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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff-Respondent,	)	CR 72787
	)	
KEVIN COOPER,	)	Supreme Court
	)	No. <u>Crim 24552</u>
Defendant-Appellant.	)	
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APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

*Vol. 11*

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IN PROPRIA PERSONA

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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 3

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

BEFORE HONORABLE RICHARD C. GARNER, JUDGE

DEPARTMENT 3 - ONTARIO, CALIFORNIA

March 2 and 5, 1984

APPEARANCES:

For the People:

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(3-5-84)

and

JOHN P. KOCHIS  
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(3-2-84 and 3-5-84)

For the Defendant:

DAVID McKENNA  
Public Defender  
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Deputy Public Defender  
(3-2-84 and 3-5-84)

Reported by:

JILL D. McKIMMEY  
Official Reporter  
C.S.R. No. 2314

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1       ONTARIO, CALIFORNIA; FRIDAY, MARCH 2, 1934; 3:20 P.M.

2                       --ooo--

3               (Whereupon, the following proceedings  
4       were had in chambers:)

5       THE COURT:   Good afternoon.

6       MR. NEGUS:   Good afternoon.

7       THE COURT:   Mr. David Negus, Mr. John Kochis  
8       in chambers.

9               I received a note from my clerk.  It says:  
10      "Mr. Negus has been ill for two days and will not be  
11      ready to proceed on March 5.  He and Mr. Kochis would  
12      like to see you Friday afternoon at your convenience.  
13      Mr. Negus indicated that you would not need to move  
14      over to Department 2 for Monday's hearing.  He also  
15      indicated he would be ready to proceed on everything  
16      on March 12.  Linda."

17      MR. NEGUS:   Let me just clarify a little bit.  
18      We -- the only thing I'm not ready on is the taking of  
19      evidence and arguing in court.  We are prepared at least  
20      to start submitting stuff to you to read and to consider  
21      all next week, but we just don't need to do it in court,  
22      because most of the stuff is -- is -- is newspaper  
23      articles, television stuff, all that kind of stuff.

24      THE COURT:   We may need to make a record as to  
25      what's going to be submitted.  Am I going to have time  
26      to try another case?

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1 MR. NEGUS: No.

2 MR. KOCHIS: No.

3 THE COURT: Oh, because I was about ready to have  
4 them call up Peters versus Peters and try and conclude  
5 a matter that we haven't been able to finally finish.

6 MR. NEGUS: Well, we feel we need -- we need  
7 your time. It's just we don't need to have it in open  
8 court, and I didn't want to bring over the defendant  
9 and have you go to all the trouble of switching courtrooms  
10 if we didn't need to do that, so that was really --

11 THE COURT: I don't think a brief appearance  
12 over in Department 3 necessitates a change of courtrooms.

13 MR. NEGUS: Well, I was just going to ask you not  
14 bring the defendant over till March 12.

15 THE COURT: You don't want him even over on the  
16 5th?

17 MR. NEGUS: Right. I have talked to him. It's  
18 agreeable to Mr. Cooper.

19 THE COURT: We are going to meet on the 5th.  
20 You have filed formally your motion for change of venue.

21 MR. NEGUS: I filed my motion. I have submitted  
22 to the clerk all the newspaper clipping exhibits that  
23 were received in response to the subpoena duces tecum.  
24 The television exhibits are coming in somewhat slowly.  
25 I will have all the radio exhibits ready for you to look  
26 at on Monday.

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1 THE COURT: Scripts?

2 MR. NEGUS: Scripts, yes, and they include a  
3 substantial number of scripts that were -- that were  
4 presented at the 868 motion, but there's also some  
5 additional ones.

6 THE COURT: Linda, would you check to make sure  
7 I filed -- everything's all right back there?

8 MR. NEGUS: And we're going to need time to go --  
9 sort of need time with the clerk to mark the exhibits.

10 THE COURT: I'm normally engaged in other matters  
11 for the first hour.

12 MR. NEGUS: Well, I understand, but we need --  
13 I need her undivided attention. It's reasonably  
14 complicated. I have to go over it with Mr. Kochis.  
15 Then we just have stuff for you to read all week, I think,  
16 and when we run out of stuff, we have the transcript to  
17 start on, because we're going to have -- you're going to  
18 have to read that, and that's --

19 THE COURT: Well, the transcripts of what?

20 MR. NEGUS: The preliminary hearing.

21 THE COURT: For purposes of venue motion?

22 MR. NEGUS: For purposes of the 995 motion,  
23 basically, you're going to have to read it. If we run  
24 out of time -- I don't think you will. I mean, I think  
25 we have enough --

26 THE COURT: Before I read the transcript on the

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1 any surprise to Mr. Kochis, and we'd be ready to start  
2 presenting evidence on the motion to suppress after we  
3 get like to the 13th.

4 THE COURT: Let me run through that again. I  
5 was thinking of something else. We're going to perhaps  
6 then on the 12th -- at some time on the 12th we'll  
7 finish phase one of the motion for venue change?

8 MR. NEGUS: That's the hope.

9 THE COURT: And then you will start on the 13th  
10 on the 995 or suppression?

11 MR. NEGUS: 1538.5, because that's easier to  
12 write that. I mean, it's basically that's evidentiary,  
13 not written. The 995 I'm still working -- I mean I  
14 haven't even started it, but there's lots to write on  
15 that, so I have to write a lot, and I haven't done that  
16 yet. I'm sort of trying to do this as fast as I can,  
17 but, you know, I'm doing five things at once.

18 THE COURT: I haven't heard from my presiding  
19 judge or supervising judge about any changing of the  
20 court, so until I am notified otherwise, we will stay  
21 here in Ontario. I may well when we get to the  
22 evidentiary portion, apart from the venue change,  
23 discontinue extended coverage.

24 What are we going to do about all the media  
25 appearing tomorrow?

26 MR. KOCHIS: Tomorrow is Saturday. There will be

1 no one here.

