## SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

CR 72787

VS.

KEVIN COOPER,

Supreme Court
No. CRIM 24

Defendant-Appellant.

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

**APPEARANCES:** 

For Plaintiff-Respondent:

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

San Diego, California 92101

For Defendant-Appellant:

IN PROPRIA PERSONA

61

VOLUME volumes.
Pages 6310 to 6332, incl.

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 4 5	THE PEOPLE OF THE STATE ) OF CALIFORNIA, ) Plaintiff, )
6	vs. ) NO. OCR-9319
7	KEVIN COOPER, ) VOLUME 59
8	Defendant.) Pgs. 6310 thru 6332, incl.
9	
10	REPORTERS' DAILY TRANSCRIPT
11	BEFORE HONORABLE RICHARD C. GARNER, JUDGE
12	DEPARTMENT 3 - ONTARIO, CALIFORNIA
13	Tuesday, August 7, 1984
14	APPEARANCES:
15	For the People: DENNIS KOTTMEIER District Attorney
16	DENNIS KOTTMEIER -
17	District Attorney By: JOHN P. KOCHIS
18	Deputy District Attorney
19	For the Defendant: DAVID MCKENNA Public Defender
20	By: DAVID NEGUS Deputy Public Defender
21	
22	
23	Reported by: JILL D. McKIMMEY
24	Official Reporter C.S.R. No. 2314
25	and BRIAN RATEKIN
26	Official Reporter C.S.R. No. 3715

ONTARIO, CALIFORNIA; TUESDAY, AUGUST 7, 1984; 1:33 P.M.

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

APPEARANCES:

The Defendant with his Counsel, DAVID

NEGUS, Deputy Public Defender of San

Bernardino County; DENNIS KOTTMEIER,

District Attorney of San Bernardino

County, JOHN P. KOCHIS, Deputy

District Attorney of San Bernardino

County, representing the People of

the State of California.

(Jill D. McKimmey, C.S.R., Official Reporter, C-2314,

Brian Ratekin, C.S.R., Official Reporter, C-3715)

THE COURT: Good afternoon, Counsel.

As I understand it, Mr. Negus disputes the competency and the probative value of two prosecution witnesses, and that we will have a hearing under Evidence Code Section 402 on the admissibility of the testimony of Diane Williams and James Taylor, and that this is pursuant to a written stipulation of counsel with an addition to the stipulation consisting of two pages each, plus certain reports and other documents entitled Exhibit 1 re James Taylor and Exhibit 1 re Diane Williams.

Have I correctly stated at least the initial issue?

MR. NEGUS: Yes. Well, the three grounds for my

4

6 7

5

8

10 11

12 13

14

15 16

17 18

19

20 21

22

23 24

25

26

objection are: One, Evidence Code Section 352; two, that there is the likelihood of perjured testimony if they would testify; and, three, lack of personal knowledge.

THE COURT: Okay. Just a moment. All right. I didn't realize the magnitude of the reading materials, but I have gone through it all and read it all.

Do you wish to amplify, Mr. Negus?

MR. NEGUS: I think that basically what I have to say is found in the -- in the written material.

With respect to just Mr. Taylor, I would give particular emphasis to the interview that he did with Investigators Hernandez and Murray on June the 10th as to -as to being circumstantial evidence that all his testimony is perjured. He testified at the preliminary hearing that the only shoes that he saw in Mr. Cooper's possession were some shower shoes and some Pro-Keds that he -- that he gave Mr. Cooper. His testimony at his -- in the interview on June 10th, which was not provided to the defense until after Mr. Taylor testified, and, as you can see in Mr. Murray's testimony, he conveniently -- Mr. Murray conveniently forgot about it for a while, there is indication that is quite to the contrary of that. You can even see in that particular -in that particular document that at one point in time when they're trying to connect Mr. Cooper up with some tobacco, that they ask Mr. -- Mr. Taylor if -- if Mr. Cooper smokes, and he says -- the first answer is no, and then they prompt

him, and he says, oh, yes, he did, yes, he did, he used to smoke that boogie-woogie, so the -- the import of Mr. Taylor's testimony is that this is a man who is facing his own charges in the -- in the prison at the time that he gives the -- he gives the information. He has a motive to lie. He is brought forward by -- at the same time as Mr. Alfred Hill, and he consults with Alfred Hill, according to the testimony of Mr. Hill, although Mr. Taylor himself denies that.

Mr. Hill is another one of the people from the -from the prison that concocts something out of whole cloth.

