My name is Gary K. Dubcoff, and I represented Joe Hunt for years as his postconviction counsel in federal court. As a result of that work, I am intimately familiar with the record facts of his case, and just how badly our criminal justice system went awry. Indeed, I have been practicing criminal trial and appellate work for over three decades, and I have rarely, if ever, seen such a concerted effort on the part of the judiciary to turn a blind eye to those facts, in the absence of legal justification for doing so. I will set out below a summary of the most salient of these facts, and, although I understand that it may be difficult for the reader to believe many of them, I can state with surety that they are supported by the record citations that accompany them (any or all of which documents I would promptly submit upon request).

Just a brief introductory word about myself (I am attaching hereto a copy of my resume). I grew up in a working class family in Brooklyn, New York. My father saw most of his friends killed as he served with the Second Armored Division in World War II, receiving a purple heart at the Battle of the Bulge. He inculcated in his son a great love of country, and thus, after graduating from Harvard Law School in 1988 (where I was a classmate of Michelle Obama nee Robinson), it was to defending constitutional rights (that is, to what truly distinguished us from our enemies), not corporate representation, that I was drawn. It was because of my upbringing that I sincerely believed, as I continue to do these decades later, that justice for all is not just an empty catchphrase, but an ideal to which it was worth dedicating a career if it was to be made real in present times.

Mr. Hunt did not receive justice. "[E]xecutive clemency exists to provide relief from harshness or mistake in the judicial system …." (*Ohio Adult Parole Authority v. Woodard* (1998) 523 U.S. 272, 284-285.) Having been informed that the Governor's Office of Legal Affairs/Pardons takes seriously that precept and (quite laudably) believes that the presence of trial irregularities should be one factor to be considered among others in weighing a commutation application, I thought it worthwhile to summarize them. I have tried as best I could to condense this narrative, but it is, of necessity, rather lengthy in order to make clear just how *far* short of dispensing justice that our system operated in Mr. Hunt's case.

The short of it is that his trial was presided over by a trial judge who, in between making leeringly misogynistic and homophobic comments and gestures because that was who he was, abandoned all pretense of impartiality, striving mightily at every turn to ensure his conviction, the facts be damned; and Mr. Hunt was represented by an incompetent attorney – in a capital case, this lawyer performed *no* pretrial investigation(!) – who sold him up the river for lucre and self-interest. The sordid details are set out below, but one unique fact bears highlighting at the outset. The damage done by the trial judge and Mr. Hunt's *own* lawyer were established with laboratory precision – something unique in my experience – because he was charged with a second murder (which proceeding ended with the charge's being dismissed), where the prosecution sought to enhance its chances of securing his conviction by convincing the jury that he had committed the murder for which he had already been convicted. That effort backfired spectacularly. Afforded that opportunity to defend himself without the burden of a biased judge and corrupt lawyer, he successfully did just this. As detailed below, the second-trial jurors were convinced (even though they were informed of his earlier *conviction*) that there had been no murder at all, and that the alleged victim was alive following his purported murder. It is to the everlasting shame of the judicial system that, without legal cause, every reviewing court

adamantly refused to take into consideration what those actual jurors stated under oath, acting as if that stark proof of the prejudicial impact of all that went wrong in Mr. Hunt's first trial did not exist at all. It is, in no small measure, the reason that he remains incarcerated and must plead for executive grace – in my view, his conviction should long since have been overturned.

I. The Trial Lawyer's Conflicts of Interest

In 1987, Mr. Hunt was convicted of first degree murder and robbery, with a robbery-murder special circumstance and sentenced to life imprisonment without the possibility of parole. He always maintained his innocence to me throughout the long course of my representing him. His trial attorney suffered from two profound conflicts that directly pitted his personal interests against those of his client, and in each instance, he chose his own interests over his duty of loyalty to Mr. Hunt. It is, in greatest part (the other parts being the surreal misconduct of the trial judge and this lawyer's overarching, bewildering incompetence), why he was wrongfully convicted.

A. Mr. Hunt's Attorney Crippled His Defense to Earn an Extra Buck

Because his was a capital case, Mr. Hunt was entitled to be represented by two counsel, and he was so for a time – by Arthur Barens and Richard Chier. Mr. Chier was the far more experienced criminal defense lawyer of the two, a certified criminal law specialist. The now-deceased trial judge, the Hon. Laurence J. Rittenband, wielded his judicial authority in various and sundry ways throughout the trial proceedings in a studied (and appalling) effort to weigh the scales of justice against the defendant (discussed at greater length in section III, below). Here, the judge's interests happened to align with the financial interests of Mr. Barens, to whom the judge, for reasons of his own, presented the same stark choice as would later be presented Mr. Barens in a different context (discussed in the next subsection) – fulfill his duty of loyalty to his client, or serve his own interests – and, as he would later also do, he chose the latter course, to Mr. Hunt's great prejudice.

The judge had a longstanding personal vendetta against Mr. Chier (ER-IV-948-950 at ¶¶ 4-6), born of an extra-judicial animosity (ER-IV-941-942 at ¶¶ 4-5, 948-950 at ¶¶ 4-6). Mr. Chier had secured an appointment from a judge (not Judge Rittenband) to represent Mr. Hunt in conjunction with Mr. Barens, who was retained. As trial approached, Mr. Barens became fearful that he had sorely underestimated the amount of work that would be required of him in a capital case (never before having been involved in one) when he entered his retainer agreement, and so, before trial began, he repeatedly sought a court appointment so that he could be paid additional money from public funds over and above what he had agreed to accept as payment for his work. (ER-VI-1455-1458.) As another judge had done before him, who reasoned that, if a lawyer makes a bad bargain, it is not the responsibility of the court to save him from it (RT 6010), Judge Rittenband initially denied Mr. Barens' request (CT 1405). Seventeen days later, however, he suddenly reversed himself. The reason he did so, although kept secret for a period of time, was ultimately revealed, and it was shocking, indeed.

Judge Rittenband came to see an opportunity in Mr. Barens' increasingly desperate bids for appointment – he could use it to harm both Mr. Chier and the Hunt defense, two of his

fondest wishes – and he acted upon it. Four days before opening statements, it was revealed that the judge had conspired with Mr. Barens to arrange for Mr. Chier to have "nothing to do actively in the trial" (RT 6007), that is, to not speak in front of the jury (RT 6019, 6024). I use the word "conspired" advisedly – it is an accurate description of what occurred in light of the two initially trying to keep the matter entirely off the record, as evidenced by their meeting's taking place with no court reporter present; the omission of the curtailment of Mr. Chier's role from the order it generated (Supp. CT 57); and Mr. Barens' affirmative disinformation that he provided to Mr. Chier about his reduced role in the aftermath of the conspiratorial agreement (Ex. 105, ¶ 2). Regardless, Judge Rittenband had presented Mr. Barens a clear-cut choice that pitted Mr. Hunt's interest in an adequate defense against Mr. Barens' interest in money – he could proceed to trial with the silenced Chier and have his appointment, or proceed in whatever way he thought best without it(!) (RT 6009-6018.) The choice that Mr. Barens made was equally clear-cut. (RT 6026.) By choosing his own self-interest, and thereby crippling the defense on the eve of trial, he generated tens of thousands of dollars for himself. (ER-III-612-615.) I have never seen anything like it.

The off-the-record deal that the two struck would have remained secret had not Judge Rittenband, goaded by Mr. Barens' feigned ignorance (a lame effort to conceal what he had done) as to why the judge, halfway through juror voir dire, suddenly stopped permitting Mr. Chier to speak, made official what he had tried to achieve covertly, namely, rescinding Mr. Chier's appointment as co-counsel under the State's capital-case statutory scheme. (RT 6009, 6021-6022.) The judge then made clear that Mr. Barens had *agreed* to this action.

When the *quid pro quo* agreement was revealed, the judge would not permit either the silenced Chier or Mr. Hunt to say a word about it. (RT 6008, 6025 ["Chier: Does the client have anything to say about this, Your Honor? The Court: No."].) The attorneys had prepared the defense and divided up their labors on the assumption that each would fully participate. (RT 6013-6014.) Mr. Barens, the lone defense attorney left to speak to the jury was incapable, by his own admission (RT 6005), of trying the case alone. The *prosecutor* took a "firm" (RT 6021) contrary position to that of the judge (not the only time he was a better advocate for Mr. Hunt's interests than his own attorney). "Gravely concerned" (RT 6020), he objected on Mr. Hunt's behalf (*ibid.* ["I think that what is in the best interest of the defendant, is not for the Court to determine..."]). The judge, pretending that it was in *Mr. Hunt's* best interest to suddenly have to rely solely on Mr. Barens, could not have cared less, replying, "I am running this trial, not you nor [the defense]." (RT 6021; see also Supp. RT B190 ["The Court: Well, I control who is counsel here, right?"].) As a matter of law, however, the judge did not control who was counsel, and it was only Mr. Barens' acquiescence that made it possible.

Mr. Barens knew full well at the time he made his Faustian bargain that he and Mr. Chier had been preparing for trial for weeks by divvying up the workload, that it was Mr. Chier who was prepared to conduct the most important witness examinations, including all those in the defense case-in-chief (ER-IV-943-945 at ¶ 2, 998, 1007-1009; ER-V-1190-1195, 1273-1279; ER-VI-1381-1382, 1459-1460), and that he (Mr. Barens) was unprepared to assume plenary responsibility for the defense (ER-III-606-610), but none of that stopped him from sacrificing his client's interests to his as he readily agreed to the judge's *quid pro quo*. (ER-IV-994 *et seq.*) Mr.

Barens got his money, and Mr. Hunt was deprived of competent representation. That is not how the system is supposed to work.

Mr. Chier was deeply outraged at what Mr. Barens had done and confronted Mr. Barens, demanding an explanation. The latter candidly (and, presumably, shamefully) replied, "I can't help myself when it comes to money." (ER-IV-944-945 at ¶ 2.)

