

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. 24552 *Crim*

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE DAVID C. MERRIAM, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

FRIDAY, OCTOBER 7, 1983

VOL. 16

APPEARANCES:

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For Defendant-Appellant:	IN PROPRIA PERSONA

C O P Y

DEBRA GODINEZ, C.S.R.
Official Reporter, C-4491

11-27-1983

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Defendant.

DEBRA A. GODINEZ
Official Reporter
C.S.R. No. 4491

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<u>EXHIBITS</u>	<u>FOR I.D.</u>	<u>IN EVIDENCE</u>
K, L, M	-	8
O through RR	-	8

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(The following proceedings were held
in chambers:)

THE COURT: The record should reflect that we're in chambers at the request of defense attorney. Present are counsel for both sides and Mr. Cooper.

MR. NEGUS: Two things: First of all, I'd like to again object to the extensive or extended television coverage. You now have the documents from my motion to close the preliminary hearing. The publicity has been extensive. Hopefully, some day it will die down, but I don't think it will ever die down if we keep having the cameras in here, so I would object.

THE COURT: Okay. The objection will be overruled.

MR. NEGUS: The second thing is with respect to the motion to close the preliminary hearing. I would be requesting to be able to indicate a few things which I think that the evidence will show at the preliminary hearing back here in chambers so that they don't -- I don't have to articulate them in open court.

THE COURT: Okay. I'm inclined to allow you to do that. So when you make your request, I'll rule on it out there.

MR. NEGUS: Okay. Well, I just wanted to do it now if you wanted --

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1 THE COURT: Okay. How long do you expect it to be?

2 MR. NEGUS: Five minutes.

3 THE COURT: Okay. The Court will allow you to do
4 that now.

5 MR. NEGUS: Okay. Basically, the basic prosecution
6 evidence which I think will be introduced at the preliminary
7 hearing is primarily physical evidence which will be used
8 by the prosecution to try and put Mr. Cooper at two places.
9 The first place that they will try and place him at is
10 the place called the Lease residence, which is approxi-
11 mately a hundred and fifty yards away from the Ryen
12 residence.

13 THE COURT: How is that spelled?

14 MR. NEGUS: L-e-a-s-e.

15 THE COURT: Thank you.

16 MR. NEGUS: And Ryen is R-y-e-n.

17 The evidence that will -- there will also be some
18 evidence that they will try and introduce from my under-
19 standing which will try and place Mr. Cooper inside the
20 Ryen residence, and basically that's -- the nature of the
21 evidence that I would expect having read the prosecution's
22 witness list -- the particular evidence which will be used
23 to place Mr. Cooper inside of the Lease residence is a
24 semen stain on a blanket, which has an enzyme in it which
25 is only found in Black people, and apparently only in
26 approximately ten percent of Black people and which

1 that in a hallway leading to the master bedroom where the
2 bodies of the five victims were discovered is one drop of
3 blood. That drop of blood has been analyzed partially and
4 has in the course of the analysis been exhausted. The --
5 there are in the drop of blood two rare enzymes which are
6 found only in Black people. These are genetic markers that
7 of the type that are found in blood. According to the
8 analysis of Mr. Gregonis of the Crime Lab, I would expect
9 him to say that that drop of blood and Mr. Cooper have
10 those two rare enzymes, and I don't know what their
11 calculation of the odds are of the percentage of the
12 Black population which would have all the different
13 characteristics shared by Mr. Cooper in that blood, but
14 it's something in the order -- I would guess it's certainly
15 over one in a hundred. That was the last I heard, and I
16 don't know what it is at the present time, but it's a very
17 small percentage of the Black population would be the only
18 person to be possible to be a donor of that particular
19 blood.

20 I would expect also that with respect to that
21 testimony there will be a motion with respect to suppressing
22 it for failure to preserve -- to take the proper steps to
23 preserve that particular sample and also samples that one
24 could reasonably expect to find in the carpet around that
25 particular drop of blood. And I would expect those motions
26 to be made both in the preliminary hearing and then if

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24 MR. NEGUS: Let me just ask you what is the status
25 of the -- have we -- our stipulation -- as I understand it,
26 the stipulation is that the exhibits that I have -- the Court

1 has looked at are now part -- are now introduced into
2 evidence?

3 THE COURT: No, they're not. We have A through J
4 and -- plus N. The remaining ones, which go through double
5 R have been submitted but not received, and so you can
6 make your motion then presumably.

7 MR. KOCHIS: I have no objection.

8 THE COURT: Okay. We'll do that out in open court.

9 | MR. NEGUS: Okay.

10 THE COURT: Then once all the evidence is in, I'll
11 permit argument on the 868 motion, likely take a very brief
12 recess, rule on the 868, and then go back into court and --
13 or after the ruling on the 868, I'll allow you an
14 opportunity to be heard on the request for a change of
15 location. It's only a request. It's obviously not a
16 change of venue.

17 Can you think of anything else that we're going to
18 be covering this morning?

19 MR. KOTTMEIER: We have the matter of the requested
20 contact of the FBI, the Border Patrol.

21 THE COURT: That's right. That order -- we'll
22 address that order after the ruling on the 868. That
23 ruling was up to the time of this hearing and so I'll hear
24 counsel on whether that should terminate, and that may
25 well depend in part on the 868 ruling.

26 | Okay. Let's go out and do it.

1 (The following proceedings were held in
2 open court:)

3 THE COURT: Good morning, ladies and gentlemen,
4 Counsel. This is the time and place set for the continued
5 hearing in the case of the People of the State of
6 California versus Kevin Cooper. The record may reflect
7 that Mr. Cooper is present with counsel. The District
8 Attorney's Office is represented.

9 At our last hearing we were hearing evidence and
10 some argument on the defense motion to close the preliminary
11 hearing to the public under Penal Code Section 868. We've
12 had two interveners allowed to be -- to participate in that
13 matter and I've received points and authorities from both
14 of them, and I appreciate that. What I would intend to do
15 at this time is to allow Mr. Mendez to be heard on his
16 motion for the Court to reconsider its previous ruling on
17 the denial of the right of both Mr. Bierschbach and
18 Mr. Mendez to cross-examine any witnesses that the defense
19 expects to call.

20 Perhaps before we do that, do you expect to call
21 additional witnesses, Mr. Negus?

22 MR. NEGUS: No, I do not.

23 THE COURT: Well, I guess it's moot at this time
24 then, so we don't need to do that. Okay. Let's proceed
25 right further on to the evidence part of the 868 motion.

