



CSU
College of Law Library

Cleveland State University
EngagedScholarship@CSU

Blood Evidence and DNA

2000 Trial Expert Reports and Tests

1-3-2000

Deposition of Dr. Mohammad Tahir

Mohammad Tahir

Follow this and additional works at: https://engagedscholarship.csuohio.edu/sheppard_dna

How does access to this work benefit you? Let us know!

Recommended Citation

Tahir, Mohammad, "Deposition of Dr. Mohammad Tahir" (2000). *Blood Evidence and DNA*. 3.
https://engagedscholarship.csuohio.edu/sheppard_dna/3

This document is brought to you for free and open access by the 2000 Trial Expert Reports and Tests at EngagedScholarship@CSU. It has been accepted for inclusion in Blood Evidence and DNA by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.



THE STATE OF OHIO,)
) SS: RONALD SUSTER, J.
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

ALAN DAVIS, EXECUTOR OF THE)
ESTATE OF DR. SAMUEL H.)
SHEPPARD, et al.,)
)
Plaintiffs,)
)
v.) Case No. 312322
)
STATE OF OHIO,)
)
Defendant.)

- - -

Deposition of MOHAMMAD A. TAHIR, PH.D., taken
by the Defendant as if upon Cross-Examination before
Angela R. Zanghi, a Registered Professional Reporter
and Notary Public within and for the State of Ohio,
at the offices of The Cuyahoga County Prosecutors,
The Justice Center, 1200 Ontario, Ninth Floor,
Cleveland, Ohio, on Monday, the 3rd day of January,
2000, commencing at 9:00 a.m.

- - -



MIZANIN REPORTING SERVICE, INC.
COMPUTERIZED TRANSCRIPTION

DEPOSITIONS • ARBITRATIONS • COURT HEARINGS • CONVENTIONS • MEETINGS

1511 TERMINAL TOWER • CLEVELAND, OHIO 44113 • (216) 241-0331 • FAX: (216) 241-8044

1 APPEARANCES:

2 Friedman & Gilbert
3 Terry Gilbert, Esq.
4 1700 Standard Building
5 Cleveland, Ohio 44113

6 On behalf of the Plaintiffs.

7 Dean Boland, Assistant County Prosecutor
8 and
9 A. Steven Dever, Chief Trial Counsel
10 and
11 William D. Mason, Cuyahoga County
12 Prosecuting Attorney
13 Cuyahoga County Prosecutor's Office
14 The Justice Center, Courts Tower
15 1200 Ontario Street
16 Cleveland, Ohio 4413

17 On behalf of the Defendant.

18 - - -
19
20
21
22
23
24
25

I N D E X

		<u>Page</u>
	Cross-Examination by Mr. Boland	4
	<u>OBJECTIONS</u>	
		<u>Page</u>
	By Mr. Gilbert	16, 29, 37, 38, 39, 70, 79, 122, 130
	<u>EXHIBITS:</u>	
		<u>Page</u>
	<u>Tahir</u>	
	1 and 2	26
	3	99
	4	112
	5	121

- - -

1 MOHAMMAD A. TAHIR, PH.D.,
2 called by the Defendant for the purpose of
3 Cross-Examination, as provided by the Ohio Rules of
4 Civil Procedure, being by me first duly sworn, as
5 hereinafter certified, deposes and says as follows:

6 - - -

7 CROSS-EXAMINATION

8 BY MR. BOLAND:

- 9 Q. Good morning, Doctor.
- 10 A. Morning.
- 11 Q. Could you state your full name and last name,
12 please.
- 13 A. Mohammad, M-o-h-a-m-m-a-d, last name Tahir,
14 T-a-h-i-r.
- 15 Q. And what is your current address, Dr. Tahir?
- 16 A. 40 South Alabama Street, Indianapolis, Indiana,
17 46204.
- 18 Q. Where are you currently employed?
- 19 A. Indianapolis - Marion County Forensic Services
20 Agency.
- 21 Q. What is the address of that employer?
- 22 A. That's the one I mentioned.
- 23 Q. That's the address you just gave?
- 24 A. Yes.
- 25 Q. What is your residence address?

- 1 A. Residence address is 12351 Seaway Circle,
2 S-e-a-w-a-y, Circle, Indianapolis, Indiana, 46236.
- 3 Q. How many years have you worked for the Marion County
4 Forensic Services Agency?
- 5 A. I started working with Marion County November 1990.
- 6 Q. And what was your role when you were first hired by
7 them?
- 8 A. Biology Section Support.
- 9 Q. What is your current job there?
- 10 A. Current job I'm a Technical Manager for DNA.
- 11 Q. And how many years have you been doing that, the
12 current job that you're in?
- 13 A. I've been doing this job since '91.
- 14 Q. And where did you work prior to working for the
15 Marion County Lab? Is it okay if I refer to that as
16 the Marion County Lab to make it short?
- 17 A. That's fine. As long as we can understand.
- 18 Q. Yes. Where did you work just prior to working at
19 the Marion County Lab?
- 20 A. I worked with Illinois State Police Forensic
21 Services, Maywood, M-a-y-w-o-o-d, Laboratory. That
22 is a suburb of Chicago.
- 23 Q. What did you do for that laboratory?
- 24 A. I was forensic serologist and lead worker or
25 something they call it.

- 1 Q. In your current role with the Marion County Lab are
2 you an employee of the county there or is that a
3 private company?
- 4 A. It is a government agency. It's a county
5 organization. That's all I know.
- 6 Q. You're an employee of the county?
- 7 A. That is correct.
- 8 Q. Did you help create any procedures for the lab or
9 employee manuals, testing protocols, things like
10 this?
- 11 A. Yes.
- 12 Q. What kinds of things did you help create? Let's
13 start off with general procedures in the lab.
- 14 A. I was the one actually we first started the DNA in
15 the laboratory and all the procedure manuals,
16 training manuals, quality controls, validations.
- 17 Q. You supervised the creation of those?
- 18 A. Supervised plus took part.
- 19 Q. And the DNA testing protocols and procedures, you
20 helped draft those?
- 21 A. Yes.
- 22 Q. Did you supervise other employees at the lab?
- 23 A. Yes.
- 24 Q. How many?
- 25 A. About seven or eight.

- 1 Q. And what kinds of things did those people that you
2 supervise do for the lab? What kind of job titles
3 did they have?
- 4 A. They're all scientists.
- 5 Q. All DNA people?
- 6 A. Yes. DNA serology.
- 7 Q. Is the Marion County Lab ASCLD accredited?
- 8 A. We have applied for it. No. We have applied for
9 accreditation.
- 10 Q. But it's not right now?
- 11 A. Yes.
- 12 Q. Can you briefly describe the type of equipment,
13 general type of equipment, that's in the Marion
14 County Lab that you're using for DNA testing sort of
15 in layman's terms? You have microscopes there I
16 assume?
- 17 A. Microscopes, watering baths, incubators,
18 refrigerators, freezers, centrifuges, biological
19 reagents, DNA sequencers.
- 20 Q. Do you use photographic equipment?
- 21 A. Just cameras. We use cameras to take photographs,
22 certain photographs.
- 23 Q. Is it digital photography or still film based
24 photography?
- 25 A. Polaroid or 35 mm. That's what we have. We have a

1 photography section that if we have to do something,
2 slides or something, they can take it there.

3 Q. But in your lab you use 35 millimeter photography?

4 A. 35 or polaroid.

5 Q. The photo documentation you have for DNA testing, is
6 it ever stored on CD Rom?

7 A. No.

8 Q. Do you have as part of your photography equipment
9 the capability to photograph through microscopes a
10 slide that you're looking at?

11 A. No.

12 Q. You're not able to do that?

13 A. No.

14 Q. Okay. As part of the procedures of the lab, do you
15 photograph material when it comes in to the lab,
16 evidence, whatever that you're going to be testing?

17 A. It depends on the discretion of the analyst.
18 Sometimes we do.

19 Q. Did you photograph the items in the Sheppard Case
20 generally?

21 A. Most of them, yes.

22 Q. Okay. Is this the lab you used for your testing in
23 the Sheppard Case?

24 A. That is correct.

25 Q. Okay. Have you testified in trials before?

Use
Marion
County
lab
for
Sheppard

- 1 A. Yes.
- 2 Q. Both criminal and civil or only criminal?
- 3 A. Mostly criminal, but sometimes can become several,
4 so I may have testified.
- 5 Q. Do you know offhand how many times you've testified
6 in trial?
- 7 A. I can tell you I've testified more than 500 times.
- 8 Q. I know you're guessing, do you know what percentage
9 of those trials were rape trials or I guess the term
10 you would use is sexual assault trials?
- 11 A. I can't give you an idea, but you are the
12 prosecutor. You probably know.
- 13 Q. I don't know what percentage you've testified in
14 those kinds of trials. That's what I'm asking.
15 Just a guessimate. I'm not holding you to a strict
16 number. 50% of the trials?
- 17 A. Maybe 50%.
- 18 Q. Have you testified in homicide trials as well?
- 19 A. Yes.
- 20 Q. When I was asking you before about the sexual
21 assault testimony I meant with DNA, relating to DNA
22 evidence.
- 23 A. When I say 500 times, I'm talking total testimony I
24 did.
- 25 Q. How many times have you testified about DNA

1 evidence, what would be your estimate?

2 A. I can't give you an accurate number, but maybe 60,
3 70 times.

4 Q. And of that estimated 60 or 70 times, how many of
5 those were homicide trials?

6 A. Maybe less than half.

7 Q. Less than half. Okay. In those trials, those 60 or
8 70 that we're estimating, are the typical samples
9 you have clean DNA profiles or mixed stains, mixed
10 samples I should say?

11 A. Sometimes it's mixed. Sometimes they're clean.

12 Q. Okay. Is there one that is more often than another?
13 That's what I'm getting at. It's about 50/50 then?

14 A. No. I can't tell you.

15 Q. Have you ever testified about statistics related to
16 DNA samples that you've tested?

17 A. Yes.

18 Q. Can you tell me any cases in which you've done that
19 you can recall or would you have records of that
20 back in the lab, cases you've testified about in
21 statistics?

22 A. We do give statistics in every case when the samples
23 are clean profiles, yes, we do.

24 Q. Okay. So in every case where you have a clean
25 profile you have testified about statistics?

- 1 A. Yes.
- 2 Q. Have you ever testified about statistics in a case
3 such as the Sheppard Case?
- 4 A. PCR and polymarker, no, we do not give any tests.
- 5 Q. For mixed stains?
- 6 A. Yes. For PCR we have in other tests. We recently
7 started. Yes, we do statistics.
- 8 Q. Is your opinion statistics are significant in
9 interpreting DNA results? *stats important*
in interpreting
DNA
- 10 A. Yes.
- 11 Q. And how are they significant?
- 12 A. You can tell the weight of the evidence.
- 13 Q. Do you have any experience in blood typing, ABO
14 blood typing?
- 15 A. Yes.
- 16 Q. And can you briefly describe what that science is of
17 blood typing, how it works?
- 18 A. I mean the whole population is divided by four
19 groups; A, B, AB and O. So in other words, all
20 human population, the whole world, can be categorized
21 into four groups. And then everybody has blood or
22 saliva or semen, and then you can get those antigens
23 and type them and compare with the evidence.
- 24 Q. Have you ever done that as part of your work prior
25 to your DNA work?

- 1 A. Yes.
- 2 Q. And what kind of comparison ¹² you make with
- 3 blood typing? For what purpose?
- 4 A. To exclude somebody or include?
- 5 Q. All right. Have you ever
- 6 typing in trials?
- 7 A. Yes.
- 8 Q. Okay. Do you sit on the I
- 9 A. Yes.
- 10 Q. Can you describe what that
- 11 purpose of that Board is?
- 12 A. The purpose of the Board is to formulate the
- 13 standards for DNA analysis in the United States.
- 14 Q. To your knowledge, has the Board produced any
- 15 documents or guidelines --
- 16 A. Yes.
- 17 Q. -- et cetera?
- 18 A. Yes.
- 19 Q. What would be the title of the document they have
- 20 produced, the Board has produced?
- 21 A. The DNA Standards For Analysis.
- 22 Q. Do you have a copy of that?
- 23 A. I don't have it with me now.
- 24 Q. No. In your lab?
- 25 A. Yes.

Blood
typing
used to
exclude.

- 1 A. Yes.
- 2 Q. And what kind of comparisons would you make with
3 blood typing? For what purpose would you do that?
- 4 A. To exclude somebody or include somebody.
- 5 Q. All right. Have you ever testified about blood
6 typing in trials?
- 7 A. Yes.
- 8 Q. Okay. Do you sit on the DNA Advisory Board?
- 9 A. Yes.
- 10 Q. Can you describe what that Board does, what the
11 purpose of that Board is?
- 12 A. The purpose of the Board is to formulate the
13 standards for DNA analysis in the United States.
- 14 Q. To your knowledge, has the Board produced any
15 documents or guidelines --
- 16 A. Yes.
- 17 Q. -- et cetera?
- 18 A. Yes.
- 19 Q. What would be the title of the document they have
20 produced, the Board has produced?
- 21 A. The DNA Standards For Analysis.
- 22 Q. Do you have a copy of that?
- 23 A. I don't have it with me now.
- 24 Q. No. In your lab?
- 25 A. Yes.

1 Q. So I can get a copy of that from you?

2 A. Sure.

3 Q. Okay.

4 A. If you can make a list of those things, keep making
5 them, I'll send you.

*Agreed to send me
materials I requested*

6 Q. Sure. A copy of the manuals for your lab that you
7 assisted in creating, I would like to get a copy of
8 each one of those, too. I assume you have those at
9 the lab?

10 A. Yes, we do.

11 Q. Okay. I'll make a list.

12 What other agencies or groups are represented
13 on the DNA Advisory Board?

14 A. They have people from the universities, people from
15 the state and local labs, FBI, and judges.

16 Q. Do you happen to know the business address of the
17 Board, if it even has one, a mailing address?

18 A. No. It's FBI Director appoints the Board Members.

19 Q. Okay. Is there an office where you typically meet,
20 the Board meets?

21 A. They announce the meeting where to meet. There is
22 no set place.

23 Q. Okay. Moving on to DNA science, can you just
24 briefly describe what DNA testing is and how it's
25 used in trials like what we're involved in here?

- 1 A. I do not understand that question.
- 2 Q. Okay. Just tell me what DNA testing is.
- 3 A. I mean, DNA is a chemical which is present in the
4 nucleus of the cell, and everybody is unique except
5 in identical twins. And we have certain
6 methodologies to get the DNA profile of certain
7 areas. When we have a profile there is not a whole
8 profile, just certain areas of the DNA molecule we
9 look for. And the technologies we use are different
10 technologies to compare those profiles.
- 11 Q. Okay. Would it be fair to describe it as a
12 destructive testing procedure, meaning that you have
13 to consume some of the sample or sometimes all of it
14 to do the test, is that a fair comment you think?
- 15 A. I wouldn't call it destructive. I would say the
16 sample has been consumed for testing.
- 17 Q. Okay. And did you consume -- I'm referring to your
18 two reports that you filed in this case. Did you
19 consume the entire samples in part of your testing
20 of all those items that are in your reports?
- 21 A. Yes.
- 22 Q. Can you list for me the types of DNA testing that
23 you are qualified to conduct or have ever been
24 qualified to conduct?
- 25 A. DQA1, PM, polymarkers, and RFLP.

- 1 Q. And STR is just another form of PCR, is that
2 correct?
- 3 A. That is correct.
- 4 Q. So you're qualified to do that testing also?
- 5 A. We implemented that thing, but I haven't started it
6 myself yet.
- 7 Q. All right. Now, your testing in general in DNA at
8 some point results in the creation of what we call
9 photo strips with dots on them?
- 10 A. That's correct.
- 11 Q. And those dots represent -- At least in this case
12 with DQ Alpha polymarkers, those dots represent
13 alleles at least of the loci?
- 14 A. That's correct.
- 15 Q. Is dot intensity important in interpreting those
16 results?
- 17 A. Sometimes, yes.
- 18 Q. Could you tell me how it's significant or important
19 in your interpretation?
- 20 A. Because it varies case to case because you have to
21 know the whole scenario of the case and the nature
22 of the sample and within the locus you can compare,
23 but intraloci you don't, within the locus. If I'm
24 comparing DQ Alpha, I have to compare DQ Alpha to DQ
25 Alpha. If I'm comparing one locus, the other locus

1 has to be the same locus.

2 Q. In a one-person profile is it your experience that
3 all the dots are the same intensity, is that a
4 general rule or is that not a rule?

5 MR. GILBERT: I'm going to object to
6 the form of the question. Scientifically I
7 don't think you're saying what you want to
8 say.

9 Q. (BY MR. BOLAND) Do you understand my question, Dr.
10 Tahir? If you don't understand.

11 In a one-person profile if you swabbed one
12 person's cheek and did their DNA test and looked at
13 the photo strips, would the intensity of those dots
14 that show up on the photo strips be equal?

15 A. In general it will be, but there are cases no.
16 There are exceptions.

17 Q. Can you explain how the C Dot operates in
18 interpreting results from those photo strips?

19 A. C Dot is a control dot, so. . .

20 Q. Is it a control for DQ Alpha or polymarkers?

21 A. For DQ Alpha.

22 Q. Okay.

23 A. And to call the results, the C Dot has to be equal
24 to that result which you are calling or it has to be
25 less than what you are calling. If the result is

1 there and you don't have C Dot, that means that
2 result cannot be relied on. You have to see the C
3 Dot.

4 Q. How does the S Dot operate in interpreting those
5 results?

6 A. Same way. S Dot for is -- S Dot is for polymarkers
7 and functions the same way.

8 Q. How many articles have you had published on forensic
9 DNA testing?

10 A. I have a list, but you can count them off.

11 Q. They're all listed here in your CV?

12 A. Most of them are listed. Some of them are in the
13 process of publication, so some of them may not be
14 listed.

15 Q. Do you have copies of each one of those articles in
16 your lab?

17 A. Probably at home. If I don't, you have the
18 references and you can get those.

19 Q. I'm saying do you have a copy?

20 A. I may have. Some of them I may not. But there is a
21 reference there.

22 Q. Okay. How many articles -- Strike that.

23 Without me having to read through this CV, are
24 there articles in here that you've published on ABO
25 blood typing and blood grouping?

no "c"
dot
you can't
report
results.

1 there and you don't have C
2 result cannot be relied on.
3 Dot.
4 Q. How does the S Dot operate
5 results?
6 A. Same way. S Dot for is --
7 and functions the same way.
8 Q. How many articles have you had published on forensic
9 DNA testing?
10 A. I have a list, but you can count them off.
11 Q. They're all listed here in your CV?
12 A. Most of them are listed. Some of them are in the
13 process of publication, so some of them may not be
14 listed.
15 Q. Do you have copies of each one of those articles in
16 your lab?
17 A. Probably at home. If I don't, you have the
18 references and you can get those.
19 Q. I'm saying do you have a copy?
20 A. I may have. Some of them I may not. But there is a
21 reference there.
22 Q. Okay. How many articles -- Strike that.
23 Without me having to read through this CV, are
24 there articles in here that you've published on ABO
25 blood typing and blood grouping?

1 A. That's true.

2 Q. Can you tell me the names of the authoritative
3 journals or publications in the field of forensic
4 DNA testing?

5 A. Could you say that again?

6 Q. What are the names of the journals or publications
7 you consider authoritative or representing the
8 members of the forensic DNA testing community?

