23 involved with the law and in courts or stuff like
24 that?

25 A. That's correct. Yes.

1 Q. Okay. And how long have you been been a
2 start with DNA specialist.

3 How long have you been doing DNA work?

4 A. I've been doing DNA analysis since --
5 excuse me -- 1991.

6 Q. How long have you been working for the
7 Crime Lab?

8 A. A little better than 18 years.

9 Q. And before you began doing DNA work, what
10 did you do?

11 A. When I was first employed in 1982, I was
12 a Forensic Lab Technician. Basically, what that
13 was, is, I made the solutions, I did ordering,
14 cleaning of glassware, basically general helper.

15 I went back to school. I obtained my
16 degree. Once I obtained my degree, they opened a
17 position for me and they put me in as what's known
18 as a Criminalist 1 or an entry level forensic
19 serologist at that point.

20 In 1990, we switched from serology to
21 DNA. I went through a training program. And then
22 in 1991, I started doing DNA analysis and I've
23 been doing that ever since.

24 Q. Okay. During that time period when you
25 were doing serology -- when did you get the

1 position as a serologist?

2 A. 1989.

3 Q. Okay. And serology work involved what at
4 that time?

5 A. At that time, what serology did is,
6 besides just the identification of a bodily fluid,
7 we did basic what we called ABO types and enzyme
8 typing.

9 Q. Of blood or saliva or whatever?

10 A. Yes.

11 Q. The fluid that was involved in the case?

12 A. Yes. Correct.

13 Q. Okay. If you could, can you go over for
14 us your educational background?

15 A. I have a Bachelor's Degree in chemistry
16 with a minor in biology from Florida Atlantic
17 University in Boca Raton. I'm presently enrolled
18 in a Master's program at Florida International
19 University to obtain a Master's in forensic
20 science.

21 I have been trained within the laboratory
22 various times, basically on the serology end and
23 the DNA end. I've gone to the FBI on four
24 different occasions for training again in basic
25 serology. I've trained a four week intensive

1 course for the RFLP DNA technology. The third
2 time was a courtroom issue in DNA technology
3 course.

4 And the last time, just recently, I was
5 up at the FBI in August for a STR, which is a
6 short tandem repeat DNA technology course. I've
7 been through their two various workshops and
8 seminars throughout the State of Florida and
9 outside of the State of Florida as well.

10 Q. Do you, as part of your work, read
11 professional literature that pertains to DNA
12 analysis and the whole DNA science?

13 A. Yes. We try to keep as current as we can
14 with the literature.

15 Q. Do you also have the opportunity to talk
16 to co-workers, people from other Crime
17 Laboratories about issues related to DNA --

18 A. Absolutely.

19 Q. -- DNA analysis?

20 A. I'm sorry. Absolutely. That is usually
21 what is done when I go to the seminar and the
22 workshops.

23 Q. Okay. During the course of time that
24 you've been a DNA specialist, can you even
25 guesstimate approximately how many different

1 evidence samples you've run DNA analysis on?

2 A. Thousands, high thousands.

3 Q. Okay. Your honor, at this time I proffer
4 Ms. -- have you ever been declared an expert in
5 the area dealing with DNA or forensic DNA
6 analysis?

7 A. Yes, I have.

8 Q. In court?

9 A. Yes.

10 Q. Approximately how many different
11 occasions?

12 A. Probably five dozen.

13 Q. Okay. All local courts or courts
14 elsewhere?

15 A. With the exception of one time which was
16 in Bahamas, everything has been in Broward County.

17 MR. SEGAL: At this time, I proffer
18 Ms. Marchese as an expert in the area of forensic
19 DNA analysis.

20 THE COURT: Mr. Terrell, do you want to
21 voir dire?

22 MR. TERRELL: No objection.

23 THE COURT: All right. I'll permit her
24 to give an opinion in her field.

25 DIRECT EXAMINATION

1 BY MR. SEGAL:

2 Q. Okay. Ms. Marchese, back in 1995 and
3 1997, during that timeframe, what type of DNA
4 testing was done in the Broward Sheriff's Office
5 Crime Laboratory?

6 A. We were doing what is known as RFLP. And
7 that's restriction fragment length polymorphism.

8 Q. Okay. And again, just in that particular
9 technology, can you guesstimate the number of
10 evidence samples that you ran overall using that
11 particular technology?

12 A. Like I -- I would have to say it would be
13 in the high thousands. We've just recently
14 switched over to the new technology so probably
15 nine, 10,000 samples.

16 Q. And you received training from the FBI
17 and other sources concerning RFLP DNA analysis?

18 MR. TERRELL: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. SEGAL:

21 Q. Did you testify that you received
22 training from the FBI?

23 A. Yes, I did.

24 Q. And from other sources as well?

25 A. That's correct. Yes.

1 Q. Okay. Can you briefly explain -- again,
2 keep it as brief as possible --

3 A. Okay.

4 Q. -- because this is not a biology class --
5 basically what RFLP testing is and what you're
6 trying to get from doing RFLP testing?

7 A. Okay. Essentially what we do is we'll
8 take a small sample, whether it be blood or saliva
9 or seminal fluid or vaginal fluid, and we attempt
10 to isolated the DNA. What happens is, we take a
11 small cutting and we add various chemicals and we
12 add an enzyme known as Procaz (phonetic). And
13 what that does is, it breaks open the cells and
14 that liberates the DNA solution.

15 What happens at this point though, if you
16 were to take a single piece DNA from a single cell
17 and stretch it out, it would be approximately six
18 feet long, which is really kind of hard to imagine
19 but the body has this wonderful way of twisting
20 and compacting it and making it fit into each and
21 every one of our cells.

22 So once I have this long piece of DNA,
23 it's not workable at that point. It'll break and
24 sheer in unspecified, unreproducible areas. So
25 what we do is, we go in with another enzyme and we

1 cut the DNA. And what it does is, it scans and
2 when it finds its appropriate point, it cuts it
3 and it scans more and cuts it. So now, I have
4 small workable pieces of DNA that are
5 reproduceable that I do my analysis on.

6 So once I have these small workable
7 pieces of DNA, what I do then is separate them out
8 by using a technique known as electrophoresis.
9 And all that is, is that I put the DNA into a kind
10 of a like jello-like medium and apply an
11 electrical current. And the DNA get pulled
12 through the gel-like medium with the smaller
13 pieces moving faster and the larger pieces lagging
14 behind.

15 At this point, the DNA is not visible to
16 the naked eye. We take radio activity and we
17 actually tag it. We expose it using film somewhat
18 like an x-ray. And then from the films, we do the
19 comparison of the size or the pieces of DNA from
20 one sample to another.

21 Q. Okay. This RFLP technique you described,
22 is it only used in DNA analysis for court cases or
23 is it used in other areas of science as well?

24 A. Up until recently when the switch had
25 been made to this new technology, RFLP was used

1 also in the medical field and in research.

2 Q. Research not pertaining to court cases
3 but medical research and other forms of research?

4 A. Yes.

5 Q. And was it very widely and generally used
6 in those other fields?

7 A. Up until very recently; yes, it was.

8 Q. Okay. Now, during the course of your
9 employment with the Crime Laboratory, did you --
10 were you assigned or did you get involved in the
11 DNA testing of evidence submitted to you by the
12 Plantation Police Department in the sexual battery
13 of [REDACTED] [REDACTED]

14 A. Yes, I did.

15 Q. Okay. When did you first get involved in
16 testing the evidence from Plantation Police
17 Department?

18 A. May I refer to my notes?

19 Q. Sure.

20 A. On the 16th of May, 1995, I did my first
21 analysis on some of the evidence.

22 Q. Okay. And what evidence did you analyze
23 at that time?

24 A. I analyzed the evidence that was
25 obtained in the SATC kit or the Sexual Assault

1 Treatment Center kit.

2 Q. I'm showing you what's been marked as
3 State's Exhibit 16, a composite 16.

4 I ask if you recognize what that is?

5 A. Yes, I do.

6 Q. And what is that?

7 A. This is the kit from the SATC center from

8

9 Q. Okay. And is this the -- some of the
10 material that you analyzed at that time?

11 A. Yes, it is.

12 Q. Okay. Is there any indication on this
13 that you're looking at this stuff or your contact
14 with this stuff?

15 A. It has the laboratory number that was
16 assigned to this case. And then where I had cut
17 open the top, I had resealed it with evidence
18 tape. And my initials are present.

19 Q. Now, the stuff that's inside, did you
20 also in some way note your involvement with those
21 items?

22 A. Yes. Again, the laboratory number is
23 present with my initials on each piece.

24 Q. Okay. And your initials, just as an
25 example on this one that says, oral swab two? See

1 where my finger is?

2 A. Yes.

3 MR. SEGAL: Can I just show the jury real
4 quick?

5 THE COURT: Yes.

6 BY MR. SEGAL:

7 Q. Okay. What were you doing when you got
8 the rape kit on May 16th of '95? What were you
9 going to do with it or what was your -- what work
10 were you going to do with it?

11 A. I was going to analyze or, actually, I
12 did analyze the swabs and the smear. I'll start
13 with the swabs. I analyzed the swabs for the
14 presence of blood and/or seminal fluid. And then
15 the oral smear, I -- it's a microscope slide and I
16 put it under the microscope and I searched for
17 spermatozoa or sperm cells.

18 Q. Can you start with the smear. That's the
19 glass slide in there?

20 A. Yes. That's correct.

21 Q. Which is contained in this cardboard type
22 container?

23 A. It's glass.

24 Q. Something's coming out?

25 A. Yeah.

1 Q. This is the thing that you analyze as far
2 as the smear?

3 A. That's correct. Yes, it is.

4 Q. And your initials are on here?

5 A. Yes.

6 Q. At the top on the tape?

7 A. Yes.

8 Q. Okay. And what was the result of your
9 looking at that particular smear?

10 A. It was negative for the presence of sperm
11 cells.

12 Q. That means you couldn't find any sperm
13 cells on that?

14 A. That's correct.

15 Q. Okay. Did you do any further testing
16 with that particular smear?

17 A. No. Once it was negative, it's
18 essentially deemed not suitable for further
19 analysis.

20 Q. Okay. Now, you said you also looked at
21 swabs; is that correct?

22 A. That's correct. Yes,

23 Q. Did you look at all the swabs that were
24 contained in there or some of the swabs?

25 A. Yes, I did.

1 Q. All of the swabs?

2 A. Yes.

3 Q. Okay. And what type of testing did you
4 perform on those swabs?

5 A. On each one of the swabs, what I did is,
6 I took a small cutting. Actually, two small
7 cuttings. And from the first cutting, I tested it
8 to see if there was blood present. And then from
9 the second cutting, I tested to see if seminal
10 fluid was present.

11 Q. Okay. Did any of those swabs reveal the
12 presence of blood?

13 A. No, they did not.

14 Q. Did any of the swabs reveal the presence
15 of semen?

16 A. No, they did not.

17 Q. What type of test do you do to determine
18 if semen is on there?

19 A. We do what's called acid phosphatase.
20 It's a chemical or spot test. What it tests for
21 is an enzyme known as acid phosphatase. And that's
22 an enzyme that is present in seminal fluid in very
23 large or very high quantities. Again, it's a
24 color test so what would happen is, after a series
25 of chemicals is added, if the acid phosphatase is

1 present, it goes from a colorless or clear to a
2 very dark blue.

