

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: James Chalfant

1 Dan L. Longo (SBN 105988)  
Suzanna R. Harman (SBN 300669)  
2 **MURCHISON & CUMMING, LLP**  
801 South Grand Avenue, Ninth Floor  
3 Los Angeles, California 90017-4613  
Telephone: (213) 623-7400  
4 Facsimile: (213) 623-6336  
E-Mail dlongo@murchisonlaw.com  
5 sharman@murchisonlaw.com

6 Attorneys for Petitioner, Samuel A. Perroni

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
10

11 SAMUEL A. PERRONI,

12 Petitioner,

13 vs.

14 ALEX VILLANUEVA, IN HIS OFFICIAL  
CAPACITY AS SHERIFF; THE COUNTY  
15 OF LOS ANGELES SHERIFF'S  
DEPARTMENT; and DOES  
16 1 through 50, Inclusive,

17 Respondents.  
18  
19

CASE NO. 21STCP00108

**COMPLAINT FOR:**

1. VERIFIED PETITION FOR WRIT OF MANDATE;
2. DECLARATORY RELIEF; AND
3. INJUNCTIVE RELIEF

20 COMES NOW, Petitioner, SAMUEL A. PERRONI, who for causes of action against  
21 the Respondents, and each of them, including DOES 1 through 50, Inclusive, complain  
22 and allege as follows:

23 **INTRODUCTION**

24 This is a lawsuit to enforce the right to inspect public records pursuant to Article I, §  
25 3, of the California Constitution and the California Public Records Act (hereinafter the  
26 "CPRA"), Cal. Gov't Code § 6250 et seq. Petitioner, SAMUEL A. PERRONI (hereinafter  
27 "Petitioner" or "Mr. Perroni") a book author and retired federal prosecutor and criminal-  
28 defense attorney, requested in writing records from Respondent, THE COUNTY OF LOS

1 ANGELES SHERIFF'S DEPARTMENT (hereinafter "Respondent Sheriff's Department")  
2 and its sheriff Respondent, ALEX VILLANUEVA (hereinafter "Respondent Villanueva").  
3 Petitioner is writing a book on a matter of significant public interest, the November 1981  
4 death of actress Natalie Wagner, a/k/a Natalie Wood. Petitioner requested records from  
5 Respondents regarding Respondent Sheriff's Department's involvement in the  
6 investigation of Ms. Wood's death. Through his work, Petitioner seeks to inform the public  
7 about the circumstances of Ms. Wood's death. Regrettably, Respondents have met  
8 Petitioner's requests for records with obstruction and delay. Respondents continue without  
9 lawful justification to withhold records that are subject to timely production under the  
10 CPRA. Consequently, Petitioner seeks the Court's intervention and an award of attorneys'  
11 fees and costs.

## 12 **THE PARTIES**

13 1. Petitioner Mr. Perroni is an author and a retired Arkansas trial lawyer.  
14 Among other things, at all times relevant to this complaint and petition, Petitioner has been  
15 engaged in the gathering and researching of public records, including information from  
16 state and local California government agencies and departments, concerning the death of  
17 Ms. Wood.

18 2. Respondent Sheriff's Department is the sheriff's department for Los Angeles  
19 County, California, providing patrol services, courthouse security, housing and  
20 transportation of inmates within the county jail system, and various other services such as  
21 crime laboratories and homicide investigations. Respondent Sheriff's Department  
22 maintains or controls the relevant records at issue in this lawsuit because it conducted a  
23 homicide investigation into the 1981 death of Natalie Wagner a/k/a Natalie Wood.  
24 Respondent Sheriff's Department is the legal custodian of the records at issue in this  
25 lawsuit. Respondent Sheriff's Department maintains its primary place of business at 211  
26 W. Temple Street, Los Angeles, California 90012, is a legal resident of Los Angeles  
27 County, California, and is amenable to service of process in Los Angeles County.

1           3.       Respondent Villanueva is the Los Angeles County Sheriff and he is sued  
2 here in his official capacity only.

3           4.       The true names and/or capacities, whether individual, corporate, associate or  
4 otherwise of the defendants DOES 1 through 50, inclusive, and each of them, are  
5 unknown to Petitioner who therefore sues said respondents by such fictitious names.  
6 Petitioner is informed and believes and thereon alleges that each of these respondents  
7 fictitiously named herein as a DOE is legally responsible, negligent or in some other  
8 actionable manner liable for the events and happenings hereinafter referred to, and  
9 proximately and legally caused the damages to Petitioner as hereinafter alleged. Petitioner  
10 will seek leave of the Court to amend this Complaint to insert the true names and/or  
11 capacities of such fictitiously-named respondents when the same has been ascertained.

12           5.       Petitioner is informed and believes and thereon alleges that at all times  
13 mentioned herein, Respondents, and each of them, including DOES 1 through 50,  
14 inclusive, were the agents, servants, employees, and/or joint venturers of their co-  
15 respondents, and were, as such, acting within the course, scope, and authority of said  
16 agency, employment, and/or venture.

#### 17                                   **JURISDICTION AND VENUE**

18           6.       This Court has jurisdiction under Cal. Gov't Code § 6258 and Cal. Civ. Proc.  
19 Code §§ 1060, 1085.

20           7.       Venue is proper in this Court pursuant to Cal. Gov't Code § 6259 and Cal.  
21 Civ. Proc. Code §§ 393, 394(a).

#### 22                                   **FACTUAL ALLEGATIONS**

23           8.       Respondent Sheriff's Department is an agency of the State of California, and  
24 as such, is governed by the public disclosure requirements of Article I, § 3 of the California  
25 Constitution and the CPRA, Cal. Gov't Code § 6250 et seq.

26           9.       Respondent Villanueva is the Sheriff for Respondent Sheriff's Department.  
27 The agency designated this position as a reasonable authority to receive and respond on  
28 behalf of Respondent Sheriff's Department to requests for public records under the CPRA.

1           10.     The involved parties have litigated before. Petitioner initiated a prior action in  
2 2015 against the Respondent Sheriff's Department and the Medical Examiner's Office  
3 pursuant to the CPRA, seeking various records relating to the death of Ms. Wood. See  
4 Perroni v. Fajardo et al., Superior Court of the State of California for the County of Los  
5 Angeles, Case No. BS 159430. Petitioner – through both orders of this Court and  
6 settlement – prevailed in this action, receiving some records that the defendants in that  
7 case had failed to produce in response to CPRA requests.

8           11.     On October 8, 2020, Petitioner submitted a new written CPRA request to  
9 Respondent Sheriff's Department seeking the disclosure of ten (10) categories of  
10 additional public records. A true and correct copy of the written CPRA request is attached  
11 to this Complaint as **Exhibit A** and incorporated herein. Specifically, the request sought  
12 the disclosure of the following specific categories of public records related to the 1981  
13 death of Natalie Wood Wagner:

- 14           a.     First, copies of all records regarding Vidal Herrera's statement to the Sheriff's  
15 Department that is referenced at endnote 481 of Suzanne Finstad's  
16 republished book, Natalie Wood: The Complete Biography;
- 17           b.     Second, copies of an 8"x11" divider file card for the Sheriff's Department's  
18 file regarding the death of Ms. Wood (identified by Detective Louis Danoff's  
19 August 17, 2020, declaration that was filed in Perroni v. Fajardo et al.,  
20 Superior Court of the State of California for the County of Los Angeles,  
21 Central District; Case No. BS 159430) and any other records showing who  
22 removed, checked out, or otherwise received access to this file;
- 23           c.     Third, copies of Respondent Sheriff's Department's computer program  
24 records regarding the Sheriff Department's file concerning the death of Ms.  
25 Wood, including any records regarding the identity of persons or entities who  
26 have removed, checked out, or otherwise received access to this file from the  
27 library described by Detective Danoff in his August 17, 2020, declaration;

- 1 d. Fourth, copies of all personnel records reflecting discipline, admonition, or  
2 demotion of Detective Danoff for the period November 1, 2000, through  
3 December 31, 2010;
- 4 e. Fifth, copies of all records reflecting communications between Respondent  
5 Sheriff's Department (including but not limited to Deputy Ralph Hernandez  
6 and counsel for Respondent Sheriff Department) and Ms. Finstad for the  
7 period November 10, 2015, through October 8, 2020;
- 8 f. Sixth, copies of all records reflecting communications between Respondent  
9 Sheriff's Department (including but not limited to Detective Danoff) and Ms.  
10 Finstad for the period of November 1, 2000, through November 30, 2000;
- 11 g. Seventh, copies of all records reflecting communications between  
12 Respondent Sheriff's Department (including but not limited to counsel for  
13 Respondent Sheriff Department) and Detective Danoff for the period March  
14 1, 2020, through October 8, 2020;
- 15 h. Eighth, copies of all personnel records reflecting discipline, admonition, or  
16 demotion of Deputy Hernandez for the period January 1, 2016, through  
17 October 8, 2020;
- 18 i. Ninth, copies of Respondent Sheriff's Department's file regarding the death  
19 of Ms. Wood (also known as the "murder book" or "blue book") as it existed in  
20 November 2000 when Ms. Finstad claimed on pages 452 and 458-59 of her  
21 book Natalie Wood: The Complete Biography that she received access to a  
22 box or boxes consisting of the entire murder book for Ms. Wood;
- 23 j. Tenth, a copy of the Marilyn Wayne pink phone message that is referenced  
24 in Ms. Finstad's book.

25 See **Ex. A.** A check in the amount of \$200.00 was enclosed to cover the cost of  
26 production.

27 12. Notwithstanding the provisions of Cal Gov't Code § 6253(c), which requires  
28 an agency response to the request within ten (10) days of receipt, Petitioner did not hear

1 back from Respondent Sheriff's Department until an October 28, 2020, twelve (12) days  
2 after Respondent Sheriff Department's receipt of Petitioner's written CPRA request. On  
3 that date, Petitioner received a response from Albert M. Maldonado, Captain, Risk  
4 Management Bureau of Respondent Sheriff's Department, stating that Respondent  
5 Sheriff's Department time limit for responding to Petitioner's CPRA request "is subject to  
6 an extension of up to fourteen (14) days under the following circumstances as defined in  
7 Government Code § 6253(c)(1): The need to search for, and collect, the requested  
8 records from field facilities or other establishments that are separate from the office  
9 processing the request, and the need to appropriately examine potentially voluminous  
10 amounts of records." A true and correct copy of Respondent Sheriff's Department  
11 response is attached to this Complaint as **Exhibit B** and incorporated herein.

12 13. The additional fourteen (14) days added to Respondent Sheriff's  
13 Department's deadline to respond to Petitioner's CPRA request through its October 28,  
14 2020, exercise of the extension pursuant to Cal. Gov't Code § 6253(c)(1) has since  
15 passed, and Respondent Sheriff's Department failed to respond timely as required by law.

16 14. Petitioner has received no further response from Respondent Sheriff's  
17 Department and there has been no production of documents as requested in Petitioner's  
18 CPRA request.

19 **FIRST CAUSE OF ACTION – WRIT OF MANDATE**

20 **(By Petitioner, SAMUEL A. PERRONI**

21 **Against Respondents, and Each of Them)**

22 15. Petitioner incorporates herein by reference the factual allegations set forth in  
23 paragraphs 1 through 14.

24 16. The California Constitution, Art. I, § 3(b)(1), declares that "[t]he people have  
25 the right of access to information concerning the conduct of the people's business, and,  
26 therefore, the meetings of public bodies and the writings of public officials and agencies  
27 shall be open to public scrutiny."

1           17.     The CPRA provides, Cal. Gov't Code § 6253(a), that "[p]ublic records are  
2 open to inspection at all times during the office hours of the state or local agency and  
3 every person has a right to inspect any public record, except as hereafter provided." The  
4 CPRA further provides that each agency must respond "within 10 days." *Id.* at § 6253(c).  
5 The CPRA further requires that "the head of the agency or their designee" may make  
6 extensions "in unusual circumstances," but only by written notice to the person making the  
7 request, "setting forth the reasons for the extension and the date on which a determination  
8 is expected to be dispatched." *Id.* The CPRA also limits extensions: "[n]o notice shall  
9 specify a date that would result in an extension for more than 14 days." *Id.*

10           18.     Respondents Sheriff's Department and Villanueva violated the California  
11 Constitution and Cal. Gov't Code § 6253 because they unjustifiably: (1) failed to respond to  
12 Petitioner's October 8, 2020, CPRA request within ten (10) days of its receipt of the  
13 request; (2) when it did respond by exercising the fourteen (14) day-extension of its  
14 response deadline (which had already passed), failed to set forth in its untimely response  
15 the date on which a determination was expected to be dispatched; and (3) failed to  
16 respond to the CPRA request within the fourteen (14) day-extended-response deadline.

17           19.     Respondents Sheriff's Department's and Villanueva's violation of Cal. Gov't  
18 Code § 6253 and the California Constitution through their unjustifiable failure to provide a  
19 timely response to Petitioner's written CPRA request – even after their untimely exercise of  
20 the fourteen (14) day-response deadline – constitute a waiver of Respondents' ability to  
21 claim exemptions for any of the ten requests for records presented to it by Petitioner in its  
22 written October 8, 2020, CPRA request.

