Witness: Steven Howard Gebler

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Called by: Defense

Phase: Guilt

Examinations: Direct – Mark Geragos; Cross – David Harris; Redirect – Mark Geragos; Recross – David Harris

Day 1 of 1 for this witness

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Direct Examination by Mark Geragos

GERAGOS: Mr. Gebler, good morning. Could you tell the jury what it is you do for a living.

GEBLER: I evaluate, I evaluate concrete, concrete components or the ingredients that go into concrete. I determine why concrete behaves as it does, why it doesn't crack or why does it spall. I investigate different construction-related problems dealing with concrete. And how they, how a contractor may have misused the concrete or a concrete structure may have been overloaded. I've done, I do mixed designs for concrete. I've evaluated numerous, numerous structures over the years involving various forms of concrete.

GERAGOS: Are you licensed in any capacity?

GEBLER: Yes. I have a, I'm a registered engineer in California and Illinois and a number of other states. And also in British Columbia, as well as Manitoba.

GERAGOS: Okay. Who are you currently employed with?

GEBLER: Construction Technology Laboratories.

GERAGOS: What is Construction Technology Laboratories?

GEBLER: We at the Construction Technology Laboratories, or CTL as it's been called before, conduct investigations of inspections into why concrete behaves such as it does. We evaluate structures to see if they are overloaded from the standpoint of having more stress on it than is, than the concrete can handle. We have laboratories to evaluate the concrete. And we have a number of structural engineers, and we do a lot of consulting along with the laboratory testing.

GERAGOS: Do you have professional affiliations that deal with concrete?

GEBLER: Yes. I'm a member of the American Concrete Institute. And I serve on a number of committees. And I'm also a member of the American Society of Civil Engineers and the American Society for Testing and Materials.

GERAGOS: Have you published articles on investigating concrete issues?

GEBLER: Yes. Around 40 or so.

GERAGOS: 40 publications?

GEBLER: 41 to be exact.

GERAGOS: Have you qualified as an expert in either state or federal court as an expert in cement materials?

GEBLER: In concrete.

JUDGE: Concrete.

GERAGOS: Concrete. Thank you. They keep telling us. Concrete materials.

GEBLER: Yes, I have. As well as cement.

GERAGOS: Did you ever go to the University of Concrete? What is the University of Concrete?

GEBLER: I read Mr. O'Neill's testimony, and Mr. O'Neill had previously worked for the, with the Portland Cement Associates. The Portland Cement Associates is a trade association dealing with wanting to sell more cement, and the way to do that is sell more concrete. And we have done a lot of research and investigations for the Portland Cement Association. The Construction Technology Laboratories is a wholly owned subsidiary of the Portland Cement Association. When I began to work at CTL, at that time we were the vision of the Portland Cement Association and we did most of their research. And as Mr. O'Neill pointed out, it's the place where many, many people in the industry have gained knowledge and have worked in. And so I, I was, it was interesting use of his, coined the term University of Concrete. And I'm still there. I've been there for 25 years now.

GERAGOS: Okay. I don't know if I cut you off. Did you say you have qualified as an expert in concrete approximately how many times?

GEBLER: 15 times in court.

GERAGOS: Okay. I would offer him as an expert.

JUDGE: Any, any cross on his qualifications?

HARRIS: Submit on that.

JUDGE: All right. Ladies and gentlemen of the jury, based upon the qualifications of Mr. Gebler, the court will accept Mr. Gebler as an expert in the field of concrete and he's qualified to give an opinion in relation thereto.

GERAGOS: Now, you're aware, I guess, of the testimony of Mr. O'Neill, correct?

GEBLER: Yes.

GERAGOS: And you're aware of the testimony of Mr. Jensen as it refers to the samples that were collected, correct?

GEBLER: That is correct.

GERAGOS: Okay. Now, you have a bunch of bags sitting down there that was marked as Defendant's 8 I. Can you tell the jury what this represents?

GEBLER: Concrete.

GERAGOS: Okay.

GEBLER: And it's the samples that Mr. Jensen had sent to us at CTL. And I examined them before they were sent to us. And some of these samples were the ones I collected, as well, on September 27th, this year.

GERAGOS: Okay. Now, when you say September 27th, I, you were contacted sometime in September by somebody from my office?

GEBLER: Yes. About a week before that.

GERAGOS: Okay. And when you were contacted, you were asked to conduct an investigation; is that correct?

GEBLER: Yes.

GERAGOS: And the investigation was to determine whether or not the samples that had been taken from the anchor and from the truck bed and from the debris from the boat cover were consistent or inconsistent with the samples taken from the side of the driveway; is that correct?

GEBLER: Yes, sir.

GERAGOS: Okay. Now, what was the first thing that you did in order to conduct that investigation?

GEBLER: Well, the first thing I did was I got a copy of Mr. O'Neill's testimony, and I think also some of his report, I think all four of his reports were ultimately sent to me. Then, upon coming here on the 27th, I looked at various specimens, the samples that you mentioned, in I think the jury room, without the jury being there. And then,

GERAGOS: So physically here in the courthouse you went and examined those exhibits?

GEBLER: That is correct.

GERAGOS: Okay. That would have been the, the item, I think it's Exhibit 80, but it's referred to as item 60 in the report, which would have been something supposedly taken from the side of the driveway; is that correct?

GEBLER: Yeah, I think it's labeled as debris from the Peterson yard.

GERAGOS: Okay. That would have been this item that I have in my hand; is that correct?

GEBLER: Yes, sir.

GERAGOS: Okay. And you looked at that again this morning; is that right?

GEBLER: Yes, sir.

GERAGOS: Okay. And then after you took a look at this, you also looked at the anchor; is that correct? Did you take a look at the anchor when you were in the jury room?

GEBLER: Yes. Back on the 27th.

GERAGOS: Okay. And then at some point did you accompany Mr. Jensen out to the house at 523 Covena?

GEBLER: Yes, that morning.

GERAGOS: That morning. So you went to Modesto. When you went to Modesto, did you take any samples yourself?

GEBLER: Yes, I took two samples from the area that was on the side of the Peterson driveway.

GERAGOS: Okay. You produced or your company produced a report; is that correct?

GEBLER: Yes.

GERAGOS: Are any of the samples in the report the samples that you took?

GEBLER: Yes. Samples 1 and sample 2, and we also, I also took a, a soil sample, samples 3 and 4, which was not soil but it was, after I took up the pieces, there was some gravel and material that is shown in 3. And 4 as well.

GERAGOS: Let me put this on, on this so they can see it. I'm going to, I'll mark the pictures as the defendant's next in order.

JUDGE: Okay. 8 I.

CLERK: K.

JUDGE: I beg your pardon. K.

GERAGOS: The first sample that you took here is sample 1. And why are there two pictures?

GEBLER: Well, the top sample is, or the one above.

GERAGOS: This one?

GEBLER: That one is the concrete as you would see it in the ground.

GERAGOS: So when, if I'm standing above or on the driveway, I'm looking down on the ground, this is the view that I'm going to see?

GEBLER: Yes, when you clean off all the, the leaves and stuff like that.

GERAGOS: Okay. And then I assume that you flip it over and this is what you see?

GEBLER: That's correct.

GERAGOS: Okay. It appears to be a difference. Why is that?

GEBLER: I'm sorry?

GERAGOS: There appears to be a difference in the look of them. Why is that?

GEBLER: Well, what you're seeing on the bottom is the gravel that's the underlaying, or, so to speak, the sub-base that happened to be there; the substrate that was there. And then that, the pea gravel concrete was placed on top of that gravel.

GERAGOS: You talk about pea gravel concrete. Is that what this looks like right here that I'm showing you?

GEBLER: Those little irregular shaped particles are the pea gravel.

GERAGOS: Okay. The pea gravel, I've learned more about cement and concrete than I ever want to know.

GEBLER: Oh, we can teach you some more.

GERAGOS: No. Concrete, if it's pea gravel means that it's less than three eighths of an inch, right?

GEBLER: It's in that realm of around three eighths of an inch and less.

GERAGOS: So if we look at this, even though I've got it blown up to the size of New Jersey up here, these small little pieces of gravel are generally three eighths of an inch or less, correct?

GEBLER: Correct. As part of the coarse aggregate.

GERAGOS: Then, coarse aggregate's just a term you guys use for rock, right?

GEBLER: No, it's just a bigger size.

GERAGOS: Okay. Then this size underneath has got larger rock; is that correct? Or, I'm sorry, larger aggregate?

GEBLER: That's correct.

GERAGOS: And the larger aggregate is generally what size?

GEBLER: In this case it's around three quarters of an inch.

GERAGOS: All right. Now, as you did that, so you took that sample. Did you also take, did you say, sample number 2?

GEBLER: Yes.

GERAGOS: Okay. What, what's that?

JUDGE: Wait. You want to mark this differently?

GERAGOS: It's the same group of pictures. I think I'll just move, he's got a series of color pictures.

JUDGE: Let's mark them then, just so the record doesn't get messed up. This is 8 K. The one you just showed, the top and the bottom view, will be 8 K 1. This will be 8 K 2.

GERAGOS: Okay. Specifically let me zoom back out. What's this? What am I looking at?

GEBLER: Sample 2 is the top of the other sample that I had taken when I was out at the Peterson property.

GERAGOS: Okay. Now, again, is this the top, does that appear to be pea gravel?

GEBLER: It doesn't appear to be; it is.

GERAGOS: It is pea gravel?

GEBLER: Oh, yeah.

GERAGOS: Okay. And then what did you do here? What is the top portion of this, the side view?

GEBLER: That's, that's from sample 1. And it's just a side section of the sample.

GERAGOS: Okay. The hotel let me borrow something this morning so that I could put one of these things on it. Do you have one of those samples? And this is a sample that was picked up from the 523 Covena house; is that correct?

GEBLER: Part of it is. There's more stuff in here, if you want it all.

GERAGOS: Without, I don't want to belabor this with the jury, but you saw the pictures that we were showing the jury with Mr. Jensen; is that correct?

GEBLER: Sure.

GERAGOS: Okay. Is that the area, the general area where you specifically picked up these portions?

GEBLER: Generally in the middle vicinity is where I picked them up.

GERAGOS: Okay. Now, what, what have you got here?

GEBLER: Well, this is the pea gravel that we were talking about. Right over here is, has, it's protruding from this base around it.

