

COPY

SUPREME COURT OF THE STATE OF CALIFORNIA

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

CR 72787

Supreme Court
No. Crim 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE RICHARD C. GARNER, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

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VOLUME ~~52~~ of 62 volumes.
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JILL D. MC KIMMEY, C.S.R., C-2314
and
BRIAN V. RATEKIN, C.S.R., C-3715
Official Reporters

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN BERNARDINO

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

5 Plaintiff,)

6 vs.)

7 KEVIN COOPER,)

8 Defendant.)

NO. OCR-9319

VOLUME 52

Pgs. 5438 thru 5564, incl.

9
10 REPORTERS' DAILY TRANSCRIPT

11 BEFORE HONORABLE RICHARD C. GARNER, JUDGE

12 DEPARTMENT 3 - ONTARIO, CALIFORNIA

13 Tuesday, July 24, 1984

14 APPEARANCES:

15 For the People:

DENNIS KOTTMEIER
District Attorney

16 DENNIS KOTTMEIER
17 District Attorney
18 By: JOHN P. KOCHIS
Deputy District Attorney

19 For the Defendant:

DAVID McKENNA
Public Defender
20 By: DAVID NEGUS
Deputy Public Defender

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23 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; TUESDAY, JULY 24, 1984; 9:35 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; DENNIS KOTTMEIER,
7 District Attorney of San Bernardino
8 County, JOHN P. KOCHIS, Deputy District
9 Attorney of San Bernardino County,
10 representing the People of the State
11 of California.

12 (Jill D. McKimmey, C.S.R., Official Reporter, C-2314,
13 Brian Ratekin, C.S.R., Official Reporter, C-3715)

14
15 (Whereupon, the following proceedings
16 were had in chambers:)

17 THE COURT: Good morning.

18 For the record, with reference to People versus
19 Kevin Cooper, I have asked the clerk to bring you all into
20 chambers as you are now initially because I don't think I
21 would like the press to pick up the words that I'm saying at
22 this time.

23 Tentatively, I find nowhere in this case deliberate
24 lies or any calculated effort to circumvent due process;
25 and in failing to collect to preserve various evidentiary
26 matters, the authorities were acting in good faith and

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1 probably in accord with their normal practice. At least
2 since the preliminary hearing, the prosecution was clearly
3 trying to do all that was suggested by the defense.

4 With reference to protection of the crime scene
5 and the collection and preservation of evidence, I do not
6 find generally the prosecution established, enforced and
7 attempted in good faith to adhere to a systematic -- to
8 systematic procedures. With the possible exception of
9 A-41, I do not find that there was a violation of applicable
10 law to warrant sanctions on any of the disputed areas
11 generally on the ground of lack of duty on the prosecution,
12 the failure of defendant to show materiality or lack of
13 apparent exculpatory value; hence, I do not find any
14 prosecution action or inaction unfair to so constitute
15 a denial of due process.

16 With reference to Exhibit A-41, so called, the
17 Hitch case and its progeny and due process requires the
18 prosecution to preserve evidence that comes into its
19 possession if there is a reasonable possibility that the
20 evidence would be material on the issue of defendant's
21 guilt or innocence. The materiality of A-41 cannot be
22 questioned. Mr. Gregonis knew early on its isolated source,
23 that it didn't come from any of the victims, that its
24 significance was unique in the case, and that the testing
25 would exhaust the sample. An inconsistent result on any
26 of the tests would exclude the defendant as the depositor.

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1 He testified it was common practice to photograph electro-
2 phoretic runs so that he and others could verify his reading
3 on the plates. The plates themselves quickly degraded.

4 True, as in People versus Zamora, lawful and
5 proper destruction requires no sanction, but I question
6 the propriety of the destruction here considering the
7 significance of the sample and the established practice of
8 photographing the plates and then making no substantial
9 effort to ascertain the quality of the photographs.

10 In People versus Vera, V-e-r-a, the Appellate
11 Court declined to impose Hitch sanctions for a failure to
12 document fingerprint evidence by photographs. They acted
13 on the facts of that case. The defendant there did not
14 challenge the authenticity of the prints. The evidence
15 was presented by -- excuse me. No evidence was presented
16 by defendant of print transfers or irregularities. Three,
17 no evidence was presented on whether the task of photographing
18 prints in plates would be burdensome to police.

19 This case can be distinguished by analogy on all
20 those three points. The Vera case, citing U.S. versus Bryant,
21 said the duty of disclosure is operative -- duty of disclosure
22 is operative as a duty of preservation, because, otherwise,
23 disclosure might be avoided by destruction, which is what
24 happened here. He could lawfully destroy. But under these
25 circumstances, he should have made a reasonable effort to
26 disclose his testing by adequate photographs in explanation.

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19 People versus Hogan, 31 Cal.3d, 850, 851, 1982,
20 no duty to obtain fingerprint scraping evidence, as opposed
21 to preserving it once collected, but the California Supreme
22 Court in the Hogan case stated that there might be a case
23 where they would impose sanctions for a failure to obtain
24 evidence, but not there, considering that record. They
25 said, considering the totality of the circumstances in the
26 Hogan case, it is highly improbable the scrapings could have

1 produced favorable evidence on the issue of guilt.

2 Like Mr. Negus suggested, with reference to a
3 number of the prosecution cases, they decline to impose
4 Hitch sanctions on the issue of materiality. Considering
5 the photographs of the plates as evidence here, however,
6 there's really no question about their materiality. I
7 don't think that the Appellate Court here would decline
8 to impose sanctions, and I'd rather exclude some evidence
9 of testing than set this case up for reversal before we even
10 get started.

11 This may -- I am going to invite further argument
12 on Hitch with reference to A-41. It may also require
13 further evidence. I have some questions that I'd like to
14 ask, and I have -- I haven't even mentioned possible
15 sanctions. Question -- three of them that I have noted --
16 if Mr. Gregonis had properly examined the first photographs
17 in testing of A-41 and found them unreadable, could, number
18 one, more photos be taken?

19 Two, the dye, G6PD, could that be changed on the
20 same sample?

21 I think I know the answers to some of these questions,
22 but I'm not certain, and I'm not certain the record reveals
23 it.

24 And number three, were there any time or means --
25 was there any time or the means to experiment to obtain more
26 readable photos?

1 And I need the answers to those questions before
2 I move further on that.

3 Are there any questions?

4 MR. KOCHIS: Yes. The answer to some of these
5 questions are going to have to come from Mr. Gregonis
6 who's not available until Monday.

7 THE COURT: I even thought at one time late
8 yesterday to perhaps have him here today, but then I
9 struggled through re-reading some -- much of his testimony,
10 but I never found the answer to these questions there.
11 I suspect that -- that, for instance, applying G6PD and
12 dyeing the plate and then taking the photograph, that he
13 can't undye it or take it out and put in a better sample,
14 if indeed that be the problem. But, rather, he would have
15 to -- to get a better run, for instance, on the PGM on
16 the 13th of June, he might have to take another sample,
17 redye it in order to photograph it, but I'm not sure, but
18 that would all be important, so unless you think that
19 there's something -- some way that I can have these questions
20 answered in the absence of Mr. Gregonis, I think that we'd
21 better just put a lid on it at this stage and wait till he
22 gets here.

23 I'm assuming, Mr. Negus, that Dr. Thornton could
24 testify, and I'm certain that he could tell me much
25 information about what proper investigation of a crime
26 scene and reconstruction efforts could reveal. Assuming

1 all of that, I still do not find it material under the
2 tests.

3 (No omissions.)
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26 MR. NEGUS: -- okay -- on those issues. I don't

1 know what the logistics of that is going to be. I know
2 Dr. Blake's on vacation one of those weeks in there. But the
3 other thing is that the money to fly both Dr. Thornton and
4 Dr. Blake down here has not yet been approved and will not be
5 approved, if it is going to be, until tomorrow morning, because
6 Judge Kayashima was on vacation for -- for two weeks. So I
7 can't give you a firm plan on -- on anything. Now --

8 THE COURT: We can talk about it tomorrow --

9 MR. NEGUS: Okay.

10 THE COURT: Or as you get more information.

11 MR. NEGUS: Okay. What I -- I suppose what I --
12 the -- the question that comes immediately to mind, because
13 it has to do with -- I was going to call Dr. Thornton tonight
14 after -- are you -- are you saying that I should not -- that
15 I -- that I should not bring Dr. Thornton down, because --

16 THE COURT: Counsel, I hate to say I'm not going
17 to let you bring him. I just think it's going to be a waste
18 of time if you bring him. Maybe he's -- maybe he's written
19 a brief article on -- on the scope that such reconstruction
20 could cover. I don't know.

21 MR. NEGUS: Basically --

22 THE COURT: But I don't think that, even if it shows
23 more than one attacker, that that's going to particularly
24 help your client. I don't think that if it shows the movement
25 of victims and some of the other things that -- that that's
26 going to particularly be helpful to -- exculpatory for your

1 client. And considering all the circumstances in the case
2 and applying the law as best I can decipher it -- I have read
3 all these cases and briefed them and noted them and reread
4 them -- I don't think it's material. So --

5 MR. NEGUS: Well, I -- I would like -- you mean I --
6 I suppose what I'm asking is one way or the t'other I want
7 to get what I would consider Dr. Thornton's testimony to be
8 on the record. I am -- you know, if -- so I need -- I need
9 to -- I need to get it on the record. Dr. Thornton is writing
10 for me, or, preparing so he can -- so he can at least tell
11 me over the phone, you know, what concrete things he thinks
12 could have been proved, what we could have known.

13 THE COURT: Why don't you show it to Mr. Kochis
14 when you get it, considering using that in lieu of it, and
15 let me read it.

16 MR. NEGUS: Well, I'm willing to make it as an offer
17 of proof.

18 THE COURT: But you're not prepared to -- to do that
19 now?

20 MR. NEGUS: No, no.

21 THE COURT: Mr. Negus, think about it, get it all in
22 hand, and then make your decision.

23 MR. NEGUS: Okay.

24 THE COURT: Okay? Anything else on this point?

25 MR. NEGUS: Not right at the moment. I'm sure we'll
26 come back to it.

1 MR. KOCHIS: Could I have, for my own mind to guide
2 me in what I'm going to do between now and Monday, is the
3 Court going to draw a distinction with A-41 between the three
4 tests in which Mr. Negus' expert --

5 THE COURT: Initially, I just -- just thinking out
6 loud with you, suppose on the 13th of June, when he ran his
7 initial species and PGM and presumptive tests and all that,
8 he prepares his plate and then, as I think a good investigative
9 criminalist should do, he had examined the first photo after
10 making his tests and found it to be unreadable, but there was
11 nothing that he could do at that point, then I doubt seriously
12 if I would suppress that particular run. If he -- if he --
13 if he then does the same thing on the 14th, I don't see how
14 the Prosecution could have any excuse, and that very likely
15 would be suppressed. Those photos of A-41 that are unreadable,
16 the sanction, I'm sure, would just, without delving into it
17 too much, would at least require a suppression of the unread-
18 able calls that he made where the photographs don't substantiate
19 them.

20 MR. KOCHIS: My question, before the -- the Court
21 has locked itself in on sanctions, because I'm sure I would
22 like to argue that first, is there were three --

23 THE COURT: He wants to argue, obviously, that it
24 all would come out in the defendant's favor, those that are
25 unreadable.

26 MR. KOCHIS: Right. Your Honor, my -- my -- my

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1 question is there may be some -- some of the plates we saved,
2 those were runs that took place when Mr. Blake was standing
3 right next to Mr. Gregonis watching the plates come up. Is
4 the Court going to draw a distinction --

5 THE COURT: Those -- I don't think there's any
6 question but what the calls that were made in October with
7 the presence of Dr. Blake on the evidence that I have now
8 would be admissible.

9 MR. KOCHIS: Okay.

10 THE COURT: And my initial reaction is that those
11 that are readable, though faint, would be admissible.

12 MR. KOCHIS: Okay.

13 THE COURT: But I'm not locked into any of that.

14 MR. KOCHIS: That provides the guidance I need to
15 reread certain portions of the transcript, examine Mr. Gregonis
16 further on Monday, and then argue further.

17 Could we have perhaps a 10-minute recess?

18 THE COURT: You bet.

19 MR. KOCHIS: And then move to other -- I assume
20 Mr. Negus is prepared this morning to start moving onto other
21 areas.

22 MR. NEGUS: I'm prepared on some of them, yes.

23 THE COURT: Sure. Let's take a brief recess. Thank
24 you.

25 Why don't you step out in open court, Mr. Negus.

26 (Recess.)

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1 (Whereupon the following proceedings were
2 held in open court.)

3 THE COURT: Counsel, I'd like -- be on the record.

4 I'd like to get kind of informal, go on the record
5 at all times, so I will join you at the counsel table in
6 open court to where we can get out our books and things.

7 MR. NEGUS: Before we start on -- on new matters,
8 it occurred to me -- I know that at least one reporter is
9 going to call me this afternoon and ask me what happened this
10 morning. There may be others. I am perfectly willing, if
11 the Court -- I mean, the Court indicated some desire not to
12 have the press be aware of your tentative ruling. I'm
13 perfectly willing to say no comment and not answer their
14 questions as long as I know that everybody is going to say
15 no comment and not answer their questions. If -- if that's
16 not the case --

17 MR. KOCHIS: I would prefer that. I would even
18 further prefer, on this limited issue, a gag order from the
19 Court for this reason: if there's publicity about results
20 that may be suppressed, that may affect jury selection which
21 is going to start.

22 THE COURT: Counsel, I foresaw all of this. That's
23 why I had it in chambers. It's clear that what goes on in
24 chambers need not be disclosed, even under an extended media
25 coverage type of order. So I would much prefer to keep all
26 of this away, the findings that I made. I don't want them to

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1 get into that area. Certainly the tentative rulings are
2 guidance that I have given you. I'm not mired in concrete
3 yet. There's been no official order.

4 So I think, as far as the clerk is concerned, that
5 if you're contacted, that you simply indicate that no rulings
6 were made as yet.

7 And, Detective Arthur, do you agree to be bound
8 by that the same as Mr. Kochis has indicated?

9 SERGEANT ARTHUR: Yes, sir.

10 THE COURT: Apparently everybody's in agreement,
11 and I need no court order. I don't want to get into gag orders.

12 MR. NEGUS: I'll just say no comment, as long as the
13 other side is going to say no comment.

14 THE COURT: Frankly, I appreciate greatly that type
15 of a -- let's try the case in court.

16 Is that the end of that matter at the moment?

17 MR. NEGUS: Yes.

18 THE COURT: You have a date of July 30th, going to
19 your tentative list of motions, wherein you desire to allow
20 Dr. Thornton to view physical evidence. Apparently he -- you
21 have in mind him attempting to do a reconstruction.

22 MR. NEGUS: No. What I -- what I have in mind is
23 that, as the testimony has been, there's lots of items of
24 furniture that you can't really see what's blood and what's
25 not. And there's other things that he needs just to look at
26 just so that he can verify -- verify photographs and things of

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1 that nature. I have taken -- he has all the photographs in
2 the case, but he hasn't actually seen the physical evidence.

3 THE COURT: Are you talking about going to the
4 Sierra Way loft, so to speak?

5 MR. NEGUS: And the crime lab, if he needs that.

6 THE COURT: Yes. I'm sorry.

7 MR. NEGUS: The Sierra Way loft, to have him go to
8 the Sierra Way loft, have him go to the crime lab, if he
9 needs it, assuming that he's going to be down here on July
10 the 30th, which now is at least --

11 (No omissions.)
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1 MR. KOCHIS: Your Honor, as to that motion, we
2 have no objection. I have already made arrangements in
3 person and through Sergeant Arthur with Lieutenant Cox of
4 the ID Bureau and Mr. Baird. They expect Mr. Thornton on
5 July 30 or another day, if he's not going to be here on
6 July 30. They have in the ID Bureau either a review room
7 or he can look at the evidence where it actually is on the
8 second floor.

9 The crime lab is also expecting Mr. Thornton. We
10 have no objection.

11 THE COURT: All right. No problem in that regard,
12 Two, motion to provide physical evidence for non-
13 destructive examination in testing.

14 MR. NEGUS: Can I have a document which is just
15 handwritten, because I have not had a chance to have any
16 of the stuff typed up or anything copied --

17 THE COURT: Why don't you show it to Mr. Kochis
18 here, and you can have copies of it made later on.

19 MR. KOCHIS: Your Honor, I can tell the Court that
20 my position at this point is I have no objection to the
21 testing and examination. I am going to ask from this Court
22 the same type of order that was granted in the case of
23 Keenan versus Superior Court, K-e-e-n-a-n, 126 Cal.App.3d,
24 576, and the order appears in a paragraph form which I've
25 underlined in red. I can either read it into the record
26 or show it to the Court and Mr. Negus.

1 THE COURT: Have you seen it?

2 MR. NEGUS: No.

3 THE COURT: Read it.

4 MR. KOCHIS: The trial court ordered the prosecution
5 to, quote, allow defense criminalists to inspect, test and
6 examine all physical evidence which was seized during the
7 course of the investigation in this case. However, in order
8 to protect the integrity of said evidence, the evidence
9 shall not be removed from the San Francisco Hall of Justice
10 and the custody of the San Francisco Police Department, and
11 the prosecution may monitor said inspections, testing and
12 examination by having a representative of the San Francisco
13 District Attorney's Office or the San Francisco Police
14 Department present during the course of the inspection,
15 testing and examination conducted by defense criminalists.

16 I might add that as to number one, it is my
17 intention to have a homicide detective present when
18 Mr. Thornton views the evidence in the loft and the crime
19 lab.

20 THE COURT: I suppose when they did that, or on
21 another occasion, if you had, for instance, say, Dr. Blake
22 came down with reference to number two and goes through
23 the loft and says I'd like to test all of these, and there
24 was ample sample in each one of them for him to take a
25 portion of it, why not let him?

