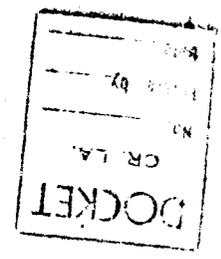
ATTORNEY GENERAL



88DA0269

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

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

VS

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

No. A090435

CLERK'S TRANSCRIPT
VOLUME V

Appearances:

Counsel for Plaintiff and Respondent:
THE ATTORNEY GENERAL

Counsel for Defendant and Appellant:

IN PROPRIA PERSONA

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 _____

NOTICE TO APPELLANT:

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

CLERK'S TRANSCRIPT

ORIGINAL

12112

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
JOE HUNT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, etc., et al., Defendants.	**Case No. A090435** **NOTICE OF MOTION AND MOTION FOR ORDER STRIKING THE SPECIAL CIRCUMSTANCE OF MURDER FOR FINANCIAL GAIN ALLEGATION; POINTS AND AUTHORITIES** **Date:** May 8, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C **Est. Time:** 8 Minutes

TO: IRA REINER, District Attorney for the County of Los Angeles, and his deputy assigned to the within case, Frederick Nathan Wapner; To codefendant, JAMES PITMAN, and his attorneys of record:

PLEASE TAKE NOTICE that on May 8, 1986, or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order striking the special circumstance alleged pursuant to Penal Code Section 190.2, subdivision (a)(1), to wit, "murder for financial gain."

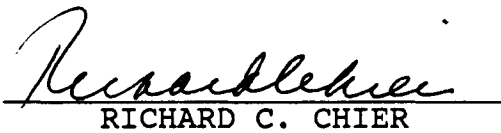
Said Motion will be made upon the ground that the "financial

gain" special circumstance applies only when the victim's death is the consideration for, or an essential prerequisite to the alleged financial gain sought by the defendant. Said Motion will be based upon the within moving papers, the documents, motions, and pleadings on file herein, upon the Preliminary Hearing Transcript, and upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: April 22, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: 
RICHARD C. CHIER
Attorneys for Defendant
JOE HUNT

POINTS AND AUTHORITIES

1.

THE FINANCIAL GAIN SPECIAL CIRCUMSTANCE APPLIES ONLY WHEN THE VICTIM'S DEATH IS THE CONSIDERATION FOR, OR AN ESSENTIAL PREREQUISITE TO, THE FINANCIAL GAIN SOUGHT BY THE DEFENDANT

The prosecution's theory in this, the Hunt case, can be briefly summarized as follows. Hunt was the chief executive officer of a financial futures corporation alleged to have suffered massive financial losses. The "victim," Levin, tricked Hunt into phoning in trades for a dummy account Levin maintained at Clayton Brokerage. When this dummy trading account had grown on paper to approximately $8,000,000, Hunt asked Levin for a percentage which request Levin at first stalled and finally rejected by advising Hunt that it had all been a cruel joke. There was no money.

The prosecution contends that on the evening of June 7, 1984, Hunt and Pitman gained entry into the victim's residence, forced him to sign a $1.5 million check on a Swiss bank account (the alleged special circumstance of robbery) and once having secured the draft shot the victim and disposed of his body.

These facts, the prosecution contends, support two special circumstances, robbery and murder for financial gain.

A similar theory was offered in the case of People v. Bigelow (1984) 37 Cal.3d 731, 750-51, wherein the California Supreme Court noted that since most robberies . . . are committed

for financial gain, it was necessary to adopt a limiting construction under which the financial gain special circumstance was applicable only when the victim's death was the consideration for, or an essential prerequisite to, the financial gain sought by the defendant. Insofar as the interrelationship between the special circumstance of murder for financial gain and murder during the course of a robbery is concerned, Bigelow appears to be a case of first impression. Accordingly, it is appropriate to quote in haec verba the discussion appearing at pages 750-51:

> "(D) The Special circumstance of Murder for Financial Gain.
>
> "In 1977 death penalty law included a special circumstance of murder for hire, defined in the following language: 'The murder was intentional and was carried out pursuant to an agreement by the person who committed the murder to accept valuable consideration for the act of murder from any person other than the victim.' (Former Section 190.2, subd. (a).) As was frequently the case, the 1978 initiative replaced the precise language of the 1977 act with vague and broad generalities. In this instance, it rewrote the special circumstance to read: The murder was intentional and carried out for financial gain.' (Section 190.2, subd. (a)(1).) The trial court instructed the jury in the statutory language.
>
> "Read broadly, the 1978 language would create a large area of overlap between this special circumstance and that of felony murder (Section 190.2, subd.

(a)(17)), since most robberies, as well as many burglaries, kidnapings and arsons, are committed for financial gain.

"Defense counsel maintains that although the 1978 law expanded the scope of the special circumstance beyond murder for hire, it should still be limited to those cases in which the victim's death is essential to obtaining the financial gain, such as a killing to obtain an inheritance or life insurance proceeds. Defendant cites a decision of the Nebraska Supreme Court construing an aggravating factor of 'murder for pecuniary gain' to apply (1) to the hired gun, (2) to the hirers of the gun, and (3) to murder motivated primarily by a desire for pecuniary gain as in the case of a murder of an insured by the beneficiary of a life insurance policy for the purpose of obtaining the proceeds, or the murder of a testator of a legatee or devisee to secure a legacy or a devise.' [Sic] The Nebraska court concluded that 'here . . . we do not consider the murder was committed for a pecuniary gain even though the result could possibly have been to enable [defendant] to keep the proceeds of the robbery. We think it is not reasonable to construe the definitions in such a manner as to make them overlap and make the same identical facts constitute two aggravating circumstances.' (State v. Rust (1977) 197 Neb. 528 [250 N.W.2d 867, 874].)

"We write with little to guide us in the

construction of the financial gain special circumstance. No legislative history illumines the adoption of this special circumstance. The ballot arguments and other materials concerning the 1978 initiative do not address the subject.

"In this context, we believe the court should construe special circumstance provisions to minimize those cases in which multiple circumstances will apply to the same conduct, thereby reducing the risk that multiple findings on special circumstances will prejudice the defendant. Such a limiting construction will not prejudice the prosecution, since there will remain at least one special circumstance -- either financial gain or felony murder -- applicable in virtually all cases in which the defendant killed to obtain money or other property. We adopt a limiting construction under which the financial gain special circumstance applies only when the victim's death is the consideration for, or an essential prerequisite to, the financial gain sought by the defendant. Since the present case does not fall within the special circumstance as so limited, the trial court erred in submitting that special circumstance to the jury."

Accordingly, based upon the authority of Bigelow, the Court is respectfully requested to strike the special circumstance

alleging murder for financial gain.

DATED: April 22, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant
JOE HUNT

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On April 23, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR ORDER STRIKING THE SPECIAL CIRCUMSTANCE OF MURDER FOR FINANCIAL GAIN ALLEGATION; POINTS AND AUTHORITIES on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 April 23, 1986.

Helen Samuels

2 TRL/MOT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

1210

DATE MAY 08 1986 | JUDGE L. WALKER | DEPT. WEC

HONORABLE J RITTENBAND | Deputy Sheriff P QUINN | DEPUTY KALOFF R GOODBODY | Deputy Clerk Reporter

CASE NO. A090435

PEOPLE OF THE STATE OF CALIFORNIA VS

01 HUNT JOE

CHARGE AKA 01 GAMSHY JOSEPH HENRY

187 01CTS 211 01CTS

(BOX CHECKED IF ORDER APPLICABLE)

(Parties and counsel checked if present)

Counsel for People: F. WAPNER

DEPUTY DISTRICT ATTY:

Counsel for Defendant: R CHEIR, PVT and A. Barens, PVT

NATURE OF PROCEEDINGS TRIAL/MOTN BL 04-04-85

31 ☐ _____ IS SWORN AS THE ENGLISH/_____ INTERPRETER.

32 ☐ OATH FILED PER SECTION 68560 GOVERNMENT CODE.

33 ☐ DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE/31000 GOVERNMENT CODE ALTERNATE DEFENSE COUNSEL _____ IS APPOINTED.

34 ☐ ON PEOPLE'S MOTION, AMENDMENT TO/AMENDED INFORMATION FILED/DEEMED FILED/INFORMATION AMENDED BY INTERLINEATION/AS FOLLOWS _____

35 ☐ ON _____ MOTION, CASE A _____ CONSOLIDATED INTO CASE A _____ AS COUNT(S) _____ THEREOF. SEE CASE A _____ FOR FURTHER PROCEEDINGS.

36 ☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

37 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION 41 BELOW.

38 ☐ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS; WAIVES RIGHTS; ADMITS PRIOR(S) NO. ___

39 X CAUSE IS CALLED FOR TRIAL. ☐ CAUSE SUBMITTED PER STIPULATION 41 BELOW.

40 X ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY _____ COURT ACCEPTS WAIVER(S).

41 ☐ By stipulation of defendant and all counsel [illegible] is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hearing are received in evidence and marked for identification in these proceedings, bearing the same numbers as used in the preliminary hearing, subject to this court's rulings. People's exhibit _____ (Preliminary Transcript) admitted into evidence by reference. _____

42 ☐ Defendant advised and personally waives the right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien citizenship, probation and parole status.

43 ☐ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.

44 X Motion for Order Striking the Special Circumstance Allegation is continued to 5-11-86, 9:00 a.m., Department WEC.

45 ☐ ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.

46 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

47 ☐ COURT FINDS DEFENDANT NOT GUILTY.

48 ☐ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S) _____ IN COUNTS(S) _____ ☐ LESSER INCLUDED/RELATED OFFENSE.

49 ☐ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO _____

50 ☐ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL.

51 X ON PEOPLE'S/DEFENDANT'S/COURT'S MOTION, TRIAL/MOTION(S) IS SET/CONTINUED TO/HEARING/TRAILED TO 7-21-86 AT 9 A.M. IN DEPT. WEC REASON: for further appearance

52 ☐ FURTHER CONTINUANCES WILL NOT BE GRANTED.

53 X DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL PLUS _____ DAYS.

54 ☐ CAUSE TRANSFERRED TO DEPT. _____ ☐ FORTHWITH ☐ ON _____ AT _____ A.M. FOR _____

55 X DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE.

56 ☐ DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) _____ REARRAIGNED.

57 ☐ PLEADS GUILTY/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTIONS(S) _____ IN COUNT(S) _____ ☐ LESSER INCLUDED/RELATED OFFENSE.

58 ☐ DEFENDANT REFERRED TO PROBATION DEPARTMENT. ☐ DEFENDANT WAIVES TIME FOR SENTENCE. PROBATION AND SENTENCE HEARING SET _____ AT _____ A.M. IN DEPARTMENT _____ INCLUDING ☐ DISPOSITION OF COUNT(S) _____ REMAINING ☐ DETERMINATION OF PRIORS ALLEGED/DEGREE/ARMED/USE/GREAT BODILY INJURY ALLEGATION(S)

59 ☐ DEFENDANT WAIVES PROBATION REFERRAL. REQUESTS IMMEDIATE SENTENCE. (SEE SENTENCE BELOW/SEE ATTACHED SHEET.)

60 ☐ FURTHER ORDER AS FOLLOWS: _____

61 ☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT _____ TELEPHONE CALLS AT DEFENDANT'S OWN EXPENSE.

62 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.

63 ☐ BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL _____

64 ☐ NO BAIL ☐ BAIL FIXED AT $ _____

65 ☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED( )RECALL NO. _____ WRITTEN ( )ABSTRACT FILED

66 ☐ UPON PAYMENT OF $ _____ COSTS BEFORE _____ AND FILING OF REASSUMPTION, ORDER OF _____ FORFEITING BAIL IS TO BE VACATED AND BAIL REINSTATED.

67 ☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. _____)ORDER OF _____ FORFEITING BAIL VACATED. BAIL REINSTATED.

68 ☐ DEFENDANT'S MOTION FOR RELEASE ON O.R./REDUCTION OF BAIL IS GRANTED/DENIED/SET/CONTINUED TO/ _____ REASON: _____

69 ☐ BAIL RESET AT $ _____

☐ REMANDED ☒ BAIL ☐ BAIL EXONERATED ☐ BOND NO. _____

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER

MINUTE ORDER ☐ BENCH WARRANT

MINUTES ENTERED MAY 08, 1986 COUNTY CLERK

2 TRL

2 TRL/MOT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

1211

Date JUNE 11 1986 | DEPT. WEC
HONORABLE: L J RITTENBAND | JUDGE | D TSCHEKALOFF | Deputy Clerk
201 P QUINN | Deputy Sheriff | R GOODBODY | Reporter

CASE NO. A090435

(Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT JOE
CHARGE AKA 01 GAMSHY JOSEPH HENRY
187 01CTS 211 01CTS
(BOX CHECKED IF ORDER APPLICABLE)

Counsel for People: DEPUTY DISTRICT ATTY: F. WAPNER
Counsel for Defendant: R CHEIR PVT
A. BARENS

NATURE OF PROCEEDINGS MO TO STRIKE BL 04-04-85

31 ☐ _____ IS SWORN AS THE ENGLISH/_____ INTERPRETER.
32 ☐ OATH FILED PER SECTION 68560 GOVERNMENT CODE.
33 ☐ DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE/31000 GOVERNMENT CODE ALTERNATE DEFENSE COUNSEL _____ IS APPOINTED.
34 ☐ ON PEOPLE'S MOTION, **AMENDMENT TO/AMENDED INFORMATION FILED/DEEMED FILED/INFORMATION AMENDED BY INTERLINEATION**/AS FOLLOWS _____
35 ☐ ON _____ MOTION, CASE A _____ **CONSOLIDATED** INTO CASE A _____ AS COUNT(S) _____ THEREOF. SEE CASE A _____ FOR FURTHER PROCEEDINGS.
36 ☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____
37 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION 41 BELOW.
38 ☐ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS: WAIVES RIGHTS; ADMITS PRIOR(S) NO. ___
39 ☒ CAUSE IS CALLED FOR TRIAL MOTION ☐ CAUSE SUBMITTED PER STIPULATION 41 BELOW.
40 ☒ ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY _____ COURT ACCEPTS WAIVER(S).

41 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for indentification at the preliminary hearing are received in evidence and marked for indentification in these proceedings, bearing the same number as used in the preliminary hearing, subject to this court's rulings. People's exhibit _____ (Preliminary Transcript) admitted into evidence by reference. _____

42 ☐ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien/citizenship/probation/parole status.

43 ☐ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.
44 ☒ MOTION FOR ORDER STRIKING A SPECIAL CIRCUMSTANCE ALLEGATION IS ARGUED AND TAKEN UNDER SUBMISSION.
45 ☐ ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.
46 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____
47 ☐ COURT FINDS DEFENDANT NOT GUILTY _____
48 ☐ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S) _____ IN COUNTS(S) _____ ☐ LESSER INCLUDED/RELATED OFFENSE.
49 ☐ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO _____
50 ☐ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL.
51 ☒ ~~ON PEOPLE'S/DEFENDANT'S/COURT'S~~ MOTION, TRIAL/~~MOTION(S) IS SET/CONTINUED TO/REMAINS/TRAILED TO~~ 7-21-86 AT 900 A.M. IN DEPT. WEST-C REASON: 2
52 ☐ FURTHER CONTINUANCES WILL NOT BE GRANTED.
53 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL. PLUS _____ DAYS
54 ☐ CAUSE TRANSFERRED TO DEPT. _____ ☐ FORTHWITH ☐ ON _____ AT _____ A.M. FOR _____
55 ☐ DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE: _____
56 ☐ DEFENDANT PERSONALLY **WITHDRAWS PLEA OF NOT GUILTY** TO COUNT(S) _____ REARRAIGNED.
57 ☐ **PLEADS GUILTY**/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTIONS(S) _____ IN COUNT(S) _____ ☐ LESSER INCLUDED/RELATED OFFENSE.
58 ☐ DEFENDANT **REFERRED TO PROBATION DEPARTMENT.** ☐ DEFENDANT WAIVES TIME FOR SENTENCE. PROBATION AND SENTENCE HEARING SET _____ AT _____ A.M. IN DEPARTMENT _____ INCLUDING ☐ DISPOSITION OF COUNT(S) _____ REMAINING ☐ DETERMINATION OF **PRIORS ALLEGED/DEGREE/ARMED/USE/GREAT BODILY INJURY** ALLEGATION(S)
59 ☐ DEFENDANT WAIVES PROBATION REFERRAL. REQUESTS IMMEDIATE SENTENCE. (SEE SENTENCE BELOW/SEE ATTACHED SHEET.)
60 ☐ **FURTHER ORDER AS FOLLOWS:** _____
61 ☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT _____ TELEPHONE CALLS AT DEFENDANT'S OWN EXPENSE.
62 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.
63 ☐ **BAIL, IF POSTED, FORFEITED**/O.R. REVOKED. **BENCH WARRANT** ORDERED ISSUED/REISSUED/AND HELD UNTIL _____
64 ☐ NO BAIL ☐ BAIL FIXED AT $ _____
65 ☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED( )RECALL NO. _____ WRITTEN ( )ABSTRACT FILED
66 ☐ UPON PAYMENT OF $ _____ COSTS BEFORE _____ AND FILING OF REASSUMPTION, ORDER OF _____ FORFEITING BAIL IS TO BE VACATED AND BAIL REINSTATED.
67 ☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. _____)ORDER OF _____ FORFEITING BAIL VACATED. BAIL REINSTATED.
68 ☐ DEFENDANT'S MOTION FOR RELEASE ON **O.R./REDUCTION OF BAIL** IS GRANTED/DENIED/SET/CONTINUED TO/ _____ REASON: _____
69 ☐ BAIL RESET AT $ _____

☐ REMANDED ☒ BAIL ☐ BAIL EXONERATED ☐ BOND NO. _____
☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER
MINUTE ORDER ☐ BENCH WARRANT

MINUTES ENTERED JUN 11, 1986 COUNTY CLERK

76 C779-C144 (Rev. 1-85) 4-85

1212

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C

Date:	JUNE 23, 1986				
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	NONE	Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

01 HUNT, JOE
187 01 ct

Counsel for Defendant:
A. H. BARENS
R. CHIER

NATURE OF PROCEEDINGS

SUBMITTED MATTER

The matter heretofore taken under submission in the above entitled matter is ruled on has follows.

The motion by defendant, Hunt, to strike the special circumstances of murder for financial gain is denied.

The case of People v Bigelow (1984) 37CAL3d731, relied on by defendant is wholly inapposite. The facts in that case disclosed simply that the defendant committed a robbery and then shot the victim. There was no evidence that the victim's depth was the consideration for, or an essential prerequisite to, the financial gain sought by the defendant. In this case, it is contended by the People that it was essential that the victim be dead so that he could not interfere with the cashing of the $1,500,000.00 check on the Swiss Bank such as by stopping payment on it.

MINUTES ENTERED
6-23-86
COUNTY CLERK

76M 413L C-120.4-83

MINUTE ORDER

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
JOE HUNT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, etc., et al., Defendants.	**Case No. A090435** **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO STRIKE FINANCIAL GAIN ALLEGATION; DECLARATION; POINTS AND AUTHORITIES** **Date:** July 21, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C **Est. Time:** 15 Minutes

TO: IRA REINER, District Attorney for the County of Los Angeles, and to his deputy, Frederick Nathan Wapner:

PLEASE TAKE NOTICE that on July 21, 1986, at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move the Court to reconsider its denial of defendant Hunt's Motion to strike the financial gain special.

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

1. That the Court erred as a matter of law in denying defendant's Motion;

2. That Section 190.2(a)(1) "murder for financial gain" requires the death of the victim as a legal rather than factual prerequisite to any financial gain sought by a defendant;

3. That the Court has misconstrued said Section and has analyzed it as if it were a factual rather than a legal determination; and

4. That upon reconsideration of defendant's Motion it is probable that a different Order will be entered.

Said Motion will be based upon the documents, records, and pleadings on file herein; upon the attached moving papers; upon the Order of this Court entered on June 23, 1986, a copy of which is annexed hereto as Exhibit A; upon Section 995 of the Penal Code; and upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

The Court is requested to require that the People file their response to this Motion, if any, at least five court days prior to the hearing hereof and, if not, that the People be required to submit the Motion without argument.

DATED: July 9, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
ARTHUR H. BARENS
Attorneys for Defendant
JOE HUNT

POINTS AND AUTHORITIES

1.

UNDER THE PROSECUTION'S THEORY, THE DEFENDANT CANNOT BE TRIED UNDER THE SPECIAL CIRCUMSTANCE OF FINANCIAL GAIN BUT INSTEAD CAN ONLY BE TRIED UNDER THE FELONY MURDER RULE

Section 190.2(a)(1) of the California Penal Code provides that if a defendant is found guilty of murder in the first degree and **"[t]he murder was intentional and carried out for financial gain,"** then special circumstances may be found and the defendant's penalty **"shall be death or confinement in state prison for a term of life without the possibility of parole."**

This law, enacted in 1978, replaced the 1977 special circumstance of murder for hire death penalty law which required that the murder be **"intentional and . . . carried out pursuant to an agreement by the person who committed the murder to accept valuable consideration for the act of murder from any person other than the victim."** [Former Section 190.2, subdivision (a); emphasis added.] As noted in People v. Bigelow (1984) 37 Cal.3d 731, 750, **"the 1978 initiative replaced the precise language of the 1977 act with vague and broad generalities."** [Footnote omitted.]

Because of this vague and broad language, the Court in Bigelow realized a special problem in the application of 190.2(a)(1). As the Court subsequently explained: **"We interpreted our duty as requiring us to construe special circumstances**

in a manner to avoid duplication and determined that a narrow construction of this provision was required to escape overlap with the felony-murder special circumstance." People v. Montiel (1985) 39 Cal.3d 910, 928.

Consequently, the narrow construction adopted was that "the financial gain circumstance applies only when the victim's death is the consideration for, or an essential prerequisite to, the financial gain sought by the defendant." People v. Bigelow, supra, at 751.

Clearly, if the prosecution's theory regarding the circumstance surrounding the disappearance of Ron Levin is correct, then the defendant should be tried under the felony-murder rule of Section 190.2(a)(17)(i) of the California Penal Code, rather than 190.2(a)(1). The prosecution contends that, by means of fear or force, Hunt caused Levin to sign both a $1.5 million check and an option agreement with Microgenesis of North America. If these facts are true, then perhaps a robbery might have occurred under Section 211 of the Penal Code. Section 190.2(a)(17)(i) would then apply since the alleged murder would have occurred during a robbery. Although a broad reading of Section 190.2(a)(1) might possibly include such a fact situation as a murder for financial gain, "the court should construe special circumstance provisions to minimize those cases in which multiple circumstances will apply to the same conduct . . . ." People v. Bigelow, supra, at 751. Therefore, while it may have been unfortunate for the prosecution that they were unable to establish a robbery at the Preliminary Hearing, it does not follow that the prosecution may now prosecute under the financial gain special

circumstance section. Only one subdivision can apply. If the prosecution's theory is correct, then it must fall into the felony murder rule and no other. At the Preliminary Hearing, the prosecution failed to establish these facts. 2 R.T. 169.[1/] Therefore, 190.2 cannot apply.

2.

BECAUSE THE ALLEGED VICTIM'S MURDER WAS NOT COMMITTED AS CONSIDERATION FOR OR AN ESSENTIAL PREREQUISITE TO THE FINANCIAL GAIN SOUGHT BY THE DEFENDANT THE FINANCIAL GAIN SPECIAL CIRCUMSTANCE DOES NOT APPLY

The prosecution's theory does not conform to the definition of "financial gain." To reiterate, **"financial gain special circumstance applies only when the victim's death is the consideration for, or an essential prerequisite to, the financial gain sought by the defendant."** People v. Bigelow, supra, at 751. The examples of (1) murder of an insured by a beneficiary of a life insurance policy, (2) and of a testator by a devisee were given by the Court in Bigelow. Additionally, in conformity with the 1977 law, hired assassins or the hirer of assassins would fall into this category. Bigelow rejected the use of special

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[1/] "R.T." refers to Reporter's Transcript of Preliminary Hearing on March 21, 1985.

circumstance of financial gain which occurred when the defendant murdered the victim in order to steal his car. Similarly, in People v. Montiel, supra, no special circumstance of financial gain was found when the defendant murdered the victim during a robbery of an old man's house. While in both these cases, murder may have been necessary to effect the successful commission of a robbery, the murder was not an essential prerequisite. Under the prosecution's theory, murder may have made the cashing of the check more possible. However, murder was not an essential prerequisite in law for the cashing of the check. This is in sharp contrast with the examples given in Bigelow. In these examples, the death of the victim is an essential prerequisite in both fact and law in order for the defendant to receive financial gain.

The Court's analysis of the situation as reflected in the Minute Order of June 23, 1986, appears to have been factual rather than legal. That is to say the Court has accepted the prosecution's argument that Levin's death was essential so that Hunt could not interfere with the cashing of the $1.5 million check on the Swiss bank such as by stopping payment on it. This analysis does not speak to the point of law established in Bigelow namely that the death of the victim be essential as a matter of law for the defendant to receive financial gain. If, therefore, the Court applies a legal condition precedent rather than a factual condition precedent to the financial gain it is clear that the Motion to Strike should be granted. Accordingly, based on the authority of Bigelow and Montiel, the Court is respectfully requested to strike the special circumstance alleging murder for

financial gain.

DATED: July 9, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
ARTHUR H. BARENS
Attorneys for Defendant
JOE HUNT

[redacted]

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On July 11, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR ORDER STRIKING THE SPECIAL CIRCUMSTANCE OF MURDER FOR FINANCIAL GAIN ALLEGATION; POINTS AND AUTHORITIES on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 July 11, 1986.

Jan Mitchell

2 TRL/MOT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

1221

Date JULY 21 1986
HONORABLE: L J RITTENBAND — JUDGE
202 P QUINN — Deputy Sheriff
F WHORTON — DEPT. WEC
D TSCHEKALOFF ~~R GUDDEDY~~ — Deputy Clerk / Reporter

CASE NO. A090435

(Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT JOE
CHARGE AKA 01 GAMSHY JOSEPH HENRY
187 01CTS 211 01CTS
(BOX CHECKED IF ORDER APPLICABLE)

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER
Counsel for Defendant: R CHEIR PVT
A. BARENS

NATURE OF PROCEEDINGS TRIAL BL 04-04-85

31 ☐ _____ IS SWORN AS THE ENGLISH/_____ INTERPRETE

32 ☐ DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE, _____ IS APPOINTED.

33 ☐ ON PEOPLE'S MOTION, AMENDMENT TO/AMENDED INFORMATION FILED/DEEMED FILED/INFORMATION AMENDED BY INTERLINEATION/AS FOLLOWS _____

34 ☐ ON _____ MOTION, CASE A _____ CONSOLIDATED INTO CASE A _____ AS COUNT(S) _____ THEREOF. SEE CASE A _____ FOR FURTHER PROCEEDINGS.

35 ☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

36 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION (NO. 40) BELOW

37 ☐ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS: WAIVES RIGHTS; ADMITS PRIOR(S) NO ___

38 ☐ CAUSE IS CALLED FOR TRIAL. ☐ CAUSE SUBMITTED PER STIPULATION (NO. 40) BELOW.

39 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY _____ COURT ACCEPTS WAIVER(S).

40 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to the court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hearing are received in evidence and marked for identification in these proceedings, bearing the same number as used in the preliminary hearing, subject to this court's rulings. People's exhibit _____ (Preliminary Transcript) admitted into evidence by reference _____

41 ☐ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien or citizenship/probation or parole status.

42 ☐ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.

43 ☒ DEFENS. MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO STRIKE FINANCIAL GAIN ALLEGATION IS HEARD AND TAKEN UNDER SUBMISSION.

44 ☐ ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.

45 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

46 ☐ COURT FINDS DEFENDANT NOT GUILTY _____

47 ☐ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S) _____ IN COUNT(S) _____ ☐ LESSER INCLUDED/RELATED OFFENSE.

48 ☐ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO _____

49 ☒ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL.

50 ☒ ON ~~PROCEEDING HELD/TRIAL/HEARING~~ MOTION, TRIAL/MOTION(S) IS ~~DEF~~ CONTINUED TO/~~REMAINS/TRAILED TO~~ 9-22-86 AT 900 A.M. IN DEPT. WEC REASON: further preparation

51 ☐ FURTHER CONTINUANCES WILL NOT BE GRANTED.

52 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL. ~~PLOS~~ _____ DAYS

53 ☐ CAUSE TRANSFERRED TO DEPT. _____ ☐ FORTHWITH ☐ ON _____ AT _____ A.M. FOR _____

54 ☐ DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE _____

56 ☐ DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) _____ REARRAIGNE

58 ☐ PLEADS GUILTY/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTION(S) _____ IN COUNT(S) _____ ☐ LESSER INCLUDED/RELATED OFFENS

57 ☐ DEFENDANT REFERRED TO PROBATION DEPARTMENT. ☐ DEFENDANT WAIVES TIME FOR SENTENCE. PROBATION AND SENTENCE HEARING SET _____ AT _____ A.M. IN DEPARTMENT _____ INCLUDING ☐ DISPOSITION OF COUNT(S) _____ REMAINING ☐ DETERMINATION OF PRIORS ALLEGED/DEGREE/ARMED/USE/GREAT BODILY INJURY ALLEGATION(S)

58 ☐ DEFENDANT WAIVES PROBATION REFERRAL. REQUESTS IMMEDIATE SENTENCE. (SEE SENTENCE BELOW/SEE ATTACHED SHEET.

59 ☒ FURTHER ORDER AS FOLLOWS: People's motion for an original and four copies of todays hearing is granted. The Court Reporter is directed to prepare the transcript.

60 ☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT _____ TELEPHONE CALLS AT DEFENDANT'S OWN EXPENS

61 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.

62 ☐ BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED. NO BAIL/BAIL FIXED AT $ _____

63 ☐ BENCH WARRANT ORDERED ISSUED AND HELD UNTIL _____ NO BAIL/BAIL FIXED AT $ _____

64 ☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED( ) RECALL NO. _____ WRITTEN ( ) ABSTRACT FIL

65 ☐ UPON PAYMENT OF $ _____ COSTS BEFORE _____ AND FILING OF REASSUMPTION, ORDER OF _____ FORFEITING BAIL IS TO BE VACATED AND BAIL REINSTATED.

66 ☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. _____) ORDER OF _____ FORFEITING BAIL VACATED. BAIL REINSTATE

67 ☐ DEFENDANT'S MOTION FOR RELEASE ON O.R./REDUCTION OF BAIL IS GRANTED/DENIED/SET/CONTINUED TO/ _____ REASON: _____

68 ☐ BAIL RESET AT $ _____

☐ REMANDED ☒ BAIL ☐ BAIL EXONERATED ☐ BOND NO. _____
☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER
☐ BENCH WARRANT

MINUTES ENTERED
JUL 21 1986
COUNTY CLERK

2

76 C779-C144 (Rev. 8-84)8-84 MINUTE ORDER

IRA REINER
DISTRICT ATTORNEY
BY: Fred Wapner
DEPUTY DISTRICT ATTORNEY
1725 Main Street, Suite 228
Santa Monica, California 90401
(213) 458-5351

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, Defendant(s).	NO. A090435 MEMORANDUM

TO: The Honorable Laurence J. Rittenband, Judge of the Superior Court.

After a further review of People v Bigelow at 37 C3d 731, People v Newberry 167 CA3d 238 and People v Montiel 39 C3d 910, I have concluded that the murder for financial gain special circumstance should be stricken from the information. The Supreme Court has apparently limited this special circumstance to murders for hire or for the purpose of obtaining life insurance proceeds or an inheritance, none of which apply to this case. The motion for reconsideration of the striking of the "financial gain" special circumstance should be granted.

//

//

DATED: August 1, 1986

Respectfully submitted
IRA REINER
District Attorney of
Los Angeles County

By Fred C Wapner

FRED WAPNER
Deputy District Attorney

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C

Date:	AUGUST 4, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	NONE	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: R. CHEIR
A. BARENS

NATURE OF PROCEEDINGS

SUBMITTED MATTER

In the above entitled matter heretofore taken under submission, the Court now makes the following ruling on defense motion for reconsideration of order denying motion to strike financial gain allegation. The motion to reconsider is granted and the motion to strike the allegation is granted per stipulation of the People's in Memorandum filed August 1, 1986.

A copy of this Minute Order is mailed to the above named counsel this date.

MINUTES ENTERED
8-4-86
COUNTY CLERK

DEPT. WEST C

76M 413L C 120 4 83

MINUTE ORDER

2 TRL/MOT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

1225

Date: SEPTEMBER 22 1986 DEPT. WEST
HONORABLE: L J RITTENBAND JUDGE D TSCHEKALOFF
202 P QUINN Deputy Sheriff R GOODBODY

CASE NO. A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
J1 HUNT JOE
J1 GAMSEY JOSEPH HENRY

Counsel for People: DEPUTY DISTRICT ATTY: F. WAPNER
Counsel for Defendant: R CHEIR PVT
A. BARON

CHARGE & A (BOX CHECKED IF ORDER APPLICABLE) 187 2 CTS 211 CTS

NATURE OF PROCEEDINGS TRIAL BL 04-04-85

31 ☐ .....IS SWORN AS THE ENGLISH/.....INTERPRETE
32 ☐ DUE TO **CONFLICT OF INTEREST**, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE, ...IS APPOINTED.
33 ☐ ON PEOPLE'S MOTION, **AMENDMENT TO/AMENDED INFORMATION FILED/DEEMED FILED/INFORMATION AMENDED BY INTERLINEATION/AS FOLLOWS**.....
34 ☐ ON.....MOTION, CASE A.....**CONSOLIDATED** INTO CASE A..... .....AS COUNT(S).....THEREOF. SEE CASE A.....FOR FURTHER PROCEEDINGS.
35 ☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO.....
36 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION (NO. 40) BELO
37 ☐ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS: WAIVES RIGHTS; ADMITS PRIOR(S) NO.
38 ☒ CAUSE IS CALLED FOR TRIAL. ☐ CAUSE SUBMITTED PER STIPULATION (NO. 40) BELOW.
39 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY.....COURT ACCEPTS WAIVER(S).
40 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hearing are received in evidence and marked for identification in these proceedings, bearing the same number as used in the preliminary hearing, subject to this court's rulings. People's exhibit ..... (Preliminary Transcript) admitted into evidence by reference.....
41 ☐ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien or citizenship/probation or parole status.
42 ☐ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.
43 ☐ .....
44 ☐ ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.
45 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO.....
46 ☐ COURT FINDS DEFENDANT **NOT GUILTY**.....
47 ☐ COURT FINDS DEFENDANT **GUILTY** AS CHARGED TO SECTION(S).....IN COUNT(S)..... ☐ LESSER INCLUDED/RELATED OFFENSE.
48 ☐ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO .....
49 ☐ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL.
50 ☒ ON ~~PEOPLE~~'S/DEFENDANT'S/~~COURT~~'S MOTION, TRIAL/~~MOTION~~ IS ~~SET~~/CONTINUED TO/~~REMAINS/TRAILED~~ TO 10-20-86 AT 9:30 A.M. IN DEPT. WEST-C REASON: Counsel has illness in family
51 ☒ FURTHER CONTINUANCES WILL NOT BE GRANTED.
52 ☒ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL. ~~PLUS~~ _____ ~~DAYS~~
53 ☐ CAUSE TRANSFERRED TO DEPT. _____ ☐ FORTHWITH ☐ ON _____ AT _____ A.M. FOR _____
54 ☐ DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE:.....
55 ☐ DEFENDANT PERSONALLY **WITHDRAWS PLEA OF NOT GUILTY** TO COUNT(S).....REARRAIGN
56 ☐ **PLEADS GUILTY**/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTION(S)..... .....IN COUNT(S)..... ☐ LESSER INCLUDED/RELATED OFFE
57 ☐ DEFENDANT **REFERRED TO PROBATION DEPARTMENT.** ☐ DEFENDANT WAIVES TIME FOR SENTENCE. PROBATION AND SENTENCE HEARING SET..... AT .....A.M. IN DEPARTMENT ..... INCLUDING ☐ DISPOSITION OF COUNT(S) .....REMAINING ☐ DETERMINATION OF **PRIORS ALLEGED/DEGREE/ARMED/USE/GREAT BODILY INJURY** ALLEGATION(S)
58 ☐ DEFENDANT WAIVES PROBATION REFERRAL. REQUESTS IMMEDIATE SENTENCE. (SEE SENTENCE BELOW/SEE ATTACHED SHEE
59 ☐ **FURTHER ORDER AS FOLLOWS:**.....
60 ☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT .....TELEPHONE CALLS AT DEFENDANT'S OWN EXPE
61 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.
62 ☐ **BAIL, IF POSTED, FORFEITED**/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED. NO BAIL/BAIL FIXED AT $.....
63 ☐ **BENCH WARRANT** ORDERED ISSUED AND HELD UNTIL .....NO BAIL/BAIL FIXED AT $.....
64 ☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED( ) RECALL NO. .....WRITTEN ( ) ABSTRACT F
65 ☐ UPON PAYMENT OF $ .....COSTS BEFORE.....AND FILING OF REASSUMPTION, ORDER OF .....FORFEITING BAIL IS TO BE VACATED AND BAIL REINSTATED.
66 ☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. .....) ORDER OF.....FORFEITING BAIL VACATED. BAIL REINSTA
67 ☐ DEFENDANT'S MOTION FOR RELEASE ON **O.R./REDUCTION OF BAIL** IS GRANTED/DENIED/SET/CONTINUED TO/ ..... REASON:.....
68 ☐ BAIL RESET AT $.....