HARRIS: Could I get counsel to step back, because I can't see what the witness is --

GERAGOS: I was just trying to hold the thing so it doesn't make too big of a mess.

GEBLER: And over here now, this is the bottom, and you can see how the rock is just laying there and,

GERAGOS: Well, can we, would it be okay, Judge, if I just pass this around to the jury so they can turn it over?

JUDGE: Do you have any objection?

HARRIS: No objection.

JUDGE: All right. Then, okay. I hope it's not too heavy. You can pass it among yourselves. And we'll admit then, it's number 8 I.

GERAGOS: Okay.

JUDGE: We'll admit that in evidence then.

GERAGOS: Now, if I understand correct, as they're looking at it, you then take and cut a piece. If that were meatloaf, you would take a slice, right?

GEBLER: Actually, first we had to, because it was very friable, we used epoxy in it to hold it together, and then it was cut.

GERAGOS: Okay. And that's what this represents that I've got in my hand; is that correct?

GEBLER: Right. And then you can in our, in our report, towards the end of the report we have a closeup of that,

GERAGOS: Well, let me,

GEBLER: piece.

GERAGOS: just show it for a second. This is a side, another side view of that same piece of concrete that was picked up; is that right?

GEBLER: That's correct.

GERAGOS: Okay. And then when you have this side view, if I understand correctly from when you've discussed it with me, this right here, this area that I've got my hand on, is pea gravel; is that correct?

GEBLER: That's the pea gravel concrete.

GERAGOS: Okay. So this is the pea gravel concrete. And it does not appear to have these larger coarse aggregate stones mixed in with it; is that correct?

GEBLER: That is correct. Because it was laying on top of it.

GERAGOS: Okay. Now, when you saw it was laying on top of it, you've got 11 samples, correct?

GEBLER: Oh, actually, actually we have my two and then the conglomeration of Mr. Jensen's.

GERAGOS: Okay. Now, when the jury is taking a look at the item that's there, do you have an opinion as to, or let me give you a hypothetical. If somebody were to take a used bag of, is it concrete or cement? Cement when it's in the bag, right?

GEBLER: No.

GERAGOS: No?

GEBLER: Cement is one of the ingredients.

GERAGOS: Okay. Take the bag of the type of,

GEBLER: Quick-Rete or like Sackrete.

GERAGOS: Sackrete, something like that?

GEBLER: Right.

GERAGOS: If there was gravel on the ground, that was coarse aggregate like that, and if you poured it on the ground, okay? In an area, and if the rain hits it, what would you expect to see?

GEBLER: Exactly what we have here.

GERAGOS: And why is that?

GEBLER: Well, the surface, if you look very closely at the surface, the top surface, you can see it's eroded where the pea gravel is protruding. And the rain, and if it's not properly mixed, which this isn't properly mixed, then the rainwater, over time, washed away the surface, and then you're left with the pea gravel protruding. Eventually some of the rainwater eventually permeated into that concrete.

GERAGOS: Is that an explanation for why you have kind of this uneven top surface?

GEBLER: Right. We have a actually much better example of how that got eroded.

GERAGOS: Where is that?

GEBLER: Over here.

GERAGOS: Okay.

JUDGE: Mr. Geragos, the clerk is having a problem with whether or not you want to mark each piece as it's being shown here, or are these going to be --

GERAGOS: No, these are all the contents I have --

JUDGE: Do you want the group exhibit as 8?

GERAGOS: D 8 I.

JUDGE: D 8 I. Okay. So we're not going to mark each individual piece.

HARRIS: You're Honor, at this point --

JUDGE: Mark it as a group exhibit.

HARRIS: Just for record purposes, because they're coming out of bags, if they just identify it by the identifying information on the bag, that should make it clear.

JUDGE: So you want to identify the first one we showed the jury? What bag did it come out of?

GEBLER: It was my sample number 1.

JUDGE: It was your sample number 1?

GERAGOS: What was the bag number?

GEBLER: We didn't put a number on it because it was my sample, and they're at CTL 1. You know, concrete sample.

JUDGE: They didn't mark the bag.

GERAGOS: But they did --

JUDGE: I tell you what, we can mark the bags now. Let's mark that, let's mark that bag as,

GERAGOS: Why don't we make it 12. We've got 1 through 11, correct?

JUDGE: Okay. Mark that 12 then. Get, Mr. Geragos, will you give it to Marylin so she doesn't get distracted. The bag. Would you give her the bag.

GERAGOS: Yes.

CLERK: Is that 12?

JUDGE: 12. We're marking the bag 12. It's not, it's part of the, part of the 8 I. There was 11 bags. This is the 12th bag.

GERAGOS: Now, you pulled out another piece. What's that?

GEBLER: This one, this one is one of the, Mr. Jensen's samples. We called his item 4.

GERAGOS: Okay.

GEBLER: And this comes from this bag, item 4, number 3.

GERAGOS: Okay. Now, you said that this was a better example of what the, why you saw this erosion. Why do you say that?

GEBLER: Well, again, if you look at the, maybe he wants to see that.

GERAGOS: I'm sorry, I was standing in the way.

GEBLER: The top surface, you can actually see how you have depressions going in. And you have, again, the protruding aggregate. And for that to happen, that concrete at the, or the paste, which is the binder around the rock and the sand, had to be pretty weak for this to occur.

GERAGOS: Okay. And is there any conclusion that you can draw, you know, I gave you that example of somebody poured it on top of where there's aggregate or where there's the gravel, what I call gravel. Are there reasons that you come to the conclusion that this is exactly what you would see?

GEBLER: Yes.

GERAGOS: And what, what are those?

GEBLER: Well, the fact is that, besides my own observations, the petrographer found and, that the surface through that concrete, this, and into the concrete was soft.

GERAGOS: What is that, now, you said petrographer. So besides you, there also was a petrographer at CTL who analyzes this as well?

GEBLER: Yes.

GERAGOS: And you have him analyze it to what end? Why do you have him take a look at it?

GEBLER: Well, it helps define what the material is. You, you saw the cross section, so this is a normal process that we do to investigate what those materials are.

GERAGOS: Okay. And when you did that investigation, what did you find?

GEBLER: That the surface of the concrete was soft and the concrete was carbonated all the way through.

GERAGOS: What, when you say it's carbonated, what you mean?

GEBLER: Well, there's carbon dioxide in the air, there's carbon dioxide in water. And there's, one of the hydration products of concrete is calcium hydroxide. When calcium hydroxide combines with the CO 2, it produces calcium carbonate. And for that to, for that to occur, the carbonation all the way through the concrete, it has to take an awful long time. It's a very slow process.

GERAGOS: Does that mean that you can, well, I guess, I'm not going to say "estimate," but can you determine how old this, these samples are that you have got?

GEBLER: Yeah. These concretes are at least a year old.

GERAGOS: Okay. And the concretes that are here, are all of them, I'm not going to have you pull out every single bag, but I assume you've looked at all of them; is that correct?

GEBLER: Sure.

GERAGOS: And as you look at all of them, do they all have this same general coarse aggregate on the bottom and pea gravel on the top?

GEBLER: Yes.

GERAGOS: Okay. Now, when you take a look at this, and then you've also examined what was previously marked as the anchor in this case, I forgot what the number was, right?

GEBLER: Yes.

GERAGOS: Okay. You looked at the anchor, you looked at the 60; is that correct?

GEBLER: Yes.

GERAGOS: Okay. You looked at the debris from the truck bed, I think, correct?

GEBLER: Trailer bed? Truck bed?

GERAGOS: Truck bed.

GEBLER: Yeah. Okay.

GERAGOS: Okay. Now, you also saw that there was a report from the petrographer, Mr. O'Neill, in which he identified the components of all of these specimens, correct?

GEBLER: Yes, sir.

GERAGOS: The anchor, what was found in the side, what was on the debris. Were all of those the same?

GEBLER: Yes. In our sample we found fly ash, cement, pea gravel and sand, similar to what was described by Mr. O'Neill.

GERAGOS: Does that mean that the cement that was used in the anchor and the cement that you've collected here and the cement sample that you also observed, does that mean that they all are one and the same?

GEBLER: They're all consistent. They all have, they all have all, from what I saw, the, the, the anchor and these materials are consistent with each other.

GERAGOS: What does that mean?

GEBLER: With the concrete.

GERAGOS: You say they're consistent. Does that mean they have all the same components?

GEBLER: Yes, sir.

GERAGOS: And the only difference that would be, if I understand correct, between the anchor, what was in the truck bed, if it was the truck bed, the boat debris or anything else, is the, the coarse aggregate on the bottom of these samples, the, the heavier rock?

GEBLER: Yes.

GERAGOS: Okay. When I say heavier,

GEBLER: You mean bigger.

GERAGOS: The bigger rock, correct?

GEBLER: Yes.

GERAGOS: Okay. Is that consistent throughout these samples?

GEBLER: Every one of them.

GERAGOS: Okay. And is it consistent throughout the samples that they all have this same kind of what I all surface of the moon look here?

GEBLER: No, they all have that, but not as deep as this one, but they've all have, to varying degrees, the same type of texture.

GERAGOS: So as you sit here today, is it a, do you have any doubt that the, as to how this would have occurred, this type of sample would have been created?

GEBLER: None.

GERAGOS: How is that?

GEBLER: It appears that it was placed down from the bag, from, from a material containing cement, sand, pea gravel, and fly ash in it, as a pre-bagged material, and just placed down on the gravel, and rain water and moisture did the rest of the hardening.

GERAGOS: Okay. And the, is there, I've asked you this before with some of these other samples. Is the fact that the, why is it significant that we see a difference between the top surface of

sample 1, for instance, and the bottom surface of sample 2 (sic)? Why is that significant?

GEBLER: Oh, the fact is that the three quarter inch rock was there as a sub-base or substrate in which then the pea gravel concrete was just placed on top of that.

GERAGOS: Is there any difference between the cement, or I'm sorry, the concrete at the house and the concrete that's at, that's contained in the anchor or the concrete that was on the boat cover?

GEBLER: Based on Mr. O'Neill's examination and our own, there isn't.

GERAGOS: There is no difference?

GEBLER: Right.

GERAGOS: Is there further testing that could actually be done to fingerprint, if you will, the cement?

GEBLER: Yeah. The cement itself.

GERAGOS: The cement itself. And does that cost more money?

GEBLER: Oh, yeah.

