Name: Todd Robben
Address: 308 Donna Ave.
Bakersfield, CA 93304
(661) 817-7383
robben.ty@gmail.com

CDC or ID Number: BE6907

CALIFORNIA SUPREME COURT

(Court)

TODD ROBBEN
Petitioner

vs.

RALPH DIAZ, CDCR SECRETARY
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page 1 of 1509 plus exhibits
& records of each case to be filed separately

This petition concerns:

- [x] A conviction
- [x] Parole
- [x] A sentence
- [ ] Credits
- [ ] Jail or prison conditions
- [ ] Prison discipline
- [x] Other *(specify):* Unconstitutional penal codes, Cal. constitution Art 6, Sec 6(e) and Grand Jury. Injunction request.

1. Your name: Todd Robben
2. Where are you incarcerated? Currently on parole
3. Why are you in custody? [x] Criminal conviction [ ] Civil commitment

   Answer items a through i to the best of your ability.

   a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
   Criminal threats, threats to public officials, threatening a witness, false registration, driving under the influence of alcohol

   b. Penal or other code sections: PC 422, 71, 140(a), VC 4462.5, VC 23152(a) & VC 23152(b)

   c. Name and location of sentencing or committing court:
   EL DORADO SUPERIOR COURT 495 Main St, Placerville, CA 95667
   EL DORADO SUPERIOR COURT 1354 Johnson Blvd, South Lake Tahoe, CA 96150

   d. Case number: P17CRF0114, S16CRM0096 & S14CRM0465

   e. Date convicted or committed: 09-25-2017 in P17CRF0144, 07-11-2016 in P16CRM0096, 05-07-2015 in S14CRM0465

   f. Date sentenced: 10-27-2917 in P17CRF0144, 07-11-2016 in P16CRM0096, 05-07-2015 in S14CRM0465

   g. Length of sentence: 7 yr. in P17CRF0144, 18 months in P16CRM0096, probation (revoked) in S14CRM0465

   h. When do you expect to be released? Released 04-09-2020 from prison, currently on parole

   i. Were you represented by counsel in the trial court? [x] Yes [ ] No *If yes, state the attorney's name and address:*
   In P17CRF0144: Russell Miller 901 H St Ste 107, Sacramento, 95814, CA
   In S16CRM0096: Rachel Miller 463 Main St. Suite D Placerville, CA 95667
   In S14CRM0465: Adam Spicer 2269 James Avenue South Lake Tahoe, CA 96150

4. What was the LAST plea you entered? *(Check one):*

   [x] Not guilty [ ] Guilty [ ] Nolo contendere [ ] Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

   [x] Jury [ ] Judge without a jury [ ] Submitted on transcript [ ] Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

Please see attachment on page 7

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*. *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)* Please

Please see attachment on page 7

b. Supporting cases, rules, or other authority *(optional)*:

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Please see attachment on page 7

7. **Ground 2 or Ground** _____ *(if applicable):*

Please see attachment on page 7

a. Supporting facts:

Please see attachment on page 7

b. Supporting cases, rules, or other authority:

Please see attachment on page 7

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☒ No If yes, give the following information:
   a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
   Third District Court of Appeal
   b. Result: Conviction upheld c. Date of decision: 11-18-2019
   d. Case number or citation of opinion, if known: C086090
   e. Issues raised: (1) Denial of 6th amendment right to self represent (Faretta v. California)
   (2) PC140(a) not supported by sufficient evidence
   (3)
   f. Were you represented by counsel on appeal? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:
   Robert .L.S. Angres 620 Dewitt Ave Ste 102, Clovis, CA 93612

9. Did you seek review in the California Supreme Court? ☐ Yes ☒ No If yes, give the following information:
   a. Result: Review denied b. Date of decision: 01-22-2020
   c. Case number or citation of opinion, if known: S259741
   d. Issues raised: (1) Denial of 6th amendment right to self represent (Faretta v. California)
   (2) PC140(a) not supported by sufficient evidence
   (3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:
Ineffective Assistance of Counsel (IAC) & Constructive Denial of counsel on appeal. Appellate counsel failed to properly argue the Faretta issue, failed to argue jurisdiction issues, 14th amend. & PC 14254 due-process & conflict-of-interest with the D.A. failure to file a habeas petitioner on IAC of trial counsel and the denied CCP 170.6 peremptory challenge. Failure to argue 1st amendment.

11. Administrative review:
   a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:
   N/A
   b. Did you seek the highest level of administrative review available? ☐ Yes ☒ No
   Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? [✓] Yes If yes, continue with number 13. [ ] No If no, skip to number 15.

13 a. (1) Name of court: California Supreme Court

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas case # S249765

(3) Issues raised: (a) IAC of trial counsel, Failure of trial judge to disqualify pursuant to CCP 170.6, (U.S. 14th amend.)

(b) Faretta denial, factual innocence (free speech 1st amendment), jurisdiction , other

(4) Result (attach order or explain why unavailable): Summary denial

(5) Date of decision: 11/14/2018

b. (1) Name of court: U.S. District Court E.D. Cal. (Sacramento, CA) & Ninth Circuit COA

(2) Nature of proceeding: Habeas case # 2:18-cv-2545 and COA # 19-17433

(3) Issues raised: (a) Constitutional violations 1st, 4th, 5th, 6th, 8th, & 14th IAC of trial counsel, Failure of trial judge to

(b) disqualify and the resulting due-process violations

(4) Result *(attach order or explain why unavailable):* denied without prejudice due to pending state appeal

(5) Date of decision: 11-20-2019

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:
No hearings ever held.

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)
The appeal was decided 11-18-2019 in the Third District Court of Appeal and Cal. Supreme Ct. denied review on 01-22-2020. Petitioner was released from prison on 04-09-2020, the record of P17CRM0114 was recently provided to Petitioner who is on parole. Due to COVID-19 Petitioner is housed in Bakersfiled, CA rather than Tuolumne or Stanislas Co and has been delayed.

16. Are you presently represented by counsel? [ ] Yes [x] No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? [ ] Yes [x] No If yes, explain:
Petitioner will attempt to have the Superior Court resolve this matter which may require an evidentiary hearing.

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
This is the lower court. An earlier attempt from prison was not possible since filings were not filed by the clerk and the recusal of the entire bench of the El Dorado Superior Court. The Third District COA clerk failed to file a petition for writ of habeas corpus.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 11/02/2020

/s/Todd Robben

(SIGNATURE OF PETITIONER)

Todd Robben
308 Donna Ave.
Bakersfield, CA 93304
Robben.ty@gmail.com
(661) 817-7383

CALIFORNIA SUPREME COURT

TODD ROBBEN

V

RALPH DIAZ, CDCR Secretary

Case No: _____

Underlying El Dorado County criminal cases P17CRF0114, P17CRF0089, S16CRM0096 & S14CRM0465 habeas corpus cases PC20200517 & PC20200196

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS ATTACKING CASE # P17CRF0114, S16CR0096 & S14CRM0465 IN THE ALTERNATIVE - MOTION TO VACATE AND *CORAM NOBIS*

Petitioner, Todd Robben[1] files this petition in the California Supreme Court after his previous petition in the El Dorado County Superior Court, case # PC20200517, was alleged to

[1] The pro se document is be liberally construed. As the Court unanimously held in *Haines v. Kerner, 404 U. S. 519 (1972),* a pro se complaint, **"however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers"** and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Id. at 404 U. S. 520-521*, quoting *Conley v. Gibson, 355 U. S. 41, 355 U. S. 45-46 (1957).* See also *In re Serna, 76 Cal. App. 3d 1010 - Cal: Court of Appeal, 2nd Appellate Dist., 5th Div. 1978 F/N 3*

Canon 3B(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(8)
The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. **For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law* and the canons, to enable the litigant to be heard.** A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

have been transferred to the San Joaquin County Superior Court on an alleged order # 1066302-20 by the Chief Justice of the California Supreme Court and Chairperson of the Judicial Council of California, Tani G. Cantil-Sakauye.

This Petitioner requested the Judicial Council of California to authenticate said order # 1066302-20 which is a public record pursuant to Rule 10.500 (c)(1) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court." The records also involve this Petitioner's case so there is no restriction on obtaining copies or proof by way of authentication under penalty of perjury since assignment orders in the other cases were never provided upon request or authenticated. **It appears said assignment orders are forged and a fraud-upon-the-court.** This issue is address in this petition below for the other cases.

The Judicial Council never responded to the request emailed October 27, 2020:

> From: **Ty Robben** robben.ty@gmail.com
>
> Date:Tue, Oct 27, 2020 at 7:08 PM
>
> Subject: Re: Please let me know if the habeas corpus
>
> To: PAJAR <PAJAR@jud.ca.gov>, <Tani.Cantil-Sakauye@jud.ca.gov>
>
> Thank you - please authenticate under penalty of perjury that this order is a true copy... This issue has occurred in the past cases and it appears that the Chairperson of the Judicial Council (Cantil-Sakuye) may be called to testify that these orders are indeed authentic. Past orders in the previous cases appear forged since the Judicial Council did not have true copies on file.
>
> Thank you,
>
> -TR

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to require* that court officials, litigants, and their lawyers cooperate with the judge to those ends.

On Mon, Oct 26, 2020 at 11:08 AM PAJAR <PAJAR@jud.ca.gov> wrote:

Good morning,

You have reached the "Public Access to Judicial Administrative Records" (PAJAR) team at the Judicial Council of California. The PAJAR team responds to requests to inspect "judicial administrative records" pursuant to rule 10.500 of the California Rules of Court. You can find information about rule 10.500, the process for requesting records, and the types of records available through this process at *www.courts.ca.gov/publicrecords.htm*.

In the email below you requested a copy of the assignment order for Judge Tony J. Agbayani, Jr. of San Joaquin Superior Court under #1066302-20 that was effective October 19, 2020.

We have determined that we have the disclosable responsive record. It is attached.

Sincerely,

Public Access to Judicial Administrative Records

Legal Services | Leadership Services Division

Judicial Council of California

455 Golden Gate Avenue

San Francisco, California 94102-3688

415-865-7796 | PAJAR@jud.ca.gov

www.courts.ca.gov/publicrecords.htm

Chambers of the Chief Justice
SUPREME COURT OF CALIFORNIA
350 McALLISTER STREET
SAN FRANCISCO, CA 94102-3660

1066302-20

THE HONORABLE ANTONINO J. AGBAYANI, Judge of the Superior Court of California, County of San Joaquin, is hereby assigned to sit as a Judge of the Superior Court of California, County of El Dorado, on the following date(s):

*October 19, 2020

and until completion and disposition of any specific open motion or other matter pending in a case before the judge at the time the assignment ends. Any further motions or other matters in the case may be heard only pursuant to a separate appointment order.

Dated: October 19, 2020

T. Cantil-Sakauye

Tani G. Cantil-Sakauye
Chief Justice of California and
Chairperson of the Judicial Council

*This order is made pursuant to the request for assignment until completion in the matter of *PC20200517 TODD ROBBEN VS RALPH DIAZ, CDCR SECRETARY.*

cc: Presiding Judge
Hon. Antonino J. Agbayani

Original On File With Judicial Council

This Petitioner did file his petitioner for writ of habeas corpus on October 06, 2020 electronically as an e-fax filing to the El Dorado County Superior Court and said filing was properly filed as a “civil” case not a “criminal” case. In fact, the case number PC20200517 represents a civil filing based on the “P” meaning Placerville, and “C” means “civil”

From: **Rosalie Tucker** <rtucker@eldoradocourt.org>
Date: Tue, Oct 6, 2020 at 1:32 PM
Subject: RE: Please let me know if the habeas corpus is to be refiled ASAP
To: Ty Robben <robben.ty@gmail.com>

I’ll let them know you’ll be re-submitting the paperwork as a new petition (no case number) through our fax filing and not to reject it. And it will be opened as a civil matter, not criminal.

From: Ty Robben <robben.ty@gmail.com>
Sent: Tuesday, October 6, 2020 1:29 PM
To: Rosalie Tucker <rtucker@eldoradocourt.org>
Subject: Re: Please let me know if the habeas corpus is to be refiled ASAP

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I need to e-file the petition since it's in PDF format with the record and exhibits. The So. Lake Tahoe branch rejected an earlier "fax filing" which is really an e-filing. The habeas should be considered a "civil" case also rather than criminal.

Can you inform them that I'll refile this using e-fax again as a new case later today. Or is there a better way to e-file. The petition is too big to print and mail when it is designed as a PDF file with bookmarks, etc.

Thank you.

Todd Robben

On Tue, Oct 6, 2020 at 12:04 PM Rosalie Tucker <rtucker@eldoradocourt.org> wrote:

Petition in case PC20200196 has been denied and the case is closed.

If you resubmit your request as a new petition, a new case will be opened and assigned to a judicial officer.

From: Ty Robben <robben.ty@gmail.com>
Sent: Tuesday, October 6, 2020 11:24 AM
To: Rosalie Tucker <rtucker@eldoradocourt.org>
Subject: Please let me know if the habeas corpus is to be refiled ASAP

Ms. Tucker:

I need to know if the El Dorado court is refiling my petition. I am under the impression it is not and I am going to just go to the Cal. Supreme Court since the Court of Appeals has also refused to file the petition.

I need to refile today and the window of time is short as I prepare to return to Northern California soon.

I expect to take the issue to the federal court since the California courts will not want to decide the case on the merits.

Thanks,

-Todd Robben

On October 27 & 28, 2020 this Petitioner attempted to e-file the digital PDF Adobe Acrobat version of the habeas corpus with exhibits and the records & transcripts of the underlying cases. The PDF format is required to preserve formatting, bookmarks, links and color exhibits and highlighting that failed to properly photocopy using the e-fax method which left exhibits unreadable.

Said e-filing was attempted using the San Joaquin Superior Court e-file system. The San Joaquin Superior Court clerks refused to file any filings using the e-file system or emails sent to them by this Petitioner. The San Joaquin Superior Court clerks claiming the habeas corpus is a "criminal" case rather than a "civil" case denied the e-filing. **The "criminal" department of the San Joaquin Superior Court then stated they do not even have a record of the case on file.**

From: **Tanya Auer** <tauer@sjcourts.org>
Date: Thu, Oct 29, 2020 at 3:53 PM
Subject: Re: URGENT FILING CCP 170.6 peremptory challenge against judge Tony Agbanyani
To: Ty Robben <robben.ty@gmail.com>
Cc: Amanda Harty <aharty@sjcourts.org>, Tanya Auer <tauer@sjcourts.org>

Hello.

Thank you for contacting us. Unfortunately we cannot locate a case in our database with the information you have provided.

Currently, the Criminal department is not accepting e-Filed documents and we do not accept filings by email.

Documents must be submitted by mail or via drop-box, which is available in front of the Stockton Courthouse entrance M-F 8am-4pm, excluding Court Holidays.

At your convenience, you may perform a search in our case management system to see if a case has been filed and if there is a future court date set for your case by going to https://cms.sjcourts.org/fullcourtweb/start.do

Thank you,

Tanya M. Auer

Tanya M. Auer
Legal Process Clerk Supervisor
---
180 E. Weber Ave., Suite 202
Stockton, CA 95202

From: <criminalefiling@sjcourts.org>
Date: Wed, Oct 28, 2020 at 8:37 AM
Subject: Re: MOTION TO E-FILE - San Joaquin Co. Superior Court has violated this Petitioner's U.S> 1st amendment rights
To: Ty Robben <robben.ty@gmail.com>
Cc: <civilefiling@sjcourts.org>, Shalom Rosenfelder <srosenfelder@sjcourts.org>, Angela Constantino <aconstantino@sjcourts.org>, Tanya Auer <tauer@sjcourts.org>, Amanda Harty <aharty@sjcourts.org>, criminalefiling <criminalefiling@sjcourts.org>

Hello.

Thank you for contacting us, unfortunately we cannot locate a case in our database with the information you have provided.

In San Joaquin County, Habeas Corpus filings are processed in the Criminal Division - not in the Civil Division. Currently, the Criminal department is not accepting e-Filed documents and we do not accept filings by email. Documents must be submitted by mail or via drop-box, which is available in front of the Stockton Courthouse entrance M-F 8am-4pm, excluding Court Holidays.

Please note: This email address is not intended to be utilized for obtaining information for Criminal matters and is not being regularly monitored at this time. Please utilize the on-line support ticketing system for your inquiries https://www.sjcourts.org/online-services/support/ and select the topic you'd like support for from the drop down menu on that page. It is helpful if you include the case number in your support ticket inquiry, if you know it.

At your convenience, you may perform a search on your own in our case management system to see if a case has been filed and if there is a future court date for your case by going to https://cms.sjcourts.org/fullcourtweb/start.do

Thank you,

Tanya M. Auer
Legal Process Clerk Supervisor
---
180 E. Weber Ave., Suite 202
Stockton, CA 95202

From: "Ty Robben" <robben.ty@gmail.com>
To: civilefiling@sjcourts.org
Cc: "Shalom Rosenfelder" <srosenfelder@sjcourts.org>, "Tanya Auer" <tauer@sjcourts.org>, "Civil Courtroom Clerks" <civilcourtclerks@sjcourts.org>, "Angela Constantino" <aconstantino@sjcourts.org>, "Rosalie Tucker" <rtucker@eldoradocourt.org>
Sent: Tuesday, October 27, 2020 4:51:51 PM

Subject: Re: MOTION TO E-FILE - San Joaquin Co. Superior Court has violated this Petitioner's U.S> 1st amendment rights

TODD ROBBEN habeas corpus case PC20200517.pdf

P17CRF0114 C086090_AOB_Robben.pdf

P17CRF0114 C086090_ARB_Robben.pdf

P17CRF0114 C086090_CPR_Robben.pdf

P17CRF0114 DECISION ON APPEAL.pdf

PC20200196 RECORD ON APPEAL.pdf

14CRM0465 CT.pdf

14CRM0465 Decision on appeal.pdf

14CRM0465 Marsden 1.pdf

14CRM0465 Marsden 2_3.pdf

14CRM0465 RT Vol 1.pdf

14CRM0465 RT Vol 2.pdf

14CRM0465 RT Vol I pgs 219-221.pdf

14CRM0465 RT Vol I pgs 158-161.pdf

S16CRM0096 decision on appeal.pdf

S16CRM0096 Transcript 1.pdf

S16CRM0096 Transcript 2.pdf

S16CRM0096 Transcript 3.pdf

S16CRM0096 Transcript 4.pdf

S16CRM0096 Transcript 5.pdf

S16CRM0096 Transcript 6.pdf

Here are the files that need to be "e-filed":

On Tue, Oct 27, 2020 at 4:17 PM Ty Robben <robben.ty@gmail.com> wrote:

Greetings:

Please file my motion and send me a copy of the court filed (stamped) copy. ...Or else I have to complain to the Judicial Council, file petitions for writs of mandate in the Cal. Supreme Court, etc.

I was told yesterday after calling the "Criminal Department" at (209) 992-5691 that the person handling my case would contact me about my e-filings being filed in the transferred case # PC20200517 from El Dorado Co. to the San Joaquin Co. Superior Court. **Assigned to San Joaquin County Superior Court Tony J. Agbayani.**

Note: San Joaquin Co. Superior Court has not provided a case number from their court.

Said filings include the habeas corpus in PDF format and the records of each case and other exhibits such as appeals, orders, etc. The photocopy of the habeas corpus filed by the El Dorado Co. Superior is of poor quality and unreadable in sections containing copies of the record.

All filings are intended to be electronically filed in the PDF format and they include links/bookmarks and color images. A "paper trail" or in this case, a digital record is required because of the previous civil rights violations of the El Dorado Co. clerks (and Third Dist. COA and Supreme Court) to not file this Petitioner's filings because of the corruption it exposed (including pedophile judges) and said violations have led to federal civil rights complaints pursuant to 42 USC 1983... And criminal complaints under 18 USC 241 & 242.

This Petitioner has a first amendment right to access the courts and the clerks have violated said rights of this Petitioner in bad faith.

This Petitioner did attempt to file his documents on the San Joaquin Co. Superior Court e-file system and he was unable to complete the filing.

See https://appfile.sjcourts.org/appfile/#!/history/

He called the court and was told the criminal department would contact him. The criminal department did not and Petitioner called them and was told the clerk handling his case would contact him - this has NOT happened.

It was established that this habeas corpus is, in fact, a civil proceeding:

"On Tue, Oct 6, 2020 at 1:32 PM Rosalie Tucker <rtucker@eldoradocourt.org> wrote:

I'll let them know you'll be re-submitting the paperwork as a new petition (no case number) through our fax filing and not to reject it. And it will be opened as a civil matter, not criminal."

A habeas corpus is a CIVIL case! See theU.S. Supreme Court case *Mayle v. Felix, 545 US 644 - Supreme Court 2005* "**Habeas corpus proceedings are characterized as civil in nature.** See, e. g., *Fisher v. Baker, 203 U. S. 174, 181 (1906).*"

In *Voit v. Superior Court, 201 Cal. App. 4th 1285 - Cal: Court of Appeal, 6th Appellate Dist. 2011*

"(1) The actions of the court clerk's office are quite troubling. "It is difficult enough to practice law without having the clerk's office as an adversary." (*Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 777 [79 Cal.Rptr.2d 292] (*Rojas*).) Whether Voit's motion has legal merit is a determination to be made by a judge, not the clerk's office. No statute, rule of court, or case law gives the court clerk's office the authority to demand that a petitioner cite or quote precedent before his motion will be filed.

(2) If a document is presented to the clerk's office for filing in a form that complies with the rules of court, the clerk's office has a ministerial duty to file it. (See *Carlson v. Department of Fish & Game* (1998) 68 Cal.App.4th 1268, 1276 [80 Cal.Rptr.2d 601].) Even if the document contains defects, the clerk's office should file it and notify the party that the defect should be corrected. (See *Rojas, supra*, 67 Cal.App.4th at p. 777.) Moreover, there 1288*1288 actually is precedent allowing courts to appoint counsel for indigent inmates facing civil suits. (See *Payne v. Superior Court* (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405, 553 P.2d 565].) By unilaterally refusing to file Voit's motion, the clerk's office prevented the court from applying this precedent, or any other relevant law, to Voit's particular circumstances. The clerk's office's actions violated Voit's rights under both the federal and state Constitutions to access to the courts. (U.S. Const., 1st Amend.; Cal. Const., art. I, § 3.)"

How this document has been cited

Further, "[i] fa document is presented to the clerk's office for filing in a form that complies with the rules of **court**, the clerk's office has a ministerial duty to file it.[Citation.] Even if the document contains defects, the clerk's office should file it and notify the party that the defect should be corrected
- in People v. Financial Casualty & Surety, Inc., 2017 and 5 similar citations

Whether a document presented for filing "has legal merit is a determination to be made by a judge, not the clerk's office
- in Schneider v. Hall, 2017 and 2 similar citations

There, the **superior court** clerk refused to file the motion of a pro se incarcerated defendant for appointment of counsel because it did not cite precedent in support; the **Court** of Appeal issued a peremptory writ finding that the clerk's office had exceeded the limits of its ministerial duties, resulting in the deprivation of the right of access to the **courts**
- in Medeiros v. GEORGE HILLS COMPANY, INC., 2015

In **Voit**, the California **Court** of Appeals held the petitioner's right to access the **courts** was violated where the **court** clerk's office rejected, on multiple occasions, the petitioner's motion for appointment of counsel, and, in doing so, prevented the **court** from ruling on his motion.
- in Torres v. Becton, 2019
"To summarize: state law is clear that a paper is deemed filed when it is presented to the clerk for filing in a form that complies with [California Rules of **Court**,] rule 201 [renumbered rule 2.100 [5]]. If a paper is thus presented, the clerk has a ministerial duty to file it
- in Schneider v. Hall, 2017

Todd Robben
(661)817-7383

On Mon, Oct 26, 2020 at 1:31 PM Ty Robben <robben.ty@gmail.com> wrote:
Greetings San Joaquin Superior Court:

The habeas corpus is a CIVIL filing not criminal and the case number is from El Dorado Co since it was transferred to your court.

Please confirm my habeas corpus and exhibits have been properly e-filed. I submitted them today at https://appfile.sjcourts.org/

There is no log of my filings in the system nor did I receive an email confirmation.

Your clerks have been very disrespectful and ignore my requests (see below).

Todd Robben
(661)817-7383

On Mon, Oct 26, 2020 at 1:09 PM <civilefiling@sjcourts.org> wrote:
Hi,

Please contact the Criminal Department at (209) 992-5691 with the case number to check the status.

Thank you,
Civil E-filing Support Team

It is well established by both the California Supreme Court and U.S. Supreme Court that a habeas corpus is not a criminal case – it is civil in nature. "Habeas corpus proceedings are characterized as civil in nature. See, e. g., *Fisher v. Baker, 203 U. S. 174, 181 (1906)."* *Mayle v. Felix, 545 US 644 - Supreme Court 2005*.

"A habeas corpus proceeding is not a criminal action. Rather, as relevant here, it is an independent, collateral challenge to an earlier, completed criminal prosecution." *Maas v. Superior Court, 383 P. 3d 637 - Cal: Supreme Court 2016*.

Said refusal to file this Petitioner's filings constitutes a U.S. 1st amendment violation of access-to-the-court as well as Cal. Constitution Art. 1, Sec. 3 as described in *Voit v. Superior Court, 201 Cal. App. 4th 1285 - Cal: Court of Appeal, 6th Appellate Dist. 2011:*

> "(1) **The actions of the court clerk's office are quite troubling. "It is difficult enough to practice law without having the clerk's office as an adversary."** (*Rojas v. Cutsforth (1998) 67 Cal.App.4th 774, 777 [79 Cal.Rptr.2d 292] (Rojas*).) Whether Voit's motion has legal merit is a determination to be made by a judge, not the clerk's office. No statute, rule of court, or case law gives the court clerk's office the authority to demand that a petitioner cite or quote precedent before his motion will be filed.
>
> (2) **If a document is presented to the clerk's office for filing in a form that complies with the rules of court, the clerk's office has a ministerial duty to file it.** (See *Carlson v. Department of Fish & Game (1998) 68 Cal.App.4th 1268, 1276 [80 Cal.Rptr.2d 601]*.) **Even if the document contains defects, the clerk's office should file it and notify the party that the defect should be corrected.** (See *Rojas, supra, 67 Cal.App.4th at p. 777*.) Moreover, there actually is precedent allowing courts to appoint counsel for indigent inmates facing civil suits. (See *Payne v. Superior Court (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405, 553 P.2d 565]*.) **By unilaterally refusing to file Voit's motion, the clerk's office prevented the court from applying this precedent, or any other relevant law, to Voit's particular circumstances. The clerk's office's actions violated Voit's rights under both the federal and state Constitutions to access to the courts. (U.S. Const., 1st Amend.; Cal. Const., art. I, § 3.)"**
>
> How this document has been cited Further:
>
> **"[i]f a document is presented to the clerk's office for filing in a form that complies with the rules of court, the clerk's office has a ministerial duty to file it**.[Citation.] Even if the document contains defects, the clerk's office should file it and notify the party that the defect should be corrected- in *People v. Financial Casualty & Surety, Inc., 2017* and 5 similar citations.

Whether a document presented for filing "has legal merit is a determination to be made by a judge, not the clerk's office- in *Schneider v. Hall, 2017* and 2 similar citations. There, **the superior court clerk refused to file the motion of a pro se incarcerated defendant for appointment of counsel because it did not cite precedent in support; the Court of Appeal issued a peremptory writ finding that the clerk's office had exceeded the limits of its ministerial duties, resulting in the deprivation of the right of access to the courts-** in *Medeiros v. GEORGE HILLS COMPANY, INC., 2015*. In Voit, the California Court of Appeals held the petitioner's right to access the courts was violated where the court clerk's office rejected, on multiple occasions, the petitioner's motion for appointment of counsel, and, in doing so, prevented the court from ruling on his motion.- in *Torres v. Becton, 2019* **"To summarize: state law is clear that a paper is deemed filed when it is presented to the clerk for filing in a form that complies with [California Rules of Court,] rule 201 [renumbered rule 2.100 [5]]. If a paper is thus presented, the clerk has a ministerial duty to file it-** in *Schneider v. Hall, 2017*"

Petitioner then sent said filings to the El Dorado Superior Court clerk using the e-fax system that the initial petition filing was successfully in order to get the records and exhibits filed so the court/judge would not deny the petition on grounds of lack of evidence as was done it the earlier case # PC20200196. Here, the El Dorado Superior Court clerk refused to file:

From: <customerservice@ncourt.com>
Date: Thu, Oct 29, 2020 at 1:58 PM
Subject: El Dorado - eFile Submission
To: <robben.ty@gmail.com>

Superior Court of County of El Dorado – eFile Submission

Your Filing Submission to the court clerks at Superior Court of California – County of El Dorado was declined. The summary of the submission are as follows:

File Information

Confirmation Code: 8916ef4a-620c-4340-a97f-124ed4269e53
Case Number: PC2020051720201029_153156.pdf
Filing Type: ccp 170.6 peremptory challenge
Contact Name: Todd Robben

Reason: This case has been reassigned to San Joaquin Superior Court under assignment number 1066302-20. Please resubmit your documents directly to that court. Thank you

This Petitioner is indigent and without access to a laser printer. Petitioner cannot printout thousands of pages, nor can he afford to print, copy and mail such a large expensive filing as an

indigent parolee who has no access to a law library due to the COVID-19 shutdown. Petitioner cannot deliver a copy to the San Joaquin County Superior Court dropbox since je is in Bakersfield.

This Petitioner's rights were violated in case # PC20200196 when the court clerks never filed this Petitioner that his case was dismissed after this Petitioner filed a change of address both via the San Joaquin County Superior Court e-file system and U.S. mail. In that case, a request for an extension of time to file the amended petition was filed with the initial petition and via the e-file system and U.S. mail. These issues are described below.

A clear pattern of the court clerks failure to file this Petitioner's court filings and the violation his is constitutional rights (U.S. 1st amend. & Cal. Const. Art.1, Sec. 3) to due-process (U.S. 14th amend. & Cal. Const. Art 1, Sec, 7) exists from this most current episode with the San Joaquin & El Dorado Superior Court clerks along with past incidents with the El Dorado Superior Court, the Third District Court of Appeal and the California Supreme Court. Said incidents are described below in this petition.

On October 29, 2020 this Petitioner filed a CCP 170.6 peremptory challenge against the assigned judge of the San Joaquin County Superior Court , judge Tony Agbayani since there is no way this Petitioner will have a fair and impartial habeas corpus proceeding. This Petitioner also requested the San Joaquin County Superior Court judge Abeyant and/or the El Dorado Superior Court to transfer the case to the California Supreme Court so a Special Master can be assigned to hear the case to preserve the Petitioner's rights to a written decision within 60 days pursuant to Rules of Court 4 Rule 4.551(a)(3)(A) "On filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. **The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed."** Rules of Court 4 Rule 4.551(g) Reasons for denial of petition **"Any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial. An order only declaring the petition to be "denied" is insufficient."**

Todd Robben
308 Donna Ave.
Bakersfield, CA 93304
Robben.ty@gmail.com
(661) 817-7383

EL DORADO SUPERIOR COURT
Assigned to San Joaquin County Superior Court Tony J. Agbayani.

TODD ROBBEN

V

RALPH DIAZ, CDCR Secretary

Case No: PC20200517

Underlying cases P17CRF0114, P17CRF0089, S16CRM0096 & S14CRM0465

CCP170.6 PEREMPTORY CHALLENGE

Petitioner, Todd Robben will not have a fair proceeding before assigned judge Tony J. Agbayani or the San Joaquin County Superior Court and a peremptory challenge pursuant to Cal. Civil Code ("CCP") 170.6 is filed to remove judge Tony J. Agbayani.

Petitioner will not have a fair proceeding in the San Joaquin County Superior Court since both the San Joaquin County Superior Court and El Dorado Superior Court refuse to file electronic filings of this Petitioner's habeas corpus petition, exhibits and case records along with motions. This motion is timely.

1

Petitioner has a first amendment right to file his legal filings electronically.

See *Voit v. Superior Court*, 201 Cal. App. 4th 1285 - Cal: Court of Appeal, 6th Appellate Dist. 2011

> (1) The actions of the court clerk's office are quite troubling. "It is difficult enough to practice law without having the clerk's office as an adversary." (*Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 777 [79 Cal.Rptr.2d 292] (*Rojas*).) Whether Voit's motion has legal merit is a determination to be made by a judge, not the clerk's office. No statute, rule of court, or case law gives the court clerk's office the authority to demand that a petitioner cite or quote precedent before his motion will be filed.
>
> (2) If a document is presented to the clerk's office for filing in a form that complies with the rules of court, the clerk's office has a ministerial duty to file it. (See *Carlson v. Department of Fish & Game* (1998) 68 Cal.App.4th 1268, 1276 [80 Cal.Rptr.2d 601].) Even if the document contains defects, the clerk's office should file it and notify the party that the defect should be corrected. (See *Rojas, supra*, 67 Cal.App.4th at p. 777.) Moreover, there 1288*1288 actually is precedent allowing courts to appoint counsel for indigent inmates facing civil suits. (See *Payne v. Superior Court* (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405, 553 P.2d 565].) By unilaterally refusing to file Voit's motion, the clerk's office prevented the court from applying this precedent, or any other relevant law, to Voit's particular circumstances. The clerk's office's actions violated Voit's rights under both the federal and state Constitutions to access to the courts. (U.S. Const., 1st Amend.; Cal. Const., art. I, § 3.)

A CCP 170.6 is appropriate in a habeas proceeding pursuant to *Maas v. Superior Court*, 383 P. 3d 637 - Cal: Supreme Court 2016

> A habeas corpus proceeding is not a criminal action. Rather, as relevant here, it is an independent, collateral challenge to an earlier, completed criminal prosecution. (*In re Scott* (2003) 29 Cal.4th 783, 815 [129 Cal.Rptr.2d 605, 61 P.3d 402].) Therefore, if a habeas corpus proceeding falls within the purview of section 170.6, it is because it is a "special proceeding."

2

This court's decisions have long characterized a habeas corpus proceeding as a special proceeding. (*People v. Villa* (2009) 45 Cal.4th 1063, 1069 [90 Cal.Rptr.3d 344, 202 P.3d 427]; *In re Scott, supra*, 29 Cal.4th at p. 815, fn. 6.) Although not dispositive, the Legislature likewise has labeled the habeas corpus proceeding a "Special Proceeding[] of a Criminal Nature." (See Pen. Code, pt. 2, tit. 12, ch. 1, § 1473 et seq. [setting out the grounds for and procedures governing the writ of habeas corpus].)

We conclude that a habeas corpus proceeding is a "special proceeding" within the meaning of section 170.6. Accordingly, a habeas corpus petitioner who files a motion for disqualification in proper form and in compliance with the procedural requirements of section 170.6 has a right to disqualify the 976*976 judge assigned to try, or hear any matter within, that habeas corpus proceeding. Whether a peremptory challenge under section 170.6 is available when the petitioner has simply filed a *petition* for writ of habeas corpus in the superior court thus appears to depend on whether the petition seeking a writ of habeas corpus or an order to show cause is part of the habeas corpus proceeding, or merely a precursor to it.

