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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:

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IN PROPRIA PERSONA

VOLUME ¹⁹ ~~10~~ of volumes JILL D. MC KIMMEY, C.S.R., C-2314
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VOLUME 10-A
Pgs. 942-1 thru 942-46, incl.

March 28, 1984
April 6 and 11, 1984

For the People:

For the Defendant:

DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

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

1 ONTARIO, CALIFORNIA; WEDNESDAY, MARCH 28, 1984; 9:20 A.M.

2 DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 DAVID RECUS, Deputy Public Defender of
5 San Bernardino County; JOHN P. KOCHIS,
6 Deputy District Attorney of San
7 Bernardino County, representing the
8 People of the State of California.
9 (Jill D. McKimsey, C.S.R., Official Reporter, C-2314)

10
11 (Whereupon, the following proceedings
12 were had in chambers:)

13 THE COURT: All right. On the record with
14 reference to Kevin Cooper. Both counsel are present.

15 Gentlemen, I simply, before we get locked in to
16 particular counties that this case might ultimately be
17 transferred to, there's nothing secret about what's going
18 on. I simply want to let you know and so you can consider
19 and perhaps you might have further suggestion.

20 The lady from the Judicial Council that's handling
21 this is a person by the name of Bobbi Wellins, and she
22 called me yesterday. You will have no contact with her,
23 I don't think, but she called me yesterday and indicated
24 that so far, we have the following counties: We have
25 Sacramento for sure. We have possibly Alameda, and she
26 thinks that we will have, but they've got to firm that up

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1 yet, and the third one we don't know at all.

2 MR. NEGUS: That's enough. ✓

3 THE COURT: Okay. I was hoping for something
4 closer. Presno is using makeshift courtrooms. They
5 don't have anything at all. I was particularly hoping
6 that one of our options would be San Diego for several
7 reasons: One, because it's a large city with a large
8 population. Two, it's basically out of the Los Angeles
9 sphere of television, radio. They have their own stations,
10 in any event.

11 MR. NEGUS: They also have their own cables which
12 do Los Angeles stations.

13 THE COURT: I know there are some people that get
14 L.A. stations, but a great bulk of them do not, and they
15 have their own newspapers, but, in any event, I wanted that
16 option. We may yet get it, but I doubt it.

17 MR. NEGUS: I would be interposing an objection to
18 San Diego.

19 THE COURT: Counsel, you may oppose anything that
20 we've got, but I was just wanting the option of something
21 closer. I am somewhat dismayed that we are looking so far
22 away.

23 MR. KOCHIS: That makes two of us.

24 MR. NEGUS: Could I just point out to --

25 THE COURT: The cost --

26 MR. NEGUS: The cost -- we have already investigated

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1 him, and if -- and let me know by noon or something like
2 that if that might -- if your position might change on
3 it in view of the kind of options I'm getting back, and
4 if it does, give me a call and I'll call back to San
5 Francisco and tell her, and they could at least check.
6 I don't know. Los Angeles is a favored transfer spot
7 of cases such as this, and they get an awful lot of venue
8 motions changed to Los Angeles, and they are not overly
9 eager. She told me that at the beginning, the first
10 conversation I had with her, and yet, in talking to her
11 yesterday, she said, "I haven't checked on L.A. Do you
12 want me to do that?" And I would only do that based upon
13 what Mr. Negus now tells me. I will check on L.A. if you
14 feel that it would be a possible alternative. At least
15 we could explore it. You see, I just want the three options.
16 We are going to have three options ultimately, and we are
17 going to talk about merits and demerits of those three
18 counties. I'd just like to -- I'd like to have something
19 closer. I just abhor the thought of transferring this
20 450 miles away.

21 MR. NEGUS: I think that -- I won't make my
22 arguments now.

23 THE COURT: Sure.

24 Mr. Kochis, that's all I wanted to do.

25 MR. KOCHIS: Sure. I'll call Mr. Kottmeier and
26 get back to you.

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1 THE COURT: If there's anything, let me know.

2 --o0o--

3 (Whereupon, at 10:12 a.m. the following
4 proceedings were had in chambers.)

5 THE COURT: On the record with reference to Kevin
6 Cooper, both counsel without the defendant.

7 MR. KOCHIS: I checked with Mr. Kottmeier. At
8 this point he would prefer to see what the third county
9 is without us stipulating to Los Angeles.

