

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

9 Mr. Hill is another one of the people from the --
10 from the prison that concocts something out of whole cloth.
11 He concocts a prior prison -- he concocts a prior prison
12 term of Mr. Cooper when, of course, Mr. Cooper has never been
13 to prison in California before in his -- in his life; so I
14 would submit that the -- that the evidence is that Mr. Taylor
15 doesn't know what he's talking about. He's not talking of
16 personal knowledge. He's making it up. It's likely to be
17 perjured. The -- the evidence of the prison's own records
18 are that Mr. Cooper was issued tennis shoes on May 3, and
19 that Mr. Taylor really has nothing to add to the -- to these
20 proceedings except several days worth of time trying to --
21 which will be involved in -- in bringing out the many
22 inconsistencies in -- in proving that he's lying.

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

1 with Kevin Cooper are not facts that are likely to be in
2 dispute in this particular proceeding; that is to say that
3 I don't think there's going to be any denial that Mr. Cooper
4 was the person that made the phone calls from the Lease
5 house and that he was the person that made the phone call
6 from Tijuana; therefore, it's clear from her testimony that
7 she does -- that she doesn't know anything other than that.
8 She doesn't know what she talked about. She doesn't know
9 how long the calls were. She, too, has -- there's strong
10 evidence that she, too, has been pressured by the police.
11 She first talked to them. Then she didn't talk to them.
12 Then she talked to them again. Who knows whether she is
13 going to -- you know, what she's going to say if she's
14 brought to -- brought to court this time, and if -- if in
15 fact she can be brought to court at all, she -- when she was
16 on the witness stand at the preliminary hearing, you've seen
17 from the -- from the -- from the testimony and from -- from
18 watching the television programs, that she said very
19 prejudicial things against Mr. Cooper, not in response to
20 any -- to any particular question. She's not a controllable
21 witness. She makes up things as she goes along, and the
22 evidence is quite clear that she made up -- she's made up
23 charges against Mr. Cooper in -- in the past. The December
24 27, 1982 charges were when Mr. -- when Mr. Cooper was in
25 California. She's -- they were just made up out of whole
26 cloth. You can't trust her not to make things up out of

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

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

9 THE COURT: Thank you.

10 Response?

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

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1 The other factors that are important are the fact
2 of the past knowledge of the defendant by Diane Williams,
3 that is, the fact that she had known him for some period of
4 time, they had lived together, she had talked to him on the
5 phone, that she had been a former girlfriend of Kevin Cooper,
6 specificity of some of the information contained in the phone
7 conversations, particularly on June 3rd and on June 4th.
8 June 4th doesn't have much except for the fact that she states,
9 Diane Williams, that she could not get the money that was
10 requested in the earlier phone call.

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

22 MR. NEGUS: Responding only to the -- to the Diane
23 Williams, it appears that most of the things that Mr. -- Mr.
24 Kottmeier wants to get out of Diane Williams are either
25 irrelevant or would be inadmissible for some other reason.
26 If he's -- it appears to me he's trying to -- is trying to,

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

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

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

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

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1 I think, Mr. Negus, that she is apparently a fairly
2 complex person, a complex circumstantial situation with the
3 defendant. She blows hot and cold with authorities. There's
4 a lot of motivational aspects involving the relationship
5 between the two of them. But that she's not without some
6 credibility at all, though, it -- her testimony will be
7 fraught with danger. There's a lot of opportunity for bias,
8 prejudice to come out with that particular witness. We can
9 get into areas of homosexuality, sexual misconduct, other
10 crimes, all of which may -- would create prejudice and
11 probably be outweighed under the standards of Evidence Code
12 352.

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

22 Can you do that? Can you --

23 MR. KOTTMEIER: Yes, Your Honor.

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

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

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1 MR. KOTTMEIER: Yes, Your Honor.

2 MR. NEGUS: We have two --

3 THE COURT: We're going into Josh Ryen?

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

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

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

12 THE COURT: When was that?

13 MR. NEGUS: The 4th of September.

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

19 MR. NEGUS: I see those two issues as interrelated.
20 And I would submit that it's -- that unless there is some
21 compelling urgency that the Prosecutor has to talk to Josh,
22 who I don't believe is even in the state, prior to the 4th
23 of September, I request that we do all of those issues at the
24 same time.

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

1 5th, I would not want to be put in a situation of having
2 Josh brought in and have to testify cold without at least
3 some minimal preparation.

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

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

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

12 MR. NEGUS: Our time table was that we would
13 hopefully finish the Hitch motion on Thursday, assuming that
14 the UU series of blood is --

15 THE COURT: That will be --

16 MR. NEGUS: -- finished.

17 THE COURT: -- the 9th?

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

22 (No omissions.)
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1 THE COURT: Just a second. On the 13th then you're
2 going to have from the 14th until the 4th of September off?

3 MR. NEGUS: Right, three weeks.

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

6 MR. NEGUS: Well, then -- no. We would not be in
7 court from the 14th through the 4th of September. September
8 4 we would come back in Ontario, three more days of Josh
9 Ryen. We would be able to finish Josh Ryen certainly within
10 those three days. On the 11th --

11 THE COURT: September 4, 5 and 6?

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

13 THE COURT: On Josh Ryen?

14 MR. NEGUS: Yes.

15 THE COURT: How can we possibly?

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

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

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

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

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

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

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

19 THE COURT: Do you require anything more specific?
20 Are you ready to submit that?

21 MR. NEGUS: I am willing to let what I have pre-
22 viously articulated stand as my offer of proof.

23 THE COURT: Submit it?

24 MR. KOCHIS: Yes, Your Honor.

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

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

5 THE COURT: Oh, didn't --

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

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

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

15 THE COURT: I read that.

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

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

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

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

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

21 I will deny your motion.

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

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

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1 administration of justice.

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

16 (No omissions.)

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1 MR. KOTTMEIER: I think I can distinguish --

2 THE COURT: Just -- just think about that, that
3 those are the thoughts that I had. With a little bit of
4 research I could give you some authority for some of the
5 things that I have said. But those are the things that --
6 that have crossed my mind. So, tentatively, I think that
7 you're -- you're battling uphill in that one unless you can
8 find something else.

9 MR. NEGUS: Just -- just for the -- just for the
10 Prosecutor's information, the -- my -- the argument that
11 I was going to make if we had to make it today was essentially
12 based on one of the cases that he cites in his brief,
13 Rosato vs. Superior Court, and the case that's cited in that,
14 Younger vs. Superior Court, which I think is essentially what
15 you have just said. And I haven't had a chance to go and
16 look at other jurisdictions to find other cases where they
17 might have applied the same principles. But those were the
18 two main cases that I was going to hang my hat on that I know
19 of at the present time.

20 THE COURT: Okay.

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

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

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

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

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

9 All right. We'll see you Thursday. Thank you.

10 (Whereupon the proceedings were concluded
11 at 3:08 p.m.)

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