It was established that this habeas corpus is, in fact, a civil proceeding:

"On Tue, Oct 6, 2020 at 1:32 PM Rosalie Tucker <rtucker@eldoradocourt.org> wrote:

I'll let them know you'll be re-submitting the paperwork as a new petition (no case number) through our fax filing and not to reject it. **And it will be opened as a civil matter, not criminal."**

A habeas corpus is a CIVIL case! See the U.S. Supreme Court case *Mayle v. Felix, 545 US 644 - Supreme Court* ***2005*** **"Habeas corpus proceedings are characterized as civil in nature.** See, e. g., *Fisher v. Baker, 203 U. S. 174, 181 (1906)."*

3

RELIEF REQUESTED

Judge Tony J. Abeyant must disqualify and the case must be sent to the California Supreme Court for decision or any reassignment to a special master.

Singed under penalty of perjury,

/s/ Todd Robben

10/29/2020

Proof of Service

This filing is being sent via US post office, e-file and e-fax email on 10/29/2020 to:

Superior Court of California – San Joaquin
ATTN: Judge Tony J. Abeyant
180 E Weber Ave
Stockton, California 95202

Superior Court of California – El Dorado
495 Main Street
Placerville, CA 95667

Tony Agbanyani TAgbayani@sjcourts.org
Tani Cantil-Sakauye Tani.Cantil-Sakauye@jud.ca.gov
Rosalie Tucker rtucker@eldoradocourt.org
Shalom Rosenfelder srosenfelder@sjcourts.org
Tanya Auer tauer@sjcourts.org
Stephanie Ceja <sceja@sjcourts.org>

Singed under penalty of perjury,

/s/ Todd Robben

10/29/2020

4

In good faith, this Petitioner did comply with *People v. Hillery (1962) 202 Cal.App.2d 293, 294* [an appellate court "has discretion to refuse to issue the writ as an exercise of original jurisdiction on the ground that application has not been made therefor in a lower court in the first instance"] – Petitioner filed his petition with the El Dorado County Superior Court to rectify the numerous constitutional and jurisdiction issues that mandate reversal of each case on grounds including this Petitioner's actual & factual innocence.

Despite the lower court filing, this case is ripe for the California Supreme Court because of case law that must be revised such as penal codes 71, 140 & 422 are unconstitutional based on recent U.S. Supreme Court case law related to the definition of a true threat and the "subjective" requirements. This petition also attacks the criminal grand jury in California as unconstitutional, the petition argues that a defendant does have a U.S. Constitutional vicinage right pursuant to the 6th and 14th due-process and equal-protection clause. Other California case law is inconsistent with U.S. Supreme Court case law such as the prosecutor having two cases against the same defendant at the same time with the same charges. These issues are articulated in this petition below in detail. Additionally, this Supreme Court should be aware of the rampant corruption, conspiracy, obstruction, racketeering and fraud-upon-the-court that occurred in this case that requires this court to refer matters to the appropriate authorities such as the state bar, the CJP and the FBI.

The current situation requires an urgent response from this Supreme Court since the El Dorado Superior Court clerk called this Petitioner's parole agent claiming they were harassed and threatened when this Petitioner stated he would file complaints with this Supreme Court and the Judicial Council and sue them and pursue criminal complaints pursuant to 18 USC 241 and 242 for civil rights violations, conspiracy, fraud, forgery, obstruction of justice, etc. Threats and actual violence has been used against this Petitioner who is nearing completion of his parole housing program on November 16, 2020 and he now must pay $800.00 per month for housing as he suffers wrongful felony convictions and is obstructed from obtaining a drivers license and gainful employment as a result of the wrongful convictions addressed in this petition.

The habeas corpus petition case # PC20200196 was dismissed without prejudice by San Joaquin Co. Superior Court Judge Tony Agbayani on May 08, 2020 who was allegedly assigned by the Chief Justice Tani G. Cantil-Sakauye on assignment # 1065152-20 . A copy of said order(s) is embedded below.

CASE NO: PC20200196 TODD ROBBEN VS GEORGE JAIME
DATE: 04/28/20 TIME: 8:28 DEPT:

EX PARTE MINUTE ORDER

Clerk: D. Lambie

Court Reporter: None

Each of the current El Dorado County Judicial office
themselves from hearing this matter, Court Administr
matter to the Chairperson of the Judicial Assignment
reassignment.

The Court has been contacted by the Judicial Assignm
Judicial Council and the matter has been assigned to
Tony Agbayani, San Joaquin Superior Court, under ass
1065152-20.

Parties will be notified of the ruling.

The minute order was placed for collection/mailing i
Tahoe, California, either through United States Post
Inter-Departmental Mail, or Courthouse Attorney Box
listed herein.

Executed on 05/04/20, in South Lake Tahoe, Californi

cc: Todd Robben, c/o Westcare, 2901 H St., Bakersfie

cc: George Jaime, P.O. Box 2626, California City, CA

FILED

MAY 08 2020

EL DORADO CO. SUPERIOR COURT

BY _____ (DEPUTY CLERK)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO

In the Matter of the Petition of TODD ROBBEN For Writ of Habeas Corpus	CASE NO. PC 20200196 ORDER

TO: TODD ROBBEN, Petitioner:

A petition for Writ of Habeas Corpus was filed with the El Dorado County Superior Court on April 14, 2020. Due to an entire bench recusal, on April 28, 2020, this matter was assigned by the Judicial Council of California under assignment number 1065152-20 to the Honorable Tony J. Agbayani, Jr., Judge of the Superior Court in and for the County of San Joaquin.

Having considered the Petition and good cause appearing therefor, IT IS HEREBY ORDERED THAT: the Petition for Writ of Habeas Corpus is **DENIED without prejudice** for the reasons indicated.

REASON: Petitioner was convicted and sentenced in 2017 for "threats." In this petition, he asserts that his "actual innocence [is] based on new evidence," "[t]he transcripts prove no true threats were made," and "[n]ew evidence proves a conspiracy existed between the D.A., the judges, and appointed counsel." While Petitioner does not specify what relief he is seeking, based on his arguments, the court presumes Petitioner wants his conviction reversed.

> The petition should both (i) state fully and with particularity the facts on which relief is sought (*People v. Karis* (1988) 46 Cal.3d 612, 656 [250 Cal.Rptr. 659, 758 P.2d 1189] [hereafter *Karis*]; *In re Swain* (1949) 34 Cal.2d 300, 304 [209 P.2d 793]), as well as (ii) include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations. (*Harris*, *supra*, 5 Cal.4th at p. 827, fn. 5; *Clark*, *supra*, 5 Cal.4th at p. 791, fn. 16.) "Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing." (*Karis*, *supra*, at p. 656.)

(*People v. Duvall* (1995) 9 Cal.4th 464, 474, 37 Cal.Rptr.2d 259.) Here, Petitioner has presented no independent objective evidence to support his claims other than his own self-serving

CMS

statements, which are insufficient to substantiate the claims. (*In re Alvernaz* (1992) 2 Cal.4th 924, 938, 830 P.2d 747, 756.) If Petitioner fails to state a prima facie claim for relief, the court may summarily deny the petition. (*Duvall, supra*, 9 Cal.4th at 475; California Rules of Court, rule 4.551(a)(4)(B).)

Based on the foregoing, the petition is **denied without prejudice**.

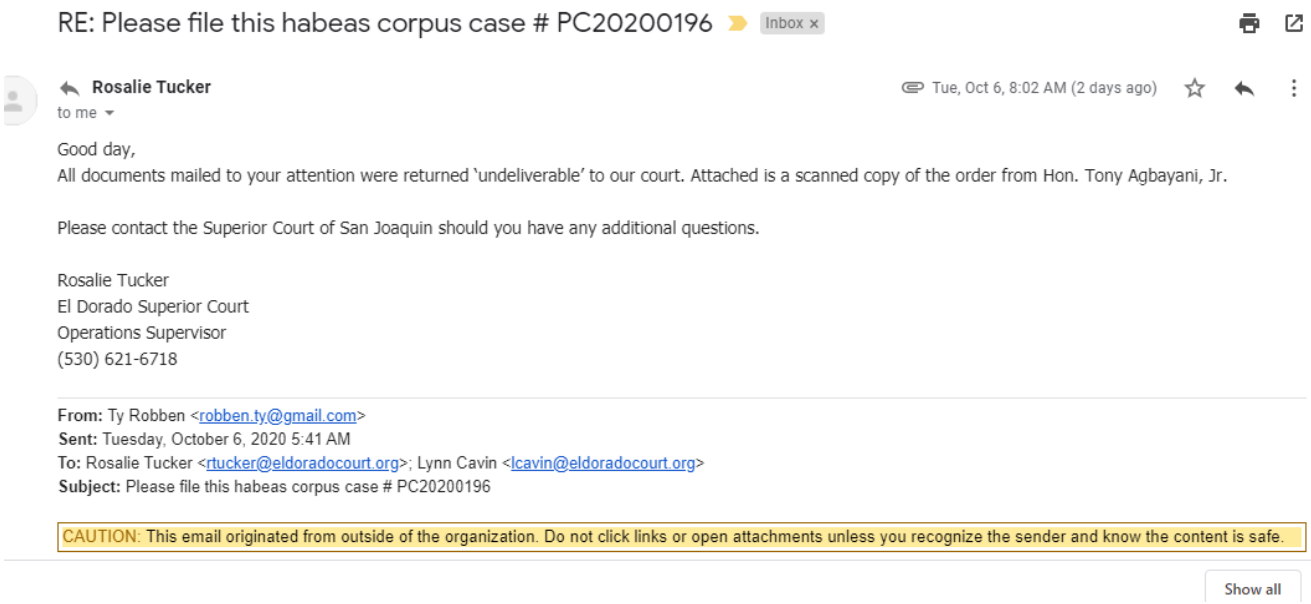
Date: 5/8/20

Tony J. Agbayani, Jr.
TONY J. AGBAYANI JR
ASSIGNED JUDGE OF THE SUPERIOR COURT

The Petitioner had requested an extension of time to amend his habeas petition in early May 2020 by a hand written letter to the San Joaquin Co. Superior Court Judge Tony Agbayani. Said mailing included a change of address[2]. Petitioner also e-filed a second request on May 27, 2020 as Order #9924272 & Order # 8041776 on the San Joaquin Co. Superior Court e-file website . The requests also requested e-filing and fee waivers. **No response was been received by the San Joaquin Co. Superior Court as of September 28, 2020.**

This Petitioner found out about the dismissal on October 06, 2020 when El Dorado Superior Court clerk Rosalie Tucker emailed the following:

[2] Petitioner also provided notice he has changed his address and phone number to: **Todd Robben 308 Donna Ave. Bakersfield, CA 93304 (661) 817-7383.**



RE: Please file this habeas corpus case # PC20200196 Inbox ×

Rosalie Tucker Tue, Oct 6, 8:02 AM (2 days ago)
to me

Good day,
All documents mailed to your attention were returned 'undeliverable' to our court. Attached is a scanned copy of the order from Hon. Tony Agbayani, Jr.

Please contact the Superior Court of San Joaquin should you have any additional questions.

Rosalie Tucker
El Dorado Superior Court
Operations Supervisor
(530) 621-6718

From: Ty Robben <robben.ty@gmail.com>
Sent: Tuesday, October 6, 2020 5:41 AM
To: Rosalie Tucker <rtucker@eldoradocourt.org>; Lynn Cavin <lcavin@eldoradocourt.org>
Subject: Please file this habeas corpus case # PC20200196

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Show all

This Petitioner has been blocked at every level in has efforts to resolve there matters using the California court system who has most recently claimed he cannot file his filings electronically and his habeas corpus is not a "civil" matter claiming it to be a "criminal matter" despite **"Habeas corpus proceedings are characterized as civil in nature.** See, e. g., *Fisher v. Baker, 203 U. S. 174, 181 (1906)*." *Mayle v. Felix, 545 US 644 - Supreme Court 2005*

Re: Please confirm Habeas corpus e-filing

Inbox

Stephanie Ceja <sceja@sjcourts.org> Tue, Oct 6, 9:03 AM (2 days ago)

to me

The Petition was uploaded as a Civil matter and should have been submitted as Criminal. All documents will be rejected and you will need to resubmit as a new criminal case. When resubmitting you must uploaded the document as one and not split it into multiple orders. If the document is too large then you will need to file by mail or you can drop off your documents at the courthouse. Please feel free to contact the Criminal Department at 209-992-5691 if you have additional questions.

Thank you,

Civil E-filing Support Clerk

INTRODUCTION

This petition attacks three cases. **Petitioner, simply requests for a decision on the merits since he is actually innocent in each case.** There is no way the wrongful convictions can stand once a through review is complete. This Petitioner rejects any and all null & void judgments of conviction in the three cases and he is filing liens against the individuals, city, county & state... Everything is explained in detail in this petition.

The courts have refused to allow this Petitioner to have his day in court and have the **merits decided** in a fair venue. **"The law mandates prompt disposition of habeas corpus petitions (§ 1476)"** *In re Clark (1993) 5 Cal.4th 750 [21 Cal.Rptr.2d 509, 855 P.2d 729] (Clark); In re Morgan, 237 P. 3d 993 - Cal: Supreme Court 2010.* Each claim (or ground) is on the issue presented and Ineffective Assistance of Counsel ("IAC") and Ineffective Assistance of Appellate Counsel ("IAAC"). Petitioner also asserts Constructive Denial of Counsel ("CDC") as explained in the petition. For example, the jurisdiction, evidence & immunity issues are argued as a single issue and the cumulative effect, and an IAC/CDC issue and an IAAC/CDC issue that complies to the *Strickland v. Washington* two prong test[3] for IAC/IAAC. **CDC does not require said 2 prong test. To claim constructive denial of counsel bearing on guilt: defense counsel's assertedly deficient performance "resulted in a breakdown of the adversarial process at trial; that breakdown establishes a violation of defendant's federal and state constitutional right to the effective assistance of counsel; and that violation mandates reversal of the judgment even in the absence of a showing of specific prejudice."** (*People v. Visciotti (1992) 2 Cal.4th 1, 84 [5 Cal. Rptr.2d 495, 825 P.2d 388] (dis. opn. of Mosk, J.).)*

"failings resulted in a breakdown of the adversarial process at trial; that breakdown establishes a violation of defendant's federal and state constitutional right to the effective assistance of counsel; and that violation mandates reversal of the judgment even in the absence of a showing of specific prejudice. (See *United States v. Cronic (1984) 466 U.S. 648, 653-662 [80 L.Ed.2d 657, 664-670, 104 S.Ct. 2039]* [speaking of the federal constitutional guaranty only]; *People v. Ledesma (1987) 43 Cal.3d 171, 242-245*

[3] Strickland v. Washington created a two-prong test for **ineffective assistance of counsel claims** which places the burden on the defendant to show **(1) "that counsel's performance was deficient" and (2) "that the deficient performance prejudiced the defense.**" 466 U.S. at 687.

[233 Cal. Rptr. 404, 729 P.2d 839] (conc. opn. of Grodin, J.) [speaking of both the federal and state constitutional guaranties].)

"The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." (*Herring v. New York (1975) 422 U.S. 853, 862 [45 L.Ed.2d 593, 600, 95 S.Ct. 2550]*; accord, *United States v. Cronic, supra, 466 U.S. at p. 655 [80 L.Ed.2d at p. 665]*.) In other words, "The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness." (*Polk County v. Dodson (1981) 454 U.S. 312, 318 [70 L.Ed.2d 509, 516, 102 S.Ct. 445]*.) It follows that the system requires "meaningful adversarial testing." (*United States v. Cronic, supra, 466 U.S. at p. 656 [80 L.Ed.2d at p. 666*].) **"When" — as here — "such testing is absent, the process breaks down and hence its result must be deemed unreliable as a matter of law."** (*People v. Bloom (1989) 48 Cal.3d 1194, 1237 [259 Cal. Rptr. 669, 774 P.2d 698*] (conc. & dis. opn. of Mosk, J.); see *United States v. Cronic, supra, 466 U.S. at p. 659 [80 L.Ed.2d at p. 668];* see also *Rose v. Clark (1986) 478 U.S. 570, 577-578 [92 L.Ed.2d 460, 470-471, 106 S.Ct. 3101]* [to similar effect].)

The size of this petition (over a thousand pages) reflects that there is an abundance of facts, law and evidence to support the reversal of all convictions.

"There is no page limit for habeas corpus petitions in California." *In re Reno, 283 P. 3d 1181 - Cal: Supreme Court 2012* F/N 11.

This Petitioner, with good cause, is forced to over compensate, over articulate and over elaborate on certain points of law and facts since the courts have consistently denied relief on alleged procedural errors or alleged lack of evidence. Exhibits are forced into the pleadings so the reader is shown the evidence including pertinent proof of facts which are embedded[4] into the pleadings (the exhibit page numbers refer to the clerk or reporters transcripts i.e. CT/RT) and this petition contains links to Internet websites for audio/video and other public records exhibits that comply with the rules of evidence as described below. Copies of each case record will be included and the court can refer to each case to read the alleged facts proffered by the state. This petition focuses on the Petitioner's facts and law to reverse each conviction.

[4] "facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence" *Dodd v. Citizens Bank of Costa Mesa, 222 Cal. App. 3d 1624 - Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. 1990*

The court can order copies of all previously filed habeas petitions from the following courts: El Dorado Co, Sacramento Co. Third District Court of Appeal and California Supreme Court. Petitioner is unable to obtain these records as explained in this petition. The court may also have the State Attorney General obtain and supply said filings if required.

Most issues have been federalized in preparation for a federal 28 U.S.C. 2254 habeas corpus since it is very, very unlikely this Petitioner will receive a fair hearing in the state courts as explained in detail in these pleadings. The Petitioner will file said federal petition for writ of habeas corpus and request a stay & abeyance as this case proceeds in the Superior Court where there have been problems with the court not responding or even filing. Petitioner will file another petition in the California Supreme Court to exhaust all claims for federal court.

As previously stated, Petitioner has not, and likely will not receive a fair habeas corpus hearing in the State of California where court corporation and judges will perpetuate the conspiracy to cover-up massive judicial corruption and pedophilia scandals involving other judges which are described and proven in this petition. An example of the blatant bias is exhibited in this petition where the courts have gone so far as to not even file this Petitioner's legal filings from jail & prison. Clear and obvious facts have been distorted and warped by corrupt bias judges to deny a timely and properly CCP 170.6 peremptory challenge and the Third District Court of Appeal failed to exercise discretion to rectify the issue on a timely filed writ petition which would have dismissed the case # P14CRF0114 and Petitioner would not have been convicted and sentenced to an unconstitutional and unlawful maximum sentence by Sacramento Co. judge Steve White, a know pedophile with an axe to grind.

The state judges/justices have failed to exercise discretion on the merits where, as this and other courts will see, Petitioner prevails on the issues/grounds raised. **"The failure to exercise discretion is an abuse of discretion."** *People v. Giger, Cal: Court of Appeal, 3rd Appellate Dist. 2008 citing Kahn v. Lasorda's Dugout, Inc. (2003) 109 Cal.App.4th 1118, 1124.)* Clearly the State judicial system is giving this Petitioner the middle finger[5] since it is well known that the corruption and pedophilia issues (Petitioner even had victims & judges names

[5] In Western culture, "the finger" or the middle finger (as in giving someone the (middle) finger or the bird or flipping someone off) is an obscene hand gesture. The gesture communicates moderate to extreme contempt, and is roughly equivalent in meaning to "fuck me", "fuck you", "shove it up your ass/arse", "up yours" or "go fuck yourself". It is performed by showing the back of a hand that has only the middle finger extended upwards, though in some locales, the thumb is extended. https://en.wikipedia.org/wiki/The_finger

such as Carson City judge John Tatro, Sacramento Co. judge Steve White and former El Dorado Co. judge James Wagoner) are rampant in the California judiciary on par with the Catholic Church, Hollywood, Sacramento, CA, Washington D.C. and Jeffrey Epstein's Island. That's why this petitioner is going to the news, alternative news bloggers & influencers to promote his case and to get support and protection from future retaliation that's been threatened by the El Dorado D.A. "Officer of the year" Bryan Kuhlmann[6] who's attempting chill Petitioner's 1st amendment rights to expose this story …and the very people involved. This Petitioner's life is literally on the line, he's already survived numerous attacks as he attempts to use and exhaust all non-violent remedies to solve the problem(s), achieve justice, reform the system and further expose the pedophilia in the law enforcement, the judiciary and Child Protective Services ("CPS").

The petition complies with Rules of Court and case law for a Superior court under Rule 4 et seq. and the Court of Appeal or Cal. Supreme Court under Rule 8 et seq.. It is filed on the proper Cal. Judicial Council form HC-001 witch allows additional pages "If you have additional grounds for relief, use separate page(s) for each ground. For additional grounds, make copies of page 4 of the HC-001 form and number the additional grounds". Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall (1995) 9 Cal. 4th 464, 474.*) Supporting cases, rules, or other authority (optional). Confidential information related to Marsden motions are made public pursuant to Rules of Court 846(b)(2)(A)

Since this is not a "capital" case (death penalty) and since Petitioner is not represented by any lawyer, there is no limitation on the size of this petition pursuant to *In re Reno*, *283 P. 3d 1181 - Cal: Supreme Court 2012 "*We take this opportunity to establish some new ground rules for exhaustion petitions in capital cases that will speed this court's consideration of them without unfairly limiting petitioners from raising (and exhausting) justifiably new claims. Therefore, we direct that, in future cases, although a petitioner sentenced to death will still be able to file his or her initial habeas corpus petition with no limit as to length, second and subsequent petitions will be limited to 50 pages (or 14,000 words if produced on a computer), subject to a good cause exception"

[6] https://www.mtdemocrat.com/news/officers-of-the-year-honored/

Rule 4.550 "This article applies to habeas corpus proceedings in the superior court under Penal Code section 1473 et seq. or any other provision of law authorizing relief from unlawful confinement or unlawful conditions of confinement, except for death penalty-related habeas corpus proceedings, which are governed by rule 4.560 et seq."

Rule of Court 4.551:

(a) Petition; form and court ruling.

(1) Except as provided in (2), the petition must be on the Petition for Writ of Habeas Corpus (form HC-001).

(2) For good cause, a court may also accept for filing a petition that does not comply with (a)(1). A petition submitted by an attorney need not be on the Judicial Council form. However, a petition that is not on the Judicial Council form must comply with Penal Code section 1474 and must contain the pertinent information specified in the Petition for Writ of Habeas Corpus (form HC-001), including the information required regarding other petitions, motions, or applications filed in any court with respect to the conviction, commitment, or issue.

(3)

(A) On filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. **The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed.**

(B) If the court fails to rule on the petition within 60 days of its filing, the petitioner may file a notice and request for ruling.

(i) The petitioner's notice and request for ruling must include a declaration stating the date the petition was filed and the date of the notice and request for ruling, and indicating that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the notice and request for ruling.

(ii) If the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge or his or her designee must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition before the date the petition is calendared for decision, the matter may be taken off calendar.

(4) For the purposes of (a)(3), the court rules on the petition by:

(A) Issuing an order to show cause under (c);

(B) Denying the petition for writ of habeas corpus; or

(C) Requesting an informal response to the petition for writ of habeas corpus under (b).

(5) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under (b).

CA Penal Code § 1473

(a) A person unlawfully imprisoned or restrained of his or her liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, **but not limited to**, the following reasons:

(1) **False evidence** that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration.

(2) **False physical evidence**, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) **New evidence** exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, “new evidence” means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) **Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2)** of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) **This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.**

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements

The following hypertext index identifies the main sections and allows the reader to click on the index topic links to be taken to that location in this document which is optimized for Adobe Portable Document Format ("PDF") and can be navigated similar to a website.

constitutional errors are both clear and fundamental and strike at the heart of the trial process, the trial court lacked jurisdiction, trial court committed acts in where it totally lacked jurisdiction – – Case *(In re Dixon (1953) 41 Cal.2d 756, 759*) is inapposite.;

IV. **Sufficient facts are alleged with particularity** – Case *(In re Swain (1949) 34 Cal.2d 300, 304)* is inapposite;

V. **Evidence sufficiency is properly couched under IAC and IAAC** – Case *(In re Lindley (1947) 29 Cal.2d 709, 723)* is inapposite.

VI. **This petitioner is not "repetitive" it contains the complete set of issues Petitioner was unable to fully present from prison where he was restricted to law library access, computers, internet, copy systems, printers, etc.. Petitioner did not even have his records in prison…** Case (In re Miller (1941) 17 Cal.2d 734, 735) - is inapposite.

F. Introduction of grounds & issues

2. CASE # P17CRF0114 ISSUES

A. CCP 170.6 + U.S. 14TH AMEND & JURISDICTION ISSUES
   I. IAC, CDC & IAAC
   II. Reversible per se
   III. Proof of filing

B. REASSIGNMENT ORDER + GOVERNMENT CODE 69740 + NO CONSENT = NO JURISDICTION
   I. IAC, CDC & IAAC
   II. Reversible per se

C. NO ORDER FROM CAL. SUPREME COURT ASSIGNING ANY ASSIGNED RETIRED JUDGES OR TRANSFER
   I. IAC, CDC & IAAC
   II. Reversible per se

D. CALIFORNIA CONSTITUTION VIOLATES THE U.S. CONSTITUTION

E. SECTION 68118 & RIGHT TO A JURY POOL VICINAGE FROM A CROSS-SECTION OF THE COMMUNITY
   I. IAC, CDC & IAAC

F. UNLAWFUL AND ILLEGAL CLOSING OF THE COURTROOM

G. GRAND JURY LACKED JURISDICTION AND VIOLATES CONSTITUTIONAL DUE-PROCESS & EQUAL PROTECTION

H. THE CRIMINAL GRAND JURY SCHEME IS UNCONSTITUTIONAL AND MUST BE ABOLISHED

I. GRAND JURY IRREGULARITIES

J. SPEEDY TRIAL VIOLATIONS & IAC

K. D.A. CONFLICT-OF-INTEREST VIOLATED U.S. 14TH AMENDMENT

L. JUDGE STEVEN BAILEY ISSUED UNLAWFUL WARRANT AND ORDERS AFTER BEING DISQUALIFIED

M. UNLAWFUL SURREPTITIOUS RECORDINGS

N. MARSDEN MOTION HEARING

O. FRAUD UPON THE COURT

P. TIMELY FARETTA MOTIONS DENIED

Q. EACH CHARGE MANDATES REVERSAL
COMPREHENSIVE BREAKDOWN OF EACH COUNT IN CASE # P17CRF0114

R. PENAL CODES 71, 140(a) & 422 ARE UNCONSTITUTIONAL

S. NO MIRANDA RIGHT OR RAMEY WARRANT

T. COUNSEL WAS IAC/CDC FOR FAILING TO CHALLENGE THE CONSTITUTIONALITY OF PC 71, 140(A),& 422

U. PETITIONER IS FACTUALLY INNOCENT

V. RESPONSE TO PROBATION REPORT

3. THE PRIOR CONVICTIONS MUST BE REVERSED Case # P16CRM0096

A. CASE S16CRM0096 REQUIRES REVERSAL

B. Petitioner was immune from any violation pursuant to Vehicle Code 41401

C. Trial court judge was divested of jurisdiction

D. Unlawful delay and venue change

E. Unlawfully assigned judges Beason and Baysinger

F. No probable cause for the traffic stop

G. IAC/CDC/IAAC & Constructive Denial of Counsel explained

H. Petitioner not served notice of suspension or expired registration

I. Probation revoked by disqualified judge with no hearing

J. No notice of appeal filed by trial counsel or appeallate counsel David Cramer

K. Right to travel without a license

4. CASE S14CRM0465 MUST BE REVERSED

A. Arresting officer did not file all required reports

B. Arresting Officer stated the Petitioner was not drunk

C. The arresting officer committed perjury and used false evidence

D. The prosecutor knew said officer lied and used false evidence

E. The assistant D.A. acknowledges there was insufficient evidence

F. Trial counsel was IAC/CDC and appellate counsel was IAAC/CDC

G. The appeal was decided by a panel of which two retired judges were not lawfully assigned and all three were bias/prejudice.

H. There was a conflict-of-interest with the D.A.

5. INJUNCTION REQUIRED

6. PETITIONER ENTITLED TO SB 269 & AB 701 RELIEF

7. PETITIONER NOT REQUIRED TO PAY ANY FINES, FEES, OR RESTITUTION

8. SUMMARY & CONCLUSION

Due to the complexity and impeded ability to perform legal research with no Lexis & Westlaw access or law library access since the court law libraries have been closed due to COVID-19 and Petitioner had no access to any local law library – Petitioner only has Google Scholar for legal research and he requested the court to appoint co-counsel or with Petitioner as co-counsel to assure his issues are properly argued.

Petitioner was indigent and without resources to obtain the complete set of records or hire a private investigator to perform investigations into matters such as the forged court orders from the California Supreme used to unconstitutionally assign retired judges in all three related cases.

Any hearing must be done by telephone. If an evidentiary hearing is to be held, and an order to show cause is issued, the court is mandated to appoint co-counsel pursuant to Rule 4.551(c)(2) See *In re Clark (1993) 5 Cal.4th 750, 780* and *People v. Shipman (1965) 62 Cal.2d 226, 231-232*. Petitioner is very, very cautious about the use of appointed lawyers as shown in these cases; lawyers paid(off) by the State/County have been unlawfully appointed and sabotaged his cases. They are unwilling to argue meritorious claims as part of the larger conspiracy explained and documented in this case. All lawyers are members of the corporation i.e. State bar[7] (British Accreditation Registry) and are "officers of the corporation i.e. court" – bar members are ruled/pimped by the court and bar and they are not accountable the "client". The State bar of California and its employees have claimed the Petitioner has threatened to harm them in this case (alleged threats against a state bar employee). Petitioner has exposed the entire California court system as a sham using unconstitutional assigned retired judges, court clerks not filing legal paperwork (in all three courts Superior, Appellate and Supreme), the use of forged court orders claiming to be from the Cal. Supreme Court and Judicial Council, etc.

[7] The State Bar of California was created by the State Bar Act of 1927. (§ 6000 et seq.) In 1966, the electorate adopted a provision 840*840 the State Bar in the judicial article of the state Constitution. Article VI, section 9 of the California Constitution states: **"The State Bar of California is a public corporation**. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record." [3] The unique role of the State Bar is further illustrated by article VI, section 6 of the California Constitution, which describes the membership of the Judicial Council, and by the former version of section 8, subdivision (a), which described the composition of the Commission on Judicial Performance until the commission's structure was revised, effective in 1995, by Proposition 190. These provisions gave the State Bar of California express authority — along with the Supreme Court or the Chief Justice, the houses of the Legislature, and the Governor — to appoint a specified number of members of each respective body. *In re Attorney Discipline System, 967 P. 2d 49 - Cal: Supreme Court 1998*

Petitioner filed his petition for writ of habeas corpus from prison prior to his early release date on April 09, 2020 as a place-holder or “shell” in the event he was discharged from parole at the time of his release in an effort to prevent him from filing a habeas corpus. Petitioner did serve an extra 18 months plus he was unlawfully classified by the CDCR (Cal. Dept. of Correction & Rehab) as level 2 and in total served over three years longer than he should have. The petitioner noted that there would be an amended filing due to the prison law library being shut down due to the COVID-19 corona virus prior to the filing.

The Petitioner, who lost him home in the process of unlawful incarceration, has been housed in a “transitional halfway house” situation in Bakersfield, Kern Co. rather than his home county of Tuolumne Co. or alternatively Stanislaus Co. due to the COVID-19 and early release (due to COVID-19) creating a situation where no housing was available. Petitioner was initially housed at Westcare in Bakersfield, CA despite not being required to be in any rehabilitation program where he had no access to a computer or law library. Petitioner has been re-housed to a transitional house in Bakersfield as of May 20, 2020 where he has computer and internet access. Petitioner is still in a very difficult environment to work on his case with constant interruptions with no office or peace & quite, and a lack of resources with no formal law library (Lexis/Nexis or Westlaw)

Petitioner requests this court to set-aside (reverse) the wrongful convictions in three cases P17CRF0114, S16CRM0096 & S14CRM0465 by way of habeas corpus (PC1473), motion to vacate (PC1473.6, 1473.7 & 1385) common law *coram nobis* and non-statutory common law and Constitutional habeas corpus[8]. **"The writ of habeas corpus was developed under the common law of England "`**as a legal process designed and employed to give summary relief against illegal restraint of personal liberty.'" (Wilkes, Federal and State Postconviction Remedies and Relief (1992) § 2-2, p. 42, quoting 2 Spelling, A Treatise on Injunctions and Other Extraordinary Remedies (1901) § 1152, p. 977.) It continues to serve this purpose today under our law. (See Pen. Code, § 1473, subd. (a) ["Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."].)" *People v. Romero, 883 P. 2d 388 - Cal: Supreme Court 1994.*

[8] California Civil Code 22.2 **"The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State."**

A common law and constitutional habeas corpus or *coram nobis,* not being repugnant to the constitution or laws of this State is not restricted by any penal code and he is not limited to relief on all three cases pursuant to California Civil Code 22.3. "In a **habeas corpus** proceeding the return to the writ or order to show cause alleges facts tending to establish the legality of the challenged detention and **is analogous to the complaint in a civil proceeding.** (*In re Masching (1953) 41 Cal.2d 530, 533 [261 P.2d 251]; In re Egan (1944) 24 Cal.2d 323, 330 [149 P.2d 693]; In re Collins (1907) 151 Cal. 340, 342-343 [90 P. 827, 91 P. 397]." In re Saunders, 472 P. 2d 921 - Cal: Supreme Court 1970*

"Our state Constitution guarantees that a person improperly deprived of his or her liberty has the right to petition for a writ of habeas corpus. (Cal. Const., art. I, § 11. . . .)" (*People v. Duvall (1995) 9 Cal.4th 464, 474*.) The petitioner must be illegally restrained. (Pen. Code, §§ 1473, subd. (a), 1474, subd. 2.) That is, the petitioner must be in custody or otherwise have his or her liberty restrained. **A parolee is "restrained."** (*In re Sturm (1974) 11 2 Cal.3d 258, 265*.); *Jones v. Cunningham (1963) 371 U.S. 236 [9 L.Ed.2d 285, 83 S.Ct. 373*] [**defendant released on parole is still "in custody" for federal habeas corpus purposes]. Both S16CRM0096 and S14CRM0465 included a sentence of a fine which suffices to meet the custody requirement for habeas corpus relief.** (*In re Catalano (1981) 29 Cal.3d 1, 7-9 [171 Cal.Rptr. 667, 623 P.2d 228*].) A comprehensive list of other case law allows this court to grant relief on the S16CRM0096 and S14CRM0465 cases.

