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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff-Respondent,) SUPREME COURT
)
 vs.) NO. CR11724552
)
 KEVIN COOPER,)
)
 Defendant-Appellant.)

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

Vol. 8

APPEARANCES:

For Plaintiff-Respondent: HON. JOHN K. VAN DE KAMP
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VOLUME ~~1~~ *8*
 Pages B-1 through B-19, Incl.
 (MOTIONS)

CHRISTINE R. BUCKNER, C.S.R.,
 Official Reporter, C-1878

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

DEPARTMENT NO. 4 ONT HON. CHARLES BIERSCHBEACH, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
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REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
WEDNESDAY, JANUARY 18, 1984

APPEARANCES:

For the Plaintiff:	DENNIS E. KOTTMEIER District Attorney
For the Defendant;	DAVID L. MC KENNA Public Defender BY: DAVID NEGUS Deputy Public Defender
Reported by:	CHRISTINE R. BUCKNER, C.S.R. Official Reporter C-1878

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1 ONTARIO, CALIFORNIA, WEDNESDAY, JANUARY 18, 1984; 1:30 P.M.

2 DEPARTMENT NO. 4 ONT HON. CHARLES BIERSCHBACH, JUDGE

3 (Christine R. Buckner, C.S.R., Official Reporter, C-1378)

4 THE COURT: Good afternoon, gentlemen.

5 MR. NEGUS: Good afternoon.

6 MR. KOTTMEIER: Hello.

7 THE COURT: I understood that Judge Allen has
8 requested both counsel to come over to Department 4 this
9 afternoon for a conference, but that you wanted a Court
10 Reporter.

11 MR. NEGUS: Mr. Kottmeier wanted the Court Re-
12 porter.

13 THE COURT: And so probably did you, but, in any
14 event, so did I.

15 MR. NEGUS: Okay.

16 THE COURT: I have not been apprised as to what
17 happened at the arraignment and thereafter, so -- because
18 we don't have a copy of the minute order.

19 Judge Allen informally indicated to me that the
20 case of People versus Kevin Cooper was assigned to this
21 department.

22 Does either counsel wish to be heard at this
23 time?

24 MR. KOTTMEIER: Our only purpose in being here,
25 your Honor, is to find out from the Court what scheduling
26 problems may exist or any of the difficulties that this

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1 case may require us considering, as far as our future plans
2 and timing.

3 The two dates that have been set were February the
4 10th, a Friday, for initial consideration of some motions,
5 subpoena duces tecum returns at that time, and four items
6 that have been presented to Judge Allen during the arraign-
7 ment from the Defense. That hearing was scheduled to start
8 at about ten o'clock and should be finished on that day.

9 The trial date at this time is set for March the
10 19th.

11 There are many hurdles to overcome before we get
12 to actual jury selection, but as far as setting any future
13 dates, times, or hearings, Mr. Negus and myself thought it
14 would be best to leave those issues for this Court to decide
15 as opposed to trying to decide them at this time.

16 I do not think that any issues have been decided
17 in regard to, oh, the operation of the case, other than
18 for the setting of the date of the 10th as the first ap-
19 pearance date for the defendant at this time, which, of
20 course, can be changed.

21 THE COURT: And I take it that case was assigned
22 to this department, Department 4, Ontario, for trial, as
23 well as for all pretrial motions; is that right?

24 MR. NEGUS: Yes.

25 MR. KOTTMEIER: Yes.

26 THE COURT: Now, you mentioned that four matters

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1 were submitted to Judge Allen this morning, and I -- Do I
 2 understand then that there will be further hearings on
 3 those issues?

4 MR. NEGUS: What I did was submit four written
 5 motions this morning, which, I believe, should be in your
 6 file.

7 One is a motion with respect to daily transcripts;
 8 another is a motion with respect to the record that you
 9 will use in the 995, plus the use of certain matters which
 10 I subpoenaed as publicity -- that I subpoenaed and which
 11 relate to publicity, which relate to the 868 motion re-
 12 lating to Municipal Court, which I am seeking to use, as
 13 well, in the change of venue motion in this court.