Mr. Barens violated his ethical obligations in agreeing to the judge's silencing of Mr. Chier. (See, e.g., *Hulland v. State Bar*, 8 Cal.3d 440, 448 (1972) ["When an attorney, in his zeal to insure the collection of his fee, assumes a position inimical to the interests of his client, he violates his duty of fidelity to his client."]; ABA, Std. for Crim. Justice 4-3.5(e)(ii) [defense attorney obligated to not accept payment from anyone else (here, the State) unless "there is no interference with defense counsel's independence of professional judgment or with the client-lawyer relationship"].) But, beyond that, he actually committed felony offenses in doing so. As the record revealed, he *perjured* himself regarding how much money he had received on Mr. Hunt's behalf *and* about the timing of the last payments made to him, and he failed to divulge the material fact that he was given a negotiable note from a third party that secured the balance owed him, all to maximize his chances of getting appointed. (DS 67-68.) That was how much he could not help himself when it came to money.

Regardless, the upshot of Mr. Barens' backroom deal with the judge was that Mr. Hunt's defense was crippled on the eve of trial by the removal of the attorney most capable of representing him, and his fate was placed in Mr. Barens' hands, essentially rendering conviction a foregone conclusion.

B. Mr. Hunt's Attorney Sacrificed the Most Compelling Exculpatory Evidence, Which Would Have Made the Difference Between Conviction and Acquittal, to Protect Himself Against Potential Personal Liability

Mr. Hunt was charged with the murder of Ronald Levin. At his residence where it was alleged he was killed, there was no evidence of foul play – no blood, no bullets, no eyewitnesses, and, most notably, no corpse. (ER-V-1212-1213.) Despite extensive efforts by the authorities to locate it, his body was never found. Mr. Barens presented (after a fashion) that defense – Mr. Levin had not been murdered, but had absconded to evade an avalanche of troubles that he had created for himself, including the very real possibility of spending the next decade of his life in prison. There was a great deal of available evidence to support that defense theory, the most compelling of which was testimony from *six* independent, neutral eyewitnesses who saw Mr. Levin alive after his purported murder (there were actually seven, but one came forward only after the trial proceedings had ended). Mr. Barens, however, made the decision not to effectively investigate and present that evidence once it became clear to him, as will be explained below, that doing so could land him in trouble with the trial judge, the State Bar, and, indeed, the District Attorney's Office. He chose self-preservation and, as a result, the jury heard only from two of these witnesses, presented by Mr. Barens in an abjectly inadequate manner, and never heard from three of these eyewitnesses who knew Mr. Levin personally, including one who actually spoke with him(!)

The prosecutor sent a letter to Mr. Barens dated May 4, 1987, which was subsequent to the jury's verdict but before the sentencing hearing and hearing on post-verdict motions. (ER-IV-921-922.) He wrote:

> Three more people [two had already come forward] now claim to have seen Ron Levin alive. Ivan Werner says he saw someone who looked like Levin at a memorial service at the Westwood Village Mortuary in August 1986. He says Levin would have signed the guest book. Mr. Werner's work telephone is ... and his home telephone is .... [A] deputy jailer in Kentucky claims Levin was in his jail a few weeks ago ... and an anonymous female [] said she was at Nippers night club on April 24, 1987 and the owner pointed to a man on the dance floor and said it was Ron Levin[, who] goes there all the time.

(*Id.*) Mr. Barens would later concede, under oath, that he received the letter (ER-IV-882-883), but he did not reveal it to anyone else on the defense team, neither Mr. Chier nor H.K. Lee, an investigator whom Mr. Barens hired in the middle of trial, who first learned of the letter *in 1994* (ER-IV-934 at ¶ 3, 945-946 at ¶ 3).

In that year, Mr. Werner contacted Mr. Hunt's postconviction lawyer (ER-IV-925 at ¶ 9) after having read a newspaper article about the case (ER-III-717). He informed counsel that he had contacted the police years earlier about having seen Mr. Levin, but nobody had ever gotten back to him. (ER-III-717-718.) Thus, Mr. Barens not only kept the letter's contents secret from his colleagues, but he did nothing in light of the revelations.

Two of the seven eyewitnesses who swore that they had seen Mr. Levin after his purported death testified at Mr. Hunt's trial, but Mr. Barens' conduct with respect to them, which indisputably was driven by his overweening self-interest, managed to turn what should have been powerful proof of his client's innocence into a powerful argument to the contrary by the prosecutor. On November 25, 1986, the parties convened in the judge's chambers, where the prosecutor disclosed two bombshells. First, two residents of Tucson, Arizona, reported that they had seen Mr. Levin in September 1986 (ER-IV-970) (again, these were the first two of the seven sightings witnesses to come forward), and both of them had passed polygraph exams administered by the prosecution (ER-IV-982). Second, Lewis Titus, Mr. Barens' co-counsel at Mr. Hunt's preliminary hearing, had reported Mr. Barens to the authorities (*see* ER-IV-909-911), describing a plan by him to procure fraudulent witnesses to report that they had seen Mr. Levin alive in Brazil (ER-IV-972). The prosecutor thereupon handed Mr. Barens copies of the reports generated by his team's debriefing of Mr. Titus. (ER-IV-909-911, 990.)

What was Mr. Barens' immediate response? He requested a gag order and that the record of the chambers conference be sealed, which were granted. (ER-IV-984.) That order was eventually lifted, however, and the story promptly appeared in the *Los Angeles Times*, where the essence of Mr. Titus' allegations against Mr. Barens was printed. (*Ibid.*) On December 9, 1986, the prosecutor announced that, although he did not then anticipate calling Mr. Titus as a witness, he preserved the option of doing so. (ER-IV-992-93.) But *most* ominously from Mr. Barens' perspective, the prosecutor added that the reports of Mr. Titus' allegations "may be the subject of

future litigation." (ER-IV-991.1) It is in the light of these disclosures that Mr. Barens' otherwise inexplicable actions with respect to the eyewitnesses who saw Mr. Levin alive following the date that he was alleged to have been murdered became all-too-explicable. To protect himself from that "future litigation," he failed miserably to investigate and present the powerful proof offered by them.

Carmen Canchola was then a 23-year-old college student. (ER-V-1324-1327.) Jesus Lopez, also then in college and her boyfriend, was a manager at one of several McDonalds' franchises owned by Ms. Canchola's father. (ER-V-1353-1354.) They described the man they saw at a gas station near the University of Arizona that was consistent in *all* respects with Mr. Levin's appearance – he was impeccably dressed, meticulously groomed, slender, about 6'1" tall, with piercing eyes and slightly effeminate mannerisms, at a gas station near the University of Arizona. (ER-V-1328-1331; Trial Exs. 152-154; ER-III-674-675, 691-692, 725; ER-IV-961; ER-V-1331.) Ms. Canchola and Mr. Lopez were each shown photo lineups totaling 12 photos, and each confidently identified Mr. Levin's photo as the man whom they had seen. (ER-V-1345-1351, 1355-1359.) The prosecutor made no headway against the two on cross-examination. For all the world, they appeared to be conscientious, uninvolved witnesses trying to do the right thing. Their identifications contained compelling signs of reliability, right down to Ms. Canchola's observation that the man had a skin anomaly on his forehead (ER-IV-815 at ¶ 17; ER-V-1329), precisely where Mr. Levin had a scar (ER-IV-815 at ¶ 17). Mr. Barens, wanting nothing to do with these witnesses for reasons of his own, however, did not elicit for the jury that convincing detail that essentially established that they had seen Mr. Levin. Why was that?

Mr. Barens himself answered that question. Some four months after the prosecutor made his not-very-veiled threat to prosecute him, and before the Arizona eyewitnesses were called to testify, he engaged in the following colloquy with Judge Rittenband:

> Barens: Your Honor, we are going to make as comprehensive a disclosure to the court as possible. Now I want to be candid in how we are going to approach this so you won't have any doubt ... in what we are going to do.... The District Attorney and a number of police personnel spent a number of hours with [the Arizona witnesses] and made a tape recording of it.... All I am going to do is take her [one of those witnesses: Carmen Canchola] through the tape recording....
>
> The Court: Aren't you going to take her independently?
>
> Barens: *All I am going to do is ask her stuff within the police material which had been given to me*.

(ER-V-1317 [emphasis added].)

> Barens: Well, Your Honor, let me say one thing clearly. I have never, ever spoken to this witness other than precisely what is on those tape recordings.

(ER-V-1342.)

> Barens: *What I have done Judge, I have not even made up my [own] questions*. I have used [the prosecutor's] questions and the other police's questions and I am mimicking and reading those questions from the tape.

(ER-V-1343 [emphasis added].)

Obviously, *any* defendant, let alone one in a capital case, was entitled to far more from his lawyer than "mimicking" what the prosecution team had done and turning his direct examinations of the Arizona witnesses into a re-enactment of her police interrogation:

> Barens: Your Honor, this is still on the Arizona people subject, Your Honor – well it occurred to me that Your Honor might wish to ask these witnesses some questions. During the polygraph examination, ... they were asked if they knew me or had even spoken to me or Mr. Chier or Mr. Hunt or Lou Titus, or you know, the folks that we know – you know, all kind of stuff. They said no. They passed the polygraph both times in that regard.
>
> Chier: In all regards.

(ER-V-1318-1319.)

Things got worse. Judge Rittenband took great umbrage (because it was marginally helpful to the defense) at the particular testimony of Ms. Canchola as to why she came forward to report her sighting of Mr. Levin – she did not want people "being tried for a murder that they didn't commit." (ER-V-1331-1336.) Although the prosecutor had not objected, the judge hit the roof, commenting, "She had no business making a remark of that kind," and inquiring whether Mr. Chier had put her up to it. (ER-V-1337.) Rather than responding that the testimony was proper, Mr. Barens rushed to his *own* defense: "Your Honor, let me make that real clear, what transpired here. I met this person on Sunday of this week for the first time in my life...." (*Id.*) Thereupon, the judge turned his wrath on the prosecutor, asking, "Why didn't you make an objection to have it stricken as expressing her belief as to guilt or innocence?" (ER-V-1337.) The prosecutor replied that he saw nothing wrong with the witness' expressing her motivation for going to the police (this was another one of the times that the prosecutor argued on Mr. Hunt's behalf more effectively than Mr. Barens did). (ER-V-1338.) Mr. Barens, oblivious to the fact that the judge was accusing everyone *but* him of wrongdoing, again rallied to his own defense:

> Barens: Your Honor, excuse me, Your Honor made a statement, "Did I put her up to that, or did Mr. Chier?"