As a preliminary note, this Petitioner has filed prior habeas corpus petitions in the state courts and federal courts. Petitioner also had his cases taken to the appellate courts. This petition is not procedurally barred as an abuse of the writ, *res judicata*, *collateral estopple*, law-of-the-case, or untimely, etc… All conditions of State and Federal law, case law, rules, etc. are met to overcome any procedural defect in order to achieve a decision on the merits …in this case, the court will understand this Petitioner is factually/actually innocent of all charges & convictions as a matter of both fact and law, the courts lacked jurisdiction, there is new evidence, there is Ineffective Assistance of both trial & appellate Counsel[9], and there is massive fraud-upon-the-court and

[9] **90% of all lawyers are incompetent in their chosen field of expertise.** Chief Justice Earl Warren was an American jurist and politician, who served as the 30th Governor of California and later the 14th Chief Justice of the United States. https://www.quotes.net/quote/66297

constitutional violations that shock the conscious and show a manifest injustice & miscarriage-of-justice which all mandate reversal per se of all wrongful convictions in all related cases.

Petitioner is without his full set of records since boxes from jail were never sent with him to prison. The jails of both El Dorado and Sacramento County kept Petitioner's legal mail and personal property.

In prison this Petitioner had problems with access to the law library, he was threatened with the prison law library and prison guards using prison politics to keep him out of the law library. Petitioner actually had to fight for his rights to access the law library in prison. Petitioner did file prison CDCR "602" inmate grievances (appeals) to challenge the situation which was denied by prison investigators…

Petitioner's legal papers were taken from him in both jail and prison and records of grievances in jail and prison, phone calls and court filings are proof of said interference by government officials to prevent Petitioner from filing his legal complaints and habeas corpus filings. Hundreds of notes were destroyed in prison. Petitioner's cellmate and others who he did legal work for (writ writing) would be able to confirm these things happened along with records of said jail & prison grievances. This filing is also made under oath and any evidentiary hearing on the matters would prove there was interference (impedance) by government officials to stymie this Petitioner's 1st and 14th amendment access to the courts. The other habeas petitions explain this on-going problem.

"The due process clause guarantees prisoners a constitutional right of meaningful access to the courts. *Bounds v. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977); Sands v. Lewis, 886 F.2d 1166 (9th Cir.1989); Storseth v. Spellman, 654 F.2d 1349, 1352 (9th Cir. 1981).* **The Second Circuit has stated that the denial of access to legal documents prepared by a pro se inmate constitutes a violation of the constitutional right to meaningful access to the courts.** *Morello v. James, 810 F.2d 344 (2nd Cir.1987)." Williams v. ICC COMMITTEE, 812 F. Supp. 1029 - Dist. Court, ND California 1992.* **"Plaintiff alleges that he has been deprived of his legal papers and that this deprivation has left him unable to amend his complaint in another action as directed by this court. This court finds this allegation to state a cognizable claim for relief under Section 1983."** Id. "Plaintiff claims that the prison authorities confiscated a letter written to him by his mother. **This court construes this claim to allege the censorship of Plaintiff's mail. A prison inmate retains those first amendment**

rights that are not inconsistent with his status as a prisoner or with legitimate penological objectives of the corrections. *Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974); Storseth v. Spellman, 654 F.2d 1349, 1355-56 (9th Cir.1981).* **Although there may be legitimate prison interests which are served by the censorship of inmate mail in a particular circumstance, and which may be brought to the court's attention through Defendant's responding papers, this court considers that Plaintiff has stated a cause of action for censorship in violation of the first amendment."** Id.

In *Cody v. Weber, 256 F. 3d 764 - Court of Appeals, 8th Circuit 2001* **"In this case, however, the prison officials and employees offered no evidence of any penological interest to justify the intrusion into Cody's private legal papers.** This case is therefore distinguishable from *Wycoff v. Hedgepeth, 34 F.3d 614 (8th Cir.1994),* on which the district court relies. Wycoff involved the search and seizure of an inmate's legal papers after prison officials discovered that he possessed bomb-making directions."

Petitioner had numerous problems filing legal documents from jail and prison and even had to file a federal civil rights 42 USC 1983 complaint against court clerks in the Superior Court, Court of Appeal and California Supreme Court. The Third District Court of Appeal would not file Petitioner's petition for writ of habeas corpus. See the following exhibits. **Petitioner even filed federal lawsuits against the El Dorado Superior Court, Third District Court of Appeal and Cal. Supreme Court clerks for the 1st amendment violations.**

The letter below from Allan Junker (first appointed appellate counsel) does prove the El Dorado Co. jail and Sacramento Co. jail did not return Petitioner's property to him. Mr. Junker also discussed the El Dorado case # S16CRM0096 where Petitioner did prevail on his appeal one two counts of driving on a suspended license, There was no attempt by Mr. Junker or second appointed counsel Robert L.S. Angres to have 18 months credit applied to the prison sentence in case # P17CRF0114. Trial counsel, Russell Miller claimed he was no longer appointed after trial to request any resentencing. Here, **Petitioner did 18 months in the county jail and won his appeal and no credit was applied or even an attempt to resentence this Petitioner.** Petitioner did 18 months on top of a maximum upper term prison sentence of seven (7) years eight (8) months. The total time is Eight (8) years and ten (10) months.

The below letter from the Third District Court of Appeal from February 26, 2019 shows that Petitioner's petition for writ of habeas corpus was not filed by the court. Prison mail legal mail logs show that mail going to the court. Petitioner asserts the clerks were not performing their ministerial duty of filing his legal papers in that case and others. Petitioner has extensive evidence of this behavior and he filed a federal lawsuit from prison for the U.S. 1st amendment access to the court violations. Evidence of this can be provided at an evidentiary hearing if needed and again this Petitioner has signed this petition under oath (his statement is evidence) and several boxes of evidence has not been returned to the Petitioner at the time of this writing. The previous court filings are also evidence.

The El Dorado Co, jail call log below shows U.S. mail issues Petitioner had with his mail to Mike Weston and the courts when he was jailed at the Placerville and South Lake Tahoe jail where his mail was interfered with.

The El Dorado and Sacramento jails do not maintain an outgoing legal mail log. The El Dorado County jails does not provide any photocopy services or printing from the legal kiosks. Sacramento Co. Jail offers limited printing from their legal kiosks (10 pages). No typewriters are available at Sacramento or El Dorado Co. jails.

\

\

\

\

\

\

\

\

\

\

\

ALLAN E. JUNKER
ATTORNEY AT LAW

6114 La Salle Ave., # 412
Oakland, CA 94611

Telephone (559) 250-1129

March 20, 2018

CONFIDENTIAL LEGAL MAIL
Todd Christian Robben, BE6907
California Correctional Center
P.O. Box 2500
Susanville, CA 96127-2500

Re: People v. Robben; 3DCA C086090; El Dorado County P17CRF0114

Dear Mr. Robben,

Here are some updates on your appeal.

a. Regarding your property. A Mr. Michael Weston (775-359-7070) called me about recovering your property. I told him that I couldn't talk to him about your case, as I do not have your permission to do so. Nevertheless, considering that he was wondering about how to assist you to recover and/or safeguard your property, I said I would look into it. Here is what I have found.

- Sacramento. The Main Jail has one box of your property. Please find enclosed some "Personal Property Release Authorizations." You must fill one out and name the person who can retrieve your property from the jail, and a deputy must sign and date the form as a witness. The person picking up your property can bring the release with him or her. The Main Jail address is Sacramento County Main Jail, Attn: NIC Property, 651 I Street, Sacramento, CA 95814, and the phone is (916) 874-4253. If your property is not picked up by May 4, 2018, the jail will "purge" it, which means they will dispose of it. For your convenience, I have included an addressed and stamped envelope for you to mail the release to the jail. You should also send Mr. Weston a copy.

- El Dorado County. The El Dorado DA does not have your property but the jail in Placerville does. The person to contact there is Mr. Miller, Detention Aide, El Dorado County Jail, 300 Forni Rd., Placerville, CA 95667, phone (530) 621-6013. Mr. Weston can pick up your property or he can pay for UPS or Fedex to pick it up and ship it to wherever he tells them. Mr. Miller will box and address the property, and hold it for pick-up. You must send Mr. Miller a written note telling him who is authorized to arrange for retrieval. For your convenience, I have included an addressed and stamped envelope for you to mail him that note.

b. El Dorado case S16CRM0096. Enclosed is the original 7/11/16 sentencing minute order, the 1/26/18 opinion which dismissed counts one and two, and the 3/9/18 remittitur which allows the trial court to regain jurisdiction to dismiss the two counts. I do not know if or how that affects your sentence in this case, but I left a message for Alison Cohen, Cohen Defense Group, who is the attorney in that case, to ask her how it might affect your sentence in this case. There is no indication in the record for this case that the DUI case sentence mattered. I will let you know what I find out.

c. Other issues. I am still assembling your record for this case. I have reviewed the materials you sent me and I am researching them.

If you have questions, please write me. I have enclosed a return envelope for your use.

Sincerely,

Allan E. Junker

Allan E. Junker

OFFICE OF THE CLERK
COURT OF APPEAL
Third Appellate District
State of California

914 Capitol Mall
Sacramento, CA 95814-4814
916.654.0209
www.courts.ca.gov

ANDREA K. WALLIN-ROHMANN
Clerk/Executive Officer

COLETTE M. BRUGGMAN
Assistant Clerk/Executive Officer

February 26, 2019

Todd Christian Robben
CDC #: BE6907 DOB: 04/16/1969
California City Correctional Center
P.O. Box 2610
California City, CA 93505

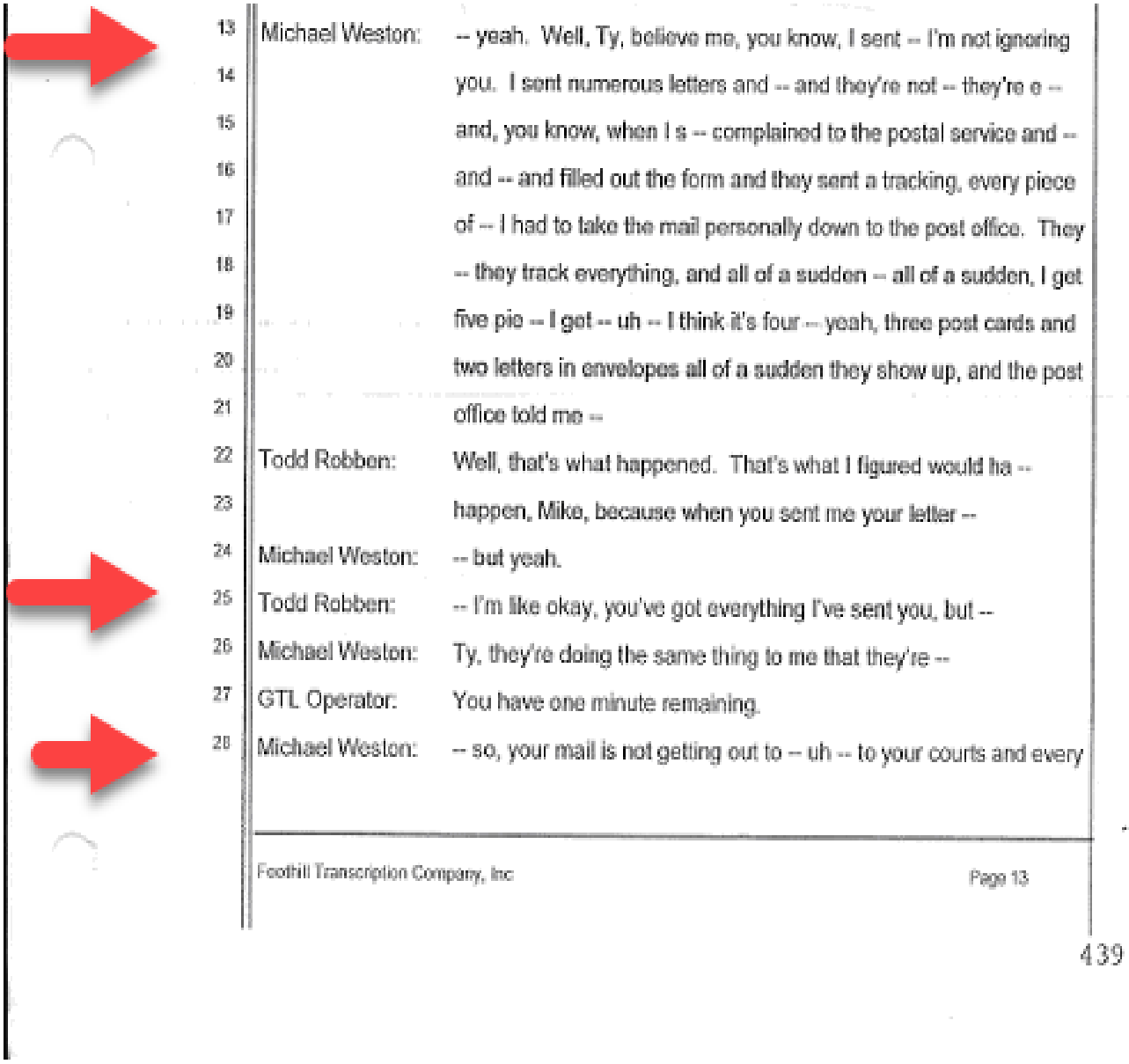
Dear Mr. Robben:

Enclosed please find the documents which were received in this office on February 13, 2019. At the direction of the court, they are being returned to you unfiled. I am unable to locate a pending petition for writ of habeas corpus for you, and I am unable to determine what relief you are seeking from this court.

Very truly yours,

ANDREA K. WALLIN-ROHMANN
Clerk/Executive Officer

By: Jenna Swartzendruber
Deputy Clerk



Michael Weston: -- yeah. Well, Ty, believe me, you know, I sent -- I'm not ignoring you. I sent numerous letters and -- and they're not -- they're e -- and, you know, when I s -- complained to the postal service and -- and -- and filled out the form and they sent a tracking, every piece of -- I had to take the mail personally down to the post office. They -- they track everything, and all of a sudden -- all of a sudden, I get five pie -- I get -- uh -- I think it's four -- yeah, three post cards and two letters in envelopes all of a sudden they show up, and the post office told me --

Todd Robben: Well, that's what happened. That's what I figured would ha -- happen, Mike, because when you sent me your letter --

Michael Weston: -- but yeah.

Todd Robben: -- I'm like okay, you've got everything I've sent you, but --

Michael Weston: Ty, they're doing the same thing to me that they're --

GTL Operator: You have one minute remaining.

Michael Weston: -- so, your mail is not getting out to -- uh -- to your courts and every

Foothill Transcription Company, Inc Page 13

439

- INTERVIEW -

GTL Operator: For English, press -- for a col -- enter your -- please enter the -- please hold. Please wait while your call is being connected.

Michael Weston: Hello.

GTL Operator: Hello, this is a prepaid call from --

Todd Robben: Todd Robben.

GTL Operator: -- an inmate at the El Dorado County Jail. To accept this call, press zero. To refuse this call -- your current balance is $40.29. This call is from a correction facility and is subject to monitoring and recording. Thank you for using GTL.

Todd Robben: Mike?

Michael Weston: Uh -- Ty (phonetic) --

Todd Robben: Yeah.

Michael Weston: -- uh -- I've been out work -- Ty, I've been working out in the garage -- uh -- so, I didn't hear the phone, but hey, they're saying the balance now is only $40. It -- it -- it -- it -- something's not right there. It's -- uh -- it can't -- you know, it's $3 sh -- the -- uh -- I don't know what's going on.

Todd Robben: Well, call the jail --

Michael Weston: Anyway, I --

Todd Robben: -- and complain, you know -- uh -- but the Su -- call the Supreme Court. Let them know hey, I don't even have a lawyer. I've been in here for four months, okay --

Michael Weston: -- oh, yeah, I know that long. I'm going to --

Todd Robben: -- uh -- and then this fucking with the mail, okay, and you're my proof of that --

Michael Weston: -- yeah.

Todd Robben: -- call the Third District Court of Appeal, please. Let them know

because I mailed shit and they didn't get it. Now they want to dismiss one of my cases and -- um --

Michael Weston: How do you know they're going to do --

Todd Robben: -- the Placer -- the Placer County, find out who that court administrator is. That's more important than the -- uh -- El Dorado -- see, all my -- my case has been transferred over to Placer. So, El Dorado County, you can call them. Remember that one lady that was pretty good -- uh -- uh -- that we were talking to way back when all this started, Mike?

Michael Weston: -- uh -- boy, I forget. That's been a while -- uh --

Todd Robben: Tucker, Rosalie (phonetic) --

GTL Operator: This call is being recorded.

Todd Robben: -- it's Ro -- Rosalie Tucker, I think.

Michael Weston: Oh, man, I got to find a pencil here. I just -- I came in from out here. Let me go out and get a -- um -- I just -- I've been out in the garage working all -- since I talked to you last -- since -- got the -- uh -- here, okay. What's the -- uh -- wh -- Third -- probably Third -- uh -- District Court? Now, where are they? Are they in -- uh -- Sacramento or --

Todd Robben: Sacramento.

Michael Weston: -- what's that?

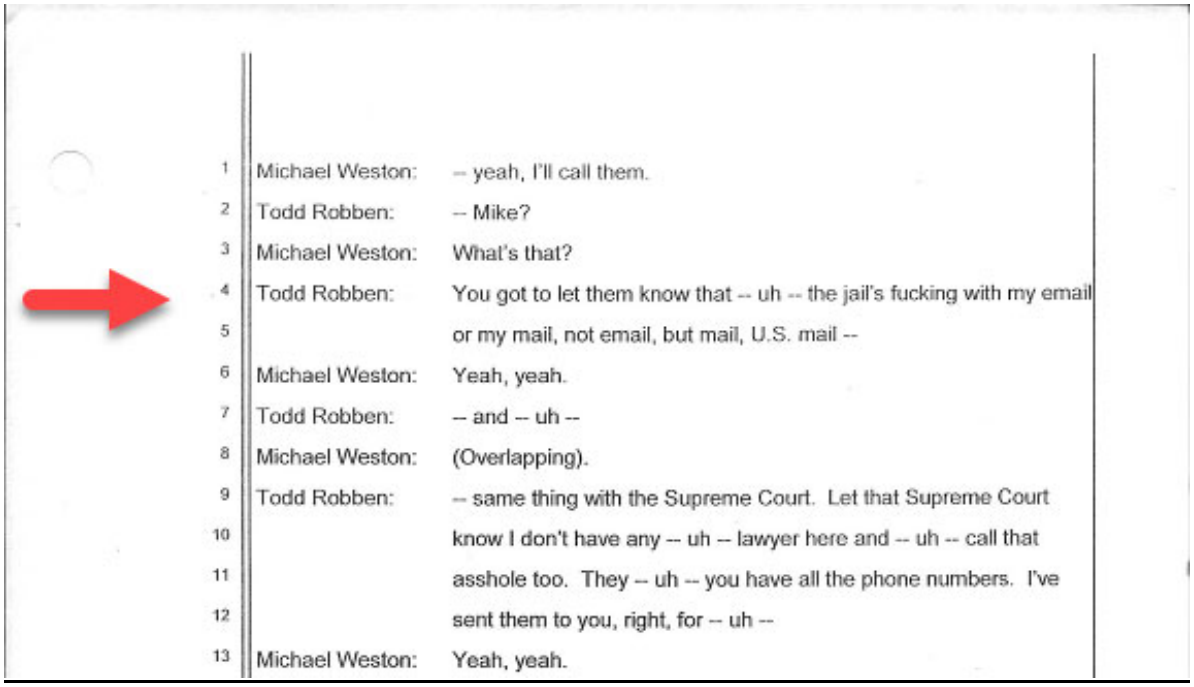
Todd Robben: Sacramento.

Michael Weston: Okay, Sacramento, okay.

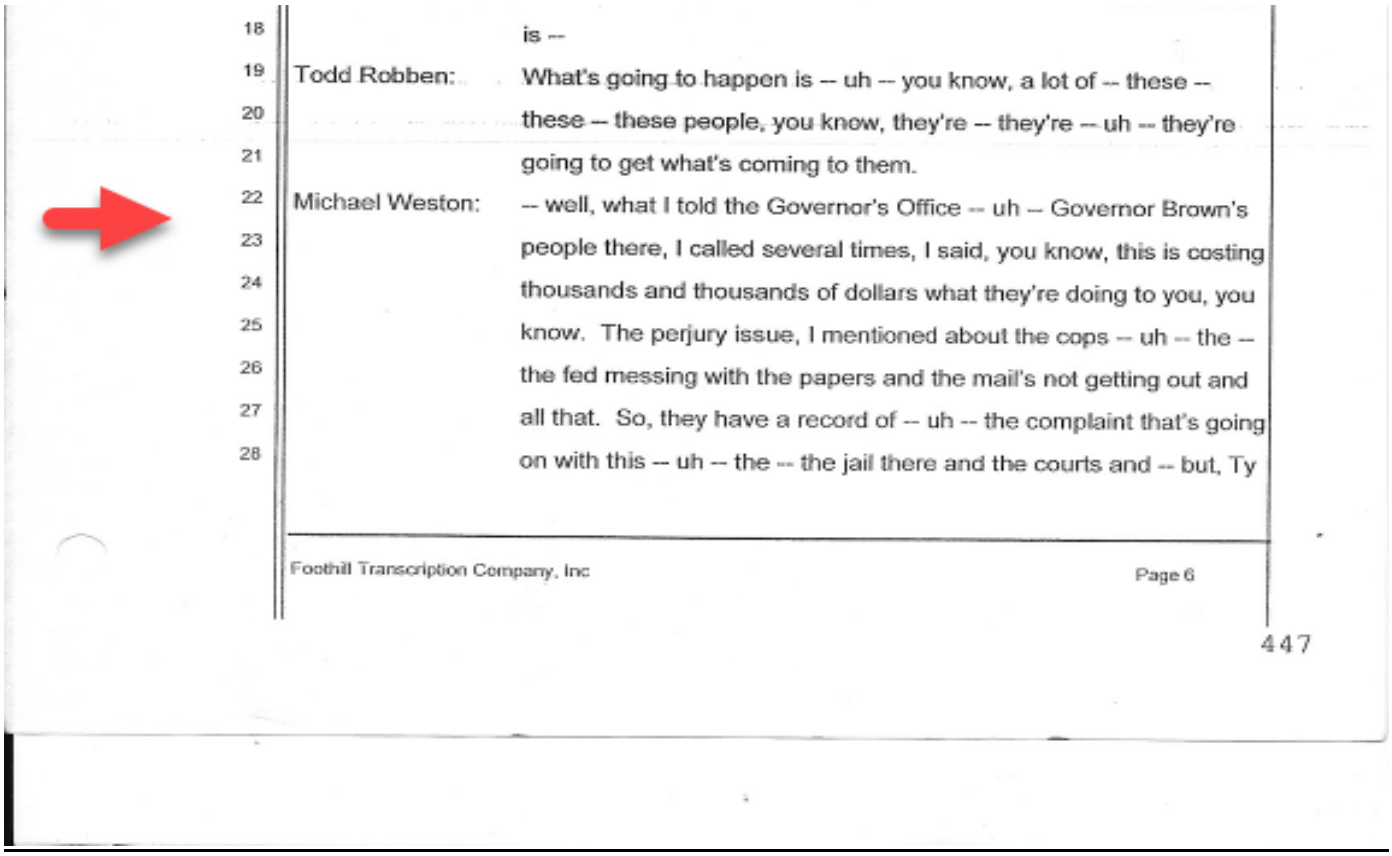
Todd Robben: Yeah, and -- uh --

Michael Weston: Okay, let me -- let me go here. It's just hard to hear. Sac -- okay -- uh -- okay. I'll call them and -- and -- uh -- I'll put cases on -- on hold or whatever.

Todd Robben: -- well, I mean --



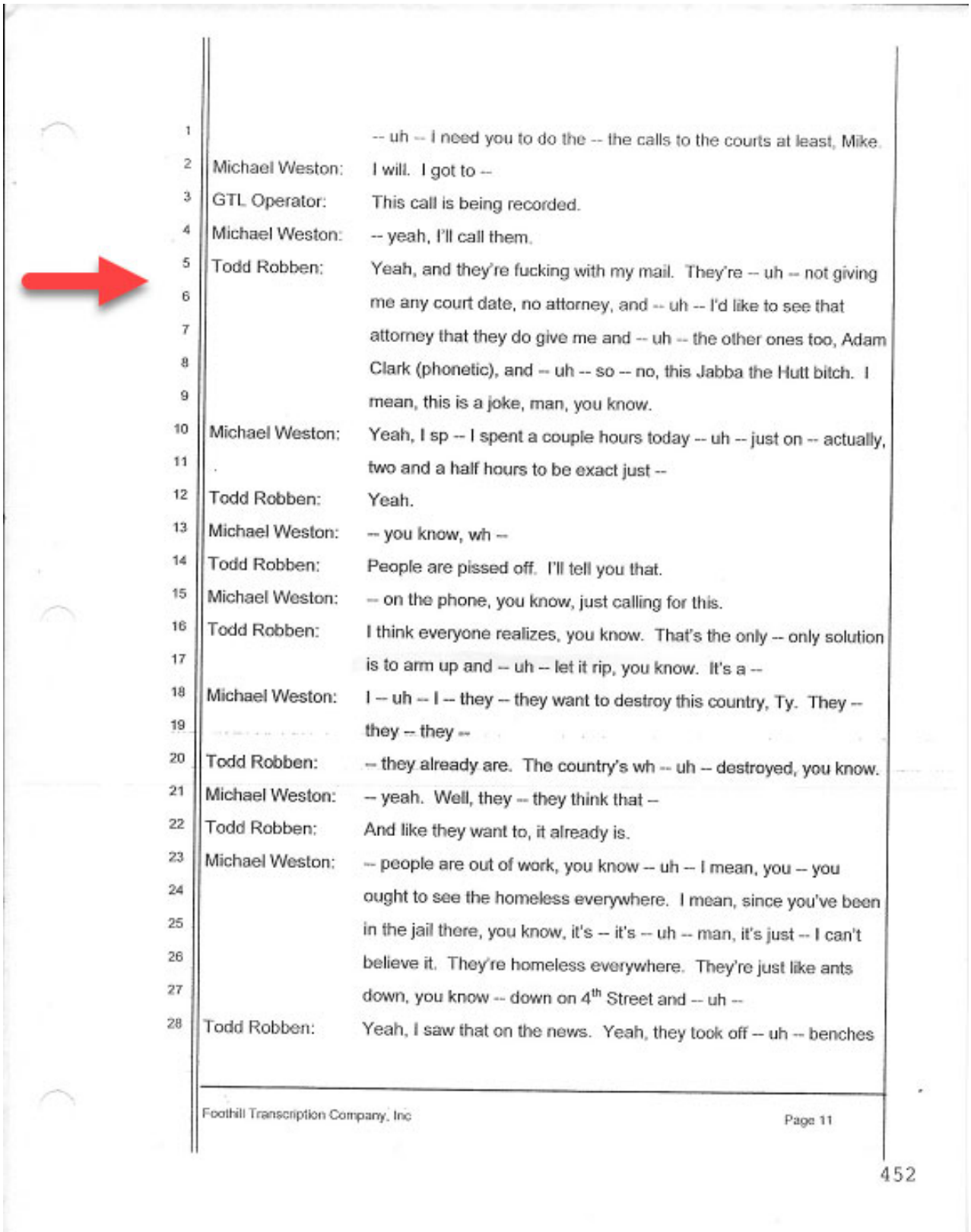
1	Michael Weston:	-- yeah, I'll call them.
2	Todd Robben:	-- Mike?
3	Michael Weston:	What's that?
4	Todd Robben:	You got to let them know that -- uh -- the jail's fucking with my email
5		or my mail, not email, but mail, U.S. mail --
6	Michael Weston:	Yeah, yeah.
7	Todd Robben:	-- and -- uh --
8	Michael Weston:	(Overlapping).
9	Todd Robben:	-- same thing with the Supreme Court. Let that Supreme Court
10		know I don't have any -- uh -- lawyer here and -- uh -- call that
11		asshole too. They -- uh -- you have all the phone numbers. I've
12		sent them to you, right, for -- uh --
13	Michael Weston:	Yeah, yeah.



18		is --
19	Todd Robben:	What's going to happen is -- uh -- you know, a lot of -- these --
20		these -- these people, you know, they're -- they're -- uh -- they're
21		going to get what's coming to them.
22	Michael Weston:	-- well, what I told the Governor's Office -- uh -- Governor Brown's
23		people there, I called several times, I said, you know, this is costing
24		thousands and thousands of dollars what they're doing to you, you
25		know. The perjury issue, I mentioned about the cops -- uh -- the --
26		the fed messing with the papers and the mail's not getting out and
27		all that. So, they have a record of -- uh -- the complaint that's going
28		on with this -- uh -- the -- the jail there and the courts and -- but, Ty

Foothill Transcription Company, Inc Page 6

447



-- uh -- I need you to do the -- the calls to the courts at least, Mike.

Michael Weston: I will. I got to --

GTL Operator: This call is being recorded.

Michael Weston: -- yeah, I'll call them.

Todd Robben: Yeah, and they're fucking with my mail. They're -- uh -- not giving me any court date, no attorney, and -- uh -- I'd like to see that attorney that they do give me and -- uh -- the other ones too, Adam Clark (phonetic), and -- uh -- so -- no, this Jabba the Hutt bitch. I mean, this is a joke, man, you know.

Michael Weston: Yeah, I sp -- I spent a couple hours today -- uh -- just on -- actually, two and a half hours to be exact just --

Todd Robben: Yeah.

Michael Weston: -- you know, wh --

Todd Robben: People are pissed off. I'll tell you that.

Michael Weston: -- on the phone, you know, just calling for this.

Todd Robben: I think everyone realizes, you know. That's the only -- only solution is to arm up and -- uh -- let it rip, you know. It's a --

Michael Weston: I -- uh -- I -- they -- they want to destroy this country, Ty. They -- they -- they --

Todd Robben: -- they already are. The country's wh -- uh -- destroyed, you know.

Michael Weston: -- yeah. Well, they -- they think that --

Todd Robben: And like they want to, it already is.

Michael Weston: -- people are out of work, you know -- uh -- I mean, you -- you ought to see the homeless everywhere. I mean, since you've been in the jail there, you know, it's -- it's -- uh -- man, it's just -- I can't believe it. They're homeless everywhere. They're just like ants down, you know -- down on 4th Street and -- uh --

Todd Robben: Yeah, I saw that on the news. Yeah, they took off -- uh -- benches

and --

Michael Weston: -- yeah, yeah.

Todd Robben: -- yeah.

Michael Weston: It -- it -- it -- I -- it --

Todd Robben: Why, I -- I just know -- I know this, Mike, a lot of people want to see a lot of these peo -- the people dead and -- uh -- that's good news because -- uh -- you know -- uh -- you know -- uh --

Michael Weston: Yeah, it's -- uh --

Todd Robben: -- it's -- it -- a lot of these people -- uh -- get what's coming to them.

Michael Weston: -- uh -- Trump is (overlapping).

Todd Robben: -- all right, well --

Michael Weston: -- Trump was (overlapping) --

Todd Robben: -- I'm fixin to go. I'll let you go. I'll save my minutes, but if you could keep up on the phone calls.

Michael Weston: -- well, I will. I will.

Todd Robben: I'll call you back -- uh -- but, yeah, call the -- the Placer Court p -- ask for the court ad -- uh -- administrator and --

Michael Weston: Yeah.

Todd Robben: -- let everybody know, Third District Court of Appeal, the Supreme Court that hey, Ty's got no lawyer. It's been four months in jail. I'm putting out my habeas corpuses. They're fucking with me on the mail. You can attest to that.

Michael Weston: Yeah.

Todd Robben: I got everything documented here, but I don't have anybody on the outside, Mike. So, it's -- it's good to talk to you --

Michael Weston: Yeah.

Todd Robben: -- and -- and I -- yeah.

Michael Weston: Yeah.