GERAGOS: Okay. And what, what can you do to further fingerprint?

GEBLER: Well, what you can do is, at times not all the cement particles, the paste, will get totally hydrated. So you can actually go in and find unhydrated Portland cement particles.

GERAGOS: What is unhydrated, unhydrated means,

GEBLER: No water.

GERAGOS: don't mix with water?

GEBLER: No water.

GERAGOS: Okay.

GEBLER: And you can pick them out and use a scanning electron microscope, microscopy, SEM, and see what trace elements are there. And then you can compare the two to see if they have the exact same trace elements, because cements made by various Portland cement companies, or companies making Portland cement, will have traces to, of that component material. And then you can look at the trace materials that are in the unhydrated Portland cement particle and compare it to another one and get pretty close to know who possibly is a cement supplier of that Portland cement.

GERAGOS: So when I talk about fingerprinting the cement, what you're doing is you're taking a look at it, you look under the microscope, if you can find some, some trace minerals or materials, you can then identify who the manufacturer is that uses this particular kind of material, generally speaking?

GEBLER: Of the cement.

GERAGOS: Of the cement.

GEBLER: Of the cement itself.

<Noon recess>

GERAGOS: I do. And I had a conversation with Marylin at the break. And if it's acceptable to the Court, what we were going to do is, since I have a number of these colored pictures that were taken, rather than just number them all, they have got on them figures, 1 through 41. And we were going to just take D8K and now turn that into D8K-1 through 41.

JUDGE: Okay.

GERAGOS: I'm going to show these to you, Mr. Gebler.

JUDGE: 1 through 41.

GERAGOS: 8K-1 through 41. Can you tell the jury what that is?

GEBLER: The pictures here are those that were taken in our laboratory to show the samples, how they arrived. And in the back of the, of the, which is part of our report, as well as has some cross section samples like I showed you a little bit earlier.

GERAGOS: Let me put that up on the screen if I could, and then you can tell me if the, if you have seen what these are. You have, I assume when the items come into CTL, they will come in, and you photograph them, you measure them as well; is that correct?

GEBLER: Yes, sir.

GERAGOS: So as I'm turning these pages, these are the samples, the photographs and measurements, correct?

GEBLER: Yes.

GERAGOS: And this corresponds to the items that are down there by your feet in plastic bags?

GEBLER: That's correct.

GERAGOS: What are we looking at here, Sample 3?

GEBLER: Those are the samples that I removed from underneath the pea gravel concrete that was just underneath the, that I was able to just remove them with my hands.

GERAGOS: Well, does that, if I understand correctly, do you have, you have got an area there that the cement, I'm sorry, the concrete where pea gravel has been picked up; is that correct?

GEBLER: Yes, I picked it up.

GERAGOS: And then underneath it, you grab, and this is the dirt and the gravel that is underneath the concrete that's got pea gravel in it?

GEBLER: Right. Sample Number 3 was under my Sample 1. And Sample Number 4 there is what I picked up under Sample Number 2 of the pea gravel concrete.

GERAGOS: Okay. Then what are these samples? Specifically what it says, Figures 9 and 10?

GEBLER: Also took a sample of the soil just as part of the investigation.

GERAGOS: Okay.

GEBLER: The Sample 1 now, Item 1, that's part of Mr. Jensen's eleven samples.

GERAGOS: Okay. Sample 1, Item 4?

GEBLER: Right.

GERAGOS: Okay. And what are these?

GEBLER: Now, Sample 1, again, Item 4, is the underneath where, you go back to previous page, that's the way we did that is, the first sample would be the top side as you would see it laying in place. And the next one would be where we turn it over, where you can see the underlayment part of it.

GERAGOS: This is a side view?

GEBLER: That is a side view of that one.

GERAGOS: Same thing with Item 4, this is what the bottom surface and the top surface, Figure 13?

GEBLER: Right.

GERAGOS: The top, and Figure 14 is the bottom?

GEBLER: Yes.

GERAGOS: Same thing here top surface and a side view?

GEBLER: Yes.

GERAGOS: And then go through what you are doing, the same thing, you take the samples, and then show the bottom and then the side, correct?

GEBLER: Yes.

GERAGOS: And Figures 19 and 20, we have the top and then the bottom, correct?

GEBLER: Yes.

GERAGOS: Once again, so we understand, when you are looking down, when you say top, that's what we're seeing is this pea gravel concrete, because it's three-eighths inch or less. When we turn it over, we see on this sample as well, that it is the coarse aggregate, that's three quarters of an inch?

GEBLER: Right, the gravel.

GERAGOS: Right. The gravel. And that the gravel, is there anything significant about the fact that here the cement, looks like I have got that right, the cement encases the pea gravel?

GEBLER: The paste.

GERAGOS: The paste?

GEBLER: Is encompassing most of the pea gravel. And when you do the cross section that I showed in the report at the end, shows that it's fully encased the pea gravel.

GERAGOS: What does that mean, fully encased?

GEBLER: Encased means that the paste is surrounding the entire aggregate.

GERAGOS: You take a look at this Sample 5, and this is a side view. Is there any significance to the fact that you have here what appears to be concrete with pea gravel and none of the larger stones?

GEBLER: Right. It's telling me that the, that it's obviously the coarse aggregate. The three quarter inch is not part of that original material.

GERAGOS: Okay. So that it's obvious to you, in your expertise, based on your expert opinion, that what happened is that the pea gravel concrete was placed on top of coarse aggregate, not the fact that coarse aggregate of three quarter inch was mixed up with?

GEBLER: Correct.

GERAGOS: And the same here, top and bottom, on 23, 24?

GEBLER: Yes.

GERAGOS: Okay. And self explanatory, side and top. Then did you paste another, or use some epoxy?

GEBLER: Take another, that one of the others, we used the epoxy on the samples that we used to cut, to do our cross-section.

GERAGOS: And I'm just flipping through these. All these are the same. I just taking the samples and showing either side or top, correct?

GEBLER: Yes.

GERAGOS: And the same thing here, you have that piece that was the other one that you took out and did some kind of analysis with this?

GEBLER: I think the one you are talking about is Number 11, which was Item 4 from Mr. Jensen's sample.

GERAGOS: Okay. We took this,

JUROR: There is a bag that's empty.

GERAGOS: Do you have the pieces out of what bag?

GEBLER: This comes out of Item 4, Bag 11.

GERAGOS: Okay. And it looks like you sawed off, or somebody sawed off one side of this; is that correct?

GEBLER: Yes, sir.

GERAGOS: And then I assume, if you put the, you did something to match it up like that?

GEBLER: Actually it's better this way.

GERAGOS: Okay. You get a sample there and you cut off a slice of this, correct?

GEBLER: Correct.

GERAGOS: Okay. And then on the cross section what do you do?

GEBLER: This one we polish. We have a special machine, just like the polishing stones that a jeweler does, the same kind of fine grit and stuff like that. What you can do, you can actually see the paste in there. And then you can see the rock down below is not part of the original mix of the pea gravel.

JUDGE: I just have a question. I may missed it. I missed it. The concrete that contains the pea gravel, was that put on, if you have an opinion, was it as likely to be put on wet as it is put on dry, and then it got rained on?

GEBLER: The way the appearance of the concrete and the softness of the surface is more likely that it was placed on dry and then rainwater worked on it.

JUDGE: If I walked out there, and I had a half bag of concrete, and I just emptied the bag on top of the aggregate, and then it rained on it, it would end up like that?

GEBLER: Over time it would.

JUDGE: Okay. Because this, you can't hardly call that finished concrete, can you?

GEBLER: And that's one of the things we said in our report. There was no trowel finish, like if I was doing a sidewalk or a driveway, you would finish it off here. It was just laying right down. Plus it got eroded away with the surface not being consolidated and densified, then the rainwater, and the elements, the rest,

JUDGE: Rainwater, even a hose?

GEBLER: Well, yeah, it could do that.

GERAGOS: May I publish to the jury as we,

JUDGE: Go ahead.

GERAGOS: Number 2, the two pieces that you have right there came out of that one bag; is that correct? Originally were both one and the same?

GEBLER: Yes, sir.

GERAGOS: Okay. And then what you are doing there is cutting off the slice, and you are polishing it specifically so that you can tell that the pea gravel is on top and the rock is on the bottom?

GEBLER: Yes.

GERAGOS: And would you have expected to have seen that, which one of these pictures represents that sample?

GEBLER: One of the last ones.

GERAGOS: Is that a cut rock?

GEBLER: This is one the jury has right now.

GERAGOS: Okay.

GEBLER: And specifically I have got a couple of pictures here. Just show them.

GERAGOS: If this was something that contained the larger rock, you would expect to see this portion here down below or encasing or enveloping?

GEBLER: I couldn't hear the whole question. I have a hearing problem as well.

GERAGOS: Would you expect to see the portion that contains the pea gravel to actually be encasing or enveloping the larger aggregates?

GEBLER: If it was a very, if it was a wet mix, that it was like you described, that where it was mixed with water prior to placing it down, you would expect some of that to actually permeate down and around because it's more fluid. Here it wasn't fluid at all.

GERAGOS: Okay. And so that's, is that one of the other reasons that you have come to your conclusion based on your investigation that the way that this would have happened was that somebody would have placed the bag of concrete with pea gravel size on top of coarse aggregate?

GEBLER: Yes.

GERAGOS: The total number of items or bags that you have there are how many?

GEBLER: About 17. I'm not sure. About 17.

GERAGOS: Now, you and I had left right before the break talking about the fingerprinting. I just want to just ask you a couple of brief questions on that. The fingerprinting of a sample of cement, what that will tell you is, that if you find certain trace elements, then you can go back to the manufacturer and see if that particular manufacturer used those elements?

GEBLER: Didn't use the elements. When you produce and make Portland Cement, you use an a variety of materials: Clays, iron ores, things of that nature. And they tend to have some trace elements. And they are very, very minor. They are in like parts per million. And if you would take a number of Portland Cement from, say, the Bay Area, or from up in Washington, or down in LA, they will all have different trace elements. And you then would be able to distinguish possibly that this cement was manufactured at that particular plant. But it's not easy to do. Then you have got different types of Portland Cement as well that goes into the equation.

GERAGOS: Okay. And the, relying on Mr. O'Neill's analysis, the petrographer the prosecution had testify, he came that, he came to the conclusion that there was fly ash, Portland Cement, action; is that correct?