He concocts a prior prison -- he concocts a prior prison
term of Mr. Cooper when, of course, Mr. Cooper has never been
to prison in California before in his -- in his life; so I
would submit that the -- that the evidence is that Mr. Taylor
doesn't know what he's talking about. He's not talking of
personal knowledge. He's making it up. It's likely to be
perjured. The -- the evidence of the prison's own records
are that Mr. Cooper was issued tennis shoes on May 3, and
that Mr. Taylor really has nothing to add to the -- to these
proceedings except several days worth of time trying to -which will be involved in -- in bringing out the many
inconsistencies in -- in proving that he's lying.

As to Diane Williams, I would submit that the basic thing that she can give any information on that -- connecting the phone calls that she received with Kevin Cooper, that is, the phone calls made from the Lease house and from Tijuana

with Kevin Cooper are not facts that are likely to be in dispute in this particular proceeding; that is to say that I don't think there's going to be any denial that Mr. Cooper was the person that made the phone calls from the Lease house and that he was the person that made the phone call from Tijuana; therefore, it's clear from her testimony that she does -- that she doesn't know anything other than that. She doesn't know what she talked about. She doesn't know how long the calls were. She, too, has -- there's strong evidence that she, too, has been pressured by the police. She first talked to them. Then she didn't talk to them. Then she talked to them again. Who knows whether she is going to -- you know, what she's going to say if she's brought to -- brought to court this time, and if -- if in fact she can be brought to court at all, she -- when she was on the witness stand at the preliminary hearing, you've seen from the -- from the -- from the testimony and from -- from watching the television programs, that she said very prejudicial things against Mr. Cooper, not in response to any -- to any particular question. She's not a controllable witness. She makes up things as she goes along, and the evidence is quite clear that she made up -- she's made up charges against Mr. Cooper in -- in the past. The December 27, 1982 charges were when Mr. -- when Mr. Cooper was in California. She's -- they were just made up out of whole cloth. You can't trust her not to make things up out of

26

1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

whole cloth, and she's just -- she's just a -- she says whatever -- whatever is convenient for her.

The only probative value that she has is in connecting Mr. Cooper to the phone calls. You couldn't believe a word she said about any content of those conversations. She doesn't have any memory of it, and I would submit that she likewise is -- for all three reasons, that her testimony should be excluded.

THE COURT: Thank you.

Response?

1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

MR. KOTTMEIER: Your Honor, in regard to Mr. Taylor, I think the cases that we have heretofore supplied the Court illustrate that the matters that Mr. Negus talks about are matters that do not prevent his testimony, but are only matters that would relate to his credibility and possible impeachment in front of the jury. Mr. Taylor offers us valuable testimony in a very critical area of this particular case, and that's the specificity of the type of shoes and size that were given to Mr. Cooper pursuant to not only a prescription, but Mr. Cooper's own request. There's nothing that Mr. Negus has stated that illustrates that there is a lack of personal knowledge on Mr. Taylor's The only thing that Mr. Negus can offer in regard to Mr. Taylor is the content of some of the recollection of other individuals, whether by report or by areas that Mr. Negus would like to impute, based upon the types of

la

questions he asked Mr. Taylor which did not give verification to the idea that Mr. Negus is trying to get across.

3

a -- an area that is not even in the category, for example, 5 with Diane Williams; that Mr. Taylor has been tested on

6

cross-examination, as the Court has seen during the preliminary

I would submit that in regard to Mr. Taylor, this is

7

hearing. You have virtually before you, with the exception of the recollection of the Hernandez-Murray interview, which

8

you've seen, the full gamut of cross-examination for

9 10

Mr. Taylor, and I would submit that Mr. Taylor's credibility

11

as to the details of the shoes is a matter for the jury to

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

decide. In regard to Diane Williams, I would offer that there are some other areas in regard to the material that she would testify to that are important, and those areas potentially I would agree could be stipulated to, but the question becomes one of whether or not the jury should be deprived the opportunity of seeing the way in which Diana Williams testifies, as well as the content of her testimony, and here it is important, because Diana Williams is one of those individuals that the defendant turns to to try and get assistance, and it also illustrates, through her demeanor and the way in which she testifies, the frustration that Mr. Cooper may have felt when he could not get her cooperation, and it also goes to the desperateness of Mr. Cooper when he has to rely on someone like a Diane Williams to potentially get him money.

