

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 DAVID C. MERRIAM, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

FRIDAY, SEPTEMBER 23, 1983

APPEARANCES:

For Plaintiff-Respondent:

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For Defendant-Appellant:

IN PROPRIA PERSONA

C O P Y

NOEMI LUCCHESI, C.S.R.
Official Reporter, C-3136

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1 IN THE SAN BERNARDINO COUNTY MUNICIPAL COURT DISTRICT
2 WEST VALLEY DIVISION, COUNTY OF SAN BERNARDINO
3 STATE OF CALIFORNIA

4 THE PEOPLE OF THE STATE)
5 OF CALIFORNIA,)

6 Plaintiff,)

7 vs.)

OCR-9319

8 KEVIN COOPER,)

FWV-13949 and
FWV-13950

9 Defendant.)
10

11 MOTIONS

12 BEFORE HONORABLE DAVID C. MERRIAM, JUDGE, DEPARTMENT A
13 FRIDAY, SEPTEMBER 23, 1983
14

15
16 APPEARANCES:

17 For the People:

DENNIS KOTTMEIER
District Attorney

18 DENNIS KOTTMEIER
19 District Attorney
20 By: JOHN P. KOCHIS
Deputy District Attorney

21 For the Defendant:

CHARLES E. WARD
Public Defender
22 By: DAVID W. NEGUS
23 Deputy Public Defender
24

25 Reported by:

NOEMI LUCCHESI, CSR #3136
Official Reporter
26

I N D E XDEFENSE WITNESSESDIRECT

WALKER, Larry

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SCHUYLER, Philip Kenneth

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KATZ, Naida

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ARTHUR, Bill

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1 ONTARIO, CALIFORNIA; FRIDAY, SEPTEMBER 23, 1983; 8:35 A.M.

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3
4 (The following proceedings were held in chambers:)

5 THE COURT: Mr. Negus, you have requested that before
6 we proceed into the courtroom, that you be heard in chambers.
7 The record may reflect that Mr. Cooper is present with his
8 counsel, and the District Attorney's Office is represented.

9 Do you wish to be heard?

10 MR. NEGUS: Yes, Your Honor.

11 With respect to this particular hearing, I filed a
12 notice, requested that the hearing be held in a closed
13 courtroom without access to the press. I believe that our
14 reasons are set forth in the motion that I -- in the motion
15 that I filed. That would have been the first motion that I
16 filed.

17 It would seem that if one is going to have a motion
18 on a Penal Code Section 868 matter, that it would be futile
19 to have the motion and give all the reasons in open court
20 of why the material should be -- at the preliminary hearing
21 should be closed. And for that reason I think that it --
22 that in order to be able to address the issues that are
23 necessary for the 868 motion, that we should be able to do
24 that without the press being present. Otherwise, it would
25 be self-defeating.

26 In addition, with respect to the discovery motion,

1 most of the matters in the discovery motion are matters which
2 again are evidence which will be ~~admitted~~ educed at the preliminary
3 hearing. And in order to insure that Mr. Cooper receives
4 a fair trial, I believe that the hearing should be closed for
5 those matters as well.

6 THE COURT: Do you wish to be heard?

7 MR. KOCHIS: I have no objection to that request.

8 THE COURT: Okay. The matters that we're going to be
9 hearing today, as I can best detail them, are going to
10 be motions to quash certain subpoenas, a variety of those,
11 defense counsel's formal motion for discovery which is
12 directed only in part to the District Attorney's Office, but
13 in part to other agencies as well -- presumably there will
14 be those other agencies here to be heard on that -- and also
15 the 868 motion to close the preliminary hearing.

16 I'm going to deny the motion at this time to close
17 these proceedings.

18 Do you have any other motions at this time, any other
19 issues to address?

20 MR. NEGUS: I would request then that somehow when
21 we're talking about the various items with the 868 motion,
22 that we do that in chambers. If you don't wish to close
23 the open courtroom, there has to be some sort of mechanism
24 for addressing these issues outside the presence of the --

25 THE COURT: The question as presented in the 868
26 motion is whether or not the closing or keeping the preliminary

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1 hearing open will provide -- will deny Mr. Cooper a fair
2 trial if the matter proceeds to trial. Why can't those
3 issues be openly discussed?

4 MR. NEGUS: The problem is -- one of the problems is
5 that in making that motion it's going to be necessary to
6 refer to, A, inflammatory publicity which has occurred in the
7 past, and in so doing you only re-emphasize that inflammatory
8 publicity, and, B, to the evidence which will be ~~reduced~~ at
9 the preliminary hearing. And if you have to refer to that
10 evidence in open court in order to have the hearing closed,
11 it becomes self-defeating. And so when we have to refer to
12 those kind of matters, which I think will be for the 868 --
13 for most of the 868 hearing, it would seem to me that
14 we're put in a position that either I don't present all the
15 evidence or I am creating the same sort of climate I'm trying
16 to avoid.

17 THE COURT: What we'll do at this time -- I've denied
18 the motion at this time, Mr. Negus, but what we'll do is
19 we'll try and handle first the motions to quash the subpoenas.
20 When we get to the 868 motion, if there are aspects of it --
21 there are certain aspects of it that I think the closed
22 hearing won't make much difference, and that is if you wish
23 to -- you've indicated you're going to submit certain
24 video tapes. You've asked they be marked, and they have
25 been marked, and certain newspaper things in those matters.

26 Those things I think can be received by the court in

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1 open court, and that won't affect your case.

2 If we get to specific issues that you think are of
3 such a nature, I'll allow you to make that request in court,
4 and I'll rule on it, and then we'll either proceed in open
5 court, or we'll -- if I grant your request, we'll hear
6 portions of the motion in chambers.

7 MR. NEGUS: One logistical problem: There is one
8 witness that should be here at 9:00 o'clock, that is, Mayor
9 Walker of the City of Chino who has asked that he be put on
10 as quickly as possible to testify, so that he could be out
11 of court by 10:00 o'clock. I would imagine his testimony
12 would take something like 15 minutes or 20 minutes. There-
13 fore -- and he is -- his testimony will be concerning some
14 of the inflammatory things which have been said about
15 Mr. Cooper in the City of Chino.

16 I wouldn't wish to re-emphasize those things and have
17 them back on the evening news again, because I think that
18 would jeopardize Mr. Cooper's ability for a fair trial.
19 Therefore, I would request that sometime in the time frame
20 of 9:00 to 10:00, we take Mayor Walker's testimony outside
21 the presence of the cameras, either in chambers or having the
22 cameras leave the courtroom.

23 THE COURT: Counsel, do you have any authority at
24 all -- you have authority, but -- and I grant you that 868
25 in its amended form is relatively new.

26 MR. NEGUS: Well, there's lots of authority which I

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1 have cited to the court as to, A, the court has a duty to
2 protect the defendant's right to a fair trial, and, B, the
3 court can make orders denying access, temporarily, to evidence,
4 to exhibits, to -- you can restrict the right of the parties,
5 the witnesses, any participant, to discuss the matter with
6 the press. You can have closed hearings as to the
7 admissibility of evidence. You can have closed hearings as
8 to any number of things.

9 The Allegrezza case that I talked about was a closed
10 hearing as to the admissibility of evidence. The Younger
11 versus Superior Court case has to do with stopping people's
12 ability to talk about the case. There are other cases that
13 are -- have been -- that have come down which have indicated
14 you have a right to close off exhibits, you have a right to
15 seal transcripts, you have a right to close off any number
16 of things.

17 The only case by the U.S. Supreme Court on pretrial
18 hearings held that you had a right to exclude the public
19 from those pretrial hearings. The only case by the U.S.
20 Supreme Court which has come down on the ^{issue} of access has
21 been access at trial in the Richmond Newspaper case, which
22 was cited, where the trial judge made no findings as to any
23 necessity for a closed hearing.

24 All the cases indicate that upon a finding, such a
25 closed hearing is necessary to protect the right to a fair
26 trial, that such an order not only can be made but should be

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1 made.

2 THE COURT: Okay. Let's go out in open court in just
3 a few minutes, and we'll commence with the motions to quash
4 the subpoenas, parties who wish to be heard on those.

5 When your witness, Mr. Walker, arrives, you can
6 inform the court, and we'll address that issue then. Okay?

7 MR. NEGUS: Could Mr. Cooper again be unshackled for
8 the court appearance?

9 THE COURT: Yes, the court will order that.

10 (The following proceedings were held in open
11 court:)

12 THE COURT: Morning, ladies and gentlemen, Counsel.

13 This is the time and place set for a number of motions
14 in the case of People of the State of California versus
15 Kevin Cooper. The record may reflect that defendant is
16 present with counsel, and the District Attorney's Office is
17 represented.

18 We have a number of items on the agenda today. I
19 don't really know how long or how short they'll take, but
20 we'll try and indicate what they are, and if counsel have
21 some priorities as to whether they have to be elsewhere, we'll
22 try and take their cases first. We'll just work our way
23 down till we get them done.

24 We're first going to address a number of motions to
25 quash subpoenas. Mr. Hanoian was here previously and is here
26 today.

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1 Mr. Hanoian, you'll be addressing those issues as
2 well. The District Attorney's Office --

3 Do we still have issues in contention as regards to
4 that motion with your office, Mr. Kochis?

5 MR. KOCHIS: No, we don't, Your Honor.

6 THE COURT: Okay. We'll just --

7 So that's the discovery part of it, and then lastly
8 we have on calendar for today the 868 motion by the defense
9 to close the preliminary hearing.

10 We have an indication of some attorneys for -- or an
11 attorney for NBC, Mr. --

12 MR. MENDEZ: Robert Méndez, Your Honor.

13 THE COURT: Mr. Méndez. Excuse me, Mr. Méndez.

14 We'll address first the issue of your standing to
15 address the court, and then, depending on that ruling, we'll
16 hear what you have to present.

17 Okay. Let's proceed, Mr. Hanoian, with your matters.
18 And if among the growing pile of paperwork I can find the
19 subpoenas we're actually dealing with, we'll go through them.

20 Okay. Mr. Hanoian, if you would indicate the
21 particular subpoena you wish to address and make sure that
22 counsel is able to locate it, and I locate it, and then you
23 can be heard on it.

24 Actually, the first one I have in front of me is a
25 subpoena d.t. to Rick Minjares, the custodian of records,
26 Special Services Unit, Department of Corrections.

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26 MR. NEGUS: It would seem that if it relates to

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1 Mr. Cooper, it's something that they should give me, Your
2 Honor, and I am under the impression that there is an
3 investigation that was taking place with trying to apprehend
4 Mr. Cooper after the -- after the escape.

5 THE COURT: Okay. We haven't gotten to that. That's
6 Point 2.

7 MR. NEGUS: I thought -- I thought counsel said that
8 there was no such investigation. Perhaps I misunderstood
9 him.

10 MR. HANOIAN: That's what my clients tell me, and
11 that's what the records reflect.

12 MR. NEGUS: There are records that we've already
13 received from the Department of Corrections indicating that
14 an agent of the Special Services Unit, who I know to be an
15 agent of the Special Services Unit, a John Laudeman, was
16 out conducting an investigation, looking for Mr. Cooper.

17 Now, Mr. Kochis, when Mr. Hanoian was last here,
18 called up a person by the name of Zeke Hernández who is an
19 investigator down at C.I.M., and Mr. Kochis asked Mr.
20 Hernández was Mr. Laudeman involved. Mr. Hernández said
21 no. However, after that I went back and looked at a report
22 filed by Mr. Hernández which I have received from the
23 institution, and it indicates that Mr. Laudeman was right
24 along with him as part of the investigation. Therefore, I
25 have somewhat difficulty crediting their denials that the
26 Special Service Unit was involved in that investigation,

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1 because Mr. Hernández' report indicates he was.

2 THE COURT: Counsel?

3 MR. HANOIAN: With regard to any report by Mr.
4 Laudeman, we would again ask the court to consider the
5 privilege and view in camera to determine whether or not that
6 relates to the charge in front of the court. That is a
7 privileged document, and we would so claim the privilege.

8 THE COURT: Okay. As to the second item, any and
9 all records, documents, notes, tapes, photos or other writings
10 concerning the attempts to apprehend Kevin Cooper after his
11 escape, do you wish to address that issue?