23           20.     Further, in addition to the requirements of the CPRA and Respondents'  
24 waiver, a prior order from this Court compels Respondents Sheriff's Department and  
25 Villanueva to produce the records requested in the first, ninth, and tenth categories of  
26 documents requested by Petitioner. In the 2015 lawsuit referenced above, this Court ruled  
27 that whatever portions of the 1981 Sheriff's Department file that author Suzanne Finstad  
28 (or any other author or member of the public) had been given access to, the same records

1 must be produced to Petitioner. As a result, the LACSD produced to Petitioner certain,  
2 discrete portions of its file regarding Ms. Wood, but not the entire file. Earlier this year,  
3 however, Ms. Finstad published a book claiming that, in 2000, she had been given access  
4 to the items requested in the first, ninth, and tenth categories of documents, including the  
5 entire 1981 Sheriff's Department file, what she referred to as the Sheriff Department's  
6 "murder book." See Finstad, *Natalie Wood: The Complete Biography*, at pp. 452, 458-59,  
7 462.

8 21. Specifically, in that book, Ms. Finstad wrote as follows regarding being  
9 provided access to the complete file:

10 **Homicide detectives in the L.A. Sheriff's Department keep what they call**  
11 **a "murder book," the official record of a homicide investigation. I was**  
12 **given access to Natalie Wood's murder book.** There I found the buried  
clues as to what really happened on the last weekend of her life. . . .

13 Of all Natalie Wood's secrets that I held in 2001, that secret was the reason  
14 for my urgency: I had come to realize the unimaginably horrible reason that  
she had drowned, and I needed to make public the dark and twisted facts of  
her drowning and its aftermath. **I had uncovered the facts using the**  
15 **Sheriff's murder book....**

16 **At some point in our conversation, [Detective] Rasure mentioned the**  
17 **possible existence of a murder book, the file of all the evidence in a**  
18 **homicide investigation, including a summary of the case, all interviews,**  
19 **investigative reports, field and lab reports, photographs, and printouts.**  
I needed to see Natalie Wood's murder book.

20 **On a tip from the genial Rasure, I dropped his name to an LAPD detective,**  
21 **Louis Danoff, with the nickname "Sweet Lou," and persuaded him to let**  
22 **me see the murder book for the Wood investigation, which did, in fact,**  
23 **exist. Within a week, I met Sweet Lou at a Sheriff's Department office on**  
24 **the outskirts of downtown. My mother, who was in Los Angeles for**  
25 **Thanksgiving, came along, a camera tucked into her purse.**

26 Sweet Lou escorted both of us to a small spare room. Inside were a long table  
27 and several chairs. I set up my laptop on the table and **Sweet Lou returned**  
28 **with one or two boxes he identified as Natalie Wood's murder book.** Then  
he left the room and closed the door.

Uncertain how long I would have, what I was permitted to see, or whether I  
could document it, I began to enter the contents of the murder book into my  
laptop as quickly as I could type. I asked my mother to take photographs. We  
both kept an eye on the door, anxious that Sweet Lou might return with  
restrictions. Neither of us said anything. **We both got the sense that we**  
29 **were looking at something that was not meant to be seen.**

30 *Id.* (emphasis added).



1           22. Respondents Sheriff's Department and Villanueva have waived any  
2 applicable CPRA exemptions pursuant to Cal. Gov't Code § 6254.5 by these public  
3 disclosures of the Ms. Wood 1981 investigative file or "murder book." This Court, at a  
4 hearing in the 2015 lawsuit, concluded as much during the following exchange:

5           THE COURT: Look, I agree with you, you don't. If there was any issue that  
6 what they are withholding is not – but you are specifically asking for  
7 photographs and witness interview summaries and yacht examinations and  
8 the Miller report. All of those, by definition, are investigatory records. So there  
9 is no point in me looking at the very things you have asked for. If you had  
10 asked for something else that might not be an investigatory record, that would  
11 be different, which is why I am saying they have to – the Coroner has to say  
12 anything they are withholding, what is it. It is investigatory record. Now if you  
13 want me to look at that and if you want me to look at the records the Coroner  
14 is withholding, I may do that.

15           MR. PERRONI: I understand, Judge. But here's the state of the record. The  
16 state of the record is that in 2000 and 2001 they allowed two authors to  
17 rummage through these files.

18           THE COURT: Did they?

19           MR. PERRONI: Okay.

20           THE COURT: Did they? I'm not aware that the authors were given the files to  
21 rummage through. I am aware that they were given documents from the file.

22           MR. PERRONI: No. They were given access to the file.

23           THE COURT: **If they were given the file to look through, the whole file is**  
24 **disclosable.**

25 See September 27, 2016, Hearing Transcript, attached to this Complaint as **Exhibit C** and  
26 incorporated herein, at pp. 33:26-34:25 (emphasis added). The Court, during this  
27 September 2016 hearing, agreed that Petitioner was entitled to production of whatever  
28 portions of the file to which a member of the public had been previously granted access.  
The Court subsequently adopted its tentative rulings and orders, including the court's legal  
conclusions at the hearing and entered a judgment granting Petitioner's petition for a writ  
of mandate in part, pursuant to established legal precedent and provisions of the Act  
regarding selective access disclosure. See January 26, 2017, Judgment Re Petition for  
Writ of Mandate, attached to this Complaint as **Exhibit D** and incorporated herein, at p. 2

1 and §§6253 and 6254.5, *supra*. The Court's legal conclusions on selective disclosure are  
2 now res judicata and operate as a conclusive adjudication in this action.

3 23. By their failure to provide timely compliance with the CPRA as well as their  
4 continuing failure to provide documents responsive to any of the categories of documents  
5 listed in Exhibit A attached hereto, Respondents have violated this Court's prior order as  
6 well as the California Constitution, Art. I, § 3, and the CPRA, Cal. Gov't Code § 6250 et  
7 seq., and thereby caused Petitioner to obtain legal counsel to obtain the desired relief.

8 24. As a result of the aforementioned conduct, Petitioner requests issue of a writ  
9 of mandate directing Respondents to comply fully and without further delay with the  
10 California Public Records Act and to furnish to Petitioner all public documents meeting the  
11 descriptions in his ten requests set forth in Exhibit A attached hereto.

12 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF**

13 **(Petitioner, SAMUEL A. PERRONI**

14 **Against Respondents, and Each of Them)**

15 25. Petitioner incorporates herein by reference the factual allegations set forth in  
16 paragraphs 1 through 24, inclusive, above, as though fully set forth herein.

17 26. An actual future controversy exists between the parties hereto relating to  
18 their rights, duties, and liabilities.

19 27. Petitioner contends that Respondents have violated Petitioner's rights under  
20 the California Constitution, Art. I, § 3, and under Cal. Gov't Code § 6250 et seq., by failing  
21 to produce the requested documents and accordingly, judicial determination of these  
22 issues and of the respective duties of Petitioner and Respondents is necessary and  
23 appropriate at this time under the circumstances.

24 28. As a result of the aforementioned conduct, Petitioner seeks a declaration  
25 from the Court that Respondents have violated Petitioner's rights under the California  
26 Constitution, Art. I, § 3, and under Cal. Gov't Code § 6250 et seq. by failing to produce the  
27 requested documents, Respondents have waived any applicable CPRA exemptions  
28 pursuant to Cal. Gov't Code § 6254.5 by the aforementioned public disclosures, Petitioner

1 is entitled to production of those portions of the file to which a member of the public had  
2 been previously granted access, and Petitioner is entitled to judgment for costs and  
3 expenses in bringing the instant action, including reasonable attorneys' fees. Petitioner is  
4 informed, believes, and thereon alleges that Respondents, and each of them, contend to  
5 the contrary.

6 **THIRD CAUSE OF ACTION - INJUNCTIVE RELIEF**

7 **(Petitioner, SAMUEL A. PERRONI**

8 **Against Respondents, and Each of Them)**

9 29. Petitioner incorporates herein by reference the factual allegations set forth in  
10 paragraphs 1 through 28, inclusive, above, as though fully set forth herein.

11 30. Petitioner is informed and believes and thereon alleges that Respondents'  
12 delay in complying with their obligations under the CPRA was without substantial  
13 justification. Accordingly, pursuant to Code of Civil Procedure, §3367, Petitioner seeks an  
14 injunction from the Court directing Respondents to waive all fees associated with  
15 Petitioner's requests.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner respectfully requests that this Court:

18 1. Issue a writ of mandate directing Respondents to comply fully and without  
19 further delay with the California Public Records Act and to furnish to Petitioner all public  
20 documents meeting the descriptions in his ten requests set forth in Exhibit A attached  
21 hereto;

22 2. In the alternative, issue an Order to Respondents to show cause why the  
23 Court should not issue such a writ and thereafter issue a peremptory writ compelling  
24 Respondents to perform their public duty as set forth above;

25 3. Declare that Respondents have violated Petitioner's rights under the  
26 California Constitution, Art. I, § 3, and under Cal. Gov't Code § 6250 et seq., by failing to  
27 produce the requested documents;

1           4.       Enter an injunction directing that, because Respondents' delay in complying  
2 with their obligations under the CPRA was without substantial justification, Respondents  
3 must waive all fees associated with Petitioner's requests;

4           5.       Award Plaintiff reasonable attorneys' fees and costs as authorized by Cal.  
5 Gov't Code 1 § 6259, and;

6           6.       Order such additional relief as the Court may deem just and proper.  
7

8 DATED: January 13, 2021

**MURCHISON & CUMMING, LLP**

9                               /s/ Suzanna R. Harman

10 By: \_\_\_\_\_

Dan L. Longo

Suzanna R. Harman

Attorneys for Petitioner, Samuel A. Perroni  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT "A"**

Garrett S. Llewellyn  
Of Counsel  
(310) 284-3876  
[gllewellyn@btlaw.com](mailto:gllewellyn@btlaw.com)

October 8, 2020

Daniel P. Barer, Esq.  
Pollak, Vida & Barer  
11500 W. Olympic Blvd., Suite 400  
Los Angeles, CA 90064  
[daniel@pollakvida.com](mailto:daniel@pollakvida.com)

Sheriff's Services Division  
Sheriff's Department, County of Los Angeles  
211 W. Temple Street, First Floor  
Los Angeles, CA 90012  
[prarequests@lasd.org](mailto:prarequests@lasd.org)

**VIA E-MAIL & U.S. MAIL**

Re: **Sam Perroni**  
**California Public Records Request For Records**

Dear Mr. Barer and Sheriff's Services Division:

As you know from my May 23, 2020, letter, our law firm represents Sam Perroni regarding his public-records requests. In view of the ruling made by Judge Chalfant at our September 1, 2020, hearing, I am writing to you on behalf of Mr. Perroni to make new requests for public records under the California Public Records Act ("CPRA").

First, we request copies of all records regarding Vidal Herrera's statement to the Sheriff's Department that is referenced at endnote 481 of Suzanne Finstad's republished book, *Natalie Wood: The Complete Biography*. Specifically, at endnote 481, Ms. Finstad referenced receiving a 2017 "Vidal Herrera statement to L.A. Sheriff's Department."

Second, Detective Louis Danoff's August 17, 2020, declaration that was filed in *Perroni v. Fajardo et al.*, Superior Court of the State of California for the County of Los Angeles, Central District; Case No. BS 159430, states this: "An ABC, 3"x5" card system was set up wherein each case entered into the Library was given a Library Number based upon the first letter of the name used to identify the case and followed by the number indicating when it was logged into the system – Example (A-200). If a case was removed from the Library, the Investigator requesting the case would fill out an 8"x11" divider file card with the Library Number requested, date requested, and

the name of the requestor.” This card was then placed in the space from which the file was removed and would be removed when the file was returned.” Pursuant to the CPRA, we request copies of this divider file card for the Sheriff Department’s file regarding the death of Natalie Wood and any other records showing who removed, checked out, or otherwise received access to this file.

Third, Detective Danoff’s declaration further states that this card system was updated “into a simple computer program” around 1990. Later in his declaration, Detective Danoff states that, around 2001, “Homicide Bureau was in the midst of converting their reporting system to an improved computerized system.” Pursuant to the CPRA, we request copies of all such computer program records regarding the Sheriff Department’s file concerning the death of Natalie Wood, including any records regarding the identity of persons or entities who have removed, checked out, or otherwise received access to this file from the library described by Detective Danoff. To the extent that there is a separate file for the 2011 investigation into the death of Ms. Wood, we may this request for both the original file and the file regarding the 2011 investigation.

Fourth, Ms. Finstad’s book indicates that Detective Danoff gave her access to the Sheriff Department’s file regarding the death of Ms. Wood in November 2000. Detective Danoff’s declaration indicates that he last worked for the Sheriff’s Department in 2010. Pursuant to the CPRA, we request copies of all personnel records reflecting discipline, admonition, or demotion of Detective Danoff for the period November 1, 2000, through December 31, 2010.

Fifth, in *Perroni v. Fajardo et al.*, Superior Court of the State of California for the County of Los Angeles, Central District; Case No. BS 159430, respondents filed a July 15, 2016, declaration from Deputy Sheriff Ralph Hernandez. In paragraphs 7 and 8 of that declaration, Deputy Hernandez identified certain documents that the Sheriff’s Department provided to Ms. Finstad and members of the public. In the subsequent November 8, 2016, deposition of Deputy Hernandez, he testified regarding his communications with Ms. Finstad. Pursuant to the CPRA, we request all records reflecting communications between the Sheriff’s Department (including but not limited to Deputy Hernandez and counsel for the Sheriff’s Department) and Ms. Finstad for the period November 10, 2015, through today.

Sixth, as discussed above, Ms. Finstad has written that Detective Danoff gave her access to the Sheriff Department’s file regarding the death of Ms. Wood in November 2000. Pursuant to the CPRA, we request all records reflecting communications between the Sheriff’s Department (including but not limited to Detective Danoff) and Ms. Finstad for the period November 1, 2000, through November 30, 2000.

