

COPY

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff-Respondent,)

vs.)

KEVIN COOPER,)

Defendant-Appellant.)

CR 72787

Supreme Court

No. *Crim 24552*

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

Vol 12

For Plaintiff-Respondent:

HON. JOHN K. VAN DE KAMP
State Attorney General
Department of Justice
110 West "A" Street, Suite 700
San Diego, California 92101

For Defendant-Appellant:

IN PROPRIA PERSONA

VOLUME ~~4~~ *12* volumes
Pages 224 to 276, incl.

JILL D. MC KIMMEY, C.S.R., C-2314
and
NOEMI LUCCHESI, C.S.R., C-3136
Official Reporters

00066777

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

F I L E D
Robert D. Zumwalt, Clerk
FEB 26 1985

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

CR 72287
NO. 9CR-9319

VOLUME 4

REPORTERS' DAILY TRANSCRIPT

BEFORE HONORABLE RICHARD C. GARNER, JUDGE

DEPARTMENT 3 - ONTARIO, CALIFORNIA

March 12, 1984

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney

DENNIS KOTTMEIER
District Attorney
By: JOHN P. KOCHIS
Deputy District Attorney

For the Defendant

DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

Reported by:

JILL D. McKIMNEY
Official Reporter
C.S.R. No. 2314
and
JOHN LUCCHESI
Official Reporter
C.S.R. No. 3136

00066774

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I N D E X
V O L U M E 4

DEFT'S WITNESSES PAGE

<u>BACON, Richard</u>	
Direct Examination by Mr. Negus	235
Cross-Examination by Mr. Kochis	238
Redirect Examination by Mr. Negus	239
 <u>BLANCO, Luis</u>	
Direct Examination by Mr. Negus	241
Cross-Examination by Mr. Kochis	244
 <u>TATRO, Brenda</u>	
Direct Examination by Mr. Negus	246
Cross-Examination by Mr. Kochis	258
 <u>ARTHUR, Bill</u>	
Direct Examination by Mr. Negus	262

E X H I B I T S

	<u>FOR I.D.</u>	<u>IN EVIDENCE</u>
Y-40 thru 43 - Photographs	-	245
Y-44 - Literature	-	245

---o0o---

006675

[illegible]

2

HON. RICHARD C. GARNER, JUDGE

3

4

5

2

7

9

2

9

2

E

•

9

1

41

1

24

2

22

c. 1 Mr. Cooper was originally advised to get a court order to
2 do that by a Sergeant Ingram.

3 THE COURT: I have no objection to it. Is there
4 any problem with that?

5 MR. NEGUS: I have a call in to Lieutenant
6 Gilmore, who's watch commander of the jail. He just
7 started that duty. He's checking, but I don't think there's
8 any problem, but he'll let me know if there's any problem.

9 MR. KOCHIS: No objection from the People.

10 THE COURT: Unless there's some security problem
11 with the jail in some way, why, I have no objection, and
12 I will be happy to make an order, if you desire.

13 MR. NEGUS: As far as I hear back from Lieutenant
14 Gilmore, I will draft an order and get it to you.

15 THE COURT: That's number one.

16 MR. NEGUS: The second request is that Mr. Cooper
17 had -- needs glasses. He had glasses when he was arrested
18 in Los Angeles, but they were lost during the course of
19 the arrest by the Los Angeles Police Department. On his
20 medical records at CIM is a notation he needs glasses.
21 He's having more and more difficulties as he goes along,
22 because he gets headaches. He can't see. He gets dizzy.

23 We would request that the Court order a doctor
24 from the California Institution for Men who does that sort
25 of thing to come up and do a prescription and have the
26 CIM people prepare the glasses.

0000000000

1 Sergeant Gilmore's also checking to see whether
2 that would cause any security problems. He didn't think
3 it would.

4 THE COURT: Well, it's one thing for me to sign
5 an order to permit such an expert access to the defendant
6 in the County Jail, and I have no problem with that. It's
7 quite another for me to order them to do so. He doesn't
8 have a prescription already filled -- prepared for his
9 old glasses that he can simply supply to GIM people to
10 prepare new glasses?

11 MR. NEGUS: The last prescription he -- he got
12 was filled I think in 1979, or something like that, at
13 Huntington Prison in Pennsylvania. I don't think we have
14 it, or it's available -- it's out of date, anyway.

15 MR. KOCHIS: Your Honor, I'm not sure what GIM's
16 position is going to be, because at this point he's not
17 in their custody.

18 THE COURT: Mr. Negus, I'd like to have you do
19 some more checking. Perhaps, you know, that testing
20 would have to be done down at GIM. Perhaps it could be
21 done -- he could be taken down on a Thursday night, and it
22 could be done on Friday. Saturday or Sunday before he's
23 brought back here, we could perhaps have him down there
24 one weekend. I'd like you to do some more checking on
25 that. Find out more what GIM's position is, what facilities
26 are needed. I don't think that a doctor can simply go into

0000000000

1 County Jail and do an adequate job.

1. 2 I have a pair of magnifying glasses that somebody --
3 that I came across. If he wants to use those as an
4 emergency, why, I'd be happy to let him have those.

5 MR. NEGUS: I'm not sure that that's the problem
6 with his eyes. I think there's an astigmatism problem or
7 something.

8 THE COURT: That's not a good thing to do. I
9 appreciate that. So could you do some more checking, and
10 we'll follow up on it. Right now, I'd be hesitant to
11 make any order.

12 MR. NEGUS: The third thing is I am going to be
13 making a motion to exclude witnesses from the -- all the
14 motions that we have, and I'd be making that motion to
15 exclude all witnesses who may be called at trial by -- by
16 either side, with the exception of the two investigating
17 officers, Mr. Arthur and Mr. Forluch, and the reason for
18 that is that a lot of the testimony at the various motions
19 will overlap the testimony at trial, and I believe it is
20 necessary, in order to make sure that the witnesses'
21 testimony is their own, to keep them out of court. I have
22 five witnesses today, none of whom I expect to call at trial,
23 and I have no objection to them -- the people remaining
24 today. I just didn't want to waive it by not making it
25 at the earliest possible opportunity.

26 THE COURT: I don't understand now. The five

0000000000

1 witnesses that you've got --

2 MR. NEGUS: Today are the witnesses -- The witnesses
3 on the change of venue motion are not witnesses that
4 will ever testify at trial. They are just going to testify
5 about community centers, with the exception of Sergeant
6 Arthur, and he would be excluded from the order, anyway.

7 THE COURT: Do you have witnesses, Mr. Kochis or
8 Mr. Kottmeier?

9 MR. KOCHIS: Not today, Your Honor.

10 THE COURT: It's kind of a moot question today,
11 apparently.

12 MR. NEGUS: I just wanted to make the Court aware
13 of that motion, and not to waive it tomorrow by not -- by
14 not making it today.

