

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

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UNITED STATES OF AMERICA :  
 :  
 v. : Criminal Action No.  
 : F320-00  
 ANTHONY JENKINS, :  
 :  
 Defendant. :  
-----X

Washington, D.C.  
Friday, February 17, 2006

The above-entitled action came on for a motions hearing before the Honorable RHONDA REID WINSTON, Associate Judge, in Courtroom Number 302, commencing at approximately 12:10 p.m.

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APPEARANCES:

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On behalf of the Defendant:

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**P R O C E E D I N G S**

THE DEPUTY CLERK: This is calling the matter of United States vs. Anthony Jenkins, F320-00.

THE COURT: Good afternoon. Would you all please identify yourselves?

MR. AMBROSINO: Michael Ambrosino for the United States, Your Honor. Good afternoon.

THE COURT: Good afternoon.

MR. UNGVARSKY: Good afternoon. Edward Ungvarsky on behalf of Raymond Jenkins. Mr. Jenkins has waived his presence for this hearing.

THE COURT: All right. We're here to discuss two issues. A issue concerning the defendant's request that certain items of evidence be turned over to it for additional DNA testing. And I really don't recall whether it was in writing or not, but somehow my chambers received information that the evidence had not been turned over and that you, Mr. Ambrinso, wanted to raise some other issue about it.

So, why don't we just start with that since we've sort of discussed that before?

MR. AMBROSINO: So Your Honor knows, the MPD has been accumulating the evidence to turn it over and I think it's together now. They have been awaiting an order from the Court.

THE COURT: Okay.

MR. AMBROSINO: There is one --

1 THE COURT: And there is a proposed order. Have you  
2 seen it that's been sent to the Court?

3 MR. AMBROSINO: I haven't and it was sent to me and I  
4 haven't had a chance to look at it yet. I've been consumed  
5 with a bunch of other things, but I will look at it today and I  
6 will fax it over to MPD as soon as it's signed.

7 Here's the issue. Oh, and there is a little side  
8 issue. As I told Mr. Ungvarsky, there are a couple pieces of  
9 -- a couple of prints that were not done at the Metropolitan  
10 Police Department. They were done at the Federal Bureau of  
11 Investigations. I think it was three pieces of evidence and  
12 I've been told by Mr. Ungvarsky with respect to the knife,  
13 pieces of evidence that they were also -- potentially contained  
14 blood didn't go to the MPD fingerprint section. They go to the  
15 Federal Bureau of Investigations. And one of those pieces was  
16 a pocketknife, which had blood all over it and so they were the  
17 ones that lifted the print from that.

18 Now, Mr. Ungvarsky has indicated that he's not  
19 interested in that piece of evidence, because the print was the  
20 victim's print on that knife.

21 There are, I think, two other articles of evidence.  
22 One is a \$20 bill and there is -- I know there's at least one  
23 other piece of evidence that was printed over there at the FBI.

24 THE COURT: A \$20 bill?

25 MR. AMBROSINO: There's a \$20 bill that was literally

1 right underneath the victim's body. It was found underneath  
2 the victim's body and I know that that was fingerprinted. And  
3 oh, yes, and there was another piece of evidence that went to  
4 the FBI and that was a Phillips head screwdriver that was  
5 recovered a few days later from the house.

6 Now, what MPD has told me is they didn't do the actual  
7 lifts. What happens is when the bureau performs that type of  
8 latent lift, they send a photo of it to MPD.

9 So, MPD has accumulated all these requested item  
10 numbers, but the actual original latent lift I'm in search of  
11 over at the FBI. I haven't gotten those yet.

12 THE COURT: Let me make sure I understand. Just with  
13 regard to those three or with --

14 MR. AMBROSINO: Two. It's only those two out of the  
15 three now.

16 THE COURT: Okay. He doesn't want the knife?

17 MR. AMBROSINO: The one from the knife they are not  
18 looking for. The rest have been accumulated.

19 THE COURT: Okay.

20 MR. AMBROSINO: They are in the latent fingerprint  
21 section. They are being gather together. I notified -- last  
22 Friday, I communicated with Commander LoJacono, who oversees  
23 the whole mobile crime unit, and I gave him the heads up on  
24 this because what he indicated was that they would have to  
25 figure out -- this hasn't happened in MPD where the Defense has

1 obtained latent fingerprints for DNA testing, so they are  
2 trying to figure out some protocol to preserve the evidence.

3 I know Your Honor had raised this issue the other day  
4 and they are just trying to deal with that. They are going to  
5 comply with the Court's order and produce this to the  
6 laboratory identified in the order in accordance with the  
7 Court's order.

8 But what they're trying to do is they are going to  
9 have to try and photograph -- at least have some type of record  
10 of these latent prints maintained in the file before they get  
11 turned over. So that's what they are trying to accomplish now.