9 A. There are several of them, but I can't name every,
10 but. . .

11 Q. As many as you can.

12 A. General Forensic Sciences by American Academy of
13 Forensic Sciences. Forensic Science International
14 is from Ireland. Science & Justice from British
15 Forensic Science Society, Canadian journal. Science
16 International. Several others.

17 Q. Have some of the articles that appear in your CV
18 been published in some of those journals you've just
19 listed?

20 A. Yes.

21 Q. When did you first hear of the Sam Sheppard Case?

22 A. I think -- I don't remember the date, but it was
23 early 1996 or maybe late '95. I don't remember the
24 date.

25 Q. Had you ever heard of the case before in its

1 connection with anything else?

2 A. Never.

3 Q. And how did you become involved in the case once you
4 heard about it back at that time?

5 A. I had a friend, Professor Peter DeForest. He's a
6 professor at the John Jay College of Criminal
7 Justice in New York. And one day I taught a DNA
8 workshop actually and he was in my class. And he
9 just came back and he gave me a call that I have one
10 sample, very old, could you do DNA analysis on that?
11 And I said, yes. We can try. Until we try we don't
12 know. And he says, okay, are you familiar with Sam
13 Sheppard Case? And I said no.



14 That was the first time I ever heard about Sam
15 Sheppard Case from Peter. And I said no. He said
16 that was a famous case. I said no, I never heard
17 about it. He talked about movies and all. I said
18 no. So he said, would you be able to do it? I
19 said, sure, I would do it. And then he said,
20 someone will call you from Cleveland, and then Terry
21 called me. And I told Peter that Terry called me.
22 At that time there was only one sample. I never
23 knew about anything else.

24 Q. What fee did you charge them or did you tell them
25 you would charge them to conduct this DNA testing on

- 1 that one sample?
- 2 A. He told me at that time, he said, you know. . .
- 3 Q. I'm sorry, he who?
- 4 A. Peter DeForest told me that this -- They do not --
- 5 It is pro bono. If you wish ^{to} ~~do~~
- 6 do it as a favor to me.
- 7 Q. Did you agree to do it?
- 8 A. I said okay.
- 9 Q. So no fee was involved?
- 10 A. No fee was involved.
- 11 Q. Okay. When you talked to Ter
- 12 tell you about this case?
- 13 A. He didn't talk much about that. And he said there
- 14 are some other samples. I said, I can't talk to you
- 15 until I see that.
- 16 Q. Okay. Prior to doing your first testing you spoke
- 17 to Terry Gilbert?
- 18 A. That is correct.
- 19 Q. Have you ever met Cynthia Cooper?
- 20 A. I think I met her. She came here once during when I
- 21 came here. I'm not exact on dates. I can't
- 22 recollect my memory. But she came to my lab. That
- 23 I know of.
- 24 Q. Do you know when she came to your lab?
- 25 A. I don't know the dates.

working
pro
bono.
no fee

- 1 that one sample?
- 2 A. He told me at that time, he said, you know. . .
- 3 Q. I'm sorry, he who?
- 4 A. Peter DeForest told me that this -- They do not --
- 5 It is pro bono. If you wish, I would request you to
- 6 do it as a favor to me.
- 7 Q. Did you agree to do it?
- 8 A. I said okay.
- 9 Q. So no fee was involved?
- 10 A. No fee was involved.
- 11 Q. Okay. When you talked to Terry Gilbert what did he
- 12 tell you about this case?
- 13 A. He didn't talk much about that. And he said there
- 14 are some other samples. I said, I can't talk to you
- 15 until I see that.
- 16 Q. Okay. Prior to doing your first testing you spoke
- 17 to Terry Gilbert?
- 18 A. That is correct.
- 19 Q. Have you ever met Cynthia Cooper?
- 20 A. I think I met her. She came here once during when I
- 21 came here. I'm not exact on dates. I can't
- 22 recollect my memory. But she came to my lab. That
- 23 I know of.
- 24 Q. Do you know when she came to your lab?
- 25 A. I don't know the dates.

- 1 Q. Do you know why she came to your lab?
- 2 A. She came to my lab, she said she's an author and
- 3 she's writing a book. She wanted to see the lab.
- 4 Q. Did you give her a tour of the lab?
- 5 A. Yes, I gave her a tour of t' ²¹
- 6 Q. Was testing being conducted ^{draw}
- 7 concluded on this one item? ^{line 16}
- 8 A. Testing was not conducted.
- 9 have to be there weeks to s 
- 10 allow anybody when testing
- 11 Q. So was your testing concluded
- 12 the time she arrived or was
- 13 A. I can only say the testing ²¹
- 14 still going on. You know t: ^{Arrow}
- 15 the last few months, last y ^{line 16}
- 16 ago. One sample or another ^{It was not done}
- 17 in her presence or somethin 
- 18 Q. I see. When did you first
- 19 A. When I came here for Sam's
- 20 that's the first time I saw
- 21 Q. Do you recall what he told you about this case --
- 22 your conversations with him?
- 23 A. I can't talk to him about the case at all.
- 24 Q. Other than Cynthia Cooper, did Terry Gilbert or Sam
- 25 Reese Sheppard visit your lab?

no one
allowed
in
during
testing

no
testing
done in
Cynthia
Cooper's
presence

- 1 Q. Do you know why she came to your lab?
- 2 A. She came to my lab, she said she's an author and
3 she's writing a book. She wanted to see the lab.
- 4 Q. Did you give her a tour of the lab?
- 5 A. Yes, I gave her a tour of the lab.
- 6 Q. Was testing being conducted at that time or had it
7 concluded on this one item?
- 8 A. Testing was not conducted. Testing is so long. You
9 have to be there weeks to see the testing. I never
10 allow anybody when testing is done.
- 11 Q. So was your testing concluded I guess I'm asking by
12 the time she arrived or was it still ongoing?
- 13 A. I can only say the testing was -- The testing is
14 still going on. You know that. It just concluded
15 the last few months, last year. It was a long time
16 ago. One sample or another coming. It was not done
17 in her presence or something.
- 18 Q. I see. When did you first meet Sam Reese Sheppard?
- 19 A. When I came here for Sam's exhumation. I think
20 that's the first time I saw him.
- 21 Q. Do you recall what he told you about this case in
22 your conversations with him?
- 23 A. I can't talk to him about the case at all.
- 24 Q. Other than Cynthia Cooper, did Terry Gilbert or Sam
25 Reese Sheppard visit your lab?

- 1 A. Terry I think visited once.
- 2 Q. Do you know why he visited the lab?
- 3 A. I think he had a lecture or something with Sam in
- 4 Indiana someplace. And he came to see me, so that's
- 5 -- that's all I remember. I don't remember anything
- 6 else.
- 7 Q. And what is your fee for all your work up to this
- 8 point on this case that you have charged the
- 9 Plaintiffs?
- 10 A. Nothing.
- 11 Q. Okay.
- 12 A. Let me say that because I stick to my promise
- 13 because I promised since I'll do it. But it is a
- 14 lot of time consuming on my part. All the work I've
- 15 done is on my own time because it's not my lab time.
- 16 I told Terry to talk to our director, and the
- 17 director told me that you c²² (17)
- 18 to do it but it has to be o
- 19 Q. What is the name of your ow
- 20 A. Hamby, James Hamby. H-a-m-
- 21 Q. He's your supervisor then?
- 22 A. Yes.
- 23 Q. So are you saying that you were conducting this
- 24 testing not in regular business hours and evenings?
- 25 A. Evenings or weekends. My time. Because I promised

*worked
evenings
or
weekends*

- 1 A. Terry I think visited once.
- 2 Q. Do you know why he visited the lab?
- 3 A. I think he had a lecture or something with Sam in
- 4 Indiana someplace. And he came to see me, so that's
- 5 -- that's all I remember. I don't remember anything
- 6 else.
- 7 Q. And what is your fee for all your work up to this
- 8 point on this case that you have charged the
- 9 Plaintiffs?
- 10 A. Nothing.
- 11 Q. Okay.
- 12 A. Let me say that because I stick to my promise
- 13 because I promised since I'll do it. But it is a
- 14 lot of time consuming on my part. All the work I've
- 15 done is on my own time because it's not my lab time.
- 16 I told Terry to talk to our director, and the
- 17 director told me that you can do it, I'll allow you
- 18 to do it but it has to be on your own time.
- 19 Q. What is the name of your own director?
- 20 A. Hamby, James Hamby. H-a-m-b-y.
- 21 Q. He's your supervisor then?
- 22 A. Yes.
- 23 Q. So are you saying that you were conducting this
- 24 testing not in regular business hours and evenings?
- 25 A. Evenings or weekends. My time. Because I promised

1 that I wouldn't charge so I don't want -- That's a
2 lot of hours because I got --

3 Q. How many hours is it? Do you have a record of how
4 many hours you've spent?

5 A. Hundreds of hours.

6 Q. Did you keep a record?

7 A. No.

8 Q. How many other cases have you worked pro bono?

9 A. Maybe a couple.

10 Q. Can you name those cases or the parties or anything
11 about them?

12 A. Just recently I had a case from Florida, Broward
13 County, a rape case. I think an 80-year-old woman
14 was raped.

15 Q. Did you testify as part of your pro bono work in
16 that case?

17 A. Not yet.

18 Q. It's a criminal trial I assume?

19 A. Because they didn't have -- There are several
20 suspects. I excluded them, so now they have no
21 suspect. But finally I am doing RFLP so they're
22 searching international data so we think maybe.
23 Before we did PCR. So we'll see if it goes to hit
24 something or not.

25 Q. Do you know the name or any details about the other

1 cases that you worked pro bono?

2 A. I don't remember.

3 Q. Okay. Did other people help you on this case, the
4 Sam Sheppard Case? Other scientists is what I'm
5 getting at in your lab.

6 A. No. Just sometimes we have reading of the person's
7 results. That's our policy.

8 Q. No one else conducted tests connected with the
9 Sheppard Case except for you?

10 A. Yes.

11 Q. Okay. Do you have a correspondence file of this
12 case of letters back and forth between yourself and
13 Mr. Gilbert or anyone else that you kept?

14 A. Some of the evidence came in, that's all that came,
15 the receipts and things like that. I didn't keep
16 anything else.

17 Q. Okay. Did you keep a news clipping file on this
18 case of stories regarding the Sam Sheppard
19 reinvestigation?

20 A. People used to send me some of them.

21 Q. You have those in the file somewhere?

22 A. Some places maybe.

23 Q. Okay. But you might be able to find them back in
24 your lab?

25 A. Yes. Maybe.

1 Q. Okay. Can you list for me what materials you
2 reviewed as part of your work on the Sam Sheppard
3 Case? Not the pieces of evidence. I mean other
4 materials about the case that you reviewed in
5 preparation for your work on this case.

6 A. Like --

7 Q. Testimony of other witnesses from the first trial,
8 for example. Other reports by pathologists, Dr.
9 Gerber, et cetera, who worked on Marilyn Sheppard's
10 autopsy.

11 A. I don't think. Maybe just briefly a -- I don't
12 remember that I did that.

13 Q. Do you have a list somewhere that you reviewed? Did
14 you keep a record?

15 A. I don't think I reviewed in detail anything.

16 Q. Okay. Is it fair to say then that you didn't review
17 any additional materials to prepare the two reports,
18 the DNA reports, that you created?

19 A. DNA reports I created by my findings what I had.

20 Q. Okay. Now, your first report in 1997, the one that
21 was released let's say, was that the one and only
22 report you created, or was there a first draft of
23 this report?

24 A. That was the first report. I think I only have two
25 reports.

1 Q. Right. I'm saying that were released. There were
2 no other drafts of that report in your lab
3 somewhere?

4 A. No. Not from me.

5 Q. Okay.

6 (Tahir Deposition Exhibits 1 and 2
7 marked for identification.)

8 A. I want to correct something, clear something,
9 because you asked me how much did I charge. Except
10 out of pocket expenses that he has to pay. If I
11 come here or photocopying or photos or something
12 like that he asks, the lab will not pay for that.
13 So I have to send him a bill. The lab gets money.
14 Whatever I spend for airfare or something or cab or
15 that, he has to pay.

16 Q. (BY MR. BOLAND) Do you have a copy of those expense
17 bills back at the lab? Do you think they were sent
18 out to Mr. Gilbert?

19 A. They may have in the lab. But most of them are my
20 own if I come here. So he sends me the check I gave
21 him. I don't keep a record.

22 Q. Okay. Doctor, showing you what's been marked Tahir
23 Exhibit No. 1, can you identify that for the record,
24 please?

25 A. This is Exhibit No. 1 and it's a two-page report

1 issued on February 3rd, 1997.

2 Q. Is that the report you issued at that time or a
3 xerox copy of the report?

4 A. That's correct.

5 Q. Can you identify Tahir Exhibit No. 2 for the record
6 as well?

7 A. This is Exhibit No. 2. It's my report which is a
8 second report I issued on April 21st, 1999.

9 Q. Okay. Does the Marion County Lab have guidelines
10 for the forming of DNA reports?

11 A. Yes.

12 Q. And do these reports follow those guidelines?

13 A. Yes.

14 Q. I want to talk a little bit about the news
15 conferences and TV programs that have surrounded
16 this case. Can you tell me how many television
17 related events you participated in in your
18 connection with the Sheppard Case?

19 A. I don't remember. Several people came. I don't
20 remember.

21 Q. Okay.

22 A. But there were several.

23 Q. Did you ever have discussions prior to those events
24 like the Nova Show, or the news conference that
25 released the DNA information in '98 I believe, did

1 you ever have discussions with anyone prior to those
2 events, the planning of those TV appearances that
3 you made?

4 A. No. Anything in the report that was issued was
5 discussed. Nothing.

6 Q. Were you ever given a script of what to say when the
7 TV cameras came in?

8 A. No.

9 Q. Okay. Let's talk about the Nova broadcast that you
10 participated in. Do you recall when that was
11 filmed?

12 A. I don't remember. They came several times.

13 Q. Your presentation as part of Nova, was that a
14 scientific presentation or was it more of a
15 dramatization would you say?

16 A. I didn't see that yet because I was out of the
17 country --

18 (William Mason enters the room.)

19 A. -- and it was played. And they sent me copies I
20 have. I haven't watched yet.

21 Q. What I'm asking about, though, is what you did for the
22 show.

23 A. I just told the facts what it is in the report and
24 I'm not going to change those facts. And that's
25 what I told Terry when I got the case; that you have

1 to take what I will say factually and it may help
2 you or may hurt you. So don't fish for the right
3 answer.

4 Q. Were you a paid consultant to Nova for that show?

5 A. No.

6 Q. Were you paid anything for your participation in
7 that show?

8 A. No.

9 Q. By anyone?

10 A. No. Except if they want me to come to Chicago and
11 then they can't come to Marion. I said okay. They
12 bought me a ticket. That's all. I didn't get any
13 compensation.

14 Q. Who bought the ticket for you?

15 A. Nova.

16 Q. Do you have any opinion on Berry Sheck's analysis of
17 your two DNA report results that he gave during that
18 show?

19 MR. GILBERT: I'm going to object
20 because he didn't see the show.

21 Q. (BY MR. BOLAND) You were present when Berry Sheck
22 made an analysis of DNA evidence as part of the
23 filming of the show?

24 A. Yes, I was.

25 Q. Do you have any reaction to his comments about your

1 DNA? What is your opinion about that, were they
2 accurate or not?

3 MR. GILBERT: If you remember what he
4 said.

5 A. I remember some, but vaguely. He's an attorney. He
6 has to do his -- I mean, as a scientist I have to
7 tell the facts. He is an attorney. He can do
8 whatever he wants. Definitely I do not have to
9 agree with all he says. But if you bring me a
10 question what he said, then I'll comment on that.

11 Q. (BY MR. BOLAND) As we are right now, you don't
12 recall what he said?

13 A. No.

14 Q. Were you present for any re-enactments by Bart
15 Epstein as part of that Nova filming?

16 A. I was there for one day when they called me to come.
17 But I did not see Bart doing all the experiments.

18 Q. Were you there for any re-enactments done by Dr.
19 Michael Sobel?

20 A. No.

21 Q. Did you have any conversations with any of the other
22 people that were being filmed the day you were
23 there?

24 A. I did not talk about the specifics of the case, what
25 they did, what I did. I was there as an observer.

1 Q. Did you consult with Nova about the DNA graphics
2 that were used in the show?

3 A. No.

4 Q. Have you been keeping up on the articles about this
5 case since your involvement began, reading them?

6 A. Somebody sends me I'll read them, otherwise I'm not
7 looking for this.

8 Q. Have you read articles about the DNA evidence in
9 this case that have been published?

10 A. What articles?

11 Q. Any. Do you recall reading an article about the DNA
12 evidence in this reinvestigation of the Sam Sheppard
13 Case?

14 A. Sometime if it's in the paper I will, yes, but I'm
15 not looking for it.

16 Q. Okay. Have you provided other people written
17 information or even over the phone regarding how to
18 comment about the DNA evidence in this case?

19 A. Like what?

20 Q. Have you told other people what to say about the DNA
21 evidence?

22 A. What people, for example?

23 Q. Anyone. Have you had a conversation where you told
24 somebody, look, if there is a question about DNA
25 here's what you should say, have you done that?

1 A. I don't remember saying anything like that or
2 somebody coming to me about that.

3 Q. Okay. Have you contacted anyone about their
4 comments about the DNA evidence in this case?

5 A. I think about a year or two years ago Terry asked me
6 to send a copy of my notes to Bruce Budowle,
7 B-u-d-o-w-l-e, of the FBI.

8 Q. How is he connected to the Sheppard Case, Mr.
9 Budowle?

10 A. That's what I'm going to say. Terry called me that
11 if I can send a copy of my notes to Dr. Bruce Budowle
12 and Dr. David Bing.

13 Q. Did he tell you why he wanted you to do that?

14 A. He wants to have them look at my work. I mailed
15 them a copy.

16 Q. To verify what you did?

17 A. I don't know. He said he wanted to --

18 Q. Are they DNA scientists that you were sending it to?

19 A. Yes.

20 Q. They're not reporters?

21 A. No.

22 Q. Okay. Have you had a chance to review Exhibits 1
23 and 2 prior to coming here today in preparation for
24 your deposition?

25 A. Yes.

1 Q. Okay. And did you have a chance to review your case
2 notes as well?

3 A. Yes.

4 Q. Before we start, are there any errors, typographical
5 or any other, that you have identified in either
6 Exhibits 1 or 2 or your case
7 mention before we get start

*no errors
in report*

8 A. I haven't seen any, no.

9 Q. Okay. What was the procedure you used for handling
10 the evidence in the Sam Sheppard Case as it came
11 into the lab?

12 A. Evidence I received I stored in the evidence ward
13 and then once I start I take item by item out and
14 start processing the evidence.

15 Q. Did you photograph the items as they came in to show
16 the condition that they were in when you received
17 them?

18 A. I photographed them when I was analyzing them and I
19 recorded notes.

20 Q. I'm saying before you started analyzing did you take
21 a photograph of whatever it was that you got in the
22 evidence envelope, for example, from the Coroner's
23 Office?

24 A. Yes.

25 Q. Okay. And you documented either by photograph or

1 Q. Okay. And did you have a chance to review your case
2 notes as well?

3 A. Yes.

4 Q. Before we start, are there any errors, typographical
5 or any other, that you have identified in either
6 Exhibits 1 or 2 or your case notes that you want to
7 mention before we get started?

