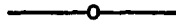


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8/15/85
Date 7/85

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA



THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff
and Respondent/Appellant

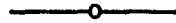
VS

No. A090435 - AUGMENTATION
X-Ref. W/B029409

T/N HUNT, JOE
AKA GAMSKY, JOSEPH HENRY
Defendant
and Appellant/Respondent



CLERK'S TRANSCRIPT



Appearances:

Counsel for Plaintiff and Respondent:
THE ATTORNEY GENERAL

Counsel for Defendant and Appellant:

DANIEL A. DOBRIN, ESQ.
1753 CENTINELA AVE.
SANTA MONICA, CA. 90404

C/o CALIFORNIA APPELLATE PROJECT

Appeal from the Superior Court,
County of Los Angeles

Honorable L. J. RITTENBAND Judge

Date Mailed to:

Defendant (in pro per) _____

Defendant's Trial Attorney _____

Defendant's Appellate Attorney _____

District Attorney _____

Attorney General _____

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NOTICE TO APPELLANT:

In the event that a request for corrections is filed, counsel should deliver his copy of the transcript to the court clerk at the time of the hearing so that it may be conformed.

CLERK'S TRANSCRIPT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FILED

JAN 14 1985 -

S. M. SEIDLER, Clerk Municipal Court
Beverly Hills Judicial District

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

JAMES PITTMAN and
JOE HUNT

Defendant.

M.C. No.
D.A. No. A 090435L PALUMBO Deputy

PETITION AND REQUEST FOR ORDER
REQUIRING WITNESS TO ANSWER
QUESTIONS AND PRODUCE EVIDENCE
UNDER SECTION 1324 Penal Code
of California

BEVERLY HILLS JUDICIAL DISTRICT
APR 2 - 1985

Comes now the District Attorney of the County of Los Angeles, pursuant to Section 1324 of the Penal Code of the State of California, and alleges:

That there is now pending in the Municipal Court of the Beverly Hills Judicial District a case entitled The People of the State of California, plaintiff, v. JAMES PITTMAN & JOE HUNT, defendant; Municipal Court No. A 090435 wherein defendant is charged under Section 's 187 and 211 of the Penal Code of the State of California, with the crimes of Murder and Robbery

That Dean Karny is a necessary witness for the People and the testimony of this witness is material, competent and relevant. That petitioner believes this witness will testify in substance as follows:

That he has known co-defendant Joe Hunt since they were in the 8th grade. They became re-acquainted in 1980. In 1982 Joe Hunt, Dean Karny and several others formed a fraternal and business organization called the Bombay Bicycle Club (BBC). Defendant Pittman became a member of the BBC and was a good friend of defendant Hunt. The BBC was an umbrella organization for a group of corporations, one of which traded in commodity futures. Defendant Hunt was the primary trader of commodities for the corporation. Hunt lost all of the money that people had invested in the commodity trading business. Hunt recruited other investors and used their money to pay off the original investors.

In mid 1983 Hunt met and befriended Ron Levin, the victim in this case, believing that Levin was wealthy and had money to invest. In early 1984 Hunt began planning to kill Levin. When Hunt heard that Levin was going to New York, he decided to rob and kill Levin, dispose of the body, and make it appear that Levin had gone to New York. He planned to make the robbery appear to be a business transaction where Levin paid money for an option to market a machine that Hunt's company was developing.

After the murder there was a meeting of the BBC where Karny heard both Hunt and Pittman admit they had killed Ron Levin.

Karney knew of Hunt's plans for the murder because he watched Hunt prepare lists of things to do in the killing. Karny participated in a plan to "send" letters to Levin to set up a defense that Hunt and Levin were friends. These letters were typed by the BBC secretaries, but intercepted by Karny before mailing, and given back to Hunt so he could put them in Levin's house at the time of the murder.

After the murder Karny assisted Hunt in an attempt to cash a \$1.5

million check that was obtained from Levin in the robbery/murder. Karyn knew that Hunt had killed Levin the day before the check was cashed.

Karyn was a philosophical desciple of Hunt and would do anything Hunt told him.

That said person upon being questioned refuses to answer questions and produce evidence on the ground that said person might be incriminated thereby; that the use of the above named person as a witness is not contrary to the public interest and could not subject said person to criminal prosecution in another jurisdiction.

That there is attached hereto a waiver by said person of the right to show cause why questions should not be answered or evidence produced.

WHEREFORE, the District Attorney of Los Angeles County respectfully requests that, pursuant to the provisions of Section 1324 of the Penal Code of the State of California, an order be issued, forthwith, by this Honorable Court requiring said person to answer such questions and produce such evidence which, but for Section 1324 of the Penal Code, this person would be privileged to withhold on the ground that such testimony might be self-incriminating.

IRA REINER, District Attorney of
Los Angeles County, State of California

By *Fred Warner*
Deputy District Attorney

DATED: January 11, 1985

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

03

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

M.C. No.
D.A. No. A 090435

v.

JAMES PITTMAN and
JOE HUNT

Defendant.

**WAIVER OF ISSUANCE OF ORDER
TO SHOW CAUSE AND HEARING
UNDER SECTION 1324, PENAL
CODE OF CALIFORNIA**

Comes now Dean Karny, a witness on behalf
of the People of the State of California in the above entitled action, who states as follows:

That the refusal of the undersigned to testify as a witness in the Municipal Court felony preliminary hearing, case number A 090435, is based upon the ground of self-incrimination;

That it is fully understood that in accordance with Section 1324 of the Penal Code of the State of California, undersigned is entitled to a hearing in the Superior Court with an opportunity to show cause for the court's consideration in determining whether or not to issue an order compelling the giving of testimony or offering of evidence which may be incriminating; and to have a finding made as to whether or not in this case it would be clearly contrary to the public interest or could subject the undersigned to criminal prosecution in another jurisdiction by compelling the giving of testimony containing incriminating matters;

That undersigned waives the issuance of an order to show cause why the giving of testimony and production of evidence should not be compelled, and to a hearing thereon;

WHEREFORE, Dean Karny
hereby consents to the issuance of an order by this court, forthwith, compelling the undersigned to answer such questions and produce such evidence in the case of the State of California, Plaintiff, v:

JAMES PITTMAN and JOE HUNT, Defendant,'s

in the Municipal Court of the Beverly Hills Judicial District, case
number A 090435, as may be material, competent and relevant to the case,
and an order by this court that upon compliance therewith the undersigned shall not be prosecuted or subjected to penalty or forfeiture for, or on account of, any question, fact or thing, which, in accordance with said order, the undersigned was required to answer or produce.

Dean L. Karny

DATED: January 11, 1985

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
JAMES PITTMAN and
JOE HUNT
Defendant.

M.C. NO.
D.A. NO. A 090435

**ORDER REQUIRING WITNESS TO
ANSWER QUESTIONS UNDER
SECTION 1324, PENAL CODE
OF CALIFORNIA**

Petition having been filed by the District Attorney of the County of Los Angeles under Section 1324 of the Penal Code of the State of California, requesting that Dean Karny, a necessary witness, be required to answer questions and produce evidence in the Municipal Court of the Beverly Hills Judicial District, case number A 090435 ;

said person, as a witness, having duly filed a waiver of the right to a hearing upon, and the issuance of, an order to show cause why such an order should not issue; the court believing that all of the allegations of the petition are true; and, the court finding: that there is no good cause why this order should not be made; that this order is not contrary to the public interest; and, further, that said person, a necessary witness, could not be subjected to a criminal prosecution in another jurisdiction through compliance with this court's order;

IT IS HEREBY ORDERED that said Dean Karny shall answer such questions and produce such evidence in the case of the People of the State of California, Plaintiff, v. JAMES PITTMAN and JOE HUNT Defendant, in the Municipal Court of the Beverly Hills Judicial District, case number A 090435 , as may be material, competent and relevant to the case and which otherwise, but for the provisions of Section 1324 of the Penal Code of the State of California, the witness would be privileged to withhold on the ground that answering such questions and producing such evidence might be self-incriminating.

After complying with this order, the above named witness shall not be prosecuted or subjected to penalty or forfeiture for or on account of any question, fact or thing, which, in accordance with this order, the witness was required to answer or produce.

Leslie W. Light

Judge of the Superior Court, County of
Los Angeles, State of California

DATED: January 11, 1985

1 Arthur H. Barens
 Richard C. Chier
 2 10209 Santa Monica Blvd.
 Los Angeles, California 90067
 3 (213) 557-0444
 4 Attorneys for
 5 Defendant

FILED
 JUL 26 1985
 AUG 9 1985
 FRANK S. ZOLIN, County Clerk
Chier
 BY G. GILLET, Deputy

8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF LOS ANGELES

11	THE PEOPLE OF THE STATE OF CALIFORNIA)	No. A 090435
12)	
13	Plaintiff,)	ACKNOWLEDGMENT
14	)	OF DISCOVERY
15	vs.)	ITEMS RECEIVED
16	)	<i>8/14/85</i>
17	JOE HUNT)	
)	
	Defendant.)	

18
 19 The following items have been received by way
 20 of informal discovery in the above-entitled matter:

- 21
- 22 1. Beverly Hills Police Department Arrest Report.
 - 23 2. Beverly Hills Police Department Disposition
 - 24 of Arrest and Court Action.
 - 25 3. Beverly Hills Police Department Property Report.
 - 26 4. Complaint, Felony.

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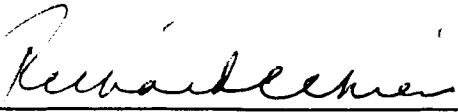
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5. Motions Concerning Bail.

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DATED: July 24, 1985

Respectfully submitted,



RICHARD CHIER
Attorney for Defendant
JOE HUNT

(VERIFICATION - 446 and 2015.5 C.C.P.)

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STATE OF CALIFORNIA }
County of _____ } ss. I, the undersigned, say: I am the _____

in the above entitled action: I have read the foregoing _____

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on _____ at _____, California
(date) (place)

(Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address: ~~XXXXXXXXXX~~ is

10209 Santa Monica Boulevard, Los Angeles, California 90067

On July 24, 19 85, I served the within ACKNOWLEDGMENT OF

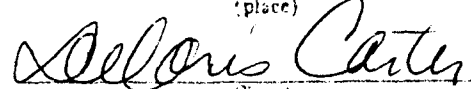
DISCOVERY ITEMS RECEIVED

on the _____ interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the

United States mail at Los Angeles County, California
addressed as follows: FRED WOPNER, Deputy District Attorney
1725 Main Street
Santa Monica, California 90401

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on July 24, 1985 at Los Angeles County, California
(date) (place)


DELORES CARTER
Signature

* Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

1 ARTHUR H. BARENS
10209 Santa Monica Blvd.
2 Los Angeles, CA 90067
(213) 557-0444

3 RICHARD C. CHIER
4 10920 Wilshire Blvd., Suite 1000
Los Angeles, CA 90024
5 (213) 550-1005

6 Attorneys for Defendant

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
12)
Plaintiff,)
13)
v.)
14)
JOE HUNT,)
15)
Defendant.)
16)

Case No. A090435

NOTICE OF MOTION AND MOTION
FOR LIVESAY HEARING

Date: October 30, 1986
Time: 9:00 a.m.
Place: Department WE-C

17 TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS AN-
18 GELES AND TO FREDERICK NATHAN WAPNER, HIS DESIGNATED DEPUTY:

19 PLEASE TAKE NOTICE that on October 30, 1986, or as soon
20 thereafter as counsel may be heard in Department WE-C of the
21 above-entitled Court, defendant, JOE HUNT, will move for an Order
22 compelling the People to turn over the "Livesay" memorandum to
23 defense counsel and, thereafter, for an Order permitting counsel
24 to examine employees of the District Attorney's office under
25 oath, about their invocation of the death penalty under the
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1 circumstances of this case.

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3 DATED: October 24, 1986

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Respectfully submitted,

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ARTHUR H. BARENS
RICHARD C. CHIER

7

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By: *Richard C. Chier*

9

RICHARD C. CHIER
Attorneys for Defendant

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NAME, ADDRESS, AND TELEPHONE NUMBER
OF ATTORNEY(S)

11

RICHARD C. CHIER (213) 550-1005
10920 Wilshire Blvd., Suite 1000
Los Angeles, California 90024

ATTORNEY(S) FOR DEFENDANT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

People of the State of California	CASE NUMBER A 090435
VS JOE HUNT	APPLICATION FOR SUBPENA DUCES TECUM
PLAINTIFF(S)	DEFENDANT(S)

STATE OF CALIFORNIA, County of Los Angeles

The undersigned states: That he is attorney of record for ~~Plaintiff~~ Defendant in the above entitled action; that said cause was duly set down for trial November 4, 19 86 at 8:45 A. M. in Department C of the above entitled Court.

That CUSTODIAN OF RECORDS, STATE BAR OF CALIFORNIA

has in his possession or under his control the following documents:
(Designate and name the exact things to be produced)

Original or true copy of all applications for admission to State Bar of California submitted by Dean L. Karney (DOB: 5/24/60), during the period between January 1982 inclusive to date.

Original or true copies of all supporting and/or related documents contained in the State Bar file concerning Dean L. Karney, including but not limited to:

- A. Moral fitness evaluation
- B. Reference letters concerning Dean L. Karney
- C. Reports from any law enforcement agency, Federal, State, or Local concerning Dean L. Karney

APPLICATION FOR SUBPENA DUCES TECUM

24

That the above documents are material to the issues involved in the case by reason of the following facts:

These documents which are in the exclusive possession and under the exclusive dominion and control of the State Bar of California contain matters which will impeach or lead to impeachment evidence against Dean L. Karney, or these records may contain information and admissible evidence tending to show bias, interest or motive on the part of Dean L. Karney to give false testimony in and bear false testimony against the defendant in this proceeding.

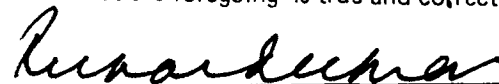
That good cause exists for the production of the above described matters and things by reason of the following facts:

They are relevant to the defense of Joe Hunt.

WHEREFORE request is made that Subpena Duces Tecum issue.

Executed October 28, 1986, at Los Angeles, California.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct.


(Signature of Declarant)

PROOF OF SERVICE OF SUBPENA
(CRIMINAL OR JUVENILE)

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person served (name): Custodian of Records State Bar of California, Tom Ricks.

b. Address where served: 1230 West 3rd Street, Los Angeles, California.

c. Date of delivery: October 29, 1986

d. Time of delivery: 0900 hours

2. I received this subpoena for service on (date): October 28, 1986

3. Person serving

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

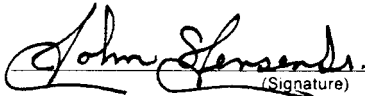
d. Exempt from registration under Bus. & Prof. Code 22350(b).

e. California sheriff, marshal, or constable.

f. Name, address and telephone number and if applicable, county of registration and number:
John C. Jensen, Sr.
Post Office Box 100
Tujunga, California 91042-0100
(818) 353-4436

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): October 29, 1986 at (Place): Tujunga, California.

(For California sheriff, marshal, or constable use only) I certify that the foregoing is true and correct and that this certificate is executed on (Date): at (Place): , California.


(Signature)

(Signature)

1 ARTHUR H. BARENS
10209 Santa Monica Blvd.
2 Los Angeles, CA 90067

3 (213) 557-0444

4 Attorney for Defendant

FILED

Dec - 1986

~~CONFIDENTIAL~~
~~INVESTIGATION~~
~~SECTION 987(d)~~

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
) Plaintiff,)
)
) v.)
)
) JOE HUNT,)
)
) Defendant.)
)

Case No. A090435

**CONFIDENTIAL IN CAMERA MOTION
FOR APPOINTMENT OF ADDITIONAL
COUNSEL PURSUANT TO PENAL CODE
SECTION 987(d); POINTS AND
AUTHORITIES; DECLARATIONS**

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Pursuant to the provisions of Section 987(d) of the California Penal Code, defendant, JOE HUNT, respectfully moves the Court for an Order appointing Arthur H. Barens as additional counsel in the above-entitled case.

This application is made upon the grounds, each and all:

1. That appointment of additional counsel is necessary to ensure the defendant's right to the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 15 of the California Constitution;

2. Appointment of additional counsel is necessary and appropriate because the defendant is presently indigent; and

DECLARATION OF ARTHUR H. BARENS

1
2
3 ARTHUR H. BARENS declares and states:

4 1. I am an attorney at law, a member in good standing of
5 the State Bar of California, and have been the attorney of record
6 for defendant, JOE HUNT, since approximately March of 1985.

7 2. I was retained by Mr. Hunt to represent him in this
8 special circumstances murder case in the Superior Court for which
9 Mr. Hunt agreed to pay me the sum of \$50,000 plus expenses.

10 3. Mr. Hunt has paid me a total of a \$35,000; his last
11 payment was made in October of 1985. From and after October,
12 1985, Mr. Hunt has been unable to pay his counsel the sum agreed
13 upon or any other sum for either fees or expenses.

14 4. Mr. Hunt, the defendant, is presently indigent. He has
15 always been indigent at all times herein relevant.

16 5. The representations of Mr. Hunt with respect to the
17 payment to me of fees and costs were made in reliance upon assur-
18 ances given to Mr. Hunt by other persons that my fees and expens-
19 es would be paid.

20 6. For reasons which are not presently clear neither Mr.
21 Hunt nor his friends nor anybody else on his behalf has been able
22 to honor the commitment made to me by Mr. Hunt.

23 7. The trial of this case is taking far longer than was
24 originally anticipated and the defendant's inability to pay the
25 balance of his fees or expenses is beginning to erode my effec-
26 tiveness.

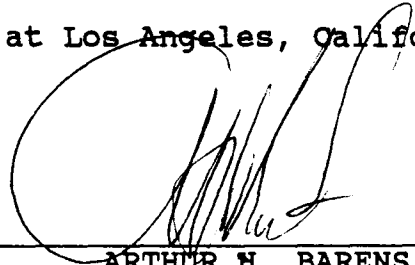
27 8. I believe that the appointment of myself as additional
28 counsel in this case pursuant to the provisions of Section 987(d)

1 will tend to ensure my continuing and regular presence throughout
2 the trial and will minimize the number of other court appearances
3 I will have to make during the course of this trial in order to
4 keep the economic ship of state afloat.

5 9. The defendant is willing and able to submit such finan-
6 cial declarations, as may be required by the Court pursuant to
7 Section 987(d).

8 10. I am willing to accept appointment at whatever rate the
9 Court deems appropriate in accordance with the provisions of Sec-
10 tion 987.3 of the Penal Code.

11 I declare, under penalty of perjury, under the laws of the
12 State of California, that the foregoing is true and correct and
13 that this Declaration was executed at Los Angeles, California, on
14 February 21, 1986.



ARTHUR N. BARENS

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DECLARATION OF RICHARD C. CHIER

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3 RICHARD C. CHIER declares and states:

4 1. I am an attorney at law, a member in good standing of
5 the State Bars of New York and California, am a Certified Crimi-
6 nal Specialist and am co-counsel of record for defendant, JOE
7 HUNT.

8 2. On March 1, 1986, your declarant was appointed to rep-
9 resent defendant Hunt pursuant to the provisions of 987(d) of the
10 California Penal Code.

11 3. Because of the pendency of a related investigation and
12 prosecution of Mr. Hunt in San Mateo County and, further, because
13 of the fact that the case of PEOPLE v. JAMES PITMAN has been
14 tried separately from the instant case and, finally, because of
15 the enormous amount of unanticipated paperwork generated by the
16 concomitance of all these events, preparation of the within case
17 for trial has become unwieldily and extremely complex.

18 4. I believe that Arthur H. Barens should be appointed to
19 represent Hunt pursuant to the provisions of 987(d).

20 5. Mr. Barens is a well respected member of the Bar; is
21 intimately familiar with every aspect of the within prosecution;
22 is experienced in defending persons accused of homicide; and has
23 a good working relationship with the District Attorney's office.

24 6. It is my considered opinion that it would be both fit-
25 ting, appropriate, and lawful for the Court to appoint Mr. Barens
26 as second counsel pursuant to the provisions of Section 987.9 of
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the Penal Code.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, except as to those matters stated on information and/or belief, and as to those matters, I believe them to be true; and that this Declaration was executed on December 16, 1986.


RICHARD C. CHIER

1 to or greater than that required for the guilt phase.

2 In the case of Keenan v. Superior Court (1982) 31 Cal.3d
3 424, 430, the California Supreme Court established for the first
4 time that the showing of genuine need gave rise to a presumption
5 a second attorney was required for preparation and presentation
6 of a capital defense. As stated at p.434 of the Keenan opinion:

7 "Moreover, Section 987.9, though not providing for
8 appointment of counsel, reflects a legislative intent
9 that the court be guided by a capital defendant's need
10 for a 'complete and full defense.' That intent, to-
11 gether with the constitutionally mandated distinction
12 between death and other penalties, requires that the
13 trial court apply a higher standard than bare adequacy
14 to a defendant's request for additional counsel. If it
15 appears that second attorney may lend important assis-
16 tance in preparing for trial or presenting the case,
17 the court should rule favorably on the request."

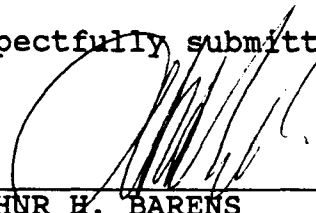
18 In Keenan, supra, the California Supreme Court issued a pe-
19 remptory writ of mandate directing the trial court to appoint a
20 second attorney for the defendant.

21 Although a defendant may have been financially able to ob-
22 tain lead counsel, it is an abuse of discretion for a trial court
23 to deny the appointment of second counsel if the defendant is, in
24 fact, indigent. See, for example, Gilbert v. Superior Court
25 (1985) 169 Cal.App.3d 148. Upon a proper showing of necessity, a
26 trial court must provide to an indigent defendant expert servic-
27 es, without regard to whether his counsel is appointed or select-
28 ed pro bono counsel. People v. Worthy (1980) 109 Cal.App.3d 514.

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Although a defendant can afford to retain lead counsel, he should be treated no differently than a defendant who could not afford to retain counsel at all. The effect of denying second counsel would result in a disparate treatment of defendants with some amount of money versus defendants with no money at all.

DATED: December 16, 1986

Respectfully submitted,

ARTHUR H. BARENS
Attorney for Defendant

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ARTHUR H. BARENS
10209 Santa Monica Blvd.
Los Angeles, CA 90067

(213) 557-0444

Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff,)

v.)

JOE HUNT,)

Defendant.)

Case No. A090435

ORDER APPOINTING SECOND
COUNSEL
[Penal Code Section 987(d)]

Upon the reading and filing of the Application of Arthur H. Barens for appointment as second counsel pursuant to the provisions of Section 987(d) of the Penal Code, and good cause appearing therefor, it is hereby ordered that Arthur H. Barens be appointed to represent defendant, JOE HUNT, for the remainder of the guilt phase, special circumstances phase, penalty phase, if any, throughout all post trial proceedings, if any, and, further, that the said Arthur H. Barens be paid pursuant to provisions of Section 987.2 of the Penal Code.

DATED: _____
LAURENCE J. RITTENBAND
Judge of the Superior Court

1 IRA REINER
2 DISTRICT ATTORNEY
3 BY: FRED WAPNER
4 DEPUTY DISTRICT ATTORNEY
5 1725 Main Street, Suite 228
6 Santa Monica, CA 90401
7 (213) 458-5345

FILED
DEC 9 1986
Clerk
SHERIFF OF LOS ANGELES

8 Attorney for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 PEOPLE OF THE STATE OF CALIFORNIA,)
12) NO. A090435
13 Plaintiff,) MOTION IN LIMINIE;
14 v.) POINTS AND AUTHORITIES
15) IN SUPPORT THEREOF
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TO THE HONORABLE JUDGE LAURENCE RITTENBAND, JUDGE
OF THE ABOVE ENTITLED COURT;

TO: ARTHUR BARENS AND RICHARD CHIER, ATTORNEYS OF RECORD.

THE PEOPLE OF THE STATE OF CALIFORNIA, before trial and general jury selection, move this Honorable Court to exclude any reference to prosecution witness Dean Karny's possible connection with an unsolved Hollywood murder and respectfully submit the following points and authorities.

DATED: DECEMBER 9, 1986

Respectfully submitted
IRA REINER
District Attorney

By
Fred Wapner
Fred Wapner
Deputy District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

1
2
3 SPECIFIC WRONGFUL ACTS OF A WITNESS ARE INADMIS-
4 SIBLE UNLESS IT CAN BE SHOWN THAT THE WITNESS
5 HAS BEEN CONVICTED OF A FELONY. Evidence Code
6 Sections 787, 788. Witkin, California Evidence
7 3d Edition, Section 1940-1944.

8 The proof must show a felony conviction, not merely an arrest or
9 trial. People v. Anderson (1978) 20 Cal 3d 647, 650-51; People v. Guzman
10 (1975) 47 Cal. App. 3d 380, 389; People v. Duvernary (1941) 43 Cal. App. 2d
11 823, 826; Long v. Barbieri (1932) 120 Cal. App. 207, 218.

12 The proof must show conviction of a felony, not a misdemeanor. People
13 v. Tent (1975) 15 Cal. 3d 481, 484; People v. White (1904) 142 Cal. 292,
14 294; Grundt v. Los Angeles (1970) 2 Cal. 3d 575, 591.

15 ANY MENTION OF PROSECUTION WITNESS DEAN KARNY'S
16 POSSIBLE CONNECTION WITH AN UNSOLVED HOLLYWOOD
17 MURDER IS INADMISSIBLE.

18
19 Dean Karny's possible connection with an unsolved October 1986
20 Hollywood murder has no relevance to any issue of fact in this trial.

21 Further, Mr. Karny's possible connection with this murder is
22 inadmissible for the purpose of impeachment as a specific wrongful act
23 since he has not been convicted of this crime. In fact, he has not even
24 been arrested.

25 ///

26 ///

27 ///

28 ///

1 JOHN K. VAN DE KAMP, Attorney General
 of the State of California
 2 JOHN R. VANCE, JR.
 Deputy Attorney General
 3 Special Prosecutions Unit
 6000 State Building
 4 San Francisco, California 94102
 Telephone: (415) 557-1790
 5
 Attorneys for the Department of Justice,
 6 Special Prosecutions Unit

D. TSCHEBOLD, Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF LOS ANGELES

10

11 THE PEOPLE OF THE STATE OF CALIFORNIA,)	
	)	NO. A090435
12 Plaintiff,)	
	)	DECLARATION OF
13 v.	)	<u>JOHN R. VANCE, JR.</u>
)	
14 JOSEPH HUNT,)	
)	
15 Defendant.)	
)	

16

17 John R. Vance, Jr., declares

18 1. Declarant states that he is a deputy attorney general
 19 for the State of California assigned to the Special Prosecutions
 20 Unit.

21 2. Declarant states he is the attorney assigned by the
 22 Special Prosecutions Unit to the prosecution of the above
 23 defendant in San Mateo County Superior Court number C15761.

24 3. Declarant states that he has never attended any
 25 meeting with the District Attorney of Los Angeles Ira Reiner much
 26 less the purported meeting described in paragraph 5 of the
 27 declaration of Arthur Barends. (See declaration of Arthur Barends,

1 page 6 lines 27 through page 7 line 10.)

2 4. Declarant further states that he is personally
3 shocked and dismayed at the false allegation contained in said
4 paragraph 5 of Arthur Barens' declaration which alleges that
5 declarant was a participant in a discussion relative to "kill[ing]
6 the investigation". As Arthur Barens' declaration is made under
7 "information and belief", we will not further deign to respond.^{1/}
8 We request this Court to order Arthur Barens to disclose the
9 factual foundation of his "information and belief".

10 5. Declarant has reviewed the defendant's motion and
11 finds many, if not most, of the requests to be directed at other
12 agencies who well might be conducting another investigation. In
13 particular, declarant finds requests numbers 1, 2, 3, 4, 5, 6, 7,
14 8, 9, 10, 11, 12, 13, and 14 to be wholly inapplicable.

15 6. Declarant states that the California Attorney General
16 is not the custodian of records for (1) the Los Angeles District
17 Attorney, (2) the Los Angeles Police Department, (3) the Los
18 Angeles Coroner, or (4) the Beverly Hills Police Department.

19 7. Declarant states the only homicides he is aware of
20 which could be described as "the Karny/homicide" as the discovery
21 motion of Arthur Barens uses the term in requests two and five,
22

23 1. An affidavit made upon information and belief is, as
24 a matter of law, insufficient. People v. Smith (1850) 1 Cal 9,
25 11. As the court noted " . . . an affidavit which states no fact
26 within the knowledge of the person making it can be of liitle
27 weight in any legal proceeding." Ibid. In other words, "[t]he
chief test of the sufficiency of an affidavit is whether it is so
clear and certain that an indictment for perjury may be sustained
if it is false." Osborn v. City of Whittier (1951) 103 Cal.App.2d
609, 619.

