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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff-Respondent, )

KEVIN COOPER, )

Defendant-Appellant. )

CR 72787

Supreme Court

No. Crim 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

For Plaintiff-Respondent:

HON. JOHN K. VAN DE KAMP  
State Attorney General  
Department of Justice  
110 West "A" Street, Suite 700  
San Diego, California 92101

For Defendant-Appellant:

IN PROPRIA PERSONA

VOLUME ~~8~~ <sup>10</sup> volumes  
Pages 85 to 175, incl.

JILL D. MC KIMMEY, C.S.R., C-2314  
Official Reporter

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

VOLUME 2

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS  
BEFORE HONORABLE RICHARD C. GARNER, JUDGE  
DEPARTMENT 3 - ONTARIO, CALIFORNIA

February 24, 1984

APPEARANCES:

For the People:

DENNIS E. KOTTMER  
District Attorney  
and  
JOHN P. KOCHIS  
Deputy District Attorney

For the Defendant:

DAVID McKENNA  
Public Defender  
By: DAVID NEGUS  
Deputy Public Defender

Also Present:

JOHN VAN DE KAMP  
Attorney General  
By: STEVEN V. ADLER  
Deputy Attorney General  
(Representing California  
Department of Corrections)

(Appearances continued on  
the following page.)

Reported by:

JILL D. McKIMMY  
Official Reporter  
C.S.R. No. 231A

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1 APPEARANCES: (Continued)

2 Also Present:

SILVER & KREISLER  
By: WILLIAM J. HADDEN  
Attorney at Law  
(Representing San Bernardino  
County Sheriff's Department)

5 IRA KURGAN  
Attorney at Law  
(Representing CBS)

7 DONALD ZACHARY  
Attorney at Law  
(Representing NBC)

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THE COURT: Good morning. In the matter of People versus Kevin Cooper, I see Mr. Cooper here.

MR. KOCHIS: John Kochis. I represent the People  
of the State of California.

MR. KOTTMEIER: Dennis Kottmeier, District Attorney  
of San Bernardino County.

THE COURT: Thank you.

THE COURT: Thank you, Mr. Hadden.

MR. NEGUS: Your Honor, before we begin, I hear the click of cameras, and I notice the man seems to be focusing his television camera. My understanding was that

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1 there would be no extended coverage today until all  
2 opportunity -- all sides had an opportunity to be heard.  
3 I am told by the people from CBS that they didn't even  
4 file their thing on time, their request, and so I wondered  
5 why we are being televised right now.

6 THE COURT: First, I don't know of any such  
7 understanding that there would not be extended coverage.  
8 Secondly, I received or was informed that we had a  
9 request for extended coverage and pooling agreements  
10 yesterday, which I consider sufficient time, at least  
11 in the informal manner that they have been received in  
12 the past.

13 MR. NEGUS: Well, they have been received  
14 formally in the past, and I believe the Court stated --  
15 we don't have a transcript yet, but I believe the Court  
16 stated on the record last time that before any extended  
17 coverage took place at this hearing, that I will be  
18 given an opportunity to object as the Rules of Court  
19 provide, and I haven't.

20 THE COURT: Mr. Negus, I simply don't recall  
21 saying that. That was not my intent at any time. You  
22 informed me that you have previously objected in the  
23 lower court, and in my court previously in chambers  
24 arguing against extended coverage, and that you  
25 intended to continue that practice, and I think I  
26 indicated to you -- it's according to my recollection,

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MR. NEGUS: I do wish to again have the record

1 reflect that I do object to extended coverage today.  
2 Today's proceedings are purely legal proceedings, and I  
3 can't imagine anything of extended interest to the press  
4 that would require cameras in the courtroom in covering  
5 it. If the Court -- I made note in the past that in the  
6 868 motion that I requested the Court to consider as part  
7 of the 995, I documented that whenever we had a legal  
8 proceeding like this where essentially nothing happened,  
9 prejudicial material tended to be published, and that  
10 material had nothing to do with the court proceeding.

11 I also have noticed the Court that on the 5th of  
12 March I am going to be making a motion for change of  
13 venue; and by allowing continued extended coverage of  
14 this particular case, what we do is we run the risk that  
15 we will never be able to get a fair trial anywhere in the  
16 state of California.

17 At the present time I think I can demonstrate  
18 that the Southern California area is saturated with media  
19 coverage, and points and authorities to that effect will  
20 be filed with the Court today, but by allowing the cameras  
21 in the courtroom, one encourages coverage beyond that in  
22 other parts of the state -- other parts of the state of  
23 California where we, hopefully, would be seeking a change  
24 of venue to. The general tenor of the pictorial coverage  
25 tends to be of more emotional nature than informative.  
26 At the preliminary hearing when extended coverage was

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1 allowed, the types of stuff that were -- were broadcast  
2 did not involve the rather technical and dry scientific  
3 evidence which was the crux of the case, but oft times  
4 involved matters which were not even evidence. The biggest  
5 play in the preliminary hearing was given to a Diane  
6 Williams, Mr. Cooper's former -- former girlfriend who  
7 expressed emotional -- strong emotions that she hated  
8 Mr. Cooper. They liked that. That was -- that was  
9 broadcast. More informative stuff on the same date was  
10 not.

11 By allowing extended coverage, I think that you  
12 are -- that you are encouraging an emotional type of  
13 coverage of this particular -- of this particular case,  
14 and I am not criticizing the television folks for -- for  
15 doing that. I mean, that's -- they put on the television  
16 that which they think is -- is best, but I think it's  
17 indisputable that that is the kind of thing that they think  
18 is best, and that is just the kind of -- that's the kind  
19 of coverage, that's the kind of thing that makes it  
20 harder and harder for Mr. -- for Mr. Cooper to get a fair  
21 trial.

22 I get -- we get mail in our office. I even had  
23 a call from one of our local assembly persons or his  
24 field representative worrying about Mr. Cooper's suit;  
25 and whenever people see pictures of Mr. Cooper in a suit,  
26 that seems to excite great prejudices. We get phone calls

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1 and objections that Mr. Cooper is allowed to wear his own  
2 suit, and I think that that's the kind of coverage that  
3 we are getting, and if you -- if you look at the rules,  
4 the extended coverage is discretionary.

5 We have also had several instances where there's  
6 been pictures published in the local newspaper of  
7 Mr. Cooper looking at some notebook or Mr. Cooper writing  
8 letters and, in essence, invading the inner bar. We can't  
9 even put our papers out on counsel table without somebody  
10 taking a picture of what we are looking at and what we are  
11 doing, and I think that makes it very difficult to --

12 THE COURT: Counsel, I am informed that they  
13 cannot pick up the printed word nor read what's on your --  
14 the counsel table at this time. I specifically checked  
15 that out.

16 MR. NEGUS: There was in the Progress Bulletin --  
17 and the exact citation to date and time is in the change  
18 of venue motion which I'll file -- there is pictures of  
19 Mr. Cooper sitting at counsel table, and indicates that  
20 Mr. Cooper, according to them, is reading -- is looking  
21 at a scrapbook of photographs concerned with this  
22 particular case. That is, they may not be able to pick  
23 it up with their pictures, but they can with their captions,  
24 and there is other things Mr. -- they had a story about  
25 Mr. Cooper was sitting with a stub of a pencil writing  
26 letters during the course of the proceedings. That is,

1 they may -- the actual resolution of their cameras may not  
2 be sufficient to take a photograph of the -- of the -- of  
3 the item, but they may take pictures of Mr. Cooper  
4 looking at things on the counsel table, and I guess the  
5 reporters' eyes are sharper than their cameras, and they  
6 put it in the captions.

7 THE COURT: All right. I will come back to you.

8 Mr. Kottmeier, Mr. Kochis?

9 MR. KOTTMEIER: Your Honor, as far as extended  
10 media coverage, this is an issue that we have left with  
11 the discretion of the Court and have not taken a position  
12 whether the proceedings should be open or closed.

13 THE COURT: Mr. Adler, anything on that issue?

14 MR. ADLER: No, Your Honor. We have nothing to  
15 add.

16 THE COURT: Mr. Kurgan, Iran Kurgan from CBS,  
17 do you wish to be heard on this?

18 MR. KURGAN: Yes, Your Honor.

19 THE COURT: And Mr. Zachary from CBS.

20 MR. ZACHARY: Good morning, Your Honor. Thank you  
21 very much. I am Donald Zachary. I am with NBC in Burbank,  
22 and while we did not request extended coverage of this  
23 particular hearing, I would, with the Court's permission,  
24 respond to some of Mr. Negus' comments since we have  
25 covered this proceeding in the past and will no doubt do  
26 so in the future.

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1 THE COURT: All right. You may.

2 MR. ZACHARY: Your Honor, the policy embodied  
3 in California Rule of Court 930.2 is for open proceedings.  
4 Because we represent through NBC all of our viewing  
5 audience in their desire to be -- to have access to this  
6 proceeding, the points that Mr. Negus makes are based on --  
7 on his -- his well-meaning attempt to defend his client,  
8 but without any basis in fact or reality. For example,  
9 he -- he has -- he makes a -- his major point seems to be,  
10 as I understand it, that by allowing extended media  
11 coverage here in this courtroom to the stations in  
12 Southern California, that is going to prevent him from  
13 getting a fair trial anywhere in the state.

14 Your Honor, we -- we doubt that the extended  
15 coverage would prevent a fair trial in Southern California,  
16 because of the large number of potential jurors in the  
17 Southern California area. I don't think it's possible  
18 because of our coverage to -- to inhibit the right of  
19 Mr. Cooper to get a fair trial; and through the techniques  
20 that are available to the Court, particularly through  
21 extensive voir dire, I think that this Court can eliminate  
22 any problem of prejudicial publicity.

23 Furthermore, if, as Mr. Negus contends, the  
24 Southern California area has been saturated, that does  
25 not in any way imply that the rest of the state has been  
26 prejudiced by that coverage. KJBC's coverage area extends

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1 not further north than Santa Barbara, so that the whole  
2 northern part of the state is open and is not affected in  
3 any way by our coverage, and there's simply no facts to  
4 demonstrate that because KNBC covers a story which is  
5 important to it and its viewers, that someone in the  
6 northern part of the state would thereby be encouraged  
7 to do so or in fact has done so.

8 The fact is, Your Honor, that -- that Mr. Negus  
9 has brought forward no facts which would indicate  
10 prejudice to his client, and on that basis we respectfully  
11 submit that extended media coverage should continue to be  
12 allowed.

13 Thank you, Your Honor.

14 THE COURT: All right. Thank you.

15 Anybody else?

16 Do you wish to respond?

17 MR. NEGUS: Just briefly. There's nothing in  
18 Rule 980.2 that I can find which establishes a preference  
19 for either having it or not having it. It merely -- it  
20 merely establishes a procedure whereby the various  
21 television stations or other stations can ask for it and  
22 the Court can rule on it. It doesn't give you any -- any  
23 guidelines that I can see in there as to -- as to how you  
24 are supposed to -- how you are supposed to make the --  
25 how you are supposed to make the decision; so I think  
26 that basically it's a matter of discretion.

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1           Secondly, I have had personal experience that the  
2 various television stations' footage here doesn't limit  
3 itself just to their own particular viewing audience.  
4 What ABC and NBC publish -- or put on the television  
5 here is made available to other NBC or ABC affiliates  
6 throughout the state, and I think we have to recognize  
7 that in this day and age, the impact of television is  
8 probably considerably stronger on potential jurors than --  
9 than other forms of -- than other forms of coverage.

10           I'm aware -- maybe counsel can inform me otherwise --  
11 of no other case which has had the degree of television  
12 coverage that this -- this one has. Even the most  
13 celebrated cases in Los Angeles haven't had -- haven't  
14 had the -- haven't had the cameras in the courtroom for  
15 every little thing that they -- that they -- that they do,  
16 and I also beg to differ with Mr. Zachary in that -- that  
17 somehow voir dire is going to be a cure for Mr. -- for  
18 Mr. Cooper. There have been change of venue granted in  
19 counties of comparable size to San Bernardino with  
20 considerably less publicity than we've had in -- in this  
21 particular case.

22           Just tabulating in preparing for the change of  
23 venue, we've had more television stories on two channels,  
24 which I happen to have available to me, on this particular  
25 case than they had newspaper articles in a case that was --  
26 where a change of venue was granted in Northern California;

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1 so I don't think that -- that we can sort of plausibly  
2 say that, oh, it's not going -- it's not going to make  
3 any difference. The newspapers and the press themselves  
4 treat this case as a -- as unprecedented, at least for  
5 this particular county, in its publicity, and there have  
6 been stories to that effect.

7 THE COURT: All right. Rule 980.2 of our Rules  
8 of Court perhaps doesn't establish guidelines to require  
9 me in any way to open it up to extended coverage, but I  
10 think it's undeniable that the mere fact that we have  
11 980.2, which is of recent origin, indicates the trend  
12 evident in the past few years towards openness in  
13 judicial proceedings. It used to be a violation of  
14 judicial ethics if I even permitted a camera to be in  
15 the courtroom, but we've gone on an experimental basis  
16 that's been extended, and I think that precedent has  
17 indicated that as far as the participants in the judicial  
18 proceedings are concerned, cameras get largely ignored,  
19 and it doesn't bother us here. It's true that it can  
20 bother your client or perhaps the prosecution in certain  
21 circumstances, but I do not subscribe to what seems to be  
22 a premise that mere publicity is bad publicity in all  
23 cases.