3 Q. Okay. And that acid phosphatase testing
4 on these swabs gathered at the Sexual Assault
5 Treatment Center were all negative?

6 A. Yes, they were.

7 Q. Did you do any further testing on those
8 items?

9 A. No, I did not.

10 Q. Excuse me one second. Okay. Subsequent
11 to that, did you do testing on any other items
12 submitted by the Plantation Police Department?

13 A. Yes, I did. I also -- I failed to
14 mention that also within the rape kit or the SATC
15 kit was a blood vial from [REDACTED] [REDACTED] that I took
16 a small sample of and I dried it down and I
17 preserved it for further testing.

18 Q. Okay. Then when you finished with the
19 rape kit, then what did you do in this case?

20 A. In this case, approximately a month
21 later, I analyzied two additional pieces of
22 evidence from this case.

23 Q. And when did you begin that analysis?

24 A. On the 13th of June, 1995.

25 Q. Okay. The items that you tested on June

1 or began the testing on June 13th, could you tell
2 us what they are?

3 A. A black and white print dress and a green
4 top sheet.

5 Q. Okay. Where had those items been when
6 you obtained them for testing?

7 A. They were in the laboratory in the
8 evidence vault.

9 Q. And what is the evidence vault?

10 A. I'm trying to remember where we were at
11 that time. I believe we were in the new lab. The
12 evidence vault is a secured room within the
13 laboratory that, with the exception of the two
14 evidence technicians and I believe the lab
15 director, access is unlimited -- I'm sorry --
16 unauthorized to anyone else.

17 Q. And is it temperature controlled?

18 A. Yes, it is.

19 Q. Okay. How did you go about getting those
20 evidence items out of the laboratory vault?

21 A. I had to go and get one of the evidence
22 technicians and have him let me in. And actually,
23 he pulled the evidence and actually handed it to
24 me physically.

25 Q. Now, when you received the top sheet and

1 the slip dress or the print dress, were they
2 bagged at the time?

3 A. Yes, they were.

4 Q. In brown paper bags?

5 A. Yes.

6 Q. And was there evidence tape on there?

7 A. Yes, there was.

8 Q. Was there any indication at all that
9 those things had been or that the seals on the
10 bag, the evidence tape had been torn, on the bag
11 themselves were torn in any fashion?

12 A. No. In cases of that, I usually note
13 that in my notes. And there's nothing in my
14 notes.

15 Q. Nothing that would indicate that those
16 had been tampered with at any point after they had
17 been sealed in the bag?

18 A. No evidence of that.

19 Q. Okay. I'm showing you State's Exhibit 5
20 and state's Exhibit 7.

21 Are these the items that you looked at at
22 that time, the top sheet and the slip dress or the
23 print dress? Do you want gloves?

24 A. I've got some. Thank you. Yes, they
25 are.

1 Q. Now, when you got those items, I assume
2 you removed them from the bags they were packaged
3 in; correct?

4 A. That's correct. Yes.

5 Q. I'm showing you the inner bags referring
6 to State's Exhibit 7, first of all.

7 Which evidence item is State's Exhibit 7?

8 A. That would be the black and white print
9 dress.

10 Q. Okay. Is this inner bag the bag that it
11 was wrapped in when you got it out of the evidence
12 vault?

13 A. Yes, it is.

14 Q. Do you have your initials on there?

15 A. Yes, I do.

16 Q. Now, what did you do with that print
17 dress after you got it out of evidence?

18 A. The first thing I did was, I did a visual
19 examination to see if I could actually see
20 anything that might be either blood or seminal
21 fluid. It's a pretty difficult print so what I
22 did is, I took it into our laser room and actually
23 used the laser on it. But again, because of the
24 difficulty of the print, the laser did not show me
25 any indications or any signs of florescence which

1 would indicate to me that there might be seminal
2 fluid present so I did not do any further testing
3 by acid phosphatase, that I mentioned before, on
4 this evidence.

5 Q. Let's step back for a second.

6 A. Okay.

7 Q. You said you did a visual examination.
8 What were you looking for?

9 A. I was looking for any kind of stains that
10 might indicate that there was blood or seminal
11 fluid present that I could go ahead and test.

12 Q. Okay. Visual examination with your eyes.
13 Did you see any stains at all?

14 A. Correct. And I did not.

15 Q. Okay. Then you said you took it to be
16 lasered; is that correct?

17 A. That's correct. Yes.

18 Q. Now, what does a laser do? What's the
19 purpose of using the laser?

20 A. There are certain properties within
21 seminal that, upon drying, when they're hit with a
22 lasor, they flores. There are other things that
23 also flores under the laser but again, it's a tool
24 to indicate that there might be something present,
25 in which case if something had floresed, I would

1 have taken a small sample and did my testing on
2 it.

3 Q. But nothing floresed when you ran that
4 over the slip dress?

5 A. No. Like I said, it's a black and white
6 print and prints are very, very hard to look at
7 under the laser.

8 Q. Okay. I mean, in other words, given what
9 the laser -- given the fact that it's a print, the
10 difficulty of the print, is it possible there was
11 semen on there but it just didn't --

12 MR. TERRELL: Objection. Leading.

13 THE COURT: Let me hear what the question
14 is.

15 BY MR. SEGAL:

16 Q. Is it possible there was semen on there
17 but it just didn't flores?

18 MR. TERRELL: Objection. Leading and
19 speculation.

20 THE COURT: Overruled.

21 THE WITNESS: It is very possible; yes.

22 BY MR. SEGAL:

23 Q. Okay. Given the fact that you couldn't
24 find any locations of semen with the laser, did at
25 that point you decide to do the whole dress to

1 look for semen?

2 A. That's kind of really almost an
3 impossibility. I had no indication or no
4 scientific basis or where to start or how to start
5 so once I didn't get a visual and then I didn't
6 get anything laser, I -- I didn't take anything
7 further at that point.

8 Q. When you do your -- the RFLP testing, how
9 big a piece of evidence can you utilize to do the
10 testing?

11 A. The general rule was about half of a
12 dime.

13 Q. Okay. And in other words, if you were
14 looking for semen on an entire dress and you'd
15 need half a dime, you would be doing like six
16 zillion tests or something; correct?

17 A. I'd probably still be doing that today.

18 Q. Okay. Now, with the top sheet, which is
19 state's Exhibit 5, again, was that packed in the
20 bag on the inner bag that's inside the outer bag?
21 Is that the bag it was in when you received it?

22 A. I'm sorry. Yes, it is.

23 Q. And did you initial that bag?

24 A. Yes; on my evidence tape.

25 Q. Okay. And that bag was secured and not

1 torn or no apparent tampering with it?

2 A. No, there was not.

3 Q. Okay. What did you do with that top
4 sheet?

5 A. Again, I did a visual exam. I did find
6 one small stain that I did test for acid
7 phosphatase and it was negative. At that point, I
8 again went and I did a laser examination with
9 negative results.

10 There was also some trace evidence. And
11 what I mean by that, hairs and fibers that I
12 collected and I packaged and I put back in with
13 the bag. I'm sorry. Back with the sheet.

14 Q. Okay. How long did it take you to do the
15 testing on the sheet and the dress?

16 A. Probably about an hour.

17 Q. Okay. So you did it all in the same day?

18 A. Yes, I did.

19 THE COURT: Counsel, can I see you
20 briefly for one second?

21 [WHEREUPON, the following sidebar
22 discussion was had]

23 THE COURT: I'm just catching in the
24 corner of my eye, I think it's the last juror, it
25 looks like he's getting ready to nod.

1 MR. TERRELL: I can't imagine why.

2 THE COURT: So is this an appropriate
3 time to take a break?

4 MR. SEGAL: Is it me?

5 THE COURT: No. You're titilating. So
6 is this a good time -- is this a good time to
7 break?

8 MR. SEGAL: Sure. That's fine.

9 [WHEREUPON, the sidebar discussion was
10 concluded]

11 THE COURT: Okay. Ladies and gentlemen,
12 I think this is probably a good time that we take
13 a stretch break. A couple of comments.

14 First of all, don't discuss this case
15 among yourselves. Don't discuss it with anybody
16 else. And certainly, don't form any definite or
17 fixed opinion on the merits of this case.

18 Please be outside these doors no later
19 than 10:30 and make sure you have your personal
20 items with you. Thank you.

21 [WHEREUPON, the jury panel left the
22 courtroom]

23 MR. TERRELL: I see what's going on here,
24 your honor. You want them refreshed before we get
25 to the evidence.

1 THE COURT: Actually, I thought I saw his
2 head moving and it hurt my neck.

3 [WHEREUPON, a short recess was taken]

4 THE COURT: All right. Let the record
5 show that Mr. Behrens, Mr. Segal, Ms. Shelowitz,
6 Mr. Terrel are present.

7 Ms. Marchese -- is that how you pronounce
8 it --

9 THE WITNESS: Yes.

10 THE COURT: -- is present.

11 Henry, are they all out there?

12 THE SHERIFF: Yes, judge.

13 THE COURT: Okay. Bring in the jury,
14 please.

15 MR. SEGAL: There's one missing.

16 THE COURT: One missing.

17 MR. TERRELL: Judge, before he gets the
18 jury, my office has made contact with Dr. Shea
19 with Mr. Segal's knowledge. He is going to be
20 available by phone to explain that to me so I can
21 explain it to Mr. Segal from a quarter to 12:00
22 until quarter after 12:00 so if there's any way
23 within that half hour that we can dismiss for
24 lunch, I'll be able to get that information for
25 Mr. Segal.

1 THE COURT: All right. The record will
2 show Mr. Behrens, Mr. Terrell, Mr. Segal,
3 Ms. Shelowitz, Ms. Marchese are all present.

4 Bring them in, please.

5 THE SHERIFF: Jurors coming in, your
6 honor.

7 [WHEREUPON, the jury panel entered the
8 courtroom]

9 THE COURT: Welcome back, ladies and
10 gentlemen.

11 Okay. Mr. Segal, you may proceed.

12 MR. SEGAL: Thank you, your honor.

13 BY MR. SEGAL:

14 Q. Ms. Marchese, after you finished
15 examining the sheet, the rape kit, that stuff,
16 what do you do with the items?

17 A. If there was ever any positive or
18 evidentiary items, I would take cuttings and put
19 them in the freezer.

20 Q. Those that were all negative for your
21 examination, what did you do with them?

22 A. They went back to the Plantation Police
23 Department.

24 Q. Okay. Did you reseal them?

25 A. Yes. I resealed them. I evidence taped

1 them and then initialled the evidence tape.