GEBLER: Yes.

GERAGOS: Contained in there, and pea gravel, correct?

GEBLER: Yes.

GERAGOS: And it was even his conclusion that all of those things were present in the samples that you have got there. However, there was also this coarse aggregate, was the one added component, correct?

GEBLER: Yes.

GERAGOS: And so the only way to make sense of that, I would assume, let's make sense of that if, in fact, that same mixture had been placed on top of this coarse aggregate; is that correct?

GEBLER: Yes, uh-huh.

GERAGOS: Thank you. I have no further questions.

Cross Examination by David Harris

HARRIS: Yes. Had some rocks, still have some rocks being passed around. Mr. Gebler, I want to just go through this a little bit. And during your testimony you were using a term "we". We were doing things back at our lab. We did this. We did that. So I want to go through this.

GEBLER: Could you possibly, I have a hearing, I have a humming in my ears. So talk a little louder. I appreciate it.

HARRIS: I'll do my best. Going back through this, you mentioned something about being a member of ASTM?

GEBLER: Yes.

HARRIS: What is that?

GEBLER: American Society of Testing and Materials.

HARRIS: And ASTM C295, what is that?

GEBLER: That is the 295. That is a standard for petrographic examination of aggregates.

HARRIS: Now, in this particular case, you are not authorized, pursuant to that particular standard, to do a petrographic examination, are you?

GEBLER: I don't follow your question.

HARRIS: Well, are you a petrographer?

GEBLER: No. But I teach petrographers.

HARRIS: In this particular case did you do the petrographic examination?

GEBLER: No, I didn't. Dave Vollmer at our laboratory did.

HARRIS: What is the requirement under the ASTM standard to do petrographic examinations?

GEBLER: First of all, it's not right one. It's ASTM C 856 is the proper one. 295 is not the one that would be appropriate in this particular test.

HARRIS: Okay. Let's go, what is C 295?

GEBLER: I'm sorry?

HARRIS: What is C 295?

GEBLER: C 295 is for petrographic examination of rock and sand, coarse and fine aggregate, not for concrete. But they are ultimately used in concrete.

HARRIS: The components of concrete as you have been describing for us, and tell us, that is it reason why you know how this happened is because you were looking at the differences in the aggregate; isn't that the a fair statement?

GEBLER: Yes, I saw them. I inspected them and viewed them.

HARRIS: Pursuant to the standards of the society that you are a member of, you don't meet the requirements to make that petrographic examination, do you?

GEBLER: Like I said, my petrographer, Dave Vollmer, is a petrographer. He did the work under my direction.

HARRIS: Let's go through that. How many samples, total samples did you submit to Mr. Vollmer?

GEBLER: I had the soil sample plus the two that I took, and then Samples 3 and 4 that were underneath the Samples 1 and 2. And then we had the Item 4, which would have been the eleven or so samples that we obtained from Mr. Jensen.

HARRIS: And how many of those samples, I think you mentioned there were seventeen bags. Roughly seventeen? Of those seventeen, how many did Mr. Vollmer test?

GEBLER: We looked at every single one and inspected each one. And we did, let me, you ask me the question, I'll answer,

HARRIS: The question was, how many did he test, not what we did.

GEBLER: That's what I'm trying to do. He looked at each one of them and inspected everyone of them. And then we selected from the representative group three for slicing and preparing them for examination.

HARRIS: So you take, of those seventeen, after his examination, it's boiled down to three or four that are going to be tested?

GEBLER: Three of which, because they were all the same.

HARRIS: Well, okay. Let me ask you about that. So you go out and you pick up a chunk of concrete. And by looking at it, you are telling us that you can tell it's the same as every other piece of concrete that's there?

GEBLER: I can tell that from my 35 years experience in the field. Yes, I can.

HARRIS: Just by looking at it?

GEBLER: And by looking at it, and also its feel. When we have got it back into the laboratory as well. I looked at each one of them and examined them, and then we decided together which ones we wanted to do a more detailed examination to.

HARRIS: So even with your 35 years of experience, you take these, you give them to the person who is qualified to do the petrographic testing?

GEBLER: Sure.

HARRIS: And let him test to see what it's actually made of; is that a fair statement?

GEBLER: He does that, sure.

HARRIS: So you sample off three of the 17. You give them to him. How many does he actually do a petrographic, a true petrographic examination of to determine what the components of that particular sample are?

GEBLER: We did the, on three of them. We did the analyses, and you saw the cut sections, and that's what we utilized. And he used the microscopes to make that determination.

HARRIS: Now, you said "we" again.

GEBLER: Right.

HARRIS: Let's go back through this. You didn't do the test, did you?

GEBLER: That's correct.

HARRIS: So it would be him, Mr. Vollmer that did the test?

GEBLER: He did the preparation and wrote the report that you have.

HARRIS: Hold on a, hold on a second. You didn't write a report, did you?

GEBLER: No. I was here doing the inspection, and then gave the samples over to Dave Vollmer, and then he reported it to me what he had, what we found. And we use, we work together. It's not like we worked apart. We work together on these things in our laboratory.

HARRIS: Now, going back to what he did, so you have these three or four samples. You said that there were how many that were, you have shown us the pictures. You passed around the concrete sample to the jury that was cut in half or segmented somehow. How many were segmented?

GEBLER: Three were purposely segmented.

HARRIS: Okay. The three segmented concrete samples, that isn't part of the petrographic examination, is it?

GEBLER: We did the petrographic examination on those three where we used the stereo microscope. Sure, we did.

HARRIS: Okay. Let's go back to that. You examined three, actually examined two samples under 45 power magnification, right?

GEBLER: Right.

HARRIS: Actually Mr. Vollmer did?

GEBLER: Yes.

HARRIS: And then he took one of those samples and he did an actual microscopic examination in trying to determine what the components of that particular sample are.

GEBLER: And the reason he did that is because I wanted to know if there was fly ash in these samples, of which we found there was fly ash in them. That's why we did that.

HARRIS: Okay. But the problem with that is, let me just go through this with you. You only know what the components of one particular sample is, because you only tested one sample under 400, just reading from the report, polarized light petrographic microscope magnification up to four hundred times only one sample; isn't that correct?

GEBLER: That's fine with me. One was enough.

HARRIS: One out of 17?

GEBLER: That's correct. They all had similar properties. All we did that for was looking to see if there was fly ash. That's the only reason we did that.

HARRIS: And the one particular sample that you used to see if it had similar properties, fly ash in it, that wasn't even a sample that you collected?

GEBLER: Doesn't matter. It was the same area. When I selected in my samples there, they were in close proximity to where Mr. Jensen got his.

HARRIS: So if it's in the same area, it's going to have exactly the same properties?

GEBLER: From what I viewed it did.

HARRIS: Well, when you viewed it, sir, are you telling us there is a difference from when you viewed it to back in December of 2002?

GEBLER: When it was put down in December 2002, it was a powder at that point. It was unmixed.

JUDGE: Identify "It" for record, what you are showing him.

HARRIS: Have you seen People's Number 80 before?

GEBLER: Yes.

HARRIS: And in People's Number 80, is that all powder?

GEBLER: There is rock in there, there is other debris, and there is some, could I open up the bag?

JUDGE: Just so the jury has been identified, 80 is a bag of concrete debris that was gathered in the driveway of the Peterson residence?

GEBLER: Can I open it?

JUDGE: Yes.

GEBLER: Okay What's the question again?

HARRIS: Did you look at People's Number 80?

GEBLER: Oh, yes.

HARRIS: And is there concrete in there?

GEBLER: There is some concrete in here, yes.

HARRIS: Let me show you a photograph from People's Number 80. Have you seen this before? It was in Mr. O'Neill's report.

GEBLER: I didn't have the photographs in Mr. O'Neill's report. I saw them subsequently when I was here on the 27th.

HARRIS: Now, were you here when he testified?

GEBLER: No, I wasn't.

HARRIS: And you told us already that you had a chance to look at the exhibit previously, right?

GEBLER: Yes, sir.

HARRIS: So looking at this particular photograph right here from Mr. O'Neill's report, you would agree that that's a chunk of concrete there, wouldn't you?

GEBLER: That is a piece of concrete. And you can see, actually, in here, you can see the smooth area in here? See that? And that kind of would match up to another piece that was laying right underneath it similar to what I found.

HARRIS: All right. So you would agree then, since this sample was collected on the 26th of December, that this wasn't powder at that point in time.

GEBLER: No. This powder in here, I'm saying it was powder when it was placed down way back when.

HARRIS: If I can have this marked People's next in order, this photograph.

JUDGE: That would be 296. What does that purport to be? When it was recovered on December 26th, in the photograph?

GERAGOS: Actually not on the 26th. I believe the testimony was the 27th.

JUDGE: December 27th.

HARRIS: 27th.

JUDGE: This is concrete, photograph of the concrete debris, that is,

HARRIS: From Mr. O'Neill's report.

JUDGE: When he recovered this is all I want to know.

GERAGOS: The testimony was that on the 27th.

JUDGE: Of December.

GERAGOS: Grogan told Brocchini to go get it.

JUDGE: Okay. Photograph marked as Exhibit 296 for identification.

HARRIS: Looking at this particular item, 296, up there. So this is the photograph from Mr. O'Neill's report of the sample that was collected by the detective December 27th.

GEBLER: Okay.

HARRIS: You were describing concrete for us, this kind of round rock to the right side of the picture.

GERAGOS: I would ask that he point it out so that we know what he is,

GEBLER: Are you talking about one of these?

HARRIS: This one right here.

GEBLER: Yeah, this one right here.

HARRIS: And is that, looking at the photograph, does that appear to be cementitious paste on there?

GEBLER: If you look, and the answer is yes. But if you look underneath it, there is no paste at all underneath it.

HARRIS: All right. Looking at this item up here. This is a block of concrete up there, isn't it?

GEBLER: I'm sorry?

HARRIS: This item right here is a block of concrete, isn't it?

GEBLER: This piece here, I think, and which has the detritus inside, it has twigs. And that would be consistent with other materials there that would have been dropped down. If it was mixed separately, in a bucket or whatever, in a wheelbarrow, you wouldn't have the detritus in the sample. If you would like to take a look, I'll show you.

HARRIS: Mr. Gebler, I'm looking at the photograph up here. Would you agree that that particular item that you are looking at now has been opened and closed and inspected, and it doesn't seem to be in the same,

GERAGOS: Objection. That calls for speculation.