14 The other two have to do with respect to requesting
 15 that the prosecution furnish me with certain information.

16 I am also planning on filing with the Court prior
 17 to February 1st so you'll have at least ten days to con-
 18 sider it a formal written discovery motion likewise to be
 19 noticed for February 10th.

20 So I have -- for February 10th I would foresee
 21 the four briefer motions, which really require a granting
 22 or a denying, as near as I can tell, perhaps some argu-
 23 ment on a couple of them, and then the longer formal dis-
 24 covery motion.

25 I have -- I am in the process of having issued
 26 subpoena duces tecum to approximately fifty newspapers,

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1 fourteen television stations, and nineteen radio stations,
2 I believe, for various publicity relating to this particular
3 case. I did that on February 10th so that all the infor-
4 mation could be gathered prior to our writing Points and
5 Authorities on the change of -- change of venue motion.

6 What I would be requesting is that we set the
7 change of venue motion as soon as logistically possible
8 after the 10th so that if the Court grants that motion, we
9 will have as much time as possible to try and find a county
10 which is willing to take this case before the -- before
11 the matter has to go to trial.

12 There are three separate pretrial motions that
13 would be heard at some date after the discovery motion.
14 One is a motion to suppress evidence pursuant to Penal
15 Code Section 1538.5; another is a 995 motion, and the --
16 finally, the other one is the change of venue motion.

17 I believe that Mr. Kottmeier and I disagree as
18 to which order that go in, my being -- asking as to the
19 change of venue going first; my understanding he was going
20 to ask it go last.

21 My reason of having the change of venue going
22 first, as I indicated, was the logistical one. If it is
23 granted, then I think it is going to take that long a
24 period of time to find the place that is willing to accept
25 us.

26 And so what I would request is, so that as far

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1 as I can plan my time and plan my subpoenas, is if we pick
2 a date at this point in time for -- to begin the hearing
3 on the various -- those three other motions, which will
4 take -- which will be more protracted, I was going to re-
5 quest, if the Court -- it is agreeable with the Court,
6 that we begin that on February 27th and proceed through
7 all those motions until we're finished with them, if that's
8 agreeable with the Court's schedule.

9 Mr. Kochis, I believe, estimated three weeks it
10 would take to do that. I am hopeful it won't take quite
11 that long, but that's at least one estimate.

12 THE COURT: All right. Then the -- the matters
13 that you submitted to Judge Allen were these motions that
14 you have just enumerated, and there is nothing further to
15 be heard in Department I then?

16 MR. NEGUS: Right, those motions were -- that I
17 was going to request that you rule on on February the 10th.

18 MR. KOTTMEIER: The only thing that remains from
19 Department I is probably we should request preparation of
20 the transcript. I failed to do that this morning. But
21 the arraignment transcript should be requested, I think,
22 at this time so that when everything is finished and done,
23 should it be necessary, we've got a full set of transcripts
24 rather than trying to retrace our steps and pick them up
25 as we go along.

26 THE COURT: You're going to make that motion in

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1 Department 17

2 MR. KOTTMEIER: Yes. I will make that request
3 of Judge Allen's Clerk this afternoon.

4 THE COURT: All right.

5 MR. KOTTMEIER: But that's the only loose end
6 left in Department 1.

7 THE COURT: Are you in agreement with what Mr.
8 Negus said except for one or two things?

9 MR. KOTTMEIER: Yes. I tend to think that maybe
10 Mr. Kochis and Mr. Negus both are a little bit conservative
11 in their estimate on the motions. I have a feeling it's
12 going to take us longer.

13 My feeling in regard to the length of time is one
14 that comes from an administrative perspective, which is
15 that the availability of witnesses is going to become
16 tougher and tougher the closer we get to the Olympics due
17 to the individuals involved having assignments that are
18 intertwined with security preparations both in this county
19 and cooperative efforts with Los Angeles County. And it
20 will be a constant problem even before the Olympics start
21 because of the planning.

