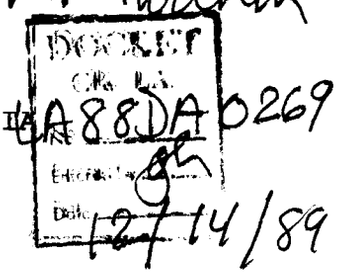
M. Turchin



Crim. B 029402
(L.A. No. A090435)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE LAURENCE J. RITTENBAND, JUDGE PRESIDING

APPELLANT'S APPLICATION FOR EXTENSION OF TIME TO FILE STIPULATIONS AS TO MISSING PORTIONS OF APPELLATE RECORD; APPLICATION TO VACATE OPENING BRIEF DUE DATE; ALTERNATIVELY, APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE OPENING BRIEF; PROPOSED ORDER

DANIEL A. DOBRIN
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Box 530
1184 E. Mission Blvd.
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Attorney for Appellant
By Court Appointment

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff and Respondent,	)	
	)	
v.	)	2 Crim. B 029402
	)	(L.A. No. A090435)
JOE HUNT,	)	
	)	
Defendant and Appellant.	)	
	)	

STIPULATIONS AS TO CONTENTS OF DOCUMENTS

NOT PRESENTLY INCLUDED IN THE APPELLATE RECORD

In accordance with paragraph 5, pages 15-16 of the Court of Appeal's November 8, 1988 augmentation order, the parties stipulate that the attached documents may be included in the record on appeal, as they are true and correct copies of the following documents which are now missing from the court file and which are referred to in the existing appellate record in this matter:

1. Defendant's written analysis of cases cited by the People during proceedings on appellant's motion for sanctions based on a search of appellant's residence during trial proceedings, submitted on January 29, 1987.

2. Defendant's motion for mistrial, submitted on or about April 13, 1987 and denied April 14, 1987.

3. Declarations and points and authorities in support of

motion to reinstate Richard Chier, submitted and originally placed under seal on April 24, 1987.

Documents 2 and 3 listed above were re-created from computer records. As to these documents, the parties stipulate that at all places where there is a space for a signature, each document was signed by the person designated below the signature space, and dated with the approximate date that the document was submitted to the court.

Respectfully submitted,

DANIEL A. DOBRIN
Attorney for Appellant
Joe Hunt
Dated: November 1, 1989

IRA REINER
District Attorney,
County of Los Angeles
Attorney for Respondent
By: RICHARD STONE
Deputy District Attorney
Dated: ~~November~~ December 4, 1989

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. JOE HUNT, Defendant and Appellant.	)	2 Crim. B 029402 (L.A. No. A090435) Order

THE COURT:*

Based on the parties' above stipulations, and good cause appearing, it is ordered that the attached documents shall be included in the record of this appeal, and that these documents shall be deemed signed and dated in accordance with the provisions of the parties' stipulations.

*PRESIDING JUSTICE

1. Defendant's Written Analysis of Cases Cited By the People During Proceedings on Appellant's Motion For Sanctions Based On a Search of Appellant's Residence During Trial Proceedings, Submitted On January 29, 1987.

People v. Towler
(31 Cal.3d 105)

In Towler the Court refuses to grant a dismissal for two reasons:

First. The defendant did not seek dismissal at trial and did not see to it that the document in question became part of the record.

The Court found unpersuasive Towler's assertion that the only reason he did not seek dismissal was because before the Barber ruling was made he had no reason to believe such a sanction was achievable. The court concludes:

"**if Towler believed that the district attorney's conduct had undermined or prejudiced his defense, he did not need Barber to suggest that a motion for dismissal was the logical move**."

Hunt clearly is not in Towler's position.

The court also found that:
"**It might have been readily apparent from an examination of the document whether or not the prosecution was actually aided by the information and whther some remedy short of dismissal would be adequate to protect the defendants rights (citing Zamorra) Since the inadequacy of the record is attributable to the defendant's failure to pursue this matter below, we conclude that the defendant may not raise this claim for the first time on appeal**."