8 A. I haven't seen any, no.

9 Q. Okay. What was the procedure you used for handling
10 the evidence in the Sam Sheppard Case as it came
11 into the lab?

12 A. Evidence I received I stored in the evidence ward
13 and then once I start I take item by item out and
14 start processing the evidence.

15 Q. Did you photograph the items as they came in to show
16 the condition that they were in when you received
17 them?

18 A. I photographed them when I was analyzing them and I
19 recorded notes.

20 Q. I'm saying before you started analyzing did you take
21 a photograph of whatever it was that you got in the
22 evidence envelope, for example, from the Coroner's
23 Office?

24 A. Yes.

25 Q. Okay. And you documented either by photograph or

1 notations every step in the process of testing?

2 A. Yes.

3 Q. And can you tell me why that's important?

4 A. Just to see to show that the evidence what condition
5 I got it in before I received the evidence.

6 Q. Why is it important to document everything
7 throughout the testing process as well?

8 A. To show every step how the evidence was and how I
9 handled it and keep the notes.

10 Q. Okay. I'm going to use your lab numbers to talk
11 about the items in these two different reports,
12 which are Exhibits 1 and 2. Let's start with Tahir
13 Exhibit 1. On Tahir Exhibit 1 you have an item
14 listed as Item No. 3, do you see that at the bottom
15 of the first page?

16 A. Yes.

17 Q. You describe it as a wood chip?

18 A. Yes.

19 Q. Can you tell me who you received this object from?

20 A. It came from Cuyahoga County Coroner's Office.

21 Q. Do you know when you received that?

22 A. May 2nd, 1996.

23 Q. And did anyone tell you what this object was before
24 you received it?

25 A. Yes. That's an item which Peter DeForest called me

1 about. That's how it started.

2 Q. Who told you this was a wood chip coming to you,
3 that it was going to be mailed to you for example?
4 Was it Peter DeForest?

5 A. The first one was Peter DeForest. He had it I think
6 when he called. But then I received it from
7 Cuyahoga County. I don't know where it went after
8 that.

9 Q. Can you describe what that object looked like after
10 you got it, Item No. 3?

11 A. It was tiny, two pieces tiny, two pieces of wood.

12 Q. Were they just in an envelope or how were they
13 packaged?

14 A. It was packaged in a cardboard box and a glass vial.
15 I'm just refreshing my memory from my notes. It's
16 certainly in my notes. Probably you have a copy. I
17 think it was in a glass vial and it was in a
18 cardboard box and then the box was in an envelope.

19 Q. Did you document the receipt of that object in your
20 lab?


21 A. All these things came in one box.

22 Q. Okay.

23 A. Federal Express box.

24 Q. So that's your documentation?

25 A. Yes.

- 1 Q. On Tahir Exhibit 1 of the receipt of that?
- 2 A. Yes.
- 3 Q. Okay. Do you know how many people in your lab
- 4 handled Item No. 3 throughout the entire time you
- 5 had it for all its testing, et cetera?
- 6 A. I handled it.
- 7 Q. Did anybody else handle that item?
- 8 A. No.
- 9 Q. Okay. Can you tell me what tests you did on Item
- 10 No. 3?
- 11 A. I did extract the DNA and subject it to PCR DQA1
- 12 polymarkers.
- 13 Q. Any other tests?
- 14 A. I did test for blood also, just presumptive test.
- 15 Q. What's the name of that test ³⁶
_{(2) 400}
- 16 A. Kastle-Meyer.
- 17 Q. What do you mean by presumpt
- 18 A. This test tells us the stain
- 19 blood.
- 20 Q. Okay. Were you given the re 
- 21 that were done on that objec
- 22 A. No, not to my knowledge.
- 23 Q. Do you know of any other tests that were done on
- 24 Item No. 3 before you received it?
- 25 A. No, I have no knowledge about that.

Km
test
"could be
blood."

- 1 Q. On Tahir Exhibit 1 of the receipt of that?
- 2 A. Yes.
- 3 Q. Okay. Do you know how many people in your lab
- 4 handled Item No. 3 throughout the entire time you
- 5 had it for all its testing, et cetera?
- 6 A. I handled it.
- 7 Q. Did anybody else handle that item?
- 8 A. No.
- 9 Q. Okay. Can you tell me what tests you did on Item
- 10 No. 3?
- 11 A. I did extract the DNA and subject it to PCR DQA1
- 12 polymarkers.
- 13 Q. Any other tests?
- 14 A. I did test for blood also, just presumptive test.
- 15 Q. What's the name of that test?
- 16 A. Kastle-Meyer.
- 17 Q. What do you mean by presumptive?
- 18 A. This test tells us the stain in question could be
- 19 blood.
- 20 Q. Okay. Were you given the results of any prior tests
- 21 that were done on that object, Item No. 3?
- 22 A. No, not to my knowledge.
- 23 Q. Do you know of any other tests that were done on
- 24 Item No. 3 before you received it?
- 25 A. No, I have no knowledge about that.

1 Q. Do you know where that obj ←
2 1954?
3 A. I have no knowledge.
4 Q. Do you know of any mistakes that were made
5 concerning this object by the various forensic
6 scientists who worked on it? I'll list them for
7 you. Roger Marsters.
8 A. Never heard his name.
9 Q. Mary Cowan.
10 A. I heard her name. I don't know what she did.
11 Q. Do you have any information
12 in testing that object?
13 A. No.
14 Q. Paul Kirk?
15 A. I don't whether he tested it or not.
16 Q. And Lester Adelson?
17 A. I heard his name, but I don't know whether he tested
18 it or not.
19 Q. I'm not asking whether he tested. Mistakes they
20 made in regards to how they tested this.
21 MR. GILBERT: Objection. I don't
22 think there is any foundation that all
23 these people tested this object or handled
24 it. I think the objection I have is the
25 presumption in the question that these

no info.
re:
chain of
evidence

no knowledge
about
mistakes
in ABO tests.

1 Q. Do you know where that object was, Item No. 3, since
2 1954?

3 A. I have no knowledge.

4 Q. Do you know of any mistakes that were made
5 concerning this object by the various forensic
6 scientists who worked on it? I'll list them for
7 you. Roger Marsters.

8 A. Never heard his name.

9 Q. Mary Cowan.

10 A. I heard her name. I don't know what she did.

11 Q. Do you have any information about mistakes they made
12 in testing that object?

13 A. No.

14 Q. Paul Kirk?

15 A. I don't whether he tested it or not.

16 Q. And Lester Adelson?

17 A. I heard his name, but I don't know whether he tested
18 it or not.

19 Q. I'm not asking whether he tested. Mistakes they
20 made in regards to how they tested this.

21 MR. GILBERT: Objection. I don't
22 think there is any foundation that all
23 these people tested this object or handled
24 it. I think the objection I have is the
25 presumption in the question that these

1 people tested it.

2 Q. (BY MR. BOLAND) Let me make it more general. Do
3 you know of any mistakes that were made by anyone
4 who tested Item No. 3 in the past?

5 MR. GILBERT: Objection. I don't know
6 what you mean by mistakes.

7 Q. (BY MR. BOLAND) Did you find an error in some
8 testing that was done on this object?

9 A. I don't know actually. Nobody talked about mistake.
10 Even if somebody talked, my results I'm not going to
11 change because of mistakes somebody did or somebody
12 didn't. I'm going to say what I found. That's all.

13 Q. Okay. And your result on the DNA testing for that
14 Item No. 3 is listed here on Tahir Exhibit No. 1 on
15 the bottom, is that correct?

16 A. That's correct.

17 Q. How would you describe the ³³
18 received?

19 A. 4.1, 2, 3, 1.1 (1.2) and as

20 Q. Are there multiple contribu

21 A. This suggests yes, this is a mixture.

22 Q. How did all those multiple contributors get there?

23 A. I have no idea.

24 Q. Can you tell me what the possibilities are for
25 creating a mixed result such as you have in Item No.

*no idea
how multiple
contributors
got there?*

1 people tested it.

2 Q. (BY MR. BOLAND) Let me make it more general. Do
3 you know of any mistakes that were made by anyone
4 who tested Item No. 3 in the past?

5 MR. GILBERT: Objection. I don't know
6 what you mean by mistakes.

7 Q. (BY MR. BOLAND) Did you find an error in some
8 testing that was done on this object?

9 A. I don't know actually. Nobody talked about mistake.
10 Even if somebody talked, my results I'm not going to
11 change because of mistakes somebody did or somebody
12 didn't. I'm going to say what I found. That's all.

13 Q. Okay. And your result on the DNA testing for that
14 Item No. 3 is listed here on Tahir Exhibit No. 1 on
15 the bottom, is that correct?

16 A. That's correct.

17 Q. How would you describe the DNA result that you
18 received?

19 A. 4.1, 2, 3, 1.1 (1.2) and asterisk on top of 1.2.

20 Q. Are there multiple contributors to this result?

21 A. This suggests yes, this is a mixture.

22 Q. How did all those multiple contributors get there?

23 A. I have no idea.

24 Q. Can you tell me what the possibilities are for
25 creating a mixed result such as you have in Item No.

1 3?

2 MR. GILBERT: Objection.

3 Q. (BY MR. BOLAND) How can that happen based on your
4 knowledge of DNA testing?

5 A. I can only say this is not a clean profile for one
6 person. That's all I can say.

7 Q. What are the ways you get a non-clean profile? Are
8 there --

9 A. It's a mixture.

10 Q. Okay. What I'm asking is can you tell me the ways
11 in your experience that a mixture, a DNA mixture,
12 can occur?

13 A. It's old evidence. I mean, I have no knowledge how
14 this was handled the prior 40 years.

15 Q. Okay. So is handling one way you can get a mixed
16 stain?

17 A. Yes.

18 Q. Any other way you know of?

19 A. Any other ways talk about how many people handled
20 that or somebody can do in t

21 Q. Okay. Do you know which one
22 possibilities, handling or i
23 that caused this multiple cc

contamination
or in
lab.

24 A. I can only talk about the lab. But I don't know
25 about unknown, which is handling prior to it coming

1 3?

2 MR. GILBERT: Objection.

3 Q. (BY MR. BOLAND) How can that happen based on your
4 knowledge of DNA testing?

5 A. I can only say this is not a clean profile for one
6 person. That's all I can say.

7 Q. What are the ways you get a non-clean profile? Are
8 there --

9 A. It's a mixture.

10 Q. Okay. What I'm asking is can you tell me the ways
11 in your experience that a mixture, a DNA mixture,
12 can occur?

13 A. It's old evidence. I mean, I have no knowledge how
14 this was handled the prior 40 years.

15 Q. Okay. So is handling one way you can get a mixed
16 stain?

17 A. Yes.

18 Q. Any other way you know of?

19 A. Any other ways talk about how many people handled
20 that or somebody can do in the laboratory.

21 Q. Okay. Do you know which one of those two
22 possibilities, handling or in the lab, is the one
23 that caused this multiple contributor sample here?

24 A. I can only talk about the lab. But I don't know
25 about unknown, which is handling prior to it coming

1 to me.

2 Q. Can you tell me how many individual person's
3 profiles are included in this mixture?

4 A. It's a possibility I can tell you. I mean, there's
5 several combinations can be made.

6 Q. Can you tell me an exact number
7 it took to make this profile
8 DNA?

9 A. I can't say definitely how
10 there are several possibilities
11 the number of how many because
12 person. That's all I can say.

13 Q. Are you able to pull out from this result each
14 individual profile?

15 A. If you give me something to compare with, yes, I
16 will say this could have come from this or this
17 could have come from this.

18 Q. I'm saying just from looking at the results can you
19 tell me, you know, which alleles in the DQ Alpha match
20 up with other loci polymarkers to create one profile
21 of one person and then go to the next? Are you able
22 to do that?

23 A. No.

24 Q. Do you know if the person who contributed the 1.1 in
25 the DQ Alpha, for example, do you know if that

*can't say
how many
different
people
here.*

1 to me.

2 Q. Can you tell me how many individual person's
3 profiles are included in this mixture?

4 A. It's a possibility I can tell you. I mean, there's
5 several combinations can be made.

6 Q. Can you tell me an exact number of how many people
7 it took to make this profile up, how many people's
8 DNA?

9 A. I can't say definitely how many. It's a picture
10 there are several possibilities. I can't give you
11 the number of how many because it's not from one
12 person. That's all I can say.

13 Q. Are you able to pull out from this result each
14 individual profile?

15 A. If you give me something to compare with, yes, I
16 will say this could have come from this or this
17 could have come from this.

18 Q. I'm saying just from looking at the results can you
19 tell me, you know, which alleles in the DQ Alpha match
20 up with other loci polymarkers to create one profile
21 of one person and then go to the next? Are you able
22 to do that?

23 A. No.

24 Q. Do you know if the person who contributed the 1.1 in
25 the DQ Alpha, for example, do you know if that

1 person also contributed A in any of the polymarker
2 alleles?

3 A. No.

4 Q. Okay. Can you say if the 1.1 allele in the DQ Alpha
5 is connected with the 1.2 allele for example in the
6 DQ Alpha that you have in the parentheses? Can you
7 say those are connected from the same person?

8 A. Can you say it again?

9 Q. The 1.1 allele in the DQ Alpha and 1.2, are those
10 from the same person?

11 A. No. I can't tell you.

12 Q. Okay.

13 A. No.

14 Q. Can you tell me what the stain was on this object?
15 What created the stain on what you're describing as
16 a wood chip?

17 A. I tested only for blood.

18 Q. Okay. Is the stain blood, t⁴¹₍₁₂₎
19 you?

20 A. This was blood. But I don't

21 Q. That's fine. Now, did this mixed sample result come
22 entirely from the DNA contained in the stain of
23 blood on that item?

24 A. The question is not clear.

25 Q. Okay. It's fair to describe your description on

*wood chip
stain was
blood.*

1 person also contributed A in any of the polymarker
2 alleles?

3 A. No.

4 Q. Okay. Can you say if the 1.1 allele in the DQ Alpha
5 is connected with the 1.2 allele for example in the
6 DQ Alpha that you have in the parentheses? Can you
7 say those are connected from the same person?

8 A. Can you say it again?

9 Q. The 1.1 allele in the DQ Alpha and 1.2, are those
10 from the same person?

11 A. No. I can't tell you.

12 Q. Okay.

13 A. No.

14 Q. Can you tell me what the stain was on this object?
15 What created the stain on what you're describing as
16 a wood chip?

17 A. I tested only for blood.

18 Q. Okay. Is the stain blood, that's what I'm asking
19 you?

20 A. This was blood. But I don't know what else --

21 Q. That's fine. Now, did this mixed sample result come
22 entirely from the DNA contained in the stain of
23 blood on that item?

24 A. The question is not clear.

25 Q. Okay. It's fair to describe your description on

1 this item is blood on a piece of wood?

2 A. That's what I tested --

3 Q. Okay.

4 A. -- for.

5 Q. Did all the DNA that created this mixed profile come
6 from the DNA in that blood?

7 A. I still don't understand.

8 Q. Is DNA -- Is blood a source of DNA?

9 MR. GILBERT: In general or in this
10 particular case, in this particular sample?

11 Q. (BY MR. BOLAND) Can you use blood to test and
12 recover somebody's DNA profile?

13 A. Yes.

14 Q. You're saying this is blood on this object?

15 A. That is correct.

16 Q. You obtained a DNA result from testing this object?

17 A. Yes, I did get the profile.

18 Q. And is this result coming from your testing done on
19 the blood on that object?

20 A. If the blood was the only body fluid on that chip.

21 Q. What other body fluids were on that object?

22 A. I don't know.

23 Q. Okay. Is there an individual allele in either DQ
24 Alpha or these polymarkers that you can say
25 definitely came from the blood on that object as

1 opposed to the other body fluids that might have
2 been on these?

3 A. No. Bottom line is I cannot tell you of the body
4 fluid what was present other than blood.

5 Q. My question is -- I'll rephrase it. In the DQ Alpha
6 allele, did the 4.1 come from the blood on that
7 object in your test result?

8 A. I think I answered that I cannot tell you whether
9 -- I only tested for blood. But if something else
10 is present mixed with blood, if you're coming to
11 that point, I can't tell you.

12 Q. That's what I'm asking. Do you know if any of these
13 items came from the blood, do you know if they came
14 from the blood?

15 MR. GILBERT: Specifically?

16 Q. (BY MR. BOLAND) Yes.

17 A. Blood is one of them. That I can tell you. I don't
18 know what else was there. I 43
19 have nothing else to do DNA
20 no other sample. We can tes

21 Q. Can you say that these alle:
22 blood on the object? That's
23 4.1, the 2, 3, 1.1, and 1.2
24 from the blood?

25 A. Only from the blood?

can't say
this DNA
result is
from blood?
on object?

←
next
pg. 60

1 opposed to the other body fluids that might have
2 been on these?

3 A. No. Bottom line is I cannot tell you of the body
4 fluid what was present other than blood.

5 Q. My question is -- I'll rephrase it. In the DQ Alpha
6 allele, did the 4.1 come from the blood on that
7 object in your test result?

8 A. I think I answered that I cannot tell you whether
9 -- I only tested for blood. But if something else
10 is present mixed with blood, if you're coming to
11 that point, I can't tell you.

12 Q. That's what I'm asking. Do you know if any of these
13 items came from the blood, do you know if they came
14 from the blood?

15 MR. GILBERT: Specifically?

16 Q. (BY MR. BOLAND) Yes.

17 A. Blood is one of them. That I can tell you. I don't
18 know what else was there. If I tested that, I would
19 have nothing else to do DNA on because I would have
20 no other sample. We can test for others.

21 Q. Can you say that these alleles here came from the
22 blood on the object? That's what I'm asking. The
23 4.1, the 2, 3, 1.1, and 1.2, can you say those came
24 from the blood?

25 A. Only from the blood?

1 Q. Yes.

2 A. No.

3 Q. Okay. Can you tell us who deposited the 4.1 in the
4 DQ Alpha?

5 MR. GILBERT: You mean who -- The name
6 of the person?

7 Q. (BY MR. BOLAND) Can you identify the person who
8 deposited the 4.1?

9 A. In this report I have given the blood of Eberling,
10 and in this case that was the only one. The second
11 report I have two other people. But in this
12 comparing with this, Eberling cannot be excluded.

13 Q. Let me rephrase my question. I understand what you
14 just said. Can you tell me that that 4.1 came from
15 Richard Eberling?

16 A. Just saying that's him?

17 Q. That's my question. Did the 4.1 come from Richard
18 Eberling's DNA?

19 A. No. He cannot be excluded.

20 Q. Can you say any of the other alleles in these
21 polymarkers, if any of those alleles came from
22 Richard Eberling? Can you conclude that definitely?

23 A. No. He cannot be excluded. 44

24 Q. I understand. His exclusior
25 question is can you say that

*Did 4.1
come from
him? No.*

1 Q. Yes.

2 A. No.

3 Q. Okay. Can you tell us who deposited the 4.1 in the
4 DQ Alpha?

5 MR. GILBERT: You mean who -- The name
6 of the person?

7 Q. (BY MR. BOLAND) Can you identify the person who
8 deposited the 4.1?

9 A. In this report I have given the blood of Eberling,
10 and in this case that was the only one. The second
11 report I have two other people. But in this
12 comparing with this, Eberling cannot be excluded.

13 Q. Let me rephrase my question. I understand what you
14 just said. Can you tell me that that 4.1 came from
15 Richard Eberling?