24 These are purely legal proceedings. I find  
25 nothing prejudicial about these proceedings. This is  
26 a non-evidentiary matter, at least today. We are going

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1 to take it one day at a time, so to speak. Any order for  
2 extended coverage will be subject to revocation.

3 Mr. Negus, I wouldn't expect us to have to do it every  
4 single day, but if something unusual comes up that may  
5 well be prejudicial, I'll hear you again, but here we  
6 are considering your client's right to a fair trial and  
7 balancing it against what is clearly a legitimate public  
8 interest in the proceedings, and the fact that somebody  
9 sees him bringing -- taking notes at a table or looking  
10 at exhibits, something like that is perfectly to be  
11 expected of somebody on trial or facing criminal proceedings.  
12 That doesn't necessarily mean that it's bad or prejudicial  
13 to him. I do not find prejudice sufficient to outweigh  
14 the public interest. At least at this time we are going  
15 to continue with permissible extended coverage.

16 MR. NEGUS: My -- I'm not -- from the Court, I'm  
17 not sure whether the Court was ruling that unless I  
18 object again there, you're going to continue to allow it  
19 or we're going to have these hearings each -- each time.

20 THE COURT: No. I do not wish to duplicate this  
21 every single time.

22 MR. NEGUS: Well, then I wish to make clear that  
23 I am objecting to it from now and forevermore.

24 THE COURT: All right. I will consider it a  
25 continuing objection.

26 Now, as far as procedure to the meat of our issues

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1 today, would you like to take up --

2 MR. ZACHARY: Thank you, Your Honor.

3 THE COURT: Yes. Perhaps I simply arbitrarily  
4 looked at some of them, and I find no difficulty with  
5 some of your motions, Mr. Negus, and perhaps the  
6 prosecution doesn't, either.

7 Let's go first to your motion to include in the  
8 preliminary hearing record certain matters to be considered  
9 with your 995 motion which has not yet been filed, but  
10 you've indicated that you would do so.

11 MR. NEGUS: And also with the change of venue  
12 motion.

13 THE COURT: All right, and I haven't -- I'm not  
14 looking at your pleadings at the moment, but you wanted  
15 the transcripts of the complete proceedings, I believe,  
16 before the Municipal Court. You wanted the Defendant's  
17 exhibits which were offered to the court below with  
18 reference to your request to close the preliminary  
19 hearing to extended coverage. You wanted oral testimony  
20 from the transcripts, particularly at the time of the  
21 motion of a Larry Walker, Philip Schuyler, Haida Katz,  
22 and Bill Arthur.

23 MR. NEGUS: Right. Basically, that's the  
24 evidence that was submitted to the Court in support of  
25 the 863 motion.

26 THE COURT: And then I guess all exhibits; is that

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1 correct?

2 MR. NEGUS: Right.

3 THE COURT: Any objection to any of those?

4 MR. KOCHIS: No, Your Honor, not from the People.

5 THE COURT: All right. I don't, either, so that  
6 will be granted in its entirety.

7 Secondly, I have a motion for daily transcripts,  
8 and I may -- we do not have it today, and we discussed  
9 this kind of informally and fairly briefly before, but  
10 you indicated what I felt were compelling reasons to grant  
11 that to you on your venue motion and on evidentiary  
12 motions and for trial and for even jury voir dire. The  
13 only reservation that I have about it was with reference  
14 to non-evidentiary legal motions.

15 Mr. Negus, is there some compelling reason why  
16 you should have a daily on that, for instance, a 995?

17 MR. NEGUS: The only reason I requested the daily  
18 was two -- there's practical reasons and --

19 THE COURT: Just on that now. I understand some  
20 of the practical problems.

21 MR. NEGUS: Just thinking now, taking the 995  
22 as an example, well, I am aware, from having gone through  
23 this before, that there is -- there are economic problems  
24 which are put on court reporters by -- by the burdens that  
25 this kind of case puts on them, and I had a situation in  
26 another case where I felt that the economic pressures put

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1 on the court reporters were such that they couldn't do an  
2 adequate job. I'm concerned that how do you -- how do you  
3 schedule people coming in and out?

4 THE COURT: I am aware of some of that. Why don't  
5 I go ahead and make the ruling at this time that -- I have  
6 even reservations. I'm trying to cut down and economize,  
7 but I -- I think basically your request is well taken, so  
8 unless -- unless there's some opposition to this -- I can't  
9 conceive of you doing so, because it would benefit perhaps  
10 the prosecution as well -- I will make a standing order  
11 then, and unless I tell the court reporter differently,  
12 commencing on the 5th of March, if that's going to be our  
13 next hearing date, we will have a daily transcript.

14 MR. NEGUS: Thank you.

15 THE COURT: There are good and valid reasons and  
16 burdens on the reporters to where even if I don't order  
17 it, they would only be able to work part-time perhaps.  
18 It's a small amount that I'd be able to exclude even if  
19 I didn't grant it.

20 Number three, I had a motion to set time for  
21 the district attorney to file notice of evidence that he  
22 would introduce in aggravation pursuant to Penal Code  
23 Section 1903. Gentlemen, at the time that motion was  
24 filed by the defense, he was talking about the first  
25 trial date previously set of March 19, and thus requested  
26 the district attorney to file by March 1st. I have no

1 idea whether or not the case will go to trial at that time.

2 MR. NEGUS: I have no idea, either, but I still  
3 think that's a reasonable date, Your Honor. They have --  
4 basically, they have known about the motion for several  
5 months.

6 MR. KOCHIS: Your Honor, I am approximately 70  
7 percent done with the response to that request. I intend  
8 to have it filed if not on the 1st of March, the very  
9 next day, on the 2nd. I don't see that as being a problem.

10 MR. NEGUS: The 2nd's fine.

11 MR. KOCHIS: Likewise, with Mr. Negus' request --

12 THE COURT: I'll even establish, say, the 6th of  
13 March. That should be plenty of time. All right, to be  
14 filed by March 6. Okay?

15 MR. KOCHIS: Your Honor, likewise, with his  
16 request for the 1101 noticed motion, I intend likewise  
17 to file my response to that, hopefully, by either March  
18 the 1st or March the 2nd.

19 THE COURT: All right.

20 MR. NEGUS: The 6th is fine for that.

21 THE COURT: In an abundance of caution, that's  
22 with reference to similars or prior acts, and we'll set  
23 that likewise on or before 5:00 p.m. on March 6. That  
24 takes care of two more of the preliminary motions.

25 MR. KOCHIS: Your Honor, before we leave that,  
26 the method I prefer to follow in that is to serve

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1 Mr. Negus by those dates, and then he and I can determine  
2 if we want to actually file the documents with the Court  
3 because, as I understand it, things that are filed with  
4 the Court may become matters of public record, and I think  
5 those are types of documents that we might not want to be  
6 made public.

7 THE COURT: Good idea. Satisfactory?

8 MR. NEGUS: Fine.

9 THE COURT: I am certainly not indicating that  
10 you must file everything that you give to Mr. Negus with  
11 the Court.

12 Then one that's perhaps not listed is you made a  
13 formal but general motion for the Court to take judicial  
14 notice, and you furnished me with some nine volumes. I  
15 read three-fourths of one of them without mention of the  
16 Cooper case, but you are going to have to get much more  
17 specific before I will take judicial notice. That's in  
18 the Frey case.

19 MR. NEGUS: Right, Your Honor. What -- first of  
20 all, the records --

21 THE COURT: I would prefer, Counsel, for you  
22 rather than just to tell me orally, that you file written  
23 documents citing page and line within those documents in  
24 some way.

25 MR. NEGUS: Can I just point out to the Court that  
26 I asked that that motion was actually -- that I request

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1 that you do that on March the 5th, and I am filing with  
2 my declaration in support of a change of venue references  
3 to the parts of that that I -- that I wish the Court to  
4 take notice of. The only reason I did that was so that  
5 the prosecution would have notice that I want that record  
6 to be -- to be part of the Court. I am not expecting you  
7 to read it all: just give them notice that matters in  
8 that will be requested to take judicial notice. That's  
9 what the Evidence Code requires me to do, just give them  
10 notice.

11 MR. KOCHIS: Your Honor, along that line --

12 THE COURT: That may be. Are you asking me to do  
13 something?

14 MR. NEGUS: No, I'm not. I'm just giving them  
15 notice that I am going to ask that you take judicial  
16 notice of certain parts of that record. I will tell you  
17 what parts specifically I want -- I am not even going to  
18 ask you to read anything I already haven't tabulated.

19 THE COURT: On March 5 then?

20 MR. NEGUS: Right.

21 MR. KOCHIS: And by that time, if I have an  
22 appropriate objection to the Court taking judicial notice  
23 of it, I will inform the Court of that and Mr. Negus in  
24 writing.

25 MR. NEGUS: Fine. I think -- I was just following  
26 a procedure in the Evidence Code that says I have to give

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1 him a piece of paper.

2 THE COURT: All right. I'm going to be attending  
3 a study institute in San Diego and will be back here a  
4 week from today, and if you have something else in mind,  
5 I thought you might ruin my time in San Diego.

6 MR. NEGUS: You'll have approximately 60 or 70  
7 pages to read, Your Honor, while you're in San Diego I'll  
8 get to you this afternoon.

9 THE COURT: All right. You are going to tell me  
10 that at some point. And with that, I am down to your  
11 motion for discovery.

12 MR. NEGUS: Okay.

13 THE COURT: Before we get to that, perhaps, I  
14 could hear in chambers, I believe, counsel discussing  
15 what was going to occur on March 4. Could you fill me in  
16 briefly before we get into your discovery motion? March 5,  
17 excuse me.

18 MR. NEGUS: What I have -- I am prepared to give  
19 ten days notice of a change of venue motion. Today is  
20 ten days before March 5, and my typist is mightily doing  
21 the last ten or fifteen pages.

22 THE COURT: They have oral notice of that all this  
23 time. They'd perhaps waive any slight defect.

24 MR. NEGUS: They may want to read it. I don't  
25 know. Maybe they don't, but, anyway, I am going to file  
26 that with the Court and get a copy to counsel.

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1 THE COURT: Today?

2 MR. NEGUS: Today, so that is the one motion that  
3 I have had time to formally notice for March the 5th.  
4 I believe that once you get that motion, once we introduce  
5 the exhibits, I am going to be calling a few witnesses,  
6 not very many, but a few witnesses on the 5th with respect  
7 to that motion. Once you get all that material, it's  
8 going to probably take you close to a week to go through  
9 it. You've got probably 20 hours, I would guess, of  
10 television to watch. There's many, many, many newspaper  
11 clippings. I have attempted to pick out some of the ones  
12 that I think are more important so maybe you didn't have  
13 to read all the newspaper articles.

14 THE COURT: You understand that we've got a two-  
15 stage proceeding?

16 MR. NEGUS: Right. We're just talking about --

17 THE COURT: Possibly we won't get to the second,  
18 so don't give me information on the second that might be  
19 irrelevant to the first.

20 MR. NEGUS: I'm just talking about the information  
21 on the first, Your Honor. I mean, we have -- I believe  
22 there was ten -- there was ten hour-long videotapes of  
23 visual coverage up to the 868 motion. I think it took me  
24 eight hours to watch them, and I would guess we'll probably  
25 have a similar amount that I haven't yet received -- I  
26 haven't yet viewed on -- since then, so that's -- you know,

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1 that's several hours of that. There's just lots and lots --  
2 lots and lots of documentation just on -- just on newspaper  
3 articles that had circulation within this county; and  
4 pursuant to our informal -- our informal discussion before,  
5 I have limited myself to -- in the preparation of exhibits  
6 just to stuff that has to do with San Bernardino County,  
7 but that's immense.

8 THE COURT: All right. The first stage would be  
9 whether or not the trial should be moved from this county.

10 MR. NEGUS: Right.

11 THE COURT: And if the Court decides that there's  
12 a reasonable likelihood that he cannot get a fair trial  
13 in this county, then when we get over that hurdle we go  
14 to stage two at some point, and we may well not get into  
15 stage two then until further down the motions.

16 MR. NEGUS: I would assume we would not. The  
17 Rules of Court provide that you -- if you make that --  
18 make that finding, that you notify the Judicial Council,  
19 and that they -- it's going to take -- it looks like it  
20 takes at least a month or so for that process --

21 THE COURT: Oh, I wouldn't think so. I think it's  
22 almost telephonic.

23 MR. NEGUS: Well, whatever, but we have to set up --

24 MR. KOCHIS: Your Honor, I am standing because as  
25 I've discussed with Mr. Negus --

26 THE COURT: You want equal dignity, Mr. Kochis,

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1 because he's standing.

