

Cynthia Sommer case deputy district attorney Laura Gunn responds to News 8's email questions from April 23, 2008:



1. Laurie Gunn is quoted in the AP:
"Gunn said one expert who analyzed the new results questioned the quality of the six-year-old samples, which had been preserved in paraffin wax."

Who is the expert questioning the quality of the paraffin wax samples?
Specifically, what types of quality problems were identified by the expert(s)?



A: The paraffin block samples were preserved in formalin prior to their preservation in paraffin. All parties (both the defense and the prosecution) were concerned that the use of a preservative (formalin, or any formaldehyde-type solution) could result in a false positive or could possibly result in a higher arsenic reading. Thus, the fresh samples (those that were flash-frozen and sent to AFIP) have always been regarded as the better samples. It is not unusual for testing to only be done on some representative samples in a case like this.



2. Could we please get a copy of the Weber report referenced in the Motion to Dismiss?



A: The report will be put out for Allen Bloom this week, if it hasn't been already.



3. Is DNA testing being performed on the paraffin samples?



A: Yes.



4. Who told Naval Medical Center San Diego (NMCS D) not to destroy the paraffin samples?



A: NMCS D called me after the trial to remind me that there were still formalin-preserved tissues at Balboa and asking whether they could destroy the tissues now that the trial was over. I asked Balboa not to destroy anything because there was a new trial motion pending and an appeal would be filed later. They agreed not to destroy anything.



5. News 8 has obtained a copy of the "Special Attention" retention letter (attached). Is it correct, as it says in the letter, that "The enclosed materials for the above case were discussed in August 2007 with the San Diego County Deputy Prosecutor, Ms. Laura Gunn." What is your response to this statement in the attached letter?



A: The discussion referenced in that memorandum is the discussion in my answer to #4. I don't recall any other conversations with anyone from Balboa in 2007.



6. Specifically, when did Laura Gunn find out about the existence of the paraffin samples at NMCSA?



A: Actually, all sides (both the defense and the prosecution) had an evidence list prepared by NCIS in December 2005 (and provided to the defense in March 2006, when Ms. Sommer arrived in San Diego) that referenced the paraffin block samples. AFIP had the "fresh" (i.e. not preserved in anything) samples, which were the ones used for testing throughout the case. In March 2008, investigators went to Balboa Naval Hospital to follow up on an issue raised by Dr. Weber. The investigators noted that in addition to the tissue samples that were still in formalin, there were also tissue samples in paraffin still at Balboa. Neither group of tissues had ever been tested.



7. What motivated the DA's office to test the paraffin samples? Did the motivation come from the defense motion of May 2007, or the defense follow-up letter of Feb. 2008? Or, was it some other factor that led to the testing of the paraffin samples?



A: We decided to test the paraffin samples after speaking to Dr. Kosnett and Dr. Weber. To clarify: Allen Bloom's February 2008 letter is more specifically geared toward chain of custody documentation. NCIS requested "all documents relevant to the pathology of Sgt. Sommer to include any chain of custody documents associated with the samples obtained at autopsy" from Balboa Naval Hospital in May 2007. Balboa turned over 31 pages in response, which were put out in discovery.

In fairness to the defendant, we carefully evaluated the newly-submitted reports about arsenic testing by the defense and the testimony of the defense witnesses. In doing so, we consulted with new experts of our own without regard to the expense. We did all this in an abundance of caution and because it's our job to pursue the truth. Based upon concerns raised by the new experts, we continued our search for answers. We immediately sent those additional samples to be tested by a new lab and a new expert in Canada both recognized as the "gold standard" for this kind of analysis.

Mr. Bloom's 2007 discovery motion requested "Access to all of the body tissues, fluids, or microscopic slides taken from decedent Todd Sommer taken before, after, or at the time of his autopsy which are still in possession of the United States Navy, including all tissues that Dr. Robinson stated that he caused to be preserved and kept, so that they can be viewed and/or examined microscopically." The defense always has access to tissues, fluids, and slides as requested. I discussed this item with Mr. Bloom and pointed out that the state of the evidence at trial was that there were no significant microscopic findings. It was my understanding that he decided to shelve this request until another time. However, he had the same evidence list that I did regarding what remained at Balboa, and was certainly welcome to make arrangements to have his experts view the evidence, as defense experts are entitled to do in any criminal matter.



8. Is it still your assertion that Bonnie Dumanis misspoke during her April 17th news conference when she said, "There were some samples that were preserved for additional work. We weren't aware of those until just recently, and as soon as we became aware of those, those were the ones we took to test."?



A: Yes, DA Dumanis misspoke. The information about no arsenic was new to us, but not the existence of additional samples. A more accurate statement would be that the samples had never been tested. They had been noted on an inventory by NCIS previously, but both the prosecution and the defense focused on the fresh/frozen tissues that were at AFIP. When we realized that there were tissues that had never been tested, and that had not been sitting in formalin for 6 years, we sent them off to be tested as soon as we could.



Follow-up question asked by News 8 under separate email, after the previous questions were asked and answered:

Here is a quote from Laura Gunn in court, on the record and on camera, from April 17, 2008. Did Laura Gunn misspeak when she made this remark before Judge Einhorn?

Gunn: "I did not play games. I did not hide evidence. I was told repeatedly that we have two kinds of evidence in this case: the frozen and the formaldehyde evidence. I did not learn until March 20th that there was this set of evidence in paraffin, and when we learned we acted immediately."



Response from DA spokesperson:

The statement is accurate, with the exception of the last sentence. Ms. Gunn misspoke, since both the defense and the prosecution have known about all the preserved samples for years.