26 MR. KOCHIS: That's a different issue. That's --

1 that's item number --

2 THE COURT: Isn't that part of the same thing?

3 MR. NEGUS: What the stuff that I'm asking for
4 in this particular motion is basically stuff that can --
5 that can -- that the examination of testimony (sic) will
6 be microscopic and will not change the nature of the stuff
7 in any way, so, you know, what we -- what we get, we'll
8 give back, and we won't use anything up in testing,

9 THE COURT: Can that be done on the scene?

10 MR. NEGUS: No. First of all, I mean there's
11 several reasons. The easiest one to cite is cost.
12 Dr. Thornton is -- teaches at the University of California
13 at Berkeley. His laboratory's at the University of
14 California at Berkeley. The graduate student assistants
15 that --

16 THE COURT: You have in mind Dr. Thornton here on
17 number two, then?

18 MR. NEGUS: Yes, Dr. Thornton.

19 THE COURT: I was thinking of Blake, for instance.

20 MR. NEGUS: No. That's different.

21 THE COURT: All right. Dr. Thornton --

22 MR. NEGUS: He's going to examine physical evidence --

23 THE COURT: I assume for directional findings and
24 things of that nature. Well, he's going to come down.

25 MR. NEGUS: Judge, this is different stuff. What
26 I'm asking, this stuff is not blood splatter patterns.

1 That's not the primary purpose. Most of it's hair and
2 other items of physical evidence too that I wish to have
3 examined in the laboratory.

4 THE COURT: These are things that already have an
5 exhibit number or identification number?

6 MR. NEGUS: I believe Mr. Kochis has, or somebody
7 has the list that I just drafted. They already have lab
8 numbers, except for the latent fingerprints, which I'm
9 also asking for, and they all have lab numbers, but they
10 are in existence.

11 THE COURT: Is Dr. Thornton a criminalist himself?

12 MR. NEGUS: Dr. Thornton is a criminalist. He was
13 nine years a criminalist for the Contra Costa County
14 Sheriff's Department, including, in the end of it, lab
15 director. He's a professor of -- he was -- he was a
16 professor in the criminalistics section of the School of
17 Criminology when that existed. He's now the same thing in
18 the School of Public Health.

19 THE COURT: Do you have an objection to the type of
20 order from San Francisco?

21 MR. NEGUS: Yes, because it's totally impractical,
22 and it allows the prosecution to determine what tests we
23 decide to do, which I think is work product, and just as a
24 practical matter, it would probably cost 50 times what it
25 would cost to do it in Berkeley. At least, I mean, we're
26 talking about analysis which is going to last over a month

1 or two. If you want me -- I doubt seriously if Dr. Thornton's
2 willing to camp out in San Bernardino County, lovely though
3 it may be, for that period of time.

4 MR. KOCHIS: Your Honor, I am concerned about the
5 integrity of the evidence, and Mr. Negus, for example,
6 mentioned something that heightens that concern; The
7 fact that I don't believe Dr. Thornton has an independent
8 laboratory that he locks. If he's going to have student
9 assistants analyze, then it's obvious to me the analysis
10 is going to be conducted on a school campus. I'm not sure
11 what type of security is going to be involved in a building
12 where there's going to be a number of people in addition
13 to Dr. Thornton who have access to the building, who are
14 going to be handling the evidence. If he's going to have
15 ten or fifteen graduate students, I'm not sure what their
16 background is going to consist of, and that's much
17 different than having Dr. Thornton examine it.

18 Some of the crucial evidence, the fingerprints, I
19 have been informed by the ID Bureau that they have set aside
20 a specific fingerprint comparison room with equipment that's
21 in their building, not actually within their working space,
22 that the examination of the prints could be conducted in
23 there, and I can't imagine that taking 50 days, and I am
24 not interested in having someone stand over Dr. Thornton's
25 shoulder on the prints, but just simply remain in the
26 building to make sure nothing's taken in, taken out, that

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1 the documents aren't altered in any fashion,

2 THE COURT: I would think that --

3 MR. NEGUS: Let's separate the fingerprints
4 from the physical evidence.

5 THE COURT: I would think they may have several
6 conceivable classifications of evidence here, and maybe
7 we should break it down, identify them with a descriptive
8 word or two after them. Let's put them down in groups of --
9 in manageable groups to where he doesn't have it all, and
10 he returns one set after he -- he -- before he picks up
11 another, and let's examine some of them to see if it can
12 be feasibly done in a fairly short period of time at the
13 crime lab without taking a chance, recognizing that
14 Dr. Thornton is not -- does not have the sworn duty of a
15 sheriff or criminalist. He does not have the attache or
16 officer of the court status, such as you gentlemen have,

17 MR. NEGUS: He definitely --

18 THE COURT: He's trained, but he's a private citizen.

19 MR. NEGUS: He's employed by me, and he comes under
20 the attorney-client privilege. He's part of that.
21 Dr. Thornton has been a consultant in --

22 THE COURT: Counsel, I'm assuming that he's
23 eminently qualified.

24 MR. NEGUS: The problems he addresses don't exist.
25 He has a laboratory in the University of California. He
26 has facilities to keep -- to keep chain of evidence. It's

1 not that -- I mean he has done this kind of work for the
2 last 15 years, ever since he left the Contra Costa Sheriff's
3 Department, or however long it's been since he left the
4 Contra Costa Sheriff's Department.

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5 THE COURT: None of those items have been
6 introduced into evidence so far?

7 MR. NEGUS: I don't think so.

8 THE COURT: But all of them are -- have possible
9 admissible status later on, would they?

10 MR. KOCHIS: At this point, not all of them from
11 the prosecution. I can tell, reviewing the list, that
12 at this point it's not our intention to introduce each
13 and every one of the items Mr. Negus has listed.

14 THE COURT: Do you want to take a look at it and
15 let me pass that one then until you break it down with some
16 kind of description? You know, I want to protect the
17 integrity of the exhibits. On the other hand, I don't find
18 it to be unreasonable, and I don't know what the practical-
19 ities are. Could we not -- are we talking about items that
20 must be kept in cold storage?

21 MR. NEGUS: No,

22 MR. KOCHIS: No.

23 THE COURT: May they be mailed parcel post? What's
24 the bulk of them? A lot of things I don't know.

25 MR. NEGUS: Well, most of it's hair, so it's not
26 very big. There's some items of clothing, and some other

1 small items. I don't believe there's anything -- I'd have
2 to go through and check over again, but I don't believe
3 there's anything of any bulk, so it's all stuff that can
4 be -- that can be conveniently transported either -- I can
5 either have Mr. Forbush pick it up and personally transport
6 it up or -- if you want to spend that kind of money.

7 THE COURT: I think maybe you ought to maintain a
8 chain of possession on it.

9 How long are you looking at? How long must he have
10 all of these?

11 MR. NEGUS: I would guess at least a month. The
12 hair -- that's one of the problems. Hair comparisons
13 take a long time, and all we'd use graduate students for
14 is to screen hair, and then for Dr. Thornton to look at
15 anything that turns out to be significant.

16 This is work that the prosecution hasn't done,
17 apparently isn't doing. They have screened all the hair
18 from Mr. Cooper's hair, but that's of less interest to me
19 than -- than other things, so I would -- this is -- you
20 know, it's work that I think the defense -- the defense
21 has a right to do.

22 As a practical matter, I don't believe I can get
23 Dr. Thornton to do it in San Bernardino County Sheriff's
24 Department for the period of time that would be required
25 to do all of this kind of stuff, I mean he works out of
26 Berkeley. He always works out of Berkeley and -- and, quite
27 frankly, he doesn't --

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1 THE COURT: I can see good and valid reason to
2 object to the type of order they have in San Francisco. I don't
3 know what specifically they were talking about in that case
4 or what motivated the respective attorneys to --

5 MR. KOCHIS: It was a death penalty murder case,
6 Judge, and they had some physical evidence.

7 THE COURT: Well, circumstances may be different.
8 The lab may be different, the time involved may be different,
9 distances and locations and the type of evidence, all of that.
10 I simply don't know.

11 In any event, I don't think he's being unreasonable.
12 I think there's just some questions I don't yet know. So
13 would you break the list down and try to find out which --

14 MR. KOCHIS: Yes.

15 THE COURT: -- items are in dispute.

16 MR. KOCHIS: Yes.

17 THE COURT: And let's take it up perhaps some day
18 this week.

19 MR. KOCHIS: Well, I can tell you the one item that
20 we're concerned about are fingerprints. That is a separate
21 group, in my opinion.

22 MR. NEGUS: Okay. Well, fingerprints is in fact
23 probably going to be a separate expert whose name I don't
24 wish to reveal at the present time but who is, nonetheless,
25 a former law enforcement officer who has done this --

26 THE COURT: He can't work from photographs?

1 MR. NEGUS: No. The -- you can't. The kind of
2 stuff that -- that they've got is the kind of stuff that
3 photographs really aren't good enough on, because there's
4 some, in my -- you know, that's just my opinion, but that's
5 what I -- based upon what I have been told. And I have -- I
6 do have Xeroxes, obviously, and have shown the Xeroxes. On
7 that, I'm reasonably sure I can get it back within a week or
8 two. And, again, we'll take -- I'll have Mr. Forbush take
9 chain, deliver it, take chain back.

10 THE COURT: Would you try and get some organization
11 to the list with a descriptive phrase after each exhibit.

12 MR. KOCHIS: We, in effect, already have that, Judge,
13 because he listed them by numbers, and at the Hitch motion
14 we introduced, I think, H-291, which has the numbers and a
15 typewritten description of each item.

16 THE COURT: Well, do you want me to try and make some
17 kind of decision on that now with as little as I know?

18 MR. KOCHIS: No. If I could have some time to in my
19 own mind review it and see exactly what items he's requested,
20 I can make a more intelligent decision.

21 THE COURT: All right. I think that's wise. We'll
22 pass it, then, at the moment.

23 I'm just running down your list. The next one is
24 number three, Prosecution witness list.

25 MR. KOCHIS: It was my understanding that I have been
26 ordered to provide that prior to jury selection. And I still

1 intend to do so.

2 MR. NEGUS: Okay. I wasn't clear as to whether --
3 reading over the discovery motion, I wasn't clear as to whether
4 that order had been -- that order had been made or not. And
5 I just want to clarify, because --

6 THE COURT: I doubt seriously if there's going to be
7 any surprises in this case.

8 MR. NEGUS: Well, there have been already.

9 MR. KOCHIS: And I can also --

10 THE COURT: But as far as --

11 MR. KOCHIS: -- represent to the Court informally
12 that at this point I can't imagine a witness being called at
13 the case other than perhaps Mr. Rienstera from the Redlands
14 Police Department, who has not testified in this case in one
15 of the motions or at the prelim. But I still have a list.

16 THE COURT: Okay. Any problem with reference to
17 notice, when you're going to give the list?

18 MR. KOCHIS: Prior to jury selection and -- and,
19 in any event, during the month of August.

20 THE COURT: Okay. That --

21 MR. NEGUS: Fine.

22 THE COURT: -- seems satisfactory.

23 MR. NEGUS: Yes.

24 THE COURT: No dispute.

25 MR. NEGUS: Number four is --

26 THE COURT: It's one that probably I had in mind

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1 before.

2 MR. NEGUS: Number -- with number -- with respect
3 to number four, what I'm really concerned about is -- is
4 getting the results of all the serological evidence sometime
5 soon. And if the crime lab, and I -- again, in -- in saying
6 what I'm saying, I'm not in any way trying to fault Mr. Kochis
7 or Mr. Kottmeier, because I am well aware from this case and
8 other cases that you can't always get the crime lab to do
9 things as quickly as possible for a variety of reasons, some
10 of which are legitimate, others which I might not think so.
11 But I would like to be able to have the completion of the
12 serological testing. It's obviously a lot quicker to have
13 our crime lab do it, a lot cheaper to have our crime lab do
14 it first, and then have anything that I find significant
15 available, you know, to do any re-testing I want to do after
16 they're finished with it, presuming that they do adequate
17 documentation of the work that they do. That would be my
18 preferred way, and it's certainly a heck of a lot cheaper
19 than paying Dr. Blake to do it. But I'm also concerned that
20 it get done. And the Prosecution has now one hired serologist
21 and one sheriff's serologist apparently working on the case,
22 I don't know at what speed. Obviously, Dr. -- Mr. Gregonis
23 can't be here. This motion was thought of in connection with
24 your comments about when we're going to start the case in
25 San Diego. I certainly want all the results of the various
26 physical evidence before we get to San Diego.

1 THE COURT: I can't conceive of me saying, "Thou
2 shalt not have any more ideas and thou shalt not do any further
3 testing from here on out."

4 MR. NEGUS: Well, I didn't ask that. What I want
5 is either they finish their testing on the blood --

6 MR. KOCHIS: Judge, we're going to do that --

7 MR. NEGUS: -- or they give it to me.

8 MR. KOCHIS: -- with the UU series. As soon as
9 Mr. Gregonis gets off the stand on Monday, he's going to
10 arrange with Dr. Blake, I believe, when they can conduct that
11 joint testing. He's going to finish up on the sheets. I had
12 another expert, and I was going to have him do some work.
13 But apparently there was an agreement between that expert,
14 Mr. Wraxall, and Mr. Negus' expert, Mr. Blake, that Mr.
15 Wraxall would not be involved in any of the actual analysis
16 of blood unless it's the Gm type. And, therefore, he's not
17 available to me any longer.

18 THE COURT: Too bad, since they're so conveniently
19 located.

20 MR. KOCHIS: Mr. Negus feels that there's an attorney-
21 client work product privilege involved and that they may have
22 discussed their results of certain tests before I retained
23 Mr. Wraxall. So he's technically available, but the
24 Defense doesn't want me to use him. So I have to rely on
25 Mr. Gregonis, and he's going to start doing this stuff again
26 on a full-time basis Monday when he gets off the stand. And

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1 I hope at that point on Monday to get an indication from him
2 in terms of a time parameter when he will be done.

3 MR. NEGUS: But, you know, my point is that if --
4 like with the trace evidence, then once I have a chance to have
5 my person go over it, then obviously they can do whatever
6 additional analysis they have time to do after we get through
7 with it. But they've got it. I can't analyze it until they've
8 finished with it. So either I want them to finish or give
9 it to me. I mean, I am trying to be reasonable, but it --
10 but, on the other hand, I'd like to have -- I'd like to know
11 what the evidence is before I go to trial.

12 THE COURT: Well, there may be evidence that they
13 are not independent in testing it. You may want to test --

14 MR. NEGUS: Right. And I want -- but, then, let me
15 have it.

16 THE COURT: Or portions of it.

17 MR. NEGUS: My understanding is that they are
18 testing everything, on the -- every sample of blood which
19 there has been in any manner an attempt to preserve, that is,
20 there's a bunch of stuff that they --

21 MR. KOCHIS: Well, that's not completely true. We
22 have a bedding section that was not frozen that I'm confident
23 you can still do serological tests on. And it's not our
24 intention at this point to test every drop of blood on the
25 comforter, the top sheet, the bottom sheet and every pillow-
26 case.

1 THE COURT: What would be wrong, in that case,
2 for instance, using a sheet, letting the --

3 MR. KOCHIS: Defense expert --

4 THE COURT: -- Defense expert come in and scrape off
5 areas that he wants --

6 MR. KOCHIS: As long as their --

7 THE COURT: -- after you've finished?

8 MR. KOCHIS: As long as areas will be left behind
9 that we can test. Or if he will agree to a joint testing,
10 I have no problem. I would not want single blood drops to
11 be completely exhausted and taken from us forever.

12 MR. NEGUS: Okay. That -- that -- that really is
13 not a -- that's really not the -- the problem. There is more
14 information that you can get out of the stuff that's been
15 frozen than the stuff that's not frozen. Basically you can
16 get ABO out of the stuff that's not been frozen, and that's
17 about it, probably.

18 MR. KOCHIS: So I -- I should have a time parameter
19 Monday from Mr. Gregonis as to when he will complete the
20 genetic profiles on the bedding and --

21 THE COURT: That's just a small part of it, isn't
22 it?

23 MR. NEGUS: And the furniture is he -- there's what's
24 left that I understand is UU.

25 MR. KOCHIS: The UU and the bedding alone, Judge,
26 is approximately 57 separate samples. To do genetic profiles

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1 on those samples takes some time. The UU samples, because
2 of their -- the quantity, we don't want to put ours back in
3 an A-41 situation. And I want to either do joint testing or
4 have a waiver on the record from the defendant that they don't
5 want to be there.

6 MR. NEGUS: Okay.

7 MR. KOCHIS: Because those samples are going to be
8 expended.

9 MR. NEGUS: My understanding as to what the -- let's --
10 let's take it one -- let's break it down. UU, bedding,
11 furniture.

12 THE COURT: All right. UU, we had some discussion
13 on that before. What did we -- what did we do?

14 MR. KOCHIS: Joint testing.

15 MR. NEGUS: They -- no. They get to -- they get to --
16 they get to decide what tests and their -- their criminalist
17 does -- does it. I told them -- I have been told -- in their
18 offer of proof, they said they wanted to do transferrin.
19 Okay? And I have been told that's what they want to do,
20 transferrin. Transferrin is of the -- you can preserve the
21 whole plate of transferrin. You don't have to take a picture
22 of it; you've got it. Okay? I have told them if they're
23 doing transferrin, and they preserve the plate like they did
24 on A-41 and like they have the technology of doing, there is
25 no sense in paying \$500 a day plus airplane expenses for
26 Dr. Blake to come down and watch Mr. Gregonis do that. They

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1 can go ahead and do transferrin on it whenever they want to
2 without Dr. Blake. And I'm saying that on the record now,
3 ~~and I have~~ said it to Mr. Kochis, and I have said it to Mr.
4 Gregonis many times in the past. If they're going to do some-
5 thing else besides transferrin or in addition to transferrin,
6 then I may or may not, depending upon what it is and depending
7 upon what their transferrin result, wish to watch.

8 THE COURT: Well, it seems like it -- the move is
9 yours, that it behooves you, then, to tell them what you want
10 to do so that they can react.

11 MR. KOCHIS: Well, I have. And we're having --
12 Mr. Negus knows we're having some additional analysis done
13 on the known blood types in the Bay Area by Mr. Wraxall to
14 determine their Gm types, to see if that test should be done.
15 And it's my understanding that some of the UU series, the
16 smear from the door and the doorknob, may be of a quantity
17 that is sufficient to do more than one test. If that's the
18 case, we're obviously not going to stop at transferrin. And
19 I will have a discussion with Mr. Negus as to what system
20 he wants to run next, see if we can reach an agreement, see if
21 he wants his expert here. But we do intend to do that.