2 THE COURT: Monday.

3 MR. NEGUS: The Riverside Press Enterprise,  
4 Channel 2, Daily Report have all been notified that  
5 nothing's going to happen.

6 THE COURT: Is that man still back there?

7 THE CLERK: (Nodding affirmatively.)

8 THE COURT: Press Enterprise wanted to look at  
9 the Cooper file. It is a public record, as far as I can  
10 tell. They are going to pick up all of his declarations,  
11 wherein he says that you're all bad and he's all good.

12 MR. KOCHIS: I'm trying to think what's in the  
13 file. I'm not eager to have them look at the file.

14 THE COURT: Well, I'm not, either, but I don't  
15 know how I can stop it.

16 MR. KOCHIS: Well, I think we could agree that  
17 at this point pending the Court's ruling on a change of  
18 venue motion, it wouldn't be appropriate.

19 THE COURT: They have already looked at it.  
20 They have been back there for an hour.

21 MR. NEGUS: I don't see how you can grant  
22 extended coverage -- well, I take it back. I have no  
23 comment.

24 MR. KOCHIS: I assume the confidential portion of  
25 the file has been removed.

26 THE COURT: What confidential portion? On fees?

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1 MR. KOCHIS: Yes.

2 THE COURT: Well, that's not even maintained  
3 here, I hope. There's nothing confidential in our files,  
4 is there?

5 THE CLERK: I don't think so.

6 THE COURT: I assume Judge Kayashima has that.

7 THE CLERK: The only thing I know that's in there  
8 is the invoices on some of the billings that Mr. Negus  
9 has received.

10 THE COURT: Are any other papers playing this  
11 up? I was out of town till last night, and I saw the  
12 day after our last Friday's hearing, I guess it was last  
13 Saturday, The Daily Report had a splash. I looked at  
14 The Times for the same day, and I did not see anything in  
15 The Times.

16 MR. NEGUS: The L.A. Times is not at the present  
17 time sending anybody out. They are keeping in touch so  
18 that they know -- they are going to make a decision to  
19 come back at some point in time, but they are not sending  
20 anybody out right at the moment.

21 THE COURT: How about the Sun Telegram?

22 MR. NEGUS: The Sun Telegram has published an  
23 article last time. So did the Riverside Press Enterprise,  
24 and I don't subscribe to any other newspapers, so I don't  
25 know what -- I assume that the Herald and the Register  
26 are carrying smaller articles. I know it went out on

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MR. NEGUS: Judge, the issue in the suppression motion is credibility. If you can tell me some way to get credibility other than doing it de novo, I am willing to listen, but I don't see any way we can do it, and I don't think John does, either.

MR. KOCHIS: I agree, Judge.

I have served Mr. Negus with statements in aggravation and a notice of 1101 motion, and I have not filed the originals with the Court, nor do I intend to do so if someone from the press is looking through the file, because it deals with a matter that a jury may never hear, and perhaps sometime next week we can work out something to put them in a confidential portion of the Court's file.

THE COURT: I will be happy to maintain a confidential file, and we can set up a separate file kept by the clerk here of confidential material, and we will review anything of any particular sensitivity from either one of you that should go into that file. I can see reasons definitely why some things should not be open to the public, and that would apply to you as well, Mr. Negus. I don't want to try this in the newspapers.

MR. NEGUS: It's a little late.

1 THE COURT: You're objecting to extended coverage,  
2 which is television, picture-taking, sound recording,  
3 but you never asked me to close the court.

4 MR. NEGUS: I can't.

5 THE COURT: All we are doing by extended coverage --  
6 it's a little late as far as Municipal Court is concerned,  
7 you mean?

8 MR. NEGUS: Yeah.

9 THE COURT: I see, because this case is going to  
10 be reported whether we have extended coverage or not.

11 MR. NEGUS: At the Municipal Court, Your Honor,  
12 I asked to have the preliminary hearing closed, everybody  
13 excluded. The prosecution did not take a position one  
14 way or the other, and Judge Merriam denied the motion,  
15 so I --

16 THE COURT: You ought to make him try it.

17 MR. NEGUS: I take it that Judge Merriam wasn't  
18 worried about change of venue motions at that point in  
19 time. He certainly --

20 MR. KOCHIS: He's a Municipal Court judge.

21 MR. NEGUS: -- seemed to not be too worried  
22 about it, and the prosecution elected not to join me in  
23 the request, which I think made it harder to do.

24 THE COURT: Mr. Negus, just informally at this  
25 time, if you get over the hurdle of getting it moved out  
26 of this county, and just anticipating down the road, is

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1 the many, many witnesses, the time and expense. This  
2 case is going to be expensive enough as it is. That's  
3 not, you know, -- considering fair trial, that's not of  
4 a paramount concern, but I have to consider that, and  
5 the inconvenience to all those people that you are going  
6 to have to bring up there.

7 MR. NEGUS: That was what I told Mr. Kottmeier.

8 THE COURT: Yes, so --

9 MR. NEGUS: Mr. Kottmeier doesn't wish to --

10 THE COURT: I am surprised at your statement,  
11 though.

12 MR. NEGUS: Maybe I'm speaking out of turn.

13 Mr. Kochis can speak for Mr. Kottmeier probably better  
14 than I can, but my understanding is --

15 THE COURT: Let me just start you thinking. You  
16 don't want me to --

17 MR. NEGUS: If you're going to talk -- the only --  
18 I believe that Mr. Cooper cannot get a fair trial anywhere --

19 THE COURT: It may be that he cannot.

20 MR. NEGUS: -- in Southern California, with the  
21 possible exception of Downtown Los Angeles, and I have,  
22 I believe, substantial evidence that, for example, Vista,  
23 Oceanside -- well, there's no Superior Court in Oceanside,  
24 but Vista, San Diego County is just as bad as here, and  
25 we have the -- when we get to that stage, I can bring in  
26 that kind of stuff.

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1 THE COURT: Well, okay.