☐ REMANDED ☒ BAIL ☐ BAIL EXONERATED ☐ BOND NO. .....
☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER MINUTES ENTERED

2 TI

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

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 TO COMPEL DISCLOSURE OF ANY PRIOR OR SUBSEQUENT ACTS THE PROSECUTION INTENDS TO INTRODUCE PURSUANT TO EVIDENCE CODE SECTION 1101(b); POINTS AND AUTHORITIES; DECLARATION** **Date:** October ~~7~~ 14, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C

TO: EACH PARTY AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on October 7, 1986, at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard in Department C of the above-entitled Court, defendant, JOE HUNT, will move for the following Orders:

1. For an Order requiring the People to disclose any and all prior and/or subsequent acts they intend to produce at trial pursuant to Evidence Code Section 1101(b); and

2. For an Order requiring the People to disclose the intended purpose for the introduction of each such act.

This Motion will be based upon the attached moving papers,

the files, records, and documents on file herein, and upon such further oral and/or documentary evidence as may be presented at the hearing on these Motions.

DATED: September 5, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

DECLARATION OF RICHARD C. CHIER

RICHARD C. CHIER declares and states:

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

2. Defendant Hunt is presently scheduled to commence jury trial on September 22, 1986. I anticipate the trial will be continued for approximately 45 days thereafter because of a personal emergency of defense counsel.

3. Defendant Hunt is also one of four named defendants in a prosecution for murder now pending in the San Mateo County Superior Court.

4. Throughout the course of the pretrial proceedings in the instant case, Deputy District Attorney Fred Wapner has continued to send to counsel discovery materials in an undifferentiated mass without any indication as to whether or not Mr. Wapner intends to use the materials and/or, if so, what he intends to use them for.

5. Included in these undifferentiated materials are police reports, witness statements, and miscellaneous records including but not limited to banking records reflecting stop payments, withdrawals, and the like.

6. While Mr. Wapner has never specifically disclosed what use, if any, he intends to make of the information contained in these documents it would appear that he intends to offer some or all of the information in evidence during the course of the

trial.

7. Many of the items appear to be irrelevant, immaterial, and/or inadmissible for a variety of reasons.

8. In order to properly prepare Memoranda re the admissibility or inadmissibility of this evidence it is necessary and appropriate -- owing to the sheer mass of evidence in this case -- for the Court to require the People to disclose to defendant any similar acts which it intends to introduce in the guilt phase of the trial and the purpose for which it intends to introduce those acts.

9. I have conducted preliminary research in the area of the admissibility of similar acts [Section 1101(b), California Evidence Code], and have concluded that the complexity of the issues in the area will consume substantial segments of research time and factual investigation in order to meet or contest the many and varied possible theories upon which the People may attempt to introduce this evidence.

Accordingly, the Court is respectfully requested to grant the relief requested herein.

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 September 5, 1986.

Richard C. Chier

RICHARD C. CHIER

MEMORANDUM OF POINTS AND AUTHORITIES

The touchstone for the philosophy underlying defense discovery in a criminal case is the California Supreme Court decision in People v. Riser, 47 Cal.2d 566, in which case the Court stated:

> **"The State '. . . has no interest in convicting on the testimony of witnesses who have not been rigorously cross-examined and as thoroughly impeached as the evidence permits.'"** Riser at 586.

Following Riser, supra, the cases were in conflict on the extent of discovery available to the defense. In People v. Moore (1975) 50 Cal.App.3d 989, 994, the Court limited the extent of discovery available to the defense on the basis of the "work product" rule [California Code of Civil Procedure, Section 2016(b)(g)], by barring discovery of:

> **". . . writings, reflecting an attorney's impressions, conclusions, opinions, legal research or theories . . . ."** (Moore at 994.)

In contrast to the preceding case, which recognized the work product rule, the holding in Craig v. Superior Court (1976) 54 Cal.App.3d 416 distinguished civil discovery procedures from criminal discovery procedures and noted:

> **"A defendant's motion to discover is not dependent on civil discovery procedure but is addressed solely to the sound discretion of the trial court, which has inherent power to order discovery when the interests of justice so demand. [Citations omitted.] Therefore,**

discovery may be compelled by an accused by demonstrating that the requested information will facilitate the ascertainment of the facts and a fair trial." 54 Cal.App.3d 416, at 421.

The Craig **"interests of justice"** approach to the discovery problem in criminal cases appears to be the more enlightened view in that it does not set down any hard and fast parameters binding the trial court. The Craig view also finds support in the A.B.A. Standards, Discovery and Procedure Before Trial (1970). In Section 2.5 of that tract, the House of Delegates of the American Bar Association has adopted the following language:

"Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the Court in its discretion may require disclosure to defense counsel of relevant material and information not covered by Sections 2.1 . . . (1)."

Applying the foregoing principles to the case at hand, the question becomes whether or not this Court should exercise its discretion to compel the People to disclose to the defendant any similar acts which it intends to introduce in the guilt phase of the trial and the purpose for which it intends to introduce those acts. Based on the Declaration submitted herein it is apparent that the prosecution is contemplating the introduction, as circumstantial evidence to prove their case in chief, of various other alleged bad acts of the defendant. In a death penalty trial the State's interest in affording to accused every opportunity to prepare as extensively and thoroughly as possible to meet the attempted introduction of acts allegedly committed by him that

are unrelated in time or place to the trial then in progress (and which are the type that would certainly inflame a jury) is paramount to considerations of tactical advantage by one side over the other.

Because of the extremely complex nature of this trial and the voluminous documents to be read and considered by the defendant, he contends that it would be in the "interests of justice" to narrow so far as possible the trial issues he must prepare for and meet. This would allow for the most thorough and complete preparation of the vital issues he will face during the prosecution's case in chief.

The defendant is not requesting that the prosecution divulge the legal theories or the results of legal research, rather only that they commit themselves to the evidence they intend to introduce and divulge the purpose for which it is being introduced pursuant to Section 1101(b) of the Evidence Code.

CONCLUSION

The Court is respectfully urged to exercise its discretion and in the "interests of justice" order the District Attorney to disclose prior to trial the prior and/or subsequent acts they intend to introduce in their case in chief and the purpose for

which they are being introduced.

DATED: September 5, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On September 23, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION TO COMPEL DISCLOSURE OF ANY PRIOR OR SUBSEQUENT ACTS THE PROSECUTION INTENDS TO INTRODUCE PURSUANT TO EVIDENCE CODE SECTION 1101(b); POINTS AND AUTHORITIES; DECLARATION on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
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I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 September 23, 1986.

[redacted]

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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 FOR ORDER EXCLUDING EVIDENCE OF OUT OF COURT STATEMENTS BY DEFENDANT PRIOR TO THE DETERMINATION BY THE COURT OF THE PRELIMINARY FACTS OF THE EXISTENCE OF THE <u>CORPUS DELICTI</u>** **Date:** October 7, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C **Est. Time:** 30 Minutes

TO: THE PEOPLE OF THE STATE OF CALIFORNIA, AND TO IRA REINER, THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that the defendant, JOE HUNT, pursuant to the provisions of Section 402 of the California Evidence Code, respectfully moves the Court to prohibit the introduction into evidence in the presence of the jury of any out-of-court statements made by the defendant, including any spoken and written statements, unless and until the Court determines the existence of the <u>corpus delicti</u> independent of such out-of-court statements.

This Motion is made on the following grounds, each and all:

1. Section 402 of the California Evidence Code requires a Court in a criminal action to hear and determine the question of the admissibility of out-of-court confessions and admissions by the defendant out of the presence and hearing of the jury upon Motion of any party.

2. Out-of-court statements by the defendant are inadmissible on the issue of guilt unless and until the People prove the existence of the corpus delicti independent of the out-of-court statements.

3. The danger of conviction based on untrue confessions and admissions by the defendant prohibits a conviction based on these possibly untrue confessions and admissions alone.

4. No case law in existence has allowed the corpus delicti in a murder trial to be established independent of the out-of-court statements by the sole fact that the alleged victim has disappeared.

5. The evidence presented by the prosecution independent of the extra-judicial statements by the defendant raises only suspicion and conjecture and is therefore insufficient to establish a prima facie showing of the corpus delicti.

6. For the purpose of admitting extra-judicial statements, no case law in existence has upheld a defendant's conviction of murder where no body was discovered and the alleged victim had a strong motive for disappearing.

Said Motion will be based upon the attached moving papers; upon the California Evidence Code; upon the Preliminary Hearing Transcripts; and upon such further oral and/or documentary

evidence as may be presented at the hearing.

The Court is further requested to order the People to file their response to this Motion, if any, in writing at least 10 days prior to the hearing on this Motion.

DATED: September 23, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: Richard Chier
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Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I

UPON THE MOTION OF A DEFENDANT IN A CRIMINAL ACTION, A COURT IS REQUIRED TO HOLD A HEARING TO DETERMINE THE FOUNDATIONAL FACT ON THE ADMISSIBILITY OF ANY STATEMENTS MADE EXTRA-JUDICIALLY BY THE DEFENDANT

Section 402(b) of the California Evidence Code provides that:

> **"The court may hear and determine the question of admissibility of evidence out of the presence or hearing of the jury; but in a criminal action, the court shall hear and determine the question of the admissibility of a confession or admission of the defendant out of the presence and hearing of the jury if any party so requests."** [Emphasis added.]

California, and an overwhelming majority of the jurisdictions, require proof of the corpus delicti, independent of any out-of-court statements, before such out-of-court statements can be considered by the trier of fact on the issue of the guilt of the defendant. E.g. People v. Selby (1926) 198 Cal. 426, 434; 45 A.L.R.2d 1316, Section 7(a), pages 1327-29. The establishment of the corpus delicti is therefore a foundational requirement before the extra-judicial statements can be considered. **"In a criminal action, if a defendant objects to admissibility of a confession or admission on any grounds, the Court must determine the**

question of admissibility by conducting a hearing out of the presence and hearing of the jury if the defendant or the People so request, and by permitting all parties at such hearing to introduce evidence on questions of admissibility." People v. Fowler (1980) 109 Cal.App.3d 557, 167 Cal.Rptr. 235. Failure to grant the defendant's request for such a hearing is grounds for reversal on appeal. People v. Rowe (1972) 22 Cal.App.3d 1023.

Furthermore, failure by the prosecution to prove the corpus delicti independent of any out-of-court statements would, ipso facto, requires the prosecution to rely solely on the out-of-court statements as its only proof of the corpus delicti in its case-in-chief against the defendant. This is specifically prohibited by the corpus delicti rule; it is this very situation which the corpus delicti rule is designed to protect the defendant against. People v. Cullen (1951) 37 Cal.2d 614, 625. Such statements would therefore be irrelevant since there would be no established corpus delicti to which they could go to prove, and the statements cannot, by themselves, prove the corpus delicti. "In absence of prima facie proof of the corpus delicti, anything the defendant may have said that might be construed as an admission is not proof of anything." People v. Coppla (1950) 100 Cal.App.2d 766, 771.

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THE INHERENT LACK OF TRUSTWORTHINESS IN EXTRA-JUDICIAL CONFESSIONS AND ADMISSIONS DEMANDS THAT THESE CONFESSIONS OR ADMISSIONS BE INDEPENDENTLY CORROBORATED TO PROTECT THE DEFENDANT FROM BEING CONVICTED ON THE BASIS OF AN UNTRUE CONFESSION

The purpose of the corpus delicti rule is two fold. First, it protects the defendant from being convicted of a crime which never occurred. People v. Stoddard (1948) 85 Cal.App.2d 130, 134. Because in the case against the defendant, JOE HUNT, no body has been discovered, this is especially a situation where a defendant could be convicted for murder when none has occurred.

Second, the rule protects the defendant from being convicted solely on the basis of an untrue confession, People v. Cullen, supra, at 625, or on the basis of untrue testimony of a confession. Opper v. United States (1954) 348 U.S. 84, 89; People v. Vertrees (1915) 169 Cal. 404, 409. Opper expressed this rationale as follows:

> **"In our country the doubt persists that the zeal of the agencies of prosecution to protect the peace, the self-interest of the accomplice, the maliciousness of an enemy or the aberration or weakness of the accused under the strain of suspicion may tinge or warp the facts of the confession."** Opper v. United States, supra, at 89-90.

Undoubtedly, those testifying against the defendant, JOE

HUNT, are hostile towards the defendant. Revenge as a motivation could significantly influence them to testify against him. They may hold the defendant responsible for the loss of hundreds of thousands of their dollars, as well as the failures of their businesses. Furthermore, Dean Karny was granted immunity from his admitted participation in a kidnapping and homicide in exchange for his statements incriminating the defendant. It is anticipated the evidence will reflect that Karny had an unnatural attraction for Hunt but Hunt rejected Karny. Karny and his family also lost thousands of dollars through the BBC and quite possibly could, in their minds, hold the defendant responsible for this loss. Because of this, fabricated or tainted testimony by these witnesses is a distinct possibility.

Furthermore, in Smith v. United States (1957) 348 U.S. 147, 153, the Supreme Court noted that **"the experience of the courts, police and the medical profession recounts a number of false confessions voluntarily made."** For example, it has been reported that there have been over 200 "confessions" to the Lindberg kidnapping and more than 20 false confessions concerning the as yet unsolved "Black Dahlia" murders. Exhaustive psychological studies attempting to explain this particular phenomenon have been made. See generally Note, Voluntary False Confessions: A Neglected Area in Criminal Administration 28 Ind. L.J. 374, n.26 (19__). Extensive elaborations on these competing psychological theories is no doubt inappropriate in the context of this Motion. Suffice it to say, that the prosecution's theory that the defendant made the alleged confessions because the defendant wanted to somehow fortify his standing as a leader of the BBC is at least

as equally consistent with a motive to make a false confession -- made by taking advantage of the disappearance of Ron Levin -- as it is with confessing an actual murder. Furthermore, an average juror is not familiar with these inherent difficulties in the trustworthiness of confessions; therefore, it is justifiable to restrict the power of the jury to convict based on these confessions alone. Smith v. United States, supra. There is some argument concerning the weight confessions and admissions should receive as evidence. While on one hand it has been deemed the highest kind of evidence, People v. Gardner (1961) 57 Cal.2d 135, 162 (Traynor, J., concurring), on the other hand it has been regarded **"as the sort of testimony calculated to arouse and stimulate suspicion."** People v. Vertrees, supra, 169 Cal. at 409. Wigmore believed this difference in opinion stems from **"a failure to distinguish the confession as evidence from the evidence of the confession[.] [W]e find that few have ever really doubted that the first is in itself of the highest value, while the second is always suspected."** 3 Wigmore, Evidence, Section 820(b); see also Wharton on Criminal Evidence (13th Ed.) Section 693.

It is precisely this suspicious evidence of a confession with which we are dealing. This is not a situation where the confession of a defendant is made in court or given to a law enforcement agent after he has been informed of his rights. (Instead, the evidence of a confession is presented through the hearsay statements of self-interested witnesses who are hostile to the defendant and have motives to lie.

Moreover, beyond independent corroboration of out-of-court admissions and confessions, California requires that all

extra-judicial statements made by the defendant must also be corroborated by proof of the corpus delicti. People v. McMonigle (1947) 29 Cal.2d 730, 738-40; People v. Duncan (1959) 51 Cal.2d 523, 528. This is in conformity with Opper, supra, which held all extra-judicial confessions, admissions, and statements, including exculpatory statements must be independently corroborated. Opper, supra, at 92. In California this would include both oral and written statements. See California Evidence Code Section 225. See also People v. Small (1970) 7 Cal.App.3d 347.

Therefore, whether it is to protect Joe Hunt from being convicted (1) for a murder which never occurred; (2) on the basis of his own lies; or (3) on the basis of hearsay testimony of hostile witnesses; both death and death by criminal agency must be established independently from the extra-judicial statements. Absent the establishment of the corpus delicti through independent proof the defendant must not be convicted.

3

THE EVIDENCE PRESENTED BY THE PROSECUTION INDEPENDENT OF THE EXTRA-JUDICIAL STATEMENTS BY THE DEFENDANT IS INSUFFICIENT TO ESTABLISH THE CORPUS DELICTI

In California, to establish the corpus delicti of murder,the prosecution must make a prima facie showing that the victim is dead and that he died through criminal agencies. People v. Cullen, supra, at 624. This corpus delicti may be established by slight evidence, by circumstantial evidence, and by reasonable

inferences drawn therefrom. People v. Cantrell (1973) 8 Cal.3d 672, 679. However, evidence which merely creates suspicion or conjecture is not enough to establish the corpus delicti. People v. Davis (1941) 47 Cal.App.2d 331, 334; People v. Simonsen (1895) 107 Cal. 345, 347. **"A mere possibility affords no evidence whatsoever."** People v. Williams (1957) 151 Cal.App.2d 173, 179.

Because the prosecution need not establish the corpus delicti beyond a reasonable doubt or even by a preponderance of the evidence, People v. Gouldy (1945) 69 Cal.App.2d 6, 10, it logically follows that the prosecution **"need not eliminate all inferences tending to show a non-criminal cause of death. Rather, the foundation may be laid by the introduction of evidence which creates a reasonable inference that death could have been caused by criminal agency, even in the presence of an equally plausible non-criminal explanation of the event.** People v. Jacobsen (1965) 63 Cal.2d 319, 327.

It is also unnecessary to identify the defendant as the perpetrator in establishing the corpus delicti. People v. Mehaffey (1948) 32 Cal.2d 535, 545. However, the corpus delicti must be established independently of evidence which merely tends to connect the defendant with the crime charged. People v. Tapia (1901) 131 Cal. 647, 651.

Finally, motive does not form any part of the corpus delicti.

In assessing the evidence which the prosecution relies on to establish the corpus delicti it becomes apparent that the prosecution falls far short of making the requisite prima facie showing that either Ron Levin is dead or that he died through

criminal means.

To begin with, in his determination at the Preliminary Hearing whether the corpus delicti had been established, Judge Kidney relied in part on the fact that pieces of paper with the defendant's handwriting and fingerprints on them were found in Levin's apartment. People v. Hunt, Preliminary Hearing, Volume II, page 63. Reliance on this fact was erroneous for two reasons. For one, this evidence could at the very most only tend to connect the defendant with the crime charged by placing him in Levin's home. Evidence of handwriting and fingerprints on a piece of paper is in no way probative on the issue of whether Levin is dead or whether he died by criminal means. Of course in determining the probative value of this evidence as it goes to establish the corpus delicti, the Court cannot consider the content of any of the defendant's writings on the papers because the corpus delicti **"must be proved entirely independent of and without considering the defendant's extra-judicial statements."** People v. Cantrell (1973) 8 Cal.3d 672, 680, [emphasis added].

Moreover, the fact that paper with the defendant's handwriting and fingerprints is found in Levin's house has considerably less weight in establishing death through criminal agency when one considers that Levin and the defendant were well acquainted. Hunt was often a guest at Levin's apartment. There are no facts in evidence as to when the handwriting was actually written or when the fingerprints were imprinted on the paper, (the prosecution's own witness testified on this fact). Nor is there any evidence as to when the paper may have been put in the house. The lack of this evidence coupled with the fact that Hunt was a guest

at Levin's apartment many times before Levin's disappearance makes the fact that paper with the defendant's handwriting and fingerprints were found in Levin's home have no relevancy whatsoever in determining whether Levin is dead through criminal agency.

It is also anticipated that the prosecution will rely heavily, for the purpose of establishing the corpus delicti, on the existence of a $1.5 million check signed by Levin giving him an interest in the BBC corporation, Microgenesis. Once again this fact is irrelevant in making a determination whether the prosecution has made a prima facie showing of the corpus delicti.

As already stated, supra, motive plays no part in determining the existence of the corpus delicti. The existence of this contract is only relevant in explaining why perhaps the defendant may have wanted to murder Levin. However, in murder cases where no body is discovered there will inevitably be some evidence of a motive by someone to murder the victim. It is one of this defense's contentions, in fact, that several parties may have had a motive for murdering Levin. Assuming arguendo that the prosecution intends to use the check to establish the criminal agency element, an analysis of the issue will make clear that the rule of law is that such evidence plays no part in establishing the corpus delicti.

In most instances, of course, cases requiring a prima facie showing of the corpus delicti of murder will not be confronted with the inherent problems of proving death or criminal agency when no nobody is discovered. Needless to say, in all cases where there is a body discovered and identified death is never

the issue. The only remaining issue then is whether death was attributable to criminal causes. In the cases involving a prima facie showing of the corpus delicti when the body is found and identified, the focus of the Courts in making their determinations as to whether death was due to criminal causes has not been on why the person may have been killed, but instead has been on how the person met their death. Once the how is discovered, the Court determines whether the causes of death were in the nature of accident or suicide, or rather were due to criminal means.

For instance in People v. Small (1970) 7 Cal.App.3d 347, the Court relied on the fact that death occurred from pressure being applied to the neck. Evidence that the defendant/husband and victim/wife had been quarrelling played no part in the Court's ruling on whether a prima facie showing of corpus delicti had been made. Similarly, in People v. Bonilla (1931) 114 Cal.App. 219, evidence which tended to show that the fatal injuries were due to a blow on the head from a blunt instrument rather than to an accidental fall from an automobile was held sufficient to show corpus delicti. In ruling on the corpus delicti issue the Court made no mention of the disagreements between the husband and wife. See e.g. People v. Misquez (1957) 152 Cal.App.2d 471; People v. Miller (1969) 71 Cal.2d 459.

Of course such analysis becomes impossible when no body is available. In consideration of this, **"evidence of means used to produce death are not essential to the establishment of corpus delicti."** People v. Bolinski (1968) 200 Cal.App. 705, 715. Nevertheless, cases involving the establishment of corpus delicti when no body is discovered do not fall back on a recitation of

motive to establish death by criminal agency. To the contrary, any discussion of motive is distinct and separate from the analysis of whether there is a sufficient showing of corpus delicti. See People v. Bolinski, supra, at 716. The sufficiency of the evidence needed to establish this element will be discussed, infra. May it suffice to say for now that "**[i]f circumstances point to the death of the person alleged to have been killed, findings of fragments of a human body, or tufts of hair or of articles known or proved to have been worn by the deceased may be sufficient**" to establish the corpus delicti. 3 Underhill, Criminal Evidence (5th Ed.), Section 630.

Use of this option contract to establish a prima facie showing of corpus delicti fails for the additional reason that the prosecution is unable to prove any impropriety regarding the agreement. Regardless of whether consideration of the contract is precluded because it only goes to prove motive, a contract which in the absence of contrary evidence must be presumed to be valid raises no reasonable inferences that Levin was murdered.

Finally, any conclusion that the option contract proves criminal agency assumes the fact that death occurred. The corpus delicti of murder consists of two elements: death and criminal agency as the cause of death. People v. Mitchell (1982) 132 Cal.App.3d 389, 392. The death of Levin must be proven, and without such proof the corpus delicti is not established. The option agreement is in no way probative of this issue. Therefore, without the additional proof of death the extra-judicial statements cannot be admitted into evidence.

Therefore, discounting the relevance and sufficiency of the

evidence of the paper with the defendant's handwriting and fingerprints and the $1.5 million option agreement, the evidence tending to prove the corpus delicti, even though only needing to be slight, falls far short of that which could create a reasonable inference that Ron Levin is dead and that his death was due to criminal means. The evidence tending to prove the corpus delicti in this instance is wholly circumstantial, but this is permissible as the inferences arrived at through this evidence are reasonable. The prosecution's evidence proves to be insufficient, though, because at most it raises mere suspicions and conjectures which is not enough to rise above the threshold of slight evidence.

In examining the evidence the most notable fact is that Levin has not been seen nor heard since his disappearance. As was correctly stated in the Preliminary Hearing (Vol. II, page 62), this fact alone is not enough to establish the fact of death. See People v. Cullen, supra. See also Perovich v. People (1907) 205 U.S. 86, 92, 51 L.Ed. 722, 724. In addition to Levin's disappearance, the prosecution relies on the facts that several articles are missing from Levin's residence, his alarm was not turned on, and his dog urinated in the house. Furthermore, although incidental to the fact of his disappearance, Levin has not called his mother as was his custom to do at least once a week.

In considering this evidence the fundamental issue becomes whether this evidence raises a reasonable inference that Levin was killed through criminal causes, or whether it at most raises mere suspicion or conjecture. If it does raise a reasonable

inference, then it would meet the requisite slight showing so that a prima facie case for the corpus delicti would be made. In assessing whether this level of proof has been met, much of the difficulty lies in this term "slight." As a term for describing the required quantum of evidence it is at best vague and probably more often misleading. However, in attempting to comprehend this nebulous concept, while by no means trying to draw its parameters, a further examination of case law reveals instances in which much more evidence than the prosecution's case against Joe Hunt have not attained the "slight" standard.

In People v. Vertrees, supra, certain documents were missing from the District Attorney's office. Based on the statements by two witnesses who claimed the defendant told them he had stolen the documents, the defendant was found guilty on the trial court level. This conviction was reversed by the California Supreme Court. Although a window screen had been broken and footprints were found outside the window of the office, the Court ruled the corpus delicti of both burglary and unlawful entry had not been established so as to admit the extra-judicial statements. In so ruling the Court stated:

> **"The district attorney's office is a public one and the fact that papers disappeared from it would not prove that burglary had been committed. The circumstance that a window screen had been broken did not establish either an unlawful entry or the stealing of the exhibits by the person making such entry. It was not shown that the papers and the hotel register were in the office at the time the window screen was broken or at the**

time when the tracks appeared on the soft earth outside of the office . . . . Without the details given by [the extra-judicial statements] no one could positively say that burglary had been committed by some one entering the office of the district attorney with intent to commit larceny. While the facts related by the district attorney would properly arouse his suspicion, they would not amount to circumstantial proof of the crime charged . . . . [N]o authority has been cited which justifies the use of the confession itself to prove one or more of the necessary elements of the commission of the crime that would be wholly lacking without such confession." Id. at 408-09 [emphasis added].

A prima facie showing of corpus delicti was also not found in People v. Schuber (1945) 71 Cal.App.2d 773. Here, the defendant was accused of lascivious conduct upon his nine year old stepdaughter. However, the Court found no slight showing of the corpus delicti so as to admit extra-judicial statements despite the fact that the girl had a 1/2 inch laceration at the entrance of her vagina and the defendant had been sleeping in the same bed with his stepdaughter just before the injury occurred. But because the record was devoid of evidence as to what caused the injury, except for the extra-judicial statements of the defendant, the Court ruled there was no competent evidence that the injury was received by unlawful means, or that a public offense had been committed. Once again we see that merely suspicious circumstances do not amount to the slight evidence required to establish the corpus delicti. In addition, in the course of the opinion, the

Court in Schuber made a further observation which casts more light on what is required in determining a prima facie showing of corpus delicti. The Court stated: "The rule which requires less evidence, . . . or even slight evidence, merely goes to the quantum, sufficiency, or weight of evidence, and not to its competency, relevancy, or character." Id. at 776.

A further indication of slight proof can be seen when comparing two arson cases, People v. Bispham (1938) 26 Cal.App.2d 216 and People v. Andrews (1963) 222 Cal.App.2d 242. In Bispham no corpus delicti was found even though the defendant doubled her insurance shortly before the fire which destroyed her business. The Court noted that the wiring had recently been examined and was reported to be in good condition, thus negating the possibility that the fire was of electrical origin. Additionally, the Court noted that the fire had burned with great rapidity and that no odor of smoke had been noticed before the breaking through of the flames. Nevertheless, the Court found that there was no showing of criminal origin of the fire.

In contrast, Andrews concerned four separate fires. Similar to Bispham, the possibility of fire due to accidental causes, such as a short in the electrical equipment, was negated. However, unlike Bispham, corpus delicti was found so as to allow the extra-judicial statements because of the "more convincing" evidence of four similar fires in "the same neighborhood, close in point of date, closer in point of time of day, all started by an apparently similar method," thus "snapping the long arm of coincidence." Id. at 245-46.

This principle as applied in a murder case is expressed in

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People v. Corrales (1949) 34 Cal.2d 426. Corrales involved the discovery of two mutilated human torsos in the same region of the Sacramento River. Only because of the later discovery of additional body parts of one of the torsos so that the manner of death could be determined, the corpus delicti involving the death by criminal means of the other body was determined. The Court stated:

> **"Although the existence of a mutilated body does not constitute conclusive evidence of death by means of such an act, it is sufficient to support an inference to that effect. This fact, taken in connection with testimony that [the victim] was seen in good health the day of her disappearance and sickening similarity between the two bodies taken from the water, one which was clearly shown to be the result of murder, are factors which strengthen the inference of homicide to a point sufficient to allow the introduction of the confessions or statements."** Id. at 430 [emphasis added].

Further examples of insufficiency of evidence not amounting to slight evidence can be found in In re Flodstrom (1954) 134 Cal.App.2d 871 and Hall v. Superior Court (1953) 120 Cal.App.2d 844.

When considering these cases, it becomes evident that the prosecutor's case against the defendant, JOE HUNT, while admittedly raising suspicion, does not reach the threshold of slight evidence so as to make the requisite prima facie showing that would allow consideration of any extra-judicial statements. As noted previously, and similar to the documents in Vertrees, the

mere disappearance of Levin, though suspicious, does not amount to the establishment of the corpus delicti. Neither does any of the additional evidence offered by the prosecution create any reasonable inference of either death or death by criminal causes. No doubt when anyone inexplicably disappears there will be curious circumstances surrounding the situation; however, none of the facts offered by the prosecution are such that would "snap the long arm of coincidence" so that more than suspicion is aroused. To the contrary, none of the facts offered strengthen the inference of homicide beyond the typical conjecture. Moreover, it is questionable whether any of the additional evidence is relevant as to proving death by criminal agency. To say that Levin has not called his mother is merely restating the fact that he disappeared. The fact that the dog urinated in the house, that some personal articles were missing, and that Levin did not turn on his alarm when leaving, while curious, do not aid whatsoever in answering the question as to why Levin disappeared, not to mention its failure to support any reasonable inferences that the disappearance must be due to criminal causes. After "eliminating the admissions and considering the other circumstances advanced, they amount only to conjecture, speculation and surmise . . . . There is no proof independent of [the defendant's] admissions of the essential elements of the corpus delicti." People v. Parker (1954) 122 Cal.App.2d 867, 874. In support of this, it should be noted that it took Levin's own father two weeks to report his son's disappearance to the police, and it took the police over a month before they started acting on the disappearance. The police questioned the likelihood of homicide so much that they

failed to make a report when essentially these same facts were reported. Therefore, the only conclusion is that the prosecution's case relies on mere conjecture. As a guidance to this conclusion, this Court should consider the Court's language in People v. Schuber, supra:

> **"We commend the district attorney for his conscientious prosecution of this case. We may even concur with him in speculating or surmising that the defendant may be guilty, but we cannot escape the conclusion that the record contains no competent evidence that the defendant caused the injury received by the child, or that a public offense was committed with relation thereto."** Id. at 777.

Furthermore, Levin was a man who, by his own admission, was facing the distinct possibility of serving several years in prison. He was severely in debt. His ability to continue to provide for himself and maintain his lifestyle was threatened due to the exposure he had received in his ensuing lawsuits. Continuing his ways under a different name and identity was certainly an alternative option when considered against the likelihood of instead spending the next several years in prison. These facts detract from any inferences that the reason for Levin's disappearance was due to criminal causes.

In the instant case, the prosecution offers no evidence to negate the possibility that Levin may have fled bail in order to establish a new identity someplace else. In rebuttal to this, the anticipated response by the prosecution is that they are not required to eliminate non-criminal agencies. However, allowing

for the possibility of non-criminal agencies must not be confused with the contention that the prosecution need not offer any evidence negating this non-criminal explanation. An examination of the cases addressing this issue reveals that the Courts are careful to dispose of the possibilities of non-criminal explanations.

For instance, in People v. Alba (1921) 52 Cal.App. 602, a horse stealing case, the Court found sufficient evidence of the corpus delicti from the following evidence: the stake to which the horse had been tied had been pulled straight up and out from the ground; buggy tracks and other horse tracks led from the victim's house right along side those of the stolen horse; the tracks led to the defendant's camp; the horse was tied to the bushes in the defendant's camp; the horse was sweating indicating that it had not merely wandered there by itself. The reliance on this final fact implies that mere possession of the horse would not be enough to establish the corpus delicti because of the possibility that the horse could have wandered there by itself.

In People v. Bollinger (1925) 196 Cal. 190, which involved the cause of death of a body found decomposed exhibiting marks of violence including a crushed skull, the Supreme Court approved of the following ruling by the trial court:

> **"Here is a man with marks of fatal wounds on his body; he is dead; his body is found; there you have evidence of corpus delicti unless it is apparent the wounds may have been self inflicted, and this is impossible from the description of the wounds, so he was killed by some agency."** Id. at 201 [emphasis added].

This principle is also expressed in People v. Waack (1950)

100 Cal.App.2d 253. Here, the victim was found dead with heroin in her body. naturally, these were, as the Court stated, suspicious circumstances, but this was not enough to establish a criminal cause of death. However, in addition to this, there was evidence of puncture wounds on the victim's arms made by a hypodermic needle. Furthermore, and most important, the Court found **"that most of the lawful sources from which a narcotic could be supplied had not issued a prescription to the deceased."** Id. at 257. Although generally an illegal drug, the heroin itself in the body was not enough to establish the element of criminal agency until the possible non-criminal explanation was negated. See also People v. Frank (1905) 2 Cal.App. 283.

4

MURDER TRIALS IN WHICH NO BODY HAS BEEN DISCOVERED DESERVE A HEIGHTENED STANDARD OF PROOF IN ORDER TO ESTABLISH THE CORPUS DELICTI

The very basis for the corpus delicti rule warrants a heightened standard of proof in establishing the corpus delicti of murder before admitting extra-judicial standards when the alleged victim has disappeared and no body is found.

Apparently, the corpus delicti rule evolved through a series of recorded and unrecorded cases described by the esteemed Sir Matthew Hale, in the 1700's. In the only recorded case, Perry's Case (1661) 14 How St. Tr. 1312; Note, California's Corpus Delicti rule: The Case for Review and Clarification (19__) 20 U.C.L.A. L.Rev. 1055 n.24, a servant and his brother and mother

were all convicted of the murder of the servant's master after the master's disappearance. Bloodied articles of the master's clothing were found. The servant gave several inconsistent stories explaining his master's absence, and then "confessed" that his brother had killed the master while he and his mother stood by. All three were convicted and executed. A year later, the master returned. He explained his disappearance with a strange story of being kidnapped and sold into slavery overseas.

In another case ascribed to Lord Coke, the defendant's niece disappeared after being heard to cry out, "Oh, good uncle, kill me not." The uncle was found guilty of her "murder" and executed. Several years later, the niece reappeared saying she fled from her uncle after a severe beating. 2 Hale, Pleas of the Crown, 290 (1678); Perkins, The Corpus Delicti of Murder, 18 Vir. L.Rev. 173 (1962).

Prompted by these tragedies, Hale stated he would never convict any person of murder or manslaughter unless the fact were proved to be done, **"or at least the body found dead."** Pleas of the Crown (1678) 2 Hale 290; Perkins, The Corpus Delicti of Murder, supra, 18 Vir. L.Rev. at 174. See also Texas Penal Code Annotated Section 1204 (Vernon 1961).

The first recorded case in the United States in which the accused were convicted of murder despite no discovered body also demonstrates the need for a stricter standard for a showing of the corpus delicti to prevent a defendant from being convicted on his erroneous out-of-court confessions alone. In The trial of Stephan and Jesse Boorn (1819) 6 Am. St. Tr. 73; Borchard, Convicting the Innocent (1932) pages 15-22, the brothers of the wife

of the alleged victim apparently had had several disagreements with the "victim". Despite the victim's history of sudden and unexplained disappearances, the brothers were arrested when the "victim's" hat was found in a field and bones were found in the ashes of a burnt down barn. Although the bones were later proved to be nonhuman, subsequent to their arrest, the brothers began accusing each other and, later, confessing to the "murder". After their conviction, and on the pleas of one brother shortly before he was to be executed, advertisements were published in an attempt to locate the alleged victim. The advertisements were successful in finding the "victim," who apparently had become tired of his wife and decided to disappear "permanently".