16 A. Just saying that's him?

17 Q. That's my question. Did the 4.1 come from Richard
18 Eberling's DNA?

19 A. No. He cannot be excluded.

20 Q. Can you say any of the other alleles in these
21 polymarkers, if any of those alleles came from
22 Richard Eberling? Can you conclude that definitely?

23 A. No. He cannot be excluded. That's all I can say.

24 Q. I understand. His exclusion I'll get into. But my
25 question is can you say that came from him?

1 A. No.

2 Q. Okay. We'll get into this exclusion issue. Is
3 there a test available to answer that question I
4 just asked you to determine if any of those alleles
5 in the polymarkers of the DQ Alpha came from Richard
6 Eberling? Is there a test that can be run to
7 determine that?

8 A. Sure. If there is enough evidence sample, sure, you
9 can do it.

10 Q. Given what we have now, the technology we have now
11 and these samples?

12 A. Not to my knowledge.

13 Q. Okay. Can you tell me the number, the exact number,
14 of different people that contributed DNA to this
15 Item No. 3?

16 A. 4.1 there could be one person. 1.1 and 2 could be
17 another person. 2 and 3 another. And 4.1 and 2.
18 4.1 and 3. So you can make all these combinations.

19 Q. So my question is therefore can you tell me an exact
20 number of people that contributed all this DNA? Is
21 it seven people that are here or is it four? Do you
22 have an exact number? That's what I'm asking, not a
23 range. Is there an exact number of people?

24 A. I can calculate, but not right now.

25 Q. So you can determine the exact number of people that

- 1 contributed to the sample?
- 2 A. Yes.
- 3 Q. Okay. If we took a moment and took a break from
4 your deposition, would you be able to calculate that
5 here now, the exact number of people that
6 contributed to this sample?
- 7 A. Sure we can. But the only thing is our policy we do
8 not, as I even mentioned earlier, we do not give
9 statistics for the mixed stains in DQ Alpha
10 polymarkers. That's what I reported. That's what
11 we will say. He cannot be excluded. That's all.
- 12 Q. I'm not requesting statistics. What I'm asking is is
13 it five people's DNA?
- 14 A. I can give you that.
- 15 Q. Or just four?
- 16 A. I can give you it once we take a break.
- 17 Q. Okay. Can you say that Richard Eberling's DNA is in
18 this test result, not that he can't be excluded? Is
19 his DNA in there?
- 20 A. I can't tell you about that.
- 21 Q. Can you say his DNA is anywh
- 22 A. No, I cannot. If you are as
- 23 Q. Yes.
- 24 A. He's in one of those.
- 25 Q. Can you say Richard Eberling's DNA is in the blood

4/6
6-21

wood
chip.

Can't say
this is
Eberling's
DNA.

1 contributed to the sample?

2 A. Yes.

3 Q. Okay. If we took a moment and took a break from
4 your deposition, would you be able to calculate that
5 here now, the exact number of people that
6 contributed to this sample?

7 A. Sure we can. But the only thing is our policy we do
8 not, as I even mentioned earlier, we do not give
9 statistics for the mixed stains in DQ Alpha
10 polymarkers. That's what I reported. That's what
11 we will say. He cannot be excluded. That's all.

12 Q. I'm not requesting statistics. What I'm asking is is
13 it five people's DNA?

14 A. I can give you that.

15 Q. Or just four?

16 A. I can give you it once we take a break.

17 Q. Okay. Can you say that Richard Eberling's DNA is in
18 this test result, not that he can't be excluded? Is
19 his DNA in there?

20 A. I can't tell you about that.

21 Q. Can you say his DNA is anywhere on this object?

22 A. No, I cannot. If you are asking his, no.

23 Q. Yes.

24 A. He's in one of those.

25 Q. Can you say Richard Eberling's DNA is in the blood

1 stain on this object?

2 A. No.

3 Q. Okay. Can you say that this
4 blood on this object?

*can't say it's
RE's blood.*

5 A. No.

6 Q. Okay. Did you ever tell anyone Richard
7 Eberling's DNA was on this object?

8 A. No.

9 Q. Did you ever tell anyone that Richard Eberling's DNA
10 was in the blood on this object?

11 A. No.

12 Q. Okay. Did you ever tell anyone
13 Richard Eberling's blood?

*Gilbert stout.
not from
Tahiri.*

14 A. No. I said he cannot be excluded.
15 cannot be excluded.

16 Q. Is it scientifically accurate to say this is Richard
17 Eberling's blood?

18 A. No.

19 Q. Is it scientifically accurate to say that this test
20 result somehow puts Richard Eberling at the location
21 where this blood was recovered?

22 A. My answer is the same thing. I cannot say it's his
23 blood or his DNA. No matter how many questions you
24 ask on the same line, bottom line is I cannot say
25 that's his blood.

1 stain on this object?

2 A. No.

3 Q. Okay. Can you say that this is Richard Eberling's
4 blood on this object?

5 A. No.

6 Q. Okay. Did you ever tell anyone that Richard
7 Eberling's DNA was on this object?

8 A. No.

9 Q. Did you ever tell anyone that Richard Eberling's DNA
10 was in the blood on this object?

11 A. No.

12 Q. Okay. Did you ever tell anyone that this was
13 Richard Eberling's blood?

14 A. No. I said he cannot be excluded. My answer is he
15 cannot be excluded.

16 Q. Is it scientifically accurate to say this is Richard
17 Eberling's blood?

18 A. No.

19 Q. Is it scientifically accurate to say that this test
20 result somehow puts Richard Eberling at the location
21 where this blood was recovered?

22 A. My answer is the same thing. I cannot say it's his
23 blood or his DNA. No matter how many questions you
24 ask on the same line, bottom line is I cannot say
25 that's his blood.

- 1 Q. Doctor, let's move on to another item that I believe
2 is on Tahir Exhibit No. 2. You describe it on
3 the second page as Item 1-C, and your description is
4 it's a stain from the bedroom closet. Do you know
5 who you received this object from or this item?
- 6 A. Cuyahoga County Coroner's Office.
- 7 Q. Do you know when you received it?
- 8 A. October 20th, 1997.
- 9 Q. Okay. What were you told this was that you were
10 going to receive, if anything?
- 11 A. I was told that there was some evidence, blood
12 stains, were found someplace in California.
- 13 Q. Who told you that this was a blood stain found in
14 California?
- 15 A. I think Peter DeForest told me.
- 16 Q. Okay. Did you document the receipt of this object
17 as well?
- 18 A. Yes.
- 19 Q. Okay. Do you know how many people in your lab
20 handled this object, Item 1-C we're referring to?
- 21 A. I myself handled that.
- 22 Q. Okay. Can you describe what that object was when
23 you got it --
- 24 A. It was --
- 25 Q. -- and how it was packaged as well, please.

1 A. It was a big cardboard box and it had several
2 envelopes inside sealed and there were two envelopes
3 which they have two glass vials and it had Paul
4 Kirk's address if I remember. I have a picture of
5 that. Paul Kirk's address typed on those glass
6 vials.

7 Q. What was inside the vials?

8 A. And then in the vials there was a piece of paper or
9 paper folded. One of them didn't have anything
10 inside, okay, the other one had some dark brown dirt
11 type color.

12 Q. Was it fluid or more like a dust?

13 A. Dust type thing.

14 Q. Okay.

15 A. And that was one vial. And then there was two
16 others I think.

17 Q. Let's hold on. The vial you just described as a
18 dark brown dust is 1-C?

19 A. Yes.

20 Q. Let's just talk about that for a second. What test
21 did you conduct on Item 1-C?

22 A. Since it was very small and I weigh that thing, how
23 much is weighed, some kind of quantification, so I
24 recorded the weight. And since it's one stain on
25 it, notation was on the vial the stain was from the

1 closet door.

2 Q. Do you know whose handwriting it was -- Or it was
3 typed you said?

4 A. Some was typed, some was handwritten, but I don't
5 remember. I think you have a copy of the notes. I
6 remember it said something. And then since its note
7 says it came from the closet door and I thought
8 somebody scraped with a blade, that's what my
9 assumption was that it's dust, I thought it was not
10 just blood when you scrape from a wall paint or
11 paint from the door or whatever, so whatever I see
12 may not be all blood.

13 Q. What test did you conduct on that vial 1-C?

14 A. Once I weigh that, I dissolve that to do the testing
15 and then the blood will dissolve, non-blood things
16 are not dissolved. So I took that blood portion
17 when I want to test for DNA. The rest of the things
18 I tried and solid portions is non-blood. So I
19 deducted that weight from the total weight so that
20 will give me the actual weight, approximate weight
21 of the blood, whatever.

22 So then I tested for Kastle-Meyer as I
23 mentioned earlier. Then I extracted the DNA.

24 Q. And conducted the remainder of the PCR testing?

25 A. Yes.

- 1 Q. That's the only testing you ⁵¹ ()
- 2 A. That's true.
- 3 Q. Were you given any results (
- 4 done on this 1-C prior to re
- 5 review those?
- 6 A. I don't know anybody did any
- 7 Q. Okay. Do you know where th:
- 8 A. No.
- 9 Q. Okay. And again, do you know of any testimony, any
- 10 testing, et cetera, done regarding this object that
- 11 you found mistakes in that testing of it, forensic
- 12 testing of this object?
- 13 A. No. I have no idea.
- 14 Q. Okay. The results of your DNA testing on this
- 15 object are included on Page 2 of Tahir Exhibit No.
- 16 2, that's correct?
- 17 A. That is correct.
- 18 Q. Okay. And there are multiple contributors to this
- 19 result as well?
- 20 A. This is not a clean profile. It is a mixture again
- 21 as I mentioned.
- 22 Q. Do you know how all those multiple contributors got
- 23 in there?
- 24 A. Same possibilities I told you for the wood chip
- 25 maybe.

Don't 1-C
know
where
this
has been

1 Q. That's the only testing you did on the object?

2 A. That's true.

3 Q. Were you given any results of other tests that were
4 done on this 1-C prior to receiving it? Did you
5 review those?

6 A. I don't know anybody did any testing on it.

7 Q. Okay. Do you know where this object was since 1954?

8 A. No.

9 Q. Okay. And again, do you know of any testimony, any
10 testing, et cetera, done regarding this object that
11 you found mistakes in that testing of it, forensic
12 testing of this object?

13 A. No. I have no idea.

14 Q. Okay. The results of your DNA testing on this
15 object are included on Page 2 of Tahir Exhibit No.
16 2, that's correct?

17 A. That is correct.

18 Q. Okay. And there are multiple contributors to this
19 result as well?

20 A. This is not a clean profile. It is a mixture again
21 as I mentioned.

22 Q. Do you know how all those multiple contributors got
23 in there?

24 A. Same possibilities I told you for the wood chip
25 maybe.

1 Q. That's going to be my next question about
2 possibilities. Do you know how those mixed markers
3 came in?

4 A. No.

5 Q. The possibilities that exist are the same as the
6 previous question I asked you?

7 A. Yes.

8 Q. Okay. You can calculate as well how many individual
9 person's profiles are in this mixture if we take a
10 break later?

11 A. Yes.

12 Q. Okay. As in the previous result that we looked at,
13 are you able to determine for example who
14 contributed the 1.1 allele in the DQ Alpha of this
15 result?

16 MR. GILBERT: You mean the name of a
17 person?

18 MR. BOLAND: Correct.

19 Q. (BY MR. BOLAND) Can you identify a person who
20 contributed that 1.1 allele there?

21 A. No.

22 Q. Okay. And can you say if that 1.1 allele in the DQ
23 Alpha is connected with the 1.3 allele in the DQ
24 Alpha, meaning can you say those came from the same
25 person even if you don't know their identity?

1 A. I still -- I don't understand the question. If you
2 can simplify it, I would appreciate it.

3 Q. Can you say that the 1.1 and 1.3 alleles in the DQ
4 Alpha came from the same individual?

5 A. No.

6 Q. Okay. Can you say that any of these alleles are
7 connected with any of the other alleles? Are you
8 able to pull out and figure out which ones are
9 connected in a one-person profile?

10 A. Again, when you say other alleles, what do you mean
11 other alleles?

12 Q. Are you able to tell us which ones in the DQ Alpha
13 -- which alleles in the DQ Alpha are also connected
14 with which alleles in the polymarkers result that
15 you have here?

16 A. No.

17 Q. Can you say that all the alleles that are present in
18 this result you have here were also present on this
19 sample when it was removed from the door in the
20 Sheppard Home?

21 A. What do you mean?

22 Q. The day this stain was scraped off the door in the
23 Sheppard Home, and I'm going
24 it is in fact that stain, th
25 off that door, can you say t

alleles
could have
been added
later 1-C

1 A. I still -- I don't understand the question. If you
2 can simplify it, I would appreciate it.

3 Q. Can you say that the 1.1 and 1.3 alleles in the DQ
4 Alpha came from the same individual?

5 A. No.

6 Q. Okay. Can you say that any of these alleles are
7 connected with any of the other alleles? Are you
8 able to pull out and figure out which ones are
9 connected in a one-person profile?

10 A. Again, when you say other alleles, what do you mean
11 other alleles?

12 Q. Are you able to tell us which ones in the DQ Alpha
13 -- which alleles in the DQ Alpha are also connected
14 with which alleles in the polymarkers result that
15 you have here?

16 A. No.

17 Q. Can you say that all the alleles that are present in
18 this result you have here were also present on this
19 sample when it was removed from the door in the
20 Sheppard Home?

21 A. What do you mean?

22 Q. The day this stain was scraped off the door in the
23 Sheppard Home, and I'm going on your assumption that
24 it is in fact that stain, the day that was scraped
25 off that door, can you say that the alleles present

1 that day are the same ones you have here?

2 A. No.

3 Q. Nothing added later?

4 A. I don't know.

5 Q. Okay. Based on your test, what was the material in
6 this vial? What was that substance?

7 A. What I tested was blood.

8 Q. It was blood?

9 A. Yes.

10 Q. Okay. And can you say that this mixed result here
11 came entirely from that, just the DNA in that blood?

12 A. No.

13 Q. Okay. Can you say that this 4.1 allele in the DQ
14 Alpha came from the blood?

15 A. No.

16 Q. Can you say that any allele in the DQ Alpha that's
17 in this test result of 1-C came from the blood in
18 that vial?

19 MR. GILBERT: Any specific allele?

20 Q. (BY MR. BOLAND) Any specific allele came just from
21 the blood?

22 A. No. I tested the blood. I don't know whether there
23 was something else there or not.

24 Q. Can you tell us who deposited the 4.1 allele in this
25 DQ Alpha in this sample? Can you identify who that

- 1 person is?
- 2 A. Identify like saying this is him?
- 3 Q. Yes.
- 4 A. No.
- 5 Q. Can you say that the 4.1 came from Richard Eberling?
- 6 A. No.
- 7 Q. Is there any test available that could determine
- 8 that you know of that conclusively links that 4.1 to
- 9 Richard Eberling and Richard Eberling only?
- 10 A. Not with this amount of material you have.
- 11 Q. Okay. Can you tell me when each DNA profile of this
- 12 mixed stain was placed onto this sample?
- 13 A. I don't understand when you say placed. You're
- 14 asking the age of the stain?
- 15 Q. The age of all these mixed DNA alleles that are
- 16 showing up here, when were they all placed on there?
- 17 A. I cannot tell you the age of the stain or the age of
- 18 the DNA.
- 19 Q. Does DNA testing ever have the capability to tell
- 20 the age of a particular sample?
- 21 A. No.
- 22 Q. Can you say Richard Eberling's DNA is in this
- 23 result, specifically his DNA, is it in here?
- 24 A. No.
- 25 Q. Is Richard Eberling's DNA in the blood in this vial,

1 the little dusting brown blood that you tested? Can
2 you say that?

3 A. When you say that you mean identify him, just him?

4 Q. Is Richard Eberling's DNA in that blood?

5 A. Not. Like he can't be excluded?

6 Q. That's what I'm saying. Is his DNA blood in that
7 DNA?

8 A. No.

9 Q. Can you say this is Richard Eberling's blood in 1-C?

10 A. No.

11 Q. Did you ever tell anyone that Richard Eberling's
12 specific blood was in this?

13 A. No. All I can say is he can't be excluded.

14 Q. Did you ever tell anyone that his blood was in the
15 tube?

16 A. No, sir.

17 Q. Did you ever tell anybody this is Richard Eberling's
18 blood?

19 A. No, sir.

20 Q. Would it be scientifically accurate to say this is
21 Richard Eberling's blood?

22 A. No.

23 Q. Let's move on to Tahir Exhibit No. 1, your item
24 number is b-3-b-1. You describe it as a blood stain
25 from Sam Sheppard's trousers. Can you tell me who

- 1 you received this object from?
- 2 A. Cuyahoga County Coroner's Office.
- 3 Q. And do you recall when you received that object?
- 4 A. May 2nd, 1996.
- 5 Q. And what were you told this object was?
- 6 A. It was written on the package.
- 7 Q. What was written there?
- 8 A. That the stain is from Sam's trousers.
- 9 Q. Do you know whose writing that was?
- 10 A. No.
- 11 Q. Did you document the receipt of this object?
- 12 A. That was in the same box everything came in. So it
- 13 was one box and then in the box there were
- 14 individual items.
- 15 Q. So you did document it?
- 16 A. Yes.
- 17 Q. Okay. How many people handled Item b-3-b-1 in your
- 18 lab?
- 19 A. Myself.
- 20 Q. No one else?
- 21 A. No.
- 22 Q. Can you describe what this object was when you got
- 23 it?
- 24 A. It was in an envelope with two glass vials, very
- 25 tiny glass vials. They were marked on the glass

1 vials and then in one vial there was a piece of
2 clothing, striped piece of clothing, and then the
3 other one also has a striped piece of clothing. And
4 on one glass vial it was marked unstained control,
5 and the other one was stained from the trousers.

6 Q. Did they look different?

7 A. Yes.

8 Q. I neglected to ask you this question on the other
9 ones. Just to clarify, these vials that you've been
10 mentioning regarding the other samples, did they all
11 come with tops on them, they were sealed vials, or
12 did some come without the lids on them?

13 A. No. They had tape on them. They were sealed.

14 Q. Okay. What test did you do on this Item b-3-b-1 as
15 described?

16 A. I extracted then followed the process for DNA
17 extraction and typing.

18 Q. Did you do any other tests?

19 A. Just Kastle-Meyer Test.

20 Q. Were you given the results of any prior tests that
21 were done on this item?

22 A. No.

23 Q. Do you know of any other tests that were done on
24 this item?

25 A. No.

- 1 Q. Do you know where this object b-3-b-1 was since
2 1954?
- 3 A. Pardon?
- 4 Q. Do you know where this object was since 1954?
- 5 A. No. I have no knowledge where it was and who
6 handled it or how many people handled it.
- 7 Q. You didn't review any of the tests done on this
8 object?
- 9 A. No, sir.
- 10 Q. Aside from your review, do you know of any errors
11 that were made in prior testing of this object?
- 12 A. No.
- 13 Q. What form of DNA test did you do on this?
- 14 A. DQA1 polymarkers, PCR.
- 15 Q. Your results are included on Tahir Exhibit 1, the
16 first page there on the bottom, is that correct?
- 17 A. Yes.
- 18 Q. This is a multiple contributors result as well?
- 19 A. That is correct.
- 20 Q. Do you know how all those multiple contributors got
21 there?
- 22 A. I don't know.
- 23 Q. The probabilities are the same as we've mentioned in
24 the past, right?
- 25 A. Yes.