2 MR. KOCHIS: More or less.

3 I have an objection that I'd like to place on the  
4 record to us handling the change of venue motion first.  
5 I think it's practically inappropriate. I think Mr. Negus  
6 would agree he intends to bring a 995 and a 1538.5 motion  
7 during the course of these proceedings at some point. I  
8 would imagine those motions are going to take some time  
9 to litigate. Even the 995 is going to involve the Court  
10 reading portions of a rather voluminous preliminary  
11 hearing transcript. The 1538.5 hearing is going to be a  
12 de novo hearing. It's going to require the taking of  
13 testimony, likewise is going to take some time. If either  
14 party receives a ruling they are not satisfied with on  
15 either one of those hearings, I'm sure the prosecution  
16 or the defense may be taking a writ and requesting for a  
17 stay. That could affect the posture of this case in terms  
18 of when we would get to trial. What I am saying is it  
19 seems to be more practical because one of the factors the  
20 Court has to consider in a change of venue motion is how  
21 much time has passed between the crime and the trial, and  
22 these other motions and writs that may be taken would  
23 seriously affect the time frames, and it could cause us  
24 to move the trial date backward quite some time.

25 THE COURT: I'm in sympathy with that position,  
26 Mr. Negus, but let me go ahead and let you finish.

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1 MR. KOCHIS: And my preference would be I have no  
2 objection to starting motions on the 5th of March,  
3 whether that be a 1538 or a 995, hearing those matters  
4 first, getting the Court's ruling, seeing how much time  
5 it takes us to resolve those, and then hearing the change  
6 of venue motion.

7 THE COURT: We touched on this briefly before.  
8 You indicated some reason, but I -- it didn't persuade  
9 me too much as to why we should get into that first.

10 MR. NEGUS: First of all, the practical problems.  
11 I have noticed the change of venue motion, and I will  
12 have noticed it, and that's the one I am prepared to go  
13 on. I -- it is of considerable --

14 THE COURT: Suppose hypothetically -- let me  
15 interrupt, please. Suppose hypothetically I deny your  
16 motion for change of venue and say that he can get a  
17 fair trial in this county, and then we go all the way  
18 through these proceedings and you could quite legitimately  
19 renew your motion and say, but look at all this publicity  
20 that's occurred before, and this is duplication of efforts  
21 and two bites of the apple, perhaps.

22 MR. NEGUS: No. I don't think so, because  
23 basically my understanding is I can -- I can take -- I  
24 can make it twice. I can make it at the time of -- before  
25 trial, and I can renew it after voir dire. That's the  
26 only two times that I can -- that I believe that I am

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1 We can litigate --

2 THE COURT: How long do you expect that first stage  
3 to last?

4 MR. NEGUS: Well, as I say, I think it's going to  
5 take you probably a week, maybe -- Mr. Kochis said a week.  
6 My original estimate was two or three days, two or three  
7 days to get -- to get through all the material. It's just  
8 lots and lots and lots of material, and I think that  
9 counsel probably would agree.

10 MR. KOCHIS: Your Honor, you are going to need  
11 five working days to review the material.

12 MR. NEGUS: Anyway, so the upshot is that the --  
13 that at the request of the District Attorneys' Association,  
14 the legislature changed the statute, and they set up  
15 exactly the procedure that I'm following. It's the D.A.'s  
16 that did this. They said that you make your change of  
17 venue motion. Then they specifically said that any motions  
18 that are pretrial motions, like a 995 and a 1538.5, are  
19 made in the county in which a change of venue is granted.  
20 At the end of that, if the publicity has died down, then  
21 the D.A. can come in and ask for a reconsideration, but  
22 my best guess is that the publicity is not going to die  
23 down. It hasn't yet. Mr. Kottmeier's been predicting  
24 it's going to die down for months, and he's been wrong  
25 for months, so I just don't think that -- that it's likely  
26 to die down, and I doubt if they are going to be able to

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1 make that showing, but that's the procedure that the  
2 District Attorneys' Association pushed through the  
3 legislature, and it is their procedure, and I think  
4 that that's what I'm trying to follow.

5 THE COURT: Submit it, Mr. Kochis?

6 MR. KOCHIS: Yes.

7 THE COURT: Mr. Negus?

8 MR. NEGUS: Yes.

9 THE COURT: Counsel, I think that these  
10 proceedings -- at least I hope that they are going to  
11 become so dry, technical, long and perhaps duplicative  
12 of what occurred at the Municipal Court that the media  
13 is not going to be interested in covering these  
14 proceedings after a while.

15 Secondly, with reference to the time and my  
16 duplication of services, if I have to consider it again  
17 to consider new publicity, would you stipulate at this  
18 time, Mr. Negus, that I could -- wouldn't have to go  
19 through all this again, and all we'd do is present  
20 evidence on the new matters that come up between now and --  
21 come up between the time of my ruling and the end of the  
22 motions stage?

23 MR. NEGUS: The way it works is if you -- if you  
24 deny the change of venue motion now, then we've got a  
25 record. I take a writ. If you grant it, then it's  
26 granted. Then the D.A. can come back and show -- what he

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1 has to come back and try and show is that there hasn't  
2 been any publicity in the interim, okay, and so you don't  
3 have to -- you don't have to reconsider what you've  
4 already done.

5 THE COURT: Yes. That's my understanding, so I  
6 don't really see any loss of time, and I would just take a  
7 look at the new matter, so I will deny your motion to  
8 not get into the change of venue first. If that's what  
9 he's prepared on, we will go on that.

10 Anything further before we get into discovery?

11 MR. KOCHIS: Not at this time.

12 MR. NEGUS: My -- just to give both Court and  
13 counsel some insight into what my plans with respect to  
14 the motions are is I would then -- I would be planning  
15 to be able to notice the motion to suppress evidence for  
16 March the 12th, and given Mr. Kochis' estimates of how  
17 long it's going to take to get the change of venue, we  
18 may or may not be ready exactly on the 12th, but whenever  
19 we get done with the change of venue, to go into that.

20 I would then hope to be able to have my points  
21 and authorities on the 995 completed prior to the  
22 completion of the motion to suppress. I would imagine  
23 the motion to suppress, judging on the basis of the  
24 preliminary hearing, and given the fact I think both  
25 sides are probably producing additional evidence at this  
26 time, might last a little over a week, so we would then

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1 be ready to go ahead with the 995 as soon as we finished  
2 the motion to suppress. That would then end the pretrial  
3 motions.

4 My position on the trial is that it depends --  
5 obviously, that's going to depend upon whether a change  
6 of venue has been granted, where we -- where we go from  
7 there, and we can take that up at that time, but that's  
8 my intended course.

9 THE COURT: Let me -- let me mention one other  
10 thing at this time, and then there's one hearing that we  
11 should have sometime today in chambers away from the media,  
12 and that would be where all of this is going to take place,  
13 and I will give you a clue. If we are talking about  
14 extended court time as we are, at least pretrial on this  
15 matter, that deprives the West End Superior Court of a  
16 significant part of its judicial manpower. We have no  
17 more courts here with which to put another judge. We  
18 can perhaps get another judge assigned from San Bernardino  
19 or by the Judicial Council to help us with our workload.  
20 This is something, the administration of the courts in  
21 that area, that we all here are concerned with, but I  
22 can't do it if I am occupying one of the courts here,  
23 so I am considering another place to hold these pretrial  
24 motions, San Bernardino or Chino, and we have courts in  
25 both of them, and perhaps you'd rather speak on this  
26 privately, and perhaps you might get Sergeant Reynosa as

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1 well, because they have an interest in the matter, in on  
2 that conversation.

3 MR. NEGUS: I'll just tell you I would object  
4 strongly to Chino, and I have no objection to San  
5 Bernardino.

6 THE COURT: Let the record reflect, but let's  
7 take that up at some point today when we can get all the  
8 interested parties involved in that.

9 All right. I believe in the next area you have  
10 all the counsel at the table here, including Mr. Adler  
11 and Mr. Hadden as well. Has --

12 MR. NEGUS: Your Honor, I received some points  
13 and authorities from Mr. Hadden approximately two minutes  
14 before the Court came out. I haven't had a chance to  
15 read them.

16 THE COURT: It's not much different from that  
17 that Mr. Kochis had filed.

18 MR. NEGUS: I still -- if we could do the other  
19 parts of the -- of the -- of the motion other than the  
20 Pitchess materials and then give me a chance to -- to look  
21 at that before I -- before we argue the Pitchess materials,  
22 let's take a break or go out to lunch.

23 THE COURT: Why don't we take a brief recess at  
24 this time, and that will give you a chance to look it over  
25 as well. All right. So we will be in morning recess.

26 (Recess.)

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1 THE COURT: I have read the motion for discovery  
2 filed January 31, 1984, the incorporated pages of the  
3 transcripts mentioned in it, the order proposed, the  
4 district attorney's response thereto, and that from the  
5 Sheriff's Department, and the Sheriff's Department,  
6 Mr. Negus, you received that only this morning, as did I,  
7 but going along with that, I suppose, there's a  
8 declaration previously filed back on February 17 of  
9 Lieutenant Nunn, N-u-n-n --

10 MR. NEGUS: I received that.

11 THE COURT: -- which I have likewise read and  
12 considered.

13 Do you wish to be heard, Counsel?

14 MR. NEGUS: Let me just -- I don't know which  
15 order you wish to do it. I've had talks with Mr. Adler  
16 from the Attorney General's Office, and we can go  
17 through and specify with respect to Section A those items  
18 which there are no objections to and those which there  
19 are.

20 THE COURT: All right.

21 MR. NEGUS: And we can divide them up perhaps  
22 that way.

23 THE COURT: Let me go back to your motion for a  
24 minute here.

25 MR. NEGUS: Because some -- there's various ones.

26 THE COURT: Did you file anything, Mr. Adler?

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1 MR. ADLER: No, sir, I did not. If the Court --  
2 the Court will note that in the district attorney's  
3 response, there is a section of argument directed to a  
4 portion of -- of the discovery motion that was directed  
5 towards California -- to the Department of Corrections  
6 because --

7 THE COURT: All right. Let's take it up -- when  
8 we get to the part you are concerned with, then we will  
9 hear from you orally.

10 MR. ADLER: Thank you, Your Honor.

11 THE COURT: Going to your motion for discovery,  
12 Mr. Negus, I've gone through and I've mentioned the ones  
13 that there are objections to, so let's just go through  
14 them one at a time, and we're going to quickly handle  
15 the uncontested ones.

16 Number one, there's no objection, and I will  
17 just initial where it says "ordered." That's correctional  
18 officers' names on May 3.

19 Have you gone through the district attorney's  
20 Response, Mr. Adler?

21 MR. ADLER: Yes, Your Honor, I have.

22 THE COURT: So do you have a different position  
23 than him on any of the others that he has not argued  
24 against?

25 MR. ADLER: Which -- which portion of the  
26 discovery motion are we talking about?

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1           THE COURT: I am distressed somewhat because I  
2 asked you before if you took a significant different  
3 position than the district attorney, and apparently you  
4 do. He has no objection to that one, but you do then.  
5 Are you telling me that that information cannot be  
6 supplied?

7           MR. ADLER: Well, the Department told me that  
8 given the way this works, it is difficult for them to  
9 do that, or impossible. Mr. Negus told me in our  
10 telephone conversation that in his experience, they  
11 have been able to do this before. I am sort of at a loss.  
12 I am telling the Court what my client told me, and also  
13 representing to the Court what Mr. Negus told me. I can't  
14 go much further than that.

15           THE COURT: He wants inmates in a certain hall  
16 between certain dates, in fact, three halls at a certain  
17 time. What do you suggest, sir?

18           MR. NEGUS: They can do it. That's why I think  
19 in my declaration I noted certain pages in the transcript.  
20 CIM always says they can't.

21           THE COURT: I will order it, and then if they  
22 can't, why, we will have, in effect, an order to show  
23 cause why not.

24           MR. NEGUS: Fine.

25           THE COURT: All right. I have initialed number  
26 three as being ordered.

1           Number four, photographs. Have you got some kind  
2 of agreement to have those likewise returned?

3           MR. ADLER: These are of inmates, Your Honor.

4           THE COURT: Yes.

5           MR. ADLER: No.

6           THE COURT: No problem?

7           MR. ADLER: I don't believe there's a problem  
8 there.

9           THE COURT: So ordered.

10          Number five, information with reference to a  
11 particular inmate.

12          No indicated objection so far.

13          Mr. Adler?

14          MR. ADLER: Your Honor, the only objection that  
15 we feel compelled to make is an objection based upon the  
16 right of privacy of Mr. Taylor. It seems to us if we  
17 don't make an objection and have the Court engage in the  
18 balancing and weighing process, Mr. Taylor might then  
19 seek redress against the Department.

20          THE COURT: What's on here? You've got psycho-  
21 logical test results.

22          MR. NEQUS: Those are not privileged, Your Honor.  
23 They circulate freely amongst the institutions. Any staff  
24 member in the institution has access to them with a "need  
25 to know" basis. They are not restricted. They are not  
26 covered by any patient-psychotherapist privilege.