26 Mr. Negus, we have had marked Exhibits A through

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1 double R. Of those, A through J and N have been received
2 in evidence. Do you have a motion regarding the balance
3 of those exhibits?

4 MR. NEGUS: Yes. At this time I would move that
5 the remaining exhibits be introduced into evidence.

6 THE COURT: Okay.

7 MR. KOCHIS: We have no objection.

8 THE COURT: Okay. They may be received.

9 Mr. Negus, do you have any additional evidence you
10 wish to present?

11 MR. NEGUS: No.

12 THE COURT: Okay. Mr. Mendez, I don't think you're
13 prepared -- or intended to offer any evidence, did you?
14 Just argument.

15 MR. MENDEZ: No.

16 THE COURT: Mr. Bierschbach, likewise?

17 MR. BIERSCHBACH: No, sir.

18 THE COURT: Okay. We're then at the point where
19 we'll allow the proponent of the motion to present his
20 argument.

21 Mr. Negus?

22 MR. NEGUS: Basically we're here today, Your Honor,
23 because the news industry has objected to having a closed
24 preliminary hearing. My understanding is that the
25 prosecution has not made any objection to this particular
26 procedure being followed. We've already -- I've already

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1 spent approximately two weeks of my time, plus I know the
2 Court has spent additional -- a great deal of time in going
3 over the exhibits. My investigator has spent a lot of time
4 trying to gather them. My secretarial staff has spent a
5 considerable amount of time preparing the exhibits, and
6 based upon what we have accumulated, both counsel for the
7 news industry appear to concede that there is a -- at least
8 a reasonable likelihood that based upon the nature of the
9 publicity that we have had heretofore, that an open
10 preliminary -- an open preliminary hearing may very well
11 prevent a fair trial of this particular case. And certainly
12 it would prevent a fair trial in this particular judicial
13 district, the West Valley Superior Court District, and --
14 within a period of time which we could foresee would be the
15 normal statutory time to bring the case to trial. And I
16 would also submit that by any other standard of proof that's
17 capable of actually being -- being proved, that the
18 documentary evidence which we have submitted to you and
19 which you've considered is such that the preliminary hearing
20 should be closed.

21 The argument essentially that the news industry is
22 presenting through their attorneys is based upon -- first
23 of all, it's based upon a dissenting opinion in a United
24 States Supreme Court case. It was not the standard that
25 they want to -- that they want to impose as far as what
26 burden I have at this particular hearing. It's based upon

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17 I would submit that given the analysis of an 868
18 motion made in the case of San Jose Mercury-News versus
19 Municipal Court, that a mere showing that there's been
20 high publicity should be enough. That is, one should not
21 have to do what I did in this particular case and spend
22 two weeks accumulating massive amounts of evidence to show
23 the nature and inflammatory content of that particular
24 publicity. But as no Court of Appeal or the Supreme Court
25 hasn't yet ruled on what exact standard is required, in
26 an excess of caution I felt compelled knowing that the news

1 industry was going to -- was going to intervene to make
2 that particular -- to make that particular showing. I
3 would submit that at a maximum, the kind of showing that
4 one could be expected to make for a motion to close the
5 preliminary hearing should be no greater than is required
6 to obtain a change of venue. And in this particular
7 situation I would submit that certainly based upon the
8 analysis I set forth in the original points and authorities,
9 that burden has been met. There has been a lot of
10 publicity about other crimes than the one Mr. Cooper's
11 on trial for that he's alleged to have committed, and
12 basically those crimes are crimes that he has not been
13 tried for. If you believe the statements of the prosecutors
14 which are quoted in the press, Mr. Colville of Alleghany
15 County and Mr. Sneddon of Santa Barbara County, those
16 are crimes which at least in their anticipation, their
17 hopes, they'll never have to try Mr. Cooper for, so we'll
18 never know whether or not there's proof sufficient to
19 sustain those in a court of law.

20 There has been publicity that he is supposedly a
21 former mental patient. There has been publicity that
22 associates Mr. Cooper with other crimes. There is -- every
23 time some sort of crime comes up that involves an inmate of
24 a custodial institution, Mr. Cooper's name is associated
25 with that crime in the press. There was a Cuban escapee
26 that was involved in a shoot-out in Los Angeles with banner

1 headlines which connect -- and stories which connect
2 Mr. Cooper into that. There was an escapee out in Lake
3 Hughes from some probation facility out there that -- those
4 stories connect Mr. Cooper. Obviously, Mr. Cooper had
5 nothing to do with those particular crimes, but the nature
6 of the publicity is to associate Mr. Cooper with any sort
7 of dangerous or violent behavior and -- in a situation when
8 in fact Mr. Cooper has never been convicted of a crime of
9 violence.

10 The case also is involved in local politics, and
11 we've had testimony that Mr. Cooper has become somewhat of
12 a symbol of local opposition to further expansion of prison
13 facilities in this particular area. There are innumerable
14 articles which I've provided the Court which whenever they
15 mention the legislative battles about prisons in this
16 particular area tie those battles into -- into Mr. -- into
17 Mr. Cooper's case so that various political figures have
18 attributed the defeat of the Governor's plan to expand
19 prisons in this particular area at Y.T.S. to the impact
20 that this particular case has had in Sacramento.

21 There is various different kinds of publicity
22 which indicates that various authorities have a belief and
23 are expressing a belief in Mr. Cooper's guilt that they
24 shared on television, Channel 4 as well as others, when
25 Mr. Cooper was arrested which indicated that he thought he
26 had a strong case. There are lawsuits which are being filed

9 There is in various publicity that has come out a
10 certain -- a considerable amount of inflammatory language
11 about the case. I would have liked to have quoted from
12 NBC because their counsel is here, but they didn't provide
13 us with any scripts of their particular broadcasts in
14 response to a subpoena, so it's somewhat difficult to try
15 and do that, but just as an example of the type of thing
16 that we're dealing with, Channel 7 had an ad in the T.V.
17 Guide which is reproduced in Exhibit QQ, I believe, and
18 that was purported to be -- the program apparently never
19 aired, but it was advertised as a program with an interview
20 with an Owen and Angelica Handy, who are the people that
21 according to the reports we've received so far Mr. Cooper
22 was staying with from early June until his -- until the time
23 of his arrest. And quite unlike Mr. Mendez's assertion
24 that the press doesn't take any position with respect to
25 Mr. Cooper's guilt or innocence, the advertisements for
26 that were entitled "Profile of a Murderer," indicating

1 clearly that KABC saw it in their commercial interest to
2 advertise their programs already ascribing guilt to
3 Mr. Cooper.

