## SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

CR 72787

No. <u>Crim 24</u>552

KEVIN COOPER,

Defendant-Appellant.

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE RICHARD C. GARNER, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

**APPEARANCES:** 

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IN PROPRIA PERSONA

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VOLUME 10-1-of volumes JILL D. MC KIMMEY, C.S.R., C-2314 Pages 942-1 to 942-46, incl. Official Reporter

1	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
2	FOR THE COUNTY OF SAN BERNARDING	
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5	OF CALIFORNIA, ) Plaintiff, )	
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7	KEVIN COOPER,	
8	Defendant.	VOLUME 10-A Pgs. 942-1 thru 942-46, incl.
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10	REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS	
11	BEFORE HONORABLE RICHARD C. GARNER, JUDGE	
12	DEPARTMENT 3 - ONTARIO, CALIFORNIA	
13	March 28, 1984 April 6 and 11, 1984	
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16	APPEARANCES:	
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18		District Attorney Ey: JOHN P. KOCHIS
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25	Reported by:	JILL D. MCFIMMEY
26	•	Official Reporter C.S.R. No. 2314
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ONTARIO, CALIFORNIA; WEDNESDAY, MARCH 28, 1984; 9:20 A.M.

DEPARTMENT NO. 3 - HON. RICHARD C. GARNER, JUDGEAPPEARANCES:

DAVID RECUS, Deputy Public Defender of
San Bernardino County; JCHN P. KOCHIS,
Deputy District Attornsy of San
Bernardino County, representing the
People of the State of California.
(Jill D. McKimmey, C.S.R., Official Reporter, C-2314)

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

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

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

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

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

MR. NEGUS: ) That's enough.

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

MR. HEGUS: They also have their own cables which do Los Angeles stations.

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

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

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

MR. KOCHIS: That makes two of us.

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

THE COURT: The cost --

MR. MEGUS: The cost - we have already investigated

the cost of various counties, and if you're talking about counties outside of Southern California, which I maintain is where we have to go, you've got the two cheapest counties. The reason for that is that the biggest expense that we are going to have is airfare, and I have already talked —

THE COURT: You're going to have lodging too if we go to Sacramento.

MR. NEGUS: Lodging no matter where you go, but if you look at the expenses, what the biggest expense is going to be in terms of getting witnesses to these counties is airfare. You happen to have mentioned the two cheapest cities to get to. It costs 70 bucks to get to Alameda County or to Sacramento County from here. It costs a couple hundred dollars to get to Fresno. It may not make any sense, but it does just because of the nature of the airfare.

THE COURT: Could be. Well, I haven't considered all that, but that's the way it's coming down. She's going to call me again. She will call me on the phone probably today and tell me the news, and then they will put it in writing, and once they get it in writing, then I can formally schedule a hearing and we can consider the various merits and descrits of it. I brought you in today just so that you'd be brought up to date, and also I was kind of noping against hope, Mr. Negus, that you might say,

at your request.

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25 26 extremely large city, and we get people from West L.A. that could care nothing at all and downtown L.A. that could care nothing at all about prison. They don't have one in the county. If you want it done, I'll tell her to

was out as far as he was concerned.

check on Los Angeles. I could add that to the list. MR. NEGUS: I just relayed to you -- I -- as I

hey, Judge, I've talked with my client, and we would

consider Los Angeles Central, and I haven't had them

check with Los Angeles because I'd almost have to do that

I brought this issue up to him that Los Angeles Central

based upon what I've seen so far, that I would not move

it to Los Angeles over objection at all because that's

where all of our publicity emanates from, but it's an

MR. NEGUS: Mr. Kottmeier indicated to me when

THE COURT: I have told her that I thought that

indicate, I think I told you this before. Before we even started the change of venue notion, I offered to stipulate with Mr. Kottmeier, if he wanted to, that if we did get a change of venue motion, it would be in Central Los Angeles, that -- we would do that before anything else was discussed, any other alternatives came up. Mr. Kottmeier categorically refused, so --

THE COURT: Let me ask you, Mr. Rochis, in view of what I've now told you, why don't you discuss that with

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

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

THE COURT: Sure.