22 So that I am only suggesting that the three weeks
23 may be relatively short compared to what it really takes
24 us.

25 We were able to coordinate it with attendance to
26 where, during the preliminary hearings, as many as eight

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1 or twelve people were appearing in one day. And that may
2 be a task that we are unable to achieve for the motions in
3 this case.

4 MR. NEGUS: Is that going to be a problem in early
5 May? That's when we are talking about.

6 MR. KOTTMEIER: Could be. I'm only offering that
7 as a thought.

8 And, of course, the one thing that has not been
9 considered is the demands that this Court has in other
10 matters or other considerations.

11 THE COURT: Let's take up one issue that was
12 raised by Mr. Negus, and that is the priority of the
13 hearing of the motions, especially as it relates to the
14 change of venue.

15 MR. KOTTMEIER: I would suggest in that regard,
16 your Honor, that we wait until the 10th because at this
17 time I'm not even sure that we know -- when I say "we,"
18 I mean the Defense as well as the Prosecution -- what
19 degree of cooperation we're going to get from the various
20 media. We had good cooperation in the preliminary hearing
21 court, but that could change because we're now dealing with
22 a different set of requests that are going to be tougher
23 to go through and glean the applicable information.

24 In other words, when we had the hearing before
25 the preliminary hearing court, the time element was some-
26 where in the neighborhood of two months, two or three

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1 months.

2 MR. NEGUS: The responses to the subpoena duces
3 tecum on -- from the media were all done in a less period
4 of time, with less notice than I'm giving them now, and I
5 deliberately set the date of February 10th because that --
6 I -- the Penal Code allows for service of subpoenas now
7 by mail and so I'm attempting to do that without -- so we
8 don't have to cost the county a small fortune in fees for
9 serving subpoenas. And I -- with the cooperation -- If
10 the Clerk's Office's workload allows it, we will have those
11 subpoenas in the mail by Friday. They are all signed and
12 being collated right now. So the media should have at least
13 three weeks to get their information together.

14 And with respect to the television stations and
15 the radio stations whom -- from whom information was sub-
16 poenaed in the past, I have indicated to them that they
17 need not supply the information that was given at the pre-
18 liminary hearing, and that's being forwarded to you in the
19 form of exhibits from the -- from the lower court.

20 So I -- I think that probably we can get most of
21 the stuff from the media by the 10th.

22 THE COURT: Well, then we will set all of these
23 hearings on the 10th and then on that date determine the
24 order in which I will get the motions.

25 MR. NEGUS: Fine.

26 THE COURT: Understand, I don't know anything

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1 about what went on in Department 1 except that you were
2 coming over here, so I am somewhat at a loss to pick up
3 the thread.

4 MR. NEGUS: Basically, we didn't do anything in
5 Department 1 except enter a plea of not guilty; our thought
6 being, essentially, that, as Judge Allen told us, he was
7 going to assign the case to you for all matters; that we
8 might as well let you handle and make all the decisions.

9 THE COURT: Okay.

10 MR. KOTTMEIER: The one question that I have that
11 may be a question in Mr. Negus' mind is whether the Court
12 has any plans or cases or anything else that you anticipate
13 coming up after February 10th.

14 THE COURT: None have been assigned or scheduled.
15 I still have some matters that are trailing over from cases
16 that have been -- that have gone to judgment, for example,
17 and I have probate calendars on Fridays. I have law and
18 motion calendars every morning, but I do not have any --
19 any trials set beyond February 10th.

20 MR. NEGUS: It would be my request that we
21 essentially go -- well, in the Municipal Court where our
22 hours were from 9:15 to 12:00 and from 1:30 to 4:00, and
23 I would request that we have some similar type hours,
24 either 9:30 to 12:00 or 9:15, whichever -- and 1:30 to 4:00,
25 and that we do not have formal sessions on Friday; es-
26 sentially do it as a four-day court. The reason for that

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1 is that I'm -- don't -- have not requested any additional
2 legal assistance in this case. I tend to do it all myself,
3 and it's just physically overwhelming to try and go for
4 five -- for five days.