12 The only remaining issue -- so there really aren't --  
13 that's all just logistical stuff.

14 THE COURT: May I interrupt you and ask you about two  
15 things?

16 MR. AMBROSINO: Yes.

17 THE COURT: What about the two items that are at the  
18 FBI Headquarters about -- which the request, I guess, has not  
19 been withdrawn, what about getting them to wherever -- if we  
20 get that far.

21 MR. AMBROSINO: I don't think that's going to be a  
22 problem, Your Honor.

23 THE COURT: Okay.

24 MR. AMBROSINO: I think what will happen is the order  
25 will just go directly to the FBI and the FBI will just have to

1 send it directly to the lab. It won't go to MPD and then to  
2 the lab.

3 THE COURT: All right. And I have one other --

4 MR. AMBROSINO: And I have a much greater confidence  
5 in the bureau's ability to track down evidence quickly.

6 THE COURT: All right. Well, let me just ask --

7 MR. AMBROSINO: So I don't think that will pose a  
8 problem.

9 THE COURT: I have another question that is not really  
10 related to this particular issue, but there was previously a  
11 request that information -- that evidence be submitted for  
12 testing.

13 And my question is whether or not these two remaining  
14 items that are now at the FBI, the \$20 bill and the Phillips  
15 head screwdriver, were those things that were subject to the  
16 previous request for testing or is this a part of something  
17 completely new?

18 MR. AMBROSINO: I don't have the old -- I don't have  
19 the formal order here. Mr. Ungvarsky would have to address  
20 that. I don't have -- I have a copy in my office of the prior  
21 order and I don't know where those previously went.

22 THE COURT: Okay. All right.

23 MR. AMBROSINO: I don't believe -- I mean, the  
24 screwdriver -- I know the latent lifts were not.

25 THE COURT: Okay. But --

1 MR. AMBROSINO: The screwdriver and the dollar bill  
2 may have been.

3 THE COURT: Okay.

4 MR. AMBROSINO: But I don't believe -- if my memory  
5 serves me correctly, Your Honor, we did not transport evidence.  
6 We transported biological material that was taken from evidence  
7 and Mr. Ungvarsky might be able to correct me on that.

8 THE COURT: Is that right?

9 MR. UNGVARSKY: That's my recollection as well.  
10 However, Mr. Flood was mostly handling that, so I can go back  
11 and check, but that is my recollection.

12 THE COURT: All right.

13 MR. AMBROSINO: Now, there was another issue raised  
14 and I think there are two other issues related to the  
15 independent testimony. One was Your Honor wanted the Defense  
16 to name the laboratory because we didn't know what laboratory  
17 was being used. I know that it was not accredited, but it was  
18 an outfit in California as I recall Mr. Ungvarsky stated. I'm  
19 assuming that they are identified in the proposed order. I  
20 haven't had an opportunity to look at it.

21 The other issue is -- the other issue is in their  
22 motion there was a sentence that referred to a new methodology  
23 and I didn't know what that meant and after consulting with  
24 some folks down in Quantico, I was told that there is this new  
25 methodology known as low copy.

1 THE COURT: Low copy?

2 MR. AMBROSINO: Low copy. That as part of the  
3 amplification process they do something known as low copy and  
4 that that procedure has not gained general acceptance yet in  
5 the scientific community although there are some labs  
6 -- my understanding is that there is one lab in New York that  
7 is attempting to get accredited with respect to that procedure,  
8 but we've already been told that's not the lab that the Defense  
9 is seeking to use here.

10 So I called -- actually, I sent an e-mail to Mr.  
11 Ungvarsky and he wrote back that they are not attempting to use  
12 that.

13 And so, if that's not the case, if there are no new  
14 methodologies or procedures that they are attempting to use  
15 here, then that's not a non-issue. I just wanted that to be  
16 very clear on the record.

17 Mr. Ungvarsky sent me back an e-mail just saying that  
18 they are using standard PCR, STR technology. And so, I just  
19 wanted that to be very clear on the record that we're not  
20 looking at any new methodologies and we're not going to be  
21 looking at a whole Frye process. Because my understanding is  
22 that has never been -- not only is it something that the FBI at  
23 this stage doesn't do but, for example, if a profile is  
24 developed utilizing low copy CODUS (phonetic sp.) won't even  
25 run it, because it's not generally accepted at this point in

1 time.

2 They won't even run the profile through CODUS because  
3 they don't accept the results from low copy.

4 So, I just wanted that to be -- but I think that issue  
5 has been resolved because I did get an e-mail back, so.

6 THE COURT: Okay. Well, then I have the order. Now,  
7 my question before signing the order regarding the other  
8 evidence is whether or not you believe that MPD -- because I  
9 thought I saw the date February 20th in this proposed order.  
10 Maybe I --

11 MR. UNGVARSKY: Page three.

12 THE COURT: And that must be --

13 MR. UNGVARSKY: Monday.

14 THE COURT: -- Monday. So, do you think that the MPD  
15 is going to have done -- taken the steps necessary to send this  
16 out on Monday? Maybe --

17 MR. AMBROSINO: I know that they have the evidence  
18 identified and put in one place. I haven't received an update.  
19 The last time I spoke with Commander LoJacono I believe was  
20 Tuesday. I haven't received an update on whether or not they  
21 photographed it. They've been aware of this.