Hunt clearly is not in this position either. Conclude with me then in finding that Towler is not referring to a defendant in Hunt's position and its rulings could not justifiably be described as governing a fact situation similar to my client's.

The ~~Second Reason~~ support the Courts finding in Towler is stated on page 102:

"Finally the record before us is totally inadequate to determine whether or not dismissal would be an appropriate sanction. On the facts of Barber, we concluded that an exclusionary sanction would not adequately protect the defendants' rights, in part because in order to enforce that sanction the defendants would have been forced to divulge the full contents of conversations to **which the police informant, but not the prosecutor** had been privy. (24 Cal.3d at p.758) **Here, However, defendant would not have had to provide any informatin that the prosecutor did not already know because the confidential**

information was contained in a written doucment that the prosecutor had seized."

This is the Crux of the Barber case as repeated in the Case of Towler by way of differentiation. It is also undeniably supportive of Mr. Hunt's position here today. The police are privy the prosecutor is not. That is the situation in this court room today. The defendant is placed in a position where, if he were to have to prove that Zoeller has tainted any of the witnesses he deals with or will deal with he must waive his own constitutional rights, Furthermore if the defendant were to seek to rebut the DA's assertions of freedom from taint he would have to violate his own priveleges. This is exactly the unconscionable situation decried in Barber, Towler and Glover. The court itself, not the police or the prosecutor, will put Mr. Hunt in the situation where he has to choose between maintaining his constitutional priveleges or waiving them in an effort to prove actual prejudice during a Chapman style Sanction hearing. It is not a situation as in Glover and Towler where the District attorney without the court's blessing had already violated the defendant's constitutional rights and where the court, though it deplores said action, is not condoning, accepting or acquiesing to a future and prospective violation of those rights. **It is a situation where the court itself becomes the instrument whereby my client, the defendant, Joe Hunt, is forced to choose potentially between a fair trial free of taint and his constitutional rights. Such a dilemma cannot exist in America. It is repugnant to the people and to the laws as expressed so lucidly by the Supreme Court of California. Dismissal is the only sanction which will prevent the Courts from becoming the instrument by means of which the defendant is stripped of the sensible protection of his constitutional rights.**

3. Towler is a post conviction case. Barber and the Hunt case are pre-trial cases and as such do not have to prove actual bias. See The Glover brief for analysis.

Wilson V. Superior Court
(70 Cal.App.3d 751)

Distinguishing issues:

1. Wilson V. Superior court is a pre-barber case and thus is not controlling.

2. Wilson V. Superior Court is an Appelate level case and Barber is a California Supreme Court Case.

3. The courts reasoning in Wilson applies most particularly to post-trial appellate action:

In support of the proposition that an illegal intrusion into the client attorney relationship does not justify a dismissal Wilson cites a variety of Federal cases which are all about post-conviction appeals. O'Brien V. U.S., hoffa v. U.S., Black V. U.S., Caldwell V. U.S. , Coplon V. U.S., and Weatherford V. Bursey. As Barber and Glover so clearly state a pre-trial motion for dismissal or writ of prohibition is a different situation than a post-conviction appeal. These cases can be distinguished on that basis.

4. All the cases cited in Wilson v. Superior Court are Federal Cases.

To the extent that the Federal Cases conflict with Barber and Glover, not that the defense is suggesting that they do, Barber and Glover are controlling because it has long been recognized that state courts and legislatures are free to adopt more restrictive standards than those mandated by the constitution.

5. The court in Wilson found that it was unnecessary to use the sanction of dismissal as a deterrent for the conduct of the prosecution in that case because of its isolated nature:

In Wilson the Court Concludes the discussion of whether dismissal is justified with this paragraph:

"California cases have long recognized the right of an accused to confer privately with his attorney. The absence of California Cases dealing with an infringement of that right, such as occurred here, leads us happily to conclude that the incident before us is an isolated one and that the prophylactic adopted by the federal courts is sufficient to assure that it does not

happen again.

The prophylactic procedure described is where the People are forced to show that they can "prove and independent and untainted source for their evidence," and where the prosecution is limited in his cross examination of witnesses to avenues of attack which the people prove they gained from their own files.