Seventh, Mr. Perroni contacted Mr. Barer in March 2020 requesting supplemental documents. Detective Danoff’s declaration states that he has not worked for the Sheriff’s Department since March 2020. Pursuant to the CPRA, we request all records reflecting communications between the Sheriff’s Department (including but not limited to counsel for the Sheriff’s Department) and Detective Danoff for the period March 1, 2020, through today.

Eighth, pursuant to the CPRA, we request copies of all personnel records reflecting discipline, admonition, or demotion of Deputy Hernandez for the period January 1, 2016, through today.

Ninth, pursuant to the CPRA, we request copies of the Sheriff's Department file regarding the death of Ms. Wood (also known as the "murder book" or "blue book") as it existed in November 2000 when Ms. Finstad claims that she received access to a box or boxes consisting of the entire murder book for Ms. Wood. As I wrote to your previously, Ms. Finstad's updated book provides:

**Homicide detectives in the L.A. Sheriff's Department keep what they call a "murder book," the official record of a homicide investigation. I was given access to Natalie Wood's murder book. There I found the buried clues as to what really happened on the last weekend of her life. . . .**

Of all Natalie Wood's secrets that I held **in 2001**, *that* secret was the reason for my urgency: I had come to realize the unimaginably horrible reason that she had drowned, and I needed to make public the dark and twisted facts of her drowning and its aftermath. **I had uncovered the facts using the Sheriff's murder book....**

**At some point in our conversation, [Detective] Rasure mentioned the possible existence of a murder book, the file of all the evidence in a homicide investigation, including a summary of the case, all interviews, investigative reports, field and lab reports, photographs, and printouts. I needed to see Natalie Wood's murder book.**

**On a tip from the genial Rasure, I dropped his name to an LAPD detective, Louis Danoff, with the nickname "Sweet Lou," and persuaded him to let me see the murder book for the Wood investigation, which did, in fact, exist. Within a week, I met Sweet Lou at a Sheriff's Department office on the outskirts of downtown. My mother, who was in Los Angeles for Thanksgiving, came along, a camera tucked into her purse.**

Sweet Lou escorted both of us to a small spare room. Inside were a long table and several chairs. I set up my laptop on the table and **Sweet Lou returned with one or two boxes he identified as Natalie Wood's murder book.** Then he left the room and closed the door.

Uncertain how long I would have, what I was permitted to see, or whether I could document it, I began to enter the contents of the murder book into my laptop as quickly as I could type. I asked my mother to take photographs. We both kept an eye on the door, anxious that Sweet Lou might return with restrictions. Neither of us said anything. **We both got the sense that we were looking at something that was not meant to be seen.**

Finstad, *Natalie Wood: The Complete Biography*, at pp. 452, 458-59.



Ms. Finstad's account makes clear that she and her mother were given access to more than the scant documents identified by Deputy Sheriff Hernandez. Detective Danoff gave Ms. Finstad and her mother one or two boxes that contained the "murder book" regarding the investigation into Ms. Wood's death. What was in this murder book? Ms. Finstad recalls that the murder book included "the file of all the evidence in a homicide investigation, including a summary of the case, all interviews, investigative reports, field and lab reports, photographs, and printouts." Based on this information from Ms. Finstad, the Sheriff's Department provided to Ms. Finstad documents beyond what was identified in Deputy Sheriff Hernandez's testimony. The Sheriff's "Department waived any CPRA exemptions by the public disclosure of the Natalie Wood" murder book to Ms. Finstad and her mother, to borrow the language from Judge Chalfant's October 2016 order. This disclosure was intentional and not accidental. Accordingly, we request that the Sheriff's Department supplement its earlier production and provide to Mr. Perroni the entire box or boxes consisting of the murder book as it existed in November 2000 regarding the death of Ms. Wood.

To be clear, on behalf of Mr. Perroni, and pursuant to the CPRA, we are hereby requesting a copy of the Los Angeles County Sheriff's Department file pertaining to the investigation of the death of Ms. Wood as it would have been provided to Ms. Finstad

Tenth, pursuant to the CPRA, and to the extent not covered by the above request, we request a copy of the Marilyn Wayne pink phone message that is referenced in Ms. Finstad's book.

This CPRA request does not include any of the records that have already been produced to Mr. Perroni in his lawsuit.

I am enclosing a check for \$200.00 to cover the cost of production. If the enclosed sum is not adequate to cover the costs, please let me know and I will send the balance. I request advance notice if you contend that the costs will exceed \$500.00.

Please also note that I provided a check for \$200.00 with my May 23, 2020, letter. As no documents have been produced in response to that letter, please return or refund that check for \$200.00.

Thank you for your prompt attention to this matter. I look forward to Mr. Perroni receiving the requested documents in a timely manner.

Regards,

A handwritten signature in black ink, appearing to read "Garrett S. Llewellyn", with a long horizontal flourish extending to the right.

Garrett S. Llewellyn

**BARNES & THORNBURG LLP**

11 South Meridian Street  
Indianapolis, IN 46204-3535

TO VERIFY THE AUTHENTICITY OF THIS CHECK, RUB OR BREATHE ON  
THE AREA ABOVE. COLOR WILL DISAPPEAR & THEN REAPPEAR

**Fifth Third Bank**  
Indianapolis, INDIANA  
71-859/749

**CHECK NO.**  
**524121**

**CHECK DATE** 10-09-2020

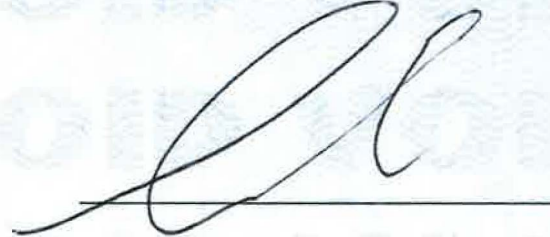
**CHECK AMOUNT**

\$ 200.00\*\*\*\*\*

TWO HUNDRED AND 00/100 Dollars

**PAY  
TO THE  
ORDER OF**

**Sheriff's Department, County of Los Angeles**  
**Sheriff's Services Division**  
**211 W. Temple Street, First Floor**  
**Los Angeles, CA 90012**



⑈ 5 2 4 1 2 1 ⑈

⑆ 0 7 4 9 0 8 5 9 4 ⑆ 7 6 5 3 5 1 0 7 0 6 ⑈

**EXHIBIT "B"**



# OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

ALEX VILLANUEVA, SHERIFF



October 28, 2020

Garrett Llewellyn  
Barnes & Thornburg LLP  
2029 Century Park E., Suite 300  
Los Angeles, CA 90067-2904  
Garrett.Llewellyn@btlaw.com

Dear Mr. Llewellyn:

## PUBLIC RECORDS ACT REQUEST – #20-1692MI

This letter is in response to your request for records under the California Public Records Act dated October 8 and received by the Los Angeles County Sheriff's Department, Discovery Unit on October 16, 2020.

In your request you are seeking the following:

Re: Sam Perroni  
California Public Records Request for Records

"we request copies of all records regarding Vidal Herrera's statement to the Sheriff's Department that is referenced at endnote 481 of Suzanne Finstad's republished book, Natalie Wood: The Complete Biography. Specifically, at endnote 481, Ms. Finstad referenced receiving a 2017 "Vidal Herrea Statement to L. A. Sheriff's Department"."

Although the Sheriff's Department is obligated to respond within 10 days of receipt of the request, this time limit is subject to an extension of up to fourteen (14) days under the following circumstances as defined in Government Code § 6253(c)(1).

The need to search for, and collect, the requested records from field facilities or other establishments that are separate from the office processing the request, and the need to appropriately examine potentially voluminous amounts of records.

211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

*A Tradition of Service*  
— Since 1850 —

In addition, please note that we may redact or withhold records if there are any exempt matters impacting the privacy rights of individuals (California Constitution, article I, §1, and Government Code §§ 6254(k) and 6255(a)). Other exempt matters will include those protected by the attorney-client, official information and deliberative process privileges, pending litigation exemption, personnel exemption, or other matters otherwise protected from disclosure by law or where the particular facts and circumstances warrant nondisclosure of the information (Government Code §§ 6254(b), (c), (k), and 6255(a)).

The Los Angeles County Sheriff's Department is receiving an exceptionally large volume of PRA requests and is currently experiencing an extended delay in processing them. Requests are processed in the order received; you will be notified when we start processing your request. Thank you for your patience.

If you have any questions, please contact Lieutenant Morsi of the Discovery Unit at (323) 890-5000.

Sincerely,

ALEX VILLANUEVA, SHERIFF

A handwritten signature in black ink, appearing to read "Albert M. Maldonado", with a circled "EM" to the right.

Albert M. Maldonado, Captain  
Risk Management Bureau

**EXHIBIT "C"**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

SAMUEL A. PERRONI, )  
PETITIONER, )  
vs. ) NO. BS159430  
)  
MARK A. FAJARDO, ET AL., )  
RESPONDENTS. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, SEPTEMBER 27, 2016

FOR PETITIONER: SAMUEL A. PERRONI, IN PRO PER  
FOR RESPONDENTS: DANIEL P. BARER, ATTORNEY AT LAW and  
ANNA L. BIRENBAUM, ATTORNEY AT LAW

BUFORD J. JAMES  
OFFICIAL REPORTER 9296  
111 NORTH HILL STREET  
LOS ANGELES, CALIFORNIA 90012

1 CASE NUMBER: BS159430  
2 CASE NAME: SAMUEL PERRONI VS. MARK FAJARDO  
3 LOS ANGELES, CALIFORNIA TUESDAY, SEPTEMBER 27, 2016  
4 DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE  
5 REPORTER: BUFORD J. JAMES CSR 9296  
6 TIME: 1:30 P.M.  
7 APPEARANCES: (AS NOTED ON TITLE PAGE)

8  
9 --o0o--

10  
11 THE COURT: Perroni versus Farjado, BS159430,  
12 number five on calendar. Your appearance, please.

13 MR. BARER: Good afternoon, Your Honor, Daniel  
14 Barer for respondents.

15 MS. BIRENBAUM: Good afternoon, Your Honor, Anna  
16 Birenbaum for respondents.

17 MR. PERRONI: Your Honor, Sam Perroni,  
18 petitioner.

19 THE COURT: All right. Good afternoon.

20 This is here on Mr. Perroni's petition for  
21 writ of mandate. It is a CPRA petition. There are two  
22 County Departments at issue here, the Coroner's office and  
23 the Sheriff's Department, from whom Mr. Perroni asked for  
24 records. Actually, I spent -- well, you don't care how  
25 much time I spent on this, but I actually think that the  
26 outcome is mostly straightforward.

27 Mr. Perroni says -- it's a little ambiguous,  
28 but he says what he really wants are photographs of Natalie



1 Wood taken at the scene of her death and any autopsy  
2 photographs subject to a protective order; Sheriff's  
3 Department witness interviews; yacht examinations and  
4 photographs, excluding analysis or conclusions by  
5 investigators; and the Miller report. I say it's ambiguous  
6 because in other portions of his briefs he points out that  
7 there may be missing items, none of which fit into those  
8 categories, I think. But, in any event, those are at least  
9 things the that were most important to him.

10           So the first issue is waiver for  
11 noncompliance. It is true that the CPRA requires the  
12 public agency within 10 days from the receipt of a request  
13 to respond to the requester and state whether it will  
14 comply. That is Section 6252(c). There is no remedy for  
15 noncompliance with that requirement other than to seek  
16 mandamus to compel compliance. So there is no waiver for  
17 noncompliance with the deadlines.

18           The majority -- or maybe all, but let's just  
19 say the majority of what Mr. Perroni seeks are covered by  
20 6254(f), Records of Investigations Conducted by a State or  
21 Local Police Agency. In Haney, the court distinguished  
22 between investigative files which are protected or not --  
23 exempt from disclosure only if the prospect of enforcement  
24 is concrete and definite. On the other hand, investigatory  
25 records or investigation records are exempt forever as long  
26 as the agency declines to produce.

27           Haney explained that they do not lose their  
28 exempt status based on whether or not there is a prospect

1 of enforcement. And they -- whether or not disclosure  
2 would endanger a witness or the investigation is  
3 irrelevant. The agency does not have to show a valid need  
4 to maintain the confidence of an exempt record of  
5 investigation. And while Coroners are not law enforcement  
6 agencies, they are a local agencies, and the Coroner  
7 compiles -- I wrote "complies." I meant "complies" --  
8 investigatory files as part of his local agency duties.  
9 And Coroner's record are, therefore -- Coroner's  
10 investigative records are also exempt under 6254(f). And  
11 that exemption exists even after the investigation ends.

12 And Mr. Perroni argues, and I agree, despite  
13 the conclusionary statements by the Sheriff's Department,  
14 that there is no prospect of criminal enforcement in the  
15 Natalie Wood matter. Mr. Perroni points out, and I agree  
16 with this also, that the statute of limitation has long  
17 since passed for any kind of negligent homicide for  
18 anything except murder, which has no statute of limitation,  
19 and there is no reason to believe that anyone thinks,  
20 including the Sheriff or the Coroner, that anybody murdered  
21 Natalie Wood. In any event, prospect of criminal  
22 enforcement is irrelevant to disclosure of records exempt  
23 as investigative records.