22 The deadline I gave them was last Monday, because that  
23 was the deadline we had discussed in court and so that was the  
24 deadline. I had told them that we were overdue by Tuesday and  
25 so it's hard for me to know whether that's realistic, but it's

1 something that we're shooting for.

2 Mr. Ungvarsky had told me that was the date he was  
3 going to put in the new order, the new proposed date and that  
4 they -- the Defense, was able to work with that. And I had  
5 been telling MPD up until now that we're out of time and that  
6 needs to be done immediately.

7 THE COURT: Okay. All right. Well, what I suggest is  
8 since they've known about it and I understand their need to  
9 take pictures or whatever, but I'm going to change -- I think  
10 you sent this order via e-mail or something. So I think  
11 February 21st is probably a more realistic date because Monday  
12 is a holiday and all that.

13 MR. AMBROSINO: Oh, I forgot about that.

14 MR. UNGVARSKY: I had forgot about that too.

15 THE COURT: So, why don't we just make it the 21st and  
16 I will -- I'll just have it changed electronically and sign it  
17 and fax copies of the signed one to you all.

18 MR. UNGVARSKY: Very well, Your Honor.

19 THE COURT: All right.

20 MR. AMBROSINO: Your Honor, can I just get  
21 confirmation on the record from Mr. Ungvarsky that I'm not  
22 misunderstanding what we said?

23 THE COURT: Yes.

24 MR. AMBROSINO: That it's definitely just PCR, STR. I  
25 just want to make sure I'm not misunderstanding anything.

1 THE COURT: Well, yes. You have some --

2 MR. UNGVARSKY: Yes. It's PCR, STR. That's what the  
3 order says. It's not a low copy number.

4 THE COURT: Okay. All right.

5 MR. UNGVARSKY: Can I just polish off an IPA issue  
6 before we --

7 THE COURT: Yes, and that's really why I asked about  
8 these other pieces of evidence, because I don't know whether  
9 there's going to be some other waiver issue. I don't know. Go  
10 ahead.

11 MR. UNGVARSKY: I'd like us to not wait to see about  
12 those two items that the FBI printed. So, let's have MPD send  
13 what they've got.

14 MR. AMBROSINO: They would be sent separately so this  
15 will not -- the FBI issue will not impact the timing of the  
16 other articles going out.

17 THE COURT: Well, let me ask this though is this order  
18 --

19 MR. AMBROSINO: I'll send the same order to the FBI.

20 THE COURT: Okay. Let me just make sure that  
21 it --

22 MR. AMBROSINO: The FBI will honor it, Your Honor.

23 THE COURT: Even if they are not specifically named in  
24 here and I frankly don't have a recollection?

25 MR. UNGVARSKY: The FBI is not specifically named.

1 THE COURT: So, I don't want to get --

2 MR. AMBROSINO: Well, but they are being ordered to  
3 produce -- MPD is being ordered to produce the FBI Q numbers.

4 THE COURT: Okay. Well, this is what I'm going to do.  
5 I am going to send the -- do we have to send -- well, what do  
6 you all need back, just the signed order itself and that's it?

7 I see you have attached this evidence submission form.  
8 I don't think the Court -- that must be something that you all  
9 have to handle, right?

10 MR. UNGVARSKY: I did that, Your Honor, because of the  
11 independent lab. It's for chain of custody and the like. The  
12 independent lab requires it. So, it should go with -- it  
13 should go with the evidence when it goes to the lab. Mr.  
14 Ambrinso was provided a copy of it as well. Whether he has  
15 seen it or not, I don't know. What I am just going to do is  
16 I'm going to give him my service copy. It was stamped by the  
17 Court's Clerk's Office. I am going to give it to Mr. Ambrinso  
18 right now in court.

19 THE COURT: With the evidence submission form?

20 MR. UNGVARSKY: Yes.

21 THE COURT: All right.

22 MR. UNGVARSKY: It's got the evidence submission form  
23 attached, okay. It also has attached the suggestions by our  
24 lab on how to package things which are, you know, and I'm just  
25 going to give it to Mr. Ambrinso so that when he has MPD, you

1 know, send the materials to the lab in California, they can  
2 include in the box the signed order and the evidence submission  
3 form. Otherwise, what happens is the lab is like what is this  
4 stuff?

5 THE COURT: All right. I'll go ahead and we'll get  
6 this -- we can have the original to you all this afternoon, if  
7 you can have somebody come pick it up.