4 The alternatives to closing the preliminary hearing
5 that the news industry has presented are (1) Mr. Mendez
6 indicated that we should have the preliminary hearing open
7 because quote rather than rely on secondary sources for
8 this information, NBC submits that for the protection of
9 Cooper's fair trial rights, it is best to permit NBC to
10 attend the preliminary hearing so that it may accurately
11 recount the events which transpire. That's on pages 12 and
12 13. And they have submitted a declaration by their news
13 director that they're going to send people out here and
14 report stuff even if they don't have any information coming
15 out on which to base that. And I would submit that that
16 particular kind of threat should not be a reason for
17 buckling under to them and leaving the preliminary hearing
18 open so that they can profit by the exposure on the evening
19 news. In fact, I would be very surprised if this preliminary
20 hearing lasts three weeks or however long it will last,
21 that we will be shown every night on the evening news shots
22 of a closed door in a courtroom. Maybe they'll do that
23 once or twice, but I would expect that most news directors
24 would get sort of bored with that after a while and find it
25 not newsworthy. So I expect that probably if there is a
26 closed preliminary hearing, the amount of publicity coming

3 They indicate that -- the attorney for the Sun,
4 Mr. Bierschbach, indicates that voir dire, I believe, should
5 be a satisfactory remedy; that is, that somehow when we get
6 to trial in this particular case, whatever damage the news
7 media has done to Mr. Cooper's chance to get a fair trial
8 can be cured at that particular time by asking jurors
9 questions. Something of the futility of that I think as
0 I mentioned in my responsive points and authorities is
1 that in a case -- a capital case which is being tried right
2 now, almost half the people mentioned Mr. Cooper spontan-
3 eously when they were asked questions about -- on the voir
4 dire. Those are people who are actually going to be jurors,
5 and it's very, very difficult, of course, to go out and
6 subpoena in a hundred thousand people that would be part of
7 the jury pool in this particular county and ask them
8 questions -- you know, "How are you affected right now?"
9 But we'd have some rather dramatic evidence, I would suspect,
0 that there has been a substantial effect on the jury pool
1 by the publicity that we've had heretofore so that -- I
2 would submit that the kind of voir dire that counsel
3 suggests is at least in this other case producing -- not
4 producing the kind of results that would help Mr. Cooper.
5
6 They also suggest that a change of venue might be
the kind of thing which could protect Mr. Cooper's rights

1 as an alternative to closing the preliminary hearing. Of
2 course, in our state they cannot -- we cannot be compelled
3 at this point in time to elect to change venue, and, of
4 course, this Court even has no jurisdiction to grant such a
5 request. So in making a determination about the closed
6 preliminary hearing, this Court cannot sort of guess what
7 a Superior Court will do if a change of venue motion is
8 made. And we can't -- you can't even anticipate what a
9 Superior Court will do if a motion for a continuance is
10 made. So in ruling upon this particular motion, we have to
11 assume that the case will be tried in the West Valley
12 Superior Court within 60 days of the time the Information
13 is filed.

14 Even if a change of venue were granted in this
15 particular case, given the nature of the publicity, the
16 extensive publicity that NEC has requested be allowed about
17 the preliminary hearing, one wonders where the change of
18 venue would be to. One of the problems in using the
19 federal cases relied upon by counsel on a state context
20 is that in the Federal Courts, you can change venue from,
21 for example, Texas to Florida, which was recently done;
22 that is, you're not stuck with trying to find some court
23 in the state of California that -- in which Mr. Cooper
24 can get a fair trial. And if there is a change of venue
25 granted, one would hope that it would be to some area which
26 doesn't cost the County of San Bernardino great amounts of

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1 money to transport Mr. Kottmeier, Mr. Kochis, myself, and
2 all the witnesses up to some remote corner of Northern
3 California where perhaps the publicity isn't so strong.
4 So what their -- what their proposed alternative is -- the
5 change of venue is, I would submit a very, very potentially
6 (a) very, very costly to this particular county; (b) not
7 likely to preserve Mr. Cooper's fair trial rights if we
8 have to try the case somewhere in the state of California,
9 which we do under state law; finally, there's in the
10 outline that I made of -- my outline of what I thought was
11 shown in the documents that I've submitted, I mentioned
12 that opening the preliminary hearing would, I believe, lead
13 to witness fabrication, and counsel has disputed that. The
14 there's one exhibit that I submitted and that is one out of
15 many actually just as an example, but that is the reports
16 of a person by the name of Alfred Hill. Mr. Hill is a
17 peace officer. He's a correctional officer at the California
18 Institution for Men, and he was interviewed by the police
19 on -- I believe it was June 11 some time in the early --
20 some time approximately a week after the crime. He
21 presented to those people a complete fabrication about
22 Mr. Cooper. The only thing that gave that fabrication
23 any plausibility whatsoever was that he included in it
24 certain materials that he'd heard in the news. We have
25 received by way of discovery hundreds of reports of things
26 that people have heard on the news which they have -- then

1 led them to imagine -- fabricate some information with
2 respect to this case, which they then telephoned into the
3 Sheriff's Department. Thus far based upon the rather
4 limited information which has been available, the fabricators
5 with a couple of exceptions haven't been very persuasive.
6 If the detailed facts that the prosecution intends to show
7 at the trial were known to various potential witnesses,
8 that would immensely aid in their fabrication of information
9 about Mr. Cooper.

10 There's already been a strong showing there's a
11 propensity for that to happen. San Jose Mercury-News
12 recognized that particular problem and indicated that one
13 of the -- one of the factors that could be used in closing
14 a preliminary hearing was that there was no alternatives
15 at a preliminary hearing such as would be available at trial,
16 which would be excluding and sequestering witnesses. So in
17 order -- just on that ground, I think in order to preserve
18 Mr. Cooper's fair trial rights and in order to make sure
19 that we don't have witnesses drawing upon the testimony of
20 one another, then I think that the preliminary hearing in
21 this particular case should be closed.