2 Q. Now, at a later time, did you examine ine
3 another piece of evidence in this case?

4 A. Yes, I did.

5 Q. What piece of evidence did you examine at
6 a later time?

7 A. It was a green fitted bed sheet.

8 Q. Okay. What date did you start the
9 examination of that?

10 A. On September 18th, 1995.

11 Q. I'm showing you what's been marked
12 State's Exhibit 8.

13 I ask if you recognize what that is?

14 A. This is the green sheet.

15 Q. The green fitted sheet that we were just
16 talking about?

17 A. Yes.

18 Q. Where did you get the green fitted sheet
19 from?

20 A. It was brought to the laboratory by an M,
21 it looks like, Kernan from the Plantation Police
22 Department and put into the vault until I did the
23 analysis on it.

24 Q. Okay. So they brought it into the vault
25 and you retrieved it from the vault?

1 A. Correct.

2 Q. And when you retrieved that sheet from
3 the vault, was it wrapped inside of the -- inside
4 a brown paper bag?

5 A. Yes, it was.

6 Q. Okay. Were your initials on that bag?

7 A. Yes, they are.

8 Q. All these inside bags, they've been
9 opened and closed a number of times over time,
10 have they not?

11 A. Yes, they have.

12 Q. Which accounts for the condition of the
13 bags now?

14 A. Yeah. And the double packaging; yes.

15 Q. And, in fact, like with this fitted sheet
16 here, there were times where the bags were opened
17 to show them to the defense attorney --

18 A. That's correct.

19 Q. -- to examine them for this case?

20 A. Yes.

21 Q. So all these bags have been opened and
22 closed repeatedly?

23 A. Numerous times; yes.

24 Q. Okay. When you got that green fitted
25 sheet, what type of testing did you begin on

1 September 18th?

2 A. The first thing I did was a visual exam.
3 I did note on the sheet that there were several
4 areas of stained or several stains areas. I went
5 ahead and I immediately did my acid phosphatase
6 test. There was no need at this point to go ahead
7 and laser it because they were visual. I tested
8 four areas and three of them were positive for
9 acid phosphatase which indicated to me that
10 seminal fluid was present and one area was
11 negative.

12 Q. Okay. You've got your gloves on?

13 A. Uh-huh.

14 MR. SEGAL: Is it okay if the witness
15 steps down?

16 THE COURT: Yes.

17 THE WITNESS: I'm sorry. Do you want me
18 to step down.

19 BY MR. SEGAL:

20 Q. Okay. Take this green fitted sheet and,
21 if you could, if you can kind of point out the
22 locations that you did the AP testing on?

23 A. Okay.

24 Q. You can turn it around this way so
25 everyone can see it.

1 A. I'm looking for -- there was a -- it's
2 kind of hard to see but there is a larger stain
3 here which I did an acid phosphatase test on and
4 it was positive.

5 Q. Right now, there's a hole cut in the area
6 where you just pointed to; is that correct?

7 A. That's correct.

8 Q. In order to do the acid phosphatase
9 testing, you had to cut that out or did you just
10 do it on the sheet before you did the cutting?

11 A. No. I actually take a small cutting of
12 the sheet and then test the small cutting.

13 Q. Okay. So that cutting, that hole, the
14 cutting is done by you of this sheet?

15 A. That's correct. Yes.

16 Q. Okay.

17 A. There was also --

18 Q. Sorry to interrupt. On the one you just
19 pointed out, the bigger cut --

20 A. Yes.

21 Q. -- was that positive or negative on the
22 acid phosphatase?

23 A. That was positive.

24 Q. Indicating there was -- that was semen in
25 that stain?

1 A. Correct. There was another smaller but
2 larger stain here -- I'm sorry -- cut here.
3 Again, I took a small cutting for acid
4 phosphatase. It was positive in which case I took
5 a larger sample that went into the freezer.

6 There's another hole but smaller than the
7 other two. Again, I took a small cutting. It was
8 positive. I took a sampling and put it into the
9 freezer.

10 And here is my fourth cutting which
11 actually is my second cutting according to my
12 notes but the fourth cutting. And you can see how
13 small the hole is. That sample was negative so I
14 didn't take it any further and put it in the
15 freezer.

16 Q. So you state, you basically do the acid
17 phosphatase on smaller pieces. Then if it's
18 positive, you cut out a larger one of it to do the
19 DNA testing?

20 A. That's correct. Yes.

21 Q. Okay. In doing the initial acid
22 phosphatase testing, do you basically consume or
23 use up the piece cut out for the acid phosphatase
24 testing in doing the testing?

25 A. When you do take a cutting; yes. What

1 happens is, you add your chemicals and there is a
2 color change from the colorless to the blue. In
3 this case, at this point -- for lack of a better
4 term -- the sample would be contaminated so you
5 wouldn't take it any further for any other kind of
6 testing so it's actually just discarded.

7 Q. And the three other ones, the ones that
8 were positive on the AP testing, you said you cut
9 out larger pieces for that?

10 A. Yes. And those went into the freezer.

11 Q. Okay. How did you package them to put
12 them in the freezer?

13 A. I put them in coin manilla envelopes and
14 then they're sealed, description, my initials and
15 the laboratory number.

16 Q. Now, at the location -- where do you do
17 this AP testing where you spread the sheet out and
18 do the cuttings? Where do you do that?

19 A. When I spread the sheet out, it was done
20 on the -- on the evidence table within the laser
21 room. It's a large table that we utilize for
22 larger pieces of evidence. So the acid
23 phosphatase test was done either on a different
24 section of the table where there is a hood, a
25 biological hood, that I might have done it in. I

1 don't recall at this point.

2 Q. Prior to doing the testing on the sheet,
3 do you do anything to the table or the area where
4 you do it to sterilize it, make sure there's no
5 contamination that occurs?

6 A. Yes. The table is first bleached. I --
7 I bleach the table down. And once it dries, I
8 cover it with either white paper or brown paper,
9 again whatever's available at the time. And then
10 when it's done, the brown paper or white paper is
11 thrown away and the table is rebleached.

12 Q. What does the bleach do?

13 A. It would -- it would kill any kind of
14 micro-organism or bacteria or anything that was
15 left behind from possibly a previous examination.

16 Q. Would it kill -- if there had been say
17 semen from a previous examination, would it take
18 care of that?

19 A. Yes. We use the bleach to actually wipe
20 down our counters in case there's any DNA or any
21 kind of biological fluid left behind from again
22 previous exams.

23 Q. Then the paper's put down over the
24 bleached table?

25 A. Yes, once it's dried.

1 Q. And where does the paper come from?

2 A. We have big rolls of paper that we
3 basically unroll and rip off and put down.

4 Q. And that's another protection from
5 anything that might be on the table?

6 A. Correct.

7 Q. At the time that you looked at the sheet,
8 did you have any containers of the defendant's
9 semen anywhere in the location?

10 A. No, I did not.

11 Q. Did you even know the defendant's
12 connection to this case in September, 1995, when
13 you did the testing?

14 A. No, I did not.

15 Q. And on your hands, when you're doing all
16 these cutting and stuff, what do you have on them?

17 A. I wear gloves, like I did today.

18 Q. Between tests on different cases, do you
19 wash your hands?

20 A. As a general rule -- and I know it's
21 definitely my rule -- that I only work one case at
22 a time, one case is open at a time. And in
23 between pieces of evidence, if they're not
24 physically sealed, there are put back into the bag
25 and moved aside so that there is no

1 cross-contamination between pieces.

2 Q. Are there protocols or rules that exist
3 in the laboratory to avoid any
4 cross-contamination?

5 A. Yes, there is.

6 Q. And do you follow those rules at all
7 times?

8 A. Yes.

9 Q. Okay. You take the cuttings and you put
10 them into a freezer; is that correct?

11 A. That's correct. Yes.

12 Q. Do you have with you the envelopes that
13 you put the cuttings into?

14 A. Yes, I do.

15 MR. SEGAL: Just for the record, your
16 honor, one of the clerk's tabs had to be taken off
17 just so to avoid covering anything that was on the
18 envelope. We just took off a small piece of the
19 envelope.

20 BY MR. SEGAL:

21 Q. Okay. Ms. Marchese, I'm showing you
22 what's been marked State's Exhibit W for
23 identification.

24 What is that?

25 A. This is the dry down of [REDACTED] [REDACTED]

1 blood vial that I had mentioned previously.

2 Q. Just real fast, real fast, what's a dry
3 down?

4 A. What we do is -- we don't work with any
5 kind of liquid stains so what we do is, I actually
6 took some blood out and there was a piece of
7 filter paper and I just take some blood and drop
8 on it, allow it to dry and I package it up.

9 Q. Was this ever subsequently used or tested
10 by you?

11 A. Yes. I did DNA analysis on that.

12 Q. Okay. I'm showing you State's Exhibit X.
13 I ask if you recognize what that is?

14 A. This is a cutting from the green fitted
15 sheet, spot number four.

16 Q. Okay. state's Exhibit Y.
17 What's that?

18 A. This is a cutting from that green fitted
19 sheet, spot number three.

20 Q. And state's Exhibit Z?

21 A. Is again a cutting from the green fitted
22 sheet, spot number one.

23 Q. You numbered the spots for your purposes?

24 A. Yes. It's easier to keep track of them
25 that way.

1 Q. Okay. And these are the envelopes you
2 put them in when you did the cuttings after
3 running the acid phosphatase test?

4 A. That's correct. Yes.

5 Q. And these are put back in the vault, is
6 that -- inside the freezer?

7 A. Yes.

8 Q. If you could, just open all these without
9 cutting over some tape or initials.

10 A. Do I need gloves in handling them?

11 Q. Okay. Without showing, are those the
12 same or substantially similar conditions they were
13 when you created them and utilized them for the
14 testing?

15 A. Yes.

16 MR. SEGAL: Could I have this state's
17 Exhibit W for identification into evidence?

18 THE COURT: Any objection?

19 MR. TERRELL: No objection.

20 THE COURT: All right. W will be
21 admitted without objection as state's No. 21.

22 [STATE'S EXHIBIT NO. 21 admitted into
23 evidence]

24 BY MR. SEGAL:

25 Q. Okay. state's Exhibit X for

1 identification, could you look at that.

2 First of all, what are you looking at
3 now?

4 A. Spot number four from the green fitted
5 sheet.

6 Q. And that's written on the front of the
7 envelope?

8 A. Yes.

9 Q. By you?

10 A. Yes.

11 Q. Okay. From when you first cut it out,
12 has anything been removed from it as it was -- as
13 it was first cut out?

14 A. Yes. Because I utilized a portion of it
15 for DNA analysis.

16 Q. Okay. But for that piece that was cut
17 off for DNA analysis, is it otherwise in the same
18 or substantially similar condition as it was when
19 you cut it out and began your testing?

20 A. Yes.

21 MR. SEGAL: Can I have state's Exhibit X
22 for identification into evidence.

23 MR. TERRELL: No objection.

24 THE COURT: All right. X will be
25 admitted without objection as state's No. 22.

1 [STATE'S EXHIBIT NO. 22 entered into
2 evidence]

3 BY MR. SEGAL:

4 Q. Again, Y, what's -- what's state's
5 Exhibit Y for identification?

6 A. This is spot number three from the green
7 fitted sheet.

8 Q. If you could just -- again, did you cut
9 out a piece of that for subsequent DNA testing?

10 A. Yes, I did.

11 Q. Except for the piece you cut off, is it
12 otherwise in the same or substantially similar
13 condition as it was when you cut it off for the AP
14 testing?