In re Malone, 44 Cal. 2d 700 - Cal: Supreme Court 1955:

> Although a defendant is not entitled to special privileges because he elects to represent himself (see *People v. Chessman (1951), 38 Cal.2d 166, 174 [238 P.2d 1001]*), **an accuser's right to quietly prepare his own defense in his own cell without interference 703*703 by beatings, threats of death, and destruction of papers by his jailers is closely related to the established right to counsel of accuser's choice, with time and opportunity to consult privately with such counsel so that there can be adequate preparation for trial** (see *Powell v. Alabama (1932), 287 U.S. 45, 69-71 [53 S.Ct. 55, 77 L.Ed. 158, 84 A.L.R. 527]; House v. Mayo (1945), 324 U.S. 42, 46 [65 S.Ct. 517, 89 L.Ed. 739]; People v. Simpson (1939), 31 Cal.App.2d 267, 270-272 [88 P.2d 175]; People v. Kurant (1928), 331 Ill. 470 [163 N.E. 411, 415]; Turner v. State (1922), 91 Tex.Crim. 627 [241 S.W. 162, 23 A.L.R. 1378], and Annotation, 23 A.L.R. 1382*),
>
> **Holdings of this court and the United States Supreme Court establish that invasions of some of those rights affecting the presentation of a defense furnish grounds for attack by writ of habeas corpus upon a final judgment of conviction.** (*Hawk v. Olson (1945), 326 U.S. 271, 276, 278 [66 S.Ct. 116, 90 L.Ed. 61]; In re Masching (1953), 41 Cal.2d 530 [261 P.2d 251].)*

Public records, newspapers, Internet postings/videos and records of other courts are used extensively in this pleading to demonstrate relevant facts - **California Courts may take judicial notice of public records** (*People v. Hardy (1992) 2 Ca1.4th 86, 174, fn. 24*, see also *Norgart v. Upjohn Co. (1999) 21 Ca1.4th 383, 408* **[judicial notice of controversy as evidenced by articles in the press]**. Evidence code Section 451:

> (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
>
> (g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.
>
> (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

In *Gomez v. Superior Court, 278 P. 3d 1168 - Cal: Supreme Court 2012 f/n 6* "We note, however, that the consequences of a summary denial of a writ petition differ in some respects from the consequences of a final judgment in a fully adjudicated case**. For example, the denial of an application for an alternative writ or the summary denial of a habeas corpus petition does not establish law of the case and does not have a *res judicata* effect in future proceedings.**

(See *Kowis v. Howard (1992) 3 Cal.4th 888, 893 [12 Cal.Rptr.2d 728, 838 P.2d 250*] **[appellate court's summary denial of pretrial writ is not law of the case, even when it is clear the petition was denied on the merits]**; *Funeral Dir. Assn. v. Bd. of Funeral Dirs. (1943) 22 Cal.2d 104 [136 P.2d 785]* [Supreme Court's denial of application for writ of mandate without written decision was a refusal to exercise original jurisdiction and not *res judicata* in subsequent writ proceedings in superior court seeking same relief].) **Furthermore, a summary denial may not be final when the denial is made without prejudice to petitioner's applying for further relief. (See, e.g., *In re Swain (1949) 34 Cal.2d 300, 304 [209 P.2d 793]* [application for writ of habeas corpus denied for failure to sufficiently allege facts supporting claims, without prejudice to the filing of a new petition]".**

In *US v. Alexander, 106 F. 3d 874 - Court of Appeals, 9th Circuit 1997* "Under the "law of the case" doctrine, "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *Thomas v. Bible, 983 F.2d 152, 154 (9th Cir.) (cert. denied 508 U.S. 951, 113 S.Ct. 2443, 124 L.Ed.2d 661 (1993).* **The doctrine is not a limitation on a tribunal's power, but rather a guide to discretion.** *Arizona v. California, 460 U.S. 605, 618, 103 S.Ct. 1382, 1391, 75 L.Ed.2d 318 (1983)*. **A court may have discretion to depart from the law of the case where: 1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred;** 3) **the evidence on remand is substantially different;** 4) **other changed circumstances exist**; or 5**) a manifest injustice would otherwise result**. **Failure to apply the doctrine of the law of the case absent one of the requisite conditions constitutes an abuse of discretion.** *Thomas v. Bible, supra.*

I. **This petition includes copies of documentary evidence including embedded exhibits and the complete case records/transcripts** - Case (*People v. Duvall (1995) 9 Cal.4th 464, 474)* is inapposite.;

II. **Petition contains claims rejected on appeal as IAC and IAAC claims, claimed constitutional errors are both clear and fundamental and strike at the heart of the trial process, the trial court lacked jurisdiction, trial court committed acts in where it totally lacked jurisdiction, this petition challenges several laws, which if changed, would result in reversal –** Case *(In re Waltreus (1965) 62 Cal.2d 218, 225*) is inapposite. "We continued in In re Harris, supra, 5 Cal.4th 813, to describe the four

exceptions to the Waltreus rule. As we explained there, a petitioner can renew a legal issue, despite having raised the issue unsuccessfully on appeal, in four circumstances: **(1) where the issue constitutes a fundamental constitutional error; that is, "where the claimed constitutional error is both clear and fundamental, and strikes at the heart of the trial process" (*Harris, at p. 834*); (2) where the judgment of conviction was rendered by a court lacking 478*478 fundamental jurisdiction, described as "an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties" (*Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 288 [109 P.2d 942*]; see *Harris, at p. 836 [citing Abelleira in support])*;[22] (3) where the court acted in excess of its jurisdiction, such as when it imposes an illegal sentence (*Harris, at pp. 838-839*); and (4) "when there has been a change in the law affecting the petitioner"** (id. at p. 841)." *In re Reno, 283 P. 3d 1181 - Cal: Supreme Court 2012*;

III. **Because of IAC, IAAC, CDC and actual denial certain claims can only be raised on habeas corpus**, **claimed constitutional errors are both clear and fundamental and strike at the heart of the trial process, the trial court lacked jurisdiction, trial court committed acts in where it totally lacked jurisdiction–** Case *(In re Dixon (1953) 41 Cal.2d 756, 759*) is inapposite.;

IV. **Sufficient facts are alleged with particularity** – Case *(In re Swain (1949) 34 Cal.2d 300, 304)* is inapposite;

V. **Evidence sufficiency is properly couched under IAC, CDC and IAAC** – Case *(In re Lindley (1947) 29 Cal.2d 709, 723)* is inapposite.

VI. **This petitioner is not "repetitive" it contains the complete set of issues Petitioner was unable to fully present from prison where he was restricted to law library access, computers, internet, copy systems, printers, etc.. Petitioner did not even have his records in prison…** Case (In re Miller (1941) 17 Cal.2d 734, 735) - is inapposite.

In re Reno, 283 P. 3d 1181 - Cal: Supreme Court 2012 "The right to habeas corpus is guaranteed by the state Constitution and "may not be suspended unless required by public safety in cases of rebellion or invasion." (Cal. Const., art. I, § 11.) **Frequently used to challenge criminal**

convictions already affirmed on appeal, the writ of habeas corpus permits a person deprived of his or her freedom, such as a prisoner, to bring before a court evidence from outside the trial or appellate record, and often represents a prisoner's last chance to obtain judicial review. "[H]abeas corpus cuts through all forms and goes to the very tissue of the structure. It comes in from the outside ... and although every form may have been preserved opens the inquiry whether they have been more than an empty shell."' (*In re Harris, supra, 5 Cal.4th at p. 828, fn. 6*, quoting *Frank v. Mangum (1915) 237 U.S. 309, 346 [59 L.Ed. 969, 35 S.Ct. 582]*.) **"Historically, habeas corpus provided an avenue of relief for only those criminal defendants confined by a judgment of a court that lacked fundamental jurisdiction, that is, jurisdiction over the person or subject matter" (*Harris, at p. 836*), but that view has evolved in modern times and habeas corpus now "permit[s] judicial inquiry into a variety of constitutional and jurisdictional issues"** (*People v. Duvall (1995) 9 Cal.4th 476 [37 Cal.Rptr.2d 259, 886 P.2d 1252]*,. **"Despite the substantive and procedural protections afforded those accused of committing crimes, the basic charters governing our society wisely hold open a final possibility for prisoners to prove their convictions were obtained unjustly**. [Citations.] **A writ of `[h]abeas corpus may thus provide an avenue of relief to those unjustly incarcerated when the normal method of relief — i.e., direct appeal — is inadequate.'"** *(In re Sanders (1999) 21 Cal.4th 697, 703-704 [87 Cal.Rptr.2d 899, 981 P.2d 1038]*; see *In re Robbins, 959 P. 2d 311 - Cal: Supreme Court 1998, 18 Cal.4th at p. 777* **["there may be matters that undermine the validity of a judgment or the legality of a defendant's confinement or sentence, but which are not apparent from the record on appeal" for which habeas corpus is appropriate].)"**

Notwithstanding "the importance of the `Great Writ,'" our Supreme Court has established procedural rules limiting its use. (*In re Clark (1993) 5 Cal.4th 750, 763-764,* superseded by statute on other grounds as stated in *Briggs v. Brown (2017) 3 Cal.5th 808*.) One such rule "has come to be known as the *Waltreus* rule (*In re Waltreus (1965) 62 Cal.2d 218, 225 [42 Cal.Rptr. 9, 397 P.2d 1001*]; that is, legal claims that have previously been raised and rejected on direct appeal ordinarily cannot be re-raised in a collateral attack by filing a petition for a writ of habeas corpus." (*Reno, supra, 55 Cal.4th at p. 476.*) This rule is "consistent with the very nature of habeas corpus" as "an extraordinary remedy applicable when the usual channels for vindicating rights—trial and appeal—have failed." (*Id. at p. 477*.) And because "habeas corpus cannot serve as a substitute for an appeal, . . . in the absence of special circumstances constituting an excuse for failure to employ that

remedy, the writ will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction." (*In re Dixon (1953) 41 Cal.2d 756, 759 (Dixon).*) This has come to be known as the *Dixon* rule.

Adjunctive to the *Waltreus, supra, 62 Cal.2d 218* and *Dixon, supra, 41 Cal.2d 756* rules, our Supreme Court has also "refused to consider newly presented grounds for relief which were known to the petitioner at the time of a prior collateral attack on the judgment" or "with due diligence should have been known to the petitioner and presented in an earlier petition." (*In re Clark, supra, 5 Cal.4th at pp. 767-768.*) "These procedural bars to habeas corpus relief have been termed `discretionary,' however [citations], and have been described as a `policy' of the court." (Id. at p. 768.) As our Supreme Court explained: "A successive petition presenting additional claims that could have been presented in an earlier attack on the judgment is, of necessity, a delayed petition." (Id. at p. 770.) **Before considering the merits of such a petition, a court must "ask whether the failure to present the claims underlying the new petition in a prior petition has been adequately explained, and whether that explanation justifies the piecemeal presentation of the petitioner's claims."** (Id. at p. 774.)

As our Supreme Court has observed, where a claim was available on direct appeal, but not raised due to ineffective assistance of appellate counsel, such a claim is "cognizable in a postappeal habeas corpus petition under the ineffective counsel rubric." (*In re Harris (1993) 5 Cal.4th 813, 834; see also In re Banks (1971) 4 Cal.3d 337, 343; In re Spears (1984) 157 Cal.App.3d 1203, 1208* **["habeas corpus is the appropriate means to remedy deprivation of the effective assistance of appellate counsel"].)**

In re Clark, supra, 5 Cal.4th 750. There, our Supreme Court set forth the following procedure for determining whether or not to consider a delayed and/or successive petition: "Before considering the merits of a second or successive petition, a California court will first ask whether the failure to present the claims underlying the new petition in a prior petition has been adequately explained, and whether that explanation justifies the piecemeal presentation of the petitioner's claims. This requirement is reasonable in view of the interest of the state in carrying out its judgments, the interest of the respondent in having the ability to respond to the petition and to retry the case should the judgment be invalidated, and the burden on the judicial system." (Id. at pp. 774-775.) The court continued: "In assessing a petitioner's explanation and justification for delayed presentations of claims in the future, the court will also consider whether the facts on which the claim is based,

although only recently discovered, could and should have been discovered earlier. A petitioner will be expected to demonstrate due diligence in pursuing potential claims. **If a petitioner had reason to suspect that a basis for habeas corpus relief was available, but did nothing to promptly confirm those suspicions, that failure must be justified. [¶] However, where the factual basis for a claim was unknown to the petitioner and he [or she] had no reason to believe that the claim might be made, or where the petitioner was unable to present his [or her] claim, the court will continue to consider the merits of the claim if asserted as promptly as reasonably possible.** And, as in the past, claims which are based on a change in the law which is retroactively applicable to final judgments will be considered if promptly asserted and if application of the former rule is shown to have been prejudicial." (Id. at p. 775.)

Our rules establish a three-level analysis for assessing whether claims in a petition for a writ of habeas corpus have been timely filed. First, a claim must be presented without substantial delay. Second, if a petitioner raises a claim after a substantial delay, we will nevertheless consider it on its merits if the petitioner can demonstrate good cause for the delay. Third, we will consider the merits of a claim presented after a substantial delay without good cause if it falls under one of four narrow exceptions: **"(i) that error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner; (ii) that the petitioner is actually innocent of the crime or crimes of which he or she was convicted;** (iii) that the death penalty was imposed by a sentencing authority that had such a grossly misleading profile of the petitioner before it that, absent the trial error or omission, no reasonable judge or jury would have imposed a sentence of death; or (iv**) that the petitioner was convicted or sentenced under an invalid statute."** (*In re Robbins, supra,* 18 Cal.4th at pp. 780-781.) The petitioner bears the burden to plead and then prove all of the relevant allegations. (Ibid.)

The United States Supreme Court recently, and accurately, described the law applicable to habeas corpus petitions in California: **"While most States set determinate time limits for collateral relief applications, in California, neither statute nor rule of court does so. Instead, California courts `appl[y] a general "reasonableness" standard' to judge whether a habeas petition is timely filed.** *Carey v. Saffold, 536 U.S. 214, 222 [153 L.Ed.2d 260, 122 S.Ct. 2134] (2002)*. **The basic instruction provided by the California Supreme Court is simply that `a [habeas corpus] petition should be filed as promptly as the circumstances allow** ....'" (*Walker*

v. Martin, supra, 562 U.S. at p. ___ [131 S.Ct. at p. 1125].) "A prisoner must seek habeas relief without `substantial delay,' [citations], as `measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim,' [citation]." (Ibid.; see *In re Robbins, supra, 18 Cal.4th at p. 780 ["*Substantial 461*461 delay is measured from the time the petitioner or his or her counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim."].)

This Petitioner has been falsely imprisoned since June 2016 to April 2020 as he was attempting to remedy the DUI case # S14CRM0465 and he was defending himself in case # S16CRM0096. **Petitioner has diligently attempted to file a petition for writ of habeas corpus, however he was without the case records & transcripts of all three cases in jail and prison.** Petitioner was limited to the law library and other tools such as a copy machine in jail which are needed to correctly file legal pleadings. In jail, Petitioner only had a short “golf” pencil or “flex” pen to write. Petitioner has tendonitis and has problems writing using golf pencils and flex pens. Petitioner never had access to a computer or printer or scanner to correctly formulate and articulate the legal filings from jail/prison.

At the present time, Petitioner has enough information, facts, evidence and case law that mandates a reversal on several grounds that include factual/actual innocence based on constitutional violations in all three cases. Since Petitioner’s speech in case # P17CRF0114 is 1st amendment protected speech and not a true threat or fighting words pursuant to current U.S. Supreme Court case law discussed in this petition, and the alleged threats were subject to review under a subjective standard rather than objective standard to determine *mens rea* (the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused) as opposed to *actus reus*. (Action or conduct which is a constituent element of a crime, as opposed to the mental state of the accused i.e. *mens rea*).

Additionally fabricated evidence and perjury was used to obtain the DUI conviction in S14CRM0465, and a series of cumulative errors of trial counsel and the trial judge to properly suppress/exclude said evidence in addition to other errors that mandate reversal per se. Additional errors of Ineffective Appellate Assistance of Counsel & jurisdiction will be argued as well.

There is insufficient evidence to convict Petitioner on the remaining charge of displaying false registration tags when Petitioner was never even served notice of the expired registration as well as notice of the suspended license and a series of cumulative errors of trial counsel to properly

suppress/exclude said evidence. Petitioner was also immune from any vehicle code violation pursuant to Vehicle Code 41401 since he was ordered to federal court on the day of the alleged violation in addition to other errors that mandate reversal per se. The trial court/judge also lacked jurisdiction since no order was issued by the Chief Justice of the Cal. Supreme Court or Judicial Council to assign her. The trial court lacked jurisdiction since a pre-trial interlocutory appeal was filed – the trial court was divested jurisdiction.

Other grounds in case # P17CRF0114 include Ineffective Assistance of Counsel ("IAC") and constructive denial and actual denial of trial and appellate counsel (U.S. 6th & 14th amendment violation), the trial court(s) lacked jurisdiction, the trial judge failed to disqualify after a timely Cal. Civil Code of Procedure ("CCP") 170.6 peremptory was properly filed (U.S. 14th amendment due-process violation) , conflicts of interest with the prosecutor (U.S. 14th amendment due-process violation), forged orders claiming to be from the Cal. Supreme Court Chief Justice & Judicial Council Chairperson used to assign retired judges and venue changes, unlawfully closed courtrooms (a U.S. 6th amend. Cal. Const Art 1, Sec 15 violation), the unconstitutional use of retired judges, closed courtrooms in violation of U.S. 6th amendment Cal. Art 1, Sec 15, Denial of the right to self-represent (*Faretta v. California 422 U.S. 806 (1975*)), erroneous denial of a Marsden motion, failure of the U.S. 6th & Cal. Art 1, Sec 15 amendment right to confront witnesses/victims Officer Shannon Laney and Judge Steven Bailey who were not even at the trial. "In all criminal prosecutions the accused shall enjoy the right …to be confronted with the witnesses against him" *Pointer v. Texas 380 US 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 - Supreme Court, 1965; Davis v. Alaska 415 US 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 - Supreme Court, 1974).* Petition had no prior opportunity to confront the witness, this case did not have a preliminary hearing, and instead, a grand jury indictment was used. No exception exists. In: *United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984),* No specific showing of prejudice was required in *Davis v. Alaska,supra,* **because the petitioner had been "denied the right of effective cross-examination" which " `would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.' "** Id., at 318 (citing *Smith v. Illinois, 390 U. S. 129, 131 (1968),* and *Brookhart v. Janis, 384 U. S. 1, 3 (1966)).*

The entire grand jury hearing was awash in irregularities that mandate reversal *per se* such as not having the required 19 jurors, the D.D.A. Dale Gomes acting as the foreman, no record of the first day, no record of the jurors being sworn in, the judge was a retired judge with no record of

assignment from the Chief Justice of the California Supreme Court or Judicial Council, all judges has been recused/disqualified from the El Dorado bench yet retired Thomas A. Smith presided, evidence was presented to the grand jury that was unlawfully obtained under U.S. 4th amendment using a warrant from Judge Steve Bailey who has been recused prior and who also assigned a "special master" to obtain data from Petitioner's cell phone and computer. A "pretext" call was used as evidence in the grand jury where the South Lake Tahoe City Attorney surreptitiously recorded a phone call with this Petitioner which violated the California privacy act, federal law and U.S. 4th amendment as explained later in these pleadings.

Exculpatory evidence was withheld, and the D.D.A gave the grand jury wrong legal information …and not all the victims testified which resulted in a lack of probable cause and insufficient evidence to even obtain an indictment. Counsel was IAC/CDC/IAAC failing to argues these points.

On appeal, Petitioner's counsel, Robert L.S. Angres failed to argue these issues of IAC or augment the appeal by way of habeas corpus. Said arguments would have dismissed the charges pre-trial and Petitioner would have been exonerated.

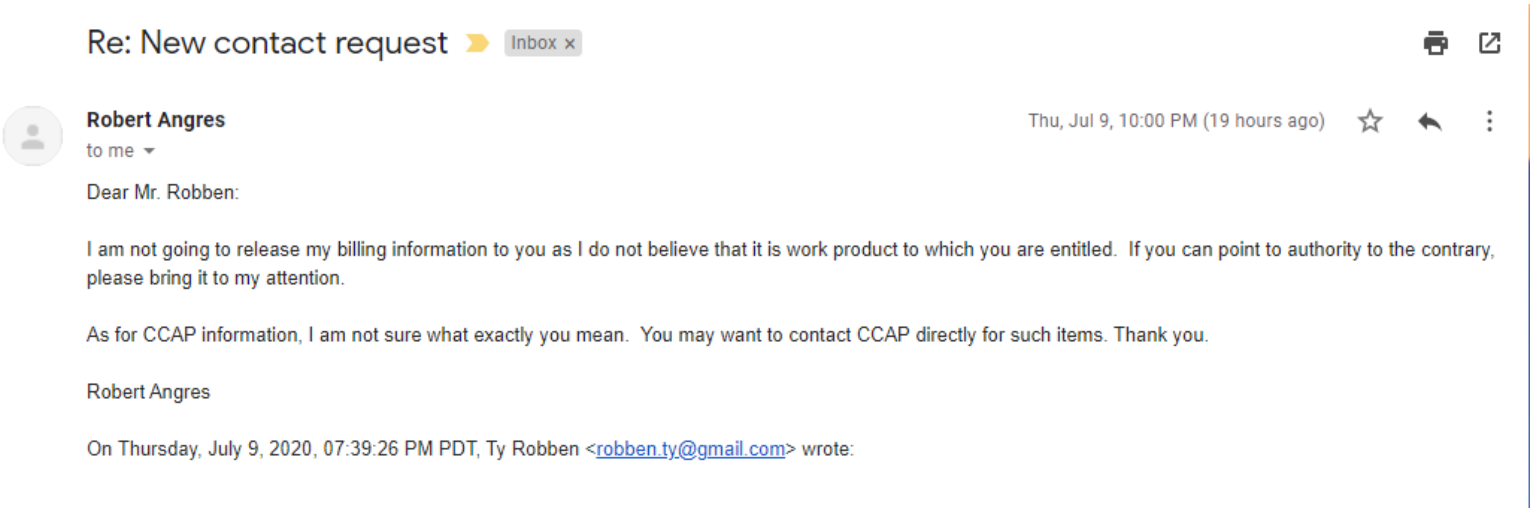
In re Harris, 855 P. 2d 391 - Cal: Supreme Court 1993:

> **This modern standard is now well established in both this state and in the federal courts. (7) We recently summarized the law in People v. Wharton (1991) 53 Cal.3d 522 [280 Cal. Rptr. 631, 809 P.2d 290]: "A criminal defendant is guaranteed the right to the assistance of counsel by both the state and federal Constitutions. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) `Construed in light of its purpose, the right entitles the defendant not to some bare assistance but rather to effective assistance.' (People v. Ledesma (1987) 43 Cal.3d 171, 215 [233 Cal. Rptr. 404, 729 P.2d 839], italics in original.) In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel's performance was `deficient' because his `representation fell below an objective standard of reasonableness ... under prevailing professional norms.' (Strickland v. Washington (1984) 466 U.S. 668, 687-688 [80 L.Ed.2d 674, 793, 104 S.Ct. 2052]; Pope, supra, 23 Cal.3d 833*833 at pp. 423-425.) Second, he must also show prejudice flowing from counsel's performance or lack thereof. (Strickland, supra, at pp. 691-692 [80 L.Ed.2d at pp. 695-696].) Prejudice is shown when there is a `reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' (In re Sixto[, supra,] 48 Cal.3d [at p.] 1257; Strickland, supra, at p. 694.)" (People v. Wharton, supra, at p. 575.) The United States Supreme Court recently explained that this second prong of the Strickland test is not**

solely one of outcome determination. Instead, the question is "whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair." (Lockhart v. Fretwell (1993) 506 U.S. ___, ___ [122 L.Ed.2d 180, 191, 113 S.Ct. 838].)

Similar concepts have been used to measure the performance of appellate counsel. (In re Banks (1971) 4 Cal.3d 337, 343 [93 Cal. Rptr. 591, 482 P.2d 215]; In re Smith (1970) 3 Cal.3d 192, 202 [90 Cal. Rptr. 1, 474 P.2d 969] **[inexcusable failure of appellate counsel to raise crucial assignments of error that arguably could have resulted in reversal deprived defendant of effective assistance of appellate counsel].)**

The single issue of Judge Steve White failing to disqualify when the timely (2 days after he was assigned) and properly filed CCP 170.6 peremptory challenge was filed against him and signed under penalty of perjury mandates reversal on the grounds of a U.S. 14th amendment due-process violation. Petitioner's appellate counsel (who appears to have been unlawfully appointed since no CCAP appellate project paperwork has been disclosed despite Cal. Public Records requests to the CCAP and Robert L.S. Angres). Mr. Angres was ineffective and refused to argue this issue over the protest of this Petitioner.



Re: New contact request Inbox ×

Robert Angres Thu, Jul 9, 10:00 PM (19 hours ago)

to me

Dear Mr. Robben:

I am not going to release my billing information to you as I do not believe that it is work product to which you are entitled. If you can point to authority to the contrary, please bring it to my attention.

As for CCAP information, I am not sure what exactly you mean. You may want to contact CCAP directly for such items. Thank you.

Robert Angres

On Thursday, July 9, 2020, 07:39:26 PM PDT, Ty Robben <robben.ty@gmail.com> wrote:

A series of mailings between Mr. Angres and this Petitioner show Mr. Angres was IAAC/CDC by ignoring Petitioner's meritorious issues and not requesting bail or O.R. pending the appeal or requesting funding from the Court of Appeal for a habeas corpus petition or even forwarding a copy of the record on appeal to Petitioner in prison so he could work on his habeas corpus. **"[T]o deny adequate review to the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside.... Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in**

the administration of its criminal law." -Justice Hugo Black, *Griffin v. Illinois 351 U.S. 12, 19 (1956)* (Black, J., plurality opinion). **"due process and equal protection require a state to provide criminal defendants with a free transcript for use on appeal"** *Griffin v. Illinois, supra.*

Even if habeas corpus was not to be funded by the court of appeal of CCAP, Mr. Angres could have augmented the appeal using judicial notice. See *Fitz v. NCR Corp., 13 Cal. Rptr. 3d 88 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 2004* **"Matters that cannot be brought before the appellate court through the record on appeal (initially or by augmentation) may still be considered on appeal by judicial notice."** (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2003) § 5:149, p. 5-42 (rev.# 1, 2003)"

In a Fourth District non-capital case it is said in *People v. Thurman, 68 Cal. Rptr. 3d 425 - Cal: Court of Appeal, 4th Appellate Dist., 2nd Div. 2007* **"A court-appointed appellate attorney has a duty to investigate any such issues which come to his or her attention during the course of representing the client on direct appeal, and to file a petition for writ of habeas corpus if it appears that trial counsel's failure deprived the defendant of the effective assistance of trial counsel**. (*In re Clark (1993) 5 Cal.4th 750, 783-784, fn. 20, 21 Cal.Rptr.2d 509, 855 P.2d 729*; see also Appellate Defenders, Inc. California Criminal Appellate Practice Manual (July 2007 rev.) §§ 8.2, 8.3 [as of November 13, 2007] **[appointed counsel in the Fourth Appellate District "are expected to pursue remedies outside the four corners of the appeal, including habeas corpus, when reasonably necessary to represent the client appropriately"].)** – Petitioner would concur that court's interpretation because Petitioner is denied a 6th and 14th amendment due-process right to effective assistance of appellate counsel if his appointed lawyer has no duty to investigate issues outside the record and not file a habeas corpus petition when there are meritorious issues. It is akin to having a doctor not treat a patient where a visible injury or disease is apparent – it is clearly malpractice.

In *Coscia v. McKenna & Cuneo, 25 P. 3d 670 - Cal: Supreme Court 2001* "The failure to provide competent representation in a civil or criminal case may be the basis for civil liability under a theory of professional negligence. In a legal malpractice action arising from a civil proceeding, the elements are (1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence. *(Budd v. Nixen (1971) 6 Cal.3d 195, 200, 98 Cal.Rptr. 849,*

491 P.2d 433; Schultz v. Harney (1994) 27 Cal.App.4th 1611, 1621, 33 Cal.Rptr.2d 276.) In a legal malpractice case arising out of a criminal proceeding, California, like most jurisdictions, also requires proof of actual innocence. (*Wiley v. County of San Diego, supra, 19 Cal.4th at p. 545, 79 Cal.Rptr.2d 672, 966 P.2d 983.)*"

Mr. Angres could have requested funding for habeas corpus -from the CCAP or court :

PREAUTHORIZATION STEPS & PROCEDURES[10]

Preauthorization Policies & Steps for Appointed Counsel Cases in the Third & the Fifth District

A. Types of Tasks & Expenses Requiring Preauthorization

1. **Travel**
   Prior approval for any travel other than for oral argument must be obtained for Third District and Fifth District cases. For both courts, CCAP is authorized to process travel requests that do not exceed $600. Travel expenses that exceed $600 must be approved by the court. In addition, statewide travel preapproval policies apply to prison visits and use of rental cars. (See Statewide Travel Guidelines)

2. **Translation Expenses**
   Prior approval for translator services must be obtained for Third and Fifth District cases. For both courts, CCAP is authorized to process translator requests that do not exceed $300. Translation expenses that exceed $300 must be approved by the court.

3. **Habeas and Other Writ Work**
   Prior approval for all writ petition work and related expenses (beyond cursory inquiries with the client and/or trial attorney) must be obtained for Third and Fifth District cases. Counsel must move to expand their appointment and obtain preapproval from these courts to be compensated for this work outside the scope of their appointment. (See also Billing Habeas Time & Expenses memo (*PDF*) and Expanding Your Appointment.)

4. **Trial Court Motion Work**
   With very limited exceptions such as *Fares* and *Clavel* motions and other statutory created exceptions for returning to the trial court as part of the appeal, expansion of the appointment must be sought for motion work and appearances in the trial court. A first step is to talk with trial counsel to see if he or she would be willing to follow through. If not, this becomes a supporting factor for your request to expand and do the work yourself. Examples for this include appearances to settle the record, filing a 1170(d) sentence recall petition, and filing Prop. 47 petitions. If in doubt, please contact your CCAP buddy first!

5. **Other Extraordinary Expenses**
   Preapproval is required before incurring any extraordinary expenses such as experts, investigators, unusual copying fees, legislative research service fees, etc. These kind of items are not currently within the scope of CCAP preauthorization authority.

EXPANDING YOUR APPOINTMENT[11]

Updated: 12/4/2015

[10] https://www.capcentral.org/procedures/court_policies/preauthorization_procedures.asp

[11] https://www.capcentral.org/procedures/expand_appt.asp

In both the Third and Fifth District Courts of Appeal, appointed counsel must move to expand the appointment to seek compensation for all writ petition work, including habeas corpus, mandamus, and certiorari, as well as other work outside of the scope of the appointment, such as an appearance and motion work in the trial court with limited exceptions. Simply stated, you will not be paid for work done outside of direct appeal without advance written approval from the courts in these two districts. *This is one of the biggest differences between our courts and other courts/projects and may lead to some confusion*. To obtain pre-approval, counsel must file a formal, written application providing the court with sufficient information to determine if the work should be authorized. Thus, an expansion request must provide enough information such that counsel presents the court with at least a colorable claim, if not a prima facie case. The relevant factors for each type of writ petition are explained more fully below.

Tip: An application to expand appointment is an ex parte request since it is an administrative matter involving compensation. It does not require service on the Attorney General. Serve your request only on CCAP and appellant.

See our preauthorization page for more steps on how to to apply for an expansion of the appointment.

If the court grants the application with a time limit, that limit must be adhered to for compensation purposes unless a further expansion is sought and granted by the court, or further authorization is ordered by the court. No amount of explanation on the claim form can support a recommendation beyond the court's ordered time limit.

Habeas

The application for expansion of appointment to file a habeas petition must make a detailed showing of good cause to believe there are grounds for habeas relief. It will not be approved if it is speculative or appears to be a fishing expedition.

Before moving to expand the appointment, investigate and verify the facts. Unless there is some preliminary investigation, such as contacting trial counsel if the basis for the writ is ineffective assistance of counsel, you may not be able to make out a reasonable case for further activity. Counsel are permitted a very limited time to investigate a habeas issue without obtaining preauthorization (probably 2.5 hours), so when in doubt, get specific preauthorization for further investigation.
The application to expand appointment should not contain conclusory allegations; it should be accompanied by some evidence supporting the allegations, such as declarations or citations to the record. It should also discuss how the evidence outside the record will establish prejudice in relation to the conviction.

It is important at this point to set forth whether the petition will be filed in the appellate court or in the superior court. Since the appellate courts are not designed to handle evidentiary hearings in which there are factual disputes, and since they regard most of the trial process as a county responsibility, that is where the costs and work tend to be shifted. Thus, in the Fifth District, the court often denies the application without prejudice to filing in the superior court.

Of course, the courts make exceptions to their usual practice. In limited circumstances, the court will accept a petition in conjunction with the appeal where it is directly related to an appellate issue and there is no controversy over the facts. As a result, if there is a special reason why a petition should not be sent to the trial court initially, it would be wise to put that reason into the application to expand the appointment. Likewise, include any previous superior court habeas action in this explanation if there was such action.

Discussing some other key relevant factors in the expansion request will increase the chances of success:

First, counsel should explain how the issue to be raised is related to matters on appeal and not to a tangential issue, such as conditions of confinement.

Petitioner asserts that if he was denied effective counsel pursuant to U.S. 6th and 14th amendment by the alleged assertion by Robert L.S. Angres that he is “not paid” to file extraordinary writ petitions such as habeas corpus, writ of mandate or even a request for bail/O.R. pending appeal. **Said denial of the 14th amendment equates to a violation of due-process and equal protection since indigent defendants are subjected to a denial of full due-process when**

meritorious claims such as IAC/CDC of trial counsel or other issues that may fall outside the four corners of the record on appeal would require a reversal per se. In *People v. Shipman, 397 P. 2d 993 - Cal: Supreme Court 1965*

In *Douglas v. California, 372 US 353 - Supreme Court 1963* the U.S> Supreme Court addressed the issue that it would be discriminatory to deny an indigent defendant effective counsel on appeal and that it was not concerned about "discretionary or mandatory review beyond the stage in the appellate process at which the claims have once been presented by a lawyer and passed upon by an appellate court"… This Petitioner would encourage the U.S. Supreme Court to change their position and include "discretionary" or "mandatory" reviews since they would otherwise deny a defendant his due-process and equal protection.

> We agree, however, with Justice Traynor of the California Supreme Court, who said that the "[d]enial of counsel on appeal [to an indigent] would seem to be a discrimination at least as invidious as that condemned in *Griffin* v. *Illinois* . . . ." *People* v. *Brown,* 55 Cal. 2d 64, 71, 357 P. 2d 1072, 1076 (concurring opinion). In *Griffin* v. *Illinois,* 351 U. S. 12, **we held that a State may not grant appellate review in such a way as to discriminate against some convicted defendants on account of their poverty.** There, as in *Draper* v. *Washington, post,* p. 487, the right to a free transcript on appeal was in issue. Here the issue is whether or not an indigent shall be denied the assistance of counsel on appeal. **In either case the evil is the same: discrimination against the indigent. For there can be no equal justice where the kind of an appeal a man enjoys "depends on the amount of money he has."** *Griffin* v. *Illinois, supra,* at p. 19.
>
> In spite of California's forward treatment of indigents, under its present practice the type of an appeal a person is afforded in the District Court of Appeal hinges 356*356 upon whether or not he can pay for the assistance of counsel. If he can the appellate court passes on the merits of his case only after having the full benefit of written briefs and oral argument by counsel**. If he cannot the appellate court is forced to prejudge the merits before it can even determine whether counsel should be provided. At this stage in the proceedings only the barren record speaks for the indigent, and, unless the printed pages show that an injustice has been committed, he is forced to go without a champion on appeal.** Any real chance he may have had of showing that his appeal has hidden merit is deprived him when the court decides on an *ex parte* examination of the record that the assistance of counsel is not required.
>
> **We are not here concerned with problems that might arise from the denial of counsel for the preparation of a petition for discretionary or mandatory review beyond the stage in the appellate process at which the claims have**

once been presented by a lawyer and passed upon by an appellate court. We are dealing only with the *first appeal,* granted as a matter of right to rich and poor alike (Cal. Penal Code §§ 1235, 1237), from a criminal conviction. We need not now decide whether California would have to provide counsel for an indigent seeking a discretionary hearing from the California Supreme Court after the District Court of Appeal had sustained his conviction (see Cal. Const., Art. VI, § 4c; Cal. Rules on Appeal, Rules 28, 29), or whether counsel must be appointed for an indigent seeking review of an appellate affirmance of his conviction in this Court by appeal as of right or by petition for a writ of certiorari which lies within the Court's discretion. But it is appropriate to observe that a State can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an "invidious discrimination." *Williamson* v. *Lee Optical Co.,* 348 357*357 U. S. 483, 489; *Griffin* v. *Illinois, supra,* p. 18. Absolute equality is not required; lines can be and are drawn and we often sustain them. See *Tigner* v. *Texas,* 310 U. S. 141; *Goesaert* v. *Cleary,* 335 U. S. 464. But where the merits of *the one and only appeal* an indigent has as of right are decided without benefit of counsel, **we think an unconstitutional line has been drawn between rich and poor.**

When an indigent is forced to run this gantlet of a preliminary showing of merit, the right to appeal does not comport with fair procedure. In the federal courts, on the other hand, an indigent must be afforded counsel on appeal whenever he challenges a certification that the appeal is not taken in good faith. *Johnson* v. *United States,* 352 U. S. 565. The federal courts must honor his request for counsel regardless of what they think the merits of the case may be; and "representation in the role of an advocate is required." *Ellis* v. *United States,* 356 U. S. 674, 675.[2] In California, however, once the court has "gone through" the record and denied counsel, the indigent has no recourse but to prosecute his appeal on his own, as best he can, no matter how meritorious his case may turn out to be. The present case, where counsel was denied petitioners on appeal, shows that the discrimination is not between "possibly good and obviously bad cases," but between cases where the rich man can require the court to listen to argument of counsel before deciding on the merits, but a poor man cannot. There is lacking 358*358 that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself. The indigent, where the record is unclear or the errors are hidden, has only the right to a meaningless ritual, while the rich man has a meaningful appeal.