1 are the ones in which he was involved with, inter alia, Joe Hunt
2 and which lead to the death of Ronald Levin and Hedayat Eslaminia.

3 8. Declarant states (a) that he has never seen the
4 purported segment of the Jerry Dunphy Show (b) he does not have a
5 copy of the segment nor (c) is declarant or the Department of
6 Justice the custodian of records for either the Jerry Dunphy Show
7 or ABC-TV.

8 9. Declarant states his office does not possess any
9 material described in request number 15.

10 10. Declarant states that the only immunity extended to
11 Dean Karny by the California Attorney General's office is that in
12 People v. Joseph Hunt, San Mateo Superior Court number C15761, as
13 has previously been disclosed, and explored at the preliminary
14 hearing in the Hunt action. There is no written agreement.

15 11. Declarant states that he possesses no exculpatory
16 material.

17 DATED: 12/9/86

18 
19 _____
20 JOHN R. VANCE, JR.
21 Deputy Attorney General
22
23
24
25
26
27

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 JOHN R. VANCE, JR.
Deputy Attorney General
3 Special Prosecutions Unit
6000 State Building
4 San Francisco, California 94102
Telephone: (415) 557-1790
5
6 Attorneys for the Department of Justice,
Special Prosecutions Unit

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11	THE PEOPLE OF THE STATE OF CALIFORNIA,)	
		)	NO. A090435
12	Plaintiff,)	
		)	POINTS AND AUTHORITIES
13	v.	)	OF THE DEPARTMENT OF
		)	JUSTICE IN OPPOSITION
14	JOSEPH HUNT,	)	TO DEFENDANT HUNT'S
		)	<u>MOTION FOR DISCOVERY.</u>
15	Defendant.)	
)	

17 I

18 INTRODUCTION

19 On Tuesday, December 9, 1986, the Attorney General was
20 served with a notice of motion and motion for discovery^{1/} by
21 defendant Joseph Hunt's attorney Arthur Barens. As we will
22

23 1. As this Court well knows, the prosecution before this
24 Court is being handled by the Los Angeles District Attorney.

25 Discovery is directed to the agency handling the
26 prosecution. People v. Senata (1976) 62 Cal.App.3d 9, 15;
Pitchess v. Superior Court (1974) 11 Cal.3d 531. Thus the proper
27 way to compel our office to provide material is by a properly
issued and served subpoena duces tecum. Senata, supra.

To expedite the hearing of this motion, we will waive not
only this formal imperfection, but lack of notice.

1 explain we do not have any reports or other material such as is
2 called for by the motion. We will specifically address each
3 request.

II

THE SPECIFIC RESPONSE

4
5
6 1. The contents or substance of all communications by
7 the confidential informant to the Los Angeles Police
8 Department concerning a homicide or evidence of a
9 homicide at the Hollywoodland Motel or elsewhere.

10 As the declaration of Deputy Attorney General John Vance,
11 Jr. makes clear the Attorney General's office is not the custodian
12 of records for the Los Angeles Police Department. This request is
13 apparently directed at an investigation that is being conducted by
14 them as it asks for material only they would possess.

15 2. The originals or true copies of all crime reports and
16 Coroner's reports prepared in relation to the inves-
17 tigation and prosecution, if any, of the Karny/homicide.

18 As the declaration of Deputy Attorney General John Vance,
19 Jr. makes clear the Attorney General's office is not the custodian
20 of records for the Los Angeles Police Department. This request is
21 apparently directed at an investigation that is being conducted by
22 them as it asks for material only they would possess. To the
23 extent it requests information from the Los Angeles Coroner: we
24 are also not their custodian of records.

25 We are quite confused at the denomination "Karny/
26 homicide". The only such homicides of which we are aware are the
27 ones which led to the the death of Ronald Levin and Hedayat
Eslaminia where Karny was involved with, among others, Joseph
Hunt.

1 3. The originals or true copies of all witness
2 statements obtained in connection with the Hollywood
homicide.

3 As the declaration of Deputy Attorney General John Vance,
4 Jr. makes clear the Attorney General's office is not the custodian
5 of records for the Los Angeles Police Department. This request is
6 apparently directed at an investigation that is being conducted by
7 them as it asks for material only they would possess.

8 4. All physical evidence obtained in the investigation
9 of the homicide in question.

10 As the declaration of Deputy Attorney General John Vance,
11 Jr. makes clear the Attorney General's office is not the custodian
12 of records for the Los Angeles Police Department. This request is
13 apparently directed at an investigation that is being conducted by
14 them as it asks for material only they would possess.

15 5. The originals or true reproductions of all
16 photographs taken by any investigating agency of any
17 person, object, or document in the course of
investigating the Karny/homicide.

18 As the declaration of Deputy Attorney General John Vance,
19 Jr. makes clear the Attorney General's office is not the custodian
20 of records for the Los Angeles Police Department. This request is
21 apparently directed at an investigation that is being conducted by
22 them as it asks for material only they would possess.

23 We are quite confused at the denomination "Karny/
24 homicide". The only such homicides of which we are aware are the
25 ones which led to the the death of Ronald Levin and Hedayat
26 Eslaminia where Karny was involved with, among others, Joseph
27 Hunt.

1 6. The originals or true copies of all handwritten notes
2 made by all police officers concerning their activities
3 and observations during the period of the investigation
of the Karny/homicide from the date of its occurrence
continuing until the present.

4 As the declaration of Deputy Attorney General John Vance,
5 Jr. makes clear the Attorney General's office is not the custodian
6 of records for the Los Angeles Police Department. This request is
7 apparently directed at an investigation that is being conducted by
8 them as it asks for material only they would possess.

9 7. The originals or true copies of all notes, reports,
10 memoranda, or other documents reflecting communications
11 by the Los Angeles Police Department to the Los Angeles
12 County District Attorney wherein any recommendations are
sought or made respecting the prosecution of Dean Karny
for the homicide in question.

13 As the declaration of Deputy Attorney General John Vance,
14 Jr. makes clear the Attorney General's office is not the custodian
15 of records for the Los Angeles Police Department. This request is
16 apparently directed at an investigation that is being conducted by
17 them as it asks for material only they would possess. To the
18 extent it requests information from the Los Angeles District
19 Attorney: we are also not their custodian of records.

20 8. The originals or true copies of all reports, notes,
21 and/or communications from the Los Angeles County
22 District Attorney's office to the Los Angeles Police
Department containing any recommendations, suggestions,
or other references to the Karny/homicide.

23 As the declaration of Deputy Attorney General John Vance,
24 Jr. makes clear the Attorney General's office is not the custodian
25 of records for the Los Angeles Police Department. This request is
26 apparently directed at an investigation that is being conducted by
27 them as it asks for material only they would possess. To the

1 extent that this requests information from the Los Angeles
2 District Attorney: we are also not their custodian of records.

3 9. For the originals or true copies of all
4 communications among the office of the District Attorney
5 and/or the Los Angeles Police Department and/or the
6 Beverly Hills Police Department and Dean Karny, and/or
7 Dean Karny's attorney or legal representative, concerning
8 the Karny/homicide between November 1, 1986, inclusive to
9 date.

10 As the declaration of Deputy Attorney General John Vance,
11 Jr. makes clear the Attorney General's office is not the custodian
12 of records for the Los Angeles Police Department. This request is
13 apparently directed at an investigation that is being conducted by
14 them as it asks for material only they would possess. To the
15 extent that it requests information from the Beverly Hills Police
16 Department and the Los Angeles District Attorney: we are also not
17 their custodian of records.

18 10. For a disclosure of the circumstances under which
19 the Office of the District Attorney was informed of the
20 Karny/homicide.

21 As this request is specifically addressed to the Los
22 Angeles District Attorney, we have nothing to which we must
23 respond.

24 11. For a disclosure of the reason or reasons the Office
25 of the District Attorney waited as long as they did to
26 advise defense counsel of this development.

27 As this request is specifically addressed to the Los
Angeles District Attorney, we have nothing to which we must
respond.

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1 12. For disclosure of the nature and substance of all
2 conversations between Dean Karny personally or through
3 his legal representative concerning the filing of charges
4 against him for the homicide in question.

5 As this request is specifically addressed to the Los
6 Angeles District Attorney, we have nothing to which we must
7 respond.

8 13. For production of any and all notes, memoranda, or
9 reports of the staff meeting that took place relative to
10 this case in the Office of the District Attorney on
11 November 25, 1986.

12 As this request is specifically addressed to a "staff
13 meeting" of the Los Angeles District Attorney, we have nothing to
14 which we must respond.

15 14. The original or true copy of the tape released to
16 ABC-TV for republication on the Jerry Dunphy News
17 relative to the Hollywood homicide.

18 We do not know to whom this request is addressed. As the
19 declaration of John R. Vance, Jr. makes clear we have never seen
20 the purported "tape" to which reference is made, nor do we have a
21 copy of it.

22 15. Copies of all correspondence between the offices of
23 Ira Reiner and John K. Van de Kamp relative to the
24 Hollywood homicide and Dean Karny.

25 This request is not supported by good cause.

26 It is clear that before any discovery may be granted,
27 good cause must be shown. (Pitchess v. Superior Court (1974) 11
28 Cal.3d 531, 547; Ballard v. Superior Court (1966) 64 Cal.2d 159;
29 Joe Z. v. Superior Court (1974) 3 Cal.3d 797, 802 and see also
30 fn. 1, at 800-801.

1 Perhaps, the best analysis of what constitutes good cause
2 is found in Ballard, supra. In Ballard, the defendant sought the
3 names and addresses of all witnesses who had been interviewed but
4 were not to be called at trial. (Id. at 167.) In the motion
5 supporting the request the defense provided no justification.
6 (Ibid.) The motion was denied by the trial court, and upon the
7 defendant's application for Writ of Mandamus the trial court was
8 sustained because of this failure. (Ibid.) In so doing, the
9 court noted, 64 Cal.2d at 168:

10 "Although the defendant does not have to show and
11 indeed may be unable to show that the evidence which
12 he seeks to produce would be admissible at trial he
13 does have to show some better cause of inspection than
14 a mere desire for the benefit of all the information
15 which had been obtained by the People."

16 The Ballard court continued that this fundamental
17 foundation of criminal discovery stood on what they considered to
18 be a fairly unimpeachable legal basis in that it was developed by
19 Mr. Chief Justice Roger J. Traynor, who wrote that criminal
20 discovery may be granted only if it appears "'reasonable that such
21 knowledge will assist in preparing for his defense'". (Id. at
22 168.)

23 Clearly the defendant has not shown any cause whatsoever
24 much less any good cause within the meaning of Pitchess, supra,
25 Ballard, supra, and Joe Z., supra. See Declaration of Arthur
26 Barens, page 4. As the court noted in Pitchess, supra, "[t]he
27 requisite showing may be satisfied by general allegations which
establishes some cause for discovery other than 'a mere desire for
the benefit of all information which has been obtained by the

1 People in their investigation of the crime'". (Id. at 537.) The
 2 declaration is a mishmash of direct allegations springled with
 3 various assertions by "information and belief". It's net result
 4 is that it does not establish good cause, or, for that matter, any
 5 cause at all.^{2/} As this request is but a fishing expedition it
 6 must be denied.

7 We have searched the points and authorities for some case
 8 which would support the defendants request. We have found none as
 9 there is none.

10 The Attorney General is well aware of the duty prescribed
 11 by Brady v. Maryland (1963) 376 U.S. 83 and People v. Sharparnis
 12 (1983) 147 Cal.App.3d 190. See defendant's brief, page 4 lines
 13 8-11. We are mystified as to what are the "additional
 14 requirements", which the defendant feels exists over and above the
 15 normal rules of discovery. See defendant's brief page 4 lines 12-
 16 17.

17 Without waiving our objections, we do note we have no
 18 correspondence as described in the request.

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23 2. An affidavit made upon information and belief is, as
 24 a matter of law, insufficient. People v. Smith (1850) 1 Cal 9,
 25 11. As the court noted " . . . an affidavit which states no fact
 26 within the knowledge of the person making it can be of liitle
 27 weight in any legal proceeding." Ibid. In other words, "[t]he
 chief test of the sufficiency of an affidavit is whether it is so
 clear and certain that an indictment for perjury may be sustained
 if it is false." Osborn v. City of Whittier (1951) 103 Cal.App.2d
 609, 619.

1 16. Copies of all immunity agreements between Dean Karny
2 and the State of California.

3 We have, as noted in the declaration of John R. Vance,
4 Jr., provided the defense with all information about the immunity
5 of Dean Karny received in the case of People v. Joseph Hunt, San
6 Mateo Superior Court No. C15761. As we have noted, there is no
7 written immunity agreement.

8 DATED: *12/9/86*

Respectfully submitted,

9 JOHN K. VAN DE KAMP, Attorney General
of the State of California

10
11 

12 JOHN R. VANCE, JR.
13 Deputy Attorney General

14 Attorneys for the Department of
15 Justice, Special Prosecution Unit
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DECLARATION OF SERVICE BY MAILCase Name: People v. Joseph HuntNo.: A090435

I declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 6000 State Building, San Francisco, California 94102.

On December 9, 1986, I served the attached

POINTS AND AUTHORITIES OF THE DEPARTMENT OF JUSTICE
IN OPPOSITION TO DEFENDANT HUNTS MOTION FOR DISCOVERY.

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Arthur Barens
Attorney at Law
10209 Santa Monica Blvd.
Los Angeles, CA 90067-6494

Fred Wapner
Deputy District Attorney
1725 Main Street
Santa Monica, CA 90401

Honorable Laurence J. Rittenband
Judge of the Superior Court
1725 Main Street
Santa Monica, CA 90401

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on December 9, 1986.

Lorraine Lynch
(Typed Name)


(Signature)

1 ARTHUR H. BARENS
10209 Santa Monica Blvd.
2 Los Angeles, CA 90067
3 (213) 557-0444
4 Attorney for Defendant

FILED
DEC 17 1986
FRANK...
BY D. TSCHENLOFF, DEPUTY

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11	THE PEOPLE OF THE STATE OF)	
12	CALIFORNIA,	)	Case No. A090435
13)	
14	Plaintiff,	)	CONFIDENTIAL IN CAMERA MOTION
15	v.	)	FOR APPOINTMENT OF ADDITIONAL
16	JOE HUNT,	)	COUNSEL PURSUANT TO PENAL CODE
17		)	SECTION 987.2; POINTS AND
18	Defendant.	)	AUTHORITIES; DECLARATIONS
19)	

17 Pursuant to the provisions of Section 987.2 of the Califor-
18 nia Penal Code, defendant, JOE HUNT, respectfully moves the Court
19 for an Order appointing Arthur H. Barens as additional counsel in
20 the above-entitled case.

21 This application is made upon the grounds, each and all:

22 1. That appointment of additional counsel is necessary to
23 ensure the defendant's right to the effective assistance of coun-
24 sel guaranteed by the Sixth and Fourteenth Amendments to the
25 United States Constitution, and Article 1, Section 15 of the Cal-
26 ifornia Constitution;

27 2. Appointment of additional counsel is necessary and ap-
28 propriate because the defendant is presently indigent; and

1 3. There is no reasonable probability of movant's finan-
2 cial condition improving in the near future.

3 It is therefore requested that the Court appoint Arthur H.
4 Barens as additional counsel, effective December 16, 1986, and
5 authorize payment to said additional counsel as provided by the
6 provisions of Section 987.2 of the Penal Code.

7 Defendant requests that this application be filed in camera,
8 under seal and that its confidentiality be maintained by the
9 Clerk of the Court until the entry of a final judgment herein.

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DATED: December 17, 1986

Respectfully submitted,



ARTHUR H. BARENS
Attorney for Defendant

DECLARATION OF ARTHUR H. BARENS

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2
3 ARTHUR H. BARENS declares and states:

4 1. I am an attorney at law, a member in good standing of
5 the State Bar of California, and have been the attorney of record
6 for defendant, JOE HUNT, since approximately March of 1985.

7 2. I was retained by Mr. Hunt to represent him in this
8 special circumstances murder case in the Superior Court for which
9 Mr. Hunt agreed to pay me the sum of \$50,000 plus expenses.

10 3. Mr. Hunt has paid me a total of a \$35,000; his last
11 payment was made in October of 1985. From and after October,
12 1985, Mr. Hunt has been unable to pay his counsel the sum agreed
13 upon or any other sum for either fees or expenses.

14 4. Mr. Hunt, the defendant, is presently indigent. He has
15 always been indigent at all times herein relevant.

16 5. The representations of Mr. Hunt with respect to the
17 payment to me of fees and costs were made in reliance upon assur-
18 ances given to Mr. Hunt by other persons that my fees and expens-
19 es would be paid.

20 6. For reasons which are not presently clear neither Mr.
21 Hunt nor his friends nor anybody else on his behalf has been able
22 to honor the commitment made to me by Mr. Hunt.

23 7. The trial of this case is taking far longer than was
24 originally anticipated and the defendant's inability to pay the
25 balance of his fees or expenses is beginning to erode my effec-
26 tiveness.

27 8. I believe that the appointment of myself as additional
28 counsel in this case pursuant to the provisions of Section 987.2

1 will tend to ensure continuity of counsel and will minimize the
2 number of other court appearances I will have to make during the
3 course of this trial in order to keep the economic ship of state
4 afloat.

5 9. The defendant is willing and able to submit such finan-
6 cial declarations, as may be required by the Court pursuant to
7 Section 987.2.

8 10. I am willing to accept appointment at whatever rate the
9 Court deems appropriate in accordance with the criteria contained
10 in of Section 987.3 of the Penal Code.

11 11. The Public Defender is ineligible to represent Hunt
12 since it formerly represented a codefendant.

13 I declare, under penalty of perjury, under the laws of the
14 State of California, that the foregoing is true and correct and
15 that this Declaration was executed at Los Angeles, California, on
16 December 17, 1986.



ARTHUR H. BARENS

DECLARATION OF RICHARD C. CHIER

1
2
3 RICHARD C. CHIER declares and states:

4 1. I am an attorney at law, a member in good standing of
5 the State Bars of New York and California, am a Certified Crimi-
6 nal Specialist and am co-counsel of record for defendant, JOE
7 HUNT.

8 2. On March 1, 1986, your declarant was appointed to rep-
9 resent defendant Hunt pursuant to the provisions of 987.2 of the
10 California Penal Code.

11 3. Because of the pendency of a related investigation and
12 prosecution of Mr. Hunt in San Mateo County and, further, because
13 of the fact that the case of PEOPLE v. JAMES PITMAN has been
14 tried separately from the instant case and, finally, because of
15 the enormous amount of unanticipated paperwork generated by the
16 concomitance of all these events, preparation of the within case
17 for trial has become unwieldily and extremely complex.

18 4. I believe that Arthur H. Barens should be appointed to
19 represent Hunt pursuant to the provisions of 987.2.

20 5. Mr. Barens is a well respected member of the Bar; is
21 intimately familiar with every aspect of the within prosecution;
22 is experienced in defending persons accused of homicide; and has
23 a good working relationship with the District Attorney's office.

24 6. It is my considered opinion that it would be both fit-
25 ting, appropriate, and lawful for the Court to appoint Mr. Barens
26 as second counsel pursuant to the provisions of Section 987.2 of
27
28

1 the Penal Code.

2 I declare, under penalty of perjury, under the laws of the
3 State of California, that the foregoing is true and correct, ex-
4 cept as to those matters stated on information and/or belief, and
5 as to those matters, I believe them to be true; and that this
6 Declaration was executed on December 17, 1986.

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RICHARD C. CHIER

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ARTHUR H. BARENS
10209 Santa Monica Blvd.
Los Angeles, CA 90067

(213) 557-0444

Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff,)

v.)

JOE HUNT,)

Defendant.)

Case No. A090435

ORDER APPOINTING SECOND
COUNSEL
[Penal Code Section 987.2

Upon the reading and filing of the Application of Arthur H. Barens for appointment as second counsel pursuant to the provisions of Section 987.2 of the Penal Code, and good cause appearing therefor, it is hereby ordered that Arthur H. Barens be appointed to represent defendant, JOE HUNT, for the remainder of the guilt phase, special circumstances phase, penalty phase, if any, throughout all post trial proceedings, if any, and, further, that the said Arthur H. Barens be paid pursuant to provisions of Section 987.2 of the Penal Code.

DATED: _____

LAURENCE J. RITTENBAND
Judge of the Superior Court

1 ARTHUR H. BARENS
10209 Santa Monica Blvd.
Los Angeles, CA 90067
2 (213) 557-0444

3 RICHARD C. CHIER
10920 Wilshire Blvd., Suite 1000
4 Los Angeles, CA 90024
(213) 550-1005

5 Attorneys for Defendant
6

FILED

JAN 14 1987

FRANK S. JONES
D. Tschubert
BY D. TSCHEBART

7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9

10 THE PEOPLE OF THE STATE OF	)	Case No. A090435
11 CALIFORNIA,)	
	)	NOTICE OF MOTION AND MOTION
12 Plaintiff,	)	FOR ORDER CONTINUING
	)	TRIAL; DECLARATION; POINTS AND
13 v.	)	AUTHORITIES
)	
14 JOE HUNT,	)	Date: January 15, 1987
	)	Time: 9:30 a.m.
15 Defendant.	)	Place: Department WE-C
	)	Est. Time: 8 Minutes

16
17 TO: THE PEOPLE, AND THEIR ATTORNEY OF RECORD, FREDERICK N.
18 WAPNER:

19 PLEASE TAKE NOTICE that on Thursday, January 15, 1987, at
20 9:30 a.m., or as soon thereafter as counsel may be heard in De-
21 partment WE-C of the above-entitled Court, defendant, JOE HUNT,
22 through his counsel of record, will move the Court to continue
23 the within trial for a period of not less than three weeks.

24 Said Motion will be made upon the ground that a continuance
25 is necessary in order to:

- 26 1. Conduct evidentiary hearings;
- 27 2. Assess impact of police interception of defense materi-
- 28 als;

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3. Travel to San Mateo County to litigate the seizure of property since this Court has no jurisdiction over same; or


4. Reconstruct the Exhibits in question.

Said Motion will be based upon the attached moving papers, upon the Motion to Dismiss filed under separate cover, and upon such further evidence as may be presented at the hearing on this Motion.

DATED: January 13, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: 
RICHARD C. CHIER
Attorneys for Defendant

DECLARATION OF RICHARD C. CHIER

1
2
3 RICHARD C. CHIER declares and states:

4 1. I am an attorney at law, a member in good standing of
5 the State Bars of New York and California, am a Certified Crimi-
6 nal Specialist, and am co-counsel of record for defendant, JOE
7 HUNT.

8 2. Jury selection in the within case has been underway
9 since on or about November 4, 1986, and is continuing as of the
10 date of this Declaration.

11 3. The defendant, JOE HUNT, has been actively assisting in
12 the segregation, cataloging, indexing, and cross-indexing of the
13 numerous and voluminous records and documents which have been de-
14 livered to defense counsel from time to time since his arraign-
15 ment in Superior Court.

16 4. Within the past 30 days I turned over the entire file
17 of the case of PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v.
18 JOE HUNT, Defendant, to the defendant for inspection, cataloging,
19 indexing, cross-indexing, and the preparation of a computer data
20 base in order to manage the otherwise overwhelming mountain of
21 documentary evidence.

22 5. Counsel for the defendant have represented to the Court
23 on numerous occasions and have filed sworn declarations on numer-
24 ous other occasions all to the effect that because of Joe Hunt's
25 familiarity with most if not all of the records in question he
26 was assuming an active role in the preparation of his defense.

27 6. Mr. Hunt is also extremely familiar with a majority of
28 the prosecution witnesses with whom he had business and/or social

1 relationships over the past ten years.

2 7. In accordance with instructions from his counsel, the
3 defendant had prepared a number of files (approximately 80) which
4 were intended to be used as exhibits in connection with the im-
5 peachment of the prosecution's witnesses.

6 8. These files and exhibits while substantially complete
7 had not been totally completed for delivery and explanation to
8 defense counsel.

9 9. On Thursday, January 8, 1987, said exhibits were at the
10 defendant's residence, 10984 Belagio Road, Bel Air, California,
11 and were in an office at said location.

12 10. In addition to the documents, exhibits, and files which
13 were being prepared for use in connection with this litigation,
14 the defendant had computerized the numerous discussions he had
15 with his defense counsel concerning the defense and was in the
16 process of organizing the various defense strategies discussed in
17 our meetings.

18 11. At least one and possibly two drafts of this computer-
19 ized defense strategy was partially on the floor and partially in
20 a trash receptacle in the defendant's office.

21 12. The computerized data and approximately 80 separate
22 documents intended to be used as exhibits in the pending trial
23 were seized on January 8, 1987, by agents of the Attorney General
24 of the State of California and were spirited out of Los Angeles
25 County by the seizing agents and taken to San Mateo County where
26 it is believed said documents repose at the present time.

27 13. The seizure of these records and documents, aside from
28 raising grave Fifth and Sixth Amendment issues place the

1 defendant and his counsel in a practical dilemma: We are unable
2 to proceed in the within case without the documents in question
3 if at all.

4 14. This Court has no jurisdiction over the documents
5 seized pursuant to a Search Warrant issued out of the San Mateo
6 Superior Court and returned to the self same Court.

7 15. The only statutory remedy provided for the recovery of
8 these documents by the defendant is a Motion for the Return of
9 Property filed in the Court out of which the Search Warrant is-
10 sued in the first place.

11 16. Since this Court has no in rem jurisdiction over the
12 property nor in personam jurisdiction over the seizing officials,
13 a Motion for its return does not properly lie before this Court
14 by reason whereof time to prepare appropriate Motions and to ap-
15 pear in court in San Mateo County are requested by the defendant.

16 I declare, under penalty of perjury, under the laws of the
17 State of California, that the foregoing is true and correct, ex-
18 cept as to those matters stated on information and/or belief, and
19 as to those matters, I believe them to be true; and that this
20 Declaration was executed on January 13, 1987.

21 

22 _____
23 RICHARD C. CHIER
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POINTS AND AUTHORITIESINTRODUCTION

On January 8, 1987, the Hon. V. Gene McDonald, Judge of the San Mateo Superior Court issued a Warrant for the search of defendant Hunt's residence (and necessarily, his office) located at 10984 Belagio Road, Los Angeles, California. The person who applied for said Warrant and who was also the Affiant therefor, was Oscar Breiling, an agent/investigator of the California Department of Justice. Mr. Breiling is the case agent in connection with the pending prosecution in San Mateo County.

Within hours following the seizure of said documents they were transported to San Mateo County where they are at present.

The Points and Authorities which follow demonstrate that the Los Angeles Superior Court has no jurisdiction over the seized property and that therefore good cause exists for a continuance in order to enable counsel to attempt to obtain the return of said documents.

1.

ALL PROPERTY TAKEN ON A WARRANT MUST BE
RETAINED BY THE SEIZING OFFICER SUBJECT
TO THE ORDERS OF COURT FOR WHICH HE ACTED

Section 1536 of the California Penal Code provides in relevant part: "[a]ll property or things taken on a warrant must be retained by the officer in his custody" subject to Court Order.

2.

1
2 AN OFFICER WHO TAKES SUCH PROPERTY
3 DOES SO ON BEHALF OF THE COURT FOR USE
4 IN A JUDICIAL PROCEEDING, AND HE "MUST
5 RESPOND, AS DOES ANY CUSTODIAN, TO THE
6 ORDERS OF THE COURT FOR WHICH HE ACTED"

7 Gershenvorn v. Superior Court

8 (1964) 227 Cal.App.2d 361, 366

9
10 3.

11 THE PROPERTY IN QUESTION MUST BE IN THE
12 POSSESSION OF THE COURT, POLICE, OR THE
13 PROSECUTING AUTHORITY AS A CONDITION
14 PRECEDENT TO A VALID ORDER FOR THE
15 RETURN OF ALL OR ANY PART OF SAID PROPERTY

16 People v. Holland

17 (1978) 23 Cal.3d 77;

18 People v. Freeny

19 (1974) 37 Cal.App.3d 20, 30-32

20
21 4.

22 CONTINUANCES SHALL BE GRANTED

23 UPON A SHOWING OF GOOD CAUSE

24 Penal Code, Section 1050

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5.

IT IS AN ABUSE OF DISCRETION AND A DENIAL OF
DUE PROCESS TO DENY A MOTION FOR CONTINUANCE
TO SECURE THE RETURN OF PROPERTY NECESSARY TO
THE PREPARATION AND PRESENTATION OF A DEFENSE

People v. Moss

(1967) 253 Cal.App.2d 248, 251

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6.