1 Q. Can you pull out the individual DNA profiles from
2 this mixture that create it?

3 A. Sure.

4 Q. Person No. 1, Person No. 2?

5 A. No. I can do combinations, possible combinations,
6 but I can't tell you who the person is.

7 Q. That's my question. Can you pull out the
8 individuals by their profile who made up this stain
9 and without identifying this is one person's profile
10 and this is other one to make up this stain?

11 A. You can make combinations and permutations.

12 Q. Can you definitely say this person and this second
13 person combined to create this?

14 A. No.

15 Q. Are you able to identify the person who contributed
16 the 1.2 DQ Alpha in the allele here?

17 A. No, sir.

18 Q. Can you tell if the 4.1 allele, for example, is
19 connected with any other alleles in the polymarkers
20 results?

21 A. No.

22 Q. Can you tell us if the 2 and the 3 in the DQ Alpha
23 result you have here are connected and came from one
24 person?

25 A. No.

1 Q. Okay. Can you tell us is the 4.1 allele in the DQ
2 Alpha from Richard Eberling?

3 A. No.

4 Q. I mean, do you know, do you know if it's from him or
5 not?

6 A. No. I said I cannot tell it came from him.

7 Q. Can you tell who it came from?

8 A. If given this stain, I can change my conclusions
9 certain people cannot be excluded.

10 Q. I understand that. Can you specifically identify
11 the person who contributed the 4.1 to that result?

12 A. No.

13 Q. Did this mixed result you have here for Item b-3-b-1
14 come entirely from the blood that was on that swatch
15 of clothing?

16 A. I have no knowledge that it came from blood or blood
17 was mixed. But one was blood.

18 Q. Okay. Do you know what part of this result came
19 from the blood on that swatch?

20 A. No.

21 Q. Can you say that the 4.1 allele in the DQ Alpha came
22 from that blood?

23 A. No.

24 Q. Okay. Can you say that any allele in this DQ Alpha
25 came from the blood stain on Item b-3-b-1?

- 1 A. Blood stain alone?
- 2 Q. Yes.
- 3 A. No. Blood is one of them.
- 4 Q. Okay. Can you -- We already went over that. Can
5 you tell when each allele was placed onto this blood
6 stain that you tested, the timing, which one came
7 first, which one came second?
- 8 A. I don't understand.
- 9 Q. Can you tell me the order in which the different
10 alleles were deposited on this blood stain, the
11 different mixed samples of different people?
- 12 A. No. I cannot tell you No. 1, No. 2, no.
- 13 Q. Is Richard Eberling's DNA in this test result?
14 Not cannot be excluded. Is his DNA here?
- 15 A. I can't tell you.
- 16 Q. Okay. Is Richard Eberling's DNA anywhere on the
17 blood stain on Item b-3-b-1? Can you say it's in
18 that blood stain?
- 19 A. Again, if you're asking to identify him.
- 20 Q. That's what I'm asking.
- 21 A. By name that's him?
- 22 Q. Can you say his DNA is in there?
- 23 A. No.
- 24 Q. Can you say this is Richard Eberling's blood on this
25 swatch of clothing?

- 1 A. No.
- 2 Q. In fact, can you say this is
- 3 Can you identify any person
- 4 stain?
- 5 A. Not by doing this test, no.
- 6 Q. Is there another test you can do.
- 7 A. Sure. If they have more blood and fresh blood.
- 8 Q. With this stain as it is, there is nothing else to
- 9 do?
- 10 A. No, sir.
- 11 Q. Did you ever tell anyone that Richard Eberling's DNA
- 12 was somewhere on this object, some swatch of
- 13 clothing?
- 14 A. Not other than exclusion.
- 15 Q. That's not my question. Did you tell someone his
- 16 DNA is on this swatch of clothing?
- 17 A. No.
- 18 Q. Did you ever tell anyone that Richard Eberling's DNA
- 19 was in the blood of this object?
- 20 A. Like identify again?
- 21 Q. Yes.
- 22 A. No.
- 23 Q. Did you ever tell anyone this is Richard Eberling's
- 24 blood on this swatch of clothing?
- 25 A. No.

- 1 A. No.
- 2 Q. In fact, can you say this is any person's blood?
- 3 Can you identify any person whose blood is on this
- 4 stain?
- 5 A. Not by doing this test, no.
- 6 Q. Is there another test you can do?
- 7 A. Sure. If they have more blood and fresh blood.
- 8 Q. With this stain as it is, there is nothing else to
- 9 do?
- 10 A. No, sir.
- 11 Q. Did you ever tell anyone that Richard Eberling's DNA
- 12 was somewhere on this object, some swatch of
- 13 clothing?
- 14 A. Not other than exclusion.
- 15 Q. That's not my question. Did you tell someone his
- 16 DNA is on this swatch of clothing?
- 17 A. No.
- 18 Q. Did you ever tell anyone that Richard Eberling's DNA
- 19 was in the blood of this object?
- 20 A. Like identify again?
- 21 Q. Yes.
- 22 A. No.
- 23 Q. Did you ever tell anyone this is Richard Eberling's
- 24 blood on this swatch of clothing?
- 25 A. No.

- 1 Q. Is it scientifically accurate to say that's Richard
2 Eberling's blood on that swatch of clothing?
- 3 A. I didn't say that.
- 4 Q. I'm saying if someone made that statement, is that
5 scientifically accurate?
- 6 A. No.
- 7 Q. Let's move on to the next item, which is your item
8 number on Tahir Exhibit No. 1, your first test
9 results, Item A-59-1, which you describe as a vaginal
10 smear from Marilyn Sheppard.
- 11 A. That's right.
- 12 Q. Who did you receive that sample from?
- 13 A. Cuyahoga County Coroner's Office.
- 14 Q. When did you receive that? 64
- 15 A. May 2, 1996.
- 16 Q. And what were you told this
17 receiving, this individual
- 18 A. Vaginal smears.
- 19 Q. Who told you that?
- 20 A. It was written on the package.
- 21 Q. Did you document the receipt of that object the same
22 way you did others?
- 23 A. The same way. They came in the one box.
- 24 Q. How many people in your lab handled this object?
- 25 A. I handled it.

Vaginal
Smears

- 1 Q. Is it scientifically accurate to say that's Richard
2 Eberling's blood on that swatch of clothing?
- 3 A. I didn't say that.
- 4 Q. I'm saying if someone made that statement, is that
5 scientifically accurate?
- 6 A. No.
- 7 Q. Let's move on to the next item, which is your item
8 number on Tahir Exhibit No. 1, your first test
9 results, Item A-59-1, which you describe as a vaginal
10 smear from Marilyn Sheppard.
- 11 A. That's right.
- 12 Q. Who did you receive that sample from?
- 13 A. Cuyahoga County Coroner's Office.
- 14 Q. When did you receive that?
- 15 A. May 2, 1996.
- 16 Q. And what were you told this was that you were
17 receiving, this individual package?
- 18 A. Vaginal smears.
- 19 Q. Who told you that?
- 20 A. It was written on the package.
- 21 Q. Did you document the receipt of that object the same
22 way you did others?
- 23 A. The same way. They came in the one box.
- 24 Q. How many people in your lab handled this object?
- 25 A. I handled it.

1 Q. Can you describe what this was, this individual
2 A-59-1?

3 A. A glass microscope slide and it was marked vaginal
4 smear from Marilyn Sheppard. And it has a lot of
5 material on it, meaning it was dark red color stain
6 on it. So when you put it under microscope, very
7 hard to pass light through.

8 Q. When you put it under the microscope what did you
9 see when you looked at the slide?

10 A. You see a lot of junk type, can't identify anything.

11 Q. What color did it appear to you?

12 A. Red, dominant red.

13 Q. What test did you do on this object Item A-59-1?

14 A. Actually I removed the cells.

15 Q. Can you explain what that means?

16 A. What I took is a cotton swab and removed the
17 material from whatever is on the slide.

18 Q. The material, meaning this red stained stuff?

19 A. Whatever is on the slide, which is vaginal smear. I
20 removed that.

21 Q. Let's stop for a second. What were you hoping to do
22 with this slide? What information did you want to
23 gain from it?

24 A. I was trying to gain -- Since we did not have
25 Marilyn Sheppard's DNA, since it was a vaginal

1 smear, Epithelial cells, so my intention was to get
2 the DNA from Marilyn Sheppard because it's her
3 vaginal slide, it's her DNA is on there.

4 Q. Her Epithelial cells would be on that slide?

5 A. Yes. I removed that to get her profile. And during
6 the process since it is a vaginal smear I did
7 differential extraction, which is separation of
8 sperm since I was not hoping for sperm actually
9 because I was looking for Epithelial cells.

10 Q. Let's stop there for a second. When you do
11 differential extraction what are you left with at
12 the end of that test, what materials do you have?
13 What are you extracting from what?

14 A. Assumption is vaginal smear, there may be some
15 spermatozoa mixed with Epithelial cells.

16 Q. What caused you to make that assumption?

17 A. Because anytime there is evidence of vaginal smear
18 or any type of sexual assault suspicion or anything
19 which is coming from vaginal you want to do
20 differential extraction as a normal procedure. We
21 do it.

22 Q. Did you have suspicion there was sexual assault in
23 this case?

24 A. No. As I mentioned to you, I was only looking at
25 her Epithelial cells. So since the protocol is you

1 have to extract with the differential extraction, so
2 first you have to digest the Epithelial cells, take
3 the DNA out and then you take whatever is left,
4 clean it up and look to see if there is anything.
5 If there is no spermatozoa, then you don't have to
6 follow through. Then you go through the
7 differential for female fraction and you can get the
8 DNA from that.

9 Q. When you did the differential extraction were you
10 left then with sperm cells and Epithelial cells?

11 A. That is right.

12 Q. What did you do next after the extraction?

13 A. Then I tested for just minute quantity from the
14 tube.

15 Q. Which thing are you --

16 A. Male fraction, the sperm fraction. Brought up under
17 the microscope slide and looked under the microscope
18 and I saw a couple sperm heads.

19 Q. How many would that be exactly?

20 A. In my notes it says a couple, one half microliter.
21 Very small quantity.

22 Q. Just to be scientifically accurate, is a couple two?

23 A. Two or more than two. At least I saw two.

24 Q. Two?

25 A. Yes.

1 Q. More than two? Was there three? Since it's
2 science, I want to be right down to the number.

3 A. I have notes, but I don't have it with me. You have
4 the copy. It's written there.

5 Q. Okay. If you used the phrase a couple, though, what
6 number is that?

7 MR. GILBERT: He said it's in his
8 notes.

9 Q. (BY MR. BOLAND) If I let you look at your notes,
10 can you tell me what a couple means?

11 A. Sure.

12 Q. Okay.

13 A. So it would be two.

14 Q. It would be two?

15 A. Yes.

16 Q. So after you saw the two sperm what did you do next?

17 A. Then I follow through for extraction. The DNA is the
18 nucleus of the head, the head contains the DNA. So
19 then you have to break those and put the new
20 chemicals in and follow through and then get the
21 DNA.

22 Q. Let me clarify for a second. Were they sperms with
23 little tails or just heads?

24 A. Just heads. In this kind of thing you're not going
25 to see tails.

- 1 Q. Because why?
- 2 A. It's on the slide. You removed -- There is a lot of
3 harsh conditions go on to do this. Tail is not
4 going to stay there.
- 5 Q. Okay. And you did the testing on --
- 6 A. Test the DNA and follow through. But I was not
7 looking for DNA from the sperm at the time. I think
8 the notes also say that because it was just to get
9 her DNA. It was a surprise for me actually.
- 10 Q. The results of your testing on the male fraction of
11 A-59-1 are included on Tahir Exhibit No. 1, your
12 first test results, is that correct?
- 13 A. That's correct.
- 14 Q. Do you know of any other testing that was done on
15 this slide prior to you receiving it? Any other
16 analysis that was done?
- 17 A. Somebody told me that there was no sperm found on
18 the slide.
- 19 Q. Who told you that?
- 20 A. I think Terry mentioned to me. After I told --
21 Because I have to get the permission to go ahead for
22 the typing because every step I have to ask.
- 23 Q. Who do you have to ask?
- 24 A. Not enough DNA. I asked him.
- 25 Q. Him who?

1 A. Terry. There is sperm, and he said this was a
2 negative slide. And I said, but I did find sperm.
3 So I was not looking for that.

4 Q. Did he tell you at that point there was prior
5 testing done on that slide?

6 MR. GILBERT: Objection. What do you
7 mean by testing?

8 Q. (BY MR. BOLAND) Did he tell you somebody else
9 observed that slide prior to you getting it?

10 A. Yes.

11 Q. And what was the result of that prior observation?
12 What did he tell you? What did he tell you those
13 results were of the other person that looked at this
14 slide?

15 A. I think he told me he didn't find sperm.

16 Q. Okay. You did find sperm on the slide?

17 A. Yes.

18 Q. Okay. How do you account for that?

19 MR. GILBERT: Objection. If you can
20 answer that. How do you account for that?

21 I'm making an objection for the record.

22 A. It would not be uncommon if I had looked at that
23 slide the way it was, I would have never found the
24 sperm anyway. Nobody would have actually, in my
25 judgment, because there were so many Epithelial

1 cells and sperm are going to be buried underneath
2 and light can't pass through. The way I found it I
3 wasn't looking. It was accidental. I found it
4 because all Epithelial cells are digested. There is
5 nothing else. That is what I found. So if somebody
6 did not find it, I'm not surprised by looking at the
7 evidence. If you give me that slide and just test
8 as it is, I would not have found it.

9 Q. (BY MR. BOLAND) It's your opinion a prior person
10 would have missed the sperm slides because of the
11 Epithelial -- sperm slides without tails because of
12 Epithelial cells covering over?

13 A. This was heavy, heavily coated with Epithelial.
14 It's not a prior person. If you give anybody that
15 slide today, don't do anything, just look at it, in
16 my judgment I don't think anybody would have found
17 it.

18 Q. Now, did you use a type of magnification with your
19 microscope looking at that slide that wasn't
20 available in 1954?

21 A. Nothing to do with magnification. The material is
22 so thick. As you put it here and put it under the
23 microscope, how can you see something? So thick.
24 You have to have light coating. I'm not surprised.

25 Q. How was the presence of this sperm documented once

1 you identified it on the slide at this point in your
2 testing?

3 A. Just in the notes.

4 Q. Were there other people looking in the lab at this
5 time with you or no?

6 A. They always work. People working there.

7 Q. There were other people in the lab?

8 A. Yes.

9 Q. Did you have the other vaginal smear slide which you
10 label as Item A-59-2? Was that in the lab around the
11 same time?

12 A. What do you mean same time? They were tested
13 different times.

14 Q. But had you received A-59-2 by this time?

15 A. That's right.

16 Q. Okay. Once you found the sperm did you continue
17 with your DNA testing?

18 A. Yes.

19 Q. Okay. Looking at the result that's on Tahir Exhibit
20 No. 1 for Item A-59-1, that's a mixed sample as
21 well, a mixed result?

22 A. Yes.

23 Q. There are multiple contributors of DNA to this?

24 A. Correct.

25 Q. Can you tell from this result the exact number of

- 1 men who have deposited DNA in this sample?
- 2 A. No. More than one.
- 3 Q. Okay. The exact number is unknown?
- 4 A. Yes.
- 5 Q. Okay. Is this the DNA result for the entire slide?
- 6 A. Yes.
- 7 Q. Let me correct that. This is the DNA result for
- 8 only the sperm fraction of what was on that slide?
- 9 A. Yes.
- 10 Q. There is a female fraction?
- 11 A. That is true.
- 12 Q. Okay. Can you tell us the DNA test result on the
- 13 female fraction?
- 14 A. There was no profile developed on that. No results.
- 15 Q. Did you test the female fraction?
- 16 A. Yes, I did.
- 17 Q. You have notes on that testing?
- 18 A. Yes.
- 19 Q. Do you know how all these multiple contributors got
- 20 into Item A-59-1?
- 21 A. No.
- 22 Q. It's the same two possibilities we went over before
- 23 how it could have happened, correct, handling or
- 24 laboratory?
- 25 A. In this case the handling is different because it

1 has to be in the hospital or autopsy because sperm
2 has a different chemistry, okay. It has to be in
3 the second fraction. All non-sperm DNA will come in
4 first fraction.

5 Q. Okay.

6 A. So it had probably no -- I'm not saying it's bad
7 science, but this is the way 40 or 50 years that was
8 the normal practice because, I mean, if I would be in
9 that time I'd probably do the same thing. I'm not
10 challenging, but I'm saying it has to be probably in
11 the autopsy room.

12 Q. Okay. So it's your opinion that the handling in the
13 autopsy room is what caused multiple contributors?

14 A. One of the reasons.

15 Q. What are the other ones?

16 A. Maybe sexual partner, consensual sex, husband.
17 She's married. And, I mean, what else could be?

18 Q. I'm asking you. You're the doctor so you come up
19 with all the possibilities.

20 A. Those are the possibilities.

21 Q. Scientific question. Which cell has more DNA, a
22 sperm cell or Epithelial cell by quantity, which one
23 has more DNA?

24 A. Epithelial cell has more.

25 Q. Can you tell us how many Epithelial cells you

- 1 identified when you finally did your extraction?
- 2 A. I can't tell you.
- 3 Q. Can you say how many individual, the exact number, of
4 individual persons who are included in this test
5 result here, A-59-1?
- 6 A. It's multiple profile, so it's again several -- More
7 than one people.
- 8 Q. I understand. Can you say the exact number of
9 people that are involved in here?
- 10 A. I can make the combination and permutations.
- 11 Q. You are able to come up with an exact number, not a
12 range?
- 13 A. Yes.
- 14 Q. Okay. Are you able to identify who the person is?
15 For example, who contributed the 1.1 to the DQ Alpha
16 on Item A-59-1, can you tell who that is?
- 17 A. Are you going to do the same? I can answer the same
18 in one question.
- 19 Q. I may have more. 1.1, can you identify?
- 20 A. No, I can't identify this is this person.
- 21 Q. Can you say the 1.1 in the DQ Alpha is connected
22 with, for example, the A allele in HBGG?
- 23 A. No.
- 24 Q. Can you do those for any of those items?
- 25 A. No.

- 1 Q. Okay. Is it your opinion that this entire DNA
2 result came from the sperm only that you found on
3 that slide?
- 4 A. You mean that all the profile came from the sperm?
- 5 Q. Yes.
- 6 A. This is in the sperm fraction. But I cannot
7 definitely tell you what happened to this before it
8 came to me.
- 9 Q. Okay.
- 10 A. So that's all I'm --
- 11 Q. I understand. So my question is is this result in
12 A-59-1 you have here on your test on your report --
13 Excuse me. Did this entire DNA mixture come only
14 from the sperm on that slide?
- 15 A. Theoretically, yes. But I do not know. I mean,
16 that's what science says. According to science it
17 should be sperm, but I can't say that. But
18 scientifically it should be a sperm fraction because
19 all the controls and everything worked properly. So
20 that's what I'm going to say.
- 21 Q. My question, though, is can you say that this DNA
22 test result came exclusively from the sperm on the
23 slide A-59-1, can you say that?
- 24 A. No.
- 25 Q. Okay. And I would have the same question for A-59-2,

1 can you say that entire result came only from the
2 sperm that you found on that slide?