These cases illustrate the particular fallibility of convictions obtained despite the fact that no body has been found. Furthermore, even if the confessions in these cases are ignored, there is considerably more evidence in other cases to establish the corpus delicti than there is in this case. In these other cases, there were bloody clothes or violent disagreements and,although erroneous, the discovery of remains. In the case against the defendant, there is virtually nothing more to prove the corpus delicti than the disappearance of a claimed victim, with the possible exception of the evidence that some of his personal belongings were also missing and he has not called his mother.

Therefore, Courts should exercise particular scrutiny in cases where no body is found in establishing the corpus delicti, especially when the only other evidence to convict is a potentially untrue or tainted confession. Once again, in the words of

Hale, "It is better that five guilty persons should escape unpunished than one innocent person should die." The History of the Pleas of the Crown (1778) Hale 289; Note, California's Corpus Delicti rule: The Case for Review and Clarification, supra, 20 U.C.L.A. L.Rev. at 155 n.31.

5

CASE LAW IS DEVOID OF ANY PRECEDENT WHERE A CORPUS DELICTI HAS BEEN ESTABLISHED BY THE DISAPPEARANCE OF THE ALLEGED VICTIM ALONE

In California, it is possible to establish the corpus delicti, despite the lack of a body. People v. Scott (1960) 176 Cal.App.2d 458, 489. As explained in People v. Manson (1977) 71 Cal.App.3d 1, 42: **"The fact that a murderer may successfully dispose of the body of the victim does not entitle him to an acquittal."**

All that is required is a foundation **"which creates a reasonable inference that the death could have been caused by criminal agencies, even in the presence of an equally plausible non-criminal explanation of the event."** People v. Bolinski, supra, 260 Cal.App.2d at 716.

Nevertheless, there is a general presumption of continuation of life [People v. Scott (1960) 176 Cal.App.2d 458, 1 Cal.Rptr. 600], and case law in California and throughout the nation is absent any precedent where the corpus delicti is established by the disappearance of an alleged victim alone. **"As a rule, it is not enough to show that the body is missing; there must be proof also**

of death." State v. Johnson (1927) 193 N.C. 701, 702, 138 S.E. 19, 20.

In perhaps the closest California case, People v. Manson, supra, there was the additional evidence of the victim being surrounded and apprehended by the defendant and his accomplices, and the testimony of a witness who claimed to hear the victims' screaming.

In People v. Scott, supra, the victim's dentures and glasses were discovered buried in an ash heap close by the defendant's house. In People v. Bolinski, supra, the victim was known to have had a habit of picking up hitchhikers. The defendant had been hitchhiking and was picked up by the victim. The defendant was known to be armed. Additionally, when the defendant was apprehended, he possessed the victim's car and credit cards. The Court in Bolinski also noted that the defendant's behavior of fleeing at the sight of a law enforcement officer and driving away at a high speed seemed to indicate a guilty state of mind. In People v. Cullen, supra, blood of the victim was discovered in the defendant's house, as well as wet carpets indicating a recent attempt to clean up the residue of the crime. Additionally, the wedding ring of the victim was also discovered.

Although California is in the majority by requiring only a prima facie showing as the quantum of proof necessary to establish the corpus delicti before extra-judicial statements can be considered as evidence, some jurisdictions have a heightened standard. For instance, one Court required "such credible evidence as, standing alone, will create a really substantial belief that a crime had actually been committed." State v. McPhee

(1955) 151 Me. 62, 65, 115 A.2d 498, 500. Similarly, the Utah Supreme Court requires the independent evidence to be "material and substantial." State v. Ferry (1954) 2 Utah 2d 371, 372, 275 P.2d 173, 174. Even more extreme are laws such as are found in Texas, Montana, and, until recently, New York. In murder cases in these States the corpus delicti can only be established by direct evidence, provided either by eyewitness testimony or identified remains of the body. Based on these standards in these other jurisdictions, it seems that California offers less protection to an accused from being convicted on the basis of a false confession or admission. See Margolis, Corpus Delicti: State of Division (19__) 2 Suff. U. L.Rev.

Nevertheless,a survey of those States using the "slight" or "prima facie" standards shows that the corpus delicti of murder has never been established solely on the disappearance of a body. Although this issue is not one often presented for Courts' consideration -- California in fact addressing it an inordinate amount of times -- there still is a substantial body of case law on point. Focusing our discussion on those cases in which the least amount of evidence sustained a prima facie showing of corpus delicti, it becomes clear that the prosecution has not supplied the quantum of evidence necessary to supply this burden.

First, there was no evidence of blood or violence in the case against Joe Hunt. This fact alone immediately distinguishes this case from State v. Dudley (1969) 19 Ohio App.2d 14, 249 N.E.2d 536, and Epperly v. Commonwealth (1982) 224 Va. 214, 294 S.E.2d 882. In Dudley, besides the disappearance of a night watchman, blood type which corresponded with the night watchman's

was found on his automobile and in the immediate vicinity. Also, a crowbar with similar blood and hair samples which also matched the night watchman's was found inside the car. A witness testified that the defendant had hidden a crowbar in his pants earlier in the evening. In Epperly, bloodstains were found in several places in the beach house where the victim was last known to be. Towels which had been missing from the beach house which were later discovered near the victim's abandoned car also had stains of similar blood.

In a closer case, State v. Zarinsky (1976) 143 N.J. Super. 35, 362 A.2d 611, the victim, a 17 year old girl, was last seen riding in the defendant's car. The defendant was a stranger to the girl, and had previously on several other occasions tried to lure young girls into his car. The handles for the door and window on the passenger's side of the defendant's car had been removed, thereby preventing escape. A hammer with traces of blood and hair was found in the defendant's trunk.

Zarinsky is similar to the California case, People v. McMonigle, supra. In McMonigle, the defendant, a 34 year old man, was able to persuade the victim, a 14 year old girl, into his car, purportedly because he needed a baby sitter. She was never seen again. Socks the victim had been wearing the day she disappeared were later found on some rocks below a cliff which overlooked the ocean. Other belongings of the victim were unearthed from a site at the defendant's work where he had been instructed to dig by his employer. Additionally, a bullet hole was discovered in the door frame of the defendant's car. Later, a bullet which was identified as being fired from the defendant's

gun was unearthed. Bloodied upholstery which had been removed from the defendant's car was also found.

In these cases the facts were sufficient to allow the jury to consider the defendant's extra-judicial statements. In the case against Joe Hunt there is no eyewitness account which identifies the defendant as being with Levin on the night on which he disappeared. There is no evidence of the defendant's missing clothing, nor anything indicative of death by criminal agency such as the highly suspicious removal of door handles to prevent escape.

Perhaps the closest case outside California is the New York case, People v. Lipsky (1982) 57 N.Y.2d 560, 443 N.E.2d 925. Lipsky involved the voluntary confession by the defendant to law enforcement officers more than two years after the disappearance of the victim. Subsequent to the victim's disappearance, the defendant had broken off his engagement, moved to another State, and had apparently undergone extreme mental anguish due to guilt. After he had been arrested for assault he told a psychiatric social worker that he had committed a previous crime which he wished to clear up. The victim was a lifelong resident of Rochester who made a living working as a prostitute and collecting rent from some property she had inherited. Besides her unexplainable disappearance, the only other evidence establishing the prima facie showing of corpus delicti was the fact that the defendant, a stranger to the victim, had possessed the clothing, wallet, identification, and glasses of the victim shortly after her disappearance and shortly before he left Rochester. There was no innocent explanation as to how the defendant came to

possess them. See 3 Underhill, Criminal Evidence (5th Ed.), Section 630, supra.

In the case against Joe Hunt there is no evidence that Hunt was inexplicably in possession of any of Levin's possessions, especially Levin's jogging suit or bathrobe. Even more, the two were well acquainted and had had many prior business dealings.

It should be noted that Lipsky modified previous New York law which required direct evidence to support a conviction for murder. The Court ruled such direct proof could be the confession or admission of the defendant, so long as the corpus delicti was established by independent evidence, including circumstantial evidence.

In the case against defendant, JOE HUNT, the prosecution offers no evidence from which a reasonable inference of death by criminal agency can be drawn except that the alleged victim can no longer be located. There is no evidence of a struggle, other violence, or blood. No neighbor claims to have heard screams, gunshots, or other sounds indicative of violence. Furthermore, the defendant did not flee even when he discovered he was the target of a murder investigation.

The evidence depended upon by the prosecution has no tendency of pointing towards death by criminal agency. The prosecutor relies on the fact that several personal items of Levin's were missing after his disappearance, thus showing circumstantially that Levin is dead. But all these facts show is that when Levin disappeared, he was wearing clothes, and he took his keys and articles to make sleeping comfortable. To infer that because these articles are gone Levin must be dead is a remarkable inference

indeed. It is much more plausible to believe that Levin disappeared because he may have had millions of dollars secretly hidden away (perhaps in a lock box and thus he needed to take the keys); he was severely in debt; he was facing a felony indictment and potentially could have faced numerous other criminal charges. The prosecution has presented no evidence to rebut the presumption of the continuation of life. At best, he has offered a far-fetched theory, hypothesizing on why no one has been able to find Levin recently. Nothing offered by the prosecution creates an inference as equally plausible as flight to escape serious criminal charges and monumental debt. See People v. Frank (1905) 2 Cal.App. 283. Compare People v. Cowan (1940) 38 Cal.App.2d 131. Therefore, under Bolinski, supra, the prosecution has not offered sufficient evidence to establish the corpus delicti.

6

IN A MURDER TRIAL WHERE NO BODY HAS BEEN DISCOVERED, NO CASE LAW IN EXISTENCE HAS JUSTLY FOUND THE DEFENDANT GUILTY, NOR HAS THE CORPUS DELICTI BEEN ESTABLISHED WHEN THE ALLEGED VICTIM HAD A STRONG MOTIVE FOR DISAPPEARING

In virtually every case in which there has been a conviction for murder despite the evidence of a dead body, Courts have placed great weight on the fact that the victim had no discernible motive for suddenly and inexplicably disappearing. E.g. People v. Scott, supra. The inference of death by criminal agency, because of these sudden, inexplicable disappearances, has

also been integral in establishing the corpus delicti when it is required in order to allow the consideration of out-of-court statements in determining guilt. Conversely, in these cases the corpus delicti has not been found if the person who disappeared had a strong motive to disappear.

For example, in People v. Scott, supra, the Court relied heavily on the fact that the victim had a highly developed social circle of friends; kept in extremely close contact with them; had no access to any finances on which she could have survived during her disappearance; and could not have functioned properly without her glasses or dentures. In People v. Manson, supra, the defense was unable to show a motive for why Shorty Shea would have disappeared without contacting any of his close friends. Shea, too, had a reason for not disappearing, since he had been offered a role as a stunt man in an upcoming motion picture. This was a lifelong ambition of his. In People v. Bolinski, supra, the evidence was inconsistent with a voluntary departure and self-concealment, since no irregularities were found in the handling of his personal or business finances or records; he was entitled to retirement pensions in a few days; he had a voucher uncashed in his office; and all his personal items were still in his hotel room.

Courts outside California also place great weight on the fact that their was no apparent motive for the alleged victim to suddenly and inexplicably disappear. For instance, in Zarinsky, supra, the Court relied on the fact that the victim was a shy, quiet, and obedient girl who got along well and was never known to have hitchhiked. On the day the victim disappeared she had

told her family she was going to the store. She took only two dollars with her. She was wearing only shorts, a sleeveless sweater, and no shoes. These facts contradict any assertions that the victim had run away on her own volition.

A similar profile of a happy home and social life was also relied on in Epperly, supra, to dispel any theory that the victim may have disappeared on her own volition. Also, the victim's abandoned car was found near a river close to the victim's home. Its driver's seat had been pushed back which was unusual considering the victim's diminutive size.

In Lipsky, supra, too, the Court noted how the victim had lived in Rochester all her life; witnesses had stated she appeared in good emotional and physical condition; and she planned to meet with her husband and sister later that day. The Court also placed weight on the fact that the victim's picture of her mother, who had died giving birth to her, which the victim always kept by her bedside was in its regular place.

Two other cases, Hurley v. State (1984) 60 Md.App. 539, 483 A.2d 1298, and State v. Hicks (1985) 495 A.2d 765 involve the disappearance of mothers where there is no explanation as to why they would abandon their children.

On the contrary, Levin had very strong reasons to voluntarily disappear. He had been indicted on felony charges and faced the possibility of spending several years in prison confinement. There was also a distinct possibility that several other people could have filed criminal charges against him arising from Levin's widespread practice of fraud. Levin was deeply in debt, yet it is possible that he had several million dollars hidden

away in an unknown bank account. Quite frankly, there was no better time for Levin to disappear than shortly before his whole fraudulent network was about to collapse. Therefore, any inferences surmised from the disappearance of Levin are considerably weakened when the strong motives for his disappearance are considered. Without more, then, the corpus delicti is not established.

In conclusion, because the foundational requirement of the establishment of the corpus delicti, independent of any extra-judicial statements, is not met, all extra-judicial statements, including any oral or written statements, cannot be admitted.

DATED: September 23, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

[redacted]
1370

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On September 23, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR ORDER EXCLUDING EVIDENCE OF OUT OF COURT STATEMENTS BY DEFENDANT PRIOR TO THE DETERMINATION BY THE COURT OF THE PRELIMINARY FACTS OF THE EXISTENCE OF THE CORPUS DELICTI on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 September 23, 1986.

Gabriela Chagolla

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

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 FOR ORDER STRIKING THE SPECIAL CIRCUMSTANCE OF ROBBERY; POINTS AND AUTHORITIES** **Date:** October 15, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C **Est. Time:** 20 Minutes

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES, AND HIS DEPUTY ASSIGNED TO THE WITHIN CASE, FREDERICK NATHAN WAPNER; TO CODEFENDANT, JAMES PITMAN, AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 15, 1986, or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order striking the special circumstance alleged pursuant to Penal Code Section 190.2(a)(17)(i), to wit, "robbery".

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

1. In prosecutions for first degree murder with felony-based special circumstances, the corpus delicti of the

underlying felony must be proved independently of an accused's extrajudicial statements;

2. Since the People have completely failed to establish any corpus for the alleged robbery, such special allegation should be stricken.

Said Motion will be based upon the within moving papers; the documents, Motions and pleadings on file herein; upon the Preliminary Hearing Transcript; upon Section 995 of the Penal Code; upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: October 14, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

1.

IN PROSECUTIONS FOR FIRST DEGREE MURDER WITH FELONY-BASED SPECIAL CIRCUMSTANCES, THE CORPUS DELICTI OF THE UNDERLYING FELONY MUST BE PROVED INDEPENDENTLY OF AN ACCUSED'S EXTRAJUDICIAL STATEMENTS

In its Information, the prosecution has accused the defendant, JOE HUNT, of violating Section 211 of the Penal Code, to wit, robbing the alleged victim, Ron Levin. It is the prosecution's theory that Hunt, through the means of fear or force, caused Levin to sign, against his will, at $1,500,000 check to the order of Microgenesis, a corporation which the prosecution alleges Hunt controlled. Because the prosecution also alleges this robbery took place during the commission of a murder, the defendant has been subjected to stand trial for murder in the first degree with special circumstances under Section 190.2(a)(17)(i) of the Penal Code. However, because the prosecution has been and will be unable to present sufficient evidence independently of the defendant's extrajudicial statements to establish a prima facie showing of robbery, the felony-based special circumstance must be stricken.

In most instances, an element enhancing the degree of punishment need not be proved independent of the defendant's extrajudicial statements. Thus, in People v. McDermand (1984) 162 Cal.App.3d 770, 797, it was ruled that the fact that the defendant had been lying in wait before perpetrating the murder need not be proved independent of the defendant's extrajudicial

statements in order to elevate the crime to murder in the first degree with special circumstances. However, in People v. Mattson (1984) 37 Cal.3d 85, the Court held that "the corpus delicti of felony-based special circumstances must be established independently of an accused's extrajudicial statements." Id. at 94. The Court based its decision on the sentence of Section 190.4 of the Penal Code which provides that "[w]henever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime." (Emphasis added.) Interpreting this language in "the light most favorable to the defendant" (citing In re Tartar (1959) 52 Cal.2d 250, 256-57), the Court ruled that "the 'general law'" proviso incorporates the corpus delicti requirement for felonies supporting special circumstances allegations." People v. Cantrell (1975) 8 Cal.3d 672. Consequently, the corpus delicti of robbery must be proved independently from any of the defendant's out-of-court statements before those statements can be considered in the determination of whether the special circumstance of robbery occurred.

2.

BECAUSE THE PROSECUTION'S CASE WHOLLY FAILS TO ESTABLISH THE CORPUS DELICTI OF ROBBERY INDEPENDENTLY OF THE DEFENDANT'S EXTRAJUDICIAL STATEMENTS, THE FELONY-BASED SPECIAL CIRCUMSTANCE ALLEGATION SHOULD BE STRICKEN

Section 211 of the Penal Code defines robbery as **"the felonious taking of personal property in the possession of another, and against his will, accomplished by means of force or fear."** Therefore, since Mattson requires the corpus delicti of the robbery be proven independently of the defendant's extrajudicial statements, each element of the alleged special circumstance must be established before a prima facie case of robbery can be sustained. See People v. Cobb (1955) 45 Cal.2d 158, 162. Since the prosecution has failed either to prove a taking against Levin's will or the use of fear or force to obtain the property, the decision of the magistrate that a prima facie case of the corpus delicti of robbery had not been made was correct, and the Court should strike this special allegation.

To begin with, in its attempt to establish a prima facie case, the prosecution has presented evidence whereby the only inferences raised are contrary to those which it is trying to prove. In so doing, the prosecution has asked the Court to disregard these inferences, and instead reach the contrary conclusions solely through reliance on the defendant's out-of-court statements.

The prosecution has offered evidence of a contract signed by Levin through which Levin was to receive an interest in attrition mills. A corresponding check signed by Levin and made out to Microgenesis was also received in evidence. Quite obviously no inference that a taking was accomplished against Levin's will can be arrived at through this evidence. To the contrary, such a conclusion would be in direct conflict with established law. **"Fraud and wrongdoing are never presumed. It is presumed that private transactions are fair and regular."** Bessesen v. Dorshkind (1957) 156 Cal.App.2d 220, 230. See also California Civil Code Section 3545. Rather than establishing the element of felonious taking, the prosecution's evidence went so far as to establish a prima facie case that the transaction was fair and regular and that the ordinary course of business had been followed. See Donovan v. Security First National Bank (1945) 67 Cal.App.2d 845, 853.

Further, no admissible evidence presented by the prosecution was able to overcome this presumption. The testimony of Gene Browning, a witness for the prosecution, that the interest Levin was to receive was not worth $1,500,000 was impeached by Browning's own testimony that he, Browning, had received substantially the same amount, if not more, for a similar interest in attrition mills. [I R.T. 200-231.] The prosecution further buttressed the presumption against it through evidence which showed that the defendant and Levin had had a history of business dealings together. In fact, the prosecution's own evidence showed that Levin may have had an obligation to pay Hunt close to $4,000,000. Therefore, despite the fact that the interest Levin received in

Microgenesis may have been inadequate with respect to the return consideration of $1,500,000, the fact that Levin may have owed Hunt considerably more than this could explain this possible disparity.

Therefore, it is apparent that the prosecution has failed to establish the element of felonious taking against the victim's will. The prosecution asks the Court to reject its own evidence and instead embrace the extrajudicial statements of the defendant as the sole proof to prove this element. This is in flagrant disregard of the corpus delicti rule in Mattson. To reiterate, the corpus delicti rule only permits the consideration of extrajudicial statements once a prima facie showing of the crime has been made. People v. Towler (1982) 31 Cal.3d 105, 115. Such a prima facie showing can be established through slight evidence and reasonable inferences drawn therefrom. People v. Miller (1969) 71 Cal.2d 459, 477. **However, a prima facie case may not be made through mere speculation or conjecture.** People v. Schuber (1945) 71 Cal.App.2d 773, 777.

Yet speculation is precisely what the prosecution has asked the Court to do. It asks the Court to disregard the presumptions and reasonable inferences raised by its own evidence. Then, after failing to rebut these presumptions, the prosecution wishes for the Court to reach contrary conclusions from those raised by these presumptions. Yet, in the absence of even some evidence, there is no basis for such a conclusion unless the defendant's extrajudicial statements are considered.

Even more apparent is the prosecution's failure to offer any admissible evidence to prove the element of fear or force. This

conclusion that no showing of force or fear was made was also reached by the magistrate at the preliminary examination. In so ruling, the magistrate stated, "There is no showing here that there was a 211 inasmuch as the whole corpus of the 211 is the forcible taking of something from a person and that would have to be pure speculation as to what occurred. There's been no testimony by any witness as to what occurred in that room when Mr. Levin ultimately disappeared. We know what happened afterwards. We know what statements have been made concerning Levin's whereabouts. But we have nothing concerning what occurred in that particular room other than a check later turned up somewhere else." [II R.T. 170.] The Court also noted that there was no evidence to show when the defendant actually received the check. Therefore, because the check could have been received by the defendant several different ways, including both felonious and non-felonious means, in the absence of any admissible evidence, the conclusion that the check was obtained through force or fear would be mere speculation.

Therefore, because the corpus delicti cannot be proven independently from the defendant's extrajudicial admissions, Mattson requires that the special circumstances of murder committed during the commission of a robbery must be stricken.

DATED: October 14, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: 
RICHARD C. CHIER
Attorneys for Defendant

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On October 14, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR ORDER STRIKING THE SPECIAL CIRCUMSTANCE OF ROBBERY; POINTS AND AUTHORITIES on all interested parties in this action by handing a true copy thereof as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

Brian L. Greenhalgh
8484 Wilshire Blvd., Suite 220
Beverly Hills, CA 90211

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 October 14, 1986.

2 TRL/MOT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

1280

Date OCTOBER 15, 1986 DEPT. WE C

HONORABLE: L. J. RITTENBAND JUDGE D. TSCHEKALOFF Deputy Cle
P. QUINN Deputy Sheriff S. YERGER Reporter

CASE NO. A090435

(Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

CHARGE 01 HUNT JOE
AKA GAMSHY, JOSEPH HENRY
187 01 ct; 211 01 ct

Counsel for Defendant:
A. BARON
R. CHEIR

(BOX CHECKED IF ORDER APPLICABLE)

NATURE OF PROCEEDINGS MOTIONS BAIL 4-4-85

31 ☐ .....IS SWORN AS THE ENGLISH/.....INTERPRE

32 ☐ DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE, ...IS APPOINTED.

33 ☐ ON PEOPLE'S MOTION, AMENDMENT TO/AMENDED INFORMATION FILED/DEEMED FILED/INFORMATION AMENDED BY INTERLINEATION/AS FOLLOWS.....

34 ☐ ON.....MOTION, CASE A.....CONSOLIDATED INTO CASE A ....AS COUNT(S).....THEREOF. SEE CASE A.....FOR FURTHER PROCEEDINGS.

35 ☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO.....

36 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION (NO. 40) BEL

37 ☐ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS; WAIVES RIGHTS; ADMITS PRIOR(S) NO

38 ☒ CAUSE IS CALLED FOR TRIAL MOTIONS ☐ CAUSE SUBMITTED PER STIPULATION (NO. 40) BELOW.

39 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY.....COURT ACCEPTS WAIVER(S).

40 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminar hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminar hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hea ing are received in evidence and marked for identification in these proceedings, bearing the same number as used in the preliminary hearing, subject t this court's rulings. People's exhibit(s) ..... (Preliminary Transcript) admitted into evidenc by reference.....

41 ☐ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privileg against self-incrimination. Defendant advised of possible effects of plea on any alien or citizenship/probation or parole status.

42 ☐ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.

43 ☐ Defendant's motion for order excluding evidence of out of court statements by defendant prior to the determination by the Court of the preliminary facts of the existence of th Corpus Delicti is heard, argued and denied. Defendant's motion for order striking the special circumstances of robbery is heard aruged and denied. Defendant's motion to adv

44 ☐ ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED. and vacate trial date of

45 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO Oct. 20, 1986 i

46 ☐ COURT FINDS DEFENDANT NOT GUILTY. granted.

47 ☐ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S) ..... IN COUNT(S) ..... ☐ LESSER INCLUDED/RELATED OFFENSE.

48 ☐ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO .....

49 ☐ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL.

50 ☐ ON MOTION OF DEFENDANT/COURT/STIPULATION, TRIAL/MOTION(S) IS/ARE CONTINUED TO/RESET TO 11-4-86
AT 9:00 A.M. IN DEPT. WE C REASON: further preparation

51 ☐ FURTHER CONTINUANCES WILL NOT BE GRANTED.

52 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL PLUS .....DAYS.

53 ☐ CAUSE TRANSFERRED TO DEPT. ..... ☐ FORTHWITH ☐ ON ..... AT ..... A.M. FOR .....

54 ☐ DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE: .....

55 ☐ DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) ..... REARRAIG

56 ☐ PLEADS GUILTY/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTION(S) ..... IN COUNT(S) ..... ☐ LESSER INCLUDED/RELATED OFFE

57 ☐ DEFENDANT REFERRED TO PROBATION DEPARTMENT. ☐ DEFENDANT WAIVES TIME FOR SENTENCE.
PROBATION AND SENTENCE HEARING SET ..... AT .....A.M. IN DEPARTMENT .....
INCLUDING ☐ DISPOSITION OF COUNT(S) ..... REMAINING
☐ DETERMINATION OF PRIORS ALLEGED/DEGREE/ARMED/USE/GREAT BODILY INJURY ALLEGATION(S)

58 ☐ DEFENDANT WAIVES PROBATION REFERRAL. REQUESTS IMMEDIATE SENTENCE. (SEE SENTENCE BELOW/SEE ATTACHED SHE

59 ☐ FURTHER ORDER AS FOLLOWS: .....

60 ☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT ..... TELEPHONE CALLS AT DEFENDANT'S OWN EXPE

61 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.

62 ☐ BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED. NO BAIL/BAIL FIXED AT $ .....

63 ☐ BENCH WARRANT ORDERED ISSUED AND HELD UNTIL ..... NO BAIL/BAIL FIXED AT $.....

64 ☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED( ) RECALL NO. ..... WRITTEN( )ABSTRACT

65 ☐ UPON PAYMENT OF $ ..... COSTS BEFORE ..... AND FILING OF REASSUMPTION, ORDER OF ..... FORFEITING BAIL IS TO BE VACATED AND BAIL REINSTATED.

66 ☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. .....) ORDER OF ..... FORFEITING BAIL VACATED. BAIL REINST.

67 ☐ DEFENDANT'S MOTION FOR RELEASE ON O.R./REDUCTION OF BAIL IS GRANTED/DENIED/SET/CONTINUED TO/ .....
REASON: .....

68 ☐ BAIL RESET AT $ .....

☐ REMANDED ☒ BAIL ☐ BAIL EXONERATED ☐ BOND NO. .....

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER ☐ BENCH WARRANT

MINUTES ENTERED 10-15-86 COUNTY CLERK

76 C779-C144 (Rev. 8-8418-84) MINUTE ORDER

2

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

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 FOR A SEPARATE PENALTY PHASE JURY
	Date: October 30, 1986
	Time: 9:00 a.m.
	Place: Department WE-C

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND TO FREDERICK NATHAN WAPNER, HIS DESIGNATED DEPUTY:

PLEASE TAKE NOTICE that on October 30, 1986, or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order that a separate jury be impaneled in the event that the issue of penalty must be decided for Mr. Hunt.

Said Motion will be made on the grounds that trial by a single jury with respect to both guilt and penalty would violate the defendant's right to a jury drawn from a representative cross section of the community as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article

I, Section 16 of the California Constitution.

Said Motion will be based upon the within moving papers; the documents, Motions and pleadings on file herein; upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: October 24, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1.

A SEPARATE PENALTY PHASE JURY SHOULD BE IMPANELED IF NECESSARY

Under Witherspoon v. Illinois (1968) 391 U.S. 510, prospective jurors who would automatically vote against the penalty of death are excludable for cause. These jurors may nevertheless be able to reach a fair verdict on the issue of guilt and should be allowed to serve as jurors during the guilt phase of a capital trial. A defendant in a criminal case has the right to be tried by a jury drawn from a representative cross section of the community. If a **"cognizable group"** is excluded from the jury by the State, the defendant's right to a representative jury is violated.

The defendant is entitled under the Sixth Amendment of the United States Constitution to a jury representative of the community; that is, a jury from a cross section of the community. Ballew v. Georgia (1978) 435 U.S. 223, 232-34. Naturally, the jury selected to determine guilt must apply the **"common sense of the community to the facts . . . [and] the counterbalancing of various biases is critical to the accurate application of the common sense of the community to the facts of any given case . . . ."** Id. Exclusion for cause from the guilt phase of a potential juror who would automatically vote against the penalty of death, but nevertheless can be fair and impartial as to the guilt of the defendant, deprives the defendant of his right to trial by

a jury that is representative of the community. Grigsby v. Mabry (8th Cir. 1985) 758 F.2d 226 (death qualifications of the guilt phase jury violates the Sixth Amendment right to a jury representative of the community notwithstanding Wainwright v. Witt (1985) 105 S.Ct. 844; cf. People v. Holt (1984) 37 Cal.3d 426; People v. Fields (1983) 35 Cal.3d 329.

Jurors who are automatically opposed to the penalty of death constitute a cognizable class for purposes of cross section analysis. Peters v. Kiff (1972) 407 U.S. 493, 500; Duren v. Missouri (1979) 439 U.S. 357. Cases utilizing the cross section analysis have required that the excluded group be "identifiable" or "distinctive." Adams v. Superior Court (1974) 12 Cal.3d 55, 60. A group is cognizable if there is "a basic similarity of attitudes, ideas, or experience among its members that a exclusion prevents juries from reflecting a cross section of the community."

The State bears the burden of justifying the exclusion for cause of a juror who can be fair on the issue of guilt. Taylor v. Louisiana (1975) 415 U.S. 522; Duren v. Missouri, supra. Defendant does not have to show that a violation of the cross section requirement resulted in a jury which was "less than neutral with respect to guilt." Id. As the State should bear the burden of demonstrating the constitutionality of an all male, or all white jury; the State also should bear the burden of demonstrating the constitutionality of a jury from which those opposed to capital punishment have been excluded.

2.

DEATH QUALIFICATION VIOLATES THE DEFENDANT'S CONSTITUTIONAL RIGHTS AND DEPRIVES HIM OF A REPRESENTATIVE JURY COMPOSED OF A CROSS SECTION OF THE COMMUNITY

Defendant incorporates by reference, as if fully set forth herein, Arguments 1, 2, and 3 of his Motion to Prohibit Voir Dire on the Death Penalty.

3.

IN CALIFORNIA, THE TRIAL COURT MAY EXERCISE ITS DISCRETION TO FIND THAT GOOD CAUSE EXISTS TO UTILIZE SEPARATE JURIES IN A BIFURCATED TRIAL AND BALANCE THE INTERESTS OF DEFENDANT AND THE STATE

Section 190.4(c) of the Penal Code[1/] states that the same jury shall decide guilt, the truth of the special circumstances alleged, and the penalty to be applied. However, the Court may discharge a jury that has convicted defendant of a crime for which the death penalty may be inflicted upon a showing of good cause. When defendant's interest in a completely impartial trial is balanced against the State's interest in providing an appropriate penalty, a split verdict, two jury procedure would allow

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[1/] Unless otherwise indicated, all references are to the Penal Code.

the trial judge to eliminate a significant potential for prejudicing defendant's Sixth Amendment right to trial before an impartial jury.[2/] Indeed, an unbiased determination as to whether one will live or die is a fundamental interest.

As stated, 190.4(c) allows the Court to discharge the guilt phase jury upon a showing of **"good cause."** Just what constitutes **"good cause"** for this purpose has never been determined. The phrase **"good cause"** has had several meanings, depending on the context in which it has been used. In Sate v. Rozzel (1965) 157 Mont. 443, 486 P.2d 877, it was held that a party could add to a list of witnesses if good cause was shown. The Court simply stated that good cause was a **"legally sufficient ground or reason."** In People v. Bryant (1971) 5 Cal.App.3d 563, **"good cause"** was found to exist when a congested Court calendar brought about a three day delay in bringing a defendant to trial. In Tucker v. People (1971) 163 Colo. 581, 31 P.2d 983, the Court defined "good cause" as distinguished from an assumed or imaginary pretense, and Boeing Airplane Co. v. Coggeshall (1986) 477 U.S. ___, holds that good cause (for enforcement of a subpoena duces tecum) exists when denial of prejudice would cause the moving party undue hardship or injustice. Given these holdings, it is clear that

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[2/] In another context, separate trials have been ordered because of a situation with a high potential of prejudice to defendants. In Bruton v. United States (1966) 391 U.S. 123, it was held that at the joint trial of Bruton and codefendant, introduction of codefendant's confession violated Bruton's Sixth Amendment right of confrontation because, despite cautionary instructions to the contrary, there is a substantial risk that the jury will use codefendant's confession against the defendant.

good cause exists for the impanelling of a separate penalty phase jury, if necessary.

CONCLUSION

Based on the foregoing, the defendant respectfully requests that this Court grant his Motion for a separate penalty phase jury.

DATED: October 24, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On October ___, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR A SEPARATE PENALTY PHASE JURY on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

Brian L. Greenhalgh
8484 Wilshire Blvd., Suite 220
Beverly Hills, CA 90211

I caused such envelope to be hand delivered to the office of the prosecutor herein; and, to the remaining addressees, I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 October ___, 1986.

_____

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

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 FOR PRETRIAL DISCOVERY; DECLARATION OF RICHARD C. CHIER; POINTS AND AUTHORITIES** **Date:** December 11, 1986 **Time:** 9:30 a.m. **Place:** Department WE-C **Est. Time:** 20 Minutes

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND TO HIS AUTHORIZED REPRESENTATIVE FREDERICK NATHAN WAPNER; TO THE BEVERLY HILLS POLICE DEPARTMENT, DISCOVERY UNIT; TO THE LOS ANGELES POLICE DEPARTMENT, DISCOVERY UNIT; TO THE CORONER FOR THE COUNTY OF LOS ANGELES; TO JOHN K. VAN DE KAMP, ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA:

YOU AND EACH OF YOU PLEASE TAKE NOTICE that on December 11, 1986, at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order compelling the People to disclose to him and, in the case of tangible items, to produce for inspection, examination, recording, and copying, all evidence

and information in the possession, custody, or control of the People, actual or constructive, which may be favorable to the defendant, or material to the issue of innocence or guilt, or which could lead to such material or evidence, including but not limited to the following:

1. The contents or substance of all communications by the confidential informant to the Los Angeles Police Department concerning a homicide or evidence of a homicide at the Hollywoodland Motel or elsewhere;

2. The originals or true copies of all crime reports and Coroner's reports prepared in relation to the investigation and prosecution, if any, of the Karny/homicide;

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

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

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

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

7. The originals or true copies of all notes, reports, memoranda, or other documents reflecting communications by the Los Angeles Police Department to the Los Angeles County District Attorney wherein any recommendations are sought or made

respecting the prosecution of Dean Karny for the homicide in question;

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

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

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

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

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

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

14. The original or a true copy of the tape released to ABC-TV for republication on the Jerry Dunphy News relative to the

Hollywood homicide;

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

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

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

1. That the People are obligated to disclose the items requested in this Motion for Discovery under the obligations of Brady v. Maryland (1963) 376 U.S. 83 and People v. Sharparnis (1983) 147 Cal.App.3d 190;

2. That the defendant's entitlement to due process of law, guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution as well as his Sixth Amendment right to effective assistance of counsel impose additional requirements on the Court and the prosecution to ensure the fair production of discovery;

3. All of the requests for materials are for items within the actual or constructive possession, custody, or control of the People;

4. Counsel for the defendant are informed and believe that prosecution of Dean Karny for the Karny/homicide is being deliberately delayed or otherwise obfuscated in order to induce Karny to testify against defendant and others in prosecutions in Southern and Northern California; and

5. That the items hereinabove requested are not privileged, are material to the defense herein, and/or will lead to the discovery of admissible evidence favorable to this moving

defendant.

Said Motion is based upon the attached moving papers, upon information in the possession of the District Attorney of the County of Los Angeles and the Los Angeles Police Department, Hollywood Division, and upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: December 4, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
ARTHUR H. BARENS
Attorneys 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 am one of the attorneys of record for defendant, JOE HUNT.

2. The within Motion is being made for discovery of all information within the knowledge, possession, and/or control of the law enforcement agencies described in the Notice of Motion concerning the homicide which occurred in late October or early November and all evidence connecting witness/informant Dean Karny to said homicide.