15 THE COURT: All right. You have made it. The
16 record will reflect it.

17 MR. NEGUS: Finally, I just want to let the
18 Court know what the logistical problems we have are at
19 the moment. We have two television tapes that have not
20 yet been received and --

21 THE COURT: Where is it from?

22 MR. NEGUS: Channel 4 and Channel 1. Channel 4
23 is supposed to call me this morning. The tape is supposed
24 to be ready for pickup, hopefully, at noon, and I am
25 prepared to send Mr. Forbush down to pick it up and get it
26 back here so we can watch it this afternoon.

0000000000

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

5

6
7
8
9
10
11
12
13
14
15
16
17
18

19
20
21
22
23
24
25
26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

3
4

5
6
7
8
9

10

11

12

13
14
15
16
17
18
19
20
21
22

23

24

25

26

1 MR. NEGUS: I hope so.

2 THE COURT: Then what would be our next step?

3 MR. NEGUS: Then the next step would be either to --
4 well, the next step I would want to do would be to consider
5 the motion to release evidence, which Mr. Kochis has
6 already responded to. That shouldn't take very long.

7 THE COURT: I have read both of those. That
8 should not take very long.

9 MR. NEGUS: And then, to begin taking testimony
10 on the motion to suppress. I don't think we need to, as
11 Mr. Kochis indicates, wait for all of his points and
12 authorities before we begin taking the evidence.

13 THE COURT: No.

14 MR. KOCHIS: I think Mr. Negus overlooked one thing.
15 I think he anticipates our arguing and receiving a ruling
16 from the Court on the change of venue motion, unless I'm
17 mistaken, prior to the time we start the 1538, or am I
18 mistaken?

19 MR. NEGUS: That would be my hope, I would think.

20 THE COURT: I would expect, shortly after receiving
21 the last evidence and hearing your argument, to be able to
22 rule immediately.

23 Okay. Wait a minute. What I did all last week,
24 I went through every item and every film.

25 MR. NEGUS: I'm not upset by what you're saying.

26 THE COURT: Maybe we'll get some decision on that,

0006643

1 and be prepared to go the next step. Maybe you'll want
2 witnesses then tomorrow afternoon.

3 MR. KOCHIS: We have witnesses subpoenaed for
4 tomorrow.

5 THE COURT: These motions could overlap, if
6 there's any delay. I mean we could proceed on.

7 MR. NEGUS: We are suggesting that Mr. Clifford,
8 who will be the first witness on the motion to suppress,
9 would begin testimony at 1:30 tomorrow afternoon.

10 THE COURT: With reference to your motion to
11 suppress, is there any shortening of such that I can save
12 by reading the transcript?

13 MR. KOCHIS: Mr. Negus and I were going to consider
14 possible stipulations to some of the testimony of some of
15 the civilian witnesses. We haven't worked that out yet.

16 THE COURT: Save us whatever you can. You tell me,
17 though.

18 Anything else?

19 MR. NEGUS: Not that I can think of.

20 THE COURT: Okay. Let's go outside.

21 MR. NEGUS: I need to get my first witnesses.

22 (No omissions.)
23
24
25
26

006644

3 THE COURT: Good morning.

11 In the presence of Mr. Cooper and his Counsel this
12 morning, are you both prepared for some sort of stipulation
13 in that regard?

15 MR. NEGUS: Yes, Your Honor. There are still a few
16 exhibits that have not yet come in. We can finish that, but
17 with respect to all exhibits received by both Prosecution
18 and Defense, I would move that they be introduced into
19 evidence at the change of venue motion and be made part of
20 the record of that motion.

22 THE COURT: There have been some offered by you as
23 well, Mr. Kochis.

25 THE COURT: So all of them previously offered will
26 be received without objection by the same numbers.

006645

1 MR. NEGUS: Also, we're requesting that we formally
2 make the stipulation that the Court can consider the pages
3 of testimony from the 868 Motion that I referred to in my
4 brief. I believe that was pages -- it was -- the date was
5 9/23/83, and I believe the pages were 40 thru 72.

6 MR. KOCHIS: I likewise have no objection to that.

7 THE COURT: Pages 40 to 72? I have not yet read
8 that. I'll have to do that. All right. The stipulation
9 is accepted.

10 MR. NEGUS: My first witness I believe is on his way.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Proceed.

13 MR. NEGUS: When he gets here, it will be Mr.
14 Richard Bacon.

15 THE COURT: Isn't there somebody else you can call
16 out of order?

17 MR. NEGUS: The other witnesses will take considerably
18 longer, and he's on his way. He should be here in just a
19 second.

20 THE COURT: Call me when he's here.

21 THE BAILIFF: Yes, sir.

22 (Short break in the proceedings.)

23 THE COURT: Proceed.

24 / / / /

25 / / / /

26 / / / /

006646

1 RICHARD BACON,
2 called as a witness by and on behalf of the Defense, was
3 sworn and testified as follows:

4 THE CLERK: You do solemnly swear the testimony you
5 are about to give in the action now pending before this
6 Court shall be the truth, the whole truth and nothing but
7 the truth so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Please be seated. State your name,
10 please, for the record, and spell your last name.

11 THE WITNESS: Richard Bacon, B-a-c-o-n.

12
13 DIRECT EXAMINATION

14 BY MR. NEGUS:

15 Q Mr. Bacon, what is your occupation?

16 A Deputy sheriff.

17 Q And are you assigned to the West End Substation Jail
18 as one of your most frequent assignments?

19 A Yes, sir.

20 Q Were you so assigned back in November of 1983?

21 A Yes, sir.

22 Q On November 24th, 1983, were you aware that Kevin Cooper
23 was attending a Preliminary Hearing in Department A of
24 the Municipal Court?

25 A I'm not sure if that was the date, but I was aware he
26 was going to a Preliminary.

006647

1 Q And during the course of that Preliminary Hearing, at
2 least at the beginning, Mr. Cooper had two different
3 suits that were available for him to wear to court; is
4 that correct?

5 A Yes, sir.

6 Q And basically I would come over and pick up one, take
7 it to be cleaned and then substitute another? We kept
8 switching them back and forth at the beginning of the
9 Preliminary Hearing?

10 A Yes, sir.

11 Q Where was the suit kept that was being used while Mr.
12 Cooper was not in court?

13 A There's a small area in the front part of the booking
14 section of the West End Jail that they were locked in.

15 Q Now, on the Wednesday before Thanksgiving, which I
16 believe was the 23rd of November, were you on duty at
17 the time that Mr. Cooper got finished with court that
18 afternoon and went back to the main jail?