A MYOPIC INSISTENCE UPON EXPEDITIOUSNESS
IN THE FACE OF A JUSTIFIABLE REQUEST
FOR DELAY CAN RENDER THE RIGHT TO
A FAIR TRIAL AN EMPTY FORMALITY

Ungar v. Sarafite

(1964) 376 U.S. 575, 589

CONCLUSION

Based upon the unbelievable oafishness of law enforcement personnel who conducted a search of defendant's residence and office at a time when they knew he was in court and unable to object to the seizure of litigation materials, and the inability of defense counsel to go forward without such materials, the Court

is respectfully requested to grant the relief sought herein.

DATED: January 13, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: *Richard C. Chier*
RICHARD C. CHIER
Attorneys for Defendant

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1 ARTHUR H. BARENS
2 10209 Santa Monica Blvd.
3 Los Angeles, CA 90067

4 (213) 557-0444

5 Attorney for Defendant

FILED

JAN 5 1987

FRANK

CLERK

BY EL. T. [unclear]

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

11 THE PEOPLE OF THE STATE OF)
12 CALIFORNIA,)
13)
14 Plaintiff,)
15 v.)
16 JOE HUNT,)
17 Defendant.)

Case No. A090435

ORDER APPOINTING SECOND
COUNSEL
[Penal Code Section 987.2
~~[TO BE SEALED]~~

18 Upon the reading and filing of the Application of Arthur H.
19 Barens for appointment as second counsel pursuant to the provi-
20 sions of Section 987.2 of the Penal Code, and good cause appear-
21 ing therefor, it is hereby ordered that Arthur H. Barens be ap-
22 pointed to represent defendant, JOE HUNT, for the remainder of
23 the guilt phase, special circumstances phase, penalty phase, if
24 any, throughout all post trial proceedings, if any, and, further,
25 that the said Arthur H. Barens be paid pursuant to provisions of
26 of Section 987.2 of the Penal Code at the rate of \$75.00 per
27 hour, plus expenses, if any.

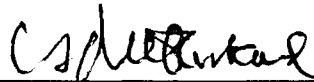
28 It is further ordered that the compensation of appointed

1 counsel, Richard C. Chier, be fixed at the rate of \$35.00 per
2 hour plus costs necessarily incurred on behalf of said defendant.

3 The Order appointing Arthur H. Barens shall be entered as of
4 December 16, 1986, nunc pro tunc.

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DATED: JAN 15, 1987


LAURENCE J. RITTENBAND
Judge of the Superior Court

1 ARTHUR H. BARENS
10209 Santa Monica Blvd.
2 Los Angeles, CA 90067
(213) 557-0444

3 RICHARD C. CHIER
10920 Wilshire Boulevard
4 Suite 1000
Los Angeles, CA 90024
5 (213) 550-1005

6 Attorney for Defendant HUNT

FILED

JAN 28 1987

FRANK...
BY D. ISCH...

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA,)
12)
13 Plaintiff,)
14 v.)
15 JOE HUNT,)
16 Defendant.)

Case No. A090435

NOTICE OF MOTION AND MOTION
FOR CLARIFICATION OF TRIAL
COURT POLICY REGARDING NATURE
AND SCOPE OF PARTICIPATION OF
CO-COUNSEL DURING TRIAL;
DECLARATION; POINTS AND
AUTHORITIES

DATE: January 28, 1987
TIME: 1:30 P.M.
DEPARTMENT: WEST "C"

18
19 TO THE HONORABLE LAWRENCE J. RITTENBAND; TO IRA REINER, DIS-
20 TRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES, AND TO HIS DEPUTY,
21 FREDRICK M. WAPNER;

22 PLEASE TAKE NOTICE that on Wednesday, January 28, 1987, at
23 the hour of 1:30 P.M., or as soon thereafter as counsel may be
24 heard in Department West-C in the above-entitled Court, defendant
25 JOE HUNT will request judicial clarification of the nature and
26 extent of the participation the Trial Court intends to permit by
27 co-counsel, Richard C. Chier during the trial proceedings herein.
28

1 Said Motion is made upon the grounds, each and all:

2 1. That between January 5, 1987 through and including
3 the present time, the Trial Court has forbidden and prohibited
4 the oral participation of co-counsel, Richard C. Chier, in the
5 trial proceedings;

6 2. That defendant, JOE HUNT, is becoming increasingly
7 concerned that he is being denied the effective assistance of
8 both counsel in this, a death penalty case; and

9 3. Recent remarks by the Trial Court suggest that
10 co-counsel, Richard C. Chier, will not be permitted to partici-
11 pate in the trial proceedings.

12 Said Motion will be based upon the attached moving papers;
13 upon Volumes 28 through and including Volume 37 of the Reporter's
14 Daily Transcript of the proceedings herein; upon Section 987, et
15 seq. of the California Penal Code; and upon such further oral
16 and/or documentary evidence as may be presented at the hearing on
17 this Motion.

18
19 DATED: January 27, 1986

20
21 Respectfully submitted,

22 ARTHUR H. BARENS
23 RICHARD C. CHIER

24
25 By: 
26 ARTHUR H. BARENS
27 Attorneys for Defendant
28

DECLARATION OF ARTHUR H. BARENS

1
2
3 ARTHUR H. BARENS declares and states:

4 1. I am an attorney at law, a member in good standing of
5 the State Bar of California, and have been co-counsel of record
6 for defendant, JOE HUNT, in the Superior Court since approximate-
7 ly April of 1985.

8 2. I deeply regret the necessity of bringing a Motion such
9 as this which has been occasioned by a series of remarks made by
10 the Court concerning the status of co-counsel, Chier, which re-
11 marks are at variance with my understanding of the applicable law
12 concerning the function of co-counsel. I bring this Motion be-
13 cause I am truly bewildered as to the Court's expectations vis a
14 vis Chier and myself.

15 3. On or about March 1, 1986, pursuant to the provisions
16 of Section 987(d) of the California Penal Code, Richard C. Chier
17 was appointed by the Honorable Robert W. Thomas as co-counsel in
18 the within case.

19 4. Judge Thomas was and is presently the presiding Judge
20 of the criminal calendar in the West Branch of the Los Angeles
21 Superior Court.

22 5. From and after the appointment of Richard C. Chier as
23 co-counsel herein, Mr. Chier has prepared the majority of all
24 pretrial motions; has performed the bulk of the legal research
25 herein; has organized (together with the defendant) the volumi-
26 nous pretrial discovery; has prepared and maintained trial note-
27 books herein; and has performed a number of other tasks as
28 co-counsel.

1 6. Because of the sheer complexity of this case, the un-
2 usually large number of prosecution witnesses and other unique
3 features of this case, Mr. Chier was selected by myself to act as
4 co-counsel herein.

5 7. Mr. Chier has been certified by the California State
6 Bar as a Criminal Specialist since approximately 1979; he enjoys
7 an aV rating in Martindale Hubbell, the National Lawyer Directo-
8 ry; he is a member of and active in the National Association of
9 Criminal Defense Lawyers and the California Attorneys for Crimi-
10 nal Justice; and is a respected member of the Criminal Defense
11 Bar.

12 8. Up until very recently, Mr. Hunt, the defendant,
13 co-counsel, Chier, and myself have worked together in harmony,
14 with efficiency, and with specific divisions of labor.

15 9. Prior to the recess for the holiday season, the Court
16 became increasingly impatient with Mr. Chier and even stated to
17 Mr. Chier, on the record, in words or substance that the Court
18 did not recognize Mr. Chier as co-counsel; that Mr. Chier had no
19 standing before this Court; and that the Court was to be ad-
20 dressed only by your declarant and not by Mr. Chier.

21 10. As a result of these incidents and as a result of pres-
22 sure from the defendant who is becoming increasingly apprehensive
23 about the role Mr. Chier was being allowed to play in the pro-
24 ceedings, a challenge was filed pursuant to the provisions of
25 Section 170.1 of the Code of Civil Procedure which was disal-
26 lowed, following which a Petition For Writ Of Mandate was filed
27 with the Court of Appeal. The Petition For Writ Of Mandate was
28 denied by Minute Order without explanation or comment.

1 11. Trial of the within cause recommenced on January 5,
2 1987 from and after which time Mr. Chier has not been permitted
3 to conduct voir dire or address the Court directly on any matter
4 of fact or law.

5 12. On January 15, 1987, the Trial Court stated that
6 Mr. Chier, wasn't needed in court during the selection of the ju-
7 ry and, further, that he was not recognized as being in the case.
8 The Trial Court stated that Mr. Chier was not co-counsel so far
9 as it was concerned.

10 13. On January 20, 1987 I respectfully and humbly sought
11 leave of this Court to have Mr. Chier respond to certain inqui-
12 ries being made by the Court concerning the Motion for Dismissal
13 which was entirely conceived of, researched and written by
14 Mr. Chier.

15 14. It has been agreed between Mr. Chier and myself that
16 Mr. Chier will handle all legal motions, legal objections, and
17 other matters of law as well as examination and cross-examination
18 of certain witnesses.

19 15. On Monday, January 27, 1987, Mr. Chier attempted to ap-
20 prise me of certain matters which were then before the Court and
21 attempted to signal me while I was engaged in the colloquy with
22 the Court.


23 16. Mr. Chier was told by the Court to "shut up" and his
24 standing as co-counsel in this case was once again brought into
25 question by the Court's deportment toward Mr. Chier.

26 17. As a result of the continuing circumscription of
27 Mr. Chier's participation, the defense has become increasingly
28 apprehensive that the defendant is being denied the effective

1 assistance of both trial counsel and the defendant has urged the
2 bringing of this request for clarification on this issue.

3 18.. Regrettably, the Court appears to be adhering to a pol-
4 icy concerning Mr. Chier which is at variance with the Federal
5 and State Constitutions and the Penal Code which variance is
6 sought to be clarified by the making of this Motion.

7 I declare, under penalty of perjury, under the laws of the
8 State of California, that the foregoing is true and correct and
9 that this Declaration was executed at Los Angeles, California, on
10 January 28, 1987.



ARTHUR R. BARENS

MEMORANDUM OF POINTS AND AUTHORITIES

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1.

THE CALIFORNIA PENAL CODE REFLECTS A PREFERENCE
FOR TWO COUNSEL IN A DEATH PENALTY CASE

Section 987 of the Penal Code (formerly subsumed by Section 9879 of the Penal Code) provides in relevant portion:

"In a capital case, the court may appoint an additional attorney as a co-counsel upon a written request of the first attorney appointed. The request shall be supported by an affidavit of the first attorney setting forth in detail the reasons why a second attorney should be appointed. Any such affidavit filed with the court shall be confidential and privileged. The court shall appoint a second attorney when it is convinced by the reasons stated in the affidavit that the appointment is necessary to provide the defendant with effective representation . . ." Section 987(d) California Penal Code.

In the case of Keenan v. Superior Court, (1982) 31 Cal.3d 424, 430, the California Supreme Court established for the first time that the showing of genuine need give rise to a presumption a second attorney was require for preparation and presentation of a capital offense. As stated at page 434 of Keenan:

"Moreover, Section 987.9, though not providing for appointment of counsel, reflects a legislative intent

1 that the court be guided by a capital defendant's need
2 for a 'complete and full defense.' That intent, to-
3 gether with a constitutionally mandated distinction be-
4 tween death and other penalties, requires that the tri-
5 al court apply a higher standard than bare adequacy to
6 a defendant's request for additional counsel. If it
7 appears that a second attorney may lend an important
8 assistance in preparing for trial or presenting the
9 case, the court should rule favorably on the request."

10 In Keenan, the California Supreme Court issued a pre-emptory
11 writ of mandate directing the trial court to appoint a second at-
12 torney for the defendant.

13 Herein, the Court acting through the Honorable Robert W.
14 Thomas, has appointed Richard C. Chier who has been, ostensibly,
15 co-counsel since the date of his appointment.

16
17 2.

18 TWO COUNSEL MAY ARGUE IN A DEATH CASE

19
20 Section 1095 of the California Penal Code provides:

21 "If the offense charged is punishable with death,
22 two counsel on each side may argue the cause. In any
23 other case, the court may, in its discretion, restrict
24 the argument to one counsel on each side."

25 This Section has been interpreted by the Superior Courts of
26 Los Angeles County to allow when requested two counsel to argue
27 in a death penalty case.
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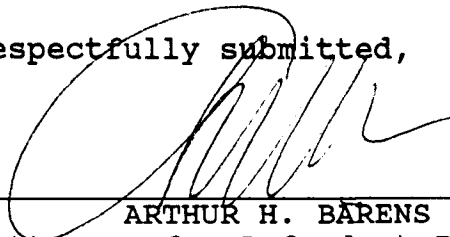
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THE COURTS MUST BE PARTICULARLY SENSITIVE
TO INSURE THAT EVERY SAFEGUARD DESIGNED TO
GUARANTEE A DEFENDANT A FULL DEFENSE
IS OBSERVED IN A CAPITAL CASE; IN STRIKING A BALANCE
BETWEEN THE INTERESTS OF THE STATE AND THOSE OF DEFENDANT,
IT IS GENERALLY NECESSARY TO PROTECT MORE CAREFULLY
THE RIGHTS OF A DEFENDANT WHO IS CHARGED
WITH A CAPITAL CRIME

DATED: January 27, 1987

Respectfully submitted,



ARTHUR H. BARENS
Attorney for Defendant JOE HUNT

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10209 Santa Monica Blvd.
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10920 Wilshire Blvd., Suite 1000
Los Angeles, CA 90024
(213) 550-1005

Attorneys for Defendant

FILED

FEB 12 1987

FRANK
CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
Plaintiff,)
)
v.)
)
JOE HUNT,)
)
Defendant.)

Case No. A090435

NOTICE OF MOTION AND MOTION IN
LIMINE RE ORDER OF PROOF AND
REQUEST FOR EVIDENTIARY
HEARING RE ACTS AND STATEMENTS
OF ALLEGED CO-CONSPIRATOR;
POINTS AND AUTHORITIES

Date: February 12, 1987
Time: 10:30 a.m.
Place: Department WE-C
Est. Time: One Hour

TO: IRA REINER, DISTRICT ATTORNEY OF THE COUNTY OF LOS AN-
GELES AND DEPUTY DISTRICT ATTORNEY FREDERICK NATHAN WAPNER:

PLEASE TAKE NOTICE that on February 12, 1987, at 10:30 a.m.,
or as soon thereafter as counsel may be heard in Department WE-C
of the above-entitled Court, defendant will move for an Order
prohibiting the introduction of evidence of acts and/or state-
ments of alleged co-conspirator James Pittman at all or, in any
event, not until the People have established by independent evi-
dence the existence of a conspiracy between Pittman and Hunt.

PLEASE TAKE FURTHER NOTICE that defendant objects to the in-
troduction of any acts and/or statements of the alleged

1 co-conspirator, Pittman, after June 7, 1984, even if the People
2 can establish a prima facie conspiracy.

3 Said objection is made on the ground that the evidence
4 sought to be introduced fails to satisfy the requirements of Sec-
5 tion 1223 of the Evidence Code.

6 Said Motion will be based on the attached moving papers and
7 upon such further oral and/or documentary evidence as may be in-
8 troduced herein.

9
10 DATED: February 11, 1987

11
12 Respectfully submitted,

13 ARTHUR H. BARENS
14 RICHARD C. CHIER

15 By: 

16 RICHARD C. CHIER
17 Attorneys for Defendant
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MEMORANDUM OF POINTS AND AUTHORITIES1.
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34 WITHOUT A PRIMA FACIE SHOWING OF THE EXISTENCE
5 OF A CONSPIRACY, ALL ACTS AND STATEMENTS BY THE
6 ALLEGED CO-CONSPIRATOR PITTMAN ARE INADMISSIBLE
7

8 As defined in People v. Causey (1937) 22 Cal.App.2d 641, a
9 criminal conspiracy is "a corrupt agreement of two or more per-
10 sons to commit an offense prohibited by statute, accompanied by
11 some overt act in furtherance of the objects of agreement." Id.,
12 at 653-54. Conspiracy, therefore, is distinct from the offense
13 that the conspirators aim to commit, and the sufficiency of the
14 evidence to establish conspiracy must be regarded separately from
15 that relied upon to establish the target offense. People v.
16 Samargian (1966) 240 Cal.App.2d 13, 17-20. Consequently, the ev-
17 idence establishing a prima facie case of murder against the de-
18 fendant, JOE HUNT, is not necessarily sufficient to establish a
19 showing of conspiracy to commit murder. It is, in fact, the de-
20 fendant's position that there has been no showing of such a con-
21 spiracy. Absent such a showing, all acts and statements made by
22 the alleged co-conspirator are inadmissible.

23 In People v. Rodriguez (1940) 37 Cal.App.2d 290, the Court
24 explained that:

25 "[T]o charge conspiracy produces no advantage for
26 the plaintiff, nor does such a charge create burdens
27 for the defendant, any different with regards to each
28 than might be expected in connection with the trial for

1 other offenses Fancied handicaps incident to
2 the prosecution of other offenses cannot be overcome in
3 the trial of a criminal action by merely charging con-
4 spiracy [T]he same rules of evidence apply
5 generally." Id., at 294.

6 Therefore, while it is not necessary that the accusatory
7 pleading formally charge a conspiracy, until a prima facie show-
8 ing of a conspiracy is established, the defendant's
9 extra-judicial statements cannot be admitted to prove a conspira-
10 cy.

11 Likewise, "[b]efore evidence of the acts and declarations of
12 an alleged co-conspirator is admissible against other
13 co-conspirators prima facie evidence of the conspiracy must be
14 proved." People v. Saling (1972) 7 Cal.3d 844, 854; see also
15 People v. Steccone (1950) 36 Cal.2d 234, 238; Evidence Code Sec-
16 tion 1223.

17 In People v. Butts (1965) 236 Cal.App.2d 817, 824, the Court
18 explained that proof of the conspiracy may be circumstantial and
19 the agreement may be inferred from the acts and conduct of the
20 defendants in mutually carrying out a common purpose in violation
21 of the statute. While the overt acts need not be criminal, such
22 acts must be done as a step toward the furtherance of the con-
23 spiracy to be sufficient.

24 The prosecution intends to offer acts and statements by
25 Pittman to prove that Levin is dead and Hunt murdered him. How-
26 ever, this evidence is not at all probative of Hunt's guilt un-
27 less a conspiracy existed between Pittman and Hunt. Absent the
28 extra-judicial statements of Hunt and Pittman, the prosecution

1 has absolutely no evidence tending to show an agreement between
2 the two to commit murder. Mere association does not suffice to
3 establish a conspiracy. Parnell v. Superior Court (1981) 119
4 Cal.App.3d 392, 404-05. Therefore, without a prima facie showing
5 that Hunt and Pittman agreed to murder Levin, established inde-
6 pendently of any statements, the acts and statements of Pittman
7 while he was in New York are inadmissible.

8
9 2.

10 A HEARING TO SHOW INDEPENDENT PROOF OF A
11 CONSPIRACY, CONDUCTED OUTSIDE THE PRESENCE
12 OF THE JURY, IS NECESSARY BEFORE ACTS AND
13 STATEMENTS OF AN ALLEGED CO-CONSPIRATOR
14 ARE ADMITTED SO AS TO INSURE THAT THE
15 DEFENDANT IS NOT UNFAIRLY PREJUDICED

16
17 Evidence Code Section 1223 provides: "Evidence of a state-
18 ment offered against a party is not made inadmissible by the
19 hearsay rule if: . . . (c) the evidence is offered after admis-
20 sion of evidence sufficient to sustain a finding of facts [of a
21 conspiracy], or, in the court's discretion as to order of proof,
22 subject to the admission of such evidence." [Emphasis added.]

23 Of course, order of proof is a matter within the trial
24 court's discretion. However, Courts have stated that it is bet-
25 ter practice to require prima facie proof of the corpus delicti
26 of a crime before admissions are received. People v. Kilborn
27 (1970) 7 Cal.App.3d 998, 1002. While failure to do so is not in
28 itself grounds for reversal, situations where it clearly appears

1 that the defendant has been prejudiced by the erroneous admission
2 of extra-judicial statements are appropriate grounds. Id., at
3 1002. This is such a case.

4 In the case of conspiracy, Courts have proven to be particu-
5 larly cautious in admitting acts and statements of alleged
6 co-conspirators without previously proving the existence of the
7 conspiracy. The rationale for this "preferred" order of proof
8 was explained in United States v. James (5th Cir. 1979) 590 F.2d
9 575, cert. denied, 442 U.S. 912 (1979).

10 "Both because of the 'danger' to the defendant if the
11 statement is not connected and because of the inevita-
12 ble serious waste of time, energy and efficiency when a
13 mistrial is required in order to obviate such danger,
14 we conclude that the present procedure warrants the
15 statement of a proffered order of proof in such a case.
16 The district court should, whenever reasonably practi-
17 cal, require a showing of a conspiracy and of the con-
18 nection of the defendant with it before admitting dec-
19 larations of a co-conspirator." Id., 590 F.2d at 582.

20 Similarly, in United States v. Eubanks (9th Cir. 1979) 591
21 F.2d 513, the late Judge Walter Ely concluded, in a concurring
22 opinion criticizing the "indiscriminate application by prosecut-
23 ing authorities of the conspiracy charge," with the following
24 quotation from Justice Jackson:

25 "When the trial starts, the accused feels the full
26 impact of the conspiracy strategy. Strictly, the pros-
27 ecution should first establish 'prima facie' the con-
28 spiracy and identify the conspirators, after which

1 evidence of acts and declarations of each in the course
2 of its execution are admissible against all. But the
3 order of proof of so sprawling a charge is difficult
4 for a judge to control. As a practical matter, the ac-
5 cused often is confronted with a hodgepodge of acts and
6 statements by others which he may never have authorized
7 or intended to even know about, but which help to per-
8 suade the jury of the existence of the conspiracy it-
9 self. In other words, a conspiracy often is proved by
10 evidence that is admissible only upon the assumption
11 that a conspiracy existed. The naive assumption that
12 prejudicial effects can be overcome by instructions to
13 the jury, cf., Blumenthal v. United States, 332 U.S.
14 539, 559, 68 S.Ct. 248, 92 L.Ed. 154, all practicing
15 lawyers know to be unmitigated fiction. See Skidmore
16 v. Baltimore & Ohio R. Co., 167 F.2d 54 (2nd Cir.)"
17 Id. 591 F.2d at 824

18
19 3.

20 ANY STATEMENTS MADE BY THE ALLEGED
21 CO-CONSPIRATOR ARE NOT MADE ADMISSIBLE BY
22 EVIDENCE CODE SECTION 1223 BECAUSE THEY WERE
23 MADE AFTER THE ALLEGED CONSPIRACY WAS COMPLETED
24 AND WERE NOT MADE IN FURTHERANCE THEREOF

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26 All the statements made by the alleged co-conspirator
27 Pittman which the prosecution seeks to admit into evidence were
28 made after the alleged conspiracy could have occurred and are

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thus inadmissible under Evidence Code Section 1223.

To satisfy the requirements of Section 1223 so that otherwise inadmissible hearsay is made admissible, three conditions must be satisfied. First, and as already stated, the conspiracy must be independently proved. Second, the statements must have been made during the conspiracy. People v. Leach (1975) 15 Cal.3d 419, 436. Finally, Section 1223 explicitly states that the statements must be made "in furtherance of the objective of the conspiracy."

Regardless, then, if the conspiracy is independently proved, the hearsay statements are not made admissible by Section 1223 because the second and third requirements are not satisfied.

DATED: February 11, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: *Richard C. Chier*
RICHARD C. CHIER
Attorneys for Defendant

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10209 Santa Monica Blvd.
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Attorneys for Defendant

FILED

MAR 3 1987

CLERK OF SUPERIOR COURT
OF LOS ANGELES COUNTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JOE HUNT,

Defendant.

Case No. A090435

NOTICE OF JOINDER IN DISCOVERY
MOTION FILED BY CODEFENDANT,
JAMES PITMAN

TO: EACH PARTY AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that defendant, JOE HUNT, hereby joins in Motion for Discovery filed herein by James Pitman and noticed for March 3, 1987.

DATED: March 3, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: *Richard C. Chier*

RICHARD C. CHIER
Attorneys for Defendant

1 JEFFREY BRODEY, ESQ.
 2 9777 Wilshire Boulevard, Suite 900
 3 Beverly Hills, California 90212
 4 (213)277-8438
 5 -and-
 6 BARRY L. GREENHALGH, ESQ.
 7 8484 Wilshire Boulevard
 8 Suite 220
 9 Beverly Hills, California 90211
 10 (213)655-5340
 11 Attorneys for Defendant,
 12 JAMES PITTMAN

FILED

FEB 11 1987

FROM: [unclear]
 [unclear]
 [unclear]

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

11	THE PEOPLE OF THE STATE	)	CASE NO. A 090435
12	OF CALIFORNIA,)	
13		)	NOTICE OF MOTION AND MOTION
14	Plaintiff,	)	FOR SUPPLEMENTAL PRETRIAL
15		)	DISCOVERY; MEMORANDUM OF
16	vs.	)	POINTS AND AUTHORITIES;
17		)	DECLARATION OF JEFFREY
18	JAMES PITTMAN,	)	BRODEY; ORDER THEREON
19)	
20)	
21	Defendant.	)	DATE: March ^{April} 3, 1987
22		)	TIME: 9:00 A.M.
23		)	DEPT: WEST "C"

24 TO THE CLERK OF THE COURT, TO IRA REINER, DISTRICT ATTORNEY FOR
 25 THE COUNTY OF LOS ANGELES AND/OR HIS DEPUTY, FRED WAPNER, AND TO
 26 DARRYL GATES, CHIEF OF THE LOS ANGELES POLICE DEPARTMENT:

27 PLEASE TAKE NOTICE that on March 3, 1987, at the
 28 hour of 9:00 a.m., or as soon thereafter as counsel may be
 heard, in Department WEST "C" of the above-entitled court,
 located at 1725 Main Street, Santa Monica, California, 90401,
 defendant, JAMES PITTMAN, by and through his counsel, JEFFREY
 BRODEY and BARRY L. GREENHALGH, will move this Court for an
 order directing the Los Angeles District Attorney's Office, the
 Los Angeles Police Department and any members of their
 respective staffs, and any other law enforcement personnel who

BRODEY & PRICE
 A PROFESSIONAL CORPORATION
 9777 WILSHIRE BOULEVARD
 SUITE 900
 BEVERLY HILLS, CALIFORNIA 90212
 (213) 277-8438

1 have assisted, are assisting, or may assist in the
 2 investigation, preparation and prosecution of the above-entitled
 3 action (hereinafter "the People") to make available to
 4 defendant's counsel for examination, hearing, analysis and
 5 copying all of the objects and information involving the death
 6 of RICHARD MAYER and/or any crime occurring after June 7, 1984,
 7 in which DEAN KARNEY is named as a suspect, other than the
 8 crimes involving HEYADAT ESLAMINIA and RONALD LEVIN, in addition
 9 to the objects and information set out in the attached Motion
 10 for Supplemental Pretrial Discovery which are in their
 11 possession or under their control or which may be reasonably
 12 obtained by them through the exercise of due diligence.

13 Defendant will further move that said order be a
 14 continuing discovery order requiring the People to inform the
 15 attorneys for defendant forthwith of any of the information
 16 covered by the order which comes to the attention of the People
 17 after the granting of said order.

18 This Motion is based upon this Notice of Motion, the
 19 Motion for Supplemental Pretrial Discovery, the attached
 20 Memorandum of Points and Authorities, the attached Declaration
 21 of JEFFREY BRODEY, the previous Motion for Pretrial Discovery,
 22 the records and files in the within matter, including the
 23 transcripts of the preliminary hearing, the transcripts of the
 24 first trial in this matter, and the transcripts of the trial and

25 ///
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 28 ///

BRODEY & PRICE
 A PROFESSIONAL CORPORATION
 9777 WILSHIRE AVENUE, SUITE 900
 BEVERLY HILLS, CALIFORNIA 90212
 (213) 277-8438

1 motions by defendant, JOE HUNT, and upon such other oral and/or
2 documentary evidence as may be adduced at the hearing on this
3 Motion.