8 MR. UNGVARSKY: Yes.

9 MR. AMBROSINO: I'm just going to change the date on  
10 this, because this is what I'm going to send them.

11 THE COURT: All right. Now, the other issue though --  
12 I think that resolves all the issues about that and so I think  
13 we can move on to the discovery issue.

14 Did you say that -- did someone say that you had not  
15 gotten a copy? Did you get a copy of the Government's  
16 opposition?

17 MR. UNGVARSKY: I did. I got a copy of the opposition  
18 plus two attachments this morning.

19 THE COURT: Okay. All right. Looking at this  
20 declaration for Mr. Callahan regarding the time that it would  
21 take to produce the information, relevance aside for the  
22 moment, it looks like he's saying a minimum of, you know, four  
23 to six months.

24 So, if that's what he's saying, that is a problem  
25 because -- well, if that's what he's saying, I think that there

1 is a substantial timeliness issue and I'm prepared to deny the  
2 request on timeliness basis if that's what he's saying and it  
3 appears to be what he's saying.

4 MR. UNGVARSKY: If I can just respond to it? Okay.  
5 I'm talking about timeliness.

6 First, there's some suggestion in the pleading that we  
7 filed our discovery letter when we did either, A, to delay the  
8 trial.

9 THE COURT: You don't have to address that.

10 MR. UNGVARSKY: Okay. Mr. Jenkins and counsel want  
11 trial in March. We're ready to go.

12 Now, as to Mr. Callahan's affidavit, Mr. Callahan's  
13 affidavit is consistent with the initial representations that  
14 law enforcement was making in that Arizona data base search  
15 case. There in that case too when the discovery requests first  
16 came in, they gave these -- this really lengthy time that it  
17 would take to do the response.

18 And if I thought it was going to take four to six  
19 months then, you know, I would agree that, you know, it's  
20 problematic. It turns out though, you know, that we narrowly  
21 tailored our request just so it wouldn't take that long.

22 So, in the Arizona case, those were the initial  
23 statements and then it turned out that sworn testimony from the  
24 California -- the Arizona CODUS woman, excuse me, was that it  
25 would take approximately 30 seconds to search the Arizona data

1 base to sort of, you know, press the buttons so the data base  
2 is searched to come up with the number of coincidental matches  
3 at 9 to 13 loci.

4 Initially, they were talking, you know, some  
5 incredibly long period of time. She testified 30 seconds.  
6 Then the question was, well, when you do that, then how long  
7 will it take to go to those profiles and make sure that they  
8 are not duplicative?

9 THE COURT: Excuse me. Could you indulge me for one  
10 minute?

11 (Pause.)

12 (Thereupon, the Court and the Deputy Clerk conferred.)

13 THE COURT: All right.

14 MR. AMBROSINO: Excuse me, Your Honor. This is  
15 actually -- I'm not sure how he found me, but this is my mobile  
16 crime technician who has gathered the evidence.

17 THE COURT: All right. Great.

18 MR. AMBROSINO: I'm just giving him a copy of Your  
19 Honor's order. I know it's the unsigned copy, but just to get  
20 the ball rolling. He's going to have a copy of that.

21 THE COURT: All right. Great. Thank you, sir.

22 All right.

23 MR. UNGVARSKY: So it was 30 seconds to have the  
24 computer do the search to see, you know, to come up with these  
25 what are called pair wise comparisons and they are using 9 loci

1 of 13. And then she said it would take 15 to 30 minutes in  
2 order to review those that came up and determine which of those  
3 were duplicative of others.

4 Now --

5 THE COURT: What about the -- what about the profiles  
6 that were matches between siblings or relatives, I'll say?

7 MR. UNGVARSKY: I don't recall that she testified how  
8 long that would take.

9 In the Arizona case, she only looked for siblings at  
10 the matches of 11 and 12.

11 But because of that, we specifically put in our  
12 discovery letter and if it wasn't clear I'll make it clear now,  
13 we are not asking the FBI to determine siblings.

14 THE COURT: Well, I thought -- I mean, I may have  
15 misunderstood.

16 MR. UNGVARSKY: If it's --

17 THE COURT: Give me one moment, please.

18 MR. AMBROSINO: Your Honor, page two of their motion  
19 the issue is addressed.

20 THE COURT: In the B section of three it suggests that  
21 you wanted -- you wanted sibling matching profiles included and  
22 identified as such.

23 MR. UNGVARSKY: And what we say is, you know, if  
24 possible, if it's not, then we said that in the last sentence  
25 of the lead paragraph in paragraph three.

1           So, if the FBI sent -- so, we're still on page two.  
2           We're on paragraph -- I'm sorry. I'm looking in my motion.

3           THE COURT: I am too.

4           MR. UNGVARSKY: Page two, paragraph three.

5           THE COURT: No, I see it.

6           MR. UNGVARSKY: The matches listed in the report  
7           should, if possible --

8           THE COURT: Well --

9           MR. UNVARSKY: -- by automated means or previous  
10          sorting.

11          The Government has now come back and said they can't  
12          do it by automated means and they haven't done it by previous  
13          sorting. Fine. It's not possible.