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1 THE COURT: That's the only thing. Well, that  
2 would appear to be the most sensitive matter there. You  
3 have disciplinary matters which are likewise sensitive.

4 MR. ADLER: Your Honor, if it's the Court's sense  
5 that Mr. Taylor's right to privacy in -- in his file  
6 is outweighed by the need of Mr. Cooper to prepare ade-  
7 quately to defend himself against capital charges, you  
8 know, we will certainly comply with the Court's order,  
9 but for the record, we do feel compelled to make the  
10 right of privacy objection.

11 THE COURT: Normally you don't have to tell me  
12 twice, Mr. Adler.

13 MR. ADLER: Excuse me.

14 THE COURT: Mr. Negus, you are not going to  
15 divulge this information outside of the usual purposes  
16 of trial, I take it.

17 MR. NEGUS: No.

18 THE COURT: All right. I will -- I will order  
19 that with that understanding, because in trial in the  
20 way you might use it here, the Court maintains control  
21 over that in the usual manner.

22 Let's skip number six and go to number seven.

23 MR. NEGUS: I can indicate there's no objection  
24 to seven through fifteen.

25 MR. ADLER: That's correct, Your Honor.

26 THE COURT: All right. So ordered each and every

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1 one.

2 He suggested a particular time that you would  
3 furnish this material somewhere. Did that appear all  
4 right to you, gentlemen? It's back at the end, I believe.

5 MR. NEGUS: I left that to the Court to decide,  
6 because we weren't sure when we were going to hear this  
7 motion. I would request two weeks from now.

8 MR. ADLER: May I have just a moment, Your Honor?

9 Your Honor, I am informed that with the exception  
10 of the items three and four, which I am told will take  
11 almost a month, there's no problem with the balance of  
12 the request.

13 THE COURT: I am not approving that time limit  
14 suggestion of a month. I don't see why anything should  
15 take that long. I can't conceive of me trying to put  
16 anybody in jail, however, if you don't get it in a  
17 couple of weeks, so do your best to furnish it within  
18 that period of time, and then we will hear from you if  
19 there's a problem. All right?

20 MR. ADLER: Thank you, Your Honor.

21 THE COURT: I trust that the institution is going  
22 to do their best to comply.

23 Surely, you have no objection to number sixteen  
24 and seventeen and eighteen, do you?

25 MR. NEGUS: Sixteen is the only other one that  
26 they have an objection to, Your Honor, and they don't like

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1 me taking pictures of fences.

2 THE COURT: Excuse me. Which one? They don't  
3 want you what?

4 MR. NEGUS: They don't like me taking pictures  
5 of their fences; however, the fences I'm asking to take  
6 pictures of, you can see by standing on Edison Avenue,  
7 as I have; however, when I was out there trying to take  
8 pictures of them, the guards didn't like me taking  
9 pictures of them, so I said I'd get a court order.

10 THE COURT: There may be some real valid security  
11 reasons for that. I don't know. I could also see valid  
12 reasons for defense desiring that under the escape charge.

13 Do you wish to be heard, Mr. Adler?

14 MR. ADLER: Your Honor has touched on the basis  
15 for our objection. It is not just a fence, either. There  
16 are also -- there are also -- there's a route within the  
17 institution that counsel would like to photograph that.  
18 We have no objection to photographs of all of the other  
19 areas, but my client feels that the areas contained in  
20 this particular requests are security areas, and we would  
21 ask the Court deny number sixteen. In the alternative,  
22 if the Court is inclined to grant it, we would ask that  
23 the same representations that have been made about other  
24 photographs which might be sensitive be applied to this  
25 item.

26 MR. NEGUS: I won't use them for any other purpose

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1 other than this case.

2 THE COURT: Is there any area that he requests  
3 pictures or inspection of that is not seen routinely by  
4 inmates?

5 MR. ADLER: Routinely by inmates?

6 MR. NEGUS: No.

7 MR. ADLER: No, Your Honor.

8 THE COURT: Then what they can see with their  
9 minds, he should be able to see with his camera, but as  
10 far as qualifying your --

11 MR. NEGUS: I have no objection to -- I will not  
12 use those photographs for any purpose other than this  
13 case.

14 THE COURT: I trust he will do that, and with  
15 that qualification, I will order number sixteen, seventeen,  
16 eighteen.

17 Nineteen, any objection?

18 MR. NEGUS: No.

19 MR. ADLER: No opposition to any other items  
20 seventeen through twenty-one, Your Honor.

21 THE COURT: All right. Let's move on to Section B.  
22 There's a lot of those. Let's get all of those that there  
23 is no objection on in case we have to modify any of them.  
24 Number one, two -- one through four, any objection to any  
25 of those?

26 MR. KOCHIS: No, Your Honor.

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26 MR. KOCHIS: No, Your Honor.

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1 and you will be able to predict which ones will be called.

2 MR. NEGUS: Judge, I don't want Mr. Cooper's  
3 life hanging on whether I predict right or not. I mean,  
4 they are just as -- they know approximately who they're  
5 going to call as witnesses at the trial. They are going  
6 to have to subpoena them all. I am not saying that this  
7 list stands in stone that they will present to me and  
8 that if they find additional witnesses or going through  
9 the trial, they decide that there's some people on the  
10 list that they -- that they want to add, that they can't  
11 be allowed to do that, but I believe that it's not an  
12 unreasonable -- it's not an unreasonable request. It's  
13 a -- the discovery procedures are -- for criminal cases  
14 are judicially created. They have tended to go along the  
15 analogy of civil cases. In civil cases this kind of  
16 request is routinely granted because it's the only way  
17 that you can -- you can prepare a piece of complex  
18 litigation. Your average burglary you don't have any  
19 problem, but in this particular case it's more akin to a  
20 complex civil case. We have to have some way of  
21 narrowing in on who they are going to -- who they are  
22 going to call as witnesses, so that we can investigate  
23 them. They have statutes that they get continuances  
24 if I bring in witnesses that they haven't heard of.  
25 There's no such statute for defense lawyers, and I doubt  
26 seriously if the Court's going to be wanting to consider

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1 during the course of trial a request for two days of  
2 continuance every time they bring in a witness that I  
3 hadn't thought of, and I think that by -- by -- there's  
4 no real -- there's no real burden on them for doing this,  
5 because they have to prepare the subpoenas anyway, and  
6 so all you're saying is -- is should they have a right to  
7 try and surprise me at trial with somebody I hadn't  
8 thought of, I don't think that's any way to run a lawsuit,  
9 and it seems to me it creates immense practical problems  
10 in a piece of complex litigation like this.

11 THE COURT: Perhaps as we get closer to trial,  
12 there's room for some accommodation. At this time I  
13 suspect that you are -- you have no way of knowing,  
14 yourself --

15 MR. KOCHIS: Well, Your Honor --

16 THE COURT: -- but later on, you will.

17 MR. KOCHIS: We have spent two months in  
18 preliminary hearing together. Mr. Negus knows the names,  
19 the identities, the addresses, the testimony under oath  
20 of a large number of people he knows we are going to call  
21 at the trial. There's not a potential witness available,  
22 that we are aware of, that we have not had interviewed,  
23 had their name placed on a piece of paper with their  
24 address and had that given to Mr. Negus. He's also  
25 aware, with his many years of trial expertise, which  
26 reports reflect information of witnesses who have no

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1 relevance whatsoever to the trial.

2 The court reporters at the preliminary hearing  
3 were kind enough to provide a typewritten chronological  
4 list of every witness who was called at the preliminary  
5 hearing. Each one of those witnesses is a potential  
6 witness, and most probably will be called at the trial.  
7 That's a list of 50 or 60 people for Mr. Negus to start  
8 to work on.

9 THE COURT: Mr. Kochis, I don't recall you ever  
10 trying a case before me but what you didn't furnish a  
11 witness list to the Court on perhaps the first day of  
12 court. Would you expect to do so in this case?

13 MR. KOCHIS: Yes, I do.

14 THE COURT: Would that be at the commencement of  
15 voir dire?

16 MR. KOCHIS: Yes, it would.

17 THE COURT: That's sufficient, Mr. Negus.

18 MR. NEGUS: That's fine. I mean I'm not asking  
19 for any more.

20 THE COURT: All right. I will not order number  
21 one.

22 MR. KOCHIS: Your Honor, the only qualification  
23 I would have is the Court is familiar when I prepare a  
24 witness list, I don't go through and put everyone's  
25 name -- I mean telephone number and address and zip code.

26 THE COURT: No, but that's in the report, and

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1 MR. NEGUS: We are talking about -- what you're  
2 talking about is, I think, a couple of boatloads of  
3 people, that they should have a list of -- of -- of the  
4 people that they sent out there. There's no officers  
5 on the island. They're in the bay.

6 THE COURT: Mr. Negus, as I read and studied this,  
7 I would suggest to you at this time you write a letter  
8 to the Sheriff of that county asking him for this  
9 information. If he denies you or ignores you, in that  
10 letter you tell him that you are going to be moving on  
11 or -- on a certain date to have the Court order that  
12 information. I want to give them an opportunity to be  
13 heard. I don't know what objection, if any, they may  
14 have to this. Try and get it yourself first. I reserve  
15 jurisdiction over it, but before I would rule upon that,  
16 I want at least an informal but written notice to the  
17 Sheriff of that county.

18 MR. NEGUS: And the Coast Guard, whoever they  
19 are, as well?

20 THE COURT: Yes, to those various people, so I  
21 will simply reserve jurisdiction on that one. They may --  
22 it may be so few, they may have no objection. I don't  
23 think it makes much difference which -- whether we take  
24 number twelve there or number six. Let's go back to  
25 page 3, any complaints of the CDC to any law enforcement  
26 agency about fabricating, falsifying or failing to preserve

1 evidence, or dishonesty of some 44 apparently -- no.  
2 This is just a very few people here. These are  
3 Investigator Ezekiel Hernandez -- and I assume these  
4 are all California Department of Corrections personnel;  
5 is that correct?

6 MR. NEGUS: Yes.

7 MR. ADLER: Yes, Your Honor.

8 THE COURT: All right. Mr. Negus, do you wish  
9 to amplify on the documents filed?

10 MR. NEGUS: Well, there's -- taking I guess all  
11 the points and authorities filed against the similar  
12 request from the Sheriff's Department are deemed to have  
13 been applied against this one, so maybe if I just  
14 argued the whole thing all at once.

15 THE COURT: Yes. I think that they are very  
16 closely aligned.

17 MR. NEGUS: They were meant to be identical.

18 First off, the -- Mr. Hadden didn't have the  
19 benefit of the preliminary hearing transcript, and if  
20 that's important to him, I don't have my copy with me.  
21 I don't think counsel does, anyway, but I incorporated  
22 by reference in my declaration essentially my summation  
23 to Judge Merriam --

24 THE COURT: I read that.

25 MR. NEGUS: -- at the preliminary hearing that I  
26 am presenting as an offer of proof, which I think is one

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1 of the two things that I'm required to do in asking for  
2 Pitchess type materials. That is, taking the situation  
3 which we're all familiar with under a Pitchess situation  
4 where the claim is excessive force, I have to claim that --  
5 I have to tell you that that's going to be my defense,  
6 I'm going to use excessive force as a defense, and I have  
7 to specify with particularity the kinds of materials  
8 that I want.

9 Well, I'm telling you in my declaration that  
10 my defense is going to include, both at the motion stage  
11 and at the jury trial stage, a claim that the San  
12 Bernardino Sheriff's Office --

13 THE COURT: Counsel, I really think you have  
14 stated all this.

15 MR. NEGUS: But I --

16 THE COURT: I know. I see no need, however, to --  
17 to make statements that may to some extent prove  
18 inflammatory. Even though the proceedings are open, I  
19 see no reason that you should bait them in any way.

20 MR. NEGUS: Well, can we have the people closed  
21 so that I can make my record? I don't want to be put  
22 in the position that we have to --

23 THE COURT: Your documents are filed. I merely  
24 suggest that to you. I know perfectly well what you are  
25 going to say. I don't see the need for you going into  
26 it, but if you insist on it, go ahead.

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1 MR. NEGUS: I am perfectly willing to do it  
2 outside the presence of all these people.

3 THE COURT: Proceed.

4 MR. NEGUS: I mean, I think it is important in  
5 explaining why I think the stuff -- that I should get it.  
6 To state more succinctly, that my offer of proof is that  
7 the Sheriff's Department botched the investigation of  
8 the Ryan crisis, and after doing that, they decided to --  
9 as soon as they found that Mr. Cooper had been in the  
10 area, they made him a scapegoat. That's what I will be  
11 attempting to prove, or one of the things I will be  
12 attempting to prove at trial and during the motions.  
13 Specifically, I think that the motion -- the evidence at  
14 the preliminary hearing, which I referred to, showed  
15 that this is not just something that -- that I've --  
16 that I've made up, that that's what -- that's basically  
17 what the evidence shows. The prosecution witnesses at  
18 the preliminary hearing admitted that they failed to  
19 preserve evidence. Mr. Gregonis testified that he  
20 wanted to have more time to gather evidence, wasn't  
21 given it. They admitted that they failed to preserve  
22 the carpet in the bedroom so that additional typing of --  
23 serological typing could be done on it. They admitted  
24 that they failed to preserve the furniture so that  
25 serological typing could be done on it. They admitted  
26 that there was various samples of blood which some officers

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1 thought were important, which supposedly through  
2 inadvertence weren't collected; so there was ample  
3 admissions at the preliminary hearing on the failure to  
4 preserve issue.