3. I am informed and believe and thereon allege that the investigation into said homicide and the prosecution of Dean Karny, himself, has been deliberately delayed by the Los Angeles Police Department and/or the Los Angeles County District Attorney and/or the Coroner of the County of Los Angeles and/or by confederation of some or all of said agencies in order to induce Dean Karny to continue bearing false witness against Joe Hunt in conformity with his previous testimony;

4. I am further informed and believe and thereon allege that the investigation and prosecution of Dean Karny is being delayed in order that Karny may be presented by the Los Angeles County District Attorneys office to the Petit Jury selected in this case as an unsoiled albeit immunized witness against Joe Hunt;

5. I am further informed and believe and thereon allege that on Tuesday, November 25, 1986, a meeting was held in the

offices of Ira Reiner, District Attorney for the County of Los Angeles which meeting was attended by Messrs. Reiner, Wapner, Vance, Livesay, Garcetti, and other section chiefs wherein and whereat there were discussions, recommendations, and decisions made concerning:

(a) The discovery of the Karny/homicide;

(b) The disclosure, if any, to defense counsel of the Karny/homicide; and

(c) The decision to delay and/or kill the investigation of Karny for the homicide in question;

6. A partial disclosure was made by Deputy District Attorney Fred Wapner to defense counsel in chambers concerning the Hollywood homicide and Dean Karny's connection therewith;

7. I am informed and believe and thereon allege that the information in question has been deliberately withheld from defense counsel in order to deceive any jury impanelled in this case and to present Karny in a false light.

8. Production of these materials is requested in order to assist defendant in the preparation of his defense to the charges herein.

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 4, 1986.

ARTHUR H. BARENS

MEMORANDUM OF POINTS AND AUTHORITIES

1.

A DEFENDANT IS ENTITLED TO DISCOVERY OF CRIMINAL CHARGES CURRENTLY PENDING AGAINST PROSECUTION WITNESSES ANYWHERE IN THIS STATE

People v. Coyer

(1983) 142 Cal.App.3d 839, 842

2.

THE PENDENCY OF CRIMINAL CHARGES IS MATERIAL TO A WITNESS'S MOTIVATION IN TESTIFYING EVEN WHERE NO EXPRESS PROMISES OF LENIENCY OR IMMUNITY HAVE BEEN MADE

People v. Coyer, supra,

142 Cal.App.3d at 842

3.

THE SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION

Brady v. Maryland

(1963) 373 U.S. 83, 87

4.

THE CALIFORNIA SUPREME COURT HAS IMPOSED A STRICTER DUTY UPON PROSECUTORS BY REQUIRING THEM TO DISCLOSE SUBSTANTIAL MATERIAL EVIDENCE FAVORABLE TO AN ACCUSED WITHOUT REQUEST

In re Ferguson

(1971) 5 Cal.3d 525

5.

IN A PROSECUTION FOR FIRST DEGREE MURDER, IT WAS REVERSIBLE ERROR FOR THE PROSECUTOR TO SUPPRESS EVIDENCE OF SUCH SIGNIFICANCE THAT WITH REASONABLE PROBABILITY IT COULD HAVE AFFECTED THE OUTCOME OF THE TRIAL OR MIGHT HAVE CAUSED A DIFFERENT VERDICT

People v. Sharparnis

(1983) 145 Cal.App.3d 190, 194

DATED: December 4, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
ARTHUR H. BARENS
Attorneys for Defendant

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

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(213) 550-1005

Attorneys 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** **NOTICE OF MOTION AND MOTION TO LIMIT VOIR DIRE OF PROSPECTIVE JURORS** **Date:** October 30, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND TO FREDERICK NATHAN WAPNER, HIS DESIGNATED DEPUTY:

PLEASE TAKE NOTICE that on October 30, 1986, or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, and in the event that this Court denies his Motion to Prohibit Voir Dire on the Death penalty, defendant, JOE HUNT, will move for an Order limiting the voir dire of prospective jurors regarding capital punishment and its imposition to the following statements and questions or similar ones chosen by the Court of like limited purpose:

1.

COURT'S [PROPOSED] INTRODUCTION TO THE JURY

The defendant in this case is charged with one count of murder with allegations of special circumstances.

It is incumbent upon me at this point to explain to you the procedure that we have in California for handling this type of case, and then I want to make some inquiry as to your personal views in regard to them.

I want to emphasize that as this trial commences, the Court has no way of knowing whether or not we will go through all of these procedures, but since there is that chance, and I emphasize "chance", let me explain these procedures to you.

The first issue which you will be asked to decide in this case if you are selected as a juror, is the guilt or innocence of the defendant to the charge of murder. There are two degrees of murder in California, and those definitions will be given to you when the jury is instructed on the law; but for now you should know that they are murder in the first degree and murder in the second degree.

If you should find the defendant not guilty, or guilty of some offense other than murder in the first degree, that would end your duties concerning this case.

If, and only if, you should find the defendant guilty of murder in the first degree, beyond a reasonable doubt, then you must also determine the truth or falsity of the special circumstance alleged.

If, and only if, you find that the special circumstance has been proven true beyond a reasonable doubt, then you will have the additional duty of deciding the punishment for the defendant.

The law of this State gives you a choice of two punishments once this penalty stage of the trial has been reached: life imprisonment without possibility of parole, or death.

2.

COURT'S [PROPOSED] LIMITED

VOIR DIRE OF PROSPECTIVE JURORS

I shall now ask you the following questions. Please listen to them carefully and answer them "yes" or "no" without further statement. If the question is unclear, please ask that it be repeated.

1. Do you have any opinion regarding the death penalty that would prevent you from making an impartial decision as to the guilt or innocence of the defendant?

2. Do you have any opinion regarding the death penalty that would cause you to vote for first degree murder, even when the prosecution only proves the defendant guilty of murder in the second degree or

manslaughter?

3. Do you have any opinion regarding the death penalty that would prevent you from making an impartial decision concerning the truth or falsity of the special circumstance alleged in this case?

4. Do you have such an opinion concerning the death penalty that you would automatically vote to impose it after a verdict of guilty of murder in the first degree with a finding of special circumstance, regardless of any evidence that may be presented at the penalty phase of the trial?

5. Do you have such an opinion concerning the death penalty that you would automatically vote for life imprisonment without possibility of parole after a verdict of guilty of murder in the first degree with a finding of special circumstances regardless of any evidence that may be presented at the penalty phase of the trial?

6. Do you understand that the issue of the death penalty may or may not occur in this case, and that these questions have been asked only in the event that you reach that phase of the trial?

Said Motion will be made on the grounds that this Order is necessary to ensure the defendant's right to a fair trial and due process of law as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 15, and 16 of the California Constitution.

Said Motion will be based upon the within moving papers; the

documents, Motions and pleadings on file herein; upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: October 24, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1.

VOIR DIRE OF PROSPECTIVE JURORS REGARDING CAPITAL PUNISHMENT SHOULD BE LIMITED AS REQUESTED BECAUSE THE DEFENDANT'S PROPOSED QUESTIONS SATISFY THE WITHERSPOON CRITERIA FOR THE EXTENT OF PERMISSIBLE VOIR DIRE FOR CAUSE IN A CAPITAL CASE

A prospective capital juror may not be challenged for cause unless he makes it unmistakably clear that he would automatically vote against the death penalty or would be unable to be impartial regarding the guilt or innocence of the defendant.

The extent of permissible voir dire for cause on the death penalty was delimited by the United States Supreme Court in Witherspoon v. Illinois (1968) 391 U.S. 510, as follows:

> "Just as veniremen cannot be excluded for cause on the ground that they hold such views [general objections to the death penalty or conscientious or religious scruples against its infliction], so too they cannot be excluded for cause simply because they indicate that there are some kinds of cases in which they would refuse to recommend capital punishment. And a prospective juror cannot be expected to say in advance of trial whether he would in fact vote for the extreme penalty in the case before him. The most that can be demanded of a venireman in this regard is that he be

> willing to consider all of the penalties provided by state law, and that he not be irrevocably committed, before the trial has begun, to vote against the penalty of death regardless of the facts and circumstances that might emerge in the course of the proceedings . . . .
>
> "We repeat, however, that nothing we say today bears upon the power of a State to execute a defendant sentenced to death by a jury from which the only veniremen who were in fact excluded for cause were those who made unmistakably clear (1) that they would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before them, or (2) that their attitude toward the death penalty would prevent them from making an impartial decision as to the defendant's guilt." Id. at 522, n.21, emphasis in original.

Following Witherspoon, the High Court decided Boulden v. Holman (1969) 394 U.S. 478, wherein it recognized that "it is entirely possible that a person who as a 'fixed opinion against' or who does not 'believe in' capital punishment might nevertheless be perfectly able as a juror to abide by existing law -- to follow conscientiously the instructions of a trial judge and to consider fairly the imposition of the death sentence in a particular case." Id. at 483-84.

In Hovey v. Superior Court (1980) 28 Cal.3d 1, the California Supreme Court followed these principles. The Hovey Court noted that "when questions are posed concerning opposition to

capital punishment, trial counsel and the court would be well advised to strive for brevity and to phrase the questions in the terms Witherspoon so unmistakably suggests." Id. at 80. As can be seen from these opinions, there can be no justification for further questioning on the death penalty on the basis of challenges for cause.

2.

VOIR DIRE OF PROSPECTIVE JURORS REGARDING CAPITAL PUNISHMENT TO BE LIMITED AS REQUESTED BECAUSE THE PROSECUTION MAY NOT USE PEREMPTORY CHALLENGES TO STRIKE JURORS WHO VOICE GENERAL OBJECTIONS TO THE DEATH PENALTY

During the voir dire, the District Attorney is expected to use his peremptory challenges to strike potential jurors for the sole reason that the veniremen are not death qualified or because they express some degree of reluctance of uncertainty regarding imposition of the death penalty. Assuming, arguendo, that this Court were to grant defendant's Motion to preclude removal for cause of jurors who are not death qualified, the prosecution could effectively negate this Court's decision by use of peremptory challenges. Defendant seeks the protection of this Court to prevent the prosecution from employing such a tactic.

The rationale of Witherspoon v. Illinois, supra, applies with equal force to the prosecutorial use of peremptory challenges to pick a "hanging jury". Id. at 523. While the method of tipping the scales towards death is procedurally different, the

result is the same: "a tribunal organized to return a death verdict." Id. at 521. The nature of this constitutional infirmity is the same. The only difference is that a much greater portion of the potential jury pool is exposed to elimination from participation in capital trials. In this sense, the constitutional flaw is far more devastating to a capital defendant.

There is no need to rehash the federal and state constitutional interests at stake. Jurors opposed to the death penalty, to one degree or another, are clearly a cognizable group for jury selection purposes. The use of peremptory strikes solely on the ground that a venireman expresses doubts about the wisdom of the death penalty, or expresses it absolutely, violates the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 15, and 16 of the California Constitution.

In People v. Wheeler (1978) 22 Cal.3d 258, the California Supreme Court held that the use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by jury drawn from a representative cross section of the community as guaranteed by the California Constitution. Although Wheeler was directed at the prosecutorial exclusion of black veniremen, the principle applies equally to potential jurors opposed to the death penalty. In reaching this decision, the majority relied upon many of the decisions and the values expressed by defendant in the case at bar. See also People v. Johnson (1978) 22 Cal.3d 296. In a subsequent death penalty case, People v. Allen (1979) 23 Cal.3d 286, the prosecution's peremptory challenges were being used solely on the grounds of

group bias.

More recently, the California Supreme Court in People v. Motton, (1985) 29 Cal.3d 596, expanded upon and reinforced the Wheeler decision by holding prosecutors accountable for racial bias if they exclude some but not all blacks from serving as jurors in criminal cases. In Motton, the **"cognizable"** class of jurors excluded by the District Attorney was black women. The Court specifically held that **"black women are a vital part** of **that 'ideal cross section of the community' that should be represented on jury panels."**

Further, in Commonwealth v. Soares (Mass. 1979) 387 N.E.2d 499, the Massachusetts Supreme Court reached a holding similar to Wheeler. The Court held that Article Twelve of the Declaration of Rights of the Massachusetts constitution proscribed **"the use of peremptory challenges to exclude prospective jurors solely by virtue of their membership in, or affiliation with, particular defined groupings in the community."** Id. at 515. Wheeler, Soares, and Motton seek to accomplish a simple yet constitutional goal -- representation on the criminal trial jury of an impartial cross section of the community. Any other holding **"would leave the right to a jury drawn from a representative cross section of the community wholly susceptible to nullification through the intentional use of peremptory challenges to exclude identifiable segments of that community."** Soares, supra, at 515; emphasis added.[1/]

[1/] But see People v. Holt (1984) 37 Cal.3d 426.

Defendant is aware, of course, of the special position of peremptory strikes in our trial procedures. Defendant also is aware of the holdings of the Supreme Court in Swain v. Alabama (1965) 380 U.S. 202, where the Court effectively immunized prosecutorial use of peremptory challenges, establishing a presumption that prosecutorial use of peremptories was constitutionally proper. Defendant argues that Swain was an ill conceived decision on a very shaky constitutional ground. Defendant submits that, were the Court to grand review of this issue today, a different result would be constitutionally inevitable.

Swain purported to leave an "out" for an aggrieved defendant whose jury was unconstitutionally molded by prosecution peremptories. The Court implied that it might entertain an equal protection challenge if a defendant cold show "in case after case" a pattern of peremptory strikes effectively eliminating all members of a group from jury service. Id. at 223. Confusingly, the petitioner in Swain had shown that no black "within the memory of persons now living has ever served on any petit jury in any civil or criminal case tried" in the county. Id. at 231-32. It is, therefore, not surprising that "every defendant who has tried to rebut the Swain presumption of prosecutorial impropriety has found it to be an illusory goal, in both federal and state courts." Id. at 509, n.10.[2/] See Note, Limiting the Peremptory

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[2/] Since its release in 1965, Swain has been the subject of extensive and biting criticism. See Martin, The Fifth Circuit and Jury Selection Cases: The Negro Defendant and his Peerless Jury (1966) 4 Hous. L.Rev. 448; Note, The Supreme Court, 1964 (Footnote Continued)

Challenge: Representation of Groups on Petit Juries (1977) 86 Yale L.J. 1715. Even federal courts have recognized that: **"No defendant seems to have been able to shoulder the burden of proof imposed by Swain . . . ."** United States v. McDaniels (E.D. La. 1974) 379 F.Supp. 1234, 1247. The McDaniels Court implicitly recognized the inadequacy of Swain, circumvented its holding, and granting relief due to prosecutorial use of peremptory challenges to totally exclude blacks from the jury. The Court grounded its holding on Rule 33 of the Federal Rules of Criminal Procedure -- granting a new trial **"in the interests of justice."** Id. at 1249. See also United States v. Robinson (D. Conn. 1976) 421 F.Supp. 467, rev'd sub nom., United States v. Newman (2nd Cir. 1977) 546 F.2d 240, where the Court of Appeals reversed the District Court decision finding the Swain **"exception"** applicable due to the defendant's factual showing.

Finally, defendant would note that even in jurisdictions clinging to Swain's rationale, minorities are exposing the fatal constitutional flaws of the opinion. See Commonwealth v. Martin

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(Footnote Continued)
Term (1965) 79 Harv. L.Rev. 103, 135-39; Comment, **Swain v. Alabama: A Constitutional Blueprint for the Perpetuation of the All White Jury** (1966) 52 Va. L.Rev. 1157; Note, Fair Jury Selection Procedures (1965) 75 Yale L.J. 322; Note, Peremptory Challenge -- Systematic Exclusion of Prospective Jurors on the Basis of Race (1967) 39 Miss. L.J. 157; Note, The Jury: A Reflection of the Prejudice of the Community (1969) 20 Hast. L.J. 1417; Comment, A Case Study of the Peremptory Challenge: A Subtle Strike at Equal Protection and Due Process (1974) 18 St. Louis U. L.J. 662; Comment, The Prosecutor's Exercise of the Peremptory Challenge to Exclude Nonwhite Jurors: A Valued Common Law Privilege in Conflict with the Equal Protection Clause (1977) 46 U. Cin. L.Rev. 554; Recent Development, Racial Discrimination in Jury Selection (1977) 41 Alb. L.Rev. 623 . . . . Id. at 510, n.11; emphasis added.

(Penn. 1975) 336 A.2d 290, 295 (Nix, J. dissenting): "Swain provides no protection against this type of abuse. To the contrary, it facilitates its perpetuation." (Emphasis added.) See Commonwealth v. Jones (Penn. Super. 1977) 371 A.2d 957 (Spaeth, J. concurring); State v. Blanson (La. 1979) 365 So.2d 1361 (Dennis, J. concurring, joined by Tate and Cologero).

Therefore, those persons who hold conscientious opinions for or against the death penalty are identifiable groups that may not be excluded from a trial jury without impinging on defendant's right to a jury drawn from a cross section of the community. See Witherspoon v. Illinois, supra. The Witherspoon Court found that jurors who voice general objections to the death penalty, express conscientious or religious scruples against its infliction, or feel that there that there are some kinds of cases in which they would refuse to recommend capital punishment are necessary to fully reflect the views of the community and are an essential segment of society. These veniremen share a perspective within the community that should be reflected in a capital case. Since the Witherspoon Court clearly considered such veniremen a cognizable group, their exclusion by peremptory challenge would result in the classic "hanging jury".

The fact that Witherspoon is based upon the exclusion of a cognizable group has been recognized by the California courts. See Adams v. Superior Court (1974) 12 Cal.3d 55, 60; People v. Sand (1978) 81 Cal.App.3d 448, 460 (Justice Jefferson dissenting). In People v. Wheeler (1978) 22 Cal.3d 258, the Court recognized that peremptory challenges cannot be used for the purpose of eliminating an identifiable group, because so-called "group

bias" is not a constitutionally permissible ground of peremptory challenge. Thus, questioning on the death penalty, beyond the constitutionally limited bounds of Witherspoon, cannot be justified on the basis of peremptory challenges.

CONCLUSION

Based on the foregoing, in the event that this Court denies defendant's Motion to prohibit voir dire on the death penalty, defendant respectfully requests that this Court issue an Order limiting the voir dire of prospective jurors regarding capital punishment and its imposition to the above-listed statements and questions, or similar ones chosen by the Court of like limited purpose.

DATED: October 24, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On October ___, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION TO LIMIT VOIR DIRE OF PROSPECTIVE JURORS on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

Brian L. Greenhalgh
8484 Wilshire Blvd., Suite 220
Beverly Hills, CA 90211

I causes such envelope to be hand delivered to the office of the prosecutor herein; and, to the remaining addressees, I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 October ___, 1986.

_____

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

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 TO QUASH THE ENTIRE PANEL OF PROSPECTIVE JURORS** **Date:** October 30, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND TO FREDERICK NATHAN WAPNER, HIS DESIGNATED DEPUTY:

PLEASE TAKE NOTICE that on October 30, 1986, at 9:00 a.m., or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move to challenge the entire panel of prospective jurors.

Said Motion will be made on the ground that the jurors have been drawn in a constitutionally impermissible manner and their composition does not represent a fair cross section of the community.

Said Motion will be based upon the testimony of Ray Arce, Los Angeles County Jury Commissioner, contained in Volume 9 of

the testimony recorded on Thursday, October 23, 1986,[1/] in connection with the case of PEOPLE OF THE STATE OF CALIFORNIA v. STEPHEN H. ERICKSON, A701260; the within moving papers; the documents, Motions, and pleadings on file herein; upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: October 25, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: 
RICHARD C. CHIER
Attorneys for Defendant

[1/] A copy of which will be lodged with the Court on Wednesday.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On October 27th, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION TO QUASH THE ENTIRE PANEL OF PROSPECTIVE JURORS on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

Brian L. Greenhalgh
8484 Wilshire Blvd., Suite 220
Beverly Hills, CA 90211

I caused such envelope to be hand delivered to the office of the prosecutor herein; and, to the remaining addressees, I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 October ___, 1986.

Richard Cheu

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Attorneys 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
	NOTICE OF MOTION AND MOTION FOR SEPARATE SPECIAL CIRCUMSTANCES PHASE
	Date: October 30, 1986
	Time: 9:00 a.m.
	Place: Department WE-C

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND TO FREDERICK NATHAN WAPNER, HIS DESIGNATED DEPUTY:

PLEASE TAKE NOTICE that on October 30, 1986, or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order directing the special circumstances phase if any to be held separately and apart from the guilt phase and subsequent penalty phase.

Said Motion will be made on the grounds that without this Order, defendant's right to a fair and impartial trial will be denied in violation of the United States and California Constitutions.

Said Motion will be based upon the within moving papers; the documents, Motions and pleadings on file herein; upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: October 24, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1.

DEFENDANT'S MOTION FOR A SEPARATE SPECIAL CIRCUMSTANCES PHASE SHOULD BE GRANTED

Selecting a fair jury in a capital case is more difficult than in a murder case where the death penalty is not at issue, because the prospect of the ultimate sanction places in the hands of the prosecutor the additional weapon of "death qualification." Common sense recognizes that "death qualification" imparts to juries a prosecutorial skew on the issue of guilt or innocence. Similarly, pretrial voir dire by the defense of jurors concerning their ability to deal impartially with the sort of evidence that will be admitted during a penalty phase -- e.g., the defendant's criminal record -- may prejudice those jurors' perception of the defendant during the guilt phase.

A Motion for a separate penalty phase panel is one way a defendant may seek to insulate his guilt phase jury from the prejudicial voir dire and selection process that differentiate a capital case from a "garden variety" homicide trial. If penalty phase considerations and evidence are best excluded from the guilt phase, so are those concerning that other distinguishing characteristic of capital cases: special circumstance allegations.

While the law presumes that guilt and penalty are to be determined in separate trial phases (Penal Code Section 190.4), however, the contrary presumption applies to the questions of

guilt and the truth of special circumstance allegations. Nonetheless,the obstacles to severance of these two issues are not insurmountable: The benefits to be gained from a separate special circumstances phase may be substantial.

As a general rule a jury in a special circumstances case determines guilt of the first degree murder charge and the truth of any alleged special circumstances **"at the same time."** Penal Code Section 190(a). The Court has the power to discharge **"for good cause"** a jury that has decided the guilt question and to impanel a new jury to consider insanity pleas, special circumstance allegations, or a penalty. Penal Code Section 190.4(c). Since a trial court can impanel a new jury for a special circumstance phase, with all the attendant cost and time involved in order to ensure a defendant a fair hearing on the special circumstance issue, it must have the discretionary power to order the less burdensome measure of hearing that issue simply in a separate phase rather than before a separate panel.

What circumstances might a trial court consider **"good cause"** to order a severance of guilt and special circumstances phase of a trial? **"Undue prejudice"** has been a traditional ground for severance of counts, and the aforementioned Section 190.1(b) provides one legislative definition of that term, i.e., the allegation of a prior murder conviction as a special circumstance.

In at least one recent case involving special circumstances allegations, a California Superior Court, after considering an in camera declaration of defense counsel detailing evidence supporting inconsistent defenses of reasonable doubt and lack of intent, granted a pretrial motion seeking bifurcated hearings on the

issues of guilt and of the truth of felony murder special circumstance allegations. People v. Richards, Marin Count No. 8362. The potential benefit of such bifurcated hearings are several. A jury may cast a more critical eye on special circumstance allegations during a separate phase than they would have if the allegations appeared to be more surplusage on a guilt phase verdict form.

2.

CONCLUSION

Based on the foregoing, the defendant respectfully requests that this Court grant his Motion for a Separate Special Circumstances Phase of the trial.

DATED: October 24, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On October 27th, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR SEPARATE SPECIAL CIRCUMSTANCES PHASE on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

Brian L. Greenhalgh
8484 Wilshire Blvd., Suite 220
Beverly Hills, CA 90211

I caused such envelope to be hand delivered to the office of the prosecutor herein; and, to the remaining addressees, I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 October 27, 1986.

Susan Lehman

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Attorneys 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** **NOTICE OF MOTION AND MOTION TO PROHIBIT VOIR DIRE ON THE DEATH PENALTY** **Date:** October 30, 1986 **Time:** 9:00 a.m. **Place:** Department WE-C

TO: IRA REINER, DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES AND TO FREDERICK NATHAN WAPNER, HIS DESIGNATED DEPUTY:

PLEASE TAKE NOTICE that on October 30, 1986, or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order declaring that no questions be asked of, or statements made to, the jury panel concerning the death penalty.

Said Motion will be made on the ground that death qualification of the jury is in violation of defendant's right to a jury trial, due process of law, equal protection of the law, and freedom from cruel and/or unusual punishment as guaranteed by the United States and California Constitutions.

Said Motion will be based upon the within moving papers; the documents, Motions, and pleadings on file herein; upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: October 25, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

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

MEMORANDUM OF POINTS AND AUTHORITIES

1.

THE AMERICAN TRADITION OF TRIAL BY JURY NECESSARILY CONTEMPLATES AN IMPARTIAL JURY DRAWN FROM A CROSS SECTION OF THE COMMUNITY

(A)

Forward

In Duncan v. Louisiana (1968) 391 U.S. 145, the Supreme FILL IN PAGE increasingly highlighted. In Williams v. Florida (1970) 399 U.S. 78, the High Court ruled that a jury of twelve persons was not an essential part of the Sixth Amendment right, since the key function of the jury was to provide a group representative of the community that would prevent Government oppression of criminal defendants: **"The essential feature of a jury obviously lies in the interposition between the accused and his accuser of the common sense judgment of a group of laymen, and in the community participation and shared responsibility that results from the group's determination of guilt or innocence."** Id. at 100. The Sixth Amendment required only that the jury be large enough to **"provide a fair possibility for obtaining a representative cross section of the community."** Id. Noting that no state provides for less than 12 jurors in capital cases, Williams interpreted this fact as reflecting **"implicit recognition of the value of the larger body as a means legitimizing society's decision to impose**

the death penalty."

Thus, the requirement that the jury be chosen from a group that accurately reflects a cross section of the community is especially significant in capital cases. In Apodaca v. Oregon (1972) 406 U.S. 404, the Court reiterated the importance of the basic principles, holding that the Sixth Amendment does not require state juries to reach unanimous verdicts, because the jury's common sense judgments could still be rendered without unanimity "as long as it consists of a group of laymen representative of a cross section of the community . . . ." Id. at 410.

Although the principle that no identifiable group could be systematically excluded from jury panels originated in cases involving racial discrimination [see Strauder v. West Virginia (1879) 100 U.S. 303], it is by no means limited to cases involving issues of race:

> "Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated." Hernandez v. Texas (1954) 347 U.S. 475, 478.

See also White v. Crook (M.D. Ala. 1966) 251 F.Supp. 401, 408-09 [exclusion of women]; Labat v. Bennett (5th Cir. 1966) 365 F.2d 698), cert. denied, 386 U.S. 991 (1967) [exclusion of wage earners]; State v. Schowquorow (1965) 240 M.D. 212, 213 A.2d 475 [exclusion of agnostics and atheists].

(B)

Defendant's Sixth Amendment

Interest in a Representative Jury

After Duncan, there is no question that the application of the Sixth Amendment guarantee has altered the constitutional standards governing jury selection. Through the Sixth Amendment, a criminal defendant is now entitled to **"a petit jury [drawn] from a representative cross section of the community."** Taylor v. Louisiana, supra, 419 U.S. at 528.[1/] For example, in Taylor, the Court applied these new Sixth Amendment standards to hold that a male criminal defendant had standing to contest the exclusion of women from his trial jury without demonstrating any specific prejudice because exclusion of a large distinctive population group **"deprived him of the kind of fact finder to which he was constitutionally entitled."** Taylor v. Louisiana, supra, 419 U.S. at 526.[2/]

[1/] Cf. Carter v. Jury Commission of Green County, supra, 396 U.S. at 330; Williams v. Florida (1970) 399 U.S. 78, 100; Apodaca v. Oregon, supra, 407 U.S. at 410; and see Peters v. Kiff, supra, 407 U.S. at 502-04 (opinion of Justice Marshall); Ballew v. Georgia, supra, 435 U.S. at 236-37.

[2/] **"We accept the fair-cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment and are convinced that the requirement has solid foundation. The purpose of a jury is to guard against the exercise of arbitrary power -- to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge. [Citation.] This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups**
(Footnote Continued)

The Taylor Court intimated strongly that purpose or intent to discriminate is no longer the controlling issue as it was under the equal protection model; rather, the focus is on the consequences of the jury selection procedure. See Taylor, supra, 419 U.S. at 526-533; Duren v. Missouri (1979) 439 U.S. 357. As the Court has continued to clarify the nature of the "jury" guaranteed in state criminal proceedings by the Sixth Amendment, the cross section requirement has become increasingly central to it. For example, in Williams v. Florida, supra, 399 U.S. 78, the Court held that a jury of 12 was not an indispensable part of the Sixth Amendment right. What the Sixth Amendment required was that the jury be large enough **"to provide a fair possibility for obtaining a representative cross-section of the community."** Id. 399 U.S. at 100.

> **"[T]he essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared**

(Footnote Continued)
are excluded from the pool. Community participation in the administration of the criminal law, moreover, is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system. Restricting jury service to only special groups or excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial. 'Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case . . . . [T]he broad representative character of the jury should be maintained, partly as assurance of a diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.' [Citation.]" Taylor v. Louisiana, supra, 410 U.S. at 530-31.

responsibility that results from that group's determination of guilt or innocence." Id. 399 U.S. at 100.

In Ballew v. Georgia, supra, the Court again recognized the critical importance of the cross section requirement, and stressed that "meaningful community participation cannot be attained with the exclusion of minorities or other identifiable groups from jury service." Id. 435 U.S. at 236-37.

The Supreme Court, as yet, has not ruled on whether death qualification violates a defendant's Sixth Amendment right to "an impartial jury drawn from a cross-section of the community . . . ." Thiel v. Southern Pacific Co., supra, 328 U.S. at 220, quoted in Witherspoon v. Illinois, 391 U.S. at 524-25, n.1 (concurring of Justice Douglas). The decision in Duncan applying the Sixth Amendment guarantee to the states was held non-retroactive in DeStefano v. Woods (1968) 392 U.S. 631, and, although Witherspoon was handed down a few days after Duncan, Witherspoon's trial predated the Duncan ruling. With the partial exception of Lockett v. Ohio (1978) 438 U.S. 586,[3/] all subsequent decisions applying Witherspoon have either involved pre-Duncan trials, such as the 23 per curiam cases reversed on the authority of Witherspoon in 403 U.S. at 946-48 (1971); Maxwell v. Bishop (1970) 398 U.S. 262; and Boulden v. Holman

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[3/] In Lockett, the Supreme Court decided a very narrow Sixth Amendment issue: In the absence of an affirmative showing of harm, the defendant's general Sixth Amendment interest in a representative jury does not prohibit the State from excluding for cause a juror who explicitly indicates an inability to follow the law on the issue of guilt or innocence in a capital case. Id. at 596-97.

(1969) 394 U.S. 478, or cases in which no Sixth Amendment challenge to the procedure of death qualifying juries was reached. See Davis v. Georgia (1976) 429 U.S. 162. However, as the following discussion will show, the Court's interpretation of the Sixth Amendment guarantee in other areas indicates that death qualification does, indeed, violate the cross section requirement.

Indeed, the United States Court of Appeals for the Eighth Circuit held last year that death qualification of the guilt phase jury violates the Sixth Amendment right to a jury representative of the community. Grigsby v. Mabry (8th Cir. 1985) 758 F.2d 226. Moreover, in a footnote, the Eighth Circuit wrote that the Supreme Court's decision in Wainwright v. Witt (1985) 105 S.Ct. 844 does not affect its decision:

> **"Witt simply elaborates the meaning of the Witherspoon standard. It describes further the criteria for deciding whether a juror's opinions justify exclusion. It is not addressed to the separate problems addressed here: (1) whether a jury, once WEs are excluded, is conviction prone and therefore not impartial on the issue of guilt or innocence; [emphasis in original] and (2) whether a death qualified jury meets the cross-sectional [emphasis added] representation requirement of the sixth amendment [sic]. Some of the footnotes, at least in the dissenting opinion of Justice Brennan, do discuss these questions, but we do not read them as deciding it one way or the other."** Id. at 243, n.35.

Thus, at least one federal appeals court has held that death qualification violates Mr. Hunt's Sixth Amendment right to a representative jury drawn from a cross section of the community. Further opinions by the United States Supreme Court support this conclusion.

As Court opinions reveal, groups characterized by well defined attitudes or ideologies are a type of "recognizable distinct class," Casteneda v. Partida (1976) 430 U.S. 482, 494, that may not be excluded from juries without violating the cross section guarantee of the Sixth Amendment. In striking down a practice of excluding blacks from Grand Juries, a plurality of the Court in Peters v. Kiff, supra, examined whether that "exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented," id. 407 U.S. at 503-04, and stated:

> "Moreover, we are unwilling to make the assumption that the exclusion of Negroes has relevance only for issues involving race. When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable." Id. 407 U.S. at 503.

In condemning five person juries in Ballew v. Georgia, supra, the Court expressly recognized that diversity of viewpoints among jurors is important to the constitutional scheme "[b]ecause juries frequently face complex problems laden with value choices." Id. 435 U.S. at 233. Concurrent in Ballew, Justice White

agreed that "a jury of fewer than six persons would fail to represent the sense of the community and hence not satisfy the fair cross section requirement of the Sixth and Fourteenth Amendments." Id. 435 U.S. at 245. Lower Court opinions also make clear that the Sixth Amendment requires a spectrum of viewpoints: The Courts have refused to permit the systematic exclusion of atheists and agnostics, State v. Schowquorow, supra; State v. Madison (1965) 240 Md. 265, 213 A.2d 880, daily wage earners, Labat v. Bennett, supra, common laborers, Simmons v. State (Fla. Ct. App. 1966) 182 So.2d 442, and students People v. Attica Brothers (N.Y. Sup. Ct. 1974) 79 Misc.2d 492, 359 B.Y.S.2d 699.

In United States v. Butera (1st Cir. 1970) 420 F.2d 564, the Court found that adults from 21 to 34 constitute a cognizable group because of the "contemporary national preoccupation with a 'generation gap,' which creates the impression that the attitudes of young adults are in some sense distinct from those of older adults." Id. at 570. More recently, in State v. Jenison (R.I. 1979) 405 A.2d 3, the Supreme Court of Rhode Island held that the exclusion of "the president, professors, tutors and students of recognized universities and colleges" from jury service violated the "due process right of the criminal defendant to be indicted by an impartial grand jury drawn from a fair cross section of the community." Id. at 3, 8. Case law thus makes clear that groups shaped by a well defined attitude or ideology are an "identifiable group" for purposes of the Sixth Amendment. Moreover, as the Supreme Court reiterated in Apodaca v. Oregon, supra, the Sixth Amendment forbids "systematic exclusion of identifiable segments of the community from jury panels," because all groups

have "the right to participate in the overall legal process by which criminal guilt and innocence are determined." Id. at 413.

It also is clear that persons who have scruples against the imposition of the death penalty are a distinct opinion shaped group. In examining jury selection process, the question of "[w]hether . . . a group exists within a community is a question of fact." Hernandez v. Texas, supra, 347 U.S. at 478. The Court in Witherspoon expressly found that jurors with scruples against the imposition of the death penalty form a distinctive, coherent, and sizeable group in most communities from which juries are selected. The Witherspoon Court took judicial notice of a 1967 poll and concluded that "less than half" of the people in the United States believe in the death penalty. Id. 391 U.S. at 519-20.[4/]

Accordingly, the exclusion for cause of veniremen opposed to capital punishment violates the exacting standards of the Sixth Amendment. As the Court stated in Witherspoon, "one of the most important functions any jury can perform . . . is to maintain a link between contemporary community values and the penal system." Id. 391 U.S. at 519 n.15. For this reason, the systematic exclusion of death scrupled jurors for cause produces a wholly

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[4/] See Bronson, On the Conviction Proneness and Representativeness of the Death-Qualified Jury: An Empirical Study of Colorado Veniremen (1970) 42 U. Colo. L.Rev. 1. A 1973 Harris Poll showed that 31% of those surveyed answered "no" to the question, "Do you believe in capital punishment (death penalty)?" and 10% indicated they were "not sure." Louis Harris & Associates, Inc., The Harris Survey, June 11, 1978, at 1. See e.g., Vidmar & Ellsworth, Public Opinion and the Death Penalty (1974) 26 Stan. L.Rev.

different practical effect, and presently a wholly different legal question, than excuses for cause upon other commonly recognized grounds.

It is the proper duty of the jury, however, to express community attitudes about punishment in order to "reflect 'the evolving standards of decency that mark the progress of a maturing society.'" Witherspoon v. Illinois, supra, 391 U.S. at 519 n.15, quoting Trop v. Dulles (1958) 356 U.S. 86, 101. A jury can fulfill this duty only if it is selected from a panel that reflects a fair cross section of community sentiment regarding the death penalty -- the views of citizens with reservations about the death penalty as well as persons in favor of capital punishment. The jury's constitutional role therefore leaves no room for the exclusion of a group of veniremen for cause merely because they hold a particular view on the death penalty -- no matter what that view may be.

