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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff-Respondent,)
)
vs.)
)
KEVIN COOPER,)
)
Defendant-Appellant.)

CR 72787

Supreme Court
No. Crim 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

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

For Defendant-Appellant: IN PROPRIA PERSONA

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Pages 5259 to 5371, incl.

JILL D. MC KIMMEY, C.S.R., C-2314
and
BRIAN V. RATEKIN, C.S.R., C-3715
Official Reporters

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

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff,)
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vs.)
)
KEVIN COOPER,)
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Defendant.)

NO. OCR-9319
VOLUME 50
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REPORTERS' DAILY TRANSCRIPT
BEFORE HONORABLE RICHARD C. GARNER, JUDGE

DEPARTMENT 3 - ONTARIO, CALIFORNIA
JULY 18, 1984

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney

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

For the Defendant:

DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

Reported by:

JILL D. McKIMMEY
Official Reporter
C.S.R. No. 2314
and
BRIAN RATEKIN
Official Reporter
C.S.R. No. 3715

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1 ONTARIO, CALIFORNIA; WEDNESDAY, JULY 18, 1984; 9:50 A.M.

2 DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID
5 NEGUS, Deputy Public Defender of San
6 Bernardino County; JOHN P. KOCHIS,
7 Deputy District Attorney of San Ber-
8 nardino County, representing the
9 People of the State of California.
10 (Jill D. McKimney, C.S.R., Official Reporter, C-2314,
11 Brian Ratekin, C.S.R., Official Reporter, C-3715)

12
13 THE COURT: Everybody good morning.

14 MR. KOCHIS: Sergeant Swanlund, Your Honor.

15
16 C A R L S W A N L U N D, called as a witness by the
17 People, having been previously duly sworn, was
18 examined and testified as follows:

19 THE COURT: Sergeant, you were sworn previously.
20 If you'd just recall the oath to tell the truth and state
21 your name for the record.

22 THE WITNESS: Carl Swanlund.

23 THE COURT: Go ahead.

24

25 DIRECT EXAMINATION

26 BY MR. KOCHIS:

1 Q Sergeant, was June the 8th of 1983 a working day for
2 you?

3 A Yes.

4 Q And on that day did you take to the Central property
5 storage building on Sierra Way some items of property
6 that you had previously removed from the Ryen master
7 bedroom?

8 A Yes.

9 Q Did you fill out property tags on that day?

10 A Yes.

11 Q Was that for the items that you took to Central property?

12 A Yes.

13 Q Directing your attention to an exhibit which has been
14 marked for identification i. this hearing as H-382,
15 do you recognize what that appears to be a xerox copy
16 of?

17 A Yes.

18 Q Does that appear to be a xerox copy of three of the
19 property tags that you filled out on the 8th of June
20 of 1983?

21 A Yes.

22 Q Does the -- does each of the tags contain a description
23 of the items that you brought to Central property?

24 A Yes.

25 Q And did you place your name on the tag as well?

26 A Yes.

1 Q Did you actually place the property tags on the items
2 that you took to Central property?

3 A Yes.

4 Q Between the time that the items were removed from the
5 Ryen home and the time that you took them to Central
6 property on June the 8th, where were the items kept?

7 A In my office.

8 Q In San Bernardino?

9 A Yes.

10 MR. KOCHIS: I have no further questions.

11

12 CROSS-EXAMINATION

13 BY MR. NEGUS:

14 Q The telephone in item A-57659, where did that come from?

15 A I believe that came off the counter in the area between
16 the trophy room and the kitchen.

17 Q Was that the one that had just music on it and wouldn't
18 work?

19 A There were two telephones, and I don't recall which one
20 that is right now.

21 Q But it was not the one from the master bedroom?

22 A No.

23 MR. NEGUS: Nothing further.

24 MR. KOCHIS: No redirect.

25 THE COURT: Thank you, Sergeant.

26 MR. KOCHIS: Your Honor, at this point, I am willing

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1 to enter into a stipulation with Mr. Negus as to some
2 proposed testimony by Officer Clifford and thereby obviate
3 the necessity of calling him.

4 MR. NEGUS: We'd stipulate that if Mr. Clifford
5 were recalled to testify, he would testify as he did at
6 the preliminary hearing, Volume 14, page 83, line 24 through
7 page 85, line 9.

8 THE COURT: So stipulated?

9 MR. KOCHIS: Yes, Your Honor. I so stipulate.

10 THE COURT: Accepted.

11 MR. KOCHIS: It is not my intention to call any
12 further witnesses at this time. I am prepared to cross-
13 examine Mr. Forbush after he testifies on direct.

14 MR. NEGUS: I am prepared to call Mr. Forbush, if
15 I can have just a few seconds.

16 THE CLERK: Do you want Mr. Forbush resworn?

17 THE COURT: I'm not sure if he was sworn on the
18 Hitch motion.

19 MR. FORBUSH: I'm not sure. I don't believe so.

20 THE COURT: Do it again, please.

21

22 R O N A L D L. F O R B U S H, called as a witness by the
23 defense, was examined and testified as follows:

24 THE CLERK: You do solemnly swear the testimony
25 you are about to give in the action now pending before
26 this court shall be the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated.

4 Please state your name for the record and spell
5 your last name.

6 THE WITNESS: Ronald L. Forbush, F-o-r-b-u-s-h.

7

8 DIRECT EXAMINATION

9 BY MR. NEGUS:

10 Q Mr. Forbush, you are a private investigator working
11 under contract with me in this particular case; is
12 that true?

13 A Yes, sir.

14 Q On August 22nd, 1983, at approximately 8:16 in the
15 morning, did you make contact with an Officer Bello
16 of the Pittsburgh Police Department?

17 A Yes, sir.

18 Q Did -- had you been attempting to contact Officer Bello
19 and his partner, Officer Ray Scherer, prior to your
20 first seeing him on August 22?

21 A It was my intention to contact them; however, I'm not
22 sure that I had taken any previous action in that regard.

23 Q On August 22, did you ask to speak with Mr. Bello?

24 A Yes.

25 Q What did Mr. Bello tell you when you asked to speak
26 with him?

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1 MR. KOCHIS: I would object. That calls for
2 hearsay.

3 THE COURT: Counsel, if there was a refusal to
4 speak or to permit discovery in the case, that may well
5 have something to do with Hitch.

6 MR. KOCHIS: But, Your Honor, if that is the case,
7 then to be relevant, it would have to be offered for the
8 truth of the matter asserted, and it's an out-of-court
9 statement and, therefore, it's hearsay and should not be
10 admitted absent some exception.

11 MR. NEGUS: Like in a contract, it's -- it's -- it's -- the refusal
12 to speak, and the reasons given, are part of the -- part of
13 the refusal to provide discovery. Hitch is a case that
14 says -- it talks about the duty to disclose. Subservient
15 to that is the duty to preserve, but the main thing is the
16 duty to disclose. Failure to disclose is the act we're
17 talking about.

18 MR. KOCHIS: Your Honor, I don't believe there's
19 been any foundation laid that Mr. Scherer is an agent of the
20 prosecution in this case. If Mr. Negus has his investigator
21 go out and contact a citizen, and the citizen says I will
22 not talk to you, that certainly doesn't have to do with
23 any Hitch obligation the People may have.

24 THE COURT: Counsel, that goes to the weight of it.
25 I am certain it is admissible on the issues that we have
26 here.

1 I will overrule the objection.

2 Q BY MR. NEGUS: What did Mr. Bello tell you?

3 A Mr. Bello stated that he had heard that I was in the
4 area and that I was attempting to contact or locate
5 them, or that I might be, and that he would -- would
6 not speak to me.

7 Q Did he tell you why he would not speak to you?

8 A Yes. He stated that he was instructed by Inspector
9 Moore and by the District Attorney's Office. I asked
10 him who the representative was in the District Attorney's
11 Office, and he stated that it was Baxter --

12 Q Did you prepare a dictated report at the time of the --
13 shortly after the time of the -- of the incident?

14 A Yes, I did.

15 THE COURT: Counsel, unless there's some objection,
16 you can refer to your notes at any time.

17 THE WITNESS: Thank you.

18 MR. NEGUS: I'd just as soon specify what report
19 he's referring to, Your Honor, lest we get into trouble
20 later on.

21 THE COURT: All right.

22 Q BY MR. NEGUS: And was that report transcribed?

23 A Yes, it was.

24 Q Do you have a -- do you have a copy of the transcribed
25 version of that report with you?

26 A Yes, I do.

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1 Q What was the name of the deputy district attorney?

2 A Rodney Baxter.

3 Q Did Mr. Bello make any indications about the readiness
4 of his partner, Officer Scherer, to talk to you?

5 MR. KOCHIS: I would object. That would call for
6 hearsay.

7 THE COURT: Counsel --

8 MR. KOCHIS: It would be double hearsay for that
9 witness to explain whether or not another individual would
10 wish to talk to Mr. Forbush, for example, for Mr. --

11 THE COURT: Counsel, a refusal -- I think anything
12 that he says indicating a disinclination to permit defense
13 discovery is admissible, whether it's hearsay on hearsay
14 or not. If it's conversation indicating disinclination to
15 talk to permit discovery, I think it's admissible.

16 MR. KOCHIS: I would -- I appreciate the Court's
17 ruling as to Officer Bello. My objection would be to
18 have him give an opinion as to the state of mind of
19 Mr. Scherer.

20 THE COURT: What he said of another party may well
21 reflect upon his own state of mind. Overruled.

22 Q BY MR. NEGUS: What statement did Mr. Bello make about
23 his partner, Mr. Scherer?

24 A That the same thing would apply; that Detective -- that
25 Detective Scherer would not talk to me, either.

26 (No omissions.)

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1 Q On August 23rd, 1983, at 10:25 a.m., in Pittsburgh, did
2 you contact two detectives named Parsons and Wolfe?

3 A Yes.

4 Q According to the police reports provided to the Defense
5 by the Prosecution, were Mr. Parsons and Wolfe the
6 detectives in the burglary division who had investigated,
7 prosecuted and taken a confession from Kevin Cooper
8 regarding various burglary offenses against him in the
9 State of Pittsburgh -- State of Pennsylvania?

10 MR. KOCHIS: I would object. That's leading and
11 suggestive. It's his witness.

12 THE COURT: Sustained.

13 MR. NEGUS: Foundation.

14 THE COURT: It's also hearsay.

15 I don't see how that's the same exception.

16 Q (BY MR. NEGUS:) Were Detectives Parsons and Wolfe
17 assigned to the burglary division of the Pittsburgh
18 Police Department?

19 MR. KOCHIS: I would object. That would call for
20 hearsay.

21 THE COURT: Sustained.

22 Q (BY MR. NEGUS:) Where did you contact Mr. Parsons and
23 Wolfe?

24 A In the burglary detail of Station No. 1 at the Pittsburgh
25 Police Department.

26 Q Did a station -- what is Station No. 1 in --

1 A It is -- I don't think they call it the police department,
2 but it is headquarters of public safety, or some such
3 name as that.

4 Q And with respect to the other police stations, is -- is
5 it the central facility?

6 A It is the central facility.

7 Q And did Mr. Parsons and Wolfe -- were they behind the
8 counter, as it were, whatever the situation was, in the
9 burglary department?

10 A Yes. It was a room that had desks in it, and they
11 were obviously working in that area.

12 Q Did you have a conversation with Mr. -- with Mr. Parsons
13 and Mr. Wolfe?

14 A Yes, I did.

15 Q And were both present during this conversation?

16 A Yes.

17 Q Did both of them present their cards to you?

18 A Yes, they did.

19 Q Did those cards identify them as detectives in the
20 burglary division?

21 A Yes, sir.

22 Q Did they make any statements to you about the -- about
23 this particular case?

24 A Yes, sir.

25 MR. KOCHIS: Well, I would -- I would object.

26 Well, strike that. Not at this point.

1 THE COURT: Your answer?

2 THE WITNESS: Yes, sir.

3 Q (BY MR. NEGUS:) What statements did they make?

4 MR. KOCHIS: I would object. That calls for hearsay,
5 and it's vague as to person.

6 THE COURT: Is this also going to show some sort of
7 refusal or --

8 MR. NEGUS: Yes.

9 THE COURT: On that basis, then, I will overrule it.

10 MR. NEGUS: Let me -- let me handle Mr. -- Mr. Kochis'
11 objection as to vague as to person. I mean, I -- I -- I
12 consent that is a valid objection.

13 THE COURT: All right. I will let you proceed.

14 Q (BY MR. NEGUS:) Did one of them make a statement to you
15 about this particular case?

16 A Yes, sir.

17 Q And who was that?

18 A That was Detective Parsons.

19 Q Was -- where was Mr. Wolfe when Mr. Parsons was making
20 this statement?

21 A In the same general area.

22 Q What did Mr. Parsons say?

23 A Stated that he did have some information that would be
24 helpful to the Defense in the Kevin Cooper case.

25 Q Did you --

26 MR. KOCHIS: And I would -- Your Honor, I move to

1 strike in that it calls for hearsay.

2 THE COURT: I think I anticipate what you're going
3 to say, Mr. Negus. But you'd better say it. Wish to respond
4 to the hearsay objection?

5 MR. NEGUS: Well, the -- the offer of proof is that
6 just part of a conversation, Mr. Forbush next asked him,
7 "What was it," and he says, "I can't tell you. Mr. Baxter
8 told me not to."

9 THE COURT: So in effect it's foundational for
10 admissible conversation. I'll overrule the objection.

11 So he has information helpful to the Defense, he
12 said?

13 THE WITNESS: That's what he said.

14 Q (BY MR. NEGUS:) Did you ask him if he would tell you
15 what the general nature of that information was?

16 A I did.

17 Q What was his response?

18 A He stated that he could not.

19 Q And what did you say next?

20 A Well, we had some general small talk in the -- in the
21 interim. And as I was being escorted out of the area,
22 I asked him if he would care to disclose or at least
23 give me some clue to what that information was. And he
24 stated that he couldn't.

25 Q Prior to that, when you had first made contact with
26 both Mr. -- Mr. Parsons and Mr. Wolfe, did they indicate

1 any -- anything to you about their willingness to
2 discuss the case?

3 A Upon the initial contact, they stated that they would
4 not, or, that they could not.

5 Q Did they say why?

6 A That it was on instructions from the District Attorney.

7 Q Did they identify that District Attorney?

8 A In this case, if they did, I don't have it indicated in
9 the report, and I don't have a present recollection.

10 Q In the, I believe it was, late May or early June of
11 this year, did you return to the City of Pittsburgh?

12 A Yes, sir.

13 Q Did you attempt to contact Mr. Scherer, Mr. Parsons and
14 Mr. Wolfe?

15 A Yes, sir.

16 Q Did you ever actually talk to any of them?

17 A I actually talked to Mr. Scherer.

18 Q Did Mr. Scherer agree to talk to you about this particular
19 case?

20 A At first, I was under the impression that he had, based
21 on the conversation that we had.

22 MR. KOCHIS: I would move to strike, calling for
23 an opinion and speculation.

24 THE COURT: Yes. Sustained.

25 Q (BY MR. NEGUS:) Did Mr. Scherer say that --

26 THE COURT: Ordered stricken. Excuse me. Go ahead.

1 Q (BY MR. NEGUS:) What did Mr. -- did Mr. Scherer say
2 anything -- what did Mr. Scherer say that gave you that
3 impression?