22 THE COURT: We're not getting very far, are we?

23 MR. NEGUS: Okay. That -- and with respect to the
24 Hitch motion, I would like at least to have the results of
25 that on the record prior to the completion of whatever evidence.
26 The reason for that is that I believe that, based upon the way

1 the sample was treated, they won't be able to, at this point
2 in time, to get results.

3 THE COURT: These are the fly speck things?

4 MR. NEGUS: Well, there's -- fly specks are one
5 thing. These are also smears in the bathroom, smears on
6 doors, finger smears, all kinds of stuff from the neighborhood
7 of A-41 which might be highly significant. And I need the
8 results of that before we finish the record on that. So
9 that's UU.

10 (No omissions.)
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1 MR. KOCHIS: Again, I don't see a problem --

2 MR. NEGUS: I don't, either --

3 MR. KOCHIS: -- with that.

4 THE COURT: Except we're fighting time on all these
5 things. If you drag that out, and with all of the mass
6 analysis that each of you are doing, I don't know when he's
7 going to have it and when can I close off a motion?

8 MR. KOCHIS: Well, what I propose, Your Honor, is
9 to talk to Mr. Gregonis Monday, communicate to the Court
10 on Tuesday what his estimate is. If the Court's not happy
11 with his estimate, then I may have to ask the crime lab
12 to put another criminalist on it. I may have to see if I
13 can hire someone from the outside lab to do some of it or
14 if Mr. Blake wants to do some and make the results available
15 to us, I imagine that's an alternative we can explore and
16 we can work within a certain time frame.

17 THE COURT: We will have to wait again then on
18 this -- that was U2. You were going to break down the
19 types of evidence under 4?

20 MR. NEGUS: Right.

21 With respect to the bedding samples that were
22 preserved, that is, frozen in whatever state on July 5,
23 I would estimate that at least 50 percent of the work, if
24 not more, on that has already been completed. If there
25 are certain -- there are -- I need at least the Group I
26 and Group II work finished on all of that. Most of the

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1 Group I and Group II work has been finished. Those are the
2 ones which will give me the best chance of telling whether
3 there's any known victims' blood on the sheets -- portions
4 of the sheets that were preserved.

5 THE COURT: Group I and Group II?

5a 6 MR. NEGUS: Yeah. He's already done all the ABO,
7 if I recall correctly, so he has to finish the Group I and
8 Group II. I am then willing to -- and he's going to get
9 some of them to come out, some of them not to come out,
10 if his past results are -- are any -- are any hint. I'm
11 then, you know, willing to use -- to use that as the
12 basis for finishing off the Hitch motion, just the Group I,
13 Group II, ABO on the various items on the sheets.

14 I would like to have whatever -- all that he's
15 going to do finished before we move to San Diego because --
16 or else give it to me,

17 With respect to the items on the furniture,
18 Mr. Gregonis has done ABO on all those. He then stated
19 when he testified that he thought that he could get --
20 do a different ABO test and maybe get results. If that's
21 going to be the state of the evidence in the Hitch motion,
22 then I want that done prior to the completion of the record
23 in the Hitch motion, either by him --

24 THE COURT: I make no commitment to you, Mr. Negus,
25 that I am going to wait on any of those things, so don't
26 take it by my silence acceding to your wants and desires.

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1 MR. NEGUS: I'm not taking anything as being
2 acceding. I'm just stating why I need -- why I'm asking
3 for this particular stuff and why I need it within certain
4 time parameters. If they're not going to be finished --
5 I'm not going to be prepared to go to trial until I know
6 the answers to all these different questions.

7 They have done on the furniture transferrin testing
8 on most of the items of furniture. None of the transferrins
9 have come out. Mr. Gregonis believes that transferrin is
10 the hardest of all the enzymes, and he testified, I believe,
11 if you can't get transferrin, you can't get anything. If
12 that's going to be the prosecution's position, they are not
13 going to try and change that, then I don't feel the need
14 for any testing besides ABO and transferrin on the furniture,
15 and that may already be substantially completed. If they
16 are going to try and dispute that --

17 THE COURT: I've got to wait on that one, too, then.
18 We'll go into similar session Monday sometime.

19 MR. KOCHIS: Judge, could we jump perhaps to number
20 eight? I know it's out of order. It's one I don't completely
21 understand. If Mr. Negus could enlighten me, it may be
22 one that we could handle in rather rapid fashion.

23 MR. NEGUS: What -- during the course of the Hitch
24 motion, the prosecution has made several references in
25 questioning witnesses to and did the defense furnish you a
26 copy of their report, or did the defense show you the tape,

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1 did the defense do this, I mean, did the defense -- not
2 Mr. Cooper, but Mr. Forbush or myself -- provide certain
3 information to the witnesses, or did the defense give you
4 the results of their testing, that is, Mr. Gregonis --
5 asking Mr. Gregonis about Dr. Blake. I haven't finished
6 getting all the case authority on that, and maybe I don't
7 need to, but I would make a motion in limine that that
8 not be done during the course of trial. The reasons for --
9 for the defense not --

10 THE COURT: You mean no motion under 1102.5; is
11 that what you're saying?

12 MR. NEGUS: No, no. 1102.5 is a separate issue,
13 and that certainly is not something that's done in front
14 of the jury; right? I'm talking about these motions now.
15 I'm thinking about a jury; right? And I'm saying that he
16 not ask his witnesses in front of the jury whether he's
17 gotten discovery from the defense or not. I don't think
18 that's -- I don't think it's relevant,

19 MR. KOCHIS: Then I think I'd better have a case
20 on it, because I can certainly see, for example, if a
21 hospital personnel, Jefferson -- and there's a case in
22 Jefferson that I intend to cite to the Court that reading
23 from a document to refresh someone's recollection is not
24 proper. Mr. Negus did it at the Hitch motion. I didn't
25 raise --

26 THE COURT: Reading from a document to refresh memory

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1 is not proper?

2 MR. KOCHIS: No, it's not.

3 MR. NEGUS: In front of a jury.

4 MR. KOCHIS: In front of a jury, If he starts
5 doing that in front of a jury, in addition to making a
6 big stink and throwing an objection on it, I think the
7 proper procedure is for him to show the document, and I
8 intend to ask people, if he's going to try to get bits
9 and phrases selectively from a report, if they've been
10 shown.

11 I can't see the prejudice to Mr. Cooper if he calls
12 Linda Headley and I ask Linda Headley on the phone -- on
13 the witness stand, well, was the interview tape recorded,
14 have you been shown a copy of the -- of the transcript.

15 MR. NEGUS: First -- first off --

16 THE COURT: And if she says yes?

17 MR. KOCHIS: I imagine she's going to say no,
18 because she hasn't been shown.

19 MR. NEGUS: Mr. Woods has been instructing various
20 witnesses to request copies of the tape recordings in
21 court when they come to court if they testify. He's been
22 instructing various witnesses to request copies of the
23 defense tapes that Mr. Forbush did of the various
24 interviews. Everybody that -- that -- that asked to make
25 their own tape, Mr. Forbush was quite cooperative and had
26 no dispute with anybody who wanted to -- to make their own

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1 copy. I believe, for reasons I've said more times than
2 you'd like to hear, that that is a violation of my duty
3 to Mr. Cooper to release that kind of information to the
4 prosecution or to anybody else, what we -- what we alone
5 have as far as defense investigation.

6 The first articulated concern of Mr. -- Mr. Kochis,
7 that I'm going to read aloud a document to the witnesses
8 in front of the jury to refresh their recollection, is not
9 going to be done. I pointed out, I think, in court before
10 Mr. Kochis even brought this up that that is something
11 which Jefferson says is improper in front of a jury, not
12 so in front of -- not so in front of a court; so, obviously,
13 knowing that, I am not about to try and use that mode of
14 refreshing recollection in front of a jury.

15 Mr. Kochis is perfectly capable to make any request
16 under 1102.5 that he deems necessary. I would request
17 that we do that out of the presence of the jury, and we
18 will argue the applicability of it as it comes up, I assume,
19 in each individual case.

20 Obviously, again, anything that gets introduced into
21 evidence, be it a transcript shown to a witness or a tape
22 recording played for a witness, is going to be available to
23 Mr. Kochis once I do that, but what I am --

24 THE COURT: Are we coming down to what you're
25 objecting to is him in cross-examination asking a witness
26 if they have refreshed their memory by a writing or tape?

1 MR. NEGUS: No, no, no. What he's done is --

2 MR. KOCHIS: That's part of it, Judge, because
3 that would be the nature of have you reviewed anything
4 today to refresh your recollection, can you recall everything
5 that was said during the interview, have you seen a copy of
6 the transcript, have you listened to a tape recording.

7 THE COURT: Doesn't that all go to credibility?
8 What's the problem with that?

9 MR. NEGUS: The problem -- let's take Mr. -- the
10 one example where he's made a big deal out of it, Mr. Gregonis
11 and Mr. Blake -- Dr. Blake both sit there watching the same
12 test results, and they take their own notes and they --
13 and they go away. Mr. Kochis has made a big deal.
14 Mr. Gregonis, did you give your results to me to give to
15 the defense? Yes. Have you ever seen Dr. Blake's results?
16 No,

17 That's irrelevant. The last question, "Have you
18 ever seen Dr. Blake's results," is irrelevant. And the
19 reason he hasn't seen it is because it would be in
20 violation of my duty and I'd probably get poked if I did
21 it, and the cases say that's -- that Dr. Blake's impressions,
22 until such time as he testifies about them in open court,
23 are protected by both work product and possibly also the
24 privilege against self --


25 THE COURT: Under that example, Mr. Kochis?

26 MR. KOCHIS: That's much different than all the

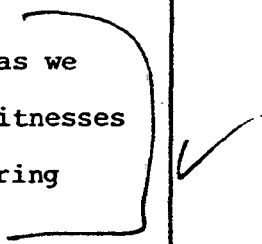
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1 others, than the hospital personnel. I did that at the
2 Hitch --

3 THE COURT: So you're saying that you're not going
4 to ask that question then of his expert witnesses who have
5 examined the evidence, but not turned over to you the
6 results of that examination?

7 MR. KOCHIS: Well, what we are talking about is a
8 limited situation so far when Mr. Blake and Mr. Gregonis
9 are present. At this point I would not ask the question
10 unless I out of the jury's presence brought it to the 
11 Court's attention and argued it.

12 THE COURT: You know, knowing both of you, I don't
13 think either one of you is going to deviate from what you
14 are representing, certainly not intentionally. If he did
15 in any way, you'd say, Your Honor, may we approach the
16 bench, and we'd go back to chambers and we'll hash it out
17 there out of the presence of the jury. I think that will
18 basically cover it, Mr. Negus.

19 MR. NEGUS: Your Honor, as long -- as long as we
20 have the same representations as far as the other witnesses
21 are concerned and that they are instructed not to bring
22 it up, Mrs. Headley, if you recall -- 

23 THE COURT: Now you're getting into non-experts
24 then, and that may be different.

25 MR. NEGUS: Well, then, fine. Let's -- I'd like --
26 if you want to do it on a case-by-case basis -- see,

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1 Mr. Woods has been -- has called different people, and
2 he says, I'll give you one piece of advice, ask for the
3 tape that Mr. Forbush did of your conversation when you
4 get to court, you know. So we have all these witnesses
5 that have been told to -- that that's -- that that's a
6 good thing to do, so I can imagine a chorus of witnesses
7 on the witness stand saying, hey, we want to look -- we
8 want to listen to the tape.

9 They have no right to do that.

10 (No omissions.)
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1 THE COURT: I thought you said that you had let
2 them have a copy of the tape.

3 MR. NEGUS: No. I said --

4 MR. KOCHIS: No, never. None of them.

5 MR. NEGUS: I have -- my understanding of my duty,
6 again, is that the results of the Defense investigation of
7 work product may be privileged against -- may also be
8 privileged against self-incrimination. I would be violating
9 my duty if I gave it to anybody other than when I -- when I
10 introduce it into evidence in court. And I have even gone
11 to some great lengths, as you might have noticed, to try to
12 limit that which I introduce in court when I do that. And
13 Mr. --

14 MR. KOCHIS: Judge, there's no --

15 THE COURT: Unless there's some way --

16 MR. KOCHIS: -- no work product privilege that
17 applies to any interview with the Defense investigator and a
18 third person who's not an expert. An eyewitness, a victim --

19 THE COURT: Well, there may be.

20 MR. KOCHIS: I have cases --

21 THE COURT: Well --

22 MR. KOCHIS: -- recent cases that indicate it's
23 not --

24 THE COURT: -- maybe.

25 MR. KOCHIS: -- work product.

26 THE COURT: But -- all right. You get into the

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1 privilege against self-incrimination and whether or not it
2 lightens the Prosecution's duty. Can you show me a case that
3 says that you can get that, Mr. Kochis? That is, Defense
4 tapes or transcripts of witness' statements.

5 MR. KOCHIS: I'll have those this afternoon. I have
6 two of them Xeroxed for the Court. One of them is not going
7 to become final for another week.

8 THE COURT: Unless -- unless the Court can compel
9 the Defense to -- to turn over those tapes, then I can see
10 where --

11 MR. KOCHIS: Well, Your Honor, here's the problem
12 I have.

13 THE COURT: Other than the refreshing of memory
14 exception.

15 MR. KOCHIS: I have a witness who called, "I have
16 been subpoenaed." "Have you ever talked to the Defense
17 investigator?" "Yes, I have." "Was it tape recorded?" "Yes,
18 it was." "What's the problem?" "I can't remember what I
19 said." "I wasn't there. I can't help you. If you have a
20 problem with your memory, ask the Defense lawyer if you can
21 see a copy of the transcript or of the tape." So they --
22 that's what they do.

23 MR. NEGUS: On the witness stand, though, like
24 Mrs. Headley did when she was so instructed. And she asked
25 for a copy right on the witness stand. That I think is
26 improper.

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1 THE COURT: All right. You're going to have to get
2 the Court to order a disclosure by the Defense of their
3 prior recorded statements in some manner. And show me the
4 authority for that.

5 MR. KOCHIS: Well, I will. But, then, on the other
6 hand, I think the issue no one's resolved is I didn't call
7 any of these people to the witness stand. They were Mr. Negus'
8 witnesses.

9 THE COURT: I don't think that makes any difference.

10 MR. KOCHIS: And I don't think I should be in a
11 position of calling his witnesses and telling them what to do
12 or not to do on the witness stand. I never instructed any
13 witness to get on the witness stand and say, "Hey, ask for a
14 copy of your transcript."

15 MR. NEGUS: But Mr. Woods has.

16 THE COURT: Gentlemen, you're beginning to play some
17 games.

18 MR. NEGUS: No, Judge. I just don't want that sort
19 of stuff blurted out in front of the witness. Any witness
20 that I call I'm going to ask to have brought back into
21 chambers before they're put on the witness stand and have you
22 tell them not to say that in open court.

23 THE COURT: I think that's proper.

24 MR. NEGUS: And I'm just asking that any witness
25 that Mr. Kochis brings forward, that before -- and I'm
26 perfectly -- if Mr. Kochis has some legitimate reasons -- but

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1 I just don't -- I suppose I'll make an in limine motion
2 that none of this be brought in front of a jury until we have
3 had a chance to have a hearing outside his presence.

4 MR. KOCHIS: But if -- if the purpose of a trial
5 is to in some way attempt to ascertain what the truth is --

6 THE COURT: Let me see your cases, Mr. Kochis.

7 MR. KOCHIS: Yes.

8 THE COURT: No point in -- in belaboring -- belaboring
9 it now. Let's see your cases on it --

10 MR. KOCHIS: Yes.

11 THE COURT: -- as far as compelling them to do it.
12 We'll take it up at the next session.

13 MR. KOCHIS: Fine.

14 THE COURT: We skipped down to number eight, and
15 now you know what he has in mind there.

16 MR. KOCHIS: Yes, I do.

17 THE COURT: And -- did you want something, Judge?

18 And then I guess number two, prior convictions for
19 impeachment.

20 MR. NEGUS: Yes.

21 MR. KOTTMEIER: I would prefer --

22 THE COURT: I've got two. It's really number five on
23 this -- on this sheet here.

24 MR. KOTTMEIER: I would prefer, on that issue, Your
25 Honor, to hold off until tomorrow. I have a rough draft of
26 the information in that regard that I would prefer to let

1 Mr. Negus look at before we actually take it up in court.

2 THE COURT: All right. Well, you can turn that
3 over to him, and we'll take that one up in the next session,
4 then. Is there something that you would want to give to the
5 Court at the same time?

6 MR. KOTTMEIER: It's not really the cases. The case
7 is very clear, at least as far as impeachment. And it involves
8 Propostion 8 and --

9 THE COURT: Well, will you have a brief on it?

10 MR. KOTTMEIER: Possibly, for the Court and Mr.
11 Negus' review, it might be well to take a look at Proposition
12 8 under -- and I can't pronounce the name. It's B-r-o-s-n-a-
13 h-a-n vs. Brown, 32 Cal. 3d, 236; 32 Cal. 3d, 236, which
14 deals with the validity of Proposition 8 and the utilization
15 of prior convictions.

16 THE COURT: All right. Why don't you turn it over
17 to him, and I'll look at that, perhaps, during the noon
18 period, and we'll come back on that one.

19 MR. KOTTMEIER: And the same is applicable to the
20 next issue on the distinctive prior crimes.

21 MR. NEGUS: Okay. I would like to put that off to
22 the end of all these short motions, because I need to do more
23 looking for cases in that, because there's a bunch of recent
24 cases, I believe, that have come out.

25 THE COURT: I've gone -- I've gone through and
26 re-numbered the order of priority. And my next one after

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1 number five is number seven.