4 DATED: 2/15/87.

5 BRODEY & PRICE, A PROFESSIONAL
6 LAW CORPORATION

7 By: *Jeffrey Brodey*
8 JEFFREY BRODEY

9 *Barry L. Greenhalgh*
10 BARRY L. GREENHALGH

11 Attorneys for Defendant,
12 JAMES PITTMAN

13 BRODEY & PRICE
14 A PROFESSIONAL CORPORATION
15 9777 WILSHIRE BOULEVARD
16 SUITE 900
17 BEVERLY HILLS, CALIFORNIA 90212
18 (213) 277-8438

MOTION FOR SUPPLEMENTAL PRETRIAL DISCOVERY

1
2 Defendant, JAMES PITTMAN, seeks an order by this Court
3 to the People requiring that the below-listed information be
4 made available to defendant's counsel for examination, hearing,
5 analysis and copying. The purpose of this motion is to request
6 information for all offenses and crimes in which DEAN KARNEY is
7 named as a suspect, other than those crimes in which the named
8 victim is HAYADAT ESLAMINIA or RONALD LEVIN:

9 1. Names of victims and dates of (1. Ordered _____
10 offenses for any crimes investigated by the (Modified _____
11 Los Angeles Police Department subsequent to (Refused _____
12 the date of June 7, 1984. (

13 2. Copies of all crime reports (2. Ordered _____
14 of any such crimes investigated by the Los (Modified _____
15 Angeles Police Department. (Refused _____

16 3. The names, addresses and badge (3. Ordered _____
17 numbers of all police officers assigned as (Modified _____
18 investigators on any such crimes. (Refused _____

19 4. Copies of any statements made (4. Ordered _____
20 by DEAN KARNEY pertaining to any such crimes. (Modified _____

21 /// (Refused _____

22 5. Any and all names, addresses (5. Ordered _____
23 and badge numbers of officers who may have (Modified _____
24 taken any written or oral statements from (Refused _____
25 DEAN KARNEY in regard to any such crimes. (

26 6. Any and all statements made (6. Ordered _____
27 by DEAN KARNEY in regard to any investiga- (Modified _____
28 tions of any such crimes. If said statements (Refused _____

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1 are merely oral, it is requested that they ((

2 be reduced to writing and copies provided ((

3 to defense counsel. ((

4 7. Any consideration given to (7. Ordered_____

5 DEAN KARNEY by any police agency or prosecu- (Modified_____

6 torial agency, not limited to the Los Angeles(Refused_____

7 County District Attorney's Office, the Los ((

8 Angeles Police Department, the Beverly Hills ((

9 Police Department, or the Attorney General ((

10 of the State of California, on any offenses, ((

11 whether by way of sentencing consideration, ((

12 investigative consideration, time delay, ((

13 immunity, or the non-filing of charges, in ((

14 exchange for his testimony in the crimes ((

15 involving victims RONALD LEVIN and HEYADAT ((

16 ESLAMINIA. ((

17 8. All information requested in (8. Ordered_____

18 Item Nos. 1 through 7 of this Motion for (Modified_____

19 Supplemental Pretrial Discovery, as they (Refused_____

20 relate to DEAN KARNEY, concerning the ((

21 murder of victim RICHARD MAYER. ((

22 9. This order binds "the People" (9. Ordered_____

23 viz: all parties named in the accompanying (Modified_____

24 Notice of Motion for Discovery, their (Refused_____

25 deputies, employees, agents, and all other ((

26 law enforcement personnel who have assisted ((

27 or are assisting in the investigation or ((

28 prosecution of this case. People v. Renchie ((

1 (1962) 201 C.A.2d 1, 5; Engstrom v. Superior (

2 Court (1972) 20 C.A.3d 240. (

3 10. This order is a continuing (10. Ordered _____

4 order and requires the People to inform the (Modified _____

5 attorneys for the defendant forthwith of any (Refused _____

6 information covered by this order which comes(

7 to the attention of the People after the (

8 hearing on this discovery motion. Hill v. (

9 Superior Court (1974) 10 Cal.3d 812, 821; (

10 In re Ferguson (1971) 5 Cal.3d 525; (

11 Brady v. Maryland (1963) 373 U.S. 83, 87; (

12 A.B.A. Standards, Section 4.2. (

13 The provisions of this Motion for Discovery with

14 Points and Authorities are severable as to the objects and the

15 means of discovery mentioned above. This motion may be granted

16 on such other, further or different terms or conditions as are

17 reasonable and just. This motion will be based upon the

18 accompanying Notice of Motion, the Motion for Supplemental

19 Pretrial Discovery, the Memorandum of Points and Authorities,

20 the Declaration of JEFFREY BRODEY in support thereof, the

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1 pleadings, records, files, documents and other evidence, whether
2 oral or written, presented at the hearing on this motion.

3 DATED: 2-18-57.

4 BRODEY & PRICE, A PROFESSIONAL
5 LAW CORPORATION

6 By: *Jeffrey Brodey*
7 JEFFREY BRODEY

8 *Barry L. Greenhalgh*
9 BARRY L. GREENHALGH

10 Attorneys for Defendant,
11 JAMES PITTMAN

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15 SUITE 500
16 BEVERLY HILLS, CALIFORNIA 90212
17 (213) 277-8438

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ORDER

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IT IS HEREBY ORDERED that the People comply with defendant's discovery motion for Items _____ through _____, on or before _____.

IT IS FURTHER ORDERED that this order be deemed continuing.

DATED: _____

JUDGE OF THE SUPERIOR COURT

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MEMORANDUM OF POINTS AND AUTHORITIES

In addition to the authorities previously cited in defendant's initial Order for Discovery, defendant submits for the Court's consideration the following general principles:

I.

THE ROLE OF THE PROSECUTOR

1. "The prosecuting attorney is both an officer of the state and of the court, and his duty extends no further than an impartial fair, and just trial of defendant . . . that it was desired that the state's evidence remain undisclosed, partakes of the nature of a game, rather than judicial procedure. The state in its might and power ought to be, and is, too jealous of according a defendant a fair and impartial trial to hinder him in intelligently preparing his defense and in availing himself of all competent, material and relevant evidence that tends to throw light on the subject matter at trial." Powell v. Superior Court (1957) 48 Cal.2d 704, 709.

2. "The duty of the District Attorney is not merely that of an advocate . . . his duty is not to obtain convictions, but to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial, and it is the solemn duty of the trial judge to see that the facts material to the charge are fairly presented." People v. Kiihoa (1960) 53 Cal.2d 748, 753.

3. "In light of the great resources at the command of the District Attorney and of a commitment that justice be done to the individual, restraints are placed on him to assure that the power committed to his care is used to further the

1 produced in open court all evidence material to the question of
2 guilt or innocence which may be feasibly obtained." People v.
3 Vigghiany (1960) 181 C.A.2d 621, 626.

4 III.
5 WHAT STANDARDS SHOULD THE COURT USE IN
6 DETERMINING WHETHER TO EXERCISE ITS DISCRETION
7 IN FAVOR OF GRANTING OR DENYING THE PROPOSED DISCOVERY?

8 1. Generally speaking, the court should order
9 discovery of information which is:

10 (a) "Described with adequate specificity to
11 preclude the possibility that defendant is engaged in a 'fishing
12 expedition.'" Pitchess v. Superior Court (1974) 11 Cal.3d 531,
13 538.

14 (b) Supported by a showing of "good cause".

15 2. "Good cause" has been held to require a showing
16 of:

17 (a) More than a "mere desire for the benefit of
18 all information which has been obtained by the People in their
19 investigation of the crime". People v. Cooper (1960) 53 Cal.2d
20 757, 770; Joe Z. v. Superior Court (1970) 3 Cal.3d 797, 804;
21 Pitchess v. Superior Court (1974) 11 Cal.3d 531, 537.

22 (b) "A plausible justification for inspection."
23 Joe Z. v. Superior Court (1970) 3 Cal.3d 797, 804.

24 3. "Good cause" or "plausible justification" does not
25 necessarily require a showing that:

26 (a) The information sought in fact exists. Hill
27 v. Superior Court (1974) 19 Cal.3d 812, 817; Cash v. Superior
28 Court (1959) 53 Cal.2d 72; People v. Campbell (1973) 27 C.A.3d
849.

1 (b) Such information cannot be readily obtained
 2 by the defendant, at least where any effort to obtain such
 3 information might have a detrimental effect upon the defense,
 4 Hill v. Superior Court (1974) 19 Cal.3d 812, 819, or is unlikely
 5 to be successful, Pitchess v. Superior Court (1974) 11 Cal.3d
 6 531, 537-538.

7 (c) The information sought would lead to evidence
 8 admissible at trial. People v. Cooper (1960) 53 Cal.2d 757,
 9 770; People v. Silberstein (1958) 159 C.A.2d Supp. 848; Powell
 10 v. Superior Court (1957) 48 Cal.2d 704; Funk v. Superior Court
 11 (1959) 52 Cal.2d 423; People v. Chapman (1959) 52 Cal.2d 95.

12 (d) Statements of prosecution witnesses which are
 13 sought are inconsistent with the witnesses' testimonies. People
 14 v. Estrada (1969) 54 Cal.2d 713, 716; People v. Chapman (1959)
 15 52 Cal.2d 95, 98.

16 (e) Statements of prosecution witnesses which are
 17 signed or otherwise acknowledged as accurate by said witnesses.
 18 People v. Estrada (1969) 54 Cal.2d 713, 716; People v. Chapman
 19 (1959) 52 Cal.2d 95, 98.

20 (f) Statements of the defendant are necessary to
 21 refresh that defendant's recollection. Joe Z. v. Superior Court
 22 (1970) 3 Cal.3d 797, 802.

23 IV.

24 ADDITIONAL CONSIDERATIONS

25 1. Any information which is discoverable at trial is
 26 also discoverable at pretrial. Funk v. Superior Court (1959) 52
 27 Cal.2d 423, 424; Norton v. Superior Court (1959) 173 C.A.2d 133,
 28 136.

1 2. The court may order the District Attorney to
2 obtain for the defense information from other agencies within
3 the criminal justice system where the information is
4 discoverable and is available to the prosecutor but is not
5 readily available to the defense. People v. Renchie (1962) 201
6 C.A.2d 1; Engstrom v. Superior Court (1971) 20 C.A.3d 240, 243.

7 3. The court should analyze challenged requests for
8 discovery by determining whether:

9 (a) The requested information might assist the
10 defendant in preparing "an intelligent defense in light of all
11 relevant and reasonably accessible information". Pitchess v.
12 Superior Court (1974) 11 Cal.3d 531, 535.

13 (b) The defendant's request has "adequate
14 specificity to preclude the possibility that defendant is on a
15 'fishing expedition'". Pitchess v. Superior Court (1974) 11
16 Cal.3d at 538.

17 (c) The defendant has shown "good cause" or a
18 "plausible justification" for discovery.

19 (d) The information is not discoverable pursuant
20 to Evidence Code Section 1040, et seq.

21 (e) If otherwise discoverable information is made
22 non-discoverable under Evidence Code Section 1040, et seq., what
23 is the appropriate "order or finding of fact adverse to the
24 public entity" which Evidence Code Section 1042 mandates?

25 4. In determining whether any information in the
26 possession of the People is subject to the discovery order, the
27 court must allow the defendant's counsel to see the questioned
28 information and argue its discoverability to the court before

1 the court rules thereon. As the court held in People v.
 2 Vigghiany (1960) 181 C.A.2d 621, 627-628, to allow the court to
 3 make such an ex parte ruling would deny the accused due process
 4 of law:

5 "Allowing the trial judge to pass upon
 6 defendant's motion [for discovery] on the basis
 7 of evidence and documents not available to
 8 defendant or his counsel . . . had the effect of
 9 substituting the judge for defendant's counsel,
 10 insofar as defendant was to be represented by
 11 counsel, in arguing the admissibility or effect
 12 of the documents with respect to his motion."

13 Criminal discovery is based on the "fundamental
 14 proposition that [an accused] is entitled to a fair trial and an
 15 intelligent defense in light of all relevant and reasonably
 16 accessible information". Pitchess v. Superior Court (1974) 11
 17 Cal.3d 531, 535. A showing "that the defendant cannot readily
 18 obtain the information through his own efforts will ordinarily
 19 entitle him to pretrial knowledge of any unprivileged evidence
 20 or information that might lead to the discovery of evidence, if
 21 it appears reasonable that such knowledge will assist him in
 22 preparing his defense" Ballard v. Superior Court
 23 (1966) 64 Cal.2d 159, 167.

24 Discovery for the purpose of obtaining information for
 25 possible use to impeach or cross-examine an adverse witness is
 26 generally appropriate since "the state has no interest in
 27 denying the accused access to all evidence that can throw light
 28 on the issues in the case and in particular has no interest in
 convicting on the testimony of witnesses who have not been as
 rigorously cross-examined and as thoroughly impeached as the
 evidence permits". Hill v. Superior Court (1974) 10 Cal.3d 812,

1 816. The same policy applies to information not in the
2 prosecution's possession but available upon request from other
3 agencies which are part of the criminal justice system.
4 Engstrom v. Superior Court (1971) 20 C.A.3d 240, 243.

5 V.

6 CONCLUSION

7 Defendant faces the maximum possible punishment
8 available under the law. The central evidence against him has
9 been supplied by prosecution witness DEAN KARNEY. KARNEY has
10 been granted immunity in two murder cases that we know of -- the
11 one before this Court involving the alleged victim, RONALD
12 LEVIN, and one now pending in Northern California involving
13 HEYADAT ESLAMINIA -- and it may be devastating to the People's
14 case if MR. KARNEY were to be the suspect in a third homicide.
15 His credibility would diminish, and his motives for lying would
16 increase in geometrical proportions. The defense should have an
17 opportunity to review the facts in that case without prejudicing
18 any ongoing investigation and then come to its own determination
19 of whether or not MR. KARNEY was eliminated as a suspect at the
20 convenience of the police department in order to avoid
21 jeopardizing the charges against MR. PITTMAN.

22 It is respectfully submitted that in this capital
23 case, defendant's discovery requests should be granted and
24 access should be made available to the defense to any offenses

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in which DEAN KARNEY is named as a suspect, including, but not limited to, the death of RICHARD MAYER.

DATED: 2-18-87.

BRODEY & PRICE, A PROFESSIONAL LAW CORPORATION

By: *Jeffrey Brodey*
JEFFREY BRODEY

Barry L. Greenhalgh
BARRY L. GREENHALGH

Attorneys for Defendant,
JAMES PITTMAN

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(213) 277-8438

DECLARATION OF JEFFREY BRODEY

1
2 I, JEFFREY BRODEY, declare as follows:

3 1. I am an attorney at law duly licensed to practice
4 before all courts in the State of California, and I am one of
5 the attorneys of record for the defendant herein, JAMES PITTMAN.

6 2. If called upon, I could competently testify to the
7 following of my own personal knowledge, except as to those
8 allegations contained herein which are based on information and
9 belief.

10 3. I have reviewed the transcript of the preliminary
11 hearing of the PITTMAN case, the transcript of the preliminary
12 hearing of the HUNT case, the transcript of the mistrial in the
13 PITTMAN case and various police reports involving statements
14 made by DEAN KARNEY, among other witnesses.

15 4. The testimony of DEAN KARNEY is essential to the
16 People's case and because of his close relationship with
17 defendants JOE HUNT and JAMES PITTMAN, it is the People's
18 contention that he is the only witness to certain alleged
19 conversations involving the death of RONALD LEVIN. It is the
20 defense's contention that these conversation did not take place
21 in the form testified to by DEAN KARNEY and have been fabricated
22 by him in order to fulfill his end of his bargained-for
23 immunity.

24 5. I have further read that MR. KARNEY has been
25 granted immunity by the People of the State of California in two
26 murder cases -- one being a murder case involving the victim
27 RONAL LEVIN, and the other being a murder case yet to be
28 prosecuted, involving victim HEYADAT ESLAMINIA.

1 6. I am informed, but do not have actual knowledge,
2 that DEAN KARNEY is a possible suspect in another death
3 occurring sometime in 1986 in Los Angeles County, but he as yet
4 has not been prosecuted for that offense.

5 7. Should MR. KARNEY have been charged with a
6 homicide, it would have had fierce repercussions to the within
7 matter, in that his credibility and reliability as a witness
8 would be completely eliminated.

9 8. If there is a possibility that a "secret deal" has
10 been made with DEAN KARNEY in regard to this murder, i.e., a
11 delay of prosecution until after he has testified against
12 MR. HUNT and MR. PITTMAN, counsel should be made aware of this,
13 so it can be brought to the jury's attention.

14 9. In order to determine whether or not there is a
15 likelihood that any possible advantage was given to MR. KARNEY
16 in relation to a charge or investigation in the other case, it
17 will be necessary for counsel to review the documents and make
18 an independent determination.

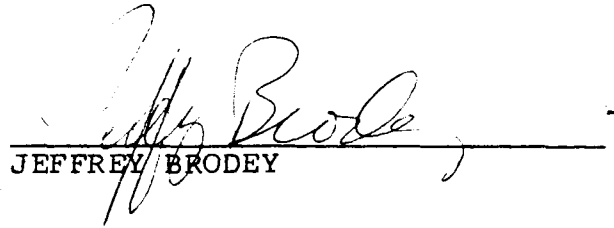
19 10. It is therefore respectfully requested that all
20 documents pertaining to any uncharged crimes, including the
21 death of RICHARD MAYER, in which MR. KARNEY has been named as a
22 suspect, be turned over to counsel for review or that counsel be
23 allowed to review those documents at some designated time and
24 place.

25 I declare under the penalty of perjury that the
26 foregoing is true and correct.

27 ///

28 ///

Executed this 18 day of February, 1987, at Beverly Hills, California.



JEFFREY BRODEY

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(VERIFICATION - 446 and 2015.5 C.C.P.)

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STATE OF CALIFORNIA }
County of _____ } ss. I, the undersigned, say: I am the _____

in the above entitled action: I have read the foregoing _____
and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are
therein stated upon my information or belief, and as to those matters that I believe it to be true.

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.
Executed on _____ at _____, California
(date) (place)

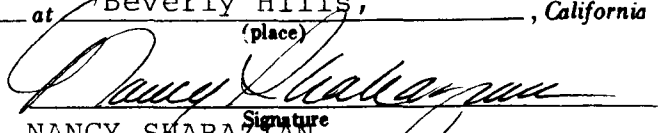
(Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within
entitled action; my business address/residence address is:
9777 Wilshire Boulevard #900, Beverly Hills, California 90212
On February 23, 1987, I served the within _____

MOTION FOR SUPPLEMENTAL PRETRIAL DISCOVERY, ETC.
on the _____ parties
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at Beverly Hills, California
addressed as follows:
FRED WAPNER, ESQ.
Deputy District Attorney
1725 Main Street
Santa Monica, California 90401

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.
Executed on February 23, 1987 at Beverly Hills, California
(date) (place)


Signature
NANCY SHABAZIAN

* Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

1 ARTHUR H. BARENS
2 10209 Santa Monica Blvd.
3 Los Angeles, CA 90067

4 (213) 557-0444

5 Attorney for Defendant

FILED

FRANK S. ZOLIN, County Clerk

By G. WANG, Deputy

6
7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10
11 THE PEOPLE OF THE STATE OF)
12 CALIFORNIA,)
13)
14 Plaintiff,)
15 v.)
16 JOE HUNT,)
17 Defendant.)

Case No. A090435

CONFIDENTIAL IN CAMERA MOTION
FOR APPOINTMENT OF SECOND
COUNSEL PURSUANT TO PENAL CODE
SECTION 987(d); POINTS AND
AUTHORITIES; DECLARATIONS

18 Pursuant to the provisions of Section 987(d) of the Califor-
19 nia Penal Code, defendant, JOE HUNT, respectfully moves the Court
20 for an Order appointing Richard C. Chier as associate counsel in
21 the above-entitled case.

22 This application is made upon the grounds, each and all:

23 1. That appointment of second counsel is necessary to en-
24 sure the defendant's right to the effective assistance of counsel
25 guaranteed by the Sixth and Fourteenth Amendments to the United
26 States Constitution, and Article 1, Section 15 of the California
27 Constitution;

28 2. Appointment of second counsel is necessary and appro-
priate because the defendant is presently indigent; and

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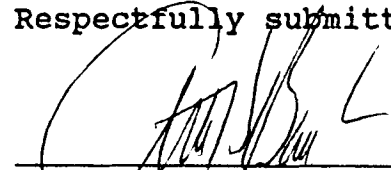
3. There is no reasonable probability of movant's financial condition improving in the near future.

It is therefore requested that the Court appoint Richard C. Chier as second counsel, effective March 1, 1986, and authorize payment to said second counsel as provided by the provisions of Section 987(d) of the Penal Code.

Defendant requests that this application be filed in camera, under seal and that its confidentiality be maintained by the Clerk of the Court until the entry of a final judgment herein.

DATED: February 21, 1986

Respectfully submitted,



ARTHUR H. BARENS
Attorney for Defendant

DECLARATION OF ARTHUR H. BARENS

ARTHUR H. BARENS declares and states:

1. I am an attorney at law, a member in good standing of the State Bar of California, and have been the attorney of record for defendant, JOE HUNT, since approximately March of 1985.

2. I was retained by Mr. Hunt to represent him in this special circumstances murder case in the Superior Court for which Mr. Hunt agreed to pay me the sum of \$50,000 plus expenses.

3. Mr. Hunt has paid me a total of a \$35,000; his last payment was made in October of 1985. From and after October, 1985, Mr. Hunt has been unable to pay his counsel the sum agreed or any other sum.

4. I have reviewed a tremendous number of reports and other documentation pertaining to the case; I have consulted with my client; I have interviewed witnesses; I have researched points of law; and I have spoken with other attorneys experienced in the defense of capital cases.

5. Notwithstanding the work I have performed on behalf of Mr. Hunt thus far, there is a substantial amount of work remaining to be done on his behalf in connection with which I believe it to be absolutely essential to have the assistance of associate counsel in order to provide Mr. Hunt with full and effective representation at the guilt, special circumstances, and penalty phases of this case. Specifically, I believe that associate counsel is necessary to provide assistance in the following areas:

(a) The preparation of the case involves the analyses

1 of numerous complex factual and legal issues such as vicari-
2 ous liability, mental state defenses, no specific intent,
3 corpus delicti problems, and other matters which cannot be
4 delegated to a non-attorney. Associate counsel, Richard C.
5 Chier, would be particularly useful in this analysis because
6 of his experience.

7 (b) Mr. Chier, who has been practicing for 18 years,
8 is a Certified Criminal Specialist and has previously ap-
9 peared in the Superior Court and California Supreme Court on
10 behalf of other persons accused of capital offenses.

11 (c) Mr. Chier is presently the lead counsel in a capi-
12 tal case now pending in the California Supreme Court enti-
13 tled and numbered PEOPLE OF THE STATE OF CALIFORNIA, Plain-
14 tiff, versus JESSIE EDWARD GONZALES, Crim. No.
15 22136/HC2404.1H, and, further, Mr. Chier was assisting me in
16 the representation of Mr. Hunt until there were no further
17 funds with which to pay Mr. Chier.

18 (d) The People have announced their intention to offer
19 evidence of other unadjudicated offenses at the guilt phase
20 pursuant to Evidence Code Section 1101, each of which charg-
21 es requires investigation of the facts and possible legal
22 and factual defenses thereto. Because I have primary re-
23 sponsibility for preparing the defense to the capital charg-
24 es in this case, associate counsel would provide important
25 assistance in preparing defenses to the other crimes evi-
26 dence.

27 (e) The prosecutor has announced his intention to call
28 in excess of 30 witnesses in this case and I believe that at

1 least 30 more witnesses must be interviewed in order to pre-
2 pare an adequate defense. Associate counsel would be very
3 helpful in evaluating reports of witness interviews, con-
4 ducting follow up interviews, and organizing their prospec-
5 tive testimony.

6 (f) The prosecution and defense of this case will in-
7 volve complicated evidentiary problems, comprising corpus
8 delicti issues, proof of death, proof of criminal agency,
9 use of statements to prove corpus delicti, etc.

10 In addition thereto the prosecution will offer witness-
11 es to testify on the issue of the alleged motive of defen-
12 dant which issue involves complicated financial transactions
13 between the defendant and the alleged victim. The documen-
14 tation of the business dealings alone fills nearly a full
15 record storage box.

16 (g) The trial of a codefendant, JAMES PITMAN, resulted
17 in a hung jury after some approximately eight weeks of jury
18 trial and it will be necessary to digest, evaluate, and or-
19 ganize the testimony in the Pitman case, much of which tes-
20 timony will be offered at the trial of defendant Hunt.


21 (h) Associate counsel would provide important and val-
22 uable assistance in evaluating these matters, in preparing
23 certain pretrial motions, and in determining the need for
24 expert testimony in certain of these areas.

25 (i) I have identified several pretrial motions of cru-
26 cial importance to this case. They have not been prepared
27 as of yet. Associate counsel is necessary to assist in the
28 drafting of these pleadings and to pursue interlocutory

1 remedies in the appellate courts in the event of adverse
2 rulings in the trial court. Attorney Chier is particularly
3 skilled in appellate matters and would be particularly use-
4 ful in the preparation of these motions and writ applica-
5 tions because of his experience.

6 6. I have discussed the case with attorney Chier, who
7 states that he is available to accept appointment as second coun-
8 sel at an hourly rate of \$ _____ per hour.

9 I declare, under penalty of perjury, under the laws of the
10 State of California, that the foregoing is true and correct and
11 that this Declaration was executed at Los Angeles, California, on
12 February 21, 1986.



ARTHUR H. BARENS

MEMORANDUM OF POINTS AND AUTHORITIES1.

A PRESUMPTION ARISES THAT A SECOND ATTORNEY
IS REQUIRED WHERE COUNSEL MAKES A SHOWING OF
GENUINE NEED THAT A SECOND ATTORNEY MAY LEND
IMPORTANT ASSISTANCE IN PREPARING FOR TRIAL
OR PRESENTING THE CASE

Section 987(d) provides:

"In a capital case, the court may appoint an additional attorney as a co-counsel upon a written request of the first attorney appointed. The request shall be supported by an affidavit of the first attorney setting forth in detail the reasons why a second should be appointed. Any such affidavit filed with the court shall be confidential and privileged. The court shall appoint a second attorney when it is convinced by the reasons stated in the affidavit that the appointment is necessary to provide the defendant with effective representation. If the request is denied, the court shall state on the record its reasons for denial of the request."

As set forth in the accompanying Declaration, an enormous amount of work is necessary to prepare properly for trial. The Supreme Court has noted that "representation of an accused murderer is a mammoth responsibility" even in a non-capital case. [In re Hall (1981) 30 Cal.3d 408, 434.] The time and effort required for adequate preparation of the penalty trial can be equal

1 to or greater than that required for the guilt phase.

2 In the case of Keenan v. Superior Court (1982) 31 Cal.3d
3 424, 430, the California Supreme Court established for the first
4 time that the showing of genuine need gave rise to a presumption
5 a second attorney was required for preparation and presentation
6 of a capital defense. As stated at p.434 of the Keenan opinion:

7 "Moreover, Section 987.9, though not providing for
8 appointment of counsel, reflects a legislative intent
9 that the court be guided by a capital defendant's need
10 for a 'complete and full defense.' That intent, to-
11 gether with the constitutionally mandated distinction
12 between death and other penalties, requires that the
13 trial court apply a higher standard than bare adequacy
14 to a defendant's request for additional counsel. If it
15 appears that second attorney may lend important assis-
16 tance in preparing for trial or presenting the case,
17 the court should rule favorably on the request."

18 In Keenan, supra, the California Supreme Court issued a pe-
19 remptory writ of mandate directing the trial court to appoint a
20 second attorney for the defendant.

21 Although a defendant may be financially able to obtain lead
22 counsel, it is an abuse of discretion for a trial court to deny
23 the appointment of second counsel if the defendant is, in fact,
24 indigent. See, for example, Gilbert v. Superior Court (1985) 169
25 Cal.App.3d 148. Upon a proper showing of necessity, a trial
26 court must provide to an indigent defendant expert services,
27 without regard to whether his counsel is appointed or selected
28 pro bono counsel. People v. Worthy (1980) 109 Cal.App.3d 514.

DECLARATION OF JOE HUNT

1
2
3 JOE HUNT declares and states:

4 1. I am the defendant in this special circumstances --
5 homicide prosecution.

6 2. I was originally arrested on the within charges in No-
7 vember of 1984. Since that time I have had a succession of at-
8 torneys including Harry Weiss; Edward Masry; and finally my
9 present counsel, Arthur H. Barens.

10 3. I am also one of four named defendants in a homicide
11 prosecution now pending in San Mateo County.

12 4. I have recently completed a preliminary hearing in that
13 case at which time I was held to answer.

14 5. I am now making appearances in the San Mateo Superior
15 Court in connection with that case without counsel. I have no
16 attorney of record due to my inability to afford private counsel.