4 MR. KOCHIS: Well, Your Honor, I would object.
5 Vague as to time and to place. I have no idea of when this
6 is taking place.

7 THE COURT: He said May or June of '84 in Pittsburgh.
8 Is that sufficient?

9 MR. KOCHIS: Not for me.

10 THE COURT: Well, pin it down.

11 Q (BY MR. NEGUS:) Do you know exactly when the conversations
12 with Mr. Scherer took place?

13 A Nearly exactly.

14 Q Okay. When -- when was -- when was the conversation in
15 which you got the impression that -- that --

16 A Was --

17 Q -- he was willing to talk to you?

18 MR. KOCHIS: Well, Your Honor, I would --

19 MR. NEGUS: I'm just using that for -- for -- I'm
20 not asking to get it in by the back door, but we have
21 identified a conversation.

22 THE COURT: Counsel, why -- why go into his
23 impressions that the man was going to talk to him at all?
24 I think this is basically irrelevant.

25 MR. NEGUS: I -- I tend to agree, Your Honor. But
26 I'm trying to use it to short circuit -- to make it quicker.

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1 Obviously it's not, so I'll try another way.

2 THE COURT: All right.

3 Q (BY MR. NEGUS:) Did you have a conversation with
4 Mr. Scherer in which you requested to talk to him about
5 the Kevin Cooper case?

6 A Yes, sir.

7 Q And when was that?

8 A That was on June 4, 1984, at approximately 11:32.

9 Q What was Mr. Scherer's response to that request?

10 A Gave me directions to, I believe it was -- as a matter
11 of fact, I'm sure it was Station No. 2, where he was
12 assigned.

13 Q When you got -- did you go to Station No. 2?

14 A No.

15 Q Why not?

16 A There was a return phone call to the duty sergeant, whose
17 name I cannot recall, in that same detail at the
18 headquarters building. And it was at that time that he
19 indicated that he would not talk to me.

20 Q After that, did you make several other attempts to get
21 in touch with Mr. Scherer?

22 A Indirectly.

23 Q Was that through me and the District Attorney and --
24 and through Mr. Rodney Baxter?

25 A Yes, sir.

26 Q And were any of those successful?

1 A No, sir.

2 Q How many days did you remain in Pittsburgh attempting to
3 do that?

4 A There were six separate days while I was in the Pittsburgh
5 area that I had contact -- I'll correct that, five
6 additional days that I had contact with Rodney Baxter,
7 yourself in an effort to arrange interviews with the
8 three persons.

9 Q And none of those efforts were successful?

10 A No, they were not.

11 Q On May 26th, 1984, did you have an interview with --
12 strike that.

13 On May 6 -- May 26th, 1984, did you talk to
14 Deputy Frederick Eckley concerning the amount of blood
15 that was on the -- a pair of coveralls that he had
16 taken into evidence?

17 A Yes, sir.

18 Q Did --

19 THE COURT: Incidentally, Counsel, I did read the
20 tape that you gave to me yesterday and listened to the --
21 listened to the tape and read the transcript. So go ahead.

22 Q (BY MR. NEGUS:) Did Mr. Eckley tell you how much blood
23 was on the coveralls?

24 A Yes, he did.

25 Q What did he tell you?

26 A He stated that there was a moderate amount of blood, and

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1 that it was splattery or splattered.

2 Q Did he describe to you the degree of splattering?

3 A He stated that it was heavily splattered.

4 Q On October 12th, 1983, did you have a conversation with
5 Linda Jean Headley concerning the subject of a
6 conversation between Hector O'Campo and Josh Ryen?

7 A Yes.

8 Q During that conversation about the subject matter, did
9 Mrs. Headley indicate to you that she was having any
10 difficulty in trying to remember what had happened on
11 June 6th as opposed to what happened on June 7th?

12 A Yes.

13 (No omissions.)

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1 Q Did you ask her, leaving aside the question of which
2 day the conversation occurred on, what the content of
3 it was?

4 A Yes.

5 Q And what did she tell you?

6 A She stated that she thought that Josh was -- had been
7 confused as to what had happened, but she stated that
8 he said that he had remembered being asleep and that
9 he had remembered his mother screaming and that he ran
10 into the room where his mother was screaming and that
11 he was trying to beat somebody with his fists and that
12 he thought that maybe it was three men, but that it was
13 dark and that he couldn't see.

14 Q Did you ask her about the nationality of these three
15 men?

16 A Yes, I did.

17 Q What did she say that Josh said?

18 A She stated that he thought maybe one of them might be
19 Mexican.

20 Q Did Linda Headley indicate to you her personal opinion
21 as to whether or not Josh was confusing separate
22 incidents?

23 A She did.

24 Q And what did she tell you?

25 MR. KOCHIS: Well, I would object. That would call
26 for an opinion and for hearsay.

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1 THE COURT: But I think it's a legitimate one. We
2 have a trained observer here. She was a nurse at the
3 hospital, was she not?

4 MR. KOCHIS: She's a nurse.

5 THE COURT: Who's observing a patient with all of
6 their physical and mental problems that she sees with
7 patients all the time, and I will permit an opinion as to
8 confusion, and I will overrule the objection.

9 Q BY MR. NEGUS: What did she tell you about the confusion?

10 A She stated that she didn't know if he had them confused
11 or whether he was just putting more than one incident
12 together -- or two incidents together.

13 Q Did she describe the two incidents that she was talking
14 about?

15 A The other incident was an incident where there was
16 contact on the driveway with her -- with his father
17 and, I presume, the family, in which there was a conver-
18 sation with three Mexicans.

19 Q On August 30, 1983, did you have a conversation with
20 Firefighter Tom Hauser concerning the number of people
21 who were at the Ryen crime scene on June 5, 1983?

22 A On my notes I may have made an error on the date, but
23 I have October 30. I'm not refreshed on the date,
24 other than that.

25 Q Showing you a ripped up piece of paper, did you --
26 which appears to be the top part of a transcription

1 of certain information, would that refresh your
2 recollection as to the date?

3 A It does.

4 Q And what was the date?

5 A It was August 30, 1983.

6 Q Did Mr. Hauser tell you how many deputy sheriffs were
7 inside the house while he was there?

8 A Yes, he did.

9 Q How many did he say?

10 A He stated there were -- at varying times there were as
11 many as three deputy sheriffs in the bedroom at one
12 given time.

13 Q Did he describe whether or not the bedroom was crowded
14 or not?

15 A He did.

16 Q What words did he use to describe that?

17 A He used the wording, quote, it was quite crowded in the
18 bedroom, unquote.

19 Q Did he describe to you how many -- did he describe to
20 you how many deputies there were around the scene at
21 the time of his departure?

22 A He stated that at least ten, possibly fourteen.

23 Q Did he distinguish between detectives and plainclothes --
24 I mean detectives and uniformed officers?

25 A Not for that large number of people. Initially he
26 thought that there -- when he was referring to the three,

1 that there were two in uniform and possibly one out of
2 uniform.
3 Q Did you ask him how many people at that point in time
4 he saw going in and out of the house?
5 A The answer is yes. I can't remember the number, if I
6 can refresh my memory.
7 Q Do you have a partial transcription of the tape that
8 you did in front of you?
9 A Yes, I do.
10 Q And do you have the bottom portion of a piece of paper
11 that's marked as page 10?
12 A Yes, I do,
13 Q And would that refresh your recollection by looking
14 at it?
15 A Yes, it would.
16 Q And how many did he say that he saw going in and out
17 of the house?
18 A At first, he was not sure, and then he stated that he
19 would safely say three.
20 Q Did you and I go to the crime lab on -- together on
21 three different dates?
22 A Yes.
23 Q What were the dates?
24 A I did not bring those notes with me, I have them in
25 my -- in my briefcase, and I can't recall the dates.
26 Q I will withdraw the question.

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1 On any of the times that you -- that you went to
2 the crime lab, did -- with me, did we ever view any of
3 the material that was in the serology freezer?

4 A No.

5 Q Did we request not to do so as to --

6 A Yes.

7 Q And what reason did we say we didn't want to?

8 MR. KOCHIS: Well, I would object. That would call
9 for hearsay.

10 MR. NEGUS: Withdraw that,

11 THE COURT: If it's something internal between the
12 two of you, he's certainly correct. If there was any
13 refusal on anybody's part, it could be relevant.

14 MR. NEGUS: No refusal.

15 THE COURT: Okay.

16 MR. NEGUS: What I expect his answer to be, just
17 as an offer of proof, is that we said we didn't want to
18 degrade the enzymes,

19 THE COURT: I will sustain the objection.

20 Q BY MR. NEGUS: Have you yourself seen any of the samples
21 that were in the serology freezer?

22 A Only once.

23 Q And when was that?

24 A That was last week.

25 Q And was that the remains of A-41?

26 A Yes, it was.

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1 Q And that -- was that present while -- were you present
2 while it was being photographed?

3 A I also photographed it.

4 Q Showing you Exhibit H-232, did you take that photograph?

5 A Yes, I did.

6 Q And what does it depict?

7 A Depicts the Velcro-type fasteners on what is called --
8 I want to call it a life suit, but -- M.A.S.T. suit.

9 (No omissions.)

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1 Q And was that photograph taken at the same time as H-231?

2 A Yes.

3 Q And did you take H-231 as well?

4 A Yes, I did.

5 Q And there's a person whose body is partially depicted in
6 H-231. Who is that?

7 A That is a nurse at the Riverside Community Hospital.

8 Q Is that the nurse that was a ride-along with the -- with
9 the paramedics --

10 A It was.

11 Q -- on June the 5th, 1983, at the Ryen residence?

12 A Yes, sir.

13 Q Do you remember her name right at the moment?

14 A At the moment, I don't.

15 Q Would the name Karen Seabert refresh your recollection?

16 A It does.

17 MR. KOCHIS: Well, Your Honor, I'm going to object.
18 He's leading and suggesting the answers to his witness. And
19 I move to strike it.

20 THE COURT: Which? You've let three or four
21 questions go by.

22 MR. KOCHIS: The last one.

23 THE COURT: All right. The last one. I'll sustain --

24 MR. NEGUS: Can I be heard on that?

25 THE COURT: Yes, sir.

26 MR. NEGUS: It's generally improper to -- to orally

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1 refresh a witness's recollection in front of a jury. But
2 there's no such prohibition in front of a Court. And Mr.
3 Forbush has testified that that's refreshed his recollection.

4 I think one's entitled to do it any way that one
5 wants to. I mean, showing a piece of paper with her name on
6 it is no different than, in effect, than -- than just saying
7 it.

8 THE COURT: You've got a good point.

9 MR. KOCHIS: Well, I don't think he does. If you
10 accept that point, then there would be no set objection as
11 a leading and suggestive question. The question --

12 THE COURT: He laid the foundation for it, Mr. Kochis.
13 But go ahead.

14 MR. KOCHIS: And, additionally, there is a specific
15 Evidence Code section, Section 771, that allows me to examine
16 a document that a witness is relying on to refresh his memory
17 so that I can ascertain if it's inconsistent with his testimony.
18 And I think what Mr. Negus is attempting to do is to short
19 circuit that section of the Evidence Code by reading, in his
20 questions, selected portions of such documents. I don't want
21 to get in the position of having to put Mr. Negus on the stand
22 to ask him the source of his information from which he refreshes
23 Mr. Forbush's memory. But that's what may happen.

24 MR. NEGUS: I'll be glad to tell him.

25 THE COURT: Mr. Negus, do you have any authority
26 to the fact that you can refresh somebody's memory orally?

1 MR. NEGUS: I -- my understanding, and I'll have to
2 look at the thing, is that you can use anything you want to
3 refresh recollection. There is a prohibition about orally --
4 orally doing it in front of a jury because that -- you know,
5 like reading a document or something like that, because,
6 obviously, in front of a jury --

7 THE COURT: You can refresh his memory --

8 MR. NEGUS: -- that's a problem.

9 THE COURT: -- with any documents or anything, but
10 that doesn't --

11 MR. NEGUS: I may be wrong. Let me just, if I could,
12 just have a second to look it up.

13 THE COURT: Okay.

14 MR. NEGUS: Counsel, do you have a copy of the
15 Evidence Code, Section 769, 770 and 771 with you?

16 MR. KOCHIS: I only had 771. I don't have 69 or 71.

17 THE COURT: I have the Evidence Code, if you wish.

18 MR. KOCHIS: If we could perhaps borrow that for a
19 minute, Your Honor, and look at --

20 MR. NEGUS: I know there's -- 771 says that if there --
21 if -- if you do use a writing, then under certain circumstances
22 the opposing party can get it. I don't think it says what
23 you can do to refresh recollection.

24 THE COURT: I'm inclined to sustain the objections,
25 Mr. Negus, unless you do have some authority.

26 All right. Proceed.

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1 MR. NEGUS: Other than that, I don't.

2 THE COURT: Consider it sustained.

3 MR. NEGUS: Okay.

4 THE COURT: So that portion, if he answered it,
5 as to her name is stricken.

6 MR. NEGUS: Okay.

7 Q (BY MR. NEGUS:) The person who was the ride-along
8 nurse on June 5th, 1983, with the paramedics at the
9 Ryen crime scene, did she take out and show you this box
10 and that Velcro?

11 MR. KOCHIS: Well, I would object. That's also
12 leading and suggestive, and there's no foundation absent
13 hearsay for that.

14 MR. NEGUS: I think he identified her as the person
15 previously. And maybe you want to strike that; I don't know.

16 THE COURT: She testified in this case?

17 MR. NEGUS: Yes.

18 THE COURT: And this is offered for a prior inconsistent
19 statement?

20 MR. NEGUS: No, it's just offered -- it's really no
21 biggy. It's just -- she's looked at the pictures and said
22 that they were -- they --

23 THE COURT: But that's hearsay, isn't it?

24 MR. NEGUS: Why?

25 THE COURT: If she points to a box, that's assertive
26 conduct. It's going to be hearsay.

1 MR. NEGUS: She has said -- she has testified and --

2 MR. KOCHIS: This is, I assume, is an offer of proof.

3 THE COURT: Yes.

4 MR. NEGUS: No, she already has testified. These
5 things are marked, right? They have been shown to other
6 witnesses. The person, whoever she was, has testified, Mrs.
7 Seabert did, that these were items shown to Mr. Forbush and
8 photographed by Mr. Forbush. And just in order, Mr. Forbush
9 just now testified that he's taken the pictures.