We vacate the judgment of the District Court of Appeal and remand the case to that court for further proceedings not inconsistent with this opinion.

It is so ordered.

Because this Petitioner was forced to have appointed counsel on his appeal and said counsel, Robert L.S. Angres was IAAC/CDC for failing to raise all meritorious claims and issues that could have been filed inside & outside the record as described in this pleading – this Petitioner's U.S. Constitutional rights (5th, 6th and 14th due-process & equal protection) were violated. Essentially Petitioner was Constructively Denied Counsel ("CDC") (see *United States v. Cronic, 466 U.S. 648,653 n.8* (1984)). …And just denied counsel on appeal and his habeas corpus. And the state effectively precluded a prisoner from challenging Ineffective Assistance of Counsel since **"A petition for writ of habeas corpus is the universally accepted method of raising claims of ineffective assistance of counsel."** (*People v. Pope (1979) 23 Cal .3d 412, 425*). Also see *People v. Mickel, 385 P. 3d 796 - Cal: Supreme Court 2016*. Since entire sets of issues, including IAC/CDC of trial counsel occurred in this case (and other cases with other petitioners) the California Supreme Court should also revise their decision in See *In re Clark, 855 P. 2d 729 - Cal: Supreme Court 1993 F/N 20*"

> **As discussed in the body of this opinion, noncapital appellate counsel in this state who are aware of a basis for collateral relief should not await the outcome of the appeal to determine if grounds for collateral relief exist. While they have no obligation to conduct an investigation to discover if facts outside the record on appeal would support a petition for habeas corpus or other challenge to the judgment, if they learn of such facts in the course of their representation they have an ethical obligation to advise their client of the course to follow to obtain relief, or to take other appropriate action.**

The above situation is akin to a surgeon only operating on half the heart (when the entire heart needs attention) or a mechanic only repairing two of the known four flat tires and sending the driver on his way. It is legal malpractice and IAC/CDC to ignore issues that would reverse a conviction and not even request funding from the court of appeal of CCAP to file a habeas petitioner. And it's a denial of due-process and equal protection to deny a prisoner the record and transcripts of his case so he can't file a habeas corpus petition himself since the court will deny the petitioner for lack of evidence. **The California Supreme Court did say "or to take other appropriate action"** *In re Clark , supra.*

A habeas corpus may be pursued with appeal. See *People v. Frierson (1979) 599 P. 2d 587 - Cal: Supreme Court 1979*. **If a habeas corpus issue is discovered, it should be filed before appeal.** *In re Stankewitz, 708 P. 2d 1260 - Cal: Supreme Court 1985; In re Baker, 206 Cal. App. 3d 493 - Cal: Court of Appeal, 5th Appellate Dist. 1988*

In *People v. Mendoza Tello, 15 Cal. 4th 264 - Cal: Supreme Court 1997* because the legality of the search was never challenged or litigated, facts necessary to a determination of that issue are lacking." (*People* v. *Cudjo* (1993) 6 Cal.4th 585, 627 [25 Cal. Rptr.2d 390, 863 P.2d 635].) The issue at trial was whether defendant possessed cocaine, not whether the deputy acted unlawfully. (2) We have repeatedly stressed "that `[if] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] ... unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,' the claim on appeal must be rejected." (*People* v. *Wilson* (1992) 3 Cal.4th 926, 936 [13 Cal. Rptr.2d 259, 838 P.2d 1212], quoting *People* v. *Pope* (1979) 23 Cal.3d 412, 426 [152 Cal. Rptr. 732, 590 P.2d 859, 2 A.L.R.4th 1].) **A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding.** (*People* v. *Wilson, supra,* at p. 936; *People* v. *Pope, supra,* at p. 426.) "We recommended in *Pope* that, `**[t]o promote judicial economy in direct appeals where the record contains no explanation, appellate counsel who wish to raise the issue of inadequate trial representation should join a verified petition for writ of habeas corpus.'"** (*People* v. *Wilson, supra,* at p. 936, quoting *People* v. *Pope, supra,* at pp. 426-427, fn. 17.) **Because claims of ineffective assistance are often more appropriately litigated in a habeas corpus proceeding, the rules generally prohibiting raising an issue on habeas corpus that was, or could have been, raised on appeal** (see *In re Harris* (1993) 5 Cal.4th 813, 824-841 [21 Cal. Rptr.2d 373, 855 P.2d 391]; *In re Waltreus* (1965) 62 Cal.2d 218, 225 [42 Cal. Rptr. 9, 397 P.2d 1001]; *In re Dixon* (1953) 41 Cal.2d 756, 759 [264 P.2d 513]) **would not bar an ineffective assistance claim on habeas corpus.**

The U.S. Supreme Court has also stated a defendant may not defend himself on appeal in *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist., 528 US 152 - Supreme Court 2000* "A criminal defendant has no federal constitutional right to self-representation on direct appeal from a criminal conviction". However, the California Supreme Court allows a defendant to file a Marsden

motion against appellate counsel (as was done by this Petitioner) see *In re Barnett, 73 P. 3d 1106 - Cal: Supreme Court 2003* **"Although we will accept and consider pro se motions regarding representation (i.e., Marsden motions to substitute counsel),** such motions "must be clearly labeled as such" and "must be limited to matters concerning representation." (*Clark, supra, 3 Cal.4th at p. 173, 10 Cal.Rptr.2d 554, 833 P.2d 561.)* Any other pro se document offered in an appeal "will be returned unfiled" (ibid.), or, if mistakenly filed, will be stricken from the docket (*Mattson, supra, 51 Cal.2d at p. 798, 336 P.2d 937).*

07/02/2018	Received:	From appellant sent to the Supreme Court emergency verified petition for writ of mandate ordering a marsden hearing, and request for transfer from Third DCA to Supreme Court.
07/17/2018	Filed application and order of:	Appellant to 8/22/2018 to file AOB.
08/09/2018	Filed document entitled:	"Notice of intent to sue appointed counsel" by appellant is treated as a request to relieve court appointed counsel.
08/14/2018	Order filed.	Appellant's "notice of intent to sue appointed counsel" filed on August 9, 2018, is treated as a request to relieve court appointed counsel and allow defendant to represent himself on appeal, and as such, is denied. (Martinez v. Court of App. of Cal. (2000) 528 U.S. 152 [145 L.Ed.2d 597, 120 S. Ct. 684.] Raye, P.J.
08/15/2018	Motion filed.	By appellant's attorney to withdrawal as attorney of record.
08/16/2018	Filed C.C.A.P. recommendation for counsel.	
09/10/2018	Request filed:	By Todd Robben to remove his appointed counsel, receive a copy of the record, and to disqualify Raye, P.J.

IAAC/CDC ISSUES – CCP 170.6 & JURISDICTION ISSUES

The letters below prove Mr. Angres was ineffective and Petitioner was Constructively Denied Counsel ("CDC"). On May 01, 2019 Mr. Angres claims he will not argue the CCP 170.6 issue since no petition writ-of-mandate was filed and the writ petition was the only way to appeal the denial of a CCP 170.6 denial. This Petitioner did file a petition for writ-of-mandate in the Court of Appeal after the CCP 170.6 peremptory challenge was denied/struck.

Mr. Angres also mailed a notice that his family member work for the State Attorney General, but he failed to state the name of this person. This Petitioner has various legal issues pending with

the Cal. Attorney General including civil rights lawsuits. Petitioner asserts this constitutes a conflict-of-interest.

Page 1 of the August 27, 2018 letter from Mr. Angres is missing.

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

THE LAW OFFICES OF ROBERT L.S. ANGRES
Robert L.S. Angres, Attorney at Law

May 1, 2019

CONFIDENTIAL COMMUNICATION
Todd Robben, BE6907
c/o CCCF
P.O. Box 2610
California City, CA 93305

Re: *Letter dated April 28, 2019*

Dear Mr. Robben:

I am in receipt of your letter dated April 28, 2019, and pursuant to your request, I am forwarding to you a copy of the respondent's brief in your case for your inspection. In your letter, you raise various issues that I will address here.

First, you complain about my failure to insert arguable issues in your opening brief that you felt were worthy of litigation. At least one issue that you mention is not cognizable on appeal even if meritorious. Thus, a defendant can only obtain relief from the erroneous denial of a peremptory challenge of a judge within the meaning of Code of Civil Procedure 170.6 through the filing of an extraordinary writ. (Code Civ. Proc. § 170.3, subd. (d).)

Moreover, the fact that you objected to certain motions by your defense counsel does not mean that such can be raised on direct appeal. To be cognizable on appeal, most issues have to be preserved by trial counsel through a timely objection on the record. As to the issues that you raise, that did not happen in your case. If Mr. Miller provided you with deficient representation by failing to object, then you can certainly raise that argument on your own in a petition for writ of habeas corpus.

My appointment does not extend to the filing of a petition for writ of habeas corpus on your behalf, and I am only obligated to bring to your attention issues that I believe might support the filing of such a petition on your own following the termination of my appointment. (E.g. *In re Clark* (1993) 5 Cal.4th 750, 783 fn. 20.) So far, I have not come across any such issues.

Moreover, even if I thought that any of the issues that you list in your letter were arguable, I am under no duty to insert any or all of them in your opening brief. (*Jones v. Barnes* (1983) 463 U.S. 745, 751-754.) I believe that I have included in your brief the arguments that are most likely to result in a favorable outcome for you; the law does not require more from me. (See *Redante v. Yockelson* (2003) 112 Cal.App.4th 1351, 1356-1357.)

620 Dewitt Avenue, Suite 102, Clovis, CA 93612 • Phone: 559-325-6602 Fax: 559-322-1551

CONFIDENTIAL COMMUNICATION

In addition, please keep in mind that if your appeal results in the conclusion that your *Faretta* motion was improperly denied, then you will receive a new trial at which you will serve as your own attorney and can file any motion or document that you see fit. The trial court will also be unable to avoid listening to your concerns and complaints which you can list in painstaking detail on the record. Indeed, that outcome will render moot virtually all of your present complaints.

Finally, I am under no duty to assist you in preserving your issues that you have apparently raised in a petition for writ of habeas corpus in federal court. (*Redante v. Yockelson, supra*, 112 Cal.App.4th at pp. 1356-1357.) Indeed, I doubt that the federal court will even entertain such a pleading because you have not yet exhausted your remedies in the state appellate courts. (See generally *Rose v. Lundy* (1982) 455 U.S. 509.) In any case, at the point where my representation comes to an end, I will explain to you in detail how you can properly pursue post-conviction relief on your own in a timely fashion and in the proper forum. Please be patient. Thank you.

Sincerely,

Robert L.S. Angres
Attorney at Law

THE LAW OFFICES OF ROBERT L.S. ANGRES
Robert L.S. Angres, Attorney at Law

May 9, 2019

CONFIDENTIAL COMMUNICATION
Todd Robben, BE6907
c/o CCCF
P.O. Box 2610
California City, CA 93505

Re: *Letter dated April 29, 2019*

Dear Mr. Robben:

I am in receipt of your letter dated April 29, 2019 in which you ask whether I will request oral argument. I have not made up my mind, and I expect that an opinion will not issue in your case before the middle of next year. You are correct when you say that the Court of Appeal has 90 days to issue its opinion following submission of the case, but the Court of Appeal also determines when it will submit a case. The Third District Court of Appeal is notoriously slow, and it is not unusual for one or two years to pass after the filing of the reply brief before the opinion issues.

A motion for bail on appeal must be filed in the trial court, and the trial court is not obligated to grant such a motion. Nothing in your appellate record led me to believe that the trial court would have granted you bail or that the amount selected would have been affordable. Indeed, very rarely does a trial court grant bail on appeal.

Finally, as I explained in my last letter to you, the issues that I litigated on your behalf were the ones that I thought showed the most promise. The United States Supreme Court has stated that appellate counsel has no duty to litigate non-frivolous issues suggested by the client. (*Jones v. Barnes* (1983) 463 U.S 745.)

I will continue to update you on developments in your matter as they occur. I thank you in advance for your expected patience.

Sincerely,

Robert L.S. Angres
Attorney at Law

620 Dewitt Avenue, Suite 102, Clovis, CA 93612 • Phone: 559-325-6602 Fax: 559-322-1551

CONFIDENTIAL COMMUNICATION

Please understand that my appointment extends only to your direct appeal and not to any extraordinary writ, including a petition for writ of habeas corpus. "Appointed counsel in noncapital appeals do not have an obligation to investigate possible bases for collateral attack on the judgment, and retained counsel must do so only if the client retains them for that purpose. Appointed counsel on appeal has a duty ... to present defendant's case on direct appeal to the best of his ability. We know of no authority and cannot conceive of any holding that counsel appointed to prosecute a direct appeal has a duty to file or to prosecute an extraordinary writ believed to be desirable or appropriate by the defendant. We hold that there is no such duty." (*In re Clark* (1993) 5 Cal.4th 750, 783 fn. 20, internal quotations omitted.)

I advise each of my clients not to file anything while I am pursuing their remedies on direct appeal, because conceivably proffered information could end up being incriminating. If this were to happen, the client's chance of success on appeal could be jeopardized. I extend this advice to you. I leave it to your discretion whether to follow my recomendation.

Unfortunately, the Court of Appeal will not pay to have your voluminous record duplicated. I will need to retain your record during the life of your appeal in order to provide you with effective representation. However, once my representation on your behalf comes to an end, I will forward your record to you, and it will then be yours to keep.

Please don't bother suing me in order to get me off the case. You will be wasting your time; it won't work. "Although being named as a defendant in a collateral lawsuit by one's client may place an attorney in a situation in which his or her loyalties are divided [citation omitted], a criminal defendant's decision to file such an action against appointed counsel does not require disqualification unless the circumstances demonstrate an actual conflict of interest." (*People v. Horton* (1995) 11 Cal.4th 1068, 1106; accord *People v. Barnett* (1998) 17 Cal.4th 1044, 1110.)

As for your request that I file a motion for bail while on appeal, I cannot intelligently comment on that until I complete my review of your record. Remind once I have completed my review, and I will share my thoughts with you on this topic.

You have also requested biographical information about me as well as proof of bar membership. I think a client is entitled to possess information as to his counsel's experience and qualifications, and to that extent, I am forwarding a copy of my resume to you. I am also enclosing a copy of my bar membership information that is available to any member of the public that accesses the State Bar website.

THE LAW OFFICES OF ROBERT L.S. ANGRES

August 27, 2018
Page 3

CONFIDENTIAL COMMUNICATION

Periodically, I will update you on developments associated with your appeal. I thank you for your expected patience as I fight to invalidate your judgment.

Sincerely,

Robert L.S. Angres
Attorney at Law

THE LAW OFFICES OF ROBERT L.S. ANGRES
Robert L.S. Angres, Attorney at Law

DISCLOSURE PURSUANT TO RULE 1.7 OF THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT

Dear Appellate Client:

Recent revisions to the rules of ethics published by the California State Bar require that I reveal the following information to you.

1. I have a sibling who works for the California Attorney General's Office in another part of the State from where I live;

2. This person only works on civil cases and has no relationship to any appellate client that I represent or have represented;

3. My relationship with my sibling does not cause me to provide anything other than zealous representation on your behalf and does not infringe on my duty of loyalty to you.

Sincerely,

Robert L.S. Angres
Attorney at Law

A Marsden motion was filed in the California Supreme Court to remove Robert L.S. Angres and was denied. "In *People v. Marsden (1970) 2 Cal.3d 118 [84 Cal. Rptr. 156, 465 P.2d 44]*, we held that a defendant is deprived of his constitutional right to the effective assistance of counsel when a trial court denies his motion to substitute one appointed counsel for another without giving him an opportunity to state the reasons for his request. A defendant must make a sufficient showing that denial of substitution would substantially impair his constitutional right to the assistance of counsel (*People v. Smith (1985) 38 Cal.3d 945, 956 [216 Cal. Rptr. 98, 702 P.2d 180]*), whether because of his attorney's incompetence or lack of diligence *(In re Banks (1971) 4 Cal.3d 337, 342 [93 Cal. Rptr. 591, 482 P.2d 215]; People v. Crandell (1988) 46 Cal.3d 833, 854 [251 Cal. Rptr. 227, 760 P.2d 423]),* or because of an irreconcilable conflict (*People v. Stankewitz (1982) 32 Cal.3d 80, 93-94 [184 Cal. Rptr. 611, 648 P.2d 578, 23 A.L.R.4th 476]; Brown v. Craven (9th Cir.1970) 424 F.2d 1166, 1170*)." *People v. Ortiz, 800 P. 2d 547 - Cal: Supreme Court 1990*

Petitioner was also denied his right to argue his own appeal (*Faretta v. California*) in the Court of Appeal.

The CCP 170.6 peremptory challenge issue was a solid issue that mandates reversal (reversible per se) this CCP 170.6 was filed by the Petitioner along with the petitioner for writ of mandate in the court. Trial counsel was IAC/CDC for not filing it. Appellate counsel was IAAC/CDC for his failure to argue this meritorious issue (Judge Steve White sticking the timely and properly filed CCP 170.6) on appeal (the record included the facts), and if needed, habeas corpus. Petitioner was prejudiced by Robert L.S. Angres incompetence because had Mr. Angres argued this issue, the conviction would have been reversed.

"A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him." *Edwards v. Balisok, 520 US 641 – U.S. Supreme Court 1997 citing Tumey v. Ohio (1927) 273 U.S. 510, 535 [71 L.Ed. 749, 759, 47 S.Ct. 437, 50 A.L.R. 1243*

The CCP 170.6 peremptory challenge was filed on 06/26/2017 (mailed to the court two days after notice that Judge Steve White was assigned on 06/22/2017– timely by the prison mailbox rules). The Sac Co. court filed stamped the filing on 06/28/2017 – well within any alleged 10 day lime limit. As proven in the exhibit, said challenge was signed under penalty

of perjury. On July 07, 2017 Judge White issued an order striking said filing claiming it was untimely and not signed under penalty of perjury.

A timely petition for writ of mandate was mailed after notice of the order striking the peremptory challenge (filed pursuant the jail/prison mailbox rules – See *Silverbrand v. County of L.A.* (2009) 46 Cal.4th 106 92 Cal.Rptr.3d 595 205 P.3d 1047; *In re Jordan, 840 P. 2d 983 - Cal: Supreme Court 1992*; *Houston v. Lack, 487 U.S. 266 (1988*)) in the Third District Court of Appeal as case # C085160 which was file stamped by the court on July 25, 2017.

This court may take judicial notice of other cases. See Evid. Code, §§ 459 ["The reviewing court may take judicial notice of any matter specified in [Evidence Code]Section 452"], 452, subd. (d) [permitting a court to take judicial notice of the "[r]ecords of (1) any court of this state"].)

Robben v. The Superior Court of Sacramento County Case Number C085160

Date	Description	Notes
07/25/2017	Filed petition for writ of:	Mandate. Stay requested. (ns)
08/03/2017	Order denying petition filed.	HULL, Acting P.J. (MD)
08/03/2017	Case complete.	

"when writ review is the ***exclusive*** means of appellate review of a final order or judgment, [the] appellate court may not deny an apparently meritorious writ petition[.]" (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114, emphasis added; see *PG&E Corp. v. PUC* (2004) 118 Cal.App.4th 1174, 1193.)

In *Kowis v. Howard, 838 P. 2d 250 - Cal: Supreme Court 1992* **"A summary denial of a petition for writ of mandate is not a denial on the merits and does not become law of the case".** Even if it's decided on the merits see *Gomez v. Superior Court, 278 P. 3d 1168 - Cal: Supreme Court 2012*.

"[S]ection 170.6 draws no distinction between civil and criminal actions. [Fn. omitted.]"]; *People v. Cook (1989) 209 Cal. App.3d 404, 407 [257 Cal. Rptr. 226].)*

Additionally, the time to file a peremptory challenge to the all-purpose assignment and a petition for writ of mandate is extended pursuant to Code of Civil Procedure 1013 when notice of the assignment is served by mail. (*California Business Council v. Superior Court (Wilson) (1997) 52 Cal.App.4th 1100*).

The Third District Court of Appeal stated In *Brown v. Swickard* *January 17, 1985 163 Cal.App.3d 820209 Cal.Rptr. 844:*

> **"The question on appeal is whether the peremptory challenge was timely filed.** As we observed in In re Abdul Y. (1982) 130 Cal.App.3d 847, 182 Cal.Rptr. 146**, "Code of Civil Procedure section 170.6 provides in substance that any party to an action may make a motion, supported by an affidavit of prejudice, to disqualify the trial judge, commissioner, or referee. If the motion is timely and properly filed, the judge must recuse himself without further proof and the cause must be reassigned to another judge. When an affidavit of prejudice has been timely filed, the judge's disqualification **848 is automatic and mandatory. Once properly and timely challenged, the judge loses jurisdiction to proceed and all his subsequent orders and judgments are void."** (Id., 130 Cal.App.3d, at pp. 854–855, fn. and citations omitted, 182 Cal.Rptr. 146.)"
>
> The first sentence of section 170.6, subdivision (1) unambiguously states that no judge who has been disqualified under that section shall hear any *831 matter therein which involves a contested issue of law or fact. **Disqualification, moreover, is not limited to the particular motion, but deprives the judge of jurisdiction in all further contests in that action.** (Brown v. Superior Court (1981) 124 Cal.App.3d 1059, 1061, 177 Cal.Rptr. 756.)
>
> 10 Here, plaintiffs' timely motion to disqualify Judge Harvey from hearing defendants' (Jack Swickard and Five Dot Land & Cattle Co.) motion for summary judgment not only deprived the judge of jurisdiction to rule on that motion, but also of jurisdiction to rule on remaining defendants' motion for summary judgment. **The result is that the summary judgments in favor of all defendants are void for want of jurisdiction.** (Solberg v. Superior Court (1977) 19 Cal.3d 182, 190, 137 Cal.Rptr. 460, 561 P.2d 1148; In re Robert P. (1981) 121 Cal.App.3d 36, 43, 175 Cal.Rptr. 252; 1 Witkin, Cal.Procedure (2d ed. 1971) Courts, § 98, pp. 369–370.) On remand, a judge other than Judge Harvey shall hear the cause. The judgments are reversed

In *Yoakum v. Small Claims Court [Civ. No. 45940. Court of Appeals of California, Second Appellate District, Division One. December 2, 1975.]* While there is language in a plethora of cases purporting to state the definition of "jurisdiction" in broader and fuzzier terms and some appellate decisions granting relief necessarily dependent upon lack of lower court jurisdiction in circumstances where jurisdiction existed, if jurisdiction is properly defined (see e.g., *Auto Equity Sales, Inc. v. Superior Court, 57 Cal. 2d 450 [20 Cal. Rptr. 321, 369 P.2d 937]; County of Marin v.*

Superior Court, 53 Cal. 2d 633 [2 Cal. Rptr. 758, 349 P.2d 526]; Harden v. Superior Court, 44 Cal. 2d 630 [284 P.2d 9]; Brady v. Superior Court, 200 Cal. App. 2d 69 [19 Cal. Rptr. 242]; Alexander v. Superior Court, 170 Cal. App. 2d 54 [338 P.2d 502]), those cases do not, upon analysis, further extend the already broadened definition. In most, the language is dictum. (See e.g., *Auto Equity Sales, Inc. v. Superior Court, supra*, *57 Cal. 2d 450* -- superior court failed to act in manner required by law in expressly and not mistakenly refusing to follow a decision of the Court of Appeal (*57 Cal.2d at p. 454*) but decision contains language implying that failure to follow *stare decisis* is an act in excess of jurisdiction (*57 Cal.2d at p. 455*).) `

Decisions of the United States Supreme Court are binding ... on state courts when a federal question is involved....' [Citation.]" (*Elliott v. Albright (1989) 209 Cal. App.3d 1028, 1034 [257 Cal. Rptr. 762].)* "[W]e are [also] bound by [decisions of] the California Supreme Court ... [citation], unless the United States Supreme Court has decided the question differently. [Citation.]" (*People v. Greenwood (1986) 182 Cal. App.3d 729, 734 [227 Cal. Rptr. 539]*, revd. on other grounds in *California v. Greenwood (1988) 486 U.S. 35 [100 L.Ed.2d 30, 108 S.Ct. 1625].)*

When a judge acts in the clear absence of all jurisdiction, i. e., of authority to act officially over the subject-matter in hand, the proceeding is *coram non judice*. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his unauthorized acts. Such has been the law from the days of the case of The Marshalsea, 10 Coke 68. It was recognized as such in *Bradley v. Fisher, 13 Wall. (80 U. S.) 335, 351, 20 L. Ed. 646*.

In PEOPLE v. SUPERIOR COURT (TEJEDA) 1 Cal.App.5th 892 (2016):

> "`Only statements necessary to the decision are binding precedents....' [Citation.] `The doctrine of precedent, or stare decisis, extends only to the ratio decidendi of a decision, not to supplementary or explanatory comments which might be included in an opinion.'" (Gogri v. Jack in the Box Inc. (2008) 166 Cal.App.4th 255, 272 [82 Cal.Rptr.3d 629] [declining to follow dicta of California Supreme Court].) Of course, "it is often difficult to draw hard lines between holdings and dicta." (United Steelworkers of America v. Board of Education (1984) 162 Cal.App.3d 823, 834 [209 Cal.Rptr. 16] (United Steelworkers).) In United Steelworkers, the appellate court treated a prior Supreme Court's "broad answers to the questions raised by all parties" for guidance "on remand" as a holding. (Ibid.) Similarly, in Solberg the court intended to instruct the lower court on remand and provided a full account of its reasoning in providing those instructions.

Moreover, "`[e]ven if properly characterized as dictum, statements of the Supreme Court should be considered persuasive. [Citation.]' [Citation.]" (Hubbard v. Superior Court (1997) 66 Cal.App.4th 1163, 1169 [78 Cal.Rptr.2d 819].) **"When the Supreme Court has conducted a thorough analysis of the issues and such analysis reflects compelling logic, its dictum should be followed."** (Hubbard v. Superior Court, supra, at p. 1169.)"

The following embedded exhibits which appear in the record show the CCP 170.6 challenge was properly filed – both timely, contained the statement defendant would not have a fair trial and was signed under penalty of perjury. Petitioner asserts Judge Steve White abuse his discretion exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice and misapplied the law which requires a *de novo* review. "A trial court's exercise of discretion will not be disturbed on appeal unless the court exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice. (*Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1434.)" *EFRAIM v. Universal City Studios, Inc., Cal: Court of Appeal, 2nd Appellate Dist., 2nd Div. 2008*

In *ANDREW M. v. Superior Court of Contra Costa County, Cal: Court of Appeal, 1st Appellate Dist., 5th Div. 2020*:

"The parties agree — as do we — that we review the court's ruling on the section 170.6 challenge de novo. The relevant facts are undisputed, and we are tasked with interpreting a statute, a question of law. (*People ex rel. Lockyer v. Shamrock Foods Co. (2000) 24 Cal.4th 415, 432*.)

De novo review is appropriate for the additional reason that "trial courts have no discretion to deny a section 170.6 motion filed in compliance with the statute's procedures." As a result, "it is `appropriate to review a decision granting or denying a . . . challenge under section 170.6 as an error of law.'" (*Bontilao v. Superior Court (2019) 37 Cal.App.5th 980, 987-988*.)

"Section 170.6 permits a party in civil and criminal actions to move to disqualify an assigned trial judge on the basis of a simple allegation by the

party or his . . . attorney that the judge is prejudiced against the party." (*Peracchi, supra, 30 Cal.4th at p. 1248.*)"

In *People v. Bonds, 200 Cal. App. 3d 1018 - Cal: Court of Appeal, 1st Appellate Dist., 3rd Div. 1988:*

> **Under the facts presented by this case, we cannot agree with the trial judge and respondent that appellants' peremptory challenge was untimely.** It does not appear from the record that appellants' trial attorneys were negligent in any way. To the contrary, they did everything reasonably possible both to ascertain the identity of the judge in the department to which the case had been assigned, and to challenge the sitting judge as soon as his true identity became known. Appellants should not be penalized when their attorneys were not informed of the identity of the trial judge by the judge supervising the master calendar and were given faulty information by the clerk of that department. We conclude that under the circumstances of this case the trial judge's refusal to send the cause back to the master calendar department for reassignment was erroneous, that **the trial judge lost jurisdiction over the case as soon as appellants had made their timely and proper motions under Code of Civil Procedure section 170.6, and that his subsequent orders and judgments in the case were therefore void.** (*People v. Whitfield, supra, 183 Cal. App.3d at pp. 303-306.*) The first opportunity to make an informed decision in respect to the exercise of the challenge was when the parties arrived at Department Six.

People v. Whitfield, 183 Cal. App. 3d 299 - Cal: Court of Appeal, 1st Appellate Dist., 2nd Div. 1986:

> (4) In this instance, defendant announced his intention to make a Code of Civil Procedure section 170.6 motion at the very commencement of the August 3 hearing. The trial court stated that it would first rule upon defendant's motion to represent himself and would then deal with the section 170.6 motion. After Judge Leahy had ruled that defendant could represent himself, the judge asked defendant whether he wanted the judge to disqualify himself. When defendant replied that he did, **Judge Leahy denied the motion on the incorrect ground that it was untimely and immediately began discussing other matters. Defendant was given no opportunity to state under oath or file an affidavit that he held the good faith belief that Judge Leahy was prejudiced against him.**
>
> **We must conclude that since Judge Leahy improperly failed to disqualify himself in the face of defendant's Code of Civil Procedure section 170.6 challenge, all of his subsequent actions were null and void and defendant's judgment of conviction must be reversed.**

In RE GK, Cal: Court of Appeal, 1st Appellate Dist., 3rd Div. 2020:

> **First, we agree with the People that minor's challenge is not cognizable on appeal because he did not comply with the requirement under Code of Civil Procedure section 170.3, subdivision (d) to seek timely review of the court's disqualification order by petition for writ of mandate.** (Brown v. American Bicycle Group, LLC (2014) 224 Cal.App.4th 665, 672.)[2]
>
> As the California Supreme Court instructs: "`If a judge refuses or fails to disqualify herself, a party may seek the judge's disqualification. The party must do so, however, "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." (Code Civ. Proc., § 170.3, subd. (c)(1).)' (People v. Scott (1997) 15 Cal.4th 1188, 1207 [citations].) As was the case in Scott, defense counsel was fully aware before and during trial of all the facts defendant now cites in support of his claim of judicial bias. But he never claimed during trial that the judge should recuse himself or that his constitutional rights were violated because of judicial bias. `It is too late to raise the issue for the first time on appeal.' (Ibid.; see also People v. Brown (1993) 6 Cal.4th 322, 334 [citations] [`[Code of Civil Procedure s]ection 170.3[, subdivision] (d) forecloses appeal of a claim that a statutory motion for disqualification authorized by section 170.1 was erroneously denied'].)" (People v. Guerra (2006) 37 Cal.4th 1067, 1111, overruled in part on another ground in People v. Rundle (2008) 48 Cal.4th 76, 151; see People v. Barrera (1999) 70 Cal.App.4th 541, 552 ["parties who were aware of the basis for disqualification and chose to waive it are bound by the requirements governing review set forth in subdivision (d) of [Code of Civil Procedure] section 170.3. Absent a timely petition for a writ, the issue is not reviewable"].)

This Petitioner did timely file the initial CCP 170.6 peremptory challenge signed under penalty of perjury with the proper statement that Judge Steve White is bias/prejudice/partial (not impartial) and Petitioner would not have a fair trial before Judge Steve White. Canon 3E(1): “A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.”

A motion to reconsider was filed after the motion was struck asserting the erroneous and unreasonable determination of the facts that the CCP 170.6 peremptory challenge was timely and properly signed under penalty of perjury with a statement that complied with the CCP 170.6 procedure and included additional statements that Judge Steve White lacked jurisdiction and violated Petitioner’s speedy trial rights. The statement went further to assert a conspiracy and racketeering among the El Dorado Co. and Sacramento Co. Superiors courts, Judge Steve White, counsel Russell Miller and D.D.A. Dale Gomes. These are “extreme facts” that achieve a

constitutionally intolerable U.S. 14th amendment due-process violation **“Due process "requires recusal when `the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.'.** See *Caperton v. A. T. Massey Coal Co. (2009) 556 U.S. 868 [173 L.Ed.2d 1208, 129 S.Ct. 2252] (Caperton); People v. Freeman (2010) 47 Cal.4th 993, 1005 [103 Cal.Rptr.3d 723, 222 P.3d 177].*

Under *Caperton v. A. T. Massey Coal Co. (2009) 556 U.S. 868 [173 L.Ed.2d 1208, 129 S.Ct. 2252] (Caperton)* the due process clause operates more narrowly. **"'[W]hile a showing of actual bias is not required for judicial disqualification under the due process clause, neither is the mere appearance of bias sufficient. Instead, based on an objective assessment of the circumstances in the particular case, there must exist "'the probability of actual bias on the part of the judge or decisionmaker [that] is too high to be constitutionally tolerable.'"** [Citation.]'" (*People v. Cowan, supra, 50 Cal.4th at p. 456.)*

Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii) provides for the disqualification of a judge based on the appearance of bias. (*People v. Cowan (2010) 50 Cal.4th 401, 455-456.)*

In *Rippo v. Baker, ___ U.S. ___, 137 S.Ct. 905, 197 L.Ed.2d 167 (2017) (per curiam)*, the United States Supreme Court clarified the standard for judicial disqualification in criminal cases under the federal Due Process Clause. In *Rippo*, the Supreme Court held that evidence of actual bias is not necessary to require recusal. *Rippo, 137 S.Ct. at 907*. The Court clarified that the proper inquiry is whether "objectively speaking, `the probability' of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable'" under the circumstances. *Rippo*, Id. (quoting *Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)*). In applying this standard, the issue is **"not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias."** *Rippo,* 137 S.Ct. at 907 (quoting *Williams v. Pennsylvania, ___ U.S. ___, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016)*).