The other factors that are important are the fact of the past knowledge of the defendant by Diane Williams, that is, the fact that she had known him for some period of time, they had lived together, she had talked to him on the phone, that she had been a former girlfriend of Kevin Cooper, specificity of some of the information contained in the phone conversations, particularly on June 3rd and on June 4th.

June 4th doesn't have much except for the fact that she states, Diane Williams, that she could not get the money that was requested in the earlier phone call.

I would submit to the Court that one of the difficulties in a stipulation is that, particularly at this point in time, that the People contend is a point just before the killings occurred by the defendant; the state of mind of the defendant is very important. The ability of a witness to impart through direct and cross examination the tone of voice, the thought patterns or the material are areas that a witness potentially could offer to a jury for their evaluation. But a stipulation would be absolutely silent in those particular areas because we couldn't draft one that would be acceptable to both sides.

MR. NEGUS: Responding only to the -- to the Diane Williams, it appears that most of the things that Mr. -- Mr. Kottmeier wants to get out of Diane Williams are either irrelevant or would be inadmissible for some other reason.

If he's -- it appears to me he's trying to -- is trying to,

ار مارکان مارکان می مارکان شمان میشود نام

a

as it were, show bad character on the part of Mr. Cooper because he chooses improper friends, to wit, Diane; to impute her lack of stability and -- and lack of trustworthiness to him because he turned to her, he called her up and asked -- asked her for money, or whatever the conversation -- conversation was.

The state of mind of Mr. Cooper just prior to the crime is irrelevant because, again, the only issue in this particular case is identity. The state of mind of Mr. Cooper does not prove anything as to whether or not he did the crime. You cannot rely on anything that Diane Williams said about that particular conversation to prove identity, because it's clear from her testimony at the Preliminary Hearing that she testified that the second conversation was very, very short, that she has no memory about it. So anything that she said would just be -- would be bound to be made up.

I don't see how her past knowledge of Mr. Cooper has any way been shown to be relevant. So, basically, all Mr. Kottmeier is proposing is to use her through association to prejudice Mr. Cooper. She doesn't have any personal knowledge as to any fact in issue except that she got a phone call from Mr. -- Mr. Cooper.

The process of impeaching her not only involves a great deal of expenditure of time but involves a great deal of expenditure of needless -- needless expenditure of money in bringing in all the people who can provide impeaching

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

evidence on her from Pennsylvania. And it just seems to me to be a total waste of time for nothing probative.

MR. KOTTMEIER: Your Honor, there's one issue that I overlooked in my first discussion of Diane Williams, and that is that there is an additional charge of escape. And in regard to escape, particularly in the phone call of June 3rd, the defendant stated that he got out of prison because California had just passed a new law. And I think that that particular untruthfulness is relevant as far as the state of mind in relation to the escape charge and is an issue that would elevate the guilt as far as Mr. Cooper is concerned as far as the escape from state prison.

> THE COURT: I fail to see that.

The -- you know, the escape and the MR. NEGUS: murders are really not properly joined. I mean, they're not the same class of crime. They're not committed during the same transaction.

It's quite possible that Mr. Kottmeier is going to attempt to use the escape charges as a vehicle to get in other -- other evidence which he couldn't get any other way. we may end up, as a tactical matter, pleading guilty to the escape charge before we actually start picking the jury. still contemplating that as a -- as a -- as a strategy. There's no real doubt or issue as to the escape charges.

THE COURT: Let's take Diane Williams first. couple of comments.

I think, Mr. Negus, that she is apparently a fairly complex person, a complex circumstantial situation with the defendant. She blows hot and cold with authorities. There's a lot of motivational aspects involving the relationship between the two of them. But that she's not without some credibility at all, though, it -- her testimony will be fraught with danger. There's a lot of opportunity for bias, prejudice to come out with that particular witness. We can get into areas of homosexuality, sexual misconduct, other crimes, all of which may -- would create prejudice and probably be outweighed under the standards of Evidence Code 352.

I think, Mr. Kottmeier, that you're going to have

I think, Mr. Kottmeier, that you're going to have to come up with a rather specific offer of proof as to just what facts you expect Diane Williams to testify to. The Defense will then be able to counter with whatever stipulations they wish to enter into or admissions they wish to make, and then we'll have to decide it. But you're leaving a lot of room for us to get into areas with her that — that would require a breakdown in the trial continuity at the time it's brought up, chambers discussion, things of that nature.

Can you do that? Can you --

MR. KOTTMEIER: Yes, Your Honor.