2 MR. NEGUS: Okay. With respect -- let me just --
3 let me just indicate the scope of number five. I think I
4 mentioned it to Mr. Kochis in passing, and I'm not sure that
5 I got it through clearly. Mr. -- according to the evidence
6 that I have been given from the Prosecution, Mr. -- Mr. Cooper
7 has a conviction of burglary, two counts out of Los Angeles
8 County in 1983. I consider that to be one class of particular
9 -- one class of -- of prior acts. And as to that, I have a
10 brief argument as to why it is inadmissible in this particular
11 case under -- under the Beagle line of cases, which, I would
12 submit, there's a considerable amount of controversy in the
13 Court of Appeals as to their -- as to the effect of Proposition
14 8 on the Beagle. Okay? But that's another issue. And I'm
15 aware of Brosnahan vs. Brown.

16 THE COURT: Have you, in your document, Mr.
17 Kottmeier, indicated specifically what type of impeachment you
18 would desire or what type of prior --

19 MR. KOTTMEIER: Well, the issue that Mr. Negus
20 raises as to the L.A. County conviction is important because
21 it relates to the escape case, which means that those -- that
22 conviction will probably come in, anyway, as a foundation.
23 for the first count of charges against the defendant, that is,
24 that he was in custody in state prison on the burglary
25 convictions out of Los Angeles.

26 THE COURT: I don't know what you're talking about

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1 when you say that there's two burglary convictions and you
2 consider them one class of prior acts.

3 MR. NEGUS: Okay. Well, I'm trying -- I didn't
4 get to the next class of prior acts. There are various
5 and sundry convictions in the State of Pennsylvania for
6 various and sundry crimes. I -- it is my -- it is my position
7 as to those that there are Beagle problems, in the documents
8 that I have received so far there are Coffey problems in this,
9 there's no showing as to their Constitutionality, if any.

10 And, finally, that I believe that, under Pennsylvania
11 law, if -- well, under -- under the -- under California law,
12 you have to look at the nature of the conviction in the
13 out of state place and determine would it be a felony under
14 California law if, you know, it had happened in California.

15 Mr. -- Mr. Cooper -- in the State of Pennsylvania,
16 anything under two years is considered to be county time.
17 Now, they have -- their jail system is somewhat different in
18 that -- that the various correctional facilities in the State
19 of Pennsylvania, some of them are consolidated, like there's --
20 like there's a county jail sort of thing for a whole bunch of
21 different counties, and they sort of send them there. But
22 anything under two years is considered to be county time.

23 Mr. Cooper was sentenced to things which in California
24 would be wobblers to county time.

25 Therefore, it is my position that none of his
26 Pennsylvania convictions are felonies for purposes of

0-1-2-3-4-5-6-7-8-9

4 So --

7 MR. NEGUS: 'Taint nothing simple.

13 MR. NEGUS: That was prior acts. The essence --
14 he hasn't said anything about -- about what he wants to use,
15 if Mr. -- if Mr. Cooper should testify, to impeach him.
16 That's the reason for bringing this motion.

20 MR. KOTTMEIER: Well, I think the issue, as far as
21 the convictions out of Los Angeles, is settled. Whether
22 Mr. Cooper testifies or not, the 969b forms are going to --

25 MR. KOTTMEIER: Yes. It's just one --

26 MR. KOCHIS: That's how he ended up in Chino, Judge.

1 MR. KOTTMEIER: It was just one charge.

2 THE COURT: So he was sentenced on both of them.

3 MR. NEGUS: There's other problems with that, in
4 that one can stipulate that he's lawfully in state prison
5 and keep that out. I mean, they have counterpositions.

6 But I don't think it's that simple. It certainly wasn't --

7 THE COURT: Are you indicating that you will offer
8 such a stipulation?

9 MR. NEGUS: I -- if Mr. Cooper's burglary convictions
10 will not come in, I would be willing to stipulate that he was
11 lawfully in state prison on June the 2nd, 1983, if the
12 burglary convictions won't come in.

13 THE COURT: Why wouldn't they come in as foundation
14 to show that -- that very issue, that he was lawfully in
15 state prison before he escaped?

16 MR. NEGUS: Right. But the reason for stipulating
17 to it is so they don't come in, so -- in -- in order to
18 relieve them of the burden of proving the burglary convictions.
19 I'm willing to stipulate he was lawfully in state prison on
20 June 2nd.

21 THE COURT: Let's cover that issue either now or
22 later, when you're prepared on it.

23 MR. KOTTMEIER: Our position, if such a stipulation
24 were offered, is that we have the right to prove it, under
25 Proposition 8. It's a foundational crime. It's a prerequisite,
26 including a conviction, for his incarceration. And Prop. 8

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1 is very specific that, if there's a prior prerequisite, that
2 you can prove it.

3 THE COURT: But the prior is not a prerequisite
4 of escape. It may be a prerequisite for an ex-con with a gun.
5 But I -- with a prior. But it is not an element of escape.
6 An element is lawful custody.

7 MR. NEGUS: I don't know. I'll have to do some
8 work on it. Okay?

9 THE COURT: When will you make an offer of proof
10 as to what you wish to impeach with?

11 MR. KOTTMEIER: Hopefully tomorrow. I mean, as
12 far as having it written.

13 THE COURT: Please.

14 Do you want to go to the photographs?

15 MR. NEGUS: Sure.

16 MR. KOTTMEIER: I have a number of photographs that
17 are prepared of general scene by scene -- I mean, pictures
18 of homes that have nothing other than the physical layout.
19 I don't think it's necessary to go through those one by one,
20 because I'm not even sure to what extent they would all be
21 used.

22 THE COURT: Are you talking about the gruesome
23 pictures, that type of --

24 MR. NEGUS: Let me -- I can -- I am making a limited
25 motion with respect to photographs, okay? The first off, I'm
26 making a motion that with respect to any photograph which

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1 depicts injuries to any of the victims or any of that sort
2 of thing, any -- any photograph that has the kind of -- of
3 signs of physical violence which is likely to inflame a jury,
4 that they not be allowed to use any photograph larger than
5 eight by ten color photographs. The reason for that is we have
6 had testimony that -- that -- that these were all 35 milli-
7 meter photographs. Any enlargement beyond 35 millimeter on
8 a -- on -- any enlargement on 35 millimeter beyond eight by
9 ten is not going to provide any additional useful information.

10 And all it can do is increase the possibility of inflam --

11 THE COURT: Sounds imminently fair and reasonable
12 at the moment.

13 MR. KOTTMEIER: Except for the fact that there's
14 an issue that involves numerous wounds to the various victims
15 and that the scene itself is extremely important. It is
16 impossible to work from an eight by ten with a jury panel
17 that is 12 to 16 members, depending upon where we are at
18 within the proceedings, being able to argue from them or
19 illustrate from photographs to that particular jury panel so
20 that they can all see it without taking the time to hand the
21 photograph through each member of the jury as we're going along.

22 (No omissions.)
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1 THE COURT: I don't mind taking that time in this
2 case. I'd rather do that than to plaster the walls of
3 blowups of pictures,

4 MR. KOTTMEIER: I haven't even been given the
5 opportunity to make the offer as to the size or show the
6 Court the pictures that we had in mind, and I object to
7 the abstract ruling that the defense says eight by ten and
8 that's the automatic order of the Court without even an
9 offer of proof.

10 THE COURT: Do you care to make an offer?

11 MR. KOTTMEIER: Yes, Your Honor. We have prepared
12 seven 16 by 20 laminated photographs that show the
13 position of the victims and the scene. Now, the difference
14 between size of photograph strictly will only apply to
15 whether it can be viewed from the witness stand, and I
16 would also remind the Court that during the preliminary
17 hearing, the defense utilized slides, and I would imagine
18 that when we get down to that area of autopsy testimony,
19 both sides will probably be requesting the opportunity to
20 use slide photographs of the various injuries for illu-
21 stration of the testimony of Dr. Root.

22 MR. NEGUS: That's not necessarily true.

23 THE COURT: With reference to possible weapons,
24 you don't intend to go into that in any detail?

25 MR. NEGUS: Let's just do one thing at a time.
26 I mean I'm just making a motion that with respect to

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1 anything that we talk about, that we use photographs which
2 are not large and inflammatory, and that would include
3 blowups of slides, so I'm not -- I would certainly request
4 that as far as photographs of the autopsy is concerned,
5 we don't blow things up or photographs of the crime scene
6 which show the victims; that eight by ten is -- is the
7 largest that you can get -- that you are going to get
8 useful information out of. Anything in that photograph,
9 you will be able to see in an eight by ten.

10 THE COURT: Let's see the scope of them, the
11 magnitude of the pictures.

12 MR. KOCHIS: Your Honor, should we have them for
13 convenience marked so if there's ever any issue under --

14 THE COURT: They're not going to be taken away
15 from me at the moment,

16 How many do you have, Mr. Kottmeier?

17 MR. KOTTMEIER: Seven. Three are of the general
18 scene, and three are of specific victims, and the final one
19 is a picture of the end of the bed.

20 MR. NEGUS: With respect to the picture of the end
21 of the bed, there is something on that which you really --
22 if you have to look at an eight by ten, you have to see it
23 with a magnifying glass, and I can see the perhaps usefulness
24 of that particular photograph; so the one that's marked as
25 ID No. A-29, because it doesn't depict any pictures of the
26 victims, I don't have any problems with it.

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1 THE COURT: The clerk can mark that separately.

2 MR. NEGUS: It looks -- I can't tell whether that's
3 a 29 or 79, I believe in fact if you went back and looked,
4 it would be A-79,

5 THE COURT: Do you have it?

6 MR. NEGUS: Mrs. Lewis is getting me some of the
7 pictures that you can compare of the same thing.

8 MR. KOCHIS: It should be A-79, Your Honor,

9 MR. NEGUS: I just want -- not necessarily those,
10 just -- there's four --

11 THE COURT: Let's take a brief recess.

12 (Recess.)

13 MR. NEGUS: I have put out for you there a couple of
14 the photographs, one of which -- the one that is our
15 Exhibit H-212 is a copy of the same photograph as the
16 enlargement, and you can see that there's no information
17 that you can get out of the enlargement that isn't -- is
18 not equally visible, if not more visible, in the eight by
19 ten. The other one --

20 THE COURT: Let's take them one at a time.

21 Mr. Kottmeier?

22 MR. KOTTMEIER: Your Honor, as far as information,
23 I would grant that you could get the same information from
24 an eight by ten as you could probably get from a three by
25 five of the same photograph if you use the time for
26 individual consideration of each photograph. My concern is

1 that the issue related to the scene and the way in which it
2 appeared is one that is going to be of continuing concern
3 to all parties, and that the enlargements give us the
4 opportunity to argue issues, present testimony with regard
5 to this area by pointing to --

6 THE COURT: That's not the same.

7 MR. NEGUS: Well, that's because they didn't print
8 it correctly. If they were to print the smaller picture
9 the same way, full frame, that they did the larger one,
10 you can see he just -- when he printed it, he crops it,
11 and if he were to make an uncropped print, you can tell
12 that this -- that the eight by ten has been -- has been --
13 has been cropped, and you can print photographs so that
14 they don't get cropped. He just cropped one side versus
15 the other.

16 MR. KOTTMEIER: I would grant that probably we can
17 duplicate whatever is contained on these photographs.

18 MR. KOCHIS: Judge, you can't on an eight by ten.
19 The way a 35 millimeter negative goes up -- and I'm sure
20 Mr. Negus knows this -- it goes up five by seven, ten by
21 fourteen. If you're going to limit to eight by ten, there's
22 going to be some cropping of the photograph. You're going
23 to lose part of the negative.

24 THE COURT: Mr. Negus, I don't find the enlargement
25 of H-212 particularly inflammatory, and I can see where
26 when we get a bunch of the older citizens in San Diego

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1 perhaps on the jury, that the various blood droplets and
2 things that might well be important in the case are not
3 nearly so visible in the eight by ten as they are in this
4 larger one.

5 I can see where there's no way that I think that I
6 would let in what's marked A-34 which depicts in the most
7 unflattering pose Peggy Ryen in the large fashion. Counsel,
8 that simply -- they should have used a modicum of
9 discretion to at least cover her privates.

10 MR. KOTTMEIER: Well, that will be done, and I
11 didn't want to do it as far as preparation for this
12 particular motion. In fact, during the presentation of
13 the preliminary hearing, we were careful to assure that
14 the privates of all of the victims were not exposed,
15 because there's no relevant evidence as to any of those
16 areas.

17 THE COURT: Well, I don't -- I don't -- what else
18 do you have? You've got Peggy and -- and you really don't
19 see anything of Douglas Ryen here, so she's the only
20 really -- and Jessica you see here from a rear view only,
21 and I don't find that particularly objectionable.

22 MR. NEGUS: If I can just articulate what I think
23 is wrong with the large photographs is the idea of leaving
24 them up around the courtroom, which is probably what
25 Mr. Kottmeier has in mind --

26 THE COURT: I can control that, Mr. Negus, and I've

1 thought of that, too.

2 The clerk has not yet marked these, but this one
3 is A-74, apparently, and that is the one of Peggy Ryen.
4 I simply -- whether you cover it or do not cover it,
5 Counsel, that's a rather close-up. This is a general here,

6 MR. NEGUS: That's A-34.

7 THE COURT: That's A-34. If you use A-34, you are
8 going to have to --

9 MR. KOTTMEIER: I thought what we might do is take
10 tape and cover over the private area or else we can have
11 potentially the picture reprinted.

12 THE COURT: Eradicate it or work out some solution
13 to cover that. That may inflame the jurors against you,
14 as a matter of fact, if you do otherwise. Other than that,
15 I think it's probative and not overly inflammatory.

16 MR. KOTTMEIER: I would like to cite for the record
17 a particular case that dealt with the utilization of 14-
18 by-17 enlargements of a genital area of the victim wherein
19 one of the issues was the way in which the victim had been
20 cut,

21 THE COURT: Well, now, wait a minute, Mr. Kottmeier.
22 You don't have any issue with reference to their cutting
23 on that -- in that area.

24 MR. KOTTMEIER: No. I'm just saying that that's
25 one of the factual settings within this --


26 THE COURT: Oh, I can see in certain rape cases

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1 where it would be entirely appropriate, but I just didn't
2 think it was in this case. If something develops, then
3 we can indeed do that.

4 MR. KOTTMEIER: I was only referring to the Court's
5 initial question as to the utilization of size photographs
6 of the nature we have here, the enlargements, as opposed
7 to an eight by ten or something else.

8 MR. NEGUS: Well --

9 THE COURT: The enlargement of Peggy Ryen, this is
10 A-74, simply shall not be used, period. Her depiction in
11 the scene along with Chris Hughes and Jessica, being a
12 more detached, may be used provided the privates are
13 covered. The small photograph may be used whether they
14 are covered or not. 

15 I don't find any objection with the other ones.

16 (No omissions.)
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1 MR. NEGUS: Then my -- just to make sure that we're
2 clear, then I -- okay to all the large photographs with the
3 exception of the A-79, because the only reason that Mr.
4 Kottmeier can articulate for using them is so that all the
5 jurors can see them for longer periods of time, and there's
6 no additional information in them. And I can -- I can see
7 that that's -- I don't think that's informative. That's only
8 inflammatory.

9 THE COURT: We can do it now or we can do it as we
10 get closer to trial. But -- you can indicate when you wish
11 to use the big photographs. I don't intend to let them stay
12 up hour after hour, Mr. Negus. And I can control that very
13 easily.

14 Would the clerk mark the large photographs here
15 and each of them so we can submit it.

16 MR. NEGUS: Can we -- before we do that, can we
17 agree to what numbering system we're going to be using for
18 the trial, because now we're starting to mark things which I
19 assume are going to go in front of a jury. I would suggest
20 that we just mark from 1 to infinity in order without any --
21 just have them all Court's exhibits. That would be my
22 request.

23 MR. KOTTMEIER: I would like to try and see what
24 could be done as far as a -- a matte or something on the
25 negative for Peggy Ryen before marking.

26 THE COURT: Well, you can substitute or we can put

1 others. You --

2 MR. NEGUS: I have no objection to him substituting
3 that if it comes down to that.

4 THE COURT: You can work on that and come back to
5 me on that, if you wish.

6 MR. KOCHIS: The numbering system I would suggest,
7 T-1 through infinity, so that we know the trial exhibits as
8 opposed to Hitch, prelim, 1538 --

9 MR. NEGUS: Have we used just straight numbers before?
10 I don't think so. I don't think we have any exhibits with just a
11 straight number on them.

12 MR. KOCHIS: We don't?

13 MR. NEGUS: I don't think so. That's why I thought --

14 MR. KOCHIS: Not even change of venue?

15 MR. NEGUS: How about the change of venue numbers?

16 THE CLERK: They were "V" with appropriate numbers.

17 MR. NEGUS: I think that's why we did it that way at
18 the beginning, so we could just use numbers.

19 THE COURT: Any -- any problem with the order of marking
20 some of them you want --

21 MR. KOTTMEIER: Yes.

22 THE COURT: The early numbers?

23 MR. KOCHIS: Yes.

24 MR. KOTTMEIER: Do you want --

25 MR. KOCHIS: I think we have other photographs that
26 are going to be offered chronologically first, and they

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1 aren't the ones from inside the house.

2 THE CLERK: Your Honor, if you'd like to have these
3 that are marked for trial now with the T-1, 2, 3, 4, and
4 then when you go down to San Diego, if there's a problem with
5 remarking them, it might be easier for that clerk, then --
6 for them to start going 1, 2, 3, 4, without any numbers in
7 front. I don't mind just having the Court hold those. I
8 don't think they necessarily need a number at this point.

9 MR. KOCHIS: Well, they do, because they're part
10 of the record. And Mr. Negus is going to object to them.
11 And there has to be something to tell an Appellate Court
12 what he objected to.

13 THE COURT: Let's put an exhibit right now T-1 on
14 through, and then I'll read that into the record. And we
15 can change that later. And it's not going to be an awful
16 lot of these.

17 MR. NEGUS: My understanding, that's all the big
18 ones.

19 MR. KOTTMEIER: With one exception, and that is that
20 we will probably have one done of Jessica in the --

21 THE COURT: I don't see the need for that. The --

22 THE CLERK: Your Honor, does --

23 MR. KOCHIS: The one that we have offered heretofore
24 does not show her upper body portion down the hall. It has
25 the upper body excluded.