The important thing to recognize here is that the Hunt case is a situation of search and seizure of confidential material, not the surreptious taping of a defense strategy conversation between Wilson and his attorney, and while such taping maybe an "isolated case" the cases of wrongful seizure during a search of client attorney priveleged material are numerous and include Glover and Towler which the DA himself cites.

Given the courts own reasoning in Wilson as referenced above we are in a situation here where the prophylactic measures of Wilson and the Cited federal cases are not an adequate remedy. We face a situation, as described in Barber where dismissal is justified on a prospective protection of the defendant's constitutional rights and as a deterrent to egregious conduct which is now, in this state, approaching the commonplace.

6. The Court in Wilson recognizes that there may be situations where dismissal is the only remedy:

"Of course, whether or not the Pople will be able to demonstrate in any given case that they have sufficient evidence to maintain a prosecution which is neither derived from nor tainted by the illegal intrustion into the attorney-client relationship will depend upon the particular facts of the case. The burden of proof lies with the People and certainly, as the court noted in Hoffa v. U.S. supra 385 U.S. 293, there may be situations where it is not possible for the People to proceed."

In Wilson case the court feels that his was not one of those cases because of the solidity of the evidence against the defendant.

"In the at bar, however, we are convinced beyond a reasonable doubt that petitioner's right to a fair trial will not have been infringed if the People are allowed to proceed to trial upon evidence such as they adduced at the preliminary hearing namely the testimony of the victim, her brother and Deputy Bland regarding the commission of the crime and the witnesses' identification of petitioner as the perpetrator. At oral argument before this court, the People indicated that proceeding

In the Hunt case the evidence against the defendant, such as it is, is entirely circumstantial and even at that subject to vigorous dispute. Consider the following:

1. In the Hunt case the evidence at the preliminary was insufficient in the presiding Judge's view to justify holding the defendant to answer on the Robbery allegation (P.C. 211) of the charges against him.
2. The People had considerable difficulty in even establishing corpus delicit. The defense contends to this day that they failed to do so.
3. There are no witnesses which have testified that they saw or heard the defendant do anything to the alleged victim.
4. There is no blood, or body to corroborate a death.
5. There are witnesses who claim to have seen the alleged victim alive and well in arizona recently.

The prosecution is not in a position, as they were in Wilson where they can advice the court that they can proceed with the evidence adduced at the preliminary hearing. Nor can a court dispassionately find that the evidence against Mr. Hunt is overwhelming in areas untouched by the seizure of this information. Unlike Wilson the prosecution accessed virtually the entire case of the defense. Finally Unlike Wilson, The Hunt case is one where subtle issues, still subject to tainted manipulation by the prosectuion might spell the difference between acquittal and conviction.

7. **Unlike Wilson the wrong done to the defendant cannot be cured by sanitizing hearings:**

The defense planned a very strong defense based upon evidence unavailable to the prosecution or its investigators under California discovery law. The defense considered surprise crucial to the efficacy of the defense as it contends that certain prosecution witnesses have lied in statements they have made concerning facts related to the case and planned to trap them on the record before introducing its evidence.

It is impossible for the defense to ever prove that they altered their testimony on some of the issues it plans to raise as several of these issues were not explored or explored in depth by the police in interviews prior to this proceeding. Anotherwords these witnesses could very well incorporate information or advice passed on to them by the DA or the Beverly Hills detectives without the defense ever being able to prove the taint.

People V. Glover.
129 Cal. App. 3d 689

Distinctions between Glover and the Hunt Case

1. Glover's motion to dismiss and to traverse the search warrant were denied.

2. Critically the Court in Glover's primary reason for denying the motion is

"that no evidence taken from appellant's jail cell nor any evidence derived therefrom was presented at trial or in any way before the jury."

Distinguish: In the Hunt case many of the exhibits taken from his home will be presented at trial before the jury and further nearly all the information seen and seized bears upon the defense plans for trial.