2 MR. NEGUS: And Santa Barbara, Ventura are just  
3 as bad as well.

4 THE COURT: The TV coverage is not the same in  
5 San Diego County as it is in Los Angeles and here.

6 MR. NEGUS: Right. We have the tapes, though.

7 THE COURT: Okay. Well, they do get some L.A.  
8 stations, but not as much.

9 MR. NEGUS: I have the San Diego stations.

10 THE COURT: Yes, and they have primarily their  
11 newspaper, although the L.A. Times is circulated down  
12 there too.

13 MR. NEGUS: L.A. Times is one of the larger  
14 circulation newspapers in San Diego County.

15 THE COURT: I know.

16 MR. NEGUS: The Union, it's about that thick  
17 (indicating).

18 THE COURT: Okay. I can't shorten it at all.  
19 I would like to reach some accommodations.

20 MR. NEGUS: I would too.

21 MR. KOCHIS: Judge, while we are talking in the  
22 abstract, I was wondering at what point we may come to  
23 an understanding of a trial date. I realize we are set  
24 for the 19th.

25 THE COURT: That's worrying me.

26 MR. KOCHIS: We are not going to be done, if I

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1 understand Mr. Negus. In my estimation of the motions,  
2 we won't be done with the 995 by the 19th.

3 MR. NEGUS: Right.

4 MR. KOCHIS: And I was wondering if there's  
5 going to be a period in time whether we're going to  
6 set the trial for the 26th, April the 2nd, April the 9th.

7 THE COURT: Well, you know, if we start hearing  
8 on the 12th, it may -- oh, you can't. We've got to have  
9 a break in it, even if it stayed here, I suppose, to  
10 some extent. I was going to say we'd be just full time  
11 right throughout trial, but if we move it someplace, that  
12 won't be possible. You will have to have at least some  
13 time to arrange.

14 MR. NEGUS: Well, that's one of the reasons why  
15 I want to do the change of venue motion first, and then  
16 give you a chance to find out what the -- what the  
17 situation is from the Judicial Council and that sort of  
18 thing.

19 MR. KOCHIS: If that becomes necessary.

20 MR. NEGUS: And, quite frankly, my position on  
21 trial time may vary with the ruling on the change of  
22 venue motion. There have been 97, if I remember correctly --  
23 correct me if I'm wrong -- articles on Mr. Cooper in the  
24 Sun Telegram over the last six months.

25 THE COURT: Have you counted lately?

26 MR. NEGUS: Yep. That's not counting the ones in



1 the last three weeks.

2 MR. KOCHIS: But the vast majority either discuss  
3 what a good job Mr. Negus is doing or how weak the  
4 prosecution case is.

5 MR. NEGUS: I don't recall any saying that --  
6 would you point that out?

7 THE COURT: They all, however, wind up with a  
8 paragraph and say he's charged with this dastardly mass  
9 murder.

10 MR. NEGUS: And escaped mental patient and rape  
11 charges in one place or another.

12 THE COURT: At least almost all the articles that  
13 I have seen so far wind up at least in the bottom  
14 paragraph with a succinct recap of the allegations.

15 MR. KOCHIS: They mention the victims' names and  
16 ages.

17 MR. NEGUS: Yes, the ages, and the slashed throat,  
18 usually.

19 MR. KOCHIS: So we're no closer to a trial date  
20 or anything else.

21 THE COURT: What are we going to do about it?  
22 Let's don't leave the subject.

23 MR. NEGUS: My position on the trial depends upon  
24 the outcome of the change of venue motion. I have told  
25 Mr. Kochis, and I think I've told some judges -- probably  
26 not yourself -- that my position on the trial date is

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1 flexible. I am not going to be insisting on the 60 days.  
2 My current position is that I'd like to get it to trial  
3 as soon as possible. I don't imagine -- it depends on  
4 how we handle -- I don't imagine that we will be through  
5 with the -- what I consider to be pretrial motions much  
6 before the first or second week in April, and then I'm  
7 sure that we have innumerable motions after that. We  
8 may -- the original estimate of two months, that may  
9 extend to twice that, depending upon what Mr. Kottmeier's  
10 position is on a certain witness.

11 MR. KOCHIS: Judge, the one thing we wanted to --  
12 I think we wanted to touch base on were, depending on  
13 what the propositions were, is there's a number of motions  
14 that will be heard out of the jury's presence that are  
15 402, 405 motions that Mr. Negus would want to have some  
16 stipulation that jeopardy will have attached. I don't  
17 think that's going to be a problem. My only thought is  
18 assuming for the sake of argument that -- let's assume for  
19 the sake of argument only that a month from now we're  
20 in some faraway place, Sacramento, I don't care where.  
21 It would seem to me that the motions that are going to  
22 be outside the jury's presence could be litigated in our  
23 own backyard, as opposed to being in Northern California,  
24 with 20 to 30 witnesses litigating those issues.

25 MR. NEGUS: I am not opposed to that, assuming  
26 that we get the stipulation that jeopardy is attached.

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1 THE COURT: Jeopardy attaches how?

2 MR. NEGUS: Well, normally what you would do is  
3 you choose a jury and you swear the jury; right? And then  
4 you have 402 motions about the admissibility of evidence --

5 MR. KOCHIS: Hitch.

6 MR. NEGUS: -- outside the presence of the jury,  
7 you know. During the presentation of evidence, normally --  
8 oftentimes in cases one as a convenience decides those  
9 before the jury is picked. Most cases it doesn't matter  
10 much how you -- which order you do it in. Technically,  
11 the motions should be made after the jury is picked, I  
12 believe.

13 MR. KOCHIS: That's another issue we don't know.

14 THE COURT: Mr. Kochis?

15 MR. KOCHIS: Yes, Your Honor.

16 THE COURT: This probably can be solved by an  
17 artfully drafted stipulation with reference to when  
18 jeopardy attaches and how we might consider those in  
19 limine type motions.

20 MR. KOCHIS: The only thing I wanted to alert  
21 the Court to is I wanted to make sure the Court didn't  
22 have any objection to handling it that way.