12 MR. HANOIAN: I believe that pretty much is the same
13 kind of a request. As I indicated to the court, there is
14 no such specific report. And again I have brought the entire
15 file for the court to look at and determine whether or not
16 such a report exists.

17 THE COURT: Can you give me an idea of what the
18 entire file looks like? It's not in boxes, is it?

19 MR. HANOIAN: No.

20 THE COURT: That's a relief.

21 MR. HANOIAN: This size.

22 THE COURT: Okay.

23 Well, okay. Your motion to quash the subpoena of
24 these records as specified in the subpoena d.t. is denied,
25 and the court will grant your request for an in-camera
26 proceeding. I think that's Evidence Code 1040, is it not?

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MR. HANOIAN: That's correct.

THE COURT: Except for the 868 issue --

MR. HANOIAN: Right.

THE COURT: -- motions. Okay.

Thank you, Mr. Hanoian.

MR. HANOIAN: Thank you, Your Honor.

THE COURT: I guess we might as well go to the Ayala and Bader motions to quash at this time.

MR. TERRY: Excuse me.

MR. HANOIAN: Oh, sure.

MR. TERRY: Your Honor, I'm Mark Terry from the Office of Legislative Counsel, representing Senator Ayala and Assemblyman Bader.

An attempt was made to serve them with identical subpoenas requiring their personal presence and for them to produce certain records, specifically letters from their constituents involving prison construction, prison security, the presence of the correctional facilities in Chino and Kevin Cooper, and what basically would be a statistical summary of mail, telegrams, records of phone messages or other communications from constituents on related issues.

We feel that these subpoenas are invalid for a couple of technical reasons:

One is that they were not properly served on the members. They were merely mailed to their district offices

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1 all process. However, you'll note in Code of Civil Procedure
2 1985 and in Penal Code Section, I think it's 1329 that
3 counsel cites, that they define a subpoena as a process of
4 the court by which a person is compelled to attend. And
5 indicating by just the use of the word "process," that
6 process is divided into criminal process and civil process.
7 And in fact our subpoenas are so divided. It says at the
8 top "Criminal Subpoena" and "Civil Subpoena." So I don't
9 think that that particular -- that particular provision
10 applies.

11 The cases cited by counsel in his Points and
12 Authorities, getting to the more substantive issue as to
13 whether or not one can subpoena quote, "highly placed, busy
14 public officials," has to do with situations in which, in
15 the case of the Deukmejian case, and in the case of the
16 Civiletti case which he cited -- have to do with situations
17 where it is acknowledged that the official being summoned
18 had no personal knowledge of the matters about which he was
19 going to -- he was being required to testify.

20 In the Deukmejian case the subpoena was served on
21 the Governor, asking him to testify as to the conditions at
22 San Quentin. And it was acknowledged that Governor
23 Deukmejian had no personal knowledge of what it was like
24 inside the prison, but that they were trying to get him in
25 because he had some sort of -- he had been instrumental in
26 the policies which had created those conditions. And in

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1 with a sub part of that -- a sub part of that has to do with
2 a longstanding feeling on the part of Legislators of resent-
3 ment against Los Angeles County because San Bernardino County
4 had the prisons present in our community, and our local
5 Legislators, judges, supervisors have made numerous public
6 statements saying that we're having to deal with prisoners
7 from Los Angeles County, and that's a problem, a responsibility
8 of Los Angeles County's, shouldn't be our problem, shouldn't
9 be our responsibility. So there is that ongoing political
10 opposition, the prison's ongoing resentment against cases
11 from Los Angeles County.

12 In this particular case, with respect to Senator
13 Ayala, Senator Ayala also has been involved in attempts to
14 mitigate the fiscal impact of this particular case on this
15 particular county.

16 Frazier versus Superior Court, which is at 2 Cal.3d
17 cited in the briefs, likewise says that political debate
18 about fiscal impact of a case is another thing which can be
19 taken into account in adjudging the prejudicial nature of
20 the publicity.

21 Senator Ayala has been a leader against prison
22 expansion in this particular area. He has made use of the
23 Ryan killings and the public prejudice against Kevin Cooper
24 in mobilizing opposition to that expansion. The press has
25 even credited the Ryan killings and public opposition,
26 public feeling against Mr. Cooper to the recent defeat in the

1 Legislature of the Governor's plan to convert Youth Training
2 School into a facility in which Adult Authority Prisoners
3 would be housed.

4 The Senator therefore has unique and personal
5 knowledge which only he -- which testimony only he can give
6 about the role that this particular case has taken in that
7 ongoing political controversy.

8 THE COURT: Counsel, let me -- ultimately you've got
9 to tie it into the ability for the defendant to have a fair
10 trial and for a court here or somewhere to impanel jurors
11 who can render a fair and impartial verdict.

12 MR. NEGUS: Right.

13 THE COURT: Now, how are you tying in Senator Ayala's
14 political knowledge with that ultimate concern?

15 MR. NEGUS: Because Senator Ayala's political
16 knowledge is -- it has to do with Senator Ayala's political
17 use of this case in mobilizing the opposition to the expansion
18 of prisons.

19 When a case becomes ~~admired~~ in a political contro-
20 versy, as this case has, and I would -- I have submitted to
21 the court partial exhibits of some of the newspaper publicity
22 which has occurred in this particular case, you will note
23 that there are -- have been almost daily mentions in the last
24 couple of weeks of this particular case in the newspaper
25 articles which concern Senator Ayala's and Assemblyman
26 Bader's fight in Sacramento to prevent the conversion of

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Secondly, the emphasis of this again re-emphasizes a fundamental problem of trying to receive a fair trial in this particular case is that the only reason to connect the Ryen killings with the problems of C.I.M. expansion is the underlying assumption which is based upon prejudice rather than having heard any evidence that Mr. Cooper is responsible for those killings. If that underlying assumption, that underlying prejudice didn't exist, there would be no connection, and that particular testimony of Senator Ayala is, I believe,

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MR. TERRY: Your Honor, defense counsel has stated that this case is ~~is~~ ^{enmeshed} in a political controversy, and certainly it is. But political controversies are the very

1 business which assemblymen and senators are elected to
2 become involved in. And one of the oldest principles in
3 our system of separation of powers is the privilege for
4 Legislators to be able to speak freely in the course of their
5 official duties on the floor of the Houses, whatever it is
6 they wish to say. That's the principle that dates from the
7 time of the Magna Carta and antedates our constitution.

8 Now, if the court, as urged by defense counsel,
9 becomes the rule in this case, and the rule generally, it
10 will mean that this very ancient privilege will not mean very
11 much. It will mean that whenever there is a case which
12 involves the political controversy, a member's privilege
13 could be stripped from him by his being called into court
14 to testify. Certainly he can't be attacked for what he says
15 on the floor, but that could be subject to an end run where
16 a Legislator could be called into court to testify on the
17 very sort of thing he would not be held to answer to from
18 stating it on the floor.

19 One of the things which defense counsel has just
20 mentioned is the knowledge of Senator Ayala about legislation
21 which he may be carrying. This I feel would be a very
22 serious breach of the separation of powers. If you can --
23 if you could call a member of the Legislature into a court
24 to testify under oath about legislation which he may plan
25 to carry, he may not plan to carry, this goes to the
26 types of negotiations which go on within the Houses in terms

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1 of legislation or the types of things which a court should
2 definitely stay out of. This is the type of political
3 controversy which is the domain of the legislative branch,
4 and I feel that it would be a dangerous precedent if this
5 court were to follow that course.

6 With regard to the constituents' mail, we understand
7 that defense counsel is not interested in the names and
8 identification of the people who have written this mail,
9 and we understand that he does want to minimize the type of
10 breach of confidentiality this would be. But we would hold
11 that as a rule the letters which constituents send to their
12 members of the Legislature are meant to be confidential.
13 These are the types of communications between -- between
14 members of the community and their elected representatives
15 which are the very life blood of the regulationship of the
16 relationship of the Legislature to the community. This is
17 the way legislators find out how their -- how their voters
18 and potential voters think about various issues, and for a
19 court to intervene, to place itself between people in the
20 community and their legislators we feel would be a branch
21 of the -- a breach, rather, of the separation of powers.

22 And to return to a more minor issue, that is, the
23 issue of the -- of whether the constitutional privilege
24 applies in this case, we submit that the meaning of the word
25 "civil" in civil process as it's used in Section 14 of
26 Article 4 of the constitution is not coextensive with the

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1 meaning of that word with regard to the difference between
2 a civil subpoena and a criminal subpoena.

3 We feel that if you look at the constitutional
4 history of that provision, what it intends is for a
5 legislator to have this privilege except when the legislator
6 himself or herself is a party to a criminal action. That is
7 when the -- that is when that privilege does not apply.
8 Otherwise, if you look at the obvious intent of that
9 constitutional provision, that is that legislators should
10 be undisturbed during session. It would mean that in any
11 criminal action to which they may not be a party, they could
12 be brought in, and we feel that that violates what is clearly
13 the intent of that constitutional provision.

14 THE COURT: Okay. Thank you.

15 Anything further, Counsel?

16 MR. NEGUS: Just one -- I'm not intending to, by what
17 I do -- to inhibit the Assemblyman or the Senator's ability
18 to speak out on issues or even -- I'm not intending to
19 criticize it. That's not -- and there's nothing about asking
20 a person to testify about things to which they have personal
21 knowledge which is in any way a criticism. We have victims
22 testify all the time about crimes, and that's not a criticism
23 of the victim. So I think that counsel's comments about
24 how we're going to interfere with the legislators are not
25 true.

26 With respect to the last point, it's a standard maxim

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1 She attended a meeting on August the 17th, a Rotary meeting,
2 in which she received similar outrage. She is a part of a
3 citizens committee which has been reactivated as a result of
4 this particular case where she is attempting to alleviate
5 citizen concerns and to find out what those citizen concerns
6 are. She has, in response to this particular case, taken
7 innumerable administrative measures with respect to changing
8 the conditions at C.I.M. as a result of these particular
9 cases in response to public pressure.

10 I think that she has the kind of personal knowledge
11 about that particular public pressure on the prisons which
12 again involves an implicit assumption that Mr. Cooper is
13 responsible for the Ryen killings which can be obtained in
14 no other way.

15 THE COURT: Counsel, what -- what about the suggestion
16 or the possibility that much of what you're suggesting, that
17 is, that although this person may have particular knowledge
18 of complaints that have been raised in the community regarding
19 matters that may inferentially have some concern with this
20 case, that those same concerns and that same information is
21 adequately displayed in the other evidence which you're
22 going to be presenting, and that is the tapes of news -- of
23 TV coverage, of --

24 I have here your exhibit of the newspaper coverage.
25 What are these potential witnesses going to be presenting
26 that really isn't presented there already?

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The relevance of all that as -- is -- well, San Jose Mercury-News says it's relevant. So I think we're sort of bound by the Superior Court -- the Supreme Court in doing it, but I think that the rationale, the reason why they say it's relevant is that it is one index of the likely effect that further publicity about this case will have on the

1 community. And the -- if you're putting out publicity about
2 a case into a situation in which people say, ho-hum, that
3 publicity is going to have one sort of impact. If you are
4 having daily publicity and coverage like we're having now
5 about a case in which it's deeply ~~admired~~ ^{admired} in political
6 controversy, each of those facts is going to have a different
7 significance, and it's going to have a different weight in
8 the community. Publicity -- not all publicity is created
9 equal, and some publicity has greater impact on the defendant's
10 ability to obtain a fair trial than others.

11 In a situation which I'm trying to demonstrate by
12 calling these witnesses that this -- the feelings about this
13 case run very, very deep, then it's even more important to
14 close the preliminary hearing and to minimize the publicity
15 about the case prior to its actually going to the jury.
16 Again, it's a situation where one has to -- that by presenting --
17 by presenting this particular evidence one is not -- it's not
18 that -- that one is trying to cut off information about the
19 case forever, but only until the evidence can reach the
20 jurors from a witness stand.