5 There was also evidence at the preliminary  
6 hearing that there were statements made by Joshua Ryen  
7 which the officers failed to preserve. Mr. O'Campo  
8 testified under oath that on June 6, 1983, he did not  
9 discuss with Joshua Ryen anything that had happened at  
10 the time of the crime. Prosecution has now interviewed  
11 and has provided a report of a nurse at Loma Linda  
12 Hospital who overheard Mr. O'Campo discussing various  
13 suspects with Joshua on June the 6th, a direct contra-  
14 diction to his testimony. Mr. O'Campo indicated that  
15 on June 14 when he talked to Joshua, at no time did  
16 Joshua ever say anything to the effect that "they,"  
17 meaning more than one person, chased him around the house.  
18 The prosecution has now provided me with discovery of  
19 the notes of Dr. Jerry Hoyle who was also present during  
20 that interview which showed several -- I think three times  
21 in the course of that note, he writes down that Joshua  
22 said "tney" were doing something to him. Mr. O'Campo  
23 said he destroyed his notes.

24 With respect to the search warrant, we had a  
25 search warrant for blood from Mr. Cooper. That search  
26 warrant was divided at the preliminary hearing into two

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1 parts, one that had to do with whether a crime was  
2 committed, in which there weren't any misstatements,  
3 and another one which had to do with a reason for  
4 believing that Mr. Cooper was responsible for the crime.  
5 That section had 12 paragraphs. Each one of those 12  
6 paragraphs had matters in it which the evidence at the  
7 preliminary hearing showed was factually not true. The  
8 witnesses from CIM, evidence was introduced at the  
9 preliminary hearing that with respect to a certain  
10 transaction that occurred on June the 7th, they had nigh  
11 onto identical descriptions of that transaction, several  
12 sentences, I think a couple paragraphs of stuff almost  
13 word for word the same. That in itself may not be  
14 significant, but they both stated under oath that in no  
15 way did they consult with the other in drafting those two  
16 paragraphs. That is, they just somehow independently  
17 came to exact same wording in their statements.

18 I would suggest that that is itself circumstantial  
19 evidence that at least those two people are lying; so  
20 in addition to just an assertion by my part -- and I  
21 haven't gone through all of it, just enough to -- I think  
22 just enough to highlight that it's not something that is --  
23 it's not what they call, in every response to request  
24 for discovery that I have ever seen, a "fishing expedition".  
25 It's something which goes to the heart of the defense  
26 case.

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1           The second -- the second criteria, in addition  
2 to an offer of proof, is that the items that are being  
3 requested are identified with specificity, and in this  
4 particular case, I have not asked for the complete  
5 personnel files or something like that which doesn't  
6 specify, but have given a specific statement as to what  
7 I want.

8           The six names from CIM are the six people that  
9 in my offer of proof I suggested that there was -- that,  
10 in the statement I made to Judge Merriam, suggested were  
11 involved in the process of fabrication. The names of  
12 deputy sheriffs which are included in the request from --  
13 for officers from the San Bernardino Sheriff's Office  
14 are names of the people that, according to a list drafted  
15 by Gary Woods of the Homicide and supplemented by  
16 testimony of people at the preliminary hearing who said  
17 that they were in the Ryan house, were there during the  
18 critical time when evidence was being -- was being -- was  
19 being seized. I have since talked to one of them, the  
20 first one, Roger McCoy, and he tells me that he was included  
21 on Mr. Woods' list by error. For that reason, I'd be  
22 willing to scratch Mr. McCoy from the list because I  
23 believe him. I don't think he was in there, but with  
24 respect to all the other people, they are either  
25 admittedly, or by reference to other people, people that  
26 were in the house, so it's just not -- it's not just an

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1 arbitrarily designated list.

2       As I take the basis of Mr. Kochis' objection,  
3 it's that the stuff that I'm asking for is not admissible  
4 in court, therefore, I shouldn't get it, and maybe I  
5 misunderstood him, but that's at least the way I read  
6 his objection. First of all, empty-ump cases say that  
7 admissibility is not a prerequisite to discoverability,  
8 but, secondly, and more important, that the two cases  
9 that Mr. Kochis relied on were both decided before  
10 Proposition 8, Article 1, Section 28(d) was added to  
11 the California Constitution. That section was added at  
12 the request of the prosecutors because they felt  
13 frustrated that certain evidentiary rules were not  
14 allowing them to get in evidence those -- the  
15 legislature excepted certain sections of the Evidence  
16 Code from the list, from -- from -- from Article 1,  
17 Section 28. The sections that Mr. Kochis relies on  
18 aren't among them.

19       It seems that if the prosecution is going to  
20 have the benefit that all relevant evidence should be  
21 admissible, that the defense likewise should have that  
22 benefit.

23       If the officers named have lied, fabricated  
24 evidence, failed to preserve evidence or destroyed  
25 evidence willfully in the past, that seems to be  
26 certainly relevant to the defense that we are putting on

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1 at trial, and I don't see anything in Mr. -- in  
2 Mr. Nunn's declaration which says otherwise. Basically,  
3 he says that they have -- have an interest somehow in  
4 getting candid reports from -- from people; therefore,  
5 they shouldn't have to -- they shouldn't have to give  
6 it up. Well, if they get candid reports that officers  
7 are lying or destroying evidence or fabricating evidence,  
8 that doesn't seem the sort of thing -- what's the point  
9 of getting candid reports if you're not going to do  
10 anything about it? I specifically did not ask for the  
11 one thing which I think that might require confidentiality  
12 in order to get a candid opinion, and that is the  
13 conclusions of the Sheriff's people about the truth of  
14 those charges, and that is the thing that I could see  
15 they might have an interest in having the guy give a  
16 candid opinion whether he thinks they are true or not,  
17 and I haven't asked for that.

18 With respect to the -- I take it the second  
19 stage of defense, that is, if you -- if you don't buy  
20 their first line of defense that I shouldn't be entitled  
21 to know whether these officers have been dishonest in  
22 the past, that you only give the names of the people  
23 who have made complaints and not give the reports, I  
24 would submit that that procedure is deficient for two  
25 reasons: First off, it just wastes time. I mean, it  
26 makes us go out and talk to everybody who's ever given a

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1 complaint, without being able to evaluate, you know,  
2 what they -- what they -- what they charge. In -- in  
3 allocating our investigative time, if it looks on the  
4 face of it to me like the complaint's not justified,  
5 then I won't waste investigative time in going out  
6 and contacting the people involved.

7 Secondly, I have found that from practice, that  
8 just getting the names of the complainants doesn't --  
9 doesn't necessarily furnish all the -- the information  
10 which is necessary.

11 In a case which we had recently, the case of  
12 People versus Ruben Munoz, you ordered essentially this --  
13 in this particular form that I have requested here -- in  
14 fact, the language I think is identical. I think I  
15 xeroxed it. And in that particular case, as just an  
16 example, there were six reports and two names of  
17 complaining witnesses. The most important witnesses  
18 that we discovered, on interviewing those people, were  
19 the people that didn't file complaints. That is the --  
20 the situation is where it was in the officer's files  
21 things of investigations, but in which nobody actually  
22 came down to the police station and filed -- and filed  
23 a complaint: so having to -- having to rely upon somebody  
24 to file a complaint, you have to get somebody who's --  
25 who thinks it's worthwhile to go down to a -- a police  
26 station and complain, and that he -- especially at CIM,

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1 but also the Sheriff's Department -- leaves out an awful  
2 lot of -- awful lot of materials.

3 In summary, I have given you a reason why I want  
4 it. It's not just something I made up. It was something  
5 that there was a lot of evidence presented at the  
6 preliminary hearing about, an offer of proof made at the  
7 preliminary hearing about it, continued to present  
8 evidence on that throughout the course of these  
9 proceedings. I have told you with specificity what I  
10 want, and I think that's all I am required to do.

11 THE COURT: Gentlemen, would you care to digest  
12 all of that with your lunch and return at 1:30?

13 MR. KOCHIS: That's fine.

14 THE COURT: I think we're going to go rather  
15 far into the lunch period otherwise. Let's resume at  
16 1:30 this afternoon, please.

17 (Whereupon, the noon recess was taken.)

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1 ONTARIO, CALIFORNIA; FRIDAY, FEBRUARY 24, 1984; 1:37 P.M.

2 --oOo--

3 THE COURT: All right. Who would like to be  
4 heard?

5 MR. KOCHIS: I believe I would start off,  
6 Your Honor.

7 THE COURT: Mr. Kochis.

8 MR. KOCHIS: Prior to lunch, Mr. Negus made  
9 reference in his oral statements to the Court of  
10 evidence that was allegedly introduced at the preliminary  
11 hearing, and in support of his discovery motion in his  
12 affidavit, he has specifically referred the Court to a  
13 particular volume and pages within that volume. The  
14 Court has read that volume and those pages and, of course,  
15 the Court is aware that what Mr. Negus has referred the  
16 Court to was neither testimony nor evidence. It was  
17 simply Mr. Negus' interpretation at the end of the  
18 preliminary hearing of what he felt the facts and the  
19 evidence was, and the Court's aware that he's attempting  
20 to bootstrap himself, in that today he's making these  
21 same groundless, warrantless accusations against the law  
22 enforcement officers involved in this case that he made  
23 at the preliminary hearing.

24 The Court is also aware that Mr. Negus used those  
25 accusations in support of his motion to suppress pursuant  
26 to Hiton to dismiss and to suppress pursuant to 1538.5,

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1 and the Court is aware, because we're here in Superior  
2 Court, that Judge Merriam, who heard all the evidence  
3 and all the testimony, found that Mr. Negus' accusations  
4 were groundless, and that he denied each and every motion  
5 Mr. Negus made based on the same ground he suggests  
6 today, and he held Mr. Cooper to answer.

7 It is our position, Your Honor, that the cases  
8 we have cited, Tyler, Royes, Minojosa, are right on point.  
9 They provide that the defense is not entitled to intrude  
10 into the confidential files of law enforcement officers  
11 with these types of accusations.

12 Mr. Negus would lead the Court to believe that  
13 the status of the law has changed since Proposition 8;  
14 however, I am going to quote from the California  
15 Constitution Article 1, Section 28 Subsection D wherein  
16 it states: "Nothing in this section shall affect any  
17 existing statutory rule of evidence relating to privilege."  
18 And the matters we are dealing with here in court today  
19 are privileged evidentiary matters as defined by Evidence  
20 Code Sections 1040 through 1045.

21 The Minojosa case makes it abundantly clear that  
22 the limitations provided through the Fitness rationale  
23 hold that intrusion into law enforcement officers' files  
24 is limited to the arresting officer where there's a  
25 showing of good cause and officers that were involved in  
26 the fracas.

1           In this particular case, you have Mr. Negus  
2 requesting to intrude into the confidential personnel  
3 files of people like Captain Myers, Lieutenant Bradford,  
4 Assistant Sheriff Pollett, Deputy Chief Majors, Captain  
5 Schuyler and the Sheriff himself, Mr. Tidwell. All of  
6 those individuals were individuals who not only did not  
7 arrest the defendant, they interviewed no witnesses,  
8 they collected and gathered no evidence, and there's  
9 no substantiation in Mr. Negus' affidavit in affidavit  
10 form without referring in boiler plate back to some  
11 argument he made at the preliminary hearing to specify  
12 which officers were involved in the collection of which  
13 particular evidence or the interview of which particular  
14 witnesses and now he has a good faith belief that there  
15 is any evidence in any personnel files of fabrication  
16 that would affect his demonstration of their credibility  
17 to the jury during the trial.

18           It is our position that if the Court follows the  
19 rules set forth in Reyes, in Tyler, it will deny Mr. Negus'  
20 request for the intrusion into the personnel files of  
21 the officers he's requesting.

22           I would submit it.

23           THE COURT: Okay. Mr. Adler.

24           MR. ADLER: Thank you, Your Honor. Department of  
25 Corrections would join in the observations of counsel,  
26 of the prosecutor. We would additionally point out to the

1 Court that the showing made by defendant in his affidavit  
2 is deficient. It doesn't even come up to that required  
3 by Pitchess. What does defendant say? Defendant says  
4 he will try to prove -- his words -- that the Department  
5 of Corrections officers were lying. Your Honor, this is  
6 no different than the vast majority of cases that I am  
7 sure this Court has seen, in which in every case the  
8 defense tries to prove exactly that. This -- there is  
9 little more actual factual basis or showing in this case  
10 than in the run-of-the-mill case where the arresting  
11 officer's credibility is attacked which justifies this  
12 unprecedented intrusion into these officers' both  
13 statutorily and constitutionally protected files.