Depending on the location of the trial and the crime with which a defendant is charged, a particular panel may contain persons who favor the death penalty in appropriate cases, people who have reservations about the death penalty, or people who are unalterably opposed to the imposition of the death penalty in any case. But "a jury that must choose between life imprisonment and capital punishment can do little more -- and must do nothing less -- than express the conscience of the community on the ultimate question of life or death." Witherspoon, supra, 391 U.S. at 519. When a group of veniremen is successfully challenged for cause because of their views on the death penalty -- when a part of the community's "conscience" is deliberately excised from the

judicial process -- the defendant's Sixth Amendment interest in a jury "impartially drawn from a cross section of the community" is seriously impaired.

(C)

Defendant's Sixth and Fourteenth Amendment Interests in an Impartial Jury

The United States Supreme Court repeatedly has held that the denial of an impartial jury violates the due process clause of the Fourteenth Amendment. See e.g. Connally v. Georgia (1977) 429 U.S. 245 (per curiam); Irvin v. Dowd (1961) 366 U.S. 717; Tumey v. Ohio (1927) 237 U.S. 510. In Irvin, the Court reversed the conviction of a defendant tried after a six month barrage of prejudicial pretrial publicity. Justice Clark wrote at length for the majority on the constitutional mandate that the defendant be afforded an impartial jury:

> "In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. [Citations.] 'A fair trial in a fair tribunal is a basic requirement of due process.' [Citation.] In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as 'indifferent as he stands unsworn.' [Citation.] His verdict must be based upon the evidence developed at the trial.

> [Citation.] this is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in 1 Burr's Trial (1807). 'The theory of the law is that a juror who has formed an opinion cannot be impartial. [Citation.]" Id. 366 U.S. at 722, footnote omitted.

In Tumey, the Court held:

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law." Id. 273 U.S. at 532.

See also Connally v. Georgia, supra.

The Supreme Court also has found that the denial of an impartial jury violates the Sixth Amendment. A bailiff in Parker v. Gladden (1966) 385 U.S. 363, assigned to shepherd the sequestered jury, assured some of the jurors that the defendant was guilty and that if there was anything wrong in finding the defendant guilty the Supreme Court would correct the problem. Id. 385 U.S. at 363-64. The Court found the case to be "controlled by the command of the Sixth Amendment, made applicable to the States through the Due Process Clause of the Fourteenth Amendment." Id. 383 U.S. at 364. Since the defendant was denied his right to an impartial jury, his conviction was reversed. Id.; see also Turner v. Louisiana, supra, 379 U.S. 466; Gonzalez v. Beto (1972) 405

U.S. 1052.

Moreover, recent studies make clear that with respect to the determination of guilt, the exclusion of any group of veniremen on the ground of their scruples against capital punishment not only results in "an unrepresentative jury on the issue of guilt," but also "substantially increases the risks of conviction." Witherspoon, supra, 391 U.S. at 518. Thus, the defendant's Sixth and Fourteenth Amendment rights to an impartial jury are significantly impaired by death qualification.

(D)

Defendant's Eight Amendment Interest
In Having Contemporary Community Values
Reflected in the Capital Sentencing Process
Is Violated by Death Qualification

The Witherspoon Court based its analysis upon the need to maintain "a link between contemporary community values and the penal system -- a link without which the determination of punishment could hardly reflect 'the evolving standards of decency that mark the progress of a maturing society.'" Id. 391 U.S. at 519 n.15, quoting Trop v. Dulles, supra, 356 U.S. at 101 (plurality opinion). Trop is an Eighth Amendment case, and this reference to it in Witherspoon signifies the Court's recognition that the practice of death qualifying capital trial juries implicates Eighth Amendment concerns.

Other Supreme Court decisions reaffirm that the jury's ability to "'maintain a link between contemporary community values

and the penal system,'" Woodson v. North Carolina (1976) 428 U.S. 280, 295, has become an essential ingredient of any death sentencing procedure under the Eighth Amendment. In 1976, the Court held mandatory death penalty statutes unconstitutional, Woodson v. North Carolina, supra; Roberts v. Louisiana (1977) 431 U.S. 633, on the ground that they were incompatible with "contemporary values," Woodson v. North Carolina, supra, 428 U.S. at 395, as demonstrated by the results of discretionary jury sentencing. In Gregg v. Georgia (1976) 428 U.S. 153, 206, the Court plainly relied upon the notion that juries' reflections of contemporary community attitudes in regard to the propriety of capital punishment would keep infliction of the death penalty in line with the evolving standards of decency, which are the measure of the Eighth Amendment. The Court saw the jury's role as reflecting developing values not only on the question whether the death penalty should be inflicted at all, but also on the narrower question whether capital punishment is appropriate for "certain kind[s] of murder case[s]." Id.

There is a striking parallel between the jury's Sixth Amendment function "to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge," Taylor v. Louisiana, supra, 419 U.S. at 530, and the jury's Eighth Amendment capital sentencing function "to maintain a link between contemporary community values and the penal system." Woodson v. North Carolina, supra, 428 U.S. 280, 295 (plurality opinion), citing Witherspoon v. Illinois, supra, 391 U.S. 519, n.15. See also

Gregg v. Georgia, supra, 428 U.S. at 190 (plurality opinion). The close similarity between a defendant's Sixth and Eighth Amendment interests in juries reflecting contemporary community values appears again in the Court's recent Sixth Amendment decision in Ballew v. Georgia, supra. In condemning five person juries, the court recognized that overly small juries produce "incorrect application of the common sense of the community to the facts," id. 435 U.S. at 232, and that diversity of viewpoints among jurors is important to the constitutional scheme "[b]ecause juries frequently face complex problems laden with value choices." Id. 435 U.S. at 233.

Veniremen who hold conscientious or religious scruples against capital punishment or its use in particular kinds of cases bespeak widespread community attitudes toward the death penalty that are indicators of "evolving standards of decency" and guarantors that such standards will be honored when the jury exercises its discretion to accept or reject the imposition of the death penalty and to determine whether the death penalty is an appropriate sentence in any particular case. Juries selected by the systematic exclusion of every veniremen who will not impose a death sentence cannot possibly perform the vital constitutional function assigned to capital jurors by the Court's decisions in Gregg, Woodson, and the Roberts cases. Accordingly, death qualifying a jury substantially impairs a defendant's Eighth Amendment right to a jury reflecting contemporary community values on the issues of punishment.

2.

THE DEFENDANT'S INTERESTS OUTWEIGH ANY COUNTERVAILING INTERESTS OF THE STATE AND REQUIRE THE PROHIBITION OF DEATH QUALIFICATION

(A)

The Jury Should Not Be Death Qualified at the Guilt/Innocence Stage of a Bifurcated Trial

Whatever the merits, if any, of death qualification with respect to the penalty phase, there is no sufficient justification for such a procedure with respect to the guilt phase, since the State's interest in a death qualified jury can be satisfied by impaneling a new jury for the penalty phase. Thus, death qualification prior to the guilt phase abridges the defendant's fundamental rights to have a guilt jury, which is representative of a cross section of the community. Moreover, guilt phase death qualification constitutes an unreasonable method of criminal procedure in violation of due process of law, and denies the capital defendant equal protection of the law by treating him less favorably than other accused persons, simply on the basis of possible penalty.

The State's primary justification for death qualifying a capital jury is to acquire a jury that is capable of imposing the death sentence in an appropriate case. Whether or not this State interest is sufficient to overcome the interests of the sentencing jury, the question first arises whether the State is justified in death qualifying the jury that sits at the guilt/innocence stage of a bifurcated capital trial.

In Witherspoon -- a case arising even before the exacting requirements of the Sixth Amendment were incorporated into the Fourteenth -- the Supreme Court noted the possibility of accommodating the respective defense and State interests by death qualifying the jury only at the penalty stage of a bifurcated trial. Considering a claim that death qualified juries are prosecution prone, the Court explained that if a defendant established that a death qualified jury is less than neutral with respect to guilt, then:

> **"[T]he question would . . . arise whether the State's interest in submitting the penalty issue to a jury capable of imposing capital punishment may be vindicated at the expense of the defendant's interest in a completely fair determination of guilt or innocence -- given the possibility of accommodating both interests by means of a bifurcated trial, using one jury to decide guilt and another to fix punishment."** Id. 391 U.S. at 520 n.18.

As demonstrated above, the defendant's Sixth Amendment interest in a representative jury and his Sixth and Fourteenth Amendment interests in an impartial jury weigh heavily against the practice of death qualifying the jury at the guilt/innocence stage. The sole interests that the prosecution conceivably can assert in favor of death qualification at the guilt/innocence stage are that1) if death qualification is permissible at the penalty stage, it should also be permitted at the guilt/innocence stage in order to avoid the inconvenience and expenditure of impaneling two separate juries to hear the two separate stages; and

2) death qualification should be permitted at the guilt/innocence stage to prevent death scrupled jurors from "nullifying" the law by voting to acquit the defendant of the charge or its capital degree, in order to spare him from potential exposure to a death sentence. However, as the following discussion shows, neither of these purported State interests can justify infringing upon the defendant's constitutional rights by death qualifying juries at the guilt/innocence stage.

The Supreme Court of the United States has consistently held that **"the cost of protecting a constitutional right cannot justify its total denial."** Bounds v. Smith (1977) 430 U.S. 817. In Duren v. Missouri, supra, the Court invalidated a jury selection procedure that provided an automatic exemption for women that was unquestionably more convenient to administer than a system of inquiring of each prospective woman juror whether her individual situation presented valid grounds of excuse from jury service. In reaching a similar decision in Taylor v. Louisiana, supra, the Court explained that **"the administrative convenience in dealing with women as a class is insufficient justification for diluting the quality of community judgment represented by the jury in criminal trials."** Id. 419 U.S. at 535.

In its decision in Ballew v. Georgia, supra, the Supreme Court considered a comparable trade-off between an equivalent roster of defense jury trial interests and the State's interests in fiscal economy and administrative convenience. The Ballew Court identified several Sixth Amendment interests that were impaired by a trial with fewer than six jurors, balanced these interests against the interests of saving court time and financial

costs, and concluded that the State could not constitutionally justify the use of a five person jury. While no single defense interest was decisive, the defense interests in the aggregate were sufficient to outlaw the practice of employing juries with fewer than six members.

Here, to set against the defendant's substantial interests in avoiding death qualifying at the guilt/innocence stage, the State can claim only a modest interest in administrative convenience; if the State is not permitted to death qualify a jury until the penalty stage, and if it succeeds in excluding for cause at that stage a sufficient number of jurors and alternates to require a new jury for the penalty trial, then the State may have to reintroduce some part or all of the evidence that it previously presented at the guilt phase.[5/] As in Ballew, the defendant's substantial constitutional interests plainly outweigh the State's interests in effecting such a relatively small saving of court time and financial cost.[6/] This resolution of the balance in favor of the defendant's interests is even more compelling in a capital case than it was in the non-capital context of Ballew: The State has a lesser financial interest because capital trials are infrequent, and the defendant has a far greater stake in the

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[5/] Needless to say, this State interest vanishes if the State is not permitted to death qualify the jury at the penalty phase. See Argument 2(b), infra.

[6/] See also Estelle v. Williams (1976) 425 U.S. 501, 505 (distinguishing between essential State interests [restraining a contumacious defendant] and State interests in mere "convenien[ce]" [compelling a defendant to wear jail clothing]).

outcome of a capital case. Cf. Gardner v. Florida (1977) 430 U.S. 349, 359-60 (plurality opinion).

The only other legitimate State interest that can be asserted as a possible justification for death qualifying the jury at the guilt phase of a bifurcated capital trial is the concern that death scrupled jurors may "nullify" the law by voting to acquit the defendant of the charge, or its capital degree, in order to spare him from potential exposure to a death sentence. but this concern, at most, will justify the excuse for cause of veniremen who come within the second Witherspoon reservation: Those who make it "unmistakably clear . . . that their attitude toward the death penalty would prevent them from making an impartial decision as to the defendant's guilt." Id. 391 U.S. at 522-23 n.21, emphasis in original. It provides no justification at all for excusing prospective jurors under the alternative and more commonly invoked first point of Witherspoon, that "they would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before them." Id., emphasis in original. Surely, a venireman's possession of the attitude described under this first point does not make it "unmistakably clear" that he also possesses the second, as Witherspoon demands.

In the face of a defendant's significant Sixth Amendment interests, rough and approximate rules of thumb may not constitutionally be used to exclude "broad categories of persons from jury service" in lieu of questioning them with particularity to determine their fitness to serve. Duren v.Missouri, supra. Although "it may be burdensome to sort out those" whose attitudes

on penalty would make them unfair triers of guilt, this burden must be borne before the State is entitled to invoke the danger of nullification as a basis for excluding veniremen who -- upon properly directed and specific inquiry -- may not pose this imagined danger at all. Taylor v. Louisiana, supra, 419 U.S. at 535.

(B)

The Jury Should Not Be Death Qualified at The Penalty Stage of a Bifurcated Trial

The defendant's Sixth, Eighth, and Fourteenth Amendment interests in a representative, impartial jury capable of reflecting contemporary community values in the capital sentencing process are all vitally compromised by the practice of death qualifying jurors at the penalty stage of a capital trial. Calling from the venire all prospective jurors with scruples against the death penalty excludes a distinct, coherent, and sizeable group in most communities, leaving the jury unrepresentative and "diluting the quality of community judgment." Taylor v. Louisiana, supra, 419 U.S. at 535. It produces a jury that is more punitive and more likely to identify with the prosecution, in derogation of the defendant's rights to have an impartial jury. By removing a segment of the community that has a prevalent, whether or not prevailing, view about the death penalty, it severs the "link between contemporary community values and the penal system" that is indispensable to assure the defendant's protection against the infliction of unduly harsh punishment.

The prosecution, of course, will contend that balanced

against these interests of the defendant is a very substantial State interest in having a jury capable of "obeying the law" and imposing the death penalty in every "appropriate case." However, as the following discussion will show, the defendant's interests in avoiding death qualification at the penalty stage should prevail.

The defendant has a fundamental right to an impartial jury reflecting community values -- a right that cannot be "balanced away" regardless of what State interest is present. Cf. Mayer v. City of Chicago (1971) 404 U.S. 189, 196-97. Witherspoon's prohibition against allowing the selection of a jury which is "organized to return a verdict of death," id. 391 U.S. at 521, is an absolute prohibition that must be respected no matter what State interest is set against it, for the simple reason that the State can have no constitutionally cognizable interest in inflicting punishment unconstrained by the safeguards that alone keep punishments fair and decent. The Court in Witherspoon expressed this basic principle in uncompromising terms:

> "[A] State may not entrust the determination of whether a man should live or die to a tribunal organized to return a verdict of death." Id. 391 U.S. at 521-22, emphasis added.
>
> "[T]he decision whether a man deserves to live or die must be made on scales that are not deliberately tipped toward death." Id. 391 U.S. at 521-22 n.20, emphasis added.
>
> "Whatever else might be said of capital punishment, it is at least clear that its imposition by a

hanging jury cannot be squared with the Constitution." Id. 391 U.S. at 523, emphasis added.

The defendant's interest is thus fundamental and absolute. For what interest could be more fundamental than the right to an unbiased determination of whether one will live or die?

Moreover, proper analysis of Witherspoon reveals that that decision ultimately rests upon principles drawn from the Eighth Amendment's cruel and unusual punishment clause. Since the cruel and unusual punishment clause reflects a categorical limitation upon society's right to impose punishment, no State interest should be permitted to justify a capital sentencing procedure that avoids the restraints of this basic and unyielding prohibition.

Even assuming, arguendo, that the competing interests of the State and the defendant may be balanced, death qualification at the penalty stage should not be permitted because this balance can only be struck in favor of the defendant's interests in avoiding death qualification. The State asserts an interest in obtaining a jury that will "obey the law" and impose the death penalty in every "appropriate case." But, under the death penalty statutes of most States, a juror "obeys the law" and determines whether or not the case before him is an "appropriate case" for capital punishment by exercising a discretion that is so far reaching and inveterately subjective that it necessarily responds to the juror's own attitudes and principles regarding fit punishment as much as to the facts of the case.

In this setting and this sense only does the State have an interest in obtaining a jury that will comply with the law --

that is, with the State's current, constitutional death penalty status -- and impose the death penalty in what the juror finds to be an "appropriate case." But a venireman with conscientious and principles, even inflexible, scruples against the death penalty is not incapable of complying with the law under such a statutory scheme. For principled opposition to the death penalty takes a variety of forms.

Any juror who considers a case and concludes that it does not warrant the extreme penalty is -- unless he acts in the wholly arbitrary and capricious manner forbidden by Furman v. Georgia, supra -- acting pursuant to some principle of broader or narrower scope, which decrees that death is not an acceptable punishment in the case. The State does not purport to dictate the shape of the governing principle; it does not, and constitutionally cannot require the death penalty in any case; and, while it may offer the juror some non-mandatory guidelines, and may even forbid the application of the death penalty unless certain facts (i.e., "aggravating circumstances") are found, it does not (and, once again, it constitutionally cannot) undertake to limit the juror's plenary authority to spare the defendant in any case or according to any principle.

How then can it tax a venireman with failure or inability to obey the law merely because the venireman acts, or says he will act, according to the broadest principle, and will spare the defendant in every case since neither that case nor any other merits capital punishment in his view? This venireman's judgment that the present case does not warrant a death sentence is no less responsible, no less considered, and no less obedient to the

law, for being responsive to the particular principle that he follows. Obviously, his conclusion that the death penalty should never be imposed embraces the judgment that it should not be imposed in the case at bar; and the latter judgment is one that the State leaves jurors free to make in the uninhibited exertion of any other principle or none at all.

Under a statutory scheme of this sort, it is dubious that the State can claim any interest in forbidding jurors to sit who would never inflict the death penalty, while permitting jurors who do sit to refuse to inflict it under principles of lesser universality but equal freedom from direction by applicable legal rules. To put the issue another way, the State's interest in excluding death scrupled veniremen in order to obtain a jury that will **"obey the law"** is either hollow or entirely circular when the only "law" involved prescribes nothing and forbids nothing except having scruples. but even if the State is deemed to have an interest in this dimension, it is surely not a weighty interest or an interest that can prevail against the far more substantial interests of the defendant, which are trammeled by death qualifying the jury at the penalty phase. Under any balancing test worthy of the name, such death qualification should be forbidden.

3.

CONCLUSION

Jurors with scruples against imposition of the death penalty form a coherent and sizeable group in most communities from which

juries are selected. As the Supreme Court declared in Witherspoon v. Illinois, supra, this group is composed of persons who have similar views upon an important and controversial social issuer and "who have charity." 391 U.S. at 520 n.17, quoting Koestler, Reflections on Hanging (1956) 166. It is unclear how large this class is, but it is clearly sizeable. In Witherspoon, the Supreme Court took judicial notice of a 1967 pool in the International Review on Public Opinion and concluded that "less than half" of the people in the United States "believe in the death penalty." 391 U.S. at 520. A 1969 Gallup Poll showed that 40% of those interviewed said they opposed imposition of the death penalty, while a 1973 Harris Poll showed that 31% of those surveyed answered "No" to the question: "Do you believe in capital punishment (death penalty)?" and 10% indicated they were "not sure."

Thus, when veniremen opposed to the death penalty are excluded, the issue before the Court is whether exclusion of this identifiable segment of the community may be justified. Jurors who tend to favor capital punishment are significantly more "likely" than their scrupled counterparts to convict. See studies by Jurow, Bronson and Harris, cited and discussed in White, The Constitutional Invalidity of Convictions Imposed by Death Qualified Juries (1973) 58 Cornell L. Rev. 1176, 1182-86. The more a prospective juror favors capital punishment, the more likely he is to have general attitudes contrary to the principle of impartiality -- politically conservative, authoritative, punitive, and an inability to tolerate deviant behavior. See studies by Harris, Boehm, and Crosson, cited and discussed in White,

supra, at 1185.

Jurors tending to favor capital punishment have attitudes on specific phenomena that compromise their impartiality: ready identification with the prosecution's efforts to punish; hostility to low sociological status; improper prejudices against the insanity defense and constitutional protections of the accused; and a tendency to distrust defense counsel and trust the prosecuting attorney. See generally White, supra, at 1185. Jurors opposed to capital punishment are not spread randomly throughout the population, but are concentrated within certain definable groups -- blacks, women, unskilled workers, Jews, and those with low income -- which would be disproportionately affected by exclusion. See Harris, Zeisel, cited and discussed by White, supra, at 1179 n.17, 1185.

Based on these and related social scientific studies, the defendant argues that with respect to the determination of guilt, the exclusion of any group of veniremen with some degree of opposition to capital punishment not only results in **"an unrepresentative jury on the issue of guilt,"** but also **"substantially increases the risk of conviction."** 391 U.S. at 518. See generally White, supra, 1188-1201. Moreover, the defendant argues that by removing a group opposed to capital punishment only in capital cases, the State is creating an invidious classification that can be justified only by a compelling State interest. See White, supra, at 1201-05. Thus, death qualification violates State and Federal due process and equal protection guarantees, United States Constitution, Fourteenth Amendment; California Constitution, Article I, Sections 7(a), 15, by abridging a defendant's

fundamental right to jury trial at the guilt stage without any sufficient justification. Grigsby v. Mabry, supra.

Based on the foregoing, the defendant respectfully requests that this Court grant his Motion to Prohibit Voir Dire on the Death Penalty.

DATED: October 25, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On October 29, 1986, I served the foregoing document described as NOTICE OF MOTION AND MOTION TO PROHIBIT VOIR DIRE ON THE DEATH PENALTY on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Frederick Nathan Wapner
Deputy District Attorney
1725 Main St.
Santa Monica, CA 90401

Jeffrey Brodey, Esq.
Brodey & Price
9777 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212-1901

Brian L. Greenhalgh
8484 Wilshire Blvd., Suite 220
Beverly Hills, CA 90211

I caused such envelope to be hand delivered to the office of the prosecutor herein; and, to the remaining addressees, I caused such envelope with postage thereon fully prepaid to be placed in the United States mail 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, 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 October 29, 1986.

Gabriela Chagollo

2 TRL/MOT **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES** 1353

Date NOVEMBER 04 1986 DEPT. WEC

HONORABLE: L J RITTENBAND JUDGE D TSCHEKALOFF Deputy Clerk

203 P QUINN Deputy Sheriff R GOODBODY Reporter

CASE NO. A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People: DEPUTY DISTRICT ATTY: F. WAPNER

VS

CHARGE 01 HUNT JOE AKA 01 GAMSHY JOSEPH HENRY Counsel for Defendant: A BARON-CHEIR

(BOX CHECKED IF ORDER APPLICABLE) 187 01CTS 211 01CTS

NATURE OF PROCEEDINGS TRIAL BL 04-04-85

31 ☐ _____ IS SWORN AS THE ENGLISH/_____INTERPRETER.

32 ☐ OATH FILED PER SECTION 68560 GOVERNMENT CODE.

33 ☐— DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED. PURSUANT TO SECTION 987.2 PENAL CODE/31000 GOVERNMENT CODE ALTERNATE DEFENSE COUNSEL_____IS APPOINTED.

34 ☐ ON PEOPLE'S MOTION, AMENDMENT TO/AMENDED INFORMATION FILED/DEEMED FILED/INFORMATION AMENDED BY INTERLINEATION/AS FOLLOWS_____

35 ☐— ON_____MOTION, CASE A _____CONSOLIDATED INTO CASE A _____AS COUNT(S) _____ THEREOF. SEE CASE A _____FOR FURTHER PROCEEDINGS.

36 ☐ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

37 ☐— MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING ☐ MOTION SUBMITTED PER STIPULATION 41 BELOW.

38 X ☐ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS: WAIVES RIGHTS; ADMITS PRIOR(S) NO____

39 X— CAUSE IS CALLED FOR TRIAL. ☐ CAUSE SUBMITTED PER STIPULATION 41 BELOW.

40 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY_____ COURT ACCEPTS WAIVER(S).

41 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for indentification at the preliminary hearing are received in evidence and marked for indentification in these proceedings, bearing the same number as used in the preliminary hearing, subject to this court's rulings. People's exhibit _____ (Preliminary Transcript) admitted into evidence by reference.

42 ☐ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien/citizenship/probation/parole status.

43 ☐— THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.

44 X Defendant's motions to prohibit voir dire on the death penalty, for separate special circumstances phase and for separate penalty phase jury are heard, argued and denied. Further per-trial motions are continued to November 5, 1986 at 10:30 a.m. in Department WEST C.

45 ☐— ALL SIDES REST. COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.

46 ☐ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

47 ☐— COURT FINDS DEFENDANT NOT GUILTY.

48 ☐ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S)_____ IN COUNTS(S)_____ ☐ LESSER INCLUDED/RELATED OFFENSE.

49 ☐— PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO _____

50 X ☐ ☐ THE DEFENDANT ☐ THE PEOPLE ANNOUNCE(S) READY FOR TRIAL.

51 X— ON PEOPLE'S/DEFENDANT'S/COURT'S MOTION, TRIAL/MOTION(S) IS SET/CONTINUED TO/REMANDED/TRAILED TO 11-5-86 AT 10:30 A.M. IN DEPT. WEC REASON: further preparation on pretrial Motns

52 — ☐ FURTHER CONTINUANCES WILL NOT BE GRANTED.

53 ☐— DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL. PLUS_____DAYS

54 ☐ CAUSE TRANSFERRED TO DEPT._____☐ FORTHWITH ☐ ON _____AT_____A.M. FOR_____

55 ☐— DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE:_____

56 ☐ DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) _____REARRAIGNED.

57 ☐— PLEADS GUILTY/NOLO CONTENDERE, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTIONS(S)_____ IN COUNT(S)_____ ☐ LESSER INCLUDED/RELATED OFFENSE.

58 ☐ DEFENDANT REFERRED TO PROBATION DEPARTMENT. ☐ DEFENDANT WAIVES TIME FOR SENTENCE. PROBATION AND SENTENCE HEARING SET _____AT_____A.M. IN DEPARTMENT _____ INCLUDING ☐ DISPOSITION OF COUNT(S) _____REMAINING ☐ DETERMINATION OF PRIORS ALLEGED/DEGREE/ARMED/USE/GREAT BODILY INJURY ALLEGATION(S)

59 ☐— DEFENDANT WAIVES PROBATION REFERRAL. REQUESTS IMMEDIATE SENTENCE. (SEE SENTENCE BELOW/SEE ATTACHED SHEET.)

60 ☐ FURTHER ORDER AS FOLLOWS:_____

61 ☐ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT _____TELEPHONE CALLS AT DEFENDANT'S OWN EXPENSE.

62 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE.

63 ☐ BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL _____

64 ☐ NO BAIL ☐ BAIL FIXED AT $_____

65 ☐ DEFENDANT APPEARING. BENCH WARRANT ORDERED RECALLED/QUASHED( )RECALL NO._____WRITTEN ( )ABSTRACT FILED

66 ☐— UPON PAYMENT OF $_____COSTS BEFORE_____AND FILING OF REASSUMPTION, ORDER OF _____FORFEITING BAIL IS TO BE VACATED AND BAIL REINSTATED.

67 ☐ REASSUMPTION FILED/COSTS PAID (RECEIPT NO. _____)ORDER OF_____FORFEITING BAIL VACATED. BAIL REINSTATED.

68 ☐— DEFENDANT'S MOTION FOR RELEASE ON O.R./REDUCTION OF BAIL IS GRANTED/DENIED/SET/CONTINUED TO/_____ REASON:_____

69 ☐ BAIL RESET AT $_____

☐ REMANDED ☐ BAIL ☐ BAIL EXONERATED ☐ BOND NO._____

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER

MINUTES ENTERED NOV 04, 1986 COUNTY CLERK

76 C779-C144 (Rev. 1-85) 2-86 MINUTE ORDER ☐ BENCH WARRANT

2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 5, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

MOTIONS AND TRIAL (JURY) BAIL 4-4-85

The case is called for hearing. Defendant's motion for a daily transcript is granted.

Defendant's motion for questionnaire to be completed by the prospective jurors is argued and denied by the Court. Motion by defense counsel to limit voir dire of prospective jurors is withdrawn. Defense motion for a Livesay Hearing is continued to November 10, 1986, at 10:30 a.m. per stipulation of Court and counsel.

A panel of 143 prospective jurors is sworn as to their qualifications to act as trial jurors. Approximately half of the prospective jurors claim hardship. The remaining jurors are excused until November 13, 1986, at 10:30 a.m. in Department WEST C.

In chambers approximely half of the panel claiming hardship are individually questioned with counsel, defendant and court reporters present. If extreme hardship is found to be true on stipulation of counsel the Court excuses the jurors. Where no hardship is found to be true the interviewed jurors are excused until November 13, 1986, at 10:30 a.m. in Department WEST C. The panel remaining to be interview as to their claimed hardwhip is excused until November 6, 1986, at 10:30 a.m. in Department WEST C.

The trial is continued to November 6, 1986, at 10:30 a.m. in Department WE C.

BAIL

DEPT. WE C

MINUTES ENTERED
11-5-86
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 6, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 5, 1986, with defendant, counsel and prospective jurors present.

An additional panel of 31 prospective jurors are called and sworn as to their qualifications to act as trial jurors.

The trial is continued to November 10, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-6-86
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 10, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 6, 1986, with counsel and defendant present.

Defendant's motion for discovery is heard and argued. An in-camera hearing is set and the motion is taken under submission.

In chambers with defendant and counsel present, voir dire is continued with a single juror at one time.

The trial is continued to November 12, 1986, at 10:30 a.m. in Department WE C.

BAIL

DEPT. WE C

MINUTES ENTERED
11-10-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 12, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	C. NORRIS/P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 10, 1986, with defendant and counsel present.

Defendant's motion for Livesay hearing and for Court's striking of the death penalty is heard. Curt Livesay is sworn and examined by the defense. The matter is argued and taken under submission.

Court's exhibits 2 (10 photocopied pages from District Attorney operating manual), and 3 (8 photocopied pages of Memorandum to Denis Petty dated July 8, 1985), are received in evidence.

In chambers court and counsel review further jury questions.

The trial is continued to November 13, 1986, at 10:00 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-12-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 13, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 12, 1986, with counsel and defendant present.

The Counrt rules as follows on the motion to strike the death penalty by the defense. The Court finds the Livesay decision to seek the death penalty is not random nor arbitrary and denies the defendant's motion.

The defense motion to inquire into the Jury Services Division's manner of selecting prospective jurors for the West District is partially heard and continued for further preparation to November 19, 1986, at 10:00 a.m. in this Department. Raymond Arce is ordered to return at the above time.

Voir dire is continued but not concluded. The trial is continued to November 17, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-13-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 1359 WE C

Date:	NOVEMBER 17, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 13, 1986, with counsel, defendant and prospective jurors.

Defendant's motion to exclude journalists is heard and continued until November 18, 1986, at 10:30 a.m. for additional argument from counsel for the journalists. The Court excludes the journalists until the 10:30 a.m. hearing.

Voir dire is continued with an additional panel of 73 jurors.

The trial is continued to November 18, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-17-86
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C

Date:	NOVEMBER 18, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA

VS

01 HUNT, JOE

187. 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 17, 1986, with defendant and counsel.

Defendant's motion to exclude press and public is heard. Stephen G. Contopululos, counsel for the Daily News, argues against the motion. The motion is denied.

Individual voir dire on the death penalty is continued.

Trial is continued to November 19, 1986, at 10:00 a.m. in Department WE C.

BAIL

DEPT. WE C

MINUTES ENTERED
11-18-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 19, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 18, 1986, with defendant and counsel present.

The defense motion to inquire into the lawful manner in which the Jury Services Division selects prospective jurors for the West District is resumed from November 13, 1986.

Raymond Arce is sworn and examined by the defense. Defendant's exhibits A (photocopy of Jury Summons frontispiece), A1 (photocopy of Identifying Information), A2 (photocopy of Statues and Rules Application to Jury Service), A3 (photocopy of letter to Citizen from Superior Court), A4 (photocopy of General Information), B (photocopy of Prospective Juror Affidavits Mailed), B1 (photocopy of Breakdown of Persons Excused from Jury Service by Category), and C (three photocopied pages of Demographic Characteristics - Santa Monica Superior Court) are marked for identification only.

The defense motion is continued to November 24, 1986, at 1:45 p.m. in Department WEST C.

Individual voir dire of prospective jurors is resumed.

The trial is continued to November 20, 1986, at 10:30 a.m. in Department WE-C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-19-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 20, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE ✓
187.01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER ✓

Counsel for Defendant:
A. BARENS ✓
R. CHIER ✓

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 19, 1986, with defendant and counsel present.

Individual voir dire of prospective jurors is resumed.

The trial is continued to November 24, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT WEST C

MINUTES ENTERED
11-20-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 24, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN/W. FINDON	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: R. CHIER
A. BARENS

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 20, 1986, with defendant and counsel present.

Invidividual voir dire of prospective jurors is resumed.

Out of the presence of the jurors, defense motion to inquire into the lawful manner in which the Jury Services Division selects prospective jurors is resumed from November 19, 1986. Raymond Arce, previously sworn, continues to testify. The matter is continued for argument to an unspecified date.

The trial is continued to November 25, 1986, at 1:30 p.m. in Department WE C.

BAIL

DEPT. WE C

MINUTES ENTERED
11-24-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 136 WE C

Date:	NOVEMBER 25, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/P. BUCHANAN	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS

01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS: TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 24, 1986, with defendant and counsel present.

On People's motion an in-chambers conference is held. Pursuant to stipulation of counsel, the Court orders the Official Court Reporters' notes sealed until further order of Court. All present are ordered to maintain strict secrecy of all matters discussed in chambers.

Later counsel for co-defendant, Jeff Brodey, is informed of the above matters in chambers. He is ordered to maintain secrecy.

Voir dire of individual prospective jurors is resumed.

The trial is continued to November 26, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-25-86
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	NOVEMBER 26, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	W. FAIRBANKS	Deputy Sheriff	S. YERGER/P. BUCHANAN	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
R. CHIER
A. BARENS

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 25, 1986, with defendant and counsel present.

Individual voir dire of prospective jurors is resumed.

The trial is continued to December 1, 1986, 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
11-26-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 1, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA

VS

01 HUNT, JOE

187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BAREN
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from November 26, 1986, with defendant and counsel present.

Individual voir dire of prospective jurors is resumed.

The trial is continued to December 2, 1986, 10:30 a.m. in Department WEST C.

BAIL

DEPT. WE C

MINUTES ENTERED
12-1-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 1367 WE C

Date:	DECEMBER 2, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN/D. WILLIAMS	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS, R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 1, 1986, with defendant and counsel present.

Individual voir dire of prospective jurors is resumed.

The trial is continued to December 3, 1986, at 10:00 a.m. in Department WEST C.

BAIL

DEPT. WE C

MINUTES ENTERED
12-2-86
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date: DECEMBER 3, 1986

HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 2, 1986, with defendant and counsel present.

Individual voir dire of prospective jurors is resumed.

A new panel of 73 prospective jurors are sworn as to their qualifications.

The trial is continued to December 4, 1986, at 10:00 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-3-86
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 4, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 3, 1986, with defendant and counsel present.

The Court conducts a hearing as to the indigency status of the defendant. The Court finds that the defendant is indigent.

Individual voir dire of prospective jurors is resumed.

The trial is continued to December 8, 1986, at 10:00 a.m. in Department WEST C.

BAIL

DEPT. WE C

MINUTES ENTERED
12-4-86
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 8, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER/R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 4, 1986, with defendant and counsel present.

Individual voir dire of prospective jurors is resumed.

Pursuant to the Los Angeles Times story of December 7, 1986, listing matters which have heretofore been secret with the Court's order of November 25, 1986, forbidding parties to discuss these matters, the Court lifts the gag order relating to the matters cited in the Los Angeles Times.

The trial is continued to December 9, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-8-86
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C 1371

Date:	DECEMBER 9, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 8, 1986, with defendant and counsel present.

The Court and counsel review appropriate jury voir dire questions. People's motion in liminie as to reference to prosecution witness Dean Karny's possible connection with an unsolved Hollywood murder is heard, argued and granted.

The trial is continued to December 10, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-9-86
COUNTY CLERK

76M 413L C 120.4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.**

Date:	DECEMBER 10, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

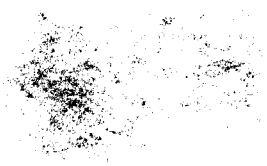
TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 9, 1986, with defendant and counsel present.

Voir dire is continued.

The jurors are admonished and the trial is continued to December 11, 1986, at 10:30 a.m. in Department WEST C.