10 I think there's enough circumstantial evidence to
11 connect the two, being Mr. Forbush having identified the
12 photographs and the lady having identified the photographs.
13 So I'm just asking him now if that lady, which we have
14 identified by other evidence, got these out and showed it to
15 him. That's --

16 THE COURT: You can ask him if he showed these
17 photographs to her.

18 MR. NEGUS: No, he -- she --

19 THE COURT: Or --

20 MR. NEGUS: The offer of proof, the testimony has
21 been that -- that she testified that she got the -- the items
22 out to show them to Mr. Forbush, okay? I am merely trying to
23 establish by circumstantial evidence, if Mr. Forbush doesn't
24 remember her name, that it was the same person. So the
25 relevance of what I'm asking for, did he get the things out --
26 did she get the things out to show it to him, is merely to

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1 show that -- that we're dealing with the same thing. I think
2 that the foundation is sufficient, anyway.

3 THE COURT: Mr. Negus, I don't know why we're taking
4 so long.

5 MR. NEGUS: I don't either.

6 THE COURT: You can ask him if that person showed
7 him certain things --

8 MR. NEGUS: Okay.

9 Q (BY MR. NEGUS:) Did that person --

10 THE COURT: -- without bringing in conversations
11 as to what they were.

12 MR. NEGUS: I didn't -- well, I don't --

13 THE COURT: I thought you did so. Go ahead.

14 Q (BY MR. NEGUS:) Did that person that's depicted in
15 the photograph there take those items, bring those items
16 out to show it to you so you could photograph them?

17 A Yes.

18 Q Now, in late May or June of 1984, did you go to the
19 Canyon Corral Bar?

20 A Yes.

21 Q And in the Canyon Corral Bar, did you take photographs
22 H-307 and H-308?

23 A Yes, I did.

24 Q And what did those, H-307 and 308, depict, starting,
25 first, with 307.

26 A 307 is a shot facing south inside the Canyon Corral Bar,

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1 showing a cocktail table with two chairs as being the
2 subject of the photograph.

3 Q And what is H-308 in relationship to H-307?

4 A This is the same table and two chairs that I have
5 described as being in 30 -- H-307. However, it's in a --
6 a direction facing west.

7 Q And is that a fair and accurate representation, those
8 two photographs, of the layout, furniture and appearance
9 of the Canyon Corral Bar in the late spring of this year?

10 A Yes, sir.

11 MR. NEGUS: Nothing further.

12

13 CROSS EXAMINATION

14 BY MR. KOCHIS:

15 Q Mr. Forbush, directing your attention back to August
16 of 1983, the 22nd day in that month, when you contacted
17 Mr. Bellows (sic), was the contact at the police station?

18 A Yes, it was.

19 Q Who else was present when you talked to Mr. Bellows
20 beside yourself and Mr. Bellows?

21 A Mr. Melvin Cooper.

22 Q Is he related in any fashion to the defendant in this
23 case?

24 A He is.

25 Q Did you tape record that interview with Mr. Bellows?

26 A I did not.

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- 1 Q Was the conversation tape recorded?
- 2 A Not to my knowledge.
- 3 Q Did you take notes of the conversation with Mr. Bellows?
- 4 A I did.
- 5 Q Did you cause a report to be prepared from your notes?
- 6 A Yes, sir.
- 7 Q Was the report typed?
- 8 A Yes, sir.
- 9 Q Did you bring a copy of your notes of the interview with
- 10 Mr. Bellows to court today?
- 11 A No, sir.
- 12 Q Did you bring a copy of the typewritten report?
- 13 A Yes, I did.
- 14 Q And in fact did you refer to the report of your interview
- 15 with Mr. Bellows on the stand while Mr. Negus was
- 16 questioning you?
- 17 A Yes, I did.
- 18 Q Was that to refresh your memory in response to questions
- 19 Mr. Negus asked you?
- 20 A Yes, sir.
- 21 Q Do you recall how many typed pages the report was of your
- 22 interview with Mr. Bellows?
- 23 A One page.
- 24 Q And is the entire page with you on the witness stand?
- 25 A Yes, sir.
- 26 Q Directing your attention to the following day, the 23rd

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1 day of August of 1983, when you interviewed Mr. Parsons,
2 where specifically did the interview take place?
3 A That took place at the headquarters building, which is
4 referred to as Station No. 1 in the detective bureau,
5 and the burglary detail.
6 Q Other than yourself and Mr. Wolfe, who was present during
7 the interview?
8 A No one else that I can name. I believe that there was
9 at least one other detective in the vicinity.
10 Q Did you tape record your interview with Mr. Parsons?
11 A No, sir.
12 Q Did you take any notes of your interview with Mr. Parsons?
13 A Yes, sir.
14 Q Did you cause those notes to be transcribed into a type-
15 written report?
16 A Yes, sir.
17 Q Did you bring the notes with you to court today?
18 A Yes, sir.
19 Q Did you bring the typewritten report with you to court
20 today?
21 A Yes, sir.
22 Q Are they both with you on the witness stand?
23 A They are.
24 I'm sorry. Both of which is what we're speaking of?
25 Q The notes and the reports in the Parsons interview.
26 A Just the typewritten report.

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1 Q Did you refer to the typewritten report when Mr. Negus
2 asked you questions on the witness stand?

3 A Yes, sir, I did.

4 Q And was that to refresh your memory?

5 A Yes, sir.

6 Q Prior to testifying today, between August the 22nd and
7 today's date, have you used the notes of your Bellows
8 interview to refresh your memory as to what you had
9 testified to today?

10 A No.

11 Q Have you --

12 A I'm sorry. Would -- I may have to have that rephrased
13 or --

14 Q Your August 22nd interview with Mr. Bellows that you
15 took notes of between August the 22nd and today's date,
16 have you read your notes to refresh your memory as to
17 what you might testify to today?

18 A No.

19 (No omissions.)
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1 Q Directing your attention to the notes and not the
2 report that you prepared during your interview with
3 Mr. Parsons between the 23rd day of August and today,
4 have you reviewed those notes to refresh your
5 recollection as to what you would testify about today?

6 A No.

7 Q Did you at any time review the notes of the 22nd
8 interview with Mr. Bellows after a report was type-
9 written?

10 A Was the question did I review my notes after the report
11 was written or transcribed?

12 Q Let me ask this question. Did you ever take your
13 typewritten report of the Bellows interview and compare
14 it to your notes to make sure that what you had in
15 your notes got into the report?

16 MR. NEGUS: Objection. That's irrelevant. The
17 only relevance of --

18 THE COURT: Preparing notes with typewritten reports
19 is irrelevant?

20 MR. NEGUS: Yes, sir. I mean we're not trying to
21 introduce the notes into -- into evidence. The only
22 relevance of the various reports that I can see is if he
23 used them to refresh his recollection. He didn't use the
24 notes, so the notes are really irrelevant,

25 THE COURT: Sustained.

26 MR. KOCHIS: Well, Your Honor, Jefferson suggests

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1 that simply because a witness says no, you don't have to
2 accept his word on that, and there's -- Jefferson indicates
3 perhaps the Court should conduct some type of voir dire to
4 indicate if the Court in its own mind is satisfied.

5 THE COURT: I'm not interested in doing so.

6 MR. KOCHIS: No, but I also think by implication,
7 that means that opposing counsel is allowed to conduct
8 some limited inquiry to indicate whether or not the only
9 thing that Mr. Forbush has refreshed his memory to is the
10 typewritten report. I certainly don't intend to belabor
11 the point.

12 THE COURT: Mr. Negus, on that basis, I will permit
13 him to inquire. Overruled.

14 Q BY MR. KOCHIS: Did you ever take the report and compare
15 it to the notes to make sure what was in your notes got
16 to the typewritten report?

17 A I don't have a specific memory of that.

18 Q So at this point, under oath you cannot honestly say
19 that your report is an accurate reflection of your
20 notes?

21 A I can honestly say that I believe that the report that
22 I have here is a very accurate representation of what
23 took place, based on my memory, as -- you know, as well
24 as this written report.

25 Q When was the first time you looked at the typewritten
26 report of your interview with Mr. Bellows?

1 A I don't know.

2 Q Was it longer than a month ago?

3 A Yes.

4 Q Did you ever compare your typewritten report of the
5 Parsons interview with your handwritten notes?

6 A I don't have any recollection of doing so.

7 Q Is it your policy not to compare a typewritten report
8 with handwritten notes to ensure that what is in the
9 notes gets in the report?

10 A I have an explanation that I can explain what I do in
11 fact,

12 Q But you did not make that comparison in this case with
13 the Parsons interview?

14 A I don't have a recollection of doing the comparison
15 as you speak of it,

16 Q The June 4, 1984 interview with Mr. Scherer at 11:30 in
17 the morning, where did that interview take place?

18 MR. NEGUS: Objection. I think that assumes --
19 which date was that?

20 MR. KOCHIS: June the 4th, 1984.

21 MR. NEGUS: Excuse me. I thought you said '83.
22 Withdraw.

23 THE WITNESS: That took -- that took place at -- on
24 the telephone at Station No. 1, detective division, burglary
25 detail, and I was informed that I was talking to him at
26 Station -- at some other numbered station, which I believe

1 is Station No. 2.

2 Q BY MR. KOCHIS: The Parsons interview, how many typed
3 pages was that, your report on that interview?

4 A On --

5 Q On August the 23rd.

6 A August the 23rd? That -- that is one page.

7 Q One page only?

8 A Yes, sir.

9 Q And you have the page with you?

10 A I do.

11 Q The Scherer interview then did not -- you did not have
12 face-to-face -- a face-to-face conversation with
13 Mr. Scherer?

14 A I did not.

15 Q Had you ever met Mr. Scherer prior to August the 4th,
16 1984 -- I'm sorry -- to June the 4th, 1984?

17 A I don't have any recollection of having done so.

18 Q You had a conversation with someone over the telephone
19 on June the 4th?

20 A Yes.

21 Q And that was a person you'd never met before?

22 A That was a person who identified himself as Sergeant
23 Ray Scherer.

24 Q But you'd never seen that person before?

25 A No, sir.

26 Q Was that the first time you had ever had a conversation

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1 with a person who represented themselves to be
2 Mr. Scherer?
3 A I believe so.
4 Q Was that conversation tape recorded?
5 A No, it wasn't.
6 Q Did you take notes of your conversation?
7 A Yes.
8 Q Did you cause a typewritten report to be prepared as
9 a result of those notes?
10 A No.
11 Q Did you write a report about your conversation with
12 Mr. -- well, did you write a report about your conver-
13 sation over the telephone with a person on June the 4th?
14 A I have notes.
15 Q Of the conversation?
16 A Of the conversation.
17 Q Were those -- are those in court with you?
18 A They're in court with me. They're not at the counsel
19 table, or not at the witness stand.
20 Q Did you refer to a document on the stand this morning
21 when Mr. Negus asked you questions about an alleged
22 conversation on June the 4th with a person over the
23 telephone?
24 A Yes, sir, I did.
25 Q And what type of document did you refer to?
26 A I guess you would refer to it as a -- I intend it to be

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1 a log from my notes,

2 Q Is it a synopsis you made after June the 4th, 1984?

3 A The notes I'm referring to now?

4 Q In court.

5 A Yes.

6 Q And was that synopsis made from another document?

7 A Yes,

8 Q And was that from a report?

9 A No.

10 Q Was that from your notes?

11 A Yes.

12 Q And are those notes in this courtroom today?

13 A Yes.

14 Q Did you rely on the piece of paper that's in the brown
15 folder in response to Mr. Negus' questions about that
16 interview in June?

17 A Yes.

18 Q Was that to refresh your recollection as to what took
19 place on June the 4th?

20 A I think only as to the date,

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21 Q Did you get that information from another -- you got
22 that information from another document?

23 A I did.

24 Q And you relied on that document to get the information?

25 A Yes, sir.

26 THE COURT: Counsel, find a point for the recess.

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1 MR. KOCHIS: This would be a point. This is a
2 point,

3 THE COURT: Take a recess.

4 (Recess.)

5 THE COURT: You may proceed.

6 Q BY MR. KOCHIS: Mr. Forbush, directing your attention
7 back to your attempts to contact Ray Scherer, other
8 than June the 4th, 1984, did you attempt to contact
9 a person known to you as Ray Scherer other than that
10 date?

11 A Directly, no.

12 Q Did you have conversations with Rodney Baxter of the
13 District Attorney's Office in Allegheny County?

14 A Yes, sir.

15 Q On which dates?

16 A On June 5, 6, 7, 8 and 11, 1984, and in some cases,
17 there was more than one conversation.

18 Q The item that you just referred to, were those notes
19 that you took of your attempts to contact Mr. Baxter?

20 A Notes from my chronological notebook that I keep.

21 Q When you were in Pittsburgh, did you keep a chronological
22 notebook of the activities that you were performing
23 for Mr. Negus?

24 A Yes, sir, I did.

25 Q And have you used portions of that chronological
26 activity sheet to refresh your memory here in court

1 today to answer questions Mr. Negus has asked you?

2 A Yes, sir.

3 Q The interview that took place on May the 26th of
4 1984 with Frederick Eckley, where did the interview
5 take place?

6 A At the Yucaipa Sheriff's Substation in Yucaipa.

7 Q Other than yourself and Deputy Eckley, who was present
8 during the interview?

9 A His sergeant. Today, for some reason, I'm having
10 trouble recalling names, and during the latter portion
11 of the interview, a reserve deputy sheriff whose name
12 was not known to me.

13 Q Did you tape record the interview with Mr. Eckley?

14 A Yes, sir.

15 Q Was a transcript prepared of the tape recording?

16 A Yes, sir.

17 Q Did you likewise take notes of the interview with
18 Mr. Eckley?

19 A I don't specifically recall notes beyond the tape
20 recording.

21 Q Do you have the transcript with you in court today
22 of the interview of Mr. Eckley?

23 A No.

24 Q Did you refer to a document when Mr. Negus asked you
25 questions about statements Mr. Eckley may have made
26 to you when you testified here this morning?

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1 A Yes, sir.

2 Q Which document was that?

3 A Excerpts of the transcription.

4 Q Portions of the transcript of the tape of the interview
5 with Mr. Eckley is what you referred to?

6 A Yes, sir.

7 Q Did you use that document to refresh your memory as
8 to the questions Mr. Negus asked you in this particular
9 hearing?

10 A Yes, sir.

11 Q Between the 26th of May of 1984 and today's date, have
12 you listened to the tape of the interview with
13 yourself and Mr. Eckley?

14 A No, sir.

15 Q You didn't check the tape to make sure that it accurately
16 recorded the content of your interview with Mr. Eckley?

17 A I did not.

18 Q Have you reviewed the entire transcript that was prepared
19 from the tape recording?

20 A At what time, sir?

21 Q Between the time the tape was made and today's date.

22 MR. NEGUS: Objection. I think that would be
23 irrelevant unless it's used to refresh his recollection,
24 because he didn't refer to the entire transcript in his
25 testimony.

26 THE COURT: It doesn't make much difference when

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3 Q BY MR. KOCHIS: You have relied on some documents to
4 refresh your recollection as to your testimony here
5 on the witness stand; is that correct?