26 THE CLERK: Does Counsel and Your Honor have any

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1 special way you want these marked? Any special order?

2 THE COURT: No, I don't think so. Her face is not
3 depicted in the large blowups.

4 MR. KOTTMEIER: Not even the upper body. You can't
5 see it. There's the picture.

6 THE COURT: Well, as far as the showing of the
7 buttocks, I don't find that objectionable one way or an
8 another, just partially nude.

9 MR. NEGUS: Just I -- I don't -- I don't think there's
10 any lack of clarity. But my objection is not to the nudity
11 but to the depiction of the wounds. That's what the basis
12 of my -- I think that --

13 THE COURT: That's very --

14 MR. NEGUS: I mean, that --

15 THE COURT: -- probative here, and your objection
16 also as to keeping them posted for a long period of time.

17 All right. If you want to get a blowup of what
18 you have marked here as A-53, I don't find any objection to
19 that.

20 MR. KOTTMEIER: Yes, Your Honor.

21 MR. NEGUS: The record should indicate that that's
22 laboratory No. A-53.

23 MR. KOTTMEIER: Yes.

24 MR. KOCHIS: I did number, I guess. Okay.

25 MR. KOTTMEIER: Your Honor, just to clarify the
26 Court's position, I would like to offer three cases.

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1 People vs. Jentry, J-e-n-t-r-y --

2 THE COURT: Mr. Jentry (sic), what are you doing to
3 me? I haven't gone against you. Why -- why belabor the
4 point?

5 MR. KOTTMEIER: Fine.

6 MR. NEGUS: Next one is autopsy photos.

7 MR. KOTTMEIER: I have here prints, and these are
8 only for reference, of the autopsy photos that were used
9 during the Preliminary Hearing, and, in addition, the autopsy
10 photos that were not used during the Preliminary Hearing.
11 And I think Mr. Negus' interest, and I'm not sure if I heard
12 him correctly when we were talking before, is to utilize
13 slides and project the slides on the wall.

14 Have you changed from --

15 MR. NEGUS: No. No. Well --

16 THE COURT: I thought that was just what you
17 indicate you were not going to do at the time of trial.

18 MR. NEGUS: Right. That was -- I didn't want to do
19 that. I did that at the Preliminary Hearing because it seems
20 -- the Preliminary Hearing seems to be a different forum than
21 a jury trial.

22 The -- I -- the autopsy photographs are of -- I mean,
23 may -- the nature of some of the wounds may well be an issue
24 at trial. The autopsy photos, in my opinion, because they
25 are basically washed and show washed, gaping wounds, are
26 more inflammatory than the actual photographs of the bloody

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1 people in the scene. Basically, the use for which the
2 autopsy photographs have been put at the prelim and the use
3 which I have seen them used in prior trials with Dr. Root is
4 that that's the only way that Dr. Root can remember the
5 wound that he's talking about, to look at the picture. So
6 basically what it is is a refreshing recollection part. And
7 the photograph and the interpretation of the photograph for
8 the jury is, I don't think, necessarily important.

9 It is conceivable that there might be a clash of
10 experts about some particular wound. At the present time I
11 don't know of any such clash. But I wouldn't want to rule it
12 out. If there were a clash of experts about the meaning of a
13 particular wound, then the autopsy photographs may or may not
14 become probative.

15 Other than that, I would request that the autopsy
16 photographs not be introduced into evidence in -- to the
17 jury, that they be available for Dr. Root to use to refresh
18 his recollection if he needs to, which I suspect he will, or
19 any other expert that testifies on it, but that they just be
20 identified and referred to without being given to the jury.

21 The reason for that is that, unless we happen to
22 have a -- luck out and get a trained pathologist on our jury,
23 I doubt seriously if there is much informative content that
24 that lay people will be able to get from the photographs.
25 There are alternate means of getting the information out. And
26 they are very inflammatory.

1 THE COURT: Are there cases on that that talk about --

2 MR. KOTTMEIER: Autopsy photographs?

3 THE COURT: Yes, specifically.

4 MR. KOTTMEIER: Yes.

5 THE COURT: I haven't read any of those in a long
6 time.

7 MR. KOTTMEIER: The cases are generally very limiting,
8 that is, that the trial judge's discretion is seldom, if ever,
9 overthrown. But I have one case in particular that might
10 be helpful, wherein something like 16 autopsy photographs
11 were offered, the Court admitted eight, and the reviewing
12 Court suggested that maybe five should have been admitted.
13 Five or three; I've forgotten which way. And it gives some
14 guidelines as to the review of them.

15 THE COURT: Well, generally speaking, we've got to
16 show relevancy, the probative value of them. If you want to
17 limit them in number to where you do not have prejudice by
18 mere weight of numbers, don't put in more than is necessary
19 so there's no duplicative pictures showing the same thing.

20 MR. KOTTMEIER: Our general thought in this regard,
21 at least as far as planning, and I wasn't sure what Mr. Negus
22 was going to do, was that there was some particular interest
23 that we had in regard to the hatchet wounds. We think,
24 obviously, that the hatchet is linked up closer to Mr. Cooper
25 than any potential weapon, and that the issue of whether a
26 hatchet was used in the attack is extremely important

1 circumstantially as far as the guilt or innocence of the
2 defendant. So that the Prosecution was interested in showing
3 some illustration type photos on the victims, each of the
4 victims as to hatchet wounds.

5 There are a couple of areas that have unique wounds,
6 such as to the chest of Jessica, that I am not sure can be
7 accurately described -- and maybe it would be best if I show
8 you a picture -- accurately described verbally without the
9 assistance of photographs.

10 MR. NEGUS: An alternate method of description
11 other than photographs is sketches. And Dr. Root has
12 innumerable sketches.

13 MR. KOTTMEIER: The problem with sketches in regard
14 to Jessica is that the wounds to her chest, according to
15 Dr. Root, are post-mortem, and the wounds themselves in
16 appearance, by coloration, tend to indicate --

17 MR. NEGUS: I'm familiar with the -- with the
18 photographs. Until such time as whether -- as that becomes
19 a disputed issue, that the -- I think what Dr. Root will say
20 is that they are post-mortem or just as she was dying, my
21 recollection of what he says. Until such time as that
22 becomes a disputed issue, which I don't think it is at the
23 moment, I don't see the relevance of it.

24 THE COURT: Counsel, I'd like to simply take a
25 look at some law on these things.

26 MR. NEGUS: Do you have the name of the case that

1 you were talking about?

2 THE COURT: I can, of course, consider the usual
3 352 considerations. But I would like to refresh my memory
4 as to some of the applicable law. There may be new law.
5 You'd think the books would be full of it.

6 MR. NEGUS: They are, but they generally don't get --

7 MR. KOTTMEIER: One that may help the Court is
8 People vs. Milan, M-i-l-a-n, 9 Cal. 3d, 185; 9 Cal. 3d, 185.

9 THE COURT: 184?

10 MR. KOTTMEIER: 185. And it's at Page 193 and 194.
11 Another case that is -- well, that just gives a general
12 statement of photographic evidence.

13 (No omissions.)
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1 THE COURT: Well, I can find general textbook
2 references on it.

3 MR. KOCHIS: Your Honor, People vs. Jentry also has
4 some general language, J-e-n-t-r-y, 69 Cal.App.3d, 615,
5 pages 626, 627.

6 MR. NEGUS: If I could -- there's a People vs. --
7 I'm just trying to find the cite. There's a couple other
8 general cases normally, People vs. Sam, and I am trying
9 to find the cite on that, and there's also, I think, a
10 Gibson case cited by Justice Jefferson, if I can find it.

11 THE COURT: Are you looking at the --

12 MR. NEGUS: That's what I was looking at, but I
13 don't see where.

14 THE COURT: Let me see what I can find.

15 MR. NEGUS: I might give you the others --

16 THE COURT: I don't think I will get anywhere during
17 the noon period on it. Counsel, why don't we break it
18 until 1:30.

19 MR. KOCHIS: And, Your Honor, also People vs. Murphy,
20 8 Cal.3d, 349, pertinent portions on 365.

21 THE COURT: 349 at 365?

22 MR. KOCHIS: Right. Apparently, it's a long case.

23 THE COURT: Let's have our lunch period.

24 (Whereupon, at 11:53 a.m. the noon recess
25 was taken.)

26 --o0o--

forget Sam - see next page

1 ONTARIO, CALIFORNIA; TUESDAY, JULY 24, 1984; 1:33 P.M.

2 DEPARTMENT NO. 3

HON. RICHARD C. GARNER, JUDGE

3 (Appearances as heretofore mentioned.)

4
5 MR. NEGUS: I have an additional case I'd like to
6 cite on the photos, which is --

7 THE COURT: I never did get the citation, nor did I
8 look up the People vs. Sam case.

9 MR. NEGUS: Sam is -- was a mistake on my part --

10 THE COURT: Okay.

11 MR. NEGUS: -- so you can scratch that. It's
12 People vs. Smith, 33 Cal.App.3d, 51.

13 THE COURT: Do you have it right there?

14 MR. NEGUS: I have it right there, and even underlined.

15 THE COURT: Just a second. All right. Quoting a
16 couple lines from it, there was autopsy testimony regarding
17 the precise location and nature of the wound which needed
18 no clarification or amplification, and the record does not
19 reveal what evidentiary purpose was expressed by the
20 district attorney in presenting these pictures to the
21 jury. The Attorney General pointed to no added probative
22 value possessed by the exhibits, blatant appeal to jury's
23 emotion.

24 So, Counsel, what's the purpose of your request to
25 put in autopsy pictures?

26 MR. KOTTMEIER: To illustrate the type of wounds

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1 consistent with being a hatchet. I think that we can have
2 testimony in regard to the majority of other wounds, In
3 fact, I have requested or tried to get a hold of some
4 plastic models to utilize for denoting the location of
5 the various bodies of the majority of wounds; however, as
6 I mentioned before, specifically the utilization of the
7 hatchet is an extremely important issue in this case, and
8 this is an issue that I wanted to utilize illustrative
9 photos because some of them when you look at the wound,
10 the photo itself tells you that their wound was made by
11 a hatchet, regardless of the additional testimony of
12 Dr. Root.

13 THE COURT: Have you selectively gone through them
14 and pared them down to what you feel is simply necessary?

15 MR. KOTTMEIER; No, because, as I indicated earlier,
16 I thought that we were going to be in an area of agreement
17 as far as the utilization of photos. In fact, I had
18 initially thought that I would probably be using a very
19 small number and Mr. Negus using an extremely large number
20 of autopsy photos, so, no, I have not done that.

21 THE COURT: I can hardly conceive, Mr. Negus, of
22 there not being (a) relevancy of the pictures with reference
23 to type of wound and, hence, what type of knife, and (b)
24 the number of weapons used to indicate more than one
25 attacker as bearing upon the involvement of your client,
26 allegedly.

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1 MR. NEGUS: I don't see that the nature of the
2 wounds -- and I think that Dr. Root, who has more expertise
3 in this than -- than either Mr. Kottmeier or myself,
4 testified at the preliminary hearing that from the nature
5 of the wound, you can't tell the difference between an
6 ax, a machete, meat cleaver, All you can say is a chopping
7 instrument with a lot of mass. And if the pathologist
8 can't tell the difference, I don't see how showing a picture
9 to a jury is going to be able to establish that. And the
10 description of the wounds I think could be done adequately
11 without showing the pictures. You can see, if we still
12 have them available -- I'm not sure if we do, the little --

13 THE CLERK: The little ones?

14 MR. NEGUS: The little ones -- the kind of wounds
15 that are being described in the photographs of the crime
16 scene that we have.

17 Maybe the little ones -- if you've got the little
18 ones, I can find them easy enough. The envelopes?

19 THE CLERK: Yeah. This is it. Do you want those?

20 MR. NEGUS: Do you have the envelopes?

21 THE CLERK: Uh-huh.

22 MR. NEGUS: Just showing you H-213, you can see the
23 kind of slashing wound on the rib cage of Peggy Ryen and
24 on her face in those photographs, and we have other non-
25 autopsy photographs which I would submit can be used and
26 are less horrifying. //

1 THE COURT: Counsel, I need to look at actual
2 pictures at some point here. Before I rule on this
3 motion, you are going to have to show me what you want
4 and why --

5 MR. KOTTMEIER: True.

6 THE COURT: -- by number.

7 MR. KOTTMEIER: And we will do that. As I say,
8 I was somewhat surprised by the reversal of approach, so
9 that I'd already started to do it for the limited purpose
10 of --

11 THE COURT: I know generally that we spent many
12 hours and days, perhaps, in questioning the source or
13 cause of various wounds, the implication from the types
14 of wounds, and I am certain that that's still going to be
15 done at trial one way or another.

16 MR. NEGUS: I will tell you right now that I doubt
17 seriously -- and I'm sure I mentioned this to Mr. Kochis
18 during the prelim -- that I'm not going to be cross-
19 examining Dr. Root using the same technique at trial as I
20 did at the prelim.

21 THE COURT: Oh, I can understand that. That doesn't
22 detract, I don't believe, from what I said.

23 MR. NEGUS: Okay.

24 THE COURT: So I need to see the pictures. I can
25 certainly see relevancy on a number of things. The usual --

26 MR. NEGUS: I think the test is -- has got to do

1 with the added probative value over description, and I'm
2 not sure that -- that they really do do that on the
3 disputed issues.

4 THE COURT: Well, to have the autopsy surgeon, for
5 instance, look at the pictures to refresh his memory and
6 somehow try to describe it in a vacuum or even to put
7 it upon a Styrofoam mass or something like that, or a
8 body, isn't as near as descriptive as actually seeing the
9 photograph, I don't know. They talk about weighing the
10 probative value against the inflammation aspects, showing
11 malice, intent, assist the surgeon, clarify his testimony
12 regarding the precise location, indicate number and location
13 of wounds, the type of wounds for aggravation in the
14 penalty phase.

15 MR. NEGUS: We are not in the penalty phase. Malice
16 is not going to be an issue. Premeditation and deliberation
17 I suspect aren't going to be issues, at least unless
18 something changes, so what we are talking about -- the
19 only issue is likely to be how specific can you get about
20 the instrumentalities that caused the wounds and -- and
21 the number and nature of those instrumentalities,

22 THE COURT: What --

23 MR. NEGUS: I --

24 THE COURT: Excuse me. Go ahead.

25 MR. NEGUS: I don't think the photographs are going
26 to add anything probative to that particular discussion,

0-1-2-3-4-5-6-7-8-9

1 THE COURT: What size photographs do you have in
2 mind here?

3 MR. KOTTMEIER: Eight by ten, because we're dealing
4 with isolated areas or isolated wounds that will show up
5 better in the eight by ten than they would on the whole body.

6 THE COURT: I think we're going to have to go back
7 to the point when you actually give me the photographs and
8 you're able to speak to the probative value of each one of
9 them.

10 MR. NEGUS: Before Mr. Kottmeier spends a lot of
11 money making eight by tens, I would submit that specifically
12 I don't know which photographs he's talking about. If he's
13 talking about the ones taken by Dr. Root of which we introduced
14 slides at the Preliminary Hearing, the quality of those
15 photographs are not such that any blowing up is going to
16 make any difference. You can see as much on the -- on the
17 three by five's as you can on anything bigger. There's just
18 no detail that is present on the -- on the film which is
19 going to show up any -- on eight by ten versus three by --
20 three by five.

21 THE COURT: The smaller they are, the less the
22 likelihood of it inflaming the jury.

23 MR. KOTTMEIER: I had mentioned earlier a case
24 dealing with the evaluation of autopsy photos. And I have
25 mislaid at the time. The citation is People vs. Willis,
26 W-i-l-l-i-s, 104 Cal. App. 3d, 433; 104 Cal. App. 3d, 433.

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1 I have --

2 THE COURT: I guess this is another thing that
3 we'll have to put off, perhaps, until tomorrow when you can
4 advise me more specifically. Have the clerk mark them, the
5 ones that you wish to offer in some manner, and we can review
6 one by one. I simply can say that I can certainly see the
7 relevancy and the probative value over the prejudicial effect
8 of some autopsy pictures. The extent of it, I don't know.

9 MR. KOTTMEIER: It may -- it may have been developed
10 during the testimony of the autopsy surgeon, that because of
11 a particular issue photographs that heretofore have not even
12 been offered become a significant factor. But we could handle
13 that as it developed.

14 MR. NEGUS: All right. Well, my original statement
15 was that I wasn't aware necessarily of any disputed facts
16 about that, about the -- about the nature or description of
17 the wounds. If it turns out that we have a disputed fact
18 about the nature or description of the wounds, then we can
19 bring it up. But I don't -- I, at the present time, am not
20 aware of any disputed facts about that. There may be disputed
21 facts about the interpretation of the wounds. But what they
22 look like and what their nature is, I don't think that's in
23 dispute.

24 THE COURT: Well, if you're going to have different
25 interpretations, then the foundation for those interpretations
26 or opinions --

1 MR. NEGUS: May have nothing to do with the --

2 THE COURT: The jurors may well want to look at
3 it for themselves.

4 MR. NEGUS: But I -- to -- I mean, if it can be
5 shown that photographs are necessary to resolve any different
6 interpretations, then that's fine. But I don't think that
7 they necessarily will. And I don't see any point in just
8 bringing them in if there's not a disputed issue that they're
9 going to resolve.

10 THE COURT: Well, let's -- let's see what we have
11 as far as the actual bare offering that you have. Perhaps
12 be as modest as you can.

13 MR. KOTTMEIER: I showed, just before we resumed
14 this afternoon, a series of eight by ten photographs, one
15 group which are depictions of -- of injuries to Josh Ryen,
16 to Mr. Negus. Maybe we ought to discuss those next.

17 THE COURT: I'm sorry. You have what, now?

18 MR. KOTTMEIER: Photographs of the injuries, the
19 treated injuries to Joshua Ryen.

20 THE COURT: Oh. Well, what manner are you offering
21 this now?

22 MR. KOTTMEIER: Just to give the Court a full
23 appreciation of the photographs relating to injuries, physical
24 defects, blood or anything surrounding the case, which is what
25 I thought we would cover.