BAIL



DEPT. WEST C

MINUTES ENTERED
12-10-86
COUNTY CLERK

76M 413L C 120 4-83

MINUTE ORDER

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, Defendant.	**Case No. A090435** **MOTION FOR DISQUALIFICATION OF TRIAL JUDGE; DECLARATION OF RICHARD C. CHIER; POINTS AND AUTHORITIES**

Pursuant to the provisions of Section 170.1(6) defendant, JOE HUNT, moves to disqualify the Hon. Laurence J. Rittenband, Judge of the Superior Court, from presiding over any further proceedings in the case entitled and numbered PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, Defendant, No. A090435.

Said Motion is made upon the ground that Laurence J. Rittenband is biased and prejudiced toward Richard C. Chier, defendant Hunt's co-counsel of record, and, further, that said bias and prejudice on the part of the judge sought to be disqualified is:

1. Depriving defendant of effective assistance of counsel; and

2. Depriving defendant due process of law.

Said Motion is based upon the Reporter's Transcript in the within case; upon Section 170.1 of the Code of Civil Procedure; upon the attached moving papers and Declaration of Richard C. Chier; and upon such further oral and/or documentary evidence that may be presented at the hearing hereof.

DATED: December 10, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

STATEMENT OF DISQUALIFICATION

RICHARD C. CHIER declares and states:

1. I am an attorney at law, a member in good standing of the State Bars of New York and California; I am a Certified Criminal Specialist; I have been Certified since approximately 1979; I am admitted to practice before numerous Federal District Courts and Circuit Courts of Appeal both in and out of this District; and I am co-counsel of record for defendant, JOE HUNT.

2. I have been practicing criminal law for approximately 20 years, during which time I have never been held in contempt of Court by any judge of any Court of Record in the Municipal, Superior, or Federal District Court within Southern California or elsewhere.

3. During the time I have been engaged in the practice of law I have never previously filed an Affidavit of actual bias against any Municipal or Superior Court judge. During the approximately 20 years I have been practicing I have filed less than six peremptory challenges against judges to whom I have been assigned and I have never before publicly criticized any judge before whom I have appeared whether or not such criticism may have been warranted.

4. Within the last year I have been rated aV by Martindale Hubbell, publisher of a National Lawyers Directory.

5. In approximately March of 1985, my co-counsel and partner, Arthur H. Barens, requested that I assist him as co-counsel in the within case entitled PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, Defendant, No. A090435, in which case Mr.

Hunt had recently been held to answer for murder with an allegation of special circumstances.

6. Between approximately June 27, 1985, and November 4, 1986, a number of appearances were made by myself either alone or together with Mr. Barens before the Hon. Laurence J. Rittenband, Judge presiding in Department C of the West Branch of the Superior Court.

7. During these various appearances at which time Motions were argued and continuances sought and obtained, I can recall no incidents occurring which indicated in any way that the judge sought to be disqualified harbored the extreme bias or prejudice which has manifested itself between November 4th and the present time on a continuing and escalating basis.

8. On my last court appearance before Judge Rittenband prior to November 4th, he demonstrated a lack of patience with respect to my request for additional time based upon the death of my mother with whom I was extremely close, but this incident, by itself, I did not consider of particular significance.

9. Unfortunately, however, commencing November 4, 1986, and continuing until the present time, without abatement, moderation, or surcease, Judge Rittenband's deportment toward me has been intemperate, abusive, undignified, discourteous, disrespectful, unprofessional, and unfair, at the very least.

10. Moreover, Judge Rittenband has acted in derogation and/or contravention of the standards relating to the function of the trial judge as approved and promulgated by the House of Delegates of the American Bar Association in Part 1 thereof, in that:

(a) He has not conducted the proceedings in the within

case with unhurried and quiet dignity;

(b) He has failed to give this particular case individual treatment;

(c) His decisions have not always been based on the particular facts of this case;

(d) He has been insensitive to the important role of defense counsel; and

(e) His conduct toward defense counsel has failed to manifest professional respect, courtesy, and fairness.

11. The intemperate, abusive, and unprofessional conduct toward Richard C. Chier can be segregated into the following groups or classifications: Interruptions; Conduct Demeaning Mr. Chier in the Presence of Prospective Jurors; Insensitivity to the Role of Richard C. Chier in the Within Case; Declared Preferences for Chier's co-counsel on Numerous Occasions; Refusals to Allow Richard C. Chier to Make a Record; Silencing, Muzzling, or Disregarding Richard Chier's Attempts to Speak; Continued Grimacing and Making of Sour Faces; Judging the Instant Case on Facts and/or Factors Present in Another Case; and Other Miscellaneous Examples of Intemperate, Abusive, and Contempt for your Declarant.

12. The following are some of the more egregious examples of the manner in which the trial judge has deported himself toward defense counsel.

1.

INTERRUPTIONS

(1.1)

After summarily refusing to conduct a Motion to Quash the Venire, the trial judge repeatedly interrupted defense counsel and prohibited him from making a coherent record. [R.T. 32:26; 58:1; 58:4; 78:1; 78:4; 78:10; 78:16; 78:20; 78:25; 79:3; 79:6.]

(1.2)

While trying to address the Court defense counsel was cut off eight separate times [R.T. 78:1 - 79:6].

(1.3)

Other examples of the Court's foreclosing discourse by interruption of defense counsel may be found at: [101:18; 327:11; 336:18; 558:8; 555:14; 562:22; 563:20; 735:16; 1176:2; 1176:4; 1176:16; 1176:19; 1186:25; 1189:16; 1243:14; 1412:23; 1413:5; 1427:14; and 1911:9].

(1.4)

After asking to be allowed to finish his sentence, the trial court ordered defense counsel to sit down [555:14] and continued to interrupt defense counsel [562:22; 563:20; 735:16].

2.

DEMEANING COUNSEL IN THE PRESENCE OF PROSPECTIVE JURORS

During the death qualification of the jurors known as Hovey Voir Dire, the Court repeatedly chastised, demeaned, and ridiculed counsel in the presence of the prospective jurors.

(2.1)

For example, in the presence of prospective juror Agsaoay, Judge Rittenband told defense counsel to **"shut up"** [695:8].

(2.2)

In the course of the Voir Dire of the same prospective juror the judge subsequently told defense counsel to sit down and speak only through co-counsel, Barens [709:21].

(2.3)

At one point defense counsel said, **"Excuse me, please,"** in response to which the judge said, **"Listen, your sit down. I have got him. Mr. Barens is now questioning the juror. I don't want to have both you."**

(2.4)

Thereafter defense counsel was commencing to Voir Dire prospective juror Mrs. Anderson, whom defense counsel had never met nor spoken to and after engaging in some preliminary formalities, the Court snapped: **"Let's dispense with salutations,"** [741:21].

(2.5)

While Voir Diring prospective juror Blevins, the judge ordered his Bailiff to **"put him [Chier] down"** and threatened to have counsel arrested unless he sat down [785:12].

(2.6)

Thereafter in the course of Voir Diring prospective juror Borne, the trial judge hurried defense counsel [810:6]; argued in front of juror Borne [812:9] interrupted counsel and told him to change the subject [816:12]: **"Let's go on, will you?"** [825:17].

(2.7)

Also during the Voir Dire of prospective juror Borne the Court preempted counsel's questions [827:6; 827:13; 827:21] and in the presence of the same juror refused to allow defense counsel to make a record [830:16].

(2.8)

Subsequently, in the course of introducing himself to prospective juror Camire, the judge resorted to abusive language and manifested low regard for counsel [880:13 - 882:3].

(2.9)

In the course of examining prospective juror Clements, the trial judge engaged in sarcasm [902:4]; displayed distemper in her presence [905:28]; characterized a question of defense counsel's as "silly" [909:26]; refused to allow counsel to make a Motion out of the presence of this juror until he finished with her [910:25] all of which projected a feeling of ill will of the Court toward defense counsel.

(2.10)

In the presence of the same prospective juror, Clements, defense counsel was treated by the trial judge as if he believed him to be stupid. Commencing on page 917, line 2, defense counsel asked the prospective juror a judicially approved question (the Court interrupted and said, "This is the proper way to ask a 'consider' question: You will hear at the penalty phase that the age of the defendant, so on, are matters you could properly consider, and would you follow that." "Ask them in that way. That will be perfectly all right." [854:23.] The Court went on to say if the question were asked in that way he would not butt in

[855:2] however, at page 918, line 3, the judge did interrupt and although the prospective juror found age irrelevant the judge continued interrupting and meddling with defense counsel who was attempting to establish the ground work for a challenge for cause.

(2.11)

Finally, the Court accepted the juror without even hearing defense counsel's challenge [920:10].

(2.12)

In the presence of prospective juror Clews, the Court scorned defense counsel [937:3]: **"Forget that will you!"** "You **don't have to go any further"** [938:25].

(2.13)

In the presence of prospective juror Coddington the Court impatiently scolded defense counsel: **"Would you please ask relevant questions"** [1035:24]; and disallowed the scruples introduction calculated to rehabilitate this prospective juror.

(2.14)

Finally, in the presence of prospective juror Faso, the Court again became impatient with defense counsel and stated:

"You're just wasting a lot of time" [1065:18]; and in the case of prospective juror Galston, the Court arrogated unto itself the unsolicited questioning for defense counsel [1140].

(2.15)

Venireman Ghebrial: four interruptions and scorn. This occurs in four places in succession on one page [1176:2; 1176:4; 1176:16; and 1176:19] and scorn and interrupt [1186:25].

(2.16)

Venireman Hadlock: Chier be quiet [1246:27]. "Are you going to be quiet, I want you to be quiet" [1247:3].

(2.17)

Hadlock: Verbal fight in front of [1248:14].

(2.18)

Harsh gratuitous comment from Court to Richard C. Chier [1295:24].

(2.19)

Venireman Hoffer: Richard Chier asks model age question; Court objects. On age [1338:19]. Hoffer proves questions

worthwhile when says age is immaterial at 1339:8 as far as she is concerned.

(2.20)

Venireman Galston: Juror corrects judge after judge interrupts Richard Chier. [1120:8] Judge interrupting to tell the juror **"That is not the law."** Juror responds, **"But he is asking me a different question."**

(2.21)

Venireman Kauzor: Interrupting counsel's line of development to instruct juror on the penalty phase.

(2.22)

Badgers counsel off his line of inquiry. **"Will you get on, will you?"** [1446:15].

(2.23)

Exchange showing hostility in front of juror [1448:17]. Denies Richard Chier the right to approach side bar to keep argumentative exchange from juror's ears. Tells him instead "Let's get on, will you?" [1448:15].

(2.24)

Court warns defense counsel, **"That is all. Sit down"** [1450:15].

(2.25)

Venireman Knight: Judge tells defense counsel, **"You are just wasting time"** [1472:13].

(2.26)

Venireman Kossove: Court talks over defense counsel for a page [1517:7] and sustains own objection [1521:13].

(2.27)

Bitter attack on defense counsel in front of Venireman Mickell [1630:24]. **"Will you please get to the questions? We have had this dialogue of yours for quite a while. Now, let's get to the questions . . . will you please"** [1630.27].

(2.28)

Venireman Nitz: Harsh **"Will you be quiet a minute"** in front of juror [1648:7].

(2.29)

Venireman Stroup: Judge cuts off defense counsel, "That is enough" [1911:10]. Defense counsel tries to distinguish his question from judge's [1913.1].

3.

GENERAL DEMEANING AND ABUSE OF YOUR DECLARANT

(3.1)

Although defense counsel was appointed as co-counsel pursuant to Section 987.9 of the Penal Code by the Hon. Robert W. Thomas, the Court threatens defense counsel with being taken off the case [67:3].

(3.2)

Defense counsel issued a Subpoena Duces Tecum for the files of the California State Bar regarding informant/material witness Dean Karny who had been granted immunity in two separate cases. Assuming, therefore, that Karny's State Bar file contained materials relative to these two alleged murders, counsel urged the trial judge to disclose the information which he assumed to be contained in the files. The trial judge sharply criticized defense counsel for making this clearly indicated assumption [317:1 - 3:18:5].

(3.3)

The Court continuously orders defense counsel to sit down when he is attempting to make a record and on one occasion threatened him with jail unless he did sit down [555:14; 766:17; and 766:20].

(3.4)

Although defense counsel has conducted himself in a quiet, dignified, and professional manner throughout the proceedings, on the occasion that defense counsel complained to the Court about its treatment of him the Court responded: **"Anything I have done with respect to you is something you have richly deserved"** [922:4] and, further, the Court accused defense counsel of attempting to **"goad [it] into error"** [925:2].

(3.5)

Court continually objects to defense counsel's line of examination. Counsel seeks permission to approach side bar for clarification. Court refuses on two separate occasions [1148:25; and 1776:19].

(3.6)

Stopping defense counsel in the middle of Hovey Voir Dire. [1450:15] **"That is all. Sit down."** Later with another juror in

a harsh tone the Voir Dire is terminated with **"That's enough"** [1911:10].

4.

EXPRESSIONS OF PREFERENCE FOR CO-COUNSEL

(4.1)

On numerous occasions throughout the proceedings the trial court has demonstrated its extreme bias against defense counsel by the following examples of overt favoritism: **"You are only co-counsel"** [46:10]; **"I'm talking to Mr. Barens"** when defense counsel attempts to speak [56:14]; advising defense counsel that only co-counsel is entitled to speak [67:11]; **"I would suggest, Mr. Barens, that you address the Court, unless it is absolutely necessary to hear from your assistant counsel"** [67:11]. **"Mr. Barens is lead counsel"** [555:7].

(4.2)

When defense counsel objected to this characterization, he was ordered to **"sit down"** by the trial court [555:14].

(4.3)

When defense counsel attempts to answer the Court on a point of law, the Court states it wants to hear only from co-counsel [582:22] or tells defense counsel to sit down and make Motions

through his co-counsel [709:25]; when attempting to assist co-counsel defense counsel is warned by the trial court to: **"Stay out of this. He is conducting this"** [785:9] or to **"Follow Mr. Barens's lead . . . [and] we will get somewhere"** [817:2].

(4.4)

The Court expresses a clear preference for co-counsel after ordering defense counsel to sit down. When defense counsel says, **"But your Honor, I --"** the Court says, **"Sit down."** Mr. Chier: **"But your Honor, I --"**. The Court: **"Your colleague doesn't act the way you do. That is why I prefer to have him ask the questions instead of you"** [1792:1].

5.

PROHIBITING COUNSEL FROM MAKING A RECORD

Although counsel has a right and obligation to **"strenuously and persistently"** press legitimate argument and protest erroneous rulings, nevertheless, the Court has foreclosed counsel from an opportunity to make his objections and argument by admonitions to sit down or to be quiet:

(5.1)

For example, [75:13 - 77:14], defense counsel attempted on four separate occasions to make a record which the Court denied. Finally, counsel for the People urged the Court to allow defense

counsel to make his record [76:17; 77:14] following which the Court gave defense counsel five minutes to make a record [77:21]. Defense counsel is admonished: **"Don't butt in Chier, you are only co-counsel"** [46:10] or **"I will tell you to shut up. I am not listening to you"** [766:14]; or **"Will you stay out of this"** [785:9]; or while attempting to make a record the Bailiff is ordered to: **"Put him down"** [785:12]; **"Will you put him down"** [785:15]; **"I don't want to hear you"** [785:17]; **"Sit down that is an order"** [785:24]. And **"Would you be quiet"** [882:4].

6.

SOUR FACES AND FITS DIRECTED TOWARD DEFENSE COUNSEL

The trial court continuously grimaces, makes sour faces and other facial expressions of displeasure when defense counsel attempt to address the Court on any issue either within or without the presence of jurors. For example, see page 30, line 24; page 50, line 10.

(6.1)

On a number of occasions the Court has looked at his watch in an effort to hurry defense counsel or to make his questions appear trivial [77:19] or give defense counsel five minutes to make a record [77:21] or condescendingly orders defense counsel to **"Go ahead. Make a record for yourself"** after interrupting defense counsel [79:8].

7.

LACK OF NEUTRALITY

Notwithstanding the provisions of 6.4 of the American Bar Association Standards Relating to the Function of the Trial Judge, the Court has continuously failed to exercise restraint over its conduct and utterances; has failed to suppress his personal predilections for co-counsel; has failed to control his temper or emotions; has engaged in unnecessary repartee and disparagement of persons and issues.

(7.1)

For example, although the instant case is different from the trial of a codefendant presided over by this same trial judge, and despite the American Bar Association Standards Relating to the Function of the Trial Judge directing that the Court judge each case on its own merits, the trial judge in this case has said on at least three occasions that the Hunt case is the same as the Pitman case [53:1]; that the testimony in the Hunt case will be the same [65:26]; during the examination of Assistant District Attorney Curt Livesay, the Court on its own motion informed Mr. Livesay about matters learned by the Court in the course of presiding over another case in order to influence Mr. Livesay and to deprive defendant of an opinion based upon the evidence presented to Mr. Livesay at the time of the original memorandum [453:6; 497:5].

(7.2)

Also, the Court has violated its neutrality by educating some witnesses [497:28 - 500:9; 888:16]; leading witnesses [882:23; 904:4 - 905:22].

(7.3)

Court invites objections and where none made sustains own objections against Chier only; never against Wapner or Barens [1245:9; 824:18; 825:6; 1301:11; 1448:14; 1521:13; 1683:2; 1685:2; 1713:10; 1776:17; 1782:11; 1946:14; 2006:12; and 2008:10].

13. These represent only the most obvious and flagrant examples of bias toward defense counsel Chier.

14. This Motion could not have been made earlier because it required an entire month to truly appreciate that the Court's conduct was neither random, occasional, democratic.

15. It is focused only on defense counsel Chier and is evidently the result of deep hostility for defense counsel the nature of which the Court has concealed from counsel.

16. The defendant Hunt has no particular axe to grind with the judge vis-a-vis himself, but is deeply concerned that the Court's ceaseless vituperation toward and vilification of Chier is having the effect of rendering Chier ineffective.

17. Accordingly and unfortunately, disqualification of

Judge Rittenband is warranted.

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 10, 1986.

RICHARD C. CHIER

MEMORANDUM OF POINTS AND AUTHORITIES

1.

BIAS OR PREJUDICE TOWARDS A LAWYER IN THE PROCEEDING MAY BE GROUNDS FOR DISQUALIFICATION

Section 170.1(a)(6)(C) provides for disqualification for bias or prejudice against a party or in this case his attorney.

This section is not limited to the existence of an actual bias. Rather, if a reasonable person would entertain doubts concerning the judge's impartiality, disqualification is mandated. To ensure that proceedings appear to the public to be impartial and hence worthy of their confidence, the situation must be viewed through the eyes of the objective person. United Farm Workers of America v. Superior Court (1985) 170 Cal.App.3d 97.

2.

IF A JUDGE WHO SHOULD DISQUALIFY HIMSELF REFUSES OR FAILS TO DO SO, ANY PARTY MAY FILE WITH THE CLERK A WRITTEN VERIFIED STATEMENT OBJECTING TO THE HEARING OR TRIAL BEFORE THE JUDGE AND SETTING FORTH THE FACTS CONSTITUTING THE GROUNDS FOR DISQUALIFICATION OF THE JUDGE

C.C.P. Section 170.3(c)(1)

3.

THE STATEMENT SHALL BE PRESENTED AT THE EARLIEST PRACTICABLE OPPORTUNITY AFTER DISCOVERY OF THE FACTS CONSTITUTING THE GROUND FOR DISQUALIFICATION

C.C.P. Section 170.3(c)(1)

4.

COPIES OF THIS STATEMENT SHALL BE SERVED ON EACH PARTY OR HIS OR HER ATTORNEY WHO HAS APPEARED AND SHALL BE PERSONALLY SERVICED ON THE JUDGE ALLEGED TO BE DISQUALIFIED, OR ON HIS CLERK, PROVIDED THAT THE JUDGE IS PRESENT IN THE COURTHOUSE OR IN CHAMBERS

C.C.P. Section 170.3(c)(1)

5.

WITHIN TEN DAYS AFTER THE FILING OR SERVICE, WHICHEVER IS LATER, THE JUDGE MAY FILE A WRITTEN VERIFIED ANSWER ADMITTING OR DENYING ANY OR ALL OF THE ALLEGATIONS CONTAINED IN THE PARTY'S STATEMENT AND SETTING FORTH ANY ADDITIONAL FACTS MATERIAL OR RELEVANT TO THE QUESTION OF DISQUALIFICATION. THE CLERK SHALL FORTHWITH TRANSMIT A COPY OF THE JUDGE'S ANSWER TO EACH PARTY OR HIS OR HER ATTORNEY WHO HAS APPEARED IN THE ACTION

C.C.P. Section 170.3(c)(3)

6.

A JUDGE WHO FAILS TO ANSWER WITHIN THE TIME ALLOWED SHALL BE DEEMED TO HAVE CONSENT TO HIS OR HER DISQUALIFICATION AND THE CLERK SHALL NOTIFY THE PRESIDING JUDGE OR PERSON AUTHORIZED TO APPOINT A REPLACEMENT OF THE RECUSAL

C.C.P. Section 170.3(c)(4)

7.

NO JUDGE WHO REFUSED TO RECUSE HIMSELF SHALL PASS UPON HIS OWN DISQUALIFICATION OR UPON THE SUFFICIENCY IN LAW, FACT, OR OTHERWISE OF THE STATEMENT OF DISQUALIFICATION FILED BY A PARTY

C.C.P. Section 170.3(c)(5)

8.

IN EVERY SUCH CASE THE QUESTION OF DISQUALIFICATION SHALL BE HEARD AND DETERMINED BY ANOTHER JUDGE AGREED UPON BY ALL THE PARTIES WHO HAVE APPEARED OR, IN THE EVENT THEY ARE UNABLE TO AGREE WITHIN FIVE DAYS OF NOTIFICATION OF THE JUDGE'S ANSWER, BY A JUDGE SELECTED BY THE CHAIRPERSON OF THE JUDICIAL COUNCIL, OR IF THE CHAIRPERSON IS UNABLE TO ACT, THE VICE CHAIRPERSON

C.C.P. Section 170.3(c)(5)

9.

A CHALLENGE FOR ACTUAL BIAS IS TIMELY WHEN MADE AT THE EARLIEST PRACTICABLE OPPORTUNITY AFTER DISCOVERY OF THE DISQUALIFYING FACTS

Schorr v. Superior Court

(1980) 105 Cal.App.3d 568

DATED: December 10, 1986

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 11, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: R. CHIER
A. BARENS

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 10, 1986, with defendant and counsel present.

Richard Chier files with the court a Motion for Disqualification of the Trial Judge. The Court denies the motion as untimely.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to December 15, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-11-86
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 15, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN & C. RHAMBO	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS DEPUTY DISTRICT ATTY: F. WAPNER

01 HUNT, JOE

187 01 ct; 211 01 ct Counsel for Defendant: A. BARENS

R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 11, 1986, with defendant and counsel present.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to December 16, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-15-86
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 16, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: R. CHIER
A. BARENS

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 15, 1986, with defendant and counsel present.

The defendant's motion to disqualify the Court heretofore denied as untimely is stricken by the Court as of December 11, 1986.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to December 17, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPTARTMENT WEST C

MINUTES ENTERED
12-16-86
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 17, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 16, 1986, with defendant and counsel present.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to December 18, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-17-86
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C 1102

Date:	DECEMBER 18, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA

VS

01 HUNT, JOE

187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: R. CHIER
A. BAREN

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 17, 1986, with defendant, and counsel present.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to December 22, 1986, at 10:30 a.m. in Department WEST C.

BAIL

MINUTES ENTERED
COUNTY CLERK

76M 413L C-120 4-85

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C

Date:	DECEMBER 22, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS: TRIAL (JURY) BAIL 4-4-86

The trial is continued from December 18, 1986, with defendant and counsel present.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to December 23, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-22-86
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 23, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-86

The trial is continued from December 22, 1986, with defendant and counsel present.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to January 5, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-23-86
COUNTY CLERK

76M 413L C 120-4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	DECEMBER 30, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	NONE	Deputy Sheriff	NONE	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS DEPUTY DISTRICT ATTY: F. WAPNER NA

01 HUNT, JOE NA

187 01 ct; 211 01 ct Counsel for Defendant: A. BAREN, PVT NA

R. CHEIR NA

NATURE OF PROCEEDINGS

MOTION FOR 987.2 FUNDS BAIL

Defendant's counsel's motion for 987.2 funds is received, considered and denied.

A copy of this Minute Order is mailed to A. Baren.

BAIL

DEPT. WEST C

MINUTES ENTERED
12-30-86
COUNTY CLERK

76M 413L C 120.4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 5, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from December 23, 1986, with defendant and counsel present.

The prospective jurors are admonished and advised to return to court on January 7, 1987, at 1:45 p.m. in Department WEST C. A new panel of 80 prospective jurors is sworn as to their qualifications. Individual voir dire proceeds.

The trial is continued to January 6, 1987, at 10:15 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-5-87
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

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

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 FOR ORDER COMPELLING PRETRIAL DISCOVERY** **Date:** January 7, 1986 **Time:** 10:30 a.m. **Place:** Department WE-C **Est. Time:** 30 Minutes

TO: THE CLERK OF THE ABOVE-ENTITLED COURT; TO THE PEOPLE AND THEIR ATTORNEY OF RECORD, FREDERIC N. WAPNER:

PLEASE TAKE NOTICE that on January 7, 1987, at 10:30 a.m., defendant will move the Court for the relief specified in the defendant's Motion of December 3, 1986.

Said Motion will be made on the grounds specified therein.

Said Motion will be based upon the moving papers earlier submitted and upon such further oral and/or documentary evidence

as may be presented at the hearing hereof.

DATED: January 5, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 10920 Wilshire Boulevard, Suite 1000, Los Angeles, California, 90024.

On January 6th, 1987, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR ORDER COMPELLING PRETRIAL DISCOVERY on all interested parties in this action by handing a true copy thereof to the Deputy District Attorney herein.

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 January ___, 1987.

Richard Klein

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JOE HUNT, Defendant.	**Case No. A090435** **DECLARATION IN SUPPORT OF ORDER FOR APPEARANCE OF DISTANT WITNESS [Penal Code, Section 1330]**

RICHARD C. CHIER declares and states:

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

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

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

accomplice, James Pitman.

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

5. The witnesses whose attendance is sought to be compelled by this application, described the person they saw with such particularity that it could have only been Ronald George Levin.

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

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

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

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

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

9. I believe both of these persons to be material and

necessary to the defense at the trial of this cause.

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 January 6, 1987.

RICHARD C. CHIER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 6, 1986			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 5, 1986, with defendant and counsel present.

Individual voir dire is continued.

The trial is continued to January 7, 1986, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-6-87
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 7, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 6, 1987, with defendant and counsel present.

Individual voir dire is continued.

Defense motion to allow the defendant with counsel to view Ron Levin's records which are held in conservatorship by David Ostrove is made, argued and granted under the conditions that the defendant, Joe Hunt, be present for consultation purposes only, that he not personally inspect files, that the examination take place under supervision as directed by the above named Deputy District Attorney, and that the examination be no longer than four hours.

Defense motion to examine Ron Levin's equipment which is held in conservatorship by David Ostrove is made argued and deemed moot after the Court finds there is no said equipment.

The trial is continued to January 8, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-7-87
COUNTY CLERK

76M 413L C 120.4 83

MINUTE ORDER

1115

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 8, 1985			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 7, 1987, with defendant and counsel present.

Individual voir dire is continued and completed.

Pursuant to the Search Warrant issued by the Judge in the defendant's Northern California case and the subsequent seizure of alleged personal papers of the defendant from his residence, the defense makes several motions all of which are argued and denied without prejudice to renewal after further data is gathered by all counsel. The above named Deputy District Attorney is enjoined from communicating with Leslie Zoller regarding the contents of any files he observed in the search and seizure which deal with the defense in the instant case. Fred Wapner is ordered to direct Leslie Zoller to refrain from using any of the said materials in any way to aid the prosecution of this case.

The trial is continued to January 12, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-8-87
COUNTY CLERK

75M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 1416 WE C

Date: JANUARY 12, 1987

HONORABLE: L. J. RITTENBAND — JUDGE
P. QUINN — Deputy Sheriff
D. TSCHEKALOFF — Deputy Clerk
R. GOODBODY & S. YERGER — Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from January 8, 1987, with defendant, counsel and prospective jurors present.

Voir dire is continued.

The prospective jurors are admonished and the trial is continued to January 13, 1987, at 10:30 a.m. in Department WEST C.

BAIL

[redacted]

DEPT. WEST C

MINUTES ENTERED
1-12-87
COUNTY CLERK

MINUTE ORDER

JAMES K. HAHN, City Attorney
LEWIS N. UNGER, Assistant City Attorney
DONNA WEISZ JONES, Deputy City Attorney
1800 City Hall East
200 N. Main Street
Los Angeles, California 90012

Attorneys for Real Party
In Interest, LOS ANGELES
POLICE DEPARTMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, v. JOSEPH HUNT, Defendants. LOS ANGELES POLICE DEPARTMENT, Real Party In Interest	CASE NO. A090 435 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PRETRIAL DISCOVERY OF LOS ANGELES POLICE DEPARTMENT DOCUMENTS DATE: January 14, 1987 TIME: 10:00 a.m. DEPT: WE-C

I

INTRODUCTION

The defendant has made a motion for Los Angeles Police Department ("Department") documents related to a homicide at the "Hollywoodland Motel or elsewhere", also referred to by the

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defendant as the "Karny homicide".[1/] The reason the defendant seeks these records is his belief that the "prosecution of Dean Karny [for the "Hollywood" homicide] has been deliberately delayed . . . in order to induce Dean Karny to continue bearing false witness against Joe Hunt . . ." Declaration of Arthur H. Barens, p. 6 ¶3. This allegation seems to be based on "a partial disclosure [was made] by Deputy District Attorney to defense counsel concerning the Hollywood homicide and Dean Karny's connection therewith". Declaration of Arthur H. Barens, p. 7, ¶6. That declaration is dated December 4, 1986.

On January 7, 1987, counsel for defendant Hunt and the district attorney were sent a declaration prepared by Detective Antonio Diaz, the investigating officer in the "Hollywood" homicide, stating that Dean Karny was not a suspect in that

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[1/]The Los Angeles Police Department is not a party or the investigating agency in the case presently before this court (A090435). To the extent that the records concerning the Hollywood homicide are within the custody and control of the Department, the Department is the entity most affected by the outcome of any ruling of this Court regarding disclosure. Accordingly, the Department must be deemed to be a real party in interest in the proceedings before this Court, with the concomitant right to represent its interests. Del Mar Beach Club Owners Assn. v. Imperial Contracting Co., (1981) 123 Cal.App.3d 898, 906, 176 Cal.Rptr. 886; Powers v. Ashton, (1975) 45 Cal.App.3d 783, 787, 119 Cal.Rtpr. 729; Weisman v. Odell, (1970) 3 Cal.App.3d 494, 498, 83 Cal.Rptr. 563. The appropriate procedure to compel real party in interest's attendance at this discovery motion is by way of subpoena duces tecum. However, in the interest of saving this court further delays of the trial, the Department will voluntarily appear before this court in this matter.

homicide. A copy of that declaration is attached hereto as Attachment A. The "Hollywood" homicide is as yet unsolved and continues to be an ongoing investigation. See Declaration of Antonio Diaz, attached hereto as Attachment B.

There can be little doubt concerning the necessity of not disclosing the exact information concerning a homicide that should ultimately enable authorites to bring the perpetrator(s) to justice. The items requested in defendant's Motion concern an unsolved murder in which Dean Karny is not a suspect and in no way fall within the category of discoverable material claimed by the defense -- "pendency of criminal charges against a witness."

The Department submits that the declaration (Attachment A) of the investigating officer previously sent to counsel completely negates the "assertions" concerning the relevancy of the material. The Department asserts the governmental privilege pursuant to Evidence Code §§ 1040(b)(2) as to any documents that they may have in their possession that are described within the defendant's Motion and requests that the records regarding the "Hollywood" homicide be reviewed in camera pursuant to Evidence Code §915(b). The in camera proceeding will enable this court to make its own determination that the records are not relevant to the defense in the present case, that the investigation shows that Dean Karny is not a suspect, and that the public's interest in the confidentiality of the material sought outweighs the defendant's interest in its disclosure. See Evidence Code §1040(b)(2).

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II

BEFORE ANY DISCOVERY MAY BE GRANTED PLAUSIBLE JUSTIFICATION MUST BE SHOWN.

Criminal discovery may be granted only "if it appears reasonable that such knowledge will assist him in preparing his defense". Ballard v. Superior Court (1966) 64 Cal.2d 159, 49 Cal.Rptr.302. The defendant has totally failed to meet his burden of plausible justification within the meaning of Pitchess v. Superior Court (1974) 11 Cal.3d 531, 547, Ballard v. Superior Court, supra, and Joe Z. v. Superior Court (1970) 3 Cal.3d 797, 806. As his request is but a fishing expedition, it should be denied.

Counsel's allegations seems to infer that Dean Karny is the perpetrator of the "Hollywood" murder. This "assertion" is based on "information and belief". No facts other than Dean Karny's name had surfaced in connection with the homicide are given by counsel. Detective Diaz, the investigating office in the as yet unsolved murder, has stated under penalty of perjury that Dean Karny is not involved in that homicide and that he is not a suspect in that homicide. Since Dean Karny is not a suspect in the Hollywood homicide, no criminal charges are pending against him. In addition, since the Department has concluded through their investigation that Dean Karny was not involved in the homicide, defendant's allegations concerning a delay in bringing charges against Dean Karny for that homicide are totally specious.

/ / /

III

SINCE THE DOCUMENTS CONCERN AN UNSOLVED HOMICIDE, IN WHICH DEAN KARNY IS NOT INVOLVED, THEY ARE NOT RELEVANT.

The defendant's authority for this discovery is People v. Coyer, (1983) 142 Cal.App.3d 839, 842, "[p]endency of criminal charges against a witness is relevant to evaluation of his testimony, even in the absence of promises of leniency, and are discoverable." While this general rule of law is correct, the court's review of the records in camera will show that this rule does not apply to the instant case.

In People v. Coyer, supra, the defendant was prosecuted for rape and false imprisonment. During pretrial discovery the defendant sought a list of any charges in the State of California pending against the prosecution witnesses. The trial court refused to order the prosecution provide such a list. Id., at pp. 841-42.

The Court of Appeal reversed the trial court and concluded "that a defendant is entitled to discovery of criminal charges pending against prosecution witnesses anywhere in the state." Id., at p. 842. The Court reasoned that "the pending of criminal charges is material to a witness' motivation in testifying even

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where no express promises of leniency or immunity have been made." Id.[2/] The Court determined that pending charges, even though not under the control of the prosecutor in the case-in-chief, may be submitted to the trier of fact to allow the trier of fact to determine if a "witness concern over charges pending in another county has contributed to his willingness to provide testimony favorable to the prosecution in the instant trial. (Citation)." Id., at p. 843.

The contents of an unsolved, ongoing murder investigation would not be admissible at trial. The Department asserts that the information the defendant seeks does not bear on the witnesses' credibility and does not by any stretch of the imagination fall within the holding and reasoning of People v. Coyer,. In addition, it is not exculpatory evidence to the present charge and the public interest would not be served by disclosure of the documents but would be severly harmed.

[2/]It is significant that in People v. Coyer there was no claim that the information sought was priviledged; indeed, the pending charges were a matter of public record (Id., at p. 843). In the instant case the defendant is not seeking a list of pending charges, but instead is embarking on a fishing exhibition and wants all documents relating to an unsolved murder investigation. Documents that are not by any stretch of the imagination public information and to which a claim of priviledge has been asserted.

IV

IN CAMERA PROCEEDINGS ARE THE APPROPRIATE MEANS FOR DETERMINING A CLAIM OF GOVERNMENTAL PRIVILEGE

The right to discovery is not absolute and the value to the accused should be balanced against other legitimate governmental interests. Pitchess v. Superior Court (1974) 11 Cal.3d 537, 538. It is well established under California law that in camera proceedings are the appropriate and constitutional means for determining a claim of government privilege. People v. Matos, (1979) 92 Cal.App.3d 862, 867, 155 Cal.Rptr. 293; People ex rel. Dept. of Public Works v. Glen Arms Estate, Inc. (1964), 230 Cal.App.2d 841, 847, n.1.

The procedure for inquiry into a claim of government privilege is expressly provided in Evidence Code §915(b). This procedure is designed to protect the confidentiality of the material while the trial court examines the information claimed to be priviledged in order to balance the competing interests intelligently. While it is recognized that §915(b) does not provide for a mandatory in camera hearing, it is equally clear that the courts have established a preference for this procedure in litigating such matters. As the court stated in In re Muszalski, (1975) 52 Cal.App.3d 475, 482, 125 Cal.Rptr. 281:

> "The burden of demonstrating the need for confidentialtity rests on the [government]. If an in camera hearing pursuant to Evidence Code section

915, subdivision (b) is the only means available to the [government] to meet its burden of proof without disclosing the very information claimed to be confidential, it would constitute an abuse of discretion to refuse [the government's] request for an in camera hearing." Citations omitted. Id., at p. 483.