19 A Was this on Wednesday afternoon?

20 Q Yes.

21 A No, sir.

22 Q When you arrived at work on Monday morning, at some
23 point in time did you go into that closet to get Mr.
24 Cooper's suit?

25 A Yes, sir.

26 Q And what -- approximately what time was that?

0006640

- 1 A I would say between 8:00 and 8:30.
- 2 Q When you went into that closet, was it locked?
- 3 A Yes, sir.
- 4 Q Showing you Exhibit 63, is that the suit that was in
- 5 the closet?
- 6 A That looks like it, yes, sir.
- 7 Q And asking you to look at the front of the suit, there's
- 8 a substance on that suit. Was that substance there on
- 9 the -- on the morning of the 28th?
- 10 A Looks about the same, yes.
- 11 Q And the tie has a burn mark. Was that burn mark there
- 12 on the --
- 13 A I didn't notice the tie.
- 14 Q And did you notice the crotch area of the pants, whether
- 15 there was any burn mark in the crotch area of the pants?
- 16 A If the location is on the left leg towards the crotch,
- 17 yes, sir.
- 18 Q Showing you, if I can, the crotch area in the left leg.
- 19 There seems to be two burns in that.
- 20 A I wasn't aware of this one. I was aware of this one.
- 21 Q You weren't aware of the one on the crotch, but you
- 22 were aware of the one on the left leg?
- 23 A Yes, sir.
- 24 Q The last time you had seen this suit on Mr. Cooper before
- 25 that, had it been in this condition?
- 26 A No, sir.

006649

1 Q Are -- are inmates of the jail supposed to have access
2 to that closet?

3 A No, sir.

4 Q Who was supposed to have access to it?

5 A The deputy who was working.

6 Q Thank you.

7 I have nothing further.

8

9 CROSS-EXAMINATION

10 BY MR. KOCHIS:

11 Q Mr. Bacon, the room in which that particular suit is
12 kept, does it have a cage area on the front?

13 A Yes, sir.

14 Q Does it also have a counter?

15 A Yes, sir.

16 Q And is the cage area made of some metal screen or mesh?

17 A Yes, sir.

18 Q Is there in fact a space of about two feet that
19 separates the counter from the metal screen?

20 A Not quite that high, but there is a large area.

21 Q And does it run across the counter several feet, three
22 or four feet?

23 A Yes, sir.

24 Q And is that space large enough for someone to crawl
25 through, even when the room itself is locked?

26 A I imagine so, yes, sir

0000000000

1 Q Who has the responsibility of hanging clothes up for
2 the inmates, the deputies or the trustees?

3 A The deputies.

4 Q Do trustees also have access to that particular room?

5 A Yes, sir.

6 Q And are trustees people who are not deputy sheriffs?

7 A Yes, sir.

8 Q Are they people who have been convicted of some crime,
9 and they're serving their time in the county jail?

10 A Yes, sir.

11 Q And those people have access to the room as well?

12 A Yes, sir.

13 Q During the day is the door to that particular room
14 often kept unlocked?

15 A In the morning. After that it's locked.

16 Q And in the morning when it is unlocked, are there
17 trustees working in that portion of the facility?

18 A Yes, sir.

19 MR. KOCHIS: I have nothing else.

20

21 REDIRECT EXAMINATION

22 BY MR. NEGUS:

23 Q When there was no court, would that room be unlocked
24 in the morning?

25 A Beg your pardon?

26 Q When there was no court, when there was no inmates being

000665-1

26 MR. KOCHIS: I would object on relevancy grounds.

1 THE COURT: Counsel, I have seen it. I don't think
2 we need to put it into evidence. Denied.

3
4 L U I S B L A N C O, called as a witness by and on behalf
5 of the Defense, was sworn and testified as follows:

6 THE CLERK: You do solemnly swear the testimony
7 you are about to give in the action now pending before this
8 Court shall be the truth, the whole truth and nothing but
9 the truth so help you God?

10 THE WITNESS: Yes, I do.

11 THE CLERK: Please be seated. State your name,
12 please, for the record, and spell your last name.

13 THE WITNESS: Luis Blanco, B-l-a-n-c-o.

14
15 DIRECT EXAMINATION

16 BY MR. NEGUS:

17 Q Mr. Blanco, what is your occupation?

18 A I'm an investigator with the Public Defender's Office.

19 Q Were you so employed on November the 9th, 1983?

20 A Yes, I was.

21 Q On that date were you assigned by myself to go out
22 and view a demonstration taking place on Sixth Street
23 in front of the courthouse?

24 A Yes, I was.

25 Q Can you describe that demonstration?

26 A Sure. There were several men dressed in uniforms with

CONFIDENTIAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

There were, I'd say, in the 30 or so minutes I was out there, about 50 people, 50 spectators coming and going. I believe there were a couple of police out there and there was some arguing. People would walk by and argue, and. . .

(No omissions.)

- 1 Q Did you photograph that demonstration?
- 2 A Yes, I did.
- 3 Q Showing you Exhibit V-40, is that one of the -- is
- 4 that a print of one of the photographs that you took
- 5 of the demonstration?
- 6 A Yes, it is.
- 7 Q And does that accurately depict one of the signs and
- 8 some of the participants in the demonstration?
- 9 A Yes, it does.
- 10 Q Showing you Exhibit V-41, did you take that photograph?
- 11 A Yes, I did.
- 12 Q And does that again accurately depict another of the
- 13 signs and some of the participants in the demonstration?
- 14 A Yes, it does.
- 15 Q Showing you Exhibit V-43, does that depict the monkey
- 16 that you described earlier?
- 17 A Yes, it does.
- 18 Q Does that also depict accurately the signs that
- 19 were attached to the monkey?
- 20 A Yes, it does.
- 21 Q Were the -- were the participants in the demonstration
- 22 handing out leaflets?
- 23 A Yes, they were.
- 24 Q And does V-42 depict the process of some of these
- 25 demonstrators handing out some leaflets?
- 26 A Yes, it does.

0000000000

1 Q Did you get copies of some of the leaflets that were
2 being handed out by the demonstrators?

3 A Yes, I did.

4 Q And did you take them in and hand them to me in my
5 office later that day?

6 A Yes, I did.

7 Q Have you seen those -- have you seen those pamphlets
8 since?

9 A Yes.

10 Q Showing you Exhibit V-44, a folder which contains a
11 series of pamphlets, are those the pamphlets that you
12 were handed by the demonstrators on November the 9th?

