

{The following are sanctions the court placed on the defense because of a late disclosure of a tape recorded interview conducted by the defense interviewing Rosa Lopez}

The Court orders as follows:

The prosecution shall have until Thursday 2 March 1995 at 9:00 a.m. to review the subject tape recording, prepare and proof a transcript of said tape recording and to prepare for the cross examination of Lopez.

Defense counsel shall assume and pay all costs for the housing and transportation of Lopez up to and including the conclusion of the Penal Code Section 1335 conditional hearing.

Defense counsel shall prepare and submit to the Court by the close of business 6 March 1995 a list of defense witnesses which shall include the full name of each witness, the date of each interview, the date of each written report of such interview, whether there exists any raw notes, tape recording, video recording or any other means of memorializing such witness statement, and the date disclosure to the prosecution. This list shall be accompanied by a declaration of all counsel of record and all investigators ever employed by the defense that the list submitted to the Court is complete and accurate.

If and when the conditional examination testimony of Lopez is presented to the jury, the Court will instruct the jury as follows:

"The laws governing criminal procedure in California require that each side disclose and give to the other side the names of the persons they intend to present as witnesses and any written record or recordings of statements made by these witnesses. These disclosures must be made before trial if the witness is then known. These laws of criminal procedure exists to promote the ascertainment of truth in trials, to save court time in trial, and to avoid the necessity for frequent interruptions and postponements. During the direct examination of Rosa Lopez by the defense, defense counsel revealed the existence of a tape recording of a 29 July 1994 interview of Rosa Lopez by defense investigator William Pavelic. This was a violation of the law and the cause for the delay between 28 February and 3 March, 1995. You may consider the effect of this delay in disclosure, if any, upon the credibility of the witness involved and give it the weight to which you feel it is entitled."

The Court will take under submission the prosecution's request to be allowed to raise the delay in disclosure of the tape recording in argument before the jury until after the presentation of Lopez's Penal Code Section 1335 testimony to the jury. The Court notes the scope of fair argument must be judged on the basis of the evidence receive at trial before the jury, the extent of which is yet to be determined.

Pursuant to Code of Civil Procedure Section 177.5, defense counsel Carl E. Douglas shall pay a monetary sanction of \$950.00. The Court finds this to be a reasonable sanction because Mr. Douglas had the responsibility for discovery compliance and had been the subject of sanctions as noted previously. Defense counsel Johnnie L. Cochran Jr. shall pay a monetary sanction of \$950.00. The Court finds this to be a reasonable sanction because not only is Mr. Cochran lead trial counsel responsible for the conduct of the defense team, but he is also the trial counsel presenting the testimony of the witness in question and had made untrue representations to the Court in reckless disregard for the truth.

IT IS SO ORDERED.

Notes