10 THE COURT: Okay. I'm not going to ask her then
11 to even check with Los Angeles to see if they have a
12 court because, based upon the evidence, I wouldn't
13 consider that one.

14 MR. NECUS: I'd request she check Los Angeles to
15 see if that should be on the list. There's no reason for
16 excluding it arbitrarily, and if -- even if they don't
17 particularly want it, I don't -- I'm not sure that it's
18 their particular rights that are involved, and that would
19 appear to me to be the one county where there's at least
20 some possibility, if we had a Central Los Angeles jury,
21 of doing it here as opposed to Northern California.

22 THE COURT: Okay. Thank you.

23 Anything further?

24 MR. KOCHIS: In response to Mr. Negus, I'm not
25 saying it shouldn't be one of the possible options. I'm
26 saying at this point we don't want to stipulate to it.

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1 this county, but I am not going to now say that we can
2 get a fair trial in Los Angeles County over objection from
3 either one of you.

4 MR. NEGUS: Well, the thing is that strikes me as
5 not being fair is that you are looking at other Southern
6 California counties where the publicity has been also
7 strong and telling the person that they can consider them.
8 That's essentially giving the District Attorney's Office,
9 who is the only person who's objecting, an arbitrary veto
10 over one of the counties.

11 THE COURT: All right. Maybe that is. You're
12 the only one that could complain then.

13 MR. NEGUS: That's true.

14 THE COURT: All you want us to do is to make it
15 an option: is that correct?

16 MR. NEGUS: That's true, and then at least all I
17 wanted to do is to investigate that along with all the
18 other things.

19 THE COURT: All she's going to do is find out if
20 there's an empty courtroom available that can handle this
21 case.

22 MR. NEGUS: Exactly, and I think that that
23 investigation should be done, and then whenever she compiles
24 the list of three, if Los Angeles is one of the three,
25 so be it. If Mono County is one of the three, so be it.

26 THE COURT: Could you tell me that you -- if suppose

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1 we have those three, I suspect it's going to be Sacramento,
2 Alameda then, and Los Angeles.

3 MR. NEGUS: Central Los Angeles.

4 THE COURT: If that occurs, do you have a preference
5 then?

6 MR. NEGUS: I do have a preference, but I am --
7 but I am not --

8 MR. KOCHIS: Mr. Negus is very fond of Alameda
9 County.

10 MR. NEGUS: There's lots of tennis courts and
11 golf courses.

12 I'm just joking. I'm sorry. I shouldn't even put
13 it on the record.

14 THE COURT: You know, I don't think that Sacramento
15 or Fresno and some of those places or Imperial in the
16 summertime would be a nice place, but I am really thinking
17 of the cost and the logistics of the trial and the fairness
18 of the voir dire panel, so --

19 MR. NEGUS: Okay. Well, I don't know if you want
20 to go into all the details of why I think various counties
21 are better than others as far as (a) logistics and (b) the
22 defendant getting a fair trial, but --

23 THE COURT: Okay. All right. What would be your
24 position, though, Mr. Negus, if we came down to it? I
25 don't want to -- you see, if I tell her to include Los
26 Angeles now, then she's going to exclude something else,

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1 and I don't know where her investigation has taken her
2 at the moment. What would be your position if I had
3 those three counties? Would you then -- you're going to
4 argue one or the other. If you think you can get a fair
5 trial in downtown Los Angeles, I'm going to move it there,
6 most likely. *

7 MR. NEGUS: I am willing to -- I am telling you
8 right now that the way it goes is my investigation --
9 I've done investigations on practically every county in
10 the state, at least short ones, and I have considerable
11 knowledge, based upon having once lived in Los Angeles
12 County, plus knowing lots of lawyers that practice in
13 downtown Los Angeles, that I would not be objecting to a
14 downtown Los Angeles jury right off the bat. *

15 The McGown case says that what we have to do is
16 present arguments as to which county would be in the interests
17 of justice to transfer the case to. I may not think that
18 Los Angeles is the best county, but I am telling you that
19 like if you transferred it to San Diego, I would be
20 attempting to introduce evidence that because of the
21 nature of the publicity, because of certain political issues
22 down there, that in no way should it be transferred to San
23 Diego.