21 THE COURT: Okay. Thank you.

22 Anything further, Counsel?

23 MR. HANOIAN: Only two things, Your Honor:

24 First of all, with regard to the Deukmejian case,
25 it says a busy public official. It doesn't say the Governor
26 or the Attorney General, and I think that a member of the

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1 Counsel, I'm concerned with the difference between
2 the material that might be presented at a preliminary hearing
3 as regards to the specific evidence that might be presented
4 which might affect public opinion, public attitude, public
5 knowledge, as regards it might -- it's -- the defendant's
6 ability to have a fair trial versus mere statements,
7 conclusionary statements that this is a case that has got a
8 lot of people interested in it.

9 Seems to me those are two different issues, and
10 your offer of proof as regards to Mayor Walker is that it's
11 simply going to be of the latter nature, and that is that
12 people are aware of this case and have certain attitudes
13 towards the case.

14 How does that affect, do you think, ultimately, the
15 question of whether or not the openness of a preliminary
16 hearing will affect the defendant's ability to have a fair
17 trial?

18 MR. NEGUS: Well, the testimony is not that people
19 are interested, because I think that that's the kind of
20 testimony that publicity proves, but that people are angry.
21 And if you introduce testimony to people who haven't heard
22 it before about why other people are angry, what you're doing
23 is what we're doing here. I think we're increasing the
24 likelihood that other people are going to say, well, I'm
25 angry too. I mean, these emotions tend to have -- they tend
26 to grow by people sharing other people's emotions. And by

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1 KNBC, and I've indicated to him, and I will indicate to you,
2 that we will address that issue, first the question of the
3 standing of yourself and other counsel will be heard, and
4 once that's resolved, to others --

5 MR. BIRSCHBACH: Very well.

6 THE COURT: Thank you for making your presence known,
7 Counsel.

8 Mayor Walker, would you come forward and approach
9 the witness stand to my left. Before you take the stand, sir,
10 would you face the clerk, raise your right hand and be sworn.

11
12 L A R R Y W A L K E R, called as a witness by and on
13 behalf of the defense, was sworn and testified as follows:

14 THE CLERK: You do solemnly swear that the testimony
15 you are about to give in the cause now pending before this
16 court shall be the truth, the whole truth, and nothing but
17 the truth, so help you God.

18 THE WITNESS: I do.

19 THE CLERK: Please state and spell your name for the
20 court.

21 THE WITNESS: Do you want a full name, or is Larry
22 Walker okay?

23 THE COURT: Just use the name you normally use,
24 Mayor.

25 THE WITNESS: Larry Walker, W-a-l-k-e-r.

26 THE COURT: Thank you.

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1 You may proceed.

2
3 DIRECT EXAMINATION

4 BY MR. NEGUS:

5 Q Mayor Walker, you're the mayor of the City of Chino?

6 A Yes.

7 Q How long have you been in the public office of the City
8 of Chino?

9 A Since March 14, 1978.

10 Q When you first ran for the City Council, was the expansion
11 of the prison at C.I.M. an issue in the campaign?

12 A Yes, it was.

13 Q What was your stand on that issue?

14 A My stand at that time was that the then administration
15 was proposing to build additional prisons on the state
16 property in the vicinity of C.I.M., that the then-existing
17 Chino City Council had not responded quickly enough to
18 oppose that effort, and that I felt that the City of
19 Chino should oppose very strongly any effort to increase
20 the population or the buildings at C.I.M. in any amount
21 whatsoever.

22 Q Is it fair to say that since that time you have been one
23 of the leaders in opposing expansion of C.I.M. in the
24 Chino area?

25 A Yes.

26 Q What was your feeling at that point in time about the

1 an office building in downtown Los Angeles.

2 Q Why did you suggest that?

3 A Because it was obvious that Los Angeles County did not
4 have its share of the prisons.

5 Q Do you feel that that -- do you still hold that sentiment?

6 A Yes.

7 Q And is that a sentiment that is also widely held by your
8 constituency?

9 A Let me qualify, as far as my sentiment, Los Angeles
10 County does not have its proportionate share of prisoners,
11 although I have advocated that perhaps it would be more
12 appropriate to locate all prisoners outside of urban
13 areas, rather than try to distribute them equally among
14 the counties providing them.

15 As far as my constituency, I can only say that I
16 believe I have the support of the citizens of Chino in
17 the positions I have taken.

18 Q What effect has the Ryen killings on June 5th and the
19 accusation that Kevin Cooper is responsible for those
20 killings had upon the political opposition to the prisons
21 in Chino?

22 A I'm not so sure that it's had an effect. It hasn't had
23 any effect on my opposition. I think it's probably had
24 more effect on the ability of that opposition to be
25 heard in places like Sacramento.

26 Q Can you explain what you mean by that?

ers?

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1 Q Well, I think it's harder for assemblymen and senators
2 from other areas of the State to turn a deaf ear on our
3 complaints, because they feel it's a more sensitive
4 issue for them to ignore.

5 Q Have you personally used that issue in lobbying in
6 Sacramento against prison expansion?

7 A I haven't had the opportunity to lobby in Sacramento
8 since the issue took place.

9 Q Have you used the issue in any other political forums?

10 A No, I don't believe so.

11 Q To the best of your knowledge, what is the sentiment
12 in Chino about the Ryen killings?

13 A Well, that it's a horrible tragedy, and there is obviously
14 a large degree of publicity that an escape from the
15 prison is connected with it.

16 Q What do you think that the sentiment in Chino is right
17 now about Mr. Cooper?

18 A I -- I'd be guessing.

19 Q What about C.I.M.?

20 A C.I.M. is -- I think there's a substantial feeling in
21 the community that the City of Chino would be better off
22 if C.I.M. were not there.

23 Q Is that connected with the Ryen killings?

24 A I would be hard pressed to say the Ryen killings had
25 nothing to do with it, but I would say, just from my
26 frame of reference and the issue that I've dealt with,

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25 A I have one record of a telephone call that actually came
26 in when I was out of town. Councilman Kenealy responded

1 to that. He's under the subpoena of the court.

2 Q Fine.

3 Thank you.

4 THE COURT: Thank you, Mayor. You may be excused.

5 Did you have any other requests for -- to call
6 witnesses at this time?

7 MR. NEGUS: I haven't been approached by anybody
8 else who asked to --

9 THE COURT: All right.

10 What I think we'll do is we'll take a brief recess
11 till about 10:10. Then at 10:10 I'm going to ask Mr. Hanoian
12 meet with me in chambers, and we'll proceed on the subpoena
13 d.t.'s in which he's exercised the privilege. I really don't
14 know how long that will take, but as far as the open court
15 is concerned, we'll be still in recess at that time. And as
16 soon as I complete the in-camera session, then we will resume
17 our proceeding out here.

18 Court will be in recess until 10:10 or as soon
19 thereafter as I complete the proceedings in chambers.
20 Court is in recess.

21 (Court was in recess until 10:10, after which
22 proceedings were held in chambers which were
23 reported but are not transcribed herein.)

24 (The following proceedings were held in open
25 court:)

26 THE COURT: Court has conducted an in-camera hearing

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1 in regards to Mr. Hanoian's exercise of the privilege under
2 Evidence Code Section 1040 and makes its findings and rulings
3 as follows:

4 Presented to the court was a file that was in
5 response to the subpoena d.t.'s to Mr. Minjares and Mr. Peña.
6 It involved six reports, one involving a report by Mr. Brown
7 dated 6-20 consisting of 40 pages;

8 Another one a supplemental report by Mr. Brown dated
9 7-7 consisting of 13 pages;

10 Another one was an assembly report, a response to an
11 Assembly Resolution 85, containing 80 pages --

12 Which was represented to the court, Mr. Negus, that
13 you already have; is that right?

14 MR. NEGUS: The reports submitted by the Department
15 of Corrections I got from Mr. Guthrie by just requesting it.

16 THE COURT: Okay. Another one was a report on
17 fingerprint cards taken of the defendant dated 6-22-83;

18 Another one was a report dated 6-17-83, consisting
19 of five pages;

20 An overview of C.I.M. escapes next was -- described
21 as a homicide report by Mr. Laudeman. I don't have the
22 date of that.

23 Mr. Hanoian, do you recall that date?

24 MR. HANOIAN: I can get that for the court.

25 THE COURT: If you would look it up.

26 Also a supplemental report by Mr. Laudeman regarding

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1 the defendant being taken in custody on August the 3rd,
2 consisting of two pages.

3 MR. HANOIAN: Mr. Laudeman's report initially was
4 issued on 6-22-83.

5 THE COURT: The court has considered the request
6 for confidentiality there and thinks that in these instances
7 it is not necessary. So the court will deny the motion to
8 quash the subpoena duces tecum and will order that it remain
9 in full effect.

10 As to the assembly report, you may not wish to have
11 an extra 80 pages in your file.

12 MR. NEGUS: I don't need the extra 80 pages.

13 THE COURT: That's up to you.

14 Okay. Thank you.

15 MR. HANOIAN: I'm sorry. I missed -- did the court --
16 the court ruled in defense favor on all of them?

17 THE COURT: That's right, except that Mr. Negus says
18 that if you wish to take out the eighty-page assembly report,
19 he would be just as happy since he already has it.

20 MR. HANOIAN: Okay.

21 THE COURT: Okay?

22 This brings us down to this point: We have left some
23 witnesses that Mr. Negus wishes to call in support of his
24 868 motion.

25 MR. NEGUS: Right. If I could call -- at the present
26 I think two witnesses that will not take too long.

2 I would also intend to give counsel for the press
3 and the television station opportunity to be heard on standing,
4 and then after I rule on that, I'll ask you, if I determine
5 that you have standing to be heard, whether you wish to
6 present evidence, or just wish to present argument. And
7 that will determine as to where we can fit you in.

13 Okay. Let me start at this time and give counsel
14 for the press --

18 THE COURT: All right. We'll grant you that,
19 certainly. You may call your witness.

21 THE COURT: Captain Schuyler, will you approach the
22 witness stand to my left and be sworn by the clerk before
23 you're seated.

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- 1 Q Has the sheriff's department received any threats with
2 respect to Mr. Cooper's life?
- 3 A To my knowledge, I have received one.
- 4 Q Were you aware -- are you aware of a report in the
5 Riverside Press Enterprise that there were 45 threats?
- 6 A I have heard about it. I did not see it.
- 7 Q Do you know the source of that particular number?
- 8 A No, I don't.
- 9 Q Is the area of the Chino Hills part of the jurisdiction
10 that the Sheriff of San Bernardino County patrols and
11 provides police services to?
- 12 A Yes, it is.
- 13 Q Have there been budget hearings with respect to the
14 sheriff's budget in San Bernardino County in the last
15 two months?
- 16 A Yes.
- 17 Q At those hearings were people from the various communities
18 served by the sheriff, appear at those hearings and testify
19 in favor of the sheriff's budget request?
- 20 A Yes, there were.
- 21 Q Were there people there from the Chino Hills?
- 22 A Yes, there were.
- 23 Q What was their reaction towards the Sheriff's department
24 providing protection to them?
- 25 A Well, they were very adamant that they wanted to not only
26 continue the level of protection that they presently have,

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26 Excuse me, Counsel. We'll just do this one witness,

2 Mrs. Katz, would you approach the witness stand to
3 my left and be sworn by the clerk before you're seated.

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8 THE CLERK: You do solemnly swear that the testimony
9 you are about to give in the cause now pending before this
10 court shall be the truth, the whole truth, and nothing but
11 the truth, so help you God.

13 THE CLERK: Please state and spell your name for the
14 court.

16 THE COURT: Would you be seated, please.

18

20 BY MR. NEGUS:

23 A Yes, I am.

25 A Well, we are a very informally organized group. I don't
26 think we have any official founding date. I think we --

1 I would say we've been in existence for about six months
2 or so.

3 Q And where is the group located?

4 A Well, we have members really from all over the county,
5 but primarily the high desert.

6 Q Was the impetus for forming the group to oppose the
7 construction of a prison in Adelanto?

8 A The purpose of our group is to oppose any more prisons
9 in San Bernardino County.

10 Q Were you specifically, though, directed at the construction
11 of prisons in Adelanto? Was that the thing that got you
12 going?