26 MR. NEGUS: I don't see any relevance to those

1 particular photographs because they don't show the nature
2 of the injuries. They're all -- all the -- after the
3 injuries have been treated. And I don't think there's any
4 dispute as to the number of injuries received by Josh.

5 THE COURT: I don't find any of these inflammatory,
6 for that matter.

7 MR. NEGUS: Well, I think that they -- I mean,
8 certainly --

9 THE COURT: Not gruesome at all. They're not bloody.
10 And we haven't come to it yet, but why don't you bring these
11 in if -- if you're going to offer them along with the rest
12 of your pictures, and let's see what you have. And we're
13 going to get to Josh Ryen's testimony at another point in
14 our motion, review.

15 MR. KOTTMEIER: Well, I do --

16 THE COURT: They may bear upon his credibility.

17 MR. NEGUS: I -- I don't see how they do. I mean,
18 if there's no dispute as to that Joshua's injured in a certain
19 way, what are they going to prove?

20 THE COURT: I don't know, Mr. Negus. One of you
21 may say that Josh Ryen is the only eyewitness of this
22 massacre and, therefore, you've got to believe him, and he
23 said that there were three people, and, therefore, there were
24 three people, and they were white people or they were Mexican
25 people; they were not Black people. And the jurors may see
26 that and say, "How could a little boy see anything if -- if

1 he was struck on the head with a wound the size that this
2 has indicated," or something like that, or throat was cut.

3 MR. NEGUS: I suspect that that's --

4 THE COURT: Counsel, I want to make both of you --
5 make sure both of you don't prejudice the jury unfairly.
6 There's a certain amount of prejudice in trying this type of
7 case. This is not a pretty case in any way.

8 MR. NEGUS: But what I'm saying is that there is --
9 that we shouldn't bring in -- emphasize the non-pretty aspects
10 if we're -- no dispute about them. There's obviously some
11 things about the crime scene itself that are going to be in
12 great dispute. And I haven't made any objection to the most
13 informative photographs of the crime scene showing the bodies
14 of the victims coming into evidence for that reason. But as
15 to things which only have emotional impact and don't add any-
16 thing to the case, I think that 352 plainly applies. And we
17 don't dispute the nature of Josh's injuries, we don't dispute
18 the timing of Josh's injuries, we don't dispute the -- the --
19 you know, that he was in deep pain during all these -- these
20 periods of time. I think I was the one that brought that out,
21 at least in the course of the motion. So I don't think that
22 that's really a -- going to be a disputed issue.

23 THE COURT: I think we are just flapping our gums
24 for the -- until we get the actual photographs. I would urge
25 you not to -- to have cumulative pictures. If they don't
26 really add anything, you don't need to have a photograph, I

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1 suggest, of each and every wound. Only the ones that may
2 have some probative value that you will be able to articulate
3 when you specifically offer them.

4 Okay. Can I move to something else?

5 MR. NEGUS: Well --

6 THE COURT: Well, you say use during voir dire is
7 the next.

8 MR. NEGUS: May we go to the last thing and then
9 come back to the voir dire just a moment.

10 THE COURT: Use of sentimental photos of victims?

11 MR. NEGUS: Right. There's no dispute as to the
12 identity of any of the victims as to who they are. If there's
13 anything that comes up, I'm willing to stipulate as to who each
14 and every one of them are.

15 We have pictures of them lying there. Mr. Kottmeier,
16 I believe, has pictures of -- family pictures of the Ryens
17 and of Christopher Hughes. I can see no point to those
18 photographs being introduced into evidence except as to --
19 as -- as to try and emotionally sway the jury. And I would
20 object to any such pictures being -- being used.

21 THE COURT: Mr. Kottmeier?

22 MR. KOTTMEIER: We do have enlargements, Your Honor,
23 of photographs that depict all four Ryens and a separate
24 photograph of the Hughes boy. The issue, as far as identity
25 or the name of the victim, I do not see as a major issue.
26 The purpose for utilizing the photographs is to show the

1 relative physical size of the individuals involved. You
2 can't, I would offer, get that necessarily from the way in
3 which the victims are laid out in the crime scene.

4 Secondly, they are offered to show the lack of
5 physical injury, physical defect or any problem as far as
6 the victims are concerned prior to the attack.

7 Finally, they're offered as a -- an illustration
8 that this was a family group that was happy with each other,
9 with themselves and so on, and that there was no outside
10 problem apparent, at least as far as the photograph. I would --

11 THE COURT: That's very -- that's very -- that's
12 not very persuasive on that point.

13 MR. KOTTMEIER: It may not be persuasive, but I
14 would submit that the efforts on the part of the Defense and,
15 admittedly, some of the Court rulings from the Appellate
16 Courts that you cannot introduce photographs of the victims
17 prior to the murder dehumanizes the victims to such a degree
18 that the victims do not get a fair hearing as far as the guilt
19 or the innocence of the defendant; that in effect it is the
20 reverse effect, that leaves the victim only a name that has
21 been murdered somewhere that has no relationship to their
22 prior existence.

23 THE COURT: I'd like to see what you're specifically
24 offering. You don't have them with you?

25 MR. KOTTMEIER: Yes. We have the -- we have one
26 set with us. They can be put into any size. We've got sizes,

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2 There's a secondary issue as to one photograph, which
3 is that there has been consistent mention during some of the
4 preceding motions --

5 MR. NEGUS: I have seen those smaller versions of
6 these.

7 MR. KOTTMEIER: -- of dogs that were present at the
8 scene.

9 THE COURT: What are these? Two by three and a half
10 or something?

11 MR. KOTTMEIER: I'm not sure.

12 THE COURT: Feet, that is.

13 Do you know when these were taken with reference
14 to the deaths?

15 | MR. KOTTMEIER: Yes; about two months before.

16 THE COURT: It appears to have been taken from the
17 property, that portion of it.

18 I don't see how the dogs helps us at all, sir, that
19 picture.

20 MR. KOTTMEIER: Well, one of the things that Mr.
21 Negus has mentioned is that the dogs were of a nature that
22 would bark or protect the family in some way. Therefore, it
23 would have required more than one person to carry out the
24 assault. And the photograph in front of you illustrate that
25 these are just casual, family type dogs. They're not
26 protection type dogs, at least as far as the way they're

1 portrayed in the picture.

2 THE COURT: Does the bunny rabbit have probative
3 value, too?

4 MR. KOTTMEIER: Other than the fact the dogs aren't
5 chasing it. I -- I didn't have a choice as far as the -- the
6 way in which the pictures were set up. There are other
7 pictures of the family available, if that is the issue as
8 far as whether there is a bunny rabbit present.

9 MR. NEGUS: There are pictures of the dogs, too.
10 But I don't see how the pictures of the dogs prove much of
11 anything other than that what the dogs were like. There may
12 or may not be testimony as to whether the dogs barked, which
13 is the only thing that I could recall there being any -- any
14 question of people about. And that questioning was done by
15 both Homicide investigators and, I believe, Mr. Forbush.

16 But as far as, leaving aside the dog question, the
17 size of the individuals is not something which a photograph
18 which is not life -- you know, which is -- you can't -- it's
19 hard to tell from photographs the size of people, anyway.
20 And other testimony is more probative on that.

21 There's no dispute as to lack of injury of the
22 victims beforehand. And I agree with the Court, that Mr.
23 Kottmeier's statement as to the nature of the family group
24 is observable only in the photograph isn't all that persuasive
25 to the point.

26 I think what he really -- I think he's being candid.

1 What he really wants to do is to try and create an emotional
2 surge in favor of the victims. That's not the kind of thing
3 that is proper at a guilt phase.

4 (No omissions.)
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1 THE COURT: We have in the course of trials -- we
2 have to present stories to the jurors and make the stories
3 understandable, and they can't understand it by looking at
4 some -- at the death pictures, Do you have one of this,
5 no bigger than the other pictures?

6 MR. KOTTMEIER: Yes.

7 THE COURT: Ten by seventeen or something like that?

8 MR. KOTTMEIER: Yes.

9 THE COURT: Then I will overrule the objection as
10 to that picture just showing the four members of the Ryen
11 family without the dog. If you have a separate picture
12 of the dogs without the family or something else for me to
13 consider with reference to the dogs, we can do that, but
14 that minimizes to some extent the -- the apple pie and
15 family and motherhood and all the other things you're
16 worried about, Mr. Negus.

17 I will give both of those back to you, Mr. Kottmeier,
18 and you can return with something in accordance with that
19 indication, unless you wish to mark it now, Do you have
20 one --

21 MR. KOTTMEIER: No, Your Honor, I don't.

22 THE COURT: So that motion -- is that it with
23 reference to --

24 MR. NEGUS: Back to the voir dire aspects,

25 THE COURT: Oh, back to voir dire?

26 MR. NEGUS: What I would request permission to do

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1 is normally I don't like to have -- I mean I think that
2 photographs of victims with injuries are inflammatory and
3 cause impact far beyond the probative value they have.
4 In this particular case, I have not entered a complete
5 objection to all the photographs of injuries to the victims
6 because I recognize that there is a strong probative value
7 to that. On the other hand, I believe that different
8 jurors react differently to that particular kind of
9 evidence. I would -- and I have done this before in
10 several homicide cases, I believe, even one in your court,
11 and it doesn't take a great deal of time. I'd request
12 permission to pick out one or two of the photographs
13 which illustrate the problem, and to show those to the
14 jurors during the course of the voir dire, ask whether
15 they could be fair in judging this kind of evidence, and
16 whether they would -- that kind of photographs, evidence
17 that they would be receiving, would so inflame them to make
18 it impossible for them to be fair.

19 THE COURT: Any objection to that? Just because one
20 espouses, the other doesn't have to object.

21 MR. KOTTMEIER: No, no. I am just concerned as to
22 what would be said by way of introduction, whether in effect
23 what would be going on is a litmus test as far as jurors
24 to elicit some kind of reaction; in other words, is there
25 any softening as far as the presentation of the picture?
26 These are jurors that are just off the street who haven't

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1 really necessarily heard what the case is all about, and
2 then to pull this picture up and right in front of them
3 may cause a severe reaction from some jurors, and may have
4 some serious consequences if they're not mentally prepared
5 for it.

6 THE COURT: Mr. Negus, could you give them a little
7 warning, say it's my intent to show you a couple photographs,
8 is there any amongst you -- and I can tell you right now
9 that they're not going to be pleasant, they're going to
10 show blood, they're going to show this or that, is there
11 any amongst you that's liable to be shocked or become ill
12 or would rather not see it at all?

13 MR. NEGUS: I think you're reciting my script from
14 the last case. I have no problem with it.

15 THE DEFENDANT: Excuse me. Can I ask my attorney a
16 question, please?

17 THE COURT: Yes.

18 I think, generally speaking, Mr. Kottmeier, that if
19 he sprung it on them in some way, I would yank it out in
20 some manner so quick that it would not have the shock value
21 as much as you fear, and I trust Mr. Negus to lead into
22 it gradually.

23 MR. NEGUS: I think it's my best interests to do it,
24 instead of flashing photographs to jurors.

25 THE COURT: I find no objection to that by either
26 counsel.

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1 MR. KOTTMEIER: We do have some aerial photographs
2 Mr. Negus has seen --

3 MR. NEGUS: No problem with aerial photographs of
4 whatever size, shape or color.

5 MR. KOTTMEIER: ~~We intended to use aerials instead~~
6 of diagrams, for example, of the street area, much the same
7 as we have done in some of the Hitch motion. We will have
8 plastic overlays so that whoever needs to draw on them can
9 draw on them.

10 MR. NEGUS: I have an objection to plastic overlays,
11 I think, but I have no problem with the aerial photographs.

12 THE COURT: Make a note of this, Mrs. Lewis, that
13 we are going to have to -- when we do get to San Diego,
14 we are going to have to check as to an evidence lockup
15 facility in some manner. See if we can prepare for that.
16 Here we've modified the quality to where she can lock things
17 up in a closet. One that was not previously lockable has
18 now become quite secure.

19 MR. NEGUS: I should indicate that other than those
20 which I have already articulated, I can't -- I don't
21 believe I have any other objection to any photographs of
22 any size for -- for other -- for other -- for other things.

23 THE COURT: We are going to have to simply come
24 back to the autopsy photos, and we will have to take those
25 up privately once again.

26 MR. NEGUS: Can I intersperse a couple other things

0-1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000

1 before we move on to another motion? I would request, and
2 I will have the order typed up when I -- as soon as I get
3 back to my office at break, that you order another sample
4 of blood be drawn from Mr. Cooper for me at the County Jail.
5 Mr. Forbush will furnish the nurse. We did this once
6 before, but we need to have a fresh sample of blood,

7 THE COURT: No problem, no problem.

8 MR. NEGUS: Secondly, if you will look at -- I have
9 told Mr. Kochis and Mr. Kottmeier, but I wish to add two
10 other motions, one of which is I can only at the present time
11 phrase it as 9E, a motion to pay jurors a living wage, and --

12 THE COURT: I would join in the motion, but I don't
13 think there's any legal authority for me to do it.

14 MR. NEGUS: Well, I know I marshalled that legal
15 authority in prior cases, and as soon as I have a chance to
16 go through the notebooks and cull it out, I'll try and make
17 my argument as best I can.

18 THE COURT: That will be a way to get welcomed by
19 the San Diego authorities if I start paying San Bernardino
20 County jurors more than their own jurors get paid.

21 MR. NEGUS: Somewhere along the line, I read
22 something that defense lawyers are not supposed to be well-
23 liked, and I suppose you can blame it on me.

24 THE COURT: I am not trying to win a popularity
25 contest, either, but I do wish their cooperation and
26 their staff to be cordial throughout and that sort of thing,

1 I don't want to go down there in the atmosphere of hostility,

2 MR. NEGUS: I'm not anxious myself.

3 THE COURT: You don't have to give me authority
4 for that, I frankly ~~don't~~ -- you know, those things are
5 set by state law or county ordinance, and I believe it's
6 the former. They get mileage plus about five dollars a
7 day.

8 MR. NEGUS: Right, but I have -- I have a constitutional
9 argument as to why I think that is not any good, and I wish
10 to make it, and --

11 THE COURT: That's sometimes not as persuasive as
12 a lowly ordinance from a municipality.

13 MR. NEGUS: I understand, but I can't do anything
14 about lowly ordinances, and all I can do is make constitu-
15 tional arguments, I suppose.

16 I realize the five dollars a day plus insufficient
17 money for mileage is what the law says, but I don't think
18 that necessarily provides for a fair trial,

19 Anyway, that just add that toward down at the end
20 of the 9 motions.

21 THE COURT: You're not desirous to do it now, then?

22 MR. NEGUS: I didn't bring my jury stuff with me.
23 I lost track of where we were as far as what we were going
24 to do this afternoon versus tomorrow. I'm not sure whether
25 we're going to run out of motions or not, I have a couple
26 other things I can --

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1 THE COURT; All right. Go ahead.

2 MR. NEGUS; Just the other thing I just wanted to
3 say was that I told Mr. Kochis and Mr. Kottmeier that I
4 would request that if they are going to try to introduce
5 any statements made by Mr. Cooper to any law enforcement
6 officers, specifically San Diego County -- or Santa Barbara
7 County people or Coast Guard people, that they -- we have
8 an in limine hearing on that. Obviously, I don't expect
9 them to have their Santa Barbara people here today, if
10 they are going to do it, but I would like to have that
11 done before we --

12 THE COURT: Well, you mean any statement anywhere
13 having any --

14 MR. NEGUS: Well, there's not a heck of a lot of
15 statements by Mr. Cooper to law enforcement that we're
16 concerned with, and -- but I'm phrasing it in terms of
17 any, in case they have some that I haven't thought of, but I
18 think that Mr. Kochis knows which ones I'm talking about,

19 THE COURT: Any objections?

20 MR. KOCHIS: No.

21 THE COURT: All right. Then before you put on any
22 evidence of any statements --

23 MR. NEGUS: I'd request to do it before we select
24 the jury, before we get through with these motions sometime.

25 MR. KOCHIS; I will make the decision before we
26 get done with the jury as far as my case in chief, and I

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1 can't really imagine them coming up in rebuttal as to
2 whether or not we intend to introduce any statement, If
3 we do, we will have a formal hearing on it.

4 THE COURT: Okay. Well, let's just don't keep putting
5 everything off. There's got to be an end to this at some
6 point; so before too much longer, be prepared to put
7 whatever you intend to use on.

8 (No omissions.)
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1 MR. KOCHIS: Yes.

2 THE COURT: Okay.

3 MR. NEGUS: I don't remember where we were.

4 That was the additions I had.

5 THE COURT: Okay. You've got the two additional
6 matters that you mentioned, then. Could we -- did we discuss
7 number four, motion regarding reference to lack of Prosecution
8 discovery?

9 MR. NEGUS: We discussed it.

10 THE COURT: That's the one where --

11 MR. NEGUS: Mr. Kochis has a couple of cases, I think.
12 And I haven't had a chance to finish --

13 MR. KOCHIS: Yes, Your Honor. My situation is I
14 have three cases I can cite to the Court today, those being
15 In re Polos, P-o-l-o-s, found at 154 Cal. App. 3d, 447.

16 THE COURT: 447?

17 MR. KOCHIS: 447, with the pertinent portions
18 appearing in headnotes five, seven and eight. And the
19 discussion of these starts on Pages 455 and 456.

20 Likewise, People vs. Lee, L-e-e, 3 Cal. App. 3d,
21 514 at Page 527.

22 People vs. Meredith, M-e-r-e-d-i-t-h, 29 Cal. 3d,
23 682 at 693. And then I have a fourth case which discusses
24 the particular issue almost on point. However, that case
25 was not decided until June the 26th of 1984, and it won't
26 be final until this Thursday. And I feel reluctant to cite

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1 it to the Court at this time because it's not a final opinion.
2 It will be on Thursday.

3 MR. NEGUS: It --

4 MR. KOCHIS: And Mr. Negus in fact does not want me
5 to cite an unfinalized opinion to the Court.

6 I -- in fact, it's so recent, I have Xeroxed a copy
7 to hand the Court -- to the Court. But Mr. Negus pointed
8 out that it's not yet final.