14 We would submit that the analysis of the  
15 prosecutor is proper; that notwithstanding Proposition 8,  
16 the 1040 through 1045 privileges remain in full vitality;  
17 and, furthermore, even if they don't, the overwhelming  
18 interests of these officers in maintaining the privacy  
19 of their personnel file, when compared to the entirely  
20 speculative interest of defendant in intruding into those  
21 private matters, clearly should result in the Court's  
22 denial of this motion.

23 Unless the Court has questions, we'd be prepared  
24 to submit the matter as well.

25 THE COURT: Sir, are you Mr. Hadden?

26 MR. HADDEN: Thank you, Your Honor. If I may only

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1 add a few things, I concur with the remarks made by the  
2 Attorney General and -- the Attorney General's Office  
3 and the prosecutor. As regards the affidavit, as  
4 Mr. Kochis noted, the affidavit is defective. It's not  
5 stated under oath as to the items noted in the transcript.

6 As regards the Sheriff's officers, there is no  
7 specific allegation in the affidavit, other than the  
8 reference to the transcript, that our officers fabricated,  
9 falsified, et cetera. In addition, I understand from  
10 Mr. Nunn that his department was not even served with  
11 the transcript as part of the papers he received. My  
12 clients have not received copies of the transcript, and  
13 I would allege that the affidavit is therefore defective  
14 and that the defendant has not complied with the provisions  
15 of 1043 et seq.

16 In addition, there is absolutely no showing from  
17 anything coming from the defendant that the personnel  
18 files of all 44 officers need be discovered. Counsel's  
19 argument related to a paltry few. It had absolutely no  
20 relevance to the great majority of officers listed there,  
21 and I would allege that his request is nothing more than  
22 a fishing expedition that has been specifically disallowed  
23 in the Tyler case.

24 Finally, his request for the names, addresses,  
25 phone numbers, statements and discipline -- investigative  
26 statements and discipline of the officers, he has no right,

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1 according to the cases that have -- the Kelvin L. case  
2 and the Carruthers case cited in our brief. He has no  
3 right to material other than the names and addresses and  
4 phone numbers. The statements of witnesses and other  
5 information is specifically precluded from the defendant  
6 until such time as he has made a showing that such material  
7 is otherwise unavailable to him, and on that, we would  
8 submit it, Your Honor.

9 THE COURT: Thank you, sir.

10 Back to you, Mr. Negus.

11 MR. NEGUS: Mr. Kochis' argument about privilege  
12 confounds two issues. There is a relevancy issue or a  
13 materiality issue that is involved. Tyler, Reyes said  
14 that certain materials were not material because Evidence  
15 Code Sections 1101, 757 made them inadmissible. Prop 8  
16 did change 1101 and 757. It did away with them. What it  
17 didn't do away with was the privilege involved that the  
18 Court, before giving me those records, has to review the  
19 file in camera to make sure that we're not dealing with  
20 a fishing expedition, that they don't just give me the  
21 whole file, they only give me those parts of the file  
22 which are material; so it is true that the privilege  
23 didn't change, but the materiality changed. That's why  
24 Reyes and Tyler are no longer good law. They didn't go  
25 to the -- to the issues of procedure, which I will  
26 concede that 1040 through 1045 is still in effect. You

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1 still have to have an in-camera hearing, look at the  
2 officers' files before they are released to me, but the  
3 scope of evidence that I can introduce at trial has  
4 changed. I am now allowed to introduce prior acts of  
5 officers lying if it's relevant to try and prove that  
6 they're lying now. That is the thing that has changed  
7 by Proposition 8; therefore, it becomes relevant to  
8 find out whether they have lied in the past.

9 THE COURT: Suppose, hypothetically, that by this  
10 material, you find out that Officer Z three years ago  
11 was less than truthful in a particular incident. It may  
12 well be subject of debate or of conflicting evidence if  
13 we had to prove that at this hearing, but how is that  
14 relevant to prove that they lied on this particular  
15 occasion?

16 MR. NEGUS: That is to show -- because -- it's --  
17 the proposition that one lied once, one will lie again has  
18 always been recognized as being relevant. The framers  
19 of the Evidence Code -- and Jefferson explains this in his --  
20 in his discussion of that -- found that they -- they  
21 created a policy against allowing it, but the District  
22 Attorneys' Association in their wisdom elected to go to  
23 the voters and overrule the drafters of the Evidence Code.

24 What I'm saying is, you know, I may not have  
25 voted for their attempt to overrule the Evidence Code,  
26 but once they've done it, both sides get the benefit of


17.

**THE COURT:** Okay.

MR. NEGUS: Hinojosa and the cases collected therein state that I don't have to know that there's stuff in the files in order to get it. Obviously, if I knew it was in the files, I wouldn't have to ask for it, if I knew there was specific things. All I have to say is with specificity what I want you to look for; that is, you have to, unfortunately, do the work, but that's what the -- that's what the privilege says. You've got to look -- I've got to tell you with enough specificity, so that it isn't a fishing expedition, what to give me if it's in there. I think I did that. Any complaints about dishonesty, falsification, fabrication and failing to preserve evidence; that's pretty specific. It doesn't do -- it doesn't deal with, you know, officers that get caught making phone calls to their girlfriends on company time or officers that beat people up or any of the 10,000 other things that might be in somebody's file. It is specific, and I don't have to prove that -- I don't have to put the preliminary hearing on all over again at this motion in order to get discovery. That's why I tried to avoid spending -- just resubmitting my offer of proof, bringing it all out again. I incorporated it by reference into my declaration that the reason that it's not evidence is because that is what I am attempting to

1 show. Counsel is, I think, not quite correct that the  
2 Judge found that it was groundless. He found that  
3 certain of the propositions didn't justify a motion to  
4 dismiss. He may also have found that there was -- that  
5 the District Attorney merely met their burden that there  
6 was a suspicion, but we're dealing in a trial before a  
7 jury with proof beyond a reasonable doubt, and there may  
8 be a reasonable possibility that the officers lied without  
9 and Mr. Cooper would still have to be held to answer,  
10 so I think it's not -- Judge Merriam's ruling is not  
11 res judicata. I'm not to be prevented from introducing  
12 the evidence and drawing the same inferences at trial  
13 merely because there was a suspicion enough to justify  
14 holding Mr. Cooper to answer, if in fact that was justified.  
15 What I have to show is why I want it, and I think my  
16 declaration states that that is going to be part of my  
17 defense. You can't -- like in a battery on a peace  
18 officer case, which was what we're used to, you can't  
19 get a Pitchess motion if your defense is going to be the  
20 defendant didn't do it, he was someplace else. You have  
21 to tell -- but all you have to do in order to get a  
22 Pitchess motion granted is to say, yes, Judge, I'm not  
23 lying to you. My defense is going to be excessive force.  
24 It doesn't matter whether there's evidence in support  
25 of that or not, and the Judge isn't required to rule on  
26 that evidence.

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1 I declared under penalty of perjury that that's  
2 the evidence I am going to be putting on. I am going to  
3 be doing -- and I -- I mean, the Court was reluctant for  
4 me to go through it again in open court, but I wanted to  
5 state on the record that when they claim that there's no  
6 basis for what I am asking, I am specifically going to  
7 prove that. That's -- I am going to be presenting  
8 evidence to that at the Witch motions and in front of   
9 the jury. That's going to be part of my defense, and so  
10 this is not something that is -- that is irrelevant to  
11 what we are going to be doing. It is relevant. I have  
12 given you enough specificity as to what I want. The law  
13 has changed to allow it in under Prop 8, and the last  
14 point that was alluded to, the case of Kelvin L. and  
15 Carruthers, do not stand for the proposition that all you  
16 get is the names of people. They say unless you make a  
17 showing, then that's all you get at first. I am arguing  
18 to you that it is a complete waste of taxpayers' time and  
19 money to do it in a two-stage process, to have Mr. Forbush  
20 go out and talk to all these people, do the screening  
21 that way -- and who knows how many people we're going to  
22 be dealing with -- and then come back. Let us do the  
23 screening by looking at the reports first. It's a lot  
24 more expeditious. It's going to save a lot of investi-  
25 gative time. It's just going to be -- it's a more  
26 efficient way to do it, and there's usually information

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1 in the reports, and it's been my experience through  
2 umpty-ump Fitchess motions in the excessive force area,  
3 that there's always information in there that is not  
4 available just by the -- by the statement of names. I  
5 gave you the example before where we had twice as many  
6 witnesses from the reports as we got from the people who  
7 have thechutzpah to go down and file complaints.

8 Finally, as to the numbers of officers, each of  
9 the four investigators and the two correctional officers  
10 that are named from CIM were involved in the issue of  
11 did a James Taylor give a certain pair of tennis shoes  
12 to Mr. Cooper in the prison. There were innumerable  
13 contradictory statements from all of those people at the  
14 preliminary hearing to amply justify the conclusion that  
15 they're being deceitful. That's why those six people  
16 are relevant.

17 The 44 people that -- if that's the number that  
18 are named in the -- in the motion are the 44 people who  
19 were involved in taking the evidence out of the Ryan house.  
20 I agree that 44 is a large number, but there shouldn't  
21 have been 44 people in the house, to begin with. When  
22 the sheriffs invited everybody in the whole department  
23 into the house to gather the evidence, they were the  
24 ones that created that particular problem. The reason  
25 that there's so many people being asked about it is that  
26 there was so many people in there. It's not correct that

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1 Sheriff Tidwell, for example, had no connection with  
2 what's going on about the obtaining of evidence. Sheriff  
3 Tidwell was sitting there telling them do this, do that.  
4 There was testimony at the preliminary hearing. There  
5 was testimony at the preliminary hearing that the -- some  
6 people wanted to seize some other evidence. Others gave  
7 countermanding orders. There was conflicting testimony.  
8 It's going to be important at some point in time that  
9 these different people that gave conflicting testimony --  
10 we are going to have to try and weigh their credibility.  
11 That's why I need to have this particular information  
12 about those particular -- those particular people. I  
13 mean I didn't just pick out names at random. I picked  
14 out people that were involved in the process which is  
15 critical to the prosecution's case and in the process  
16 which I think is critical to the defendant's case in  
17 trying to examine, so it's not just arbitrarily chosen.  
18 The reason there's so many is that they had so many people  
19 in there.

20 THE COURT: Mr. Negua, I don't believe for a  
21 moment that you are being just arbitrary or that in your  
22 mind you don't have good cause for -- and good foundation  
23 for asking for this particular discovery, and you  
24 analogize at great length with the Pitchess type cases  
25 and the battery on a peace officer case which are very  
26 much distinguishable from this situation here, and you

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1 ask me to do something and to permit you to make  
2 discovery in an area that is unprecedented. You give  
3 me no authority other than analogizing to Proposition 8  
4 in the truth-in-evidence provision in the Pitchess cases.  
5 It is distinguishable. While you give me no case or  
6 statutory authority for this kind of discovery, I do  
7 have the other, though prior Proposition 8, cases that  
8 are specifically against it: the Tyler, the Reyes cases.  
9 Perhaps Proposition 8 has indeed overruled Evidence Code  
10 Section 737 and 1101. I'm not sure, but at least the  
11 basis for those code sections, which was one of relevancy,  
12 which caused them, I'm sure, to be enacted to begin with,  
13 is still a valid consideration for me. The truth-in-  
14 evidence provisions of Proposition 8 specifically  
15 provided qualifications by (a) privilege that Mr. Koenig  
16 mentioned and (b) Evidence Code Section 352; and your  
17 argument, though more extensive and based upon a  
18 considerable record, is little different than the usual  
19 type of case where we get a trial where we're trying  
20 police officers as opposed to the defendants.

21 I do not find good cause to grant this to you. Z  
22 I do not find the plausible justification that the Tyler  
23 case speaks of. I do find that the considerations of  
24 Evidence Code Section 352, the time, the fact that this  
25 would be a complete Pandora's box, getting off onto  
26 considerable time and confusion of issues, weighed with



1 the prejudice to the morale and efficient administration  
2 of the Sheriff's Office and CDC personnel, which I find  
3 to be significantly great, and weighed with the  
4 significant invasion of privacy of individual persons  
5 that you seek to get into the personnel files, are  
6 simply lacking. When I balance the probative value to  
7 the defendant and the public interest and the necessity  
8 for a fair trial, as you've put forth your argument  
9 against these considerations, and the constitutional  
10 right of privacy, I find your request is simply over-  
11 broad and lacking in weight. Counsel, I feel I must,  
12 and I do deny each of those particular discovery requests,  
13 the ones that we have not yet taken care of.