13 A Well, I -- I will say that most of our members live in
14 the high desert. So that's our primary focus of concern,
15 because nobody else seemed to be speaking up in opposition
16 to that particular site.

17 Q Prior to June 5th, 1983, were you -- was your group
18 attempting to circulate petitions to gather signatures
19 of people opposed to the construction of the prison in
20 Adelanto?

21 | A Yes.

22 Q And did you -- had you gathered by that time approximately
23 700 signatures?

24 A Oh, no. We had more than that. We had approximately
25 2,000.

26 Q Since that time, since June 5th, 1983, how many

- 1 signatures have you gathered?
- 2 A We have gathered about 7,000 more.
- 3 Q And you began gathering signatures approximately
- 4 February of 1983; is that correct?
- 5 A I would say around there, yes.
- 6 Q Since June of 1983 have you obtained the assistance of
- 7 a variety of political leaders in San Bernardino County,
- 8 including the Victorville City Council, all five members
- 9 of the Board of Supervisors, the sheriff, the District
- 10 Attorney, and the acting public defender?
- 11 A Those people have always been opposed to any more prisons
- 12 in the county.
- 13 Q Were they working with your group prior to June 5, 1983?
- 14 A Yes.
- 15 Q All of them?
- 16 A Yes.
- 17 Q Had you had formal contacts with all of them?
- 18 A Yes.
- 19 Q Subsequent to that point in time, however, you presented
- 20 a formal declaration to an aide of Governor Deukmejian
- 21 signed by all of these people; is that correct?
- 22 A Yes, that is correct, because we made a trip to
- 23 Sacramento, and we wanted to have something tangible
- 24 to show the Governor -- Governor that all of these people
- 25 were in fact opposed to any other prisons here.
- 26 Q The signatures of -- the 7,000 signatures that you've

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1 gathered since June 5th, approximately 5,000 of those
2 were gathered at the San Bernardino County Fair in
3 Victorville?

4 A Yes.

5 Q At that fair did you have a booth?

6 A Yes, we did.

7 Q Can you describe the booth?

8 A Well, it was sort of designed to look like a prison cell,
9 and we had different -- we had literature, a fact sheet
10 and various things that we handed out to people, and
11 of course we had the petitions for them to sign if they
12 were opposed to more prisons in the county.

13 Q Were there any signs on the booth?

14 A Well, yes. We had signs that said, "Stop" -- like the
15 stop sign, that said, "Stop prisons" or "Stop the
16 prison," or something like that.

17 Q Did you also have a sign that said, "Do you want this
18 man to be your neighbor?"

19 A No, that wasn't a sign.

20 Q What was that?

21 A Well, it was a little note that was written under the --
22 under a wanted bulletin.

23 Q Showing you --

24 If I could approach the witness, Your Honor?

25 THE COURT: Certainly.

26 Q BY MR. NEGUS: -- Plaintiff's Exhibit K or Exhibit K,

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1 anyway, is that a Xerox copy of the wanted bulletin that
2 you had there?

3 A Yes, and our sign didn't say "Do you want this man to be
4 your neighbor?" It just said, "Your future neighbor"
5 question mark.

6 Q Did you also have copies of that Exhibit K made?

7 A Yes.

8 Q How many?

9 A Oh, several hundred. I didn't count them, and I didn't --
10 I didn't make them. One of our members had them run off.

11 Q Did you give them all out?

12 A No.

13 Q You still have some?

14 A Yes.

15 Q Approximately what percentage?

16 A Oh, I'd say more than half.

17 Q So you gave out how many, couple hundred?

18 A Probably about that.

19 Q Did you also give out a piece of literature that's
20 been marked as Plaintiff's Exhibit No. L?

21 A Yes, we did.

22 Q And how many pieces of that piece of literature did you
23 give out?

24 A Well, I -- I can't -- I really can't say with any degree
25 of accuracy. Not too many. I wasn't in the booth all
26 the time, of course, but -- not too many people were

1 interested in taking this, because it has so much writing
2 on it. But I'd say maybe we passed out approximately
3 50 or 60 of them.

4 Q Did you also run an ad in the newspapers which -- showing
5 you Plaintiff's Exhibit No. M.

6 A Yes.

7 Q Which newspapers did you run that ad in?

8 A In The Sun Newspaper and The Daily Press.

9 Q And were those ads all run after June 5th, 1983?

10 A Yes.

11 Q And do they have a place for a coupon for people to send
12 back signing that, agreeing with your position?

13 A Yes.

14 Q How many of those did you receive back?

15 A About a thousand.

16 Q Have you used the Ryen killings and the accusation that
17 Kevin Cooper is responsible for those killings as part
18 of your campaign against prisons in San Bernardino
19 County?

20 A We used the fact that he was an escapee, which was the
21 important issue from our point of view. There had been
22 so many arguments from the Department of Corrections that
23 people don't escape from prisons, and we know better.
24 And we used -- we used this to illustrate the fact that
25 someone did escape, and someone in our county -- someone
26 escaped in our own county.

1 Q Is it fair to say that prior to the Ryen killings a lot
2 of people in your area were sort of soft in their
3 position against the prison, but that the Ryen killings
4 have solidified that opposition?

5 A No, I wouldn't put it that strongly. The people in our
6 area were very much opposed to the prison prior to the
7 Ryen killings, and of course the Ryen killings certainly
8 brought it more to their attention.

9 Q Is Katherine Egan a member of your group?

10 A Yes, she is.

11 Q Are you familiar with a statement that she made to the
12 press that "Before the jail incident we had a lot of
13 people that were soft on their decision. Now they have
14 changed their position considerably and have signed our
15 petition"?

16 MR. KOTTMEIER: Objection. Argumentative.

17 THE COURT: Counsel?

18 MR. NEGUS: Argumentative?

19 THE COURT: How is it relevant whether or not she's
20 aware of it, in any event?

21 Q BY MR. NEGUS: Would you agree with that statement?

22 MR. KOTTMEIER: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Well, I -- I think I answered it the
25 best way I could in my answer to your last question. I
26 think -- I think certainly people became concerned, more

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1 concerned than they had been previously. Whether -- whether it
2 actually solidified any opposition, I really -- I couldn't
3 say for sure about that.

4 Q BY MR. NEGUS: Did you yourself ever make a statement to
5 April Foran, a reporter of the Victorville paper, to the
6 effect that "We don't want to have happen in Adelanto
7 what happened in Chino"?

8 A Yes. Yes, I probably said something like that.

9 Q By that, were you referring to the Ryan killings?

10 A I was referring to the escape.

11 Q After the Ryan killings, did your group increase its
12 organizational efforts to try and strike while the iron
13 was hot?

14 A We've been working very hard right along.

15 Q The president of your group, Mrs. Sarter, was quoted in
16 the press as saying essentially that. Would you agree
17 with that?

18 A I -- I wouldn't agree or disagree. That's her remark.

19 Q Why did you choose the Kevin Cooper wanted poster to pass
20 out at the fair?

21 A Well, for the obvious reason that he had already gotten
22 so much publicity in the news media, and it was -- it
23 was something that had happened in our community, and
24 we -- we felt that people would -- would look at this
25 and, you know, there would be some recognition, because
26 his picture had been in the paper so much already.

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1 Q Was he a symbol to you of the problems you were trying
2 to avoid by having a prison in Adelanto?

3 A In a sense, yes.

4 Q Thank you.

5 I have nothing further.

6 THE COURT: Any questions, Counsel?

7 MR. KOCHIS: No.

8 THE COURT: Counsel?

9 MR. KOTTMEIER: No.

10 THE COURT: Mrs. Katz, thank you for coming in. You
11 may be excused at this time. Just leave those right there
12 on the table.

13 THE WITNESS: Oh.

14 THE COURT: And the bailiff will take care of those.

15 Before we address the issue of the standing of the
16 parties to appear for the newspaper and the television
17 station, let me inquire, is there anyone who is going to raise
18 any objection to their standing to address the issue in court?

19 MR. NEGUS: I would.

20 THE COURT: Okay. Do you wish to be heard on that?

21 MR. NEGUS: Generally.

22 THE COURT: In fact, let me perhaps -- since you will
23 respond to it, let me let Mr. Méndez first be heard on the
24 issue. Then you may respond to that.

25 Mr. Méndez?

26 MR. MENDEZ: Thank you very much, Your Honor. Robert

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1 MR. BIERSCHBACH: I would just like to say, Your
2 Honor, that it would be a very ludicrous situation if the
3 Legislature has given the opportunity for the examination
4 to be open in public, except after a finding by the magistrate
5 that it's necessary, in order to protect the defendant, to close
6 the hearing. The District Attorney has indicated to us that
7 he does not intend to take a position on this. If we're
8 not allowed to be heard, no one will be heard except the
9 defendant, and we think that this is no hearing at all if only
10 one side is heard. So in order to give real meaning to the
11 Legislature's intent, I think it's incumbent that we be
12 heard.

13 THE COURT: Okay. Thank you.

14 Counsel?

15 MR. NEGUS: Basically the right to a public hearing
16 is most strong in a jury trial or a trial situation. And
17 the cases -- the case of the United States Supreme Court
18 which gave a limited right of the First Amendment access to
19 those dealt with trial.

20 Gannett Company versus DePasquale, 443 U.S. 368,
21 specifically upheld a finding closing pretrial proceedings.
22 And Richmond Newspaper Company, the case that gave the --
23 gave a right to a public trial, which we've never opposed
24 in this county, at least that I'm aware of, made a distinction
25 between the pretrial proceedings and a jury trial proceeding.

26 In Gannett versus DePasquale, it was said that -- on

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4 That is to say, if the District Attorney's Office
5 makes a finding in their own minds that they don't wish to
6 oppose the motion, basically, I would assume, on the grounds
7 that they wish to minimize the likelihood of a change of
8 venue motion being granted in this particular case, that
9 that decision on their part is entitled to great weight and
10 should be respected because they likewise have a duty to
11 ensure, if they can, that Mr. Cooper gets a fair trial. If
12 they have made the decision that not opposing the motion
13 is the best way to ensure that he gets a fair trial, I would
14 submit that that is all that is required under Penal Code
15 Section 868.

19 THE COURT: Thank you.

20 MR. MENDEZ: Your Honor, if I might respond to that,
21 I think that is our very point. The D.A. in this case is
22 an interested party. He is not an advocate for the public
23 in this case. His interest is very narrow in this case. He
24 wants to make sure that he doesn't do anything that will
25 cause this case to be overturned on appeal, and I don't
26 think that we can expect the D.A. to represent the public.

1 He's got different interests at stake and can't be an
2 advocate for the public.

3 THE COURT: What issue would you be addressing to the
4 court, Counsel, other than the issue of whether or not the
5 keeping open of the preliminary hearing might deny the
6 defendant a fair trial?

7 MR. MENDEZ: Well, it's our position that the public
8 has a right, grounded in the First Amendment and in Penal
9 Code Section 868, to be at this hearing.

10 THE COURT: I think everybody grants you commence --
11 you commence with that premise, and you commence--indeed,
12 as the statute has been amended, it says that it shall be
13 open. So then the sole question that allows a judge or a
14 magistrate to depart from that premise is a determination
15 that the openness of the hearing would prevent or, to use
16 the specific words, that "The exclusion of the public is
17 necessary in order to protect the defendant's right to a
18 fair and impartial trial."

19 MR. MENDEZ: Exactly, Your Honor. We would like an
20 opportunity to respond to the defendant's claim, and we
21 believe it is his burden to prove under 868 -- to prove that
22 closure of the preliminary hearing is necessary to protect
23 his fair trial rights, and we simply want an opportunity to
24 respond to that, to his claims.

25 THE COURT: Thank you.

26 Okay. The court I think will -- will find that both

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24 MR. MENDEZ: Your Honor, it's not crucial to our
25 position, I don't think, but if we're going to be allowed --
26 if we're going to have an opportunity to respond to their

1 claims -- I don't intend to put on any witnesses, but I
2 certainly think it's necessary for me to be able to cross-
3 examine in order to rebut any of the claims that counsel is
4 trying to establish.