7 Q One of those was a portion of some transcript; is
8 that correct?

10 Q You have never, according to your testimony, reviewed
11 the tape to determine its accuracy from which that
12 transcript was made; is that correct?

14 Q Is it likewise true that you've never reviewed the
15 transcript itself to determine the accuracy of the
16 transcript, a portion of which you used to refresh
17 your recollection in this case?

19 Q You did review the transcript?

21 Q Did that assist you in refreshing your recollection
22 as to your testimony in this case today?

24 (No omissions.)

26

1 Q Since the 26th of May, was Mr. Eckley the only person
2 that you interviewed in your work as a private investigator?
3 A I guess I must have missed the first part of it, but I'm
4 sure the answer is no.
5 Q Is it fair to say that you have interviewed a number of
6 people since the 26th of May in connection with this
7 case and other cases in your work as a private investigator?
8 A 26th of May?
9 Q 1984.
10 A '84, have I interviewed some people, yes, sir.
11 Q And are you able to recall without referring to a document
12 in quotation form what Mr. Eckley told you or didn't
13 tell you on the 26th of May?
14 A In quotation form, I would have to say no.
15 Q Did Mr. Negus ask you questions this morning for which
16 you gave specific, what appeared to be, quote answers
17 as to what Mr. Eckley may have said to you on the 26th
18 of May?
19 A Yes.
20 Q Were you able to recall that without referring to your
21 document?
22 A Partially.
23 Q Parts of your testimony, then, you had to use the document
24 to refresh your memory as to what Mr. Eckley may have
25 said or may not have said; is that correct?
26 A For the specific wording, yes, sir.

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1 Q The interview that took place with Linda Headley on the
2 12th of October of 1983, was that interview tape
3 recorded?

4 A Yes, sir.

5 Q Was a transcript prepared of the tape?

6 A Yes, sir.

7 Q Did you likewise take notes of the interview?

8 A If I did, they were notes such as dates and time of the
9 interview, and perhaps the location, but not notes of
10 the conversation.

11 Q At this time, can you recall whether or not you made
12 any written notes of the interview with Linda Headley?

13 A There are no specific written notes about the content
14 of the interview other than the tape recording.

15 Q Since the 12th of October, have you listened to the
16 tape to determine whether or not it accurately preserved
17 the contents of that interview?

18 A October 12 is the date of the interview. Yes.

19 Q Have you likewise reviewed the transcript that was
20 prepared of the tape?

21 A Was your first question, sir, the reviewing of the tape?

22 Q Yes.

23 A I'll have to correct my answer, and that was no.

24 Q So as of today, you have not reviewed the tape to
25 determine whether or not it accurately recorded the
26 conversation between yourself and Mrs. Headley?

- 1 A That's correct.
- 2 Q Who else was present, if anyone, beside yourself and
- 3 Miss Headley during the interview?
- 4 A No one.
- 5 Q Have you reviewed a transcript of the tape?
- 6 A Yes.
- 7 Q Have you relied on portions of that transcript here in
- 8 court to refresh your recollection as to questions
- 9 Mr. Negus asked you this morning?
- 10 A From the original reading, no. From the excerpts, yes.
- 11 Q Do you recall how many pages the transcript of the
- 12 Linda Headley interview was?
- 13 A Only in approximations.
- 14 Q And approximately how many pages are we talking about?
- 15 A Twenty pages or more.
- 16 Q How many of those pages do you have with you in court on
- 17 the witness stand?
- 18 A Two or three.
- 19 Q Did you select those pages, or was -- did someone else
- 20 select those pages for you?
- 21 A Someone else selected those pages for me.
- 22 Q The interview of Mr. Eckley on the 26th of May,
- 23 approximately how long is the transcript of that
- 24 interview?
- 25 A Approximately 25 or 30 pages.
- 26 Q How many of those pages are with you in court on the

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1 witness stand?

2 A Portions of two pages.

3 Q Your interview on August the 30th of Mr. Hauser, was
4 that interview tape recorded?

5 A Yes, sir, it was.

6 Q Other than yourself and Mr. Hauser, who, if anyone, was
7 present during the interview?

8 A No one.

9 Q Since August the 30th of last year, have you listened
10 to the tape?

11 A No, sir.

12 Q You have made no efforts to determine whether the tape
13 accurately recorded the interview that took place between
14 you and Mr. Hauser?

15 A Not from reviewing the tape.

16 Q Was a transcript prepared of that tape?

17 A Yes, sir.

18 Q Did you review portions of that transcript to refresh
19 your recollection in response to questions Mr. Negus
20 asked you this morning?

21 A I did review portions, yes.

22 Q Approximately how many pages is the transcript of that
23 interview?

24 A The transcript of that interview, again, I'm -- I would
25 have to guess. Between 20 and 25, 30 pages.

26 Q Are all of those pages with you in court on the witness

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1 stand?

2 A No, sir.

3 Q How many are --

4 A Portions of three pages.

5 Q Did you keep a chronological summary of your visits to
6 the crime lab in this county?

7 A Yes, sir.

8 Q And did those include dates, times at which you yourself
9 went to the crime lab?

10 A Yes, sir.

11 Q Notes of the persons present?

12 A Not in all cases.

13 Q And have you relied on those notes to refresh your
14 recollection as to questions Mr. Negus asked you this
15 morning about visits you may have had to the crime lab?

16 A Those notes and my recollection, yes, sir.

17 MR. KOCHIS: Your Honor, before I proceed any
18 further, I would move, pursuant to Evidence Code Section 771,
19 that Mr. Forbush be required to produce the documents, the
20 transcripts of the interviews upon which he has refreshed
21 his recollection to testify in this proceeding.

22 THE COURT: I presume you're prepared to do that.

23 MR. NEGUS: Well, I have copies of those documents
24 which I have made, if you rule that --

25 THE COURT: I kind of thought you might have handled
26 that during the last recess, but --

1 MR. NEGUS: Actually, I had copies made even before
2 then, Your Honor. I just had -- they -- I forgot them back
3 in my office.

4 I would, before I -- before I hand over any documents
5 pursuant to Evidence Code 771, would like to point out that
6 Evidence Code 771 makes an exception for privileged matters.
7 I wish to assert the attorney-client privilege, privilege
8 against self-incrimination as to turning over any such
9 documents.

10 THE COURT: Do you -- do you wish to argue?
11 Otherwise, I'm simply going to overrule his objection.

12 MR. KOCHIS: I could state that they are interviews
13 with third parties who aren't within the attorney-client
14 privilege, witnesses, and neither the privilege against
15 self-incrimination nor the attorney --

16 MR. NEGUS: People vs. Collie says to the contrary,
17 and --

18 THE COURT: Sometimes. I'll make a finding that,
19 with the subject interviews right now, I see no possibility
20 of them incriminating the defendant. And I'll overrule your
21 objection.

22 MR. NEGUS: Then, if I could, Your Honor, I have --

23 MR. KOCHIS: And, Your Honor, by requesting the
24 documents, I believe the purpose and the intent for which 771
25 was written would allow me to see the transcript of the
26 interview in -- for example, of Mr. Hauser and not simply the

1 one page that may have been Xeroxed and brought to court.

2 MR. NEGUS: That I disagree with.

3 THE COURT: Yes. I do, too.

4 MR. KOCHIS: Well, Your Honor, I would like to be
5 heard, because I believe, as the section points out, that
6 I'm entitled to review it to introduce portions of it that I
7 feel are relevant, to examine Mr. Forbush on it, and that is
8 so that things aren't taken and quoted out of context.

9 For example, in an interview with a paramedic that
10 may be at the scene, if I don't get the entire transcript,
11 I cannot examine Mr. Forbush as to whether the paramedic said
12 there was only one deputy sheriff in the house, and he says
13 that five or ten times, and, at the very end, he finally
14 concedes that, well, there may have been three or four people
15 in the house. It would seem to frustrate the entire purpose
16 of that section if the lawyers could simply take a document,
17 take an entire conversation, decide ahead of time the one
18 limited piece of information they want to introduce on behalf
19 of their client, Xerox that or cut out a paragraph, show it to
20 a witness and then disallow opposing counsel to review the
21 document.

22 THE COURT: Counsel, as far as I know, you can cross
23 examine on the full conversation.

24 MR. NEGUS: I disagree with that, and I have several
25 cases.

26 THE COURT: As far as I know, you can do that.

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1 Where you brought out part of a conversation,
2 there is ample authority that you can bring out the rest.
3 But as far as getting the documents, I think that that is not --

4 MR. NEGUS: Before you rule that way, could I ask
5 you to look at five cases, or, four cases.

6 THE COURT: You're prepared on that?

7 MR. KOCHIS: And the other, along that line, Your
8 Honor, the reason I make the request is to shorten the length
9 of these proceedings. I tend to agree with the Court. But
10 what it would require me to do, then, is start with the first
11 conversation in Pittsburgh, go line by line with Mr. Forbush
12 as to what the conversation was about.

13 THE COURT: As far as he could remember.

14 MR. NEGUS: People vs. Perry, 7 Cal. 3d, 776.

15 THE COURT: Well, I'm going to have to have some
16 time to take a look at this.

17 MR. NEGUS: People vs. Williams, 13 --

18 THE COURT: Just a minute. 7 Cal. 3d -- what is it
19 again?

20 MR. NEGUS: 7 Cal. 3d. The case is at 756. The
21 relevant portions are at 786 and 787. People vs. Williams,
22 13 Cal. 3d 559. People vs. Gambos, 5 Cal. Ap. 3d, 187.
23 There's some other cases. Those are the leading ones. And I
24 would also direct both of your attention to Justice Jefferson's
25 rather comprehensive treatment of the issue in 620.3 of his
26 book.

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1 THE COURT: I don't think it's going to take a
2 horrible amount of time for me to look at the authority.

3 Do you wish to press that point, Mr. Kochis?

4 MR. KOCHIS: Yes, I do.

5 THE COURT: All right. Let's take a brief recess.

6 MR. NEGUS: Be about ten minutes?

7 (Recess.)

8 (No omissions.)
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1 THE COURT: All right, Counsel. I don't believe
2 any of the research indicated anything different, but it
3 certainly refreshed my memory as to the applicable law.
4 I have examined all your authorities. It appears that
5 I should exclude from the total conversation any irrelevant
6 portions, innocuous portions, portions that are not related
7 to the same subject matter that were brought out on the
8 stand. Other than that, he is entitled to the full conver-
9 sation.

10 MR. NEGUS: All right, but the subject matter of
11 Mr. Eckley had to do with the amount of blood on the
12 coveralls.

13 THE COURT: All right. We will have to take them
14 up individually, and I didn't examine them in that light,
15 but that seems to be the law. Now, what is the particular
16 point in issue? The amount of blood on the coveralls,
17 you said it was heavily splattered.

18 MR. NEGUS: I am prepared to give to Mr. Kochis
19 what I believe to be all of the conversation with Mr. Eckley --
20 I mean if you overrule my claim of privilege, which I think
21 is -- which I feel I have to make.

22 THE COURT: All right, Counsel. I'm listening to
23 anything you have to say. I doubt seriously if Mr. Forbush
24 went into matters that were not related to the bloody
25 coveralls, so it's going to probably relate to the same
26 subject matter. The only way that I could really tell,

1 I suppose, would be to examine the tape or a full transcript
2 of his total conversation --

3 MR. NEGUS: Well --

4 THE COURT: -- in each case.

5 MR. NEGUS: I am perfectly -- could we -- could
6 you -- if it -- perhaps it would be easier if -- I think
7 the claim of privilege is -- as to the portions -- to the
8 actual pieces of paper that Mr. Forbush looked at in
9 testifying is the same, no matter what we do about the
10 other stuff, so I wish to assert the attorney-client
11 privilege and the privilege against self-incrimination
12 as to turning over those -- those limited documents.
13 That's a -- that's a limited issue, okay, and I think you
14 indicated that you're going to overrule me.

15 THE COURT: I have already overruled that.

16 MR. NEGUS: Okay. I wasn't clear on that. In
17 that case, I am prepared to hand, with a copy to Mr. Kochis
18 and a copy to the Court to be marked, if necessary, in
19 case this comes out, a --

20 MR. KOCHIS: I would prefer to have it marked as
21 an exhibit from which I get a copy so someone else could
22 later review what Mr. Negus is now handing me, so I never
23 become a witness on that issue.

24 THE COURT: Then the clerk will mark as an exhibit
25 the copies that you are prepared to give to the Court.

26 MR. NEGUS: Whatever. Okay, but, anyway, I have a

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1 copy for the Court and a copy for Mr. -- for Mr. -- for
2 Mr. Kochis of the document that Mr. Forbush used to refresh
3 his recollection. The document that I am handing Mr. Forbush --
4 Mr. Kochis and to the clerk with respect to the -- Linda
5 Headley consists of two pages and consists of everything
6 that Mr. Forbush used to refresh his recollection and
7 consists of, as near as I could tell in preparing this,
8 all of the -- all of the testimony of Linda concerning
9 the content of the conversation between O'Campo and Josh,
10 which was specifically what I asked Mr. Forbush about,
11 and that was all I asked Mr. Forbush about.

12 With respect to Deputy -- to Mr. Hauser, I have
13 three xerox pages which I have prepared. They consist of
14 a few extraneous matters, but the -- they are the only
15 documents that Mr. Forbush has used to refresh his
16 recollection about Mr. Hauser. They consist of all -- as
17 near as I can -- as near as I can tell of the documents
18 which have -- all of that conversation which has to do
19 with the number of people inside the Ryen house at various
20 times, which was the only thing that I asked Mr. Forbush
21 about.

22 I have two pages of an interview with Mr. Eckley,
23 and I only seem to have one copy of that. Perhaps I could
24 have another copy made, That consists of all of the
25 interview that I could find of Mr. Forbush and Deputy
26 Eckley concerning the amount of blood that was on the

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1 coveralls, which was the only questions I asked Mr. Forbush
2 about.

3 I have a copy for the Court and counsel of the
4 complete report prepared by Mr. Forbush of his interviews
5 with Officer Bello and Detective Parsons and Wolfe in
6 Pittsburgh in August of 1983, which is the only thing
7 that Mr. Forbush used to refresh his recollection on.

8 I have copies for the Court and counsel of notes
9 of notes that Mr. Forbush prepared concerning his contacts
10 in Pittsburgh with -- with the -- concerning the Parsons
11 and -- and Wolfe and Scherer and Rodney Baxter contacts.
12 These are the items that were in Mr. Forbush's notes. And
13 you know the information, all the information, as near as
14 I could tell, in reviewing it, that was in Mr. Forbush's
15 notes concerning those contacts to which he testified to.

16 In Mr. Forbush's notes there are other things
17 concerning contacts with other people in the case that
18 have nothing to do with those particular -- those particular
19 individuals. There's also notes about Mr. Forbush's
20 expenses and various --

21 THE COURT: Clearly, that kind of stuff is not
22 discoverable by the district attorney.

23 MR. NEGUS: So what I think I've given Mr. Kochis
24 is the sum and substance of the information in Mr. Forbush's
25 notebook, but in a form which is not the same, because it's --
26 all the extraneous stuff has been removed and it's been

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1 put on two pages.