22 The news media wants to establish a standard which
23 is essentially impossible to prove. They want -- they
24 want to have prior to a preliminary hearing being closed --
25 and most preliminary hearings in fact are not delayed as
26 long as this one and probably most judges would not be too

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1 happy with the proposition that one has to spend two weeks
2 gathering evidence in most cases to try and justify a
3 closure, so I doubt seriously whether the Legislature ever
4 intended to impose upon counsel the burden that the news
5 industry is suggesting. There are cases that don't even
6 involve this kind of situation. The cases they involve
7 involve pretrial suppression hearings. Those are hearings
8 that take place just prior to trial at a situation in which
9 all the parties are prepared, in which situations if there
10 is going to be change of venue motions, the material can be
11 gathered. The -- this particular situation is much more
12 akin to a situation where you have a Grand Jury investi-
13 gation; that is, we're still in the investigatory stage, and
14 to require that -- before a preliminary hearing is closed
15 that one go out and do jury surveys of the -- spend \$20,000 --
16 which I believe is the figure that was quoted to me -- to
17 survey the people that have been exposed to the publicity
18 so far in order to try and make the kind of showing that
19 they would -- that they would require me to make, I think
20 is just an absurdity and a waste of resources, and the
21 showing that we've made -- the massive volume of publicity,
22 the inflammatory nature of some of that publicity, the
23 likelihood that that publicity will never die down as long
24 as we continue to be exposed on the evening news at regular
25 intervals, I think justifies closing this preliminary
26 hearing so that some day, some time Mr. Cooper can receive

1 a fair trial.

2 THE COURT: Thank you, Counsel.

3 Mr. Mendez?

4 MR. MENDEZ: Thank you very much, Your Honor.

5 Before I respond to counsel's claims, I'd like to
6 make a few points of my own. I think our position is
7 well set forth in our points and authorities, but I would
8 like to emphasize a few things.

9 It's clear that in this case before the preliminary
10 hearing can be closed, this Court must make a finding that
11 it's necessary in order to protect the defendant's fair
12 trial rights. No California decision to date has established
13 a standard that the Court should use in making that
14 finding. The only cases to date that have treated that
15 issue are the Federal Court cases. Those cases are based
16 on a Supreme Court decision, and we have two Ninth Circuit
17 decisions, Brooklier and Associated Press. In each of
18 those cases, they have held that a preliminary hearing can-
19 not be closed unless the defendant proves to a substantial
20 probability three tests: First of all, that if the hearing
21 it's substantially probable that if the hearing is not
22 closed, he will suffer irreparable harm. Secondly, that
23 there are no alternatives to closure, and thirdly, that
24 closing the hearing will protect against the perceived
25 harms.

26 In this particular case the defendant has made three

1 claims in support of his position that he will be
2 irreparably harmed in this case. First of all, he has said
3 that if the press is permitted to be at this hearing, it
4 will result in an increase of fabrication or perjury. Two,
5 he has suggested that the public may learn of evidence
6 that can be suppressed at trial. And finally, he has also
7 said that if the press is permitted to be at this hearing,
8 it will result in inflammatory publicity about this case.
9 Now, we have taken the position that every claim that he
10 has made is not supported in fact. The Supreme Court has
11 held and the Federal Courts have held that having an open
12 hearing protects against perjury because witnesses are then
13 subject to the scrutiny of the public and it is less likely
14 that perjury will occur when a hearing is open to the public.
15 Secondly, with respect to his claim that the public will
16 learn about evidence that may be suppressed at trial, he
17 ignores first of all the fact that this case has received
18 a great deal of publicity already, and it's quite unlikely
19 that anything that will be revealed at the preliminary
20 hearing will be new to the public, will be something they
21 haven't heard already. In addition to which, he also ignores
22 the procedural safeguards of voir dire and instructions from
23 the Court. Finally, just to summarize our position, I think
24 it's unreasonable for counsel to suggest that the press will
25 take a position with respect to the guilt or innocence of
26 the defendant. NBC has not done that, and we will not do

5 Now I'd like to respond specifically to some of
6 the claims that defendant has made. First of all, he makes
7 the claim that the press supported its substantial
8 probability test before the California Legislature two
9 years ago and that the Legislature rejected that test. I
10 think that's an unfair statement. As I understand it, the
11 bill that was brought before the Legislature was brought
12 very late in the legislative year and the bill never
13 reached the floor of the Assembly or the Senate, so I think
14 it's unfair to say in this case that the Legislature rejected
15 that standard. I think it's more accurate to say that the
16 Legislature never acted on it. The bill simply died in
17 committee. As evidence of that, you would note that in
18 Penal Code Section 868, no standard is articulated. I
19 would suggest to the Court that if the Legislature intended
20 to reject the substantial probability standard, the Court
21 would have -- the Legislature would have articulated another
22 standard in 868. There is no standard articulated in 868,
23 and I think it's unfair --

25 MR. MENDEZ: "Necessary." That's the only word that
26 the Legislature gives us.

1 THE COURT: Isn't that the standard?

2 MR. MENDEZ: Well, how do we define "necessary,"
3 Your Honor?

4 THE COURT: Well, that's our problem, isn't it?
5 Didn't they intend that to be the standard?

6 MR. MENDEZ: Yes, it is. Well, I would point out
7 to the Court that in Brooklier and Associated Press, that
8 the language mirrors the language of 868. In Brooklier and
9 Associated Press, the finding was that a court shall close
10 a preliminary hearing when it is strictly and absolutely
11 necessary to protect the defendant's fair trial rights.
12 And then the courts went on to say that in making that
13 finding, the defendant must meet a three-part test, the test
14 that I've asserted to you before.

15 Now, again defendant's -- the defendant's reliance
16 on the San Jose Mercury case is inapplicable here. Penal
17 Code Section 868 was amended to provide for public hearings
18 because of the holding of the California Supreme Court in
19 San Jose Mercury. Again, the defendant makes -- bases a
20 great part of his arguments on the fact that this case has
21 generated a great deal of publicity. I won't dispute that.
22 That's true. But the Supreme Court and the Federal Courts
23 have also made it very clear that publicity alone is not
24 enough to close a hearing. If that were true, a defendant
25 could close any preliminary hearing at which the press
26 showed up. By definition, any time we show up to a hearing,
27 it's going to generate publicity. And if the only fact that

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1 the defendant must prove is that the case has generated
2 some publicity, we would be precluded from attending every
3 preliminary hearing or every criminal proceeding for that
4 matter.