24 And sort of as an aside, Mr. Perroni's  
25 contention that there are no witnesses or informers whose  
26 identities or statements must be kept confidential and no  
27 privacy interests at stake, meaning Natalie Wood's privacy  
28 interest, is also irrelevant. Although, I tend to believe

1 that Mr. Robert Wagner has a privacy interest in keeping  
2 his wife's records confidential. So the fact is that the  
3 Sheriff's Department and the Coroner could have maintained  
4 all investigative records into her death confidential, not  
5 disclosed them to anybody, and there is no balancing of  
6 public interest in that regard.

7 One point that Mr. Perroni raises that I  
8 agree with is that the Coroner admits that confidential  
9 items remain within the Coroner's microfilm files that have  
10 not been released to any individuals, but they have  
11 presented no reason as to why those items remain  
12 confidential. Are they investigatory records, or is there  
13 some other basis to maintain their confidentiality? The  
14 Coroner has not asserted that.

15 I think the best way to go here is for the  
16 Coroner to identify, not the record, but the reason why  
17 records or categories of records that remain confidential  
18 are, in fact, being maintained as confidential, the nature  
19 of exemption. They can identify the records if they want,  
20 but there is a case that says they are not required to  
21 identify the records that they are withholding.

22 Okay. Photographs of Natalie Wood are  
23 protected by the Code of Civil Procedure 129(a)(2). They  
24 are absolutely protected absent a showing of good cause.  
25 There is no good cause showing here. Whatever Natalie  
26 Wood's privacy interests that died with her, there is  
27 public policy against disclosing death records or autopsy  
28 records -- pictures, I'm sorry, death pictures or autopsy

1 pictures. Whether or not there are family members still  
2 around, there's a societal interest in not publishing such  
3 pictures.

4           However, 60- -- now we get to 6254.5, which  
5 provides that whenever a local agency discloses a public  
6 record which is otherwise exempt to any member of the  
7 public, this disclosure is waived. And that codifies the  
8 court of appeal decision in Black Panther Party versus  
9 Kehoe, K-e-h-o-e, which stated that the CPRA does not  
10 permit selective disclosure, that is, disclosure to one  
11 person, one member of the public, and not to all.

12           Interestingly, the Coroner could have  
13 maintained probably everything confidential, but the  
14 Coroner -- I believe that it was Noguchi who at the time  
15 was described as the Coroner to the Stars, if I recall --  
16 felt it incumbent to disclose some records. It appears  
17 that the Sheriff's Department has disclosed less  
18 information over the years than the Coroner's office.  
19 That's just my belief. Could be wrong.

20           So the question is have records been  
21 disclosed to members of public. Well, Mr. Perroni relies  
22 on the authors who have received access to certain records,  
23 most particularly, Suzanne Finstad, F-i-n-s-t-a-d, was  
24 given records by the Sheriff, both before and after her  
25 book was published. Sam Cashner, C-a-s-h-n-e-r, was given  
26 access to the 1981 file. Artie Rulli, R-u-l-l-i, was given  
27 documents from the files by Detective Hernandez.

28           The problem Mr. Perroni has, he has not

1 shown what documents they were given. And it is his burden  
2 to prove that respondents have waived their right to claim  
3 an exemption. And the fact that some documents were  
4 disclosed does not create an inference that the author  
5 received any more documents than Mr. Perroni or any other  
6 member of the public has.

7 Nobody, apparently, knows exactly what was  
8 disclosed to Ms. Finstad when she got five pages on March  
9 5, 2003, but you can't draw an inference that it must be  
10 something that was previously undisclosed. And, in fact, I  
11 would have expected Ms. Finstad to publish something if she  
12 got some previously undisclosed material.

13 An interesting point that I learned in  
14 evaluating this is that CPRA exemptions do not work like  
15 privileges under the Evidence Code. When something is  
16 privileged under the Evidence Code and the subject matter  
17 of that document is waived, then disclosure of that  
18 document is required. The CPRA is a document-based  
19 disclosure statute. It does not matter whether the subject  
20 matter -- or the information contained in the document was  
21 previously disclosed to someone, a member of the public.

22 You could have two documents discussing the  
23 very same issue, one which gets disclosed, and one of which  
24 has been maintained as confidential, and the second one  
25 will always be confidential if it is an investigatory  
26 record. So the question is not whether the information  
27 contained in a record was disclosed to a member of the  
28 public, but, rather, whether the document itself was

1 disclosed to a member of the public previously.

2           Mr. Perroni makes just such an argument with  
3 respect to the Miller report, which was a report by a  
4 fellow known by the Coroner Noguchi who was an expert,  
5 apparently, in sailing. Sounded like Mr. Noguchi took a  
6 sailing class from him or otherwise knew him from sailing  
7 experience and asked him to evaluate the boat, the algae on  
8 the boat -- let me back up.

9           I wrote this all down, exactly what he asked  
10 him to do. Examine the stern of Wagner's yacht and the  
11 dingy for any sign of violence; examine the algae on the  
12 bottom of the yacht's swimming step to see if Natalie Wood  
13 tried to reboard the yacht; and check the sides of the  
14 dingy for fingernail scratches. He wrote a report. He was  
15 not an employee of the Coroner, but he did perform the act;  
16 wrote the report; submitted it to the Coroner, which  
17 Mr. Noguchi used. He did not release, but wrote about in  
18 his memoir. And he wrote, quote, rereading the report  
19 today, I can see Isthmus Bay again in my mind's eye, dark  
20 and threatening in the night, et cetera.

21           Now, Mr. Perroni argues that the Miller  
22 report -- first of all, the Coroner's office representative  
23 said that -- admitted that Coroner investigator narratives  
24 are disclosable. Mr. Perroni found online a narrative by  
25 Pamela Eaker, E-a-k-e-r, which he described as unmistakably  
26 an investigative narrative, and the Miller report is no  
27 different. There is no reasoned basis to distinguish the  
28 Miller report from the Eaker report for purposes of

1 disclosure.

2           While I suspect he may be right, I don't  
3 evaluate it in that way because it seems to me that,  
4 despite the fact that Mr. Noguchi testified that he does  
5 not have the Miller report, he also testified that he did  
6 not take any Coroner documents with him when he retired, he  
7 had to have had the Miller report when wrote the memoir.  
8 Taking him at his own statement, he had it in his hand as  
9 he was writing the memoir.

10           It's also true that in the reopening of the  
11 case the Coroner -- the then Coroner met with Mr. Noguchi  
12 and Mr. Miller as well as members of the Sheriff's  
13 Department in 2012 and gave Mr. Miller a copy of his own  
14 report for purposes of the meeting. And I think it was  
15 pretty clear that Mr. Noguchi had the report also.

16           Now, whether he took it away from the  
17 meeting, I don't know. I don't know there is evidence of  
18 that, but it seems to me to be pretty -- I mean,  
19 borderline -- how would I put it. The purposes of the CPRA  
20 are not served by allowing Mr. Noguchi to take and use the  
21 report for his memoir and then claim that it is part of an  
22 investigative record that should not be disclosed. I  
23 think, by giving it to him when he was no longer the  
24 Coroner and no longer held public office, even if he gave  
25 it back, it was disclosed to a member of the public and  
26 there is a waiver.

27           Therefore, the tentative is to grant the  
28 petition, in part, by requiring disclosure of the Miller

1 report by the Coroner's office, not the Sheriff's  
2 Department, and requiring the Coroner at least state by way  
3 of declaration the basis on which other records are being  
4 withheld. That's what the tentative says.

5 Have you seen it?

6 MR. BARER: Yes, Your Honor.

7 MR. PERRONI: Yes.

8 THE COURT: Mr. Perroni, do you wish to be heard?

9 MR. PERRONI: Yes, Your Honor. I got it when --  
10 I got it and read it when I got here.

11 THE COURT: Okay.

12 MR. PERRONI: Okay.

13 THE COURT: You want to be heard?

14 MR. PERRONI: Yes, sir, I do.

15 THE COURT: Go ahead.

16 MR. PERRONI: All right. Because I want to make  
17 sure that I don't miss anything -- last time I was in here,  
18 I made the mistake of trying to lip read because I just  
19 have this issue about talking to people and not looking at  
20 them. But because this is so important today, I am going  
21 to have to look at this screen most of the time, and I  
22 apologize for not looking at you when you are taking.

23 THE COURT: That's fine.

24 MR. PERRONI: That's number one. Two, I hope you  
25 would indulge me a second on a little housekeeping before  
26 we get going.

27 THE COURT: Okay.

28 MR. PERRONI: All right. May I ask the Court



1    what a Statement of Decision is?

2           THE COURT:  I can't give you legal advice.

3           MR. PERRONI:  All right.

4           THE COURT:  It's in the Rules of Court.

5           MR. PERRONI:  Well, I'm not asking you to give me  
6    advice.  I just read your local rules, and the local rule  
7    says that when I get a tentative decision like this that I  
8    can make a request for a Statement of Decision pursuant to  
9    Rule 3.1590(d), as in "dog."

10          THE COURT:  Yes.  That's not a local rule.  
11    That's a Rule of Court.  That's a rule for the whole state,  
12    in other words, not local, not for L.A. Superior Court.  
13    That is a rule that governs all courts in the state.

14          MR. PERRONI:  All right.  Well, I apologize  
15    again.  I didn't mean to offend you by it --

16          THE COURT:  No, I'm not easy to offend.

17          MR. PERRONI:  Rule of California Court, I guess,  
18    procedurally I am going to have to make a request for this,  
19    since I don't thoroughly understand this tentative decision  
20    issue and how these orders are supposed to finally get  
21    final.

22          THE COURT:  Okay.  So this is my Statement of  
23    Decision.

24          MR. PERRONI:  All right.

25          THE COURT:  It's a Tentative Statement of  
26    Decision.

27          MR. PERRONI:  All right.  But my understanding is  
28    that, under the law, that's not a final order.  So how does

1 it get to be a final order?

2 THE COURT: It's going to be a final order  
3 because, assuming I adopt it. Let me explain to you the  
4 purpose of a Tentative Statement of Decision.

5 MR. PERRONI: Okay.

6 THE COURT: You, I believe, are a trial lawyer or  
7 were a trial lawyer. After a court trial when a judge  
8 makes a decision, often the judge asks the winning party to  
9 prepare a Tentative Statement of Decision. Since that  
10 winning party tends to slant the wording, the language, in  
11 their favor, the Rules of Court were adopted that permit  
12 the another side to object to the Tentative Statement of  
13 Decision before it becomes final. That is the purpose of  
14 the rule for Tentative Statement of Decision, and then you  
15 have the right to object to the Tentative Statement of  
16 Decision, and then the judge adopts the Final Statement of  
17 Decision.

18 Where I write my own decisions, and I assure  
19 you I wrote this, it makes no sense to me to have a  
20 Tentative Statement of Decision and then have the parties  
21 object to it. But if you want the right to object, you  
22 have the right to object. I'm telling you right now I'm  
23 going to overrule your objections if I adopt this tentative  
24 as my -- whatever I do adopt. Sometimes I adopt the  
25 tentative as modified at the hearing, but whatever I say at  
26 the end of the today, I am like a shark, I go forward, I  
27 don't go back. I'm not going to revisit this issue because  
28 you have filed objections to my Tentative Statement of

1 Decision.

2 But you have every right to do so. If you  
3 want me to call this -- that's why I don't call my  
4 Tentative Decision a Tentative Statement of Decision, for  
5 that very reason, because I don't want to invite  
6 objections. But you have the right to have it called a  
7 Tentative Statement of Decision, and if you want that,  
8 that's what I'll call it.

9 MR. PERRONI: Oh. I appreciate that explanation.  
10 I just wanted to make sure before we go forward if this  
11 thing gets to some kind of appellate review that I didn't  
12 do something I was supposed to do. So you have explained  
13 it. I understand the procedure.

14 THE COURT: Okay.

15 MR. PERRONI: We can go forward. There is no  
16 problem.

17 THE COURT: Okay. Go ahead.

18 MR. PERRONI: I appreciate it. All right.

19 The next thing is I know this is a tentative  
20 ruling, Your Honor, but I've been around judges long enough  
21 to know if they have made up their mind, I can argue with  
22 them till the cows come home, and I'm not going to change  
23 it, but what I would like to do, what I would like to do  
24 this afternoon, is take a little time to reason with you  
25 about some issues in this case that perhaps maybe I didn't  
26 articulate well enough in my briefs but that I want this  
27 Court to consider before we just merely adopt this  
28 tentative decision.

1           So here is what I would like to do. First  
2 of all, I would like to put this entire case in context,  
3 number one, I looked, I didn't find any cases that even  
4 remotely come close to the fact situation we have in this  
5 case. None. That's number one --

6           THE COURT: I'm not sure what you mean, "facts."  
7 You mean a criminal investigation that went nowhere? I  
8 mean, it happens all the time.

9           MR. PERRONI: No. Where somebody makes a request  
10 for public records in connection with police and coroner  
11 files that are 35 years old.

12          THE COURT: I can think of many famous cases,  
13 most of them Hollywood cases, where I would be surprised if  
14 all of the records have been produced by the law  
15 enforcement.

16          MR. PERRONI: Well, I am just saying I didn't  
17 find any reported cases.

18          THE COURT: That is true.

19          MR. PERRONI: That's all. All right.

20          Number two. This case involves celebrity,  
21 not only the celebrity that passed away, but celebrities  
22 that were on the boat that night, Robert Wagner and  
23 Christopher Walken, but as this Courts knows and would  
24 agree with me there is no celebrity exception in the  
25 California Public Records Act.