13 A Yes, they are.

14 MR. NEWS: Thank you.

15 I have nothing further.

16

17 CROSS-EXAMINATION

18 BY MR. KOCHIS:

19 Q Mr. Blanco, the persons present at the demonstration,
20 the 50 people, some of those persons included lawyers
21 from your office; isn't that true --

22 A Yes.

23 Q -- that were spectators and, in fact, a large number
24 of the persons present at the demonstration were media
25 personnel, a reporter from The Daily Report, from
26 The Press Enterprise in Riverside, and various TV

0000000000

1

2

4

5

6

7

8

10

11

12

13

15

16

17

18

19

20

21

23

24

25

26

006657

THE CLERK: You do solemnly swear the testimony you are about to give in the action now pending before this Court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated.

State your name, please, for the record, and spell your last name.

THE WITNESS: My name is Brenda Patro. That's spelled T-a-r in Tor-a-t-as in Tom-r-o.

DIRECT EXAMINATION:

BY MR. NEEDS:

Q Mrs. Tatro, in what community do you live?

Q. I live in China.

Q And have you been living there since June of 1983?

A. Yes, I have.

9. Do you belong to any community groups connected with prisons in China?

A Yes. I am president of a citizens' organization called Pro-441, and I was -- I sat on an advisory committee at California Institution for Men, which I no longer do.

Q Could you describe the advisory committee?

00650

1 A At CIM?

2 Q Right.

3 A It was made up of citizens and both prison officials.

4 Q And what was its purpose?

5 A The purpose of it was it was set up, as far as I know,
6 by Superintendent Widge Carroll at a forum at the
7 Glenmeade School. She asked if anyone would be
8 interested in sitting on an advisory council at the
9 prison, and to give her your name; so I believe from
10 there, she called people to be on this advisory
11 committee. In that, we discussed prison escapes,
12 security of the prison.

13 Q Was there any particular event which -- which caused
14 the formation of this particular committee and this
15 particular community interest?

16 A Of course, I can't speak for Widge Carroll. It was
17 formed -- like I said, it was developed at the
18 Glenmeade School because of the tragedy in Chino Hills.

19 Q That would be the homicides in which members of the
20 Ryan family were killed and Christopher Hughes were
21 killed?

22 A That's correct.

23 Q How long have you lived in Chino?

24 A It will be eight years in May.

25 Q Would you describe the tenor of the June 15 meeting
26 at Glenmeade School?

0000000000

1 A Describe it?

2 Q Yes.

3 A Hostile.

4 MR. KOCHIS: Well, Your Honor, I think I am going
5 to object as calling for an opinion that she's not
6 qualified to give.

7 MR. NEGUS: Maine versus Superior Court indicates
8 that one of the kinds of evidence that comes in in a
9 change of venue is opinion evidence about the nature of
10 the community.

11 THE COURT: Without going into the details, I
12 think she can adequately describe mood, expressions,
13 general feelings, consensus of opinion. Overruled.

14 Q BY MR. NEGUS: You can answer.

15 A I can answer? In my opinion --

16 Q Yes.

17 A -- it was hostile. It was fearful. People were
18 fearful, upset; very hard to describe, in my opinion.

19 Q Was that hostility directed against any particular
20 person?

21 A Could you repeat that? I'm sorry.

22 Q Was the hostility that was expressed at that meeting,
23 in your opinion, directed against any particular
24 person?

25 A I cannot answer for anyone else except for myself.

26 At that point I was upset because of the tragedies in

006660

5 Q You were upset primarily at CIK?

9 | Q. Of what were you afraid?

13 . Did you hear from other persons any expressions of
14 hostility towards Kevin Cooper at that meeting?

17 Q. And was that hostile?

18 A. Yes, it was.

23 A Did you say while I'm on the committee? I've been
24 removed.

25 Q Yes, while you were on the committee. Excuse me.

26 A Yes. He discussed issues that happened.

00661

1 Q Did Mr. Cooper's name come up during those meetings?

2 A Yes, it did.

3 Q How often?

4 A In the beginning, very often.

5 Q Did it ever stop coming up?

6 A It came to the point where CIM officials said that
7 we have gone over this territory enough; let's go
8 to something else.

9 Q So the cessation of talking about Mr. Cooper was at
10 the instigation of the CIM people; is that right?

11 A I'm sorry. Could you repeat that?

12 Q That was a terrible question.

13 A Yeah.

14 Q The idea to stop talking about Mr. Cooper came from
15 the CIM people rather than the community?

16 A In my opinion, yes.

17 Q Mr. Cooper was still a subject on the mind of the
18 community people at that point in time and a subject
19 of concern?

20 MR. KOCHIS: Well, Your Honor, I'm going to object
21 to that.

22 THE COURT: Sustained.

23 Q BY MR. NEGUS: When did the CIM people ask you to
24 stop talking about Mr. Cooper?

25 A I'm sorry, but I can't remember exactly what meeting
26 that occurred at. We attended twice a month, so it's

0066662

1 very difficult to come up with a date.

2 Q Can you give me an approximation? Was it like in
3 August or November, any general idea?

4 A I'm sorry. I couldn't answer that truthfully, because
5 I really don't know. I'd have to go through the
6 minutes to look at that and go over my own notes.

7 Q When -- were you still on the committee in the middle
8 of December when Fred Owen Hodges escaped from
9 California Institution for Men?

10 A Yes, I was.

11 Q At that point in time, did Mr. Cooper's name come up
12 again?

13 A I can't really remember. I think mostly it was just
14 Hodges that came up, that how come the mutual aid --
15 people felt that mutual aid was not put into force
16 like it was decided on, and why did it take so long
17 for prison officials to call the police department
18 and the Sheriff's Department and the radio stations
19 and the newspaper. It was why is this happening, why
20 didn't you do what was agreed upon. That's the input
21 I was getting or what I was asking.

22 Q Did you make any statements to the press in which you
23 mentioned Mr. Cooper in connection with the Hodges
24 case?

25 A I talked with the press after Hodges escaped out -- out
26 in front of the prison when I went to pick up files

0000000000

- 1 to hand them out about descriptions of hedges.
- 2 Q Did you mention Mr. Cooper during those conversations?
- 3 A I don't recall. I talked to so many people, I
- 4 really don't recall.
- 5 Q Was Mr. Cooper on your mind during that period of
- 6 time?
- 7 A For myself, no. I was very upset that what was
- 8 agreed upon was not carried out. I was mainly upset
- 9 that the mutual aid and what was agreed upon was not
- 10 carried out so that people could be notified that
- 11 there was a prison escape, personally speaking.
- 12 Q How many community people were involved with the
- 13 Citizens Advisory Committee, approximately?
- 14 A I believe that the agreed upon was ten -- ten citizens,
- 15 and there's going to be five CAC officials.
- 16 Q Were the citizens connected with any larger group in
- 17 the community?
- 18 A Some of them were before, yes.
- 19 Q Would that be the Concerned Citizens of the China
- 20 Hills?
- 21 A Yes.
- 22 Q Do you know about the Concerned Citizens of the China
- 23 Hills?
- 24 A I was on the Concerned Citizens of China Hills, yes.
- 25 Q Can you describe that particular organization?
- 26 A The citizens of China -- there was a forum -- who held

0006664

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

13

14
15
16
17

18
19

20

21

22
23
24
25
26

00665

1 We wanted to set up advisory groups where there are
2 prisons, and where there might possibly be prisons,
3 so that citizens could have communication with the
4 prison in case there was an escape, so it really --
5 it's not an extension of Concerned Citizens of Chino
6 Hills.