5 I don't know what the Court's inclination is on
6 this.

7 I spoke to Sergeant Arthur this morning about
8 where to have the proceedings.

9 Mr. Cooper is somewhat of a security risk; that
10 is, risks to him from people who have made threats to him.

11 I know that the Sheriff's Office would request
12 that the hearing be held in Department 11 in San Bernardino.
13 I -- that may be --

14 THE COURT: Hearing on all -- on these motions?

15 MR. NEGUS: Yes. That all further appearances
16 in which Mr. Cooper has to personally appear be held over
17 there.

18 That may be an untenable strain on yourself.
19 I don't know.

20 I would request, if we don't do it in Department
21 11 in San Bernardino, that at the minimum, if it's possible
22 for you to switch courtrooms with either Judge Ziebarth or
23 Judge Allen; the reason being that when prisoners are de-
24 livered to this building, they have to be done by squad
25 car out through the parking lot where the public attends.
26 And once that fact is known to the general public, I would

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1 have grave fears for Mr. Cooper's safety in that sort of
2 situation.

3 In the past there have been -- he's already had one
4 attack on him in the jail. There have been vigilante type
5 groups that have appeared at various times. I receive a
6 fair number of phone calls from people like that, and I
7 would not want to have him hurt.

8 I'm not sure that I would be confident that any-
9 body can guarantee security in this particular -- in this
10 particular building.

11 THE COURT: Mr. Kottmeier, do you wish to be heard
12 on that subject?

13 MR. KOTTMER: Based upon our experience in the
14 preliminary hearing court, I see no reason in my view at
15 this time to transfer the case to Department 11, especially
16 with all the problems that that creates for Judge Chapman,
17 as well as trying to reinstitute the security procedures.

18 We had very little interest after the initial
19 farfare died down, and the Marshal's Office was able to
20 search the people coming in to where we were assured that
21 the audience was not a danger.

22 It would seem to me that similar precautions and
23 maybe the shift over to the other courtroom would at least
24 give us the ability to proceed with the motions, see how
25 things are going, and make a determination somewhere further
26 down the line as opposed to in the abstract at this time.

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1 MR. NEGUS: I have no objection. As I say, as
2 long as he -- as long as he goes to a courtroom which can
3 be reached through a tunnel rather than through the parking
4 lot.

5 I have great fears about going across the parking
6 lot. I -- Department 11 was the Sheriff's Office's idea;
7 not mine.

8 MR. KOTTMEIER: Well, the Sheriff's Office may
9 be in communication with you and your Bailiff in regard
10 to the procedures that they would like to institute, as
11 far as courtroom security.

12 It didn't look that obvious or overbearing this
13 morning in Department 1, and I, as far as I'm concerned,
14 am not going to take a position in regard to security.
15 That's not my area. And that's a matter between the Court
16 and the Sheriff's Office.

17 So whatever the Court and Sheriff are comfortable
18 with is fine with me.

19 THE COURT: Okay.

20 Well, I'll take that under submission and work
21 out what I think is the best way to handle it, considering
22 the fact that no matter what other courtroom we went to,
23 it would cause a disruption in the administration of the
24 courts; however, I will consider all factors.

25 Now, these subpoenas that -- you have not issued
26 them?

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1 MR. NEGUS: They are being collated to be taken
2 over to Tonya Denton in the Clerk's Office this afternoon.
3 I am hopeful to have them there tomorrow morning. And they
4 are all for February 10th at 10:00 a.m.

5 THE COURT: And where are they returnable to?

6 MR. NEGUS: Here, to this department.

7 THE COURT: Department 4?

8 MR. NEGUS: Yes.

9 THE COURT: Okay, fine.

10 All right, I'll study the file and learn as much
11 as I can as to what problems I face and be ready for hearing
12 on the 10th.

13 What about filing opposing papers or --

14 MR. KOITMEIER: Most of those are matters that are
15 really, at least as far as what I could tell at a cursory
16 glance, probably uncontested. We will probably comply with
17 the request for advance notice, as far as aggravation and
18 those kinds of issues, with no problem on the 10th.