3. In Glover dismissal was sought as a sanction for prosecutroial misconduct rather than to cure actual prejudice.

"Given that the evidence seized during the search was never introduced, and thus had no direct effect on the jury's verdict, in effect appellant is asking us to reverse his conviction as a sanction for prosecutorial misconduct, rather than to cure any actual prejudice appellant suffered at trial."

4. Glover is distinguished from the Barber case on several levels:

Level A: Towler and Glover did not seek dismissal in their trial court

Like towler, Glover had "**failed to seek a dismissal of the charges in the trial court and had also failed to seek the relief available under existing California and federal (pre barber) authorities which held that if the prosecution had improperly obtained confidential information by intruding on the attorney-cliet relationship, the defendant could obtain a ruling requiring the people to demonstrate to the satisfaction of the court, beyond a reasonable doubt, that the evidence they seek to adduce derives in no way from the intrusion.**"

We are here today to avoid a similar mistake here today your honor.

Level B: Both in Glover and Towler the district attorney had read the seized material and therefore their defendants did not have to tell the secrets to protect them:

The glover court quoting Towler: "**On the facts of Barber, we concluded that an exclusionary sanction would not adequately protect the defendants rights, in part because in order to enforce that sanction [the sanction of forcing the prosectuion to prove the source of their evidence] the defendants would have been forced to divulge the full contents of conversations to which the police informant [think in this case Zoeller], but not the prosecutor [in this case Wapner] had been privy. Here, however, defendant [Towler] would not have had to provide any information that the prosecutor did not already know *because the confidential information was contained in a written doucment that the prosecutor had seized*.**"

In the Hunt case we are in precisely the same situation as Barber and precisely the opposite situation of Glover and Towler. The district attorney says he does not know what the information seized is and the Hunt is in a position that in order to impeach the District Attorneys allegation of a lack of taint (pursuant to a ruling by the court which would force the DA to prove that "the evidence they seek to adduce in court derives in no way form the intrustion",) *Hunt would be placed in a dilemma of either violating his own constitutional rights or in allowing the DA's assertions to stand unrebuted.*

Level C: In Towler and Glover it was readily apparent that the prosecution was not aided by the information seized.

The Glover court continues to quote Towler "**Moreover, unlike the situation in Barber, here it might have been readily apparent from an examination of the document whether or not the prosecution was actually aided by the information and whether some remedy short of dismissal would be adequate to protect defendants rights.**"

In Towler the document in question, which had been read by the DA while he was in Defendant Towler's Jail cell, was never made part of the record. The Towler court attributes this failure to the defendant "Since the inadequacy of the record is attributable to defendant's failure to pursue this matter below, we concluded that defendant may not raise this claim

In **Glover**, defendant Glover's papers related to an alibi defense he never employed. It was apparant "that the prosecution was not aided by the information seized."

In **Towler**, defendant Towler failed to make a proper record and the court was then justified in taking the logical presumption from his silence which was "that the proseuction was not aided by the information seized."

In Hunt's case the defense asserts what was seized, and reviewed was in many respects previously unknown to the prosecution, that it was, is and will be the integral parts of the defense and we are properly making a record and pursuing timely remedies.

Conclude then that dismissal of the case is warranted under the legal reasoning expressed in Glover. The Hunt case has none of the distinguished characteristics of Glover or Towler.

5. Glover and Towler were Appeals from conviction and could use Hindsight, In The Barber and Hunt cases the issue was raised before trial.

"**In a case such as this, however, with the benefit of hindsight, we know the evidence was not before the jury and the information obtained by the prosecution [which related to a never used alibi defense] was not before the jury** ***and the information obtained by the prosecution was contained within the the four corners of the documents seized by the prosecution, prejudice is readily quantifiable***"

We submit to the court that we are not looking back but are looking forward. That the defendant is staring at the crucial dilemna vivedly described in Barber. And "that the information obtained by the prosecution" is not wholly within "the four corners of the documents seized by the prosecution." In this situation prejudice cannot be quantified.