> The Court: I didn't ask you that. I asked you whether or not you knew anything about what she was going to say.
>
> Barens: I want to make it perfectly clear.
>
> The Court: I will take your word for it. You say no and that is enough.
>
> Barens: [The prosecutor] can tell the Court as to the tape recording, we do have a transcript of the tape recording. She said almost those exact words on her tape recording on November the 22nd....
>
> The Court: Don't worry when a question comes up, I always take your word for it. I did take your word for that with the charge which was made about your finding a witness in Rio.
>
> Barens: Yes with that Titus business.
>
> The Court. And I believed you. I told you that at that time. This is the reason that I didn't pursue it.
>
> Barens: *I have been real sanitary*, not even calling her or speaking to her until Sunday. Now when I met her Sunday, I told her that *I would not talk to her* except to ask her if she had .... [The court cut him off at this point.]

(ER-V-1339-1340 [emphases added].) He could not say these things often enough – "I made it a point not to speak to them by telephone or in person or anything else until Sunday of this week when they came to Los Angeles." (ER-V-1320). Likewise, in examining Ms. Canchola, Mr. Barens actually sought to co-opt her as a witness in *his* defense, not his client's:

> Barens: All right Ms. Canchola, when was the first time in your life you ever spoke to me, either in person or on the telephone?
>
> Canchola: Not until this Sunday.
>
> Barens: Sunday, three days ago?
>
> Canchola: Yes.
>
> Barens: Prior to that, had you ever spoken to me on the telephone?
>
> Canchola: No, not at all.
>
> The Court: Have you ever spoken to anybody associated with the defense?

> Barens: Your Honor, we are getting to that, and –
>
> The Court: Get to it. You are talking about yourself. Let's talk about somebody else that she might have.

(ER-V-1352.)

The compulsion that Mr. Barens felt to distance himself from the Arizona witnesses was so strong that he even disparaged them as "hostile" "to everybody" (ER-V-1320-1321), though I do not recall seeing any evidence to support that accusation. He asserted that "some of [Ms. Canchola's] answers, which I am sure [the prosecutor] will point [out] to the jury, vary at times." (ER-V-1344; but compare ER-III-736 [Mr. Barens' testifying in postconviction hearing that Arizona witnesses "categorically [were] truthful in every respect and accurate"]), but the prosecutor's cross-examination revealed no variations in the witnesses' statements.

Thus, Mr. Barens, for his own perceived self-preservation, refused to promptly interview these exculpatory witnesses and to stray in his examinations of them from the literal text of the related police interviews. Who ever heard of a defense lawyer doing such a thing? As a result of the conflict of interest generated by Mr. Titus' allegations against him – which, if found to be true, could have resulted in his being disbarred and/or prosecuted – Mr. Barens, apparently, was so afraid of being accused of ginning up evidence that he refused to ask a single question that might elicit an exculpatory response beyond those found in the police-generated transcripts.

It was actions such as those that cemented Mr. Hunt's conviction because the prosecutor used them to devastating effect. This is how he argued them to the jury in his closing argument:

> Now, you have also heard throughout the trial, the notion that cases are not prosecuted in secret and that ... this information ... would have to be immediately disclosed to the defense in this case, which it was. The next week, ... it was disclosed.
>
> So now, put yourself in Joe Hunt's position and in Arthur Barens' position. You are innocent of a crime you didn't commit. No murder ever happened.
>
> And now, you are presented with evidence that says that the man you are alleged to have killed is in fact alive in Tucson, Arizona.
>
> You are given that information the 24th or 25th of November of 1986. What is your first reaction? What do you do? What is the very first thing that you are going to do?
>
> You hot-foot it down to Tucson, Arizona with as much manpower as you can muster. You send people all over the city and you find this guy. You didn't kill him and somebody says that he is alive. You are going to get to Tucson immediately.

> You are going to put flyers all over the city. You are going to take out ads in the paper. You are going to put things on television.
>
> It is a life or death situation. Have you seen this man? We have to find this man. It is life or death. My life depends on it.
>
> *Do you see a word of that? Nothing. Not one finger was lifted. Not only that, they made a big point in saying they didn't talk to these people until March sometime. That is unheard of.*
>
> If you were charged with a crime that you didn't commit, that never occurred, what would you do? You would go there and you would find this guy, whatever it took. You would find him.
>
> We tried to find him. We go to classic car places, wouldn't they?
>
> Wouldn't they go to gay bars? Wouldn't they talk to people in the gay community? Wouldn't they put flyers up at the University of Arizona, across the street from the gas station?
>
> *Did they lift one finger? No.* They want to come in here and say well, somebody saw an Esquire Magazine [article] and says that is it. Don't cross-examine her. That is enough. It doesn't make any sense. It doesn't make any sense at all.
>
> And if there were any more room, I would put that in big. red letters on the bottom of that chart that says, "Joe Hunt's consciousness of guilt."

(ER-VI-1407-1408 [emphases added].) The next day, in his rebuttal closing argument, the prosecutor revisited his "big red letters" argument, honing it into an even more devastating rhetorical weapon. (ER-VI-1411.)

Mr. Hunt was not responsible for any of that. The prosecutor listed all the things that Mr. Barens *should* have done once notified of the Arizona eyewitnesses. Yet, as the prosecutor *accurately* informed the jury, "Not one finger was lifted." Contrary to the prosecution's argument, however, the *reason* that was so had absolutely nothing to do with Mr. Hunt's supposed guilt. It had, instead, everything to do with Mr. Barens' conflict of interest and the route he chose to resolve it, that is, selling his client up the river to protect himself against the potential repercussions that *his* misconduct had created. The prosecutor visited the sins of Mr. Barens upon Mr. Hunt. It was the height of unfairness.

The manner in which Mr. Barens addressed these Arizona eyewitnesses is one instance in which his desire to protect himself came at his client's expense and harmed Mr. Hunt greatly in the eyes of the jury. There were others. Louise Waller was another eyewitness who would

testify with certainty that he she saw Mr. Levin after his purported murder, and, as far as one can tell from reading the transcripts, she would present as an articulate, credible witness (an impression later confirmed by jurors who watched her testify). She was a legal secretary for Sidley, Austin, and was personally acquainted with him. (ER-IV-908.) She called Mr. Barens' office at least *three weeks* before the jury returned its guilty verdict to report having seen Mr. Levin in her office building on a weekend in February or March of 1987. (*Ibid.*) Yet, the first time she was interviewed was on April 22, 1987, the date that the jury returned its verdicts, and that interview was conducted not by Mr. Barens or someone working on his behalf, but by an investigator working for Mr. Hunt's (separately-tried) codefendant. (ER-IV-907.) Mr. Barens' investigator did not interview Ms. Waller until one week later. (ER-IV-899.) As Ms. Waller explained, Mr. Levin had an office in the suite where she had previously worked for over a year and a half. (ER-VI-1452-1453.) She accurately described him as about 6'2" tall, slim, with prematurely gray hair. (ER-VI-1453.) She was *absolutely positive* that she had seen Mr. Levin; she stated that she recognized him instantly. (ER-VI-1454.)

Mr. Chier called Ms. Waller as a witness in the penalty phase of Mr. Hunt's trial.[1] *Mr. Barens had not told Mr. Chier of her having contacted him until the night before the guilt-phase verdict,* that is, three weeks after she had called him. (ER-IV-848 at ¶ 3.) Based on his subsequent contact with Ms. Waller, Mr. Chier averred that, had it been up to him, he "would have called her ... in the guilt phase" "had [he] been aware of [her] ... prior to the verdict." (*Ibid.*) Why did Mr. Barens keep Ms. Waller a secret? To ask that question is to answer it. It was, most assuredly, not because he was zealously representing his client, as was his supposedly sacred obligation. He had already dispensed with that burden. He was, rather, and *obviously,* foregoing the critical exculpatory proof that the eyewitnesses could have provided Mr. Hunt to save himself from the fallout of the Titus allegations.

A fourth eyewitness who would also statue under oath with certainty that he saw Mr. Levin very much alive after his supposed murder was Robbie Robinson. Again, had it been up to Mr. Chier, he would have called Mr. Robinson as another guilt-phase defense witness. (ER-IV-848 at ¶ 1.) Like Ms. Waller, Mr. Lopez, and Ms. Canchola, Mr. Robinson was a respectable citizen, working as a police beat reporter for City News Service. (ER-III-674.) He had face-to-face dealings with Mr. Levin on at least six occasions. (ER-III-676-677.) In October 1986, he spoke with Mr. Levin while waiting in a movie line in Westwood, a subdivision of Los Angeles. (ER-III-678, 685-686.) He would later testify that he was 100% certain that it was Mr. Levin. (ER-III-678-679.)