5 THE COURT: Any authority for that at all?

6 MR. BIERSEBACH: There is no authority, Your Honor,
7 as far as I know. There are two cases in the District Court
8 of Appeal now, one in the Fourth District, one in the
9 Fifth District, concerning the nature of the hearing, and, I
10 assume, touching on this particular point. But I can't
11 conceive that the Supreme Court or the Ninth Circuit Court
12 intended that the press and the public would not have an
13 opportunity to test the evidence upon which the magistrate
14 is basing his or her decision. And I think that it's
15 incumbent that we have that right in order to give meaning
16 to the hearing.

17 THE COURT: Okay.

18 Absent any authority at this time, the court is going
19 to restrict the participation of counsel to present evidence
20 on their own if they wish to and of course to present
21 argument, because I -- I take it, essentially, Mr. Méndez,
22 you wish to -- at the completion of the presentation of the
23 evidence here, essentially to argue the insufficiency of
24 showing by the defense --

25 MR. MENDEZ: Yes.

26 THE COURT: -- to their claim.

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DIRECT EXAMINATION

BY MR. NEGUS:

Q Sergeant Arthur, what's your occupation?

A I'm employed by the County of San Bernardino, Sheriff's Department.

Q And you work with the homicide department?

A Yes, sir.

Q And were you the administrator in the sheriff's department who was put in charge of the investigation of the Ryen killings?

A Yes.

Q In that capacity have you had occasion to assess the amount of false information which you've received in this particular case?

A I believe so.

Q Have you received a lot?

A Yes.

Q Much more than -- than normally in a homicide investigation?

A Yes.

Q Did the sheriff introduce a policy early on in the investigation of not releasing information about the physical evidence in the case?

A I don't believe that was done.

Q Have statements been made about the physical evidence?

A Yes.

Q Has that physical evidence been described fully and

2 A I -- I think you would have to go into each piece of
3 physical evidence which you're talking about.

4 Q In assessing the false information that's been received,
5 has a lot of that information been determined false
6 basically because you possessed information that the
7 person making the false report didn't have and which
8 hadn't been released to the public in general?

9 A No, sir. I'm talking -- the false information I am
10 referring to is the sightings of Kevin Cooper. That
11 kind of information is more than abundant.

12 Q All right.

13 And people gave detailed statements about their
14 contacts with Mr. Cooper?

15 A That's correct.

16 Q And at the time that they were making those detailed
17 statements, you were able to determine that they were
18 false only after you later learned from other sources
19 where Mr. Cooper had been from June 10th to July the
20 30th?

21 A That's basically correct.

22 Q And that information was not generally available to the
23 people making the false reports at the time that they
24 made them; is that correct?

25 A No.

26 Q In connection with your duties did you travel to Santa

- 1 Barbara on July the 30th?
- 2 A Yes, I did.
- 3 Q And on July 31st did you drive Mr. Cooper back to the
- 4 San Bernardino County Jail?
- 5 A Yes.
- 6 Q Along the way was Mr. Cooper recognized?
- 7 A Yes, he was.
- 8 Q Were there any reactions to him as you drove back?
- 9 A Yes.
- 10 Q What were those reactions?
- 11 A People would point at him as we were driving alongside
- 12 them or by them. They would make gestures, they would
- 13 cheer, obviously cheer that he was in custody.
- 14 Q Were some of the gestures obscene gestures?
- 15 A I wouldn't classify them as obscene, no.
- 16 Q Gestures of anger at Mr. Cooper?
- 17 A Some anger and -- yes, there were some anger.
- 18 Q When you arrived back at the San Bernardino County Jail,
- 19 was there a crowd of civilians there?
- 20 A Yes.
- 21 Q How many people would you guess?
- 22 A I do not know.
- 23 Q What was that -- what was that -- was that crowd engaged
- 24 in any unusual behavior?
- 25 A Yes.
- 26 Q What was that?

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23 Let's review at this point then as to what additional
24 evidence you expect to present on the 868 motion, what we
25 have present at this time and what we don't have present and
26 what you propose in that regard.

1 MR. NEGUS: I have lodged and asked that it be marked
2 as exhibits with the court, the ten video tapes that were
3 submitted by the Los Angeles television stations in response
4 to the subpoena duces tecums that I issued. I would request
5 that those be admitted into evidence on this -- at this
6 particular hearing.

7 I have in my office, which have not yet been completely
8 collated, the scripts that were also submitted by those
9 television stations and the ratings which were also presented
10 by those television stations in response to the subpoena
11 duces tecum. I will be having prepared transcripts of the
12 video cassettes that you already have.

13 I also have not submitted yet to the court scripts
14 and some tapes from radio stations of broadcasts about the
15 case and also some ratings information from some of the
16 stations.

17 I expect also to present more newspaper clippings.
18 I have already presented you with those from four newspapers
19 up to a couple of days ago, and there are several local
20 newspapers which I have not yet gathered, clipped and prepared.
21 I will have those as soon as I -- as soon as I can.

22 In addition, I am attempting to find a person who is
23 an expert in the field of communications who can give some
24 testimony as to the effect of this material on the -- on what --
25 on what -- Mr. Cooper's ability to obtain a fair trial and
26 the effect of having an open preliminary hearing on his

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1 ability to get a fair trial. I would be expecting to present
2 that person's testimony on October 7th if the court grants
3 my motion to continue the hearing till that day.

4 THE COURT: Well, we've -- you've got certain items
5 which have already been marked. And I suppose you can move
6 at this time that they be admitted for the purpose of this
7 868 hearing.

8 MR. NEGUS: So moved.

9 THE COURT: Okay.

10 Mr. Kottmeier, Mr. Kochis, do you wish to be heard
11 on that?

12 MR. KOCHIS: No objection, Your Honor.

13 MR. KOTTMEIER: No objection.

14 THE COURT: Those items already marked may be
15 received.

16 Mr. Negus, this document was presented to the court
17 as an exhibit on your motion and Points and Authorities. I
18 don't know. Do you wish to have it marked and received as
19 an item in evidence?

20 MR. NEGUS: Move -- it makes no difference to me.
21 I wanted to have it considered. If you wished -- if you
22 wanted to consider it as evidence or as an exhibit.

23 THE COURT: No. It may remain then just as an
24 exhibit to your moving papers.

25 MR. NEGUS: There will be a supplement to that
26 exhibit filed.

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16 THE COURT: Okay. Only a procedural question, and
17 that is that obviously it would be inappropriate, unless
18 there were stipulations otherwise, for the court to be
19 considering items as evidence before they've been admitted
20 into evidence. Can we receive a stipulation between yourself
21 and the District Attorney's Office that Mr. Negus may submit
22 proposed items of evidence to the court prior to the next
23 hearing, that the court may have them marked for identification
24 and that the court may view them and, contingent upon a
25 motion to have them admitted into evidence on October 7th,
26 either consider them or not consider them depending on the

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1 court's ruling there?

2 MR. NEGUS: I would so stipulate.

3 MR. KOCHIS: So would I.

4 THE COURT: The court receives that stipulation.

5 Counsel, I would like for you to have any such items
6 to the court clerk no later than --

7 MR. NEGUS: I can have the bulk, Your Honor, by next
8 Friday. If I could have a little bit longer for some of the
9 transcripts of the tapes, but you have the tapes so you can
10 view the tapes without the transcripts.

11 THE COURT: But are they in the form that I can look
12 at them?

13 MR. NEGUS: No, but I would be willing to stipulate
14 that with respect to the professional quality video cassettes
15 which were submitted by some of the television stations,
16 that Mr. Kottmeier and I both have copies of those tapes
17 which were made on cassettes which can be played in normal
18 video machine players and that you could borrow either mine
19 or Mr. Kottmeier's to view.

20 THE COURT: Well, I think you'd better submit with
21 them, along with them. They'll be marked as an item for
22 identification. We can release them to you afterwards.
23 There's no problem in that regard. But I'd rather have them
24 to have a designation so that I can tell you what I've looked
25 at and I haven't looked at.

26 MR. NEGUS: The ones that you have have been marked.

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1 All have exhibit numbers on them.

2 THE COURT: Yes.

3 MR. NEGUS: And I will put those --

4 THE COURT: No, no.

5 MR. NEGUS: -- transfer those --

6 THE COURT: No, no. They should remain with those
7 present exhibit numbers --

8 MR. NEGUS: No. If you get them from me, for example,
9 I will label mine with the appropriate exhibit numbers.
10 Mr. Kottmeier and I are both fearful of having the tapes
11 somehow get into the system. That's why we had the copies
12 made. So I think Mr. Kottmeier or Mr. Kochis would agree to
13 the procedure that I am suggesting that I just give you the
14 tapes with them appropriately marked, rather than having
15 them made as exhibits.

16 THE COURT: As long as it's marked so that I know
17 which ones I'm viewing.

18 MR. NEGUS: Fine.

19 THE COURT: I'm afraid to ask you, how long are these
20 tapes going to be?

21 MR. NEGUS: It took me seven hours to look at the
22 television.

23 THE COURT: Thank you.

24 MR. NEGUS: Your Honor?

25 (Discussion off the record.)

26 THE COURT: Yes. Let's give a date. They should all

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1 be to me no later than October the 3rd.

2 MR. MENDEZ: Your Honor, one last point.

3 THE COURT: Yes.

4 MR. MENDEZ: If counsel has P's and A's in support
5 of the motion, can we get a copy of those?

6 THE COURT: In support of the --

7 MR. MENDEZ: 868 motion.

8 THE COURT: Yes, the 868 --

9 MR. NEGUS: My objection to that is that the Points
10 and Authorities contain allegations about facts which I
11 expect to come out at the preliminary hearing and argument
12 along that grounds. If those Points and Authorities are
13 released to the general public, then obviously part of the
14 point of having a closed preliminary hearing is thwarted.
15 So I would object to that.

16 THE COURT: Okay. The court will take your request
17 under submission and will rule on it, and it may be a
18 qualified ruling, and that is there may be certain restrictions
19 placed on aspects of it. I'll have to review those Points
20 and Authorities.

21 MR. MENDEZ: Thank you, Your Honor.

22 THE COURT: Mr. Bierschbach, any other matter?

23 MR. BIERSCHBACH: Only that it would be very
24 difficult for us to respond if we can't see his Points and
25 Authorities. I don't think that would be fair at all.

26 THE COURT: All right.

1 What else do we have in terms of any motions to quash
2 or in terms of an anticipation of the next hearing date --

3 MR. NEGUS: I believe --

4 THE COURT: -- to cover?

5 MR. NEGUS: Well, I would -- I was going to make a
6 request for the transcript of today's proceedings to be
7 prepared.

8 THE COURT: Okay. The court will so order.

9 MR. NEGUS: And I believe that leaves us only with
10 the discovery motion matters.

11 THE COURT: Okay.

12 MR. KOTTMEIER: There was one other indicated area
13 of concern, Your Honor, which was relative to the location of
14 the prelim for November.

15 THE COURT: Right. I think I had indicated previously
16 that I would rule on it at this time. I think it's appropriate
17 that I rule on that after I've made a ruling on the 868,
18 because I think that's pertinent. So the court will defer
19 ruling as to the -- any change of location until I've ruled
20 on the 868 motion. But I thank you for bringing that up.
21 I had indicated that I would make that determination today.

22 MR. KOCHIS: Your Honor, that presents one problem
23 in that we're putting into the system subpoenas for a large
24 number of witnesses and that some of those witnesses are
25 located outside of this geographical area, and we need to
26 know -- at least I need to know the location to put on the

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1 subpoenas to notify people where to appear, whether it's
2 Department 11 or here.

3 MR. NEGUS: My request would be to have the matter
4 in Department 11, no matter which way you rule on the motion.

5 THE COURT: Well, as of this time it's the court's
6 intention to hold the preliminary hearing in this courtroom.
7 And so you can subpoena accordingly --

8 MR. KOCHIS: Thank you.

9 THE COURT: If the court becomes convinced otherwise,
10 I'm open to a reconsideration of that ruling, but that's
11 the tentative ruling of the court at this time. And you may
12 have to alter your subpoenas or redirect people once they
13 come here.

14 Okay. You wish to be heard. You have a request
15 now as regards to the continuance of the -- of this hearing
16 until another date?