23 THE COURT: Hey, I'd much prefer it. That's the  
24 way we should do it. If we go away from this county, we  
25 should save that just for jury trial as much as possible,  
26 handling everything else before we ever get there.

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1 MR. NEGUS: I agree with that, as long as we  
2 stipulate that jeopardy attaches.

3 THE COURT: That can be drafted. Either one of  
4 you can draft a proposal for that, and that sounds fair  
5 to me.

6 MR. NEGUS: Okay.

7 MR. KOCHIS: We will either litigate it or  
8 stipulate to it, but we will resolve it one way or the  
9 other.

10 That's it. I don't think we have anything else  
11 to bore the court reporter with.

12 THE COURT: One other thing. You do not want  
13 Mr. Cooper here on Monday?

14 MR. NEGUS: Right.

15 THE COURT: And on Monday, however, you are going  
16 to make certain offers of exhibits and things of that  
17 nature, and are you going to make argument?

18 MR. NEGUS: No.

19 MR. KOCHIS: No.

20 MR. NEGUS: What we are going to do next week is  
21 Mr. Kochis is going to give me some points and authorities  
22 and you some points and authorities sometime next week.

23 MR. KOCHIS: No, Monday.

24 MR. NEGUS: Monday.

25 I'm giving you a whole bunch of exhibits to read.  
26 When he -- when he gets -- when he files his thing, I have

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1 an additional declaration and points and authorities I  
2 am going to have to put in. He's probably going to  
3 respond to that, so we are going to be papering you  
4 back and forth all week.

5 Well, also -- after you have done two or three  
6 days' worth of reading, you will have about 15 hours'  
7 worth of television to watch, and we are, hopefully --

8 THE COURT: Are you going to be with me when I  
9 watch that?

10 MR. NEGUS: Well, I don't see any reason to,  
11 I mean, unless you want us there.

12 THE COURT: Arrange to have an operator. I don't  
13 want to have to worry about the operation.

14 MR. NEGUS: Okay. Well, we're trying --

15 MR. KOCHIS: We're trying to get the machine  
16 first, Judge.

17 THE COURT: Get the machine, and I can assign  
18 my bailiff to it, something like that.

19 MR. KOCHIS: Yes.

20 MR. NEGUS: If you want us to be there, we can  
21 be there. I mean --

22 THE COURT: No. I don't think that's necessary,  
23 if you've seen it all.

24 MR. NEGUS: It's always nice to watch John again.

25 THE COURT: I suspect there's going to be quite  
26 a lot of repetition in my life for a while.

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1 MR. NEGUS: Yes.

2 THE COURT: Saying the same thing over and over  
3 again or reading the same thing over and over again.

4 MR. NEGUS: Right. That's true, but we are going  
5 to have to work out ways to explain to you what you are  
6 seeing, because it comes in piecemeal. The television  
7 people have not yet complied completely with the subpoenas.  
8 They have been slow in getting the stuff in, so I still  
9 have several people that haven't come in with -- CBS is  
10 not going to have all their stuff until the end of next  
11 week, so the television stuff is going to sort of be  
12 trickling in. We can start you on it, if it's not all  
13 here, but it may be trickling in, but we will have plenty  
14 for you to read back and forth, and we just need to --  
15 I think it's easier to do it that way. Mr. Cooper is  
16 not anxious to come here because whenever he moves, there's  
17 security problems involved.

18 THE COURT: It's all right with me. Then let's --

19 MR. NEGUS: Can I just call Lieutenant Carpenter  
20 from your phone here now in case he needs an order not to  
21 bring him?

22 THE COURT: Sure, or we can make a minute order  
23 and the clerk can --

24 THE CLERK: I was going to call Sergeant Reynosa,  
25 because I thought he was the one in charge of it.

26 MR. NEGUS: Okay.

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1 THE COURT: Why don't you do that right now then.  
2 Tell him not to bring him Monday until we next call for  
3 him.

4 MR. NEGUS: How about March 12?

5 THE COURT: All right, not till the 12th, at 9:30  
6 on the 12th. At that time in his presence I may set a  
7 trial date, tentative though it may be.

8 MR. NEGUS: Well, I'd like to just keep the 19th  
9 until there's some other reason. Obviously, if we are  
10 still in motions, then you can't start picking a jury  
11 when we're still in motions, and as I've said before,  
12 we are going to be -- if it's -- assuming a change of  
13 venue is granted and there's a problem of getting --  
14 getting us to wherever we are going to go, we are easy  
15 about that. We are also easy about stipulating, with  
16 jeopardy attaching, to doing all the motions down here,  
17 but once the motions start, the trial's started, so there's  
18 not really a problem, I don't think, of the trial date.  
19 We're not going to mess around with you on the 60-day  
20 rule, but --

21 THE COURT: I'd like for you to put in -- I'm  
22 yours, you know. I'll devote whatever time continuously,  
23 however, to the Cooper trial, but I'd like to put in  
24 there somewhere that if a move is effected, that the  
25 defendant and counsel perhaps will not object to a week  
26 or two hiatus between times, so that arrangements can be

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1 made. We all have personal arrangements. We have formal  
2 arrangements to make in courts and housing arrangements,  
3 perhaps, any number of things, staff arrangements. My  
4 staff is not going to go with me if I go away, a number  
5 of things.

6 MR. NEGUS: There's no problem.

7 MR. KOCHIS: Wait a minute, Judge. If we go,  
8 the staff's going to go.

9 THE COURT: I know another reporter that might  
10 want to go, however. Maybe I can put her on the payroll.

11 When are we going to have all of this to me to  
12 where I am going to start hearing argument on venue?

13 MR. NEGUS: March 12.

14 MR. KOCHIS: Assuming we get the evidence done in  
15 the morning, we will be arguing in the afternoon. If it  
16 takes us all day to put the evidence on, we'll do the  
17 argument on the 13th. Then you may be reflecting and --  
18 I imagine you'll have a decision by March the 14th, or  
19 thereabouts.