Since *People v. Freeman, supra* states **“Thus, an explicit ground for judicial disqualification in California's statutory scheme is a public perception of partiality, that is, the appearance of bias.** (Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii); *Christie v. City of El Centro (2006) 135 Cal.App.4th 767, 776 [37 Cal.Rptr.3d 718]* **["Disqualification is mandated if a reasonable person would entertain doubts concerning the judge's impartiality."].)”**

Petitioner asserts CCP 170.6 codifies[12] the Cal. Constitution Art. 1, Sec. 7 & 15 and U.S. 14th amendment due-process clause cited in *Rippo v. Baker supra* and, as a matter of law, *Caperton v. A. T. Massey Coal Co.,supra* since it states in part:

> "(a) (1) **A judge**, court commissioner, or referee **of a superior court of the State of California shall not try a** civil or **criminal action** or special proceeding of any kind or character **nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge or court commissioner is prejudiced against a party** or attorney or the interest of a party or attorney appearing in the action or proceeding.
>
> (2) **A party to**, or an attorney **appearing in, an action or proceeding may establish this prejudice by an oral or written motion without prior notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee before whom the action or proceeding is pending, or to whom it is assigned, is prejudiced against a party** or attorney, **or the interest of the party** or attorney**, so that the party** or attorney **cannot**, **or believes that he or she cannot**, **have a fair and impartial trial or hearing before the judge, court commissioner, or referee."**

[12] *People v. Brown, 862 P. 2d 710 - Cal: Supreme Court 1993* **"...the statutory basis for the motion appears to codify due process grounds for challenging the impartiality of a judge**. (Compare § 170.1, subd. (a)(6)(C), *with In re Murchison (1955) 349 U.S. 133, 136 [99 L.Ed. 942, 946, 75 S.Ct. 623*], and *Tumey v. Ohio, supra, 273 U.S. 510, 533 [71 L.Ed. 749, 758-759].) (3b)* **Nothing in section 170.3(d), however, explicitly insulates a final judgment from appellate attack on the fundamental constitutional ground that the judgment was procured before an adjudicator who was biased."**

Mr. Miller is either all paid by The El Dorado Superior Court and This Defendant is suing The El Dorado Superior Court, various Judges, and The El Dorado D.A. including Dale Gomes.

In Fact, This Defendant is currently amending his lawsuits to include John Casey, Russell Miller, Curtis M. Fiorini, The Sacramento Superior Court Clerks and Judge White who is acting where he has no jurisdiction (and no immunity). The only jurisdiction Judge White has is To dismiss This case for lack of jurisdiction. This can be done pursuant To PC 1385 sua sponte, with prejudice.

Again, anyone Knowing These Facts would doubt Judge Whites ability To be fair To This Defendant.

Additionally, This Defendant has Filed Complaints with The F.B.I, Judicial Council, Supreme Ct. of Cal, and The State Bar regarding the RICO, Conspiracy, Fraud, obstruction of Justice etc.

PS: PC 1387 bars refiling.

6.

257

The above exhibit if from the CCP 170.6 filing and it includes the statements that Judge White is being added to the lawsuit… Judge White did have a conflict of interest in the outcome of the trial since he was told he was being sued[13] for his complete lack of jurisdiction, conspiracy, RICO, etc. And Petitioner filed complaints with the FBI and CJP against Judge White et al. These conflicts "offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true."' "On these extreme facts the probability of actual bias rises to an unconstitutional level." See *Caperton v. A. T. Massey Coal Co, supra.*

In People v. Freeman, 222 P. 3d 177 - Cal: Supreme Court 2010:

> **We now turn to the issue on which review was granted: does the due process clause require judicial disqualification based on the mere appearance of bias. "A fair trial in a fair tribunal is a basic requirement of due process." (In re Murchison (1955) 349 U.S. 133, 136 [99 L.Ed. 942, 75 S.Ct. 623].) "The Supreme Court has long established that the Due Process Clause guarantees a criminal defendant the right to a fair and impartial judge."** (Larson v. Palmateer (9th Cir. 2008) 515 F.3d 1057, 1067.) The operation of the due process clause in the realm of judicial impartiality, then, is primarily to protect the individual's right to a fair trial. In contrast to this elemental goal, a statutory disqualification scheme, like that found in our Code of Civil Procedure, is not solely concerned with the rights of the parties before the 1001*1001 court but is also "intended to ensure public confidence in the judiciary." (Curle v. Superior Court (2001) 24 Cal.4th 1057, 1070 [103 Cal.Rptr.2d 751, 16 P.3d 166].)[3] Thus, an explicit ground for judicial disqualification in California's statutory scheme is a public perception of partiality, that is, the appearance of bias. (Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii); Christie v. City of El Centro (2006) 135 Cal.App.4th 767, 776 [37 Cal.Rptr.3d 718] ["Disqualification is mandated if a reasonable person would entertain doubts concerning the judge's impartiality."].)
>
> By contrast, the United States Supreme Court's due process case law focuses on actual bias. This does not mean that actual bias must be proven to establish a due process violation. Rather, consistent with its concern that due process guarantees an impartial adjudicator, the court has focused on those circumstances where, even if actual bias is not

[13] Petitioner is in the process of suing Judge Steve White et al. The original filings have been dismissed when Petitioner was wrongfully imprisoned, he was unable to prosecute his case(s). Petitioner is also billing Judge Steve White et al for the time in addition to the damages. Said billing will include the use of commercial liens against Judge Steve White, others including Vern Pierson, Dale Gomes, City of South Lake Tahoe, County of Eldorado, State of California, etc. Said billing rate was previously disclosed in excess of one million dollars per day plus interest of 10% of each day of incarceration and on-going constructive custody and each day until the convictions are set aside and said bill is paid in full. Said bill is well over a billion dollars.

demonstrated, the probability of bias on the part of a judge is so great as to become "constitutionally intolerable." (Caperton v. A. T. Massey Coal Co., supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2262] (Caperton).) The standard is an objective one.

Caperton both reviewed the court's jurisprudence in this area and extended it. The issue in Caperton was whether due process was violated by a West Virginia high court justice's refusal to recuse himself from a case involving a $50 million damage award against a coal company whose chairman had contributed $3 million to the justice's election campaign. The justice cast the deciding vote that overturned the award. The United States Supreme Court held that, under the "extreme facts" of the case, "the probability of actual bias rises to an unconstitutional level." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2265].)

As the Caperton court noted, in the high court's first foray into this area in Tumey v. Ohio (1927) 273 U.S. 510 [71 L.Ed. 749, 47 S.Ct. 437], it had "concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has `a direct, personal, substantial, pecuniary interest' in a case." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2259].) Caperton observed, however, that "new problems have emerged that were not discussed at common law" leading it to identify "additional instances which, as an objective matter, require recusal." (Ibid.) Tumey itself was such a case. Tumey involved a mayor-judge authorized to conduct court trials of those accused of violating a state alcoholic beverage prohibition law; if a defendant was found guilty, a percentage of his fine was paid to the mayor and the rest was paid to the village's general treasury. The court held that the system violated the defendant's due process rights even assuming that the mayor-judge's direct pecuniary interest would not have influenced his 1002*1002 decision. "The [Tumey] Court articulated the controlling principle: [¶] `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.'" (Caperton, at p. ___ [129 S.Ct. at p. 2260].)

The Caperton court observed that, even in that early case, the high court was "concerned with more than the traditional common-law prohibition on direct pecuniary interest. It was also concerned with a more general concept of interests that tempt adjudicators to disregard neutrality." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2260].) The court in Caperton reviewed two of its other decisions implicating indirect pecuniary interests that in its view tested the neutrality of the adjudicators in those cases. Ward v. Village of Monroeville (1972) 409 U.S. 57 [34 L.Ed.2d 267, 93 S.Ct. 80] involved another mayor-judge, but in

that case the mayor's compensation was not tied to his adjudications. Rather, "the fines the mayor assessed went to the town's general fisc." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2260].) Nonetheless, the Monroeville court found the procedure to violate due process because of the "`"possible temptation"'" the mayor might face to maximize the town's revenues at the expense of defendants appearing before him. (Caperton, at p. ___ [129 S.Ct. at p. 2260].)

Finally, in Aetna Life Insurance Co. v. Lavoie (1986) 475 U.S. 813 [89 L.Ed.2d 823, 106 S.Ct. 1580], the court "further clarified the reach of the Due Process Clause regarding a judge's financial interest in a case. There, a justice had cast the deciding vote on the Alabama Supreme Court to uphold a punitive damages award against an insurance company for bad-faith refusal to pay a claim. At the time of his vote, the justice was the lead plaintiff in a nearly identical lawsuit pending in Alabama's lower courts. His deciding vote, this Court surmised, `undoubtedly "raised the stakes"' for the insurance defendant in the justice's suit. [Citation.] [¶] The Court stressed that it was `not required to decide whether in fact [the justice] was influenced.' [Citation.] The proper constitutional inquiry is `whether sitting on the case then before the Supreme Court of Alabama "`would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.'" [Citation.] The Court underscored that `what degree or kind of interest is sufficient to disqualify a judge from sitting "cannot be defined with precision."' [Citation.] In the Court's view, however, it was important that the test have an objective component." (Caperton, supra, 556 U.S. at pp. ___-___ [129 S.Ct. at pp. 2260-2261].)

The Caperton court then examined another line of cases in which the court had found that the probability of actual bias was so high as to require recusal 1003*1003 under the due process clause. "The second instance requiring recusal that was not discussed at common law emerged in the criminal contempt context, where a judge had no pecuniary interest in the case but was challenged because of a conflict arising from his participation in an earlier proceeding." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2261].) That case, In re Murchison, supra, 349 U.S. 133, involved a judge who presided over the contempt trial of two witnesses whom the same judge had charged with contempt following his examination of them at a proceeding to determine whether to file criminal charges—a so-called "`"one-man grand jury."'" (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2261], quoting In re Murchison, supra, 349 U.S. at p. 133.)

As Caperton explained, the Murchison court set aside the contempt convictions "on grounds that the judge had a conflict of interest at the trial stage because of his earlier participation followed by his decision to

charge them. . . . The [Murchison] Court recited the general rule that `no man can be a judge in his own case,' adding that `no man is permitted to try cases where he has an interest in the outcome.' [Citation.] [Murchison] noted that the disqualifying criteria `cannot be defined with precision. Circumstances and relationships must be considered.' [Citation.] These circumstances and the prior relationship required recusal: `Having been part of [the one-man grand jury] process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused.' [Citation.]" (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2261].)

The Caperton court then turned to another decision in this line of cases—Mayberry v. Pennsylvania (1971) 400 U.S. 455 [27 L.Ed.2d 532, 91 S.Ct. 499]—which held that "`by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor.'" (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2262], quoting Mayberry v. Pennsylvania, supra, 400 U.S. at p. 466.) In so holding, however, the Mayberry court had "considered the specific circumstances presented" and was not propounding a general rule that "`every attack on a judge . . . disqualifies him from sitting.'" (Caperton, 556 U.S. at p. ___ [129 S.Ct. at p. 2262]; see Ungar v. Sarafite (1964) 376 U.S. 575 [11 L.Ed.2d 92, 184 S.Ct. 841].) Rather, "[t]he inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is `likely' to be neutral, or whether there is an unconstitutional `potential for bias.'" (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2262].)

1004*1004 The Caperton court then applied the principles derived from these cases to the issue before it—the impact of campaign contributions on judicial impartiality—acknowledging that its prior cases had not addressed this circumstance. Noting that the West Virginia justice's rejection of the petitioners' disqualification motion was based on his conclusion that he harbored no actual bias, the court said: "We do not question his subjective findings of impartiality and propriety. Nor do we determine whether there was actual bias." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2263].) Rather, the court suggested, the inherent subjectivity involved in an individual judge's examination of his or her own bias "simply underscore[s] the need for objective rules. . . . In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias. [Citations.] In defining these standards the Court has asked whether, `under a realistic appraisal of psychological tendencies and human weakness,' the interest `poses such a risk of actual bias or

prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.' [Citation.]" (Ibid.)

Emphasizing that the case before it was "exceptional," the court concluded that "there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." (Caperton, supra, 556 U.S. at pp. ___-___ [129 S.Ct. at pp. 2263-2264].) In so concluding, the court focused on the relative size of the contribution in relation to the total amount spent on the campaign—it was larger than the amount spent by all other contributors and 300 percent greater than that spent by the campaign committee—and the "temporal relationship between the campaign contributions, the justice's election, and the pendency of the case . . . . It was reasonably foreseeable, when the campaign contributions were made, that the pending case would be before the newly elected justice." (Id. at pp. ___-___ [129 S.Ct. at pp. 2264-2265].) The court concluded: "On these extreme facts the probability of actual bias rises to an unconstitutional level." (Id. at p. ___ [129 S.Ct. at p. 2265].)

In deflecting the assertion by the respondent coal company that its ruling would open a floodgate of due-process-based recusal motions, the Caperton court again emphasized the exceptional nature of the cases in which it had been compelled to conclude that the due process clause had been violated by a judge's failure to recuse himself. "In each case the Court dealt with extreme facts that created an unconstitutional probability of bias that `"cannot be defined with precision."' [Citation.] Yet the Court articulated an objective standard to protect the parties' basic right to a fair trial in a fair tribunal. The Court was careful to distinguish the extreme facts of the cases before it from 1005*1005 those interests that would not rise to a constitutional level. [Citations.]" (Caperton, supra, 556 U.S. at pp. ___, ___ [129 S.Ct. at pp. 2265-2266].) As the court also observed, the states have moved to adopt judicial conduct codes to eliminate "even the appearance of partiality" (id. at p. ___ [129 S.Ct. at p. 2266]), and these codes comprise "`standards more rigorous than due process requires'" (id. at p. ___ [129 S.Ct. at p. 2267]). The court, reiterating that the due process clause provides the "`constitutional floor'" in matters involving judicial disqualification concluded: "Because the codes of judicial conduct provide more protection than due process requires, most disputes over disqualification will be resolved without resort to the Constitution. Application of the constitutional standard implicated in this case will thus be confined to rare instances." (556 U.S. at p. ___ [129 S.Ct. at p. 2267].)

(3) The rule of judicial disqualification limned in Caperton may be complex but its application is limited. According to the high court, the

protection afforded a litigant under the due process clause in the realm of judicial disqualification extends beyond the narrow common law concern of a direct, personal, and substantial pecuniary interest in a case to "a more general concept of interests that tempt adjudicators to disregard neutrality." (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2260].) Where such interests are present, a showing of actual bias is not required. "The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is `likely' to be neutral, or whether there is an unconstitutional `potential for bias.'" (Id. at p. ___ [129 S.Ct. at p. 2262].) Moreover, the court has said that "`what degree or kind of interest is sufficient to disqualify a judge from sitting "cannot be defined with precision."'" (Id. at p. ___ [129 S.Ct. at p. 2261].) Nonetheless, the court has also made it abundantly clear that the due process clause should not be routinely invoked as a ground for judicial disqualification. Rather, it is the exceptional case presenting extreme facts where a due process violation will be found. (556 U.S. at p. ___ [129 S.Ct. at p. 2267].) Less extreme cases—including those that involve the mere appearance, but not the probability, of bias— should be resolved under more expansive disqualification statutes and codes of judicial conduct. (Ibid.)

In supplemental briefing regarding the impact of Caperton on this case, defendant argues that the facts here may present the kind of extreme case that implicates the due process clause. Defendant cites the Court of Appeal's analysis in which it concluded that Judge O'Neill's friendship with Judge Elias, and the similarity between the stalking charges against defendant and the allegation that she had stalked Judge Elias, were "consistent with what one would typically associate with actual bias." She also maintains that Judge O'Neill's acceptance of reassignment of her case after he had once recused himself constitutes unprecedented and extreme circumstances that may present a due process violation. At minimum, she requests that her case be 1006*1006 remanded to the Court of Appeal for a determination of whether the probability of actual bias on Judge O'Neill's part was constitutionally intolerable.

We reject defendant's arguments. This case does not implicate any of the concerns—pecuniary interest, enmeshment in contempt proceedings, or the amount and timing of campaign contributions—which were the factual bases for the United States Supreme Court's decisions in which it found that due process required judicial disqualification. While it is true that dicta in these decisions may foreshadow other, as yet unknown, circumstances that might amount to a due process violation, that dicta is bounded by repeated admonitions that finding such a violation in this sphere is extraordinary; the clause operates only as a "fail-safe" and only in the context of extreme facts.

(4) In this case, defendant had a statutory remedy to challenge Judge O'Neill's refusal to disqualify himself and failed to pursue it. Having forfeited that remedy, she cannot simply fall back on the narrower due process protection without making the heightened showing of a probability, rather than the mere appearance, of actual bias to prevail. We also reject defendant's claim that Judge O'Neill's acceptance of her case after he had once recused himself presents the kind of exceptional facts that demonstrate a due process violation. At most, Judge O'Neill's decision to accept reassignment of defendant's case may have violated the judicial disqualification statutes that limit the actions that may be taken by a disqualified judge. (See, e.g., In re Marriage of Kelso (1998) 67 Cal.App.4th 374, 383 [79 Cal.Rptr.2d 39]; Geldermann, Inc. v. Bruner, supra, 229 Cal.App.3d at p. 665.) But, without more, this does not constitute the kind of showing that would justify a finding that defendant's due process rights were violated.

In short, the circumstances of this case, as we view them, simply do not rise to a due process violation under the standard set forth by Caperton because, objectively considered, they do not pose "`such a risk of actual bias or prejudgment'" (Caperton, supra, 556 U.S. at p. ___ [129 S.Ct. at p. 2263]) as to require disqualification.[4]

In *People v. Chatman, 133 P. 3d 534 - Cal: Supreme Court 2006*

As noted, the statute requires the disqualification of a judge whenever "a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. . . ." (Code Civ. Proc., § 170.1, former subd. (a)(6)(C), see now subd. (a)(6)(A)(iii).) The Attorney General argues the constitutional standard is narrower. He cites Bracy v. Gramley (1997) 520 U.S. 899, 117 S.Ct. 1793, 138 L.Ed.2d 97, where the high court explained that "most questions concerning a judge's qualifications to hear a case are not constitutional ones, because the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard. [Citation.] Instead, these questions are, in most cases, answered by common law, statute, or the professional standards of the bench and bar. [Citations.] But the floor established by the Due Process Clause clearly requires a `fair trial in a fair tribunal,' [citation], before a judge with no actual bias against the defendant or interest in the outcome of his particular case." (Id. at pp. 904-905, 117 S.Ct. 1793, italics added.) Accordingly, the Attorney General argues that the due process claim requires a showing of actual bias, whereas the statute requires only the appearance of bias. We need not further address the distinction because defendant has failed to show even the appearance of bias.

640*640 **Potential bias and prejudice must clearly be established by an objective standard.** (In re Scott (2003) 29 Cal.4th 783, 817, 129 Cal.Rptr.2d 605, 61 P.3d 402.) **"Courts must apply with restraint statutes authorizing disqualification of a judge due to bias." (Ibid.)**

"Within its circumscribed limits, section 170.6 authorizes parties (or their attorneys), rather than courts, to unilaterally decide whether a judge is "prejudiced." (Home Ins. Co., supra, 34 Cal.4th at p. 1032 [§ 170.6 permits party to obtain disqualification of judge for prejudice based solely upon sworn statement without having to establish prejudice as matter of fact to satisfaction of court].) Courts must honor procedurally sufficient, timely presented section 170.6 motions. (§ 170.6, subd. (a)(4**) ["If the motion is duly presented, and the affidavit or declaration ... is duly filed ..., thereupon and without any further act or proof, the judge supervising the master calendar ... shall assign some other judge ... to try the cause or hear the matter"];** see *Stephens v. Superior Court (2002) 96 Cal.App.4th 54, 59 [116 Cal.Rptr.2d 616].)" PEOPLE v. SUPERIOR COURT (TEJEDA) 1 Cal.App.5th 892 (2016)*

A second CCP 170.6 peremptory challenge was filed and again struck as untimely despite Judge White failing to remain the "all purpose judge" after he assigned a pre-trial *Faretta* motion hearing to his wife. California Judicial Code of Conduct Canon 3(B)(1) "A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified."

Petitioner then filed two motions to disqualify listed issues that warrant disqualification i.e. Judge White was bias & prejudice and the appearance of judicial bias. Judge White stuck said filings without a response pursuant to CCP 170.3(c)(5)

California Judicial Code of Conduct Canon 3E(2) states "In all trial court proceedings, a judge shall disclose on the record as follows: "(a) Information relevant to disqualification "A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.""

In *Fry v. Super. Court, 222 Cal. App. 4th 475, 481 (2013*) ("'Courts must refrain from any tactic or maneuver that has the practical effect of diminishing' the important right to exercise the [Section 170.6] challenge.)

REASSIGNMENT ORDER & TIMELY CCP 170.6 FILING PROOF:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME : JUN 22 2017
JUDGE : KEVIN R. CULHANE
REPORTER : NONE

DEPT. NO : 47
CLERK : P. BANKS
BAILIFF : NONE
PRESENT:

THE PEOPLE OF THE STATE OF CALIFORNA,
Plaintiff,

VS. Case No.: P17CRF0114

TODD CHRISTIAN ROBBEN,
Defendant.

Nature of Proceedings: RE-ASSIGNMENT ORDER

The above entitled cause comes before the court for re-assignment. The defendant in this matter filed a CCP 170.1 challenge against Judge Fiorini, and the criminal proceedings were suspended on June 7, 2017 pending a review of the CCP 170.1 challenge. The Hon. Curtis Fiorini subsequently filed a Verified Answer to the CCP 170.1 challenge but nevertheless recused himself pursuant to CCP 170.1(a)(6)(A)(i) and (ii). Accordingly, the criminal proceedings are hereby reinstated.

The Assigned Judge Program having been notified, the Hon. Steve White is hereby assigned to this case for all purposes, and a new reciprocal assignment order from the Chief Justice of the California has been issued pursuant to Government Code Section 69740. The parties are directed to CCP 170.6(a)(2) regarding the timing of any remaining challenge following notice of this assignment.

The parties are ordered to contact the clerk in Department 21 at (916) 874-5924 to schedule further proceedings.

Dated: JUN 22 2017

Honorable KEVIN R. CULHANE,
Judge of the Superior Court of California, County of Sacramento

BOOK : 47
PAGE :
DATE : JUN 22 2017
CASE NO. : P17CRF0114
CASE TITLE : PEO v. ROBBEN

Superior Court of California,
County of Sacramento

BY: P. BANKS,
Deputy Clerk

017CRF0114

THE PEOPLE
v
TODD ROBBEN

FILED/ENDORSED
JUN 28 2017
BY

Case No.: P17CRF0114
Transfered from El Dorado Co.
Motion to Disqualify Dept. 21 Judge White for Cause per CCP 171.1(6)(A)(iii) and 171.1(7) and alternative CCP 170.6

Defendant, Todd Robben, a party to this action moves to disqualify Judge White who lacks jurisdiction to proceed in this case stemming from the unlawful transfer from El Dorado County Superior Court retired Judge Daniel Proud who was not lawfully assigned by the Col. Supreme Court or Judicial Council retired judge program. See rules of court 4.150, 4.152, and 3.501.

The record shows Mr. Proud issued an ex-parte order on 4/12/17 Transfer to Sacramento County. The minute order also states "Time is NOT waived"!

Nowhere in the record shows Mr. Proud being "assigned",

1

over →

252

Mr. Proud lacked all jurisdiction including his ex-parte order To Transfer To Sacramento.

Additionally, Mr. Thomas A Smith also lacked jurisdiction To preside over The grand-jury, and Therfor The grand jury lacked jurisdiction.

The Defendant did mail a Series of legal filings in This instant case, and The related P17CRF0089 prior To being assigned counsel. The Defendant filed a PC1424 motion To disqualify The entire El Dorado District Attorney office in both cases and Two petitions for habeas Corpus relief. One 1424 motion was marked "received" in case P17CRF0089, The other filings were never Filed.

The D.A. also violated rule 4.110 and related penal codes requiring arraignment withen 15 days of indictment. The indictment date was march 23, 2017, The arraignment was 22 days later, April 14, 2017.

This Defendant does not waive Time persuant To PC1382 which

2.

253

mandates 60 days To Trial from indictment or arraignment. The 60 days has passed. There is no "good cause" since The D.A., Court and Defendant's ineffective Counsel caused The delays. The D.A. was late bringing The arraignment and Turning over evidence including The grand jury Transcript. The court assigned previous Counsel That was a known Conflict That prejudiced Defendant. Defendant's current Counsel is ineffective and attemped To delay by filing a PC-1050 motion To extend Time / Continue Trial To July 27, 2017. The Court, Judges, D.A. and appointed Counsel, Russell Miller, Conspire To defraud The Defendant a Fair Trial and undermine his civil-rights including 6Th, 8Th and 14Th amendment rights.

The Defendants right To speedy-Trial persuant To U.S. Constitution 6Th amendment is violated (see Baker Test) as well as California Constitution. Defendant has been Jaile since

254

March 9, 2017 on this current case P17CRF0089 and P17CRF0114 which are the same charges, P17CRF0089 was dismissed and the D.A. violated PC 859(b) 10 days to preliminary hearing. Judge Daniel Proud also lacked jurisdiction in P17CRF0089 as the minute order shows Defendant attempted to demurrer prior to entering plea.

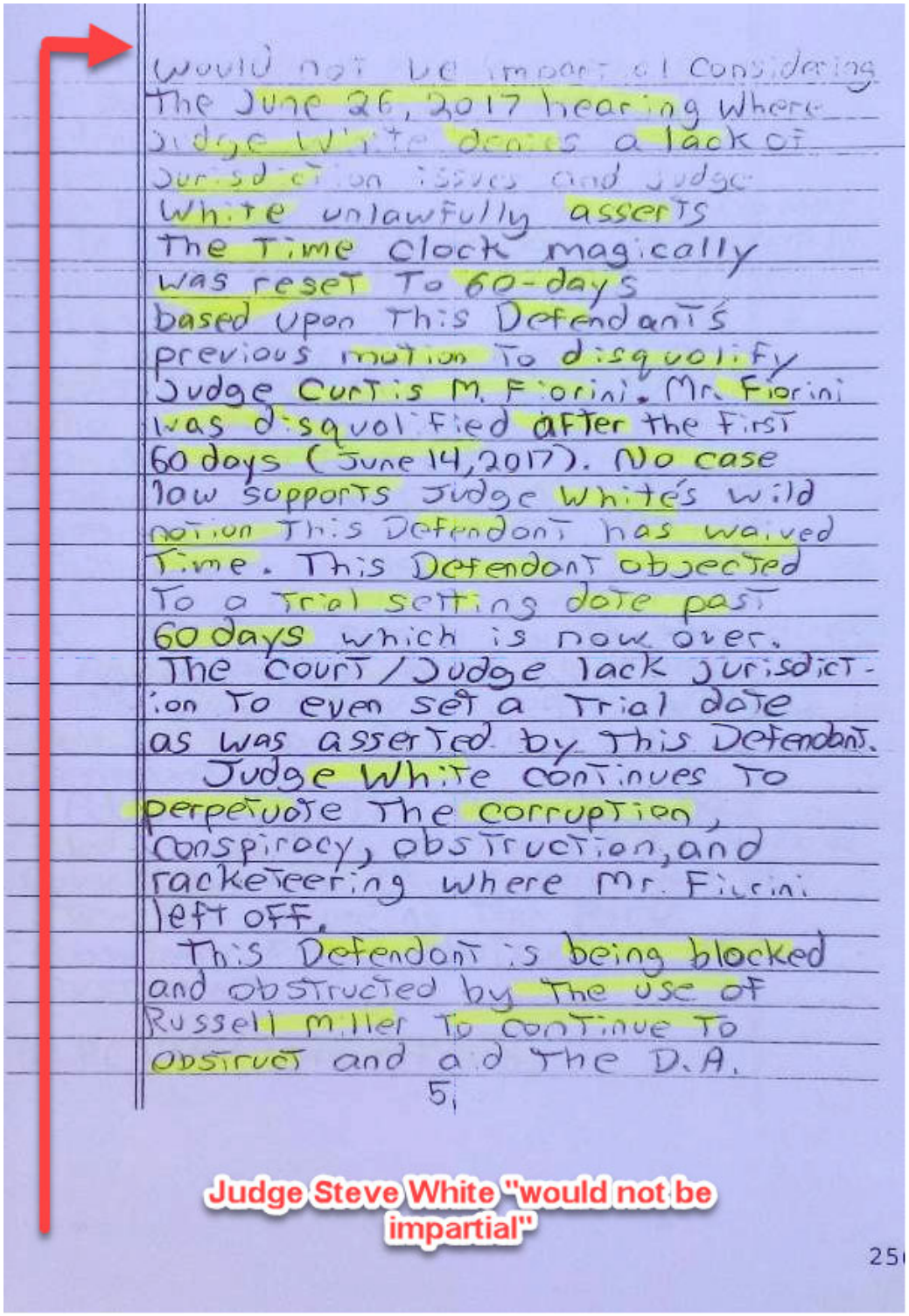
In P17CRF0114, a lawyer with a known conflict blocked Defendant's demurrer by entering his plea for him. That lawyer, John Casey, was later withdrawn/removed.

Russell Miller originally told this Defendant he would move to vacate plea nunc-pro-tunc and demurre the indictment for lack of grand jury jurisdiction, Mr. Miller has not filed any motions to assist this Defendant including 1424, 1538.5 or 995. Instead, Mr. Miller obstructs and conspires with the court, judge, and D.A. Dale Gomes.

A person aware of these facts would conclude Judge White

4.

255


would not be impartial Considering
The June 26, 2017 hearing where
Judge White denies a lack of
Jurisdiction issues and Judge
White unlawfully asserts
The Time clock magically
was reset To 60-days
based upon This Defendants
previous motion To disqualify
Judge Curtis M. Fiorini. Mr. Fiorini
was disqualified after the First
60 days (June 14, 2017). No case
law supports Judge White's wild
notion This Defendant has waived
Time. This Defendant objected
To a trial setting date past
60 days which is now over.
The Court / Judge lack jurisdict-
ion To even set a Trial date
as was asserted by This Defendant.
Judge White continues To
perpetuate The corruption,
conspiracy, obstruction, and
racketeering where Mr. Fiorini
left off.
This Defendant is being blocked
and obstructed by The use of
Russell Miller To continue To
obstruct and aid The D.A.
5,
Judge Steve White "would not be impartial"
25

Mr. Miller is employed by the El Dorado Superior Court and This Defendant is suing The El Dorado Superior Court, [illegible], and The El Dorado D.A. including Dak Gomes.

In Fact, This Defendant is currently amending his lawsuits to include John Casey, Russell Miller, Curtis M. Fiorini, The Sacramento Superior Court Clerks and Judge White who is acting where he has no jurisdiction (and no immunity). The only jurisdiction Judge White has is To dismiss This case for lack of jurisdiction. This can be done pursuant to PC 1385 sua sponte, with prejudice.

Again, anyone knowing These Facts would doubt Judge Whites ability To be fair To This Defendant.

Additionally, This Defendant has Filed Complaints with The FBI, Judicial Council, Supreme CT. of Cal, and The State Bar regarding The RICO, Conspiracy, Fraud, obstruction of Justice, etc.

P.S. PC 1387 bars refiling.

6.

257

The issues presented in this motion are only a small fraction of the rampant fraud in This case.

This motion is primarily a motion To disqualify Judge Whi who lacks Jurisdiction. Before Mr. White can exersize discretion, he must have Jurisdiction (which he does not have). This Defendant does not Waive Jurisdiction, "Fundamental Jurisdiction can not be conferred by waiver, estopple or consent. Rather, an act beyond a courts Jurisdict in the fundamental sense is null and void." People v. Lara 2010 Col. Supreme CT. citing People v. Williams (1999) 75 Col. App. 4th at p447.

At The June 26, 2017 hearing Judge White stated on the record that he had a medical precedure To take place which would delay the Defendant's Faretta hearing To July 21, 2017. This delay also deprives this

258

Defendant 25 days of Time and due-process.

Mr. White's health issues relate to CCP 171.1(7) "By reason of permanent or Temporary physical impairment, The Judge is unable To proerly preceive The evidence or is unable To properly conduct the proceeding".

The Defendant should not have To wait any longer to have his case dismissed Since The Court lacks Jurisdic

Keeping This Defendant falsely imprisoned is a violation of his civil rights. This court and Judge White are obstructing Justice and preventing this Defendant To proceed with his Federa civil rights lawsuit against Them. This is a direct conflict-of-interest

This Defendant has also filed a petition for writ of habeas Corpus in Federal Court on This matter in Case # 2:17-CV-00532 and in the Cal. Supreme CT. TODD ROBBEN v SCOTT JONES Case # S242708.

8.

The Supreme Court of Col. Should mail a case number This week.

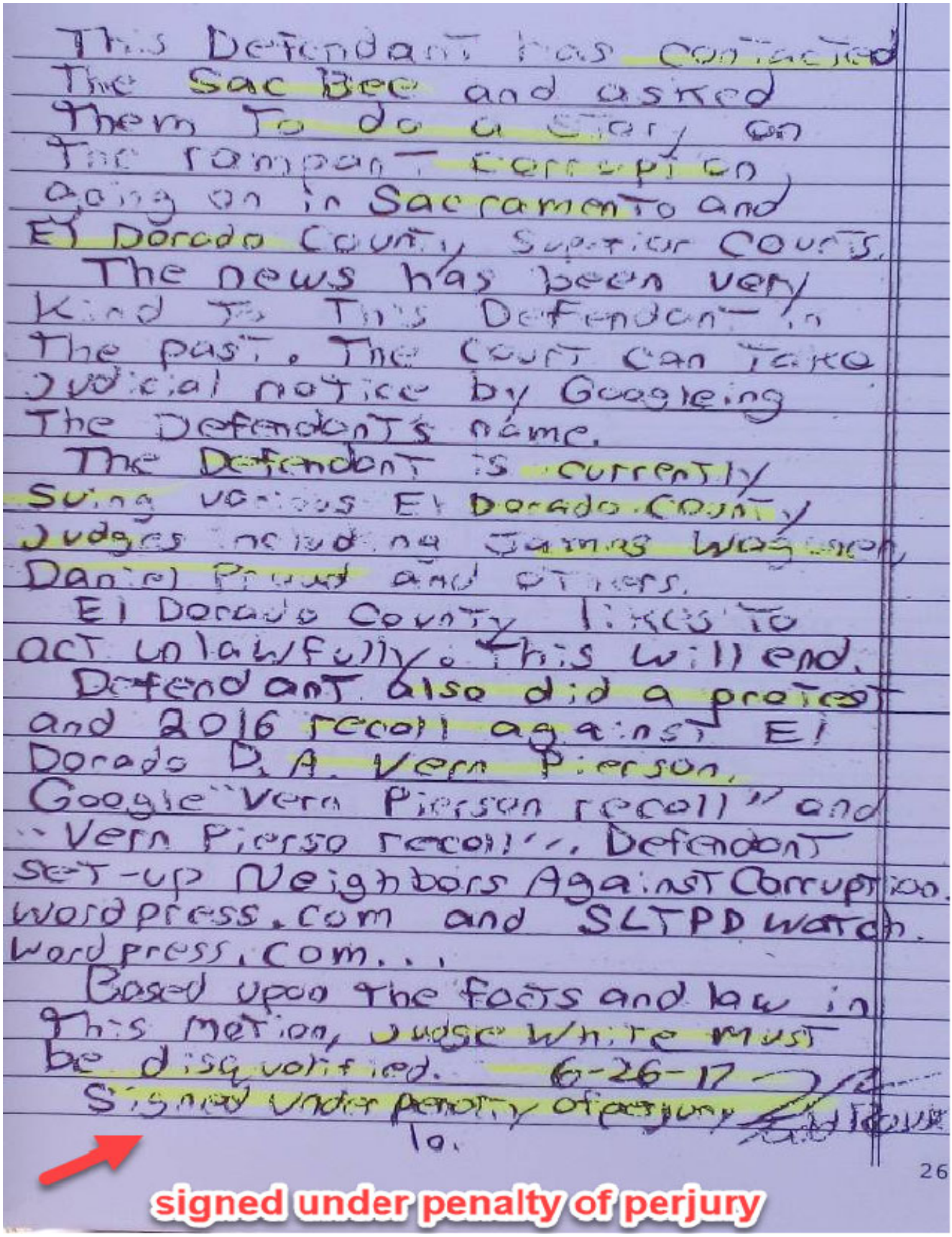
This Defendant has also moved The Col. Supreme Ct. To reopen case # S238758 "Accusation of Todd Robben against David J. Cramer". This Defendant informed The Supreme Ct. That Mr. Cramer never Filed or Checked To verify Defendants appeal of El Dorado case# S16CR0096 was in fact Filed and That evidence/exhibits were Filed - They were not Filed.