17 6. I was released from custody in November of 1985. Al-
18 though I originally agreed to pay Mr. Arthur H. Barens \$50,000
19 for my representation, I have been unable to pay him the balance
20 of monies owed and I have absolutely no funds whatsoever for the
21 appointment of investigators, law clerks, and other persons nec-
22 essary to prepare and present a proper defense in a death penalty
23 case.

24 7. I am unemployed; I own no property, real or personal; I
25 do not even have an automobile; I am ineligible for unemployment
26 and I am ineligible for any kind of social welfare payment.

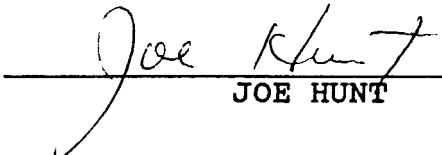
27 8. In a word, I am presently indigent. I am living on the
28 charity of my future mother and father-in-law, Mr. and Mrs. Bobby

1 Roberts. I do not have to pay rent, I am driving an automobile
2 loaned to me by my father who, himself, has no monies left to
3 help defray my legal expenses.

4 9. I therefore join in the request of Mr. Barends for the
5 appointment of Mr. Chier. I am acquainted with Mr. Chier. I
6 have confidence in his ability and I believe his appointment is
7 absolutely essential for me to have the effective assistance of
8 counsel in these proceedings.

9 Accordingly, the Court is respectfully requested to grant
10 this application as requested.

11 I declare, under penalty of perjury, under the laws of the
12 State of California, that the foregoing is true and correct and
13 that this Declaration was executed on February 24, 1986.

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16 _____
17 JOE HUNT
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LAW OFFICES
ARTHUR H. BARENS
A PROFESSIONAL CORPORATION
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067
(213) 557-0444 • 879-0922

FILED

FEB 27 1988
FRANK S. ZOLIN, County Clerk
C. Wong
By C. WONG, Deputy

Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No. A090435
)	
Plaintiff,	)	ORDER ON CONFIDENTIAL IN CAMERA
	)	MOTION FOR APPOINTMENT OF SECOND
vs.	)	COUNSEL PURSUANT TO PENAL CODE
	)	SECTION 987(d)
JOE HUNT,)	
)	
Defendant.)	

GOOD CAUSE APPEARING, IT IS ORDERED:

That Richard C. Chier be and hereby is appointed as second counsel for defendant in the above-entitled action, effective March 1, 1986; and

IT IS FURTHER ORDERED that payment to second counsel be and hereby is authorized as provided by the provisions of Section 987(d) of the Penal Code.

DATED:

FEB 27 1988

Robert W. Thomas

ROBERT W. THOMAS
JUDGE OF THE SUPERIOR COURT

1 IRA REINER
DISTRICT ATTORNEY
2 BY: FRED WAPNER
DEPUTY DISTRICT ATTORNEY
3 1725 Main Street, Room 228
Santa Monica, CA 90401
4 (213) 458-5345

FILED

March 5 1987

FRANK J. EDLUND, CLERK

Edlund

U.S. DISTRICT COURT

5
6 Attorney for Plaintiff

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 PEOPLE OF THE STATE OF CALIFORNIA,)
11)
12 Plaintiff,)
13 v.)
14 JOE HUNT,)
15)
16 Defendant(s).)

NO. A090435

MOTION TO PROHIBIT FILM
OR ELECTRONIC MEDIA COVERAGE,
VOICE RECORDING OR ARTISTS
RENDITIONS OF DEAN KARNY;
DECLARATION OF OSCAR BREILING;
POINTS AND AUTHORITIES

17 TO THE HONORABLE JUDGE LAWRENCE RITTENBAND:

18 Please take notice that on March 4, 1987 the People of the
19 State of California will move for an order prohibiting any type of
20 electronic media coverage of the testimony of Dean Karny including any
21 voice recording by the media or members of the public and any artist
22 renditions of the person of Dean Karny. The motion will be based on
23 the attached declaration and points and authorities.

24 ///


25 ///

26 ///

1 DATED: March 3, 1987

2 Respectfully submitted
3 IRA REINER
4 District Attorney of
5 Los Angeles County

6 By

7 
8 FRED WAPNER
9 Deputy District Attorney

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POINTS AND AUTHORITIES

I

"Film or electronic media coverage is permitted only on written order of the court. The court may refuse, limit or terminate film or electronic media coverage in the interests of justice to protect the rights of the parties and the dignity of the court, or to assure the orderly conduct of the proceedings. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings."

Rule 980(b) California Rules of Court.

It is in the interest of justice to protect the right of the witness, Dean Karny, by preventing any type of reproduction, by film, video or audio tape, or artist's rendering, of the person or voice of the witness. Mr. Karny is in the state witness protection program and has been moved to a location known only to Special Agent Oscar Breiling, of the Attorney General's Office. If Mr. Karny's face and voice are broadcast on national television he can be easily recognized by friends and neighbors in his new location and his whereabouts will no longer be a secret.

If Mr. Karny's whereabouts are known, his life will be in danger. As detailed in the affidavit, another innocent person has been killed in an attempt to discredit the witness and make it appear that he did the killing. This proves that people with motives to discredit the witness will not hesitate to kill to achieve their goals. The testimony in this case has shown that the defendant discussed the killing of witnesses such as Tom and David May and the girlfriend of witness Jeff Raymond. The defendant has a definite interest in seeing that Mr. Karny does not testify as Mr. Karny is one of the chief

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	NO. A090435
Plaintiff,)	
)	DECLARATION OF
v.	)	<u>OSCAR A. BREILING.</u>
)	
JOSEPH HUNT,)	
)	
Defendant.)	

10 Declarant is Oscar A. BREILING, a Special Agent employed
11 by the California Department of Justice. I have been a California
12 Peace Officer for twenty-five years, during which time I have
13 developed extensive experience in handling and protecting
14 informants.

15 In addition to investigating the kidnap/murder of Hedayat
16 ESLAMINIA (San Mateo County Superior Court No. C15761) I have been
17 charged with the responsibility of protecting the case's chief
18 informant/witness Dean KARNY. While discharging those
19 responsibilities I have learned the following.

20 In June 1984, Ronald LEVIN disappeared from his Beverly
21 Hills home, charged with his murder are Joseph HUNT and James
22 PITTMAN. On July 30, 1984, Hedayat ESLAMINIA was kidnapped from
23 his Belmont, California home and killed. Charged in that murder
24 along with the victim's son, Reza, are Joseph HUNT, James PITTMAN
25 and Arben DOSTI. An uncharged co-conspirator in both cases is
26 Dean KARNY. KARNY so far has testified in preliminary hearings
27 for the People in both cases and as a key witness, his testimony

1 will be used again in both trials.

2 In late 1985, after all defendants (except PITTMAN) had
3 been released on bail, I learned of a plot involving Reza
4 ESLAMINIA and his "associates" to locate KARNY and kill him.

5 After a hearing in San Mateo County Municipal Court on
6 that allegation, Reza ESLAMINIA's bail was revoked. Because my
7 "source" did not know the names of Reza's "associates", HUNT and
8 DOSTI were allowed to remain free on bail.

9 Since that hearing, numerous attempts to locate KARNY
10 have been made. As a result, I have enrolled KARNY in the
11 California Department of Justice's Witness Protection Program and
12 relocated him.

13 Recorded below are a few of the overt and covert steps
14 that I have identified as being taken to locate Dean KARNY.

15 First: Numerous "hang-up" calls have been made to
16 KARNY's private telephone located in his
parents home.

17 Second: Several fraudulent telephone calls have been
18 made to KARNY's parents from persons
19 identifying themselves either as his friends,
20 (although they are actually unknown to him) or
21 as United Parcel employees with packages for
personal delivery. Those calls have been
22 traced to public telephones located in the Los
23 Angeles area.

24 Third: Several requests for information about KARNY
25 have been directed to the California Department
26 of Motor Vehicles. Those inquiries have come
27 from both data search type firms and a private
investigator employed by "Joe HUNT".

28 Fourth: The KARNY family's car has been broken into on
29 at least three occasions and items removed.

30 Fifth: Members of the KARNY family report both they
31 and their residences have been the subject
32 surveillances by unknown persons.


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Sixth: Because of court action initiated by the defense, the Department of Justice was forced to present Dean KARNY (in person) in an out of court setting for interview by attorneys representing three of the charged defendants. Officers involved in that event observed (and "ditched") unknown persons who appeared to be attempting to follow KARNY's security units.

Seventh: KARNY was "framed" for a recently discovered murder in Hollywood. Apparently a "disposable human being" was killed to "smoke KARNY out" of his place of sanctuary. An in depth investigation has subsequently eliminated him as a suspect in that case.

Because of continuing attempts to locate KARNY, allowing him to be photographed (even in a courtroom setting) would only further jeopardize his life. As the Special Agent charged with maintaining his safety, I urgently request the court bar any and all photographic equipment from the courtroom and prohibit the making of any artistic representations of his appearance during the time KARNY is present in court.

I declare under penalty of perjury, that the foregoing is true and correct ant that this declaration was executied at San Francisco, California on February 23, 1987.


OSCAR A. BREILING
Special Agent
Special Prosecutions Unit
California Department of Justice

1410L

114

1 HERBERT M. SCHOENBERG
 2 ROBERT B. HUBBELL
 3 Attorneys at Law
 7800 Beverly Boulevard
 Los Angeles, California 90036
 4 Telephone: (213) 852-2711
 5 Attorneys for CBS Inc.

FILED
 MAR 9 1987
 CLERK OF COURT
 COUNTY OF LOS ANGELES

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 8 FOR THE COUNTY OF LOS ANGELES

10	PEOPLE OF THE STATE OF CALIFORNIA,)	NO. A090435
)	
11	Plaintiff,)	OPPOSITION OF CBS INC. TO
	)	PLAINTIFF'S REQUEST TO
12	vs.)	EXCLUDE CAMERA COVERAGE OF
	)	<u>THE TESTIMONY OF DEAN KARNY</u>
13	JOE HUNT)	
)	
14	Defendant.)	
)	

16 I

18 Preliminary Statement

20 After four (4) years of experimentation with cameras in the
 21 courtroom, in 1984 the state Judicial Council voted to approve a
 22 court rule permitting the use of courtroom cameras. The rule,
 23 eventually promulgated as Rule 980 of the California Rules of
 24 Court, became effective July 1, 1984, with many Judicial Council
 25 members believing it would "help the media to more accurately and
 26 fairly report on the courts, and provide the public with added
 27 insight into the judiciary". Los Angeles Times, June 2, 1984,
 28 Part II, p.5.

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The instant motion by the prosecution seeks to reverse the intent behind the promulgation of Rule 980 by prohibiting film or electronic media coverage, voice recording or artists' renditions of Dean Karny, a witness who will be testifying on behalf of the plaintiff in this matter.

Because CBS believes the prosecution's motion is misguided,* it has filed this opposition and also joins in the opposition filed on behalf of American Broadcasting Companies, Inc. ("ABC") and Cable News Network ("CNN").

II

RULE 980 DOES NOT SPECIFICALLY
PROHIBIT CAMERA COVERAGE OF A
WITNESS' TESTIMONY

The pertinent provisions of Rule 980 permitting media coverage of courtroom proceedings are set forth in section (b) which provides:

"Film or electronic media coverage
is permitted only on written order

* Since the Court has sealed the prosecution's motion, CBS' response is necessarily based upon fragmented information concerning its contents.

1 of the court. The court may refuse,
2 limit or terminate film or electronic
3 media coverage in the interests of
4 justice to protect the rights of the
5 parties and the dignity of the court,
6 or to assure the orderly conduct of
7 the proceedings. This rule does not
8 otherwise limit or restrict the right
9 of the media to cover and report court
10 proceedings." (Emphasis supplied.)
11

12 Since this section does not specifically apply to witnesses
13 but only to parties, unless the prosecution's motion clearly
14 establishes that basic rights of the respective parties to this
15 action will somehow be jeopardized, and, therefore, need
16 protection by restricting camera coverage and broadcast of the
17 witnesses' testimony, it is submitted that the request to
18 restrict coverage be denied under the guidelines established in
19 Rule 980(b).*

20
21
22 _____
23
24 *If the prosecution is concerned about wide spread dissemination
25 of Karny's visage, it is hard to understand how the exclusion
26 of television cameras will necessarily alleviate this concern.
27 In most cases, experienced sketch artists will often be able to
28 portray from memory the countenance of a witness they have
viewed in court even though they were not contemporaneously
drawing the witness' identity while he or she was testifying.
Both in-court and out of court sketching of witnesses has been
constitutionally approved. United States v. Columbia
Broadcasting System, Inc., 497 F.2d 102, 106-07 (5th Cir. 1974).

1 It is also apparent, because of the unobtrusiveness of the
2 camera coverage that has been undertaken to date, that neither
3 the dignity of the court nor the orderly conduct of the
4 proceedings is at issue here and, therefore, the limitations in
5 this area imposed by Rule 980(b) are academic.

6
7 III

8
9 IF THE COURT IS CONCERNED WITH
10 DISCLOSURE OF THE WITNESSES'
11 IDENTITY, IT MAY, NEVERTHELESS,
12 FASHION AN ORDER ALLOWING CAMERA
13 COVERAGE OF HIS TESTIMONY BUT
14 RESTRICTING COVERAGE OF HIS FACE

15
16 Assuming, arguendo, the prosecution and court are concerned
17 with possible wide-spread disclosure of Mr. Karny's identity,
18 this court can, nevertheless, fashion an order allowing camera
19 coverage but prohibiting close-up coverage of his face so that it
20 would not be discernible. Rule 980(b)(2) indicates the areas of
21 prohibited media coverage. Although the testimony of a witness
22 is not listed as falling within the restrictive provisions of the
23 rule, it appears the court does have some discretion to provide
24 for "the orderly conduct of the proceedings" under Rule 980(b).

25
26 In this case, because of the prosecution's apparent
27 objections to any media coverage that might reveal the witnesses'
28 identity beyond the courtroom, the court could still allow camera

1 coverage but restrict close-ups of his face. It is doubtful, if
2 this procedure is followed, that members of the viewing audience
3 would still be able to identify the witness by voice alone,
4 unless they were intimately familiar with him.

IV

Conclusion

11 WHEREFORE CBS respectfully prays that the prosecution's
12 motion be denied or, in the alternative, that the court permit
13 camera coverage with the exception of close-up coverage of
14 Karny's face.*

16 Respectfully submitted,

17 HERBERT M. SCHOENBERG
18 ROBERT B. HUBBELL

19 Dated: March 9, 1987

20 By Herbert M. Schoenberg
21 Attorneys for CBS Inc.

22
23
24
25
26
27 *In the event the court sets this matter for oral argument,
28 CBS requests that it be given notice of the date and time,
as well as an opportunity to appear and orally present argument
in support of its position.

PROOF OF PERSONAL SERVICE

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES) ss.

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding.

That on March 9, 1987 I caused to be personally served by messenger copies of OPPOSITION OF CBS INC. TO PLAINTIFF'S REQUEST TO EXCLUDE CAMERA COVERAGE OF THE TESTIMONY OF DEAN KARNY on the plaintiff and defendant


in said action by having the messenger personally deliver said documents, enclosed in a sealed envelope, to plaintiff's attorney and defendant's attorney:

Fred Wapner, Deputy District Attorney
 1725 Main Street
 Room 228
 Santa Monica, CA 90401

Arthur H. Barens, Esq.
 10209 Santa Monica Boulevard
 Los Angeles, CA 90067

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 9, 1987, at Los Angeles, California.


 M. Jean Dickin

Def
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MUNGER, TOLLES & OLSON
355 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-1560
(213) 683-9100

Attorneys for CAPITAL CITIES/ABC, INC.
and CABLE NEWS NETWORK, INC.

MAR 9 1987
RECEIVED
MAR 11 1987
WEST DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. A090435
)	
Plaintiff,	)	BRIEF OF CAPITAL CITIES/
	)	ABC, INC. AND
v.	)	CABLE NEWS NETWORK, INC.
	)	IN OPPOSITION TO
JOE HUNT,	)	MOTION TO PROHIBIT
	)	FILM OR ELECTRONIC
Defendant.	)	MEDIA COVERAGE, VOICE
	)	RECORDING OR ARTISTS'
	)	RENDITIONS OF DEAN KARNY;
	)	REQUEST FOR HEARING

I
INTRODUCTION

Pursuant to Rule 908 of the California Rules of Court, this Court has previously determined that television coverage of this trial will not interfere with the fair and orderly conduct of the proceedings, and has permitted a single television camera to be used in the courtroom. By the instant motion, the prosecution seeks an order prohibiting any film or electronic media coverage, whether audio or video, of the testimony of a single witness, Dean Karny, the chief witness for the prosecution.

1 The prosecution does not and could not suggest that
2 television coverage of the trial, or of Mr. Karny's
3 testimony, prejudices the rights of any party, results
4 in an unfair trial, or in any manner disrupts the orderly
5 conduct of the trial proceedings. Instead, the prosecution
6 asserts that communication to a television audience
7 of information in the public domain, and available to
8 anyone who is able to attend the trial itself -- Mr. Karny's
9 identity -- might somehow endanger Mr. Karny's life.

10 Capital Cities/ABC, Inc. ("ABC") and Cable News
11 Network, Inc. ("CNN") respectfully submit that the prosecution's
12 motion should be denied. Such a restraint on the public's
13 access to a criminal trial, based solely upon the possible
14 effect of the communication of public information to
15 a television audience, would violate the constitutional
16 guarantees of freedom of speech and press contained
17 in the United States and California Constitutions.
18 Moreover, Rule 908 of the California Rules of Court
19 does not authorize termination or limitation of electronic
20 media coverage based upon any such possible effect.
21 To the extent that the Court concludes that any restriction
22 on television coverage of Mr. Karny's testimony is necessary
23 and permissible, ABC and CNN submit that less restrictive
24 alternatives are available to protect Mr. Karny's identity
25 without depriving the public of its right to observe
26 these trial proceedings.

27 /

28 /

II

ARGUMENTA. The Order Sought By The Prosecution Would
Be Unconstitutional.1. Television Coverage of Trial Proceedings
Is Speech Protected By the First Amendment

Every member of the public and the press has a First Amendment right to be present at and observe the proceedings of a criminal trial. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 576-78, 108 S.Ct. 2814, 2827-27 (1980) (Burger, C.J.).

"It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a 'right of access' or a 'right to gather information,' for we have recognized that 'without some protection for seeking out the news, freedom of the press could be eviscerated.' The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could . . . be foreclosed arbitrarily."

Id., 448 U.S. at 576-77, 100 S.Ct. at 2827 (citations omitted).

That not every person who wishes to attend can be accomodated, or can even arrange to be physically present, does not dilute each person's constitutional

1 right to observe to the degree feasible. A person's
2 First Amendment right cannot be limited simply to reading
3 about the trial from a printed transcript, much less
4 from a newspaper account. Id., 444 U.S. at 597 n. 22,
5 100 S.Ct. at 2838 n. 22 ("the availability of a trial
6 transcript is no substitute for a public presence at
7 the trial itself. . . . [T]he 'cold' record is a very
8 imperfect reproduction of events that transpire in the
9 courtroom."). Even if the ability to read such a printed
10 account did not involve filtering of the crucial information
11 through the hearsay of a third party's reporting, but
12 merely a shift from the opportunity to hear and observe
13 directly to the opportunity to read the speaker's words
14 in print, there would nevertheless be a significant
15 abridgement of First Amendment rights. Cf. Kleindienst
16 v. Mandel, 408 U.S. 753, 765 (1972) (wrong to suggest
17 "that the First Amendment is inapplicable" to claimed
18 interest in seeing and hearing lectures just "because
19 appellees [had] full access to [the lecturer's] ideas
20 through his books and [printed] speeches"). Even if
21 a written account were both complete and accurate, the
22 opportunity to assess such matters as demeanor and
23 credibility -- plainly critical at the trial -- would
24 be forever lost to the "absent" person if he were deprived
25 of the opportunity to see and hear for himself. See,
26 e.g., NLRB v. Walton Mfg. Co., 369 U.S. 404, 408, 82 S.Ct.
27 836, 855 (1962) (per curiam); Mincey v. Arizona, 437 U.S.
28 385, 408-09, 98 S.Ct. 2408, 2421-22 (1978) (Rehnquist,

1 J., concurring in part and dissenting in part). Thus,
2 a prohibition of television coverage effects a "closure"
3 of the trial proceedings to all those who cannot attend
4 in person, in derogation of their First Amendment rights.

5 Indeed, the Supreme Court recognized in Richmond
6 Newspapers that the physical inability of every member
7 of the public to attend a trial in person "validates
8 the media claim of functioning as surrogates for the
9 public." 448 U.S. at 573, 100 S.Ct. at 2825. As the
10 Court wrote in Cox Broadcasting Corp. v. Cohn, 420 U.S.
11 469, 95 S.Ct. 1029 (1975):

12 "[I]n a society in which each individual has
13 but limited time and resources with which
14 to observe at first hand the operations of
15 his government, he relies necessarily upon
16 the press to bring to him in convenient form
17 the facts of those operations. Great responsibility
18 is accordingly placed upon the news media
19 to report fully and accurately the proceedings
20 of government. . . ."

21 420 U.S. at 491-92, 95 S.Ct. at 1044. The Court emphasized
22 "the special protected nature" of accurate press reports
23 of judicial proceedings:

24 "'A trial is a public event. What transpires
25 in the courtroom is public property. . . .
26 Those who see and hear what transpired can
27 report it with impunity.'"

28 Id., 420 U.S. at 492-93, 95 S.Ct. at 1045 (emphasis

1 in original). But only the electronic media, and particularly
2 television, is capable of fully and accurately reporting
3 judicial proceedings to those members of the public
4 not privileged to attend and see and hear the trial
5 in person, for only "[t]elevision film coverage of the
6 news provides a comprehensive visual element and an
7 immediacy . . . not found in print media." Cable News
8 Network v. American Broadcasting Co., 518 F.Supp. 1238,
9 1245 (N.D. Ga. 1981) (total exclusion of television
10 coverage of White House press conferences violated First
11 Amendment). Thus, television coverage of criminal trial
12 proceedings must be considered speech protected by the
13 First Amendment. See Westmoreland v. Columbia Broadcasting
14 System, Inc., 752 F.2d 16, 24-25 (2d Cir. 1984) (Winter,
15 J., concurring); United States v. Hastings, 695 F.2d
16 1278, 1280-84 (11th Cir. 1983) (both opinions upholding
17 across-the-board bans on television in courtrooms as
18 reasonable time, place, and manner restrictions on protected
19 speech).

20 2. The Proposed Order Is An Impermissible
21 Restriction of Protected Speech

22 The public's and press's right to observe criminal
23 trials is of course not absolute. In Richmond Newspapers,
24 the Supreme Court held that a trial courtroom, like
25 "streets, sidewalks and parks," is a public forum where
26 First Amendment rights may be exercised "[s]ubject to
27 the traditional time, place, and manner restrictions."
28 448 U.S. at 577-78, 100 S.Ct. at 2227-28. Thus, restrictions

1 on the time, place and manner in which persons may observe
2 trial proceedings are valid "provided that they are
3 justified without reference to the content of the regulated
4 speech, that they are narrowly tailored to serve a significant
5 governmental interest, and that they leave open ample
6 alternative channels for communication of the information."

7 Clark v. Community for Creative Non-Violence, ___ U.S.

8 ___, 104 S.Ct. 3065, 3069 (1984). On the other hand,

9 where the purpose of the restriction is to prevent members

10 of the public from obtaining certain information about

11 the proceedings, "it must be shown that the denial is

12 necessitated by a compelling governmental interest,

13 and is narrowly tailored to further that interest."

14 Globe Newspaper Co. v. Superior Court, 457 U.S. 596,

15 606-07, 102 S.Ct. 2613, 2620 (1982). In that situation,

16 "The presumption of openness may be overcome

17 only by an overriding interest based on findings

18 that closure is essential to preserve higher

19 values and is narrowly tailored to serve that

20 interest. The interest is to be articulated

21 along with findings specific enough that a

22 reviewing court can determine whether the

23 closure order was properly entered."

24 Press-Enterprise Co. v. Superior Court, 464 U.S. 501,

25 510, 104 S.Ct. 819, 824 (1984). See Cornelius v. NAACP

26 Legal Defense & Education Fund, ___ U.S. ___, 105 S.Ct.

27 3439, 3448 (1985) (exclusion from public forum permissible

28 "only when the exclusion is necessary to serve a compelling

1 state interest and the exclusion is narrowly drawn to
2 achieve that interest"). The order sought by the prosecution
3 cannot withstand scrutiny under either of these tests.

4 First, the order cannot be justified as a reasonable
5 time, place, and manner restriction. Such restrictions
6 are permissible only where they are justified by reference
7 to the non-communicative effect of the regulated conduct:
8 the harm that might result from the means used to communicate
9 information, not any harm that might result from the
10 information itself. Clark v. Community for Creative
11 Non-Violence, 104 S.Ct. at 3069. For example, some
12 federal courts of appeal have upheld across-the-board
13 bans on television coverage of trial proceedings, where
14 the bans were justified by the harmful effect that the
15 presence of television cameras in the courtroom -- i.e.,
16 the manner of gathering the information -- might have
17 on the conduct of the proceedings. E.g., United States
18 v. Hastings, 695 F.2d at 1282-83 (interests in prohibiting
19 television coverage were to ensure "a fundamentally
20 fair trial," to "preserv[e] order and decorum," and
21 "to increase the accuracy of the essential truth-seeking
22 function"). Here, by contrast, there is no suggestion
23 that the presence of television cameras will result
24 in any unfairness to the parties, any disruption of
25 the proceedings, or any danger to the fact-finding process.
26 Instead, the prosecution's avowed purpose is to prevent
27 the public from receiving certain information about
28 the trial because of the effect it fears that information

1 might have, not because of any effect that the press's
2 manner of gathering the information might have on the
3 proceedings. See Motion at 3 ("If Mr. Karny's face
4 and voice are broadcast on national television he can
5 be easily recognized by friends and relatives in his
6 new location and his whereabouts will no longer be secret.")

7 The Supreme Court has repeatedly held that,

8 "Where, as in the present case, the state

9 attempts to deny the right of access in order

10 to inhibit the disclosure of sensitive information,

11 it must be shown that the denial is necessitated

12 by a compelling governmental interest, and

13 is narrowly tailored to serve that interest."

14 Globe Newspaper Co. v. Superior Court, 457 U.S. at 606-07,

15 102 S.Ct. at 2620; Press-Enterprise Co. v. Superior

16 Court, 464 U.S. at 510, 104 S.Ct. at 824. The necessity

17 for such strict scrutiny follows from the First Amendment's

18 fundamental meaning: "That government has no power

19 to restrict expression because of its message, its ideas,

20 its subject matter or its content." Police Dept. of

21 City of Chicago v. Mosley, 408 U.S. 92, 95-96, 92 S.Ct.

22 2286, 2290 (1972).

23 The order sought by the prosecution fails both
24 prongs of this strict scrutiny test. First, the State
25 has no legitimate compelling interest in preventing
26 Mr. Karny's voice and face from being broadcast on television.
27 The prosecution has made no other effort to prevent
28 his identity from being generally known; his name has

1 been publicly disclosed during these proceedings, and
2 the prosecution does not seek to close the courtroom
3 itself to members of the public (which might include
4 individuals from Mr. Karny's new place of residence).
5 As the Supreme Court said in Cox Broadcasting Corp.
6 v. Cohn, supra,

7 "By placing the information in the public
8 domain . . . , the State must be presumed to
9 have concluded that the public interest was
10 thereby being served."

11 420 U.S. at 495, 95 S.Ct. at 1046. The State cannot
12 make Mr. Karny's face and voice known to some members
13 of the public, and then assert any legitimate interest
14 in preventing those who cannot actually attend the trial
15 from seeing and hearing his face and voice.

16 Moreover, the proposed order is not likely to be
17 effective in preventing the danger about which the prosecution
18 is concerned. See Nebraska Press Ass'n v. Stuart, 427 U.S.
19 539, 562, 96 S.Ct. 2791, 2804 (1976) (court must examine
20 "how effectively a restraining order would operate to
21 prevent the threatened danger"). Mr. Karny's name has
22 already been widely publicized, so that anyone learning
23 his name could be aware of his role in this trial.
24 Moreover, Mr. Karny's photograph has already appeared
25 both on national television (CBS News, December 30,
26 1986) and in newspapers and magazines (L.A. Weekly,
27 July 1986); Los Angeles Magazine, May 1986); and his
28 photograph could be taken outside the courtroom during

1 the trial, or artists could draw his likeness from memory
2 after attending the proceedings. See United States
3 v. Columbia Broadcasting System, Inc., 497 F.2d 102
4 (5th Cir. 1974) (order forbidding in-court sketching
5 and publication of sketches made from memory violated
6 First Amendment). Thus, the proposed order would not
7 significantly further the State's asserted interest.
8 Cf. Globe Newspaper Co. v. Superior Court, 457 U.S.
9 at 609-10, 102 S.Ct. at 2621-22 (exclusion of press
10 and public from courtroom during testimony of minor
11 sex victim did not significantly further interest in
12 protecting victim's identity, because "press is not
13 denied access to the transcript, court personnel, or
14 any other possible source").