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

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

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

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

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

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

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

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

THE COURT: Okay. Thank you.

Anything further?

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

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I don't know what I would do if there were five counties, four of them were in the far reaches of Northern California and one was L.A.

TRE COURT: She hasn't finished her work up there.

I don't know where the third county will be.

MR. NEGUS: What I'm saying is you shouldn't tell her not to inquire into L.A. as one of the options. There's no reason I think that it should be arbitrarily --

THE COURT: All right now. Let me explain to you, gentlemen, and I thought I'd indicated this to you before. I spent a lot of time looking at the newspaper articles and looking at television. I appreciate that Los Angeles is a great big old county with an awful lot of people and that all we need is about 16 or 18 of those citizens to try this case. I am not going to move this case to Los Angeles unless, in effect, there's a stipulation. Based upon the evidence, that's where all the publicity emanates from, and I'm simply not going to ask her to put it down there, so if you guys want to say, fine, we'd both like you to consider Los Angeles, fine. Otherwise, I'm simply not going to do it. It's just too close to the incident, that all the media news comes out of Los Angeles. Okay. That's just all there is to it. I'm simply not going to do it unless there's a stipulation. If you want to stipulate, Judge, I think we can get a fair trial and move it to Los Vingeles, I would prefer that, because that's closer for

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

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

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

MR. NECUS: That's true.

THE COURT: All you want us to do is to make it on option; is that correct?

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

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

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

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

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

MR. NEGUS: Central Los Angeles.

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

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

MR. ROCHIS: Mr. Negus is very fond of Alameda County.

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

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

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

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

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

at the moment. What would be your position if I had those three counties? Would you then -- you're going to argue one or the other. If you think you can get a fair trial in downtown Los Angeles, I'm going to move it there, most likely.

and I don't know where her investigation has taken her

MR. NEGUS: I am willing to -- I am telling you right now that the way it goes is my investigation -
I've done investigations on practically every county in the state, at least short ones, and I have considerable knowledge, based upon having once lived in Los Angeles

County, plus knowing lots of lawyers that practice in downtown Los Angeles, that I would not be objecting to a downtown Los Angeles jury right off the hat.

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

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

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trial, then I would be renewing a change of venue notion.

THE COURT: I think that that's applicable wherever we try the case.

MR. NEGUS: Right, exactly, so what I'm telling you is I may be trying to say that one of the other three counties is more preferable, but I am not going to be saying that Los Angeles is impossible.

THE COURT: All right.

MR. KOCHIS: Judge, are we limited to three counties? Can we just pick another?

THE COURT: Pretty much. The Code rule -- or rules, rather, do not say that I am bound by it. It says transferred to an appropriate county. I posed that to her, and I put her in a state of shock, because mobody's ever picked a county that they didn't provide as one of the three options, but she says, yes, Judge, I quess you're right; so we're not necessarily limited to their three counties, but we are going to shock the whole state if we don't take one of them, and I told her that if I got considering another county, before I would dwell upon that, I would let her run it through their counting and provide me an additional option, so we are not in that sense limited, so we can go shead and get the three, and then if something develops to where we want them to consider a fourth, I would go back to the Judicial Council and let them make the inquiry with the other county

and maybe give us that option as well. I am not going to

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

MR. ROCEIS: Can we just let her pick the third

county? If that's another remote county, possibly then

we could inquire about L.A.

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

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

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

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

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

MR. NEGUS: Thank you.

(Proceedings concluded.)

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

DEPARTMENT NO. 3

HON. RICHARD C. GARNER, JUDGE

APPEARANCES:

DAVID NZGUS, Deputy Public Defender of San Bernardino County; JOHN P. ROCHIS, Deputy District Attorney of San Bernardino County, representing the People of the State of California.

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

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

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

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MR. NEGUS: Yes.

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HR. KOCHIS: Yes.

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There will be nothing in writing from the Judicial

THE COURT: Okay. That makes it different somewhat.