15 A. Yes, it is.

16 MR. SEGAL: I move for State's Exhibit Y
17 for identification into evidence.

18 MR. TERRELL: No objection.

19 THE COURT: All right. Y will be
20 admitted as state's No. 23.

21 [STATE'S EXHIBIT NO. 23 entered into
22 evidence]

23 BY MR. SEGAL:

24 Q. Again, Exhibit Z for identification,
25 what's that?

1 A. Spot number one on the green fitted
2 sheet.

3 Q. Okay. If you could look at that -- did
4 you cut off a piece of that for subsequent DNA
5 testing?

6 A. Yes, I did.

7 Q. Except for the piece cut off, is it
8 otherwise in the same or substantially similar
9 condition as it was when you created the cutting
10 on September 18th, I guess it was?

11 A. Yes, it is.

12 MR. SEGAL: At this time, I would move to
13 have Exhibit Z for identification into evidence.

14 MR. TERRELL: No objection.

15 THE COURT: All right. Z will be
16 admitted without objection as state's No. 24.

17 [STATE'S EXHIBIT NO. 24 admitted into
18 evidence]

19 BY MR. SEGAL:

20 Q. Okay. Do me a favor. Again, take the
21 sheet and stand up --

22 A. Okay.

23 Q. -- and open it up. state's Exhibit 24 is
24 the green fitted sheet, spot number one.

25 Could you just point out which cutting

1 that is?

2 A. Spot one is the small circular one.

3 Q. This one right here?

4 A. Yes.

5 Q. Okay. state's Exhibit 23 is spot three.

6 Which one is that?

7 A. It's the longated one.

8 Q. This one here, the longated one?

9 A. Yes.

10 Q. And state's Exhibit 22, spot four is

11 which one?

12 A. Is the larger one here.

13 Q. Okay. And that real small one, you never
14 took a cutting of because that was negative on the
15 AP test; correct?

16 A. Correct. Yes.

17 Q. Okay. Now, what type of -- after you did
18 that initial AP testing and took the cuttings and
19 put them in the freezer, did you go then go back
20 to the cuttings and start running the RFLP DNA
21 testing that you described earlier?

22 A. Yes, at a later time.

23 Q. Do you know when you began that testing?

24 Oh, by the way, when those envelopes were
25 in the freezer, were they sealed in some fashion?

1 A. Yes. They're sealed with the evidence
2 tape.

3 Q. Okay.

4 A. The DNA was started on the 2nd of October
5 of 1995.

6 Q. Okay. To begin the DNA testing, you cut
7 out a piece of each one of those cuttings that are
8 in the envelope; is that correct?

9 A. That's correct. Yes.

10 Q. And then you put the remaining cut --
11 remaining cuttings back into the envelope?

12 A. That's correct. Yes.

13 Q. Okay. And what's done with those
14 remaining cuttings?

15 A. They're put back into the freezer.

16 Q. And they're preserved?

17 A. Yes.

18 Q. For subsequent use or testing by whoever
19 wants to do it?

20 A. That's correct.

21 Q. Okay. How long did it take you to run
22 the DNA testing that you described earlier on
23 those three pieces?

24 A. The actual extraction again was started
25 on the 2nd and was not completed until the 5th.

1 After the DNA's extracted, as I mentioned
2 before --

3 Q. Let me ask you this. One more time, can
4 you explain what extraction is?

5 A. It's when I took the DNA actually out of
6 the cell and purified it and isolated it.

7 Q. Okay.

8 A. After I've done that and now I have my
9 DNA again -- as I mentioned before, it's invisible
10 to the naked eye so what we have to do is, we go
11 in and tag it with radioactivity. We look at
12 four -- I'm sorry -- five sections of DNA or five
13 positions of DNA, plus a controlled position.

14 At the time that we were doing our RFLP,
15 it took approximately a week between each
16 position. So essentially, it could have taken
17 five even longer weeks, depending on how -- how
18 things progressed at the time.

19 Q. Okay. Now, when you say you're looking
20 at five positions, can you describe what you're
21 talking about?

22 A. What we actually look at is actually the
23 chromosomes. And we look for actually five
24 different chromosomes or five different locations
25 of the chromosomes.

1 Q. If I can go back one step.

2 A. Okay.

3 Q. In basically --

4 THE COURT: Mr. Segal, let me interrupt
5 you just one second.

6 Ms. Kettle.

7 MS. KETTLE: Yes.

8 THE COURT: I just have a message that
9 your daughter called --

10 MS. KETTLE: Yes.

11 THE COURT: -- so we're going to take
12 just a five minute break. I'll give you an
13 opportunity to call her, okay.

14 MS. KETTLE: Okay.

15 THE COURT: If you don't -- Henry will
16 show you where a phone is.

17 MS. KETTLE: It's long distance.

18 THE COURT: Okay.

19 MS. KETTLE: I have the number.

20 THE COURT: Do you have the number?

21 Okay. Here's the number.

22 So we'll take a five minute break.

23 Ladies and gentlemen, don't leave your personal
24 items in the courtroom. Don't discuss this case
25 among yourselves or with anyone else. And

1 certainly, don't form any fixed or definite
2 opinions about the merits of the case. And please
3 wait outside. We'll have you back in here in
4 about five minutes.

5 [WHEREUPON, the jury panel left the
6 courtroom].

7 [WHEREUPON, a short recess was taken]

8 THE COURT: Okay. Mr. Behrens,
9 Mr. Segal, Mr. Terrell, Ms. Shelowitz is present.

10 At this point, just bring in Ms. Kettle.

11 Ms. Kettle, welcome back.

12 MS. KETTLE: Thank you.

13 THE COURT: Just have a seat if you'd
14 like. Did you have an opportunity to speak to
15 your daughter?

16 MS. KETTLE: Yes, I did.

17 THE COURT: Is there anything about that
18 phone call that's going to be an issue for you
19 that you need to bring to my attention?

20 MS. KETTLE: Not right at this moment. I
21 will be making another phone call on my next
22 break. They had to rush my mother to the
23 emergency room.

24 THE COURT: Is she here in Broward
25 County?

1 MS. KETTLE: Yes.

2 THE COURT: Is -- is that -- and
3 certainly I can understand that circumstance. Do
4 you think that that's going to be pre-occupying
5 your mind?

6 MS. KETTLE: No. My brother is with her.
7 I understand that she is up and walking around and
8 that she is coherent. And my daughter is on my
9 way -- on her way there.

10 THE COURT: Do you -- I mean, I'm very
11 mindful of the circumstance. If you feel like you
12 need to be with your mother, if you feel like you
13 would want me to consider excusing you from this
14 jury, you let me know that.

15 MS. KETTLE: I certainly will.

16 THE COURT: Are you comfortable going
17 forward?

18 MS. KETTLE: I'm comfortable right now.
19 Like I said, I -- I might want to talk to you
20 after I make that phone call on our lunch break
21 because I will be able to talk to my mother at
22 that time.

23 THE COURT: Okay. You'll bring this to
24 my attention if you need it to be readdressed?

25 MS. KETTLE: I certainly will.

1 THE COURT: Okay. Mr. Segal, do you have
2 any question you want to ask Ms. Kettle on this
3 issue?

4 MR. SEGAL: No, your honor.

5 THE COURT: Mr. Terrell?

6 MR. TERRELL: No.

7 THE COURT: Okay. Bring in the rest of
8 our jury, please.

9 Again, Mr. Behrens, all counsel remain
10 present.

11 [WHEREUPON, the jury panel entered the
12 courtroom]

13 THE COURT: Welcome back, ladies and
14 gentlemen. Again, thank you for your patience.

15 Go ahead, Mr. Segal.

16 BY MR. SEGAL:

17 Q. A brief biology lesson for us. Again,
18 what is a chromosome that you're trying to get
19 these -- trying to look at?

20 A. If I can back up just a little bit, I
21 think it might make it a little easier. DNA which
22 is the X and Y cells which is the molecule
23 chemical that is present in each and every one of
24 our cells with a nucleus. And why I say nucleus
25 is, a lot of people are under the assumption that

1 DNA is in the red blood cells and it is not. The
2 red blood cell does not have a nucleus. So I'm
3 talking the white cells, the skin cells. In the
4 case of a male, it would be his seminal -- I'm
5 sorry -- his sperm cells. In the case of a woman,
6 it would be her vaginal cells.

7 Essentially, what this DNA is is, it's
8 inherited at birth so you get half from your
9 mother and half from your father. So essentially
10 what you're born with is what you die with. If
11 you look around, you'll notice that all of us have
12 a lot of the same DNA. And that's the DNA that
13 codes to your two arms, your two legs, just one
14 nose in the middle of your face.

15 The DNA that we actually look for many
16 years ago has been termed as junk DNA. We have
17 since remodified the word as -- junk is really --
18 a lot of people get offended by that but what that
19 means is that it doesn't code for anything. It's
20 not specific. It doesn't say: Okay. Make, you
21 know, one arm on each side of the body. So it's
22 non-specific and it differs from people.

23 We use the term polymorphic which means
24 many different forms and that's what it gives its
25 variation from person to person which allows us to

1 use it to help to individualize, attain or
2 ascertain an identity.

3 Q. Okay. And the chromosomes are part of
4 the DNA?

5 A. Actually, the DNA is actually found on
6 the chromosome; yes.

7 Q. And when you're using these five
8 positions, what -- where are these five positions
9 located?

10 A. The positions that we used, there was one
11 located on the first chromosome, one located on
12 the second chromosome, one located on the fourth
13 chromosome, one on the fifth, one on the tenth and
14 then the control is located on the seventh.

15 Q. How many chromosomes are there in total?

16 A. Six.

17 Q. How many chromosomes does a human being
18 have?

19 A. Oh, forty-six.

20 Q. Okay. Is there a term that's used --
21 commonly used in genetics or talking about DNA to
22 refer to those positions that you described?

23 A. Yes. The word is loci, l-o-c-i.

24 Q. Is that a term -- in legal, do they apply
25 that as well?

1 A. Yes.

2 Q. Okay. Now, when you say it takes about a
3 week to each position, is that each position per
4 sample?

5 A. No. What happened is, the samples are
6 batched so each batch would take approximately a
7 week.

8 Q. So in other words, you could run three at
9 the same time, just on one position?

10 A. Well, three samples for a run. And then
11 we would look at the one position all at the same
12 time; yes.

13 Q. Okay, okay. So then it took
14 approximately five or so weeks to do this testing?

15 A. Give or take; yes.

16 Q. Now, as to spots, what is it, one, two
17 and four -- I forgot -- spots one and three, what
18 were the results of the DNA testing on those?

19 A. On spot number one, I did obtain a DNA
20 profile. On spots three -- and you didn't mention
21 it but -- and four, I did not.

22 Q. Okay. If your acid phosphatase testing
23 came up positive for semen, why were you not able
24 to get a DNA profile on spots three and four?

25 A. It's very possible that there just was

1 not enough cellular material present there.

2 Q. The RFLP technology, does there have to
3 be a certain amount of DNA present to come up with
4 a profile in that testing?