7 Q Okay. The -- you said there's advisory groups set
8 up where there are prisons or where there might be?

9 A Yes.

10 Q Is the purpose of Pro-Cal to -- to organize citizens
11 in the areas of prisons primarily? Would that be
12 fair to say?

13 A Organize them? We express our opinion. We have been
14 to -- we have toured Folsom Prison. We have toured
15 CRI, XIX, CIV. We have gone to Beaumont where there's
16 the possibility of there being a prison. We put to
17 them that if they happen to do get a prison in
18 Beaumont, that we'd be more than willing to come up
19 and help them set up advisory committees, citizen
20 advisory committees, so that there is communication;
21 that we feel that the most important thing is to
22 educate and communicate with the people.

23 (No omissions.)
24
25
26

00666666

1 Q Is it -- would it be fair to say that the primary member-
2 ship of your organization, that most of the people
3 involved in it, are people that live close to either
4 existing prisons or proposed prison sites?

5 A That's correct.

6 Q And the purpose of the organization then would be to
7 aid those people who live close to prisons or proposed
8 prison sites in their relationships with the institution?

9 A If they wish our help, we'd be more than willing to
10 help them out.

11 Q As you have -- have you toured the state to visit
12 citizens in those various communities?

13 A Yes. We have talked to citizens, yes.

14 Q Around the state in those communities which do have
15 prisons, is there substantial opposition to those
16 prisons?

17 MR. KOCHIS: Your Honor, I'm going to object. Lack
18 of foundation at this point, based on who she's talked to,
19 the number of people in the community. If she goes to
20 Sacramento and talks to five or six people, I don't think
21 she's qualified to give an opinion.

22 THE COURT: Yes, sustained.

23 Counsel, bear in mind that I've reviewed numerous
24 articles and exhibits with reference to prison communities,
25 statewide, communities' opposition to it, problems in the
26 legislature in the past. All of this I'm aware of. You

0066667

1 don't need to go into that much detail. The objection is
2 sustained.

3 Q BY MR. NEGUS: Just one last series of questions:

4 During the eight years that you lived in Chino,
5 were you ever involved in groups expressing opinions
6 about prisons before June of 1983?

7 A No.

8 Q Is it -- is it fair to say that the catalyst for the
9 formation of all of the groups that you belonged to is
10 the Kevin Cooper case?

11 A I'm sorry. Could you repeat that?

12 Q Is it fair to say that the catalyst, that is, the thing
13 that brought them into being of all of the groups that
14 you belonged to, is the Ryan killings and the Kevin
15 Cooper case?

16 A Possibly, yes.

17 Q Well, you weren't involved before. Do you know of any
18 of the other people in your groups --

19 A No.

20 Q -- that were involved in opposition to prison --

21 A Not that I know of. Like I say, I'm -- I was very upset
22 about what happened in Chino Hills. My mind was more
23 on that than Kevin Cooper. I mean, what had happened
24 and what I've heard, that had a little bit to do with it.

25 Q Has your group even used Kevin Cooper as a symbol of
26 opposition to prison construction?

006668

- 1 A You mean what supposedly he did?
- 2 Q Have people with your group ever carried signs that
- 3 say "Remember Kevin Cooper"?
- 4 A No, not in Pro-Cal. Pro-Cal has never carried a sign
- 5 that says that.
- 6 Q Were you ever with any organizations that said that?
- 7 A Yes, I demonstrated in front of Chaffey auditorium with
- 8 Concerned Citizens of Chino.
- 9 Q Were such signs carried at that point in time?
- 10 A I did not carry a sign that had Mr. Cooper's name on it,
- 11 no.
- 12 Q Did you see other people who did?
- 13 A Yes.
- 14 Q Have you been present at other demonstrations against
- 15 prisons throughout the state?
- 16 A Against prisons?
- 17 Q Yes, or to try and control prisons, to make them more
- 18 responsive to the citizens?
- 19 A Like I said, I have been to Beaumont, I have talked to
- 20 officials at Folsom, I have attended a testimony at
- 21 CIM that the legislative -- Mr. Presley's committee held.
- 22 Q When you were in Beaumont, did Mr. Cooper's name come up?
- 23 A Yes, it did.
- 24 Q Were there signs about him at that point?
- 25 A They did carry signs, yes.
- 26 Q Thank you.

0066669

1 Nothing further.

2

3

CROSS-EXAMINATION

4 BY MR. KOCHIS:

5 Q Mrs. Tatro --

6 A Tatro.

7 Q Tatro. The group you are presently president of,
8 Pro-Cal, is that opposed to prison construction or in
9 favor of prison construction?

10 A We are very much in favor of prison construction.

11 Q Is the membership in that organization statewide?

12 A We really can't call it membership. We are receiving
13 our nonprofit right now. We have a lot of supporters
14 statewide California, yes.

15 Q So the supporters of your group are not restricted to
16 the Chino Hills area?

17 A No, they are not.

18 Q They're not restricted to San Bernardino County?

19 A No, they are not.

20 Q Not restricted to San Bernardino County?

21 A No.

22 MR. KOCHIS: I have nothing else.

23 MR. NEGUS: Nothing further.

24 THE COURT: Thank you very much.

25 MR. NEGUS: The next witness, I'd like to have some
26 documents which I'd like to review before I call him. I

0
0
6
6
7
0

1 think he was going to check. . .

2 (Discussion off the record.)

3 MR. NEGUS: Perhaps we could approach the bench
4 briefly.

5 THE COURT: All right.

6 Mr. Cooper, do you wish to attend when we go to
7 chambers, or will you waive your appearance?

8 THE DEFENDANT: I'll waive.

9 (The following proceedings were held in
10 chambers:)

11 THE COURT: We're in chambers now. Defendant is
12 not present.

13 What's this?

14 MR. NEGUS: Okay. Mr. -- the gentleman out there
15 is Mr. Bob Bales. He's Associate Superintendent of CIM.
16 He has with him some documents I asked to -- that he bring
17 which are the minutes of the Citizens Advisory Committee
18 meetings in Chino.