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Council. When they receive inquiries from media, they

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tell them that it is confidential as to what they have told

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

I was just looking up in the Penal Code 1033 here the order will be conditional -- will be for the trial itself, and that all pretrial -- subject to all pretrial motions being heard here, the case is ordered transferred there, that type of an order, so it is a conditional type of order. After that decision is made, I shall contact another division of the Judicial Council for an assignment. I will receive an assignment to that county, not to the Cooper case. The presiding judge of that county shall exercise his prerogative and is expected then will assign me to the case, but the law simply doesn't provide for a procedure whereby the judge goes with it, although every county has indicated that you go back to square one if you do not go with the case; that is, that these counties have indicated a willingness to accept the case, will do so on condition that their judge does not have to hear the case. The counties are Sacramento, Alameda, San Diego — subject to my putting in one day a week there on their work. That's why I wanted to know that — Los Angeles, preferably not downtown. The word that I get — and I have contacted none of these counties, nor will I at this stage. The word that I get from Los Angeles, the reason that they say not downtown is that the only courtroom they have available for this case is the high security courtroom, fondly known as the gorilla cage, which Ron George, who handles the criminal calendar, has told her that he prefers to keep open to keep vacant for other high security matters that they have from time to time.

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

Comment?

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MR. KOCHIS: Well, Your Honor, I think Mr. Negus at one point wanted it not to go beyond this room for much longer than the hearing. I think he was even toying with the idea of a closed choice of venue hearing so that we'd prolong the onslaught of the media to the county that we are going to end up in.

MR. HEGUS: That was my original thought, based upon some things that you said which rade sense to me.

THE COURT: I just don't know. I think that's good logic. I think that surely they are going to pay more attention to the case in whatever area that it goes to. The city media people are going to pay more attention to it, and every time something happens that they are going to print, they are going to say this case is going to come down to us eventually, or up to us, wherever.

HR. NEGUS: Am I to understand by what you said that we cannot have downtown L.A.?

THE COURT: No, not for sure. I asked that very question this morning to Mrs. Wellins in San Francisco.

I am telling you precisely what she told me; that Ron George says he would prefer to keep that open for their other high security -- there's only one courtroom that's known as the perilla cage, and I don't know what it's like. I invision -- and I talked briefly this morning to Captain Davis about another subject matter, but I envision at some point perhaps a contingent of us going

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wherever the new court will be. I certainly, from my point of view, want to talk to the presiding judge. I want to see the layout. I would expect perhaps to take my clerk with me, at least on that day, so we will fly or we will travel wherever on a one-day trip after arrangements have been made to meet our counterparts in another city to where a clerk that will perhaps handle the case would be there. You can talk with her. I have already talked to Captain Davis. A representative from their security force would meet their counterpart. You fellows may want to do on that trip or at another time. I haven't gone around to other courts since 1965 when I've been on the bench. I have never even, sad to say, been in that nice Pomone courtroom, that nice new building as of a few years ago. I haven't even set foot in it, so I don't know what these facilities are like.

And how do you feel about publicity now, Mr. Megus?

MR. WEGUS: Well, I mean what do you mean how do

I feel?

THE COURT: Tou know, do you second the motion, so to speak, of Mr. Mochie?

MR. NEGUS: Yes. I think that's a good idea.

THE COURT: Let's keep it confidential then.

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

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

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

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

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

the Court two days to read my response.

THE COURT: What do you envision as far as a hearing goes on the 995? How long do you estimate that to take?

MR. NEGUS: Not very long.

THE COURT: In the usual manner, a matter of argument then?

MR. NEGUS: It's solely on the transcript.

THE COURT: Are you laying out pretty much the page and line references and laying out the facts to where I am not going to have to read the transcript?

MR. NEGUS: No. I mean -- well, let me correct that.

THE COURT: You're not going to shotgun me, "See the transcript."

MR. NEGUS: I have for the factual matters that I've laid out in the most complicated part made reference to page and line and volume as to each factual assertion. It's just the sheer volume of reading those citations alone is rather time consuming, I'm sure.