5 A. Yes, there does. It's not quite as
6 sensitive as the technique that we utilize today
7 so if there's not enough present there, you're not
8 going to get a profile.

9 Q. Okay. And three and four, you were
10 unable to obtain any profile?

11 A. That's correct.

12 Q. Okay. Spot one again, was that the big
13 cutting that was in the sheet?

14 A. No. Spot one was the small circular
15 cutting.

16 Q. Okay, okay. Spot one, were you able to
17 obtain a genetic profile from that?

18 A. Yes, I was.

19 Q. Now, the genetic profile that you
20 obtained from spot one -- okay. In other words,
21 how is that profile done? When you say a profile,
22 I mean, how do you characterize it?

23 A. What we do is, we actually take this
24 piece of film that I mentioned before and we do
25 like an analysis on it through the computer. And

1 what the computer does is, by knowing known sizes
2 of pieces of DNA, it compares the unknowns to
3 knowns and assscience it a size.

4 Q. Okay. And the size consists of what?
5 When you're looking at that, you're getting the
6 size of what?

7 A. Actually, what it is is base pairs.

8 Q. The base pairs are basically -- the DNA
9 looks like a twisted ladder; correct?

10 A. Correct. Yes.

11 Q. And the base pairs are two different,
12 what are they called, chemicals or enzymes? What
13 are they called?

14 A. I'm not sure I -- there are four bases.

15 Q. Okay.

16 A. And what they do is, they pair.
17 There's -- it's A, T, G and C. And A always binds
18 with T and C with G. So A and T would be
19 considered a base pair. A is a -- is a base. T
20 is a base. But A and T together are a base pair.
21 So what we measure is in base pairs.

22 Q. And the DNA, the twisted ladder, it's
23 just a combination of A-T, C-G, C-G, A-T, all
24 kinds of different orders; correct?

25 A. Correct.

1 THE COURT: Could you just slow it down a
2 little bit?

3 BY MR. SEGAL:

4 Q. It involves A, T, C and G.

5 Okay. And then when you were trying to
6 find one loci, you're getting just like a series
7 of the A, T, C, G in one particular location; is
8 that correct?

9 A. Right. What we actually look for is what
10 is known as repeat units. And, for example, if
11 the repeat unit is C-A-T and C-A-T, C-A-T, C-A-T.
12 So the difference from, say, myself -- and, you
13 know, I may have 25 C-A-T repeat units and someone
14 else may have 15 or ten or five or -- and that's
15 how you differentiate between the actual pieces of
16 DNA by the actual repeat units.

17 Q. Okay. So with that spot one, you're able
18 to get a profile based on sizing those base pair
19 units; correct?

20 A. That's correct. Yes.

21 Q. Then basically, you've established a DNA
22 profile at the five different locations?

23 A. That's correct. Yes.

24 Q. Now, once you have the size at each loci,
25 each location, what do you do with that

1 information?

2 A. That information can be used to compare
3 between samples, essentially.

4 Q. Okay. At the time when you finished
5 doing this, which I guess would have been sometime
6 in November, I guess, five weeks --

7 A. November or December.

8 Q. -- did you have anybody to compare it to?

9 A. At that time; no, I did not.

10 Q. Again, had the name Ernesto Behrens come
11 into play in this case, to your knowledge, or had
12 you been provided any samples of Ernesto Behrens
13 to compare to this at that point?

14 A. No, I did not.

15 Q. It was just an unknown as to who -- as to
16 who to compare it to?

17 A. Well, if I may say, I did compare it to
18 [REDACTED] profile -- [REDACTED] 's profile and
19 it did not match.

20 Q. Okay. You got her profile from the blood
21 vial from the rape treatment kit?

22 A. That's correct. Yes.

23 Q. But beyond [REDACTED] there's nobody to
24 compare it to?

25 A. No, there was not.

1 Q. Okay. The information that you got as a
2 result of that and these films that you created
3 from your testing, what did you do with all --
4 with all those films.

5 What were the films called?

6 A. They're called autorads or
7 autoradiograms.

8 Q. What do you do with the autorads?

9 A. They're put into the case file.

10 Q. And the information about the sizing of
11 the different -- of the locations, loci, what's
12 done with that information?

13 A. That information is entered into our what
14 we call a local database within the laboratory
15 here.

16 Q. Okay. And those are also kept in the
17 case file?

18 A. Yes, they are.

19 Q. Okay. Now, and let me call your
20 attention forward to June of 1997.

21 A. Okay.

22 Q. Between when you finished the testing
23 back in November or December of '95, on that queen
24 fitted sheet, in 1997, were you -- were you ever
25 presented from anybody DNA to compare to the

1 evidence sample?

2 A. In June of 1997, I did receive oral swabs
3 from Mr. Behrens.

4 Q. Okay. But I'm saying from the time --

5 A. Prior to?

6 Q. From the time like November, December,
7 '95, when you finished, up until June of '97?

8 A. No. No, I did not. No, I don't.

9 Q. Okay. In June, '97, you received some
10 oral swabs?

11 A. That's correct. Yes.

12 Q. Do you remember when in June of '97?

13 A. The 16th of June.

14 Q. And who brought the oral swabs of the
15 defendant to the Crime Lab?

16 MR. TERRELL: Your honor, I'm going to
17 object and ask for sidebar at this time, please.

18 THE COURT: Come up.

19 [WHEREUPON, the following sidebar
20 discussion was commenced]

21 MR. TERRELL: Judge, from this point
22 forward, I would request that at any time those
23 swabs are referred to that exactly the -- it's
24 exactly as it's put on here, as Ernest Behrens,
25 not Ernesto. It does not say Ernesto.

1 THE COURT: Let me ask you, doesn't this
2 have an identifying mark as to how it was admitted
3 into evidence? Let's refer to it as State's
4 Exhibit 20 in evidence.

5 MR. TERRELL: And when they're referred
6 to, it's Ernest Behrens. The swabs she received
7 do not say Ernesto.

8 THE COURT: Well, I'm not going to tell
9 her what her testimony is. I'm just telling, you
10 know, Mr. Segal that he can refer to the item as
11 State's Exhibit 20 and ask if she received it.

12 MR. TERRELL: Okay. I'm just looking at
13 a few questions down the road. If she's going to
14 refer to that swab, it's Ernest Behrens.

15 THE COURT: I have no idea what she's
16 going to refer to it as.

17 MR. TERRELL: Okay.

18 [WHEREUPON, the sidebar discussion was
19 concluded]

20 BY MR. SEGAL:

21 Q. I'm showing you what's been marked as
22 State's Exhibit 20 in evidence.

23 I ask if you recognize what that is?

24 A. Yes, I do.

25 Q. And what do you recognize that as being?

1 A. These are the oral swabs that I had
2 received.

3 Q. In June of '97?

4 A. Yes.

5 Q. And do you have any markings on there to
6 show that these are the items that you received?

7 A. Yes. There is a laboratory number and my
8 initials.

9 Q. Okay. That's on the card that the swabs
10 were attached to?

11 A. That's correct. Yes.

12 Q. Did you also mark the envelope itself?

13 A. Yes. The front of the envelope is marked
14 with the laboratory number, the description, my
15 initials. And then the tape where I'd sealed it
16 has my initials on it also.

17 Q. When you received it, was it sealed?

18 A. Yes, it was.

19 Q. Okay. By evidence tape?

20 A. Yes.

21 Q. Had the evidence tape appeared to have
22 been torn open at any point?

23 A. No, it had not.

24 Q. Okay. What did you do when you received
25 those swabs?

1 A. I proceeded with a DNA analysis on them.

2 Q. The same type of DNA analysis that you
3 did on the cuttings from the fitted sheet?

4 A. Yes, I did.

5 Q. What did you utilize for the test? The
6 two swabs that are there with the cotton still on
7 them, what did you do?

8 A. What I did was, I took a cutting off of
9 it, probably the side to the top of the actual Q
10 tip, and I used that for the analysis.

11 Q. Okay. And what did you do with the
12 remaining part of the swabs that you didn't cut
13 off for any analysis?

14 A. They were put back into the freezer.

15 Q. And resealed in that envelope?

16 A. Yes.

17 Q. Okay. With your initials across the
18 tape, you resealed it?

19 A. Yes.

20 Q. For any future testing?

21 A. Right.

22 Q. Okay. Approximately how long did it take
23 to run the tests on that particular cutting from
24 the swab?

25 A. I don't have the exact dates here. I'm

1 sorry. They were -- this particular sample was
2 run with a series of different cases so the actual
3 paperwork is in another file. When I'm finished,
4 I can get it for you. But I did start them in
5 June. And again, looking at the same timeframe,
6 anywhere between six, eight -- eight weeks would
7 be when I got the final analysis.

8 Q. So you say you ran it with other cases,
9 other stuff.

10 Was there any situation in which the
11 evidence from the other stuff could have somehow
12 contaminated the evidence on these swabs?

13 A. Each sample is actually run in a, what we
14 call, a lane. And I load the sample, actually.
15 And what it is, is an actual cut or indentation in
16 the gel and then they run through that gel, like I
17 said. So there's really no way that they could
18 co-mingle or contaminate each other; no.

19 Q. Okay. As a result of the testing of the
20 cutting from the swab, did you get a result that
21 you put on the autoradiogram?

22 A. Yes, I did.

23 Q. The computer sized the band in the
24 autoradiogram?

25 A. That's correct. Yes.

1 Q. Before we get to that point, the
2 autoradiogram, the band, can you describe what the
3 band -- what these autoradiograms look like, the
4 band, and how many bands there are?

5 A. Okay. What we do is, we run what's known
6 as a ladder. And what that is, is a -- it almost
7 looks like a bar code and it's a series of bands.
8 And these are known pieces of DNA. And then
9 controls are also run again of known pieces.

10 And then essentially what happens is,
11 because your DNA is inherited and you get half
12 from your mother, half from your father, you
13 should have a two banded pattern. There are
14 individuals that have one banded pattern in which
15 case the mother and father donated the same piece
16 of or the same size of DNA. But most times or
17 normally, you would see actually two bands.

18 And again, because --

19 Q. Is that two bands in each loci?

20 A. Yes, two bands in each loci. So a total
21 of ten bands, you would see. So what you would
22 have is, you would have your two bands and then
23 you would have your known or your ladder and the
24 computer does the calculation between the unknown
25 piece and the known piece. And that's how the

1 actual size is generated.

2 Q. Okay. On the evidence sample from the
3 sheet, did you have two bands at each of the five
4 loci?

5 A. Yes, I did.

6 Q. And on the swab, the DNA analysis that
7 you did, did you have two bands at each loci?

8 A. From?

9 Q. From the swab?

10 A. Yes, I did.

11 Q. Okay. After you created the
12 autoradiogram from the swab DNA analysis that you
13 did, did you do a comparison between the
14 autoradiogram and the sizes that you had from the
15 sheet and then from the swab?

16 A. Yes, I did. The first thing I did was a
17 visual exam between the two to see if they
18 appeared that they had matched. And then I went
19 ahead and I compared the actual sizing from each
20 loci to each other.