Mr. Robinson did not come forward until he heard the case was going to the jury (ER-III-683-684), the reasons for which he explained (ER-III-681-683, 706-709). Two days before the verdicts were returned, the prosecutor disclosed his coming forward to defense counsel. The jury was deliberating and the parties were in chambers. (ER-VI-1419-1420.) Needless to say by this point, upon this disclosure, Mr. Barens, once again, gave preference to his personal agenda of

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[1] As noted in the previous subsection, Judge Rittenband, with Mr. Barens' acquiescence, had barred Mr. Chier from examining any witnesses during the guilt phase. Apparently satisfied with having secured Mr. Hunt's conviction, which would assure, at minimum, a life sentence without the possibility of parole, the judge permitted Mr. Chier to again speak in the courtroom.

containing the Titus scandal over his client's interest in saving his life from false accusations. The record of that chambers conference bears summarizing in some detail as it so neatly crystallizes how Mr. Barens' conflict of interest repeatedly served to destroy Mr. Hunt's chances of providing an effective defense: (1) the prosecutor had allowed a weekend and one full day of jury deliberations to go by without notifying the defense about Mr. Robinson (ER-VI-1419; ER-IV-896; ER-VI-1404.1-.2); (2) The immediate reaction to the revelation regarding Mr. Robinson by Mr. Chier, who was present along with Mr. Barens at this conference, was to announce a desire to immediately interview him (as any barely competent defense lawyer would have done) (ER-VI-1426); (3) Judge Rittenband, however, announced *his* intention to interview Mr. Robinson, a procedure to which Mr. Chier objected (*id.*); (4) the judge then expressed his displeasure with Mr. Chier's previously having filed motions alleging judicial misconduct and ordered him to be silent (*id.*); (5) Mr. Barens, unsurprisingly, immediately acquiesced to both the silencing of Mr. Chier and the judge's intention to interview the witness, whom neither party had yet indicated an intention to call (ER-VI-1426-1427); (6) despite the urgency of the jury's continuing deliberations, Mr. Barens granted leave to the prosecution team to finish *its* interview process before notifying the defense "as to the availability of" Mr. Robinson, asserting that it was "appropriate" for them to first "complete their interviews sequentially" (ER-VI-1427-1428); (7) Mr. Chier rebuked Mr. Barens, remarking, "They have had the man for four hours; don't you think it is our turn?" (*id.*); (8) the judge then again ordered Mr. Chier to keep his "mouth shut.... Whisper to [Mr. Barens]; don't put it on the record" (*id.*); (9) Mr. Barens told Mr. Chier, "we will discuss it further after the Judge has an opportunity to speak to the witness" (*id.*); (10) the judge told Mr. Barens to use his own judgment, and Mr. Barens assented (*id.*); (11) Mr. Chier (the lone individual in the room advocating on Mr. Hunt's behalf) then objected, saying, "your Honor, we don't consent to your reading that [police] report" (ER-VI-1430; see ER-IV-896);[2] (12) in response, the judge ordered Mr. Chier to shut up and leave the room; (13) Mr. Chier refused to leave, saying, "You are going to have to arrest me.... I have a right to be here in this matter concerning my client's life" (ER-VI-1430-1431); (14) the judge ordered the bailiff to eject Mr. Chier, remarking that he would prefer it be done "forcibly" (*id.*); (15) Mr. Barens apologized for Mr. Chier's objection (ER-VI-1430) and withdrew it (ER-VI-1440); (16) Mr. Barens made no objection to Mr. Chier's removal (ER-VI-1431); (17) with Mr. Chier gone, Mr. Barens suggested that the prosecutor run Mr. Robinson's rap sheet (*id.*); (18) Mr. Barens blessed the prosecutor's handling of Mr. Robinson, even as the jury deliberations continued with his not yet having an opportunity to interview him, stating, "For the record, I think your office has proceeded legitimately throughout this matter" (*id.*); (19) yet to receive any discovery on Mr. Robinson, Mr. Barens further announced, "I don't want the D.A.'s Office to think I am trying to make an issue out of this(!)" (ER-VI-1432), and then made two other remarks to the same effect (*id.*); (20) Mr. Barens described Mr. Robinson's speaking with Mr. Levin as "something that appears disconcerting at this juncture" (ER-VI-1432); (21) Mr. Barens then suggested that Mr. Robinson "be represented by counsel" (ER-VI- 1433); (22) Mr. Barens offered no objection when the judge ordered Mr. Robinson not to speak to defense counsel unless he permitted it(!) (ER-VI-1438); (23) Mr. Barens announced that he could not decide whether to call Mr. Robinson before he interviewed him (ER-VI-1439; but compare ER-VI-1444 [the following morning, Mr. Barens announced, *before he interviewed him*, that he will not call Mr. Robinson]); (24) Mr.

[2] Earlier in the trial, the prosecutor had objected to the judge's seeing a police report related to the Arizona witnesses, without any remonstrance from the judge. (ER-IV-991.1-.2.)

Barens then agreed with the prosecutor that the jury should be instructed to disregard anything they may have heard about Mr. Robinson (ER-VI-1445-1446); (25) Mr. Barens asked to go off the record to explain his reasons for not wanting to talk to Mr. Robinson, despite the fact that he had not yet received the discovery on him (ER-VI-1447); (26) the prosecutor insisted that they go back on the record (*id.*); (27) when the prosecutor indicated that he may decide to call Mr. Robinson to debunk him, Mr. Barens objected, saying, "now that compels me that I would have to do an interview on this man and a background check with this man and spend a lot of time with this man and dignify this man in a manner that I may not choose to do so" (ER-VI-1448-1449); and, (28) a minute later, Mr. Barens further revealed his state of mind: "[Because that compels me to] encourage him further by being able to tell people he has met with defense counsel and all of that sort of thing" (ER-VI-1450).

By 11:00 a.m. the next morning, Mr. Barens would advise the court that he would not call Mr. Robinson as a witness. (ER-VI-1447.) Yet, Mr. Barens would not receive copies of the police reports of their interview of, or the results of the polygraph exam administered to, Mr. Robinson until *two hours later*. (ER-VI-1447.) Strikingly, neither Mr. Barens nor anyone else for the defense interviewed Mr. Robinson before that decision was made. (ER-IV-926 at ¶ 11, 946-947 at ¶ 4; ER-VI-1430-1431.) The fact that Mr. Barens dreaded any contact that would allow Mr. Robinson to tell others that "he has met with" him demonstrates clearly enough that factors other than the effective defense of his client were motivating his decision not to interview him. He most certainly was not acting as any competent attorney must in a death-penalty case, objecting to the prosecutor's conduct that was designed to gain legal advantage by delaying the revelation of Mr. Robinson while jury deliberations continued; objecting to the judge's barring the defense from speaking with someone who might be a critical defense witness until he gave permission to do so; acting with dispatch since the jury might come in with a verdict at any moment; at barest minimum, preserving the issue for appeal; making critical decisions such as whether to call a witness based on adequate knowledge of the available facts; and, *most* fundamentally, capitalizing on the emergence of a potentially outcome-determinative witness.

Post-trial, Mr. Chier reviewed the testimony of Mr. Robinson at the postconviction hearing and concluded, just as with Ms. Waller, that he definitely would have called him as a witness if he had been the one to decide. (ER-IV-848 at ¶ 1.) Mr. Chier recalled "wanting to ask for a stay of deliberations while the Robinson matter was investigated" (ER-IV-946-947 at ¶ 4; ER-VI-1426) as he understood, where Mr. Barens feigned not to, that Levin sightings were "the highest investigatory priority" (ER-IV-934 at ¶ 2).

Thus, as a result of Mr. Barens' conflict with respect to witnesses coming forward to report that they had seen Mr. Levin following his purported murder, Mr. Hunt lost two such witnesses who could have testified at his trial, each of whom was completely independent of the Arizona witnesses and, unlike them, was personally acquainted with Mr. Levin. Mr. Robinson actually had spoken to him.

But there is even more. As previously noted, the prosecutor informed Mr. Barens by letter dated May 4, 1987, that three additional, potentially exonerating eyewitnesses had contacted his office. (ER-IV-921.) The guilty verdict had been returned two weeks earlier, on April 22, 1987. Crucially, neither Mr. Chier, investigator Lee, nor Mr. Hunt was shown the May

1987 letter nor otherwise told of Ivan Werner, one of the eyewitnesses named in it. (ER-IV-862 at ¶ 39G, 934 at ¶ 3, 945-946 at ¶ 3.) Mr. Werner, yet another respectable citizen, was a funeral home director. He saw Mr. Levin at a service held in 1985 or 1986. Mr. Levin and two or three other people arrived early, which gave Mr. Werner a chance to closely observe him. (ER-III-711-712.) The man whom Mr. Werner would later identify as Mr. Levin looked like "a diplomat." (ER-III-723.) Mr. Werner described him as being 6'1" or 6'2" (ER-III-721-722); with silver gray hair, "almost white" (ER-III-722); and effeminate in speech (ER-III-724). While they were speaking, Mr. Werner noticed yellow gold fillings in the man's back teeth. (ER-III-719-720.) Mr. Levin had gold fillings in 20 of his 30 teeth. (ER-IV-1075.) This latter detail is of the same caliber of evidence as the forehead scar noted by Ms. Canchola – it appears to be convincing evidence that the witness did, in fact, see Mr. Levin.

In 1987, Mr. Werner read a newspaper article about the trial; it was either ongoing or recently concluded. The article included a photo of Mr. Levin. (ER-III-714, 717-718.) Mr. Werner *immediately* called the police. Seven to ten days later, an officer called back and Mr. Werner related his information. The officer said that the police would look into it, but Mr. Werner heard nothing further until 1994, when he again saw something in the newspaper about the case and called Mr. Hunt's state postconviction lawyer. (ER-III-715-717.)

Again, despite receiving the prosecutor's May 4, 1987, letter disclosing Mr. Werner (ER-III-728; ER-IV-882-883; ER-IV-921), Mr. Barens *never contacted him* (ER-IV-913-914 at ¶ 2). Mr. Barens was told of Mr. Werner in plenty of time to interview him and present him as a witness in support of a motion for new trial, but he failed to do so. It hardly bears adding here that Mr. Chier would have added Mr. Werner to the grounds for that motion. (ER-IV-945-946 at ¶ 3.)

Also mentioned in the May 1987 letter was the fact that Mr. Levin was seen at a nightclub called "Nippers." (ER-IV-922.) This sighting would prove incapable of investigation given the passage of time (ER-IV-857 at ¶ 29), the direct result of Mr. Barens' withholding the relevant information from the defense team (ER-IV-934 at ¶¶ 3, 5).

Every "sighting" of Mr. Levin that was reported came from otherwise disinterested witnesses. Every one of the eyewitness' reports turned out to have a substantial basis, save one, *i.e.*, the "Kentucky" sighting (ER-IV-934-935 at ¶ 6). None of the sightings was ever recanted. None was refuted by evidence or another percipient witnesses. The Nippers sighting might well have been of equivalent value, but, thanks to Mr. Barens' conflicted representation, there is no way to tell.

But there is yet more. Nadia Ghaleb is yet another eyewitness who came forward to report having seen Mr. Levin after his supposed murder, and the value of her report, like all the others, was lost as a result of Mr. Barens' worrying about the implications to *him* of these witnesses on account of Mr. Titus' report to the authorities. Mr. Barens admitted in a deposition that he was aware in 1987 of Ms. Ghaleb's report. (ER-IV-879-880.) He never interviewed her. (ER-III-737.) Her first interview was performed by an investigator working for Mr. Hunt's codefendant, on May 11, 1987. (ER-III-740; ER-IV-870.) The report of that interview was supplied to someone working on the defense team within a "week or two." (ER-III-738-740.)