THE COURT: Okay. Let me interrupt just to explain to you. Judge Riebarth was asking me if I could work in a short case next week.

HR. NEGUS: I would say your answer to him should be no.

THE COURT: All right. I'll do it. I'll take

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your advice in that regard because I don't want to shortchange this at all. So be it. I can't -- I told him
what I'd do -- I said I haven't looked at the file. I
haven't looked at the notion, so I don't know the
magnitude of the effort, and I'd let him know later on
today.

MR. NEGUS: I'll tell you the -- John has the first three sections. The first three sections are going to take some time in reading. The fourth section, which is the one I haven't got back from the typist yet, is the most complicated. It involves the motion, a motion to dismiss the case because of failure to preserve evidence. That testimony on that issue essentially took the -- probably at least I would guess a month out of the total time of the preliminary hearing. I tried to pick out what I considered to be the high point. I'm sure that John will have different high points. It's just immense --

THE COURT: No problem. I'll start working on the case at my first empty moment then as soon as it gets in.

One other point. As soon as I came back to my desk last night and started working on preparing for today's hearing, I get a message that -- and it was confirmed orally by any and all who saw me this morning -- that things and plans have been made for me to go to San

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

HR. NEGUS: The 16th definitely will be in Department 2?

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

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

MR. KOCHIS: That's fine.

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

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issue? Do you want to hear it -

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MR. NEGUS: When do you want to hear the venue

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

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

THE COURT: It's a valid point. There's ways of handling it. One is to not only close the proceeding to the press, the public and everybody else to keep an absolute secret, and I don't think you can. The word is going to get out if you make an early decision. Somebody's going to get the word, you know. We look around. Hell, who's going to tell? Judge, who's the Judas among us? But it's not that simple. I think the word would get out.

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 hadge 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.

I haven't read that case in its THE COURT: 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

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THE COURT: I'd appreciate it. At some point

I've got to read it because it's going to affect the -
I don't know whether it modifies Hovey or not.

MR. MEGUS: We'll get to that.

THE COURT: Get what?

MR. NEGUS: We'll get to that.

MR. ROCHIS: We'll get to that.

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

MR. NEGUS: But, anyway --

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

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

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

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

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every member of the San Bernardino Sheriff's Office and --

THE COURT: Well, you're trying them, and, yeah, that's a little different. I can imagine their reaction.

MR. NEGUS: It's been taken personal.

THE COURT: Well, yeah, of course. They are the thin blue line who consider themselves the martyrs of society many times.

HR. NEGUS: Whatever -- I'm not saying it shouldn't have been. I just said it was.

THE COURT: I don't really see how it's either practical or legally justifiable to do it.

MR. NEGUS: The next question is when do you want to do it. I want to be able to introduce Sam Diego stuff which I didn't introduce before, because --

THE COURT: I am open to suggestions. no feelings about that, and we are going to keep it confidential till then, so till we have that hearing, then we are going to appear in open court then is the way I feel right now.

As far as when to do it, we are set to come in on the leth for 995, and then --

MR. NEGUS: The 17th is fine with me.

THE COURT: You want to move right into it

then?

MR. NEGUS: I think that --

THE COURT: You are going to have time to prepare

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on that as well?

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

THE COURT: Fine with me.

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

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

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

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

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

While I told you I was a little bit surprised to hear this, but I told you candidly everything that I was told, and looking at the venue section, it talks about the other county handles the case like they would any of their cases, so I guess that's the way it has to be done. That is, the trial is simply ordered to another county. That county has all the jurisdiction over it, all the full rights of assignment of judges and everything else, but I tell you also that they tell me that no county wants this case unless you go with it, or the judge goes with it. So I don't see a practical problem, but I see maybe a legal problem.

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

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

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

THE COURT: It's just a little tricky. It's not insurmountable. You don't have to decide it right now.

I'll continue thinking, and I'll draft out some proposed

language, because I am going to make an order of transfer.