JUDGE: Overruled.

HARRIS: Doesn't appear to be in the same condition as when it was photographed, does it?

GEBLER: For the most part it seems to be.

HARRIS: So when you look up here, do you see the very top of this? Doesn't this appear to be a smooth surface to you, up here?

GEBLER: A what surface?

HARRIS: A smooth surface.

GEBLER: No. This sand, if you take a look, you can actually see, there is grains of sand attached to that surface right over here.

HARRIS: You are saying you see this up there in the photograph as well?

GEBLER: Well, the resolution over there, if I can take a look at that, that might a little more helpful. Yeah. If you take a look here, you can actually see the sand over here, that brown area here. Here is that same brown area. That was sand to which this is, this was obviously the top over here, and this was the bottom. And then there was some sand here. That was just laid upon my hand, would have been some sand.

HARRIS: So under about your assessment of that particular piece of concrete collected on the 27th, do you see any of those big kind of aggregate rocks that you have been showing to us in the other exhibits that you have in your box up there?

GEBLER: In this sample?

HARRIS: Yes.

GEBLER: I don't see anything embedded in these. What I see is pea gravel around the outside surfaces. I don't see any large rocks like this, or like that, that are embedded in there.

HARRIS: So, again, you would say that that particular sample is not the same as the samples you are showing us in your box.

GEBLER: I didn't say that. I'm saying actually this top surface, this piece is consistent with something, most of this, all the stuff that we have here.

HARRIS: Consistent with all of the stuff?

GEBLER: Yes. All of the pea gravel concretes. This is consistent with what we have mere.

HARRIS: Let's go back through this, maybe talk about concrete a little bit. When concrete is made, we heard from Mr. O'Neill, and you have heard his testimony?

GEBLER: Yes, sir.

HARRIS: So you agree with how concrete is made?

GEBLER: How concrete is made?

HARRIS: Yes. The components that go into concrete.

GEBLER: Yes.

HARRIS: I'll try and not to use technical things so we don't have any disagreement as to language. What are the components that go into concrete?

GEBLER: Typically you will have cement, sand, coarse and fine aggregate, water. And then you can have various admixtures. Anything, be fly ash. They can be chemical admixtures as well to enhance the workability and quality of the concrete.

HARRIS: Now, the aggregate. Again, so we're all clear about this, it's been, everybody is using numbers and stuff. You have the smaller aggregate that's commonly referred to as pea gravel?

GEBLER: Well, you have fine aggregate, which is the sand. Then you have coarse aggregate, which can be running from pea gravel size all the way up to two or three or even six inch size for large, mass structures.

HARRIS: Okay. So this particular, what we're talking about here, all of this concrete that you are looking at, it's your opinion that it only has this small pea gravel aggregate, coarse aggregate. Not talking about the sand. Is that your testimony?

GEBLER: With the sand, yes it does. It's a pea gravel concrete.

HARRIS: Now, were you shown the videotape from the search warrant on December 26th?

GEBLER: No.

HARRIS: So you didn't see the flowerbed area over there?

GEBLER: No.

HARRIS: And were you shown the photographs from over there when these items were, that particular sample was taken?

GEBLER: If there was taken, it was taken in that stretch of eight feet by about two feet wide on the side of the driveway. That's where I got mine. I presume this is where this was taken, but not a very good sample.

HARRIS: Well, we'll come back to that. It's something, you mentioned actually something that's mentioned in the report. You didn't write. In this particular area, this particular area, did you see the photographs from where the sample from the Modesto Police Department was taken back on December 27th?

GEBLER: I don't recall. I don't recall seeing the photograph.

HARRIS: Now, if you were to look at those pictures, and you didn't see a bunch of gravel there, or that big rock aggregate that you are talking about, would that have changed your opinion of how that got formed?

GEBLER: You would have to remove that concrete pieces like we did to see the gravel.

HARRIS: Well, when you went out and inspected, did you notice there was no sprinkler heads in that area?

GEBLER: I didn't notice one way or the other.

HARRIS: You are talking about, it was, it's your opinion that this was poured down dry. So let's go through this. So it's your opinion somebody comes over to this particular area for whatever reason, and takes this bag and dumps it out, right? That's what you are saying?

GEBLER: Yes.

HARRIS: And it's your opinion that then water somehow gets onto this pile of concrete, right?

GEBLER: Rainwater for the most part, I would imagine.

HARRIS: Rainwater, the most part,

GEBLER: If there was a sprinkler there, that could have certainly done the same, do the same thing to hydrate the cementitious materials.

HARRIS: So you are there to do this examination, and you don't look to see if there is a sprinkler in this area?

GEBLER: I was there to get the sample and determine what the constituents were of that sample, which we did. I did the,

HARRIS: And the sample that you took, was it closer to the driveway, or closer to the fence?

GEBLER: It was like pretty close to the fence and towards the middle of the two-foot area, from what I recall.

HARRIS: Well, you took some pictures, didn't you?

GEBLER: Un-hun.

HARRIS: And if you were to see those pictures, would that help you, which sample it was that you took?

GEBLER: That's what I recall.

HARRIS: Look like a photograph that you took, and your scale there?

GEBLER: Yes, sir.

HARRIS: And does that show that there is some concrete that's right up by the fence?

GEBLER: Because I think I took the sample right around here, is what I kind of recall.

HARRIS: If I can have this marked next in order.

JUDGE: 297.

HARRIS: Saying this photograph is taken after some of the samples have been taken?

GEBLER: I'm sorry?

HARRIS: You are saying this photograph was taken after some of the samples were taken?

GEBLER: Oh, no, before.

HARRIS: What we're looking at here, is this concrete the there that you, that you are talking, that you are talking about?

GEBLER: What I recollect is there was samples right above the CTL ruler in that area. Right around there is what I recall taking one of them. Then I thought I took another one to the left of that, toward the middle, and what I kind of recall now,

HARRIS: So would you say that the sample that you took was closer to the fence or closer to the driveway?

GEBLER: I thought it was kind of in the middle is what I remember. About halfway.

HARRIS: Halfway in between?

GEBLER: Yeah.

HARRIS: Okay. Were you aware that the sample that you tested, the one that was submitted by Mr. Jensen, was taken from the edge of the driveway, that he had to use a shovel to stand on to pry it up out of the dirt?

GEBLER: I knew where he took it. He showed me where he took it.

HARRIS: Did you also see the video of him digging it out?

GEBLER: No, I didn't.

HARRIS: So you weren't shown the video where he had to stick the shovel in the ground and jump up and down on it to pry it out?

GEBLER: I didn't need that. Mine came out very easily. Just used my hand to lift it out.

JUDGE: That's not the question. That wasn't the question. Do you want read the question back. (RECORD READ) That's the question. You weren't shown the video?

GEBLER: That's correct.

JUDGE: Next question.

HARRIS: Now, you mentioned, go through this a little bit. When you were out there, you took notes, didn't you?

GEBLER: Yes, sir.

HARRIS: So you are, you know it's important to document the information that you see as you do one of these examinations, correct?

GEBLER: Yes.

HARRIS: And you do this for a living?

GEBLER: Yes.

HARRIS: And when customers come in and want something, and you do work for them, do you provide a report for them?

GEBLER: Depends. Some don't want a report. Some do want a report. All varies from project to project.

HARRIS: And the projects you also get paid for, I'm assuming?

GEBLER: We do an investigation and we are paid our normal hourly fee.

HARRIS: How much have you been paid, or do you anticipate being paid on this case?

GEBLER: Like I said, we did an inspection. We were paid, I think the court allowed I think what ten or fifteen thousand dollars to do all the trips, to come out here, and the testing in our laboratory, and being on-site to see the, to take the samples.

HARRIS: So you are anticipating over $10,000, and less than $15,000?

GEBLER: Around 15,000. I think it's actually a little more, because I had to come back and forth from last week.

HARRIS: For that $15,000, you didn't write a report, did you?

GEBLER: That's correct.

HARRIS: Now, when you are out there and you take a photograph of something, you put your scale in the picture. Do you normally put the scale by the sample that you are going to take?

GEBLER: Usually put it near it.

HARRIS: So looking at this photograph up there, the scale, does that give you any reference to as to which particular sample you are taking?

GEBLER: Like I thought I said, that I took it real close to, just a little bit, going up an inch or two to the side.

HARRIS: You were asked a hypothetical by Mr. Geragos, that if somebody were to take this bag and kind of pour it out to keep people's feet from getting muddy, I think is what it was. Do you remember that?

GEBLER: No, I don't. I don't remember the muddy part.

HARRIS: Well, if somebody were going to try and pour out concrete there to try and extend the driveway, would you expect them to do it next to the driveway?

GEBLER: Extend the driveway?

HARRIS: If they were going to try and do something, extending from the drive,

GERAGOS: Be an objection. My question was sustained on the objection. This, I know, assumes facts not in evidence, that there is an extension of the driveway.

JUDGE: Well, he's asking, I think, this is cross. I think he can ask him. Overruled. Go ahead.

HARRIS: Go through this. You are saying, somebody comes out to the front of the house by the garbage can, puts it down, you are trying to do something to make you pause there to put the trash can down, would you expect that to be right next to the driveway?

GEBLER: What's next to that driveway? It's this area here. I'm not following your point.

HARRIS: Where that concrete is at, you are telling us you collected it from, it's not next to the driveway is it?

GEBLER: It's, the driveway is, if you kind use your laser pointer, I'll show you where.

HARRIS: We can see it at the bottom of the photograph?

GEBLER: Right. That's the driveway.

HARRIS: It would be approximately what, fifteen inches

21 away where that concrete is poured out?

GEBLER: No. It's the whole length of the driveway. I mean of the section going --

HARRIS: The top red button.

GEBLER: From here down to here is where, that the area right over here, rather, to here. And that's this edge here is the driveway.

HARRIS: And you take how big of a sample from that whole area?

GEBLER: I took, if you can figure, I took a chunk about yeah big.

JUDGE: Indicating roughly about a foot wide?

GEBLER: About a foot. It was about six inches wide, maybe, and about a foot long. And you saw the pictures of the bottom as well. And then I took another sample to the left of it that was a little bit smaller than that. It was with half the size.

HARRIS: So as we go through this, one thing that you would agree upon is that there is this concrete that is on top, bigger aggregate. That's something you agree with?