14 MR. NEGUS: A-6 and C-12, for the record.

15 THE COURT: I'm sorry?

16 MR. NEGUS: I believe it's A-6 and C-12 for the  
17 numbers.

18 MR. KOCHIS: Those are the numbers.

19 THE COURT: I believe that's right.

20 MR. NEGUS: I believe we have covered all the  
21 discovery matters. I have a couple --

22 THE COURT: On another point, during the recess  
23 this morning after we broke, I spoke to the presiding  
24 judge. I simply am unable to tell you at this time  
25 as to whether or not it's going to be -- it may be a  
26 moot question as to whether or not we can get another

1 judge here. We will work on that. I have no objection  
2 to moving the pretrial hearings to San Bernardino as  
3 opposed to the only other two places in the county,  
4 Chino or Barstow, I suppose. That would probably be  
5 the likely place to handle the pretrial motions, and I  
6 am willing to do it. In fact, I am urging it, but I  
7 think all of that is conditioned upon us getting another  
8 judge here, and if we do, we shall move to San Bernardino,  
9 unless somebody persuades me otherwise, for the pretrial  
10 matters. I have no department. I have no -- they are  
11 working on it. We have started the ball rolling. I hope  
12 that they can, for the sake of the Court as well as  
13 perhaps for this case. I hope it works out. Anything  
14 else?

15 MR. NEGUS: Yes, a couple things. I have already  
16 subpoenaed some stuff to come into this court at 9:30 on  
17 March the 5th. Is that -- unless we hear otherwise, is  
18 that --

19 THE COURT: We'll be back here on March 5, 9:30.

20 MR. NEGUS: That's what I'm asking.

21 THE COURT: Yes. That's right. I've got it set  
22 aside. I've notified Judge Ziebarth that we will -- at  
23 that point, unless I get another court elsewhere, I will  
24 be -- would expect to operate this particular department.

25 MR. KOCHIS: Your Honor, to inform the Court,  
26 what I believe Mr. Negus and I anticipate happening at

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1 that time is to give you the balance of the material on  
2 the change of venue motion, and then I imagine Mr. Negus  
3 and I would leave the courtroom and give the Court the  
4 time it needs to review the material in chambers, whether  
5 that be three to four days.

6 MR. NEGUS: I think I have an hour's worth of  
7 testimony I want to put on as well.

8 MR. KOCHIS: Then we'd take that and allow the  
9 Court to work on the material; so you need not tie up  
10 Judge Ziebarth's courtroom, what I'm saying, for Monday  
11 afternoon and the rest of the week.

12 THE COURT: You don't have it ready now?

13 MR. NEGUS: What?

14 THE COURT: These exhibits that you're going to  
15 give me.

16 MR. NEGUS: No. Some of them haven't been  
17 received. Some of them are still being organized. I  
18 have to file for you a change of venue motion, which  
19 should keep you busy a little bit.

20 THE COURT: All right. I'll work on that, but  
21 I'm used to working outside of court hours as well, so --

22 MR. NEGUS: I think it's just that there's --  
23 part of the record that I'm relying on these motions is  
24 the transcript of the preliminary hearing, part of --  
25 and just the volume of stuff.

26 THE COURT: I know it.

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1           MR. NEGUS: It may not take you all week, but  
2 it is going to keep you busy.

3           MR. KOCHIS: A practical problem, I'm not sure  
4 what facilities are available to the Court to view  
5 television coverage that is on cassette. Does the  
6 County provide the Court with a VCR to view the coverage?

7           THE COURT: I know nothing of such things. I  
8 don't think so. I've always had counsel supply us with  
9 that.

10          MR. KOCHIS: I turn to Mr. Negus for that.

11          MR. NEGUS: Judge Merriam had his own, so that's  
12 how we did that.

13          THE COURT: He does? I don't have one.

14          MR. NEGUS: Neither do I.

15          MR. KOCHIS: Because, otherwise, there will be  
16 a practical problem with you being able to review some  
17 of the factual materials.

18          THE COURT: I am not even skilled in operating  
19 one of them.

20          MR. NEGUS: It's pretty easy.

21          THE COURT: So we are going to have to check out  
22 all of that.

23          MR. NEGUS: Even I can do it.

24          THE COURT: I will be back I guess then on the  
25 5th of March on this matter, and in the meantime, find  
26 one.

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1           MR. NEGUS: Can I -- I'll take it upon myself,  
2 Your Honor, if I could -- I think it would be probably  
3 cheaper, rather than me renting one and then getting  
4 reimbursed for renting one, to see if we can get one  
5 from the County, and I can make inquiries of Mrs. Shearer  
6 or whoever's in charge.

7           THE COURT: Check with Jon Mikels, if there's one  
8 available, and I think that one is.

9           THE CLERK: Excuse me, Your Honor. There's a  
10 question as to the court reporter whether you want a  
11 daily for one hour on March 5, if that's all it's going  
12 to be.

13          THE COURT: Mr. Negus?

14          MR. NEGUS: Yes, I think we do, because it may  
15 be more than that.

16          THE COURT: All right.

17          MR. NEGUS: There's no way that we can guarantee  
18 that we don't get long winded.

19          THE COURT: All right.

20          MR. NEGUS: I would like to file with the Court,  
21 Your Honor, a subpoena that was issued to the Chino  
22 Champion along with two letters from Mr. McCombs, the  
23 editor of same -- or publisher of same. Excuse me.

24          THE COURT: I see Mr. McCombs here.

25          MR. NEGUS: And Mr. McCombs, apparently his  
26 position is that he doesn't have to provide the information

1 I requested, and if Mr. McCombs wishes to speak for himself,  
2 I have no objection to that.

3 THE COURT: Counsel, with reference, I believe,  
4 to the Monterey paper, at one time informally I suggested  
5 to you that I do not wish to fight with the media  
6 representatives unless it becomes absolutely necessary.  
7 By now, I would assume that those that are going to  
8 cooperate with you have cooperated with you. Those that  
9 are not, are not. You can -- in an hour or two you can  
10 check this out. Your investigator can find it. There's  
11 no point in me fighting with Mr. McCombs.

12 MR. NEGUS: Judge Kayashima doesn't take the same  
13 view of my investigator that you do, and I think that  
14 it's something that -- I mean, I've leaned on all the  
15 other newspapers in the state, and all the other newspapers  
16 have complied. Some of them have just sent me copies of  
17 their newspapers, without giving me their files. I think  
18 that I am entitled to it, and I think that everybody,  
19 even local papers, should comply. I am filing it, and  
20 I would request that the Court -- I haven't received  
21 any materials from Mr. McCombs other than that, and I  
22 would request --

23 THE COURT: Counsel, he indicates in his letter  
24 that he offered you the facilities of the office and  
25 your investigator the opportunity to go through his paper,  
26 as I read this.

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1 MR. NEGUS: My investigator that served the  
2 subpoena has no knowledge of the case, other than I  
3 handed him a subpoena to serve. He has no way of going  
4 through the newspapers.

5 THE COURT: It says -- I have myself gone to  
6 newspaper offices and gone through issue after issue.  
7 I know that that can be done. It says in the letter  
8 dated February 21 he was offered our file of newspapers  
9 maintained for public use in our front office so that he  
10 could determine what information he would need, but he  
11 declined to do so.

12 MR. NEGUS: Well, he offered that to Mr. Blanco  
13 who knows nothing about this case and had no knowledge.

14 THE COURT: Well, send a more qualified person  
15 there.

16 MR. NEGUS: Your Honor, I don't think I should  
17 have to do that. Every other newspaper in the state has  
18 honored the subpoena. It's a valid subpoena. The  
19 declaration in support of it is valid, and if Mr. McCombs  
20 just wants to send in the newspapers, every newspaper from  
21 June the 2nd to the present to comply, I think he should  
22 comply.

23 THE COURT: I know from past experience that  
24 Mr. McCombs is very zealous of the rights of a free press  
25 as he sees them. I see no need for a confrontation  
26 between the Court and the press at this time. I will deny

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1 your request for an enforcing order. You can -- you have  
2 facilities. It's available to you, Mr. Negus. Anything  
3 further? See you all on March 5.

4 MR. NEGUS: Can I -- just a second.

5 THE COURT: Yes.

6 MR. NEGUS: Channel 4 and Channel 11 have not  
7 complied yet, either. Channel 4 tells me they are going  
8 to comply. I have not yet -- I received the message  
9 from Channel 11. I have not yet received a response from  
10 them.

11 THE COURT: Mr. Negus, I am not bellying up or  
12 copping out. If it becomes absolutely necessary, then I  
13 will intervene, but right now you haven't shown me that  
14 it is necessary. I would like to see such a request  
15 supported by declaration in the usual manner.

16 MR. NEGUS: I have -- the Court has the  
17 declaration for the subpoenas for Channel 4 and Channel  
18 11 in the file. All I am asking is that at the present  
19 time that the Court note that you have not received the  
20 exhibits. I will represent that I have not received  
21 the exhibits. I expect that I will, but in case I  
22 should have to go after enforcement, I haven't got them  
23 yet.

24 Similarly, the Los Angeles Times has indicated  
25 that they will be late in complying. I expect them to  
26 comply, and the practical problem, Your Honor, on this

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1 is that the newspapers are the only people that keep  
2 records of what they ran. I don't, and I cannot go  
3 throughout the state and get newspaper articles from  
4 every newspaper in the state, but that's relevant.  
5 Mr. Kochis has requested it, that he'll want that --

6 THE COURT: Counsel, I just consider this kind  
7 of dialogue self-defeating at this time. You supply me  
8 with the necessary information, and we will take it from  
9 there. I do not wish to air this publicly at this time  
10 in a most general way when I'm not prepared for it. I  
11 don't know what all you're speaking of. It may be self-  
12 defeating, as I indicate.

13 I would urge Mr. McCombs, the Chino Champion,  
14 and any other media people here to cooperate as much as  
15 they conscientiously can. This is a difficult case for  
16 all people concerned, including myself. I do not wish  
17 to divert my energies and intellect off on side issues  
18 to where I am concerned about constitutional principles  
19 of free press and fair trial. I want to maintain my  
20 tunnel vision to give you a proper trial in this case,  
21 without these other matters.

22 Now, I'm reserving the right to look into them  
23 at an appropriate time. This is not the appropriate  
24 time.

25 Do you have anything further, Mr. Negus? Support  
26 it, Counsel, by declarations.

1 MR. NEGUS: It is supported by declarations.

2 THE COURT: No, no, no, no. I do not know every-  
3 thing that they have said. I don't know --

4 MR. NEGUS: It's all in the letters.

5 THE COURT: I responded to this particular one.  
6 I have that foundation before me. I will expect to see  
7 further foundations with reference to any particular  
8 media or organization that's failed to comply. Okay.  
9 Let's don't get sidetracked.

10 MR. NEGUS: Well, could we go back in chambers  
11 then?

12 THE COURT: If counsel wish.

13 All right with you, Mr. Cooper?

14 THE DEFENDANT: Sure.

15 THE COURT: Sure. Okay. Thank you.

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

18 THE COURT: You've got a big voice. I'd prefer  
19 we keep the doors closed when we are going to get  
20 involved in these matters.

21 I don't know what you're going to be talking  
22 about. I thought you were holding a news conference out  
23 there earlier, but apparently you were not.

24 What can I do for you?

25 MR. NEGUS: Judge --

26 THE COURT: By airing all this out in the public

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1 that way, all we're doing is putting the newspapers on  
2 notice to get tough with us in some way.

3 MR. NEGUS: Well, that's exactly what I'm saying  
4 is that --

5 THE COURT: You're inviting it.

6 MR. NEGUS: You invited it, Judge, because, look,  
7 I just wanted to file my piece of paper and hold off  
8 compliance to do it. You put me in a spot. You jumped  
9 on me before I even had a chance to get the words out of  
10 my mouth and tell you what I wanted to do. I wasn't  
11 about to ask Mr. McCombs. I just wanted to file my  
12 papers and make my record that I hadn't got it, so if I  
13 wanted to do compliance in the future, I could. You put  
14 me in a box, and you keep putting me --

15 THE COURT: I think you could have expected that,  
16 because I told you that before, so you must have known  
17 what my indicated response was going to be.

18 MR. NEGUS: I didn't know anything. You didn't --  
19 well, if I had said that I want you to hold Mr. McCombs  
20 in contempt, I can see your indicated response. You told  
21 me before that you wanted me to hire investigators to go  
22 out and do it. I don't have time to do that.

23 THE COURT: You only had -- at that time we had --  
24 you told me about Monterey only. I don't know how many  
25 of them. I don't know the extent of the problem, and I  
26 wasn't prepared to get into it and air it all outside now.

*See  
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it  
was  
the  
page  
where  
he  
said  
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1 You started talking about the Times and --

2 MR. NEGUS: All I wanted to do was to make a  
3 record, Judge, that today is the day that the subpoenas  
4 are answerable. Okay, and I wanted to make a record that  
5 it hadn't been complied with. That's all you wanted me  
6 to do. If you would have let me do it without jumping  
7 on me before where I had to respond to you, we wouldn't  
8 have had this problem, but you put me out there. All  
9 these other guys are sitting out there. They have all  
10 complied. They "Grinched" like hell. They have complied.  
11 Al McCombs sits out there, and you've made -- he alone is  
12 going to be the one that didn't comply. It's going to  
13 be ten times harder for them to get compliance from the  
14 other people, and it's going to be ten times harder for  
15 me, because you put me in that box. I've got to do  
16 certain things to make a record. If you want to have it  
17 out there --

18 THE COURT: No. We can do -- when you start  
19 talking about this sort of thing, let's take it up -- I  
20 kept asking you to give me declarations or something like  
21 that, or let's perhaps ask to come to chambers on this.  
22 Let's get away from the media on this sort of thing when  
23 we're fighting with the media.