19 If there are any papers to be filed, we have been
20 working fairly close together, as far as coordination. We
21 will get them over to Dave so he's got a chance to look
22 at them ahead of time.

23 The one thing that may require some advance
24 additional coordination on the Court's part is an issue
25 in regard to the court reporting.

26 There has been a great deal of testimony already,

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1 and both sides are interested during the motions, as well
2 as the trial itself, in having a daily transcript prepared.
3 And as opposed to a daily transcript that is complete week
4 by week, our interests are more immediate, such as having
5 one available every evening for that particular day's pro-
6 ceedings.

7 I'm not suggesting that the Court rule on it one
8 way or the other at this point, but it is a matter that
9 probably the Court, in conversation with the Reporter or
10 Reporter's coordinator, if you have such a thing, might
11 want to take into consideration.

12 THE COURT: I take it you want daily transcripts
13 of the motions then?

14 MR. KOTTMER: Yes, as well as the trial.

15 MR. NEGUS: The February 10th motions is -- I don't
16 feel it's critical, as long as we can get one relatively
17 soon thereafterwards; that is, I would not particularly
18 -- I don't think I particularly need that on the -- at
19 seven o'clock on -- on that Friday night, but when we start
20 taking testimony on the other motions, I would request that
21 we have a daily transcript of that, as well.

22 MR. KOTTMER: I guess maybe it would be more
23 appropriate to say that we're not interested in reading
24 our own words in print, but we are very much interested
25 in having the testimony of the witnesses available in print
26 for each evening's affair. And that is a matter that, when

1 the Court sees the preliminary hearing transcript, will
2 become readily apparent because the witnesses have already
3 virtually been deposed at the preliminary hearing and now
4 we may be facing arguments over whether certain statements
5 were consistent or inconsistent and need to have the specific
6 statements to work from as opposed to our own recollection
7 and notes.

8 THE COURT: Okay. Does anybody know how far along
9 the Reporters are on the transcript on the preliminary?

10 MR. NEGUS: It's complete. It should be -- it
11 should be filed somewhere -- I don't know -- They obviously
12 didn't bring it over because it's not -- because I can see
13 it's not there. But it is filed, and we both have complete
14 copies.

15 That's probably something that would --

16 THE COURT: The original is in the Clerk's Office?

17 MR. NEGUS: I would assume so.

18 THE COURT: All right.

19 MR. NEGUS: There are also voluminous exhibits,
20 both from the 868 motion, which we will -- which are exhibits
21 of publicity about the case, which, as I indicated, I will
22 be asking the Court to consider as part of the change of
23 venue motion, plus exhibits which go to the guilt or inno-
24 cence which were introduced at the preliminary hearing,
25 and in the 995 motion I know that I intend to refer to some
26 of those matters, so --

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THE COURT: Okay.

MR. NEGUS: Let me just ask one question: If -- I would like to begin subpoenaing some people for the motions to suppress, for the change of venue motions, putting them on call, but taking it a date -- Would the Court consider setting whatever motions we're going to hear in whatever order to begin on February the 27th?

THE COURT: I have no objection to that day.

Is that all right with --

MR. KOTTMEIER: That's fine. Sure.

MR. NEGUS: And I will issue the subpoenas to this court. If we decide to change, we can --

THE COURT: Well, now, on February -- I mean, on -- yes, on February the 10th I propose to go ahead and start hearing the -- hearing these motions --

MR. NEGUS: I believe --

THE COURT: -- right immediately after the 10th.

MR. NEGUS: Oh, I see.

The reason I requested the additional time was that until I get all of the discovery, I won't be able to prepare the 99 -- I will be able to prepare the 995 motion or start preparing it, but I would not be able to be fully prepared on the motion to suppress or on the change of venue motion. So that's why I'm asking for the two-week interval, is to get the information and to then digest it and -- and brief it.

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1 THE COURT: Well, all right. Then you think that
2 we can take care of all the matters, short of hearing the
3 actual motions, on the 10th and then start actually hearing
4 the motions on the 27th?