GEBLER: That's what I'm saying.

HARRIS: So that's something you agree with, right?

GEBLER: Yes.

HARRIS: And you agree with almost everything in Mr. O'Neill's report, except for where he says People's Number 60 is not the same as the anchor material.

GERAGOS: Actually People's Number 80. Item Number 60.

HARRIS: MPD number 60.

GEBLER: Because he erroneously said that this coarse aggregate was part of that pea gravel mix, and it wasn't.

HARRIS: And did you cut and lap Exhibit Number 80?

GEBLER: No, I did not. Nobody had the,

HARRIS: Did you do a petrographic examination of it?

GEBLER: No, I did not.

HARRIS: Now, the petrographic examination that was done by Mr. Vollmer was done by taking some paste from your item Number 4, was it 11?

GEBLER: One of them. And also my Samples 1 and 2.

HARRIS: Can you see in the report where it says your samples were examined, the cementitious paste was examined for petrographic examination?

GEBLER: The whom thing is a petrographic examination. You can use a stereo microscope. There is number of ways to do the examination. And this is how we chose to do it, which is well within the ASTM C 856, which is the test method for an examination of concrete for petrographic examination.

HARRIS: Can you show me where in the report that it says that you did an examination of cementitious paste?

GEBLER: I'm sorry?

HARRIS: Were you did an examination of cementitious paste.

GEBLER: You mean me, or Mr. Vollmer?

HARRIS: Either one, of your sample.

GEBLER: We used Samples 1 and 2, which is, are my samples that I selected. And we did a petrographic examination. We used a 45 power stereo microscope, which is perfectly acceptable for what we were trying to identify what the constituents were.

HARRIS: Can you show me where in the report?

GEBLER: It says that?

HARRIS: Yeah.

GEBLER: Yeah. Samples, under method of test, in the first paragraph it says Samples 1 and 2 were impregnated with epoxy. After the epoxy hardened, these samples were then cut longitudinally, and one of the surfaces of each was lapped and examined using a stereo microscope at magnification up to 45 times.

HARRIS: What's the very next sentence?

GEBLER: Representative areas of paste from Sample 11 were removed and mounted on a glass microscope slide in Propylene Glycol. This resulting preparation was examined by use of polarized light, parentheses, petrographic microscope, at magnification up to 400 times to determine the presence of any fly ash.

HARRIS: So going back to the question. Can you show me where in the report that you took paste sample of your samples and checked it for its constituents?

GEBLER: When we cut and lapped. That's what I'm just saying. Samples 1 and 2 were lapped along with Sample 11 of Item Number 4, and were examined petrographically.

HARRIS: Under 45 power magnification?

GEBLER: That was all you needed to do to see what the constituents were.

HARRIS: But you then turn around in Mr. Vollmer's report, and says representative samples of Sample 11 were examined under 400 hundred times to do a petrographic examination. And then the sentence you just read is,

GEBLER: No, you didn't read the whole sentence. You left out the important part. Because I directed Mr. Vollmer that I wanted to know if there was fly ash present. And that's why we did it on that sample.

HARRIS: So you have to look under the 400 power microscope to determine if there is fly ash in the paste; isn't that correct?

GEBLER: That's what we did, yes.

HARRIS: Okay. So you cannot tell by looking at 45 power where there is fly ash in a sample, right?

GEBLER: That is correct.

HARRIS: So you can't tell us there was fly ash in those, the other sample, because it was not tested, correct.

GEBLER: From that standpoint you are correct. But we also knew that,

HARRIS: Mr. Gebler,

GEBLER: Mr. O'Neill,

GERAGOS: Let him finish.

JUDGE: No question pending. You can get him on redirect. Next question.

HARRIS: So when you did your examination with Mr. Vollmer, only one item was examined to determine what the microscopic chemical properties of this cement paste were; isn't that a fact?

GEBLER: That is correct.

HARRIS: So when you talk about these samples being exactly the same as Mr. O'Neill's, that is not true, because you don't know, as you sit there at this point in time; isn't that a fact?

GEBLER: That is not true.

HARRIS: You just told us you only did a test of the properties of one sample, right?

GEBLER: Yes.

HARRIS: Did you test any of Mr. O'Neill's samples?

GEBLER: I accepted Mr. O'Neill's analysis that he was correct, in that there was fly ash in this particular sample.

HARRIS: Okay. So you accepted him because he is a petrographer. He did this microscopic examination of every single sample, right? That's what you saw in his report?

GEBLER: Yes.

HARRIS: And so you accept that, because he's experienced, he's qualified, and he did the test, right?

GEBLER: I didn't have any reason to dispute what he said from the standpoint of a fly ash.

HARRIS: And the samples that you have there in that box, 1 through 17, only tested one for the chemical properties?

GEBLER: For only fly ash.

HARRIS: Well, isn't what Mr. O'Neill was saying is fly ash was present in his samples?

GEBLER: Fly ash present in his sample. And fly ash present in the Sample 11 of Item Number 4.

HARRIS: We don't know if there was fly ash present in your Sample 1, do we?

GEBLER: I'm pretty sure there is.

HARRIS: You don't know that there is in Item 2, do you?

GEBLER: I can certainly take them back, do the exact same thing just like Mr. O'Neill did. It's not that difficult to do. If you want to spend the money, we can certainly do it. From.

HARRIS: Where is your lab at?

GEBLER: In Skokie, Illinois.

HARRIS: Now, you were telling us that it's your opinion that this person, whoever it is, comes and dumps this dry material there. Why do you say it's dry versus wet?

GEBLER: When I looked at the features of the paste, it had ill-defined surface to it. It didn't look like it was, it doesn't penetrate into the underlying gravel. If it was truly, say, mixed, and it was water added to the material, it would be flowable, then it would have gone, and certainly then gone further down, and it would look entirely different. This sample doesn't. Plus the fact that the samples that we looked at, in each of them were thoroughly carbonated.

HARRIS: Now, I want to take you back through this. So part of your opinion is that, the fact is the fact, when it's in this dry, powdery state, it doesn't flow down through the cracks as well; is that what you are saying?

GEBLER: Yes.

HARRIS: Okay. Because when you mix up the cement, you add the water, if I get this wrong, forgive me. But the cementitious paste that's in there starts to form like a creamy oatmeal, so the dry flows are going down the one way, and the wet goes down some other way, right?

GEBLER: Doesn't quite go down. It's just it has no body to it. Where if you have a mix where you add water to it purposely and mix it, then you have a more even consistency in that concrete.

HARRIS: Now, when you add water to the concrete, the cementitious paste immediately starts to start having this reaction, chemical reaction doesn't it?

GEBLER: Some parts of it, yes.

HARRIS: When you add that water to, it becomes a paste. Anyone that's ever used it sees that gray paste that sticks to everything.

GEBLER: Not everything, but a number of things.

HARRIS: You were saying if it was in a wet state, you would expect it to flow better than in a dry state, right?

GEBLER: Into and around the rock that was below the pea gravel concrete.

HARRIS: Now, we have seen these samples. All the jurors have looked at these samples that you were passing around. One of the things I notice when were up there, when you do have these samples, the sand is all loose, tends to kind of break off and move around, doesn't it?

GEBLER: Because why? Because it's very friable.

HARRIS: Friable. I'm not sure we have heard that explained yet.

GEBLER: Friable, meaning that it has a brittle nature to it. Just if concrete is made properly, it will have more strength to the concrete. It also have more body to the concrete.

HARRIS: Now, as we go through the properties of the concrete, which would you say would be heavier?

GEBLER: I'm sorry?

HARRIS: Which would you say would be heavier of the proper components of the concrete, the paste, the sand, or the bigger aggregate?

GEBLER: Assuming that the specific gravity of the aggregate is around 2.6 to 65, to 2.7 or so, I would imagine that the rock would be. The paste would only have a specific gravity on a normal mix of about 2.2, or in that neighborhood. 2.3 maybe.

HARRIS: And we all have experience with an hourglass. Sand in an hourglass will flow through a small opening to fill the bottom. You have seen that before?

GEBLER: Yes.

HARRIS: You pour in dry mix down on the rocks, wouldn't you expect the concrete to flow through all of those rocks down to the very bottom?

GEBLER: Some of it would. I don't know. I don't expect it all.

HARRIS: Well, eventually fills up, right?

GEBLER: Well, depends on when water would then get to that material.

HARRIS: Didn't ask you about water.

GEBLER: That's the only way I could have answered that question.

HARRIS: Well, would you expect the sand to flow down through all of the cracks and go to the very bottom?

GEBLER: Not all of it, no.

HARRIS: Well, what would you,

GEBLER: Some of it may have.

HARRIS: So you would expect, from what you are telling us about how it flows, you should see, if it was a dry powder, a dry mix, you should see concrete down to the very bottom where that aggregate is at?

GEBLER: No. You will see some of it, but not a lot of it, I wouldn't think.

HARRIS: So you are telling us that this sand, the dry powder is not going to flow through the rocks?

GEBLER: I said some it might. It depends on if that, if the aggregate itself, if the gravel itself was wet when it was placed on, when the application was placed on there, then that would prevent that from happening.

HARRIS: So, you know, for your opinion, what you are telling us, to prevent that from flowing to the bottom is the gravel would have to be wet, in a moist condition?

GEBLER: Like I said, it's, you can get some, but you are not going to get all of it. There will be some that may get through. Depends on the nature of the how intertwined the rock is on that surface that's below the pea gravel concrete.

HARRIS: When you were out there looking at this particular bed, other than under these particular samples that you took out, on the days that you were there, did you ever see in that bed such a concentration of that big rock?

GEBLER: When I turned it over I saw the big rock. I just it here. The last word, did you say bag?

HARRIS: Big rock? We'll go through this again. You go out there, you told us how you collected samples. You see concrete. Turn it over. There is all these big rocks stuck to the bottom like you told us there, more big rocks right underneath it, right?

GEBLER: That's correct.

HARRIS: Okay. Other than those particular spots where that concrete was, what's underneath it? Did you see any other concentration of big rocks in that flowerbed, just like that?

GERAGOS: There will be an objection. There is no testimony that it's a flowerbed. That's the second time he's introduced that. It assumes facts not in evidence.

JUDGE: I think he is describing it as a flowerbed.

HARRIS: This area over,

GERAGOS: Just what is the evidence that there is a flowerbed?