19 I originally subpoenaed Mrs. Carroll, but she's
20 on vacation, and so the subpoena was passed from hand to hand
21 till it got to Mr. Bales. He is reluctant to give them up.
22 Basically I am just interested in the minutes themselves.
23 I don't wish to force the man to give them up until he has a
24 chance to talk to the AG.

25 If Mr. Kochis is willing to stipulate that once he
26 talks to the AG and finds it's okay, that we can just make

1 copies and put them as part of the Court's record, that's
2 an agreeable procedure with me.

3 MR. KOCHIS: I have no objection to that.

4 He just got in, apparently, Mr. Bales did, from
5 Sacramento last night, found out this morning he was
6 supposed to appear in court. He has not had time to
7 contact anyone from the Attorney General's Office and receive
8 a response as to what to do about the records. That's why
9 he's reluctant to just turn them over without talking to his
10 lawyer.

11 THE COURT: Should we perhaps order him back for this
12 afternoon or tomorrow morning or something like that?

13 MR. NEGUS: Whatever your pleasure --

14 THE COURT: I think maybe we -- at 1:30. That
15 should give him a chance to touch bases with the AG.

16 MR. KOCHIS: I would think so.

17 THE COURT: And we can hear the opposition, if any,
18 at that point.

19 MR. NEGUS: Okay.

20 THE COURT: Okay?

21 MR. NEGUS: Then what I have is one witness, Mr.
22 Arthur, who will not take too long. And then I have a tape
23 we can start in on. I'll have to send Mr. Forbush up to
24 try and fetch the NBC tape.

25 THE COURT: This is a tape from --

26 MR. NEGUS: Channel 11 I have available. Channel 4

006672

1 we should have at 1:30, and I don't know what the status of
2 Channel 2 is.

3 THE COURT: This is going to be done privately?

4 MR. NEGUS: Just you, Mr. Kochis and me -- or
5 Mr. Kottmeier, if he wants to be present.

6 THE COURT: Off the record?

7 MR. NEGUS: Right.

8 MR. KOCHIS: Judge, the only thing I'm going to need
9 is 10 minutes to see where the sheriff is with the training
10 seminar and if I can get the equipment that we borrowed
11 last week back.

12 THE COURT: We can contemplate perhaps going over
13 there where it doesn't have to be moved, and they can just
14 let us have the use of it briefly.

15 MR. KOCHIS: Fine. That's better.

16 THE COURT: If it's like the others, no more than
17 30 minutes.

18 MR. NEGUS: Channel 11 shouldn't be too long.
19 Channel 4 and 2 will be longer, if we get it.

20 THE COURT: Okay.

21 (The following proceedings were held in
22 open court:)

23 THE COURT: Is your name Mr. Bales?

24 MR. BALES: Yes.

25 THE COURT: Mr. Bales, we discussed the records
26 briefly in chambers. We want to give you an opportunity to

0006673

1 check with the Attorney General. I will order you to return
2 back here at 1:30 this afternoon with the documents that you
3 have, and hopefully by then you will have an answer one way
4 or another so we'll know how to respond. Okay?

5 MR. BALES: All right.

6 THE COURT: Be here by that time.

7 MR. NEGUS: Call Bill Arthur.

8
9 B I L L A R T H U R, called as a witness by and on behalf
10 of the Defense, was sworn and testified as follows:

11 THE CLERK: You do solemnly swear the testimony
12 you are about to give in the action now pending before this
13 Court shall be the truth, the whole truth and nothing but
14 the truth so help you God?

15 THE WITNESS: Yes, ma'am, I do.

16 THE CLERK: Please be seated. State your name,
17 please, for the record, and spell your last name.

18 THE WITNESS: Bill Arthur, A-r-t-h-u-r.

19

20 DIRECT EXAMINATION

21 BY MR. NEGUS:

22 Q Mr. Arthur, you're a sergeant with the Homicide Department,
23 San Bernardino Sheriff's Office; is that correct?

24 A Yes.

25 Q And you were the investigating officer who sat with the
26 Prosecution during the Preliminary Hearing?

0006674

25 Q BY MR. NEGUS: Did you attempt to gather support for that
26 initiative during the course of the Preliminary Hearing?

- 1 A Yes.
- 2 Q How did you do that?
- 3 A Passed out petitions.
- 4 Q To whom?
- 5 A Anybody that would take them.
- 6 Q Pass out any petitions to Mary Ann Hughes?
- 7 A Yes.
- 8 Q Was that during the Preliminary Hearing while you were
- 9 in court?
- 10 A Not in the courtroom, no.
- 11 Q Right outside the courtroom during a recess?
- 12 A Yes.
- 13 Q During the time -- during the time that you were attempting
- 14 to get support for this initiative, did you use this
- 15 case as an argument in favor of signing?
- 16 A Well, I certainly had this case in mind, but whether I
- 17 actually argued to a person this case in order for him
- 18 to sign, put his signature down, I don't believe I did
- 19 that.
- 20 Q Well, when you -- for example, when you gave the petition
- 21 to Mrs. Hughes, did you explain that if the petition
- 22 were passed, the lengthy Preliminary Hearing which was
- 23 held in this case would not have happened?
- 24 A I don't believe so.
- 25 Q Did you ever make that argument or that statement?
- 26 A I may have.

00006676

1 Q On how many occasions?

2 MR. KOCHIS: Well, Your Honor, I would object as
3 being irrelevant. The fact that a homicide detective gets
4 frustrated over the length of a Preliminary Hearing, how
5 does that affect whether or not the status of Mr. Cooper's
6 reputation in the community is that he can't get a fair
7 trial?

8 MR. NEGUS: Mr. Kottmeier has likewise made the
9 same statements, Your Honor. They are quoted in the press.
10 Mr. Arthur's activity I don't think was. That was the
11 reason why I was asking Mr. Arthur about his activities.

12 THE COURT: I'm considering -- Mr. Arthur is not
13 going to serve on the jury in this case. We can all
14 stipulate to that. As far as any opinion of his, statement
15 that he may have made as disclosing the temper of the
16 community --

17 MR. NEGUS: I'm not asking --

18 THE COURT: Under Evidence Code Section 352, it's
19 too remote.

20 MR. NEGUS: I'm not asking Mr. Arthur for his
21 opinion about the nature of the community. There is an
22 independent prong that can be considered in deciding whether
23 a change of venue should be granted other than the nature
24 and extent of publicity about the case, and that is the use
25 to which the case has taken in local politics. It's my
26 position from the quotes that I had from Mr. Kottmeier, from

0006677

1 Mr. Kamansky of the District Attorney's Office, and now from
2 Mr. -- from Mr. Arthur, that prosecutorial officials have
3 used this case to further certain political causes. I
4 believe that that is something which is unique to this
5 particular -- to this particular county, and although it's
6 obviously not possible to document the precise effect it has
7 on opinion, that's the kind of thing that the Appellate
8 Courts have looked to in gauging whether a county is suitable
9 for a fair trial or not.