5 Counsel has suggested that the Court should use
6 the same standard that is used in change of venue cases;
7 that is, the reasonable likelihood standard. Change of
8 venue cases are quite distinct from cases such as this
9 where there is an attempt to keep the public out of the
10 hearing. In a change of venue circumstance, the public's
11 First Amendment right to be at the pretrial hearing won't
12 be affected. The only thing that happens in that
13 circumstance is that the proceeding is moved to another
14 area, and that won't affect the public's right to attend
15 that hearing. And I would suggest to the Court that the
16 reasonable likelihood standard should not be used in this
17 circumstance because the First Amendment considerations
18 are more substantial. If this hearing is closed, the
19 public's First Amendment right to be at this hearing will
20 be infringed, and --

21 THE COURT: On what do you base any First Amendment
22 right to be at a pretrial hearing? On what do you base it?

23 MR. MENDEZ: Well, in both Associated Press and
24 Brooklier, citing Justice Blackmun's concurring and
25 dissenting opinion in Gannett, the Court found that there
26 was a First Amendment -- a right based on the First Amendment

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1 to attend pretrial hearings.

2 THE COURT: Okay. If counsel is right in saying
3 that the California Courts are not bound by the lower
4 Federal Courts and if you're only tie to a Supreme Court --
5 the United States Supreme Court case is a dissent, where
6 do you finally tie your Federal Constitutional right --
7 First Amendment right into a California Court?

8 MR. MENDEZ: Exactly. I understand the position.
9 First of all, although Justice Blackmun's opinion in
10 Gannett was a concurring and dissenting opinion, he wrote
11 for four justices. He wrote for not the majority, but it
12 was the only opinion in that court which represented the
13 opinions of four justices. I believe there were three other
14 opinions filed in that case. One was a dissent. And then
15 there of course was the opinion itself. And the Court was
16 divided as amongst itself in the three decisions, but
17 Justice Blackmun's decision represented four justices. And
18 the Federal Courts have stated that based upon that, that
19 it's fair to say that a majority of the current Supreme
20 Court would find a First Amendment right for the public to
21 attend pretrial hearings.

22 Again, I would point out to the Court that there is
23 no California decision that has treated this issue. The
24 Federal Courts have looked at this issue. They have
25 specifically addressed this particular point, and they have
26 used language that mirrors the California statute. The

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26 Counsel also made the point that the declaration of

1 Pete Moyes, our executive producer, was intended as a
2 threat to the Court. That certainly is not the case. By
3 making the point that we intend to cover this case whether
4 or not we're permitted to be at the hearing, we aren't
5 suggesting that we would not comply with the Court order
6 should the Court order this hearing closed not to be in the
7 courtroom. We won't do that. But we do have an obligation
8 to our viewing public to report whatever it is we can, and
9 from our vantage point outside the courtroom, we will
10 attempt to meet that obligation. And again it's not meant
11 as a threat to the Court. It's simply meant to state what
12 is a fact, that we have an obligation to inform our viewers
13 and we'll do it the best way we can.

14 With respect to reasonable alternatives, the Jury
15 Commissioner for San Bernardino County estimates that there
16 are approximately 300,000 jurors called to serve in San
17 Bernardino County. As amongst that vast multitude of
18 individuals, I find it unreasonable to suggest that this
19 Court would not be able to find a group of jurors who could
20 be unbiased and neutral and fair in this case. We have
21 available to us the protections of voir dire. You can get
22 the people here. You can ask them "Do you know --" "Have
23 you received any publicity about this case?" "What was that
24 publicity?" "Has that publicity affected your ability to
25 be impartial in this case?" "Can you be impartial in this
26 case?" We have those protections, and they are substantial

1 protections. In addition to which the Court can issue
2 instructions to the jury, reminding them what their
3 responsibilities as jurors are. I'm not sure where counsel
4 gleaned this, but at least in my points and authorities,
5 NEC never suggested that change of venue was an alternative
6 in this case. We would simply rely again on voir dire and
7 jury instructions, but we never suggested the change of
8 venue as an alternative.

9 Finally, counsel has indicated that the standard
10 that we have submitted that -- of proving necessity to
11 a substantial probability is a very strict standard. Well,
12 it's meant to be that way, Your Honor, because what it
13 affects is the right -- the First Amendment right of the
14 public to be at this hearing. That is a very substantial
15 right.

16 THE COURT: Counsel, let me interrupt you just a
17 moment. Where are you finding that First Amendment right
18 if you -- if it's not founded in a Supreme Court of the
19 United States basis, the statute really places the
20 determining question on this Court; that is, is the closure
21 of the preliminary hearing necessary to ensure the
22 defendant a fair trial. It doesn't say anything about
23 weighing First Amendment rights. It simply says that I'm
24 to make an attempted factual determination as to what effect the
25 opening or the closure of the preliminary hearing will
26 have on the defendant's opportunity for a fair trial.

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1 MR. MENDEZ: That's true, Your Honor. I can't
2 dispute that. And again I can only tell you that the two
3 Ninth Circuit decisions which have found that there was a
4 First Amendment right for the public to attend these
5 hearings is based upon Justice Blackmun's decision and
6 Gannett.

7 THE COURT: We understand the circular approach
8 then.

9 MR. MENDEZ: And I would -- that's basically our
10 argument, Your Honor, that that is where we make that
11 conclusion.

12 THE COURT: Fine. Okay. Thank you, Mr. Mendez.
13 Mr. Bierschbach?

14 MR. BIERSCHBACH: Thank you, Your Honor.

15 Your Honor, in this particular matter there has
16 been no suggestion by Mr. Negus that the evidence at the
17 preliminary hearing is going to be particularly inflammatory.
18 Now, obviously every preliminary hearing is directed toward
19 showing that a crime has been committed and that there's
20 a reasonable probability to believe that the defendant
21 committed the crime, and there has been no suggestion in
22 this particular case that there will be confessions offered
23 for the admission which may be disputed by the defense.
24 Those are the kind of matters that are most dangerous and
25 obviously if such a matter does come up, the Court could
26 hold an in-camera hearing and decide whether or not it

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4 Mr. Negus suggests that we have conceded that he
5 has met a standard of a reasonable likelihood that
6 prejudice will result if the preliminary hearing is
7 allowed to remain open. We do not concede that at all.
8 The evidence that he has submitted shows that there has
9 been a lot of publicity indicating that a crime has
10 occurred -- four people were murdered -- and that a person,
11 Mr. Cooper, has been arrested for that crime. But there
12 has been no showing of anything else. He attempted to
13 show by Mr. Walker and by Mrs. Katz that the public opinion
14 is to the effect that Mr. Cooper committed the crime. I
15 believe he did not succeed in eliciting that evidence from
16 either of those witnesses. Mr. Walker said he simply
17 didn't know what public opinion was, and Mrs. Katz made the
18 same response. So as far as the Court is concerned, there
19 is no showing as to what public opinion may or may not be,
20 and the fact that additional publicity may result certainly
21 is not going to indicate that prospective jurors are going
22 to have an opinion as to whether Mr. Cooper is guilty or
23 not guilty of the crime that he is charged with.