In the instant case the Department has asserted its claim of governmental privilege pursuant to Evidence Code §1040. An order of immediate disclosure, without the trial court weighing the balances inherent in an assertion of that privilege by way of an in camera hearing, effectively nullifies the very basis of that privilege by forcing revelation of the very information claimed as privileged without affording the government the process it is due under the statute. Romo v. Southern Pacific Transportaton Co., (1977) 71 Cal.App.3d 909, 922, 139 Cal.Rtpr. 787. This is not only contrary to the interests of the Department, but the public interest which that entity represents.

CONCLUSION

Based upon the foregoing, Real Party in Interest, the Los Angeles Police Department, respectfully requests that should defendants request for Department documents not be denied outright,

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this court hold an in camera hearing pursuant to to Evidence Code §§915 and 1040 and that after full review of the material requested, deny defendant's motion.

DATED: January 13, 1986

Respectfully submitted,

JAMES K. HAHN, City Attorney
LEWIS N. UNGER, Assistant City Attorney
DONNA WEISZ JONES, Deputy City Attorney

By Donna Weisz Jones
DONNA WEISZ JONES
Deputy City Attorney

DECLARATION OF ANTONIO DIAZ

I, ANTONIO DIAZ, do hereby declare that:

I am a police officer for the City of Los Angeles and have been so employed for 19 1/2 years. I am currently assigned to Hollywood Division homicide and hold the rank of Detective II.

I am the investigating officer in the murder that occurred at the Hollywood Center Motel in October 1986. The victim of that homicide was Richard Mayer (DR #86-064-2759).

Over the course of this investigation, I have eliminated Dean Karny from any involvement in this homicide. He is not a suspect in this homicide.

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

Executed this 5th day of January, 1987, at Los Angeles, California.

ANTONIO DIAZ

ATTACHMENT A

DECLARATION OF ANTONIO DIAZ

I, ANTONIO DIAZ, do hereby declare that:

1. I am the investigating officer in the Hollywood homicide investigation (DR #86-064-2759).

2. My partner and I are actively investigating this homicide. Based on the investigation that has been done so far Dean Karny has definitely been eliminated as a suspect in the Hollywood homicide.

3. To date, this homicide remains unsolved. If the information in the homicide investigation were to be released even under a protective order, it would jeopardize our effectiveness in investigating and solving this homicide as others might become privy to information that only the perpetrator(s) and the police know.

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

Executed this 12 day of January, 1987, at Los Angeles, California.

ANTONIO DIAZ

ATTACHMENT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 13, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

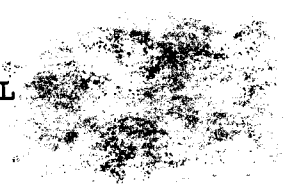
TRIAL (JURY) BAIL 4-4-85

The trial is resumed from January 12, 1987, with defendant, counsel and prospective jurors present.

Voir dire is continued.

The jurors are admonished and the trial is continued to January 14, 1987, at 10:30 a.m. in Department WEST C.

Defense motion for pretrial discovery on the Hollywood murder is argued. Defendant to submit points and authorities in rebuttal to the City Attorney's papers filed January 13, 1987, by January 14, 1987. The motion stands submitted.

BAIL 

DEPT. WEST C

MINUTES ENTERED
1-13-87
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C

Date:	JANUARY 14, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 13, 1987, with defendant, counsel and prospective jurors.

Voir dire is continued.

The jurors are admonished and the trial is continued to January 15, 1987, at 10:30 a.m. in Department WEST C

Out of the presence of the prospective jurors, the defense withdraws the motion for discovery on the Hollywood murder.

The hearing on defendant's motion to continu trial for three plus weeks is set for January 15, 1987, at 10:10 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-14-87
COUNTY CLERK

76M 413L C 120 4-83

MINUTE ORDER

ARTHUR H. BARENS
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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

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 FOR ORDER DISMISSING INFORMATION; REQUEST FOR EVIDENTIARY HEARING; DECLARATIONS; POINTS AND AUTHORITIES** **Date:** January 20, 1987 **Time:** 9:30 a.m. **Place:** Department WE-C **Est. Time:** 1 Day

TO: IRA REINER, DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES AND DEPUTY DISTRICT ATTORNEY FREDERICK NATHAN WAPNER; TO JOHN K. VAN DE KAMP, ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA, AND TO HIS DULY AUTHORIZED DEPUTIES AND INVESTIGATORS, JOHN VANCE AND OSCAR BREILING:

PLEASE TAKE NOTICE that on January 20, 1987, at 9:30 a.m., or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant will move the Court for an Order dismissing Information No. A090435.

Said Motion will be made upon the grounds, each and all, that defendant's work product, privilege against self

incrimination, and his constitutional rights to due process, and the effective assistance of counsel have been eviscerated and rendered nugatory by the unlawful searches of and seizures from defendant's office and living quarters by State and local law enforcement agents.

Please take further notice that in aid of this Motion, defendant requests an evidentiary hearing.

Said Motions will be based upon the attached moving papers and upon such further oral and/or documentary evidence as may be presented at the hearing hereof.

DATED: January 15, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: Richard Chier
RICHARD C. CHIER
Attorneys for Defendant

DECLARATION OF BROOKE ROBERTS

BROOKE ROBERTS declares and states:

1. I live at 10984 Belagio Road, Bel Air, California.

2. I occupy a free standing guest house on the grounds. I am the daughter of Lynn and Bobby Roberts and I am a close personal friend of Joe Hunt.

3. On Thursday, January 8th, at approximately 10:00 a.m., law enforcement agents representing Los Angeles Police Department, Hollywood Division; Beverly Hills Police Department; and the California Department of Justice surrounded the property and bullied their way onto the grounds by reliance on and reference to an alleged search warrant.

4. At the time these agents entered onto the property I was asleep in my room.

5. I heard a loud banging on my bedroom door accompanied by a voice shouting loudly, "Police. Open the door or we'll break it down."

6. In compliance with their demands I opened my door after which approximately five agents rushed in and began looking around my bedroom.

7. After the initial rush three of the agents left my quarters and two agents remained: one agent was known to me as Detective Les Zoeller of the Beverly Hills Police Department and the other I believe was a detective working for the Hollywood Division of the Los Angeles Police Department.

8. After the unidentified Hollywood Division detective and Detective Zoeller had been rummaging around my personal effects

for over an hour Agent Oscar Breiling came into my room and said to Detective Zoeller: "Les, and you too (pointing at the Hollywood Division detective), come with me, I want you to see something."

9. I followed the three officers into the main house upstairs and into the room used as an office by Joe Hunt.

10. When I entered the room used by Joe for his office I observed Oscar Breiling on his knees. Gathered in front of him were two boxes containing manila files and a trash receptacle containing a quantity of white computer generated paper and yellow lined legal paper.

11. Agent Breiling was directing the attention of Detective Zoeller and a police detective whose name is unknown to me to the contents of the waste basket and the boxes. Detective Zoeller joined Agent Breiling in a kneeling position on the floor and began examining the documents which Agent Breiling had selected for him.

12. When I entered the room in question there were three additional officers whose names or other identities I am unaware of but whom I can describe at any hearing conducted herein. These officers were looking through boxes containing files and papers on the bed, desk, floor, and bookcases of the bedroom.

13. After watching this for approximately five minutes I went across the hallway into the bedroom occupied by Joe Hunt, and climbed onto the middle of the bed from where I could observe still more officers searching this room.

14. I attempted, to the best of my ability, to take notes on what was transpiring and what was being looked at, seized,

moved, or discussed.

15. Finally, Richard Chier, one of Joe's attorneys, came to the house objecting to the goings on and managed to get, so it seemed, Deputy District Attorney Fred Wapner on the phone who, it seems, ordered Detective Zoeller to leave the premises.

16. As Mr. Zoeller was preparing to leave the premises he stated to me: "Brooke, I'm leaving, you can make a note of that too."

17. I didn't see Detective Zoeller for 20 or 25 minutes until he returned to the house and I heard him say to Richard Chier at that point, "I didn't actually leave; I was outside in my car; you can make a note of that too."

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 January 15, 1987.

Brooke Roberts

BROOKE ROBERTS

DECLARATION OF LYNN E. ROBERTS

LYNN E. ROBERTS declares and states:

1. I am the wife of Bobby Roberts, the mother of Brooke Roberts, am a close personal friend of the defendant, JOE HUNT, and am the owner of the premises located at and known as 10984 Belagio Road, Bel Air, California.

2. At approximately 10:00 o'clock in the morning on Thursday, January 8, 1987, our home was invaded by a squad of law enforcement agents led by Agent Oscar Breiling, who advised us that he and the persons he had brought with him were there for the purpose of searching the house pursuant to a search warrant which had apparently been issued by a Superior Court Judge in San Mateo County.

3. Mr. Breiling had brought with him Detective Les Zoeller of the Beverly Hills Police Department; Officer Curt Kuhn of the Beverly Hills Police Department, Scientific Investigations Division; and a second Beverly Hills Police Department S.I.D. Officer whose name is unknown to me but whose description I could provide under examination if asked to do so.

4. At the time this raiding party entered my house I was upstairs in the master bedroom I was permitted to complete my toilette in a hurried manner during which time the officers were searching the master bedroom. After I finished brushing my teeth and combing my hair I was directed downstairs to the kitchen while agents and law enforcement offices continued to search the upstairs portion of my residence without my being able to observe their activities.

5. I did not learn until much later that I had a right to be present during the search of my home and it was therefore out of legal ignorance that I allowed myself to be herded into the kitchen at the outset of the search.

6. At various times thereafter I saw as many as eight and never less than four law enforcement agents browsing, rummaging, perusing, and confiscating papers and documents in the office used by Joe Hunt as well as the bedroom slept in by him.

7. I specifically recall seeing Detectives Zoeller and two detectives from the Hollywood Division of the Los Angeles Police Department in Joe's office going through every single paper in the room including those in the trash can.

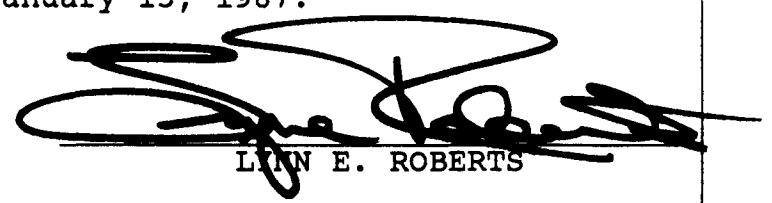
8. I specifically recall seeing Detective Zoeller in the midst of reviewing the contents of the trash basket.

9. After Mr. Chier forced Detective Zoeller to talk to Mr. Wapner on the phone I overheard a conversation in the hallway between Agent Breiling and Detective Zoeller who were unaware of my presence around the corner in my bedroom.

10. The contents of this conversation will be revealed by myself on examination at the time of the hearing hereof. However, suffice it to say that the conversation overheard by myself

was most disturbing to me because of its cynical nature.

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 January 15, 1987.



LYNN E. ROBERTS

DECLARATION OF BOBBY ROBERTS

BOBBY ROBERTS declares and states:

1. I reside at 10984 Belagio Road, Bel Air, California; I am the husband of Lynn Roberts; I am the father of Brooke Roberts; and I am a close personal friend of the defendant, JOE HUNT, who has been residing at my home for the past 14 months.

2. On Thursday, January 8, 1987, our property was invaded by a horde of law enforcement agents, some of whom I recognized and some of whom I didn't. Among those whom I recognized were Detective Les Zoeller of the Beverly Hills Police Department; Agent Oscar Breiling of the California Department of Justice. The remainder of the officers whom I would number approximately 10 to 12 I did not know and was not familiar with.

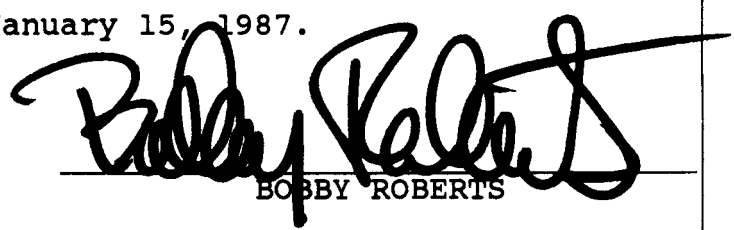
3. I observed Detective Zoeller together with Agent Breiling in the company of officers I later learned to be from the Hollywood Division of the Los Angeles Police Department and/or the Beverly Hills Police Department carefully scrutinizing documents in the room utilized by Mr. Hunt for his office and his bedroom.

4. Specifically, I saw Breiling and Zoeller reading document in Joe's trash basket.

5. At various other times I saw them reading documents on

Joe's desk and on his bed and floor.

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 January 15, 1987.



BOBBY ROBERTS

DECLARATION OF JOE HUNT

JOE HUNT declares and states:

1. I am the defendant in the criminal prosecution presently pending in Department WE-C of the Los Angeles Superior Court.

2. I am also a defendant in the case of PEOPLE v. ESLAMINIA, et al., currently awaiting trial in the Superior Court of San Mateo County.

3. For the past 14 months I have resided at 10984 Belagio Road, Los Angeles, California, as a guest of Mr. and Mrs. Bobby Roberts.

4. I have also been using a portion of the residence as my office in connection with the preparation of my defense to the charges herein.

5. On the morning of January 8, 1987, I departed for court at approximately 9:15 a.m. The court proceedings were scheduled to begin at 10:30 a.m., that morning as they have on almost every court day since November 4, 1986.

6. At approximately 11:30 a.m., I was advised by my attorneys that the Belagio Road house had been surrounded and was being searched by various law enforcement agents.

7. I returned to the house as soon as I was able and arrived at approximately 4:50 p.m., that evening. Immediately thereafter I went upstairs to see what the circumstances were in my bedroom and office.

8. I was accompanied on this inspection by Lynn and Bobby Roberts.

9. They had informed me that both my office and my bedroom

had been meticulously searched and that many documents had been removed.

10. My own visual examination of the rooms confirmed that many things were missing and that the location of many documents and items had been changed since I had last seen these items that morning.

11. I requested Lynn Roberts to stay with me while I catalogued and sealed the paper contents of my office trash can and desk top in large manila envelopes. We also sealed other documents and papers which were in various other exposed places in the room.

12. Approximately 80 defense exhibits are missing.

13. These defense exhibits are, for the most part original documents which have not been copied.

14. A variety of other papers which had not as yet been catalogued but which were nonetheless of evidential value are missing.

15. Several exhibits, an original handwritten note, and a complete envelope earmarked as evidence relating to the charges pending against me in San Mateo County and some papers containing analyses of defense issues are missing.

16. In the trash can, on the floor, bedspread, and desk top of my office, were a variety of memoranda, reports, and critiques which were meant for my attorneys and were prepared at their request and direction. I had no expectation that they would ever be reviewed or read by anyone other than my attorneys or persons employed to assist them.

17. These reports were created, for the most part from

notes taken during meetings with my attorneys over the months preceding the commencement of trial proceedings.

18. These reports comprised approximately 400 pages of single spaced computer generated paper and a large quantity of holographic memoranda on lined legal paper.

19. Included among these defense documents were analyses of testimony of key prosecution witnesses together with annotations containing impeachment techniques to be utilized in connection with each of these witnesses.

20. A complete chronology of the activities of the persons and entities involved in this litigation was next to my desk and comprised some 600 date line items and, further, contained references in many places to the defense value of date line items.

21. Numerous issues and items referred to in my papers which had been previously discussed with my attorneys were, to my knowledge, unknown to the prosecution.

22. Some of the papers related to the pending case in San Mateo County.

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 January 15, 1987.

Joseph Hunt

JOE HUNT

POINTS AND AUTHORITIES

1.

THE OUTRAGEOUS CONDUCT OF GOVERNMENT OFFICIALS WHICH RESULTED IN WIDESPREAD VIOLATIONS OF CONSTITUTIONAL RIGHTS OF THE DEFENDANT REQUIRE A DISMISSAL OF THE CHARGES AGAINST THE DEFENDANT

Because of the outrageous conduct of Government agents which violated the defendant's Fourth, Fifth, Sixth, and Fourteenth Amendment rights, as well as the California constitutional equivalents, and the irreparable damage caused by the intentional and bad faith invasion of the confidential communications between the defendant and his counsel, the trial court must dismiss the charge against the defendant, JOE HUNT. At the very least, severe sanctions should be imposed against the Government, including, but not limited to, the immediate return of all property seized in the illegal search, the immediate return of all materials which were not subject to prosecutorial discovery because of the Sixth Amendment right to counsel and a fair trial, attorney/client privilege, and the work product rule, the prohibition of Detective Zoeller and all other officers present at the search from participating in any fashion in the case against Joe Hunt, the dismissal of the District Attorney from the case, and a continuance so that the defense can assess and repair as best it can the damage caused by the illegal conduct of the governmental agents present at the search.

The conduct which gives rise to this Motion is as follows. On January 8, 1987, more than two years after the initiation of the proceedings against the defendant, two months after the beginning of the trial, and virtually days before the opening statements of the parties were to be made, law enforcement agents, without probable cause and without good faith wrongfully and unlawfully entered the residence and the office of the defendant, JOE HUNT. Without probable cause and in violation of the law forbidding prosecutorial discovery, the attorney/client privilege, and the work product rule, the law enforcement agents seized defense exhibits, communications between the defendant and his attorney, and statements by the defendant intended to be used at trial. In addition, the agents wrongfully and unlawfully viewed both defense materials intended for impeachment and cross-examination and, most importantly, the entire defense strategy outlined on computer paper.

It must be emphasized that those privileged materials which were not actually taken from the premises were unlawfully viewed by persons connected with this case and who had absolutely no legitimate reason to be on the premises and were on the premises in violation of Penal Code, Section 1530. Certain of these officers, especially Detective Zoeller, knew that Hunt was actively involved in the preparation of his defense and, therefore, had to be on notice that confidential materials, unreachable through prosecutorial discovery might have been, and in fact were, on the premises. As will be demonstrated, these facts can only lead to the conclusion that the Government agents involved intentionally misused legal process and, in bad faith, attempted to circumvent

the law so as to obtain for the prosecution those undiscoverable materials which the law would have forbidden the prosecution from obtaining. See Prudhomme v. Superior Court (1970) 2 Cal.3d 320. Therefore, since the danger that Hunt will be denied a fair trial and effective representation by counsel cannot be cured, the intentional, outrageous, and bad faith conduct by the governmental agents which caused this predicament warrant a dismissal of the case against the defendant.

2.

THE GOVERNMENT'S ACTIONS DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL AND GENERALLY VIOLATED THE DEFENDANT'S SIXTH AMENDMENT RIGHTS

As stated in In re Rider (1920) 50 Cal.App. 797, 799, "If **the right of defense exists, it includes and carries with it the right of such freedom of action as is essential and necessary to make such defense complete.**" Part of this right to defense is a right to counsel and this right is specifically guaranteed by the Sixth Amendment of the United States Constitution and Article I, Section 15, of the California Constitution. If meaningfully applied, this right entitled a defendant to effective assistance of counsel in the preparation and trial of the case. McMann v. Richardson (1970) 397 U.S. 759, 771; Powell v. Alabama (1932) 287 U.S. 45, 58; Barber v. Municipal Court (1979) 24 Cal.3d 742, 750. A component of that right is the duty of counsel to investigate carefully all defenses of fact and law that may be available to

the defendant. People v. Ibarra (1963) 60 Cal.2d 460, 464. In Barber v. Municipal Court, supra, at 751, it was recognized that **"a primary source of such information is the accused himself. Often whether guilty or innocent of the offense charged, the accused knows facts pertinent to his defense which may tend to incriminate or embarrass him."** The Court in Barber then logically concluded that **"if an accused is to derive the full benefits of his right to counsel, he must have assurance of confidentiality and privacy of communication with his attorney."** Id., at 751, [emphasis added]. It is apparent, then, that the attorney/client privilege, the obligation of confidentiality, and the work product doctrine are all designed to achieve and maintain conditions that are considered essential to the proper functioning of the attorney/client relationship and ensuring the constitutionally mandated effective assistance of counsel.

While it may possibly be that not every search of a defendant's residence, when the defendant is out on bail and the trial has begun, will result in an intrusion into the attorney/client relationship, under the circumstances of this case, the law enforcement officials at the very least had to be on notice that confidential materials, which would not have been discoverable by the prosecution, would be present at Hunt's office and residence. One of the reasons advanced as justification for allowing Hunt to be released on bail was to permit him to be more actively involved in the preparation of his defense. Hunt had in fact been diligently involved in the preparation of his defense by doing extensive research, aiding in writing several Motions,and going through and organizing the materials delivered by the prosecution

through discovery and the materials discovered through the defense's own investigation. It was not unlikely then that not only physical evidence anticipated to be used by the defense at trial was present at Hunt's residence, but also materials detailing communications between Hunt and his attorneys and materials outlining defense strategies. Yet, instead of encouraging such commendable involvement, by treating these egregious Government activities lightly, the defendant will in effect be punished for his active participation.

By analogizing the situation to a search of the law office of a defendant's attorney, the denial of Hunt's rights to a fair trial and effective assistance of counsel, the virtual nonexistence of searches of law offices can be explained by the general agreement that the attorney/client privilege and the work product doctrine would be seriously undermined if law enforcement officers armed with a search warrant could readily seize and examine documents otherwise unobtainable through prosecutorial discovery. This reasoning was recognized by retired Superior Court Judge Pacht when he enjoined the search of the Kaplan, Livingston firm and explained that a warrant of such kind **"could give agents the power to . . . go through a lawyer's office and absolutely destroy any kind of privilege that existed as to any of these documents . . . ."** Luther, Judge Assails Conduct in Search, Los Angeles Times, April 13, 1979, Section II, at p.4, column 1; see, generally, Law Office Searches, 69 Georgetown Law Journal 1, 18-20, and n.107. It logically follows that such privileged materials should not be afforded less protection simply because they are not actually located in the defendant's attorney's

office. It is the client, not the lawyer, whom this privilege is ultimately designed to protect. When the law enforcement official knows or should know that privileged material is present at the defendant's residence, it should be especially easy to apply the principle in the same way as it applies to law offices.

3.

THE SEARCH OF DEFENDANT'S RESIDENCE AND THE SEIZURE OF EVIDENCE WAS CONDUCTED WITH A WARRANT LACKING PROBABLE CAUSE AND WAS PRECIPITATED SOLELY TO DISCOVER NON-DISCOVERABLE AND CONFIDENTIAL INFORMATION

Compounding the seriousness of the Government's activities is the absolute misuse of process by the Government in carrying out their illegal activities. More than two years had passed since the proceedings had begun against Hunt. Yet, for no legitimate reason, the Government chose to wait until days before the actual trial began to effect the search.[1/] Furthermore, much of the evidence sought had previously been obtained in searches of both Hunt's residence and office while Hunt had been in custody. There was no probable cause to show that additional evidence

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[1/] See also Durham v. United States (9th Cir. 1968) 403 F.2d 190, where a search warrant to search a trailer 17 weeks after the illegal activities had ended was found to be invalid because there was no probable cause to support the contention that the activities continued beyond the time; therefore, there was no ability to show probable cause that evidence was presently existing in the trailer.

besides that already seized in the previous searches existed. Also, much more less intrusive means were available to obtain much of the evidence, especially records of trading done by the B.B.C. at E. F. Hutton. There was also the possibility that a Subpoena Duces Tecum could have been issued ordering the defense to turn over records that were discoverable.

Even more damaging to the defendant was the presence, in violation of Penal Code, Section 1530, of Lieutenant Zoeller at the search.[2/] It is obvious that the presence of Zoeller was not required so as to aid the officers named in the Warrant. But even if it were true that additional officers were needed to serve the Warrant, the choice of Zoeller, the investigating officer for the prosecution, was absolutely unjustifiable. The only explanation for his presence becomes apparent when considered in conjunction with the fact that officers investigating the murder to which the chief witness of the prosecution has been connected. It is the defense's contention that the Search Warrant was just a device to disguise an illegal search for this uncharged murder when no probable cause existed for such a search, as well as to circumvent the law as announced by Prudhomme and its progeny and effectively deny the defendant his rights to a fair trial, effective counsel, and privilege against self incrimination. Therefore, in order to discourage such blatant and intentional disregard for

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[2/] **"A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution."**

the law and misuse of process, these activities must be dealt with severely.

4.

DESPITE ANY PUTATIVE LEGALITY OF THE SEARCH, SUCH ACTIVITY WAS NOT JUSTIFIABLE WHEN IT CAME IN CONFLICT WITH THE RIGHTS OF THE DEFENDANT

Even assuming, arguendo, that the search and seizure were valid, this in no way excuses the invasion of the attorney/client privilege. Regardless of the reasons justifying this search, it had to be executed without interfering with the other constitutional rights of the accused. The application of this rule can be seen in both In re Snyder (1923) 62 Cal.App. 697 and In re Jordan (1972) 7 Cal.3d 930. In both cases, the Courts rejected the argument that intrusions into the rights of the accused's to privately communicate with his attorney were justifiable because of the governmental interest in detecting present crimes and preventing future crimes. As stated in Snyder: **"We all realize that official duty, grave and important as it is, must be performed in subordination to the constitutional rights of others."** Supra, at 701-02. Further support for this position is a quote from Barber, supra, which is directly on point: **"It is irrelevant to the reasons underlying the guarantee of privacy of communication between client and attorney that the State is intruding for one purpose rather than another."** Supra, at 753.

5.

THE ONLY SANCTION WHICH WILL BOTH EFFECTIVELY CURE THE WRONGDOING AND DETER FUTURE POLICE MISCONDUCT IS DISMISSAL OF ALL CHARGES AGAINST THE DEFENDANT

Once it has been determined that an intrusion into the attorney/client relationship has occurred and that the defendant's rights to effective counsel, to prepare a defense, and to receive a fair trial have all been damaged, all that is left is to determine the appropriate sanctions against the Government.

Under similar circumstances,the California Supreme Court in Barber v. Municipal Court, supra, dismissed the charges against the defendant because of governmental intrusion into the attorney/client relationship. In Barber, the intrusion occurred when undercover officers attended several meetings between the attorney and several of the defendants. At trial, the Motion to Dismiss had been denied on the grounds that there was no evidence to show that information gained by the officers had been transmitted to the prosecution. The trial court instead ruled that the evidence could not be used by the prosecution unless he could prove beyond a reasonable doubt that the evidence was obtained independently from the activities of the officers. The Supreme Court reversed, ruling that the only effective remedy was dismissal.

Much of the rationale supporting the Court's decision is applicable to our case. To begin with, the Court stated that:

> "[T]he enforcement of an exclusionary rule would involve exceedingly difficult problems of proof for the

aggrieved client. Subtle forms of prejudice are nearly impossible to isolate. Consider the prosecution witness who learns of some illegally obtained information. Even if the witness does not divulge the information to the prosecutor, the witness will be in a position to formulate in advance answers to anticipated questions and even to shade their testimony to meet expected defenses." Supra, at 757.

Clearly, this rationale is applicable in this case since much of the evidence illegally seized or viewed concerned materials to be used to impeach the anticipated prosecution witnesses. Furthermore, all element of surprise is destroyed regardless of whether the prosecution is prohibited from introducing some of the evidence. It follows that because the defense can never be assured that the Government has no knowledge or will not exploit the revealed information, the defense may be compelled to alter its strategy in order to nullify any unwarranted advantage the Government otherwise might have gained as a result of the illegal conduct. As a result, the client might be deprived of the best available defense.

The Court next stated that "an exclusionary rule would be illusory since the client would not be assured that he has been insulated from harm without requiring him to reopen the wound his adversary inflicted upon him in the first place." Supra, at 758. In other words, in order to have certain evidence excluded, an attorney would have to reveal confidential communication to show that the evidence was illegally obtained.

Finally, the Court stated that an exclusionary remedy would

be inadequate since it would provide no incentive for the State agents to refrain from future violations. By merely excluding the evidence the prosecution is no worse off than it was before the illegal activity,and has arguably been substantially aided, although the extent of such benefits can never be known with a certainty.

Similar conclusions were also reached by the Court in United States v. Levy (3rd Cir. 1978) 577 F.2d 200, which stated that

> **"[I]t is highly unlikely that a court can . . . arrive at a certain conclusion as to how the government's knowledge of any part of the defense strategy might benefit the government in its further investigation of the case, in the subtle process of pretrial discussion with potential witnesses, in the selection of jurors, or in the dynamics of trial itself."** Supra, at 208.

Consequently, in Levy the Third Circuit reversed the District Court and dismissed the case.

It should also be noted that in Barber, the Court recognized that the illegal conduct had a chilling effect on the defendants because they were afraid to communicate with the attorneys for fear that they would be speaking with more Government agents. Analogous to this case, the Government's activities not only have a chilling effect on further investigation and research, but if condoned, would also have a chilling effect on all future defendants from aiding their counsel in the preparation of their defense.

It must be pointed out that a judicial sanction of prohibiting the prosecution from communicating with the involved officers

is far from adequate. Not only can the anticipated effects of this sanction be easily avoided by merely using an intermediary to convey information, but also the benefits of the illegally obtained information may be realized through further investigation or by relaying the information only to potential witnesses.

In addition, as noted by both the Barber and Levy Courts, there is no guarantee that all prosecutors will behave pristinely, and not attempt to benefit from the wrong doing. See Barber, supra, at 757, and Levy, supra, at 208. Such behavior by the prosecution will not only not be admitted by the prosecution, but also will more than likely be completely undetectable.

Finally, in answer to the Government's contention that any misbehavior was solely attributable to Detective Zoeller and should not detriment the prosecution, the United States Supreme Court in Giglio v. United States (1972) 405 U.S. 150 held that **"whether the [misbehavior] was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government."**

6.

CONCLUSION

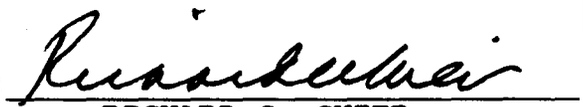
The defendant has demonstrated that for the violations herein complained of no single remedy or combination of remedies other than outright dismissal would be adequate to obviate the prejudice to this defendant and to deter in the future similar violations by others so inclined.

The visibility of this case would serve as a powerful deterrent to those tempted to violate the most sacred of rights in the panoply of rights guaranteed a United States citizen.

DATED: January 15, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: 
RICHARD C. CHIER
Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 15, 1987			
HONORABLE:	L. J. RITTANBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS DEPUTY DISTRICT ATTY: F. WAPNER

01 HUNT, JOE Counsel for Defendant: A. BARENS

187 01 ct; 211 01 ct R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued to January 14, 1987, with defendant, counsel and jurors present.

Voir dire is continued.

The jurors are admonished and the trial is continued to January 20, 1987, at 10:30 a.m. in Department WEST C.

Out of the presence of the prospective jurors, the hearing on defendant's motion to continue trial for three plus weeks in reset for January 20, 1987, after the jury selection.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-15-87
COUNTY CLERK

76M 413L C 120.4 83

MINUTE ORDER

1157

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WE C

Date:	JANUARY 20, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHEIR

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 15, 1987, with defendant, counsel and prospective jurors.

Voir dire is continued and concluded. Per stipulation of counsel the jurors are not sworn.

The jurors are admonished and the trial is continued to January 21, 1987.

Out of the presence of the jurors defense motion to continue trial is granted until February 2, 1987, after argument. Defense motion to dismiss the charges against the defendant is argued and denied.

The trial is continued to January 21, 1987, at 10:30 a.m. in Department WE C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-20-87
COUNTY CLERK

76M 413L C 120-4-83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 21, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 20, 1987, with defendant, counsel and all jurors present.

The jurors are admonished and the trial is continued to February 2, 1987, at 10:30 a.m. in Department WEST C.

A status conference is scheduled for January 26, 1987, at 10:30 a.m. in Department WEST C for the progress on return of defense material. Court's exhibit 1 (Investigation, 59 pages) is received in evidence. The Court orders two copies be made: one for the DDA and one for the defense.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-21-87
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

1459

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 26, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS. DEPUTY DISTRICT ATTY: F. WAPNER ✓

01 HUNT, JOE ✓

187 01 ct; 211 01 ct Counsel for Defendant: A. BARENS ✓

R. CHIER ✓

NATURE OF PROCEEDINGS

STATUS CONFERENCE BAIL

A status conference is called for hearing with defendant and counsel present.

Pursuant to Court's exhibit 1, received in evidence on January 21, 1987, the Court finds that an evidentury hearing is necessary to ascertain the truth of exhibit 1. The Court orders that the prosecutor have witnesses ready to testify at hearing continued to January 27, 1987, at 11:15 a.m. in Department WEST C.

The trial remains set to begin February 2, 1987, at 10:30 a.m. in Dept. WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-26-87
COUNTY CLERK

76M 413L C 120 4-83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 27, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY/S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS DEPUTY DISTRICT ATTY: F. WAPNER ✓

01 HUNT, JOE ✓ Counsel for Defendant:

187 01 ct; 211 01 ct A. BARENS ✓

R. CHIER ✓

NATURE OF PROCEEDINGS

MOTION TO DISMISS BAIL 4-4-85

The motion is dismiss is continued from January 26, 1987, with defendant and counsel present.

Kurt E. Kuhn and Oscar A. Breiling are sworn and testify for the People. Court's exhibit 2 (20 photocopied pages of Affidavit for Search Warrant), 3 (7 photocopied pages of Acknowledgement), and 4 (3 photocopied pages Return of Search Warrant) are marked for identification.

The witness Oscar Breiling is directed to photocopy specifically identified pages of possible defense material and mail a copy to the Court and a copy to the defense.

The motion is continued to January 28, 1987, at 10:30 a.m. in Department WEST C. The beginning of trial remains set for February 2, 1987.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-17-87
COUNTY CLERK

76M 413L C 120 4-83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 28, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS, R. CHIER

NATURE OF PROCEEDINGS

MOTION TO DISMISS BAIL 4-4-85

The defendant's motion to dismiss is continued from January 27, 1987, with defendant and counsel present as heretofore.

Ronald Y. Ito, Robert Rozzi and Leslie H. Zoeller are sworn and testify for the People.

Richard Chier is sworn and testifies for the defendant.

The motion is continued to January 29, 1987, at 10:30 a.m. in Department WEST C. The trial remains set to begin February 2, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-28-87
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 29, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER ✓

Counsel for Defendant: A. BARENS ✓
R. CHIER ✓

NATURE OF PROCEEDINGS

DEFENDANT'S MOTIONS BAIL 4-4-85

The defendant's motion for clarification of co-counsel R. Chier's scope of participation in trial is heard in chambers. The motion is granted and addressed by the Court.

The defense motion is continued in open court from January 28, 1987, with defendant and counsel present as heretofore.

Joseph Hunt is sworn and testifies on his own behalf. Bobby Roberts and and Lynne Roberts are sworn and testify for the defendant.

Paul Tulleners is sworn and testifies for the People.

The motion to dismiss is continued to January 30, 1987, at 10:00 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-29-87
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	JANUARY 30, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

DEFENSE MOTIONS BAIL 4-4-85

The defendant's motion to dismiss is continued from January 29, 1987, with defendant and counsel present.

Lynne Roberts, previously sworn, continues to testify for the defendant. Joe Hunt, previously sworn, continues to testify on his own behalf.

Clark W. Fogg and Brook Roberts are sworn and testify for the People.

Both sides rest. The matter is argued.

The Court makes the findings that the search warrant was valid, that those involved were adequately admonished and that the affadavits in support of the search warrant are adequate. The defendant's motion to dismiss the case is denied.

The defendant's motion re Arce and composition of the jury is argued and denied.

The trial is continued to February 2, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
1-30-87
COUNTY CLERK

76M 413L C 120 4 83

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 2, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN & P. KASER	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from January 30, 1987, with defendant and counsel present.

Defendant's motion to renew the motion to dismiss the case is heard and denied.

In the presence of the prospective jurors, by order of Court the following jurors are impaneled and sworn to try the cause:

Michael Lacey	Betty J. Burns
Linda King	Carolyn Ghaemmaghami
Gloria Shelby	Linda P. Mickell
Patricia Robles	Marsha A. Deeg
Emma Becking	J. Heide Gralinski
Irene F. Osborne	Clifton D. Rutherford

The following alternates are sworn: Catherine J. Keenan, Juel M. Janis, Nancy S. Korvin and Lynda D. Campbell-Cable.

Opening statements are made by the People and by the defendant.

Blanche Sturkey is sworn and testifies for the People. People's exhibits 6 (a black and white photograph of the victim Ronald Levin), 8 (large diagram of the victim's apartment), 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 24 (each a colored photograph), and 28 (a blue spiral notebook) are marked for identification.