6. **Prejudice must be shown on an appeal from a conviction, but not when the defendant petitions for a writ of prohibition following the denial of a motion to dismiss.**

As the Glover Court states "**Finally, we observe that requiring appellant to show prejudice on appeal from a criminal conviction, but not when the defendant petitons for a writ of prohibition following the denial of a motion to dismiss, is not a unique situation under California Law. In an appeal from a conviction on the ground that the appeallant was not afforded a sppedy trial, appellant must show prejudice resulting from the denial, whereas a showing of prejudice is unnecessary on a petiton for a writ of mandate. (People v. Wilson (1963) 60 Cal.2d 139, 151-2, People V. george 91983) 144 Cal.App.3d 956.**"

Let no mistake be made in interpretation, this is why Glover and Towler were not entitled to a per se reversal of their convictions on appeal. The glover court held that inasmuch as Glover was appealing from conviction he had to show prejudice, as prejudice was not demonstrated he was "not entitled to a per se reversal of his conviction on appeal. But the Court very clearly recognizes that on a motion to dismiss before trial or on a writ of prohibition that appellant is not required to show prejudice. Your honor that is the position of Mr. Hunt here before you today.

7. The Glover court found that no actual prejudice existed as the choices the defendant faced were the ones "he would have faced without the intrustion."

"**There is no doubt that appellant was faced with a hard choice, but one which he would have faced without the intrusion in any event. He could go forward with his original defense knowing he could be impeached, put on no defense, or put on a different defense. That appeallant freely chose an option which did not net him success is not an appropriate ground for reversal.**"

There are several descriminations that should be made when reviewing this aspect of the Glover Ruling.

First: Unlike glover we do not have to show actual prejudice as we are not appealing from conviction.

Second: Glover did not use the defense that the seized material reflected as a result he was not harmed by the seizure. We intend to use the seized material and the ideas generally reflected in the material found in Mr.

Ruling in Glover

1. All evidence found in the cell was "suppressed for any purpose whatsoever as a sanction against the People for oppressive and improper conduct."

2. The heart of the Barber case is cited in Glover.

"In Barber, the prejudice suffered by the defendants could not be calculated, and "even the blatant use of illegally obtained informatin would be difficult to prove."

That is the crux of the issue. The only remedy which will prevent Joseph Hunt from facing an unconscionable dilemna is dismissal. The court cannot be the instrument by which the defendant is placed in a position where he must violate his constitutional rights in order to have a fair trial.

2. Defendant's Motion For Mistrial, Submitted On Or About April 13, 1987 and Denied April 14, 1987.

ARTHUR H. BARENS
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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 OMNIBUS MOTION FOR MISTRIAL; DECLARATION OF RICHARD C. CHIER** **Date: April 13, 1987** **Time: 10:00 a.m.** **Place: Department WE-C**

TO: IRA REINER, AND TO HIS DEPUTY, FREDERICK NATHAN WAPNER:

PLEASE TAKE NOTICE that on April 13, 1987, at the hour of 10:00 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 for an Order declaring a mistrial herein.

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

1. The calculated and pervasive admission of negative character evidence in violation of Sections 352 and 1101 of the

California Evidence Code and the due process clause of the California and United States Constitutions;

2. The numerous instances of judicial misconduct by the trial court consisting of:

(a) The belittlement of defense counsel;

(b) The banishment of defense counsel's staff;

(c) Failure to allow counsel to approach and make legal objections and arguments in a timely fashion;

(d) The elicitation by the Court, sua sponte of prejudicial matters as punishment for defense counsel's cross-examination into the existence of a witness's bias or motive;

(e) Failure of the trial court to exclude prejudicial and inadmissible evidence other than evidence prohibited by Section 1101 of the Evidence Code;

(f) The trial court's alignment with the prosecution evidenced by facial expressions, grimaces, smirking, manifestations of disgust, impatience, and disbelief during crucial moments of cross-examination by defense counsel and rarely during direct examination by the People; and

(g) Inviting the District Attorney, by facial gestures, to make objections which are usually sustained by the trial court.

Said Motion is based upon the attached moving papers, the 70 volumes of the Reporter's Daily Transcripts, and upon such further oral and/or documentary evidence as may be presented at the hearing on this Omnibus Motion for Mistrial.

DATED: April ___, 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, by virtue of an appointment made on March 1, 1986, by the Hon. Robert W. Thomas.