24 Mr. Negus suggested that we were saying that an
25 alternative is a change of venue. In my points and
26 authorities I did cite the case of Nebraska Press, a

1 United States Supreme Court case, which said that one of
2 the alternatives was change of venue. But in the next
3 paragraph I pointed out that the most satisfactory
4 alternative is a very searching and thorough voir dire
5 examination of prospective jurors at the time of trial,
6 and I submit to the Court that that is the way that the
7 matter should be handled. For the Court at this time to
8 say that the defendant cannot get a fair trial unless the
9 preliminary hearing is closed is speculation. The Court
10 cannot determine or have any idea as to when this case will
11 be tried. Mr. Negus says it will be tried in 60 days --
12 or it could be tried in 60 days. Yes, it could be, I
13 suppose, but I would suggest that the Court knows and
14 everyone else knows that in capital cases such as this,
15 it would be more likely to be six months to a year before
16 this case is ever tried, and I would like to remind the
17 Court of the case of People versus Odle, a Supreme Court
18 case in 1982, in which the Supreme Court says, "Time dims
19 all memory, and its passage serves to attenuate the likeli-
20 hood that early extensive publicity will have any significant
21 impact at the time of trial." That's 32 Cal.3d 932. In
22 that particular case, Your Honor, the Supreme Court denied
23 a writ of mandate for a change of venue after the Superior
24 Court had denied the motion, and made the point that if at
25 the time of the selection of the jury the evidence indicates
26 that the jurors are -- they cannot get a fair jury in that

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17 MR. BIERSENBACH: I think that the Legislature
18 intended and I think the Ninth Circuit cases certainly have
19 clearly stated that there has to be some evidence to base
20 this on, and I submit that the mere gathering of reams of
21 newspaper stories and stacks of television tapes is not the
22 kind of evidence that will show that later jurors will be
23 prejudiced against the defendant. It would negate the
24 statute if every time there was any story, the Court had
25 to say, well, you know, this is going to prejudice the
26 jurors at a later date and therefore I'll have to close all

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1 said in the past, we believe that they will enunciate that
2 there is such a constitutional right. And if you are then
3 going to weigh constitutional rights, I think that there
4 has to be a higher standard in the question of whether to
5 close a hearing as opposed to the standard where only the
6 question is shall we change the venue and still allow the
7 People to attend the hearing. I think that that's a
8 distinction that must be made.

9 We submit, Your Honor, that the evidence which
10 has been offered here does not meet a standard which
11 should be met, and that it is insufficient. Mr. Negus
12 has attempted to say that there are political overtones in
13 this case. I say that that's rubbish. He even tries to
14 say that Mr. Kottmeier and the Sheriff are exploiting it
15 because in -- some time in the future, some four years from
16 now or six years from now, they have to run for reelection.
17 I think that's preposterous to make such a statement.

18 With respect to the bringing in of the prison
19 dispute, I would submit to the Court that that dispute was
20 very, very prominent long before Mr. Cooper came on the
21 scene and that his presence did not alter the decision one
22 way or the other. There was strong resistance to the
23 additional prisons in San Bernardino County long before he
24 ever was known.

25 We'd submit to the Court that the motion should be
26 denied.

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1 THE COURT: Thank you, Counsel.

2 Mr. Kottmeier, do you wish to be heard?

3 MR. KOTTMEIER: Only in regard to some of the
4 assertions that Mr. Negus has made within his points and
5 authorities and within his argument and the idea that he
6 expresses that these assertions should be given the weight
7 of evidence. As an illustration, the statement that he
8 has had personal experience in voir diring a jury and that
9 this voir dire process has come up with Kevin Cooper's
10 identity, I haven't seen anywhere in the items of evidence
11 placed before the Court that particular foundation being
12 laid for the statement that was made. And secondly, I
13 would request that the Court not be led into a trap or at
14 least distinguish the difference between the ruling as far
15 as the openness of this particular preliminary hearing as
16 distinguished from the issue of a change of venue. I notice
17 that Mr. Negus kind of slid that one in there to the Court,
18 suggesting that the burden was exactly the same for a change
19 of venue, and I just wanted to make sure that the ruling is
20 clearly solely based upon the issue that's before the Court
21 and not going to be used as a later opinion of this Court
22 relative to change of venue.

23 THE COURT: Thank you, Counsel.

24 Mr. Kochis, do you wish to be heard?

25 MR. KOCHIS: No.

26 THE COURT: Mr. Negus, do you wish to be heard on

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1 any final comments?

2 MR. NEGUS: San Jose Mercury-News makes the point
3 that one of the difficulties you have with an open preliminary
4 hearing is that people are liable to confuse it with the
5 trial. I think that the arguments of counsel here have
6 exemplified that particular problem in that the cases that
7 they cite all have to do with pretrial motions made in
8 the trial court. We're just dealing with the preliminary
9 hearing here, and this is not the court that's going to be
10 making a decision on the change of venue, as Mr. Kottmeier
11 knows, and it's not the court that's going to be trying the
12 case, and so that particular confusion the People can't
13 make up -- they can't make a distinction between pretrial
14 motions in a trial court and a preliminary hearing I think
15 is exemplified by the arguments of counsel here. None of
16 the cases they cite involve a preliminary hearing. The only
17 case that has decided whether or not there's a right of
18 access to preliminary hearings that has been cited by
19 anybody in this particular case is San Jose Mercury-News,
20 and that says that there isn't --

21 THE COURT: Counsel, let me direct some questions
22 to your inquiries regarding the San Jose Mercury-News case
23 because, of course, that was prior to the amendment of the
24 statute which changed it.

25 MR. NEGUS: Right.

26 THE COURT: And if I read all the way to the end of

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1 San Jose Mercury-News, the last full paragraph after they've
2 gone through all of the arguments justifying the Legislature
3 allowing the preliminary hearing be closed solely on the
4 request of the defendant, they proceed to declare and
5 remind us of Justice Holmes's remark that "The legislatures
6 are the ultimate guardians of the liberties of the people
7 employed in quite as great a degree as the courts."