The jurors are admonished and the trial is continued to February 3, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-2-87
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 3, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY & S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS DEPUTY DISTRICT ATTY: F. WAPNER

01 HUNT, JOE

187 01 ct; 211 01 ct Counsel for Defendant: A. BARENS

R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from February 2, 1987, with defendant, counsel and jurors present as heretofore.

Blanche Sturkey, previously sworn, is recalled and testifies for the People. Dea Factor, James O'Sullivan and James Foulk are sworn and testify for the People.

People's exhibits 4 (envelope with an Account Charge Noice dated 1-4-85, and 2 Swiss checks one for $500,000. and the other for $980,877.83), 7 (airline ticket cupons stapled to paper backing), 117 (black toiletry bag), 118, 119 (each a colored photograph of interior of victim's apartment), 120 (large black and white photograph), 121 (two pages of computer printout entitled Expected Arrivals dated 6-7-84 Mayfair Hotel), 122 (Automatic Room Summary nine pages computer printout), 123 (photocopy of Leading Hotels of the World dated 6-5-84) are marked for identification.

Defendant's exhibit A (photocopy of Beverly Hills Police Department Supplemental Report dated 10-9-84) is marked for identification.

The jurors are admonished and the trial is continued to February 4, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-3-87
COUNTY CLERK

76M 413L C-120-1-84

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 4, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
W.FAIRBANKS	S.COLLINS G.HOSHABEKIAN	Deputy Sheriffs	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA

VS

01 HUNT, JOE

187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

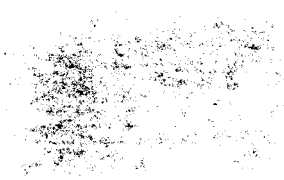
The trial is resumed from February 3, 1987, with defendant, counsel and jurors present as heretofore.

Len Marmor, Scott Furstman and Mark Geller are sworn and testify for the People.

People's exhibits 124 (two pages photocopies of Municipal Court Docket A088420) and 125 (Felony Complaint from Beverly Hills Muncipal Court numbered A088420 for Fonald Levin, 12 photocopied pages) are marked for identification.

The jurors are admonished and the trial is continued to February 5, 1987, at 10:30 a.m. in Department WEST C.

BAIL



WEST C

MINUTES ENTERED
2-4-87
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 5, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: R. CHIER
A. BARENS

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 4, 1987, with defendant, counsel and jurors present as heretofore.

Mark Geller, previously sworn, continues to testify for the People. Tere Terbea, Patricia Towers, Jerrianne Newman and Phyllis Balduzzi are sworn and testify for the People.

People's exhibits 39 (2 page Affidavit of the Custodian of Record of Security pacific National Bank and 57 photocopied pages of bank records), 40 (envelope with voided Traveler's Cheques and Chase Manhattan Bank documents), 41 (signature card for General News Corp), 42 (signature card for General Producers Corp), 43 (signature card for Journal for Investigative Reporting), 44 (nine pages of photocopied accounting records for General News Corp), 45 (12 pages of photocopied accounting records for General Producers Corp), 46 (10 pages of photocopied accounting records for Journal for Investigative Reporting), 48 (copies of 15 Chase Manhattan Corp Visa Travelers Cheques), 52 (check numbered 10028 dated June 6, 1984), 61 (copies of 15 Chase Manhattan Corp. Visa Travelers Cheques), 127 (yellow signature card for bank), 128 (letter dated June 5, 1984), 129 (cancelled check dated June 5, 1984, General New Corp), 130 (Cashier's Check from Security Pacific National Bank dated June 8, 1984), 131 (deposit ticket for June 5, 1984 for$100000 by General News Corp), 132 (deposit ticket for June 5, 1984 for $22.50), 133 deposit slip General News Corp dated June 6, 1984), 134 (Accourt Credit numbered 001008501, dated September 17, 1984), 135 (copies of Account debit dated December 18, 1984 for Ronald Levin), 136 (Copy of Account debit dated 12-18-84), 137 (copy of Account Debit Journal of Investigative Reporting), 138 (Currency Transaction Report of Ronald Levin dated June 1, 1984) are marked for identification.

The jurors are admonished and the trial is continued to February 9, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-87
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.**

Date:	FEBRUARY 9, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER & R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from February 5, 1987, with defendant, counsel and jurors present as heretofore.

Phyllis Balduzzi, previously sworn continued to testify for the People. Jerry Stone, Michael Broder and Harold Felvik are sworn and testify for the People.

People's exhibits 110 (blue 3/5 card computer printed dated 5-22-84), 111 (envelope with white slips of paper all annotated), 111A (slip dated 6-12 5:15 p.m.), 111B (slip time stamped 9:37a.m.), 111C (slip date 6-19 at 5:43 p.m.), 111D (slip dated 6-19 at 8:09 p.m.), 111E (slip 6-27 at 11:12 a.m.) 111F (slip with no date), 139 (Beverly Hills Executive Services dated 5-16-83), 139A (statement written by R. Levin on Beverly Hills Executive Services letter head dated 10-12-83), 140 (statement signed by Joe Hunt dated 6-21-83), 141 (signature card U.S. Trust dated 4-26-83), 142 (R. Levan account statements from United State Trust Company, 21 photocopied pages), 143 (4 photocopied checks), 143A (photocopied check # 5181), 143B (photocopied check # 5153), 143C (photocopied check # 5152), 143D (photocopied check # 5177), and 143E (photocopied check #5151) are marked for identificiation.

The jurors are admonished and the trial is continued to February 10, 1987, at 10:45 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-9-87
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 10, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 9, 1987, with defendant, counsel and jurors present as heretofore.

Carol Levin, Stella Ann Keener, Donald Schlegel, William G. Cowdin and Kenneth Fleiner are sworn and testify for the People.

People's exhibits 38 (envelope with 16 photocopied pages of Topaz Auto Leasing Records), 38A (4 photocopied pages of Topaz Auto Leasing on a BMW), 38B (4 photocopied pages of Topaz Auto Leasing documents on Honda), 38C (3 photocopied pages of Topaz Auto Leasing Finance Documents dated 12-1-83), 144 (photocopy of typed note dated 12-6-77), 145 (Birthday greeting from Ron Levin dated 3-6-71), 146 (Birthday card dated 3-6-82), 147 (Valentine card dated 2-14-79), 148 (group of 7 small cards), 149 (colored photograph of flowers), 150, 151, 152 (each a colored photograph), 153 (black and white photograph of 3 people), 154 (colored photograph of R. Levin and dog), 155 (cancelled check # 10022 dated 6-1-84 with Topaz Auto Leasing Statement), 156 (cancelled checks #'s 10009 and 10025 with Topaz Auto Leasing Statement), 157 (cancelled check # 10024 dated 6-4-84 with Topaz Auto Leasing Statement), 158 (cancelled check # 10026 dated 6-5-84 with Topaz Auto Leasing Statement), 159 (photocopy of Los Angeles Police Department letter dated 6-1-84), and 160 (photocopied Paulee Body Shop bill and check #2472 dated 5-22-84) are marked for identification.

The jurors are admonished and trial is continued to February 11, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-10-87
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 1470 WE C

Date: FEBRUARY 11, 1987
HONORABLE: L. J. RITTENBAND JUDGE — D. TSCHEKALOFF Deputy Clerk
P. QUINN Deputy Sheriff — S. YERGER AND R. GOODBODY Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) bail 4-4-85

The trial is resumed from February 10, 1987, with defendant, counsel and jurors present as heretofore.

Diane James and David Ostrove are sworn and testify for the People. People's exhibits 1 (Schedule of Cash Receipts for Conservator of Ronald Levin), 2 (2 pages, Statement of Securities Account Prudential-Bache and attached photocopy of a check), 3 (U.S. Trust Statement for December 1984, for Ronald Levin), 4 (two checks on a Swiss Credit Bank of R. Levin, one for $500,000.00 the other for $980,870.00 with an Account Charge Notice and an envelope from Wells Fargo Bank), 5 (Swiss Account Statement, dated December 4, 1984), 51 (an envelope with American Express records, 10 slips), 56 (photocopies of Prudential-Bache Securities Account Statements), 161 (5 photocopies pages of conservator's financial records including checks # 5205, 5206 and 5207), 162 (three photocopied pages of checks and their deposit slips), 163 (two photocopies pages of Account Statement, check and deposit slip each for $14,925.16), 164 (two photocopied pages of U.S. Trust Co. Statement and check # BK070588), 165 (two photocopies pages, check # 773621, deposit slip and check stub each for $10.22), 166A and 166B (each a large colored photograph), 167 (American Savings passbook of R. Levin), 168 (three Glendale Federal Savings passbooks of R. Levin), 169 (Home Savings and Loan passbook of R. Levin), 170 (bill from Fairfax Lock and Key dated 6-18-84), 172 (photocopy of check # 369 dated July 16, 1980) are marked for identification. People's exhibit 171 (letter dated May 23, [illegible] to Mark D. Pastor) is received in evidence.

Defendant's exhibit C (First Amended Complaint for Damages Number C535670) is marked for identification.

The jurors are admonished and the trial is continued to February 12, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-11-87
COUNTY CLERK

76M 413L C-120 - 7-80

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. WEST C 1471

Date: FEBRUARY 12, 1987

HONORABLE: L. J. RITTENBAND, JUDGE | D. TSCHEKALOFF, Deputy Clerk

P. QUINN, Deputy Sheriff | S. YERGER AND R. GOODBODY, Reporter

A090435 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA

VS

01 HUNT, JOE

187 01 ct; 211 01 ct

Counsel for People:

DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS

R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 11, 1987, with defendant, counsel and jurors present as heretofore.

Charles Milliken, Paul Pane and Richard Lebowitz are sworn and testify for the People.

People's exhibits 68 (The Plaza Hotel records), 68A (photocopy of R. Levin charge slip), 68B (photocopy of R. Levin Record of Checks Cashed form), 68C (photocopy of General Producers Corp charge slip), 68D (The Plaza room bill for R. Levin), 68E (The Palm Court dinner bill dated 6-9-84), 68F (Limo service bill for R. Levin dated 6-8-84), 68G (Limo service bill for R. Levin dated 6-10-84), 69 (photocopied sheet entitled "A. SCHMIDT, MOD, CHECKING OUT"), 173A (8 pages of computer printout of Visa Traveler's Cheques), 173B (one page of computer printout of Visa Travelers Cheques Inquiry dated 10-9-86), 174 (dental X-Rays), and 175 (black and white photograph of J. Pittman) are marked for identification. People's exhibit 68A, previously marked for identification is received in evidence.

Defendant's exhibits D (missing persons form report) and E (computer print-out of Missing Persons) are mared for identification.

Out of the presence of the jurors, defendant's motion in limine re order of proof and request for evidentiary hearing re acts and statements of alleged co-conspirator, is heard, argued and denied.

The jurors having been admonished are excused and the trial is continued to February 17, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-12-87
COUNTY CLERK

76M 413L C-120 - 7-80

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 17, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA Counsel for People:

VS DEPUTY DISTRICT ATTY: F. WAPNER

01 HUNT, JOE

187 01 ct; 211 01 ct Counsel for Defendant: A. BARENS

R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 12, 1987, with defendant, counsel and jurors present as heretofore.

Joe Vega, Robert Jordan, Robert Ferraro, Irene Noonen and John W. Reeves are sworn and testify for the People.

People's exhibits 70 (large diagram), 71, 72, and 73 (each a colored photograph), 74 (photocopy of Property Clerk's Invoice Numbered B721057), 75 (black and white photograph), 76 (photocopy of fingerprint card), 77 (envelope with photocopies of American Express charges), 176 (23 pages of photocopied telephone bills for 213 658-5566), 177 (2 pages of photocopied American Express charge slips and Gold Card Invetory Log) are mareked for identification. Later People's exhibits 74 and 177, above are received in evidence.

The jurors are admonished and the trial is continued to February 18, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C.

MINUTES ENTERED
2-17-87
COUNTY CLERK

76M 413L C-120-1-84

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 18, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from February 17, 1987, with defendant, counsel and jurors present as heretofore.

John W. Reeves, previously sworn, continues to testify for the People. Presley Reed, Jr., M.D., Martin Levin and Jeffrey Raymond are sworn and testify for the People.

People's exhibits 50 (Advanced Cellular Phone Co. Records), 51 (American Express Account Summary Statements), 52 (Check # 10028 dated 6-6-84), 53 (check # 10023 dated 6-4-84), 54 (photocopy of letter dated 6-4-84), 55 (envelope with 7 pages entitled "TO DO AT LEVINS" each encased in plastic), 94 (envelope containing Microgensis file), 95 (Microgensis Option Agreement), 100 (envelope with greenish file folder), 178 (three page photocopy of letter regarding Levin's Police Pass), 179 (check # 10020 with seven pages and envelope), 180 (letter from R. Levin dated June 5, 1984, 9 pages), 181 (letter from R. Levin dated June 1, 1984, 5 pages), and 182 (nine photocopied pages of computer generated docuemnt entitled "Objectives of the BBC" are marked identification.

Defendant's exhibits F (five page index) and G (computer printout four pages) are marked for identification.

The jurors are admonished and the trial is continued to February 19, 1987 at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-18-87
COUNTY CLERK

78M 413L C-120-1-84

MINUTE ORDER

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

RICHARD C. CHIER
10920 Wilshire Blvd., Suite 1000
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Attorneys 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** **NOTICE OF MOTION AND MOTION FOR MISTRIAL AND FOR RECUSAL OF TRIAL JUDGE; POINTS AND AUTHORITIES**

TO: IRA REINER, DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES, AND TO HIS DEPUTY DISTRICT ATTORNEY FREDERICK NATHAN WAPNER:

PLEASE TAKE NOTICE that defendant, JOE HUNT, respectfully moves for an Order declaring a mistrial and, further, for recusal of the trial court.

Said Motions are made upon the grounds, each and all, that the trial court's conduct in first reproducing and then distributing to the jury, on its own motion, copies of prejudicial statements allegedly made by the defendant has so severely prejudiced the jury and has demonstrated such extreme bias that a Motion for a Mistrial must be granted and the trial court must

recuse itself.

Said Motion will be based upon the attached moving papers, upon the Reporter's Transcript of Proceedings had before the jury on February 18, 1987, and upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: February 18, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1.

THE TRIAL COURT'S CONDUCT HAS SO SEVERELY PREJUDICED THE JURY AND HAS DEMONSTRATED SUCH EXTREME BIAS THAT A MOTION FOR A MISTRIAL MUST BE GRANTED AND THE COURT MUST RECUSE ITSELF

In the case against the defendant, JOE HUNT, the single most important piece of evidence is a collection of seven pages found in the home of Ron Levin which, according to the prosecution, expresses the guidelines which were to be followed in the perpetration of the alleged murder of Levin. In yet one more example of the trial court's ongoing efforts to aid the prosecution, the trial court, sua sponte, caused copies of these seven pages to be made and distributed to the jury. This was done even before the pages had been admitted into evidence. Indeed, these copies were made without the prosecution's knowledge or approval. On the contrary, the prosecution went so far as to suggest that the trial court exercise restraint in the matter. Furthermore, in handing out the copies to the jury, the trial court did so with facial expressions of satisfaction and approval. Through these actions, the trial court has once again demonstrated its bias against the defendant and manifested a role of advocate rather than impartial tribunal officer. For these reasons, a mistrial must be declared and the judge ought to recuse himself.

In People v. Hefner (1981) 127 Cal.App.3d 88, 95, the Court noted that **"the potential influence of the court's remarks on the**

credibility of the various witnesses in the eyes of the jury is great." The Court further explained that the effect of bias is especially prejudicial when the evidence of guilt is substantial but not overwhelming. Hefner, supra, at 95. Thus, although the trial court has been given the power through Section 19 of Article VI of the California Constitution to comment on the evidence, "[h]e may not withdraw material evidence from the jury's consideration or distort the testimony, and his comments should be temperately and fairly made, rather than being argumentative or contentious to a degree amounting to partisan advocacy." People v. Ivy (1966) 244 Cal.App.2d 406, 411, citing, People v. Friend (1958) 50 Cal.2d 570, 577-78. [Emphasis added.] Likewise, the Court in People v. Rigney (1961) 55 Cal.2d 236, stated that the trial judge "must not become an advocate for either party or under the guide [sic] of examining witnesses, comment on the evidence or cast aspersions or ridicule on a witness." Supra, at 241. Finally, in Quercia v. United States (1932) 284 U.S. 466, 479, quoted with approval in People v. Ottey (1936) 5 Cal.2d 714, 724-25, the high court explained that "[t]his privilege of the judge to comment on the facts has its inherent limitations. His discretion is not arbitrary and uncontrolled, but judicial and must be exercised in conformity with the standards governing judicial office. In commenting upon testimony he may not assume the role of a witness. He may analyze and dissect the testimony, but he may not either distort it or add to it." [Emphasis added.]

By having special copies of the seven pages produced and distributed to the jury, the Court emphasized, underscored,

exacerbated, and validated this evidence in the minds of the jurors. By so doing, the judge improperly influenced the jury so that they could no longer independently assess the significance of the evidence. Unquestionably, the Court both distorted and added to the significance of the evidence in the minds of the jury. This error is compounded by the very nature of the evidence. It was the most important piece of evidence in the prosecution's case in chief; it was the single most devastating and troublesome evidence in the case against the defendant. It should be added that at the same time these copies were being distributed to the jury, the District Attorney was utilizing large poster boards upon which the seven pages had been enlarged so that they were easily readable to the jury or any other person in the courtroom.

Quite clearly, the Court has overstepped its bounds and has become a partisan advocate. This is especially apparent when considered in light of the defense's continuing struggle with and objections to similar non-judicial behavior. This behavior has unduly influenced and irreparably prejudiced the jury so that the defendant can no longer receive a fair trial and consequently has been denied due process. The Court, therefore, has no other alternative but to rule a mistrial and, so as to prevent similar

future occurrences, recuse himself from the case.

DATED: February 18, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 19, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY AND S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 18, 1987, with defendant, counsel and jurors present as heretofore.

Jeffrey Raymond, previously sworn, continues to testify for the People. Gene Browning is sworn and testifies for the People.

People's exhibits 57 (check for 1.5 million dollars #400358 dated 6-6-84), 58 (Microgensis of North American Option Agreement, two pages), 59 (two photocopied pages of Minutes of Special Meeting), 183 (two black and white photographs) and 184 (black and white photograph) are marked for identification. Later, People's exhibit 58 is received in evidence.

Defendant's exhibits H1, H2, H3 (each a colored photograph) and I (two page analysis entitled "Cost of Machine) are marked for identification.

The jurors are admonished and the trial is continued to February 23, 1987, at 10:30 a.m. in Department WEST C.

Defendant's motion for mistrial and for recusal of trial judge is received, filed, read, considered and denied.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-19-87
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 23, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 19, 1987, with defendant, counsel and jurors present as heretofore.

Gene Browning, previously sworn, continues to testify for the People. Evan Dicker is sworn and testifies for the People.

People's exhibits 60 (signature card, World Trade Bank, N.A.), 185 (notebook entited "Minutes Microgensis of North America, Inc), 185A (three page computer printout entitled "Minutes of Meeting of the Board of Directors of Microgensis of North America, Inc."), 185B (four page photocopy of "Agenda for Special Meeting..."), 185C (two page computer printout entitled "Minutes of Meeting..."), and 182A (14 photocopied pages of BBC organization papers) are marked for identification.

Defendant's exhibit J (seven page photocopied of "Shareholders Agreement") is marked for identification.

The jurors are admonished and the trial is continued to February 24, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-23-87
COUNTY CLERK

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 24, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY AND S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER ✓

01 HUNT, JOE ✓
187 01 ct; 211 01 ct

Counsel for Defendant:
A. BARENS ✓
R. CHIER ✓

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from February 23, 1987, with defendant, counsel and jurors present as heretofore.

Evan Dicker, previously sworn, continues to testify for the People. Tom May is sworn and testifies for the People. People's exhibit 94 (envelope containing Microgenesis file) is marked for identification.

Defendant's exhibits K1 (certificate of 67 shares of Microgensis for Seldon, Inc.), K2 (certificate of 33 shares of Microgensis for Gene Browning), L1 (proxy option for B. Dosti), L2 (proxy option for Dean Karny), L3 (proxy option for Joe Hunt), L4 (Promissory note dated November 8, 1983), M1 (certificate of 29 shares of West Carsfor Dean Karny), M2 (certificate of 20 shares of West Cars for Tom May II), M3 (certificate of 20 shares of West Cars for Dean Karny), M4 (certificate of 20 shares of West Cars for Tom May II), M5 (certificate of 11 shares of West Cars for Tom II), and N (letter to Joe Hunt dated August 19, 1983) are marked for identification.

The jurors are admonished and the trial is continued to February 25, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-24-87
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 25, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY AND S. YERGER	Reporter

A090435 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant: A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is resumed from February 24, 1987, with defendant, counsel and all jurors present as heretofore.

Tom Frank May, previously sworn, continues to testify for the People. People's exhibits 80 (photocopy of two pages of Microgensis Option Agreement), 81 (photocopy of Swiss Credit Bank Check), 82 (photocopy of letter by Joe Hunt dated June 7, 1984), and 83 (records of R. Levin account with Clayton Brokerage Co.) are marked for identification.

The trial is continued to February 26, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WEST C

MINUTES ENTERED
2-25-87
COUNTY CLERK

76M 413L C-120-1-84

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	FEBRUARY 26, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	S. YERGER AND R. GOODBODY	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

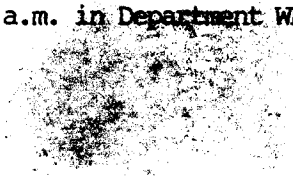
The trial is continued from February 25, 1987, with defendant, counsel, and jurors present as heretofore.

Tom Frank May, previously sworn, continues to testify for the People. Jack Friedman is sworn and testifies for the People.

People's exhibits 88 (clayton Trading Authorization) and 89 (letter from Ronald Levin dated June 28, 1983) are marked for identification.

Defendant's exhibits O (photocopy of rough draft letter to "Dear Sirs), P (photocopied page of notes in longhand), Q (photocopied page in longhand signed by Dr. Gene Browning dated July 22, 1984), R (document entitled "Joint Venture Agreement"), S1 (photocopy of handwritten note entitled "Shadow Valley Development Agreement"), S2 (photocopy of handwritten note entitled not titled), S3 (photocopy of handwritten document entitled "Joint Venture Agreement"), S4 (photocopy of handwritten note entitled "The Shadow Mountain Development Agreement), T1 (photocopy of handwritten note note titled), T2 (photocopy of page entitled "To Do"), U (photocopy of BBC letter dated September 17, 1984) are marked for identification.

The jurors are admonished and the trial is continued to March 2, 1987, at 10;30 a.m. in Department WEST C.



BAIL

DEPT. WEST C

MINUTES ENTERED
2-26-87
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES **DEPT.** WE C

Date:	MARCH 2, 1987			
HONORABLE:	L. J. RITTENBAND	JUDGE	D. TSCHEKALOFF	Deputy Clerk
	P. QUINN	Deputy Sheriff	R. GOODBODY AND S. YERGER	Reporter

(Parties and counsel checked if present)

A090435
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 HUNT, JOE
187 01 ct; 211 01 ct

Counsel for People:
DEPUTY DISTRICT ATTY: F. WAPNER

Counsel for Defendant:
A. BARENS
R. CHIER

NATURE OF PROCEEDINGS

TRIAL (JURY) BAIL 4-4-85

The trial is continued from February 26, 1987, with defendant, counsel and all jurors present as heretofore.

Julius Paskan, M.D., and Nabil Abifadel are sworn and testify for the People. Jack Friedman, previously sworn, continues to testify for the People.

People's exhibits 109 (envelope with receipt), 112 (computer generated message dated June 15, 1984), 113 (two Credit Suisse documents), 114 (two World Trade Bank Documents), 115 (World Trade Bank Account Debit slip), 186 (photocopy of check for $10,000. to Joe Hunt dated February 9, 1984) 187 (photocopy of Quaterly Account Statement dated March 1, 1984), 188 (photocopy of check to Julius Paskan for $466.66), 189 (two page photocopied letter to Dear Investor dated May 29, 1984), 190 (copy of statement of Julius Paskan), 191 (photocopy of letter dated April 12, 1984), 192 (photocopy of letter to Dear Investors dated July 18, 1984), 193 (Promissory Note Release of all Claims), and 194 (photocopy of from letter from Joe Hunt signed by J. Paskan) are marked for identification.

Defendant's exhibit V (photocopy of Limited Partnership Agreement) is marked for identification.

The jurors are admonished and the trial is continued to March 3, 1987, at 10:30 a.m. in Department WEST C.

BAIL

DEPT. WE C

MINUTES ENTERED
3-2-87
COUNTY CLERK

76M 413L C-120-1-84

MINUTE ORDER

ORIGINAL

ARTHUR H. BARENS
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(213) 557-0444

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

Attorneys 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** **NOTICE OF MOTION AND MOTION FOR ORDER DISMISSING INFORMATION, OR IN THE ALTERNATIVE, DECLARING A MISTRIAL** **Date: March 4, 1987** **Time: 10:30 a.m.** **Place: Department WE-C**

TO: FREDERICK NATHAN WAPNER, ATTORNEY FOR THE PLAINTIFF; TO JEFFREY BRODEY AND BARRY GREENHALGH, ATTORNEYS FOR DEFENDANT, JAMES PITMAN:

YOU AND EACH OF YOU, PLEASE TAKE NOTICE that on Wednesday, March 4, 1987, at the hour of 10:30 a.m., or as soon thereafter as counsel may be heard in Department WE-C of the above-entitled Court, defendant, JOE HUNT, will move for an Order dismissing Information No. 090435, or, in the alternative, for an Order declaring a mistrial herein.

Said Motion will be made upon the ground that the failure of the trial court to abide by Rule 980 of the California Rules of Court concerning media coverage has caused the within trial to be

conducted in a circus-like atmosphere thereby depriving the defendant of a fair trial.

Said Motion will be based upon the attached moving papers and upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.

DATED: March 2, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

DECLARATION OF RICHARD C. CHIER

RICHARD C. CHIER declares and states:

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

2. Trial of the within cause commenced on November 5, 1986, and is continuing as of the present time.

3. Prior to the commencement of trial, i.e., jury selection, on November 4, 1986, court appearances were attended by members of the press some of the time.

4. Representatives of the print media have attended every single court appearance since November 4, 1986, without interruption, flurry, or other attention creating behavior.

5. Since approximately February 2, 1987, the trial court has permitted press photographers, television cameras, and on occasion motion picture cameras to be present in the courtroom. I am informed and believe that no Order was made allowing this in compliance with Rule 980, California rules of Court.

6. Although the presence of these representatives of the electronic media has been violative of Rule 980 of the California Rules of Court, such as by displaying marks which identify the station or the placement of microphones in a conspicuous manner, and although the trial court has permitted the presence of these media people without notice to the parties (including the defendant), and although your declarant is unaware of the existence of any written Order permitting media coverage of this case, the

press, had for the most part conducted themselves in a responsible and unobtrusive manner.

7. Commencing on or about Wednesday, February 18, 1987, and continuing through approximately Thursday, February 26, 1987, the trial court permitted, without even colorable compliance with Rule 980 of the California Rules of Court, the following matters and things:

(a) The presence of more than one television camera;

(b) The presence of more than one still photographer;

(c) The presence of still cameras which made distracting sounds;

(d) The presence of a high intensity quartz halogen lighting system;

(e) The presence of multiple microphones and wires obtrusively located in places not approved by the Court or counsel and which were operated by more than one person; and

(f) The presence of equipment bearing the insignia or markings of various media agencies both inside and immediately outside the courtroom.

8. The presence of these media representatives together with their equipment in violation of Rule 980 of the California Rules of Court created an undignified and circus like atmosphere during the most sensitive portion of the prosecution case against defendant Hunt.

9. The prejudice suffered by the defendant is irreparable and the failure of the trial court to itself comply with Rule 980 and/or to enforce compliance therewith by other persons is unjustifiable.

10. Accordingly, defendant respectfully requests the Court dismiss the within prosecution with prejudice or, in the alternative, and at the very least, that the Court declare a mistrial herein.

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 7, 1987.

RICHARD C. CHIER

MEMORANDUM OF POINTS AND AUTHORITIES

1.

FILM OR ELECTRONIC MEDIA COVERAGE IS PERMITTED ONLY ON WRITTEN ORDER OF THE COURT WHICH MUST BE REQUESTED ON A FORM APPROVED BY THE JUDICIAL COUNCIL FILED A REASONABLE TIME BEFORE THE PORTION OF THE PROCEEDING TO BE COVERED

California Rules of Court, Rule 980(b)

2.

THE CLERK SHALL PROMPTLY INFORM THE PARTIES OF ANY REQUESTS FOR MEDIA COVERAGE

California Rules of Court, Rule 980(b)(1)

As shown by the Declaration of Richard C. Chier annexed hereto and filed concurrently herewith, the Clerk of the Court has never informed the defendant or his counsel of the nature or extent of any application or request for media coverage which may have been filed at any time herein or, any augmentation thereof.

3.

UNLESS OTHERWISE ORDERED FOR GOOD CAUSE THE MEDIA ARE LIMITED TO ONE TELEVISION CAMERA AND ONE STILL PHOTOGRAPHER WHICH DOES NOT PRODUCE DISTRACTING SOUND

California Rules of Court, Rule 980(b)(3)(i)(ii)

4.

EXISTING COURTROOM SOUND AND LIGHTING SHALL BE USED WITHOUT MODIFICATION; MICROPHONES AND WIRING SHALL BE UNOBTRUSIVELY LOCATED IN PLACES APPROVED BY THE COURT AND OPERATED BY ONE PERSON

California Rules of Court, Rule 980(b)(3)(i)(iii)

As shown by the Declaration of Richard C. Chier, there have been approximately four to five days during which there were not less than four still cameras in the courtroom and as many as three television cameras in the courtroom together with high intensity artificial lighting and the courtroom bristled with at least eight different microphones placed on the counsel table and witness stand and on the railing of the jury box.

5.

CONCLUSION

Rule 980 of the California Rules of Court together with its component subparts were enacted to achieve a balance between the right of the press to cover newsworthy events and to maintain the dignity, decorum, and rights to a fair trial guaranteed every defendant in this country. The relinquishment by the trial court of control over the media as required by Rule 980 of the California Rules of Court can be redressed only by dismissal or mistrial. Accordingly, the Court is respectfully requested to grant the relief prayed herein.

DATED: March 7, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

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

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 FOR ORDER DISMISSING INFORMATION OR, IN THE ALTERNATIVE, FOR ORDER PROHIBITING THE TESTIMONY OF DEAN KARNY; DECLARATION; POINTS AND AUTHORITIES** **Date: March 4, 1987** **Time: 10:30 a.m.** **Place: Department WE-C**

TO: EACH PARTY AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on Wednesday, March 4, 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, JOE HUNT, will move for an Order dismissing Information No. A090435. Said Motion will be made on the ground that the People have violated defendant's rights of due process by the wrongful confiscation of and refusal to return a critical defense trial exhibit.

In the alternative, and failing outright dismissal, the defendant will move the Court for an Order prohibiting the testimony of Dean Karny, because the spoliation of the evidence in

question will deny the defendant his right to confront and to effectively cross-examine witness against him as guaranteed by the Sixth Amendment to the United States Constitution.

DATED: March 27, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By: _____
RICHARD C. CHIER
Attorneys for Defendant

DECLARATION OF RICHARD C. CHIER

RICHARD C. CHIER declares and states:

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

2. Prior to January 8, 1987, the defendant was instructed to begin organizing and summarizing numerous documents and exhibits for use in the examination of prosecution witnesses.

3. In accordance with these instructions I am informed and believe and thereon allege that defendant Hunt assembled a number of documents, assigned them numbers, and organized them in some cohesive fashion.

4. Exhibit #37 was of particular significance in that it was intended to be used for the cross-examination of Dean Karny, the principal prosecution witness.

5. Because of the dilemma created by the lawless and over-reaching search of January 8, 1987, the defendant will be unable to effectively cross-examine the witness Karny without being able to confront him with a document written in his own hand.

6. I am informed and believe and thereon allege that the Court has threatened to allow the People to introduce the entire circumstances of the Karny/Eslaminia affair if the defendant has the temerity to inquire of the witness Karny about his immunity arrangement in Northern California as well as locally.

7. Inasmuch as the contents of Exhibit 37 have extreme relevance in the Eslaminia situation as well as the instant case

the defendant, himself, desires to reveal to the Court in camera the substance of the document known as Exhibit 37 which the People have confiscated and will not return.

8. Accordingly, request is hereby made that the Court take in camera testimony from the defendant and thereafter seal the same in lieu of the defendant's Declaration.

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 3, 1987.

RICHARD C. CHIER

MEMORANDUM OF POINTS AND AUTHORITIES

1.

BY INTENTIONALLY FAILING TO RETURN A CRUCIAL DEFENSE EXHIBIT WHICH TENDS TO SEVERELY IMPEACH THE CHIEF WITNESS FOR THE PROSECUTION, THE PEOPLE DENIED THE DEFENDANT DUE PROCESS OF LAW

On January 8, 1987, under color of a Search Warrant of dubious validity, law enforcement agents searched the residence of Joe Hunt and seized, inter alia, numerous defense exhibits. Hunt was actively involved in preparing his defense, and many privileged documents pertaining to his defense were located in his residence. The search was conducted while Hunt was in court during jury selection.

The manner in which the search was carried out was highly questionable. Based on the suspect legality of the search and violations of the defendant's rights, the defense moved for dismissal. This Motion was denied. However, the Court ordered copies of the documents taken to be made and delivered to the defense. Conspicuously missing from those delivered documents was an item which tended to materially impeach the testimony of Dean Karny. As will be shown, failure to return this document is a violation of due process and, unless it is returned, the defense moves to dismiss the charges against Hunt, or, in the alternative, to exclude the testimony of Dean Karny.

Under the rule as announced in California v. Trombetta (1984) 467 U.S. 479, a defendant is denied due process if

evidence which has an apparent exculpatory value is destroyed or suppressed by governmental agents and no other comparable evidence is available to the defendant to replace the suppressed or destroyed evidence.

Similarly, in Giglio v. United States (1972) 405 U.S. 150, the United States Supreme Court determined that when the "**reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting the credibility**" of that witness is a denial of due process. Id., at 154.

The United States Supreme Court further elaborated on this right in Davis v. Alaska (1974) 415 U.S. 308, when it explained that the primary interest secured by the confrontation clause of the Sixth Amendment, is the right to cross-examination. The Court then described cross-examination as "**the principle means by which the believability of a witness and the truth of his testimony are tested.**" Id., at 315-16.

Therefore, necessarily coming within the scope of the Trombetta rule is evidence which tends to impeach witnesses who testify against the defendant.

Because Karny's testimony is the essential link in bringing together the prosecution's entire case in chief, his credibility is pivotal. The ability to show that Karny is lying and has lied previously about his participation in a crime for which he has been granted immunity is of paramount importance to the defense. What can only be an intentional suppression of this evidence is a denial of the defendant's due process rights.

2.

THERE IS NO OTHER COMPARABLE EVIDENCE TO REPLACE THE EVIDENCE WHICH HAS BEEN INTENTIONALLY SUPPRESSED BY THE PROSECUTION

The second prong of the Trombetta test provides that there is no denial of due process if comparable evidence to that which has been destroyed or suppressed is available to the defendant. In this case against Hunt, the nature of the suppressed evidence is such that no comparable evidence exists to replace it.

It may be the prosecution's contention that all the defense need do is have Hunt testify as to the existence of the facts revealed by this evidence. See People v. Richbourg (1986) 185 Cal.App.3d 1098. But unlike the situation in Richbourg, the defense is not trying to establish the existence of some particular fact. Instead, the evidence was to be used to cross-examine Karny.

Indisputably, a criminal defendant has a fundamental right to confront the witnesses against him, and it is the right of cross-examination which is the primary interest secured by this guarantee and which is an essential safeguard to a fair trial. People v. Brock (1985) 38 Cal.3d 180, 188-89. Impeachment of witnesses' testimony is one of the primary concerns of cross-examination. Denial of the ability to impeach a witness because of intentional misconduct by the People is a denial of effective cross-examination and, therefore, a denial of due process and a fair trial.

The importance of this evidence is further magnified by the

Court's ruling that the admissibility of evidence of Karny's grant of immunity for his participation in another murder will be conditioned on the reciprocal right of the prosecution to present evidence of the defendant's involvement in an as yet untried murder case. If evidence of this uncharged offense is admitted, this suppressed evidence takes on an even greater magnitude because it shows Karny's involvement was greater than that previously admitted. Quite clearly, the People are attempting to deny the defendant his constitutionally protected right to impeach witnesses against him. The Court cannot condone or encourage such behavior and therefore must either dismiss the charges against the defendant or prohibit the testimony of the witness Karny until the evidence is returned.

DATED: March ___, 1987

Respectfully submitted,

ARTHUR H. BARENS
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By: _____
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