21 Q. What did the visual exam show you?

22 A. The visual exam showed me that the band
23 was in the position, for example, on the first
24 chromosome for the sheet, for example, were here
25 and the band from the oral swab were here in which

1 case they did match each other.

2 Q. Is that all the way through the five
3 bands?

4 A. Ten bands.

5 Q. I'm sorry. All the way through the ten
6 bands?

7 A. That's correct. Yes.

8 Q. So the autoradiogram from the sheet
9 visually matched that from the swab cutting?

10 A. That's correct. Yes.

11 Q. Okay. Now, you said then you did the
12 computer sizings as well; is that correct?

13 A. That's correct. Yes.

14 Q. What were the results of the comparison
15 of the computer sizings of each band that you ran
16 from the swab to that of the sheet?

17 A. That the DNA profile that I obtained from
18 the sheet matched that of the DNA profile from the
19 oral swab of Ernsto Behrens.

20 MR. TERRELL: Your honor, I'm going to
21 object and ask for sidebar again.

22 THE COURT: You may come up.

23 MR. TERRELL: Or I can object and move to
24 strike based on our previous sidebar.

25 THE COURT: Well, I'm going to -- if

1 that's -- based on -- I'm going to overrule the
2 objection. You'll have an opportunity to
3 cross-examine the witness.

4 MR. TERRELL: Okay.

5 BY MR. SEGAL:

6 Q. Now, once you get those matches, is there
7 a mathematical calculation that's done that's
8 relevant to this science?

9 A. Yes, there is.

10 Q. To do the math -- in other words, what
11 numbers were assigned to the results of the DNA
12 analysis that are used in this computer analysis?

13 MR. TERRELL: Your honor, I'm going to
14 object. She's not been declared a population
15 geneticist in any way.

16 THE COURT: I'm going to sustain the
17 objection.

18 BY MR. SEGAL:

19 Q. Did you have the results looked at by a
20 population geneticist?

21 A. Yes, I did.

22 Q. What is a population geneticist?

23 A. A population geneticist is an individual
24 who has obviously knowledge and experience in
25 statistical evaluation as it has to do with the

1 actual population.

2 Q. And who was that that was utilized?

3 A. Dr. Martin Tracey.

4 Q. And who is Dr. Tracey?

5 A. Dr. Tracey is a professor down at Florida
6 International University.

7 MR. SEGAL: Can I have one moment, your
8 honor? Okay. I have nothing further at this time.

9 THE COURT: may I see counsel very
10 briefly, please.

11 [WHEREUPON, the following sidebar
12 discussion was commenced]

13 THE COURT: Just a matter of scheduling.
14 Rather than stop you mid-stream, I'm going to
15 break and you can do your cross after lunch.

16 MR. TERRELL: What time do you plan on
17 returning?

18 THE COURT: 1:30.

19 [WHEREUPON, the sidebar discussion was
20 concluded]

21 THE COURT: Okay. Ladies and gentlemen,
22 I think this is going to be the best time that we
23 break for lunch because I don't want to begin
24 cross-examination and then have to stop at an
25 inopportune time. A couple of comments.

1 First of all, don't leave any personal
2 items in the courtroom. Make sure you take your
3 personal things with you. Don't discuss this case
4 among yourselves. Don't discuss it with anybody
5 else. And certainly, don't form any definite or
6 fixed opinion on the merits of this case.

7 Schedule-wise, I'm going to ask that you
8 be outside the jury assembly room no later than,
9 let's say, 20 after 1:00. Somebody will come down
10 and escort you to the courtroom. We want to start
11 as promptly at 1:30 as we can and you're being
12 down there no later than 20 after will enable us
13 to do that.

14 In terms of our schedule for the rest of
15 the week, as I said to you before, this is not
16 television. We deal with matters as they arise.
17 Barring something coming up that I -- you know,
18 that I just can't control, I think we are on
19 target to be able to complete this case this week.
20 But again, I say that to you because I said as we
21 got into the week, I'd give you a little feel for
22 where we are. I think we'll be able to do that.
23 Again, should something come up that would change
24 that, I will certainly let you know as I become
25 aware.

1 With that in mind, make sure you have
2 your personal items. We'll see you outside the
3 jury assembly room no later than 20 have 1:00.
4 Thank you very much. Have a nice lunch.

5 [WHEREUPON, the jury panel left the
6 courtroom]

7 THE COURT: Okay. Just let the record
8 show that the jury has left the courtroom.
9 Mr. Behrens, Ms. Shelowitz, Mr. Terrell, Mr. Segal
10 are present.

11 Ms. Marchese, I'm just going to instruct
12 that you not discuss your testimony or this case
13 with anybody during our recess, okay.

14 THE WITNESS: Okay.

15 THE COURT: Thank you.

16 [WHEREUPON, a lunch recess was taken]

17 THE COURT: Let the record reflect
18 Mr. Behren is present. Ms. Shelowitz, Mr. Segal,
19 Mr. Terrell are present. Our witness is present.

20 Is there anything we have to address
21 before we bring the jury in?

22 MR. SEGAL: Yes, your honor. As the
23 court recalls, Mr. Terrell was going to speak to
24 Dr. Shea over the luncheon and advise me. I was
25 in my office the entire lunch break. I never

1 heard from Mr. Terrell.

2 MR. TERRELL: That's correct. I did call
3 Dr. Shea. I got his voicemail. He's in
4 Gainesville, by the way, judge. I told him the
5 importance of him beeping me immediately so that I
6 can -- I told him what the situation was about. I
7 said: If for some reason you can't beep me,
8 please call Dennis Segal. I have not received --
9 returned a receive beep. I did call him
10 personally. I just left a message on his personal
11 recorder. He works, I think, from 8:30 to 5:00
12 and I'll try again. That's all I can do.

13 Certainly, I mean, Mr. Segal -- I mean,
14 the guy's already been deposed. If he's going to
15 change his testimony, if there's something wrong,
16 I think that's something to be brought out in
17 cross-examination. But nonetheless, Mr. Segal can
18 speak to him the trial -- before he starts his
19 testimony.

20 MR. SEGAL: It's not that, your honor.
21 He is a rebuttal witness. If he's going to deny
22 something he said in the deposition, then I want
23 this court reporter brought down. She owns a firm
24 in Gainesville and has a lot of commitment up there
25 so I'm trying to avoid that.

1 THE COURT: When do you expect this
2 person coming down here, tomorrow?

3 MR. TERRELL: The way things are looking,
4 tomorrow or Friday morning.

5 THE COURT: Okay. How many witnesses do
6 you expect to have at your end?

7 MR. TERRELL: Well, we've listed quite a
8 few, judge. I can't tell the court right now how
9 many we expect to call. I'm not for sure. We're
10 going to try to end it by Friday but I don't know.
11 It depends on how a couple of the witnesses
12 testify.

13 THE COURT: All right. Well, let's see
14 if the person gets back to you today and we'll see
15 what you learn.

16 MR. TERRELL: If I get a beep during --
17 and I know the area code so if I get a beep during
18 any of the testimony, I'll go sidebar and let the
19 court know.

20 THE COURT: Let's go down and get the
21 jury. Just make sure whatever witnesses you
22 anticipate wanting to call are here tomorrow
23 because I want to go through one after the next.

24 MR. TERRELL: Absolutely.

25 THE COURT: Why don't you see if

1 Ms. Marchese is out there and, if so, bring her in
2 and get her set up.

3 THE COURT: Are they all there, Karen?

4 THE CLERK: They're all there.

5 THE COURT: Okay. Mr. Behrens,
6 Mr. Segal, Mr. Terrell, Ms. Shelowitz are present.
7 Bring in the jury, please.

8 THE SHERIFF: The jury coming in, your
9 honor.

10 [WHEREUPON, the jury panel entered the
11 courtroom]

12 THE COURT: Welcome back, ladies and
13 gentlemen. I hope you had a nice lunch.

14 Before we begin, Ms. Kettle is there
15 anything beyond what we've already talked about
16 that you need to tell me?

17 MS. KETTLE: No. Thank you.

18 THE COURT: Okay. Everything's okay?

19 MS. KETTLE: Just great.

20 THE COURT: Okay. Mr. Terrell, you may
21 proceed.

22 MR. TERRELL: Judge.

23 BY MR. TERRELL:

24 Q. Good afternoon, Ms. Marchese.

25 A. Good afternoon.

1 Q. Ms. Marchese, let's start off by saying
2 that you can't testify that Ernesto Behrens was
3 not at Paula Turgeon's house on May 12th, 1995,
4 can you?

5 A. I'm sorry. Was not where?

6 Q. At Paula Turgeon's house on May 12th,
7 1995?

8 A. I don't know what you're speaking about.
9 Sorry.

10 Q. Okay. You can't testify where he was at
11 on May 12th, 1995?

12 A. No, I cannot.

13 Q. You can't testify to who the perpetrator
14 was that came through the window [REDACTED]
15 house on May 12th, 1995, can you?

16 A. No, I cannot.

17 Q. In fact, your testimony is limited to the
18 evidence that was received by you from other
19 people; correct?

20 A. That's correct. Yes.

21 Q. You're an expert in serology?

22 A. Correct.

23 Q. Bodily fluid?

24 A. Yes.

25 Q. And obviously, semen is a bodily fluid?

1 A. Yes.

2 Q. Is it not true that when a male
3 ejaculates there's billions and billions of
4 spermatozoa that comes out?

5 A. Millions to billions. That's an accurate
6 statement. Yes.

7 Q. Keeping that in mind, let's talk about
8 the rape kit.

9 A. Okay.

10 Q. We're not going to go over through
11 everything individually like the state did but I
12 do want to address the saliva -- saliva swab, the
13 oral swab and the oral smear.

14 A. Okay.

15 Q. You testified those; correct?

16 A. Yes, I did.

17 Q. What was the purpose of you testing that?

18 A. To see, in fact, if there was any blood
19 and/or seminal fluid present.

20 Q. Were you informed that there could
21 possibly be seminal fluid?

22 A. Yes, I was.

23 Q. And based on your testing of those
24 things, you found that in fact there was no
25 seminal fluid; correct?

1 A. That's correct.

2 Q. You also tested a swab that was taken
3 from -- I should say a smear from the leg of
4 [REDACTED] correct?

5 A. It was a swab.

6 Q. It was a swab?

7 A. Yes. That is correct.

8 Q. Do you know why that swab was taken from
9 her thigh?

10 A. Not off the top of my head. No, I don't.

11 Q. Okay. So they just told you to test it?

12 A. It was -- it was part of the kit; yes.

13 Q. Okay. Well, what were you testing for on
14 that?

15 A. Again, the presence of blood and/or
16 seminal fluid. There might be somewhere in the
17 paperwork of why that was collected but, like I
18 say, off the top of my head, I don't really
19 recall.

20 Q. Okay. But you know that the thigh is
21 where the person ejaculated on Ms. [REDACTED] correct?

22 A. No. That part, I don't know.

23 Q. You don't know that?

24 A. No.

25 Q. It's just what you were told?

1 A. Again, I don't even know if I was told
2 that. Normally, the request is, you know, please
3 check the following evidence for the presence of
4 body fluid or the presence of seminal fluid. And
5 a lot of times with the -- with a treatment center
6 kit, it's kind of standard what I do with it so
7 there's really not a specific request.