Hy clerk has some powers and some obligations. She's

got to send a certified copy to that county. I've got

to send another copy to the Judicial Council. Then I've

got to contact the assignment division, and all of these

things must be done, and I will work on that, and we can

have another discussion on it.

MR. NEGUS: Let me just ask John.

How mired in concrete is the 18th for your Kelly-Frye people?

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

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

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

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

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

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THE COURT: I just want to make you aware of it.

I talked it over with Bobbi Wellins, who is an attorney
for the Judicial Council, and she says, well, under the
new code section, all your pretrial — and that's clear,
but the — we are doing something that's —

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

THE COURT: The way I would suggest that we do it,

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THE COURT: Yes.

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

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we would just stipulate that joopardy attaches at this point to where if I die or something else happens, that stipulation would give you the same protection that it

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would be if another judge gets assigned; that we stipulate

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that jeopardy attaches and we go right on and treat it like a pretrial motion. That's the way I would handle it,

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and that way another judge is bound by it, the same as

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I'm personally bound by it. You know, that's the only -- saying that the trial judge must hear this motion, we

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can -- By a stipulation that jeopardy attaches, period, as

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if it were in trial, we avoid that personal aspect of it and bind future judges that may be in trial and go right

on.

That would be my offhand suggestion.

MR. MEGUE: I can't see any problems right offhand.

Let me just give one other. I don't -- my whole position

on all of these issues of timing could change, depending

on your decision of the county. I don't want to let that

come as a surprise if it does. I don't want -- I'm trying

to figure out a way of saying it so I don't sound like

I'm trying to influence your judgement.

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

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

MR. KOCHIS: Of what?

MR. NEGUS: Of everything.

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

MR. XOCHIS: You're not asking for a delay of the

MR. MEGUS: No.

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

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

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

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 MR. KOCHIS: It's in the change of venue motion. 1 We cited the McGown --- no, we did not. 2 3 THE COURT: McGown? MR. KOCHIS: Yeah. I can give you the cite, 4 5 Your Honor. THE COURT: Give Linda the citation or something. 6 7 I don't know what you're talking about. It's something 8 like a hitch, I guess. MR. HEGUS: No, no. McGown is the case that --9 one of the few cases that deals about what the nature of 10 this hearing is to decide the change of vanue, what the 11 12 new county --MR. KOCHIS: The hardship involved versus the 13 publicity that each of the counties has received. 14 15 MR. NEGUS: It doesn't say "hardship". It says 16 "the interest of justice". MR. KOCHIS: The footnote says "hardship". 17 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?

HR. HEGUS: No. It's 75. This is the case.

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

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

THE COURT: Sure.

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

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

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

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

MR. NEGUS: Okay.

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

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

MR. NEGUS: Right. Could we find out before next

Tuesday then whether or not we could go into downtown L.A.?

My position is that downtown L.A., because of its metropolitan character and the jury pool from downtown L.A., is a

place that I don't -- I feel that Mr. Cooper can get a fair

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

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

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

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

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

MR. ROCKIS: Oh, but we may. There may be a request.

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

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

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

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

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

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

THE COURT: Sure.

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

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

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

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

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

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THE COURT: We started off worried about security.

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

THE COURT: Is that the gorilla cage?

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

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

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

THE COURT: No public access --

MR. NEGUS: No.

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

MR. NEGUS: Every courtroom I have been in, that
has been the case in the criminal courts building in

downtown L.A.

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

MR. NEGUS: It doesn't need their gorilla cage.

It needs certain kinds of security.

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

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

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

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

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

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

THE COURT: Okay.

MR. KOCHIS: That's it.

THE COURT: Thank you very much.

MR. NEGUS: I will bring the thing over and give it to Linda as soon as I get it back. We have had -- this doesn't have to be on the record.

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(Whereupon, further proceedings were held at 3:35 p.m.)

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

THE COURT: Back on the record on the Cooper case, Mr. Negus and Mr. Kochis are here.

Counsel, I feel a little bit embarrassed by having you up so promptly. When I put out a call, I tell my clerk see if you can get a hold of them, if it's convenient for them to get over. It's not a paramptory writ. If it causes a problem, just call her and tell her.