5 MR. NEGUS: Yes.

6 THE COURT: Is that your understanding, too?

7 MR. KOTTMEIER: Potentially.

8 THE COURT: All right.

9 MR. KOTTMEIER: I hesitate to say for sure.

10 One of the issues that --

11 THE COURT: I mean, no sooner than the 27th?

12 MR. KOTTMEIER: There is no real reason to hurry
13 at this point, assuming that everyone is somewhat accurate
14 as to their time estimates. And I don't know to what ex-
15 tent the Defense is going to insist on the 19th as being
16 the trial date. That may be a very unrealistic trial date,
17 depending on what we run into.

18 MR. NEGUS: Our position on the -- has been that
19 I am generally interested in getting to trial as soon as is
20 reasonably possible, assuming that there doesn't come up
21 any additional evidence of a -- of a substantial nature
22 which would require additional investigation on my part.

23 I understand that if the Court were to grant, for
24 example, a change of venue motion, that there could result
25 from that decision logistical problems about finding another
26 county, finding another courtroom that could well require

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1 a delay beyond March 19th.

2 I don't intend to be obstinate about those problems
3 and we will be willing to, you know, accommodate the Court
4 on those sort of things.

5 Also, we are willing to accommodate the Court as
6 much as we can with respect to if the motions take longer
7 than we anticipate now.

8 So we don't -- we don't -- you know, we're not
9 trying to -- to be difficult about it. On the other hand,
10 Mr. Cooper would like to be brought to trial as reasonably
11 soon as possible. And so, you know, we're -- we're not
12 looking for any delays either.

13 I would just indicate to the Court that we have
14 divided these motions into what are pretrial motions, and
15 my understanding of the rules of court is that pretrial
16 motions are all done in the county where the charges are
17 brought.

18 If a change of venue motion were to be granted,
19 for example, there would be additional motions which would
20 be heard in the trial court wherever the case was trans-
21 ferred, in limine motions, I believe, probably of both De-
22 fense and Prosecution. That's just based on some comments
23 Mr. Kochis has made to me. I can imagine those motions
24 taking an additional two months of testimony to resolve,
25 so it -- we're not -- even if we were to start the trial
26 on March the 19th, it could be -- well, be two, three

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1 months before we ever talk to the first juror.

2 MR. KOTTMEIER: We have, I see developing, even
3 a basic disagreement as to what is a pretrial motion and
4 what is a trial motion.

5 THE COURT: Mm-hmm.

6 MR. KOTTMEIER: I see that developing because if
7 Mr. Negus is saying two months, then I have an idea that his
8 concept of those issues are issues that I would consider
9 to be pretrial motions and should be heard in this county
10 despite a change of venue. And that's an issue that we
11 will have to have resolved by this Court, particularly in
12 light of the fact that some of the witnesses that would be
13 called for the pretrial motions would also then have to be
14 called for the trial itself. And I guess all that we can
15 tell you at this point is that there is a lot left to be
16 settled and should be a very interesting set of proceedings.

17 THE COURT: All right. Then we will leave the
18 trial date as indicated, March the 19th, and initial con-
19 siderations of the motions on February the 10th.

20 MR. KOTTMEIER: Fine.

21 MR. NEGUS: Very good.

22 Thank you very much.

23 THE COURT: Thank you very much, gentlemen.

24 (Proceedings concluded.)

25 (This concludes the portion of the transcript
26 to be prepared by this Reporter.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. 4 ONT

HON. CHARLES BIERSCHBACH, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

KEVIN COOPER,)

Defendant.)

NO. CR 72787

REPORTER'S
TRANSCRIPT

STATE OF CALIFORNIA)

COUNTY OF SAN BERNARDINO)

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I, CHRISTINE R. BUCKNER, C.S.R., Official Reporter
of the Superior Court of the State of California, for the
County of San Bernardino, do hereby certify that the fore-
going pages P-1 through E-19, inclusive, comprise
a true and correct transcript of the proceedings held in
the above-entitled matter reported by me.

DATED this 5th day of June, 1985

Christine Buckner, C.S.R.
Official Reporter C-1878

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