26          THE COURT: There is not.

27          MR. PERRONI: Okay. Now, we have this death 35  
28 years ago. There is four people on the boat. One of them

1 ends up in the water. That leaves three folks. When --  
2 the record is clear on this and it's undisputed. When the  
3 Sheriff's office were sent out there, they were sent out  
4 to, quote, investigate the circumstances of a celebrity  
5 death.

6 Now, the Court has indicated in its  
7 tentative ruling that there's just no other reason for them  
8 to be going out there other than to investigate a crime.  
9 And I submit to you -- and I can give you statutory  
10 authority for it -- that there is. The Sheriff's office  
11 and the Coroner's office have statutory authority to engage  
12 in searches and rescues. They don't have to go out there  
13 because they think there is a crime. They can go out there  
14 because somebody is in the water or somebody is missing or  
15 somebody needs to be dug out of there.

16 THE COURT: This isn't -- this is neither a  
17 search, nor a rescue.

18 MR. PERRONI: Well --

19 THE COURT: She was dead.

20 MR. PERRONI: Judge, all I'm doing is I'm  
21 reviewing the facts of the case. The undisputed facts are  
22 they went out to investigate the circumstances of a  
23 celebrity death.

24 THE COURT: Right.

25 MR. PERRONI: Okay. Now, number two. When they  
26 got there, the very first person on the scene was a sheriff  
27 who was on the island all the time. He was assigned to the  
28 island. So what did he do, he prepared a report. And what

1 was his report, his report was the apparent, accidental  
2 drowning of a celebrity. That's in the record. It's  
3 undisputed.

4               Number two, 11 days later, 11 days later,  
5 this file was inactivated. It wasn't closed. It is really  
6 important. It was inactivated after 11 days, and it was  
7 inactivated -- and this is in the file, this is in the  
8 record, this is undisputed -- as a person dead, accidental  
9 drowning.

10              Now, let's take Haney. Number one, in  
11 Haney, there was a complaint of possible criminal --  
12 criminal activity. That's why the police went there in the  
13 first place. Number two, in Haney's case, Haney was the  
14 suspect. He was the one who was stopped and handcuffed.  
15 Why, because the complainant said that Haney had a pistol.  
16 So he was stopped for suspicion of having an illegal weapon  
17 in his possession, a crime. His request was made 11 days  
18 after they started this.

19              Now, the Haney case specifically says in  
20 there that the case is limited to the records in that case.  
21 It didn't expand this 6254(f) exemption at all. It didn't  
22 overrule Williams. It didn't overrule Uribe. It dealt  
23 specifically with that case and a request made by the  
24 suspect in a criminal activity for records. And what Haney  
25 did was Haney addressed the circumstances behind a swift  
26 request for public records in a suspicious criminal  
27 activity.

28              THE COURT: Doesn't have to be suspicious. Look,

1 there is -- if you are trying to argue to me there was no  
2 criminal investigation, I mean, that just isn't going to  
3 fly. It is the potential to find out if a crime has  
4 occurred that is important, and there is no reason for  
5 the Coroner to conduct an autopsy if everybody knows it was  
6 an accident. They do not autopsy accident victims unless  
7 there is any possibility, and it can be a remote  
8 possibility, of potential criminal activity.

9 MR. PERRONI: Judge, I agree with you 100  
10 percent, but the issue is the records. We're not talking  
11 about why they performed the autopsy. We're talking about  
12 at the time the autopsy report prepared, was it an  
13 investigatory record. And the only way -- the only way it  
14 could be is if there's a concrete and definite prospect of  
15 criminal law enforcement proceedings. And the record in  
16 this case shows that by the time Dr. Noguchi finished his  
17 autopsy and prepared his report, it was an accident.

18 THE COURT: You are confusing a file with a  
19 record. That's what -- Haney makes a clear distinction  
20 between an investigative file and an investigative record.  
21 They are not the same. The file could have newspaper  
22 articles in it, for example. It could have letters from  
23 friends. Those are not investigative in nature, but they  
24 would be in the file. And they are not protected from  
25 disclosure unless there is a concrete prospect of criminal  
26 enforcement, but the investigative record is protected  
27 forever.

28 MR. PERRONI: Well, Judge, that's only if the

1 investigation of suspected criminal activity. That's what  
2 Haney stands for, suspected criminal activity.

3 THE COURT: Potential.

4 MR. PERRONI: There was none in this case.

5 THE COURT: Potential. There is no reason for  
6 them to go. There is no reason for the Sheriff to be  
7 there. There is no reason for the Coroner to do an autopsy  
8 unless this woman who -- I might add beautiful woman, this  
9 beautiful woman who was in a nightgown drowned of a boat  
10 with her husband and two other men on the boat unless  
11 there's the potential for criminal activity.

12 The obvious question is what was she doing,  
13 why was she getting into the dingy, why didn't they know  
14 she was getting in the dingy. These are obvious questions,  
15 and they all relate to the potential for criminal activity.

16 MR. PERRONI: But, judge, that's not what they  
17 proved. See, what they have done is they have trapped you  
18 into this mind set of assuming that that is why they went  
19 out there. That's why I started my argument with the  
20 proposition that this involves a celebrity. When you say  
21 there is no reason other reason for them to be out there,  
22 I'm sorry, Judge, but this lady was Hollywood royalty.

23 THE COURT: She was.

24 MR. PERRONI: There is all the reason in the  
25 world for them to be out there.

26 THE COURT: You mean because they are just  
27 curious?

28 MR. PERRONI: For instance, when John Kennedy



1 crashed into the ocean, they sent the military and everyone  
2 else out there to find him. Not because they thought there  
3 was a crime, but because it was John Kennedy.

4 THE COURT: Maybe so. Maybe you should file your  
5 lawsuit in Massachusetts for reimbursement of the public.

6 MR. PERRONI: That's exactly what happened in  
7 this case, Your Honor. Exactly. And, see, this is the --  
8 this is what the record shows. This is not Sam Perroni.

9 THE COURT: Look, you are spending a lot time on  
10 a nonissue. There's no way this was not investigation for  
11 potential criminal activity. And Haney says even routine  
12 investigations such as a traffic stop are protected. This  
13 is completely protected. So you need to move on to an  
14 issue that you can actually win on. This one is a  
15 non-starter.

16 MR. PERRONI: Yes, sir. I will move on to  
17 another issue here, another point. All right. And that is  
18 this: This waiver issue. All right.

19 I made an objection to the two declarations  
20 in this case on this ground. I said that it violates due  
21 process of law for the respondents in this case to assert  
22 and affirmative defense, refuse to answer questions about  
23 it directly relating to it, and then to put a declaration  
24 in front of you that speaks towards that particular  
25 affirmative defense.

26 Now, I haven't seen a ruling, but I assume  
27 you overruled that. Is that true?

28 THE COURT: Well, when you say "overruled," now

1 you mean your most recent filing?

2 MR. PERRONI: Yes.

3 THE COURT: Your supplemental objection document?

4 MR. PERRONI: My supplemental objection.

5 THE COURT: I looked at that this morning. As  
6 you know and I know, those are not evidentiary objections.  
7 You are attempting to raise a due process issue that's not  
8 in the briefs, and the answer to your objection, which is  
9 not evidentiary, therefore, I did not rule on it, is that  
10 you should have made your motion to compel properly and  
11 obtained answers to the questions that you were interested  
12 in on waiver, if that's what your concern is.

13 I will also say that I didn't find the  
14 declaration enormously persuasive. For example, I agreed  
15 with you that I don't think it's a live investigation any  
16 more than you do, even though the Declaration of Detective  
17 Hernandez says it's an open investigation. So I don't know  
18 that you should be too exercised about the declarations.

19 Even if you leave aside the declarations,  
20 it's your burden to show on waiver that these -- some  
21 documents were given to somebody else who is a member of  
22 the public that were not given to you, and you haven't done  
23 that.

24 MR. PERRONI: And that's exactly what I am trying  
25 to address. In his deposition, I specifically asked  
26 Detective Hernandez multiple questions. It took me five  
27 pages to extracts this is out of him. I was specifically  
28 telling him that I was asking these questions for a basis

1 of waiver, and I was asking him about what it was that he  
2 gave -- that anybody in the Department gave Suzanne  
3 Finstad.

4 He has testified under oath, Your Honor, in  
5 that deposition that they wouldn't even let him have the  
6 files and that he had no idea that -- he had no idea  
7 whether Suzanne Finstad was even one of the persons they  
8 gave the information to. Then he turns around in a  
9 declaration and swears to you where I can't cross-examine  
10 him that here is a list of things that were given to  
11 Suzanne Finstad.

12 Now, here is what I submit at this point in  
13 time that the Court should do, and the evidence rules that  
14 you can do it. When a party has refused to answer  
15 questions, you can use that hold as an adverse inference.  
16 If you would like the pages in his testimony where he  
17 testified to that, I can give them to you from the  
18 appendix.

19 THE COURT: Where does he say what he gave to --  
20 what Finstad was given?

21 MR. PERRONI: All right. If you will look at his  
22 declaration on paragraph 6 and 7, he talks about -- about  
23 what it is that he is saying now that was given to Suzanne  
24 Finstad. However --

25 THE COURT: I mean, it does not really say.

26 MR. PERRONI: If you will look -- if you will  
27 look at pages -- Exhibit 4, pages 36 and 37, and 39 and to  
28 41 in the reply brief, the rebuttal brief. If you look at

1 Hernandez Exhibit 4. That's -- I think that's the next to  
2 the last one, maybe. Okay. Then if you will look down at  
3 the bottom, we've numbered them --

4 THE COURT: No, I saw this. Let me interrupt.  
5 What does that mean? "I don't know because you see they  
6 won't give me the file." What does that mean?

7 MR. BARER: Your Honor, that's under the Q. That  
8 says that's what Mr. Perroni said, not what Detective  
9 Hernandez said. Page 63, lines 15 and 16.

10 THE COURT: It's Mr. Perroni saying, "They won't  
11 give me the file." Okay. So page 63 what?

12 MR. BARER: Lines 15 and 16.

13 MR. PERRONI: Your Honor, he's --

14 THE COURT: I don't have page -- yeah, you are  
15 saying that's part of the question.

16 MR. BARER: Yes, Your Honor.

17 THE COURT: So where is the answer? It's not  
18 here.

19 MS. BIRENBAUM: On page 64 Mr. Perroni rephrases  
20 the question.

21 THE COURT: So he's not saying -- nowhere does  
22 Detective Hernandez say he didn't have access to the file.

23 MS. BIRENBAUM: No, at 64, line 2, Mr. Perroni  
24 says, "Let me start over. In other words, here is a new  
25 question."

26 THE COURT: Yeah. Okay, it did give me pause to  
27 see, "They won't give me the file." Okay.

28 So Mr. Perroni, back to you.

1 MR. PERRONI: All right. Judge, of course, you  
2 know, I didn't hear exactly what was said --

3 THE COURT: Go ahead and read it.

4 MR. PERRONI: -- what was said a minute ago.

5 THE COURT: Go ahead and read it.

6 MR. PERRONI: Let me read this to you.

7 "Do you know if anyone else in the  
8 Department has given Suzanne Finstad anything out of the  
9 file?" This is Exhibit 4. We've labeled it as Exhibit  
10 page 36.

11 Then I say, "This is personal knowledge."  
12 So I am asking this witness his personal knowledge as to  
13 whether or not anyone in the Department has given Suzanne  
14 Finstad anything out of the files.

15 Then I say, "I'm just asking you do you  
16 know." Then the witness goes, "To who? Given to who?" I  
17 say, "Suzanne Finstad." And then it goes, "Actual  
18 documents out of the file." I said, "Or information."  
19 Then the answer, "What kind of information?" Then I say,  
20 "Anything about the files. I don't know, you see, because  
21 they won't give me the file. So I don't know how to ask  
22 this other than you could either give somebody a file or  
23 you can tell somebody what is in the file." Then it goes  
24 over --

25 THE COURT: But that doesn't say it's an answer.

26 MR. PERRONI: -- then it says, "So what I'm  
27 trying to do, I'm trying to find out if all you have waived  
28 anything, given things to people who don't have a reason to

1 know about it other than they are trying to get information  
2 from you. And my question, specifically to you" -- this is  
3 on page 40 -- "do you know if anyone in the Department has  
4 given Suzanne Finstad any information out of the file."

5 Answer, "Okay. No." It goes again, "No,  
6 but I'm trying -- but I am under perjury here." So, see,  
7 he's thinking about what he's saying -- "under oath, and  
8 I'm just trying to think. I believe she was a -- I think  
9 she was one of the authors, and the problem is I'm not  
10 sure, and so that's why some of your questions are also  
11 unfair" -- I am being unfair here -- "but I believe she was  
12 one of the authors who gained access to the file when it  
13 was closed and inactive."

14 Then I say, "Okay." Then answer, "I  
15 couldn't tell you without a doubt who allowed her access.  
16 Okay." Then he says this: "And I couldn't tell you it was  
17 her that was given access back then." Then he comes along  
18 and he swears in a declaration, not only was she given  
19 access, but he swears to what she was given access to.

20 THE COURT: But he doesn't. He does not say what  
21 she got.

22 MR. PERRONI: What I'm getting at, Judge, is, you  
23 see, they should not be allowed to create an investigatory  
24 exemption in 2016 on records that were created in 1981.  
25 They shouldn't be allowed --

26 THE COURT: It's always been there. The flip  
27 side of this is you shouldn't be -- I'm not saying you  
28 can't, but you shouldn't be allowed to ask a witness

1 questions about access to files that took place in  
2 ninety -- when did this -- when did this occur?