14          We're therefore not asking them to go to the next step  
15          of determining which of those comparisons are relatives or not.  
16          We're not asking them to. All we're asking for is the number  
17          of -- is the number of coincidental matches related or  
18          unrelated at 9 loci or more which, in Arizona, the testimony  
19          was it would take -- the whole process would take, you know,  
20          less than an hour.

21          I understand the FBI data base is longer. It's  
22          larger. It's 3 million versus 65,000 so it will take the  
23          computer a little longer to do its initial sorting. And it  
24          might take, you know, a little longer to go and pull up each --  
25          you know, to do the -- to go to the next step and then, you

1 know, sort of put sort of the CODUS ID numbers next to them.  
2 But we're still not talking about four to six months work.  
3 We're talking --

4 THE COURT: Excuse me.

5 (Thereupon, the Court and the Deputy Clerk conferred.)

6 THE COURT: Yes, sir. Excuse me.

7 MR. UNGVARSKY: I think we're really talking about  
8 less than a days work and I think, you know, it's whether it's  
9 because -- and I think the FBI knows this actually, because  
10 they have been working with both the California and the Arizona  
11 labs with regard to that case throughout this entire process.

12 THE COURT: The FBI was involved in that case out  
13 there in Arizona?

14 MR. UNGVARSKY: Yes. This isn't some -- this isn't  
15 some out of the blue request that the FBI has never heard of  
16 before. There is actually -- any CODUS lab that gets a  
17 discovery request that relates to CODUS is required by a  
18 memorandum of understanding to immediately contact the FBI and  
19 tell them about it. And the FBI has been consulting with the  
20 Arizona and with the California labs.

21 Doctor Chocabordy (phonetic sp.) has testified in  
22 California on this request with regard to the California data  
23 base because there is an Arizona data base, right, and there's  
24 a California data base.

25 THE COURT: I know that.

1 MR. UNGVARSKY: The Arizona judge has ordered the  
2 report that you saw from Arizona.

3 In that same case, there's now litigation in  
4 California to get access to the California data base. And the  
5 FBI has been working with the California Department of Justice.  
6 Doctor Chocabordy has been out and testified.

7 So, this isn't some, you know, out of the blue, you  
8 know, request. It might be to Mr. Ambrinso. I'm not saying  
9 that Mr. Ambrinso was aware of this request before February  
10 21st, but it's not a time consuming request and it's not a new  
11 request.

12 THE COURT: Well, I'm just interested in your  
13 representation that the FBI was involved in the searches out  
14 there because I'd like to know in what respect.

15 MR. AMBROSINO: May I address that, Your Honor?

16 THE COURT: I'm going to hear you, Mr. Ambrinso. I  
17 know you've been waiting to get up but give me a minute. You  
18 may have a seat.

19 You're saying they were involved, involved in what  
20 way?

21 MR. UNGVARSKY: Well, they were involved -- I'm not  
22 saying that they were the ones who -- there were two data bases  
23 involved, the Arizona data base --

24 THE COURT: I know, California and Arizona.

25 MR. UNGVARSKY: It was California and Arizona who were

1 the people who were pressing the buttons and being asked to  
2 generate the reports. But the FBI was notified by those law  
3 enforcement authorities what was going on and the FBI was  
4 consulting with those law enforcement authorities as to their  
5 responses that they were making, you know, in objection to  
6 having this process be done.

7 THE COURT: And how do you know that?

8 MR. UNGVARSKY: I know that from representations by  
9 the Defense lawyer in both those cases. And I don't have that  
10 transcript from the proceedings but it was those  
11 representations that were made in court by law enforcement  
12 officials saying that they were, you know, working with the FBI  
13 on this matter.

14 THE COURT: Okay.

15 MR. UNGVARSKY: So --

16 THE COURT: Well, let me just hear from Mr. Ambrinso  
17 just on that for the time being. Then I have another question  
18 I wanted to ask you, Mr. Ambrinso.

19 MR. AMBROSINO: Your Honor, in the sense first of all,  
20 with respect to the involvement of the FBI, the FBI actually  
21 didn't even know about the whole business that was going on out  
22 in Arizona until it was done.

23 What happened was my understanding based on a meeting  
24 that I had with a number of officials from Quantico earlier in  
25 the week was that what happened was the Defense counsel sent a

1 subpoena to a person at the Arizona data base and that they  
2 just complied with the subpoena without conducting CODUS and  
3 without contacting the FBI. They just complied with it.

4 Now, my understanding from my meeting and my meeting  
5 did include the head of CODUS and I met with their general  
6 counsel and other individuals who intimately know the CODUS  
7 system and what it would take to try to respond to this  
8 request. Their system is not set up to key in the request as  
9 Mr. Ungvarsky has stated and simply do pair wise comparisons.  
10 Their software is not set up to do it and that's why they gave  
11 their best estimate somewhere between 120 and 180 days.