2 THE COURT: Do you wish to go beyond the printed
3 portions given?

4 MR. KOCHIS: Yes. First, I am not sure I have
5 anything from Mr. Eckley.

6 MR. NEGUS: Mr. Eckley copy for you, a copy for
7 the Court.

8 MR. KOCHIS: Your Honor, to address Mr. Eckley's
9 situation first, it is hard for me to appreciate that
10 Mr. Negus would have Mr. Forbush ask Mr. Eckley any
11 questions other than questions that pertain to the overalls
12 and whether or not there were blood on the overalls and,
13 therefore, I don't feel comfortable accepting what appears
14 to me to be xeroxed portions of two pages of an interview
15 which Mr. Forbush has testified to in terms of typewritten
16 form was substantially longer. I have no objection to the
17 policy that the Court suggested that the Court review it
18 and determine if in fact this is all that relates to the
19 issue Mr. Negus brought up and, if so, this is all I am
20 entitled to or not,

21 With the summaries, I think that the summary that
22 I have been handed of the notes, I think the Goff case
23 which I cited -- which I had the clerk give the Court is
24 on point, and that in that case the doctor took summaries
25 of some records, brought the summary to court, and the
26 proponent in that case felt all he was required to do was

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1 turn the summary of the notes over, and the court said
2 no, what he's really relying on is the records. Again,
3 in terms of the records that I do not have, I do not
4 expect to get information as to Mr. Forbush's expenses,
5 interviews of persons other than those about which he
6 testified, and I have no objection if the Court looks at
7 the notes and if the Court's satisfied that everything
8 that I have in the summary is sufficient, but I don't feel
9 comfortable accepting Mr. Negus' representations.

10 THE COURT: He doesn't have to take your repre-
11 sentation on it, Mr. Negus. You have supplied, I think,
12 all the written materials that you need to supply, but
13 counsel, I think, is going to be given more leeway in
14 cross-examination relating to other portions of the conver-
15 sation than you desire, and I can't tell the limits of
16 that scope at this stage. I would have to take it up
17 when you raise individual objections to a particular line
18 of inquiry as he cross-examines, and I am not really
19 volunteering to do this, at least not eagerly. I could
20 review the total transcript or conversation in camera.

21 (No omissions.)
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1 MR. NEGUS: The problem -- well, I have problems
2 with the latter.

3 THE COURT: Well, I'm perfectly willing to forebear
4 doing that. I have no desire to do it, because we're talking
5 about many, many pages here, and I -- I don't wish to get into
6 it if I can avoid it. And you probably have problems with
7 the former. But I'm ready to go ahead and let him start
8 cross examining.

9 Anything further on the point?

10 MR. NEGUS: No. I have no problem with -- with the --
11 with the former. I mean --

12 THE COURT: All right. Before we start now, however,
13 it's five minutes until -- until twelve. Why don't we break
14 it and resume after lunch.

15 MR. KOCHIS: Fine.

16 THE COURT: Satisfactory?

17 MR. KOCHIS: Yes.

18 THE COURT: If the Court could vacate, defendant
19 and Counsel, I can have five minutes with the students, if
20 you don't mind.

21 MR. NEGUS: Be -- I'm going to try and get out as
22 quickly as I can.

23 I'd like to just, before you make any decisions
24 about what this list is, I haven't described it to you yet.
25 I just -- it's just --

26 THE COURT: We'll talk about this after --

1 MR. NEGUS: Fine. I just didn't want you to leap
2 to any conclusions.

3 THE COURT: Off the record.

4 (Whereupon the noon recess was taken at
5 11:56 a.m.)
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1 ONTARIO, CALIFORNIA; WEDNESDAY, JULY 18, 1984; 1:34 P.M.
2 DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE
3 (Appearances as heretofore noted.)
4

5 THE COURT: Everybody's present.
6 Go ahead.
7

8 CROSS EXAMINATION (Resumed)

9 BY MR. KOCHIS:

10 Q Mr. Forbush, directing your attention to Exhibits H-231
11 and H-232, what location were you at when you took those
12 photographs?

13 A Riverside Community Hospital.

14 Q Do you recall what room you were in when you took the
15 photographs?

16 A No.

17 Q Directing your attention back to August the 23rd of
18 1983, in your contact with Detective Parsons, I believe,
19 was that the first date at which you met Mr. Parsons?

20 A I believe that it was.

21 Q Did you identify yourself to Mr. Parsons?

22 A Yes.

23 Q How did you identify yourself?

24 A I don't exactly remember. I -- I have an idea how I did
25 it, but I don't remember exactly when I said it how I
26 did it.

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- 1 Q Did you give him your name?
- 2 A Yes.
- 3 Q First and last name?
- 4 A Yes.
- 5 Q Did you give him a title?
- 6 A Yes.
- 7 Q Do you recall what title you gave him?
- 8 A I -- I don't have, like, present recollection exactly
- 9 what I said, but I have a feeling of that I know what
- 10 I said.
- 11 Q To the best of your recollection, what title do you
- 12 recall giving Parsons on August the 23rd?
- 13 A That I was a private investigator working with the
- 14 Public Defender's Office on the Kevin Cooper case.
- 15 Q Did you ever tell Mr. Parsons that you were an investigator
- 16 from San Bernardino County?
- 17 A I suppose that I could have. I don't have that memory.
- 18 Q Did you ever tell him that you were an investigator from
- 19 San Bernardino County working on the Kevin Cooper case?
- 20 A I don't believe so. I believe I identified myself as I
- 21 stated. This is what I -- it's practically a canned
- 22 introduction that I give in every case. And I don't have
- 23 any reason to think that I deviated from what I had
- 24 expressed as far as my identification was concerned.
- 25 Q You did tell him what case you were working on?
- 26 A Yes, I did.

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1 Q And did you tell him that you were working on the aspects
2 of that case that were -- that had arisen in San
3 Bernardino County?

4 A I can't say that I was specific in the words that you're
5 stating.

6 Q How long did the interview with you and Mr. Eckley last
7 at the substation, Yucaipa, on May the 26th of 1984?

8 A My memory is that it was 45 minutes, perhaps longer.

9 Q And your recollection of the length of the taped -- the
10 transcript of the tape was somewhere in the neighborhood
11 of 25 to 30 pages?

12 A I have to admit that I'm -- I'm guessing on the page
13 numbers. I -- I'm merely with a stack of papers and
14 making a guess, and I -- that's just all I'm doing with
15 that.

16 Q Was the entire 45 minute interview tape recorded?

17 A Yes, it was.

18 Q Was the area you were there to interview Mr. Eckley
19 about a set of coveralls that had been turned in to the
20 sheriff's substation in Yucaipa?

21 MR. NEGUS: Objection. Irrelevant. That's beyond
22 the scope of what the -- of what the -- the direct examination
23 was. The direct examination had to do with blood on the
24 coveralls.

25 MR. KOCHIS: Well, Your Honor, I think it's
26 foundational. I haven't asked about any area other than the

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1 coveralls at this point. And I think, to make some type of
2 recording as to my request pursuant to 771 of the Evidence
3 Code, I have to examine Mr. Forbush as to, for example, what
4 portion of the interview covered the coveralls.

5 MR. NEGUS: Well, the coveralls was not the subject
6 of his direct testimony. It was blood on the coveralls. And
7 it was limited specifically to just blood on the coveralls
8 by all of the questions. We were concerned with the blood,
9 not the coveralls.

10 THE COURT: I don't see it that way. Overruled.
11 Go ahead.

12 Q (BY MR. KOCHIS:) Did you go to the substation to interview
13 Mr. Eckley about a pair of coveralls that were turned
14 in to the Yucaipa Substation?

15 A Yes.

16 Q And did you in fact interview him about a pair of
17 coveralls that were turned in to the substation?

18 MR. NEGUS: Same objection, and it's also beyond
19 the scope.

20 THE COURT: Well, overruled on both counts.

21 THE WITNESS: The question was did I interview him
22 about the coveralls? Yes.

23 Q (BY MR. KOCHIS:) In terms of time, what portion of the
24 interview was involved in questions and answers about the
25 coveralls that were turned in to the Yucaipa Substation?

26 MR. NEGUS: Objection. Irrelevant, beyond the scope.

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1 THE COURT: Overruled.

2 THE WITNESS: In a general sense, the topic was the
3 coveralls and circumstances surrounding the coveralls.

4 Q (BY MR. KOCHIS:) Is it fair to say that, in terms of
5 a general topic, the topic that was discussed with Mr.
6 Eckley in the interview was the pair of coveralls?

7 MR. NEGUS: Same objection.

8 THE COURT: Same ruling.

9 THE WITNESS: I'd have to say in a general sense,
10 yes.

11 Q (BY MR. KOCHIS:) That would have been the entire 45
12 minutes?

13 A We talked about other things.

14 Q Other than the coveralls?

15 A I -- I think everything could be considered to be -- to
16 have been connected to the coveralls in some -- you
17 know, to some degree, but it's difficult to answer the
18 question.

19 Q You obviously covered, did you not, during the course
20 of the interview, the condition of the coveralls?

21 MR. NEGUS: Objection, Your Honor. The direct
22 examination was only to one area, inconsistent statement of
23 Mr. Eckley about the amount of blood on the coveralls. That's
24 all it was offered for. The other conditions of the coveralls
25 are not covered on direct examination.

26 This is material which is covered by the work product

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1 privilege. And it doesn't put in context the statement.
2 about the amount of blood on the coveralls.

3 THE COURT: Overruled.

4 Proceed.

5 Q (BY MR. KOCHIS:) Do you recall the question?

6 A No.

7 Q Did you interview Mr. Eckley about the condition of the
8 overalls that you interviewed him about?

9 A If -- are you referring to the blood?

10 Q That would be one aspect. Did you talk to him about
11 stains that may have been on the overalls?

12 A Yes.

13 Q What portion of the interview involved your questioning
14 Mr. Eckley about stains that may have appeared to be
15 consistent with blood on the overalls?

16 A My best recollection is that the material that I referred
17 to is the material that -- subject material that we were
18 discussing.

19 Q Well, my question is what portion of the interview in
20 terms of time was devoted to you asking Mr. Eckley
21 questions and Mr. Eckley answering those questions about
22 stains that may have been on the overalls that may have
23 been consistent with blood?

24 A Maybe a minute.

25 (No omissions.)

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1 Q Sixty seconds was all the time that you spent on the
2 stains on the overalls?

3 A I don't have a direct memory about that particular
4 subject matter. My belief is that it was for that
5 particular subject matter, that it was a short period
6 of time, consistent with the -- with the verbage that's
7 on the pages in the excerpt of that transcript.

8 Q Taking the limited issue of overalls, the Eckley
9 interview, and stains that may have appeared to be
10 consistent with blood on the overalls, what questions
11 did you ask Mr. Eckley about that limited topic?

12 | A About the blood on the coveralls?

13 Q Stains that may have appeared to be blood on the coveralls.

14 A I -- I really don't think I can answer the question.
15 I don't have a memory, and I don't know.

16 Q Well, did you ask him questions about when he may have
17 first seen stains on the overalls?

18 | A. Eckley?

19 Q Yes.

20 A I think that he -- I don't think that I necessarily
21 asked that question, but I think in the course of
22 discussion, that it was explained.

23 Q Did you ask him where he was when he first saw the
24 stains on the overalls?

25 A I don't recall having specifically asked him where
26 he was, but I think that he told me where he was when

1 he saw the coveralls.

2 Q Did you ask him who was present when he first saw
3 the overalls with stains on them?

4 A I'd have to answer in the same way and state that it
5 was his comments that had disclosed that information.

6 Q Did you ask him to describe the stains?

7 A I think I did,

8 Q And did he answer that question?

9 A Yes.

10 MR. KOCHIS: Your Honor, I need a copy that's been
11 marked as an exhibit of the portion of the interview that
12 Mr. Negus gave me of Mr. Eckley's interview.

13 THE COURT: You have your own copy now, and you
14 want to see the Court's; is that right?

15 MR. KOCHIS: I want to use the Court's as an
16 exhibit --

17 THE COURT: All right.

18 MR. KOCHIS: -- when I examine Mr. Forbush.

19 Q Mr. Forbush, directing your attention to Exhibit H-387,
20 do you recognize what that's a copy of?

21 A Yes, I do.

22 Q And is it a copy of a portion of a transcript that
23 you reviewed in this case?

24 A Yes.

25 Q Did you prepare that Exhibit H-387?

26 A No.

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1 Q And, of course, it's fair to say that that is not a
2 complete transcript of your interview with Mr. Eckley;
3 is that correct?

4 A That is correct.

5 Q Can you review that document for a moment.

6 THE COURT: Is that very faint?

7 Oh, down at the bottom,

8 MR. KOCHIS: Your Honor, and while the Court made
9 that comment, a problem I have with my copy of H-387 is
10 on the second page there were lines drawn to underline
11 certain words, and as a result of that, I can't read the
12 words on the page.

13 MR. NEGUS: I'll be glad to help.

14 Q BY MR. KOCHIS: Mr. Forbush, do you see anywhere in
15 that document statements that Mr. Eckley made as to
16 when he first saw the stains on the garment?

17 A No.

18 MR. NEGUS: Objection. I assume -- that assumes
19 facts not in evidence. Mr. Forbush said that -- never said
20 that Mr. Eckley said I first saw the stains at a certain
21 point in time.

22 THE COURT: I believe he said he didn't ask the
23 question, but in the course of the conversation, Mr. Eckley
24 indicated.

25 MR. NEGUS: I think that -- I don't think he said
26 that he -- he indicated a specific question about when

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1 stains -- when he first saw stains. He may have said
2 something about when he first saw coveralls. But that
3 doesn't necessarily mean when he first saw stains.

4 THE COURT: My memory may be faulty.

5 Mr. Kochis?

6 MR. KOCHIS: I suppose I could re-ask the question,
7 even though the witness may have been educated during
8 the course of the objection.

9 Q Mr. Forbush, do you recall testifying a few moments
10 ago that, although you did not specifically ask
11 Mr. Eckley where he was when he first saw the stains
12 on the overalls, that that was covered in his conver-
13 sation?

14 A There is -- there is something in particular that I
15 recall about Mr. Eckley explaining to me, and that's
16 the extent of my memory, and I can tell you what I
17 recall,

18 Q Well, are you talking about where he was when he first
19 saw the overalls?

20 A Yes.

21 Q Did he tell you when he first saw the overalls the
22 stains were in fact on the overalls?

23 A I believe so.

24 Q Do you see that information anywhere on H-387, the
25 transcript in front of you?

26 A I do not.

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1 Q So that's covered by a portion of the transcript that's
2 not in front of you on the witness stand; is that
3 correct?

4 A I believe so.

5 MR. KOCHIS: Your Honor, I need to have a moment
6 with Mr. Negus so he can enlighten me on the wording of
7 the transcript.