20 THE COURT: I suspect.

21 MR. NEGUS: The reason why it might take a long  
22 time --

23 THE COURT: By the time I've gone through all  
24 of that, and by the time you make your last argument,  
25 I will be ready to make my decision.

26 MR. KOCHIS: I imagine that's true.

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1 THE COURT: That's the way it generally works.

2 MR. NEGUS: The reason you may have problems  
3 on the 12th is, quite frankly, that I probably will  
4 subpoena some legislators. They probably will have to  
5 quash the subpoenas, so that will probably take some time.

6 THE COURT: You are a troublemaker.

7 MR. NEGUS: No, sir. I --

8 THE COURT: There's a special code section to  
9 excuse legislators. I don't know what it says, but  
10 there's some special provision for it if they are in  
11 session.

12 MR. NEGUS: We litigated that last time. It's  
13 got to do with civil process, not criminal, and they  
14 will move to quash whatever, but I am perfectly willing  
15 to stipulate to Downtown Los Angeles and save us all  
16 this problem.

17 THE COURT: Would you stipulate, Mr. Kochis,  
18 perhaps, that if counsel will draft a set of interrogatories  
19 to those legislators and if they answer them under oath,  
20 that that may be received by the Court and considered in  
21 evidence? And perhaps you can also add some questions  
22 to it. Let's do it an easy way, if we can.

23 MR. KOCHIS: I had no problem with that last  
24 time.

25 MR. NEGUS: Neither did I. It was the legislative  
26 council that had problems.

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1 MR. KOCHIS: They didn't want to spend their time  
2 answering interrogatories.

3 MR. NEGUS: Well, that's not true. What happened  
4 is the legislative -- Mr. Bader was willing. In fact,  
5 he was anxious to come in, I think.

6 THE COURT: Sure. They get publicity.

7 MR. NEGUS: But their council had -- they had --  
8 last time I subpoenaed their mail as well as the  
9 legislature, so that was their real hangup. Who knows  
10 what's going to happen? I'm going to do it somewhat  
11 differently, I think.

12 THE COURT: Well, try and -- I don't want to  
13 repeat my speech that I made with reference to Mr. McCombs,  
14 but try and avoid these confrontations with other branches  
15 of our government.

16 MR. NEGUS: I can't. I can't. Like with  
17 Mr. McCombs, Mr. McCombs, according to the Riverside  
18 Press Enterprise, was perfectly --

19 THE COURT: What? I saw the article.

20 MR. NEGUS: All right.

21 THE COURT: The little paper won. I didn't make  
22 it come out that way.

23 MR. NEGUS: But the -- but the key to it was  
24 that Mr. McCombs -- if you hadn't have put me in a box,  
25 Mr. McCombs --

26 THE COURT: Had him in the box.

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1 MR. NEGUS: -- was ready to give me what I asked  
2 for and --

3 THE COURT: Well, that was a misunderstanding,  
4 Mr. Negus.

5 MR. NEGUS: But, you know --

6 MR. KOCHIS: That's it. We're just chattering  
7 now.

8 MR. NEGUS: All right.

9 (Whereupon, the matter was adjourned  
10 until Monday, March 5, 1984.)

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1 ONTARIO, CALIFORNIA; MONDAY, MARCH 5, 1984; 10:15 A.M.

2 --oOo--

3 (Whereupon, the following proceedings  
4 were had in chambers:)

5 THE COURT: In chambers out of the presence of  
6 everybody, including the defendant.

7 I have Mr. Negus, Mr. Kottmeier and Mr. Kochis  
8 here.

9 We had a hearing last week, the record would  
10 reflect, wherein you kind of outlined what would be  
11 expected to go on today, and you waived the appearance  
12 of Mr. Cooper and, in fact, requested that we not bring  
13 him over until the 12th of March.

14 MR. NEGUS: That's true.

15 THE COURT: What are we going to do back in  
16 chambers at this time?

17 MR. KOCHIS: To alert you to the fact that I  
18 think we have a VHS VCR for you. Some of the tapes will  
19 not fit that format. Most will.

20 MR. NEGUS: No. We can get everything on the  
21 VHS.

22 MR. KOCHIS: We've got the Sheriff to loan us  
23 the television.

24 We are ready to mark some of the exhibits, but  
25 not all of the exhibits, and I was going to make a request,  
26 and I understand Mr. Negus has no strong objection to my

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1 request to deviate somewhat from the format you suggested;  
2 that Mr. Negus has submitted to the Court the United Press  
3 and Associated Press releases. We also have received  
4 material from --

5 THE COURT: I don't understand that. He submitted  
6 what?

7 MR. KOCHIS: The wire service releases, UPI and  
8 AP.

9 THE COURT: Okay. I don't know what he submitted.  
10 This is something that you're having marked outside?

11 MR. NEGUS: Yes.

12 THE COURT: Okay. So I don't know.

13 MR. KOCHIS: To get to the point, you have expressed  
14 a preference for considering just the publicity in this  
15 county first before you consider, if we get to the second  
16 stage, publicity in other counties. I am going to be  
17 asking the Court to consider some of the publicity the  
18 case has received in other counties to assist me in the  
19 argument I am going to be making to the Court next week  
20 as to why the case should stay here, and it is my under-  
21 standing Mr. Negus does not have a strong objection, if  
22 any objection, to my requesting the Court consider some  
23 of that publicity as well.

24 MR. NEGUS: The only --

25 THE COURT: Can you clue me in?

26 MR. KOCHIS: Well, Judge --

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1 THE COURT: Is your argument going to be, hey,  
2 publicity occurred everywhere, so you may as well keep  
3 it here?