8 Q. Why is a swab important? Why would they
9 swab the log?

10 MR. SEGAL: Objection, your honor.
11 Asking her to characterize why somebody else did
12 something.

13 THE COURT: Well, I'm going to overrule
14 the objection to the extent you can answer from
15 your personal knowledge. Don't speculate on what
16 you may think. If you know, you can answer it.
17 If you're going to speculate on the answer, then
18 you're not going to be permitted to answer.

19 THE WITNESS: No. I'd have to speculate
20 on why they did that.

21 BY MR. TERRELL:

22 Q. Okay. Why would they use a swab to -- to
23 cover an area that seminal fluid may have been on?

24 A. To the best of my knowledge, I believe
25 that they would do that at the center if they were

1 told there could possibly be a sample of
2 evidentiary value there.

3 Q. Okay. My question is, why would they use
4 a swab though?

5 A. We use Q tips routinely or swabs
6 routinely to collect samples. You know, usually
7 they're sterile and they're clean and they're very
8 convenient and it's a good testing medium.

9 Q. Okay. And I guess my questions aren't
10 clear.

11 I mean, why would they use a swab as
12 opposed to masking tape to try and pull it up?

13 A. Again, it's the proper medium for
14 collection of sample. If you put a Q tip swab and
15 you added a little bit of distilled water and you
16 rub anything, you're going to pick up or
17 transfer -- hopefully transfer whatever's there.

18 Q. So it's a recognized and accepted
19 practice for serologists to use clean, sterile
20 swabs to collect evidence?

21 A. Yes.

22 Q. If there's ejaculation on somebody's
23 thigh, for example, and that ejaculation is
24 smeared, does not some of the cells go into the
25 pores of the skin of the person's leg?

1 A. I don't know. That's kind of beyond my
2 scope.

3 Q. That's beyond your scope as a serologist?

4 A. Whether or not it would be absorbed in
5 the pours; yeah. I don't think I'm qualified to
6 answer that one. Obviously, if you deposit a
7 stain there, it would be like a layer on the top.
8 But as far as absorbing, I'm not real sure about
9 that.

10 Q. You also received in the lab on, I
11 believe it was, May 18th, 1995, a slip dress;
12 correct?

13 A. It came into the lab on May 18th. I did
14 not look at it until the 13th of June. But that
15 is correct; yes.

16 Q. Okay. And would this be that slip dress?

17 A. I have it as a black and white print
18 dress but yes, it is.

19 Q. Is this gold and white or gold and black
20 or black and white, in your opinion?

21 A. It's probably gold. It's got a little
22 bit of white in there, some black, some gray. We
23 get a lot of different variations: Blue,
24 turquoise, aqua.

25 Q. Do you know when this was collected from

1 the scene?

2 A. No, I do not.

3 Q. Do you know where this would have been
4 from the time it was collected to the time you saw
5 it?

6 A. No.

7 Q. Have you tested this?

8 A. I did a visual exam and then I hit it
9 with the laser; yes.

10 Q. When this come into the lab, into your
11 particular lab, did it come in with any
12 instruction on it?

13 A. May I look?

14 Q. Please.

15 A. It says: Check dress for semen hairs and
16 fibers.

17 Q. Okay. So at least from the information
18 you got and the reason you tested it is because
19 you were expecting to see if there was any seminal
20 fluid or any hairs on it; correct?

21 MR. SEGAL: I'm going to object as to,
22 expect to see it. She was just asked to check it.

23 THE COURT: Restate your question.

24 BY MR. TERRELL:

25 Q. Okay. When you were testing this, what

1 were you looking for?

2 A. I was looking to see if there was any
3 seminal fluid present.

4 Q. When you tested this dress, did you have
5 gloves on?

6 A. Absolutely.

7 Q. Do you always wear gloves when you're
8 testing for DNA?

9 A. I always wear gloves whenever I touch
10 anything in the laboratory; yes.

11 Q. Why would you wear gloves when you were
12 testing this?

13 A. The potential of bodily fluid.

14 Q. By just touching it, are you saying that
15 my DNA could be transferred over to this dress, by
16 just touching it without gloves?

17 A. There's a lot of controversy now with the
18 new technology of how limited a sample you need to
19 get an actual DNA profile. With the RFLP
20 technology, you can manhandle it and I'd never
21 catch -- I'd never pick up a DNA profile on it.

22 Q. The RFLP testing is kind of outdated as
23 far as your lab is concerned?

24 A. It -- I don't want to say it's outdated.
25 It's just we -- kind of new and improved.

1 Q. Right. We have better technology?

2 A. Yes.

3 Q. And the argument is, is it not, that as
4 much as breathing on this or touching it with your
5 bare hands, you can transfer DNA cells -- I guess
6 all cells are DNA. Well, that's not true
7 according to your direct?

8 A. Right.

9 Q. But you can transfer cells over to this
10 dress; correct?

11 A. Yes.

12 Q. That's why we must be very careful when
13 we're testing evidence such as this; correct?

14 A. Correct.

15 Q. Isn't it true now that you can as much as
16 breathe on something and collect DNA cells -- DNA?

17 A. For the most part; yes.

18 Q. The newest technology is, what is it, STR
19 testing?

20 A. PCR/STR; yes.

21 Q. And when you tested this, at the time you
22 tested it, you lasered it; correct?

23 A. Yes.

24 Q. You used the best technology that Broward
25 Sheriff's Crime Lab had to offer, didn't you?

1 A. At the time; yes.

2 Q. Let me ask you something. If someone
3 were to ejaculate on their thigh and used this
4 slip dress to wipe that ejaculation off and you
5 tested the thigh and you tested the dress, where
6 would you expect to find the ejaculation or the
7 semen?

8 A. I would -- if it was all wiped off, I
9 guess I would expect to see more of it on that
10 dress.

11 Q. Okay. Would you expect to maybe see some
12 on the thigh also?

13 A. I guess that would depend on how thorough
14 the wiping was done.

15 Q. Would you be surprised if you tested the
16 thigh and the dress and you found no seminal
17 fluid? Would that surprise you, in your
18 expertise?

19 A. No, it wouldn't surprise me.

20 Q. So it just disappeared into thin air?

21 A. It's not a matter of disappearing. It
22 might be below my detection capabilities or,
23 again, I cannot say that there's no seminal fluid
24 on that dress. I can tell you that I could not
25 find any. With the methods that I used, I didn't

1 identify any. I'm not say it's not there. I did
2 not identify it.

3 Q. But going back to the original question.

4 If, right in front of you, I'm wiping
5 semen off my thigh and you test my thigh and the
6 dress, you would expect to find it either on the
7 dress or the thigh; correct?

8 A. If I knew exactly where it was on the
9 dress; yes.

10 Q. But you'd expect it to be there?

11 A. If there was seminal fluid on your thigh
12 and, yes, you wiped it off with the dress, I would
13 expect to find it or I would expect to see it at
14 that point; yes.

15 Q. Because it certainly just doesn't
16 disappear into thin air, does it?

17 A. Not to the best of my knowledge; no.

18 Q. In fact, when seminal fluid dries, it
19 becomes hard and sticks more; correct?

20 A. Again, it depends on your material. Yes.
21 It definitely dries. And a lot of times, as on a
22 bed sheet, for example, it'll leave a stain
23 behind. But that's not always a hundred percent
24 either.

25 Q. It really has nothing to do with the

1 material, whether or not it dries, does it?

2 A. Oh, it's always going to dry; yes.

3 Q. Okay. And when it dries, it hardens,
4 doesn't it, or it crystalizes?

5 A. Well, I don't know if crystalize is the
6 right word.

7 Q. What word would you use?

8 A. I mean, it's a fluid. Anything's that's
9 wet, when it dries -- I mean, water is a liquid
10 and when it dries, it could leave a stain behind
11 but, again, it doesn't always have to.

12 Q. So is it possible this dress beat
13 science?

14 A. I'm sorry. I don't think I understand
15 what you mean.

16 Q. Well, you testified on direct and you're
17 trying to imply on cross that: Well, there might
18 be seminal fluid there but I was not able to
19 detect it; correct?

20 A. That's what I'm saying; yes.

21 Q. Okay. So then would you agree then, it
22 beat science, it beat technology, if it's on here?

23 A. I don't know if that's really an accurate
24 statement. I'm just saying that the methods that
25 I used, which again were the visual and the laser,

1 I did not detect it. So if you want to say it
2 beat me, then I guess you could.

3 Q. I don't want to say it beat you. I want
4 to say it beat technology.

5 Would you agree with that or not?

6 A. I'm not comfortable personally with that
7 wording, but --

8 Q. Okay. How long have you worked for the
9 government?

10 A. You mean, for the county?

11 Q. It's government, isn't it?

12 A. Indirectly, I suppose. Eighteen and a
13 half years.

14 Q. Indirectly?

15 A. Well, I mean, there are strictly
16 government agencies.

17 Q. Broward County Sheriff's Office is a
18 government agency, is it not?

19 A. Well, I -- I -- I always think the FBI or
20 the CIA, that's more of a government agency where
21 I'm a local --

22 Q. How many times have you testified for the
23 government?

24 A. Oh, in excess of five or six dozen times.

25 Q. In evidence, you also received what

1 everybody's calling a top sheet; correct?

2 A. Correct.

3 Q. Do you remember the day you received that
4 into evidence?

5 A. I'm sorry. When it came into evidence?

6 Q. Yes.

7 A. The 18th of May, 1995.

8 Q. And you noticed a stain on that top
9 sheet, did you not?

10 A. Yes, I did.

11 Q. Did you test that stain?

12 A. Yes, I did.

13 Q. In fact, you went and lasered the top
14 sheet, didn't you?

15 A. Yes, I did.

16 Q. And what were you looking for?

17 A. Seminal fluid.

18 Q. And were you able to find any?

19 A. On the top sheet; no.

20 Q. So at this point, the places on the
21 evidence that you tested that you would expect to
22 find seminal fluid, there was none; correct?

23 A. I don't know. I would expect to find it?
24 I didn't find it. I mean, the analysis up to this
25 point that I did, I did not find anything.

1 Whether or not I expected to find it?

2 Q. Well --

3 A. You know, I mean, I don't go into the
4 analysis expecting anything one way or the other.

5 Q. Okay.

6 A. I try to go in with an open mind but I
7 did not up to this point find anything.

8 Q. Do you testify with an open mind?

9 A. I try to; yeah.

10 Q. Trace evidence, can you again explain to
11 the jury what trace evidence is?

12 A. Trace evidence can be a lot of things but
13 when I mentioned trace evidence, I was talking
14 more with respect to hairs and fibers.

15 Q. Which in this case, you were able to --
16 you -- trace evidence was submitted to you;
17 correct?

18 A. No, no. It wasn't submitted to me. I
19 found some or detected some on the top sheet, the
20 green top sheet, when I did the analysis.

21 Q. And how did you get the top sheet?

22 A. I'm sorry?

23 Q. How did you get the top sheet?

24 A. From the evidence vault.

25 Q. Okay. So it was submitted to you;

1 correct?