8 Q Did Mr. Eckley tell you that in terms of placing a
9 quantitative amount on the overalls, that there was
10 what he used as a moderate amount of blood on the
11 overalls?

12 A He used two such adjectives. One was "moderate".

13 Q And did he tell you that it was not saturated or soaked
14 type of blood?

15 A That is correct.

16 Q How long did you talk to Linda Headley when you inter-
17 viewed her at Loma Linda?

18 A My best guess is approximately 30 to 45 minutes.

19 Q And again you testified this morning that the approximate
20 length of that transcript was 25 to 30 pages; is that
21 correct?

22 A Yes, and, again, that's -- that was just a total guess.

23 Q Since you testified this morning and since you got
24 on the witness stand, you've had a chance to talk to
25 Mr. Negus; isn't that true?

26 A Mr. Negus and I have talked.

- 1 Q And have you talked about the length of the transcripts
2 of the witness interviews that you've testified about
3 this morning?
- 4 A Only one.
- 5 Q And was that Mr. Eckley's transcript?
- 6 A No.
- 7 Q Which transcript was that?
- 8 A Mr. Hauser.
- 9 Q Did you ask Linda Headley essentially questions about
10 statements she may have overheard Joshua Ryen making
11 while he was in the hospital in Loma Linda?
- 12 A I believe that -- generally, yes.
- 13 Q And was that the main topic of conversation in fact
14 in your interview with Mrs. Headley?
- 15 A I would say that that was one of the main topics.
- 16 Q Is it fair to say that the majority of the interview
17 was in fact spent in terms of time talking to
18 Mrs. Headley about her recollection or lack of her
19 recollection as to what she may have overheard Joshua
20 Ryen saying?
- 21 A I don't think that it was the bulk of the conversation;
22 however, I don't have present recollection about the
23 entire interview.
- 24 Q What portion of the interview in terms of time was spent
25 talking to Linda Headley about Joshua Ryen's statements?
- 26 A My best guess would probably be about half of the time

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1 or 30 percent of the time.

2 Q Somewhere between 10 and 15 minutes?

3 A Perhaps.

4 Q And was the tape recorder running the entire time?

5 A Yes, sir.

6 Q And was it a question-and-answer format the entire

7 time?

8 A Basically, yes.

9 Q How many different conversations did Linda Headley

10 tell you she overheard Joshua Ryen have in which he

11 talked about his recollection of the night his parents

12 died?

13 A I don't recall.

14 Q Well, she told you that she may have overheard Joshua

15 speak on two separate days; isn't that true?

16 A One of -- I think, if my memory is correct, perhaps

17 one of the two days,

18 Q Well, she told you that she watched Joshua on two

19 days?

20 A Two days, yes.

21 Q Were those dates approximately June the 6th and June

22 the 7th of 1983?

23 A Approximately, yes.

24 Q And did you ask her about any statements she may have

25 overheard Joshua make on either one of those days?

26 A Yes.

1 Q Did she tell you on how many of those days, if any,
2 she actually heard Joshua speak?

3 A I don't recall that,

4 Q Did you ask her that question?

5 A I probably did, but I don't recall.

6 Q Well, is it fair to say that your purpose for inter-
7 viewing Linda Headley was to determine if Joshua Ryen
8 had made statements in her presence?

9 A Sir, that was one of the subjects that I was interested
10 in,

11 Q Is it fair to say that that was as important a topic
12 as any of the others?

13 A I considered it was important.

14 Q And did you attempt to determine exactly what, if
15 anything, she had overheard Joshua Ryen say?

16 A I did ask her that..

17 Q And you tape recorded that to preserve your memory;
18 is that correct?

19 A Yes, and to just determine -- you know, to have a
20 record of what she did in fact say.

21 Q And you believe you asked her questions about her
22 recollection of his statements on both days; is
23 that correct?

24 A I believe that I asked her about her recollection of
25 events for those two days that would include anything
26 that he would have said.

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1 Q Did she tell you that she overheard Joshua making
2 statements on both days?

3 A If my memory serves me correct, she did not recall
4 whether he made statements on two separate days, but
5 she did recall that he made statements on one of the
6 two days.

7 (No omissions,)

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1 Q Did you then ask her, regardless of the day in question,
2 to describe to you what she recalls Joshua Ryen saying?

3 A Yes.

4 Q And you appear to be referring to something, for the
5 record; is that correct?

6 A Merely questions before her answer to the question that
7 you've just asked.

8 Q Did she then describe to you a statement that she
9 allegedly overheard Joshua make?

10 A Yes.

11 Q And did you ask her to first of all describe the
12 statement?

13 A I did ask her.

14 Q How much time did you spend with her talking to her
15 about what Joshua may have said about his recollection
16 of the night his parents died?

17 A I don't have a clear recollection. My best answer would
18 be consistent with the amount of printing that we have
19 here in the two pages, which would be a minute, two
20 minutes.

21 Q Well, can you, as a witness under oath, testify that the
22 two pages that you have in front of you on the witness
23 stand are the only portions of that transcript of the
24 interview with Linda Headley in which you discussed
25 with Linda Headley what Joshua Ryen may have said on
26 June the 6th and June the 7th?

1 A No, I cannot.

2 Q Did you also ask -- so your estimation as to time, if
3 it's based on what you are referring to on the witness
4 stand, is not accurate?

5 A I think that my estimation of time is correct. You asked
6 me a question under oath, if I, you know, remember, and
7 it's -- or, I think you asked me under oath if I had asked
8 any such questions throughout that interview. And my
9 memory is no. But I cannot say under oath that it's
10 not there, because obviously the transcript is -- it's
11 going to be its best record. And I have not reviewed
12 that, so I don't know.

13 Q Did you ask Mrs. Headley who was present other than
14 herself when Joshua allegedly made those statements?

15 A I think I did.

16 Q And did you ask her where Joshua was when he made the
17 statements?

18 A I don't think the question was in that form.

19 Q Did she tell you who else was present when Joshua made
20 the statement?

21 A At some time in the interview, she mentioned certain
22 persons being present during certain times that Joshua
23 was talking, and I don't recall what that is.

24 MR. KOCHIS: Again, Your Honor, I need from your
25 clerk the exhibit of the portion of the interview with Linda
26 Headley.

- 1 Q (BY MR. KOCHIS:) Mr. Forbush, directing your attention
2 to H-383, does that appear to be a Xerox copy of a
3 portion of the transcript of the Headley interview?
- 4 A Yes, sir.
- 5 Q Could you take a moment and review the transcript and
6 perhaps place an arrow on the portion of the transcript
7 that contains the information as to who was present when
8 Linda Headley overheard Joshua Ryen make the comments.
- 9 A I don't find it in the two pages.
- 10 Q So that would be on another portion of the transcript,
11 then?
- 12 A If it's there at all, yes.
- 13 Q Now, the transcript that you have in front of you, H-383,
14 that was the -- at least the second time during the
15 interview you asked Linda Headley about comments she
16 may have overheard Joshua make about what she recalled
17 the night of the murder; is that correct?
- 18 A It's not clear to me. The -- the first question could
19 indicate that there was some conversation about that
20 either as a result of a question of mine or some response
21 that she gave.
- 22 Q Well, the first question is, for the record, "And, okay,
23 I, you know, would like to get back to anything that
24 was discussed regarding the suspect information, to start
25 off with, and --"
- 26 A That's what I'm referring to. But I don't know.

1 Q Well, that to you indicates, does it not, that you had
2 earlier in the interview discussed with Miss Headley
3 this issue of what Joshua may recall?

4 A That's possible. But I don't have a recollection.

5 Q And to make that determination, you have to review the
6 entire transcript; is that fair to say?

7 A That would be fair to say, yes.

8 Q Is it also fair to say that, based on the statement,
9 it's certainly reasonable that you had asked Miss Headley
10 questions earlier in the interview about what Joshua
11 may have said?

12 A Not necessarily true. I could have very well have just
13 been asking questions. I don't know if you call them
14 foundational, but, you know, what days, what times, who
15 was present, and certain things. And she may have given
16 certain responses, but I may not have been to the point
17 in the interview where I was asking anything about that
18 until this question here.

19 Q Well, again, getting back to the exhibit, H-383, can you
20 indicate perhaps with an arrow on the exhibit where the
21 dates, times and places at which these conversations
22 were allegedly overheard, where that is on the exhibit.

23 A That's not present on this exhibit, sir.

24 Q Is that -- was that covered in another portion of the
25 interview?

26 A I believe that it was.

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1 Q That would be on another portion of the transcript?

2 A Yes.

3 Q Did Mrs. Headley tell you that she was in effect so un-
4 clear about things?

5 A She did.

6 MR. NEGUS: Objection. I -- I didn't understand
7 the question. Can I have it repeated?

8 THE COURT: Yes.

9 Q (BY MR. KOCHIS:) Did Mrs. Headley tell you in effect
10 that she was so unclear about things?

11 THE COURT: His answer was affirmative.

12 MR. KOCHIS: Yes.

13 Q (BY MR. KOCHIS:) And when she said that, was she
14 talking about whether things happened on a first or a
15 second day?

16 A That's exactly what she was talking about.

17 Q And that had obviously been discussed earlier in the
18 interview; is that correct?

19 A I would say not necessarily so. We may have been -- you
20 know, it may have been, "Gee, I don't remember what the
21 dates were," and everything else. And in fact, I think
22 we had the aid of some medical records there.

23 Q Did she tell you that she did not want to commit herself
24 if she was having that much trouble with her memory?
25 That much trouble remembering, excuse me.

26 A She did say that.

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1 Q And did she tell you that, "Well, I think -- well, Josh,
2 I think, was really confused about what happened"?

3 A Yes. You left out an important part after that last
4 question on there, that she did clear up her uncertainty
5 about committing herself. But then she did make the
6 statement that you've just referred to next.

7 MR. KOCHIS: Your Honor, I wonder if I could have
8 Mr. Forbush's response, which was non-responsive, stricken
9 from the record.

10 THE COURT: Mr. Negus, anything?

11 The last response, you mean?

12 MR. NEGUS: I think it clarified the question.
13 Mr. Kochis' question seemed to make it appear that the
14 question -- the statement about Josh being confused came
15 directly after the statement about having trouble remembering.
16 And that wasn't -- and that wasn't clear. And I think Mr.
17 Forbush's answer was responsive to the way that Mr. Kochis
18 raised the question.

19 THE COURT: Would you read it back, both the question
20 and the answer.

21 (The record was read.)

22 THE COURT: Counsel, I'll strike everything after
23 the word "yes." You can bring out the additional later, if
24 you wish, Mr. Negus.

25 Sustained.

26 Q (BY MR. KOCHIS:) Did she also tell you that what she

1 recalled Josh saying is -- is he heard his mother scream,
2 he woke up, and it was dark, and he really couldn't see?
3 Did she tell you that?
4 A Yes, he did -- she did.
5 Q And you asked her a question as to what Josh recalled,
6 if anything, about race or nationality; is that correct?
7 A That is correct.
8 Q And did she tell you that he said he couldn't see well
9 enough and that he thought one of them might have been
10 a Mexican?
11 A That is correct.
12 Q Did she also describe an incident that Joshua recalled
13 taking place earlier in the day?
14 A Earlier in the day before the homicide?
15 Q Yes.
16 A Yes.
17 Q And was that some contact between Joshua's father and
18 what appeared to be some Mexican male adults?
19 A Yes.
20 Q And did she tell you that she didn't know whether he
21 was putting those two incidents together or whether he
22 simply had them confused?
23 A Yes.
24 Q Your interview with Mr. Hauser lasted how long?
25 A I believe that my interview with Mr. Hauser was in the
26 neighborhood of 30 minutes.

1 Q Was a portion of that time spent about his observations
2 inside the Ryen house when he was there treating Josh
3 Ryen?

4 MR. NEGUS: Objection. That would be irrelevant,
5 Your Honor. The only thing that we had testimony on in this
6 particular matter was his observations as to the number of
7 people and not anything about anything else. It was purely
8 as inconsistent statements to certain statements made by Mr.
9 Hauser at the -- at the -- earlier in the case.

10 THE COURT: I think that you are on a different
11 subject matter now, Mr. Kochis.

12 MR. KOCHIS: Well, Your Honor, I can't see how Mr.
13 Negus can examine a witness on what he recalls at a scene in
14 terms of who was there and I'm limited simply to cross examine
15 him on the numbers. It would certainly seem that if that
16 issue was discussed, I'm allowed to go into the conversation
17 as to what he recalled simply at that scene while he was
18 there treating the person; I'm not asking for anything that
19 took place before or after his entry into the house. It
20 certainly seems to be an area within 356 that may have some
21 meaning to his conversation.

22 THE COURT: Well --

23 MR. NEGUS: 356, Your Honor, is designed to deal
24 with context. That is --

25 THE COURT: Counsel, I'm -- I'm ruling for you.

26 MR. NEGUS: I'll shut up.

1 THE COURT: Additional conversation which will go
2 to explain it or to make it more understood is relevant.
3 But when you get into a different subject matter, it's not
4 provided for. And I'll sustain the objection.

5 Q (BY MR. KOCHIS:) How much time did you spend talking
6 to Mr. Hauser about his recollection of people inside --
7 strike that, people at the Ryen scene?

8 A Perhaps 15 minutes.

9 (No omissions.)
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1 Q Was the tape recorder running the entire five minutes?

2 A Yes, sir.

3 Q And did you ask -- is it fair to say that you asked
4 Mr. Hauser a number of questions about the number of
5 people he may have seen inside the Ryen house when
6 he was there with Josh Ryen?

7 A Yes.

8 Q And is it fair to say that you didn't stop questioning
9 Mr. Hauser about that topic with the first one or two
10 answers he gave you about the numbers; isn't that fair
11 to say?

12 A Yes.

13 Q In fact, didn't he initially tell you that he saw inside
14 the house one deputy sheriff in the bedroom?

15 A What he stated was at least one deputy sheriff.

16 Q Did you then continue to question Mr. Hauser about that
17 observation?

18 A Yes, sir.

19 Q And did -- after some questioning, did he say "I'd
20 say at least two"?

21 A Are we speaking of -- would you repeat the question,
22 please?

23 Q Did you then ask him how many different deputy
24 sheriffs he thought he saw in the room in the Ryen
25 house?

26 A Yes.

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1 Q And did he say at least two?

2 A Yes.

3 Q Were you attempting to differentiate people he saw in

4 the Ryen master bedroom from people he may have seen

5 going into other portions of the house?

6 A Possibly.

7 Q Do those questions and answers appear obviously in

8 other portions of the transcript other than the

9 portions that's with you on the witness stand?

10 A Yes, sir, if -- if they're at all in the interview.

11 Q Did you at one point ask him -- and I could direct

12 your attention, I guess, to page 10 of the interview --

13 how many people that he saw go in and out of the house?

14 A Yes.

15 Q And did he tell you that he had no idea?

16 A Yes.

17 Q Did he tell you that he could -- that -- did you then

18 ask him if he could say for sure one?

19 A Yes.

20 Q And did he at that point say "I could probably safely

21 say three"?