THE COURT: -- come up with specific items you want to bring up with her?

Overall, as far as I can tell, she's a competent

witness, she can be impeached. But most witnesses can. I can't see any -- there will be some areas perhaps where she wouldn't have personal knowledge. But the other standards are met. Okay.

With regards to Taylor, his testimony will undoubtedly show some inconsistencies and his credibility will be arguable. But, basically, he seems to have volunteered and come forward himself. What his motivations are will be up to the trier of fact, and how much weight to give to his testimony I don't know. But I can't, as a general matter, keep his testimony out.

I can't see, Mr. Negus, some sort of a conspiracy between an inmate Taylor and the prison authorities and the investigative authorities to somehow fabricate evidence against Mr. Cooper. I just don't see any of that.

Anything further on these issues? They can both testify. But the extent of their testimony I can't tell, particularly of Diane Williams.

Now, I guess I'll simply give these to the clerk, the stipulation, the two exhibits, ones --

MR. NEGUS: Perhaps we could have all of that collectively marked as the Exhibit M next in order.

THE COURT: It's okay with me, as well as your -the Points and Authorities filed by the District Attorney
all can be kept together and marked as one exhibit. Is "M"
satisfactory?

87 CT2 21.

MR. KOTTMEIER: Yes, Your Honor.

MR. NEGUS: We have two --

THE COURT: We're going into Josh Ryen?

MR. NEGUS: No. We're not ready for that yet.

THE COURT: How are you doing? Are you getting your information?

MR. NEGUS: We have all the information. I am in the process of gathering it all together and packaging it, and I hope to have it to a psychologist in time to have it back and be ready to go on the 4th of September, like we previously planned.

THE COURT: When was that?

MR. NEGUS: The 4th of September.

MR. KOTTMEIER: I think, Your Honor, what Mr. Negus is discussing is whether Josh Ryen shall testify as opposed to the issue that we had submitted the Points and Authorities to the Court on at the beginning of this week, that is, whether the Prosecution can talk to Josh Ryen.

MR. NEGUS: I see those two issues as interrelated.

And I would submit that it's -- that unless there is some compelling urgency that the Prosecutor has to talk to Josh, who I don't believe is even in the state, prior to the 4th of September, I request that we do all of those issues at the same time.

MR. KOTTMEIER: My concern was if there was a chance, which I hope to avoid, of Josh testifying on the 4th or the

€

.

call
here's
ar as
mewhere
g that
mples
issues
e 4th

5th, I would not want to be put in a situation of having
Josh brought in and have to testify cold without at least
some minimal preparation.

MR. NEGUS: I -- I can appreciate that. I don't intend to call him.

MR. KOTTMEIER: I don't anticipate that we'll call him, Your Honor. So if that's going to be the case, there's no reason that I need any guidance from the Court as far as my Points and Authorities until September.

THE COURT: I know I've got it in my notes somewhere as far as the time table is concerned.

MR. NEGUS: Our time table was that we would hopefully finish the <a href="Hitch">Hitch</a> motion on Thursday, assuming that the UU series of blood is --

THE COURT: That will be --

MR. NEGUS: -- finished.

THE COURT: -- the 9th?

MR. NEGUS: Or at least the representative samples of it, yes. We would finish with all the other blood issues on the 13th. We would do the Josh Ryen issues from the 4th through the 6th of September. We would begin --

(No omissions.)

ŧ

IU

THE COURT: Just a second. On the 13th then you're going to have from the 14th until the 4th of September off?

MR. NEGUS: Right, three weeks.

THE COURT: Well, from the -- from the 4th of September to the 11th of September?

MR. NEGUS: Well, then -- no. We would not be in court from the 14th through the 4th of September. September 4 we would come back in Ontario, three more days of Josh Ryen. We would be able to finish Josh Ryen certainly within those three days. On the 11th --

THE COURT: September 4, 5 and 6?

MR. NEGUS: Yes. That was what we had planned on.

THE COURT: On Josh Ryen?

MR. NEGUS: Yes.

THE COURT: How can we possibly?

MR. NEGUS: It may not take that long, but we would come back on the 4th and finish him in that week. There may be testimony from -- from a defense witness on that issue. That's -- that was what the schedule was in the -- that we worked out.

THE COURT: I'm not disputing it. I haven't gone back to that.

MR. NEGUS: So, anyway, then the 4th, 5th and 6th we would -- if it takes all those three days, I'm not convinced it will, but, you know, we'll make -- we would make sure we'd finish the Josh Ryen things the 4th, 5th and

6th.