24 I would not be doing that with Los Angeles. If --
25 and this is true of any county we go to. If during the
26 voir dire it becomes apparent that we can't get a fair

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1 and maybe give us that option as well. I am not going to
2 go over their head and come up with some dark horse.

3 I've got to go with a jury that's waiting outside.

4 MR. KOCHIS: Can we just let her pick the third
5 county? If that's another remote county, possibly then
6 we could inquire about L.A.

7 THE COURT: There's no way we would seriously
8 consider Los Angeles without knowing if they have a
9 courtroom available to handle it, so I'd have to have her
10 concurrence on it.

11 MR. NEGUS: I don't think that she should -- like
12 I say, I don't think she should arbitrarily exclude Los
13 Angeles or any other county.

14 MR. KOCHIS: No. I'm not asking that anyone be
15 excluded arbitrarily.

16 MR. NEGUS: If she wants to inquire, I think she
17 should be able to.

18 THE COURT: All right. At the recess I will get
19 a hold of her and tell her to "exclude it in" or something
20 like that. Okay.

21 MR. NEGUS: Thank you.

22 (Proceedings concluded.)

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1 ONTARIO, CALIFORNIA; FRIDAY, APRIL 6, 1984; 11:17 A.M.

2 DEPARTMENT NO. 3

HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 DAVID NEGUS, Deputy Public Defender of
5 San Bernardino County; JOHN P. KOCHIS,
6 Deputy District Attorney of San Bernardino
7 County, representing the People of the
8 State of California.

9 (Jill D. McKinney, C.S.R., Official Reporter, C-2314)

10
11 (Whereupon, the following proceedings
12 were had in chambers:)

13 THE COURT: On the record with reference to People
14 versus Kevin Cooper, I have received more information which
15 I am going to impart to you so that you will be able to
16 prepare your presentation for the next venue hearing that
17 we shall have. A couple cases -- things before we get
18 into that. Did I indicate to you at the beginning that
19 when we actually do get into trial, that it would be a
20 four-day week?

21 MR. NEGUS: Yes.

22 MR. KOCHIS: Yes.

23 THE COURT: Okay. That makes it different somewhat.
24 There will be nothing in writing from the Judicial
25 Council. When they receive inquiries from media, they
26 tell them that it is confidential as to what they have told

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1 me. What they tell them is that they have given me the
2 names of the counties, but whether or not it is released --
3 it is confidential at the moment, and they'd have to
4 contact us for disclosure: so I would expect that before
5 long, the media will be contacting us here. I would
6 think, subject to your consultation, that it would be
7 best to keep it kind of confidential until we have an
8 open hearing, and at that time we can let it hang out,
9 but I don't like to prolong the media attention. Ulti-
10 mately after we have a hearing, wherever it's decided
11 the case shall be transferred to, I will make an order
12 of transfer.

13 I was just looking up in the Penal Code 1033 here
14 the order will be conditional -- will be for the trial
15 itself, and that all pretrial -- subject to all pretrial
16 motions being heard here, the case is ordered transferred
17 there, that type of an order, so it is a conditional type
18 of order. After that decision is made, I shall contact
19 another division of the Judicial Council for an assignment.
20 I will receive an assignment to that county, not to the
21 Cooper case. The presiding judge of that county shall
22 exercise his prerogative and is expected then will assign
23 me to the case, but the law simply doesn't provide for
24 a procedure whereby the judge goes with it, although
25 every county has indicated that you go back to square one
26 if you do not go with the case; that is, that these counties

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1 have indicated a willingness to accept the case, will do
2 so on condition that their judge does not have to hear
3 the case. The counties are Sacramento, Alameda, San
4 Diego -- subject to my putting in one day a week there
5 on their work. That's why I wanted to know that -- Los
6 Angeles, preferably not downtown. The word that I get --
7 and I have contacted none of these counties, nor will I
8 at this stage. The word that I get from Los Angeles,
9 the reason that they say not downtown is that the only
10 courtroom they have available for this case is the high
11 security courtroom, fondly known as the gorilla cage, which
12 Ron George, who handles the criminal calendar, has told
13 her that he prefers to keep open to keep vacant for other
14 high security matters that they have from time to time.