3 MS. BIRENBAUM: The original death, '81.

4 THE COURT: No. Finstad's access to file  
5 information. When was the fax sent?

6 MR. PERRONI: She got access to the file about  
7 2000, Your Honor.

8 THE COURT: So we're talking 16 years ago.

9 MR. PERRONI: That's right. He wasn't even there  
10 then.

11 THE COURT: He was not. And it's pretty hard --  
12 unless they kept a record of what they gave, which,  
13 apparently, they didn't because, otherwise, he would have  
14 been easily able to tell you what she got.

15 MR. PERRONI: Yes.

16 THE COURT: You are asking about 16 years ago so  
17 nobody knows. The answer is nobody knows, except, by the  
18 way, Ms. Finstad. Did you depose her?

19 MR. PERRONI: Oh, no, I could not find her, but I  
20 did this. I asked him if he had talked to her, and he  
21 said, yes, he talked to her in 2016. And I asked him,  
22 "Well, what did you talk about?" And they told him not to  
23 answer.

24 THE COURT: Well --

25 MR. PERRONI: Now, I think you can hold all of  
26 that against them, Your Honor. They had access to Suzanne  
27 Finstad. They could have gotten an affidavit from her or a  
28 declaration from her about what she has got. Instead,

1 they Hernandez, who had testified under oath that he didn't  
2 even know she was one of the authors that got access, do a  
3 declaration and say exactly what she got.

4 My point of all this is, Your Honor, is  
5 that I don't have to prove waiver by direct evidence. That  
6 is, somebody saying, "Oh, I gave a document to so and so."  
7 I can prove it by circumstantial evidence --

8 THE COURT: Sure, you could.

9 MR. PERRONI: -- and the circumstances  
10 surrounding this show that Finstad and Cashner were given  
11 access to the '81 files, and they -- they have the burden  
12 of showing that it wasn't all of the file, not me.

13 THE COURT: Why didn't you ask Hernandez, "You  
14 spoke to Finstad. What is her contact information? Give  
15 me her address, her phone number so I can talk to her."

16 MR. PERRONI: They wouldn't let me have any  
17 information.

18 THE COURT: Did you ask that question?

19 MR. PERRONI: I asked her what she talked about.  
20 They said you are not going to answer it.

21 THE COURT: Yeah. Well, I do think that you  
22 should have been able to ask that question, what you talked  
23 to her about. She's not -- there is no privilege there.

24 MR. PERRONI: I know there is no privilege there.  
25 That's one of the things I was arguing about. That's why I  
26 think it's so unfair. They have a man testify under oath  
27 in the deposition that he has no clue whether she was even  
28 one of the people who get it, then they turn around in a



1 declaration that I can't cross-examine or examine any more  
2 and say, well, this is what she was given.

3 THE COURT: His declaration -- his declaration is  
4 pretty vague. That's my point. He doesn't really say  
5 because he does not know what Ms. Finstad got.

6 MR. PERRONI: It is vague, Judge, but here is the  
7 point. I think that, under the law, I have made a prima  
8 facie case because they have admitted that they disclosed  
9 these files to these two people. What is left in that  
10 file, I don't know, but I've asked this Court to look at it  
11 in camera.

12 THE COURT: Well, what would be the point of  
13 looking at it in camera? That is, they are not withholding  
14 it based on it being a file document. They are withholding  
15 it based on it being an investigative report.

16 MR. PERRONI: Well, Judge, and I'm saying that  
17 under the undisputed facts in this case in 1981 it was  
18 definitely not. And what I am saying is is that --

19 THE COURT: I don't agree with that. So you are  
20 arguing waiver. Well, what about -- Mr. Perroni's argument  
21 is that the Sheriff's Department has admitted that various  
22 authors received access to portions of the 1981 file. I'm  
23 reading page 6 of the Hernandez declaration. Detective  
24 Hernandez apparently does not know exactly what each author  
25 was given access to.

26 Paragraph 7 says, "I was able to determine  
27 that the persons who were provided access were provided  
28 access to the following items," and then he lists them.

1 Mr. Perroni says, essentially, how does he know that. How  
2 does he know what documents that Finstad and Cashner had  
3 access to because he sure couldn't tell me.

4 That is your argument, right, Mr. Perroni?

5 MR. PERRONI: Yes, sir.

6 THE COURT: So what about that? How does he  
7 know?

8 MR. BARER: Your Honor, in doing these  
9 declarations, we dealt with Detective Hernandez. He was  
10 able to determine after investigation, he is a detective,  
11 into the files that portions of the files had been given to  
12 various persons. He didn't know exactly what was given to  
13 Suzanne Finstad or Sam Cashner, but he said these are the  
14 documents that have been given to people. And there were  
15 about 241 pages that are listed in paragraph 7. And once  
16 we found that out, we gave them to Mr. Perroni.

17 THE COURT: Well, how did he know that these are  
18 the documents that have been given to people?

19 MR. BARER: By reviewing the files and doing  
20 investigation within the firm --

21 THE COURT: There must be something that he saw  
22 or did that told him in paragraph 7 these are the only  
23 documents, we don't know -- apparently, he does not know  
24 what Finstad got, what Cashner got, but these are the  
25 documents that have been disclosed. Right? There must be  
26 some basis.

27 MR. BARER: Yes.

28 THE COURT: Mr. Perroni, if you want to depose

1 Mr. Hernandez again and ask him what his basis is for  
2 paragraph 7, you may do so. Next issue.

3 MR. PERRONI: Thank you. I'll do it.

4 THE COURT: Okay. Next issue. What else you  
5 got?

6 MR. PERRONI: All right. Let's see if I can go a  
7 little further here, Judge. Just so -- may I do a little  
8 bit of housekeeping for one second on what you just  
9 permitted me to do.

10 THE COURT: Okay.

11 MR. PERRONI: Now, last time I took a deposition  
12 of Detective Hernandez they instructed him not to answer  
13 almost a hundred times.

14 THE COURT: Yeah, you can't do that in  
15 California. I don't know about in Arkansas, but you can't  
16 do that in California unless you are instructing the  
17 witness based on privilege. If there is any other ground  
18 besides privilege, you cannot instruct them not to answer.

19 MR. PERRONI: Well, but puking out privilege is  
20 easy to do. All you've got to do is say "I object on the  
21 basis of privilege."

22 THE COURT: Okay. Do you want to depose him in  
23 the court house? You can do it in the court house if you  
24 want.

25 MR. PERRONI: What I'm trying to is get  
26 guidelines. Can I ask him about this Suzanne Finstad fax?

27 THE COURT: Yeah. You already have. You can't  
28 ask -- you can't replot the same ground, but you are

1 certainly entitled -- I'm giving you -- not certainly. I  
2 am giving you the right -- he says in paragraph 6 that, "We  
3 disclose to Finstad and Cashner." Then paragraph 7 he  
4 says, "Here is what we disclosed."

5 You are entitled to ask him, "How do you  
6 know what was disclosed? What document or interviews or  
7 communications did you have on which you are relying to say  
8 these things were disclosed and these are the only things  
9 that were disclosed?" You may ask that.

10 You may also ask, "Are you able to tell in  
11 paragraph 7 which ones were given to Finstad and which ones  
12 were given to Cashner or this other fellow Rulli?" That's  
13 the scope of what you get to ask so far.

14 MR. PERRONI: Thank you. That's good enough.

15 Now I'd like to address these photographs.

16 THE COURT: Okay.

17 MR. PERRONI: All right. Here is what we're  
18 dealing with. In this particular case we're dealing with,  
19 apparently, three sets or types of photographs. We're  
20 dealing with photographs -- or two types. We're dealing  
21 with photographs that the Sheriff's Department took at the  
22 scene that are still in their file, and we're dealing with  
23 photographs that the Coroner's office took, presumably,  
24 because I haven't been told and they didn't submit anything  
25 to this Court to determine this, supposedly, I guess at the  
26 autopsy. I don't know.

27 But, here is the thing. Here is what this  
28 statute says. This statute says -- and they have to prove

1 this, Judge. This statute says that these photographs have  
2 to be taken by or for the Coroner at the scene of death or  
3 in the course of a postmortem examination or autopsy.

4 THE COURT: Right.

5 MR. PERRONI: Now, there is absolutely zero  
6 evidence offered by them that the photographs that are in  
7 the Sheriff Department file were taken by the Sheriff  
8 Department for the Coroner.

9 THE COURT: I didn't say they were.

10 MR. PERRONI: Okay. If they didn't say they  
11 were, then, this statute doesn't fit this section 12 --

12 THE COURT: Doesn't protect Sheriff's  
13 photographs, no, but it protects the Coroner's photographs.

14 MR. PERRONI: Okay. So we got that down. All  
15 right. So but in your tentative ruling it appears as  
16 though that it says that this statute protects all  
17 photographs.

18 THE COURT: No. Look at the first line on page  
19 10 of my tentative.

20 MR. PERRONI: Okay.

21 THE COURT: Go ahead. Look at the first line on  
22 page 10 of my tentative under section 3, "The photographs  
23 are separately protected." First line.

24 MR. PERRONI: Let's see here. The one under  
25 photograph. Can you tell me what page that is, Judge?

26 THE COURT: Ten. First line under the heading.  
27 "The Coroner's photographs of Natalie Wood's body are  
28 separately protected by statute."

1           MR. PERRONI: Then I misspoke. So let's deal  
2 with the photographs taken by the Sheriff at the scene.

3           THE COURT: They are investigative records.

4           MR. PERRONI: They are protected by investigative  
5 records. That's what you are saying.

6           THE COURT: Yes.

7           MR. PERRONI: Based on the evidence that's in  
8 this record?

9           THE COURT: Yes.

10          MR. PERRONI: All right. And in that connection,  
11 you have declined my request for in camera inspection of  
12 those?

13          THE COURT: I don't know what the purpose of in  
14 camera inspection would be here. That is, it's undisputed  
15 what these things are. So if I were to look at a  
16 photograph taken by the Sheriff of Natalie Wood's body, all  
17 I would see is a photograph of Natalie Wood's body taken by  
18 the Sheriff, which I have concluded that those photographs  
19 are necessarily investigative records. I don't need to  
20 look at the photograph in camera to know that.

21          MR. PERRONI: Okay. So then you are denying it.

22          THE COURT: I am denying it because the issue in  
23 this case is waiver, and I can't tell waiver by looking at  
24 the records in camera.

25          MR. PERRONI: All right. And but I'm also asking  
26 you to look at them in connection with this investigative  
27 exemption, which I don't believe is applicable.

28          THE COURT: Right. If they were relying on the

1 investigative file exemption, then I would have to look in  
2 camera to see if all of the records in the file were  
3 somehow protected, but they are relying on investigative  
4 record exemption. You are asking for witness interviews  
5 and photographs. I cannot think of anything that is more  
6 investigative record in nature than witness interviews and  
7 photographs of the alleged victim.

8 MR. PERRONI: All right. And just for the  
9 record, just so you know, I think that that is an -- an  
10 overexpansion of section 6254(f) and an overexpansion of  
11 the ruling in Haney because that's what this Court has got  
12 to be relying on to say that.

13 THE COURT: Okay. My answer to you is that's a  
14 court of appeal issue.

15 MR. PERRONI: Okay. But I want to make sure I  
16 have a record. I've asked you to look in camera at the  
17 1981 file records that have not been given to me. I've  
18 asked that.

19 THE COURT: For what reason?

20 MR. PERRONI: For the same reason. I believe  
21 it's not applicable, Judge.

22 THE COURT: What --

23 MR. PERRONI: I believe that section 6254(f) is  
24 not applicable.

25 THE COURT: Okay. Let me ask opposing counsel.

26 Is there any reason for me to look at  
27 anything in camera?

28 MR. BARER: Your Honor, the investigative

1 records -- and we provided Detective Hernandez's  
2 declaration they are investigative records and that are  
3 sought in the L.A. Sheriff's Department records. There is  
4 no reason to look at them in camera unless he makes a prima  
5 facie showing that they have been wrongly withheld --

6 THE COURT: In other words, that they are not  
7 investigative records.

8 MR. BARER: Right.

9 THE COURT: That they are newspaper articles or  
10 something like that, which I would have to do if you were  
11 relying on investigative file exception.

12 MR. BARER: Exactly.

13 THE COURT: But there is no reason for me to look  
14 at a witness interview and say, oh, yes, this is  
15 investigative record.

16 MR. BARER: In fact, there were newspaper  
17 articles, magazine articles, and "48 Hours" recording we  
18 offered to Mr. Perroni. We concluded the investigative  
19 file exception does not apply and they were not  
20 investigatory records. We gave Mr. Perroni the "48 Hours"  
21 episodes. He didn't want the articles.

22 MR. PERRONI: No offense to opposing counsel, I  
23 have read no law that says that I have to except what the  
24 respondents are saying with respect to what is covered and  
25 what is not covered.

26 THE COURT: Look, I agree with you, you don't.  
27 If there was any issue that what they are withholding is  
28 not -- but you are specifically asking for photographs and



1 witness interview summaries and yacht examinations and the  
2 Miller report. All of those, by definition, are  
3 investigatory records.

4 So there is no point in me looking at the  
5 very things you have asked for. If you had asked for  
6 something else that might not be an investigatory record,  
7 that would be different, which is why I am saying they have  
8 to -- the Coroner has to say anything they are withholding,  
9 what is it. Is it investigatory record.

10 Now, if you want me to look at that and if  
11 you want me to look at the records the Coroner is  
12 withholding, I may do that.