4 MR. KOCHIS: That's it in a nutshell.

5 MR. NEGUS: That's going to --

6 THE COURT: That would open it up statewide,  
7 though, wouldn't it?

8 MR. KOCHIS: I would think so.

9 THE COURT: So it's not just a crack in the door  
10 that you're asking for. It's to go into --

11 MR. KOCHIS: Well, Your Honor, I was not going to  
12 submit radio coverage, TV coverage. I was just going to  
13 ask the Court to consider some of the media coverage,  
14 newspaper coverage from other counties. I can make part  
15 of the argument with the UPI/AP wire service, but I don't  
16 want to be precluded, if I stand up next week, from making  
17 that type of argument with Mr. Negus succinctly pointing  
18 out, well, those facts aren't before the Court, and how  
19 can Mr. Kochis make that argument.

20 THE COURT: You're probably not even prepared to  
21 put on all this stuff from around the state, are you?

22 MR. NEGUS: The stuff from around the state is  
23 unorganized sitting in my office -- or actually in a  
24 closet near my office.

25 THE COURT: How can we do it then to give him  
26 the opportunity to make the point without getting all

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1 that in, I suppose?

2 MR. NEGUS: Well, I suppose we can't, because I  
3 don't think the point is well taken, because my argument  
4 is going to be that publicity around the state is not  
5 all equal, and I don't wish to concede that point, so if  
6 we are going to litigate it, I guess we will have to --  
7 it will take us time to get it all organized. The  
8 purpose of the AP stuff and the UPI stuff is that the  
9 Victor Valley paper and some of the radio stations do  
10 not keep records of what stories they published in form --  
11 in -- which we are not -- they do not keep records of  
12 the stories that they publish generated from the wire  
13 services. What they -- all they can do is estimate that  
14 they -- for example, I believe the estimation of the  
15 Victor Valley Daily Press was that they printed half of  
16 the stories that came over the wire, and of those, they  
17 usually cut them down by half, so in order to give some  
18 substance to how much we are talking about, I introduced  
19 the wire service.

20 Some of the radio stations have the same problem.

21 THE COURT: Why is this going on back in chambers  
22 instead of out in open court?

23 MR. NEGUS: Well, because the reason we are doing  
24 all this in chambers is that, basically, this week we  
25 are just trying to organize the exhibits, and I don't think  
26 anything should happen in open court without Mr. Cooper

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Number one, you are concerned with extended coverage as far as the defendant's picture being taken and things of that nature, and then last week you told me that we were not going to have him here. At no time did you indicate that all of our hearings were going to be in chambers last week. At least I didn't understand that, and we have these people outside.

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1 they can conjure up all sorts of visions as to what's  
2 occurring back in chambers. This is perfectly legitimate  
3 pretrial discussions that we are having here, and I don't  
4 see any need to hide this from the people outside that  
5 are wondering about this case and what's going on in  
6 chambers. I don't like a lot of secrecy, if I can avoid  
7 it. This is going to give the appearance of it now if  
8 we try to have substantial hearings in chambers.

9 MR. NEGUS: What we are suggesting is we are not  
10 to have a substantial hearing today. We are not -- I  
11 don't think Mr. Kochis is asking you to rule on the  
12 request. All we are trying to do is tell you what the  
13 logistical problems are and how logistically we want to  
14 handle you working out reading the stuff during this  
15 week. What I was about to finish by saying was is that  
16 I believe we have enough in the county stuff to keep you  
17 busy for this -- for this -- for most, if not all, of  
18 this week. Not all of the television stuff has been  
19 turned in yet, so that will be coming -- hopefully, the  
20 rest of that will be coming in by the end of the week.  
21 It's been promised to me by the end of the week.

22 THE COURT: At some point today, Mr. Negus,  
23 wherever it may occur, you are going to physically offer  
24 in and ask the Court to accept as evidence on your venue  
25 motion certain things?

26 MR. NEGUS: No, I am not, no. What we have

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1 I guess we can, but I don't want to be in a position of  
2 moving stuff into evidence or that kind of stuff until  
3 Mr. Cooper's actually here. The reason I didn't have him  
4 here this week was because I thought we had agreed that  
5 we'd handle it informally.

6 THE COURT: Mr. Negus, I don't see any reason to  
7 bend all the traditional rules of evidence and everything  
8 else. Here I am going to make a decision on this. I am  
9 going to read and consider certain things, and yet I don't  
10 follow the usual rules of evidence and have it admitted  
11 before me.

12 MR. KOCHIS: But you are, Judge. He submitted  
13 ten days ago a 70-page motion for change of venue --

14 THE COURT: That many pages?

15 MR. KOCHIS: -- that contained numerous references  
16 to pieces of evidence, quotes that you have obviously  
17 read by now, and have partially considered, and, technically,  
18 it is not in evidence, and we are following the normal  
19 procedure that we always follow.

20 THE COURT: For the record, aggressive counsel  
21 are taking firm control of this trial and deciding how  
22 it's going to go without -- without any input from the  
23 Court.

24 MR. NEGUS: We consulted you last Friday, Judge,  
25 and that was the point of doing that.

26 THE COURT: You may have had one thing in mind.

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1 I don't normally spend a week's work without the matter  
2 being formally submitted to me in evidence. I normally  
3 don't look at exhibits unless they are received.

4 MR. NEGUS: Well, technically, I suppose that  
5 the exhibits are all incorporated by reference into the  
6 declaration. All you are really required to do in  
7 support of the change of venue motion is to make a  
8 declaration of counsel, which I've done, and so those  
9 exhibits are already before you.

10 THE COURT: All right. Counsel, I will take it  
11 as an offer of proof without objection from the  
12 prosecution, and this is all going to be ultimately  
13 moved into evidence; is that correct, Mr. Negus?

14 MR. NEGUS: Yes.

15 THE COURT: Now, all the -- are there going to be  
16 a lot of things submitted to the clerk for me to study  
17 this week?

18 MR. NEGUS: Yes.

19 THE COURT: And there's no dispute or objection  
20 as to any of those things?

21 MR. KOCHIS: No.

22 THE COURT: All right. Considering it then as  
23 part of the offer of evidence on which there is no  
24 objection, and subject to being formally received in  
25 evidence later on, I will proceed that way.

26 As far as your request, Mr. Kochis, on the scope --

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1 MR. NEGUS: Could I make a suggestion?