12 And by the way, Your Honor, that's tying up the CODUS  
13 system. That's taking CODUS out of the picture while they're  
14 doing that search for a number of months so a whole bunch of  
15 rapists and murderers are not going to be caught for that  
16 period of time while they are doing this search. They are not  
17 going to be able to utilize the software. It raises other  
18 questions about how their software is set up, but right now  
19 they are not set up to this. They are simply not set up to do  
20 it.

21 This is their best guesstimate on how fast and this is  
22 running their system 24-7. This estimate the head of CODUS  
23 gave -- the reason it was changed to 120 days is because it  
24 started at six months and the reason it thought it could be  
25 perhaps accomplished in 120 days is if they ran that system 24-

1 7, basically, took it out of commission.

2 Now --

3 THE COURT: Well, my next question is the discovery  
4 request was in two parts. Three, four, the matches and the  
5 CODUS --

6 MR. AMBROSINO: Duplicates?

7 THE COURT: No. No. The CODUS and DIS data base and  
8 then number four was for those in the Virginia data base.

9 And I guess my first question would be whether the FBI  
10 because of its association with all these state bases, are you  
11 saying that because they just don't have their system set up to  
12 do these kinds of comparisons they can't even call out the  
13 Virginia -- the information from the Virginia data base in the  
14 fashion requested?

15 MR. AMBROSINO: No, Your Honor. No. When they  
16 receive -- when they receive a profile, all they're receiving  
17 is the profile itself. They are not receiving individualized  
18 data about the person giving it. That's why they have no idea  
19 about duplicates and it gets very complicated. There's a lot  
20 of duplicates in the CODUS system, Your Honor. You're going to  
21 get a lot of matches even at 13 loci, because what happens is  
22 if somebody commits a crime in Virginia, they go in through  
23 Virginia. Their profile gets entered.

24 If they commit a crime in D.C., it gets in through  
25 D.C. And the reason why they don't call out these duplicates,

1 they purposely don't do this is that different systems have  
2 different criteria.

3 For example, somebody could be convicted of a crime in  
4 Virginia and later on it could be overturned. Their conviction  
5 could be overturned and they can be withdrawn from Virginia but  
6 they could still be a convicted felon from Washington, D.C. and  
7 so they're still in the CODUS system even though their entry  
8 from Virginia has been withdrawn.

9 Now, it gets even more complicated than that. What  
10 you have a lot of times is that inmates get housed across state  
11 lines. Their prison system may be overflowing and so the  
12 inmates will go from Nevada to Colorado. Colorado will enter  
13 those people into CODUS when they cross those state line. They  
14 now have convicted offenders in their jurisdiction and they  
15 enter them into CODUS. Don't ask me why they do this, Your  
16 Honor.

17 The point I'm making is again, it brings up a whole  
18 series of matches that are simply just duplicate entries. They  
19 have no way of calling those out, Your Honor.

20 THE COURT: Well, maybe I just -- maybe I'm just --  
21 maybe I never understood it. If I did, maybe I forgot it. But  
22 if they can do -- occult it through this trolling method, don't  
23 they have to have the profiles identified in some fashion so  
24 that there is some match done? I mean, they don't do it by --

25 MR. AMBROSINO: They can run one profile through, Your

1 Honor. That's what they'll have to do. They will have to run  
2 every profile through separately. That's how they do it.

3 So when they get a profile from a crime scene or a  
4 profile from Mr. Jenkins, they run that one profile through  
5 separately. That's how they have to do it and they can  
6 compare.

7 And just so Your Honor knows for the record, Mr.  
8 Jenkins' profile has been run through CODUS.

9 THE COURT: No, I saw that.

10 MR. AMBROSINO: And interestingly, I mean, I know Your  
11 Honor doesn't want to address relevancy right now. I  
12 understand that.

13 But, you know, one thing to please bear in mind is  
14 that even when they ran Mr. Jenkins' profile through at just 8  
15 loci for 100,000, it didn't hit a single person except for Mr.  
16 Jenkins.

17 This whole exercise, Your Honor, in our view, is  
18 completely irrelevant. These statistics are completely --  
19 these hits, these partial hits -- they are not matches, Your  
20 Honor, but these partial similarities in profiles, when you  
21 look at a full 13 are to be completely expected when you're  
22 looking at felon data bases and not general population  
23 statistics.

24 This is nothing out of the ordinary in the statistical  
25 community, Your Honor. This is to be expected. This is

1 nothing new in the statistical community. Folks like Bruce  
2 Weir, who the Defense has relied heavily upon, have written on  
3 this subject but it does not undermine --

4 (Thereupon, the Court and the Deputy Clerk conferred.)