24 MR. NEGUS: Judge, you give me --

25 THE COURT: You can make a record here as well  
26 as outside.

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1 MR. NEGUS: Okay, but we're -- last I heard, we  
2 were doing everything in open court. That's -- we can't  
3 have it both -- you can't put me in a box both ways, either.

4 THE COURT: If I put you in a box, I apologize  
5 for that, Mr. Negus, but I didn't intend that we should  
6 never ever be able to come to chambers. In fact, we  
7 specifically cleared the ground for that with your client  
8 last time. We can, of course, come to chambers, and I  
9 will be happy to do it, and when you get into some  
10 sensitive areas, in fact, I mentioned it this morning  
11 that we'd be able to come to chambers. Let's really do.

12 I am serious about this, though. I am not backing  
13 off a bit from my indicated feeling. I do not want to  
14 fight with the media unless I absolutely can't avoid  
15 it.

16 MR. NEGUS: Well, then, Judge, I don't want to  
17 spend all my time fighting with them, either, so it's  
18 easier -- you know, there's only one of me, and I've  
19 got all this work to do, and I am not going to spend --  
20 I am not going to go and draft an order to get an  
21 investigator specially to go down and clip coupons --  
22 clip papers from Al McCombs because he's stubborn.

23 THE COURT: I think that you're making --

24 MR. NEGUS: The thing is, it's who gets put in  
25 the box, him or me, and you're putting me, and I don't  
26 think that's right, because I've got a valid subpoena

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1 on it, and he thumbs his nose at the valid subpoena.

2 THE COURT: My goodness, you in open court as  
3 soon as he walked in placed that before me. It won't  
4 take an hour for your investigator that's knowledgeable  
5 to go down there, and he can recognize the name of  
6 Cooper. That's a very tiny, little paper. It's seven  
7 miles from here. Get that work done. It won't cost us  
8 ten dollars. I'll be damned if I'm going to take up a  
9 fight with Allen McCombs and the Supreme Court.

10 MR. NEGUS: There's no constitutional issue.  
11 The only issue is does the man have to give us copies  
12 of his paper or not. There's no constitutional issue  
13 of free press involved.

14 THE COURT: Yes, there is. Yes, there is.

15 MR. NEGUS: Well, I don't see it.

16 THE COURT: And he will find it, and, Counsel,  
17 I've been here for eight eons. I know Mr. McCombs from  
18 way, way back. I know his constitutional makeup. He  
19 will find constitutional issues. The man is extremely  
20 protective of his estate, as he sees it.

21 MR. NEGUS: Okay. Then you're putting me in a  
22 position where I've got to protect my record too. I've  
23 got to do -- I think in this particular case I have to do  
24 it correctly. I made a decision that the best way to  
25 do it, the only way that I can protect myself that I got  
26 everything that I wanted and then not have somebody come

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1 back and say, well, Negus missed it or something like  
2 that, is to do it by subpoena. I have to do it by  
3 subpoena.

4 THE COURT: Make your record, Mr. Negus. Go  
5 ahead, but when you get around to enforcing the  
6 subpoena, I am going to consider alternatives. You  
7 can make whatever record you wish.

8 MR. NEGUS: If Mr. McCombs had called me up and  
9 offered me alternatives other than me going down and  
10 buying the newspapers. He wants to sell me newspapers.  
11 That's what he does. Ask him. I told him -- I've told  
12 everybody if they just want to send me the newspapers,  
13 send me the newspapers. Then I have them. He doesn't  
14 want to do that. He wants my investigator to sit in his  
15 office and clip his newspapers and buy them from him at  
16 50 cents a copy. I don't think that's right, and, you  
17 know, I -- if it were just Al McCombs, that would be one  
18 thing, but I've leaned on 51 newspapers in the state of  
19 California. All other 51 have complied, and so I don't  
20 see why I should make an exception for him.

21 THE COURT: Okay. Anything else?

22 MR. NEGUS: But I just want to let you know that  
23 all I was trying to do this morning, when I did that,  
24 was just to make a record that he hadn't complied, and  
25 if you try to anticipate what I'm going to do before I  
26 do it, you know, you put me in a box, and I have to

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1 fight you back.

2 THE COURT: Okay. I regret that, but be careful  
3 the way you present things to me, perhaps, where that  
4 won't occur.

5 MR. NEGUS: Well, I try my best. That's why I  
6 didn't say anything nasty.

7 THE COURT: Okay. Thank you all.

8 MR. KOTTMEIER: Could we just indicate on the  
9 record the parties present, in case for some reason it  
10 becomes important later on; that is, who's here.

11 THE COURT: Okay. Mr. Kottmeier and Mr. Kochis  
12 throughout. We haven't been off the record. We do not  
13 intend to be off the record through the course of this  
14 trial.

15 THE CLERK: Your Honor, on March 5 what time do  
16 you want that?

17 THE COURT: 9:30 is what I said.

18 THE CLERK: Oh, I'm sorry. I didn't hear.

19 THE COURT: And after you file that document,  
20 would you give it back to me, and I could carry that  
21 with me when I leave today.

22 MR. KOTTMEIER: Thank you.

23 THE COURT: Enjoy your weekend. I'll see you  
24 ten days from now, roughly.

25 MR. NEGUS: If you need to see us on the 2nd,  
26 you may be busy, but if you do, we'll be available.

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1           THE COURT: I'll certainly be here, and I invite  
2 any two of you to come to me, as long as both sides are  
3 here, at any time, and I would urge you to, and we'll  
4 get on the record, but I would urge you to clue me in,  
5 give me notice. Like the 2nd I'll be back, and say,  
6 Judge, it might help you if you read this or that or  
7 you don't have to read this. I'd appreciate that kind  
8 of forewarning. Let me husband my energies as well.

9           MR. NEGUS: I'll tell you right now that as  
10 soon as I get the time over this weekend to draft them,  
11 you're going to have two other motions, or at least  
12 one other motion, available that goes with the change of  
13 venue motion, and that is a motion for a jury survey,  
14 and as I indicated before, I am going to make that  
15 contingent on what the prosecution's -- what the  
16 prosecution's claims are. I'd like to set the jury  
17 survey if there's any -- if there's any question as to  
18 the extent of the publicity in this county.

19           Now, I think I've heard from both Mr. Kocnis and  
20 Mr. Kottmeier different theories as to why they are opposed  
21 to the change of venue, both of which concede the  
22 extent, so if they are going to concede the extent, I  
23 am not going to put them in a box right now and say  
24 anything, if they are going to concede the extent of  
25 the publicity.

26           THE COURT: If they are going to do what?

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1 MR. NEGUS: Concede the extent of the publicity.  
2 There's two theories I've heard from them. One is a  
3 sort of Manson case theory where publicity everywhere is  
4 so bad that you don't need a change of venue, so that  
5 concedes that the publicity has been extensive in this  
6 county.

7 The other one is that, okay, it's been extensive,  
8 but the nature is not prejudicial, so if they're going  
9 to make either of those two arguments --

10 MR. KOCHIS: And others.

11 THE COURT: I'm sorry, Mr. Kochis?

12 MR. KOCHIS: And others.

13 MR. NEGUS: But if they're not going to deny  
14 that there has been extensive, unprecedented, so that  
15 everybody's heard about it in this county, then we don't  
16 need it. If they are going to argue with me about the  
17 extent of it, then I am going to request it, and I will  
18 have points and authorities as to why I think I should  
19 get it.

20 MR. ROTHMEIER: Your Honor, in this area, it  
21 seems to me, in my past experiences, that the request  
22 for a jury survey has been made not by the trial -- to  
23 the trial judge by the defense, but by the defense to  
24 the judge that is granting the motions for various  
25 extraordinary --

26 THE COURT: Judge Kayashima.

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1 MR. NEGUS: I discussed this with Judge Kayashima  
2 off the record and on the record. I told him this was  
3 the procedure I was going to do, and he indicated that  
4 was okay with him. In fact, I think it may have been --  
5 I'm not sure whose idea it was, but --

6 THE COURT: I'd invite you to go back to him.

7 MR. NEGUS: Well, I think it's better to do it  
8 this way, and I think so today. I can't speak for him,  
9 but I think it's better to do it this way, and I talked  
10 about it.

11 THE COURT: I suppose -- I have no idea. I  
12 suppose when you submit your motion, that you'll estimate  
13 the cost and that sort of thing, which would certainly  
14 be a factor, and that's something normally the trial  
15 judge doesn't do in capital cases.

16 MR. NEGUS: But I'm not asking for it --

17 MR. KOCHIS: They're about \$25,000 each time.

18 MR. NEGUS: Yes.

19 THE COURT: I'm kind of cheap.

20 MR. NEGUS: I know, but, Judge, you may be cheap,  
21 but every time you deny -- if you deny it, that protects  
22 me. I think I've got a good enough record without it.

23 THE COURT: I'll keep an open mind.

24 MR. NEGUS: If you deny it, that protects me.

25 THE COURT: Sure.

26 On the record just a second before you leave, I

1 THE COURT: Because I would think that you need  
2 one day off to work.

3 MR. NEGUS: I agree. You're absolutely 100-  
4 percent right.

5 THE COURT: As a matter of fact, when I mentioned  
6 to Judge Morris and Judge Ziebart, I said I will  
7 probably be able to handle my other calendars on those  
8 days.

9 MR. NEGUS: Probably we can say the 5th and then  
10 on the 12th.

11 THE COURT: So don't plan on working Fridays  
12 on this case.

13 MR. KOCHIS: Your Honor, I'm not confident in  
14 this type of case you'll have Fridays free, either  
15 because I assume oftentimes we'll come to a portion in  
16 the case where we'll complete testimony on Thursday and  
17 we'll submit something lengthy for you to read in writing  
18 that will take you most of Friday to read, so I think  
19 you're going to be very busy.

20 THE COURT: Try and time those things where I can  
21 do it over the weekend, and I'll come back to you on  
22 Monday. I'm happy to work Saturday and Sunday.

23 MR. NEGUS: I've been working seven days a week  
24 sixteen hours a day.

25 THE COURT: I'll bet you have.

26 MR. NEGUS: Since August, and I'll tell you that

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1 wanted -- I'm thinking I want to tell Judge Ziebarth  
2 about his availability of his courtroom next week -- or  
3 the week of the 5th. You would expect me only how long  
4 on that date?

5 MR. NEGUS: I don't know. I mean, I think --

6 THE COURT: Can I do it in Department 3 on the 5th?

7 MR. NEGUS: I'd really rather not, if we can  
8 avoid it.

9 THE COURT: He's working with a jury, most  
10 likely. It's kind of difficult for him to bounce back  
11 and forth with a jury.

12 MR. KOCHIS: Your Honor, I think comfortably we  
13 could estimate we should be done by noon if we start at  
14 9:30.

15 MR. NEGUS: No, we can't. You know better than  
16 that.

17 MR. KOCHIS: Monday.

18 MR. NEGUS: Just Monday, and then whenever you  
19 want to start up again, probably Friday or the Monday  
20 after.

21 THE COURT: Now, on your motions, you asked me  
22 early on informally if we'd be a four-day or five-day  
23 department. I indicated four days. I -- it was my  
24 intent when I mentioned that that that would apply for  
25 motions as well as trial.

26 MR. NEGUS: Fine, four days.

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1 the transcript -- when you -- you're going to have to  
2 start -- I don't see any way that I can cut down of  
3 what you read in the transcript, and I think from my  
4 perspective of what I'm going to argue, you're probably  
5 going to have to read most of it.

6 THE COURT: I'll do it.

7 MR. NEGUS: We can skip out some of it.

8 THE COURT: I've always regretted never taking  
9 a speed-reading class.

10 Thank you very much.

11 (Whereupon, the matter was adjourned  
12 until March 2, 1964.)

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REPORTER'S CERTIFICATE

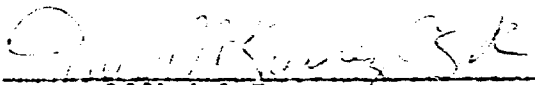
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COUNTY OF SAN BERNARDINO    )

I, JILL D. McKIMMEY, do hereby certify:

That I am an official reporter of the Superior Court  
of the State of California, for the County of San  
Bernardino;

That at the time and place herein stated I reported  
in stenotype the oral proceedings had with respect to the  
above-entitled cause and that the foregoing pages numbered  
85 through 175, inclusive, constitute, to the best of my  
belief and ability a full, true and correct transcript of  
said proceedings as transcribed from my stenotype notes.

Dated this 27 day of March, 1934, at  
Ontario, California.

  
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Official Reporter  
C.S.R. No. 2314

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I, JILL D. McKINNEY, do hereby certify:  
That I am an official reporter of the Superior Court  
of the State of California, for the County of San  
Bernardino;

Dated this \_\_\_\_\_ day of March, 1934, at  
Ontario, California.

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