15 The other -- the outlying areas -- and they
16 didn't tell me for sure about any one of these areas --
17 is Pomona, Burbank, Pasadena, San Fernando-Van Nuys,
18 Long Beach, Catalina, Norwalk, Torrance, Santa Monica
19 and Compton. These basically are the outlying areas of
20 those -- of Los Angeles. I would prefer to give you that
21 information so you can make your presentation. We will
22 have to decide when we are going to hear this further,
23 and I really think that we ought not to let it go beyond
24 this room until such time as we have that hearing, but I
25 don't feel wired in concrete.

26 Comment?

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Tell the people -- now, at the time of the hearing, however, at the time of the hearing, I am going to say, gentlemen, we've got these four counties, as you know, and we are going

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1 to be talking, and you are going to be making argument,
2 I would assume, as to the merits or demerits of each of
3 these locations, and so at that time they are going to
4 know that much, and at the end of that hearing, I would
5 make a decision, and if you are asking for a closed
6 hearing and to seal the record, we'd have to consider
7 that. I don't think we can delay indefinitely on the
8 matter. I think that the other county, like us, need to
9 make plans. They want me to make in my order of transfer
10 a tentative date, at least so that they will know when
11 we are coming, roughly, and if that would still be the
12 July 2nd date, fine.

13 I hear rumors, and I haven't even talked to my
14 clerk about this, that I think I heard mention from --
15 heard it from Judge Ziebarth in passing that there may
16 be some delay in filing the 995 or something. I haven't
17 looked at the file yet. Is there?

18 MR. NEGUS: The 995 is coming back from the
19 typist. It is going to be here at 1:00 o'clock. I will
20 proofread it. You will have it by 2:30 or 3:00.

21 THE COURT: Wonderful, and then you are going to
22 file yours when?

23 MR. KOCHIS: I said I needed seven days after
24 the time he filed his, which means it will not be filed
25 Tuesday morning, but I will try to have it filed by
26 Thursday morning prior to 10:00 o'clock. That would give

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1 Bernardino and personnel plans and everything else, which
2 is kind of comical in a way. As I understand it -- you
3 may be under a misapprehension -- Penton Jones does not
4 arrive here, is the information I now have, until the 30th
5 of April, a Monday morning. Charles Havens, if it's going
6 to be Charles Havens -- and that's not locked in, in spite
7 of what we may hear -- is not due until July 1st, so there
8 is no judge planned to take my place as such. I have told
9 you and told them, Judge Morris and Judge Ziebarth, that
10 I am perfectly willing to move the pretrial motions to
11 Chino or San Bernardino at any time that they give us
12 another judge for Ontario, because they are going to
13 sorely feel the loss of one department; so I am not
14 getting another judge until the 30th of April; so there's
15 no move that's imminent, no need for it. Judge Ziebarth
16 is going to be on vacation, I believe, next week. We'll
17 continue to use his courtroom, and we will continue to
18 use his courtroom until April 30th. We can start hearing
19 it in San Bernardino on the 30th of April, if that be
20 confirmed. I haven't been able to talk to Judge Morris
21 yet; so I haven't been able to confirm this, but if Penton
22 Jones truly comes out on the 30th of April, at that point
23 then I would probably move this hearing to San Bernardino.

24 MR. NEGUS: The 16th definitely will be in
25 Department 2?

26 THE COURT: Yeah, and I'm going to stay here next

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1 week in preparation, and the 16th will be in Department 2.

2 Okay.

3 MR. KOCHIS: That's fine.

4 THE COURT: Any questions, subtractions, deletions,
5 additions to the minutes?

6 MR. NEGUS: When do you want to hear the venue
7 issue? Do you want to hear it --

8 THE COURT: Let's talk about it. When is the
9 best time? I suppose we have a political and media
10 question that we have to face first. I don't see how
11 we can cover it, frankly. I don't think it's practical
12 to close the courtroom or close the record on that sort of
13 thing. You know, that's something that --

14 MR. KOCHIS: Your Honor, the one thing I am
15 thinking about in terms of closing it is it's possible
16 that Mr. Negus and I during our arguments may mention
17 certain things about the potential counties in terms of
18 not only availability and hardship and publicity, but
19 reasons we may think we cannot get a fair trial in a
20 particular county, and I would hate to have that
21 publicized and then end up in the county where Mr. Negus
22 and I may have said something that's not completely
23 complimentary about San Diego, Los Angeles, Alameda, and
24 then face a panel of jurors that have heard, well, this
25 is the -- this is the defense lawyer or the prosecutor
26 who said A, B and C about us in this county.