8 Now, if they meant that and then if the Legislature
9 perhaps they read that as well. They entered into this
10 balancing act between First Amendment and fair trial rights.
11 They came up with the conclusion as the guardians of
12 liberty that it's to be open unless a certain condition
13 exists, and that condition is changed from; in other words,
14 once they re-balanced it, they came to a different balance
15 and they said that the hearing is to be open unless it's
16 necessary for the defendant to have the protection of a fair
17 and impartial trial. Now, hasn't that changed quite a bit
18 from what San Jose Mercury-News is saying?

19 MR. NEGUS: It doesn't change the basic analysis
20 of San Jose Mercury-News. What it changes is whether or
21 not the defense can just come in and assert that it -- I
22 want it closed, or whether we have to make some sort of
23 showing. And clearly what they were trying to do was to
24 not allow preliminary hearings to be closed in just routine
25 cases for no reason. There was at the time that that
26 statute was -- was being propounded originally, the then

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12 The state of the law in California at the time that
13 that particular statute was passed was that you could issue
14 an order to a witness, a prosecutor, a defense lawyer,
15 anybody involved in a case, and tell them that they can't
16 reveal anything about the case on a mere showing that there
17 was a reasonable likelihood that their talking to the press
18 would deprive a defendant of a fair trial. That's the only
19 standard that existed in California law at the time that
20 the Legislature passed this particular statute. It's still
21 the only standard that exists in California law. That's
22 still the standard for what's called a gag order. I would
23 submit that as they did not pass the statute requested by
24 the news industry, that is, the statute which would make it
25 very, very difficult, not impossible however, to make the
26 kind of showing which would be necessary to close a preliminary

1 hearing; that what they intended was that all we would be
2 required to do is to show that based upon the kind of
3 publicity that you have in a particular case, that if that
4 publicity is sufficient, for example, that would require
5 a change of venue, then it's necessary to close the
6 preliminary hearing in order to try and prevent that from
7 happening. I know that our county does not like change of
8 venues. It costs us a lot of money. And I know that the
9 judges in Superior Court aren't particularly fond of long
10 continuances because that delays their clearing their
11 calendars. What the press is -- what the press is
12 suggesting is that somehow the Legislature ignored the
13 large body of law -- the only body of law -- the only
14 standard that existed at the time the statute was passed
15 and somehow grafted on this higher statute and that higher
16 standard, and that standard was one that they in fact did
17 not elect to pass. So I would submit that basically they
18 did not intend to set for us a standard which is almost
19 impossible to prove at a preliminary hearing. If they had
20 wanted to just say preliminary hearings shall be open, they
21 could have. And the fact that they didn't and that they
22 passed that statute with an understanding that most
23 preliminary hearings are heard within ten days of the time
24 that the person first comes to court, I would submit that
25 is evidence that they didn't intend to make us go out and
26 do jury surveys, which is the only way that I could

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5 If you look at the five factors which are -- which
6 are involved which have to do with the nature and gravity
7 of the crime, which have to do with the nature and extent
8 of the publicity, which have to do with the size of the
9 particular area, which have to do with the relative statuses
10 of the victim and the defendant, and which have to do with
11 whether or not there are political overtones to the case,
12 you engage that type of analysis. That's the only kind of
13 analysis which a court could reasonably expect to be doing
14 at the preliminary hearing, and so I submit that's what
15 the Legislature had in mind for this particular Court to do.
16 And I submit also that on the basis of the information that
17 I've provided to you, that that standard has been met.

18 Counsel for the different industries, the newspapers
19 and the television, essentially I think argued contra-
20 dictory things, which is nice to have two lawyers to be
21 able to do. Basically Mr. Mendez says, well, the publicity
22 about this case is always going to be so great that closing
23 the preliminary hearing won't -- will never do you any
24 good and so why do it? And Mr. Bierschbach argues, well,
25 it will die down eventually. Well, I hope it will die down
26 eventually and I think that in that particular sense

1 Mr. Bierschbach is more accurate, that I think that's --
2 if in fact the preliminary hearing is closed, then it will
3 die down eventually and hopefully he can get a fair trial
4 somewhere. The example which is foremost in my mind at
5 the moment because it was just argued in the Court of Appeals
6 yesterday -- Wednesday is the Diaz case in Riverside County,
7 and in that particular case the preliminary hearing was
8 closed despite the fact that there was massive pretrial --
9 there was massive publicity when the charges were
10 originally filed. The preliminary hearing was closed.
11 The transcript has remained sealed, and it's now believed
12 by Mr. Diaz's lawyers that he can get a fair trial in
13 Riverside County, and they did a survey to show that.

14 THE COURT: But they've apparently waived jury.

15 MR. NEGUS: They have waived jury, but they have
16 also indicated that -- that's a different decision.

17 THE COURT: I know. But, you see, it puts this
18 Court in an extraordinary position of having to wonder
19 what's going to happen down the line. I mean, if I were
20 able to divine that in six months if Mr. Cooper were held
21 to answer and were to waive his right to a jury trial, I
22 might come to one conclusion. I mean, that's --

23 MR. NEGUS: That's true, but I think what you have
24 to do again according to the cases and the standards is
25 that in making this determination, you have to assume that
26 it's going to be in this judicial district, which is a

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23 MR. BIERSCHBACH: I don't like to make statements
24 that aren't substantiated by some sort of evidence; although,
25 Mr. Negus doesn't have any hesitation about that. And I
26 would only say that where he says that the average

1 preliminary hearing is held within ten days of the day you
2 appear in court, I believe that in murder cases it's closer
3 to two months, and I think the Court probably has sufficient
4 knowledge of its own to know that that's probably true.

5 THE COURT: Okay. I've received all the evidence
6 on it and I've received the argument. We're going to take
7 a brief recess at this time, maybe until about five minutes
8 till 10:00, at which time I'll come back and issue a ruling
9 on the defense motion.

10 Court will be in recess until five minutes till
11 10:00.

12 (Recess.)

13 THE COURT: Before I do rule on the matter, I
14 would like to compliment and thank counsel for all parties
15 and all interests involved for the excellence of their
16 argument and their points and authorities, particularly
17 defense counsel for his diligence in the presentation of
18 evidence on the matter. It was all commendable.

19 This is a new statute. It has not been interpreted
20 yet by any Court of Appeal. There has been no judicial
21 definition given to the word "necessary." It would be this
22 Court's intention to give the word "necessary" its common
23 and ordinary meaning; that is, that it's a condition that
24 is essential or indispensable. Given that meaning, the
25 Court would, I believe, have to be convinced that if the
26 preliminary hearing is not closed, that the defendant will

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26 We have also been in contact with the Attorney

1 General's Office, and representing the Attorney General's
2 Office this morning is Attorney Peter Quon, and Harley
3 Mayfield indicated to me that there were certain
4 miscellaneous papers that the Department of Justice had
5 as a result of the investigation into the procedures that
6 led to the misclassification of Mr. Cooper, and that the
7 defense would be allowed to view those items on receipt of
8 a subpoena duces tecum. And I received from Mr. Negus
9 this morning the subpoena duces tecum and have given it to
10 Mr. Quon, so Mr. Quon, I think, is prepared to respond to
11 the Court on that issue.