MR. NEGUS: No problem.

THE COURT: But if it's convenient, I appreciate your coming by.

I talked with Bobbi Wellins and told her we need more clarification as to the availability of courts in Los Angeles, particularly in Central: that counsel didn't think -- and I agreed -- that this was a high security case, but rather was probably a medium security case; that we are trying it here without being in any cage of

and that the public hazn't shown all that much interest in the hearings so far, and that would she go back to Judge George and find out if they have a Less high security facility in downtown Central. She says, all right, I'll be happy to do that, but my recollection is that that was the only courtroom that was available in downtown Los Angeles, but, anyhow, she went back to them. called me back just a few minutes ago, and she says her recollection is basically correct; that the only courtroom that's available in Central is the maximum security courtroom; that Judge George is reluctant to let us use that one, but he recognizes the problems in finding a home for such a case, and he would let us use it. It will cause something of a hardship, and I have now read the McGown case. For Los Angeles County, if we put it there, he said would you also tell counsel, particularly defense counsel, that most defendants' attorneys do not like it tried there. It has a bad atmosphere. I think I know what he's speaking about there, because we have one in San Bernardino. When you put up -- it does look like a cage when you put in all the glass and stuff, in ours, anyhow. 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

any sort, and we don't have any metal detection devices,

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that they are basically now putting through legislation, apparently with the approval of the board, to get 18 new judges. I don't know where they are going to put them. I thought they had all kinds of courtrooms over there, but that's the information I have. There's that one courtroom. That's the only thing that's available in Central.

Put it into your computer and respond accordingly,
I guess, at the appropriate time.

MR. KOCHIS: We will.

THE COURT: Any other thoughts or suggestions?

I'd be happy to work with you to give us as much information and education as we can have.

MR. KOCHIS: No. I'm going to leave and start responding to the last portion of this book that Mr. Negus just served me with, Judge.

THE COURT: He served me with it too.

I appreciate The Frees Enterprise matter.

MR. NEGUS: You can have that. That's an extra copy, I think.

THE COURT: Good.

Any other thoughts or suggestions?

MR. KOCHIS: Not at the moment.

THE COURT: I shall see you on the 16th.

MR. NEGUS: And probably we should talk -- I'm going to go away next Friday. I won't be here Friday, but I will be here during the rest of the week. Perhaps we should

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some logistical problems.

MR. KOCHIS: That's possible.

THE COURT: Well, as things stand now on -- well, as far as transporting the defendant, the defendant will be here in Department 2 on the 16th, but I will be available all next week. I will be right here. Okay.

Thank you for coming over once again. Enjoy your weekend.

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

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

and your Saturdays and your Sundays without doing extra curricular activities.

THE COURT: Well, I can't tell that at this time.

I guess we'll just have to wait and see, but my first
obligation, I'll tell you, is going to be to this case,
and I don't mind doing the other work, but if I need
time on this case, I will simply have to let them know,
but we will just have to see. Okay.

MR. NEGUS: You can show them the 995 motion and tell them that's typical.

THE COURT: It's going to be your computer against his computer.

MR. NEGUS: I don't have a computer.

(Proceedings concluded.)

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CHTARIO, CALIFORNIA, WEDNESDAY, APRIL 11, 1984; 10:00 A.M. 2 DEPARTMENT NO. 3 EON. RICHARD C. GARNER, JUDGE 3 APPEARANCES: DAVID NEGUS, Deputy Public Defender of 5 San bernardino County: JOHR P. MOCHIS, 6 Deputy District Attorney of San Bernardino 7 County, representing the People of the 8 State of California. 9 (Jill D. McKimmey, C.S.R., Official Reporter, C-2314) 10 11 (Whereupon, the following proceedings were 12 had in chambers:) 13 THE COURT: In chambers at my request, I asked

THE COURT: In chambers at my request, I asked both Mr. Negus and Mr. Kochia to come over. I have talked with them informally for five or ten minutes without the reporter. Now I am going to recap what occurred off the record, and then counsel can fill in any blanks or omissions.