Then on the 11th of September in San Diego, we would do a change of venue motion, and then, if that's denied, on the 12th begin the three days of taking excuses, as I call it. On the 18th and 19th we would do the jury challenge; and on the 20th -- and then you're going to be gone the 24th and the 25th. Either on the 20th or the 26th then, we would commence the Witherspooning.

THE COURT: And you're both telling me now that you don't expect to have to call Josh Ryen in September?

MR. NEGUS: I don't.

MR. KOTTMEIER: That's correct, Your Honor.

THE COURT: But you're not precluding the possibility of other testimony.

MR. NEGUS: Other testimony from people not -- who are not Josh Ryen, yes. In fact, I'm planning on that. I mean that's -- I would assume that would be the case.

THE COURT: You know, I haven't received anything from San Diego, and I -- unless there's something in my basket that I haven't seen today -- I did write them just last week to the executive officer jury commissioner and asked him to send me the information that you requested, and I think I may have to telephone him, if I get into that, today or tomorrow -- or today, and I still haven't received a -- maybe I'll wait until Thursday and telephone to find out what happened, and then beyond that, I'm -- I wanted to do

that and get that information before I gave them any further word on our timetable, and yet I -- if we're going to require jurors there on the 12th of September, I haven't got too much longer, because I'd like to give them the 30 days on that. Okay? Anything else?

MR. NEGUS: There was two other motions that were pending, one of which was a 1385 motion to strike the special circumstances because it's essentially based on the offer of proof on the Stanford study that the death penalty is disproportionately applied to people who kill white people as opposed to people who kill Black people.

THE COURT: Well, I read everything you gave me with reference to the Stanford study, which consisted of, I believe, both Daily Journal as well as at least two lay papers' description of it.

MR. NEGUS: As I say, Mr. Gross -- Professor Gross is still, to my knowledge, on vacation, and so I have not yet had a chance to get anything more specific.

THE COURT: Do you require anything more specific?

Are you ready to submit that?

MR. NEGUS: I am willing to let what I have previously articulated stand as my offer of proof.

THE COURT: Submit it?

MR. KOCHIS: Yes, Your Honor.

THE COURT: I am going to rule against the defense on that.

.

MR. NEGUS: The other one that we had pending, and I don't know if you're prepared to rule on it today or not, which I don't believe has been ruled on yet, is the motion to pay the jurors a living wage, as I call it.

THE COURT: Oh, didn't --

MR. NEGUS: I think you decided to study that at one point in time, and I don't think you ever actually ruled on it, to my knowledge.

THE COURT: Didn't I solicit some sort of authority on that?

MR. NEGUS: Well, I gave you -- I gave you -- I mean the stuff I referred you to was that -- was a couple different things. One, the -- the testimony of, I believe, primarily Dr. Meisenhelder in the Bonillas trial.

THE COURT: I read that.

MR. NEGUS: The Van Dyck -- there was portions of the Van Dyck book that dealt with that, and then just the general proposition that you have under both the jury challenge cases and under <u>Corvatsky vs. Superior Court</u>, you have the authority -- the power to order whatever is necessary to ensure due process of law.

THE COURT: In general terms, but not specifically a blank check to pay jurors whatever I think is a fair compensation for serving on the jury. There's no case along that line.

MR. NEGUS: The point of this is that it's to ensure

3a

those jurors who all the studies show are always underrepresented on juries, those people who are in the poverty
level, under -- under \$15,000, that they will have an
opportunity to serve on the juries, because they are always
underrepresented, according to the studies.

THE COURT: I understand your point. I understand the point that the sociologists and the study people are making as far as the amount of money that they get compensated for. The \$5 plus mileage hits on the poorer people more than it does the more affluent members, on retired perhaps more than it hits on the working people; and recognizing all of that, and accepting all of that, I still have no precedent casewise for taking it upon myself to increase the compensation for it. I think rather that the serving upon a jury is still considered to be, to a large extent, a duty of people, and that I'm not going to be able to, either, one, keep all those poor people on, and, two, pay them a reasonable amount of money, which would probably be about \$50 a day, by your standard and by a fair compensation for what they're losing otherwise.

I will deny your motion.

MR. NEGUS: The last was Mr. Kochis was going to decide whether or not he intended to present any alleged statements by Mr. Cooper to any law enforcement people.