9 MR. NEGUS: And I also point out that the half life
10 of those particular decisions are exceedingly short.

11 THE COURT: Sometimes. All right.

12 MR. NEGUS: Every one that has come down so far, that I
13 am aware of, has been granted a hearing in the Supreme Court.
14 So I don't think really -- and I'm not sure that -- by the
15 way, Polos is a case that I think is favorable for me. And
16 there was -- the latest advance sheets had -- it had a hearing
17 date -- a date for granting a hearing extended to --

18 THE COURT: I've got both Polos and Olson.

19 MR. NEGUS: Okay. The -- but --

20 MR. KOCHIS: Do you have -- the Court has also In re
21 Olson?

22 THE COURT: I don't have it, no. I only have the
23 Daily Journal clipping that I clipped out some long time ago
24 on that.

25 MR. KOCHIS: Olson is the case that I Xeroxed in
26 total. But that opinion is not yet final.

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1 MR. NEGUS: Right.

2 THE COURT: I don't --

3 MR. NEGUS: Polos may well -- if -- if every other
4 case on 120 -- 1202.5 is any -- is any hint, Polos, which is --
5 I say -- I didn't -- not really saying I don't think Polos is
6 wrong, I think it isn't, because it's a good case for me,
7 but Polos, the -- the -- the time of hearing in the Supreme
8 Court was extended to July 11th. That was in the latest
9 advance sheets that we've received in our office. I don't
10 know whether or not what they did, by on July 11th, they made
11 their decision as to whether to grant a hearing or not. So
12 Polos may not be any good at all, either. I'm not sure.
13 But --

14 THE COURT: I just don't know how -- well, it's --
15 we -- we don't know -- we're not facing it at the moment.

16 MR. NEGUS: Right. But --

17 THE COURT: I don't know how I would handle the
18 Polos procedure. In many of the cases that, you know, where
19 it's not just one thing he's after but it may be any inconsi-
20 tencies -- anything else?

21 MR. NEGUS: But my motion in limine doesn't have to
22 do -- I'm not trying to preclude Mr. Kochis from making his
23 1202.5 argument. And, you know, he did it at one point in
24 time in the course of this motion, then withdrew it. I'm not
25 trying to preclude him from doing -- from -- from any
26 discovery to which he's entitled. I don't think he's entitled

1 to any. But if he is -- I'm not trying -- I'm not trying
2 to preclude him, by making this motion, from litigating that.
3 What I'm talking about is the stuff where, pursuant to
4 Mr. Woods' instructions or pursuant to other questions,
5 the witnesses say, "I want my tape from Mr. Negus and he
6 won't give it to me." That, I think, no matter how you
7 rule on Polos, no matter what people do to -- to refresh
8 their recollection, is irrelevant, because of, (a), irrelevant
9 and (b), you know, the reason that they --

10 THE COURT: Let's just don't go into argument now.
11 I put him off to some extent. He's going to give me some
12 authority on it.

13 MR. NEGUS: I think that's -- I think he -- I thought
14 he did.

15 THE COURT: Oh. Did you?

16 MR. NEGUS: That was his authority.

17 THE COURT: That's these two cases?

18 MR. KOCHIS: Those three cases. Mr. Negus was
19 arguing that all of that is work product and attorney-client
20 privilege. And those cases in my opinion indicate that it's
21 not.

22 I'm certainly not going to ask a witness to say that
23 from the stand. I disagree with Mr. Negus. I think this
24 may be dispositive.

25 Obviously, if I get a transcript and the witness
26 can look at it, the issue's never going to come up. If we

1 get the tape recording and the witness reviews it, the issue's
2 never going to come up. The witness is never --

3 MR. NEGUS: That's not necessarily true. I mean --

4 THE COURT: But when are we going to know if these
5 two cases are final now?

6 MR. KOCHIS: Once -- well --

7 MR. NEGUS: Polos is final. Polos is citable,
8 unless the Supreme Court has acted to -- to make it uncitable.
9 Olson will be citable on Thursday until such time, if any,
10 as the Supreme Court acts to make it uncitable. And my
11 understanding --

12 THE COURT: There's just no rush on this at all.
13 We don't have any witnesses, apparently, going to testify in
14 the next few days on that that you need the tapes or state-
15 ments on. So let's just wait for a while and take that up
16 next week.

17 MR. NEGUS: Okay. But, anyway, my -- and I -- my
18 motion is just that no witnesses be talking about what they
19 got or did not get from the Defense. That, whatever --
20 however the -- however it comes out, that kind of testimony
21 is irrelevant, saying that they didn't get something from
22 the Defense.

23 MR. KOCHIS: Well, Your Honor, I have to disagree
24 with that, because --

25 THE COURT: You guys insist upon arguing this when
26 I'm not ready to have it argued.

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1 (Whereupon, the following proceedings
2 were had in chambers;)

3 THE COURT: All right. Counsel, you have requested,
4 some of you, one of you, to come to chambers. I don't see
5 the defendant present.

6 MR. NEGUS: Waived for this limited purpose of
7 whining and sniveling.

8 THE COURT: All right.

9 MR. NEGUS: I'm having difficulty keeping abreast
10 of everything that we're doing. I am not really 100-
11 percent prepared on anything else this afternoon,

12 THE COURT: On any things?

13 MR. NEGUS: Well, I have been trying to figure out
14 something where -- where preparation jives, and there
15 really isn't much,

16 THE COURT: I am not going to push you, Mr. Negus.
17 I haven't carried my own research thoroughly into this
18 next area, so unless there's some objection from the
19 prosecution, I am willing to let you go to work in chambers
20 or something like that,

21 MR. KOTTMEIER: I could offer -- since the next
22 area is on separate juries, I can give you the three areas
23 or cases that I have considered, and it may give a foothold
24 or whatever.

25 THE COURT: I have the bench book on that very issue
26 now. 190.3 presides for a separate hearing, but -- on

1 penalty.

2 MR. KOTTMEIER: I think 190.4 Subsection C says
3 the same jury, unless there's good cause or extraordinary
4 cause shown --

5 THE COURT: 190.4?

6 MR. KOTTMEIER: Subsection C. Some cases in the
7 area are, in reverse order of when they were found,
8 Thornton, T-h-o-r-n-t-o-n, 11 Cal.3d, 738; Easley, E-a-s-l-e-y,
9 33 Cal.3d, 65.

10 THE COURT: Give me the volume,

11 MR. KOTTMEIER: 33 Cal.3d, 65; and, finally, Gilbert,
12 G-i-l-b-e-r-t, 63 Cal.2d, 690 at 712.

13 MR. NEGUS: None of those have to do with the
14 current statute. Easley was a '77, I'm pretty sure.

15 THE COURT: Well, I will be better prepared tomorrow,
16 and you will be better prepared. Let's kind of map out
17 where we're going to go then tomorrow.

18 Witherspoon is the sequestered voir dire?

19 MR. NEGUS: Well, yeah. What I'd like to do, I
20 suppose, is just get some idea of how you plan to handle
21 it, you know, the Witherspoon -- I think the motion I'm
22 going to make is -- I may not do it for a variety of reasons,
23 but I haven't got it all written out yet as to why I think
24 we shouldn't --

25 THE COURT: That's a radical thought. I might be
26 just jubilant about the idea, but --

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1 MR. NEGUS: Well, I'm easy,

2 THE COURT: I think we have to worry about Hovey,
3 too, which hasn't been overruled by Press Enterprise.

4 MR. NEGUS: It's the prosecution that wants the
5 Witherspoon, not the defense. They are the ones --

6 THE COURT: Witherspoon is simply voir diring on
7 their opposition to death penalty.

8 MR. NEGUS: Right.

9 THE COURT: Hovey is sequestered voir dire.

10 MR. NEGUS: I am talking about doing the Witherspoon.
11 You don't get to the Hovey problem if you don't do the
12 Witherspoon.

13 THE COURT: The death qualifying?

14 MR. NEGUS: Yeah. Forget it. It's not necessary
15 in this case,

16 MR. KOCHIS: And the People want to Witherspoon,
17 to do a death qualification.

18 THE COURT: A sequestered death qualifying?

19 MR. KOTTMEIER: I haven't seen a case yet that says
20 that there's a denial of a right as far as -- or I'm doing
21 it backward. I have not seen a case that denies us the
22 right to have a Witherspoon qualification. They have all
23 verified the right to that kind of examination.

24 THE COURT: I have never had it come up before.
25 Generally, the defense wants it.

26 I would think, now, I could be wrong --

1 MR. NEGUS: I mean there may -- I'm not privy to
2 the thought processes of other defense lawyers other than
3 myself. I have never particularly been fond of it, but,
4 anyway, you know, there's, you know --

5 THE COURT: Would you care to amplify on it as
6 to the reason why or what you are concerned about, or does
7 it have to do with trying to get out of San Diego?

8 MR. NEGUS: No, no. The San Diego issue is -- I
9 would make that motion if I were in Alameda County, Judge.
10 That has nothing to do with San Diego. It's got to do with --
11 it's got to do with (a) the effect of Witherspooning on
12 jurors. Anybody that's ever been through it, and I'm sure
13 that -- that, you know, it's a boring, unnecessary, useless
14 exercise. It -- in my mind, it totally prejudices the
15 defendant from getting any fair trial. After you've been
16 through that, I don't see how you could ever get a fair
17 trial, and in this particular case, I think it's totally --
18 it's totally a waste of time, because if Mr. Cooper is
19 convicted, I can't imagine them having any trouble getting
20 a jury that's going to somehow have conscientious opinions
21 against the death penalty which is going to prevent them
22 from coming back with a death verdict if they find him
23 guilty.

24 THE COURT: Have you given to Mr. Negus, Mr. Kochis,
25 the copy of our script on Gray?

26 MR. KOCHIS: No.

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1 THE COURT; I will get you a copy of this, but let
2 me explain to you the way that it went, I can tell you
3 just precisely the way it went on the Gray case. Initially,
4 I started holding it back in chambers, and then right in
5 the middle of our jury selection, Press Enterprise came
6 down, and we moved into open court. I then, without the
7 robe, sat down informally at one end of the counsel table,
8 had defendant and his counsel on one side, district attorney
9 on the other side, and had the jurors come in and the
10 bailiff would show them a seat at the end of the counsel
11 table. I would make introduction of the parties, in case
12 they'd forgotten us, and tell them to relax, that we
13 thought they'd relax better, and we have a few questions
14 particularly relating to the death penalty here, so kick
15 back and relax a little bit,

16 Then the first question -- I'd kind of start off on
17 the list and just run through those. I would ask all of
18 those questions. Then I'd turn it over to counsel, and
19 they would follow up on anything, ask any additional questions
20 that we had. It took generally ten minutes, roughly, per
21 juror, no great traumatizing experience.

22 I'm not trying to talk you into it, but I did it as
23 informal as possible in an effort to make them as relaxed
24 as possible. The defendant and everybody was right there,
25 but no black robe type of atmosphere, and I don't think
26 anybody -- I don't think it's going to prejudice the

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1 defendant.

2 MR. NEGUS: I do, I mean that's why I want to
3 make the motion,

4 THE COURT: Well, I will be happy to hear your
5 motion, I just never considered it before, I will have
6 to -- I will have to think about that one.

7 MR. NEGUS: You know, just -- just to let you know
8 where I'm coming from, if -- if you -- if you -- if you
9 overrule me entirely, then I am going to be asking that
10 you only ask the standard Witherspoon three questions, I
11 think it is, whatever the -- three questions translated
12 from --

13 THE COURT: It could be boiled down.

14 MR. NEGUS: -- translated from legalese into English.

15 THE COURT: Linda, would you take -- make a copy of
16 that for Mr. Negus, please.

17 THE CLERK: Just one?

18 THE COURT: Would you -- yes. Would you?

19 MR. NEGUS: And not let the lawyers --

20 THE COURT: I am not sure I am -- I'd have to re-
21 read Witherspoon to know the three questions, but under --
22 under any circumstances, I'd like to have you maybe, if
23 you can, draft those out for me.

24 MR. NEGUS: Okay, I'll try as soon as I can. I
25 can't --

26 THE COURT: In your spare time.

1 MR. NEGUS: Yeah. Okay. I can't -- I have a social
2 obligation I have to take care of tonight later on, but I
3 will --

4 THE COURT: Well, it's not that important, I mean
5 I will try and -- we all have our commitments, but I am
6 sure that we can probably -- I probably know what you're
7 talking about.

8 MR. NEGUS: At least I can articulate tomorrow
9 what my concerns are on some of those jury issues,

10 THE COURT: We can put it off till tomorrow.

11 MR. NEGUS: Okay, and there's --

12 THE COURT: We don't have to argue these other
13 things, and you don't have to be prepared on them, but so
14 that we might be better prepared to hear you, what do you
15 mean by "questionnaire"?

16 MR. NEGUS: Essentially, what they did in the
17 DeLorean case, what's done in other cases, rather than go
18 through and get the general information from all the jurors,
19 I'd request that we just -- when -- however you arrange it,
20 whatever, logistically when they're first brought in, have
21 them fill out a written questionnaire with all the stuff
22 on it. I'm not trying to prevent the prosecution from
23 asking any question that they so desire, but I really don't
24 believe that the way you pronounce "Alta Loma" when you
25 say which city that you reside in has a heck of a lot of
26 probative value, and it's a lot quicker to get through that

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1 initial information,

2 The other thing that I'd like to use it for is
3 rather than just getting all the information down in a
4 fashion that we don't have to spend a lot of court time
5 on it is in screening with respect to the issue of
6 publicity, because the -- I'd like to try and draft a
7 questionnaire in such a way that we can isolate those
8 people who have some feelings about the case, based on
9 prior publicity, so that we can talk to them separately.
10 And if I had my druthers, I'd much rather use whatever
11 time it takes to do Witherspoon, trying to find out what
12 people have been exposed to the case in such a way that
13 they don't -- that they don't pollute one another.

14 MR. KOTTMEIER: There may be one real advantage which
15 he just touched on at the end, which is if we do it by a
16 written questionnaire, you don't run the risk that in
17 asking have you heard anything about it, some juror says,
18 oh, yeah, I know all about him in Pennsylvania or whatever.

19 THE COURT: I think that -- I'm not moved greatly
20 one way or another. I think if I did it, I'd want some
21 introductory remarks.

22 The number of jurors, I believe -- I have no idea
23 how they did it in DeLorean, except I noted with interest
24 the fact that they did it. I'd want some introductory
25 remarks from the Judge to try to assuage any feelings of
26 invasion of privacy or resentment against putting them

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1 MR. NEGUS: I'm sure that that kind of logistics
2 could be worked out, I mean. But I just -- I feel that
3 there is -- that voir dire in this case is going to take
4 long enough, because I don't suspect that it could go quite
5 as quick as in the Gray case just because of the nature of
6 the case and the publicity.

7 THE COURT: My initial reaction, if you're suggesting
8 that we have sequestered voir dire on the issue of publicity,
9 is negative.

10 MR. NEGUS: Well, I am probably going to ask that,
11 too. But -- but I -- what I'm suggesting is we try and
12 screen the people. I mean, I don't see how you can ask
13 people questions in open court, you know, "What have you
14 heard about Kevin Cooper," and --

15 THE COURT: We do it all the time. "Without telling
16 us what you have heard, what you have read, seen, or heard,
17 has that so made an impression upon you to where you could
18 not fairly and objectively listen and accept the evidence
19 and decide it in a fair and impartial manner?" "Do you have
20 a preconceived idea of the guilt or innocence of this
21 individual?"

22 MR. NEGUS: It was just legal conclusions. They
23 don't tell you anything.

24 THE COURT: Well, goes right to the gist of the
25 matter.

26 MR. NEGUS: But, you know, people fudge on that all

1 the time. I think you have a right to know what they heard.
2 And I don't see how you can do that otherwise.

3 THE COURT: Okay. My reaction to that is that I
4 open up a can of worms if I do this, and you're going to have
5 to artfully learn how to do that in open court, and you'll
6 be permitted to voir dire there.

7 MR. NEGUS: Well, I -- Judge, I mean, I'm going to
8 ask them, "What have you heard?" I mean, I don't see how
9 you can stop me from doing that. And then we're just -- I
10 mean, that's -- I've got to know what they've heard about
11 the case.

12 I mean, how can I -- how can you -- how can you
13 rationally decide, you know, whether there's a challenge
14 for cause or whether I want to use prejudice until I know
15 what they have heard about it?

16 THE COURT: Okay. Go ahead.

17 MR. NEGUS: Well, I -- you know, and if I'm not --
18 if I'm --

19 THE COURT: By the time we get this matter to the
20 jury, there's not going to be anybody around that remembers
21 what they have heard.

22 MR. NEGUS: Want to bet?

23 THE COURT: Some vague impression, and they're going
24 to -- they're going to think about the grisly aspects of it.
25 and they're going to remember some of the vague matters,
26 but --

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1 MR. NEGUS: Judge, well, we're going to get into
2 that later, too. But I think you're quite wrong, and I'm
3 prepared to try and prove that, if you give me the money to
4 do it, especially given the latest incident down in San Ysidro,
5 I think that from everything that I have heard from relatives,
6 friends, from making contacts in San Diego, everybody is
7 very much aware of the case. And I'm talking about in San
8 Diego County there's extensive publicity about it. And, you
9 know, prepared -- I have a guy that's wanted to do a survey
10 to prove it. That's another one of the motions.

11 THE COURT: How much time do you think it would
12 take on a sequestered basis?

13 MR. NEGUS: Well, if we have it -- if you have -- if
14 you have a screening process with a questionnaire first,
15 and you cut down the -- the irrelevant jazz on the Hovey
16 stuff where -- where both sides try and banter back and forth
17 and -- and get people to change their opinions about the
18 death penalty, one or the t'other, if you eliminate all that,
19 you know, I can't imagine that the average probably is
20 going to be five, ten minutes about people telling what they
21 have heard about the case.

22 Some people aren't going to remember anything.
23 That's not going to take very long. Other people have heard
24 a lot, and that will take longer. So it will -- it will vary.
25 But I think that's much more important in terms of
26 sequestered voir dire than all the Witherspoon nonsense that

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1 people normally go through. And you could screen it by
2 this questionnaire before you get to it.