I told them I had primarily one reason for calling them, and I had a couple peripheral questions. The peripheral questions was (1) when was I going to receive the points and authorities from Mr. Kochis in response to the defense's motion under 995, and he responded this afternoon at some time, most likely.

And, secondly, I talked about when we were going to have the venue change hearing, was it the 18th, and I'm

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sure that it would be the day after the 995 hearing. The 17th we'll start that. In that regard, we didn't talk about that, but if madia does ask, should we tell them that that will probably be decided on the — they are going to all flock here if we do. I won't volunteer anything if you don't want me to.

MR. NEGUS: I have said in answer to any and all questions on that subject "No comment," and that's I think the best way to do it.

MR. ROCHIS: In addition, Your Honor, it may be a situation where you may want to reflect on the decision or the arguments of counsel, and you may not make a decision immediately from the bench.

THE COURT: That's indeed true.

MR. KOCHIS: So you may want a day or two to think about it.

THE COURT: They may say when are you going to get into the venue hearing again, and now we are scheduling it for the 17th and --

MR. NEGUS: I still want to be heard on closing it to the public before we -- with Mr. Cooper there before we actually do it, and I -- my position is that whatever -- whatever happens, there's nothing wrong with saying "No comment."

THE COURT: Well, that's fine as far as the way we treated it. If the media calls you, Linda, and they

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want to know when we are going to consider further venue matters or when we are going to decide what county it's to go, just tell them that the Judge has instructed me "No comment" on it. Okay?

THE CLERK: Yes, sir.

THE COURT: Now, getting back to the point at hand, the real reason I called you over, as I indicated to you off the record, was because I'd heard this morning that a comment from the Sheriff's Department was that the case was going to be transferred to San Diego because I have a condo there, which implies that I would move the case out of personal considerations, and I told you that I was offonded at that, and then I disclosed matters which I don't think are at all a secret, which are certainly not a secret around my staff; that I do have ties in San Diego. Escrow closed in January on an ultimate retirement home down there, which has, however, been bought and leased on a firm lease until 1986, and there's no way I can possibly use it or do I have any business around the place. I don't even have right of entry.

Secondly, I have a part-time condo, a time-share, a twelfth interest in one on the water down on Mission Bay which we've been using since 1978. I have four weeks a year there. I don't use it all, but most of it I do. I take vacations there on weekends, and the family's there the other times. That's -- those four weeks are -- there

lotteries as to who's going to get first choice and one thing or another. My four weeks are spread out during the year, and I gave you a copy of my vacation schedule, and a couple of those weeks in there at least are from San Diego. If I move the case to San Diego, I will have to rent premises, just like I'm sure each of you will. We will be looking for a short-term apartment lease or something like that, as opposed to a hotel. At least that would be my intention wherever it goes.

I also have ties in the areas -- I have family not really close to Sacramento, but within an hour's -- hour's drive or so from Sacramento in the Auburn-Tahoe area. I've got two brothers and a sister and nephews and nieces by the dozens in that area.

With reference to Oakland, I have gone to judges school there a couple times, but no particular ties there, but in San Prancisco I have all kinds of ties, daughter, son-in-law, sister-in-law, sister in San Jose, brother-in-law, all kinds of people there, and my alma mater from law school is at U.S.F. I have all kinds of law school buddies in the Bay Area. Anyplace I go, I'm going to socialize, but that's not a consideration, and I assure you that it will not be a consideration for the move of the Cooper case, and I'm sure that you people are more -- have a bigger ear to the ground than I do, and you would

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

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

MR. KOCEIS: No.

MR. NEGUS: No.

THE COURT: Thank you, gentlemen.

(Proceedings concluded.)

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## REPORTER'S CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDING

I, JILL D. MCKIMKEY, 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 942-1 through 942-46, inclusive, constitutes to the best of my belief and ability a full, true and correct transcription of raid proceedings as transcribed from my stenotype notes.

DATED This 18th day of April, 1984, at Ontario, California.

Official Reporter C.S.R. No. 2314