13 MR. PERRONI: I understand, Judge. But here's  
14 the state of the record. The state of the record is that  
15 in 2000 and 2001 they allowed two authors to rummage  
16 through those files.

17 THE COURT: Did they?

18 MR. PERRONI: Okay.

19 THE COURT: Did they? I'm not aware that the  
20 authors were given the files to rummage through. I am  
21 aware that they were given documents from the file.

22 MR. PERRONI: No. They were given access to the  
23 file.

24 THE COURT: If they were given the file to look  
25 through, the whole file is disclosable.

26 MR. PERRONI: That is exactly what I have been  
27 trying to say. And if you look at the declaration of  
28 Hernandez, he says "access."

1           THE COURT: Doesn't mean "rummage." Doesn't mean  
2 they got to look at the file, that they got to know what is  
3 in the file. It does not mean that.

4           MR. PERRONI: All right. Let's just take this  
5 proposition. Let's just take the state of the record that  
6 in 2000, 2001, that they allowed two authors to look at  
7 something. We could all agree to that.

8           THE COURT: Yes.

9           MR. PERRONI: All right.

10          THE COURT: I can't remember if it was the  
11 Sheriff who did that.

12          MR. PERRONI: Now they are coming back and  
13 saying, well, in 1981, there is other things in the file.  
14 We don't want you to have those because those are protected  
15 by the investigatory exemption they are claiming.

16          THE COURT: Right.

17          MR. PERRONI: Right.

18          THE COURT: Right.

19          MR. PERRONI: Okay. Here is what I think. I  
20 think this. I think I've established a prima facie case  
21 when they admit that they have allowed the public to look  
22 at these files and they --

23          THE COURT: You would have --

24          MR. PERRONI: -- can't tell us what.

25          THE COURT: You would have to show that. I don't  
26 believe you have shown that. Finstad or Cashner get to  
27 rummage through the file.

28          MR. BARER: No, Your Honor. Paragraph 6 says

1 portions of the 1981 files. Detective Hernandez's  
2 paragraph 6. And paragraph 7 of that declaration says  
3 these are the portions they were given.

4 THE COURT: Yeah, it's provided access. I cannot  
5 draw any conclusion other than that somebody went through  
6 the file at the Sheriff's Department and decided to give  
7 these people certain documents. Why they did so, I don't  
8 know. Whether Finstad was buddies with the Sheriff. I  
9 don't know why they decided to cough up this information.  
10 They didn't have to cough up any of it, as near as I can  
11 tell. But they did, and those are public.

12 MR. PERRONI: Well, in their Request for  
13 Admission they admitted that they gave access to Sam  
14 Cashner and Suzanne Finstad. Access.

15 THE COURT: Right.

16 MR. PERRONI: Okay. It's in the record.

17 THE COURT: You can ask Hernandez in your  
18 followup deposition if "access" means --

19 MR. PERRONI: See, Judge, that's why it's so  
20 unfair that they admit --

21 THE COURT: It's not. I'm giving you a followup  
22 deposition.

23 MR. PERRONI: Yes, Judge, it is because they  
24 admit they gave them access, then they turn around and try  
25 to convince you, well, it was only these little items right  
26 here.

27 THE COURT: "Access" does not mean "rummaging."  
28 No matter what inference you want to draw, it does not mean

1     that.

2             MR. PERRONI: I think "giving access" is arguably  
3     "rummaging."

4             THE COURT: "Access to portions of the file" does  
5     not mean "rummaging."

6             MR. PERRONI: Okay. Well, I am -- all I'm  
7     trying -- for the record, are you denying my request to  
8     look at the balance of the 1981 file to determine whether  
9     or not they fit within the investigatory exemption that the  
10    respondents are claiming in this case?

11            THE COURT: Is there something you want me to  
12    look at?

13            MR. PERRONI: I want you to look at the balance  
14    of the 1981 files that have not been given to me that they  
15    are claiming fall within this exemption. I want you to  
16    look at them --

17            THE COURT: You mean you want me to decide  
18    whether these are investigatory records?

19            MR. PERRONI: Because --

20            THE COURT: If that's what you want me to do? I  
21    have concluded, and you are not going to move me off the  
22    point, that an investigatory record is exempt. Are you  
23    asking me to review what has been withheld to determine  
24    that it is or is not an investigatory record?

25            MR. PERRONI: Yes.

26            THE COURT: All right. Bring it in. I'll have  
27    to look at the file and see if it's an investigatory  
28    record.

1           MR. PERRONI: And the reason why I am asking you,  
2 not to burden you with this, is because I don't believe  
3 them. With all due respect to opposing counsel, with the  
4 information that's been given to me, I don't believe these  
5 people. I'll believe you, but I won't believe them.

6           THE COURT: Well, it's nice to be believed.  
7 Okay. What else? So let's back -- let me summarize so  
8 far. You get to depose Hernandez on paragraph -- what is  
9 it, 6 and 7 -- yes, of his declaration. And you get to --  
10 now you get to ask Hernandez what he means by "access."

11           Okay.

12           MR. PERRONI: Right.

13           THE COURT: Okay. I'll look at -- it's the 1981  
14 file you want me to look at; right?

15           MR. PERRONI: Right, the balance.

16           THE COURT: The undisclosed portion to see-- I'm  
17 only going to be looking at one thing, are they  
18 investigatory records. For example, I would assume that a  
19 telephone message is not an investigatory record. Am I  
20 right? Is that why it was disclosed?

21           MR. BARER: Your Honor, it was disclosed because  
22 it had been disclosed to people, members of the public so  
23 we have to give -- It's waived.

24           THE COURT: I doubt a phone message from Suzanne  
25 Finstad is an investigatory record. Maybe if it was a  
26 phone message from Robert Wagner, it would be. I don't  
27 know whether that would be an investigatory record. I  
28 don't know.

1           MR. PERRONI: That's the point. That's all I'm  
2 getting at.

3           THE COURT: Okay. What else?

4           MR. PERRONI: May I -- I don't have anything  
5 further. I do have some procedural questions.

6           THE COURT: Okay. We got the Miller report  
7 hanging over their heads. So go ahead.

8           MR. BARER: Your Honor --

9           THE COURT: Wait. Before you do that, do you  
10 have any problem with the Coroner having to explain what  
11 they are relying on for withholding the rest of the  
12 microfilm information?

13          MR. BARER: No, Your Honor. We submit on that  
14 portion of the tentative.

15          THE COURT: Okay. Fine.

16          MR. BARER: Your Honor, should I address the  
17 Miller Report? I would also like to address the Hernandez  
18 deposition ruling, if I may.

19          THE COURT: Well, let's address Miller. That's  
20 the one I was interested in when we started this hearing.

21          MR. BARER: Certainly, Your Honor.

22                 Your Honor made a finding in the tentative  
23 that he, not only did Dr. Noguchi not only use the Miller  
24 report, but possessed it. So the question is whether the  
25 evidence preponderates that he possessed it, considering  
26 that, as Your Honor pointed out in both the written and  
27 oral tentative, Dr. Noguchi testified that he didn't take  
28 anything with him when he left office, and he doesn't have

1 anything now. Plus, at page --

2 THE COURT: That's what he said.

3 MR. BARER: Plus at pages 318 to 319 of the  
4 Appendix, he was asked by Mr. Perroni did he have access to  
5 the Miller document when he wrote the book, and he said he  
6 didn't know. So that's a neutral point on the evidence.  
7 So we got two indications that he didn't take it with him.  
8 He does not have it. He does not know at this point.

9 What evidence is there that he had it.  
10 There's the passage in the book, "Rereading the report now,  
11 I can see the Isthmus Bay in my mind's eye."

12 THE COURT: Yes.

13 MR. BARER: First of all, the statement in a  
14 book, "rereading the report today," to say that he was  
15 rereading the report when was writing that is hearsay.  
16 It's introduced to prove the truth of the matter asserted.

17 THE COURT: It's a prior inconsistent statement,  
18 is it not?

19 MR. BARER: It's a prior inconsistent -- prior  
20 inconsistent with taking it with him?

21 THE COURT: With the statement that he didn't  
22 take anything with him, is it a prior inconsistent  
23 statement?

24 MR. BARER: I'm not sure if it even qualifies as  
25 that, considering he had a coauthor. I'm not sure if he  
26 wrote that particular segment.

27 THE COURT: I think he's saddled every word.  
28 Whether he had a coauthor or not, he's saddled with every

1 word in the book as his own. It's inconsistent with his  
2 statement that he didn't take anything with him.

3 Now, you can argue he didn't take anything  
4 with him, but he was given access when he wrote his memoirs  
5 so it's not inconsistent. That requires an explanation.  
6 On its face, it's inconsistent.

7 You know, then we have this 2002 interview.  
8 Not interview, memorandum.

9 MR. BARER: The 2012 reopening the investigation?

10 THE COURT: Yes. I'm sorry. Yes. What page is  
11 that?

12 MR. BARER: That's attached to the --

13 THE COURT: 361, is that it? No.

14 MR. BARER: It's attached to the petition.

15 And --

16 THE COURT: It's in Mr. Perroni's Appendix.

17 MR. BARER: Yes.

18 MS. BIRENBAUM: I've got it at App 79.

19 MR. BARER: Page 79 of the Appendix.

20 THE COURT: What do we have there? We have  
21 Dr. Noguchi present with Mr. Miller. It doesn't say  
22 Dr. Noguchi was given a copy. It says a copy was given to  
23 both L.A.S.D. and Mr. Miller.

24 MR. BARER: Yes.

25 THE COURT: Now, I don't know how Mr. Miller  
26 could be given a copy without Dr. Noguchi also having a  
27 copy. That's what they are talking about.

28 Now, here is where Mr. Perroni, I think, is



1 entitled to an inference. The inference is Noguchi had a  
2 copy at this meeting, whether he's looking over Miller's  
3 shoulders or not does not really matter. It doesn't say  
4 that they have left the meeting with their own copies,  
5 but -- well, leave it there.

6 MR. BARER: Well, of course, this is unconnected  
7 with the writing of the book "Coroner" because "Coroner"  
8 was published in 1983. This is in 2012.

9 THE COURT: Right. I understand.

10 MR. BARER: The context in which Dr. Noguchi and  
11 Mr. Miller were present here was a reevaluation of the case  
12 with the Sheriff's Department and the Coroner acting  
13 together.

14 THE COURT: Right.

15 MR. BARER: In terms of cases that are  
16 investigated where somebody Commissioned a report or read a  
17 record who then leaves public service, I would submit that  
18 the purposes of investigative exemption as put forth in  
19 Haney are furthered by being able to call in former  
20 coroners, people would did investigations for them, to be  
21 involved in reopened or reevaluated law enforcement  
22 investigations to ask them, you wrote this, what did you  
23 mean by it, or, you wrote it, can I ask you a few questions  
24 about it.

25 THE COURT: Right. I don't disagree with that,  
26 which is why I said I don't need to decide whether giving  
27 the document to Miller was a waiver, and I said probably  
28 not. And I said probably not for the very reason you are

1 arguing, which is, okay, he's an agent of the Coroner when  
2 he wrote it. Even though he is an unpaid volunteer agent,  
3 he's still an agent of the Coroner. He created a report.  
4 It's the -- what does the Coroner call that, investigative  
5 narrative.

6 And then when he's called back in 15 years  
7 later, whatever it is, they say, you know, you wrote this  
8 report, let me refresh your memory, take look at it, what  
9 did you mean by this, what did you mean by that, I tend to  
10 think that it may be covered.

11 So my point was not so much that Miller was  
12 given access in this May 20th, 2012, meeting, but that  
13 Noguchi was there. And he is -- it does not say anything  
14 about him having or not having his own copy of the report.

15 But here is where I think, you know, the  
16 circumstantial evidence on which Mr. Perroni wants to rely  
17 starts to add up. Noguchi has said in his book, "Rereading  
18 the report, I see the Isthmus Bay." I've been there many  
19 times. I've never seen the Isthmus look like this  
20 description. That's just my personal aside. I can't  
21 remember what he says.

22 But so he said when he wrote his memoirs  
23 he's rereading the report. Then in 2012 he's there at  
24 least when the report is given to Miller, and they are  
25 certainly talking about the report. And he's a public  
26 employee and Miller -- I'm sorry. He's a former public  
27 employee -- and Miller never was a public employee. He was  
28 probably an agent of the Coroner's office.

1           And maybe if all they did was show it to the  
2 two of them and retrieve it from them after asking them  
3 about it, maybe any privilege -- not privilege, any  
4 exemption would still apply. I tend to agree that it  
5 would. But it doesn't say we took the report back from  
6 them. It doesn't say we treated it as confidential. It  
7 doesn't say that at all. It says it was given to Miller.  
8 In fact, as near as I can tell, the inference would be that  
9 Miller walked away from the meeting with a copy of his own  
10 report.

11           Now, under those circumstances, if Miller  
12 didn't retain his -- you know, people who write things tend  
13 to keep it on their computers or wherever, handwritten  
14 copy. If he didn't keep a copy in his files, which  
15 apparently he didn't because they wouldn't have to give him  
16 a copy, if they let him walk out of the meeting with a copy  
17 of his own report, I think that's a waiver.  
18 I think that's a waiver.

19           So there is an inference here. Mr. Perroni  
20 is arguing circumstantial evidence, and I -- and you didn't  
21 rebut it. You could have presented evidence. 2012 isn't  
22 that long ago. We could have had evidence from the author  
23 of this report that says, oh, no, we did not give them a  
24 copy of the Miller report to take out of the meeting. We  
25 retrieved them from them as they left. I don't have that  
26 declaration.