3 A. No.

4 Q. Okay. Can you say in A-59-1 that the 4.1 allele in
5 DQ Alpha came from the sperm on that slide?

6 A. No.

7 Q. Can you tell us who deposited the 4.1 allele in the
8 DQ Alpha on A-59-1?

9 A. No.

10 Q. Therefore, can you say that the 4.1 came from
11 Richard Eberling?

12 A. I can't say who it came from, but he cannot be
13 excluded just like I said earlier.

14 Q. Can you say who -- Strike that.

15 Can you say exactly how many different people
16 contributed to this sample?

17 A. No.

18 Q. Is Richard Eberling's DNA in this test result,
19 A-59-1, can you say that, his specific DNA is here?

20 A. Again, if you are asking identification?

21 Q. Yes. His actual DNA, is it in this result?

22 A. No.

23 Q. Can you say that his DNA is anywhere on that slide?

24 A. No.

25 Q. Can you say this is Richard Eberling's sperm

1 somewhere on this mixed result?

2 | A. No.

3 Q. Did you ever tell anyone that Richard Eberling's
4 DNA was on the slide A-59-1?

5 A. No.

6 Q. Did you ever tell anyone that Richard Eberling's DNA
7 was in the sperm fraction on this slide?

8 A. No.

9 Q. Did you ever tell anyone that this was Richard
10 Eberling's sperm?

11. A. No, sir.

12 Q. Is it scientifically accurate to say that this is
13 Richard Eberling's sperm based on this result?

14 A. No.

15 (Recess taken.)

16 Q. (BY MR. BOLAND) Dr. Tahir, I want to go back
17 briefly to a couple issues regarding this slide and
18 some of your experience. You mentioned before
19 you've testified in rape cases in criminal trials?

20 A. Yes.

21 Q. And you've handled vaginal smear slides from rape
22 victims in your lab?

23 A. Yes.

24 Q. And can you conclude if you look through one of
25 those cases that you had handled and saw two sperm

1 heads this was recent intercourse? Would that be
2 your opinion in that slide?

3 MR. GILBERT: I'm going to object to
4 the form of the question.

5 Q. (BY MR. BOLAND) Two sperm heads without tails,
6 would you say that is evidence of recent intercourse
7 or not?

8 A. That is out of my expertise to tell you if it's
9 recent or not. I can only say what I found and I
10 can proceed from there. Intercourse, somebody is
11 taken to the hospital after so long that's several
12 hours depending on did she go to the bathroom or
13 wash or whatever. There are so many factors. I
14 think it's out of my expertise. If you can
15 formulate another question on the same line or
16 actually what you want to know, I would be more than
17 happy to --

18 Q. We talked a little bit about this slide A-59-1 you
19 indicated was stained red, and I wanted to clarify.
20 Is it the red staining or the amount of Epithelial
21 cells that prevented you from being able to see
22 sperm that were underneath?

23 A. Because the red staining is indicative of Epithelial
24 cells because cells are going to stain, that's how
25 people look. When there is a vaginal smear

1 Epithelial comes with it.

2 Q. So it's a combination of the amount of Epithelials
3 that were all stained red?

4 A. Yes.

5 Q. Can you say these two sperm you later found, sperm
6 heads, did they have tails on them at some point?

7 A. They may have. I don't know.

8 Q. Can you say?

9 A. No.

10 Q. And is it your opinion that what you found, the two
11 sperm heads, are indicative of sexual assault or
12 recent sexual intercourse?

13 A. Could be consensual intercourse. Could be rape. I
14 don't know.

15 Q. In the rape cases you've testified where you've done
16 an analysis of vaginal smear slides from a victim
17 who has recently been raped, do you find sperm
18 without tails?

19 A. Sure.

20 Q. Exclusively?

21 A. We do find, sure. It's not uncommon.

22 Q. An entire slide where all the sperm have no tails of
23 a recent rape victim, you've had that happen before?

24 A. I don't know when you say recent.

25 Q. Well, I'm basing it on the knowledge you would have

1 at the lab. If a police officer came to you and
2 said this victim showed up two hours after a rape
3 and here's the vaginal smear slide, test it. When
4 you look at those slides do you see a bunch of sperm
5 with no tails? Have you done it before?

6 A. Yes. Because you have to see each person's
7 chemistry is different. There are so many things in
8 enzymes and bacteria and yeast that are just
9 chopping up sperm and decomposing. So there are so
10 many unknown factors, so we -- I can't actually test
11 those. This is not uncommon. I can only say it's
12 not uncommon to see sperm without heads. You have a
13 lab here, you can ask them the same question.
14 They'll tell you. It's not uncommon. But in this
15 situation even the sperm head was there. Tail would
16 not be there because I removed everything. So
17 whenever you transfer something, there is force
18 being done. But maybe his tail was there, maybe not
19 there. I cannot tell you. If you ask me was the
20 tail present the day before the murder, I can't tell
21 you.

22 Q. Do you know in that sperm you saw in connection with
23 testing A-59-1 was that deposited contemporaneously
24 with Marilyn Sheppard's death, do you know?

25 A. No.

- 1 Q. Okay. Moving on to item No. A-59-2, which is on
2 Tahir Exhibit Page 2 of your '97 report. Do you see
3 that test result?
- 4 A. Which one?
- 5 Q. A-59-2.
- 6 A. Yes.
- 7 Q. Who did you receive that object from?
- 8 A. Cuyahoga County. They were received at the same
9 time, both slides.
- 10 Q. When did you receive it?
- 11 A. May 2nd, 1996.
- 12 Q. And what were you told this was?
- 13 A. It was a vaginal smear.
- 14 Q. And were you told that or was it written?
- 15 A. It was written on there.
- 16 Q. Did you document the receipt of this like you did
17 the others?
- 18 A. Yes.
- 19 Q. How many people in your lab handled A-59-2?
- 20 A. Myself.
- 21 Q. And only you?
- 22 A. Yes.
- 23 Q. Can you describe what this object was?
- 24 A. This was a glass microscope slide exactly the same
25 type as 59-1.

- 1 Q. Was it unstained or stained?
- 2 A. It was stained. Same way as the previous one.
- 3 Q. Did you put it under a microscope and look at it?
- 4 A. No.
- 5 Q. What test did you run?
- 6 A. I removed the Epithelial cells and then after
7 because there were so many Epithelial cells on that
8 and then I was not going to see anyway as I
9 mentioned earlier because there's such thick
10 material on it.
- 11 Q. Let me step back to confirm something. Did you put
12 A-59-2 when you received it under a microscope to see
13 what you could see?
- 14 A. No.
- 15 Q. What's the first thing you did to that slide once
16 you began its testing?
- 17 A. I took the slide and removed the material with a
18 cotton swab and transferred it to the test tube and
19 then did differential extraction as I explained for
20 the previous slide. And then after I digested the
21 Epithelial cells then I took the bottom, washed it
22 and then I took one half microliter and plot it onto
23 another glass microscope slide and then tested for
24 -- and stained that and tested for sperm heads.
- 25 Q. What do you mean tested for sperm heads?

- 1 A. Look under the microscope.
- 2 Q. Did you see them?
- 3 A. Yes.
- 4 Q. How many --
- 5 A. Again --
- 6 Q. -- if you recall?
- 7 A. I have to look.
- 8 Q. While we're getting this out, can you explain why
- 9 A-59-2 you did not put it under a microscope prior to
- 10 your testing?
- 11 A. Because it was so opaque as I mentioned earlier I
- 12 would not see anything.
- 13 Q. Opaque to the naked eye you mean?
- 14 A. Naked eye can't tell you. If it's all coated I'm
- 15 not going to see anything.
- 16 Q. Based on your observation of this with your naked
- 17 eye you did not put it under a microscope?
- 18 A. Yes.
- 19 Q. Okay. Here's your notes A-59-2.
- 20 A. Again, a couple of heads positive.
- 21 Q. Okay. What number is that, a couple of?
- 22 A. A couple means when you look under one view that you
- 23 see just one view, two heads.
- 24 Q. Two heads? Tails?
- 25 A. No. Heads.

1 Q. Do you know if there were tails intact prior to you
2 doing your testing?

3 A. No. I can't tell you about that.

4 Q. This sperm you now identified as A-59-2, do you know
5 if that was deposited at the same time as Marilyn
6 Sheppard's death?

7 A. No.

8 Q. Okay. Were you given the result of any other tests
9 that were done on this object before you received
10 it?

11 A. No. I was not given. I was told -- When I talked
12 earlier remember I told you earlier Terry told me
13 this was negative.

14 Q. He told you A-59-2 had you been observed before?

15 A. Yes.

16 Q. Did he tell you who observed it?

17 A. I think Dr. Adelson. I think Dr. Balraj also
18 mentioned to me that it was negative.

19 Q. What was your purpose for doing the testing on
20 A-59-2? Why were you testing that?

21 A. Same reason; trying to get Epithelial cell typing.

22 Q. For Marilyn Sheppard's profile?

23 A. Yes.

24 Q. After the differential extraction you had Epithelial
25 cells and male sperm fractions?

- 1 A. Yes.
- 2 Q. Then what did you do next?
- 3 A. Then I subjected both fractions to PCR typing.
- 4 Q. And your results for that testing are what appear
- 5 here on Tahir Exhibit No. 1, your '97 report, is
- 6 that correct?
- 7 A. That is true.
- 8 Q. Let me back up one second. When you saw these sperm
- 9 on the slide after doing the extraction, sperm
- 10 heads, I should be clear, did you document that in
- 11 your case notes?
- 12 A. Yes.
- 13 Q. Did you photograph it?
- 14 A. Photograph what?
- 15 Q. The slide.
- 16 A. No.
- 17 Q. Were there other people working in your lab at the
- 18 time that you were doing the testing on A-59-2?
- 19 A. Yes.
- 20 Q. Okay. Once you found the sperm did you continue
- 21 with your DNA testing?
- 22 A. Yes.
- 23 Q. And the result that's reported on Tahir Exhibit No.
- 24 1 for A-59-2, is that the result for just the sperm
- 25 portion of what you took off that slide?

- 1 A. Yes.
- 2 Q. There was a female fraction for Epithelial cells?
- 3 A. Yes.
- 4 Q. What's the DNA result for that fraction?
- 5 A. That did not give any profile. It was tested but no
6 profile was received.
- 7 Q. Do you know why that didn't happen, why you couldn't
8 get a profile?
- 9 A. Usually Epithelial cells degrade much faster, and it
10 is our knowledge that when we do even fresh samples
11 that normally DNA degrades much faster in Epithelial
12 cells. It's the nature of the cells. Sperm cell is
13 much, much harder because it has the ultra protective
14 layer, which is acrosome. The DNA is like in a safe
15 deposit box. So that's why DNA in the sperm lasts
16 much longer than the Epithelial cells. So that DNA
17 is very old, DNA was probably degraded very badly.
- 18 Q. What is your lab's procedure for reporting results
19 in cases of vaginal swab DNA tests? Do you report
20 both the sperm and Epithelial fraction?
- 21 A. If we get it, then we report both, yes.
- 22 Q. Okay. And there are multiple contributors to this
23 result as well on your report, A-59-2, is that
24 correct?
- 25 A. That's correct.

- 1 Q. Do you know how all these multiple contributors got
2 there?
- 3 A. No idea.
- 4 Q. The same possibilities exist that we mentioned?
- 5 A. Yes.
- 6 Q. Handling?
- 7 A. Handling.
- 8 Q. And in your lab?
- 9 A. Yes.
- 10 Q. Do you know how many individual person's profiles
11 are included in the result in A-59-2, the exact
12 number of people it took to make this mixed stain?
- 13 A. No.
- 14 Q. Do you know if the person in A-59-2, for example,
15 who contributed the 1.2 in the DQ Alpha also
16 contributed the 3 allele in the DQ Alpha?
- 17 A. No, I cannot tell you.
- 18 Q. Do you know if any of the DQ Alpha alleles that are
19 showing up there in that result are connected to any
20 of the polymarkers that are showing up? Do you know
21 which ones are connected to which?
- 22 A. No.
- 23 Q. Can you say that the 4.1 in A-59-2 came from a
24 particular person?
- 25 A. No.

- 1 Q. Can you say it came from Richard Eberling?
- 2 A. No.
- 3 Q. Is Richard Eberling's DNA in the result A-59-2? Can
- 4 you say his DNA is in there?
- 5 A. No.
- 6 Q. Can you say his DNA was on that slide?
- 7 A. No.
- 8 Q. Can you say that the 4.1 in the DQ Alpha came from
- 9 Richard Eberling and no one else?
- 10 A. No.
- 11 Q. Is there Richard Eberling's sperm in this sperm
- 12 fraction result that you have?
- 13 A. No. That's multiple profile.
- 14 Q. Is Richard Eberling's sperm in there?
- 15 A. No.
- 16 MR. GILBERT: It could be, right?
- 17 A. When he's asking me these questions, you're asking
- 18 identification.
- 19 MR. GILBERT: So we make sure about
- 20 that.
- 21 Q. (BY MR. BOLAND) I'm not asking probability. I'm
- 22 saying can you say definitely that Richard
- 23 Eberling's sperm is on this slide?
- 24 A. I can't tell you the identification of him it's him.
- 25 Q. Is his sperm on this slide?

- 1 A. No.
- 2 Q. Can you identify any male who contributed sperm to
3 this slide?
- 4 A. No.
- 5 Q. Not Richard Eberling, some other person?
- 6 A. No.
- 7 Q. And this entire result you've reported here came
8 from the two sperm heads that you identified?
- 9 A. No. Two sperm heads were seen in the little portion
10 which I took, but the rest of the sample was in the
11 tube. That was the presumptive test.
- 12 Q. Your assumption is that there's more sperm in that
13 tube?
- 14 A. Yes. Because I can't take all and put it on the
15 slide. In the tube like that thing is 30 or 40
16 microliter in the tube. I took half a microliter.
17 So then I tested the sperm in that. So it's not two
18 sperms.
- 19 Q. You're assuming many more than two sperm?
- 20 A. Yes.
- 21 Q. You actually only saw two sperm heads?
- 22 A. Yes.
- 23 Q. Are there items in these two reports, Tahir Exhibit
24 1 and Tahir Exhibit 2, that you tested twice?
- 25 A. There may be, yes.

1 Q. Can you tell me which ones? Let's start with Tahir
2 Exhibit 1, which one of these items did you conduct
3 DNA testing twice on?

4 A. I would have to look at the notes. I think my
5 memory if I say one was vaginal smear.

6 Q. Which vaginal smear?

7 A. I don't remember now. I have to look at the notes.

8 Q. Okay.

9 A. And then are you talking about the two also?

10 Q. Is that it for Exhibit No. 1 as far as you recall
11 one of the vaginal smear slides you tested twice?

12 A. That one I know of, but I don't know. There may
13 have been some other tests.

14 Q. If you look at your notes, you would be able to tell
15 us that?

16 A. Yes.

17 Q. How about what you can recall from Tahir Exhibit No.
18 2, what items in that report did you test twice?

19 A. I think I tested maybe this 1-D-4, 1-D-5. I think
20 that one I tested.

21 Q. Any others?

22 A. There may be. I don't remember. I would have to
23 look at the notes.

24 Q. Okay. Do you have the DQ Alpha and polymarker
25 results for those first tests you ran on those items

1 you listed?

2 A. That's in the notes, yes. No results were taken.
3 That's why they were retested.

4 Q. The fact you obtained no results is in your notes?

5 A. Yes.

6 Q. Do you have the photo documentation in your lab of
7 the DNA strips?

8 A. Yes. It should be in the notes.

9 Q. I mean do you have the actual photo documentation of
10 those tests in your lab?

11 A. Yes.

12 Q. Why did you test those items twice?

13 A. I did not get any results.

14 Q. Now, by any results do you mean no dots lit up at
15 all?

16 A. No.

17 MR. GILBERT: For clarification, which
18 item of evidence are you speaking of?

19 Q. (BY MR. BOLAND) Let's start with the vaginal smear
20 on Tahir Exhibit 1. Why did you test that one
21 twice? You don't know which one it was.

22 A. I think I remember on one the C Dot was not lit in
23 the first activity. Everything was there, then I
24 have some sample left and I redid that.

25 Q. So the first time through the control dot --

- 1 A. Did not --
- 2 Q. Your control failed the first time through?
- 3 A. Yes.
- 4 Q. Okay. Now, the Item 1-D-4 on Tahir Exhibit No. 2,
- 5 your second report, why did you test that one twice?
- 6 A. If I remember, I think there was no results at all.
- 7 Q. No dots were lighting up?
- 8 A. No. Nothing.
- 9 Q. Okay. 1-D-5, do you recall why you tested that one
- 10 twice?
- 11 A. Same thing.
- 12 Q. No dots?
- 13 A. No results.
- 14 Q. You have the photo documentation of this as well?
- 15 A. Yes.
- 16 Q. Okay. Can you explain what a positive control is in
- 17 DNA testing?
- 18 A. Positive control is a sample which is provided with
- 19 a kit you use with the test every time you do, which
- 20 the type is normal, that type 1.1, 4.1.
- 21 Q. Why do you use a positive control in testing?
- 22 A. To see if your whole method is working.
- 23 Q. Did you use positive controls from the kits for all
- 24 the testing you did here?
- 25 A. Yes.

1 Q. Can you tell me what an internal control is?

2 A. Internal control is something which we introduced.
3 Those are minimum standards, but in our laboratory
4 I introduced extra standards which is internal
5 control. It's one other person in the laboratory.
6 We have people profiled for DNA analysis. Their
7 profile is normal. Then we took blood stains and
8 then make the blood stains, and identity is not
9 known to us. It's one person in the lab. He knows
10 which stain. We only know 1, 2, 3, whatever. Those
11 stains come back to us with numbers. Then the
12 record is with them. And the procedure is whenever
13 we do the case, start doing the case, and go to the
14 next consecutive envelope, pull it from the freezer
15 and process with evidence exactly the way you do the
16 whole evidence. So that also the internal control
17 is also positive control, but it is an extra
18 standard we added.

19 Q. What is your procedure if during your testing your
20 positive control fails?

21 A. If positive fails in that case, then we have to
22 repeat the tests.

23 Q. Can you call those results if a positive result
24 control fails?

25 A. No, sir.

1 Q. How about if an internal control fails, can you call
2 those results?

3 A. Yes. As long as one of them is working.

4 Q. One of them? What are you talking about one of
5 them?

6 A. Positive control that comes with the kit or internal
7 control. If somebody misidentifies internal
8 control, then no.

9 Q. Just for --

10 A. Let's me clarify because whenever an internal
11 control you can -- Let's say no result was obtained
12 for example. Okay. So that means there was no
13 result. But the positive control at the same time
14 gave a result. So in that case you can report. But
15 if you misidentify it's your blood, say the internal
16 control is 1 or 2, it was your blood but I
17 identified Mr. Mason's blood, then it is a big
18 problem.

19 Q. Are there cases then where you will call a result of
20 your lab where the positive control with the kit has
21 failed but internal control has not failed, will you
22 still call that result?