17 MR. NEGUS: Yes. I would request that the 868 hearing
18 be continued until October 7th.

19 THE COURT: Okay.

20 Counsel?

21 MR. KOCHIS: As long as that doesn't affect the
22 preliminary hearing date, I have no objection.

23 THE COURT: The preliminary hearing date is presently
24 set for November the 9th. I'd expect that, as I indicated
25 I think in our first hearing, that preliminary hearings
26 aren't set in concrete. This one is getting increasingly

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1 set in concrete. I would expect that it will start
2 November 9th. The continuance of this hearing until
3 October the 7th will not affect that.

4 MR. NEGUS: That's -- I have no reason to think it
5 will.

6 THE COURT: So the court will grant your request to
7 continue the balance of the proceedings on your motion under
8 Penal Code Section 868 until October the 7th at the hour
9 of 8:30 in this department.

10 The one remaining matter we have to cover is some
11 specific discovery motion. The court is going to take a
12 recess until 11:30, after which time the courtroom will be
13 closed to the public because of the particular nature and the
14 representations that may have to be made in this discovery
15 motion.

16 Court will be in recess until 11:30.

17 (Recess.)

18 THE COURT: The record may reflect we're back in
19 court. At this point the hearing has been closed. However,
20 Mr. Bierschbach has requested an opportunity to address the
21 court on the ruling that it's made closing the hearing and
22 the ruling on the discovery.

23 You may be heard, Counsel.

24 MR. BIRSCHBACH: Thank you, Your Honor, for allowing
25 me to be heard.

26 THE COURT: Surely.

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1 MR. BIERSCHBACH: At this time, Your Honor, I would
2 request the court rescind its order closing this particular
3 hearing until some adequate showing has been made that there
4 will be a strong prejudicial effect on the defendant's
5 right to a fair trial if the hearing is open. I think it's
6 been clearly set forth by the United States Supreme Court
7 and the Ninth Circuit Court in the case of U.S. versus
8 Brook Lier that without some hearing to determine the closing
9 of any portion of a trial, it is a violation of the First
10 Amendment. And I'd request the court to hold such a hearing
11 before it makes such a determination.

12 THE COURT: Okay. What I'm concerned about, Counsel,
13 is I have in front of me the written request for discovery
14 that requests a number of things. Incumbent in the court's
15 consideration of that discovery motion and those items are
16 going to have to be representations made to the court as to
17 what those items may or may not contain. Those are only
18 representations, and I can't at this point, without obviously
19 having those matters in front of me, determine whether or
20 not they are in fact -- those representations in fact
21 reflect what the document is that's asking to be discovered.
22 Therefore I am concerned in having information be disseminated
23 to the public at this time only as a representation of what
24 the discovery might be without having it itself, and it's
25 that principal concern that leads me to believe that it may
26 be detrimental to a fair trial at a later time, and if certain

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1 representations and certain statements are made here in court
2 and given the imprimatur or the stamp of the court when they
3 may not in fact be true at all, that's my concern.

4 I appreciate your presentation of the constitutional
5 assertion of the right of your client, but the court at this
6 time will decline to reconsider. Thank you, Counsel.

7 MR. BIRSCHBACH: Thank you, Your Honor.

8 THE COURT: Counsel, I'm referring now to a document
9 declared Motion for Discovery which gives a notice of it and
10 then contains specific numbered paragraphs at which discovery
11 is requested. And absent a suggestion otherwise from counsel,
12 we'll, I guess, just simply proceed down those, and I'll
13 hear argument and representations by counsel as to whether it
14 shall be granted or denied.

15 They start out with requested records from C.I.M.

16 Mr. Hanoian, can we get you at the counsel table
17 somewhere?

18 MR. HANOIAN: Certainly, Your Honor. Thank you.

19 THE COURT: Okay.

20 I assume that at this time, for purposes of the
21 arguing presentation that none of these have been submitted;
22 is that right, Mr. Negus?

23 MR. NEGUS: With respect to the C.I.M. materials,
24 that's true. When we get to some of the stuff that's been
25 requested from the District Attorney's Office, we'll have
26 different representations.

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1 THE COURT: Let's address Request No. 1.

2 Mr. Hanoian?

3 MR. HANOIAN: We would not object to providing the
4 defense with Mr. Cooper's Central file, his property records
5 or records of clothing, with this proviso: There are waiver
6 forms that are provided for inmates looking at the specific
7 pieces of property and copying them or releasing them to
8 their attorney. We would ask the court to order that the
9 defendant sign those forms and that the attorney sign those
10 forms in exchange for us providing that information. And on
11 that basis we would submit the request.

12 THE COURT: Any objection?

13 MR. NEGUS: No, assuming you mean the standard form
14 we always submit to --

15 MR. HANOIAN: We have the forms.

16 MR. NEGUS: Okay. He'll provide the form.

17 MR. HANOIAN: Sure. I've got them in my briefcase.

18 Also the records would be made available for counsel
19 to copy at a time and place convenient to him and to the
20 C.I.M. personnel.

21 THE COURT: Yes, that's understood. Okay.

22 Number 1 will be granted with the only modification
23 that defense will be required to submit waiver forms.

24 Number 2?

25 MR. HANOIAN: We would object to this, Your Honor.
26 I believe that the justification for this specific item

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1 relates to an examination which took place on the 3rd of
2 May of 1983. To the extent that such an examination did
3 take place, it would be in the inmate's Central file, and
4 then he would have knowledge of who it was that examined him.
5 I'm not sure of the nature of the examination involved or
6 any of the specific material in the file, but I believe that
7 it's over broad as requested, "all staff on duty on May 3rd,
8 1983."

9 MR. NEGUS: We were looking for the person that
10 examined him. If we had his name, we wouldn't have asked
11 for it.

12 There's other witnesses we need to locate. I don't
13 wish to have to reveal what we're trying to find, because
14 that would be having to give up Mr. Cooper's rights to --

15 THE COURT: Okay. I'm going to at this time deny
16 2 on the basis that it's over broad.

17 I would expect, Counsel, that once you get the
18 discovery under 1, that you'll be in a better position to --

19 MR. NEGUS: I don't think so. I already have the --
20 what I believe is in Central's file with respect to 1. We've
21 gotten a few documents. The problem is that there are some
22 people that did specific acts who were staff who were on that
23 one date in that one place. So I'm not asking for everybody
24 he's ever come in contact with. There's only going to be
25 probably 10 or 15 people.

26 MR. HANOIAN: Maybe if he would designate what specific

1 acts he was talking about, we could narrow it down.

2 MR. NEGUS: The thing is I don't wish to have to
3 give up crucial facts of Mr. Cooper's defense in order to do
4 it. There is a specific individual we are looking for who
5 was present on that date, and I know of no other way of
6 obtaining his identity other than showing photographs of the
7 people there to Mr. Cooper and having him designate who he
8 was to me.

9 THE COURT: At this point I don't know what relevance
10 May the 3rd is.

11 MR. NEGUS: Well, if I tell you what relevance it
12 is -- I'll be glad to tell you what relevance it is outside
13 the presence of the prosecution.

14 MR. HANOIAN: Well, Your Honor, we are not the
15 prosecution. I think that's one of the things that needs to
16 be made clear. We're representing the California Department
17 of Corrections and not the People in this matter.

18 MR. NEGUS: The California Department of Corrections
19 throughout the Complaint, and the Attorney General I think
20 is --

21 THE COURT: Okay. The court is going to not order
22 that.

23 MR. NEGUS: Can I be heard in-camera then in order
24 to justify it?

25 THE COURT: Not at this time, no.

26 Okay. Number 3?

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1 MR. HANOIAN: Number 3 is incredibly over broad.
2 He is asking for photographs, inmate numbers, cells, bunk
3 numbers of everybody that the defendant came in contact with
4 over what appears to be a six-week period of time, and the
5 task involved in gathering that material, if it is possible
6 to gather the material, is monumental, and without a showing
7 of how that would specifically be relevant to an escape
8 charge, I don't think that he would be entitled to that
9 material as well.

10 It's the Pitchess situation, the fishing expedition
11 incarnate.

12 MR. NEGUS: The problem is that we're not dealing
13 only with the escape charge in our material from C.D.C.
14 The prosecution intends to introduce witnesses at trial that
15 and at the preliminary hearing, specifically, that will
16 detail certain actions that Mr. Cooper supposedly underwent
17 at the California Department of Corrections. I'm aware at
18 the present time, from a witness list which has been provided
19 to me, of a James Taylor who is an inmate at the California
20 Institution for Men.

21 In order to locate witnesses -- Mr. Cooper does not
22 know the names of the different people that he came in contact
23 with, other than street names in some instances. This is
24 the only way that I can locate those witnesses who have
25 information about his contacts with Mr. Taylor and other
26 things relevant to that testimony which we expect to have at

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1 the preliminary hearing.

2 I have heard time and time again from the Department
3 of Corrections how onerous it is on them to find these
4 photographs. The courts have ordered them over and over
5 again, and they usually come up with them within a couple
6 of days.

7 I have had situations where it was to their advantage
8 to produce the photographs, and they come up with them within
9 a couple of hours.

10 I find it very difficult to believe that it's all that
11 hard for them to do it, because they always manage to do it
12 when it's to their advantage, and it always manages to be
13 tremendously onerous when it's to the advantage of the defense.

14 There's no other way we can locate those witnesses,
15 other than having all those people brought into court, other
16 than showing the photographs to Mr. Cooper and having him
17 tell me who they are.

18 THE COURT: Counsel?

19 MR. HANOIAN: The fact that counsel has some experience
20 where he has been provided with photographs in the past is
21 no indication as to the request that we have in front of the
22 court right now where there are between three and five hundred
23 different persons involved. Not only do we have to locate
24 photographs of the individuals, but we have to find out who
25 they are in the first place. And there is no log that is
26 kept, a permanent record of who is where on a specific date.

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24 If I had any way of limiting the number of inmates
25 that I needed to look at, if we could -- if we could identify
26 the people who are witnesses in any other way, I would do it.

1 I know of no other way to limit it, because we're dealing
2 with both -- the only way I could think of doing it offhand
3 would be race, but we're dealing with witnesses of both
4 races, and so I can't even do that.

5 THE COURT: The court is going to deny the request
6 as over broad and also on the basis of relevancy.

7 Number 4?

8 MR. HANOIAN: Your Honor, we would object to A through
9 H here. If Mr. Taylor wishes to give the defense access to
10 his Central file, then he can fill out the paperwork and
11 allow access. But I believe that he is entitled to the
12 same privacy as any other individual in the State of
13 California under the privacy act.

14 Further, this again is a request to examine the
15 totality of Mr. Taylor's Central file, and a search for
16 credibility evidence.

17 The prosecution will provide the defense with any
18 evidence that they're aware of with regard to credibility.
19 They are required by law to do that, and so this -- anything
20 that would be in his C File would be duplicative of that
21 particular fact.

22 I don't believe that it's necessary to infringe on
23 Mr. Taylor's privacy rights without some compelling
24 justification.

25 Further, if in fact the court rules that these are
26 necessary and relevant, we would assert the privilege

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1 pursuant to 1040, because all the information in the
2 Central file was taken in confidence. It is not generally
3 disseminated to the public, and it is meant to stay
4 confidential.

5 THE COURT: Do you have that file with you?

6 MR. HANOIAN: Yes, I do, and I have a records
7 officer with it as well.

8 THE COURT: Counsel?

9 MR. NEGUS: It is not the entire Central file. I've
10 specified the exact documents that I want within the file.
11 There are many documents in the file that are not covered by
12 the thing.

13 Mr. Taylor is going to be -- is going to be a witness
14 at the preliminary hearing. He's going to testify as to
15 contacts that he's had with Mr. Cooper.

16 I believe that -- I have set forth in the declaration
17 the problems one has of proving directly the rewards and
18 promises and things that have to do with the credibility,
19 inmate witnesses from the -- from the institution. There's
20 been no counter declarations filed on that.

21 Mr. Hanoian argued on the last item that he wasn't
22 part of the prosecution. To my knowledge, the prosecution
23 does not -- is not the -- the District Attorney's Office is
24 not in possession of Mr. Taylor's file. Therefore, it doesn't
25 do any good to rely upon their duty to disclose to me
26 something that they personally don't have. That's why I asked

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1 the C.D.C. to come forward with it.