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Amen.

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Two, you know, you've got The Press Enterprise case. In a way, you want me to seal the transcript kind of like. They got into a transcript sealing record after that. I just don't think we can avoid it, so I think the best thing for you to do is to hedge your remarks and don't state it as a fact, but the people of this jurisdiction may such and such.

MR. NEGUS: The problem is -- well, (a) The Press Enterprise case says that you can't have a per se rule excluding the press for voir dire things. It also says that juror right of privacy is not a valid criteria. That's all it says. It doesn't say you can't ever keep the press out.

THE COURT: I haven't read that case in its entirety. If you have a copy, if you'd send it to me, I'd appreciate borrowing it for a while.

MR. NEGUS: I will. Has it come out -- I'll find

1 it for you.

2 THE COURT: I'd appreciate it. At some point
3 I've got to read it because it's going to affect the --
4 I don't know whether it modifies Hovey or not.

5 MR. NEGUS: We'll get to that.

6 THE COURT: Get what?

7 MR. NEGUS: We'll get to that.

8 MR. KOCHIS: We'll get to that.

9 THE COURT: Well, I'm sure we will.

10 MR. NEGUS: But, anyway --

11 THE COURT: My preference is at that point to
12 go ahead and let it all hang out.

13 MR. NEGUS: Well, it seems like there's two things
14 I would favor and would request; that (a) the hearing be
15 closed and (b) the result be closed, but one could at
16 least logically separate and keep the hearing closed and
17 let them know the result. That doesn't solve my problem
18 of publicity in the new county, but it does solve
19 Mr. Kochis' problem.

20 THE COURT: You guys are both very skilled at
21 being able to couch language in a way that's not going
22 to be taken personally, and I think you could make your
23 point with a judge who's also skilled in deciphering
24 such language without being offensive to people.

25 MR. NEGUS: Do you think that my remarks haven't
26 been taken personally? I would like personally to subpoena

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1 on that as well?

2 MR. KOCHIS: I'm not sure, but we can try. We
3 are going to start the 18th with the serologist with
4 the Kelly-Frye issue, and I am trying to do two things
5 at once.

6 THE COURT: Fine with me.

7 MR. NEGUS: Technically, I think that the Kelly-
8 Frye thing is the actual start of the trial, and so that's
9 why I would suggest we do it the 17th.

10 THE COURT: I am a little bit concerned with the
11 phraseology. Penal Code Section 1033(a), on motion of
12 the defendant, that is in a criminal action, the Court
13 shall order a change of venue on motion of the defendant
14 to another county when it appears there's a reasonable
15 likelihood that a fair and impartial trial cannot be had
16 in the county. When the change of venue is ordered by
17 the Superior Court, it shall be for the trial itself.
18 All proceedings before trial shall occur in the county of
19 original venue except when it is evident that a particular
20 proceeding must be heard by the judge who is to preside.

21 You know, we can talk about stipulating that
22 jeopardy attaches at this point, but the trial does not
23 to the extent that I lose jurisdiction. In some way we've
24 got to artfully express this somehow.

25 MR. NEGUS: The problem is that the motions that
26 we start on the 18th are motions which must be heard by

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1 the trial judge. That's why we are stipulating that the
2 trial jeopardy attaches, the trial begins, so that we can
3 do that here without --

4 THE COURT: The least said about it, the better.
5 While I told you I was a little bit surprised to hear
6 this, but I told you candidly everything that I was told,
7 and looking at the venue section, it talks about the
8 other county handles the case like they would any of
9 their cases, so I guess that's the way it has to be done.
10 That is, the trial is simply ordered to another county.
11 That county has all the jurisdiction over it, all the
12 full rights of assignment of judges and everything else,
13 but I tell you also that they tell me that no county wants
14 this case unless you go with it, or the judge goes with it.
15 So I don't see a practical problem, but I see maybe a
16 legal problem.