5 MR. AMBROSINO: -- but it does not undermine the  
6 statistics being utilized in this case.

7 We stand by the declaration that was given by Mr.  
8 Callahan, Your Honor. This would shut down CODUS. And that  
9 time period, Your Honor, you has to remember, has nothing to do  
10 with calling out duplicate entries, siblings, twins; none of  
11 that.

12 The only way that can be accomplished is to go back to  
13 each and every -- not just state law enforcement agencies, you  
14 don't have to just go to all 50 states and the District of  
15 Columbia and territories, you have to go further than that.  
16 You have to go to every local law enforcement data base and  
17 then you would have to compare all those data bases against one  
18 another to see where there have been duplicate entries by the  
19 separate states.

20 This is an impossible task, Your Honor, and it would  
21 take months or years to accomplish it and that's without regard  
22 to what the relevancy is here.

23 If Your Honor has any inclination whatsoever, and I  
24 know that we don't have any inclination to grant this request,  
25 I would then ask to be heard on the relevancy issue. Because

1 our position, Your Honor, is there is absolutely no relevance  
2 on the statistics that are being given at trial here.

3 THE COURT: Mr. Ungvarsky, I know what you said about  
4 what the initial response was in the California and Arizona  
5 cases, but -- well, one more -- you may stay right where you  
6 are, but does the fact that the Defense is not now requesting  
7 information about the pair wise matches among or between  
8 relatives, does that change this at all or is the answer the  
9 same because of the way the system is set up?

10 MR. AMBROSINO: The answer -- well, it has absolutely  
11 no bearing on the initial search. It would affect the months  
12 and perhaps years down the road of various law enforcement  
13 agencies trying to call out the duplicates. They wouldn't be  
14 taking out or marking sibling entries but, Your Honor, all that  
15 would do is just make this data even more irrelevant.

16 The statistics that are calculated when the FBI takes  
17 a single DNA profile and they look at the 26 locations in the  
18 genome because when you look at 13 loci, you're really looking  
19 at 26 locations one from your mother, one from your father.

20 So, when you're looking at that little snapshot of the  
21 genome, they are looking at that particular profile. They are  
22 looking at that particular person and they're trying to  
23 estimate the frequencies at each of those locations.

24 THE COURT: Excuse me for one minute.

25 (Thereupon, the Court and the Deputy Clerk conferred.)

1 THE COURT: Counsel, I have another matter that I can  
2 handle very quickly. You all can stay where you are, but I'm  
3 just going to call another case so I can get them out of here.

4 (Thereupon, the proceedings were recessed.)

5 (Thereupon, the proceedings were reconvened.)

6 THE DEPUTY CLERK: All right. Returning to the matter  
7 of the United States vs. Anthony Jenkins, F320-00

8 MR. AMBROSINO: For the record, Michael Ambrosino for  
9 the United States, Your Honor.

10 THE COURT: Mr. Ungvarsky.

11 MR. UNGVARSKY: Edward Ungvarsky. Hello.

12 THE COURT: And the defendant's presence has been  
13 waived.

14 (Thereupon, the Court and the Deputy Clerk conferred.)

15 THE COURT: I apologize. All right. I think I had  
16 started asking about -- maybe I had already asked about the  
17 Virginia -- the ability to produce the Virginia information.

18 I tell you I hear you, Mr. Ungvarsky, about what the  
19 representations were in the Arizona and California cases but,  
20 you know, I have an affidavit from somebody in the -- Mr.  
21 Callahan, in the FBI who says he's the chief of the CODUS unit  
22 and that he's the NDIS custodian.

23 Now, regardless of which one of you is right, whether  
24 the FBI knew about the Arizona and California cases before it  
25 happened or after the information had been turned over to the

1 lawyers in Arizona, the FBI is aware apparently of what was  
2 involved.

3 And so if that's the case and they're saying their  
4 data base is not set up to do it that way, I don't know that I  
5 can go behind that in terms of accepting, you know, what he  
6 says about -- whether his data base is set up to do that kind  
7 of match and if it's not and it's going to take 120 days  
8 minimum, then I think it's something I'm going to deny because  
9 of the sheer amount of time.

10 MR. UNGVARSKY: I think that Mr. Callahan's affidavit  
11 does not precisely address it the same way that the questions  
12 were put to him.

13 I'll just tell the Court that, Your Honor, the  
14 software that they used in Arizona and California is provided  
15 to them by the FBI. It's the same software. The FBI has the  
16 software and they provide it to the cooperating agencies that  
17 use CODUS.

18 So, I don't see Mr. Callahan's affidavit directly  
19 addressing -- and I can give you, if you want, I'm happy to  
20 give you a transcript of the testimony from the Arizona  
21 hearing, but I don't see Mr. Callahan's affidavit directly -- I  
22 see his affidavit as being the same sort of initial proffer  
23 that was started in Arizona, but when put to them the question  
24 of how long would it take you to, you know, actually just run  
25 the search and the answer in Arizona was, well, it would take

1 30 seconds.