22 A Yes,

23 MR. KOCHIS: Your Honor, at this point, before I

24 move any further, I would ask pursuant to Evidence Code

25 771 to have the additional portions of the interview of

26 Mr. Eckley and Miss Headley that obviously pertain to the

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1 subject matter I'm examining Mr. Forbush on before I
2 move on.

3 THE COURT: On what basis?

4 MR. KOCHIS: That he's testified that I -- I
5 believe his testimony indicates that he may have asked
6 other witnesses -- he may have asked other witnesses about
7 that subject matter in terms of who was present, the timing --

8 THE COURT: Counsel, you're confusing the two
9 code sections, 356 with 771.

10 MR. KOCHIS: I don't think I'm confusing them.

11 THE COURT: 771, if they refreshed their memory
12 on matters to which he previously testified on direct,
13 you are entitled to look at the writing.

14 MR. KOCHIS: Right,

15 THE COURT: Under 356, you can go into these other
16 areas as long as it's part of the same subject matter, but
17 it doesn't say that you -- and you have, but it doesn't
18 say you can then go back to the underlying writing.

19 MR. KOCHIS: Here's the problem I'm confronted
20 with, Your Honor, I have a witness who interviews people
21 in a very specific area. My offer of proof to the Court
22 would be he didn't go out to pass the time of day with
23 Mr. Eckley. He didn't go out to ask Mr. Eckley if he knew
24 Mr. Cooper. He asked Mr. Eckley specific questions about
25 the overalls. What Mr. Negus has very ingeniously done
26 is he's decided what limited portions of a conversation

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1 he wants admitted into evidence, had Mr. Forbush look at
2 portions of pages that were xeroxed from a transcript.
3 Mr. Forbush now conveniently can't recall anything else
4 with any certainty about the other portions of the conver-
5 sations -- if time was discussed, if persons present were
6 discussed, if dates were discussed, because he claims he
7 hasn't reviewed the transcript; therefore, I am blocked
8 under 356 to going into those portions of the conversation,
9 because he now can't recall them, and I am blocked under
10 771 because, according to Mr. Forbush, if I believe him,
11 he only looked at limited xeroxes that someone else, not
12 himself, prepared.

13 THE COURT: Counsel, as long as it comports with
14 the law, I will uphold the right of either of you to be
15 ingenious at trial and pretrial, and I don't know how you
16 can get around it. If they've done it, so be it. To that
17 extent, we will still permit the games. That's what the
18 law provides, and I think I'd be remiss if I went beyond it.

19 Q BY MR. KOCHIS: Is it fair to say, Mr. Forbush, that
20 you don't have a specific independent recollection of
21 your conversations that took place last year in
22 Pittsburgh with Bellows and Wolfe?

23 A I think that I have a fair recollection about what the
24 conversation was about between us.

25 Q Is it fair to say that you've had to rely on portions
26 of transcripts to recall what words were actually spoken

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1 to you back at that time?

2 A That is true,

3 Q And those are transcripts which you have not compared
4 with any tape to determine their accuracy; is that
5 fair to say?

6 THE COURT: Or transcripts to tape recordings?
7 Go ahead. Stay with your question.

8 Q BY MR. KOCHIS: You testified this morning that you
9 did not go back and take the transcripts and compare
10 them to the tapes to determine if they were accurate
11 or not; is that fair?

12 A That's fair to say, yes.

13 Q As you sit there on the witness stand, are you able to
14 say there were no errors made in transcription on the
15 transcripts that are in front of you on the witness
16 stand?

17 A I would say that, I would say that there are no
18 significant errors. There might be typographical
19 errors or something of that nature, but the nature
20 of what had taken place is correct.

21 MR. KOCHIS: I don't have anything else.

22 And, Your Honor, I would offer into evidence at
23 this time all of the exhibits that Mr. Negus marked on
24 the issue of 771 so that the Court can consider all the
25 statements -- all the alleged statements in context from
26 start to finish.

1 THE COURT: Why are you treating those exhibits
2 different than the other ones?

3 MR. KOCHIS: Well, in the event that Mr. Negus
4 wants to go back and --

5 THE COURT: Counsel, they are in the possession of
6 the clerk. He is not going to get them without --

7 MR. NEGUS: Judge, I think what he's trying to do
8 is to save us some time, which I appreciate. I was about
9 to go back and read certain other portions of those
10 transcripts into the record which Mr. Kochis left out.
11 If we can just have the exhibits admitted, then I won't
12 have to do that.

13 THE COURT: All right. So be it. So ordered.
14 Same numbers.

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16 . REDIRECT EXAMINATION

17 BY MR. NEGUS;

18 Q And let me just clear up one little thing here on --
19 let's see. On the report -- first of all, Mr. Kochis
20 used various and sundry words to describe the -- the --
21 the reports on Mr. Bello and Mr. Parsons and Wolfe.
22 Was there a verbatim transcript prepared of your
23 conversations with Mr. Bello and Mr. Wolfe?

24 A No, sir.

25 Q What transcript was prepared?

26 A A transcript -- a transcript of my dictation of my

1 recollection of the conversations, perhaps with the
2 assistance of notes.

3 Q With respect to the -- the part of Exhibit H-385 which --
4 which deals with your interview with Officer Bello,
5 there's a name scratched off, "Bello", and "Scherer"
6 written in; is that correct?

7 A That's correct.

8 Q And the "Scherer" is written in in my handwriting; is
9 that correct?

10 A That is correct.

11 Q And this happens to be a copy of my particular copy of --
12 of those documents and not your own; is that right?

13 A That's right.

14 Q And before bringing those documents to court, did I
15 ask you if in fact it was Mr. Bello or Mr. Scherer whose
16 name should appear in that particular spot?

17 A You did.

18 Q And did you tell me it was Mr. Scherer?

19 A Yes, sir.

20 Q And is it fair to say that as far as the number of
21 pages is concerned -- well, is your memory of the number
22 of pages more accurate than your -- than your memory
23 of the amount of time of the various interviews or
24 is your memory of the amount of time more accurate
25 than the number of pages, if you understand me -- take
26 it back.

1 A I think I understand,

2 Q How accurate is your memory of the amount of pages
3 of the various interviews?

4 A It's just a guess, That's all, and I don't have any
5 clear memory.

6 MR. NEGUS: Nothing further.

7 MR. KOCHIS: I have nothing further.

8 THE COURT: You may step down,

9 Thank you.

10 May I have all the exhibits.

11 MR. KOCHIS: Your Honor, I would -- before the
12 witness leaves the witness stand, while he's still available
13 for examination, I would make a motion to strike the
14 testimony as to a conversation the witness may have had
15 on June the 4th of 1984 in that there was no foundation
16 the person he was talking with was Ray Scherer.

17 THE COURT: I think it's clear that if a --

18 MR. NEGUS: It was done from the Pittsburgh No. 1-
19 Pittsburgh No. 2 at the direction of the officers, and he
20 identified himself,

21 THE COURT: There was sufficient foundation for it.
22 Motion denied.

23 Step down.

24 Thank you.

25 What's next, gentlemen?

26 MR. KOCHIS: I have no further witnesses.

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1 MR. NEGUS: Nor do I at this time.

2 THE COURT: Can we discuss logistics matters and
3 the documents each of you have given to me in chambers
4 on the record?

5 MR. NEGUS: I think both those documents are for
6 me.

7 THE COURT: Are they? May we discuss this, please,
8 in chambers?

9 MR. KOCHIS: Whatever's most convenient for the
10 Court.

11 THE COURT: I prefer to do it there.

12 MR. NEGUS: I would like to have Mr. Cooper.

13 THE COURT: You want him present?

14 MR. NEGUS: Yes, I do.

15 THE COURT: All right. I'd still like to do it
16 there. I wasn't trying to get rid of Mr. Cooper, but I
17 just think when they're discussing logistics and things,
18 the more informal the better.

19 (No omissions.)
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1 (Whereupon a discussion was held in
2 chambers with all the parties present.)

3 THE COURT: Mr. Negus, with reference to the two
4 documents, No. 1, your citations, I assume that this is with
5 reference to the Hitch motion.

6 MR. NEGUS: Yeah. I -- I just -- those are just
7 cases that were not cited in my Points and Authorities which
8 I happen to have which were Xeroxed and available to me last
9 time. Without doing further research, I'm reasonably sure
10 I'm going to refer to them. I thought you might like to have
11 them.

12 THE COURT: Fine. I appreciate that.
13 You've got a copy of that?

14 MR. KOCHIS: Yes, I do.

15 THE COURT: If we don't go tomorrow, I have already
16 indicated to my staff that I want a day to work on the case.
17 So if you have any citations further, feel free to feed them
18 in any time during the day and in any manner.

19 With reference to your second matter --

20 MR. KOCHIS: I would --

21 THE COURT: -- when you say "lasting less than a day,"
22 would you explain that? Is that per each?

23 MR. NEGUS: Yes.

24 THE COURT: That's a day each?

25 MR. NEGUS: And --

26 THE COURT: So some of them are substantially less

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1 than a day?

2 MR. NEGUS: I would hope so.

3 THE COURT: Yes.

4 MR. NEGUS: I -- I -- I'm trying to -- to -- to
5 accommodate, you know, two interests. I'm trying to give
6 you as best as I can what I understand as to what I have left
7 in terms of motions which we will be doing in San Bernardino
8 County. Okay? Before we go to San Diego. And so I was
9 hopeful that that would at least give you some idea --

10 THE COURT: Oh, it does. I appreciate it.

11 MR. NEGUS: -- of -- of the amount of work that is --
12 is -- is left.

13 THE COURT: Some of these --

14 MR. NEGUS: I can't -- I can't -- I can't be any
15 more precise. I wish I could, but I can't be more precise in
16 terms of time.

17 THE COURT: Some of these there may be no dispute on.

18 MR. KOCHIS: That's correct.

19 THE COURT: Optimistically.

20 MR. NEGUS: Optimistically, but --

21 THE COURT: Going to No. 9, just one second, when
22 we tried the Gray case, Mr. Kochis, you may recall that --
23 that you had written out a script and that I revised and had
24 typed up a kind of a script that we used on sequestered voir
25 dire. I would invite each of you to -- to do that a little
26 bit.

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1 First, there was a script out in open court that --
2 to a large jury panel as a whole, to make -- and if you don't
3 have such a thing, Mr. Negus, I can give you a copy of the
4 Gray one, wherein I said, "Particularly not indicating to you
5 in any way that we're going to get to the second phase, but
6 this case involves possibly two phases," and we can go on
7 with that, and I generally outline a -- the possible phases
8 of the trial.

9 MR. NEGUS: Is that the bench -- Benchbook one?

10 THE COURT: It -- I -- I suspect it was used for
11 a guide; at least my revised one used the Benchbook as a guide.
12 And so we're going to each perhaps want to work on such a
13 script. And any time you can prepare something like that,
14 that will be fine. And the same for the sequestered question.

15 MR. NEGUS: These -- these motions -- actually these
16 are just -- I have more specific things in mind --

17 THE COURT: Okay.

18 MR. NEGUS: -- than -- than, you know, the -- I
19 hadn't even talked about the -- the -- I was -- the
20 Witherspoon really I think does -- is a motion that, if No. 1
21 is -- is not granted, could do away with it.

22 THE COURT: Well, I hadn't even noticed No. 1. I
23 can almost tell you for sure that there will not be two
24 separate juries.

25 MR. NEGUS: I know. But I wish to -- I wish to make
26 a record as to why I think there should, and that leads into

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1 No. 2.

2 THE COURT: Okay. We'll discuss them at length at
3 the appropriate time.

4 MR. NEGUS: All right.

5 MR. KOCHIS: Your Honor, what would assist me in
6 being prepared is some guidance from the Court as to simply
7 the dates the Court wants to litigate these motions so I
8 know which ones to start working on this afternoon and
9 tomorrow.

10 THE COURT: Well, have we concluded witnesses on
11 Hitch with the exception of Thornton?

12 MR. NEGUS: Again, I --

13 THE COURT: And you've got some others depending
14 upon the discovery; is that right?

15 MR. NEGUS: Yes. Well, there's -- there's --
16 Thornton I definitely would want to put on no matter what
17 happens. I believe I want to put on Mr. Wraxall as soon as
18 I get his report. I may or may not want to put on Dr. Blake,
19 depending upon my analysis of Mr. Gregonis' evidence and the
20 outcome of the discovery. Mr. Gregonis, perhaps, nowhere
21 near the length he's been before, but just as to some results
22 and a few questions we had left over from when he was on
23 before.

24 I am simply thinking about the possibility of
25 subpoenaing in reporters that took the statements that I tried
26 to get into evidence the various members of the sheriff's

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1 department denied making. I, of course, would be willing
2 to stipulate that the newspaper articles could be used in
3 their stead. But I doubt if that's going to serve Mr. Kochis'
4 interest.

5 MR. KOCHIS: I won't stipulate.

6 MR. NEGUS: And the final is --

7 THE COURT: Is that worth it?

8 MR. NEGUS: I don't know.

9 THE COURT: Is that worth it? I mean, suppose you
10 bring out an inconsistency or that the officer wasn't able
11 to recall if that's what he told the reporters.

12 MR. NEGUS: Well, the statements I'm concerned about
13 have to do with evidence which turned out not to be there,
14 mainly. Those are the ones that I was thinking -- I mean,
15 like the bloody coveralls and -- and that kind of stuff. I
16 mean, not the bloody coveralls, the bloody corduroys. I mean
17 that -- that -- that couldn't take more than 30 minutes for
18 all -- whatever reporters I would bring in, I don't think.

19 And the final witness that I still am up in the air
20 about, and that has to do with -- with other policies, is
21 Dr. Mary Howell to testify as to the -- as to the contents
22 of the conversation with O.C. on June the 6th. And, you
23 know, I think the reasons not to call Mary Howell are obvious.
24 And I just have to figure out how important her testimony is
25 to me.

26 THE COURT: Is -- is she back East?

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1 MR. NEGUS: No, she's not. I -- I am bound not to
2 tell you where she is, but she -- I -- I'm not going to
3 mention where anybody is. I don't think I should. I think
4 I signed a promise more or less not to.

5 THE COURT: Okay.

6 MR. NEGUS: But I believe Dr. Howell is available.
7 That's not the problem. But I mean I think the other problems
8 with calling her are obvious.

9 THE COURT: Well, in any event, we're not ready to
10 proceed at this time on further Hitch witnesses, if there is
11 going to be any more.

12 MR. KOCHIS: That's correct.

13 THE COURT: So when, you know, he -- he brings up a
14 valid point, the extent that apparently substantial discovery
15 is continuing. And is there light at the end of the tunnel
16 on that?

17 MR. KOCHIS: Well, if -- as Mr. Negus represented
18 at the change of venue motion, if we were going to proceed
19 right now into trial, we would have tried the case with the
20 evidence we had at that time. If we start with jury
21 selection Monday, I'm prepared to try the case with the
22 evidence we have. The longer the proceedings are drawn out,
23 the more opportunity I have to impress upon members of the
24 crime lab and the sheriff's office to do additional things
25 that Mr. Negus suggests that I think should be done. So as
26 long as the jury has not gone out, I'm going to be requesting

1 that additional things be done.