That "someone" was Mr. Barens. As noted, he admitted seeing the report, but Mr. Chier was not apprised of it at all (ER-IV-848 at ¶ 2). Neither was the defense investigator. (ER-IV-934 at ¶ 5.) Mr. Barens kept it hidden from both of them.

Ms. Ghaleb was the maitre d' of Mr. Chow's, a celebrated restaurant in Los Angeles in the early 1980's. (ER-III-690.) She also had held positions in public relations, and in hotel and restaurant management. (ER-III-688-689.) The last time that Ms. Ghaleb saw Mr. Levin was shortly before the March 21, 1987, death of her close friend, Dean Paul Martin (Dean Martin's son). (ER-III-695, 698.) She had had extensive contact with Mr. Levin over a period of 11 years. (ER-III-687, 693, 699-700.) She described him as "prematurely gray ... a striking feature. He was always well dressed ... on the tall side ... thin.... He had that very distinct face." (ER-III-692.) She was in her car heading east on San Vincente Boulevard in the Westwood area of Los Angeles. (ER-III-694.) The traffic was congested and her car was moving slowly. It was about 8:30 a.m.:

> I was kind of traveling in stop and start traffic, and I looked over and I saw Ron Levin getting into a car and remarked to myself that, "There is Ron Levin. I haven't seen him for awhile." And it was one of those moments that evoked an era in my life. I just kind of thought about him in that period throughout the rest of my drive to work.

(ER-III-695.) Ms. Ghaleb had her eyes on Mr. Levin for 2-4 seconds. (ER-III-703-704.) Later, when she was watching the news of Dean Paul Martin's death on television, "they flashed this picture of Ron Levin. I was so surprised.... I looked at my assistant, I said: 'I can't believe this. This guy is not dead. I just saw him.' " (ER-III-696.) Ms. Ghaleb had 20/20 vision (ER-III-697) and was certain that she had an adequate opportunity to make a positive identification of Mr. Levin: "I clearly saw Ron Levin." (ER-III-701.) She recalled seeing his whole face. (ER-III-702.) She described him as "a very distinctive looking person," and never saw anyone else who looked like him. (ER-III-705.)

Thus, and again, Mr. Barens deprived Mr. Hunt of another outcome-dispositive witness. In sum, he ignored Mr. Werner entirely, buried the Nippers' information, procrastinated with respect of Ms. Waller such as to lose her as a witness in the guilt phase of the trial; feared to even have contact with Mr. Robinson and thus eschewed the only means to assess his value as a guilt-phase witness, which, as would later be shown, was great; adopted his "sanitary" protocol with the Arizona witnesses that turned them into weapons to be wielded by the prosecutor instead of the powerfully exculpatory witnesses they should have been; and suppressed the Ghaleb information, precluding her inclusion in the new-trial motion. Certainly, if *others* called Mr. Barens to report seeing Mr. Levin, not only will we never know about it, but we can be absolutely certain that, if they did call, Mr. Barens deflected them.

What remains perhaps *most* painful in the manner in which that Mr. Hunt was treated by the judicial system, as referenced above, an actual jury subsequently heard the very eyewitnesses who had seen Mr. Levin after his purported murder, *the jurors found them to be completely credible*, and every reviewing court thereafter simply refused to even consider this most persuasive proof of how his first trial had generated a miscarriage of justice. As noted, he was

separately prosecuted for a second murder (for which the jury refused to convict and which charge was then dismissed). At that trial, the very eyewitnesses whom Mr. Barens could have called, but did not, testified because Mr. Hunt was permitted to call them in response to the prosecution's trying to enhance its chances of securing his conviction by presenting evidence of his supposed murder of Mr. Levin.

The Arizona witnesses were examined there as normal witnesses would be, unlike as they had been by Mr. Barens, that is, without merely "mimicking" questions posed to them by the police, and the jurors found them quite persuasive witnesses. (ER-IV-815 at ¶ 17 [Juror Creekmore: "I felt Ms. Canchola and Mr. Lopez were very believable. Mr. Lopez did not want to come forward. Ms. Canchola knew a lot of facts [about Mr. Levin's appearance] that were not in the *Esquire* article.... The scar was a very important and telling aspect of the identification."]); ER-III-786 at ¶ 8 [Juror Sorelle: "I believe [Ms. Canchola and Mr. Lopez] saw Levin."]; ER-III-772 at ¶ 13 [Juror Carsanaro: "Ms. Canchola was a very credible witness."].) Again: it was the "sanitary tactics" that Mr. Barens adopted with respect to these witnesses that became the very means by which the prosecution discredited them in the eyes of the first jury.

The jurors had the selfsame reaction to hearing Mr. Robinson testify. (See ER-III-773 at ¶ 16 [Juror Carsanaro: "Mr. Robinson was a critical defense witness because he was very credible."]; ER-III-783 at ¶ 8 [Juror Sorelle: "I felt Ron Levin was outrageous and brazen enough to approach Mr. Robinson ...."]; ER-III-792 at ¶ 9 [Juror Morrow's averring that Mr. Robinson added to reasonable doubt]; ER-IV-797-798 at ¶ 5 [Juror Saperstein's averring that the Robinson sighting had value because Robinson both saw and spoke to Levin]; ER-IV-815 at ¶ 16 [Juror Creekmore: "Mr. Robinson was ... credible."].)

The jurors said much the same about Ms. Ghaleb. (See ER-IV-815 at ¶ 15 [Juror Creekmore: "[S]he was sincere. On balance, she helped the Defense."]; ER-IV-797 at ¶ 5 [Juror Saperstein: "I was convinced that she could see and recognize Ron Levin under the conditions she described. I found Ms. Ghaleb to be credible and I took her sighting seriously."]; ER-III-783 at ¶ 8 [Juror Sorelle believed Mr. Levin was alive, citing Ms. Ghaleb as one of the "credible witnesses" leading her to so conclude]; ER-III-773 at ¶ 15 [Juror Carsanaro: "I believe it is very possible to identify someone that you know in the matter of seconds as Ms. Ghaleb indicated."].)

Perhaps enough has been said about how Mr. Hunt was denied the powerful support of the eyewitness testimony from those who saw Mr. Levin following his purported murder, but if there is any doubt remaining about just how powerful that lost evidence was, it should be put to rest by what prosecution team members themselves had to say about it. After the defense rested, the *prosecutor* conceded the vulnerability of his case to the presentation of (what turned out to be readily available) additional exculpatory evidence. He told the judge of his "great fear" that one more sighting witness would cause a "hung jury or worse." (ER-VI-1447.) In addition, the lead case agent conceded in 1993 that, in light of the "five new witnesses who state that they have seen ... Levin after his reported disappearance ... [a] new trial would be hard to win without additional evidence of our own." (ER-III-766.) These are the opinions of State representatives who were *intimately* familiar with the evidentiary facts.

In sum, the evidence available to Mr. Barens, but not presented at Mr. Hunt's trial, when later presented to other jurors at a subsequent trial convinced *them* that Mr. Levin was not murdered. If only *one* juror so concluded at the first trial, Mr. Hunt would not have been convicted. And, as amply illustrated, the reason that the jury did not hear these witnesses was Mr. Barens' choosing to serve himself rather than his client.

II. Ineffective Assistance of Counsel

With the benefit of hindsight, it is easy to see the grave error in Mr. Hunt's judgment in retaining Mr. Barens. He was primarily a personal-injury lawyer. (ER-IV-868 at ¶ 55.) Among other things that he concealed from Mr. Hunt were the facts that he was in Cocaine Anonymous at the time (ER-III-745; ER-IV-885); he had been sued *over 15 times* for professional negligence; and he had a horrendous reputation in the legal community, including for incompetence and perjury, as would later be attested to by four highly respected attorneys (ER-III-729-731, 746-748; ER-IV-865 at ¶ 46).

Wholly apart from Mr. Barens' willful refusal to investigate and present the testimony of the eyewitnesses who claimed with certainty that they had seen Mr. Levin after his purported murder, discussed above, his effort to present the defense that Mr. Levin had jumped bail to avoid incarceration was woefully inadequate. In a *capital case,* Mr. Barens did not even begin to investigate until *after* the prosecution rested its case, *i.e.*, approximately two and one-half years after he had been retained. Again, although it beggars belief, he performed *no* pretrial investigation at all. None of the prosecution witnesses was interviewed prior to taking the stand. Mr. Barens did not even bother to obtain, let alone review, the transcripts of the earlier trial of Mr. Hunt's codefendant, though, of course, they contained the testimony of many of the prosecution witnesses who would then testify against him. By way of objective contrast, the lawyer who successfully defended the codefendant (who was not convicted of the murder that, according to the prosecution's theory, he personally committed at Mr. Hunt's direction),[3] had over 150 witnesses interviewed before trial. (ER-IV-959.) Mr. Barens interviewed *none.* At Mr. Hunt's second trial, 44 defense witnesses took the stand to address the alleged Levin killing (Ex. 201, ¶ 7); in the trial at which he was represented by Mr. Barens, there had been 4.

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[3] The case against this codefendant failed twice. Following a mistrial due to the inability of the jury to reach a unanimous verdict, he was retried after Mr. Hunt's trial to the same result. The murder charges against him were then dismissed. (ER-III-765; *see* CR-248-15.) To me, this is yet further proof of how Mr. Hunt's trial's outcome would have been different had he only been competently represented and tried before an impartial judge. Parenthetically, the first mistrial of his codefendant occurred at a trial presided over by Judge Rittenband, where the jury's vote was 11-1 in favor of conviction, whereas the second, tried before an impartial judge, ended with a vote of 10-2 in favor of acquittal. In fact, the prosecution charged a third person in connection with the murder of Mr. Levin, Reza Eslaminia, and that case ended with the dismissal of charges against *him*. Thus, in the four trials in which conviction was sought for the murder of Mr. Levin, the lone time it was secured was at Mr. Hunt's trial, tainted as it was, unlike the others, with the massive incompetence of and betrayal by a defense lawyer, and the equally massive misconduct and partiality on the part of a judge.