2. I am making this Declaration in support of defendant Hunt's Omnibus Motion for Mistrial on multiple grounds, the net effect of which is that the trial of defendant Hunt has been so unfair and so riddled with error that the only appropriate remedy at this juncture is a mistrial.

3. From the commencement of jury selection continuing until the present time the trial judge has engaged in judicial misconduct in that he has belittled, ridiculed, demeaned, and insulted your declarant in the presence of the jury collectively and in the presence of individual jurors during the voir dire process.

4. The trial court has banished your declarant's law clerk, John Carlson, without legal reason or justification therefor.

5. The Court has admitted, over the objection of defense counsel irrelevant and prejudicial and inadmissible evidence in violation of Sections 352 and 1101 of the Evidence Code and the due process clauses of the United States and California State Constitutions including but not limited to allowing references to

the defendant being suspended from the Chicago Mercantile Exchange; allowing testimony suggesting that defendant embezzled or otherwise misused corporate funds; allowing testimony that a gypsy fortune teller recoiled at the sight of young Joe Hunt in terror, denouncing him as evil; by allowing defendant to be tried for his ideas and thoughts served up to the jury in a package entitled Paradox Philosophy; and, last but not least, allowing the introduction of evidence that the defendant was and is a defendant in another murder prosecution in Northern California which entails, inter alia, patricide.

6. In addition, the Court has become a partisan advocate vis-a-vis the defense witnesses, Brooke and Lynne Roberts and, further, the Court has even gone so far as to suggest that the contents of a newspaper article concerning witness Lynne Roberts's husband were true despite the Court's admonition to the jurors, themselves, not to read any newspaper articles.

7. In addition, the trial court has aligned itself with the prosecution evidenced by facial expressions, grimaces, smirking, manifestations of disgust, impatience, and disbelief during crucial moments of cross-examination by defense counsel and rarely during direct examination by the prosecution.

8. The Court has refused when requested to give limiting and/or cautionary instructions to the jury after allowing the People to elicit inadmissible and prejudicial evidence or after the Court itself has elicited such prejudicial and inadmissible evidence.

For all of the above reasons, the Court is respectfully requested to 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 April ___, 1987.

RICHARD C. CHIER

3. Declarations and Points and Authorities In Support of Motion to Reinstate Richard Chier, Submitted and Originally Placed Under Seal On April 24, 1987.

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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** **DECLARATIONS OF JOE HUNT AND RICHARD C. CHIER IN OPPOSITION TO ATTEMPTED REMOVAL OF CO-COUNSEL; POINTS AND AUTHORITIES**

Defendant, JOE HUNT, respectfully submits the following Declarations and Points and Authorities in opposition to the Court's attempted removal of co-counsel, Richard C. Chier.

DATED: April 24, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By:_____
ARTHUR H. BARENS
Attorneys for Defendant

DECLARATION OF JOE HUNT

JOE HUNT declares and states:

1. I am the defendant in the within action. On Wednesday, April 22, 1987, I was convicted by a Superior Court jury of the crimes of murder in the first degree and robbery and, further, the said jury found the alleged special circumstances, to wit, robbery, to be true.

2. It therefore is necessary to proceed with a penalty phase in order that the jury may determine whether I should be executed or committed to prison without the possibility of parole.

3. Although the guilt phase of this trial was prepared in contemplation that both my attorneys, Richard C. Chier and Arthur H. Barens would participate fully herein, in approximately January of 1987, the trial court against my will and over my objections, pursuant to some "arrangement" not apparent on the record, committed a series of acts which were calculated to and did in fact result in the denial of my right to the effective assistance of counsel, my right to due process, as well as my statutory right to two counsel.

4. In addition to muzzling my co-counsel, Richard C. Chier, the trial court declared that it was setting Mr. Chier's compensation at the rate of $35.00 per hour, a figure so woefully inadequate in the face of the realities of law office economics and Mr. Chier's standing in the legal community that it could on-

ly have been done to humiliate Mr. Chier and to cause his withdrawal from the case for financial reasons.