23 A. We will -- Yes, I will call. But we did not have
24 any case like that. But theoretically I would call
25 that.

- 1 Q. You never had a case like that before?
- 2 A. No.
- 3 Q. Did that ever happen in the Sheppard Case materials?
- 4 A. No.
- 5 Q. What is your practice when viewing the photo strips
6 if one or two of the dots that are showing up are
7 less intense than the C or S Dot?
- 8 A. If they are less intense than C, then that's not a
9 result.
- 10 Q. Would you call any of the result?
- 11 A. An inconclusive.
- 12 Q. Inconclusive?
- 13 A. Right.
- 14 Q. Okay. Referring to Tahir Exhibit No. 1, the Item
15 No. 3 you identify as the wood chip on that result.
16 Do you see that, Doctor?
- 17 A. Yes.
- 18 Q. Before we do that, can you define what the term of
19 art means in DNA testing included, the phrase
20 included as you use it in DNA?
- 21 A. Including, means a person cannot be excluded. His
22 profile cannot be excluded.
- 23 Q. Can you define the term excluded?
- 24 A. Excluded means if you have a profile and that
25 profile is not present which you want to see, then

1 that person is excluded. Let us say you are 1.1
2 homozygous and the profile is 1.1 -- profile is 1.2,
3 1.3, and 3. You are excluded because that factor is
4 not here. 1.1 is not here.

5 Q. Is it the same meaning then to say that the person
6 is included in a mixed stain as it would be to say
7 they were not excluded in a mixed stain? Those are
8 equivalent statements?

9 A. I don't understand.

10 Q. Is it fair to say that a person is included, for
11 example, is Richard Eberling included in one of
12 these test results because his factor is there?

13 A. The factor which he owns is there, so he cannot be
14 excluded.

15 Q. And you described that as he is included?

16 A. He is included. If 4.1 would have never been there,
17 then he's excluded, he's not there.

18 Q. Not excluded and included mean the same thing?

19 A. No. Exclusion is 100%. If you are not there you
20 are not there. Inclusion means I have a chance.
21 Maybe I was there, maybe I was not there.

22 Q. So included means maybe?

23 A. Sure. Because the factor is there. He's among the
24 group of people that can't be excluded.

25 Q. Not excluded, does that also mean maybe?

1 A. No. Exclusion is exclusion.

2 Q. No. No. When you say someone is not excluded as
3 being a contributor to a stain, is that equivalent
4 as to saying they may be in there or may not be
5 there?

6 A. No.

7 Q. Can you define when you say someone is not excluded?

8 A. Not excluded means the factor is there which he can
9 contribute. The other thing like you're asking
10 identification, if this is contributed by him. Let
11 me have a piece of paper so I can explain better.
12 Is it okay?

13 MR. GILBERT: Do you want to do this?

14 That's not his question.

15 A. I think I understand what he means. Exclusion. Let
16 us say the Person A is 1.1, 1.1. And then the
17 profile. This is examples. Profile is 1.2, 1.3,
18 and 4.1. If I have to compare this person with this
19 one, in this case this person is excluded.

20 Q. (BY MR. BOLAND) A is excluded?

21 A. He can never be there.

22 Inclusion now. We're going to talk about
23 inclusion. Now, Person B is this one. His profile
24 is 1.2, 1.2. If I compare with this one, this
25 person cannot be excluded among the group of people

1 here. He cannot be excluded.

2 Q. Now, is it fair to say given the example you've just
3 drawn on that paper there that Person B you can
4 equally say he's included in this profile, is that
5 an equivalent to not excluded?

6 A. Yes. He's included. His profile is included in
7 this one.

8 Q. Can you say he himself is included in that sample,
9 that person is included?

10 MR. GILBERT: In the identification?

11 A. No. I thought I already answered that no.

12 Q. (BY MR. BOLAND) I'm trying to clarify when I use
13 these phrases we're talking about the same thing.

14 A. No. Whatever is truth is truth.

15 Q. Looking at Item No. 3 from Tahir Exhibit No. 1, you
16 identified as the wood chip.

17 A. Yes.

18 (Tahir Deposition Exhibit 3
19 marked for identification.)

20 Q. (BY MR. BOLAND) Talking about Item No. 3 on Tahir
21 Exhibit No. 1, Doctor, is Richard Eberling -- can he
22 be excluded or -- is he excluded or not excluded as
23 a contributor to that test result that you got?

24 A. He's not excluded.

25 Q. Is Marilyn Sheppard excluded or not excluded?

1 A. She's excluded.

2 Q. Dr. Sam Sheppard, is he excluded or not excluded?

3 A. He's excluded.

4 Q. And yourself, Dr. Tahir, are you excluded or not
5 excluded from that sample?

6 A. No, I'm not excluded.

7 Q. And is it accurate to say that looking at the allele
8 LDLR, see that one, Doctor, as a factor that exists
9 in this test result did not come from Richard
10 Eberling, is that correct?

11 A. No. It didn't come from him.

12 Q. So it is correct to say he did not contribute that?

13 A. No.

14 Q. Moving on to HBGG --

15 MR. MASON: He's saying no. You're
16 looking for the answer yes.

17 Q. (BY MR. BOLAND) Here's my question. The A factor
18 in the LDLR in the result of that Item No. 3, did
19 this come from Richard Eberling, yes or no?

20 A. LDLR A did not come from Richard Eberling in wood
21 chip.

22 Q. Okay. In the same item what you're calling the wood
23 chip in HBGG, that locus, the allele C that's in
24 that result, did that come from Richard Eberling,
25 yes or no?

- 1 A. No.
- 2 Q. And the same item locus Gc, allele C, did that come
3 from Richard Eberling?
- 4 A. No.
- 5 Q. Okay. And one last question. Back to HBGG, the
6 allele C that's in that test result --
- 7 A. Yes.
- 8 Q. -- did that come from anyone that was tested; Eberling,
9 Marilyn, or Sam?
- 10 A. No.
- 11 Q. Do you know who contributed that allele in HBGG?
- 12 A. No.
- 13 Q. Looking at Item 1-C on Tahir Exhibit 2 on the second
14 page, you identify that as a stain from the bedroom
15 closet. Do you see that result, Doctor?
- 16 A. Yes.
- 17 Q. Is Richard Eberling excluded or not excluded as a
18 contributor to that test result?
- 19 A. Eberling is not excluded.
- 20 Q. Is Marilyn Sheppard excluded or not excluded?
- 21 A. Marilyn Sheppard is not excluded.
- 22 Q. Dr. Sam Sheppard, is he excluded or not excluded?
- 23 A. He can be included or he cannot be included. I
24 cannot tell about that.
- 25 Q. What do you mean by that? Is he excluded or not

1 excluded?

2 A. No conclusion can be drawn. He may be there, he may
3 not be there.

4 Q. Is that different than not excluded?

5 A. Yes.

6 Q. Can you explain how?

7 A. Because Sam Sheppard is 1.2, 1.3, and we have 1.3,
8 which you can see. And 1.3 could be coming from
9 Marilyn and Sam himself because he's 1.3, but then
10 1.2 is limitations of the system that we can't tell
11 apart.

12 Q. Is there a 1.2 in that stain, in the DQ Alpha
13 allele?

14 A. I cannot tell whether it is present or not present.

15 Q. And based on that, can you exclude Sam Sheppard as
16 potentially contributing that 1.2?

17 A. I cannot -- He may be there, he may not be there.
18 It's a different category as being there. Like she
19 is there. We know her profile. When I say she's
20 there means she could be there because of her
21 profile. But this is a different category for Sam.
22 He may be there, he may not be there.

23 Q. My question then how in layman's terms can you
24 exclude him? Is it absolutely conclusive that he
25 did not contribute DNA to that stain, can you say

1 that?

2 A. No. He cannot be excluded, but the category is
3 different for exclusion in this case. Do you
4 understand what I'm saying?

5 Q. Right. But you cannot say that --

6 A. I can't say he's not there definitely. I can't say
7 he's not there.

8 Q. That's my question.

9 A. But it's different than Marilyn because there's a
10 difference between the categories.

11 Q. Now, yourself, can you be excluded or are you
12 excluded or not excluded from Item 1-C, your DNA
13 profile?

14 A. I'm excluded.

15 Q. Looking at the locus LDLR, do you see the allele A
16 that is there?

17 A. Yes.

18 Q. Is Richard Eberling the contributor of that allele?

19 A. He could not be.

20 Q. And in the locus Gc, is Richard Eberling the
21 contributor of the C allele that is in there?

22 A. No.

23 Q. Okay. Let's move on to Item b-3-b-1, which you've
24 identified on Tahir Exhibit No. 1 as the blood stain
25 from Sam Sheppard's trousers. Is Richard Eberling

- 1 excluded or not excluded from that item, b-3-b-1?
- 2 A. Richard Eberling cannot be excluded.
- 3 Q. Is Marilyn Sheppard excluded or not excluded from
- 4 the result on that item?
- 5 A. Marilyn Sheppard is excluded.
- 6 Q. Dr. Sam Sheppard, is he excluded or not excluded?
- 7 A. He's excluded.
- 8 Q. You yourself, Dr. Tahir, are you excluded or not?
- 9 A. No, I'm not excluded.
- 10 Q. And in the locus LDLR, the A allele, did that come
- 11 from Richard Eberling?
- 12 A. No.
- 13 Q. And in HBGG, the C allele, did that come from
- 14 Richard Eberling?
- 15 A. No.
- 16 Q. Did that come from anyone who was tested?
- 17 A. No.
- 18 Q. In the Gc locus, did the C allele come from Richard
- 19 Eberling?
- 20 A. No.
- 21 Q. Moving on to Item A-59-1 on Tahir Exhibit 1, it's
- 22 the vaginal smear from Marilyn Sheppard sperm
- 23 fraction. Is Richard Eberling excluded or not
- 24 excluded from that test result?
- 25 A. On 59-1?

- 1 Q. Yes.
- 2 A. Richard Eberling is not excluded.
- 3 Q. Marilyn Sheppard, is she excluded or not excluded
- 4 from that test result?
- 5 A. She's not excluded.
- 6 Q. Dr. Sam Sheppard, is he excluded or not excluded as
- 7 a contributor to the result on A-59-1?
- 8 A. He's not excluded.
- 9 Q. And yourself, Dr. Tahir, are you excluded from that
- 10 result?
- 11 A. In this case these 2, 3 are below C Dot. I just put
- 12 it there if you can see it in the notes. It's not
- 13 actually a result of 2, 3 in this case. There may
- 14 or may not be. It's below C.
- 15 Q. The intensity on the photo strips of the 2, 3 in the
- 16 DQ Alpha are below the intensity of the C Dot?
- 17 A. Yes. That's why I put the asterisk there and says
- 18 it may be there or may not be there.
- 19 Q. And this is the common procedure for the lab when
- 20 it's below the C Dot, you put it in parentheses with
- 21 an asterisk?
- 22 A. Yes. In this case because it was the old samples, I
- 23 just wanted to make a notation there.
- 24 Q. Okay. So the 2, 3, are you calling that as being
- 25 present or not in A-59-1?

- 1 A. I would not call because according to me may be
2 there or may not be there.
- 3 Q. Okay.
- 4 A. I told you --
- 5 Q. You don't know if it's present?
- 6 A. I don't know.
- 7 Q. Okay. The LDLR locus on that A-59-1, did the A that
8 shows up there come from Richard Eberling?
- 9 A. No.
- 10 Q. In HBGG, the C that shows up in the result of
11 A-59-1, did that come from Richard Eberling?
- 12 A. No.
- 13 Q. Did that come from anyone who was tested?
- 14 A. No.
- 15 Q. In the Gc locus, the C that shows up in that test
16 result of A-59-1, did that come from Richard
17 Eberling?
- 18 A. No, it didn't come from him.
- 19 Q. Next let's take a look at A-59-2, which you identify
20 as well as a vaginal smear from Marilyn Sheppard, a
21 sperm fraction. Do you see that result?
- 22 A. Yes.
- 23 Q. Is Richard Eberling excluded or not excluded from
24 that mix?
- 25 A. He's not excluded.

- 1 Q. Is Marilyn Sheppard excluded or not excluded?
- 2 A. She's excluded.
- 3 Q. Is Sam Sheppard excluded or not excluded?
- 4 A. Sam is excluded.
- 5 Q. And at the LDLR locus, the A that's showing up in
- 6 A-59-2, did that come from Richard Eberling?
- 7 A. No.
- 8 Q. At the HBGG locus, the C that's showing up on
- 9 A-59-2, did that come from Richard Eberling?
- 10 A. No.
- 11 Q. Did it come from anyone tested?
- 12 A. No.
- 13 Q. And at Gc, there's a C that's showing up in the
- 14 result you received on A-59-2, did that come from
- 15 Richard Eberling?
- 16 A. No.
- 17 Q. Okay. Next let's move to E-5-S, which is an item on
- 18 Tahir Exhibit 1, the first item listed on your
- 19 report. Do you see that result?
- 20 A. Yes.
- 21 Q. Is Richard Eberling excluded or not excluded from
- 22 the DNA result on that item?
- 23 A. No.
- 24 Q. No meaning what?
- 25 A. He's not excluded.

- 1 Q. Is Marilyn Sheppard excluded or not excluded from
2 that result?
- 3 A. She's excluded.
- 4 Q. Is Sam Sheppard excluded or not excluded from that
5 result E-5-S?
- 6 A. He's excluded.
- 7 Q. And can you tell us what that item is, E-5-S?
- 8 A. Stamp from Envelope No. 5.
- 9 Q. And who gave you that envelope?
- 10 A. Cynthia Cooper sent it to me.
- 11 Q. And what was written on the envelope?
- 12 A. Marilyn Sheppard, Marilyn Reese Sheppard I think was
13 on the envelope.
- 14 Q. What were you told this was?
- 15 A. This was an envelope that Sam wrote to Marilyn
16 Sheppard when they were girlfriend and boyfriend.
- 17 Q. Do you recall the date that was on the envelope?
- 18 A. I think 1943 or '42, or something like that.
- 19 Q. Going to Item E-1-S, the very next item on Tahir
20 Exhibit 1, you describe it as stamp from Envelope
21 No. 1?
- 22 A. Yes.
- 23 Q. Where did that envelope came from, if you know?
- 24 A. Same. Envelope.
- 25 Q. What was written on there?

- 1 A. Marilyn Sheppard's address in Cleveland.
- 2 Q. Do you know the date on that document?
- 3 A. It's been documented, you can see the date, '43
- 4 probably.
- 5 Q. And can Richard Eberling be excluded or not excluded
- 6 from that stamp?
- 7 A. He cannot be excluded.
- 8 Q. Can Marilyn Sheppard be excluded from that result?
- 9 A. She's excluded.
- 10 Q. Can Sam Sheppard be excluded or not excluded from
- 11 that result?
- 12 A. Yes, he's excluded.
- 13 Q. Okay. You have Item B-4-n on Tahir Exhibit 1. You
- 14 identify that as hairs from mattress of death bed.
- 15 A. Yes.
- 16 Q. Do you know whose hairs those were that you tested?
- 17 A. I don't know. It was written that was Marilyn
- 18 Sheppard's hair.
- 19 Q. Who wrote that, do you know?
- 20 A. I don't know.
- 21 Q. Where was that written? On the object itself?
- 22 A. On the envelope on the top.
- 23 Q. You also tested pulled head hairs item B-4-U. You
- 24 see that on Exhibit No. 1?
- 25 A. Yes.

- 1 Q. You have a mixed profile on that?
- 2 A. Yes.
- 3 Q. Are these all the items in Exhibits No. 1 and 2 that
4 you tested in connection with this case, they're all
5 reported here?
- 6 A. Yes. Except there are other envelopes which I was
7 testing before. They're in the notes. I provided
8 everything to you.
- 9 Q. Did you get results for those tests?
- 10 A. Some of them I got. They were all mixed because I
11 was trying to see if I can get a clean profile. At
12 the time we didn't have Sam's body exhumed.
- 13 Q. Do you see the result you got for -- you don't have
14 an item number -- just described as stain from
15 Marilyn Sheppard's bedsheet?
- 16 A. Yes.
- 17 Q. And can you describe your test results on that item?
- 18 A. 1.1, 1.3, 4.1, 4.2/4.3, and the rest is just below
19 the C.
- 20 Q. Is anyone excluded from that as a contributor of
21 that sample? Let me rephrase my question. In DQ
22 Alpha is every single dot that would light up on the
23 photo strip lit up in that result you have there?
24 Are there any alleles that aren't present?
- 25 A. Except 1.2, 2, and 3 because they were below C.

- 1 Q. Were there a couple below C? They lit up but they
2 were lighter than C?
- 3 A. Yes.
- 4 Q. Okay. You did what you described as Kastle-Meyer
5 testing?
- 6 A. Yes.
- 7 Q. In your notes you list it as KM. That's your
8 abbreviation?
- 9 A. Yes.
- 10 Q. Can you describe how KM is weak? You wrote the word
11 weak in your notes.
- 12 A. Weak means slow reaction.
- 13 Q. And what do you conclude from a slow reaction on a
14 Kastle-Meyer Test?
- 15 A. Because --
- 16 Q. What do you conclude from that result?
- 17 A. Nothing. I just note it presumably could be blood,
18 and that's all the Kastle-Meyer is for. It doesn't
19 tell us if it's blood. It just tells us the stain
20 in question could be blood.
- 21 Q. In your portion of your notes you listed
22 Kastle-Meyer as slow. What does that mean?
- 23 A. Same thing. Slow and weak are the same thing.
- 24 Q. Another portion in your notes you listed
25 Kastle-Meyer as faint. Is that the same as well?

1 A. Yes. Weak.

2 Q. In connection with one of the items that you tested
3 you received correspondence from Cynthia Cooper?

4 A. Yes.

5 Q. Do you have a copy of that particular letter that
6 you received from her in connection with that?

7 A. Maybe --

8 Q. Let me mark this if I could.

9 (Tahir Deposition Exhibit 4
10 marked for identification.)

11 Q. (BY MR. BOLAND) Dr. Tahir, showing you what's been
12 marked Tahir Exhibit No. 4, can you identify that
13 for the record, please?

14 A. This is a letter Cynthia Cooper sent.

15 Q. This is from your case notes?

16 A. Yes.

17 Q. Do you have a copy of the entire -- Step back a
18 second. Is the entire letter visible there from the
19 copy that you're looking at?

20 A. Probably I would have.

21 Q. The copy you're looking at, Exhibit 4, is the entire
22 letter visible? You have to do this for the record.
23 Can you describe is the entire letter visible on
24 that document from Cynthia Cooper?

25 A. Maybe some lines will be missing, but I can send you

1 the letter.

2 Q. Do you have the original?

3 A. Yes.

4 Q. Okay. Do you have other correspondence from Cynthia
5 Cooper as well?

6 A. No. That's the letter that came. She called on the
7 phone because we didn't have Sam's DNA. She said
8 here's an envelope, can you do something? I said I
9 can test it.

10 Q. Your purpose for testing those envelopes was what?

11 A. To see if I could get Sam's DNA.

12 Q. Were you able to do that?

13 A. No.

14 Q. Do you know during your whole testing phase, your
15 connection, let's put it that way, your connection
16 with the Sheppard Case how often Cynthia Cooper
17 called you?

18 A. Not very often. Maybe a couple times. Two or three
19 times. I recall that's all. And she came. She was
20 writing a book and she came I think. I remember --
21 I didn't read the book, but people told me. I think
22 she misquoted me, there, too. I don't know what she
23 said in the book.

24 Q. You don't know what she said but you know she
25 misquoted you?

1 A. Somebody told me. I didn't read it. Why even
2 bother to read it? But she probably misquoted the
3 way. Somebody told me something in the book.

4 Q. Who was that somebody who told you that?

5 A. I don't remember. Somebody called me. But the book
6 is probably there. I haven't read the book.

7 Q. Do you know what she misquoted you about?

8 A. She was talking about the probabilities and all the
9 calculations she did on her own. You know, I told
10 you today I don't do that.