This Defendant also informed The Supreme Ct. That Mr. Cramer has Filed false criminal Charges alleging death Threats From This Defendant.

AT some point an honest Judge has a duty To report The judges and attorneys persuant To judicial code of conduct cannon 3(d)(2) and 3id(1). and rule 10.1017, Russell Miller and Dale Gome must be reported To The STAT bar and FBI, Mr. Miller violates rules 3-100, 3-200, 3-300, 3-500.

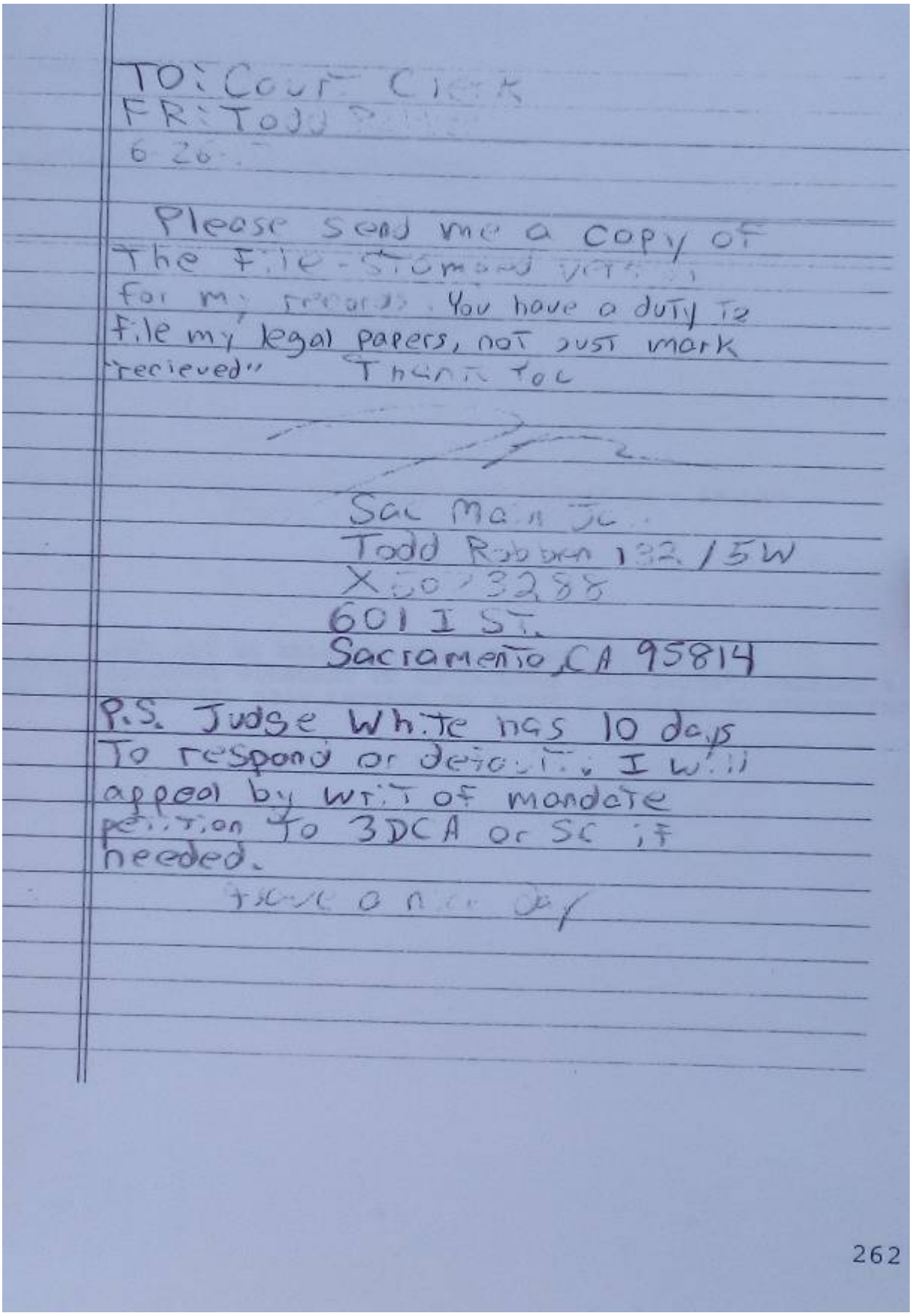
9.

260


This Defendant has contacted The Sac Bee and asked them To do a Story on The rampant Corruption going on in Sacramento and El Dorado County Superior Courts. The news has been very Kind To This Defendant in The past. The Court can Take Judicial notice by Googleing The Defendant's name. The Defendant is currently Suing various El Dorado County Judges including James Wagoner, Daniel Proud and others. El Dorado County likes To act unlawfully. This will end. Defendant also did a protest and 2016 recall against El Dorado D.A. Vern Pierson. Google "Vern Pierson recall" and "Vern Pierso recall". Defendant set-up Neighbors Against Corruption. wordpress.com and SLTPD watch. wordpress.com... Based upon the facts and law in this motion, Judge White must be disqualified. 6-26-17 Signed under penalty of perjury /s/ Todd Robben

26

signed under penalty of perjury



TO: Court Clerk
FR: Todd
6 26

Please send me a copy of
The File-Stamped [illegible]
for my records. You have a duty to
file my legal papers, not just mark
"recieved" Thank You

Sac Main Jail
Todd Robben 192/5W
X00-32288
601 I ST.
Sacramento, CA 95814

P.S. Judge White has 10 days
To respond or dismiss. I will
appeal by writ of mandate
petition to 3DCA or SC if
needed.

[illegible]

262

FILED/ENDORSED

JUL - 7 2017

By Christa Beebout, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. TODD ROBBEN, Defendant.	Case No. P17CRF0114 ORDER STRIKING DEFENDANT'S CHALLENGE FOR CAUSE (Code Civ. Proc., §§ 170.4(b).)

The "Motion to Disqualify Dept. 21 Judge White for Cause Per CCP 171.1[1](6)(A)(iii) and 171.1(7) and (sic) Altemitive CCP 170.6" (the "Challenge") filed by Defendant Todd Robben on June 28, 2017, seeking to disqualify Judge Steve White in the above criminal action, is ordered stricken pursuant to Code of Civil Procedure section 170.4(b), because the face of the Challenge discloses no legal grounds for disqualification.

The Defendant's Challenge contains no statement of facts from which a person aware of such facts might reasonably entertain a doubt that Judge White would be able to be impartial, or that evidence bias or prejudice by the judge toward a lawyer or party in the proceeding.

[1] It is assumed that Defendant intended to cite Code of Civil Procedure section 170.1.

Defendant's Challenge takes exception to Judge White's rulings, and the judge's interpretation and understanding of the procedural history and status of the subject criminal action. However, the facts stated by Defendant do not state a legal ground for disqualification. The Defendant's alternative allegation that Judge White is unable to properly perceive the evidence or is unable to properly conduct the proceeding by reason of permanent or temporary physical impairment under Code of Civil Procedure section 170.1(a)(7) fails to state facts that the judge has a permanent or temporary physical impairment, or that the judge has been unable to properly perceive the evidence or is unable to properly conduct the proceeding. To the extent the Defendant intended his challenge to contain an alternative peremptory challenge pursuant to Code of Civil Procedure section 170.6(a)(2) it fails to satisfy the requirements of that statute because it fails to contain a declaration under penalty of perjury that the judge before whom the action is pending, or to whom it is assigned, is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, or believes that he cannot, have a fair and impartial trial or hearing before the judge.

A judge has a duty to decide any proceeding in which he or she is not disqualified. (Cal.Code Civ. Proc.§170.) The standard for disqualification under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii) is objective. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104-105.) "If a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts concerning the judge's impartiality, disqualification is mandated. The existence of actual bias is not required." (*Id.* at p. 104; *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 170.) "While this objective standard clearly indicates that the decision on disqualification not be based on the judge's personal view of his own impartiality, it also suggests that the litigants' necessarily partisan views not provide the applicable frame of reference." (*Flier v. Superior Court, supra*, 23 Cal.App.4th at p. 170.) "'The challenge must be to the effect that the judge would not be able to be impartial toward a particular party.' [Citation.]" (*People v. Panah* (2005) 35 Cal.4th 395, 446, emphasis added.)

The burden is on the party seeking judicial disqualification to establish the facts showing such disqualification existed. (*Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 424.) The

claimed potential bias and prejudice must clearly be established. (*Gray v. City of Gustine* (1990) 224 Cal.App.3d 621, 632; *Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724.) Bias and prejudice are not implied. A party's unilateral perception of bias cannot alone serve as a basis for disqualification. Prejudice must be shown against a particular party and it must be significant enough to impair the adjudicator's impartiality. The challenge to the fairness of the adjudicator must set forth concrete facts demonstrating bias or prejudice. (*Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 792.)

When a judge's state of mind appears to be adverse to a party, but the adversity is based on his or her actual observance of witnesses and evidence given, the judge's attitude does not amount to prejudice against a party which disqualifies the judge. (*People v. Yeager* (1961) 55 Cal. 2d 374.) The rationale behind this rule is that it is the judge's duty to consider and pass on evidence produced and, when it is in conflict, to resolve the conflict in favor of the party whose evidence outweighs that of the opposing party. (*People v. Yeager*, supra, 55 Cal. 2d 37 at 391 (criminal prosecution for robbery)].

"Erroneous rulings against a litigant, even when numerous and continuous, form no ground for a charge of bias or prejudice, especially when they are subject to review." (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11.) A judge's error as to a question of law does not constitute bias or prejudice. (*In re Morelli* (1970) 11 Cal. App. 3d 819, 849 (judge refused to shorten or extend time for court procedures), overruled in limited part on unrelated issue *Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal. App. 4th 1281, 1287 fn. 6; *Shakin v. Board of Medical Examiners* (1967) 254 Cal.App.2d 102, 116, (judge denied petitions for stay of judgment on three occasions); *Estate of Buchman* (1955) 132 Cal.App.2d 81, 104 (judge denied due process to executor); *Ryan v. Welte* (1948) 87 Cal.App.2d 888, 895 (judge ruled that plaintiff could not state a cause of action). This is true no matter how gross the error, since a litigant cannot substitute proceedings for disqualification for his or her remedy of appeal. (*Ryan v. Welte, supra,* 87 Cal. App. 2d at pp. 893, 895.)

If a statement of disqualification is legally insufficient, a judge may strike it from the files. (Code Civ. Proc. § 170.4(b), (c)(3); *In re Morelli* (1970) 11 Cal. App. 3d 819, 843-844, 850

[statement was inadequate and properly stricken]; *Urias v. Harris Farms, Inc.* (1991) 234 Cal. App. 3d 415, 421.) A statement of disqualification for cause and the papers supporting it, may be stricken from the files when all that the papers contain are any of the following: (1) Conclusions, (2) References to copious transcripts without citation to specific excerpts; (3) Allegations of facts not pertinent or appropriate to the issues to be determined in the hearing; (4) Material not legally indicative of bias or prejudice, such as judicial opinions expressed in discharge of litigation and judicial ruling; (5) Judicial reactions based on actual observations in legal proceedings; and/or (6) References to circumstances so inconsequential as to be no indication whatsoever of hostility and nonprobative of any bias or prejudice. (*See In re Morelli* (1970) 11 Cal. App. 3d 819, 843; *see also In re Marriage of Lemen* (1980) 113 Cal. App. 3d 769, 789-791.)

Defendant's claims of disqualifying conduct which are directed at this judge constitute no more than: (1) conclusions, (2) allegations of facts not pertinent or appropriate to the issues to be determined in the hearing; (3) material not legally indicative of bias or prejudice, such as judicial opinion expressed in discharge of litigation and judicial rulings; (4) judicial reactions based on actual observations in legal proceedings; and/or (5) references to circumstances so inconsequential as to be no indication whatsoever of hostility and not probative of any bias or prejudice. (*See In re Morelli* (1970) 11 Cal. App. 3d 819, 843; *see also In re Marriage of Lemen* (1980) 113 Cal. App. 3d 769, 789-791.)

With regard to conduct alleged against this judge, Defendant has asserted nothing more than the Court's disposition of the matters before it within its jurisdiction, and/or in exercise of its discretion.

In sum, Defendant's Petition is legally insufficient as it fails to state any facts or circumstances upon which a decision of disqualification could potentially be made. The Challenge is therefore ordered stricken from the court record pursuant to Code of Civil Procedure section 170.4(b) because the face of the Challenge discloses no legal grounds for disqualification.

Dated: July 7, 2017

JUDGE OF THE SUPERIOR COURT
HON. STEVE WHITE

4

272

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **ORDER STRIKING DEFENDANT'S CHALLENGE FOR CAUSE** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 Ninth Street, Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

TODD ROBBEN, X-REF 5073288
SACRAMENTO COUNTY MAIN JAIL
651 I ST, 5W-1-32A-LOW
SACRAMENTO, CA 95814

RUSSELL W. MILLER, JR
MILLER LAW GROUP
901 H ST #612
SACRAMENTO, CA 95814

DALE GOMES
EL DORADO COUNTY DISTRICT ATTY
515 MAIN ST
PLACERVILLE, CA 95667

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Superior Court of California,
County of Sacramento

Dated: July 7, 2017

By: _____
C. BEEBOUT, Deputy Clerk

CERTIFICATE OF SERVICE.doc

273

Denied from bench 7-21 DP

FILED/ENDORSED
JUL 17 2017
By Christa Bostout, Deputy Clerk

THE PEOPLE
v
TODD ROBBEN

Case No.: P17CRF0114

Ex Parte Motion To alter/amend or Reconsider order Striking Defendant's Challenge For Cause

Alternative 170.6 "Challenge" With verified affadavit of Bias and prejudice

Defendant, Todd Robben moves Judge Steve White to comply with the law, Judicial ethics, and disqualify/recuse from case# P17CRF0114 which was unlawfully Transferred from El Dorado County by an "assigned" retired Judge named Daniel Proud who was not assigned by The Chief Justice of The California Supreme Court and/or The Judicial Council persuant To Cal. Constitution Art 6, section 6.

Defendant Todd Robben also never Consented To a venue change persuant To

1 of 3

278

Government Code Section 69740(b).
Judge White often ~~to~~ to violate Defendant's civil rights and Judge White has bias and prejudice against the Defendant as demonstrated in his July 07 2017 order.

Judge White violates the judicial code of conduct listed in canons 1, 2, and 3 including 3(b)(8), and 3(b)(2). Judge White did not comply with CCP 170.3(5)(c) and having another judge decide the issue. IT is very, very clear that Judge White is bias, prejudice, and lacks integrity. Judge White's bias and prejudice is demonstrated against Todd Robben who is a constitutionalist. Judge White is at war with men like Todd Robben who assert their rights and defend themselves against fascist tyrants.

The original Motion for Disqualify Judge White mailed on June 26 2017 did contain facts and an affidavit with legal grouds for disqualification persuant to 170.1(A)(6)(A)(iii) and 170.1(7) and 170.6. The motion was Timely.

Since Judge White wishes to violate the Defendant's civil rights, The Defendant will add Judge White to his

2

279

42 USC 1983 lawsuit which includes RICO and conspiracy.

The Defendant [illegible]:

Todd Robben, being duly sworn, deposes and says: he is a party TO This action, Judge Steve White ffom Dept. 21 where case # P17CRF0114 is pending is prejudice against Todd Robben so That Todd Robben cannot have a fair Trial or heoring before Steve White. Additionally, Todd Robben demands To review Steve White's oaTh of office where iT is a fact Steve White is not an article III judge and instead only a commissioner (Form 61). Steve White lacks jurisdicTion for reasons stated in This moTion and he's noT an arTicle III Judge - see U.S. v Woodley 726 F2d 1328.

Signed Under Penalty of Perjury

Todd Robben
7-12-2017

P.S. Judge White can or could have had a heoring on The matter and declined...

3 of 3

280

This CCP 170.6 disqualification issue and 14th amendment due-process violation would have reversed the conviction alone and Mr. Angres cumulative failures to argue meritorious issues including IAC/CDC of trial counsel as addressed in this pleading and actual innocence since the Petitioner was denied a fair trial (the trial was an unconstitutional) the speech was first amendment protect speech as argued later in this petition.

The CCP 170.6 and 14th amendment issue could have been appealed and/or argued on a habeas corpus petition since there is no authority that states a erroneous denial or striking of a CCP 170.6 challenge cannot be argued on a habeas corpus. Mr. Angres was IAAC/CDC.

CA Penal Code § 1259 "Upon an appeal taken by the defendant, the appellate court may, without exception having been taken in the trial court, review any question of law involved in any ruling, order, instruction, or thing whatsoever said or done at the trial or prior to or after judgment, which thing was said or done after objection made in and considered by the lower court, and which affected the substantial rights of the defendant. The appellate court may also review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby."

Petitioner was prejudiced by both trial counsel and appellate counsel. See *In re Reno, 283 P. 3d 1181 - Cal: Supreme Court 2012* "**criminal defendants are guaranteed the right to effective legal representation on appeal"**. *(In re Sanders, supra, 21 Cal.4th at pp. 715-716.)* See *EVITTS v. LUCEY 469 U.S. 387 (1985)* Interpreting *Douglas v. California (1963),* the Supreme Court held, 7–2, in an opinion by Justice William J. Brennan, that **the due process clause of the fourteenth amendment requires the effective assistance of counsel during a defendant's first appeal, as of right, from a criminal conviction.**

In *People v. Osband, 13 Cal. 4th 622 - Cal: Supreme Court 1996* "A defendant claiming ineffective assistance of counsel under the federal or state Constitutions must show both deficient performance under an objective standard of professional reasonableness and prejudice under a test of reasonable probability of a different outcome. *(People v. Ledesma (1987) 43 Cal.3d 171, 216-218 [233 Cal. Rptr. 404, 729 P.2d 839*].) We apply that standard to representation on appeal. (*People v. Hamilton (1988) 45 Cal.3d 351, 377 [247 Cal. Rptr. 31, 753 P.2d 1109]; Alford v. Rolfs (9th Cir.1989) 867 F.2d 1216, 1220; see also In re Harris (1993) 5 Cal.4th 813, 833 [21 Cal. Rptr.2d 373, 855 P.2d 391*]; cf. *Evitts v. Lucey (1985) 469 U.S. 387, 392 [83 L.Ed.2d 821, 827, 105 S.Ct. 830]*

[declining to decide whether same standard to show ineffective assistance on review applies to appellate as well as trial counsel].)"

This Petitioner DID file a timely petitioner for writ of mandate in the court of appeal as described above. In *People v. Freeman, 222 P. 3d 177 - Cal: Supreme Court 2010:*

> **Ordinarily, the failure to file a writ petition precludes a subsequent appellate challenge based on a disqualification claim. However, when the appellant's disqualification claim implicates constitutional due process rights, appellate review is permitted.** In Brown, supra, 6 Cal.4th at pages 334-335, 24 Cal.Rptr.2d 710, 862 P.2d 710, the California Supreme Court concluded that a party may raise a constitutional due process disqualification ground on appeal, even though the statutory disqualification ground addressing essentially the same due process issue may be reviewed only by writ.
>
> **In Brown, the defendant had brought a writ petition challenging a disqualification decision on a statutory ground, and the petition was summarily denied. The Brown court concluded the defendant's due process claim was entitled to the procedural protections afforded on appeal (i.e., oral argument and a written opinion) and thus he could again raise the issue in his appeal from the final judgment.** (Id. at p. 336, 24 Cal.Rptr.2d 710, 862 P.2d 710.)
>
> **In dicta, the Brown court suggested that in some cases a negligent failure to file a writ petition may constitute a forfeiture of the constitutional claim. (Ibid.) However, subsequent to Brown, the high court clarified that as long as the disqualification claim was raised at trial, it could be raised on appeal on constitutional grounds even if a writ petition was not filed.** (People v. Chatman (2006) 38 Cal.4th 344, 363, 42 Cal.Rptr.3d 621, 133 P.3d 534.) **That is, "a defendant who raised the [disqualification] claim at trial may always `assert on appeal a claim of denial of the due process right to an impartial judge.'"** (Ibid.)
>
> In People v. Mayfield (1997) Cal. Supreme Ct. 14 Cal.4th 668 *811 (78): **Under our statutory scheme, a petition for writ of mandate is the exclusive method of obtaining review of a denial of a judicial disqualification motion.** (Code Civ. Proc., § 170.3, subd. (d); People v. Hull (1991) 1 Cal.4th 266, 269 [2 Cal. Rptr.2d 526, 820 P.2d 1036].) **Nevertheless, a defendant may assert on appeal a claim of denial of the due process right to an impartial judge.** (People v. Brown (1993) 6 Cal.4th 322, 335 [24 Cal. Rptr.2d 710, 862 P.2d 710].) Accordingly, we construe defendant's contention as a due process claim.

Since Judge Steve White failed to remove/disqualify, and as any corrupt bias/impartial/prejudice judge would do, **Judge White wrongfully claimed the peremptory**

challenge was untimely and not signed under penalty of perjury. Here, any objective review could only conclude Judge Steve White was bias & prejudice since he is being sued by the Petitioner and Judge White engaged in judicial misconduct and fraud when he struck the CCP 170.6 challenge when the CCP 170.6 was timely, in the proper format, and signed under penalty of perjury. Judge Steve White had to lie and claim it was not timely, did not comply with the proper format and was not signed under penalty of perjury.

Petitioner's U.S. Constitutional 14th amendment due-process right was violated and controlling case law mandates reversal per se. … And pursuant to CCP section 170.1, subdivision (a)(6) (a person aware of the facts reasonably might entertain a doubt whether the judge would be able to be impartial).

In *Maas v. Superior Court, 383 P. 3d 637 - Cal: Supreme Court 2016* the California Supreme Court explained:

> The question presented in the case involves an interplay between a litigant's right to disqualify a superior court judge for prejudice under section 170.6, and the procedures governing a petitioner's challenge to his or her criminal conviction or sentence by way of a petition for writ of habeas corpus. We begin with a brief overview of the relevant features of the two schemes, and then proceed to decide the proper application of section 170.6 under the circumstances presented by this case.
>
> A. Disqualification of a superior court judge under section 170.6
>
> (1) Section 170.6 provides that "[a] judge, court commissioner, or referee of a superior court of the State of California shall not try a civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding." (§ 170.6, subd. (a)(1).) **Prejudice is established, for purposes of section 170.6, by a motion supported by an "affidavit or declaration under penalty of perjury, or an oral statement under oath" that the assigned judge "is prejudiced against a party or attorney ... so that the party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial or hearing before the judge**...." (§ 170.6, subd. (a)(2).) **So long as the "motion is duly presented, and the affidavit or declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof," a different judge must be assigned to try the cause or hear the matter.** (§ 170.6, subd. (a)(4).)

(2) **When a litigant has met the requirements of section 170.6, disqualification of the judge is mandatory, without any requirement of proof of facts showing that the judge is actually prejudiced**. (*McCartney v. Commission on Judicial Qualifications (1974) 12 Cal.3d 512, 531 [116 Cal.Rptr. 260, 526 P.2d 268]; Loftin v. Superior Court (1971) 19 Cal.App.3d 577, 579 [97 Cal.Rptr. 215]* [the statute's provisions "give a litigant one chance to get rid of an unwanted judge, whom he cannot successfully challenge [for cause] under [former] section 170"].) **This court has characterized the Legislature's enactment of section 170.6 as having bestowed upon litigants "an extraordinary right" to peremptorily challenge a judge.** (*McCartney, at p. 531.*) **"The right is `automatic' in the sense that a good faith belief in prejudice is alone 973*973 sufficient" for disqualification**. (Ibid.; see *Solberg v. Superior Court (1977) 19 Cal.3d 182, 193 [137 Cal.Rptr. 460, 561 P.2d 1148].*) **Permitting a party's belief that the judge is prejudiced to justify disqualification was intended to "preserve public confidence in the impartiality of the courts."** (*Solberg, at p. 193; see International Union of Operating Engineers v. Superior Court (1989) 207 Cal. App. 3d 340, 349 [254 Cal.Rptr. 782*] **[the purpose of § 170.6 is "`to promote fair and impartial trials'"].) "[S]ection 170.6 is to be liberally construed in favor of allowing a peremptory challenge, and a challenge should be denied only if the statute absolutely forbids it."** (Stephens v. Superior Court (2002) 96 Cal.App.4th 54, 61-62 [116 Cal.Rptr.2d 616]; accord, International Union of Operating Engineers, at p. 349.)

Disqualification is ministerial. “Courts of Appeal reviewing section 170.6 orders frequently describe the appellate standard of review for such orders as abuse of discretion. (See, e.g., *Entente Design, Inc. v. Superior Court (2013) 214 Cal.App.4th 385, 389.*) However, trial courts have no discretion to deny a section 170.6 motion filed in compliance with the statute’s procedures. (*Maas v. Superior Court (2016) 1 Cal.5th 962 at p. 972.*) **Because the trial court exercises no discretion when considering a section 170.6 motion, it is “appropriate to review a decision granting or denying a peremptory challenge under section 170.6 as an error of law. review under the non-deferential de novo standard.”** (*Ziesmer v. Superior Court (2003) 107 Cal.App.4th 360, 363.*)” See *Bontilao v. Superior Court, 37 Cal. App. 5th 980 - Cal: Court of Appeal, 6th Appellate Dist. 2019.*

“We review an order denying a section 170.6 peremptory challenge for abuse of discretion. (*Grant v. Superior Court (2001) 90 Cal.App.4th 518, 523 [108 Cal.Rptr.2d 825*].) **"The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of**

the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi v. Superior Court (2008) 43 Cal.4th 706, 711-712 [76 Cal.Rptr.3d 250, 182 P.3d 579], fns. omitted.*)" *PEOPLE v. SUPERIOR COURT (TEJEDA) 1 Cal.App.5th 892 (2016)*

Judge Steve White had no jurisdiction to hold further proceedings other than to inquire into the timeliness and technical sufficiency rather than striking the filing as a sham and frivolous as stated in *McCartney v. Commission on Judicial Qualifications, 526 P. 2d 268 - Cal: Supreme Court 1974* stated:

> **It is well recognized that in enacting Code of Civil Procedure section 170.6 the Legislature guaranteed to litigants an extraordinary right to disqualify a judge. The right is "automatic" in the sense that a good faith belief in prejudice is alone sufficient, proof of facts showing actual prejudice not being required.** *(E.g., Pappa v. Superior Court (1960) 54 Cal.2d 350, 353 [5 Cal. Rptr. 703, 353 P.2d 311]; Mayr v. Superior Court (1964) 228 Cal. App.2d 60, 63 [39 Cal. Rptr. 240].)*
>
> **Accordingly, the rule has developed that, once an affidavit of prejudice has been filed under section 170.6, the court has no jurisdiction to hold further proceedings in the matter except to inquire into the timeliness of the affidavit or its technical 532*532 sufficiency under the statute**. (See, e.g., *Andrews v. Joint Clerks etc. Committee (1966) 239 Cal. App.2d 285, 293-299 [48 Cal. Rptr. 646],* upholding court's power to inquire as to timeliness; *Lewis v. Linn (1962) 209 Cal. App.2d 394, 399-400 [26 Cal. Rptr. 6*], upholding court's power to inquire into sufficiency.)
>
> **When the affidavit is timely and properly made, immediate disqualification is mandatory.** *(Jacobs v. Superior Court (1959) 53 Cal.2d 187, 190 [1 Cal. Rptr. 9, 347 P.2d 9].)* Hence, petitioner was bound to accept proper affidavits without further inquiry. A fortiori, his vehement criticism of public defenders for exercising such statutory power was clearly improper. (*Cf. Calhoun v. Superior Court (1958) 51 Cal.2d 257 [331 P.2d 648],* **holding improper a trial court's striking of a Code Civ. Proc., § 170 statement as a "sham" and "frivolous.")**
>
> Moreover, the highly personal hostility for the public defender's office which petitioner expressed in doing so was absolutely inappropriate. Precisely the same sort of abuse of position evident in a judge's arbitrary substitutions of counsel met with our condemnation as wilful misconduct in Geiler. As this court has noted in respect to the exercise of contempt powers, **"[a] judge should bear in mind that he is engaged, not so much in vindicating his own character, as in promoting the respect due to the administration of the laws...."** (*People ex rel. Field v. Turner (1850) 1 Cal. 152, 153.)*

Case law indicates that the orders of disqualified judges are void outright and must be vacated. (E.g., *Giometti v. Etienne (1934) 219 Cal. 687, 688–689, 28 P.2d 913; Ziesmer v. Superior Court (2003) 107 Cal.App.4th at p. 364, 132 Cal.Rptr.2d 130; Zilog, Inc. v. Superior Court (2001) 86 Cal.App.4th 1309, 1323, 104 Cal.Rptr.2d 173; In re Jenkins (1999) 70 Cal.App.4th 1162, 1165–1167, 83 Cal.Rptr.2d 232; In re Jose S. (1978) 78 Cal.App.3d 619, 628, 144 Cal.Rptr. 309*.)

"trial by judge who is not fair or impartial constitutes 'structural defect in the constitution of the trial mechanism' and resulting judgment is reversible per se" *People v. Brown*, supra citing *Arizona v. Fulminante* (1991) 499 U.S. 279, 309 [113 L.Ed.2d 302, 331, 111 S.Ct. 1246]. see also *Gomez v. United States* (1989) 490 U.S. 858, 876 [104 L.Ed.2d 923, 939-940, 109 S.Ct. 2237]; *Gray v. Mississippi* (1987) 481 U.S. 648, 668 [95 L.Ed.2d 622, 639-640, 107 S.Ct. 2045] **["impartiality of the adjudicator goes to the very integrity of the legal system"];** *Rose v. Clark* (1986) 478 U.S. 570, 579, fn. 7 [92 L.Ed.2d 460, 471, 106 S.Ct. 3101]; *Tumey v. Ohio* (1927) 273 U.S. 510, 535 [71 L.Ed. 749, 759, 47 S.Ct. 437, 50 A.L.R. 1243**] ["No matter what the evidence was against him, he had the right to have an impartial judge."**

Petitioner also asserts the decision in *People v. Hull, 820 P. 2d 1036 - Cal: Supreme Court 1991* is incorrect and he concurs with the dissenting opinion since that is what the statute states. Since Petitioner did file a petition for writ of mandate within 10 days and the other case law indicates the issue could have been raised on appeal (as a 14th amendment due-process violation). In the event the court disagrees, the issue should have been appealable on the language of the statute. …And the issue is not precluded on habeas corpus and a separate issue, or IAC/CDC and IAAC.

> *People v. Hull, 820 P. 2d 1036 - Cal: Supreme Court 1991*
>
> KENNARD, J.
>
> I dissent.
>
> The majority holds that a party seeking review of an unsuccessful peremptory challenge to a trial judge can do so only by petitioning for a writ of mandate within 10 days of notice of the disputed ruling, and not by postjudgment appeal. Although the majority's holding has practical advantages — immediate writ review generally will avoid reversal and retrial, thus promoting judicial economy — it finds no support in the statutory scheme.

I. THE TWO REMOVAL METHODS

The Code of Civil Procedure[1] sets out two separate methods by which a party may prevent a trial judge or other judicial officer from presiding over a particular legal action. A party can seek to remove a judge under sections 170.1 and 170.3 (commonly called a "for cause" disqualification), or it can exercise a peremptory challenge against the judge under section 170.6, as defendant did here.

Section 170.1, subdivision (a) lists the grounds for disqualifying a judge "for cause."[2] Section 170.3 sets forth the procedure for such disqualification. A judge who "determines himself or herself to be disqualified" must notify the court's presiding judge of the recusal. (§ 170.3, subd. (a).) A disqualified 277*277 judge may, however, seek a waiver from the parties after disclosing the basis for disqualification "on the record." (§ 170.3, subd. (b).)

If "a judge who should disqualify himself or herself refuses or fails to do so," the party seeking the disqualification must file a verified, written statement with the clerk of the court objecting to the hearing or trial before the judge and "setting forth the facts constituting the grounds for disqualification." (§ 170.3, subd. (c)(1).) The judge can either consent to the disqualification or file a verified answer admitting or denying the allegations in the challenger's statement and adding any additional facts material "to the question of disqualification." (§ 170.3, subd. (c)(3).) Unless there is a recusal by the challenged judge, the question of disqualification must be heard and "determined" by another judge agreed to by the parties. (§ 170.3, subd. (c)(5).) That determination may be based on the challenger's statement and the answer filed by the challenged judge, or by evidence presented at a hearing. (§ 170.3, subd. (c)(6).) Thus, when a judge's disqualification is contested, the challenging party must establish the facts supporting its claim of bias or prejudice to the satisfaction of a neutral judge, who is to determine whether there is "cause" for disqualification.

As noted earlier, a party seeking to remove a judge from hearing a particular matter involving a contested issue of law or fact is not restricted to filing a challenge based on any "cause" contained in section 170.1, but may seek removal simply by filing a peremptory challenge to the judge under section 170.6.

Section 170.6 prohibits a judge, or other judicial officer, from hearing a matter when that judicial officer is "prejudiced" against any party or lawyer in the proceeding. (§ 170.6, subd. (1).)[3] Prejudice under this section is established merely by "an oral or written motion without notice" supported by a sworn affidavit stating that the judge is prejudiced against either the party or the attorney for the party making the motion "so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge...." (§ 170.6, subd. (2).)

Thus a "for cause" disqualification of a judge (§ 170.1) and a peremptory challenge (§ 170.6) differ in the following important respect: A "for cause" disqualification requires the challenger to establish bias or prejudice as a fact 278*278 to the satisfaction of an impartial judge, but the allegation of bias in a peremptory challenge may not be contested and removal is automatic upon the filing of an affidavit of prejudice. (Oak Grove School Dist. v. City Title Ins. Co. (1963) 217 Cal. App.2d 678, 703 [32 Cal. Rptr. 288] [contrasting former § 170, subd. (5), from which § 170.1 was derived, with § 170.6].)