JUDGE: He's talking about this.

GERAGOS: It's a rock garden. It's certainly not a flowerbed.

JUDGE: May be a rock garden, but it could be a flowerbed. Overruled. Go ahead.

HARRIS: Did you,

JUDGE: Do you remember the question?

GEBLER: No.

HARRIS: You told us about the concrete, turning it over. You have shown us the samples with lots of the big rocks stuck to the bottom. Then you said directly underneath were all these, were all these big rocks.

GEBLER: Yes.

HARRIS: Other than in the exact same spot where you have collected this concrete from, did you see a similar concentration of big rocks?

GEBLER: Yes.

HARRIS: Where?

GEBLER: Near some of the areas where Mr. Peterson had taken, I mean Mr. Jensen had taken his sample.

HARRIS: So only,

GEBLER: And. Okay.

HARRIS: Go ahead and answer.

GEBLER: Now, you let me, there is also, we took a soil sample that was right on the surface as well. That was one of the samples that we took that was in the picture that would was shown a little bit earlier. But if the area, do you have the pointer? I'll show you where if you like. If the fence post is back here somewhere, and the tree is down around here, it's a round eight feet in distance here. So there, and around this area here, is what I recall seeing more coarse aggregate.

HARRIS: We're looking at this particular photograph, the one that was taken when you were out there. It doesn't appear, at least on the surface here, that there is that big concentration of aggregate, is there?

GEBLER: Some of it has been removed.

HARRIS: By who?

GEBLER: Mr. Jensen removed some of the concrete.

HARRIS: Okay. That's not my question, though. Other than where this concrete is, did you see a bunch of big rocks on top of this dirt?

GEBLER: Just what you see in the photograph.

HARRIS: Okay. Just what we see in the photograph, and you would agree what you see in the photograph doesn't match what's at the bottom of your concrete, does it?

GEBLER: What I have is the, I don't I have the true sample. I have the one that does match some of that rock, because that rock that was there was not cemented. It was loose. And that's dirt that could have been moved around by other people. I don't know.

HARRIS: You are telling us that it's possible from December of 2002, when the Modesto Police Department took their sample, things could have happened. People could have been through this, lots of things could have happened to change what you collected in September of 2004; isn't that a fair statement?

GEBLER: That's certainly a possibility. But what I have here is similar, is the same material that's in the other ones that were examined, the anchor and those other materials that I looked at when I was here in September.

HARRIS: That's based on the fact that you assumed that there is fly ash in the sample?

GEBLER: There is fly ash in the sample, there is no question about that.

HARRIS: People have no other questions.

Redirect Examination by Mark Geragos

GERAGOS: I got a question. You show this picture, and he keeps asking you,

GEBLER: I don't hear you.

GERAGOS: Asking if you see any other gravel. What is all this? Is that all gravel, or am I hallucinating?

GEBLER: That's,

GERAGOS: Isn't that gravel?

JUDGE: Wait a minute. Let him answer the question.

GEBLER: There is some gravel, and there is other, yes, the soil there. And there is some pea gravel concrete.

GERAGOS: And then here is the picture D6J-1.

GEBLER: That's,

GERAGOS: Right now, this is taken, and it sure looks to me like, I know the resolution is bad. But there is cement or I'm sorry, concrete here. And, lo and behold, what's here around it? Does that look like gravel?

GEBLER: To me it does.

GERAGOS: Right. Does that look like the bottom of the gravel that's sitting in these bags, in these right here?

GEBLER: One and the same.

GERAGOS: Okay. You said that this stuff appears to be, based on the carbonation, to be a year old?

GEBLER: Yes, sir.

GERAGOS: Okay. So do we, do you think that maybe somebody came along and decided before, by the way, what's the date of Mr. O'Neill's last report? It's March of this year, isn't it?

GEBLER: Yeah, it was.

GERAGOS: March 2004?

GEBLER: Right.

GERAGOS: So, obviously, the carbonation that took place, took place before he ever did his analysis in March of 2004?

GEBLER: Well, depends on how he held the sample. If he would have protected the sample from the air, then it would have been what it would have been.

GERAGOS: Let's assume, so until the day before yesterday, Mr. O'Neill had never bothered to go out there?

GEBLER: That's true.

GERAGOS: First place that you went was where?

GEBLER: Out to the site.

GERAGOS: Why? Because you needed to see what it looked like, correct?

GEBLER: I do that in all my examinations.

GERAGOS: Okay. And you did, you assumed that Mr. O'Neill, when he did his petrographical analysis was correct when he said the anchor, the boat cover debris, and the bed, and this area that his sample, that they all had fly ash, right?

GEBLER: Yes, sir.

GERAGOS: Okay. And so you said, okay, I'm going to accept that. We're going to accept Mr. O'Neill, that all of those things have fly ash, correct?

GEBLER: Yes.

GERAGOS: Then you took, just to be on the safe side, another sample here out of yours, right?

GEBLER: Yes.

GERAGOS: And somebody examined it. Lo and behold, what was in it?

GEBLER: Fly ash.

GERAGOS: Okay. So at that point you said fly ash here, fly ash all way across, we got fly ash in everything, right?

GEBLER: Correct.

GERAGOS: You have read O'Neill's testimony, correct?

GEBLER: Yes, sir.

GERAGOS: O'Neill testified that the only thing that separated the sample that he had from the rest of the cement was what?

GEBLER: The big rock.

GERAGOS: Right. And his sample that he took was the sample that you look at, this bag here, eleven of them, he had this, correct?

GEBLER: Yes.

GERAGOS: And specifically he said,

JUDGE: When you say "this" can you identify,

GERAGOS: This is People's 80, I believe. Item number 60.

GERAGOS: And this is the sample that he looked at, right there?

GEBLER: Yes. That was the top now. You are turning it over to the bottom.

GERAGOS: Okay. And then you found something in this bag that looked like it was one of the pieces of coarse aggregate, didn't you?

GEBLER: Yes, I did.

GERAGOS: Did you pull that out?

GEBLER: I already did.

GERAGOS: Do it again.

GEBLER: Yeah, here was some. Okay. Okay.

GERAGOS: These are the rocks that you are talking about, right?

GEBLER: Yes.

GERAGOS: And this rock here has got, on one side we have got a little bit of cement paste, right?

GEBLER: Yes, sir.

GERAGOS: Is that right? That the area right there?

GEBLER: That's correct.

GERAGOS: Then if you turn it over,

GEBLER: Nothing.

GERAGOS: No paste, right?

GEBLER: Yes.

GERAGOS: Which would lead you to believe that if he had these samples and saw it, that what happened is that this is just the same cement with fly ash, sand, Portland Cement, I'm sorry. Concrete, Portland Cement, fly ash, sand, right?

GEBLER: Yes, sir.

GERAGOS: That was laid on top of this piece of gravel like this, correct?

GEBLER: Yes.

GERAGOS: And the reason you have got cement on a little bit of one side is because that's how it settled, right?

GEBLER: Just attached itself to it.

GERAGOS: Then if this had been, part of the sample had been part of the original mix, you would find it encased in that?

GEBLER: It would be totally encased.

GERAGOS: We don't have that, do we?

GEBLER: That's correct.

GERAGOS: Okay. The other thing that you said that you noticed in this that leads you to believe that this is no different from the a samples that you took is these items right here. Right? Can't see it quite clearly, the twig. That looks like it's embedded in it?

GEBLER: That is the detritus. Detritus. Twigs, and, yeah. You go see the wood and some of what that is.

GERAGOS: Okay. And specifically this is the item that Mr. O'Neill said looked to him to be different because there was aggregate present; is that correct?

GEBLER: Yes.

GERAGOS: I'd ask that the jurors be allowed to take a look at it.

JUDGE: Sure.

GERAGOS: When they are looking at, what you are saying is that the bottom of this looks like it's something that was poured on to the ground, correct?

GEBLER: Un-huh.

GERAGOS: In fact, you have got other items in here that also looks like it was poured on the ground. What are those twigs, debris?

JUDGE: When you say "here",

GERAGOS: This is still People's Number 80.

JUDGE: Just for the record, we're admitting People's 80 into evidence. Take the same number.

GERAGOS: And the aggregate that we're talking about are these, right?

GEBLER: Yes, sir.

GERAGOS: Okay. Now, on the aggregate that we're talking about, we have got a piece here. This is not aggregate, is it?

GEBLER: I can't tell from here.

GERAGOS: Tell me what that looks like to you.

GEBLER: Okay. That's part of the pea gravel concrete.

GERAGOS: That's part of the pea gravel concrete which appeared to be friable, which broke apart, right?

GEBLER: That's correct.

GERAGOS: That's exactly what People's Number 80 looks like. It looks like a bad representation of the actual samples that you have got, or that were collected, correct?

GEBLER: Yes, sir.

GERAGOS: And along with that, did somebody pick up some coarse aggregate in there? There is at least one rock in there, isn't there?

GEBLER: Yeah. This one, and there was another one.

GERAGOS: Okay. Now, the samples that you have specifically, I'm not going to pull them out all the way. Everybody has seen them. The samples, also, is there any way that you can posit right now, as you sit here, any other way for those, that the sample to have been laid down on the ground and to end up the way that you found it, other than it was pea gravel concrete that was poured on an area that has large aggregate rock?

GEBLER: None.

GERAGOS: And does the fact that you did only one test for fly ash, does that matter one whit?

GEBLER: Not to me it doesn't.

GERAGOS: And why?

GEBLER: Because all the other samples were representative. They all had the same features in the paste.

GERAGOS: Right. And you actually went out and saw the area, correct?

GEBLER: Yes, sir.

GERAGOS: Okay. Has Mr. Harris showed you any pictures of flowers growing in that area at any point?

GEBLER: Not that I see.

GERAGOS: Do you see any flowers in there?

GEBLER: None.

GERAGOS: Okay. Do you see anything that would make one whit of difference to your analyses if the cement was from here where I got my finger on D6J-1 here, does that have anything, any difference to your analysis?

GEBLER: No, sir.

GERAGOS: Doesn't matter where the cement was, this cement was in that area, does it?

GEBLER: No.

GERAGOS: Was, you are only analyzing whether or not the same cement, I'm sorry, the cement-concrete had the same constituents as the other items, correct?

GEBLER: Yes.

GERAGOS: You did a test of one of your samples, and it came back that it was fly ash?