2 A. Yes.

3 Q. What did you do with the trace evidence
4 that you got from the top sheet, pillowcase or
5 wherever it may be?

6 A. I collected it and I put it back in with
7 the sheet.

8 Q. And some of that was hair?

9 A. I have hairs and fibers. I'm not really
10 qualified to make the distinction.

11 Q. Okay. Can you extract DNA from hair?

12 A. Yes and no.

13 Q. Okay. Well, first, let's deal with the
14 yes.

15 A. You can extract DNA from a hair that has
16 either a large root or a root or some tissue.
17 That also is conditional to PCR. With RFLP
18 technology, you could not have gotten a DNA
19 profile from a hair.

20 There's also -- there's also a technology
21 called microndril DNA which is totally, totally
22 different with respect to, it's not done from a
23 nucleus of a cell. It's actually done from the
24 mitochondria and that's actually in the hair shaft.

25 Our laboratory does not perform that.

1 Actually, there are not too many laboratories that
2 do at this point.

3 Q. Have you ever extracted DNA from hair?

4 A. Personally; no, I have not.

5 Q. How long have they been able to extract
6 DNA from hair?

7 A. I guess as long as the PCR technology has
8 been prevalent.

9 Q. If you don't extract DNA from hair as a
10 practice, what's the point of collecting that
11 trace evidence?

12 A. In case it had needed to be looked at by
13 one of the trade people at a later date.

14 Q. Do you know whether or not that was even
15 suggested in this case?

16 A. I believe on the letter of transmittal.
17 I mean, it says: Check for hairs and fibers. And
18 that would be the extent of that.

19 Q. Okay. So the question is, do you know if
20 it's ever even considered in a case like this
21 whether that hair was tested?

22 A. In this case, it was not. Normally, what
23 happens is, the agency would go through the
24 process of requesting it and then we need also
25 standards for comparison purposes.

1 Q. Hair could be a very, very valuable piece
2 of evidence, could it not?

3 A. With respect to DNA; yes.

4 Q. Okay. What about the fibers? What's the
5 point of collecting fibers that you collected?

6 A. Again, what I try to do is -- actually,
7 what we all try to do is, we -- you know, we don't
8 want to destroy or lose evidence so that's why we
9 work over white sheets and anything that is
10 detected is collected and preserved for possible
11 further analysis.

12 Q. What type of analysis would you do on
13 fiber?

14 A. You can do a -- and I'm not a fiber
15 expert. But you can do analysis between a known
16 and an unknown fiber to see if they do match.

17 Q. Okay. To the best of your knowledge, was
18 anything ever done with the fiber that was
19 collected in this case?

20 A. No, it was not.

21 Q. You also received a fitted sheet;
22 correct?

23 A. That's correct.

24 Q. Do you remember what date you received
25 that fitted sheet?

1 A. The fitted sheet came into the laboratory
2 on the 30th of June. I did not do an analysis --
3 of 1995.

4 Q. Okay.

5 A. I did not look at it until the 18th of
6 September, 1995.

7 Q. You just testified that it came in -- the
8 fitted sheet came in on the 30th of June of 1995;
9 correct?

10 A. Yes.

11 Q. And can you tell the ladies and gentlemen
12 of the jury when the other evidence came in: The
13 pillowcase, the top sheet, the rape kit?

14 A. The rape -- the rape kit came in on the
15 15th of May --

16 Q. Okay.

17 A. -- 1995. Originally, the only thing that
18 came in was the -- well, I'm sorry. I was looking
19 at this property sheet -- would be the flat sheet.
20 And that was the 18th of May, 1995.

21 Q. Okay.

22 A. The black and white print dress also came
23 on the 18th of May, 1995.

24 Q. Okay. So would you agree that by the
25 18th of May, 1995, you received all the evidence

1 except for this fitted sheet?

2 A. Yes. The fitted sheet did not come into
3 the laboratory until the 30th of June. That's
4 correct.

5 Q. And that's some -- about 40 days later;
6 correct?

7 A. That was -- yes. That was upon request
8 though by myself.

9 Q. Okay. And even though it came in in June
10 of 1995, you didn't test it, did you?

11 A. Not at that time; no.

12 Q. You had no instructions to test it, did
13 you?

14 A. No. Originally, they had asked -- or
15 maybe I should back up. It's policy of the
16 laboratory that when a case comes in of a sexual
17 battery nature and a suspect is not listed, that
18 only the rape kit or the SATC kit is analyzed.
19 And that was standard policy.

20 In this case, they put in a special
21 request for me to analyze additional evidence.
22 And originally, the black and white dress and the
23 top sheet came in and I did that. Then they put
24 in another request. I'm sorry. I asked them to
25 bring me the other sheet and that's what they did

1 and then I ended up testing that one also.

2 Q. Did you receive any instructions when you
3 got the fitted sheet?

4 A. It just says: DNA and possible sheets
5 folded envelope style, inward pillowcase removed,
6 inside out.

7 Q. Okay. And that was the general
8 instruction to all of it; correct?

9 A. Yes.

10 Q. I'm talking specifically about the fitted
11 sheet that you didn't receive until June, did you
12 receive instructions on that sheet to do anything
13 specific to it?

14 A. Again, on the property receipt, just
15 check for semen, hairs and fibers. Nothing
16 direct.

17 Q. Okay. Well, let's ask this question.

18 When did that property receipt -- when
19 did you receive that property receipt?

20 A. This is the property receipt that came in
21 with the flat sheet.

22 Q. Which was when?

23 A. The 18th of May.

24 Q. Okay. So when you received the fitted
25 sheet in June, did you receive any different

1 instructions? Let's try it that way.

2 A. No. Because it was on the same property
3 receipt.

4 Q. Were there any notations with the fitted
5 sheet like check this or there were wet spots
6 here, anything to that effect?

7 A. No.

8 Q. So you receive it in June, 1995.

9 You don't test it, do you?

10 A. In June? No, I do not.

11 Q. Okay. In fact, it sits for another four
12 months; correct?

13 A. Three months. Yes.

14 Q. Okay. So you take the sheet out in
15 September, three months later, four months after
16 the incident or five and you do a visual
17 inspection of it; correct?

18 A. That's correct.

19 Q. And you notice several stains on this
20 sheet, don't you?

21 A. Yes, I do.

22 Q. And is it your testimony that you don't
23 remember a kind of a big yellowish stain right in
24 the middle of the sheet?

25 A. I don't know if I made mention of that or

1 not.

2 Q. Well, to your knowledge, do you ever
3 remember seeing a yellowish stain in the middle of
4 that seat -- sheet?

5 A. The one we just pulled out a little while
6 ago, I believe there was a fairly good size stain,
7 if that's the sheet you're talking about.

8 Q. Ms. Marchese, is that the first time you
9 saw that stain?

10 A. I mean, I don't -- I'm sorry. I don't
11 really remember the exact -- I mean, I've seen the
12 sheet several times. But as far as independent
13 recollection of every stain on it, I don't have
14 that. I'm sorry.

15 Q. You and I have looked at that sheet
16 together, have we not --

17 A. Yes.

18 Q. -- in the past?

19 A. Yes, we have.

20 Q. And it was never brought to your
21 attention about the big stain in the middle.

22 Is that your testimony?

23 A. No. You might have brought it to my
24 attention.

25 Q. So after you do your visual exam --

1 visual examination and you see spots -- you see
2 more than four spots on the sheet, don't you?

3 A. Yes.

4 Q. You choose to pick four at random?

5 A. Yes.

6 Q. And you do the -- actually, you pull
7 those four? You cut holes on them; correct?

8 A. After I had done the acid phosphatase
9 test; yes.

10 Q. Okay. Spot number two --

11 A. Yes.

12 Q. -- tiny, tiny spot that we saw on the
13 sheet; correct?

14 A. Correct.

15 Q. Just that tiny little pinhead of a spot;
16 correct?

17 A. Yes.

18 Q. Didn't you testify on direct examination
19 that you need at least a half a dime to test --
20 that size of a half a dime to test it?

21 A. For DNA, not --

22 Q. For DNA?

23 A. Right. For DNA, not for acid
24 phosphatase.

25 Q. Why would you cut such a small tiny spot

1 if you're going to look for DNA instead of cutting
2 a bigger spot around the size of a half dime?

3 A. Because the policy is, I have to identify
4 a stain first and I did that through the acid
5 phosphatase test. And the acid phosphatase test
6 is very sensitive so I only needed a small
7 cutting, which is what I took. Once I determined
8 it was negative, there was no reason or point for
9 me to cut a bigger stain to take it further
10 because it had at this point no evidentiary value
11 to me.

12 Q. So your testimony is then that the other
13 three spots, you started off with a pinhead of a
14 cut also?

15 A. About the same size; yes.

16 Q. Okay. And then you go back and you cut
17 bigger patches off of it?

18 A. Correct.

19 Q. Now, spot one, spot three and spot four,
20 you shake out spermatozoa, do you not?

21 A. Yes, I do.

22 Q. And spermatozoa are cells?

23 A. Yes; male reproductive cells.

24 Q. Can you testify to when those cells were
25 put on that sheet?

1 A. No, I cannot.

2 Q. Can you testify as to how those cells
3 were put on that sheet?

4 A. I would have to say that they came from a
5 male and it was during an ejac -- during or after
6 an ejaculation; yes.

7 Q. Okay. Can you tell the circumstances?

8 A. No, I cannot.

9 Q. Can you tell the number of people that
10 put those different sperm -- those different
11 spermatozoa on the sheet?

12 A. With respect to the results that I got,
13 it is a single source sample so there was only
14 one, yes, one individual.

15 Q. And you're positive only one individual
16 put all three on there?

17 A. No. I can't tell you what happened with
18 the other two. I didn't get results there.

19 Q. So it's very possible, it could be three
20 different sources?

21 A. It's possible.

22 Q. You have no evidence to refute that, do
23 you?

24 A. No.

25 Q. That it was three different sources of

1 semen?

2 A. No, I have no evidence.

3 Q. At this point, with spot number one, you
4 take the cell and you open it up and you get a
5 profile; correct?

6 A. Yes.

7 Q. You use RFLP testing; correct?

8 A. Correct.

9 Q. Restriction Fragment Length
10 Polymorphysism?

11 A. Correct.

12 Q. The outdated test?

13 A. The older. There are still some
14 laboratories utilizing it, so --

15 Q. And when you utilize RFLP testing, you
16 don't determine identity, do you?

17 A. No. We --

18 MR. SEGAL: Objection, your honor. She's
19 not a population geneticist.

20 MR. TERRELL: I didn't ask for any
21 numbers, judge.

22 THE COURT: overruled.

23 THE WITNESS: After a profile is
24 obtained, we do what we call a probability -- a
25 probability of occurrence.

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I, CARMEN JASIK, Shorthand Reporter, certify that I was authorized to and did stenographically report the hearing of STATE OF FLORIDA versus ERNESTO BEHRENS; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 30th day of March, 2001.

CARMEN E. JASIK, BOSRA

CARMEN E. JASIK, BCSRA

Certified Shorthand Reporter