MR. KOCHIS: At this point in time, my answer is still no. I don't anticipate to present to the jury anything

3

5

6

7

8 9

10

11

12

13

14 15

16

17

18 19

20

21

22 23

24

25

26

Mr. Cooper said during his apprehension in Santa Barbara.

MR. NEGUS: Okay. Don't need a motion then -- don't need a hearing.

THE COURT: You got a copy, did you not, Mr. Negus, of Mr. Kottmeier's points and authorities in opposition to the limitations on contact with Josh Ryen?

MR. NEGUS: Yes.

THE COURT: I haven't thoroughly researched that, but did you find anything on that or have you been prepared to respond to that at all?

MR. NEGUS: Well, as I said, if -- my -- my druthers would be to -- to put that over until we get --

THE COURT: Okay. We can do that, but I just want to preliminarily indicate, Mr. Kottmeier, I think if we continue researching, that we can analogize with the Court's authority in lineup situations, that the Court in order to ensure due process and fair trial and -- can order one of your witnesses outside of court to attend and view a lineup of suspects; that we have the power under the inherent power of the Court to protect witnesses; that it would be the duty of the Court to reasonably protect witnesses while they're engaged in testifying in court, and even when they're not in court. As long as the case is properly before the Court, the Court has inherent powers to control judicial proceedings to ensure an orderly administration of justice, and to see that all persons indulge in no act which obstructs the

\_\_\_

administration of justice.

This situation with this witness is somewhat more unique than — than I can ever recall, not only because of the traumatizing or perhaps emotionally traumatizing, at least, experience, as well as physical, that he had, but also because of his age; and to have a police officer who's assigned over a sustained period of time to ingratiate himself or establish rapport, if you will, meaning about the same thing, to have influence over that particular witness, and then to give you unfettered discretion to continue to contact in any way you wish, once the case is before the Court and once the issue is known, seems to me to be ridiculous. I can't see the separations of power doctrine interfering with the Court's ability, as well as obligation, to intervene in that case.

(No omissions.)

THE COURT: Just -- just think about that, that those are the thoughts that I had. With a little bit of research I could give you some authority for some of the things that I have said. But those are the things that --

MR. KOTTMEIER: I think I can distinguish --

that have crossed my mind. So, tentatively, I think that you're -- you're battling uphill in that one unless you can

find something else.

MR. NEGUS: Just -- just for the -- just for the Prosecutor's information, the -- my -- the argument that I was going to make if we had to make it today was essentially based on one of the cases that he cites in his brief,

Rosato vs. Superior Court, and the case that's cited in that,

Younger vs. Superior Court, which I think is essentially what you have just said. And I haven't had a chance to go and look at other jurisdictions to find other cases where they might have applied the same principles. But those were the two main cases that I was going to hang my hat on that I know of at the present time.

THE COURT: Okay.

MR. KOTTMEIER: I have already considered the position the Court has expressed, but I distinguish between an investigative procedure such as a lineup, wherein in effect there is a unique confrontation, unique issue that is more easily preserved as far as the questioning and answers of the witness by having a Defense representative present, than go

through a process and try and reconstruct on cross examination. I think there's an extreme distinction between investigative procedure, such as lineups, and a case that involves the ordinary preparation of a witness to testify and tell the truth.

And this, I would submit, is that unique a case.

We deal all the time with single eyewitnesses who are prepared for court to testify by conversations with the District Attorney. And I would submit that I have never seen a case that says that the Defense is entitled to have sit in the District Attorney's Office, during those preliminary conversations, a Defense representative.

THE COURT: Now, you had your preliminary conversation way back when. You've had one after another over days and weeks of preliminary work with them. The young man is now before the Court, basically.

There may be a meeting point in some way to where we could simply turn a -- a T.V. monitor on and conceivably let you do your work and then have that reviewed by the Defense without another Defense investigator being present if you're afraid that -- that Mr. Forbush might scare this young man. Something like that might be able to accomplish the same thing.

We're going to have Mr. Wraxall manana?
MR. NEGUS: Thursday.

THE COURT: Pardon? Thursday, excuse me.

```
MR. NEGUS: You're -- I'm going to the doctor; you're going elsewhere tomorrow.
```

THE COURT: Yes. You're being given a very easy week of it, aren't you? I think you ought to each volunteer to have some -- some other case from your office to fill in.

MR. NEGUS: I don't think they're going to.

THE COURT: You're going to forget how to try a case, both of you, all of us.

All right. We'll see you Thursday. Thank you.
(Whereupon the proceedings were concluded at 3:08 p.m.)