2 THE COURT: Sure.

3 MR. NEGUS: That Mr. Kochis and I proceed to  
4 organize this material this week, and that he formally  
5 make the motion for you to consider that as part of his  
6 argument next week, because I think that you will be  
7 busy with what we have so far, and then if you decide  
8 that that should be considered, then you can consider  
9 that next week before you rule on the motion.

10 THE COURT: Will we have Mr. Cooper back on the  
11 12th?

12 MR. NEGUS: Mr. Cooper will be here on the 12th.

13 MR. KOCHIS: That sounds like a reasonable  
14 suggestion.

15 THE COURT: All right. That's fine. Then we  
16 don't have anything going on in court today. Is that  
17 your --

18 MR. NEGUS: That was the whole plan.

19 THE COURT: Well, I am going to step out and  
20 recap this, at least in some manner. I've got to tell  
21 them what has occurred.

22 MR. NEGUS: Judge, I would object to doing  
23 anything out in court. I -- the people that are -- have  
24 been following the case most closely called me up and  
25 asked if anything was going to happen. I told them no,  
26 we're not going to do anything in court, based upon what

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1 I understood was I think a fairly clear representation  
2 that we did in chambers. It's not fair to other stations  
3 for them not to show up on the basis of those kind of  
4 representations and then give coverage to the people  
5 that -- that are less --

6 THE COURT: I don't care if I do it.

7 MR. NEGUS: Well, I do. That's why I'm objecting.

8 THE COURT: You want to step out and do it?

9 MR. NEGUS: No. I just don't think that --

10 THE COURT: You mean just keep them in the dark,  
11 Mr. Negus?

12 MR. NEGUS: You can have the bailiff tell them  
13 nothing's going to happen in court. That's fine, but  
14 that's what -- that's what anybody who has asked has been  
15 told.

16 THE COURT: All right. I will note your  
17 objection, but I am -- this is a public courtroom, and  
18 I am going outside and make a statement briefly  
19 synopsizing what's occurred here.

20 Anything further?

21 MR. NEGUS: I would object to doing that outside  
22 the presence of the defendant.

23 THE COURT: You may object. The record will  
24 reflect it.

25 Anything further?

26 And then you are going to go ahead and mark your

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1 exhibits.

2 It's not going to take me 30 seconds outside.

3 All right. Let's go back outside.

4 (Whereupon, the following proceedings  
5 were had in open court:)

6 THE COURT: To those of you in the audience who  
7 are interested in the matter of People versus Kevin  
8 Cooper, counsel and I have been in chambers discussing  
9 the method of proceeding on the motion for change of  
10 venue. You were warned last week, I understand, at least  
11 some of the media representatives were warned, that  
12 nothing was going to occur in open court today, and indeed  
13 that's so, and we have had all the hearing we are going  
14 to have on the record in chambers. I will be spending  
15 time studying exhibits and reading documents, I assume,  
16 for the balance of this week, but there's nothing  
17 secretive about it. Nothing was said back there that  
18 in any way is startling or particularly newsworthy or  
19 anything else, but all we did discuss was the method of  
20 proceeding of getting the exhibits before the Court.

21 Mr. Cooper is not present, and we are not having  
22 any hearing. I simply wanted to explain to you a little  
23 bit what occurred in chambers.

24 Counsel are going to continue to work with the  
25 clerk on the marking of exhibits, and I will receive  
26 those when given to me by the clerk.

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1           MR. NEGUS: Well, you have listed on that hand-  
2 written thing the frequency of the coverage. The only  
3 problem you have is trying to -- is to be exactly sure,  
4 and if that becomes important, I can take the tapes and  
5 sit down and do it for you, but it wasn't -- we didn't  
6 even coordinate it for the 868 motion, and you have a  
7 list of when there was Cooper coverage on that handwritten  
8 thing, so that you can gauge the frequency.

9           THE COURT: All right.

10          MR. NEGUS: Channel 7 is more complicated, and  
11 that's in V -- excuse me. Channel 5 is next. With  
12 respect to Channel 5, now you have both scripts and tapes,  
13 and the way that I have found most successfully to do it  
14 is to sit when I'm watching the videotape with the script  
15 in front of me, and if you -- it's in the manila folder.  
16 The script's in the manila folder, V-3-C there right  
17 underneath Channel 5. Okay. If you look at the script,  
18 I can explain a little bit to you about that. There's --  
19 the scripts are those things in great big letters that --  
20 that -- that go down -- that are on several pages of  
21 xerox. In order to --

22          THE COURT: Doesn't that come out in the video?

23          MR. NEGUS: No. That's the reason why you have --

24          THE COURT: You just have the picture without  
25 the sound?

26          MR. NEGUS: What they have done is that the stuff

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1 on the script is what the anchorperson reads on the --  
2 on the television. They don't apparently keep tapes of  
3 their anchorpersons. All they keep tapes of is their  
4 remote coverage, so what you have there is the remote  
5 coverage is on the tape. When it says "V.O.," that means  
6 a particular segment is being broadcast on the screen as  
7 the anchorperson is reading what you -- what you see in  
8 front of you. There is also at the end of the script a  
9 listing of what was broadcast remote without a voiceover,  
10 and if you'll look at the script, it says at the  
11 end "-- 40 Tidwell", "--114 Wiesner", "--147 Mike". What  
12 that means is you've got 40 seconds into the tape, there's  
13 Sheriff Tidwell speaking, and then there's a tape that  
14 runs a total of a minute and forty-seven -- excuse me --  
15 two minutes and eleven seconds, and they give you a  
16 breakdown as to what comes on during what portion of the  
17 tape. That particular -- that particular tape was  
18 therefore broadcast without an anchorperson reading over  
19 it, but just with the sound that you see with the -- with  
20 the sound that you see on it; so you have to sit there  
21 with a script and watch the television and put it all --  
22 and put it all together.