17 MR. NEGUS: Why don't we do this: Why don't you
18 on the -- we do the hearing on the 17th, you decide
19 which county we're going to, and you --

20 THE COURT: I could do that, and then get a
21 conditional assignment.

22 MR. NEGUS: Well, you make the decision. Let me
23 just think. The only reason I'm hesitating is --

24 THE COURT: It's just a little tricky. It's not
25 insurmountable. You don't have to decide it right now.
26 I'll continue thinking, and I'll draft out some proposed

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1 language, because I am going to make an order of transfer.
2 My clerk has some powers and some obligations. She's
3 got to send a certified copy to that county. I've got
4 to send another copy to the Judicial Council. Then I've
5 got to contact the assignment division, and all of these
6 things must be done, and I will work on that, and we can
7 have another discussion on it.

8 MR. NEGUS: Let me just ask John.

9 How wired in concrete is the 18th for your
10 Kelly-Frye people?

11 MR. KOCHIS: It's not. I have written them a
12 letter telling them that we anticipate taking evidence on
13 the 18th, the 19th, the 23rd and possibly the 24th. I
14 haven't agreed in concrete on a date with anybody with
15 the exception of, I believe, Mr. Sensabaugh, who is not
16 available until the 23rd, and next week I was going to
17 firm that up.

18 MR. NEGUS: Do you want to have a couple of days
19 to get the transfer order so we start on the 23rd rather
20 than the 18th?

21 THE COURT: This doesn't need to delay anything.
22 I will work on this in the meantime. I will have some
23 proposal. We can have another discussion. I will show
24 you my proposed minute order. I am not going to contact
25 any county, any presiding judge. I will have no contact
26 with anybody. We are going to play it by the book, but

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1 I don't mind open discussion and consultation on how to
2 phrase things.

3 MR. KOCHIS: I am confident it's something we can
4 work out. I don't see the --

5 THE COURT: I just want to make you aware of it.
6 I talked it over with Bobbi Wellins, who is an attorney
7 for the Judicial Council, and she says, well, under the
8 new code section, all your pretrial -- and that's clear,
9 but the -- we are doing something that's --

10 MR. NEGUS: We are saving County money by staying
11 here on the trial motions.

12 THE COURT: Yes.

13 MR. NEGUS: And that's -- so that's --

14 THE COURT: The way I would suggest that we do it,
15 we would just stipulate that jeopardy attaches at this
16 point to where if I die or something else happens, that
17 stipulation would give you the same protection that it
18 would be if another judge gets assigned; that we stipulate
19 that jeopardy attaches and we go right on and treat it
20 like a pretrial motion. That's the way I would handle it,
21 and that way another judge is bound by it, the same as
22 I'm personally bound by it. You know, that's the only --
23 saying that the trial judge must hear this motion, we
24 can -- By a stipulation that jeopardy attaches, period, as
25 if it were in trial, we avoid that personal aspect of it
26 and bind future judges that may be in trial and go right

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1 on.

2 ~~That would be my offhand suggestion.~~

3 MR. NEGUS: I can't see any problems right offhand.
4 Let me just give one other. I don't -- my whole position
5 on all of these issues of timing could change, depending
6 on your decision of the county. I don't want to let that
7 come as a surprise if it does. I don't want -- I'm trying
8 to figure out a way of saying it so I don't sound like
9 I'm trying to influence your judgement.

10 THE COURT: I don't understand it, Dave.

11 MR. NEGUS: Okay. Then I won't go any further,
12 but I'm just saying I could be asking for a delay.

13 MR. KOCHIS: Of what?

14 MR. NEGUS: Of everything.

15 THE COURT: I haven't got the foggiest --

16 MR. KOCHIS: You're not asking for a delay of the
17 995?

18 MR. NEGUS: No.

19 MR. KOCHIS: You're not asking for a delay of the
20 McGown hearing?

21 MR. NEGUS: No. Depending on the outcome of the
22 McGown hearing, everything else could be -- I could take --
23 I have -- I don't --

24 THE COURT: Give me -- what decision are you
25 talking about? Give me a citation or something when you
26 send over the other --

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1 MR. KOCHIS: It's in the change of venue motion.

2 We cited the McGown --- no, we did not.

3 THE COURT: McGown?

4 MR. KOCHIS: Yeah. I can give you the cite,
5 Your Honor.

6 THE COURT: Give Linda the citation or something.
7 I don't know what you're talking about. It's something
8 like a Hitch, I guess.