15 Finally, the proposed order sweeps too broadly,
16 restricting public access to the trial far more than
17 is necessary to achieve any legitimate interest the
18 State has in protecting Mr. Karny's identity. See Nebraska
19 Press Ass'n v. Stuart, 427 U.S. at 562, 96 S.Ct. at
20 2804 (court must examine "whether other measures would
21 be likely to mitigate the effects of unrestrained pretrial
22 publicity"). Both ABC and CNN have in the past electronically
23 altered an individual's appearance, prior to broadcast,
24 in order to protect the individual's visual identity
25 from being disclosed. Alternatively, ABC and CNN can
26 instruct their cameramen not to videotape Mr. Karny
27 himself during his testimony, but instead focus on the
28 jurors, lawyers, and the judge. ABC and CNN believe

1 that neither of these measures is necessary or consistent
2 with the First Amendment under these circumstances.
3 Nevertheless, if the Court believes that some measure
4 is necessary to protect Mr. Karny's identity, ABC and
5 CNN are prepared to comply fully with such a limited
6 order. Any broader restriction would clearly be unnecessary
7 and violative of the First Amendment.

8 B. Rule 908 of the California Rules of Court
9 Does Not Authorize The Proposed Order

10 Rule 908 of the California Rules of Court, adopted
11 by the California Supreme Court, authorizes film or
12 electronic media coverage of court proceedings on written
13 order of the court. Rule 908(b) provides that "[t]he
14 court may refuse, limit or terminate film or electronic
15 media coverage in the interests of justice to protect
16 the rights of the parties and the dignity of the court,
17 or to assure the orderly conduct of the proceedings."
18 (Emphasis added.) Thus, Rule 908 recognizes that the
19 only legitimate basis upon which a court may prohibit
20 television coverage is the existence of some danger
21 to the fair or orderly conduct of the trial itself,
22 not any desire to prevent dissemination of information
23 about the trial to the public. So interpreted, the
24 Rule is consistent with the First Amendment. Cf. Shuttlesworth
25 v. City of Birmingham, Ala., 394 U.S. 147, 150-53, 89 S.Ct.
26 935, 938-40 (1969) (invalidating ordinance giving official
27 discretion to deny access to public forum for reasons
28 "unrelated to proper regulation of public places").

1 Here, the prosecution would have the Court prohibit
2 film and electronic media coverage in order to prevent
3 a television audience from receiving information which
4 is in the public domain, not to prevent any interference
5 with the proceedings. ABC and CNN submit that Rule
6 908 does not, and could not consistent with the First
7 Amendment, give the Court discretion to enter such an order.*/
8

9 III

10 CONCLUSION

11 For the foregoing reasons, ABC and CNN submit that
12 the prosecution's motion should be denied. In the event
13 that the Court concludes that some restriction on television
14 coverage is necessary to protect Mr. Karny's identity,
15 and would be consistent with the First Amendment, ABC
16 and CNN submit that an order requiring that Mr. Karny's
17 facial features be electronically disguised prior to
18 broadcast, or not be videotaped at all, would be the
19 most restrictive order permissible or necessary under
20 the circumstances. ABC and CNN request an opportunity
21
22
23

24 */ The federal courts of appeal which have upheld local
25 rules prohibiting television coverage of trial proceedings
26 have addressed rules which banned coverage across-the-board
27 and thus left no discretion to the trial judge to
28 restrict coverage based upon the content of the trial
proceedings. See, e.g., United States v. Edwards,
785 F.2d 1293 (5th Cir. 1986); Westmoreland v. Columbia
Broadcasting System, Inc., supra; United States v.
Hastings, supra.

1 to address the Court orally prior to entry of any order
2 limiting television coverage of the trial.

3 Respectfully submitted,

4 Dated: March 9, 1987

MUNGER, TOLLES & OLSON
RONALD L. OLSON
BRADLEY S. PHILLIPS

6 By 
7 Bradley S. Phillips

8 Attorneys for Capital Cities/ABC,
9 Inc. and Cable News
Network, Inc.

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

- I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
- I am an Officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

- I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. Executed on _____, 19____, at _____ California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____
on _____ 19____.

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of LOS ANGELES, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____
355 S. Grand Avenue, Los Angeles, CA 90071

On March 9 19 87, I served the foregoing document described as BRIEF OF CAPITAL CITIES/ABC INC. AND CABLE NEWS NETWORK, INC. IN OPPOSITION TO MOTION TO PROHIBIT FILM OR ELECTRONIC MEDIA COVERAGE, VOICE RECORDING OR ARTISTS' RENDITIONS OF DEAN KARNY; REQUEST FOR HEARING on attorneys of record

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

IRA REINER, DISTRICT ATTORNEY	Arthur H. Barens
FRED WAPNER, DEPUTY DISTRICT ATTORNEY	10209 Santa Monica Boulevard
1725 Main Street, Room 228	Los Angeles, CA 90067
Santa Monica, CA 90401	

- (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at _____, California.

Executed on _____, 19____, at _____, California.

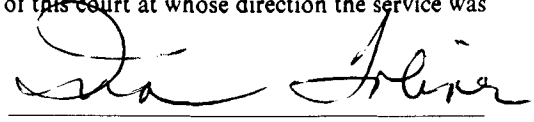
- (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on March 9, _____, 19 87 at Los Angeles, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

INA TOLIVER

Type or Print Name



Signature

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Voice of Karney
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MUNGER, TOLLES & OLSON
355 South Grand Avenue
Los Angeles, California 90071-1560
(213) 683-9100

Attorneys-for CAPITAL CITIES/ABC, INC.
and CABLE NEWS NETWORK, INC.

HERBERT M. SCHOENBERG
7800 Beverly Boulevard
Los Angeles, California 90036
(213) 852-2711

Attorneys for CBS Inc.

FILED
MAR 16 1987
F. B. [unclear]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,) No. A090435
)
Plaintiff,) [Revised] [redacted]
) ORDER RE MOTION TO
v.) PROHIBIT FILM OR
JOE HUNT,) ELECTRONIC MEDIA
) COVERAGE, VOICE
Defendant(s).) RECORDING OR ARTISTS'
) RENDITIONS OF
) DEAN KARNY

On Tuesday, March 10, 1987, and Thursday, March 12, 1987, the Plaintiff's Motion to Prohibit Film or Electronic Media Coverage, Voice Recording or Artists' Renditions of Dean Karny was heard by the Court. Fred Wapner, Deputy District Attorney, appeared for the People; Arthur M. Barends appeared for the defendant; Herbert M. Schoenberg appeared for CBS Inc.; and Bradley S. Phillips, Munger, Tolles & Olson, appeared for Capital Cities/ABC, Inc. and Cable News Network, Inc. The matter having been argued and submitted, and the Court having considered the briefs and arguments of counsel,

1 IT IS HEREBY ORDERED, pursuant to California Rules
2 of Court, Rule 980(b), that film and electronic media
3 coverage of the testimony of Dean Karny shall be permitted
4 under the following conditions:

5 (1) Each media agency participating in the pooling
6 arrangement pursuant to Rule 980(b) shall be entitled
7 to create a video and audio tape of Mr. Karny's testimony;

8 (2) Prior to telecast of any portion of Mr. Karny's
9 testimony, that portion of the tape shall be edited
10 so that Mr. Karny's face and voice are not recognizable;
11 all unedited portions of the tape of Mr. Karny's testimony
12 shall be erased or destroyed;

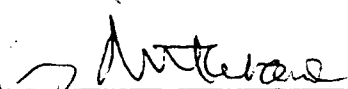
13 (3) Any media agency that wishes to create an
14 original tape of Mr. Karny's testimony pursuant to the
15 pooling arrangement, other than Capital Cities/ABC,
16 Inc., Cable News Network, Inc., or CBS, Inc., shall
17 apply to the Court for permission to do so and shall
18 agree to comply with the provisions of this Order; a
19 copy of this Order shall be posted on the wall above
20 the recording equipment in the hallway outside the courtroom
21 during Mr. Karny's testimony;

22 (4) No media agency participating in the pooling
23 arrangement shall transfer or deliver to any other person
24 or entity, by any means, any portion of the tape of

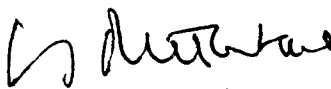
25 /
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28 /

1 Mr. Karny's testimony unless such portion has been edited
2 so that Mr. Karny's face and voice are not recognizable.


3
4 Dated: March 16, 1987

5
6 
7 Laurence J. Rittenband
8 Judge of the Superior Court

9 Accendum: All copies of the tape of
10 Mr. Karny's testimony shall be maintained in a
11 secured location, and shall be available only to
12 those individuals responsible for broadcast
13 production with respect to such tapes.
14

15
16 
17 Juv
18

19
20 On behalf of KHS-TV, I agree to all
21 terms and conditions contained in Judge
22 Rittenband's order.
23

24  (TRANK)
25 News Reporter
26 KHS-TV 3/18/87
27

28 I Anna Crozco
On a representative of KCOP
have agreed to the above
mentioned. Anna Crozco 3/18/87

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19____, at _____ California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as _____

on _____ 19____.

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____
355 S. Grand Avenue, Los Angeles, CA 90071-1560

On 3/16 1987, I served the foregoing document described as [Revised] [Proposed]

ORDER RE MOTION TO PROHIBIT FILM OR SLECTRONIC MEDIA COVERAGE, VOICE RECORDING OR ARTISTS' RENDITIONS OF DEAN KARNY

on attorneys of record in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FRED WAPNER
DEPUTY DISTRICT ATTORNEY
1725 Main Street, Room 228
Santa Monica, CA 90401

ARTHUR H. BARENS
10209 Santa Monica Blvd.
Los Angeles, CA 90067

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

Executed on _____, 1987, at _____, California.

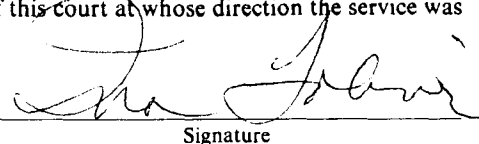
(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on 3/16/87, 19____, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

INA TOLIVER

Type or Print Name


Signature

DEAR JUDGE RITTENBAND

ON THIS DATE OF MARCH 9, 1987, I MICHAEL A. LACEY-
WOULD LIKE TO BEG THE PARDON OF THE COURT. THIS NOTICE
IS TO INFORM THE COURT THAT AS OF MARCH 20, 1987
I MUST RELINQUISH MY POSITION ON THE JURY THAT I'M
PRESENTING SERVING ON CONTINENTAL AIRLINES COMPANY
POLICY OF ONLY PAYING FOR 30 DAYS OF JURY SERVICE IS BEING
IMPOSED ON ME THE COMPANY INFORM ME ON FRIDAY THAT I
HAVE TWO MORE WEEKS TO SERVE AS A JUROR WITH PAY AND
AFTER THAT DATE OF MARCH 20 TO CONTINUE ON THE COMPANY
PAY ROLL I MUST REPORT TO WORK MARCH 23, 1987, OR MY STATE
OF EMPLOYMENT WILL BE IN DIRE JEOPARDY. I'M ASKING
THE COURT TO HAVE COMPASSION AND UNDERSTAND THAT I
WOULD NOT BE TAKING THIS ACTION IF I WAS NOT
FORCED OR DEEMED TO DO SO. TO CONTINUE ON JURY
DUTY PAST MARCH 20 WOULD CREATE A UNDUE FINANCIAL
HARDSHIP TO MY FAMILY AND MYSELF.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS NOTICE,
PLEASE FEEL FREE TO CALL MY MANAGEMENT AT (213) 646-2826
MR PETE SLIVKOFF, 7300 WORLD WAY WEST, L.A. CA 90009

FILED

MAR 9 1987

FRANK

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RECEIVED

<u>Classification</u>	<u>Rate of Pay</u>
5. Process Cleaner	
1st 6 mos. as Process Cleaner	\$5.75
2nd 6 mos. as Process Cleaner	5.90
3rd 6 mos. as Process Cleaner	6.05
4th 6 mos. as Process Cleaner	6.20
5th 6 mos. as Process Cleaner	6.35
6th 6 mos. as Process Cleaner	6.50
After 10 yrs as Process Cleaner	6.80
6. Assistant Supervisor - Stores	\$9.00
7. Stock Clerk	
1st 6 mos as Stock Clerk	\$6.30
2nd 6 mos as Stock Clerk	6.47
3rd 6 mos as Stock Clerk	6.64
4th 6 mos as Stock Clerk	6.81
5th 6 mos as Stock Clerk	6.98
6th 6 mos as Stock Clerk	7.15
After 5 yrs as Stock Clerk	8.00
After 10 yrs as Stock Clerk	8.50

These new rates are a combination of the old Schedule A rates and longevity premiums.

- B. Shift Differential - Any employee required to work a shift which starts after 6 p.m. or before 6 a.m. will receive an additional 25¢ for each hour worked.
- C. Shift differential, license premium, Honolulu Premium and Master Certificate premium shall be included in the calculation of premium overtime rates of pay.
- * D. Jury Duty and Witness Service
1. Company Policy - The Company recognizes jury duty as a civic responsibility of its employees and every reasonable effort will be made to release the employee from their job for jury duty.
 2. Pay During Jury Duty - If an employee is required to appear during scheduled working hours for jury duty, they will be paid their regular straight-time rate for the hours scheduled to work.

3. Procedure Upon Receiving Summons Juror - Upon receipt of a jury summons, the employee must immediately present the summons or a copy of the summons to their supervisor and must inform the supervisor of the following:
 - a. Date employee is to report to first day of jury duty.
 - b. Name and location of court where they will be serving.
 - c. Approximate duration of jury duty obligation (if specified).
4. Company Requested Release from Jury Duty
 - a. If the employee's absence would cause a hardship in their department because of a temporary pressure of work, the employee's division head will ask the Personnel Relations Division to attempt to obtain an postponement of jury service.
 - b. In such request the employee's division head should fully explain why the employee is temporarily indispensable and why the Company would have difficulty securing a temporary replacement. The reasons for the postponement request will be presented to the civil authorities.
5. Pay Policy for Jury Duty
 - a. An employee serving on jury duty will be paid at their regular straight time rate less jury duty fees and expense allowances, for a maximum of one month.
 - b. Upon return from jury duty, the employee must furnish their supervisor with a court validated "Statement of Attendance" indicating the dates of attendance on jury duty.
 - c. When an employee is selected for jury duty for a period of three days or more, the employee shall be scheduled to work day shift with Saturdays and Sundays off for the period of the required jury service. If the employee is released temporarily from jury service for

a period of one calendar week or more, the employee will revert to their regular shift while retaining Saturdays and Sundays off.

- d. When an employee is required to serve on jury duty on a day recognized by the Company as a holiday, the employee will be paid their regular holiday pay for that day. Upon completion of the jury duty, the employee will be granted another day off to compensate for the missed holiday. The day granted will be selected by the employee subject to approval of the supervisor.
6. Release from Jury Duty on any Scheduled Work Day - When released from jury duty on any scheduled work day, the employee shall report for work if four hours or more of the work day remain, unless released by their supervisor.
 - a. An employee who appears as a witness in a court proceeding at the request of the Company will be subject to the same pay procedures as if they were serving on jury duty.
- E. All wages payable hereunder to employees shall be paid on a biweekly basis unless otherwise provided by law, and pay checks shall be distributed to employees during their working hours on their assigned pay days. The pay days will be every other Friday. In the event the pay day falls on a holiday, the preceding day shall be the pay day.
 - F. Nothing in these Work Rules shall be considered as preventing increase in individual rates over and above the minimum established.
 - G. If an employee is temporarily transferred from his work to the work of a higher classification, he will be paid the higher rate for all hours worked in the higher classification with a minimum allowance of one (1) hour. A higher classification employee may be utilized in the work of a lower classification employee on a straight time basis only. When such employee is utilized in a lesser classification, he shall receive no less than his base rate of pay.

1 ARTHUR H. BARENS
10209 Santa Monica Blvd.
2 Los Angeles, CA 90067
(213) 557-0444

3 RICHARD C. CHIER
10920 Wilshire Blvd., Suite 1000
4 Los Angeles, CA 90024
5 (213) 550-1005

6 Attorneys for Defendant

FILED

MAR 16 1987

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA,)
12)
13 Plaintiff,)
14 v.)
15)
16 JOE HUNT,)
17 Defendant.)

Case No. A090435
NOTICE OF MOTION AND MOTION
FOR ORDER PERMITTING
CO-COUNSEL, RICHARD C. CHIER,
TO DELIVER CLOSING ARGUMENT;
DECLARATION; POINTS AND
AUTHORITIES
[Penal Code Section 1095]
Date: March 12, 1987
Time: 10:30 a.m.
Place: Department WE-C

18 TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS AN-
19 GELES, AND TO HIS DEPUTY, FREDERICK N. WAPNER:

20 PLEASE TAKE NOTICE that on Thursday, March 12, 1987, at the
21 hour of 10:30 a.m., or as soon thereafter as counsel may be heard
22 in Department West C of the above-entitled Court, defendant, JOE
23 HUNT, will move for an Order permitting both his attorneys of
24 record, Arthur H. Barens and Richard C. Chier, to deliver closing
25 arguments herein.

26 Said Motion will be made upon the grounds, each and all:

27 1. That a defendant in a capital case has a statutory
28 right to two attorneys, both of whom are entitled to give closing

1 arguments;

2 2. Movant desires that co-counsel, Chier, who has hereto-
3 fore been muzzled by the Court be allowed to deliver closing ar-
4 guments; and

5 3. The complexity and length of the within trial require
6 that both attorneys be permitted to give closing argument.

7 Said Motion will be based upon all of the papers, documents,
8 and records on file herein and upon such further oral and/or doc-
9 umentary evidence as may be presented at the hearing this Motion.

10 DATED: March 16, 1987
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13 Respectfully submitted,

14 ARTHUR H. BARENS
15 RICHARD C. CHIER

16 By: 

17 RICHARD C. CHIER
18 Attorneys for Defendant
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DECLARATION OF JOE HUNT

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JOE HUNT declares and states:

1. I am the defendant in the within case wherein the prosecution is seeking the death penalty.

2. Although at the commencement of the within trial I had two attorneys of record who had agreed upon a division of labors, since approximately mid January the trial court has refused to permit one of my attorneys, Richard C. Chier, to examine witnesses, make objections, or perform any other services as an attorney in the presence and hearing of the jury.

3. This nullification by the Court of one of my attorneys has taken place over my objection and has, in my opinion, deprived me of my right to the effective assistance of counsel.

4. Section 1095 of the California Penal Code permits two attorneys to give closing argument in a capital case.

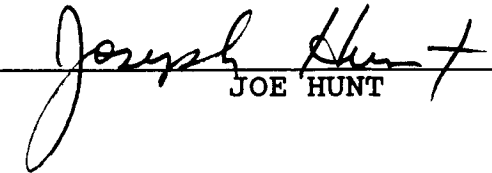
5. It is my desire based upon my statutory right that both Barens and Chier be allowed to deliver closing argument to the jury in the guilt phase of this trial.

6. I am also requesting that the Court make its ruling on this Motion without delay in order to test any adverse ruling in a higher court before the conclusion of this trial.

7. The failure to allow both of my attorneys to argue as permitted by the California Penal Code will be the ultimate

1 abrogation of my right to the effective assistance of counsel.

2 I declare, under penalty of perjury, under the laws of the
3 State of California, that the foregoing is true and correct, ex-
4 cept as to those matters stated on information and/or belief, and
5 as to those matters, I believe them to be true; and that this
6 Declaration was executed on March 16, 1987.

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JOE HUNT

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ARTHUR H. BARENS
10209 Santa Monica Blvd.
Los Angeles, CA 90067
(213) 557-0444

RICHARD C. CHIER
10920 Wilshire Blvd., Suite 1000
Los Angeles, CA 90024
(213) 550-1005

Attorneys for Defendant

FILED
MAR 27 1987
Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
) Plaintiff,)
)
) v.)
)
) JOE HUNT,)
)
)
) Defendant.)
_____)

Case No. A090435
REQUEST FOR ATTENDANCE OF OUT
OF STATE WITNESS
[Penal Code, Section 1334]

RICHARD C. CHIER declares and states:

1. I am co-counsel of record for defendant, JOE HUNT, in this action.
2. There is now pending in the Superior Court of the State of California for the County of Los Angeles the above-entitled criminal prosecution against Joe Hunt for alleged violation of Sections 187 and 211 of the California Penal Code.
3. The defendant has entered a plea of not guilty to these charges and trial of the case commenced on November 4, 1986, in Department WE-C of the Santa Monica Branch of the Los Angeles Superior Court.
4. The presence of witness Jeff Meyers will be required

1 for a minimum of one day and maximum of two days commencing on
2 the 19th day of March, 1987.

3 5. The laws of California will give to the witness protec-
4 tion from arrest and service of criminal process during the time
5 that he is in California in obedience to the subpoena directing
6 him to appear and testify in this State, with respect to matters
7 which occurred before his entrance into California under this
8 subpoena (Penal Code, Section 1334.4). Therefore, it is request-
9 ed that this Court issue a Certificate for the attendance of Jeff
10 Meyers under the Seal of the Superior Court of the State of Cali-
11 fornia for the County of Los Angeles in order that it may be pre-
12 sented to the proper Court in the State of Arizona for the pur-
13 pose of compelling the attendance of Jeff Meyers at the trial of
14 the above-entitled cause.

15 I declare, under penalty of perjury, under the laws of the
16 State of California, that the foregoing is true and correct, ex-
17 cept as to those matters stated on information and/or belief, and
18 as to those matters, I believe them to be true; and that this
19 Declaration was executed on March 26, 1987.

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22 RICHARD C. CHIER
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5 (213) 550-1005

6 Attorneys for Defendant

FILED

MAR 27 1987

CLERK OF SUPERIOR COURT
LOS ANGELES COUNTY
J. A. [Signature]

7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10
11 THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
12)
Plaintiff,)
13)
v.)
14 JOE HUNT,)
15)
Defendant.)
16

Case No. A090435

DECLARATION IN SUPPORT OF
ORDER FOR APPEARANCE OF
DISTANT WITNESS
[Penal Code, Section 1330]

17 RICHARD C. CHIER declares and states:

18 1. I am an attorney at law, a member in good standing of
19 the State Bars of New York and California, am a Certified Crimi-
20 nal Specialist, and am co-counsel of record for defendant, JOE
21 HUNT.

22 2. On or about November 22, 1986, defense counsel were ad-
23 vised about the existence of two witnesses who reside in Tucson,
24 Arizona, who claim to have seen the alleged victim, Ronald George
25 Levin, alive and well in Tucson, Arizona, in the second or third
26 week of October, 1986.

27 3. The prosecution alleges that Mr. Levin who disappeared
28 on June 7, 1984, was murdered by the defendant Hunt and an

1 accomplice, James Pitman.

2 4. The defendant, on the other hand, claims that Mr. Levin
3 fled the jurisdiction to avoid prosecution for one or more felony
4 offenses.

5 5. The witnesses described the person they saw with such
6 particularity that it could have only been Ronald George Levin.

7 6. In addition, both witnesses were administered grueling,
8 rigorous lie detector examinations which they passed.

9 7. Finally, I am informed and believe that both witnesses
10 selected Ronald George Levin's photograph from an array of six
11 photographs displayed to them by the investigating officers in
12 this case thereby reinforcing the observation made by them previ-
13 ously.

14 8. The names and addresses of the witnesses in question
15 are:

16 (a) Carmen Marie Canchola, 202 North Country Club,
17 Tucson, Arizona; and

18 (b) Jesus Edalberto Lopez, 337 West 32nd Street,
19 Tucson, Arizona.

20 9. The Tucson police conducted an extensive investigation
21 which included:

22 (a) Attempts to locate a person in the area who
23 matched the description given by the witnesses;

24 (b) Inquiry into the background of the two witnesses,
25 looking for any bias or motive to give false testimony;

26 (c) Inquiry into and examination of the background of
27 the two witnesses in an attempt to ascertain whether they
28 were fabricating their declarations;

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(d) Attempts to locate a car answering to the description of the automobile the witnesses described (a classic -- '50's style American car) as being driven by the person they saw.

10. The witnesses whose attendance is sought to be compelled by this Application will be able to describe the police investigation conducted in reaction to the declarations of the witnesses listed in Item 8, above.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, except as to those matters stated on information and/or belief, and as to those matters, I believe them to be true; and that this Declaration was executed on March 26, 1987.


RICHARD C. CHIER

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2 Los Angeles, CA 90067
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3 RICHARD C. CHIER
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5 (213) 550-1005

6 Attorneys for Defendant

MAR 30 1987

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA,)
12)
13 Plaintiff,)
14 v.)
15 JOE HUNT,)
16 Defendant.)

Case No. A090435

REQUEST FOR LIMITING
INSTRUCTION RE ADMISSION OF
UNCHARGED MISCONDUCT

17 Defendant, JOE HUNT, requests the Court instruct the jury
18 regarding the limited purpose for which evidence concerning a
19 pending case in San Mateo County was received in this trial and
20 particularly instruct them that they may not consider such evi-
21 dence as evidence of the defendant's guilt in this case.

22 DATED: March 29, 1987

23 Respectfully submitted,

24 ARTHUR H. BARENS
25 RICHARD C. CHIER

26 By: *Richard C. Chier*

27 RICHARD C. CHIER
28 Attorneys for Defendant

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6 Attorneys for Defendant

FILED

APR 9 1987

FRANK J. ...

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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA,)
12)
13 Plaintiff,)
14 v.)
15 JOE HUNT,)
16 Defendant.)