11 Q. Is it your opinion she misquoted you or you think
12 she misquoted you?

13 A. If I read it. According to what somebody told me,
14 she misquoted it. If I confirm that, that's what it
15 is in the book. I know I didn't say it, so I didn't
16 care to read it.

17 Q. You have an item in your case notes that you
18 identified as Item 1-6-S. Can you tell me what that
19 is?

20 A. Let me read my notes.

21 Q. Maybe this is it.

22 A. 1-6-S. It's in my notes, yes.

23 Q. Do you remember what that item was you tested?

24 A. Maybe Sam's envelope. What does it say on the
25 notes?

1 Q. Looking at your notes I just handed you to review
2 that.

3 A. It's probably from those same envelopes.

4 Q. The envelopes that Cynthia Cooper sent you?

5 A. Yes. She sent me a bunch of those.

6 Q. Okay. You mentioned on Tahir Exhibit No. 1 on the
7 second page, the third paragraph from the bottom,
8 it's a one sentence paragraph discussing Item B-4-a,
9 as in apple, stain from porch. Do you recall
10 testing that?

11 A. Yes.

12 Q. And you list there that you got inconclusive
13 results. Do you remember what caused you to make
14 that statement in your report that the results were
15 inconclusive?

16 A. Yes.

17 Q. And can you tell me what that was?

18 A. Because there was a profile and it was a clean
19 profile, but there were no C and S Dots. So as a
20 result, I called it inconclusive.

21 Q. Do you have the photo documentation at your lab for
22 those tests?

23 A. Yes.

24 Q. Okay. In several portions throughout your notes you
25 have a line that says witness and then a person's

- 1 signature next to it.
- 2 A. Yes.
- 3 Q. Specifically I'm referring to your notes regarding
- 4 A-59-2, the vaginal smear.
- 5 A. Yes.
- 6 Q. You make mention of identifying two sperm and then
- 7 you say shown to CK?
- 8 A. Yes.
- 9 Q. Can you tell me who CK is?
- 10 A. I think, yes. Carol Kohlman. When I was looking in
- 11 the microscope she was looking in the microscope. I
- 12 said I saw something, and then she looked at it.
- 13 Q. What did she look at through the microscope?
- 14 A. Sperm.
- 15 Q. She identified the sperm without tails?
- 16 A. Yes. Same thing what I saw. She happened to be
- 17 there. Since I was not -- I was not expecting to
- 18 see sperm and she was like next checking. I said,
- 19 look at this sperm, and she looked at it and yes,
- 20 that's it. It was a surprise.
- 21 Q. Did she confirm that what you were seeing was sperm
- 22 heads without tails?
- 23 A. Yes.
- 24 Q. And can you spell her last name, please?
- 25 A. K-o-h-l-m-a-n.

- 1 Q. What is her role at the laboratory?
- 2 A. She's a scientist.
- 3 Q. What kind of scientist? A DNA scientist?
- 4 A. A serologist.
- 5 Q. A serologist?
- 6 A. Yes.
- 7 Q. She's still working at the lab?
- 8 A. Yes.
- 9 Q. Did she handle A-59-2 of that item?
- 10 A. No.
- 11 Q. Did she handle the other vaginal smear slide,
- 12 A-59-1?
- 13 A. No.
- 14 Q. On Tahir Exhibit 1, your first report, Item B-4-n,
- 15 you call it the hairs from the mattress of the death
- 16 bed (Marilyn Sheppard), then there's a profile
- 17 there.
- 18 A. Yes.
- 19 Q. In your notes it indicates that you actually
- 20 received B-4-n and then separated it into two
- 21 different parts, one that was blood and one that was
- 22 tissue/hair?
- 23 A. Yes.
- 24 Q. Which one of those items did you obtain a DNA result
- 25 from? Was it from the blood in B-4-n or tissue and

1 hair?

2 A. If I see my notes maybe -- I think my recollection
3 it's from the hair. There should be another sheet
4 where it will tell.

5 Q. Let me take that back from you and see if I can find
6 the other sheet that you're referring to. Would
7 that be in your case notes back at the laboratory
8 that you're referring to?

9 A. No. All the notes were given to you. I think it's
10 from the hairs, the roots.

11 Q. In your notes you mention an Item 25-E and you call
12 it a stamp and a flapper, and there are results in
13 your notes from your DNA testing on 25-E stamp but
14 they are not on either one of the reports. Can you
15 tell me that 25-E is?

16 A. The same envelopes that Cynthia Cooper sent me.

17 Q. Why didn't you place those on your report to Tahir
18 Exhibit 1 or 2?

19 A. Some of them I mentioned they were not clean
20 results. I just represented because it doesn't mean
21 anything even in this report. So that's why.

22 Q. So you didn't report them because the results were
23 not clean?

24 A. Yes.

25 Q. How about 24-E?

- 1 A. Same thing. Let me see it.
- 2 Q. I'm showing you your notes with the test results.
- 3 A. Every profile is every same way, everything is here.
- 4 Just put a couple here. It is not used in any
- 5 comparison.
- 6 Q. Did you not use these because they are not good
- 7 results?
- 8 A. No. No. None of them is good, even these are not
- 9 good. They're not used in any comparison.
- 10 Q. What do you mean by not good? Did the C control
- 11 dots not work, or what are you saying?
- 12 A. No. It has to be a clean profile for one person,
- 13 which saliva we are thinking somebody licked the
- 14 envelope like Sam. In this case it's not clean.
- 15 When it's not clean I can't use it as a standard.
- 16 None of them are good enough.
- 17 Q. Why did you decide to put Item 5-E-S on the report
- 18 when it's not a clean profile?
- 19 A. Just to show somebody I did. The rest of it is in
- 20 the notes.
- 21 Q. You chose not to do 24-E and 25-E?
- 22 A. Yes.
- 23 Q. These are stamps?
- 24 A. From Sam Sheppard wrote letters assumed.
- 25 Q. What do you mean assumed?

1 A. We think he wrote them. We don't know that he wrote
2 them.

3 Q. There's another item that appears in your notes that
4 you have labeled E-4-F. And the case notes that you
5 sent to us do not have even a xerox of the photo
6 documentation of those test results.

7 A. What are you referring to?

8 Q. Do you know where those are at?

9 A. Those are envelopes, stamped envelopes of Sam
10 Sheppard I mentioned earlier.

11 Q. Do you know where the photo documentation of those
12 test results are at? Are they in your lab
13 somewhere?

14 A. There should be another document there.

15 Q. Going along with that, there is also E-4-S which I
16 also see on that page. Would you have photo
17 documentation of that test that you ran on that
18 item?

19 A. There should be. Some of them may not have DNA so
20 I didn't follow. That's all it is. If there was
21 DNA, there should be documentation.

22 Q. Even if there wasn't DNA, there should be a blank
23 photo strip somewhere?

24 A. No. If I didn't get any DNA quantification, then I
25 wouldn't proceed further.

1 Q. I understand. There's an item in your report
2 A-59-3 that in your -- not in your report, in your
3 notes -- it's not in your report -- that you
4 identify as a tissue slide. And here's a
5 description of what you identify.

6 (Tahir Deposition Exhibit 5
7 marked for identification.)

8 Q. (BY MR. BOLAND) Dr. Tahir, handing you what's been
9 marked as Tahir Exhibit No. 5, can you please
10 identify what that is?

11 A. The tissue slide.

12 Q. I mean, what is the document itself?

13 A. It's a copy of my notes.

14 Q. From the Sam Sheppard Case testing?

15 A. Yes.

16 Q. Okay. And do you see on that --

17 MR. GILBERT: Let me ask you a
18 question here. Looks like there is other
19 writing on there. Can you identify the
20 other writing?

21 A. I don't know.

22 MR. MASON: Don't you think he should
23 be asking the questions?

24 MR. GILBERT: I hesitate to -- I have
25 to make an objection to an exhibit which is

1 not his completely. I think you need to
2 identify what's on there other than his
3 writing.

4 Q. (BY MR. BOLAND) Do you see writing on there that is
5 not part of your notes?

6 A. Yes.

7 Q. Can you identify what that is?

8 MR. GILBERT: Let the record reflect
9 there is other writing on there that
10 doesn't belong to Dr. Tahir.

11 Q. (BY MR. BOLAND) What is that other writing that
12 doesn't belong to you?

13 A. "What was wrong with slide." There's a note there.
14 "Bed sheet. 7-16-96" and something underneath.
15 Another line. "7-16-96. What other" -- Something
16 else. I can't read it.

17 Q. Other than that?

18 A. "Why did he" -- Something else.

19 Q. The rest of it, do you recognize that as your notes
20 other than those items you just described?

21 A. Yes.

22 Q. My question, Doctor, is do you see where it says
23 tissue slide A-59-3 at the bottom?

24 A. Yes.

25 Q. Is that your writing?

- 1 A. Yes.
- 2 Q. What was that slide?
- 3 A. It's a tissue slide probably from the autopsies, and
4 again --
- 5 Q. Whose tissue was that, if you know?
- 6 A. It was autopsy, which was Marilyn Sheppard autopsy
7 tissues.
- 8 Q. What did you do with that slide?
- 9 A. I tried to extract the DNA.
- 10 Q. Were you successful?
- 11 A. No.
- 12 Q. And you have the results of that?
- 13 A. No DNA results were there.
- 14 Q. Is that documented somewhere that you weren't able
15 to get the DNA results?
- 16 A. No results. Yes, it's documented.
- 17 Q. In your notes you have an Item B-4-G, green bag. Do
18 you recall that?
- 19 A. Yes.
- 20 Q. Do you recall if you tested that or not?
- 21 A. I think I did.
- 22 Q. And if you got results, would those -- If you did
23 get results, would that be in your case notes?
- 24 A. Yes.
- 25 Q. Okay. And do you still have all the photo

1 documentation of all the testing that was done in
2 this case?

3 A. Yes.

4 Q. Okay. And are you willing to provide that to us so
5 we can review that and have our experts review the
6 actual --

7 A. I think I sent you some of the photographs. Didn't
8 you receive those?

9 Q. I did receive some of the things you sent. I'm
10 saying every single photo strip, everything you did
11 on all the tests even the ones that came out blank
12 for example, are you willing to turn those over so
13 our experts can look at the actual photos other than
14 the xerox copies?

15 A. Yes. The other thing is your office has to pay for
16 the photographs, all of them, because I related to
17 the report that I sent. So it will cost. So you
18 probably have the bill for those. But I have to
19 take it to Kinko's and you'll have to pay for that.

20 MR. MASON: Not a problem.

21 A. Because our lab won't pay for it.

22 Q. (BY MR. BOLAND) Dr. Tahir, is there anything else
23 you know of that you received that can still be
24 tested, DNA tested?

25 A. I don't think. There are some other tissue slides.

1 That's all. Evidence stains, these are the only
2 evidence stains you can test against. To the best
3 of my knowledge, that's it.

4 Q. Were there a couple tissue slides that you received
5 that we can conduct tests on?

6 A. Those are in the Coroner's Office. I doubt you can
7 test those because of the tissue.

8 Q. Did you try to test those?

9 A. I tested those. They didn't work.

10 Q. All the things you tested, the ones we're going
11 through now in your report, where are all those
12 objects now?

13 A. They're all in the Coroner's Office.

14 Q. There's none in your lab?

15 A. No.

16 Q. Okay. While I'm looking for one other thing, one
17 other question. Going back to the issue of the
18 sperm that were found on those two slides, A-59-1
19 and A-59-2, are you qualified to talk about what
20 sperm cells or what sperm would look like if it was
21 recent intercourse or if it was two or three days
22 before death, et cetera? Is that something you've
23 ever testified about or are you qualified to testify
24 about?

25 A. No.

1 Q. So you can't say the sperm found on those slides
2 when it was deposited on or in the victim, you can't
3 say?

4 A. The only thing I can say is maximum sperm normally
5 last about 72 hours.

6 Q. Normally?

7 A. Yes.

8 Q. So there's a window of 72 hours anywhere in there is
9 when sperm could still show up in an autopsy in your
10 experience?

11 A. Yes. We see that. We are asked all the time in
12 sexual assault cases. We ask for if a person has a
13 consensual partner within 72 hours we like to have
14 standards from that person, too, to compare.

15 Q. All right. Have you ever testified before in a
16 trial either civil or criminal when the results you
17 were testifying about were mixed stains?

18 A. No, not in a civil trial.

19 Q. In a criminal trial have you done that?

20 A. Yes.

21 Q. And what kind of trial would that have been?

22 A. All kinds. Murders, sexual assaults, rapes,
23 burglary.

24 Q. Is that for the purpose of excluding or not
25 excluding a particular suspect, was that generally

1 what you were testifying about in those mixed stains
2 issues?

3 A. I would be saying that he's not excluded. Whatever.
4 Depends on what kind of profile. That's what it's
5 going to be because I do not give statistics.

6 Q. But you have testified about statistics before?

7 A. Not in mixed. In PCR mixed RFLP, sure, we will do
8 that. But PCR DQ Alpha, no.

9 Q. Okay. Looking at Item A-59-1 on Tahir Exhibit No.
10 1, we went through who could be excluded and could
11 not be excluded. Do you recall those series of
12 questions?

13 A. Which one?

14 Q. A-59-1 on Exhibit 1.

15 A. Okay.

16 Q. Can you explain to me your reaction to the fact that
17 Marilyn Sheppard cannot be excluded from A-59-1?

18 A. Because 1.1 and 1.3 are there. It came from her
19 vaginal slide. Is from her. If her profile is
20 there, I'm not going to exclude.

21 Q. Is she the contributor of 1.1 and 1.3 alleles in the
22 DQ Alpha in the A-59-1?

23 A. She could be.

24 Q. Could you say she definitely is the person?

25 A. I don't know. She could be.

1 Q. Could you say she is?

2 A. No.

3 Q. Okay. And so it's possible that she's the one that
4 put those two numbers there, would you say that's
5 fair to say?

6 A. Two alleles. Not items, two alleles.

7 (Recess taken.)

8 Q. (BY MR. BOLAND) Dr. Tahir, when we discussed items
9 A-59-1 and A-59-2 from Tahir Exhibit 1, the vaginal
10 smear slides, when you only put one under the
11 microscope, A-59-1, when you did that you weren't
12 able to see anything, is that correct, except red
13 stain?

14 A. Yes.

15 Q. That's because the Epithelial cells that were
16 stained covered up anything?

17 A. Yes.

18 Q. And anyone else who would have looked at that slide
19 would have seen the same thing, is what you're
20 saying? There is no special microscope or anything
21 that would have helped to observe the sperm you
22 later say you found? You wouldn't have seen sperm,
23 anyone that looked at that?

24 A. In my judgment, I don't think. If I looked at it I
25 would have said no sperm found.

1 Q. Okay. When you did the first testing on A-59-1 and
2 after the extraction discovered under the microscope
3 that you had two sperm heads that you identified,
4 and once you completed that testing, did you report
5 those results or note those results prior to testing
6 A-59-2, the other vaginal smear slide?

7 A. Report to who?

8 Q. In your notes. Did you write in your notes, okay,
9 I'm completed with A-59-1, here's the results,
10 before you went to A-59-2?

11 A. I think so. It should be in my notes. It should
12 be. Yes.

13 Q. Okay. Have you ever conducted a P30 test on either
14 one of those slides?

15 A. No. That's not appropriate.

16 Q. Did you do an acid Phosphatase test?

17 A. No. That's not appropriate, both tests.

18 Q. Can you describe what a P30 test is?

19 A. P30 is prosthetic specific antigen, which is an
20 antigen specific to the seminal fluid.

21 Q. Acid Phosphatase test?

22 A. Enzyme that is found abundantly in semen but other
23 body fluids do contain that, like second highest
24 concentration is vaginal secretions. That test is
25 not specific for sperm because of P30. P30 means

1 you have a swab taken, then you can do the P30.

2 Q. Okay. Have you made public comments on this case?

3 A. What do you mean public comments?

4 Q. To a newspaper reporter or television reporter.

5 A. Yes, I would have. Same thing. I couldn't exclude.

6 Somebody misquotes something, that's different.

7 What I say is he cannot be excluded.

8 Q. You made no other quotes other than using the phrase
9 not excluded or excluded?

10 A. No.

11 Q. Have you ever commented on the quality of the
12 evidence in this case?

13 MR. GILBERT: Comments to who?

14 Q. (BY MR. BOLAND) Newspaper, television, radio,
15 anywhere.

16 A. If someone would have asked, I would have said. But
17 I don't remember. The quality is old and degraded.

18 Q. And finally, Dr. Tahir, did Sam Sheppard kill his
19 wife?

20 MR. GILBERT: Objection.

21 MR. BOLAND: What is the basis for
22 that objection?

23 MR. GILBERT: He wasn't there.

24 MR. MASON: You can answer it.

25 A. Can I answer?

1 MR. GILBERT: Go ahead. If you know.

2 A. Could you say again the question?

3 Q. (BY MR. BOLAND) Did Sam Sheppard kill his wife?

4 A. I have no knowledge.

5 Q. Did Richard Eberling kill Marilyn Sheppard?

6 A. I have no knowledge about that.

7 Q. Do you know who killed Marilyn Sheppard?

8 A. I have no knowledge of that.

9 MR. BOLAND: I have no further
10 questions, Terry. Do you have anything?

11 MR. GILBERT: No. This deposition
12 will be typed up in a transcript and if you
13 want you can read it over before it's made
14 official. Would you want to read a copy of
15 it?

16 THE WITNESS: I would like to.

17 - - -

18 (Deposition concluded at 12:35 p.m.)

19 - - -

20

21

22

23

24

25

1 I have read the foregoing transcript of my deposition
2 taken on Monday, January 3rd, 2000, from page 1 to page
3 131 and note the following corrections:

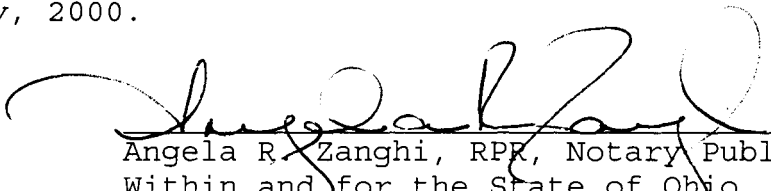
4
5 PAGE: LINE: CORRECTION: REASON:
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MOHAMMAD A. TAHIR, PH.D.

1 THE STATE OF OHIO,)
2) SS: CERTIFICATE
3 COUNTY OF CUYAHOGA.)

4 I, Angela R. Zanghi, a Notary Public within and
5 for the State of Ohio, duly commissioned and
6 qualified, do hereby certify that MOHAMMAD A. TAHIR,
7 PH.D. was by me, before the giving of his
8 deposition, first duly sworn to testify the truth,
9 the whole truth and nothing but the truth; that the
10 deposition as above set forth was reduced to writing
11 by me by means of Stenotype and was subsequently
12 transcribed into typewriting by means of
13 computer-aided transcription under my direction;
14 and that I am not a relative or attorney of either
15 party or otherwise interested in the event of this
16 action.

17 IN WITNESS WHEREOF, I hereunto set my hand and
18 seal of office at Cleveland, Ohio, this 10th day of
19 January, 2000.

20 
21 Angela R. Zanghi, RPR, Notary Public
22 Within and for the State of Ohio
23 1511 Terminal Tower
24 Cleveland, Ohio 44113
25

My Commission Expires: June 8, 2004.