9 MR. NEGUS: No, no. McGown is the case that --
10 one of the few cases that deals about what the nature of
11 this hearing is to decide the change of venue, what the
12 new county --

13 MR. KOCHIS: The hardship involved versus the
14 publicity that each of the counties has received.

15 MR. NEGUS: It doesn't say "hardship". It says
16 "the interest of justice".

17 MR. KOCHIS: The footnote says "hardship".

18 THE COURT: Okay. Well, it must be a change of
19 venue motion, isn't it?

20 MR. KOCHIS: No, because it was a separate issue.

21 MR. NEGUS: Right.

22 THE COURT: It's a second hearing part. You're
23 going to file supplemental points and authorities?

24 MR. NEGUS: Yes.

25 MR. KOCHIS: Isn't it 90 Cal.App.3d?

26 MR. NEGUS: No. It's 75. This is the case.

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1 THE COURT: Oh, that's fine, and I will take a
2 look at this. Okay.

3 MR. NEGUS: Anyways, let me -- can I just ask
4 John a question outside for a second?

5 THE COURT: Sure.

6 That case citation is McGown versus Superior Court,
7 75 Cal.App.3d 648.

8 (Whereupon, there was a brief
9 interruption in the proceedings.)

10 MR. NEGUS: All I can tell you is that I might
11 have -- depending upon which of the four counties you
12 pick, I might have different attitudes towards continuing
13 the proceedings at that point.

14 THE COURT: Well, okay. Well and good. I accept
15 that. I can see reasons for it, whatever it is.

16 MR. NEGUS: Okay.

17 THE COURT: I am not going to let that affect me
18 at all. We are going to proceed right on, and I will
19 play it down the middle as best I can.

20 Okay. Then we will hear from you after I make
21 the decision, I guess, and we will see what happens then.

22 MR. NEGUS: Right. Could we find out before next
23 Tuesday then whether or not we could go into downtown L.A.?
24 My position is that downtown L.A., because of its metropoli-
25 tan character and the jury pool from downtown L.A., is a
26 place that I don't -- I feel that Mr. Cooper can get a fair

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1 trial. I do not feel that for any suburban area; so I
2 have a different position with respect to a downtown L.A.
3 venue as opposed to an outlying venue.

4 MR. KOCHIS: What would you feel about an outlying
5 venue with a county-wide L.A. panel?

6 MR. NEGUS: I don't want a county-wide panel,
7 either. My only agreement to L.A. is downtown L.A. with
8 a downtown panel.

9 MR. KOCHIS: So you want a specific type of jury
10 in L.A. For example, you are not going to agree to a
11 downtown L.A. county-wide panel, anyway?

12 MR. NEGUS: Right. Nobody ever said anything
13 about county-wide panel. We said downtown L.A.

14 MR. KOCHIS: Oh, but we may. There may be a
15 request.

16 MR. NEGUS: I don't think you -- I don't think you
17 have the power to get a request. That's me.

18 THE COURT: You know, I had a young lady attorney
19 up there in San Francisco who has done an awful lot of
20 work on this. She's made repeated calls, been working for
21 two weeks really on it. She says this is one of the most
22 difficult ones that she's ever had. I don't know why,
23 the magnitude of it. I don't think I want to call anybody
24 and talk to anybody. I asked her the specific question
25 that you asked, and she answered it the way I indicated.
26 If you want some further clarification, I will go back

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1 and have her contact downtown L.A. to further spell it
2 out, and I can do that easily enough.

3 MR. NEGUS: Okay. I don't care how you want to
4 do it.

5 THE COURT: I will probably get an answer to
6 that today. I don't know.

7 MR. NEGUS: That makes a difference to me in my
8 presentation.

9 THE COURT: Sure.

10 MR. NEGUS: But I specifically understand that
11 downtown is available. They have preferences, but maybe
12 if it was four days a week --

13 THE COURT: Of course, they have cases coming in
14 all the time. They have other high security cases. Heaven
15 knows, they must have.

16 MR. NEGUS: I am not convinced personally that
17 this case needs the gorilla cage in terms of a downtown
18 L.A. venue.

19 THE COURT: All I know is that Judge George and --
20 who must have an awareness of this case, and Mrs. Wellins,
21 who has an awareness of the nature of this case, have
22 said that that's the courtroom that's available.