Case No. A090435

DEFENDANT JOE HUNT'S REQUEST
FOR JURY INSTRUCTIONS

17 Defendant hereby respectfully requests, from CALJIC, the
18 most recent revision of Instructions set forth below:

<u>Request No.</u>	<u>CALJIC No.</u>	
21 1.	1.00	RESPECTIVE DUTIES OF JUDGE AND JURY (1979 Revision)
23 2.	1.01	INSTRUCTIONS TO BE CONSIDERED AS A WHOLE (1979 Revision)
25 3.	1.02	STATEMENTS OF COUNSEL -- EVIDENCE 26 STRICKEN OUT -- INSINUATIONS OF QUES- 27 TIONS -- STIPULATED FACTS (1979 Revi- 28 sion)

1	4.	2.00	DIRECT AND CIRCUMSTANTIAL EVIDENCE --
2			INFERENCES (1979 Revision)
3	5.	2.09	EVIDENCE RECEIVED IN ERROR
4	6.	2.11	PRODUCTION OF ALL AVAILABLE EVIDENCE NOT
5			REQUIRED
6	7.	2.11.5	UNJOINED PERPETRATORS OF SAME CRIME RE-
7			QUIRED
8	8.	2.20	CREDIBILITY OF WITNESS (1980 Revision)
9	9.	2.21	WITNESS WILLFULLY FALSE -- DISCREPANCIES
10			IN TESTIMONY
11	10.	2.22	WEIGHING CONFLICTING TESTIMONY (1975 Re-
12			vision)
13	11.	2.27	SUFFICIENCY OF TESTIMONY OF ONE WITNESS
14			(1977 Revision)
15	12.	2.50	EVIDENCE OF OTHER OFFENSES (1984 Revi-
16			sion)
17	13.	2.60	DEFENDANT NOT TESTIFYING -- NO INFERENCE
18			OF GUILT MAY BE DRAWN (1979 Revision)
19	14.	2.61	DEFENDANT MAY RELY ON STATE OF EVIDENCE
20			(1979 Revision)
21	15.	2.70	ADMISSION AND CONFESSION - DEFINED (1980
22			Revision)
23	16.	2.71	ADMISSION -- DEFINED (1980 Revision)
24	17.	2.72	CORPUS DELICTI MUST BE PROVIDED INDEPEN-
25			DENT OF ADMISSION OR CONFESSION
26	18.	2.81	OPINION TESTIMONY OF LAY WITNESS
27	19.	2.90	PRESUMPTION OF INNOCENCE -- REASONABLE
28			DOUBT -- BURDEN OF PROOF (1979 Revision)

- 1 20. 4.50 ALIBI (1979 Revision)
- 2 21. ADMISSIONS AND CONFESSIONS (INDEPENDENT
- 3 PROOF OF CRIME REQUIRED)
- 4 22. ADMISSIONS AND CONFESSIONS (JURY TO DE-
- 5 TERMINE VALUE)
- 6 23. ADMISSIONS AND CONFESSIONS (JURY TO DE-
- 7 TERMINE VALIDITY)
- 8 24. ADMISSIONS AND CONFESSIONS (JURY TO DE-
- 9 TERMINE WEIGHT)
- 10 25. ADMISSIONS AND CONFESSIONS (RATIONALE
- 11 FOR CAUTION)
- 12 26. ALIBI (DATE CERTAIN FIXED BY THE PROSE-
- 13 CUTION)
- 14 27. ALIBI (DEFINED)
- 15 28. ALIBI (EFFECT OF PROOF)
- 16 29. ALIBI (RAISING A REASONABLE DOUBT IS
- 17 SUFFICIENT TO ACQUIT)
- 18 30. ALIBI (REASONABLE DOUBT IS SUFFICIENT TO
- 19 ESTABLISH THE DEFENSE)
- 20 31. BURDEN OF PROOF (FALSE STATEMENTS BY THE
- 21 DEFENDANT ARE INSUFFICIENT TO CONVICT
- 22 32. BURDEN OF PROOF (PREPONDERANCE OR SUSPI-
- 23 CION IS INSUFFICIENT TO CONVICT)
- 24 33. BURDEN OF PROOF (SOME EVIDENCE, SUSPI-
- 25 CION, OR STRONG REASON TO SUSPECT GUILT
- 26 IS INSUFFICIENT TO CONVICT
- 27 34. BURDEN OF PROOF (SUSPICION IS A POSSI-
- 28 BILITY ONLY AND NOT EVIDENCE AND WILL

- 1 NOT SUPPORT A CONVICTION)
- 2 35. CIRCUMSTANTIAL EVIDENCE (DUTY TO RECON-
- 3 CILE WITH INNOCENCE
- 4 36. CIRCUMSTANTIAL EVIDENCE (MUST EXCLUDE
- 5 GUILT OF ANOTHER)
- 6 37. CORPUS DELECTI (PROOF INDEPENDENT OF AD-
- 7 MISSIONS OR CONFESSIONS IS REQUIRED)
- 8 38. CREDIBILITY (JURY MAY REJECT ENTIRE TES-
- 9 TIMONY OF A WITNESS)
- 10 39. CREDIBILITY (POLICE OFFICER)
- 11 40. CREDIBILITY (REASONABLE DOUBT AS TO
- 12 CREDIBILITY OF TRUTHFULNESS OF WITNESS
- 13 AGAINST THE DEFENDANT MUST BE RESOLVED
- 14 BY FINDING THE STATEMENT OF SUCH WITNESS
- 15 TO BE UNTRUE)
- 16 41. CREDIBILITY (SINGLE WITNESS IS SUFFI-
- 17 CIENT TO PROVE ANY FACT)
- 18 42. JURY (DUTY NOT TO SURRENDER HONEST CON-
- 19 VICTIONS AND DUTY NOT TO VOTE FOR GUILTY
- 20 VERDICT IF A REASONABLE DOUBT IS ENTER-
- 21 TAINED)
- 22 43. JURY (INDIVIDUAL OPINION OF EACH JUROR
- 23 MUST BE EXPRESSED IN VERDICT)
- 24 44. MURDER (FELONY MURDER AND REASONABLE
- 25 DOUBT AS TO THE UNDERLYING FELONY)
- 26 45. REASONABLE DOUBT (BURDEN OF PROOF AND
- 27 PRESUMPTION OF INNOCENCE)
- 28 46. REASONABLE DOUBT (DUTY TO ACQUIT IF A

- 1 REASONABLE DOUBT IS PRESENT)
- 2 47. REASONABLE DOUBT (EXPLANATION AND REASON
- 3 FOR THE RULE)
- 4 48. REASONABLE DOUBT (MAY ARISE FROM A QUES-
- 5 TION OF FACT OR FROM LANGUAGE INTERPRE-
- 6 TATION OR CONSTRUCTION)
- 7 49. ROBBERY (PROOF OF FORCE OR FEAR RE-
- 8 QUIRED)
- 9 50. ACCUSATORY STATEMENTS -- DEFENDANT IN
- 10 CUSTODY
- 11 51. TESTIMONY OF INFORMER -- INTERESTED WIT-
- 12 NESS
- 13 52. TESTIMONY UNDER GRANT OF IMMUNITY
- 14 53. CREDIBILITY (SINGLE WITNESS) SUFFICIENT
- 15 TO PROVE ANY FACT
- 16 54. EVIDENCE OF OTHER ACTS OF DEFENDANT
- 17 55. CHARACTER AND REPUTATION EVIDENCE
- 18 56. ADMISSIONS -- WRITTEN SAME AS ORAL
- 19 57. THE BURDEN OF PROOF -- IDENTIFICATION IN
- 20 ARIZONA

21 Defendant further requests that the Court charge the jury

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1 with the attached special instructions.

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3 DATED: April 9th, 1987

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5 Respectfully submitted,

6 ARTHUR H. BARENS
7 RICHARD C. CHIER

8 By: 
9 RICHARD C. CHIER
10 Attorneys for Defendant

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COURT INSTRUCTION NO. _____ :

REQUEST NO. 1

RESPECTIVE DUTIES OF JUDGE AND JURY

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence we come to that part of the trial where you are instructed on the applicable law.

[I am required to read the instructions to you in open court. In addition, you will have these instructions in their written form in the jury room for use during your deliberations.]

Whether a defendant is to be found guilty or not guilty depends upon both the facts and the law.

As jurors you have two duties to perform. One duty is to determine the facts of the case from the evidence received in the trial and not from any other source. The word "fact" means something that is provided directly or circumstantially by the evidence [or by agreement of counsel]. Your other duty is to apply the rules of law that I state to you to the facts as you determine them and in this way to arrive at your verdict.

It is my duty in these instructions to explain to you the rules of law that apply to this case. You must accept and follow the rules of law as I state them to you.

As jurors you must not be influenced by pity for a defendant or by prejudice against him. You must not be biased against the defendant because he has been arrested for this offense, or because he has been charged with a crime, or because he has been brought to trial. None of these circumstances is evidence of his guilt and you must not infer or assume from any or all of them

1 that he is more likely to be guilty than innocent.

2 You must not be swayed by mere sentiment, conjecture, sympa-
3 thy, passion, prejudice, public opinion or public feeling. Both
4 the People and the defendant have a right to expect that you will
5 conscientiously consider and weigh the evidence and apply the law
6 of the case, and that you will reach a just verdict regardless of
7 what the consequences of such verdict may be.

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.CALJIC 1.00 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 2

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

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5 If any rule, direction or idea in these instructions [is]
6 [has been] repeated or stated in varying ways, no emphasis [is]
7 [was] intended and you must not draw any inference because of its
8 repetition. You are not to single out any certain sentence or
9 any individual point or instruction and ignore the others. You
10 are to consider all the instructions as a whole and are to regard
11 each in the light of all the others.

12 The order in which the instructions [~~are~~] [~~have been~~] given
13 has no significance as to their relative importance.

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24 .CALJIC 1.01 (1979 Revision)

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26 Given as Requested: _____ Given as Modified: _____ Refused: _____

27 Withdrawn: _____
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COURT INSTRUCTION NO. _____ :

REQUEST NO. 3

STATEMENTS OF COUNSEL -- EVIDENCE

STRICKEN OUT -- INSINUATIONS OF

QUESTIONS -- STIPULATED FACTS

Statements made by the attorneys during the trial are not evidence; [however, if counsel for the parties have stipulated to any fact, you will regard that fact as being conclusively proved as to the party or parties making the stipulation].

A "stipulation" is an agreement between attorneys as to matters relating to the trial.

As to any question to which an objection was sustained, you must not guess what the answer might have been or as to the reason for the objection.

You must never assume to be true any insinuation suggestion by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the court; such matters is to be treated as though you had never heard of it..

 .CALJIC 1.02 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

1 COURT INSTRUCTION NO. :

2 REQUEST NO. 4

3 DIRECT AND CIRCUMSTANTIAL

4 EVIDENCE -- INFERENCES

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6 Evidence consists of testimony of witnesses, writings, mate-
7 rial objects, or anything presented to the senses and offered to
8 prove the existence or non-existence of a fact.

9 Evidence is either direct or circumstantial.

10 Direct evidence is evidence that directly proves a fact,
11 without the necessity of an inference, and which by itself, if
12 found to be true, establishes that fact.

13 Circumstantial evidence is evidence that, if found to be
14 true, proves a fact from which an inference of the existence of
15 another fact may be drawn.

16 An inference is a deduction of fact that may logically and
17 reasonably be drawn from another fact or group of facts estab-
18 lished by the evidence.

19 It is not necessary that facts be proved by direct evidence.
20 They may be proved also by circumstantial evidence or by a combi-
21 nation of direct evidence and circumstantial evidence. Both di-
22 rect evidence and circumstantial evidence are acceptable as a
23 means of proof. Neither is entitled to any greater weight than
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1 the other.

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.CALJIC 2.00 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 5

EVIDENCE RECEIVED IN ERROR

Certain evidence was admitted in error.

For example evidence concerning an alleged critique by defendant of the film Rambo was admitted by the Court in error and should not be considered by you for any purpose.

In addition you are not to consider for any purpose the following described evidence which should not have been received:

- 1. All references to Chicago Mercantile Exchange;
- 2. All references to the manner in which investors were treated by Hunt;
- 3. All references to any statements by gypsy fortune tellers to Hunt or his parents;.
- 4. All references to paradox philosophy;
- 5. All references to the defendant's alleged involvement in a Northern California criminal prosecution.

You are again instructed that you must not consider such evidence for any purpose and must strike such testimony from your minds as though you never heard it.

.CALJIC 2.09 (as modified)

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

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COURT INSTRUCTION NO. :

REQUEST NO. 6

PRODUCTION OF ALL AVAILABLE

EVIDENCE NOT REQUIRED

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Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.

.CALJIC 2.11

Given as Requested:_____ Given as Modified:_____ Refused:_____

Withdrawn:_____

COURT INSTRUCTION NO. :

REQUEST NO. 7

UNJOINED PERPETRATORS OF SAME CRIME

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There has been evidence in this case indicating that a person named James Graham also known as Pitman was or may have been involved in the alleged crime for which the defendant is on trial.

You must not discuss or give any consideration as to why such other person is not being prosecuted in this trial or whether he has been or will be prosecuted..

.CALJIC 2.11.5 (as modified)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

inconsistent with the testimony of the witness.

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.CALJIC 2.20 (1980 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 9

WITNESS WILLFULLY

FALSE -- DISCREPANCIES

IN TESTIMONY

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A witness willfully false in one material part of his testimony is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you shall believe the probability of truth favors his testimony in other particulars.

However, discrepancies in a witness' testimony or between his testimony and that of others, if there were any, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience; and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

.CALJIC 2.21

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 10

WEIGHING CONFLICTING TESTIMONY

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You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against the testimony of a lesser number or other evidence, which appeals to your mind with more convincing force. This does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

.CALJIC 2.22 (1975 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. :REQUEST NO. 11SUFFICIENCY OF TESTIMONY OF ONE WITNESS

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5 Testimony which you believe given by one witness is suffi-
6 cient for the proof of any fact. However, before finding any
7 fact required to be established by the prosecution to be proved
8 solely by the testimony of such a single witness, you should
9 carefully review all the testimony upon which the proof of such
10 fact depends.

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25 .CALJIC 2.27 (1977 Revision)

26 Given as Requested: _____ Given as Modified: _____ Refused: _____

27 Withdrawn: _____
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COURT INSTRUCTION NO. :

REQUEST NO. 12

EVIDENCE OF OTHER OFFENSES

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Evidence has been introduced for the purpose of showing that the defendant committed [a crime] [crimes] other than that for which he is on trial.

Such evidence, if believed, was not received and may not be considered by you to prove that he is a person of bad character or that he has a disposition to commit crimes.

Such evidence was received and may be considered by you only for the limited purpose of determining if it tends to show:

[A characteristic method, plan or scheme in the commission of criminal acts similar to the method, plan or scheme used in the commission of the offense in this case which would further tend to show [the existence of the intent which is a necessary element of the crime charged] [or] [the identity of the person who committed the crime, if any, of which the defendant is accused] [or] [that the crime charged is part of a larger continuing plan, scheme or conspiracy];]

[The existence of the intent which is a necessary element of the crime charged;]

[the identity of the person who committed the crime, if any, of which the defendant is accused;]

[A motive for the commission of the crime charged;]

[That the defendant had knowledge of the nature of things found in his possession;]

[That the defendant had knowledge or possessed the means

1 that might have been useful or necessary for the commission of
2 the crime charged;]

3 [The existence of a conspiracy;]

4 For the limited purpose for which you may consider such evi-
5 dence, you must weigh it in the same manner as you do all other
6 evidence in the case.

7 You are not permitted to consider such evidence for any oth-
8 er purpose.

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.CALJIC 2.50 (1984 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 13

DEFENDANT NOT TESTIFYING -- NO

INFERENCE OF GUILT MAY BE DRAWN

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It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. You must not draw any inference from the fact that he does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way.



.CALJIC 2.60 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 14

DEFENDANT MAY RELY ON STATE OF EVIDENCE

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In deciding whether or not to testify, the defendant may choose to rely on the state of the evidence and upon the failure, if any, of the People to prove beyond a reasonable doubt every essential element of the charge against him, and no lack of testimony on defendant's part will supply a failure of proof by the People so as to support a finding against him on any such essential element.

.CALJIC 2.61 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. :REQUEST NO. 15CONFESSION AND ADMISSION -- DEFINED

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5 A confession is a statement either written or oral made by a
6 defendant other than at his trial in which he has acknowledged
7 his guilt of the crime(s) for which he is on trial. In order to
8 constitute a confession, such a statement must acknowledge par-
9 ticipation in the crime(s) as well as the required [criminal in-
10 tent] [knowledge].

11 [A statement made by a defendant other than at his trial is
12 not a confession but an admission whenever the statement does not
13 by itself acknowledge his guilt of the crime(s) for which he is
14 on trial, but which tends to prove his guilt when considered with
15 the rest of the evidence.]

16 You are the exclusive judges as to whether the defendant
17 made a confession [or an admission], and if so, whether such
18 statement is true in whole or in part. If you should find that
19 the defendant did not make the statement, you must reject it. If
20 you find that it is true in whole or in part, you may consider
21 that part which you find to be true.

22 Evidence of an oral ~~or written confession~~ [or oral admis-
23 sion] of the defendant should be viewed with caution.

24 A false confession cannot support an inference of the truth
25 of the matter untruthfully stated. Therefore, the false confes-
26 sion of guilt of a specific act cannot be used as proof of the
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1 commission of that act.

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.CALJIC 2.70 (1980 Revision, as modified by People v. Liss, 35 Cal.2d 570.)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :REQUEST NO. 16ADMISSION -- DEFINED

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5 An admission is a statement either written or oral made by
6 defendant other than at his trial which does not by itself ac-
7 knowledge guilt of the crime(s) for which he is on trial, but
8 which statement tends to prove his guilt when considered with the
9 rest of the evidence.

10 You are the exclusive judges as to whether the defendant
11 made an admission, and if so, whether such statement is true in
12 whole or in part. If you should find that the defendant did not
13 make that statement, you must reject it. If you find that it is
14 true in whole or in part, you may consider that part which you
15 find to be true.

16 Evidence of an oral or written admission of the defendant
17 should be viewed with caution.

18 A false admission cannot support an inference of the truth
19 of the matter untruthfully stated.

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24 .CALJIC 2.71 (1980 Revision, as further revised by People v.
Liss, 35 Cal.2d 570.)

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26 Given as Requested: _____ Given as Modified: _____ Refused: _____

27 Withdrawn: _____
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COURT INSTRUCTION NO. _____:

REQUEST NO. 17

CORPUS DELICTI MUST BE PROVED
INDEPENDENT OF ADMISSION OR CONFESSION

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No person may be convicted of a criminal offense unless there is some proof of each element of the crime independent of any [confession or] admission made by him outside of this trial.

Motive is not an element of a crime and is not to be considered when determining whether there is some proof of the elements of the crime.

Evidence which merely tends to prove the identity of an alleged perpetrator also must not be considered when determining whether there is some proof of the elements of the crime.

.CALJIC 2.72 (as modified by People v. Tapia (1901) 131 Cal. 647, 653.)

Given as Requested: _____ Given as Modified: _____ Refused: v

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 18

OPINION TESTIMONY OF LAY WITNESS

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In determining the weight to be given to an opinion expressed by any witness [who did not testify as an expert witness], you should consider his credibility, the extent of his opportunity to perceive the matters upon which his opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

.CALJIC 2.81

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 19

PRESUMPTION OF INNOCENCE -- REASONABLE

DOUBT -- BURDEN OF PROOF

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A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the State the burden of proving him guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

.CALJIC 2.90 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 20

ALIBI

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The defendant in this case has introduced evidence for the purpose of showing that he was not present at the time and place of the commission of the alleged offense for which he is here on trial. If, after a consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the alleges crimes were committed, he is entitled to an acquittal.



.CALJIC 4.50 (1979 Revision)

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 22

ADMISSIONS AND CONFESSIONS

(JURY TO DETERMINE VALUE)

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The weight and credibility to be accorded an admission or confession are questions for the jury.

.People v. Thornton, 11 Cal.3d 738, 767.

Given as Requested: _____ Given as Modified: _____ Refused: _____ ✓

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 23

ADMISSIONS AND CONFESSIONS

(JURY TO DETERMINE VALIDITY)

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The jury is the sole judge of the truth or falsity of extra judicial admissions or confessions introduced against the defendant.

.People v. Thornton, 11 Cal.3d 738, 766.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

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COURT INSTRUCTION NO. _____ :

REQUEST NO. 25

ADMISSIONS AND CONFESSIONS

(RATIONALE FOR CAUTION)

The reason for the rule that evidence of any oral admission or confession of the defendant ought to be viewed with caution is that this kind of testimony is considered dangerous, first, because it may be misapprehended by the person who hears it, secondly, it may not be well remembered, thirdly, it may not be correctly repeated.

.People v. Gardner, 195 Cal.App.2d 829, 832.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. _____:

REQUEST NO. 26

ALIBI (DATE CERTAIN FIXED BY THE PROSECUTION)

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5 The prosecution evidence has fixed the crime charged as oc-
6 ccurring on June 6, 1984. The defendant has offered an alibi for
7 that day. In light of the defendant's alibi defense, the time
8 the alleged offense was committed becomes material. The jury is
9 limited in its consideration of the evidence to the period which
10 the prosecution has selected as the time of the commission of the
11 offense charged. If you have a reasonable doubt that the offense
12 was committed on that particular day the defendant is entitled to
13 an acquittal.

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24 .People v. Jones, 9 Cal.3d 546, 557.

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26 Given as Requested: _____ Given as Modified: _____ Refused: _____ ✓

27 Withdrawn: _____
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COURT INSTRUCTION NO. _____ :

REQUEST NO. 28

ALIBI (EFFECT OF PROOF)

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When a person on trial for a crime shows that he was in another place at the time when the crime alleged was committed, he is said to prove an alibi. The defense interposed by the defendant in this case is what is known as an alibi, that is, that the defendant was in another place at the time of the commission of the alleged crime. You are instructed that such a defense is as proper and legitimate as any other and all the evidence bearing on that point should be carefully considered by you. If, in view of all the evidence, you have a reasonable doubt as to whether the defendant was in some other place when the crime was committed you should give him the benefit of that doubt and acquit him. As regards the defense of alibi, you are instructed that the law does not require the defendant to prove that defense beyond a reasonable doubt to entitle him to an acquittal. It is sufficient if his defense upon that point raises a reasonable doubt in your minds of his presence at the time and place of the commission of the crime charged.

.People v. Vasquez, 93 Cal.App. 448, 449.

Given as Requested: _____ Given as Modified: _____ Refused: _____ ✓

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 30

ALIBI (REASONABLE DOUBT IS
SUFFICIENT TO ESTABLISH THE DEFENSE)

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6 The defendant, Joe Hunt, has introduced testimony to prove
7 an alibi. To entitle him to an acquittal, it is sufficient that
8 such proof, considered with all other evidence, raises in your
9 minds a reasonable doubt of his presence at the place and at the
10 time of the crime or crimes charged in the information.

11 The burden of proof is always on the prosecution. It never
12 shifts to the defendant. He is not required to prove an alibi
13 beyond a reasonable doubt or even by a preponderance of the evi-
14 dence. It is your duty, therefore, to find the defendant, Joe
15 Hunt, "not guilty," unless from all the evidence you are satis-
16 fied beyond a reasonable doubt that he is guilty.

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24 .People v. Gist, 28 Cal.App.2d 287, 293.

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26 Given as Requested: _____ Given as Modified: _____ Refused:

27 Withdrawn: _____
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COURT INSTRUCTION NO. _____ :

REQUEST NO. 31

BURDEN OF PROOF (FALSE STATEMENTS BY THE

DEFENDANT ARE INSUFFICIENT TO CONVICT

Neither false statements of the defendant, if there were any, nor suspicious circumstances, are sufficient to support a verdict of guilty in a criminal case.

.People v. Ton Woo, 181 Cal. 315, 328.

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 32

BURDEN OF PROOF (PREPONDERANCE OR
SUSPICION IS INSUFFICIENT TO CONVICT)

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You have no right to convict the defendant of a crime upon mere suspicion, however strong, nor simply because there may be a preponderance of all of all of the evidence in the case against him, nor merely because there is or may be strong reason to suspect that he is guilty. Before you can lawfully convict you must be convinced of the defendant's guilt beyond all reasonable doubt.

.People v. Bickerstaff, 46 Cal.App. 764.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 34

BURDEN OF PROOF (SUSPICION IS A
POSSIBILITY ONLY AND NOT EVIDENCE
AND WILL NOT SUPPORT A CONVICTION)

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Evidence which merely raises a strong suspicion of the defendant's guilt is not sufficient to support a conviction. Suspicion is not evidence; it merely raises a possibility, and this is not a sufficient basis for an inference of fact.

.People v. Redmond, 71 Cal.2d 745, 755.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 33

BURDEN OF PROOF (SOME EVIDENCE,
SUSPICION, OR STRONG REASON TO SUSPECT
GUILT IS INSUFFICIENT TO CONVICT

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7 You are not to convict the defendant of the crime charged
8 upon mere suspicion, however strong. Nor are you to convict him
9 simply because there may be some evidence in the case against
10 him, nor merely because there is or may be strong reason to sus-
11 pect that he is guilty. Before you can lawfully convict the de-
12 fendant you must be convinced of his guilt to a moral certainty
13 and beyond all reasonable doubt.
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24 .People v. Draper, 69 Cal.App.2d 781, 786.
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26 Given as Requested: _____ Given as Modified: _____ Refused:
27 Withdrawn: _____
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1 COURT INSTRUCTION NO. _____ :

2 REQUEST NO. 36

3 CIRCUMSTANTIAL EVIDENCE (MUST

4 EXCLUDE GUILT OF ANOTHER)

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6 To convict as defendant on circumstantial evidence alone,
7 such evidence must produce a reasonable and moral certainty that
8 the accused, and that no other person, committed the crime
9 charged.

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24 .People v. Madison, 3 Cal.2d 668, 677.

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26 Given as Requested: _____ Given as Modified: _____ Refused:

27 Withdrawn: _____
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COURT INSTRUCTION NO. :

REQUEST NO. 37

CORPUS DELECTI (PROOF INDEPENDENT OF
ADMISSIONS OR CONFESSIONS IS REQUIRED)

The corpus delecti must be proved by evidence independent of the extrajudicial declarations and statements of the defendant so that he may be protected against the possibility of fabricated testimony which might wrongfully establish the crime and the perpetrator.

.People v. Starr, 11 Cal.App.3d 574, 582, abstracting and emphasizing People v. Quicke, 71 Cal.2d 502, 521, quoting from People v. Amaya, 40 Cal.2d 70, 75-76.

Given as Requested: _____ Given as Modified: _____ Refused: ✓

Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 38

CREDIBILITY (JURY MAY REJECT
ENTIRE TESTIMONY OF A WITNESS)

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As jurors you are the triers of the fact in this case. As triers of the fact, you are not required to accept as true the testimony of a witness even if it appears uncontradicted.

Lombardi v. Tranchina, 129 Cal.App.2d 778, 780.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 39

CREDIBILITY (POLICE OFFICER)

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A police officer's testimony is to be weighed and judged by the same standard that applies to the average witness.



.People v. Hanna, 36 Cal.App.2d 333, 337.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 40

CREDIBILITY (REASONABLE DOUBT AS TO
CREDIBILITY OF TRUTHFULNESS OF WITNESS AGAINST
THE DEFENDANT MUST BE RESOLVED BY FINDING
THE STATEMENT OF SUCH WITNESS TO BE UNTRUE)

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If you have any reasonable doubt as to the credibility or truthfulness of any statement made by any witness against the defendant, you must resolve that doubt in favor of the defendant and find such statement to be untrue.



.People v. Hidalgo, 78 Cal.App.2d 926, 936.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 42

JURY (DUTY NOT TO SURRENDER HONEST

CONVICTIONS AND DUTY NOT TO VOTE FOR GUILTY

VERDICT IF A REASONABLE DOUBT IS ENTERTAINED)

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Jurors are not required to surrender their convictions for the mere purpose of agreeing upon a verdict. If any juror entertains a reasonable doubt of guilt of the defendant, it is his duty not to vote for a verdict of guilty nor to be influenced in so voting.

.People v. Wade, 266 Cal.App.2d 918, 927.

Given as Requested: _____ Given as Modified: _____ Refused: ✓

Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 43

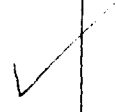
JURY (INDIVIDUAL OPINION OF EACH
JUROR MUST BE EXPRESSED IN VERDICT)

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Any verdict that you reach must express the individual opinion of each as well as the unanimous agreement of all.

.People v. Shekell, 5 Cal.App.2d 537, 540.

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____



COURT INSTRUCTION NO. :

REQUEST NO. 47

REASONABLE DOUBT (EXPLANATION

AND REASON FOR THE RULE)

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A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

These significant words express a cardinal rule of Anglo-American criminal jurisprudence. The presumption, intended originally to ameliorate the severity of the early English common law, serves not to protect the guilty but to prevent conviction of the innocent. It has been described as a fundamental right and an essential element of due process of law. It is the capstone in the protective arch of a citizen's rights when accused of crime.

.People v. Belton, 23 Cal.3d 516, 520, and the cases therein cited.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 48

REASONABLE DOUBT (MAY ARISE FROM A
QUESTION OF FACT OR FROM LANGUAGE
INTERPRETATION OR CONSTRUCTION)

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The defendant is entitled to the benefit of every reasonable doubt, whether it arises out of a question of fact, or as to the true interpretation of words or the construction of language used in a statute.

.People v. Chessman, 38 Cal.2d 166, 182.

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. _____:

REQUEST NO. 50

ACCUSATORY STATEMENTS -- DEFENDANT IN CUSTODY

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After taking a defendant into custody, arresting officers sometimes make accusatory statements to him or in his presence, with a view to prompting some admission of guilt.

An accusatory statement, as the term suggests, is a statement which in substance or effect accuses a person of guilt.

The law does not require a defendant in custody to make any reply whatever to any accusatory statement made to him, or in his presence, either orally or in writing. So neither the accusatory statement, nor any failure to make reply thereto, is evidence of any kind against the accused.

That is to say, neither the accusatory statement, nor any failure to reply thereto, can create any presumption or permit any inference of guilt.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

.Devitt & Blackmar, Section 15.14.

Given as Requested: _____ Given as Modified: _____ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 51

TESTIMONY OF INFORMER -- INTERESTED WITNESS

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The testimony of an informer to provides evidence against a defendant for pay, or for immunity for punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest, or by prejudice against defendant.

.United States v. Garcia (5th Cir. 1976) 528 F.2d 580; Johnson v. United States (8th Cir. 1974 506 F.2d 640, cert. denied, 420 U.S. 978; Devitt & Blackmar, Section 17.02.

Given as Requested: _____ Given as Modified: ✓ Refused: ✓

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 52

TESTIMONY UNDER GRANT OF IMMUNITY

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5 You have heard testimony from Dean Karny, a witness who has
6 received immunity. That testimony was given in exchange for a
7 promise by the State of California that he would not be prosecut-
8 ed for murder in either Los Angeles County or San Mateo County
9 and that to the extent possible, the office of the Attorney Gen-
10 eral would assist witness Karny in any admission to the State Bar
11 of California.