2 All the -- all the documents are documents which are
3 relative to credibility and are relative to the rewards that
4 Mr. Taylor may receive.

5 THE COURT: As to credibility and also as to reliability
6 or bias or what have you; is that right?

7 MR. NEGUS: Right, as set forth in the declaration.

8 MR. HANOIAN: If I might invite the court's
9 attention to People versus Gaulden, 36 Cal.App.3d at 961,
10 they have specifically rejected claims to go throughout a
11 file just in search of evidence of credibility.

12 Moreover, this request also asks for any psychological
13 test results which I think are particularly subject to the
14 person -- the personal privacy rights of any individual as
15 well as -- and the courts of appeal have in fact dealt with
16 that issue specifically in Arcelona versus Municipal Court,
17 113 Cal.App.3d at 531 through 532.

18 That case was not an inmate case. It was a case
19 where a law enforcement officer's psychiatric records were
20 in question, but I think the reasoning is as applicable to
21 this specific case.

22 MR. NEGUS: The psychological testing which is done
23 of inmates at the California Department of Corrections is
24 not subject to the psychotherapist-patient privilege. That
25 information is widely disseminated throughout the institution.
26 People who are not in a privileged position with the inmate

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16 Mr. Taylor is going to come in and say that somehow
17 he snuck a pair of tennis shoes out of the stock that they
18 had and gave them to Mr. Cooper, and that's how come they
19 are going to try and connect this tennis shoe print at the
20 scene with Mr. Cooper, is through this long chain of evidence.
21 So if they are going to claim that that sort of -- if they're
22 going to introduce that kind of evidence, which I believe
23 that they are based upon their witness list, then I think
24 that I'm entitled to inspect the records of the tennis shoes
25 to see whether or not there's any evidence which supports
26 Mr. Taylor's testimony or denies it.

1 THE COURT: Counsel?

2 MR. HANOIAN: I don't think that justifies looking
3 at 6,000 shoes or the records for 6,000 shoes. It certainly
4 justifies perhaps the defense examining the same sample that
5 the prosecution has had an opportunity to examine, and indeed
6 if the defense would like additional shoes, particular shoes
7 to examine, I think we could produce that, as well as providing
8 the types of tennis shoes which are available. That doesn't
9 require the inspection of every pair of shoes --

10 THE COURT: That's not what he's asking. He's asking
11 for records of them.

12 MR. HANOIAN: Of all the shoes?

13 THE COURT: Suppose he wants to know what kind of
14 shoes C.I.M. bought or had there to hand out.

15 MR. HANOIAN: Well, if that's what he wants, the
16 type of shoes bought, perhaps they do have those, and I'd
17 be willing to hand that over.

18 THE COURT: You want the kinds of shoes?

19 MR. NEGUS: I want the records of the shoes bought
20 and their distribution. I assume that they have -- somebody --
21 I can't believe a state agency -- we've got 10,000 tennis
22 shoes or 6,000, whatever figure that they supposedly have.
23 I don't believe it's that high for the month of May, but
24 maybe I'm wrong. However many tennis shoes they issued in
25 the month of May, I would think they were probably more in
26 the low hundreds or even below that, and some indication of

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1 to whom. That is to say, if Mr. Taylor claims that he got
2 a certain kind of tennis shoe, and those tennis shoes weren't
3 issued in the month of May, I think that bears heavily upon
4 this chain of evidence that they're trying to establish.

5 THE COURT: Do you think any record exists as to who
6 was issued what kind of tennis shoe?

7 MR. HANOIAN: My understanding with talking with my
8 client--and, in fact, Your Honor, I do have one of the
9 investigators from C.I.M. here who is familiar with the
10 procedures. We can put him on the stand if that need be --

11 THE COURT: I just want representations without
12 taking evidence.

13 MR. HANOIAN: My understanding is that the clothing
14 that is distributed to the inmates at C.I.M. is not accounted
15 for item by item. They account for the property that is
16 brought into the institution by each inmate, and then they
17 supplement clothing with that particular property, and they
18 don't keep a record as to who gets which pair of shorts or
19 who gets which pair of socks or which pair of shoes.

20 MR. NEGUS: Tennis shoes are somewhat different in
21 that only special persons are allowed to have them. They're
22 not something which is generally issued, and you have to get
23 special permission in the institution to get tennis shoes,
24 which leads one to believe that if there's special permission,
25 they have records of the special permission. In fact, I'm
26 reasonably sure that they do.

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1 But also if it just -- I can't believe that they
2 don't keep some kind of track of, for example, whether tennis
3 shoes are going to R.C. West or C.I.M. Minimum or the
4 East Facility. And if they're all going to the East Facility
5 and not to West, where this supposedly happened, that's
6 important to know.

7 THE COURT: I think to resolve that, we're going to
8 have to have some representations by your people as to what
9 the practice is on tennis shoes so I can form some conclusion
10 as to how relevant it is to get a record of all the tennis
11 shoes or what have you.

12 So let's take our noon recess at this time. We'll
13 be in recess until 1:30.

14 And if you could have your person available to come
15 in to make some representation to us as to that.

16 MR. HANOIAN: Certainly.

17 THE COURT: If you envision on any of these other
18 ones those same particular problems, we can do that, or have
19 your --

20 MR. HANOIAN: There are only three more.

21 THE COURT: Right. There are very few more.

22 Okay? We'll be in recess until 1:30.

23 (Lunch recess.)

24 THE COURT: We're back in session, in a closed
25 session, considering defendant's written request for
26 discovery.

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1 THE COURT: -- that nature.

2 MR. HANOIAN: And I would also represent to the court
3 that the sheriff's department has been provided with an
4 example of the tennis shoes that were available, the different
5 brands of shoes that were available, and we would be --

6 THE COURT: I'm only concerned here with the requested
7 order. That covers No. 5.

8 Number 6?

9 MR. HANOIAN: We do not have any property of Mr.
10 Cooper's in the institution.

11 THE COURT: Okay. The court will leave that as
12 ordered, and you merely indicate that there is none existent.

13 Number 7?

14 MR. HANOIAN: We would object to this, Your Honor,
15 for a number of reasons:

16 First and foremost, security reasons. I don't think
17 that it would be appropriate to allow someone who has been
18 charged with escape to go out and photograph the entire
19 institution. If there's any specific reason why these
20 particular places are relevant and photographs are necessary,
21 I'd be interested in hearing them. They certainly aren't
22 justified by the rationale presented in the motion.

23 "Material as to route of the alleged escape."

24 I don't know that there is a route to the escape.
25 I mean, I'm sure he -- he escaped by --

26 THE COURT: I don't think it says that, does it?

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1 MR. HANOIAN: "Material as to the route of the alleged
2 escape."

3 THE COURT: Oh, I see.

4 Mr. Negus?

5 MR. NEGUS: Well, if there's not a route, I wonder
6 how he got out.

7 I think that the security reasons, if they're worried
8 about Mr. Cooper escaping from C.I.M. Minimum again, I would
9 suggest that that's probably fanciful in the extreme. I
10 can't imagine the C.D.C. ever putting Mr. Cooper back in
11 C.I.M. Minimum given all the flak they had for the last time
12 they did it.

13 It's -- what I'm asking for is photographs of the
14 crime scene.

15 The problem we have in all these requests is that
16 in the prison cases, the crime scene is in fact a prison.
17 But that doesn't -- so you have to get a special order to
18 get access to what normally you'd just be able to walk up
19 and take pictures of.

20 I've taken pictures of other crime scenes, other
21 escapes in the past, and I've never heard any of those
22 photographs caused any breaches in their security.

23 I would note that they allow the news media in to
24 take pictures of their institution with surprising frequency.
25 At least, I saw an awful lot of pictures of their institution
26 on the news when I was watching the television program in

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26 MR. NEGUS: It's -- No. 8, there can be no claim of

1 security on that. They published similar-type diagrams in
2 the Chino Champion, and if you'll look at Exhibit C-21 in
3 the stuff I gave you, you'll see an outline of the -- of the
4 whole thing showing the location of the buildings. The only
5 thing it doesn't do is it doesn't give the specific names of
6 the buildings and that sort of stuff.

7 Basically the -- we're talking again about the crime
8 scene, and how the escape, if it was, was effected, and that
9 certainly is relative to some of the charges that we're
10 going to be facing.

11 THE COURT: Do you want any more than that?

12 MR. NEGUS: Well, they have these -- they have diagrams
13 which -- which they release in lots of cases. They're
14 blueprint outlines of the relationships of the various
15 buildings, and they are available to the prosecution. And
16 in order to try and figure out certain facts about the
17 escape, I need those diagrams to show to Mr. Cooper and to
18 show to the witnesses. That particular diagram doesn't give
19 me the names of the buildings and what have you. They have
20 another one that has the names of the buildings.

21 THE COURT: Counsel?

22 MR. HANOIAN: Well, if it's available in the press,
23 I don't see how we need to provide it to him.

24 As far as the names of the buildings --

25 THE COURT: This is just sort of a -- apparently a
26 popularized version, as opposed to a more specific one.

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1 Is that right, Mr. Negus?

2 MR. NEGUS: Yes, that's true.

3 MR. HANOIAN: Well, I mean, what is the reason for
4 being more specific, other than having the names of the buildings?
5 That's one of the things I don't understand. I think that
6 giving detailed blueprint diagrams are certainly -- there is
7 certainly a security risk involved in that.

8 MR. NEGUS: They certainly float around rather
9 freely, if there is a security risk. I can provide counsel
10 with lots of them. I just don't happen to have this particular
11 facility. If I did, I wouldn't have asked for it.

12 MR. HANOIAN: Again, the same relevance arguments
13 would apply.

14 THE COURT: I suppose some knowledge of the location
15 of the -- where the defendant was alleged to have been
16 incarcerated and the exit, way one exits is --

17 MR. HANOIAN: Well, again, the defendant can provide
18 counsel with that information.

19 THE COURT: Well, that -- we're not asking the
20 defendant for discovery here. We're asking your office.

21 MR. HANOIAN: Certainly. And if there is a reason
22 why the defendant can or can't provide himself with discovery,
23 we do not need to serve as his investigator.

24 THE COURT: Okay.

25 I'm going to order No. 8. I think that probably that
26 doesn't breach the security very much. As ordered.

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1 MR. NEGUS: With respect to No. 7, Your Honor, you
2 struck it down as over broad. There are -- you have listed --
3 there are photographs -- I don't know how to describe it with
4 any greater specificity, but I would like to have certain
5 photographs of certain parts of the facility to facilitate
6 testimony as to the escape.

7 How would you like it to be less broad? I mean,
8 specific shots that I want? This hole and that fence or --

9 THE COURT: I suppose that's one way.

10 MR. NEGUS: It's hard to do that unless I can have
11 an order -- the only alternative that I can think of to get
12 it more specific is that I be given an order to allow Mr.
13 Cooper to accompany me to C.I.M. Minimum to point out what
14 I should take pictures of. And it would seem like the way
15 I'm asking for it is an easier way to do that.

16 THE COURT: I think with the diagram you're going to
17 be able to confer with your client. Then perhaps you can
18 achieve greater specificity at that point.

19 I'm going to leave it as ordered.

20 Okay. Number 9. Let's see who we're dealing with.

21 No one here -- is here for the Federal Bureau of
22 Investigation; is that right?

23 So we disregard discussion on that.

24 United States Immigration and Naturalization Service.
25 Anyone here for that?

26 The State Police of Baja?

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25 THE COURT: Excuse me. You have it listed under the
26 California Institute for Men Section. Then from just after

1 that you make reference to the D.A.

2 MR. NEGUS: Right. What I'm requesting is the
3 District Attorney be ordered to make efforts, diligent
4 efforts, to -- excuse me -- diligent, good faith efforts to
5 obtain and make available the information requested from
6 those agencies.