23 This, apparently, is the way that our television  
24 people keep records.

25 Channel 7, they have for you both a list of all  
26 the different times that -- that the stories were

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1 broadcast. They also have xerox -- what are called story  
2 slugs, which tells you when a particular thing on the  
3 videotape was -- was broadcast, and they also have the  
4 script; so you have to put in again -- in order to make  
5 sense of the whole thing, the -- what is on the videotape  
6 with what is in the script. Basically, again, for the  
7 purposes that we've been using this stuff before and  
8 which I would be willing -- which I am going to be  
9 proposing it, that which I am concerned about is not  
10 so much the exact continuity of the story, for the most  
11 part, but what was broadcast and how often; so I don't  
12 think it is as important to have an exact chronology.  
13 Once you see all the stuff on the tape, and once you  
14 read all the scripts, I think you can put it together  
15 and have an idea.

16 Let's see. Channel 9 is again scripts and tapes.  
17 On Channel 9 it can be confusing in trying to understand  
18 the dates of things, unless you know that they go all the  
19 way through their 1:30 news, and so you have a sequence  
20 of coverage on the scripts and tapes through the 1:30  
21 news, and then the tape jumps back to the beginning again,  
22 and they show you all the way through June to August on  
23 the 10:00 o'clock news; so it looks like it's repeating  
24 itself, but what you have on the first -- on the first  
25 series is all the 1:30 news, and on the second series all  
26 the 10:00 o'clock news, and they have a list for you when

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1 AP, they only take one story per day, not four or five,  
2 the four or five different versions of the same story  
3 that come over the wire.

4 MR. KOCHIS: The only procedural concern,  
5 Your Honor, is the equipment you are going to be using  
6 to view the video apparently has to be returned to the  
7 Sheriff's Office later this week. They have a training  
8 seminar, but it's going to be free for today and tomorrow,  
9 and I can make arrangements to continue to have it  
10 available for the Court on Wednesday, if the Court is  
11 still looking at the video on Wednesday.

12 MR. NEGUS: The other problem is that the second  
13 series of television tapes we won't have completely  
14 available, at least from what I understand, that soon.

15 THE COURT: Is that Channel 2, 4, 5? We've got  
16 5, 7, 9, 11 and 13.

17 MR. NEGUS: That's what you've got in front of  
18 you. That's all those channels up to August. We don't  
19 have -- we have five tapes that have come in on the post-  
20 August coverage. Three of those tapes -- there's three  
21 yet to come that are in transit, plus there's some  
22 scripts that are yet to come, so we are not --

23 THE COURT: Isn't there any room for reasonable  
24 latitude here? Is it possible at all that, for instance,  
25 Channel 2 might be representative of, basically, a similar  
26 context in Channels 4, 7, at least to where I wouldn't

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1 have to look at all of them? I mean the three major  
2 networks, the basic quantity and quality would not be  
3 approximately the same? I mean you who have seen these  
4 tapes might be able to stipulate.

5 MR. NEGUS: They aren't basically the same.  
6 Channel 2 I don't think has sent us all the stuff that  
7 they aired, but --

8 THE COURT: There's no representative way that I  
9 can avoid going through each and every one?

10 MR. KOCHIS: Your Honor, the fashion in which  
11 the case was covered is depicted differently among the  
12 various news stations.

13 THE COURT: Sure. Significantly so?

14 MR. KOTTMEIER: I don't think, in my own feeling,  
15 it's that significantly different. You get nuances of  
16 story or comment here or comment there from the news-  
17 caster, but nothing that --

18 THE COURT: No. I'm not trying to bend your arms,  
19 gentlemen, and I am perfectly willing to go through it,  
20 if you think it's important. I can just see myself,  
21 however, having gone through perhaps one or two of  
22 these stations, beginning to be able to recite by memory  
23 or rote.

24 MR. NEGUS: Certainly there's some statements by  
25 Mr. Kottmeier and Mr. Tidwell that get broadcast a lot of  
26 times, and you probably could say them by rote at the end.

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1 THE COURT: We'll see how it goes. If I have  
2 any question, may I call you and get you in on another  
3 conference?

4 MR. KOCHIS: Yes, you may, Your Honor. We will  
5 be available on short notice.

6 MR. NEGUS: I am sure both Mr. Kochis and I  
7 will be here all week, with the possible exception of  
8 Friday, and we will be available. We will be bringing  
9 in additional materials when they do become available,  
10 and we will be filing additional papers during the week.  
11 I hadn't -- when I wrote my declaration, I hadn't had  
12 a chance to view the television materials, the most  
13 recent ones, and I am also sure that there will be some-  
14 thing that Mr. Kochis will say that I'll feel the need  
15 to respond to.

16 THE COURT: All right. The plan is then that --  
17 and you both give me permission to view these materials  
18 in your absence and in the absence of the defendant on  
19 an informal basis as indicated; correct?

20 MR. NEGUS: Yes.

21 MR. KOCHIS: Yes, Your Honor.

22 THE COURT: Okay. We shall start with the  
23 television first, so that we might free the machine at  
24 the earliest reasonable time, and my bailiff is going to  
25 be my chief engineer, and we are going to commence with  
26 the top of your list, I guess.

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1 MR. NEGUS: I would suggest, perhaps, if you want,  
2 that probably Channel 4 and Channel 7 are the most  
3 complete coverage, and if you want to start with that,  
4 then you'll at least have a -- and they're also the best  
5 documentation of what they've done for you; so if you  
6 want to start with that, that might make it easier for  
7 you to understand some of the other stuff, but that's  
8 just a suggestion.

9 THE COURT: Is it going to be hard to understand?

10 MR. NEGUS: Not really, I don't think.

11 THE COURT: All right. Channel 4 starts off then  
12 with Exhibit V-2?

13 MR. NEGUS: Channel 4 you don't have to go back  
14 and forth between -- between video and script, so it's  
15 easy. That's why I suggested it first.

16 (Whereupon, the matter was adjourned  
17 until Monday, March 12, 1984.)

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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;

Dated this \_\_\_\_\_ day of March, 1984, at  
Ontario, California.

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