10 THE COURT: What specifically are you asking, again?

11 MR. NEGUS: How many times did he use that argument.
12 The next and last question was to be to whom.

13 THE COURT: I'll sustain the objection. I'm
14 recalling, however, that declaration that's in the file,
15 and with reference to the points that you're making, I don't
16 think it's necessary considering the time and the extraneous
17 issue and the other factors of 352. Sustained.

18 MR. NEGUS: Thank you.

19 I have nothing further.

20 MR. KOCHIS: I have no questions.

21 THE COURT: Thank you, sir.

22 THE WITNESS: Thank you.

23 MR. NEGUS: Having resolved the question of Mr. Bales,
24 that he won't need to testify, but we'll just be submitting
25 documents, I have no further testimony that I need to take.

26 THE COURT: Now, you have at least one other

006678

1 television tape that perhaps we can listen to this morning
2 if we can make the arrangements.

3 MR. NEGUS: I have somewhere Channel 11. I have to
4 get Channel 4 and Channel 2, and there's documents from
5 Channel 7.

6 THE COURT: Is there anything further we can do?
7 If you have no more witnesses, anything further we can do
8 at this time? Otherwise, we'll adjourn and see if we can
9 see the tape.

10 MR. KOCHIS: Your Honor, I notice Lieutenant
11 McCormick in the courtroom. If I can have a moment to
12 check and see if we can once again impose on his equipment.

13 I think we can.

14 MR. NEGUS: The other thing, if Your Honor wishes,
15 if you wish to use this time now, we can argue the -- we
16 can intersperse the motion I had for the release of certain
17 physical evidence, but if you want to be more -- I don't
18 care.

19 THE COURT: I don't care either.

20 Mr. Kochis?

21 MR. KOCHIS: I have no objection to resolving that
22 issue at this time.

23 (No omissions.)
24
25
26

00065679

1 THE COURT: All right. In that regard, you made
2 a motion to have disclosed to you, or to your proposed
3 expert, a Mr. Blake from Northern California, certain
4 physical evidence in this case for purposes of taking
5 serological tests, which motion is kind of opposed by
6 the District Attorney, as I read his response.

7 MR. NEGUS: My understanding is they oppose it
8 as to the items labeled number one, but don't as to items
9 number two and three.

10 MR. KOCHIS: That's correct, Your Honor.

11 THE COURT: Let me -- let me just find out. Item
12 number one --

13 MR. NEGUS: -- is what we referred to as the UU
14 series of blood that was seized by criminalists on June
15 30, 1983.

16 THE COURT: Well, number one is made up of many
17 sub parts, A through K, apparently.

18 MR. NEGUS: One through sixteen, yeah.

19 THE COURT: I'm sorry?

20 MR. NEGUS: It should be one through sixteen,
21 I think.

22 THE COURT: Excuse me just a minute. All right.
23 I'm looking at his document filed on March 8, application
24 for order re releasing physical evidence, and number one
25 is on page 1 only, one through sixteen. I'm with you now.

26 MR. NEGUS: Okay.

006680

1 THE COURT: And you have no objection to that;
2 is that correct?

3 MR. KOCHIS: Excuse me, Your Honor?

4 THE COURT: You have no objection at all to the
5 release of those items to Dr. Edward Blake?

6 MR. NEGUS: No. He objects to number one, doesn't
7 object to two and three.

8 MR. KOCHIS: That's correct, Your Honor, as to
9 two and three. The procedure that I am going to suggest
10 be employed, because I have some trouble from Mr. Negus'
11 photographs, is one of the witnesses that Mr. Negus is
12 going to call at the motion to suppress is Mr. Gregonis.
13 He's going to bring the sheet and the comforter when he
14 comes with him to court, and at Mr. Negus' direction, he's
15 going to cut out the sections that Mr. Negus requests,
16 and at that point we will turn the portion of the exhibit
17 directly over to either Mr. Forbush or another representative
18 of Mr. Negus' office so that he can arrange for the item
19 to go to Northern California.

20 MR. NEGUS: It's in the -- well, we can work out
21 the details.

22 THE COURT: Are you talking now about number two?

23 MR. KOCHIS: Yes, Your Honor, two and three.

24 THE COURT: So once we get on the record, then,
25 when Mr. Gregonis gets here, there would be no other
26 objection to number two and three?

0006681

2 THE COURT: All right. That will then be granted.

6 MR. KOCHIS: Your Honor, for the record, they
7 are HU-1 through HU-16. That's the way the crime lab
8 refers to them.

11 MR. KOCHIS: No, Your Honor. The reason -- one
12 of the reasons they have not been is because the samples
13 themselves are extremely small; and were the crime lab
14 to analyze them at my direction, they would be expended,
15 and I felt I would have another Hitch problem. We had a
16 sample similar to these that was small in nature that,
17 prior to the preliminary hearing, we instructed the crime
18 lab to stop the analysis. We informed Mr. Negus. He
19 hired an expert who came down from Northern California
20 and was present when the remainder of that sample was
21 tested and expended. We have not tested these because the
22 testing will result in their destruction, and I feel it
23 would be another appellate issue.

24 I also feel, however, because we have chosen not
25 to create a Hitch problem, we have suggested some time in
26 the past that they be tested jointly, that we should not

006602

54

1 be prevented from the results of those by a unilateral
2 testing by the defense that would destroy the samples
3 forever for the prosecution.

4 THE COURT: Do you object to that, Mr. Negus?

5 MR. NEGUS: Yes. Let me explain why. Basically,
6 the testimony at the preliminary hearing was that these
7 samples are only large enough so that you can do one out
8 of eight possible tests on them. Some of them may be
9 large enough for two, but, basically, they are only large
10 enough for one. If a trained criminalist were to know
11 which test was done, they would be able to know what I
12 was looking for. If they were able to know what I was
13 looking for, they would be able to figure out certain
14 aspects of defense strategy.

15 THE COURT: There's nothing confidential about it
16 in the way of communication. Where's the privilege?

17 MR. NEGUS: Torres says that communication is not
18 the issue. It's the right to do an independent analysis
19 without reviewing ^{recalling} the defense to the prosecution in
20 advance. I would suggest that there is a way that the
21 interests of both parties can be protected. Dr. Blake is
22 probably the foremost practitioner of the art of -- or
23 science of serology in the state, if not a much larger
24 area. He takes excellent -- keeps excellent records and
25 takes excellent photographs, so that other serologists
26 can look over his work and judge whether he's right or

5a

0000000000

1 wrong.