12 As I may have said already, the FBI has not
13 acknowledged one way or the other by phone or letter the
14 receipt of the request that we have sent to them via the
15 mails.

16 THE COURT: Okay.

17 MR. QUON: Good morning, Your Honor.

18 THE COURT: Good morning, Mr. Quon.

19 MR. QUON: If I may correct Mr. Kottmeier on one
20 matter -- rather than our acceding to the subpoena duces
21 tecum which I received this morning, what we -- I believe
22 what Mr. Mayfield of our office informed Mr. Kottmeier is
23 that we would waive the receipt of the subpoena d.t.,
24 reserving our rights under Evidence Code Section 1040,
25 also Code of Civil Procedure 2016 for the governmental
26 privilege and also attorney work product privilege with

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1 regard to those items -- some of the items which we have
2 in our possession. I did bring with me today all the
3 materials that I am aware of -- that our department is
4 aware of of our activity in this matter. I have gone
5 through the box previous to this hearing. I have secluded --
6 separated out those materials which we perceived no privilege
7 to exist and have also identified those items which we
8 believe either the attorney work privilege or the govern-
9 mental privilege under 1040 to apply.

10 THE COURT: Okay. Mr. Negus, do you wish to be
11 heard on that? You don't know what has been offered or
12 not offered, I take it, at this time.

13 MR. NEGUS: That's true. I haven't seen it.

14 THE COURT: Okay. I was slightly under the
15 impression, Mr. Kottmeier, you were going to address a
16 different issue. You are addressing the discovery order
17 issue the Court made --

18 MR. KOTTMEIER: Yes, Your Honor.

19 THE COURT: -- earlier. Okay.

20 Well, what I'm inclined to do is -- I don't want to
21 schedule another hearing between now and the preliminary
22 hearing, so what I'm -- well, how long do you think --
23 maybe Mr. Negus and Mr. Quon, you could just confer very
24 briefly right now in terms of time -- what length of time
25 you think we're talking about in your reviewing what is
26 offered and --

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26 THE COURT: It's number 9?

1 MR. KOTTMEIER: It's on page -- begins on page 5.

2 THE COURT: Okay. I'm with it now. And that is
3 "Any and all reports, documents, notes, tapes, photographs,
4 or other writings concerning Kevin Cooper, Kevin Cooper's
5 escape from CIM on June 2nd, 1983; the killing of the Ryen
6 family and Christopher Hughes on June 4th or 5th of 1983;"
7 that was the extent of the order.

8 MR. KOTTMEIER: I think you may have left out the
9 section -- the last line, "the arrest of Kevin Cooper on
10 July 30th, 1983."

11 THE COURT: You're absolutely right, Counsel. I
12 did leave that out.

13 Mr. Quon, you have with you certain documents that
14 are in the possession of the F -- is it the FBI?

15 MR. QUON: No. Department of Justice, State of
16 California.

17 THE COURT: The Department of Justice. And as to
18 portions of those you're going to -- you wish to exercise
19 the privilege under Evidence Code 1040 and also the work
20 product privilege; is that right?

21 MR. QUON: That's correct, Your Honor.

22 THE COURT: Okay. And you're requesting an in-
23 camera hearing?

24 MR. QUON: Yes, I am, Your Honor.

25 THE COURT: Okay. The Court will be in recess.
26 I'll proceed in chambers in-camera with Mr. Quon and with

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1 the court reporter and make an in-camera examination of
2 the documents, and will then issue a ruling back in court
3 shortly.

4 Court will be in recess.

5 (The proceedings held in-camera are
6 not transcribed herein by order of
7 the Court.)

8 (The following proceedings were held
9 in open court:)

10 THE COURT: Before I rule on Mr. Quon's motions,
11 I'd like to inquire of Mr. Negus as to whether or not you
12 have a multi-page report, maybe a quarter to a half-inch
13 thick of what's believed to be a report to Mr. Denton by
14 a Mr. James Brown --

15 MR. NEGUS: I do.

16 THE COURT: -- that's dated June 20, 1983.

17 MR. NEGUS: I do.

18 THE COURT: You do. Okay.

19 The Court has reviewed the documents presented to
20 it by Mr. Quon, and the Court orders that the following
21 documents be made available to defense and the motions made
22 under the 1040 privilege or work product privilege are denied
23 with regard to these items, and that is: a folder entitled
24 "San Bernardino Confidential Investigation #831V0011,"
25 the right-hand portion of that file, and also a file
26 designated "Clips and Miscellaneous," all the items within

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24 MR. NEGUS: That's true, but I have enough work
25 preparing for the preliminary hearing to take up all of
26 that time, and in trying -- I've already spent two weeks

1 trying to get in all the junk together on this particular
2 case which I couldn't do getting ready for the preliminary
3 hearing, and I feel in order to -- in order to -- I can't --
4 I can't justify really to myself taking time away from
5 the preparation of the preliminary hearing especially if
6 it's going to be open -- which is going to require
7 additional work on my part, I'm sure -- I can't justify
8 taking that time away in order to -- in order to prepare
9 the writ, but I think that the writ should be done, so
10 I'm asking for an additional week.

11 THE COURT: Okay. Mr. Kottmeier and Mr. Kochis,
12 do you wish to be heard on that motion?

13 MR. KOTTMEIER: We oppose the requested continuance,
14 Your Honor.

15 THE COURT: Okay. At this time the motion to
16 continue the preliminary hearing will be denied.

17 Do we have any other matters, Mr. Negus? Mr. Kochis?
18 Mr. Kottmeier?

19 MR. KOTTMEIER: No, Your Honor.

20 THE COURT: Okay.

21 MR. NEGUS: We --

22 THE COURT: Yes?

23 MR. NEGUS: We have not yet received most of the
24 documents requested in the discovery motions, especially
25 from the Department of Corrections, and other things.
26 There may be also additional discovery matters that will

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I, DEBRA A. GODINEZ, Official Reporter of the
above-entitled court, do hereby certify:

DATED this 24th day of July, 1985, at Ontario,
California.

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