7 THE COURT: Do you wish to comment?

8 MR. KOTTMEIER: We have no anticipation of being
9 able to get the cooperation of any of the agencies listed.

10 Furthermore, nothing in our investigation indicates
11 that there's relevant material to the prosecution or the
12 defense from those particular agencies, and I object to being
13 directed, in effect, to carry forth an investigative exercise
14 when there is no foundation, as far as relevance that I have
15 heard, that has been laid before this court.

16 MR. NEGUS: The various agencies, as I indicated,
17 have, according to the police reports furnished by the
18 prosecution and information I've gained from other witnesses
19 with respect to the FBI, conducted an investigation into
20 Mr. Cooper's background and his whereabouts on the dates
21 suggested.

22 There is indication in the police reports that the
23 gentlemen that are listed in the -- in Mexico were cooperating
24 with the sheriff's department in looking for Mr. Cooper in
25 Mexico. There is indication that the border patrol was
26 likewise cooperating. There are lots of reports of the various

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6 MR. KOTTMEIER: The difficulty, Your Honor, is that
7 there is a very clear delineation of activity. One involves
8 investigation of an escape, another involves an investigation
9 of the murder, and then the third area is attempted apprehension
10 of a fugitive, and this is where the FBI and all these other
11 agencies come in. And I would suggest to the court that
12 potentially there are very voluminous reports, as far as the
13 operation of the fugitive detail to try and apprehend Mr.
14 Cooper, the same as there are voluminous reports from the
15 sheriff's office. But they do not provide any relevant
16 information, other than a whole series of false leads and
17 people going everywhere to try and pick up Mr. Cooper.

18 The difficulty is to put the burden on us to try and
19 bring the Federal Bureau of Investigation into line. To
20 cooperate with the very time-consuming preparation of reports
21 in a fugitive felony area is not the same as saying, well,
22 Kottmeier, go out and get the reports that directly relate
23 to evidentiary considerations in this case. And I get the
24 impression from the way in which this material is worded
25 that it is the fugitive investigation that we are being
26 requested to offer, especially with the information listed

1 from the U.S. Immigration and Naturalization, as well as the
2 Department of Justice.

3 THE COURT: Counsel?

4 MR. NEGUS: In carrying out those fugitive investi-
5 gations, there are numerous reports about some of the same
6 subject matter that if you look at the -- if you look at the --
7 that the reports of the sheriff's investigation of the crime --
8 they're covering the same area.

9 For example, in the investigation of the crime there
10 is a tremendous amount of stuff about Mr. Cooper's contacts
11 in Los Angeles, and trying to connect in certain phone calls,
12 certain actions with respect to people in Los Angeles with
13 proving that he was the person that committed the crime.
14 Those same areas are investigated by -- were investigated by
15 the FBI perhaps for different purposes, but the information
16 they're gathering applies in both situations.

17 Another example, they did -- there's apparently
18 going to be some effort at some point in time to prove some
19 sort of modus operandi, that Mr. Cooper commits crimes in
20 certain ways, using certain distinctive mannerisms. The
21 same sort of stuff that was involved in that investigation
22 is also involved in the investigation of -- in the attempts
23 to apprehend him.

24 There are certain things -- there are certain people
25 that will be testifying against him as witnesses. Those people
26 were contacted, background checks were done on them, and they

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1 were put under surveillance, I believe, at certain points in
2 time with respect to attempts to apprehend him. So the
3 attempts to apprehend are not isolated from the investigation
4 of the crime.

5 They're not -- it's not, as the prosecutor says, in
6 neat little boxes, and people didn't label their reports,
7 escape, attempting to apprehend or investigation of the
8 murder. They were doing all of them, from the reports that
9 I have received, simultaneously.

10 THE COURT: Okay.

11 Anything further, Mr. Kottmeier.

12 MR. KOTTMEIER: Only the suggestion, Your Honor, that
13 I have found in the past, and I need this on the record as
14 far as an evaluation of our efforts, that even in cases
15 where we have worked with the Federal Bureau of Investigation,
16 we have not been able to get full compliance from their
17 agency, because they believe in a strong separation of powers
18 idea, as far as the furnishing of reports and information of
19 the activities of their agents.

20 A recent case in point is People versus Gwaltney, and
21 we've had other contacts of that nature where literally they
22 do their investigation and then refuse to give us any
23 indication of the activities or the reports of their
24 particular agents.

25 THE COURT: Okay.

26 The court will modify Term No. 9, and that is make it

1 relative to Cooper's escape from C.I.M. on June 2, 1983,
2 the killing of the Ryen family, Christopher Hughes, in
3 Chino Hills on June 4th and 5th, 1983, deleting from the
4 word "including" down into the next-to-last line reading
5 "of Deborah Englehart on June 29th or 30th, 1983," leaving
6 in that portion of the arrest of Kevin Cooper on July 30th,
7 1983.

8 The court will order that the District Attorney's
9 Office make a good faith effort to attempt to inquire of the
10 first three agencies as to whether they have any such reports
11 relative to those subject matters, and if those reports are
12 provided to the D.A.'s Office, that they be made available
13 to the defense.

14 Okay. Number 10.

15 MR. KOCHIS: Your Honor, as to that request, we've
16 provided Mr. Negus with a list of the persons we were able
17 to determine were in the crime scene. So we've complied with
18 10, Lines 3, 4 and 5 up until the comma after the date.

19 As I've explained to Mr. Negus, we were having
20 difficulty and may not be able to recreate the times, specific
21 times at which each officer entered the residence and left
22 to make a radio call or lunch or any other purpose. So we
23 will attempt to comply with 10 to the best of our ability.

24 THE COURT: Okay.

25 Court will order that to the ability -- to the
26 extent that you have such records.

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1 Number 11?

2 MR. KOCHIS: We've provided your court reporter and
3 Mr. Negus with such a list.

4 THE COURT: Okay. That's fine.

5 MR. NEGUS: Is there --
6 You provided the clerk?

7 MR. KOCHIS: I have not provided the clerk with one.

8 MR. NEGUS: Could I have that -- a copy of that
9 marked?

10 THE COURT: Okay. Marked as Defendant's next in
11 order.

12 Any objection to it being received?

13 MR. KOCHIS: Is it a witness list? If I could glance
14 at what's being marked.

15 THE COURT: After it's marked, would you let
16 Mr. Kochis take a look at it?

17 MR. KOCHIS: No, I have no objection.

18 THE COURT: It may be received.

19 MR. KOTTMEIER: We do reserve the right, Your Honor,
20 obviously, to add to or detract from that list. That is not
21 necessarily a batting order which we guarantee that all nine,
22 or however many, will bat.

23 THE COURT: That's understood.

24 MR. NEGUS: I understand that as well, but what I --
25 reason I'm requesting is that by indicating that I'll be
26 ready on November 9th, I'm indicating that I'll be ready with

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1 respect to these witnesses. If there's other witnesses of
2 significance, then that could change.

3 THE COURT: It would be expected that if, as you
4 develop your case or as the time approaches, you change your
5 list, that you keep counsel informed of those that you'd
6 expect not to call so that he will not be under the mis-
7 apprehension of not subpoenaing them if he wishes to call
8 them, and if there are additional ones, that you'll make
9 those available to counsel.

10 THE CLERK: This is simply marked for identification?

11 THE COURT: No, it's received as well.

12 MR. KOCHIS: Your Honor, is that going to be sealed
13 or in any fashion --

14 THE COURT: As of this point we have the entire file
15 sealed.

16 MR. KOCHIS: Thank you.

17 THE COURT: Not available for public inspection.
18 Number 12?

19 MR. KOCHIS: We have no objection to providing that
20 type of information.

21 THE COURT: That will be ordered.

22 Number 13?

23 MR. KOCHIS: We have provided already, to the best
24 of our ability this morning, a written list that complies
25 with 13. If I receive additional information that necessitates
26 the listing augmented, I will do that immediately.

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1 THE COURT: Okay. The court will order that, then.
2 I've run out of numbers. Is that it?

3 MR. NEGUS: I would like at some point the opportunity
4 to be heard in-camera as to Number 2 as to why I need that
5 so I don't have to reveal to the prosecution the theory under
6 which I am operating.

7 MR. KOCHIS: Could we have Sergeant Arthur in
8 Chambers when that offer of proof is made?

9 THE COURT: Number 2? You wish to be heard --

10 MR. NEGUS: Yes.

11 THE COURT: -- in regard to the staff?

12 MR. NEGUS: Yes.

13 THE COURT: No. The court will deny that request.

14 Okay. Do we have any others?

15 Okay. All we have left, as far as I can see, is that
16 I'm going to meet in-camera with Mr. Hanoian, come back out
17 and announce my ruling on that. Otherwise, everything is
18 put over until the 7th of October at 8:30, and you are
19 aware of the deadline date of October 3rd to get all of those
20 other physical items to me so that I can be prepared on that
21 date. So on the 7th we'll be deciding -- hearing the rest of
22 the testimony and the argument on the 868 question.

23 Any other matters that we're going to handling on
24 that date?

25 MR. NEGUS: I would like to reserve the right to
26 present witnesses with respect to the inconvenience and

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1 physical discomfort and what I think will make it impossible
2 for Mr. Cooper to cooperate with me --

3 THE COURT: You wish to address the location of the
4 preliminary hearing issue?

5 MR. NEGUS: Yes.

6 THE COURT: Okay. You'll be allowed to do that.

7 MR. KOCHIS: Your Honor, so there's no confusion
8 as there apparently was before this last proceeding, could
9 the court inform the custody officers that Mr. Cooper is
10 ordered to be back in court with us on the 7th of October?

11 THE COURT: Certainly. If we overlooked that, we
12 shouldn't have.

13 Okay. We'll be in brief recess, and I'll see
14 Mr. Hanoian in chambers, and then we'll come back out and
15 wrap up this proceeding.

16 (Whereupon proceedings were held in chambers
17 which were reported but are not transcribed
18 herein.)

19 THE COURT: The court has reviewed the file on James
20 Taylor referred to as the Central file, and the court will
21 order that the following portions of that file be made
22 available to the defense:

23 The documents known as classification chronos, which,
24 my understanding as I was able to understand them, relate the
25 movement of the -- or the documentation of the movement of
26 Mr. Turner within the prison. He went from one location to

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1 another location. That is ordered revealed.

2 And also the investigation reports regarding an
3 allegation against Mr. Turner of suspected possession of
4 marijuana. Those reports may be made available to the
5 defense.

6 MR. HANOIAN: Your Honor, may I be heard on the first
7 one --

8 THE COURT: Yes.

9 MR. HANOIAN: -- the classification chronos?

10 THE COURT: Yes.

11 MR. HANOIAN: Could I inquire of the court as to what
12 relevance the classification chronos have to the issue of
13 credibility?

14 THE COURT: They go beyond the issue of credibility
15 in this instance.

16 MR. NEGUS: Could I request that a copy of the file
17 be preserved in a sealed condition so in case we ever got to
18 an appellate review of this, there would be some way of
19 figuring out what happened?

20 THE COURT: Well, I'll have to inquire of Mrs. King.

21 Is it -- would there be any reason why the file in
22 its present condition as regards to Mr. Turner would not
23 remain in its present condition?

24 MRS. KING: No. It would be added to, but it would
25 stay in its present condition.

26 THE COURT: I'm not sure we can suspend Mr. Turner --

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1 MR. NEGUS: Taylor.

2 MR. KOCHIS: It's Taylor, Your Honor.

3 THE COURT: Excuse me. I used the wrong word.
4 -- in action.

5 MR. NEGUS: That's why I was requesting a copy.
6 That would seem like they could keep what they need, and
7 then we could keep a copy for review.

8 THE COURT: I'm going to deny the request at this
9 time.

10 Okay. Do we have any other matters?

11 All right. Before you think of another motion,
12 Mr. Negus, we'll be in recess until October the 7th at
13 8:30 in the morning.

14 Thank you, Counsel.

15 Oh, just a minute. I didn't do what you all asked
16 me to do.

17 The court will order that the sheriff return
18 Mr. Cooper to this court on October the 7th at 8:30.

19 (Whereupon the proceedings were concluded.)
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I, NOEMI LUCCHESI, Official Reporter of the above-entitled court, do hereby certify:

DATED This 21st day of June, 1985, at Ontario,
California.

Official Reporter
C.S.R. No. 3136

006308