2 If these were released to the defense, the
3 procedure which is used in other aspects of revealing
4 defense information to the prosecution could be utilized,
5 and that is that once the defendant has presented the --
6 his case, we would be prepared to make full disclosure of
7 the results of the test. That way, they would not be lost
8 forever to the prosecution, but on the other hand, the
9 prosecution would not be able to use the information they
10 got from our testing technique as part of their burden of
11 proof. That is a -- that's -- that would seem to me a
12 standard procedure which, in fact, the statutes for
13 witnesses and other things provide. I don't think that
14 the prosecution would be harmed, and I wouldn't have to
15 give up confidential information which -- which goes into
16 the decision as to which test to do before the prosecution
17 has finished their case.

18 THE COURT: Are these --

19 MR. KOCHIS: I would like to be heard in response.

20 THE COURT: -- all within one area of an exhibit
21 to where we could perhaps divide them up fairly, half to
22 one side and half to the other?

23 MR. WEGHO: I was hoping that we could, and with
24 that in mind, I asked that question essentially to
25 Mr. Orino, the man who collected them at the preliminary
26 hearing. He said no, Mr. Orino being, for the record, a

00000004

1 criminalist from the County of San Bernardino Sheriff's
2 Department.

3 THE COURT: Where are these exhibits from?

4 MR. NEWS: They are from the Ryan house.

5 THE COURT: I understand, but various walls, all
6 on one fabric, or where are they from?

7 MR. NEWS: Three of them -- which I don't really
8 care, but I don't know which one that they are -- I don't
9 really want analyzed, but I don't know which they are until
10 I see them -- are fly specks, that is, from the little
11 feet of flies that had gotten in there. I don't care
12 about those. One of them is relatively close to a drop
13 of blood which the prosecution -- the prosecutor,
14 Mr. Kottmeier, indicated was his most crucial piece of
15 evidence. A couple more of them are from smears on a door
16 near that drop of blood. Others are from the master
17 bathroom and --

18 THE COURT: Well, you've given me enough of an idea
19 already.

20 You started to say something?

21 MR. KOCHIS: Yes, Your Honor. I wanted to be heard
22 in response, because the Torres case, on which Mr. Legas
23 bases his argument, is distinguishable for two reasons:
24 One, in Torres the testing did not -- would not result
25 in exhausting any sample, and the court in Torres
26 specifically pointed out that for the doctor to conduct

00000005

5-7

1 any meaningful examination of the defendant in that case,
2 he was going to have to communicate with the defendant,
3 obtain a history from him which might be incriminating,
4 when he'd used drugs, and that's not necessary in this
5 case.

6 Mr. News' proposal to the Court as to how we
7 would not be in a disadvantage is really not accurate,
8 because, practically, this is what would happen if he's
9 allowed to test it independently. If the analyses are
10 ~~inconsistent~~ ^{consistent} with ~~his~~ ^{the} theory of the case, he, of course,
11 would introduce those into court, and I would have a
12 chance to scramble, have another expert look at the
13 results and see if they are legitimate; however, if his
14 analysis of those specks are consistent with the
15 prosecution's theory of the case and not consistent
16 with his theory of the case, he's going to have those
17 results. He's never going to introduce them, and I'm
18 never going to be able to introduce them, either, because
19 they are going to be lost to me, so his suggestion is not
20 effective, and it's not fair.

21 MR. NEWS: My suggestion would be not that they
22 be lost to him forever, but that merely that they be not
23 available to him until the close of the defendant's case;
24 and whether they are favorable to me or unfavorable,
25 whether they help me or not, then I reveal them at that
26 point in time, and then Mr. Dechis, I'm sure, given the

006686

1 length of projected testimony in this particular case,
2 will have ample opportunity to use them.

3 THE COURT: Some of the points and authorities
4 were filed on this matter only this morning. I'd like a
5 chance to read the cases on it before I rule on this.
6 Let's set this over till later on today.

7 MR. NEWS: Fine. Did you want to do it later on
8 today? If that's the case --

9 THE COURT: Or we can do it perhaps tomorrow
10 morning.

11 MR. NEWS: What I was going to suggest is if we
12 are just going to watch television the rest of the day,
13 that there's no need to keep Mr. Cooper here in the West
14 End, and we can release him and then have a ruling on that
15 tomorrow morning.

16 THE COURT: That will be fine.

17 We will resume tomorrow morning at 9:30 on the
18 record then. Satisfactory?

19 MR. NEWS: Fine.

20 MR. KOCHIS: Yes.

21 THE COURT: Okay, and, Counsel, when would you
22 like --

23 MR. NEWS: I need 10 or 15 minutes to find out
24 what the status of the television tapes --

25 THE COURT: I think we ought to meet back here,
26 say, at 1:30 this afternoon for Mr. Sales' response, to find

00066007

1 out about that. Get a waiver from your client, if you
2 would, on that, and then we can go from there. That will
3 give me a chance to read the cases, and we can go from
4 there, commence hearing the TV transcript this afternoon.

5 MR. NEGUS: Fine.

6 THE COURT: All right. We will be in adjournment
7 till 1:30.

8 MR. NEGUS: Okay. That's satisfactory with
9 Mr. Cooper.

10 THE COURT: Okay. Then we will meet this
11 afternoon with reference to his documents without you,
12 Mr. Cooper. Okay?

13 THE DEFENDANT: All right.

14 THE COURT: All right. 1:30.

15 (Whereupon, at 11:00 a.m. the noon
16 recess was taken.)

17 (Whereupon, no more proceedings were
18 taken on the record.)

19 --oOo--
20
21
22
23
24
25
26

006688

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
3

4 THE PEOPLE OF THE STATE OF CALIFORNIA,)
5 Plaintiff,)
6 vs.) No. CR-72787
7 KEVIN COOPER,) OCR-9319
8 Defendant.) REPORTERS'
CERTIFICATE

9 STATE OF CALIFORNIA)
10 COUNTY OF SAN BERNARDINO) ss

11 We, JILL D. MC KIMMEY and NOEMI LUCCHESI, Official
12 Reporters of the above-entitled court, do hereby certify:

13 That we are certified shorthand reporters of the State
14 of California, duly licensed to practice; that we did report
15 in stenotype oral proceedings had upon hearing of the afore-
16 mentioned cause at the time and place hereinbefore set
17 forth; that the foregoing pages numbered 224 TO 276,
18 inclusive, constitute a full, true and correct transcription
19 from our said shorthand notes so taken.

20 Dated at Ontario, California, this 23rd day of July, 1985.

21
22
23 Noemi Lucchesi C.S.R.
OFFICIAL REPORTER, C-3136

24
25 Jill D. McKimmy C.S.R.
OFFICIAL REPORTER, C-2314
26

0000000000