5. I am informed and believe and thereon allege that in addition to threatening to establish Mr. Chier's compensation at the rate of $35.00 per hour, that the Court has failed and refused and continues to fail and refuse to approve payment to Mr. Chier of any compensation for his services rendered between November 4, 1986, through and including February 28, 1987.

6. I am further informed and believe and thereon allege that immediately following the reading of the guilty verdicts on Wednesday, the trial court sought to remove and discharge my co-counsel, Richard C. Chier from further participation in this case and specifically from participation in the penalty phase.

7. I object to the Court's attempted removal of Mr. Chier and its attempt to prohibit his participation in the penalty phase. I decline to participate in a hearing wherein I have been stripped of the assistance of the attorney of my choice and who should be allowed to participate and represent me in the penalty phase for the reasons which follow.

8. During the approximately two years that Mr. Chier has represented me I have developed a close working relationship with him; I have spent in excess of 100 hours discussing the case with him; I have discussed matters which are acutely relevant to the issues involved in a penalty phase hearing; Mr. Chier is completely familiar with the factual and legal setting of this case as well as the Northern California case wherein he was my co-

counsel throughout that Preliminary Hearing. I am informed and believe that the prosecution is going to attempt to introduce in this case substantial evidence from the San Mateo County case.

9. In addition to the above reasons, Mr. Chier is particularly well qualified to represent me during the penalty phase of this case because of his extensive work with the penalty phase investigator, Casey Cohen, and a number of witnesses we anticipated will testify at the penalty phase.

10. I have developed a relationship of trust and confidence with Richard C. Chier and I am convinced that he would afford the best possible representation of me throughout the penalty phase proceedings.

11. I am informed and believe and thereon allege that the Court has announced its intention to replace Mr. Chier with another attorney who would be a virtual stranger to me and could not provide as adequate a defense to the charges as could Mr. Chier.

12. Over the months I have worked with Mr. Chier both in San Mateo County and Los Angeles County I have come to regard him as a skillful advocate, a shrewd tactician, an aggressive litigator, and a person who has worked very hard in the face of incredible adversity throughout these last six months.

13. To deprive me of this kind of representation in favor of a complete stranger in whom I would have no such confidence and trust would be tantamount to depriving me of true and effective representation of counsel.

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, 1987.

JOE HUNT

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 have been co-counsel of record for defendant, JOE HUNT, in the within case since approximately April of 1985.

2. On March 1, 1986, I was appointed as associate counsel on the application of Arthur H. Barens. Said application was submitted to and an Order issued thereon by the Honorable Robert W. Thomas, Judge Presiding in Department B of the Santa Monica Branch of the Superior Court.

3. At the time I was appointed by Judge Thomas, my appointment was not limited to the guilt phase but, rather, contemplated that my appointment would endure as long as necessary including a penalty phase hearing, if any was required herein.

4. In a special circumstances case the penalty phase is an integral part of the guilt phase and cannot be logically or spatially separated therefrom.

5. The Reporter's Daily Transcript in this case consists of approximately 80 volumes and consists of over 25,000 pages.

6. Over the past two years I have retained investigators and experts on behalf of defendant Hunt in connection with a penalty phase hearing, if any.

7. As a result of the jury verdict read in open court on Wednesday, April 22, 1987, it is now evident that a penalty phase will be necessary in this proceeding and, accordingly, the trial court's attempt removal of your declarant and its refusal to allow him to participate in the penalty phase of this case is a gross abuse of discretion, a deprivation of the defendant's right to counsel; right to effective assistance of counsel, and right to due process.

8. Over the past two years I have developed a special relationship with the defendant Hunt, and I am deeply committed to his representation out of a sense of professional obligation and personal affection for the defendant.

9. So complete is my commitment to the cause of Mr. Hunt that I have continued to render services to him and on his behalf despite the fact that the trial court has declined to approve my compensation for services rendered between November 4, 1986, and February 28, 1987, at the niggardly rate of $35.00 per hour or any other rate or at all.

10. Accordingly, unless the Court causes your declarant to be forcibly removed from the courtroom, it is your declarant's moral and legal obligation and intention to continue to represent the defendant Hunt and, indeed, to participate in the penalty phase proceedings henceforth.