The abject incompetence of Mr. Barens. The other professionals on the defense team, that is, those in the best position to assess whether he was providing the sort of representation to which Mr. Hunt was entitled, all contemporaneously came to the same conclusion. Prior to trial, two attorneys and three investigators were retained by Mr. Barens. By the time of trial, *all* of them had concluded that he was *not* providing barely competent representation. Four of them withdrew from the case for that very reason. (*See* ER-IV-931-932 at ¶¶ 1, 3, 936 at ¶¶ 1, 4, 939 at ¶ 7.) The fifth was Mr. Chier, who stayed on as Mr. Barens' silenced assistant, but only because Mr. Hunt begged him not to abandon him. (ER-IV-946 at ¶ 4.)

To be more specific: Lewis Titus, a former lieutenant in the Sheriff's Office and an experienced capital defense attorney (referenced above regarding his reporting Mr. Barens' potentially criminal conduct to the authorities), resigned after the preliminary hearing in 1985, "quite alarmed about Mr. Barens' professional competence and ethics." (ER-IV-931-932 at ¶¶ 1, 3-5.) He found Mr. Barens "so poorly versed in criminal law" as to be "dangerous." (ER-IV-933 at ¶ 7.) John and Martie Jensen, highly experienced guilt-phase capital-case investigators, resigned on the eve of opening statements, finding the attorney "supervision of the case [] so unprofessional as to make it impossible ... to do even minimally acceptable investigation." (ER-IV-936 at ¶ 4.) It was the first and last time in their long careers that they did so. (*Id.*) They found Mr. Barens' unresponsiveness particularly frustrating because they had "a wealth of viable leads" (*id.* at ¶ 6), lost because they could not obtain "the necessary logistical assistance and strategic direction" (*id.* at ¶ 5). Mr. Barens would not even return their calls, let alone supply "the factual and documentary support" they needed. (*Id.* at ¶ 7.) Casey Cohen, a renowned specialist in penalty-phase investigation, who worked on approximately 110 special-circumstance cases (ER-IV-938 at ¶ 1), joined the defense team on June 5, 1986 (*id.* at ¶ 2), but quit on March 11, 1987, after concluding that Mr. Barens had a "grossly inappropriate and irresponsible orientation ... towards his duties" (ER-IV-939 at ¶ 7). It was the only time in Mr. Cohen's career that he had to quit a case for such a reason. (*Id.*) Succinctly summing it up, he concluded that Mr. Barens "did not know what he was doing." (ER-IV-938 at ¶ 5.)

As a result, Mr. Levin's pre-disappearance statements and actions, which would have provided powerful support for the defense, were never presented to the jury. Mr. Levin was a notorious con-man, known to operate through several false identities, including those of doctor and lawyer. (ER-IV-1032-1033, 1037-1043; ER-V-1224.) On June 6, 1984, the day he went missing, he was free on bail as he awaited the start of his trial on 12 felony counts of grand theft with enhancements. (ER-IV-1053, 1060-1062.) He had just learned that a close associate had agreed to cooperate with the prosecution against him, and that additional charges were about to be filed. (ER-IV-1065-1066.) He promptly, just prior to his disappearance, spent $10,000 in fees to take a bail lien off his mother's home so as to free his parents of potential liability should he abscond. (ER-IV-1054-1059.) Among other facts that only came to light following the trial, when the adequate investigation was performed that Mr. Barens eschewed, are the following:

Oliver Holmes, a former attorney, was Mr. Levin's friend and legal aide (ER-III-630-636; ER-IV-964-965), whom Mr. Barens neither interviewed nor called as a witness. In early 1984, after Mr. Levin's arrest on the 12 grand-theft charges, he sought Mr. Holmes' advice. Mr. Holmes told him he was "in serious trouble." (ER-III-635-636.) Mr. Levin specifically wanted to know whether an American could avoid extradition through bribery (ER-III-639-641, 647),

remarking that his own research had indicated there was a moratorium that preempted extradition from Brazil (ER-III-649-650). He explained that it was a journalistic interest (*ibid.*), though he was not a journalist. On the day before his disappearance, Mr. Levin demanded that Mr. Holmes return the key to Mr. Levin's house that had enabled Mr. Holmes to work on Mr. Levin's criminal case there. (ER-IV-964-965.) Mr. Holmes had that key for months. (ER-III-642.) Mr. Levin made up a lie about his maid's losing his house keys to explain the demand. (ER-IV-965.) He was agitated. He told Mr. Holmes that he had just learned that a close friend had betrayed him by providing information to the authorities. (ER-III-644, 647-648.)

Mr. Barens was aware of Mr. Holmes. There were two multi-page police interview reports on him. (Hearing Exs. 216, 240.) Mr. Barens admitted seeing them. (ER-III-731.1-.2.) The prosecutor testified he disclosed all the discovery to him. (ER-III-726-727.) The Jensens, then the defense investigators, were aware of Mr. Holmes, and were tasked to interview him (ER-III-741-742; ER-IV-969), but they quit before doing so on account of Mr. Barens' bizarre behavior (ER-IV-936-937). Thus, it is abundantly clear that Mr. Barens did not make a reasoned decision to ignore Mr. Holmes, nor did he lack sufficient information to justify a decision to interview him. Rather, he simply failed to have interviewed a witness who was known by him to possess favorable information, which was just one piece of his grossly incompetent management of the entire defense investigation. (See ER-IV-936-937.)

The list of defense witnesses left uninvestigated and unpresented by Mr. Barens goes on. John Duran was Mr. Levin's longtime hairdresser. (ER-IV-961.) Mr. Levin visited him every two weeks throughout their relationship that had spanned some 12 years. (*Id.*) Mr. Duran was startled when, on the occasion of Mr. Levin's last visit to his hair salon, Mr. Levin inquired about dyeing his hair and beard brown. (*Id.*) Mr. Duran was shocked because he understood that Mr. Levin considered his gray hair to be his most striking feature. (*Id.*) Mr. Duran tried to talk him out of it. (*Id.*) When Mr. Levin remained adamant, Mr. Duran reluctantly offered to do it for him. (*See* ER-IV-829-831 at ¶ 11.) Mr. Levin refused the offer, but called back just before his disappearance, at which time he sought and obtained detailed instruction on how to dye his hair and beard. (ER-IV-961-962.) Testimony at my trial established that brown stains were found in Mr. Levin's bathtub, which the police determined were not blood. (ER-V-1213.) In the absence of Mr. Duran's testimony, the jury had no basis to draw the reasonable inference that Mr. Levin had dyed his hair just before fleeing, staining his tub in the process.

Again, there was no investigation in this capital case until after the prosecution rested its case-in-chief, a scant three weeks before the jury verdicts. (CR-191-1-3, 69-70; ER-IV-923 at ¶ 2, 928-929 at ¶¶ 22-26, 934-940; ER-V-1273-1279; ER-VI-1381-1382.) As a result, the jury neither heard that, on the eve of his disappearance, Mr. Levin was researching extradition treaties after learning that a close friend had turned state's evidence against him, nor that he was then making uncharacteristic, unprecedented inquiries about altering the color of his hair. The value of that loss to Mr. Hunt is self-evident.

The next witness his jury did not hear, but should have, was Karen Marmor, the wife of a prosecution witness, Leonard Marmor. Ms. Marmor lived next door to Mr. Levin. She was a former bank operations officer. (ER-III-651-654.) She described Mr. Levin in the same manner as did all the witnesses who saw Mr. Levin alive after his supposed murder: tall, lean,

meticulous, the best clothes, beautiful silver hair and beard, very intelligent, and very sophisticated. (ER-III-655-656.) On an occasion, which she estimated as being about two to seven days before his disappearance, Mr. Levin hailed Ms. Marmor as she was leaving her apartment, urgently asking her to come inside his place. (ER-III-657-658, 664-665.) This was the last time she saw him. (ER-III-673.) He was very upset. (ER-III-659.) He said someone had just threatened him (ER-III-666-667) and told her that he was going to New York and might not return. She did not know how to take this because, with Mr. Levin, one never knew if he were serious or not. (ER-III-669-670, 672.) However, Mr. Levin seemed serious when he emphatically stated that he would not go back to jail, telling her that "you have no idea what they do to you in there." (ER-III-657.) Their conversation was interrupted by Mr. Levin's talking on the telephone to someone about transferring money, possibly overseas. Waiting, Ms. Marmor picked up some yellow legal paper that was on Mr. Levin's desk. It was titled, "To Do" (ER-III-660) and said something about "kill dog" and "handcuffs." Mr. Levin pulled it away from her. (ER-III-660-661), explaining that it and a script were parts of a movie project that he was working on. (ER-III-662-663, 668-669.) The script had something to do with a trip to New York and a disappearance amidst a fake murder. Ms. Marmor did not have a clear recollection of the elements of the plot. (ER-III-671.)

That list which Ms. Marmor saw in Mr. Levin's possession was the centerpiece of the prosecution's case against Mr. Hunt, but, had the jury learned of Ms. Marmor's observation, it could not have served as such. In fact, that observation would have proven the lies that the most important prosecution witness, Dean Karny, was telling about the list and the defendant. The jury heard that this "To Do" list was found by Mr. Levin's stepfather in August 1984 at Mr. Levin's home. (ER-V-1088-1090.) Not only was this list singled out by the trial judge, who, sua sponte, ordered distribution of individualized copies to each juror (ER-V-1118; ER-VI-1402), but the prosecution made billboard-sized posters out of it and expounded from the stand for hours about its putative meaning. The prosecutor made much use of it in his closing arguments. (*E.g.*, ER-V-1371-1372; ER-VI-1412-1415.)

Yet, had the jury learned that Ms. Marmor saw the list in Mr. Levin's possession, none of that would have been possible. According to Karny and the prosecutor, Mr. Hunt had written the list in furtherance of a plan to rob and murder Mr. Levin. (ER-V-1242-1243.) Karny also testified that Mr. Hunt *still had the list at about 6:00 p.m. on June 6, 1984*. (ER-V-1247-1249.) If the jury had heard Ms. Marmor's testimony of having seen it in Mr. Levin's possession days earlier and given it any credence whatsoever, it would have neutered the core of the prosecution's case, as it should have.