2 THE COURT: But if he's saying the system isn't even  
3 set up to do that kind of search, I mean, that seems fairly  
4 probative to the Court.

5 I'm sorry, but this is what I'm going to do. I am  
6 going to pass you all today or put you off until next week,  
7 because before I rule on timeliness then I think before I go  
8 off asking anybody to find anything else out from the FBI about  
9 what they can and can't do, maybe I do need to make a finding  
10 about the relevance, so that, you know, if I find that it's not  
11 relevant anyway, then the matter will be resolved.

12 But I've got a courtroom full of folks and I suspect  
13 this is going to take longer than the time I have now without  
14 making them wait longer than I'd like to.

15 (Thereupon, the Court and the Deputy Clerk conferred.)

16 THE COURT: If you want to try to come back at 2:45 or  
17 3:00, I'll hear you then.

18 MR. AMBROSINO: Your Honor, I can't. I'm sorry, Your  
19 Honor, but I am tied up in the afternoon out of the office. I  
20 can't come back. I'm not supposed to be on Tuesday, but I can  
21 come in on Tuesday, if Your Honor --

22 THE COURT: Tuesday is not working. It won't work. I  
23 could hear you on the relevance issue at 9:15 on Wednesday  
24 morning.

25 MR. UNGVARSKY: I'm happy to come in for that, but can

1 I make a suggestion?

2 THE COURT: Well, Thursday then. If Thursday is one  
3 of your days?

4 MR. UNGVARSKY: No, that wasn't going to be my  
5 suggestion. My suggestion is that Mr. Ambrosino between now  
6 and Monday afternoon we just both file short representations of  
7 why he thinks it's not relevant, why I think it is relevant and  
8 you rule on the papers.

9 THE COURT: But I think I've already -- do you have  
10 something else to add to what you filed in your opposition  
11 about why it's not relevant?

12 Because if you're standing on what you said in your  
13 opposition, then I'll just have counsel file something  
14 responsive to that.

15 MR. AMBROSINO: Let me just say this. If Your Honor  
16 has any inclination towards granting this, I need to be heard,  
17 because as I indicated already I met with a lot of high level  
18 people at the FBI.

19 An order of this magnitude would literally shut down  
20 the CODUS system for months on end and this is something where  
21 I don't want the Court ruling on the papers if the Court is  
22 going to be inclined -- has any inclination whatsoever to grant  
23 this request.

24 THE COURT: I was addressing the issue of relevance,  
25 because I'm not going -- I don't think frankly, that I would be

1 prepared to rule.

2 There might be some other questions that I have based  
3 on what counsel says is the fact that the FBI provides the  
4 software to the states and I don't even know what all that  
5 means.

6 But I can see that if I were to consider it relevant  
7 at all or more than minimally relevant, let me say it that way,  
8 I could see that there might be some more questions that I  
9 might want asked of the CODUS folk at the FBI about why  
10 somebody who uses their software is set up to do it and they  
11 can't.

12 So, I'm not going to rule on whether it can be  
13 produced or should be produced timeliness wise without hearing  
14 you, but I can rule on the relevance issue on the papers.

15 My question to you is whether do you have anything  
16 else that you want to say about the relevance? If you do, then  
17 you all can file cross pleadings.

18 MR. AMBROSINO: Your Honor, I'd ask to be heard on it  
19 on Wednesday. We filed our pleading, but I'd like an  
20 opportunity to be heard on it.

21 THE COURT: All right. Can you file something by  
22 Tuesday then, Mr. Ungvarsky?

23 MR. UNGVARSKY: And then we'll come in Wednesday  
24 morning?

25 THE COURT: Wednesday morning, 9:15.

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MR. UNGVARSKY: Sure.  
THE COURT: Thank you all.  
MR. UNGVARSKY: Thank you. Have a good day.  
MR. AMBROSINO: Thank you, Your Honor.  
(Thereupon, the hearing was concluded.)

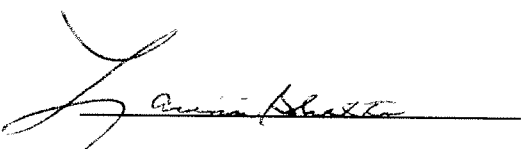
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**CERTIFICATE OF REPORTER**

I, LAVINIA SHELTON, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported in my official capacity, by machine shorthand and transcribed the sound recording, the proceedings had and testimony adduced in the case of the UNITED STATES OF AMERICA vs. ANTHONY JENKINS, Criminal Action No. F320-00, on the 17th day of February 2006.

I further certify that the foregoing 31 pages constitutes the official transcript of said proceedings as transcribed from said machine shorthand notes and audio recording.

In witness whereof, I have subscribed my name this the 24th day of February 2006.

  
Official Court Reporter