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

and as to those matters, I believe them to be true; and that this Declaration was executed on April 23, 1987.

RICHARD C. CHIER

POINTS AND AUTHORITIES

1.

THE TRIAL COURT'S REFUSAL TO APPOINT ATTORNEY SELECTED BY A DEFENDANT AND ITS APPOINTMENT OF OTHER ATTORNEYS IN THE PLACE OF THE ATTORNEY SELECTED BY THE DEFENDANT AMOUNTS TO AN ABUSE OF SOUND JUDICIAL DISCRETION WHERE THE SELECTION OF THE DEFENDANT IS BASED UPON PRIOR REPRESENTATION AND ASSISTANCE BY THE ATTORNEY NOMINATED WHICH NOT ONLY ESTABLISHED A CLOSE WORKING RELATIONSHIP BETWEEN THE DEFENDANT AND HIS ATTORNEYS BUT ALSO SERVED TO PROVIDE ATTORNEY WITH AN EXTENSIVE BACKGROUND IN VARIOUS FACTUAL AND LEGAL MATTERS WHICH MIGHT BECOME RELEVANT IN THE INSTANT PROCEEDING

Harris v. Superior Court

(1977) 19 Cal.3d 786, 799

2.

JUDICIAL DISCRETION IS THAT POWER OF DECISION EXERCISED TO THE NECESSARY END OF AWARDING JUSTICE BASED UPON REASON AND LAW BUT FOR WHICH DECISION THERE IS NO SPECIAL GOVERNING STATE OR RULE . . . THE TERM IMPLIES ABSENCE OF ARBITRARY DETERMINATION, CAPRICIOUS DISPOSITION OR WHIMSICAL THINKING. IT IMPORTS THE EXERCISE OF DISCRIMINATING JUDGMENT WITHIN THE BOUNDS OF REASON. DISCRETION IN THIS CONNECTION MEANS A SOUND JUDICIAL DISCRETION ENLIGHTENED BY INTELLIGENCE AND

LEARNING, CONTROLLED BY SOUND PRINCIPLES OF LAW, OF FIRM COURAGE COMBINED WITH THE CALMNESS OF A COOL MIND, FREE FROM PARTIALITY, NOT SWAYED BY SYMPATHY OR WARPED BY PREJUDICE OR MOVED BY ANY KIND OF INFLUENCE SAVE ALONE THE OVERWHELMING PASSION TO DO THAT WHICH IS JUST

Harris v. Superior Court

supra, at 796

3.

WHEN TRIAL JUDGES ADOPT AN OBDURATE STANCE ON APPOINTMENT OF COUNSEL, THERE LURKS BEHIND THEIR ACTION AN IMPLICATION THAT BECAUSE A DEFENDANT IS INDIGENT AND COUNSEL IS APPOINTED RATHER THAN HIRED, THE NEED FOR TRUST AND CONFIDENCE BETWEEN ATTORNEY AND CLIENT IS LESS COMPELLING

Harris v. Superior Court

supra, at 800

4.

THE ATTORNEY CLIENT RELATIONSHIP IS NOT SIMPLY A MATTER OF WHETHER A DEFENDANT PAYS HIS FEE AND GETS A COMPETENT ATTORNEY: IT INVOLVES NOT JUST THE CASUAL ASSISTANCE OF A MEMBER OF THE BAR, BUT AN INTIMATE PROCESS OF CONSULTATION AND PLANNING WHICH CULMINATES IN A STATE OF TRUST AND CONFIDENCE BETWEEN THE CLIENT AND HIS ATTORNEY

Harris v. Superior Court

supra, at 800

5.

THIS IS PARTICULARLY ESSENTIAL WHEN THE ATTORNEY IS DEFENDING THE CLIENT'S LIFE

Harris v. Superior Court

supra, at 800

DATED: April ___, 1987

Respectfully submitted,

ARTHUR H. BARENS
RICHARD C. CHIER

By:_____
ARTHUR H. BARENS
Attorneys for Defendant