Mr. Barens conceded in his postconviction hearing testimony that someone on the defense team should have interviewed Len Marmor as he was Mr. Levin's *next-door neighbor*. (ER-III-732-733; ER-IV-1047), that is, he lived in the adjacent apartment to that where the killing was alleged to have taken place. Mr. Barens agreed that it "was probably important" to interview Mr. Levin's neighbors. (ER-III-734.) Karen and Len Marmor were presumptively the most important neighbors not only because of their proximity, but also because Len was the only neighbor testifying for the prosecution, and he presented himself as Mr. Levin's closest confidant. (ER-IV-1044-1048.) Moreover, in a memo that Mr. Hunt wrote Mr. Barens from jail, he specifically asked him to interview them. (ER-III-743-744; H.Ex. 244.) None of that made a

difference to him. He never did, and so Ms. Marmor's exculpatory testimony was lost to the defense.

Next, it turned out that Mr. Levin had at his disposal half a million dollars to fund his flight, but Mr. Barens failed to learn of and present that significant fact. In its closing argument, the prosecution made much of the fact that some funds – up to $40,000 – were found in Mr. Levin's accounts after his disappearance, wielding that fact to ask why a person who absconded voluntarily would do so without taking with him all the money he could. (ER-V-1364-1369.) Had the jury been presented with evidence that Mr. Levin had available to him much larger sums of money that could not be accounted for in the wake of his disappearance, the prosecution's use of the $40,000 would have been neutralized. It could have been effectively argued that a con man who absconded with very substantial ill-gotten gains *would* leave a much smaller amount behind precisely to convince law-enforcement authorities that he had not voluntarily fled to escape his prosecution. Mr. Barens, however, failed to present ample evidence regarding Mr. Levin's illicit sources of income and of the missing $500,000, which would have supported the defense that he was a fugitive, not a corpse.

In the state postconviction proceedings, Mr. Hunt's lawyer presented proof that, in 1983 and 1984, Mr. Levin defrauded Progressive S&L of $157,000, Merrill Lynch of $107,126, BPF Travel Company of $26,831, Thomas Cook Travel Company of $45,000, insurance companies of $500,000, camera companies of $700,000, and a medical doctor of the better part of $1.3 million. (CR 238, Lodgment D; CR 191 at 12-13.) The relevant facts and witnesses could easily have been developed by Mr. Barens' simply reviewing the file of Mr. Levin's conservator, who testified at the trial of Mr. Hunt's codefendant. (ER-IV-958.) The prosecution never specifically disputed the adduced proof or the allegations based thereon, either in state or federal court. (CR 238, Lodgment J; ER-III-506 *et seq.*) Indeed, they filed an expert reevaluation of the conservator's financial records that disclosed $500,373.92 in "unexplained transfers" out of Mr. Levin's accounts. (ER-III-748.1-.2.) This sum was withdrawn from the Levin accounts that the conservator knew about, *but was not paid to any traceable third party*. The probative, exculpatory value of Mr. Levin's missing $500,000 is, again, self-evident.

There was another important piece of evidence that the jury did not hear, consistent with the rest, regarding an American Express credit-card transaction. John Reeves worked for the security division of American Express and testified for the prosecution. He reported, among other things, that Mr. Levin had a balance owed on his credit card of nearly $50,000 when he disappeared. (ER-V-1086-1087.) He had charged nearly $24,000 in the previous month. (ER-V-1085.) There were scores of charges, but one deserved and received special attention – a June 7, 1984, charge at a Los Angeles Brooks Brothers clothing store for $83.07 (ER-IV-1081) on an American Express Card with the last five digits of 82028 (ER-IV-1082). That charge post-dated by one day the date on which the prosecution alleged that he was murdered. The prosecution explained away this inconvenient fact with the notion that the transaction actually occurred on *May* 7, 1984, when Mr. Levin made three other charges at Brooks Brothers. (ER-IV-1081, 1083.) Responding to the prosecutor's leading questions, Mr. Reeves testified that the June 7th transaction that appeared on the credit-card statement more likely *did* occur on May 7th despite what the charge said. Because, "[i]n order to produce this date on this document it has to go

through a minimum of 2 hands" (ER-IV-1083-1084), the June 7th date could "easily" have been a mistake, he said.

It should come as no surprise to the reader that Mr. Barens admitted that he never looked at the American Express records prior to Mr. Reeves' taking the stand. (ER-IV-1067, 1070). As a result, a false picture of the bona fides of this June 7, 1984, transaction was presented to the jury, and, yet again, important evidence that Mr. Levin was still alive after June 6, 1984, lost all force and effect.

First, Mr. Reeves, for whatever reason, testified incorrectly. The information transmitted to American Express electronically is *not* retyped by two people. There was, consequently, no possibility of a key-punch error at their headquarters. He admitted this during the second trial, where he was called as a *defense* witness. (ER-IV-841 at ¶ 7.) It turned out that the Brooks Brothers' computer network interfaced *directly* into the American Express computer systems. (ER-III-758.)

Second, had Mr. Barens actually conducted an investigation, he would have learned that the June 7th date *had* to be accurate. Mr. Reeves explained that reference numbers are generated by the merchant. (ER-IV-1080.) The three May 7 transactions had reference numbers which were sequential, but the reference number for the June 7th charge at Brooks Brothers was 2,965 transactions after the three charges that were made there on May 7th. (*See* ER-III-759-762.) The reference numbers are not inputted manually, and the date was not inputted manually either, but derived from the system's internal clock/calendar. (CR 10, Ex. 145.)

Third, had Mr. Barens bothered to actually look at the American Express bills, he would have seen that the three May 7, 1984, transactions were grouped together on page 1 of the 11-page American Express statement of June 12, 1984, while the June 7, 1984, transaction was on page 11 of that bill. Mr. Reeves testified at my second trial that, under normal conditions, all electronic submissions are recorded during the cycle of the day they occur. (ER-III-763-764.) The June 7th transaction's position 10 pages apart from the May 7th transactions confirmed what the date and reference number indicated: the fourth transaction happened on June 7th, not May 7th.

Again, it was the prosecution's theory, built on the testimony of Dean Karny, that Mr. Levin died on the night of June 6, 1984. (ER-V-1249-1251.) American Express issues only one card per card number. (ER-IV-1082.) The card in question was found at Mr. Levin's residence. (ER-V-1214-1216, 1361; Trial Ex. 106.) The cross-corroborating evidence of the date and reference number on these American Express records, therefore, could have provided strong support for the defense argument that Mr. Levin did not leave, or die in, Los Angeles on the night of June 6, 1984, but, thanks to Mr. Barens, yet again, what should have been proof of his client's innocence was lost to him.

Just as with the eyewitnesses who saw Mr. Levin alive after his supposed death, the witnesses discussed in this section, who were not called at the trial due to Mr. Barens' bewildering incompetence, testified at the second trial and, just like those other witnesses, the jurors found them to be credible, important witnesses:

> Mr. Oliver Holmes testified that Levin had described to him how he had been researching the extradition treaty between Brazil and the United States. This had a big impact on me. Mr. Holmes even said that Levin had called the State Department to find out when the treaty went into effect, apparently being told that it did not do so for about a year. This was proof to me that Mr. Levin had been considering fleeing for some time. I believe that he ultimately did so.

(ER-IV-826 at ¶ 8 [Juror Achiro].)

Juror Saperstein described Mr. Holmes as "a witness that helped change his mind [about Mr. Hunt's guilt]." (ER-IV-806 at ¶ 19.) Juror Carsanaro described Mr. Holmes as a "key witness." (ER-III-772 at ¶ 11.) Juror Creekmore found his testimony about Mr. Levin's research to be "glaring evidence of Levin's intentions [to flee]." (ER-IV-816 at ¶ 19.) Juror Sorelle described at length the powerfully exculpatory inferences she drew from Mr. Holmes' testimony. (ER-III-780 at ¶ 6(E)(3).) Again: it was *highly* unfair for the reviewing courts to simply ignore what actual jurors who heard the evidence that Mr. Barens should have presented, but did not for reasons of his own, had to say about it. One would have thought our criminal justice system demanded more.

As to Mr. Duran, Juror Achiro described his testimony as "powerful evidence" that helped convince her that "Levin had altered his appearance to make good his escape." (ER-IV-829-831 at ¶ 11; see also ER-III-751-757.) Juror Saperstein stated that Mr. Duran was "very important." (ER-IV-803 at ¶ 12.) Juror Sorelle stated that Mr. Duran "really swayed me. He was a very believable witness and very informative.... He was a very important witness." (ER-III-782-783 at ¶ 7.) Juror Carsanaro: "Mr. Duran was a very important witness." (ER-III-771-772 at ¶ 10.) Juror Creekmore: "I could not understand why Levin would want to [dye his hair] at home, it just wasn't his style.... [Mr. Duran's testimony] made me think, 'What is this guy planning?' " ... Detective Zoeller had seen a brown stain in the bath tub [see ER-V-1213] ... Given that Levin called Mr. Duran right before he disappeared it stands to reason that this was hair dye." (ER-IV-813-814 at ¶ 14.)

Regarding Karen Marmor, the jurors at my second trial, once again, established plainly enough the gravity of the loss to Mr. Hunt of Mr. Barens' ineptitude. Juror Creekmore stated:

> [Karen Marmor was] very important. I accepted her testimony.... I saw her as being fair and neutral.... I believed Karen Marmor [over Dean Karny]. It was an easy choice: a former bank officer vs. an immunized and self-admitted perjurer....

(ER-IV-812-813 at ¶ 11.) Juror Achiro stated, "Possibly the most important witness on the issue of what happened to Ron Levin was Karen Sue Marmor. She was great! ... [S]he was very straightforward...." (ER-IV-826 at ¶ 9.) Juror Saperstein: "I believed Karen Marmor.... Her testimony added to the reasonable doubt that I came to believe." (ER-IV-795-796 at ¶ 4.)

Juror Morrow described Ms. Marmor as one of the "most significant witnesses on the Levin case," finding her credible. (ER-III-790-791 at ¶¶ 4-5.) He added: "I felt [Ms. Marmor] was a very credible witness on the stand.... [She] was a big factor in the deliberations and in my thinking." (ER-III-792-793 at ¶ 10.) Juror Carsanaro: "Ms. Marmor was "a very credible witness." (ER-III-770 at ¶ 6.)