3 THE COURT: Have you done any preparation on a
4 questionnaire? Do you have any guides or anything?

5 MR. KOCHIS: Your Honor, my thought on that is my
6 experience in Witherspoon is that it takes anywhere from six
7 to eight minutes per juror; that it's not drawn out, you
8 don't ask a lot of psychological questions.

9 THE COURT: Mr. Negus is not Abubakari.

10 MR. KOCHIS: I know. But even -- I -- I'm not in a
11 position of trying to have people change their minds. And
12 when I get someone on the jury who says, "I would probably
13 give the guy the death penalty in every case, whether it's
14 five victims," I don't belabor it; we excuse him. At that
15 point, you can simply ask one additional question, "Have
16 you been exposed to any pretrial publicity," and at that
17 point ask him a few questions. And if it's an extra three
18 or four minutes, then we're still about ten minutes a juror.

19 THE COURT: Maybe I ought to relent a little bit on
20 that. Let me -- maybe we could at least try it. I don't
21 know. Let me see what kind of script you write.

22 You don't want in open court about death penalty,
23 or you -- you do want in open court about death penalty?

24 MR. KOCHIS: He wants no death penalty. I'm the
25 one that wants death penalty.

26 MR. NEGUS: He wants death penalty. I want -- if

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1 we're going to have it, I want it limited to the three or
2 four Witherspoon questions and not go into it. When I have
3 gone into it in the past, I mean, if you open it up for both
4 sides to go into it, it has not taken six to eight minutes;
5 it's taken 30 minutes to 45 minutes.

6 When Mr. McPherson and Mr. Cole did it in Department
7 2 not too long ago, it took about that amount of time per
8 person.

9 THE COURT: I read some of their transcript. It was
10 longer than Gray, I assure you.

11 MR. NEGUS: I assure you. In the Bonillas case,
12 Mr. McPherson and I took between -- we got in -- we got --
13 I never -- I swore I'd never do that again in my life, but
14 I think that we got no more than six people in a morning and
15 no more than six people in the afternoon, and usually fewer,
16 between four and six. So that was between eight and,
17 probably, no more than -- our best day was probably ten
18 people.

19 THE COURT: Write out a script for me, Mr. Negus.
20 That's not going to take you more than 15 minutes to -- to
21 do that. Find time to dictate that.

22 MR. NEGUS: On the questionnaire or on the --

23 THE COURT: Well, on -- well -- no -- well, the
24 questionnaire, you know what you want. I think it behooves
25 Counsel to give me some sort of a --

26 MR. NEGUS: I -- I would -- I mean, I'm just -- you

1 asked me what I meant by that, and, see, that's one of the
2 reasons why I --

3 THE COURT: Sure, okay. I'm with you.

4 MR. NEGUS: I'm behind on my preparation. I confess
5 I am more behind in my preparation than I would like to be.
6 And today I have done stuff basically that I can wing. But
7 I will like to have it all written out as soon as I can; I
8 just haven't had time physically or energy with the bunch
9 of other things I have been trying to do in the case. I
10 just haven't had time to get those done. And this is of less
11 concern to me than some of the other things I have to give
12 my priority to. So that's just where I sit. I mean, I don't
13 like being in that position, but that's just where I have
14 had to sort of make a choice.

15 THE COURT: Well, I doubt if you're going to be
16 ready on that tomorrow, then, since it's going to require
17 you to give me a suggested script.

18 Let me see how long it is, if we can handle it in
19 a manageable fashion.

20 MR. NEGUS: If you want me to tell you, as I said,
21 my first choice on Witherspoon is no Witherspoon. I'm sure
22 I can get you a Witherspoon script.

23 MR. KOCHIS: My script that the -- script, the
24 outline the Court used in Gray contains the three Witherspoon
25 questions and, in addition, four or five others. So he can
26 simply with a black pen fashion what he wants the Witherspoon

1 to be from what the Court did in Gray by knocking four or
2 five questions off.

3 MR. NEGUS: Six or seven.

4 THE COURT: Tomorrow we can get into what, gentlemen?
5 Have you got something specific in mind?

6 MR. NEGUS: I think I can articulate separate juries
7 for the guilt and penalty phase. I think we can do the
8 priors, right? We're going to be able to do the priors
9 tomorrow.

10 MR. KOTTMEIER: What about the similar? The
11 Pennsylvania rape?

12 MR. NEGUS: I just haven't had a chance. I know
13 there's a bunch of recent cases out. I know all the old
14 cases by heart. But I haven't had a chance to read Tassle,*
15 or whatever the heck it is.

16 THE COURT: That's on priors and Prop. 8?

17 MR. KOTTMEIER: No. This is a different --

18 MR. NEGUS: No. This is on Pennsylvania rape. The
19 Prop. 8 stuff I can -- I know that -- I mean, I have done
20 that before, and so I can go through that jazz. I could do
21 what's on your script as -- as your handwritten number two,
22 motion regarding use of prior convictions for impeachment.
23 That I -- that is no problem. And I can do separate juries
24 for guilt and penalty phase as to why I think that is. I
25 can make an offer of proof on that.

26 If you want me to bring in witnesses to substantiate

*(Phonetic spelling)

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1 the offer of proof, then that's going to take a little bit
2 more time. I can make my pitch for sequestered questioning.
3 I'm going to ask you to find that this is one of those
4 special cases. The Press Enterprise says you don't have
5 to let the newspapers in. But I'm not going to do much
6 more than just tell you that's what I'm going to do.

7 THE COURT: No extended coverage, then, you're
8 saying?

9 MR. NEGUS: No extended coverage, no, no. I'm going
10 to ask you to apply Hovey despite Press Enterprise because
11 Press Enterprise says in extraordinary circumstances you
12 can't, and --

13 MR. KOCHIS: And I can represent I will be joining
14 with that in regard to death qualification and publicity.
15 I can't see having a T.V. camera while we question jurors
16 as to what the media has been on.

17 MR. NEGUS: You can't get a --

18 THE COURT: I don't think any of the jury is ever
19 going to be shown before the T.V. camera, even during trial.

20 MR. NEGUS: You can't have extended coverage on --
21 on voir dire. I mean, that's -- the statute says you can't
22 have it. So that's -- that's not the issue. The issue is
23 is it sequestered, that is, in the -- in the Hovey sense,
24 that is, nobody in there, no press at all. Press Enterprise
25 says in extraordinary circumstances you can do what Hovey
26 says you can do.

1 By suggestion is that this is extraordinary
2 circumstances and we should do that.

3 THE COURT: May I -- may I -- well, this case is
4 not Gray. We didn't notice any difference when we went from
5 chambers into open court. We just had attorneys filing
6 papers and stuff.

7 MR. KOCHIS: Judge, I can tell you I already had
8 calls from T.V. stations, and they want to know the day we're
9 going to start jury selection. I've tried to tell them that
10 the presentation of evidence would be after that. They said
11 they understood that, but they would like -- they plan to
12 send a crew there when we start jury selection. So they plan
13 to be there for the roll call, at least. So it's not going
14 to be like Gray.

15 THE COURT: Oh, I know that. I'll have to -- I'll
16 have to look at our rules on extended coverage again. I don't
17 think that they ever show pictures of the jury.

18 MR. NEGUS: They're not allowed in for the -- for
19 the voir dire. But we're now talking about not the television
20 folks but the newspaper people and general public, can they
21 come in. And so I'm asking that everybody be kept out, just
22 like we used to under Hovey, because Press Enterprise says
23 you can't have a blanket rule, but it doesn't say that you --
24 all it says is you can't have a per se rule, okay? And so
25 my argument is not all that different from previous ones if --
26 if any case ever cried out for it, it would be this one.

1 And if Press Enterprise says per se rules are no good, but
2 on balancing you can do it -- and so that's my position. I
3 don't know if that's what --

4 THE COURT: Who complained in Press Enterprise?
5 Was it the media?

6 MR. NEGUS: Press Enterprise.

7 THE COURT: Yes. It's the media that complained,
8 you see. So Court and Counsel can all agree, but they're
9 going to scream to high heaven if we start doing that.

10 MR. KOTTMEIER: What's even worse --

11 MR. NEGUS: On the other hand, you may get a
12 reversal if you don't think of my record.

13 MR. KOTTMEIER: In Press Enterprise, what was even
14 worse was the Court said they would preserve a record and
15 make it available for the media afterward.

16 THE COURT: Seal the record, transcript?

17 MR. KOTTMEIER: Yes, said that's not good enough.
18 Old news is not good news.

19 MR. NEGUS: But they also said -- the problem with --
20 with Press Enterprise, the problem the Supreme Court got a
21 majority on was not keeping the press out but a per se rule
22 keeping the press out. If you look at all the publicity
23 cases that have come down, there was a per se rule that no
24 rape victim, in Massachusetts, you know, you can't have
25 press coverage of a rape thing, and that got thrown out
26 because it was a per se rule. Hovey was -- was read to be a

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1 MR. NEGUS: I think I will be ready on my numbering
2 system B-5 a and b.


3 THE COURT: What is that?

4 MR. NEGUS: Motion re -- you remember in Louie,
5 that I got you to have Mikels hand out a questionnaire
6 to some jurors so I can count out how many Blacks, whites,
7 rich, poor and what have you you had on your panels? So
8 I'm asking to do that in the county.

9 THE COURT: You want a jury room survey then?

10 MR. NEGUS: Yep, and also discovery of the --
11 whatever, I mean an order that the San Diego people send
12 me up whatever their procedures are. I mean I happen to --
13 I happen to know from -- not personally, but my mother's
14 experience --that their procedures are, I think, very
15 deficient as far as getting a fair jury is concerned. 

16 THE COURT: San Diego?

17 MR. NEGUS: Yeah. In the -- in the Norco robbery,
18 which was held in Vista, they had a panel of -- I guess
19 they have a three-month panel or something, I forget
20 exactly how it works, but they have a whole bunch of jurors
21 that are on call, and you get called two or three times,
22 not like our system, and the way they got the jury for
23 the Norco bank robbery was they called up everybody who
24 was currently on their list and asked them can you come in
25 for a long case or not. Some people said yes. Some people
26 said no. My mother just said no, my kids are coming down 

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1 for the holidays, and so that's how she got off it.

2 THE COURT: I met the executive officers also and
3 the jury commissioner down there that used to be in our
4 county, I believe his name is Pierce. I met him. I told
5 him at some point we will give him instructions on how
6 many jurors to have in and when. I had in mind something
7 like the Gray procedure that we did before, where we started
8 off with -- I don't know -- 200 -- no, 60. We had 60 for
9 in the morning, 60 in the afternoon, 60 the next morning,
10 60 the next afternoon, something like that, to where we
11 got them as far as time is concerned, and then we gave
12 them appointments for sequestered voir dire and that sort
13 of thing. I said at some point I'll come in with a script
14 for you telling you how many to have and when. He requested --
15 he says, Judge, it would be very helpful if you could do
16 that a month -- tell me a month in advance, because it
17 takes some -- some effort on our part to call them in, and
18 we'd like as much lead time as you can give us, didn't
19 indicate at all it was going to be anything like a telephone
20 survey, but we can tell them, Mr. Negus. We can make sure
21 that we don't get any standby professionals or anything like
22 that,

23 MR. NEGUS: Well, that's one problem, but -- but I
24 think also just generally in the state of California, you
25 get underrepresentation of Blacks, and so I want the
26 survey plus the other things to try and do my challenge,

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1 because I don't think I am going to get enough Black people
2 on the jury.

3 THE COURT: Well, we want to get all we can; so
4 whatever procedure is most conducive for that, we will
5 try and follow, but I -- so far, I have had nothing but
6 cooperation from them, and they indicated a willingness
7 to do it however we told them, consistent with their
8 abilities, so we can get into that more tomorrow.

9 MR. KOTTMEIER: Do you have any idea as to when
10 you might be ready on Josh Ryen?

11 MR. NEGUS: Whenever -- as I told John, it requires
12 at least -- I got to have my doctor available and have a
13 chance to go over the materials, whenever we get them from
14 Gendler. We have been sending everything over to Gendler
15 as quickly as we've been getting it, and I haven't heard
16 back from him yet. Have you?

17 MR. KOCHIS: No.

18 MR. NEGUS: So that's --

19 MR. KOTTMEIER: All I'm saying is from my point,
20 I'm not ready in the abstract to do Josh Ryen, because I
21 haven't gotten the materials, either.

22 MR. NEGUS: We're in the same boat.

23 MR. KOTTMEIER: So that it's not where we can go,
24 well, let's pick up item one under B, item one under C or
25 item two under C, because those are all Josh Ryen,

26 MR. NEGUS: Right,

1 THE COURT: May I see that a minute?

2 MR. NEGUS: Josh Ryen I can't do.

3 THE COURT: Why? Why can't you do it?

4 MR. NEGUS: Because I haven't got the materials.

5 THE COURT: This is material on the -- on the civil
6 case that you're talking about?

7 MR. NEGUS: Yes. And that's -- whether -- what
8 Josh Ryen's role in the case is is going to depend upon
9 an analysis of that material. I have contracted the
10 psychologist to examine the material and to advise me on
11 it, and I can't get his opinion and decide how I'm going
12 to handle it until I get the material.

13 THE COURT: You can -- how can a psychologist
14 possibly keep out the testimony of an otherwise competent
15 witness?

16 MR. NEGUS: Well, the question, of course, is the
17 competence of the witness.

18 THE COURT: Well, you talk about the trauma and the
19 shock and that sort of thing, but that can be handled in
20 the examination and cross-examination.

21 MR. NEGUS: Judge, I mean I forget what it is, but
22 there's a requirement that the People have that before
23 anybody testifies, they have personal knowledge, and you
24 are also entitled to have a hearing on the competence of
25 the witness, of any witness, before they testify under I
26 think it's 700 or 701 -- I forget exactly which -- of the

1 Evidence Code, and I don't think --

2 THE COURT: It's just that in 18 years, I have
3 never had a competency hearing on an all-American healthy
4 eight-or-nine-year-old boy or anybody close to that age.
5 I have had them for three and four year olds, and I have
6 had them perhaps for -- in older people for competency,
7 but I have just never, ever had one, so it's a rather
8 unusual thing. I don't know, What I've heard so far,
9 it sounds like both of you are making much to do about
10 nothing. That boy's not going to help either one of you.

11 MR. NEGUS: Well, thanks, but --

12 THE COURT: A dumb statement, is it?

13 MR. NEGUS: Well, I don't know, whatever.

14 THE COURT: That's a reaction.

15 MR. NEGUS: That -- that I don't know. I -- I --
16 maybe I read too many Pope issues.

17 MR. KOCHIS: We're probably spinning our wheels,
18 because we're not going to resolve the issue one way or the
19 other.

20 MR. NEGUS: We can't do it till we -- we can't --
21 Mr. Kottmeier and myself and John, I'm sure, would not feel
22 that it would be possible for us professionally to make a
23 decision as to what we are going to do until we know the
24 facts, and we haven't got the facts yet. It's hard to
25 really argue it,

26 MR. KOTTMEIER: I think I can safely say for us that

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1 we will put Josh on. We will call him as a witness,
2 you know, The fact that he may have been traumatized,
3 from everything I've seen, there's no indication of the
4 kind of problem that you allude to.

5 MR. NEGUS: I have seen stuff that tells me otherwise,
6 so --

7 MR. KOCHIS: What time should we appear tomorrow
8 to continue with the motions, 9:30?

9 THE COURT: Yes.

10 MR. NEGUS: The other series of motions which is
11 going to be hard to -- to get going on right away, other
12 than those which involve serology and Josh, is those which
13 involve Mr. Walz, because I have not yet talked to
14 Judge Kayashima. I'm going to talk to him first thing
15 tomorrow morning, and I am going to need a different person
16 to investigate Mr. Walz, because I feel it would be a waste
17 of my time and Mr. Forbush's time to go into something which
18 is so -- which is of so little probative force.

19 On the other hand, I am not about to get Pope for
20 not investigating thoroughly Mr. Walz.

21 THE COURT: You're sure concerned with your image,
22 aren't you?

23 MR. NEGUS: Judge --

24 THE COURT: You must have mentioned it a dozen times
25 that you don't want to be criticized, in effect, by the
26 Appellate Court for failing to do everything that you should

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1 have.

2 MR. NEGUS: Well, Judge, if you'd look at the history
3 of death penalty litigation in this county, you've gotten
4 a lot of -- lot of lawyers who have been overturned for
5 incompetency on appeal, and I --

6 THE COURT: I don't know of those cases, You say
7 that, and I have heard you say it before, and it may be,
8 Is that your experience?

9 MR. KOTTMEIER: My experience has been that when
10 everything else fails, that is, when it appears that
11 everybody did a good job, they then pick on the defense
12 attorney to find an excuse, really.

13 The Robertson case had an unusual wrinkle to it;
14 and although they mentioned incompetent counsel, it was in
15 conjunction with a psychiatric issue that was poorly
16 handled by the court-appointed psychiatrist, not the defense
17 attorney. The defense attorney thought he'd gotten a full
18 report, didn't realize that the court-appointed psychiatrist
19 didn't interview his client at all.

20 MR. NEGUS: There was a -- well, my opinion is that
21 there is lots of other problems with that, and I think that
22 this county has a problem with competent counsel on death
23 penalties.

24 THE COURT: You're not worried about the county's
25 problem.

26 MR. NEGUS: I'm worried about my problem. I'm not

1 going to -- I'm not going to do anything -- I'm going to
2 do what I consider to be a competent job. If you order
3 me not to do it, then it's your problem, and you go before
4 the State Bar or whatever, not me.

5 THE COURT: That may happen, too.

6 MR. NEGUS: Whatever, but I am not going to do a
7 slipshod job of investigation.

8 THE COURT: Okay. Let's just go ahead and go our
9 separate ways and do our homework and be better prepared
10 tomorrow. All right. It's now 3:17. See you tomorrow
11 morning, 9:30.

12 (Whereupon, at 3:17 p.m. an adjournment
13 was taken in this matter until July 25,
14 1984.)

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