23 MR. NEGUS: Oh, okay. I mean if that's the room
24 that's available, that's fine, but they have lots of
25 courts in that building, and they are just as secure as
26 the courts we have been in so far.

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1 THE COURT: We started off worried about security.

2 MR. NEGUS: I am still worried about security. I
3 am just saying that -- I am familiar with the downtown --
4 criminal courts building in downtown L.A., and I am just
5 saying that the court where they had the Buono case
6 is not -- is certainly a very secure courtroom.

7 THE COURT: Is that the gorilla cage?

8 MR. NEGUS: Yes, but there are other courts in
9 that building which, in my opinion, are more secure than
10 anything we have been in so far, so their idea of a
11 high security courtroom, their idea of the needs for
12 security may not be in fact what we have been getting
13 up to now, anyway. I just --

14 THE COURT: Do they have secured corridors? They
15 don't take a defendant down the public --

16 MR. NEGUS: The defendant comes up -- comes out
17 of the back. I mean I've never been in the back there,
18 but he comes out of the back and he appears in court and
19 he goes right back out. They have -- they have these
20 security corridors.

21 THE COURT: No public access --

22 MR. NEGUS: No.

23 THE COURT: -- on any of the courtrooms then?

24 MR. NEGUS: Every courtroom I have been in, that
25 has been the case in the criminal courts building in
26 downtown L.A.

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1 THE COURT: Well, maybe I ought to give Mrs. Wellins
2 that information and say that it's not a high security
3 case.

4 MR. NEGUS: It doesn't need their gorilla cage.
5 It needs certain kinds of security.

6 THE COURT: Does it need metal detectors, that
7 sort of thing?

8 MR. NEGUS: We had that at the prelim. We didn't
9 have that since we've been in Superior Court. At the
10 present time --

11 THE COURT: I have simply given the security people --
12 said if you feel something looks suspicious, take them
13 outside, pat them down, use your discretion.

14 MR. NEGUS: That seems to be a reasonable -- I
15 haven't -- the only problem that I had with security
16 was the transportation problem to this building because
17 of the way they did it. The other parts about who goes
18 in -- controlling in and out of the courtroom has not
19 bothered me.

20 THE COURT: I will go back to her this afternoon,
21 give her the additional information, and have her fine
22 tune it a little bit and get back to you when I get an
23 answer. She may not be able to get a hold of Judge George
24 today, but I don't want to contact them directly.

25 MR. NEGUS: All right. That's fine.

26 THE COURT: Okay.

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The question arises -- that's the end of the communication. The question that arises in my mind, we all know that L.A. has asked for 42 more judges and

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1 talk like on Wednesday or something like that, just about
2 some logistical problems.

3 MR. KOCHIS: That's possible.

4 THE COURT: Well, as things stand now on -- well,
5 as far as transporting the defendant, the defendant will
6 be here in Department 3 on the 16th, but I will be
7 available all next week. I will be right here. Okay.
8 Thank you for coming over once again. Enjoy your weekend.

9 I am somewhat dismayed to find out the plans that
10 they have for me when I go to San Bernardino. I am not
11 one to shirk my responsibilities as a judge, but in my
12 18 years on the bench, I have never handled an order to
13 show cause -- domestic order to show cause calendar, which
14 is something usually reserved in this county for
15 commissioners. That's what they have planned for me,
16 which is a full-bore calendar, so I can foresee during
17 the course of this -- these pretrial motions where I may
18 well need Fridays or extra time to study outside of open
19 court proceedings, but you're going to have to let me
20 know when that is. Will you still need that extra day
21 during this time? You're sure you can't take me up five
22 days a week in some way?

23 MR. NEGUS: I will be glad to have you doing
24 reading on the fifth day, but it becomes just impossible
25 for us to be actually doing court things. I'm sure that
26 you will have more than enough work to fill your Fridays

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1 hear the same rumors that I hear, and I just wanted to
2 assure you as a matter of personal privilege that it
3 will not be a consideration. That's a fact, and I
4 appreciate your listening to me and coming over.

5 Anything that you'd like to add to the record
6 now that we're on the record?

7 MR. KOCHIS: No.

8 MR. NEGUS: No.

9 THE COURT: Thank you, gentlemen.

10 (Proceedings concluded.)

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