The jurors at the second trial also heard of the half-million dollars missing from Mr. Levin's accounts. One of them stated that the "money Levin left behind ... was not so much to be material to him" because Levin " took in close to one million dollars in the 18 months before he fled...." (ER-III-781 at ¶ 6(E)(6).) In the absence of the evidence that Mr. Barens failed to develop, supporting the inference that Mr. Levin fled with (at least) the missing half-million dollars, the prosecutor could and did argue persuasively that the money left in his account proved that he was a victim of foul play. It was only Mr. Barens' dereliction of duty that allowed the prosecutor to do so.

None of the foregoing made any difference to the reviewing courts, a "harshness" that no defendant deserves. The facts should have spoken for themselves, as they continue to do. Mr. Barens took on the case in November 1984 (ER-IV-889 at ¶ 4), but did not even hire guilt-phase investigators until April 1986 (ER-IV-936 at ¶ 1), though he had the duty to conduct a "prompt" investigation. These investigators quit in January 1987 because Mr. Barens would not even return their calls, let alone provide them with documentary and strategic direction. (*Id.* at ¶¶ 1, 4.) Mr. Barens sought no continuance on account of the absence of investigation, just as he sought no continuance upon the silencing of Mr. Chier. Moreover, although he nominally hired a replacement investigator on February 11, 1987, one week *after* opening statements (ER-IV-934 at ¶ 1), by his own admission he took no action to develop the defense case until after the prosecution rested on March 24, 1987 (ER-V-1201, 1278-1279; ER-VI-1381-1382). Inadequate in *any* circumstances, it should have been that much more glaring to the reviewing courts that this failure occurred in a capital case. Again, the jurors in Mr. Hunt's second trial *proved*, with their declarations under oath, how much was lost on account of Mr. Barens' incompetency.

III. Judicial Bias and Misconduct

Judge Rittenband intervened literally hundreds of times in the course of the trial to emphasize inculpatory testimonial evidence and to make caustic comments about the defense theory, defense lawyers, witnesses, and evidence. (*See* ER-III-615-618.) Never once, by his own admission (ER-V-1315), did he make such comments in a manner favorable to the defense. But that is just the tip of the iceberg. Always quick to get himself assigned the most high-profile cases in the Los Angeles courthouse, he would be disgraced for his off-the-record malfeasance in Roman Polanski's case. (See *Polanski v. Superior Court* (2009) 180 Cal.App.4th 507, 512, 514 [taking note of the "extremely serious allegations of judicial … misconduct that have been brought forward," which "are in many cases supported by considerable evidence…. To the extent that these allegations are true – and from the documentary evidence filed with this court, it appears to this court that there is a substantial probability that a court conducting an evidentiary hearing would conclude that many, if not all, are true – they demonstrate [on the part of Judge Rittenband] malfeasance, improper contact with the media concerning a pending case, and unethical conduct."].) That malfeasance and unethical conduct pale in comparison to his conduct

throughout Mr. Hunt's trial proceedings. I have argued that there has never been a published decision in the history of this country that reveals a more extreme abandonment of the judicial role and duty of impartiality than occurred in this case, and I stand behind that assessment today.

Two alibi witnesses testified for the defense. Judge Rittenband, sua sponte, used a newspaper article – which was not in evidence and which he mischaracterized – to communicate to the jury that the article *proved* that one of them, Lynne Roberts, had perjured herself. (DS 150-51.) The jury saw this article. (Exs. 12B, ¶ 9; 12C, ¶ 9; 12E, ¶ 9; DS 150-51.) The judge said, loud enough for the jury to hear, that the other alibi witness, Brooke Roberts, appeared "completely coached." (RT 11527.) Those were hardly isolated instances. (See RT 11530 [judge's calling Brooke a "hatchet woman" loud enough for jury to hear]; DS 149 [judge's insinuating before jury, without foundation, that Mr. Hunt was having an affair with Lynne]; DS 148 [judge's interrupting the prosecutor's cross of Brooke to leeringly comment, "Have you ever tried to shut up a woman when she's in the mood?"].) The judge asked Brooke *three* times whether Mr. Hunt had discussed her testimony with him before she took the stand. (RT 11788.) The judge posed the same question to Lynne *four* times. (RT 11842-11844; DS 149.)[4]

The judge *repeatedly* broke into the prosecutor's direct examinations so as to highlight points harmful to the defense, and, again, he candidly *admitted* such intent. (RT 11858; DS 123-162.) He barged into the prosecutor's examination of Karny, the chief prosecution witness, to have him describe in greater detail the purported dismemberment of Mr. Levin's body (RT 10955), testimony calculated to maximally inflame the jury. Relying on homosexual stereotypes supported by nonverbal histrionics, the judge attacked the Arizona eyewitnesses. (DS 153.) He also took the "To-Do" list found at Mr. Levin's apartment, had his clerk make a copy for each juror, ordered their distribution at the time of its introduction, and then, as retribution for one of Mr. Chier's judicial misconduct motions, permitted the jurors to hold on to the copies for the duration of the trial. *N.b.*, it was the judge himself, not the prosecutor, who decided to do all that. (DS 154-57.) I, for one, have never seen such abandonment of impartiality on the part of a trial judge in my over 30 years of practice. There really is no question but that Mr. Hunt's conviction was tainted by the blatant, nauseating partisanship displayed by Judge Rittenband.

The judge's silencing Mr. Chier was part and parcel of that. At the time of Mr. Hunt's trial, he "complete[ly]" and fixedly "detested Mr. Richard Chier," explaining "that his opinion was formed" (doc. 10, Ex. 106) because of what he perceived to be opprobrious conduct by Mr. Chier in 1983 when Mr. Chier lived in an apartment building owned by "very, very, close friends of the judge (*id.*, Exs. 103; 106 at ¶¶ 4, 5). The judge had personally intervened in that landlord-tenant dispute, twice calling Mr. Chier, advising him that he should cooperate with the demand that he "vacate," "upbraid[ing] Chier for the distress" he was causing the judge's friends, and raising the specter of blackening his "reputation" as retribution should he refuse to comply. The judge punctuated his second call by referring to the power he had as "the Senior Judge in the West-District." (*Id.*, Ex. 106 at ¶ 6.) Far earlier, in the late 1960's, Judge Rittenband called the head of the law firm at which Mr. Chier was working, to complain about his conduct in a case

[4] Lynne Roberts testified again at the second trial. There, free from Judge Rittenband's unrelenting assaults, the jurors found her "credible," "good," and "honest." (Exs. 204, 205, 207, 208.) Had a single juror at the first trial so concluded, she could not have voted to convict.

that was then before the judge, referring to Mr. Chier as "a little punk" and asking that he be fired. A former prosecutor and close personal friend of the judge averred that, during Mr. Hunt's trial, the judge told him that "he was irritated by the presence of Mr. Chier ... and that he had arranged things so that Mr. Chier would keep his mouth shut during the proceedings." (Doc. 10, Ex. 106.) As noted above, the judge stated for the record a pretextual reason for silencing him – it was in *Mr. Hunt's* best interests – but, unsurprisingly, he refused to hear argument or take evidence before making that critical finding. (RT 6008, 6022, 10600, 10606.) Needless to say, when the judge told his friend that he had arranged the silencing of Mr. Chier, he said nothing about his purported solicitude for the quality of Mr. Hunt's representation. (Doc. 10, Ex. 106.)

During the trial, with Mr. Chier's staying on as Mr. Barens' silent assistant out of loyalty to Mr. Hunt, Judge Rittenband repeatedly and viciously attacked him in the most unjudicial manner possible. The examples abound. (See, e.g., RT 12495 ["The Court: Shut up, you miserable …," the court reporter noting the rest of that sentence was "unintelligible"]; RT 13282 ["I think he is a discredit to the profession"]; RT 15215 ["Shove it"]; RT 12498 ["Junior Miss"]; RT 14256 ["sleazy"]; RT 14308 ["unscrupulous"]; RT 13169 ["go in the bathroom; that is appropriate [for you]"]; RT 13245 [judge's stating he would "like to" eject Mr. Chier "forcibly"); RT 10333-10334 [judge's telling bailiff to "take him by the back of the neck if you have to"]; Doc. 191 at 83-90 ["I don't want him in this courtroom"; "[it] would be better even if we can get him out of here"; "this is why I told you [Barens] I didn't want this man on this case didn't I?"; "I don't want to subject you [Barens] to any more of this abuse from this so-called lawyer"; "I am talking about that alleged lawyer"; "I don't recognize him as a lawyer in this case"; "big mouth"; "you are not a lawyer"; "this lawyer, so-called"].) The judge baselessly threatened Mr. Chier with contempt 11 times. (See doc. 191 at 88, 99-110, 163-166). Almost needless to add, Mr. Chier, a certified criminal law specialist, had never been cited for contempt by any judge over the course of his multi-decade career. (See doc. 191 at 100-101.) The jury was, beyond any doubt, all-too-aware of the judge's antipathy to Mr. Chier.

But, not content with evincing that contempt, the judge also made clear to the jury his opinion about Mr. Barens, namely, that he was an utter buffoon. The judge repeatedly rebuked him in front of the jury in humiliating ways. (Doc. 6, Ex. G [collecting transcript excerpts providing a plethora of examples].) The judge's evidentiary interventions, coupled with a plethora of non-verbal histrionics (described in declarations by courtroom observers) and sarcastic one-liners, and his undisguised contempt of defense counsel, made plain as day to the jury that he wanted them to convict Mr. Hunt. Defendants are entitled to better.

I can assure the reader that there is far more that went awry at Mr. Hunt's trial, but as the foregoing should make sufficiently plain, I don't believe there can be any doubt but that he was convicted by a deplorable combination of judicial misconduct and incompetent, corrupt representation by Mr. Barens. I further believe, equally strongly, that he remains incarcerated today only because reviewing courts refused to recognize the unreliability of his conviction generated thereby by turning a blind eye, above all else, to the definitive proof that demonstrated as much, that is, the views of actual jurors who subsequently heard the defense that should have been, but was not, presented at his trial.