GEBLER: Right.

GERAGOS: And you picked fly ash because that's something that you would be able to test to see if, in fact, Mr. O'Neill was right about the constituent parts of these items, correct?

GEBLER: Yes, sir.

GERAGOS: Thank you. I have no further questions.

Recross Examination by David Harris

HARRIS: Mr. Gebler, have you ever seen this photograph before?

GEBLER: No, I haven't.

JUDGE: Identify it for the record.

HARRIS: D7P.

HARRIS: This is the photograph that was taken right before the sample was collected by the Modesto Police Department. You have never seen this photograph before?

GEBLER: That's correct.

HARRIS: Now, since you are telling us that the only way that you can posit that this occurred is by somebody dumping out this item. Your sample wasn't connected to Mr. Jensen's sample, was it?

GEBLER: Was pretty close, but I don't know that it was actually, physically touching his at one time.

HARRIS: Now, if somebody is pouring out a bag, that would mean that they poured it out in one place, moved it to another, poured it out there too, if they are not physically connected?

GEBLER: They may have pulled it and dragged it. I'm not sure. I didn't ask anybody how that was done. But it's not a regular surface.

HARRIS: And you said the first thing that you do in your investigation is, you go and you go to the scene right?

GEBLER: I try to do that almost all the time.

HARRIS: And you went there September of 2004?

GEBLER: Yes, September 27th.

HARRIS: Now, as part of your investigation, since you are trying to shore up your opinion that this was a bag of concrete that poured out there, that was. Do you think you might have wanted to look at the photographs taken when it was collected?

GEBLER: Not for my analysis, I didn't need it.

HARRIS: If there is not a bunch of rocks there, there is not a pile of concrete on top of everything, do you think that that might have made a difference to you?

GEBLER: What I'm saying is, when I went out there, this is the sample that I procured, obtained, and ran the tests.

HARRIS: You say you can't think of another possible scenario that had happened. Now,

GEBLER: The sample that I got was, so to speak, in situ. It looked like it hadn't been moved or tampered with when I took it up.

HARRIS: And you said that you think that it had been there for about a year?

GEBLER: Oh, at least, sure.

HARRIS: And maybe five years.

GEBLER: That's a possibility, but unlikely.

HARRIS: Why is it unlikely?

GEBLER: Because the carbonation tests that we ran, we ground the concrete until the pea gravel was thoroughly carbonated. And that would be consistent with a mix that's not

compacted, as you normally would do, say, putting in a driveway, or putting in a foundation, or something of that nature.

HARRIS: Now, when you do put in a driveway, a lot of times when you put in a driveway, you put down big rock underneath as a substrate?

GEBLER: Subbase.

HARRIS: Subbase for your concrete over the top, don't you?

GEBLER: Always. Or compacted. It's compacted.

HARRIS: So when you put down this big rock, you put forms up next to it?

GEBLER: For the driveway.

HARRIS: For the driveway.

GEBLER: Sure.

HARRIS: Lot of times those big rocks and that excess stuff, the concrete, end up spilling over to the areas right next to the driveway, doesn't it?

GEBLER: No. In fact, we just in our driveway down. That's not the way it happened at all. They would take an admixture of rock and sand to actually compact it, so then when you are placing your new concrete over it, then it would settle. So it doesn't usually work its way out all the over the place. Just doesn't happen that way.

HARRIS: In your experience everything stays within the forms?

GEBLER: Pretty much so. You get some concrete leaking out maybe an inch or so. But that's about it.

HARRIS: Now, when you worked with concrete before, it's not the neatest to use, is it?

GEBLER: I think it's neat to do. I mean, but in terms of cleanliness, that's something else.

HARRIS: Well, I want to talk about that. In the experience with just getting your driveway put in, did the contractors always get all the rocks in the forms?

GEBLER: I looked at them, watched them do it like a hawk, because it is my own driveway. They got most of it. There was very little that was out, no more than maybe an inch or so towards the walkway part that we put in.

HARRIS: So you agree, then, that the big rocks don't always end up in the forms. And when you do the driveway, they screen off the top?

GEBLER: Screed.

HARRIS: Screed, screen. I have heard it used different ways.

GEBLER: Screed. S-c-r-e-e-d.

HARRIS: And that ends up being pushed to the side and going on top of those big rocks, doesn't it?

GEBLER: If it fell over, if it fell over the form, is what you are saying?

HARRIS: Yeah.

GEBLER: That could happen, sure.

HARRIS: Okay. So it's possible that you can have this screeded-off concrete landing on big rocks right next to a driveway, couldn't you?

GEBLER: But not over that concrete that you use in a driveway, would not have just pea gravel. It's typically made with three quarter inch rock in most instances. When I used though work in

the Bay Area, and the rock for driveways and for most construction, you would use three quarter inch rock as a maximum size aggregate. And you wouldn't be using just solely pea gravel. That's an uncommon mix for a driveway.

HARRIS: So the driveway mix would be what's referred to, is that Ready Mix, something that Mr. O'Neill was asked about?

GEBLER: Yes. And Ready Mix would, you can have a number of different mixes that people use for different construction. It can be for a driveway. It could be for a foundation. It can be for a high rise. They will use all different mixtures.

HARRIS: Could be for a sidewalk?

GEBLER: Could be for a sidewalk, for sure.

HARRIS: Could be for a fence post?

GEBLER: Could be for a fence post as well. But I didn't see any concrete overladen this concrete here, the pea gravel, with anything new.

HARRIS: So you did find dirt and debris and twigs on top of this?

GEBLER: You saw the one picture that was gravel and leaves and stuff, sure.

HARRIS: And Mr. Jensen's sample, when, the one you tested, had to be dug out?

GEBLER: That's what he said. I wasn't there. You heard him this morning.

HARRIS: That was right next to the driveway?

GEBLER: Yeah. I didn't, mine, it was just lifted up. It came out, you know, just lifted up in my hands.

HARRIS: So would you agree then that if the driveway didn't use the big rocks, there could be waste concrete from some other location that could end up on big rocks from the same driveway?

GEBLER: From the samples, I'll show you from the samples that we have, there is nothing overladen with this concrete, with new concrete on top of that. None at all.

HARRIS: That's, I'm not asking you about whether there was concrete that is poured on top of concrete. That's not what I'm saying.

GEBLER: That's what I thought you were asking.

HARRIS: You said that the only way that you can get those samples is for somebody to take a bag of dry mix and dump it out there.

GEBLER: That's what it appeared to me from the consistency of looking at the surface texture of the concrete.

HARRIS: Now, if somebody had taken, say they take their wheelbarrow after doing some concrete work, they go and dump it over there next to where those rocks, big rocks are, next to the driveway.

GEBLER: But then you would have a much more different-looking concrete. Not the concrete that I saw here.

HARRIS: Now, in your experience you have seen people dump out concrete at the side of driveways after they are done cleaning up, haven't you?

GEBLER: Not on driveways. They will wash it down, but they won't just put it anywhere.

HARRIS: And that concrete that's referred to, that is waste concrete, right?

GEBLER: Waste concrete would then be, usually what they

1 will do is, they will take a hose and just rinse it all out, get the paste out of it. Then you will, you are left with rock. Then they get rid of the rock.

HARRIS: And if you don't rinse it out completely so you just have this waste concrete laying at the side of the driveway, you start hosing it down, it gives the appearance of an erosion, doesn't it?

GEBLER: Not from what I examined, because in what I examined, I didn't see any coarse aggregate bigger than the three-eighths inch concrete. So you wouldn't, it wouldn't come from that source.

HARRIS: Have you ever seen an exposed aggregate sidewalk?

GEBLER: You look downstairs here at the columns to this building, I think have exposed aggregate finish, which is purposely done.

HARRIS: How you do that is by, you wet it down, and you brush off the concrete, don't you?

GEBLER: Number of ways to do it. You can use a retarder, a chemical retarder to do that. And then you hose it, hose it down slightly, so you get that exposed surface. Then you would also have in that mixture bigger rocks so you get that exposed surface to it. If you use just pea gravel, you get kind of not a real nice-looking architectural surface.

HARRIS: So you would agree then that you can hose down concrete and expose the pea gravel, and get the same erosion, same look that you were talking about?

GEBLER: Not to the effect of those deep depressions, depressions that I showed you earlier.

HARRIS: In which particular sample?

GEBLER: It was number three I think in Mr. Jensen's samples. The one that had that, I think the jury took a look at.

HARRIS: Lastly, since you were being asked by counsel about using Mr. O'Neill's work, you would agree that he went through each of the samples in this case and testified?

GEBLER: I'm sorry?

HARRIS: You would agree that Mr. O'Neill went through the samples in this case and tested them?

GEBLER: That's what he purported to do in his report.

HARRIS: And you accept his petrographic examination of all but one of those samples?

GEBLER: Because he didn't have a good representative sample like I have here.

HARRIS: That wasn't the question. You accept all but one?

GEBLER: That's correct yes.

HARRIS: Okay. You can explain now if you want.

GEBLER: I'm sorry?

HARRIS: Go ahead.

GEBLER: Because he didn't have a representative sample that shows how that concrete, pea gravel concrete was actually above the gravel. If you look at this sample, where did it go. You guys have it? If you look at that sample there, you can cut it apart, and in that sample will just be pea gravel. It won't, I seriously doubt, it's unlikely that you have three quarter inch rock in this sample.

HARRIS: But you do have the larger rock in the sample in that bag?

GEBLER: Right. Which is, again, acting like that. If you would have gotten a bigger sample, you would have seen exactly what I saw here.

HARRIS: So besides that, the only thing that you disagree with in his particular report is where he says, based on his actual examination of that item, not just your looking at it, but his examination of it, that he found that the bigger rock was embedded in it?

GEBLER: This concrete is, this rock is not embedded in it. That's incorrect. You can make that observation. Jury can make that observation. This is not embedded. This is not encased. It just happened to be laying there. Has some paste on the surface over here. And it was just laying in that driveway area over there just like so.

HARRIS: And, again, you don't know what's happened to that scene between December of,

GERAGOS: Asked and answered four times.

JUDGE: Go ahead with your question.

HARRIS: 2002 and 2004, do you?

GEBLER: That's correct.

HARRIS: No other questions.

JUDGE: May this witness be excused, go back to,

GERAGOS: Yeah.

JUDGE: Mr. Gebler, thank you very much.