2 THE COURT: But you appreciate it that that gives
3 him more fuel for the -- for the gun of delay and continued
4 motions?

5 MR. KOCHIS: I don't see it. If I want -- if I
6 wanted to intellectually and legally joust along the lines
7 of what we did this afternoon, I could stop all the investigation
8 after the Hitch ruling, start it up again.

9 MR. NEGUS: Well, the thing is that what I'm asking
10 is if -- I mean, I have been waiting for the fingerprints,
11 for the hair, for a lot of physical evidence until they get
12 done with it. To -- to ask that -- that -- all the stuff
13 that can be examined in non-destructive form. If -- if I
14 can have it for a -- for a reasonable period of time so that
15 I can examine it, then I'm not going to care what they, you
16 know, what they find out, because I'll know the answer to
17 the questions that I have and I'll know what -- what they can
18 get out of it.

19 Similarly, with the blood, if they want to turn over
20 all the blood that they haven't analyzed to my -- Dr. Blake
21 can get rich and -- and I'll know the answers to that.

22 It's -- it's that, you know, it's -- that I have
23 tried to be reasonable and not demand, realizing the problems
24 with the crime lab. And I should point out that the crime
25 lab worked on this case, like, really hard in the month of
26 June, I would say; there was lots of stuff that was done.

1 Trailed off considerably in July, brief little peak of
2 activity in November, another little peak in February or
3 March, and most of the work has been done since May.

4 THE COURT: What I'd like to see you impress upon
5 the crime lab people is to make a big push and conclude the
6 substantial portion of the analysis and discoverable matters.
7 You know, in a case of this magnitude, I certainly don't
8 suggest for a minute that, anything important, that you not
9 do it because it's going to take more time. And even during
10 the course of the trial, of course, Counsel can -- can continue
11 to make discovery investigation.

12 We'll take a brief break.

13 (No omissions.)
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1 THE COURT: The break was to allow a substitution
2 of reporters,

3 But if you can get them to do the bulk of it, then --
4 then we can pin down the nature of our pretrial work. I've
5 got to get some certainty of commencement of trial.

6 MR. KOCHIS: Judge, I've done that, and I'm doing
7 that. Part of the problem is, obviously, when members of
8 their staff are on the stand for four or five days in
9 a row, that's four or five days that not only that person
10 doesn't work, but they have to have someone cover that
11 person's court appearances, and they're doing that. The
12 majority of the trace and the fiber work has been done.
13 The serology is just -- I'm going to have to make a decision
14 as to what tentatively we want to have done, because if
15 you wanted someone to go through the blood drops in the
16 loft, Mr. Blake wouldn't be done by 1986,

17 THE COURT: I haven't asked for anything. That's
18 your decision and the Sheriff's Department,

19 All right, Monday morning -- is this agreeable --
20 that you'll take tomorrow off, and we'll all do homework
21 between now and Monday morning. Monday I'm going to have
22 arguments on the applicability of Hitch for sanctions and
23 suppression of evidence and/or dismissal in this case.

24 In general terms, with regard to the different
25 types of issues that have arisen, I can't say that we'll
26 not get specific on some things. If I indicate that I will

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1 not suppress evidence nor impose sanction, then I will
2 give you further time to re-cite, reargue -- to examine
3 the record then more completely, if you need more time,
4 Mr. Negus, but I think before we take further time, that
5 being the case, then I would expect we would go probably
6 a half a day on Monday in argument. I suspect it would
7 probably be better if we did it, maybe plan on any
8 witnesses on Monday, start off Tuesday, since you may have
9 another hearing later on in the day on Hitch, legal
10 theory and applicability -- I conceivably could hear your
11 argument in the morning, then have you come back at 3:00
12 o'clock or something like that. I don't know, but I don't
13 want to rush you and say we'll start off with witnesses at
14 1:30.

15 All right. Then Tuesday morning let's make a
16 selection here as to some order of priority as to where
17 we're going to go next.

18 MR. NEGUS: I would request that the one through
19 four be done first because -- and, you know, number four,
20 based on what the Court says now, may not be as -- as
21 pressing. I'm not sure, but, anyway, one through four;
22 that we then do essentially five, seven, eight, saving
23 six and nine for last, because I think those will take us
24 the longest and they need the most work.

25 MR. KOCHIS: These are all on Tuesday?

26 MR. NEGUS: I would not imagine getting to them

1 all on Tuesday, but go through the rest of the week doing
2 those, however long they take.

3 THE COURT: Nine to be last on that page?

4 MR. NEGUS: Yeah. Six -- just move six until
5 after eight, and then do it in the order stated.

6 THE COURT: Okay. Well, I have numbered one, two,
7 three and four as being number one, and then five is the
8 second order of priority, seven is the third, eight is
9 four, six will be fifth priority, nine will be sixth
10 priority, just a different way of doing it.

11 MR. NEGUS: Okay.

12 THE COURT: All right.

13 MR. NEGUS: Then I can -- the -- with respect to
14 some of the ones on the second page, B-3 depends upon the
15 outcome of other Gregonis motions.

16 THE COURT: Which one?

17 MR. NEGUS: B-3, what we call the Lindsey motion,
18 that depends on the outcome of other Gregonis motions.

19 THE COURT: Let's go back now to which one now?

20 MR. NEGUS: I was just going ahead to the next --
21 actually, probably we should wait and see how far we get
22 before we get onto the end of the motions on the next
23 page.

24 THE COURT: You were going to test the qualifi-
25 cations of Gregonis somewhere?

26 MR. NEGUS: Yes. It's under the motions which may

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1 require taking evidence and may last longer than a day,

2 THE COURT: The last number three, C-3?

3 MR. NEGUS: Right.

4 THE COURT: We probably should go to C-3 before
5 that one then.

6 MR. NEGUS: Right, and the -- let me -- that
7 obviously depends upon the outcome of some of the
8 serological work still being done.

9 Number -- with respect to Mr. Walz, that motion
10 will depend upon my having another investigator appointed
11 to do Mr. Walz and having a chance to -- to go -- have him
12 go through the mass of materials -- I hope to get to
13 Judge Kayashima with that early Monday morning -- and do
14 the work for me.

15 THE COURT: You know, if the prosecution's going
16 to call this guy -- I don't know anything about the case,
17 except there's a mammoth one going on in San Bernardino.
18 If they are going to call him, there's only so many ways
19 that you can impeach him, I don't think that all the
20 detail of these past crimes and -- would be all that
21 relevant.

22 MR. NEGUS: I think most of the detail of the
23 past crimes may be relevant, and the man's a professional
24 snitch.

25 THE COURT: That's one thing. To find out all
26 the cases that he's snitched in or testified in perhaps

1 and do something like that, go through all of that --

2 MR. NEGUS: But the cases he's involved in over
3 there, my -- again, I don't know -- all I know is what
4 I hear through the -- through the courthouse grapevine about
5 Mr. Walz, but it would strike me that I would not feel
6 comfortable going -- if the prosecution wishes to go ahead
7 and -- you know, my position is that once all the evidence
8 gets out, it's going to be just -- we're just going
9 through a waste of time, because they won't -- they are
10 going ahead with a -- the likelihood of them getting
11 Mr. Walz to testify for them, I think, is completely
12 chimerical.

13 THE COURT: Chimerical?

14 MR. NEGUS: The relevance of his testimony is --

15 THE COURT: Chimerical? Go ahead.

16 MR. NEGUS: -- is completely fantasy. The
17 likelihood of him being allowed to testify is fantasy,
18 but if we're going to have to go through the exercise,
19 I don't intend to be criticized at some future time for
20 failing to do it correctly, and that's what it -- that's
21 what it requires.

22 THE COURT: Mr. Kochis and Mr. Kottmeier, sometimes
23 that's indeed very important, that type of evidence, but
24 my experience is most of the time the jurors discount
25 the jailhouse informants, and I can see the mammoth amount
26 of work that apparently he's going to do, or have others

1 do for him, and the time it's going to take, and I ask
2 you to make an early-on decision. Are you really serious
3 about that additional --

4 MR. KOTTMEIER: We have done the best we can to
5 indicate to the Court that we don't intend at this time to
6 use Mr. Walz. It's Mr. Negus that keeps insisting that
7 that is a possibility and, as long as there's any
8 possibility, regardless of how remote, that he needs to
9 investigate Mr. Walz.

10 MR. KOCHIS: And there is a possibility. Our
11 problem is being locked into concrete at this point,
12 apparently months before jury selection starts, as to
13 what we will and will not do at trial.

14 THE COURT: Well, in what type of situation can
15 you conceive of your then wanting to use him?

16 MR. KOCHIS: I can conceive --

17 THE COURT: If the defendant gets on the stand and
18 says certain things that are contrary to --

19 MR. KOCHIS: That's one situation. I can also
20 foresee another, and I don't feel comfortable sharing my
21 thoughts on that with Mr. Negus at this point, if ever.

22 THE COURT: Okay.

23 MR. KOTTMEIER: We are relatively certain we are
24 not going to use him, and when I say "relatively certain,"
25 we have given you two --

26 THE COURT: If I was defense counsel, I'd certainly

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1 want to make some inquiry in preparedness for the possibility
2 I don't see how he can avoid it.

3 Well, I think B-1, Josh's statements, could be
4 handled most any time. It doesn't require a lot of effort.

5 MR. NEGUS: Right. It doesn't require -- it
6 doesn't require evidence. I think it may require ruling
7 on the Hitch motion before we do it, because I think that
8 may affect my -- that will affect my argument, but mainly
9 it needs -- that's stuff that I need more research on.

10 If I had to rank them in order of ones which I'd
11 be more likely to be able to get ready on first on the
12 B ones, it would be four, five, six, in that order, and
13 then going back -- I will be ready to do number three
14 whenever we get through with the Hitch and know what --
15 and the Gregonis thing and know what we're talking about.
16 385 motion depends upon the outcome of the Hitch motion,
17 and then the admissibility of Josh's statements just
18 depends upon my having a chance to do more research into --

19 THE COURT: Okay. We've got enough right now to
20 where we can --

21 MR. KOTTMEIER: Your Honor, there's one area in
22 connection with Josh's statements that will be a motion
23 on our part which relates to the witness preparation
24 latitude for the district attorney, and that probably
25 ought to be considered in that same period of time with
26 Josh's admissibility,

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1 THE COURT: I don't understand that.

2 MR. KOTTMEIER: You made a statement two weeks
3 ago or so that we could not have any contact with Josh
4 Ryen in the absence of a representative of the defense.

5 THE COURT: Yes.

6 MR. KOTTMEIER: We wish to contest that particular
7 ruling as far as it relates to the normal witness preparation
8 that would go on prior to the placement of Josh on the stand,
9 assuming that you would rule in our favor that he could
10 take the stand.

11 THE COURT: Well, we can bring that up again after
12 you come up against number one here.

13 MR. KOTTMEIER: And there's no real need for
14 any rush on it. There's no big hurry that I anticipate,
15 and I don't think we are violating anything. Josh is
16 out of the control of anybody locally for quite a while.

17 THE COURT: I assume you'd want to call him.

18 MR. NEGUS: No, no. They want to. I'm opposed.

19 MR. KOCHIS: But he wants to get in forms of conduct
20 that may be consistent with communication, whether Joshua
21 gets on the stand or not. He wants the hospital stuff
22 about the three white guys to come in, whether Joshua gets
23 on --

24 THE COURT: I don't know how he's going to do that
25 without putting Josh on first to say he doesn't recall or
26 something, but you can enlighten me.

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1 MR. NEGUS: I'd be glad to.

2 THE COURT: I thought you would want to call him
3 so you could later on put these other people on and get
4 the full story out.

5 MR. NEGUS: That's going to be very complicated,
6 but, no, Basically, they want to call him and keep the
7 hospital stuff out. I don't want him called, and I want
8 the hospital stuff in I think is a fair summary of the
9 positions of the various parties, but, anyway --

10 THE COURT: Just a moment for a change of reporters.

11 (No omissions,)

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1 MR. NEGUS: With respect to the testimony -- the
2 motions regarding the testimony of Josh, I sent off to Mr.
3 Gendler, the attorney for Dr. Howell, yesterday an amended
4 agreement that he had requested Mr. Kochis and I sign. I
5 would assume that they -- that they are going to get that
6 agreement before Judge Schaefer for approval as soon as it
7 can be done.

8 MR. KOCHIS: I'm listening.

9 MR. NEGUS: And then we will have the materials
10 that we need to -- we'll have the materials that we need in
11 reference to the testimony of Josh. Once I am in receipt of
12 those materials, I need a period of, depending on -- 1 to X
13 number of weeks depending upon the availability of my expert
14 at that point in time to examine those materials for -- and
15 study them before we -- we get into that particular motion.

16 We have been working, Mr. Kochis and I -- every
17 time Mr. Gendler gives us an opportunity, we're down there
18 quickly. But we're dealing with three other lawyers who are
19 not as interested in getting this stuff as we are and who are
20 from large firms who have lots of other business that takes
21 precedence. So we're -- you know, we're waiting for them.
22 But -- we think we can get it, but there's a -- there's a --
23 there's a lag time involved in that.

24 THE COURT: Well, I can see Monday and Tuesday
25 without any witnesses at all. So be on tap for -- for
26 Wednesday, fall-back witnesses if we're going to have some

1 evidentiary matters.

2 MR. NEGUS: Most of these, except for the -- for
3 the C, don't require, to my mind, probably taking any evidence
4 on, just getting materials together.

5 THE COURT: Motion regarding jury composition. Okay.

6 MR. NEGUS: These are not actual jury challenge or
7 change of venue motions. These are things which I feel have
8 to be done before we get to San Diego. And so I'm trying to
9 get them.

10 THE COURT: I don't know what that could be, then.

11 MR. NEGUS: Well, the same thing I did in -- in
12 Mr. Bonillas' case, to find out how many people they're
13 actually getting in as jurors in San Diego County.

14 THE COURT: Well, the demographic studies, you
15 normally subpoena or have Mr. Forbush pick them up from the
16 appropriate agency, and things like that.

17 MR. NEGUS: I understand. I know what the population
18 figures are. But if you -- I don't know if you remember what
19 we did in Mr. Bonillas, but --

20 THE COURT: I don't think I did it.

21 MR. NEGUS: Well, you --

22 THE COURT: Did I?

23 MR. NEGUS: -- granted the -- granted the orders,
24 yeah. Well, I'll -- I'll enlighten you further --

25 THE COURT: Okay. This is not at the moment, at
26 least, a challenge to the panel down there?

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1 MR. NEGUS: No. These are preliminary matters to
2 obtain information from which a challenge can be done.

3 THE COURT: All right. Anything further?

4 MR. KOCHIS: Not at this time.

5 THE COURT: Thank you very much.

6 (Whereupon the proceedings were
7 concluded at 2:52 p.m.)
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