27           MR. BARER: Well, doesn't say they took them with  
28 them, and the evidence is that Dr. Noguchi doesn't have it.

1 He testified to that. And there is no statement from Mr.  
2 Miller that he has it or so the inference that they walked  
3 away from this meeting with this report that Dr. Noguchi  
4 filed away without releasing I would submit is not  
5 supported by the record or any sworn evidence.

6 THE COURT: You know, the statement by the  
7 Sheriff that a copy was given to both L.A.S.D. and  
8 Mr. Miller. Doesn't say we retrieved it, we gave them a  
9 copy. I think the inference is he walked out of the  
10 meeting with his copy of his own report.

11 MR. BARER: I would not say that unless there is  
12 something in this fairly comprehensive report by the Dr.  
13 Lachmanian that he left with the report, and there isn't.

14 THE COURT: Yeah. I mean, I -- you know, the  
15 interesting thing here is -- at least I found this  
16 interesting, that the investigative reports are protected  
17 and the Coroner's investigation is all protected, and yet  
18 Dr. Noguchi gets to pick and choose what he's going to  
19 disclose. Of course, once it's disclosed, it's disclosed  
20 forever, but he gets to decide what he's going to disclose.  
21 There is no criteria for that. It's just whatever he feels  
22 like disclosing. I found that to be an interesting fact.

23 I think that's what the law is. I think he  
24 gets to decide. I think the Sheriff gets to decide what  
25 they are going to disclose if it is otherwise exempt. And  
26 nobody -- I guess they could be criticized for either being  
27 over-inclusive or under-inclusive. Other than being  
28 criticized, they are perfectly within their legal right in

1 doing that. I mean, I found that interesting, but that's  
2 kind of an aside.

3 So the Miller -- you know, the Miller report  
4 hangs on, you know -- I don't know, it hangs on a fairly  
5 slim reed. But, you know, we have the fact that Noguchi  
6 debated whether or not to cough up the Miller report in the  
7 first place and decided against it. Now, here we are 35  
8 years later. It's definitely been used by him in writing  
9 his memoirs. He claims he was rereading it. It was  
10 definitely given to Miller at the 2012 meeting. I have no  
11 evidence that it was taken back.

12 And -- in the meeting, I tend to think it's  
13 protected, but if Miller left the meeting with a copy of  
14 the report given to him by the Coroner's office, I do not  
15 think it's protected. And I have no reason to believe that  
16 he didn't walk out of the meeting with a copy of his own  
17 report. So I think it's -- the waiver rule applies.

18 You wanted to ask -- comment about the  
19 deposition?

20 MR. BARER: Certainly, Your Honor. First an  
21 argument, then a housekeeping question in case I lose on  
22 the argument. The argument is that we filed our brief and  
23 served it July 28th, 2016. That was almost two months now  
24 because of continuances two months before this trial.  
25 Their discovery was still open. Was still the right to  
26 make motions to compel further discovery. In fact,  
27 Mr. Perroni made a motion to compel further discovery and,  
28 specifically, a further deposition of Detective Hernandez.

1 That was denied.

2 He has made this argument about due process  
3 and the right to cross-examine Detective Hernandez a few  
4 days ago. Why didn't he make a motion when there was still  
5 time to make a timely discovery motion and move for -- to  
6 compel the deposition of Detective Hernandez then, instead  
7 of now when we're done with briefing, we're at trial, and  
8 the production of more evidence, I would assume, would lead  
9 to supplemental briefing at another hearing.

10 THE COURT: I don't know about supplemental  
11 briefing. I think there's an answer to that. This is  
12 something I wanted to explain to Mr. Perroni. CPRA cases  
13 by definition are supposed to be expeditiously done. They  
14 are narrow in scope. Discovery, in my view -- the Supreme  
15 Court is going to decide this issue -- discovery is  
16 limited. They are not only decided expeditiously,  
17 supposedly, by the trial court, they are reviewable only by  
18 mandamus in the court of appeal. And all of this is  
19 because CPRA cases do not involve the same type of legal  
20 rights as a civil action for damages or declaratory relief  
21 between opposing parties. It is an access to public  
22 records case, which is limited.

23 Now -- and to answer your question, I mean,  
24 I do quite a few of these now. It is often the case where  
25 we get to trial in a CPRA case and one side, typically the  
26 petitioner, says, well, they said in their declaration  
27 something that I would like to test its accuracy. If it is  
28 within the scope of a CPRA case, typically, that is we

1 looked here, we looked there, we looked high, we looked  
2 low, we could not find anything. And the petitioner said,  
3 "Well, I don't -- I don't trust them. I don't believe  
4 that. I would like to test that." I sometimes let them do  
5 that.

6 Here, we have not a "I want to test the  
7 search" statement by Mr. Perroni, but, rather, "I want to  
8 test what he said about -- relative to waiver because, in  
9 my view, it's not something consistent with what he said at  
10 his deposition." Well, if Hernandez had provided no  
11 declaration, I would not be permitting him to reopen  
12 discovery. This is an issue of evidence presented in the  
13 opposition for trial.

14 Your argument is when the opposition was  
15 filed he still could have taken discovery. And, okay, but  
16 I don't think he has waived his right to argue to me in a  
17 very limited and narrow way, I don't expect this to be an  
18 expansive deposition, but on the two things I said he could  
19 ask about, to receive his assurance due process or  
20 otherwise that Mr. Hernandez's statements in his  
21 declaration are accurate, you know, I am exercising my  
22 discretion to permit that.

23 MR. BARER: That raises a housekeeping question  
24 that, once Mr. Perroni has taken Detective Hernandez's  
25 deposition and has his testimony, what is he to do with it?  
26 Are we going to have a further hearing in which it's  
27 submitted?

28 THE COURT: You are, because he wants me to look

1 in camera at -- whose file, Mr. Perroni, the Sheriff's file  
2 or the Coroner's file?

3 MR. PERRONI: Well, okay, let me see if I can  
4 answer you this way. I thought in this tentative decision  
5 that you are ordering them to tell you in Winters'  
6 declaration where in the world that he has come up with  
7 this confidentiality on the remaining items in the file.

8 THE COURT: I am.

9 MR. PERRONI: Okay. Well, I am fine with that.  
10 I want to see it. Okay. So now we're talking about  
11 Sheriff's file. To answer your question, we would just be  
12 talking about the Sheriff's file right now.

13 THE COURT: Okay. So housekeeping, you take your  
14 deposition of Hernandez on the two issues I said you can  
15 do. You come back for the in camera hearing where I look  
16 at the Sheriff's file only to decide whether they are  
17 investigative records. In addition to that, the Coroner's  
18 office presents a declaration that says what exemption they  
19 are relying on for the remaining microfilm records that  
20 have been withheld.

21 Does that take care of everything except  
22 setting a date for that appearance?

23 MR. BARER: So no further briefing, but we will  
24 be submitting, A, the declaration; and, B, the records of  
25 the 1981 L.A.S.D. investigation to be reviewed in camera.  
26 And Mr. Perroni, by whatever deadline the Court sets, will  
27 submit any further deposition testimony from a transcript  
28 from Detective Hernandez.



1 THE COURT: Yeah. You will have to bring the  
2 Custodian of Records for the in camera review, the  
3 Sheriff's Custodian of Records.

4 MR. PERRONI: Judge --

5 THE COURT: Because I will be asking the  
6 custodian, you know, what have you brought me and where is  
7 it from to be sure that I have everything that I'm supposed  
8 to have. And that happens in chambers under oath without  
9 Mr. Perroni present.

10 MR. PERRONI: Judge, point of order here on this  
11 Coroner's -- remaining Coroner stuff.

12 THE COURT: Yes.

13 MR. PERRONI: They give some kind of declaration  
14 or something about the remaining things in that file.  
15 Based on what they say, I may ask this Court to look at  
16 that information, too, to determine whether or not it's  
17 what they say.

18 THE COURT: Well, there isn't going to be another  
19 hearing so if you want to see that declaration and make  
20 that decision, then that has to happen sometime before the  
21 next hearing.

22 MR. PERRONI: Okay. So what I would like for you  
23 to do is set some dates.

24 THE COURT: All right.

25 MR. PERRONI: What is this -- may I ask you this.  
26 What is an OSC re judgment? What is that?

27 THE COURT: An order to show cause.

28 MR. PERRONI: Order to show cause. OSC. Sorry.

1                   Well, if we could -- Your Honor, I have to  
2 fly from Arkansas here. So --

3                   THE COURT: Well, how long will it take you to  
4 complete your deposition?

5                   MR. PERRONI: Well, based on what you've said  
6 that I could ask, it shouldn't take me very long at all.

7                   THE COURT: I don't mean how long will the  
8 deposition be. How long will it take you to fly back out  
9 here and complete the deposition? How long do you want for  
10 that?

11                  MR. PERRONI: Well, what I'm trying to do is  
12 coordinate it with any other appearances. If I'm supposed  
13 to be back here October 20th, perhaps we can coordinate it  
14 to where when I fly back the next time, we can do this  
15 deposition, and I could get an expedited transcript. It  
16 shouldn't be too long. And then they could also get the  
17 declaration from the Coroner's office, and we can address  
18 all this at that time.

19                  THE COURT: Well, how long before the hearing do  
20 you want the deposition, then?

21                  MR. PERRONI: Well, I guess what I'm saying is if  
22 I could do the deposition the day before the hearing.

23                  THE COURT: I don't know. Is that workable?

24                  MS. BIRENBAUM: Well, my instinct is the  
25 Custodian of Records is most likely Detective Hernandez.  
26 That's asking an on duty sheriff to take two days, one day  
27 for the deposition and the next day to be in court away  
28 from other duties. I can certainly check with him --

1 THE COURT: There are lots of deputy sheriffs.  
2 What are you saying, they are going to have a need for him?  
3 There are a lot of deputy sheriffs in the Sheriff's  
4 Department.

5 MR. BARER: He is a homicide detective, Your  
6 Honor. There is not as many homicide detectives as deputy  
7 sheriffs.

8 THE COURT: I don't know how many there are, but  
9 homicides are up this year. Whatever you can work out.  
10 What are you -- I'm going to set a date for the hearing and  
11 a date for the declaration of the Coroner's office. How  
12 about a week from today for the declaration from the  
13 Coroner's office? Is that fine?

14 MS. BIRENBAUM: I am in court the rest of the  
15 week.

16 MR. BARER: Could we get more time for that, Your  
17 Honor.

18 THE COURT: All right. How much time do you  
19 want?

20 MS. BIRENBAUM: I could probably get it by next  
21 Friday. Monday is a holiday for me.

22 THE COURT: Next Friday, the 7th?

23 MS. BIRENBAUM: It's cutting so close for me.

24 THE COURT: That's 10 days.

25 MS. BIRENBAUM: I know.

26 THE COURT: Yeah. Let's do the 7th.  
27 Declaration -- you don't need to file it with me. Provide  
28 it to Mr. Perroni by the 7th. And then he will decide

1 based on that whether he wants the Coroner's custodian to  
2 be present at the hearing for the same purpose that the  
3 Sheriff's custodian will be present. And all -- so there  
4 wasn't anything magic about October 20th. If you need more  
5 time from the 7th to prepare -- why don't I move it to  
6 November 10th at 9:30 for the continued hearing on the writ  
7 at which I will at a minimum do in camera examination.

8 Now, as to when the Hernandez additional  
9 deposition occurs, I'm going to leave that up to you to see  
10 if you can work it out.

11 Okay. Does that take care of everything?

12 MR. PERRONI: Except for this. The tentative  
13 decision says I'm supposed to prepare something --

14 THE COURT: I mean, you can't prepare a judgment  
15 until the case is over. The case isn't over until November  
16 10th. The hearing is continued until November 10th.

17 MR. PERRONI: All right. That's good.

18 THE COURT: Nothing to prepare judgment-wise  
19 right now.

20 MR. PERRONI: Right. Thanks a lot.

21 MR. BARER: Only remaining issue, Your Honor, is  
22 Mr. Perroni sounds like is prevailing, at least in part, so  
23 he's going to be entitled to costs under 6259(d), but there  
24 was an issue about whether he was entitled to attorney  
25 fees. We cited law that said he isn't. He says he is and  
26 hasn't cited any law saying he is.

27 THE COURT: Attorneys fees motions are  
28 customarily made post judgment. They are not required to

1 be made at the trial on the merits. So I am not going to  
2 worry about that right now is what I'm saying. The Rules  
3 of Court, Mr. Perroni, tell you when you have to make your  
4 motion for attorneys fees.

5 MR. PERRONI: Thank you. I will.

6 THE COURT: Okay. So the only thing -- I've made  
7 some orders and continued the hearing. You want to waive  
8 notice?

9 MR. PERRONI: Yes, sir.

10 MR. BARER: Notice is waived, Your Honor.

11 THE COURT: Okay. Thank you.

12 (Proceeding adjourned at 3:45 p.m.)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

SAMUEL A. PERRONI,	)	
PETITIONER,	)	
vs.	)	NO. BS159430
	)	REPORTER'S
MARK A. FAJARDO ET AL.,	)	CERTIFICATE
RESPONDENT.	)	

I, Buford J. James, CSR 9296, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages 1 through 54, inclusive, comprise a full, true, and correct transcript of the testimony and proceedings held in the above-entitled matter on TUESDAY, SEPTEMBER 27, 2016.

Dated this 2nd day of NOVEMBER, 2016.



Buford J. James, Certified Shorthand Reporter