12 In evaluating Dean Karny's testimony, you should consider
13 whether that testimony may have been influenced by the prosecu-
14 tion's promise of immunity given in exchange for it, and you
15 should consider that testimony with greater caution than that of
16 other witnesses.

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23 .United States v. Morgan (9th Cir. 1977) 555 F.2d 238, 242-43;
24 Manual of Model Jury Instructions for the Ninth Circuit, 1985
Edition, No. 4.09.

25
26 Given as Requested: _____ Given as Modified: Refused:

27 Withdrawn: _____
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COURT INSTRUCTION NO. :

REQUEST NO. 53

CREDIBILITY (SINGLE WITNESS)

SUFFICIENT TO PROVE ANY FACT

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Testimony which you believe given by one witness is sufficient for the proof of any fact.

Two defense witnesses have testified to having seen the alleged victim, Ron Levin, alive in Tucson, Arizona, in the month of September, 1986.

The defendant is not required to prove beyond a reasonable doubt that the person identified by witnesses Canchola and Lopez was in fact Ron Levin.

Provide that person

The defendant is entitled to an acquittal if a consideration of the entire testimony of either or both of said defense witnesses raises in your mind a reasonable doubt that the alleged victim, Ron Levin, is ~~actually~~ dead.

.People v. Sears, 2 Cal.3d 180; People v. Granados, 49 Cal.2d 490, 496; People v. Rincon-Pineda, 14 Cal.3d 864, 885.

Given as Requested: _____ Given as Modified: ✓ Refused: _____

Withdrawn: _____

COURT INSTRUCTION NO. _____ :

REQUEST NO. 54

EVIDENCE OF OTHER ACTS OF DEFENDANT

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Remember, that only this defendant is on trial here, not anyone else, and only for the crimes charged, not for anything else. You should consider evidence about the acts, statements, and intentions of others of evidence about other acts of the defendant, only as they relate to these charges against this defendant.

.Manual of Model Jury Instructions for the Ninth Circuit, 1985 Edition, No. 3.09.

Given as Requested: _____ Given as Modified: _____ Refused: _____
Withdrawn: _____

COURT INSTRUCTION NO. :

REQUEST NO. 55

CHARACTER AND REPUTATION EVIDENCE

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You have heard evidence about the character and reputation of Joe Hunt, the defendant. The defendant did not place his character in issue. The Court should not have allowed the introduction of evidence concerning the defendant's character. You are not to consider any evidence concerning the defendant's character for any purpose whatsoever and you should strike such evidence your minds as if you had never heard it.

.California Evidence Code, Section 1101.

Given as Requested: _____ Given as Modified: _____ Refused:

Withdrawn: _____

Distribution: White original to County Clerk
Statistical Unit, 111 North Hill Street, Room
405-C, Los Angeles; Pink second copy to
files; Yellow third copy to Register of
Actions; Blue fourth copy to Declarant.

PACE REVIEW

210

IN THE MATTER OF
THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff

JOE HUNT

Defendant

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
DECLARATION AND ORDER RE FEES
FOR ALL SUPERIOR COURT APPOINTMENTS
(EXCEPT 987.9 PENAL CODE)

SECTION A DECLARANT: COMPLETE SECTION "A" ONLY. ATTACH "DETAIL OF SERVICES AND EXPENSES
ATTACHMENT" FORM AND A SELF-ADDRESSED, STAMPED ENVELOPE.

I am claiming reimbursement for services rendered for Case Number 1 A090435
(for Juvenile Cases provide JAI NUMBER _____ and date petition filed _____).

I request that remittance be made payable as follows (CAUTION: Use the individual or firm name under which you are entered in the system.
Non-matches will be rejected. Any changes must be reported AT LEAST 30 DAYS IN ADVANCE of payment processing on the Status Notification
Form).

Remittance to me as an individual

4 Social Security Number 568181-444-479161

5 Individual Name (LAST, First, Middle initial)
CHIER, RICHARD C.

Remittance to my firm/corporation

4 Tax I.D. Number _____

5 Firm Name _____

OR

I was appointed by Judge THOMAS in Dept. WE-B on (date) 03/01/86 pursuant to Section/Code

6 987.2 P.C. Service was rendered on behalf of (name) JOE HUNT

This claim is for services performed from (date) 10/29/86 to (date) 7 02/28/87 before Judge RITTENBERG

in Dept. WE-C. My appointment is Completed; Partially completed; My appointment was completed on
_____; however, I am requesting a supplemental payment.

My claim is summarized as follows:

	Hours Spent	Amount Requested
Appearances	263.00	\$
Preparation	312.90	\$
Expenses		\$ 455.50
Total	11 575.9 hrs.	\$

Type of service was: Attorney Investigator

Doctor Expert Witness Other _____

Arbitrator *

* For Arbitration Cases:

Arbitration was Elected Stipulated Court-ordered

Did this case come from Municipal Court? Yes No

I declare under penalty of perjury, pursuant to Section 2015.5 C.C.P. and 911.2 G.C. of the State of California, that I have not previously claimed, nor have I been
reimbursed for, service(s) as claimed on this Declaration, that the information contained herein and attached is true and correct, and that the claim is presented
within one year after the last item of service.

Date 28 March 1987

Signature (Declarant) Richard C. Chier

RICHARD C. CHIER

For Investigator's Claims Only:

I declare under penalty of perjury, pursuant to Section 2015.5 of the Code of Civil Procedure, that all of the services claimed on this Declaration were requested by
me and, to the best of my knowledge, were performed, requiring the time and/or financial expenditure indicated.

Date _____

Signature of Defendant's Attorney
(Or Defendant, In Pro Per)

FILED

SECTION B COURT CLERK: COMPLETE SECTION "B" ONLY

The court clerk verifies that no previous payment has been authorized for this service JA (Initials)

The court now orders payment as follows:

Serial No. 8 B1- 93822 Date Authorized 9 5-12-87 Amount 10 \$ 17,500
Dollars Cents

Judge's Signature [Signature] Dept. No. WE-C District Code 2 WEST Pay Code Letter 3 A

Supervising Judge's authorization (required on all awards representing cumulative payments on the same criminal case for any attorney in excess of \$5,000 within
the Superior Court) or Juvenile Presiding Judge's authorization (for cumulative payments on the same Juvenile case in excess of \$2,500 within the Juvenile Court).

Signature [Signature] Juvenile Presiding Judge/Supervising Judge

FOR ALL SUPERIOR COURT CLAIMS FOR PAYMENT FOR SERVICE (EXCEPT 987.9 PENAL CODE)

780 738-A218 (REV. 4-84)

Distribution: White original to County Clerk Statistical Unit, 111 North Hill Street, Room 105, Los Angeles; Pink second copy to files; Yellow third copy to Register of Actions; Blue fourth copy to Declarant.

PACE REVIEW _____

PREVIOUS PAYMENTS

10-29-86 to 2-28-86 - \$17,500

IN THE MATTER OF **CASE NO. A090435**
THE PEOPLE OF THE STATE OF CALIFORNIA
v.
Plaintiff
JOE HUNT
Defendant

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
DECLARATION AND ORDER RE FEES
FOR ALL SUPERIOR COURT APPOINTMENTS
(EXCEPT 987.9 PENAL CODE)

SECTION A **DECLARANT: COMPLETE SECTION "A" ONLY. ATTACH "DETAIL OF SERVICES AND EXPENSES" ATTACHMENT" FORM AND A SELF-ADDRESSED, STAMPED ENVELOPE.**

I am claiming reimbursement for services rendered for Case Number **1 A090435**
(for Juvenile Cases provide JAI NUMBER _____ and date petition filed _____)

I request that remittance be made payable as follows (CAUTION: Use the individual or firm name under which you are entered in the system. Non-matches will be rejected. Any changes must be reported **AT LEAST 30 DAYS IN ADVANCE** of payment processing on the Status Notification Form).

Remittance to me as an individual
4 Social Security Number **5681-44-4796** **OR** Remittance to my firm/corporation
4 Tax I.D. Number _____
5 Individual Name (LAST, First, Middle initial)
CHIER, RICHARD C. **5** Firm Name _____

I was appointed by Judge **THOMAS** in Dept. **WE B** on (date) **03/03/86** pursuant to Section/Code **6 987.9 P.C.**, Service was rendered on behalf of (name) **JOE HUNT**

This claim is for services performed from (date) **02/01/87** to (date) **7/03/87** before Judge **Rittenband** in Dept. **WE C**. My appointment is Completed; Partially completed. My appointment was completed on _____; however, I am requesting a supplemental payment _____

My claim is summarized as follows:

	Hours Spent	Amount Requested
Appearances	59.3	\$
Preparation	113.4	\$
Expenses		\$ 168.59
Total	11 172.7	\$

Type of service was: Attorney Investigator
 Doctor Expert Witness Other _____
 Arbitrator *

* For Arbitration Cases:
Arbitration was Elected Stipulated Court-ordered
Did this case come from Municipal Court? Yes No

I declare under penalty of perjury, pursuant to Section 2015.5 C.C.P. and 911.2 G.C. of the State of California, that I have not previously claimed, nor have I been reimbursed for, service(s) as claimed on this Declaration, that the information contained herein and attached is true and correct; and that the claim is presented within one year after the last item of service.

Date **April 13 1987** Signature (Declarant) **Richard C. Chier**
RICHARD C. CHIER

For Investigator's Claims Only:

I declare under penalty of perjury, pursuant to Section 2015.5 of the Code of Civil Procedure, that all of the services claimed on this Declaration were requested by me and, to the best of my knowledge, were performed, requiring the time and/or financial expenditure indicated.

Date _____ Signature of Defendant's Attorney (Or Defendant, In Pro Per) _____

SECTION B **COURT CLERK: COMPLETE SECTION "B" ONLY**

The court clerk verifies that no previous payment has been authorized for this service **AB** (Initials)
The court now orders payment as follows:

Serial No. **8 B1- 39708** Date Authorized **9 5-14-87** Amount **10** \$ **4308** **18**
Dollars Cents
Judge's Signature **[Signature]** Dept. **WE C** District Code **2 WE** Pay Code Letter **3 T**

Supervising Judge's authorization (required on all awards representing cumulative payments on the same criminal case for any attorney in excess of \$5,000 within the Superior Court) or Juvenile Presiding Judge's authorization (for cumulative payments on the same Juvenile case in excess of \$2,500 within the Juvenile Court).

Signature _____ Juvenile Presiding Judge/Supervising Judge

FOR ALL SUPERIOR COURT CLAIMS FOR PAYMENT FOR SERVICE (EXCEPT 987.9 PENAL CODE)

76D 738-A219 (REV. 4-84)

FILED

JUL 25 1989

FRANK S. ZOLIN, COUNTY CLERK

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GEORGE L. HARRIS, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA)
Plaintiff)
)
)
vs.)
)
JOE HUNT)
)
)
)
Defendant)

Superior Court No. A090435
2nd Crim. #B029402

CERTIFICATE OF CLERK

I, FRANK S. ZOLIN, County Clerk and Executive Officer of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the requested items in the order Augmenting the record, after a thorough search of the Superior Court file was not contained within nor could they be located in the designated area for sealed documents. The items referred to is listed as follows:

- 2. (m) Defense counsel's written analysis of cases cited by the People during proceedings on motion for sanctions based on a search of appellant's residence, submitted for filing on January 29, 1987.

1 (v) Appellant's written motion for mistrial etc., submitted
2 for filing on or about April 13, 1988.

3 (w) Appellant's counsel Arthur Barens' written motion to
4 reinstate Richard Chier etc., filed on or about
5 April 24, 1987.

6 IN WITNESS WHEREOF, I have hereto set my hand and affixed
7 the seal of said Superior Court this 25th day of July, 1989.



FRANK S. ZOLIN, County Clerk and
Executive Officer of the Superior
Court of California, County of
Los Angeles,

By B. L. Harris Deputy
B. L. Harris

Office Asst. III`

FILED

NOV 11 1988 214

FRANK S. ZOLIN, COUNTY CLERK

B. L. Harris

BY **B. L. HARRIS, DEPUTY**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COURT OF APPEAL - SECOND DIST.

F I L E D

NOV 18 1988

ROBERT L. WILSON Clerk

Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff and Respondent,)

v.)

JOE HUNT,)

Defendant and Appellant.)

2 Crim. B 029402
(L.A. No. A090435)
(L. Rittenband,
Judge)

ORDER

THE COURT:*

Upon consideration of Appellant's motion herein, and, good cause appearing, it is ordered as follows:

1. The Clerk of the Superior Court of Los Angeles County shall cause to be prepared and shall transmit to this court within thirty (30) days of the date of this order a supplemental reporter's transcript consisting of the following proceedings in the Superior Court of the State of California for the County of Los Angeles in the case of People v. Joe Hunt, case No. A090435. Should the reporter's record of any of these proceedings currently be under seal, it is ordered by this court that said reporter's record shall be removed from sealed status to the extent necessary to carry out the order of augmentation herein.:

(a) The court reporter's entire record of the following

proceedings:

i. The court reporter's entire record of Penal Code section 995 motion proceedings in Department WE "F" of said court, Honorable Leslie Light, Judge presiding, L. Anastasiou, being the reporter, on June 18, 1985.

ii. The court reporter's record of the entire proceedings, including Penal Code section 995 motion proceedings, in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger, being the reporter, on October 15, 1986.

(b) The court reporter's entire record of the discovery motion proceedings in Department WE "F" of said court, Honorable Leslie Light, Judge presiding, L. Anastasiou, being the reporter, on August 14, 1985.

(c) The court reporter's entire record of proceedings on September 27, 1985 in the above-captioned case in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, R. Goodbody, being the reporter.

(d) The court reporter's record of the entire proceedings in the above-captioned case, in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, R. Goodbody, being the reporter, on November 4, 1986.

(e) Proceedings on December 4, 1986 in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, consisting to the entire record of the hearing as to the indigency status of defendant and the court's findings thereon.

(f) The court reporter's entire record of the following proceedings:

i. The court reporter's record of all proceedings upon a motion for order prohibiting testimony of Dean Karny, in Department WE "C" of said court, Honorable Laurence Rittenband Judge presiding, S. Yerger and R. Goodbody, being the reporters, on March 4, 1987.

ii. The court reporter's record of all proceedings upon a motion for order prohibiting testimony of Dean Karny or relating to defense exhibits claimed to have been confiscated by police, in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, on May 11, 1987.

(g) The court reporter's record of all conferences

between court and counsel concerning potential defense witness, Robert Robinson, in the above-captioned case in Department WE "C" of said court, Honorable Laurence Rittenband Judge presiding, S. Yerger and R. Goodbody, being the reporters, on April 20, 1987.

(h) The court reporter's record of all conferences between court and counsel in the above-captioned case pertaining to admonishments of the jury about media coverage in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, on April 21, 1987, including any requests for such admonishment by trial counsel or discussion of this request.

(i) The court reporter's record of all conferences between court and counsel concerning defense counsel Arthur Barem's motion to reinstate co-counsel Richard Chier in the above-captioned case, in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, on April 24, 1987.

(j) The court reporter's entire record of the following proceedings:

i. Proceedings on May 8, 1987 in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, limited to in camera proceedings on the so-called "Recipe of the Week" admitted as Court's Exhibit 1 on May 11, 1987.

(k) Proceedings on May 8, 1987 in Department WE "C" of said court, honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, limited to proceedings of appellant's "Marsden" motion.

ii. Proceedings on May 11, 1987 in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, limited to in camera proceedings on the so-called "Recipe of the Week" admitted as Court's Exhibit 1 on May 11, 1987.

(l) The Court reporter's record of all proceedings on May 11, 1987 in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, S. Yerger and R. Goodbody, being the reporters, of all motions presented personally by defendant on said date.

(m) The court reporter's entire record of proceedings on June 25, 1987 in the above-captioned case in Department WE "C" of said court, Honorable Laurence Rittenband, Judge presiding, R. Goodbody, being the reporter.

2. The Clerk of the Superior Court of Los Angeles County shall cause to be prepared and shall transmit to this court within thirty(30) days of the date of this order a supplemental clerk's transcript consisting of following records

and documents of the Superior Court of the State of California for the County of Los Angeles in the case of People v. Joe Hunt, case No. A090435:

(a) Petition and request for order requiring witness to answer questions and produce evidence, waiver of issuance of order to show cause and order, filed on or about January 14, 1985. Said document is approximately four pages in length.

(b) Acknowledgement of discovery items received filed on behalf of defendant on or about August 9, 1985. Said document is approximately three pages in length.

✓ (c) Appellant's counsel Richard Chier's confidential written application for appointment pursuant to Penal Code section 987.9, all documents filed in support thereof, and order of appointment, filed on or about March 1, 1986. It appears this document may currently be kept in a sealed document room or other designated area for sealed documents. Should this document currently be under seal, it is ordered by this court that the document be removed from such sealed status to the extent necessary to carry out the order of augmentation herein.

(d) Appellant's written motion for a "Livesay" hearing, filed on or about October 27, 1986. Said document is approximately 3 pages in length.

(e) Appellant's application for subpoena duces tecum and subpoena duces tecum for records of the State Bar of California relating to Dean Karny's application for admission to the California Bar. Said document is dated October 28, 1986 and consists of two pages with printing or writing on both sides of each page.

(f) Defendant's confidential in camera motion for appointment of additional counsel pursuant to Penal Code section 987 (d), filed in December, 1986. Said document is approximately 10 pages in length.

(g) People's motion in limine, points and authorities, and other supporting documents filed in support thereof, filed on or about December 9, 1986. Said document is approximately three pages in length.

(h) Declaration of John Vance, points and authorities, and all other supporting documents filed by the Department of Justice in opposition to appellant's discovery motion. Said document was filed on or about December 12, 1986 and is approximately 13 pages in length.

(i) Defendant's confidential in camera motion for appointment of additional counsel pursuant to Penal Code section

987.2 and all supporting points and authorities, declarations and proposed orders. Said document was filed on or about December 17, 1986 and is approximately seven pages in length.

(j) Appellant's notice of motion and motion for continuing trial and supporting declarations and points and authorities, filed on or about January 14, 1987. Said moving papers are approximately nine pages in length.

(k) Order appointing second counsel under Penal Code section 987.2, filed on or about January 15, 1987. This document is approximately two pages in length.

(l) Appellant's notice of motion and motion for clarification of trial court policy regarding nature and scope of participation of co-counsel during trial, supporting declaration and points and authorities filed on or about January 28, 1987. This document is approximately nine pages in length.

✓ (m) Defense counsel's written analysis of cases cited by the People during proceedings on appellant's motion for sanctions based on a search of appellant's residence during trial proceedings, submitted for filing on January 29, 1987. It appears possible that this document may currently be kept in a sealed document room or other designated area for sealed

documents. Should this document currently be under seal, it is ordered by this court that the document be removed from such sealed status to the extent necessary to carry out the order of augmentation herein.

(n) Appellant's notice of motion and motion in limine re order of proof and request for evidentiary hearing re acts of co-conspirator, and supporting documents, including points and authorities. Said motion was filed on or about February 12, 1987, and is approximately eight pages in length.

(o) The following documents:

i. Appellant's notice of joinder in discovery motion filed herein by codefendant James Pittman filed on or about March 3, 1987. Said document is approximately one page in length.

ii. Codefendant James Pittman's notice of motion for pretrial discovery, and attached points and authorities, declaration and proposed order. Said document, filed on or about February 24, 1987, is approximately 19 pages in length. It appears that this document may be found in the "Pittman" portion of the court file in A090435 rather than the "Hunt" portion.

(p) The following documents:

i. People's motion to prohibit film and electronic

coverage of Dean Karny's testimony, declaration of Oscar Breiling and points and authorities and other supporting documents, filed on or about March 5, 1987, said document being approximately seven pages in length;

ii. Opposition of C.B.S. Inc. to People's request to exclude camera coverage of the testimony of Dean Karny, filed on or about March 9, 1987, said document being approximately five pages in length;

iii. Brief of Capitol Cities/ABC - TV and Cable News Network in opposition to motion to prohibit film or electronic coverage, and request for hearing, filed on or about March 9, 1987, said document being approximately 14 pages in length;

iv. Revised order re motion to prohibit film or electronic media coverage, prepared by attorneys for Capitol Cities News/ ABC Inc. and Cable News Network, said document having been filed on or about March 16, 1987 and being approximately four pages in length.

(q) Handwritten letter from juror Michael A. Lacey and attached excerpt of document setting forth jury duty policy of Lacey's employer, Continental Airlines. The letter and attachment were filed on or about March 9, 1987, and have a total length of approximately four pages.

(r) Appellant's notice of motion and motion for co-counsel Richard Chier to present closing argument, and

supporting declarations and points and authorities. The motion was filed on or about March 16, 1987. Said document is approximately five pages in length.

(s) Appellant written request for attendance of out of state witnesses, and supporting declaration of Richard Chier. This document was filed on or about March 27, 1987, and is approximately five pages in length.

(t) Appellant's request for limiting instruction re admission of uncharged conduct filed on or about March 30, 1987. Said document is approximately one page in length.

(u) Defendant Joe Hunt's request for jury instructions and proposed jury instructions, filed on or about April 9, 1987. Said document is approximately 57 pages in length.

✓ (v) Appellant's written motion for mistrial and all documents filed in support thereof, submitted for filing on or about April 13, 1988. It appears this document may currently be kept in a sealed document room or other designated area for sealed documents. Should this document currently be under seal, it is ordered by this court that the document be removed from such sealed status to the extent necessary to carry out the order of augmentation herein.

✓ (w) Appellant's counsel Arthur Barens' written motion to reinstate Richard Chier and declaration of Arthur Barens in support thereof, and all other supporting documents, filed on or about April 24, 1987. It appears this document may currently be kept in a sealed document room or other designated area for sealed documents. Should this document currently be under seal, it is ordered by this court that the document be removed from such sealed status to the extent necessary to carry out the order of augmentation herein.

(x) The following documents:

i. Defense counsel Richard Chier's claim for compensation, (form 76D 738-A219) for the period from October 29, 1986 to February 28, 1987, and order for compensation, said order having been filed on or about May 12, 1987. This document is one page in length.

ii. Defense counsel Richard Chier's claim for compensation (form 76D 738-A219) for the period from March 1, 1987 to March 31, 1987, and order for compensation, said order having been filed on or about May 19, 1987. This document is one page in length.

3. The Clerk of the Superior Court of Los Angeles County shall obtain and shall transmit to criminal exhibit room this court within thirty (30) days of the date of this order the immunity agreement of Dean Karny which was admitted as a court exhibit on March 24, 1987 in Department WE "C" of the Superior Court of the State of California for the County of Los Angeles in the case of People v. Joe Hunt, case No. A090435, the Hon. Laurence Rittenband, judge presiding, D. Tschekaloff being the clerk. Said document shall be lodged into the exhibit room pursuant to the normal procedures for logging exhibits.

It appears that this document may currently be kept in a sealed document room or other designated area for sealed documents. Should this document currently be under seal, it is ordered by this court that the document be removed from such sealed status to the extent necessary to carry out the order of augmentation herein.

4. The clerk of the Superior Court of Los Angeles County is directed to forward to this court, under seal, all documents submitted to it for its review by the State Bar of California, pursuant to appellant's prior subpoena of records of applications for bar admission by Dean Karny and all other records of the state bar pertaining to Dean Karny. In the

event that the clerk of the superior court has returned these documents to the State Bar, said clerk is directed to obtain from the State Bar all documents previously submitted to it pursuant to appellant's prior subpoena, and forward these documents under seal to the appellate court together with a certificate of said documents' accuracy, pursuant to the procedure set forth in People v. Barnard (1982) 138 Cal. App. 3d 400, 405-407.

5. Pursuant to California Rules of Court rules 12(a) and 12(c), appellant is granted leave to file stipulations of parties to correct omissions in the court reporter's record, solely as to those matters set forth in subsection (a) of section V (B) of appellant's application for augmentation previously filed in this matter. Within 30 days of the date of this order, the parties to this appeal may file stipulations with the superior court clerk and with the clerk of this court as to each of the above matters, or may file an affidavit averring that the parties are unable to reach agreement as to any particular matters. Those matters the parties are unable to reach agreement on shall be referred to the trial court for settlement following a noticed hearing in accordance with the procedures set forth in rule 7 of the California Rules of Court. Upon settling of the statement by the superior court judge, the judge shall fix the time within which the appellant shall

engross the statement as settled. Within the time so fixed, the appellant shall engross the statement in accordance with the order of the judge and shall serve and file the engrossed statement upon all interested parties. In so doing, appellant shall file an original and three copies of the statement as settled with the clerk of the Court of Appeal.

Good cause appearing, the clerk of the superior court shall select a judge who did not participate in the trial proceedings in this matter to preside over the augmentation proceedings as to matters set forth in subsection (a) of section V(B) of appellant's augmentation application.

In the event a settled statement proceeding becomes necessary, the clerk of this court, upon request of any interested party, shall forward to the superior court for its reference a copy of appellant's previously filed augmentation application, or the relevant portions thereof (consisting of subsection (a) of section V (B) of said application).

If the clerk of the superior court cannot locate any of the documents that are to be augmented to the appellate record by this order, parties to this action may, within 30 days of being advised of the loss of the document, file stipulations with the clerk of the superior court and with the clerk of this court as to the contents of such documents, or an affidavit averring that the parties are unable to reach agreement as to the contents of said documents. Those matters thae parties are

unable to reach agreement on shall be referred to the trial court for settlement following a noticed hearing in accordance with the procedures set forth in rule 7 of the California Rules of Court. Upon settling of the statement by the superior court judge, the judge shall fix the time within which the appellant shall engross the statement as settled. Within the time so fixed, the appellant shall engross the statement in accordance with the order of the judge and shall serve and file the engrossed statement upon all interested parties. In so doing, Appellant shall file an original and three copies of the statement as settled with the clerk of the Court of Appeal.

6. Copies of the supplemental reporter's and clerk's transcript to be prepared pursuant to this order shall be mailed to counsel for the People, John K. Van De Kamp, Attorney General, 3580 Wilshire Blvd., Sixth Floor, Los Angeles CA 90010 and to appellant's counsel, Daniel A. Dobrin, 1753 Centinela Ave., Santa Monica, CA 90404.

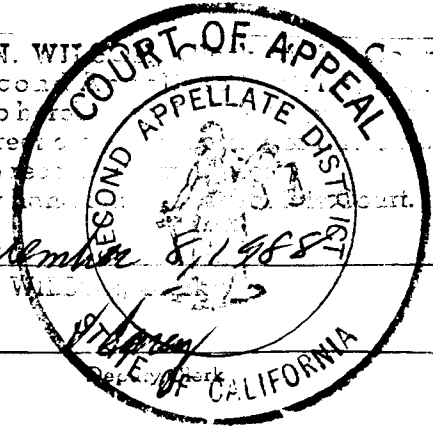
7. Appellant shall have an extension of time to and including thirty (30) days from the date of filing of all materials ordered augmented herein with the Court of Appeal and lodging of all exhibits ordered lodged herein to file his opening brief in this case.

* PRESIDING JUSTICE

ROBERT N. WILSON
Appeal, Second District
California, do hereby certify that the foregoing is
true and correct as the same appears from the
shown by the record.
Witness my hand and seal of office this _____ day of _____ 1988.

Dated November 8, 1988
ROBERT N. WILSON

By _____



**STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

T/N HUNT, JOE
AKA GAMSKY, JOSEPH HENRY


No. A090435 - AUGMENTATION X/REF. W/B029402

I, FRANK S. ZOLIN, COUNTY CLERK AND CLERK of the Superior Court for the County and State aforesaid, do hereby certify that I have compared this transcript with the original documents on file and/or of record in this office and it is a full, true and correct copy.

SEAL

FRANK S. ZOLIN, COUNTY CLERK and Clerk
of the Superior Court of California, County
of Los Angeles.

Date: July 27, 1989

By , Deputy
VELMA J. WADE

- Notice of Completion of the Clerk's Transcript on appeal of the within action having been mailed/delivered to the attorneys representing the appellant and the respondent, and no request for correction of said transcript on appeal having been filed, and the time for said filing having expired; pursuant to rule 35c of the Rules on Appeal, I hereby certify the foregoing record consisting of 231 pages to be a full, true and correct transcript on appeal.

FRANK S. ZOLIN, COUNTY CLERK and Clerk
of the Superior Court of California, County
of Los Angeles.

Date: _____

By _____, Deputy

- I, L. J. RITTENBAND, Judge of the Superior Court of the State of California for the County of Los Angeles, do hereby certify that the objections made to the Clerk's and Reporter's transcript have been heard and determined and the transcripts are now correct in accordance with said determination within the time allowed by law.

Date: _____

JUDGE OF THE SUPERIOR COURT