II. APPEALABILITY

Before enactment of the provision at issue here, the rules for appellate review of orders on "for cause" disqualifications (§ 170.1) and on peremptory challenges (§ 170.6) were the same. Such orders were not separately appealable, but were subject to review by extraordinary writ and also on appeal from final judgment. (Reichert v. General Ins. Co. (1968) 68 Cal.2d 822, 825, fn. 1 [69 Cal. Rptr. 321, 442 P.2d 377]; Briggs v. Superior Court (1932) 215 Cal. 336, 342 [10 P.2d 1003]; People v. Whitfield (1986) 183 Cal. App.3d 299, 306 [228 Cal. Rptr. 82]; Garcia v. Superior Court (1984) 156 Cal. App.3d 670, 679 [203 Cal. Rptr. 290].)

In 1984, as part of its amendment of the statutory scheme governing "for cause" disqualifications, the Legislature added the following limitation on appellate remedies: "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought within 10 days of notice to the parties of the decision and only by the parties to the proceeding." (§ 170.3, subd. (d), italics added.) The issue here is whether this provision (hereafter subdivision (d)) applies only to "for cause" disqualifications or also to peremptory challenges. Subdivision (d)'s placement and language show that the Legislature intended it to apply only to "for cause" disqualifications.

The Legislature placed subdivison (d) in section 170.3. Each of section 170.3's other subdivisions relates exclusively to the procedure for disqualification of judicial officers "for cause." The procedure for peremptory challenges of judges, on the other hand, appears in a different statute, section 170.6. Subdivision (d) makes no reference to section 170.6, nor does section 170.6 refer to subdivision (d). Because the Legislature grouped it with the procedures governing rulings on "for cause" disqualifications, the most reasonable inference is that the Legislature intended subdivision (d)'s limitation on appellate remedies to apply exclusively to such rulings.

This inference is strongly reinforced by the language of subdivision (d). Other subdivisions of section 170.3 use the term "disqualification" and the phrase "question of disqualification" (often in conjunction with the word "determines") when referring to the procedure for removing a judge "for 279*279 cause." For

example, subdivision (c)(5) of section 170.3 states that "the question of disqualification shall be heard and determined by another judge," while subdivision (c)(6) of the same section states that the judge deciding "the question of disqualification" may do so on the basis of the statement and answer filed by the parties or may set the matter for a hearing, that the judge shall permit argument at a hearing on "the question of disqualification," and that notice is to be given the presiding judge if the impartial judge "deciding the question of disqualification determines" that the judge is disqualified.

In contrast, the peremptory challenge provision, section 170.6, never uses the words "determine," "question," or "disqualification." Moreover, the reference in subdivision (d) to the "determination of the question of disqualification" would be an inapt and improbable description of the procedure for a peremptory challenge of a judge: because judicial removal under section 170.6 is automatic (see People v. Whitfield, supra, 183 Cal. App.3d 299, 303), a peremptory challenge presents no question of disqualification to be determined. Thus, subdivision (d)'s use of the language "determination of the question of disqualification" should be construed to apply only to rulings on disqualifications "for cause," and not to peremptory challenges.

The majority reasons that its limitation of the appellate review of rulings on peremptory challenges will eliminate "possible delay, waste, and the relitigation of issues" that occur when such rulings are reviewed on postjudgment appeal. (Maj. opn., ante, p. 273.) As the majority points out, public policy favors pretrial writ review because it permits the appellate court to remedy an erroneous denial of any judicial challenge, usually without the necessity of reversing a judgment. (Maj. opn., ante, p. 272.)[4]

I agree that public policy favors immediate writ review. That policy, however, does not empower us to rewrite a statute. (Nott v. Superior Court (1988) 204 Cal. App.3d 1102, 1106 [251 Cal. Rptr. 842].) Whether any policy is sufficiently important for a statutory mandate is a question for the Legislature, not this court. (See People v. National Association of Realtors (1981) 120 Cal. App.3d 459, 475 [174 Cal. Rptr. 728].) Because in the case of a peremptory challenge under section 170.6, the Legislature has not limited appellate review to a petition for writ of mandate filed within 10 days, the issue can be raised by defendant on this postjudgment appeal. (See Pen. Code, § 1259; Briggs v. Superior Court, supra, 215 Cal. 336, 342; People v. 280*280 Whitfield, supra, 183 Cal. App.3d 299, 306; In re Christian J. (1984) 155 Cal. App.3d 276 [202 Cal. Rptr. 54].)

III. DEFENDANT'S PEREMPTORY CHALLENGE

Defendant contends her section 170.6 peremptory challenge against the judge assigned to preside over her trial was timely and thus should have been granted. I agree.

Section 170.6, subdivision (2) specifies the time within which a peremptory challenge must be asserted: "If directed to the trial of a cause where there is a master calendar," the peremptory challenge must be presented to the judge supervising the master calender court "not later than the time the cause is assigned for trial." But this provision cannot be interpreted to require the filing of a peremptory challenge motion before counsel for the moving party learns the identity of the assigned judge. (People v. Bonds (1988) 200 Cal. App.3d 1018, 1024 [248 Cal. Rptr. 5]; People v. Montalvo (1981) 117 Cal. App.3d 790, 794 [173 Cal. Rptr. 51].)

Here, the master calendar court assigned defendant's case for trial before Judge Pierson on Friday, October 27, 1989. Because the defense had not been ordered to appear on that date, neither defendant nor her counsel was present. The next court day, Monday, October 30, 1989, when defense counsel learned of the assignment, was therefore the earliest possible opportunity to present to the master calendar court defendant's peremptory challenge of Judge Pierson. Thus, defendant's peremptory challenge, presented to the master calendar court on October 30, 1989, was timely. (See People v. Bonds, supra, 200 Cal. App.3d at 1024; People v. Montalvo, supra, 117 Cal. App.3d at 794.)

When the issue of judicial removal is raised on postjudgment appeal, a determination by the reviewing court that the trial judge should have been removed requires reversal. (See Briggs v. Superior Court, supra, 215 Cal. 336, 342; People v. Whitfield, supra, 183 Cal. App.3d 299, 306.) **As I have explained, defendant's peremptory challenge to Judge Pierson was timely and should have been granted. Because the issue is properly before us on postjudgment appeal, that judgment should be reversed.**

Appellant's petition for a rehearing was denied February 20, 1992. Kennard, J., was of the opinion that the petition should be granted.

D.D.A Dale Gomes claims the peremptory challenge was a tactic used by the Petitioner to remove unwanted judges, delay and hope the case would be dismissed. Yet, the El Dorado D.A. Vern Pierson has literally removed El Dorado Co. Judge Dylan Sullivan from all criminal cases by papering her with blanket peremptory challenges:

EDC judge ousted from criminal bench

PUBLISHED: AUGUST 17, 2015

By Kathryn Reed

Cached:

https://web.archive.org/web/20151229061622/http://www.laketahoenews.net/2015/08/edc-judge-ousted-from-criminal-bench/

El Dorado County Superior Court Judge Dylan Sullivan has been removed from all criminal cases and instead will hear civil issues.

The reason for this change has not been disclosed.

Presiding Judge Suzanne Kingsbury, who makes the assignments, deferred comment to the El Dorado County District Attorney's Office. She would not explain why.

"The legal system is designed so both the District Attorneys Office as well as the Public Defenders Office is offered the opportunity when appropriate to exercise the legal authority to exclude a Superior Court judge from a case. At this time the District Attorneys Office has chosen to utilize this legal right," Deputy District Attorney David Stevenson told *Lake Tahoe News*.

The DA's Office has filed a number of preemptory challenges against Sullivan. However, the reasons are not being disclosed. The DA's office said Sullivan would be challenged on a case-by-case situation.

El Dorado County Superior Court Judge Suzanne Kingsbury, left, was at Dylan Sullivan's election party last year. Photo/Provided

These types of challenges are not routine, but neither are they rare, according to legal officials. They must be made in a timely manner and can only be filed once per case.

Filing such a challenge is equivalent to saying one does not believe the judge will be able to handle the case, perhaps for ethical reasons. The attorney doing the challenge does not have to prove bias. While California is not alone in allowing this type of procedure, it is not the norm in most states.

The judge has no recourse and essentially does not get her day in court to prove she is or is not biased or that she is being wrongfully persecuted in a reverse case of bias.

People close to the issue told *Lake Tahoe News* things came to a head last week with Kingsbury clearing Sullivan's court calendar starting on Aug. 10. By the end of the week Sullivan was told to go home. This week she has been seen following Judge Nelson Brooks who handles probate, an area of law Sullivan isn't familiar with. Reports are the two judges will be swapping departments.
Even so, this will not eliminate Sullivan from interacting with deputy district attorneys. They are involved in delinquency and other cases in that department.

"There are judicial ethics that make it difficult for me to comment," Sullivan told *Lake Tahoe News*. She would not say anything more.
The normal process if someone has an issue with a judge is to file a complaint with the Commission of Judicial Performance.

"We can't talk about specific cases. We can't say who is under investigation," Victoria Henley, director and chief counsel for the commission, told *Lake Tahoe News*.
If a challenge for cause were filed, that is when the challenger has to prove bias or misconduct by the judge.

Sullivan, 49, was elected to the job in June 2014. She filled the vacancy of retiring Judge Daniel Proud. She was to begin the job in January, but instead Gov. Jerry Brown appointed her to the seat early. Kingsbury swore her in Sept. 19, 2014.

At that time Kingsbury said she assigned Sullivan to Department 7, the criminal pre-trial department in Placerville, to handle misdemeanor arraignments, hear preliminary matters, traffic issues, and drug court because of Sullivan's training and experience.

Comments

Comments (14)

1. Chief Slowroller says - POSTED: AUGUST 17, 2015
   did they find out that she is bought and sold ?

2. 
experienced says - POSTED: AUGUST 18, 2015
framing article

3. 
gigguy says - POSTED: AUGUST 18, 2015
I am glad that Judge Kingsbury took the bull by the horns and acted. That is her job to do, after all, and I trust she had good reasons.
If I could get 5 minutes with the Judge I'd hope she'd be barring a couple completely incompetent (and high) attorneys and employees of her court, that can't perform their jobs and hide their huge errors from her at the cost of people working their way through the system. It should be criminal.

4. 
Ted Long says - POSTED: AUGUST 18, 2015
Judge Sullivan was one of the most understanding and fair judges I have ever had the opportunity to appear before. She takes the time to understand the people as well as the issues. In my experience some people expect the judge to be hard and fast, and I might add biased. Judge Sullivan choice compassion and fairness.

5. 
Michael Priest says - POSTED: AUGUST 18, 2015
Judge Sullivan holds everyone accountable and, yes, that includes the DAs office. She follows the law!!!!

6. TOM says - POSTED: AUGUST 18, 2015
THE COURTS ARE SUPPOSED TO BE AN UNBIASED FORUM!!! IF THE DISTRICT ATTORNEY DOES NOT LIKE THE JUDGE, THEY CAN DISQUALIFY THEM ON A CASE AND SO CAN THE DEFENSE ATTORNEY. JUST BECAUSE THE PROSECUTOR WANTS TO DISQUALIFY THE JUDGE, THE HEAD JUDGE SHOULD NOT MOVE THE JUDGE!!! "JUDGE SHOPPING IS ILLEGAL"! WHAT DOES THIS MEAN??? IT MEANS THAT THE PROSECUTOR IS CONTROLLING THE COURT AND THE HEAD JUDGE IS ALLOWING THEM TO DO SO!!! THIS IS AN OUTRAGE!! THE PEOPLE OF EL DORADO VOTED FOR JUDGE SULLIVAN AND NOW THE HEAD JUDGE IS MOVING HER OUT BECAUSE THE PROSECUTOR DOES NOT LIKE THAT SHE IS MAKING THEM FOLLOW THE RULES IN THE JUSTICE SYSTEM. THIS JUDGE HAS NOTHING WRONG – ONLY TO HOLD BOTH SIDES ACCOUNTABLE AND MAKE BOTH SIDES FOLLOW THE RULES!

7. Johnathan says - POSTED: AUGUST 18, 2015
You are right – the story should be that the Presiding Judge allowed the DA to control the bench! This is outrageous conduct and the voters of El Dorado County should be outraged.

What the reporter is likely unaware of is that the 170.6 challenges may be routine, but to have a presiding judge coward to the demands of the DAs office should outrage every person expecting a fair hearing in El Dorado County. When I say everyone, I mean, attorneys, citizens, officials – EVERYONE.

I am concerned as all of you should be, if the DA wanted Judge Sullivan out, what kind of criminal experience does Judge Brooks have?

This should be concerning to every single person!!

8.

Lock says - POSTED: AUGUST 18, 2015
Why Would the Judge Kingsberry “defer comment to the district attorneys office”. Sounds to me like they are in-cahoots… not OK. Judges are supposed to not favor either side and we see who Judge Kingserry is siding with the District attorney against Judge Dylan. This is scary. We cant really trust anyone in this county anymore.. Judge Brooks is going to the criminal court because he doesnt have criminal experience so the district attorney will be the Judge really.. no more defense in criminal cases here anymore… scary!

9. William S says - POSTED: AUGUST 18, 2015
Judge Sullivan is good for the kids of El Dorado County! This is a WONDERFUL move!

10. Jazz says - POSTED: AUGUST 18, 2015
These are typical politicians.. Kingsbury is working for **Vern Pearson who has lied about being in the Military** and now he has the courts under his control too. The District Attorney himself has not even stated a reason for disqualifying a very experienced woman Judge who the people put in Office. There is no good reason to disqualify an experienced criminal judge on all cases.. He did not support Judge Sullivan and people knew he would try to get her out. Now Kingsbury let it happen and is trying to make it seem like Judge Sullivan did something wrong. All she has done is follow the law and make all the attorneys follow the law. Shame on Kingsbury!

11. Justice says - POSTED: AUGUST 19, 2015
I have never seen a question about the DA’s military service ever come up, and with this kind of accusation without a shred of facts to support it, it is not something someone should be doing without the required proof if they have it. For the other questions about why a judge is being disqualified for criminal cases by the DA’s Office, the reason must be there somewhere and I am sure it will be revealed soon and if the judge is unable to hear criminal cases because of a bias it can cause a lot of delays and it is an legitimate issue.

12. What Do You Know? says - POSTED: AUGUST 19, 2015
Just ridiculous! You take the time to vote only to have the vote be taken away! Why move a judge who has many years experience in Criminal Law? Judge Sullivan is VERY fair in all her criminal cases. The people of El Dorado County should feel deluded.

13. Nena Aguirre says - POSTED: AUGUST 19, 2015
The voters of El Dorado County should be outraged by this!! I cannot believe that the DA’s office would even have the audacity to question Judge Sullivan’s actions when she is known for and IS a judge that maintains all fairness for all parties in her courtroom, she applies the rules of the judicial system to all while upholding the law and applying the constitution. The real travesty is that the DA’s office is now being allowed to dictate who presides over what –Well what about the people that she represents??–where is our voice in this decision.

14. Kristin says - POSTED: SEPTEMBER 3, 2015
I am on the board of the El Dorado Hills Tea Party Patriots. We met her and spoke with her. She’s tough. We had a candidate’s forum and she outperformed the other contenders for the position. The majority of people who attended the forum knew she was the person for the job. She knows her stuff. She’s fair minded. The Tea Party Patriots of EDH endorsed her for this position, and we don’t hand out endorsements like candy. This is very concerning.

EL DORADO COUNTY SUPERIOR COURT JUDGE DYLAN SULLIVAN PULLED FROM DUTY

Short URL: http://www.villagelife.com/?p=51676

August 17, 2015 | Posted by Amanda Williams

Judge Dylan Sullivan
El Dorado County District Attorney officials have excluded El Dorado County Superior Court Judge Dylan Sullivan from proceedings until further notice.

DA officials cite California Civil Code 170.6 to back up their action. The code states, "A judge, court commissioner or referee of a superior court of the state of California shall not try a civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding."

"The legal system is designed so that the DA's Office as well as the police department is afford the opportunity, when applicable, to exercise the legal authority to exclude a judge from proceedings," DA investigator Dave Stevenson told the Mountain Democrat. "We are utilizing this legal right."

Sullivan was not available for comment. The Department 7 judge handled criminal and traffic proceedings in the El Dorado County Government Center's Building C basement in Placerville. She was first elected in June 2014.


KIRK SMITH CHALLENGES DA VERN PIERSON TO PUT UP OR STAND DOWN REGARDING JUDGE DYLAN SULLIVAN

Cached source: http://web.archive.org/web/20160417041414/http://molosyndicate.com/3/1-1528

Kirk Smith, DA Vern Pierson, Judge Dylan Sullivan
By :
Placerville Newswire

2015-09-01, 07:17:47 PLACERVILLE CA



Kirk Smith: **"The origin of the phrase "peremptory challenge" — a very old legal term — means that a reason does not have to be stated. And the DA"s office did NOT give any reasons to reporters or in court papers."**

What's next, Vern?

Why ask the Judge? Judges are barred from commenting, making the DA's first front page smear a couple weeks ago all the more cowardly. Judge Sullivan correctly and appropriately cited and followed the governing cannons of judicial ethics. Why not ask Vern Pierson for comment? And please look at the actual court papers the DA filed to back up his sleazy attack because I read them and there's nothing in those short pages to support Pierson's outlandish bias claim, but much to show that this is another political vendetta launched by one of the most ambitious politicians in the area.

Pierson's thin court papers were signed by the DA's right hand, Jim Clinchard, who, with Pierson, were both among the biggest backers of attorney Joe Hoffman against Judge Sullivan in last year's judicial election. It was one of the nastiest judicial races in this county's history, though not as ugly as the one also waged on behalf of Hoffman in an earlier judicial election against Judge Warren Stracener. [Ok, so the Mountain Democrat's endorsements were also on the wrong side both times too.]

The "peremptory challenge" rule cited by the DA proscribes that a judge is to step aside "when it is established as provided in this section that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding." But instead of prejudice or bias, the Clinchard document alleges that the county "has a custom and practice" of judges handling courtroom 7 matters sending them to other judges for trial, and not retaining them, except in the case of Phillip and Nancy Garrido.

What? No rule, no statute, no case law, just one lawyer's vague anecdotal notion about some "procedure or practice"? Sorry, but it is judges, not folklore from DA's, who have the right and duty to manage their calendars. Court schedules and court calendars are governed by judges, not politicians. Yes, the same inherent judicial authority used when a judge in Division 7 a few years ago chose to retain for trial the Garrido case, something Pierson did not object to at that time.

Vern Pierson lost a race for legislative office a few years ago and then ran for DA like a consolation prize and is now widely reported to be ready to run for Assemblywoman Beth Gaines seat once she makes her expected run against Supervisor Ron "Mik" Mikulaco. You want to know what is behind Pierson's extraordinary attack on a sitting judge, follow the money; look at the campaign contributions for an idea about Pierson's

motive. See whether one the biggest if not the biggest contributor to the campaigns of Pierson, Hoffman and Gaines are the same. That's just for starters. Keep looking.

Imagine the chilling impact on judges in this community when a politically motivated District Attorney can get away with this kind of unilateral slam. The origin of the phrase "peremptory challenge" — a very old legal term — means that a reason does not have to be stated. And the DA"s office did NOT give any reasons to reporters or in court papers. As a public official, Vern Pierson owes the public a detailed statement about the specific facts he had in mind. The integrity and independence of the judiciary, the very meaning of justice in this community, deserves no less than a full and honest explanation.

SOURCE: http://molosyndicate.com/3/1-1528

Cached at: http://web.archive.org/web/20160716184125/http://molosyndicate.com/3/1-1548

KIRK SMITH EXPLAINS DA PEIRSON'S UNDERHANDED MOVE RE JUDGE DYLAN SULLIVAN

SOURCE: http://web.archive.org/web/20160716184125/http://molosyndicate.com/3/1-1548

By : Placerville Newswire
2015-09-04, 06:09:48 PLACERVILLE CA

— CHARLET NALBACH BURCIN of El Dorado Hills wrote:

The Honorable Dylan Sullivan was elected by this county's voters by an overwhelming majority. For her to be removed suddenly, without warning, from proceedings in Department 7 by District Attorney officials is a travesty of justice.

Do you really think that the voters are going to stand by the District Attorney's Office's decision without demanding a clear explanation? You may cite your California Civil Code 170.6 as the reason — bias toward the attorney, district attorney or other party. What is the real reason? Does this have anything to do with Vern Pierson?

I hope the Honorable Dylan Sullivan appeals this "movement" against her so that we as El Dorado County residents are able to get to the truth and to the real story going on behind the scenes.

— Then Kirk Callan Smith responded:

Hi Charlet,

Your outrage about Vern Pierson's spitefully nasty political attack on a distinguished judge is certainly in order. But your suggestion that the judge "appeal" Pierson's action is not an option. She can't. The Rule 170.6 "peremptory challenge" does not allow for an appeal, no response of any kind; it operates automatically just by having been filed. The rules of judicial ethics also prevents the judge from making public comment, a fact that makes Pierson's gutless move all the more despicable.

The remedies, therefore, have to be pursued by the rest of us. They include such things as the public sending more letters like yours, groups picketing Pierson's office, starting a recall campaign now made even easier by recent laws, and calling on the Mountain Democrat's editorial board to insist that Vern Pierson reveal whatever facts he has to support his very vile defamatory smear — which Pierson cannot do since such facts do not exist — or for him to withdraw the challenge. Voters deserve an honest, competent District Attorney, not the appearance of a political hack.

Yes, demand that the Mountain Democrat speak up for the integrity and independence of our local judiciary. This paper has to stop being a mouthpiece for incumbents, to either stop remaining silent about political sleaze or stop wondering why its news pages and subscription numbers continue to decline. This paper, deeply afraid of controversy, sits on a great many important stories, including this one. We can insist on more.

A number of local lawyers privately call Pierson's action pure politics and say this drama came about when he continued to find that Judge Sullivan could not be pushed around by his office. The fact that Pierson's office has considerable discretion when it comes to who to charge and the kind of plea deals that can be made, sadly can make silence a safe choice for any lawyer wishing to pay their bills. Members of the county bar, so small it can seem like a club, have to speak up as well, and very strongly, about the latest Pierson fiasco since it can reflect so poorly on the entire legal community as well.

The public needs a strong and independent judiciary as well as a prosecutor that operates with the highest standards of the legal professional and not like a political opportunist guided by an aggressive thirst for higher office. and the apparent power of campaign contributions.

"History does not long entrust the care of freedom to the weak or the timid," President Eisenhower once said. And if the people of this county want a judicial system that is truly fair and just, free of bias and political taint, it will not come about by silence but rather by vigilance and protest.

Judge Steve White violated any alleged "all purposes" assignment when he transferred the July 25, 2017 *Faretta* motion hearing to his wife, Laural White when he was out on medical leave. Said transfer was NOT done by the Chief Presiding Judge or Judicial Council or Chief Justice of the California Supreme Court. At the hearing, Petitioner was assured by trial counsel Mr. Miller, that motions like the 995 or non-statutory motion to dismiss would be filed on jurisdictional grounds and speedy trial violations in addition to first amendment defenses that the alleged crimes were protected speech. As the court will see, Mr. Miller failed to properly argue these issues and Petitioner filed a *Marsdan* motion, attempted another *Faretta* motion prior to trial which was denied as being untimely. Petitioner did attempt another Marsden motion prior to trial and the record fails to reflect said attempt to file the *Marden* motion since the record state Defendant wants to file another motion (which was a MARSDEN MOTION) and Judge White claims it to be another CCP 170.6 or 170.1 or 170.3 motion which it was not.

In *Woodman v. Superior Court, (1987)196 Cal. App. 3d* "The reason for an `all purpose' assignment lies in the pragmatic value of having all matters arising in a complicated and potentially long drawn-out case to be heard by one judge, so that the time of litigants, counsel and the superior court need not be wasted in the repetitive education of successive judges in the intricacies of that kind of case." The situation, thus, differs from that involved in the cases relied on by the majority, where the assignment was to a department of the court and not to a particular judge by name. While the departmental assignment may have been made on the assumption that one judge would continue to control the case, that was neither the legal nor the practical effect of those assignments. Many circumstances might result in a transfer of the original judge to another department, **or the temporary assignment of a different judge to the designated department.** The assigned case would, absent some new assignment, remain in the designated department, regardless of the judge sitting on any particular day. **Not so with the `all purpose' assignments.**

In *Bontilao v. Superior Court, 37 Cal. App. 5th 980 - Cal: Court of Appeal, 6th Appellate Dist. 2019* "The California Supreme Court has stated, **"for a case assignment to be an all purpose assignment, two prerequisites must be met. [Citation.] First, the method of assigning cases must `instantly pinpoint' the judge whom the parties can expect to ultimately preside at trial.**

**Second, that same judge must be expected to process the case `in its totality'** [citation], from the time of the assignment, thereby `acquiring an expertise regarding the factual and legal issues involved, which will accelerate the legal process.'" (*People v. Superior Court (Lavi) 4 Cal.4th at p1180 [17 Cal.Rptr.2d 815, 847 P.2d 1031], fns. omitted*.) The court in *Lavi* declined to adopt the "impracticable standard" that the same judge "process[ ] the case `from start to finish.'" (Ibid., fn. 13.) "Rather, if, at the time of the assignment, 992*992 substantial matters remain to be processed in addition to trial, and the assigned judge is expected to process all those matters from that point on (thus allowing him or her [to] acquire expertise in, and familiarity with, the intricacies of the case), then the all purpose assignment rule may apply." (Ibid.)"

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

TUESDAY, JULY 25, 2017 3CT639

AFTERNOON SESSION

--o0o--

The matter of The People of the State of California, plaintiffs versus Todd Robben, Defendant, Case Number P17CRF0114 came on regularly this day before Honorable Laurel D. White, Judge of the Superior Court of the State of California, for the County of El Dorado, sitting in Superior Court of Sacramento County in Department 10 thereof.

The People were represented by Dale Gomes, Deputy District Attorney, in and for the County of El Dorado.

The Defendant, Todd Robben, was personally present and represented by Russell Miller, Attorney at Law acting as his counsel.

Katherine Greiner, Official Shorthand Reporter, was personally present upon the Court and acting.

The following proceedings were had, to wit:

THE COURT: Good afternoon, everyone.

MR. MILLER: Good afternoon.

MR. GOMES: Good afternoon.

THE COURT: This is the matter of Mr. Robben. People versus Todd Christian Robben. P17CRF0114.

Counsel, please state your appearances for the record.

MR. GOMES: Dale Gomes for the People.

MR. MILLER: Good afternoon, your Honor. Russell Miller with Mr. Robben he's present; he's in custody.

REASSIGNMENT ORDER + GOVERNMENT CODE 69740 + NO CONSENT = NO JURISDICTION

The peremptory challenge above also addressed the unlawful venue change from El Dorado Co. to Sacramento Co. where the court relied on Government Code 69740 which states in section (b):

> "In appropriate circumstances, upon agreement of the presiding judges of the courts, and in the discretion of the court, the location of a session may be outside the county, **except that the consent of the parties shall be necessary to the holding of a criminal jury trial The venue of a case for which session is held outside the county.** outside the county pursuant to this section shall be deemed to be the Nothing in this home county of the court in which the matter was filed. section shall provide a party with the right to seek a change of venue No party shall have any right to unless otherwise provided by statute request the court to exercise its discretion under this section."

This Petitioner affirmatively objected to the unlawful venue change as demonstrated in the CCP 170.6 filing – Petitioner did not consent, he objected so there is no "waiver" of "forfeiture". Trial counsel Russell Miller who conspired with the D.D.A. Dale Gomes and Judge Steve White remained silent. This issue is made as an independent claim/ground and on grounds of IAC, CDC and IAAC.

The court lacked exceeded jurisdiction and the Judge Steve White totally lacked jurisdiction based on the cumulative facts/law (the CCP 170.6 issue, no actual orders or use of forged orders from the Chief Justice of the California Supreme Court or Judicial Council pursuant to Rule 10.630 and 68115, no consent pursuant to Gov. Code 69740, 69741, 68115 or 68118).

In Safer *v. Superior Court (1975) 15 Cal.3d 230, 242 [124 Cal.Rptr. 174, 540 P.2d 14],* this court reiterated its holding in the landmark case of *Abelleira v. DistrictCourt of Appeal (1941) 17 Cal.2d 280, 290 [109 P.2d 942, 132 A.L.R. 715]* **"[I]t seems well settled (and there appears to be no case holding to the contrary) that when a statute authorizes prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction,..."""**

The following exhibits are in the record including the reassignment order, Rule 10.630, Gov. Code § 69740, CCP § 203, Gov. Code § 68118, Gov. Code § 68115, *Price v. Superior Court (2001)* & *People v. Guzman (1988).*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME : JUN 22 2017
JUDGE : KEVIN R. CULHANE
REPORTER : NONE

DEPT. NO : 47
CLERK : P. BANKS
BAILIFF : NONE
PRESENT:

THE PEOPLE OF THE STATE OF CALIFORNA,
Plaintiff,

VS. Case No.: P17CRF0114

TODD CHRISTIAN ROBBEN,
Defendant.

Nature of Proceedings: RE-ASSIGNMENT ORDER

The above entitled cause comes before the court for re-assignment. The defendant in this matter filed a CCP 170.1 challenge against Judge Fiorini, and the criminal proceedings were suspended on June 7, 2017 pending a review of the CCP 170.1 challenge. The Hon. Curtis Fiorini subsequently filed a Verified Answer to the CCP 170.1 challenge but nevertheless recused himself pursuant to CCP 170.1(a)(6)(A)(i) and (ii). Accordingly, the criminal proceedings are hereby reinstated.

The Assigned Judge Program having been notified, the Hon. Steve White is hereby assigned to this case for all purposes, and a new reciprocal assignment order from the Chief Justice of the California has been issued pursuant to Government Code Section 69740. The parties are directed to CCP 170.6(a)(2) regarding the timing of any remaining challenge following notice of this assignment.

The parties are ordered to contact the clerk in Department 21 at (916) 874-5924 to schedule further proceedings.

Dated: JUN 22 2017

Honorable KEVIN R. CULHANE,
Judge of the Superior Court of California, County of Sacramento

BOOK : 47
PAGE :
DATE : JUN 22 2017
CASE NO. : P17CRF0114
CASE TITLE : PEO v. ROBBEN

Superior Court of California,
County of Sacramento

BY: P. BANKS, Deputy Clerk

017CRF0114

PEOPLE v. TODD ROBBEN

EL DORADO SUPERIOR COURT CASE - P17CRF0114

"Reciprocal assignment order" - California Rules of Court, Rule 10.630 "A 'reciprocal assignment order' is an order issued by the Chief Justice that permits judges in courts of different counties to serve in each other's courts."

Gov. Code § 69740 entitled "Determination of number and location of sessions; Location outside county; Venue; Sharing of expenses and resources between courts." Subdivision (b) provides - "In appropriate circumstances, upon agreement of the presiding judges of the courts, and in the discretion of the court, the location of a session may be outside the county, except that the consent of the parties shall be necessary to the holding of a criminal jury trial outside the county. The venue of a case for which session is held outside the county pursuant to this section shall be deemed to be the home county of the court in which the matter was filed. Nothing in this section shall provide a party with the right to seek a change of venue unless otherwise provided by statute. No party shall have any right to request the court to exercise its discretion under this section."

California Code of Civil Procedure § 203. "Persons not qualified to be jurors (a) All persons are eligible and qualified to be prospective trial jurors, except the following: … (4 Persons who are not residents of the jurisdiction wherein they are summoned to serve."

California Government Code § 68118 entitled "Noncurtailment of defendant's rights" provides that: "Nothing contained in this chapter shall be construed to curtail the right of a defendant in a criminal case to a fair and speedy trial or authorize the trial of such a defendant by jurors drawn from a jury panel of a court outside the county of trial."

California Gov. § 68115 entitled "Authority of judge, or authorization from Chairperson of Judicial Council during

emergency; Enumerated courses of action" "When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a superior court location or locations within a county, the presiding judge may request and the Chairperson of the Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following: (a) Hold sessions anywhere within the county. (b) Transfer civil cases pending trial in the court to a superior court in an adjacent county. No transfer may be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council…."

Price v. Superior Court (2001) 25 Cal. 4th 1046, 108 Cal. Rptr. 2d 409, 25 P.3d 618 (the Sixth Amendment vicinage clause is not incorporated into the Fourteenth Amendment and therefore is not applicable to the states; Cal. Const., art. I, §16 impliedly guarantees vicinage right, but is limited in that Legislature may designate the place for trial as one having reasonable relationship or nexus to commission of offense).

People v. Guzman (1988) 45 Cal. 3d 915, 933 "…the vicinage right is not a personal one. A change of venue to ensure a fair trial, even over an accused's objections, does not threaten "'that respect for the individual which is the lifeblood of the law.'" (Faretta, supra, 422 U.S. at p. 834 [45 L. Ed. 2d at p. 581].) Nor does the right exist solely to protect fair and impartial factfinding. Its waiver, pursuant to the provisions of section 1033, subdivision (a), is a tactical matter within counsel's power to control."

The above filings are apart of the trial record. **This Petitioner did not consent to any venue change and he clearly objected to the venue change.** The Sacramento Superior Court's presiding judge allegedly assigned Sac. Co. Judge Steve white to the El Dorado Co. case. Here, the judge/court lacked jurisdiction as described in *Desert Turf Club v. Board of Supervisors, 296 P. 2d 882 - Cal: Court of Appeal, 4th Appellate Dist. 1956*:

> "We assume from the foregoing that the judge who tried the case had secured the essential assignment from the Chairman of the Judicial Council to sit and act in Riverside County, but that for convenience the case was actually tried in the San Bernardino County courthouse, with the tacit or express consent of the attorneys. **Appellant does not raise any point as to jurisdiction or error in this respect. But this court cannot let pass unnoticed the impropriety involved in this irregular procedure. [8] The sessions of the superior court of a given county, under the law, must be held in that county** (Gov. Code, §§ 69741, 68099; 13 Cal.Jur.2d, "Courts," § 41)."
>
> **"The judgment is reversed, with instructions upon the going down of the remittitur to amend the findings of fact and conclusions 457*457 of law in accordance with the views expressed in this opinion, and to enter a judgment granting a peremptory writ of mandate directed to the board of supervisors of Riverside County and the members thereof requiring them forthwith to cancel and annul their order denying appellant's petition and to proceed without delay to carry on and complete a hearing in the manner indicated and set forth in this opinion."**

NOTE: Ca. Gov. Code § 69741

Repealed by Stats 2003 ch 149 (SB 79),s 34, eff. 1/1/2004.

Amended by Stats 2002 ch 784 (SB 1316),s 295, eff. 1/1/2003.

Gov. Code, §§ 69741. (now repealed) stated:

Except as otherwise provided by Section 68115, each superior court shall hold its sessions:
(a) At the location or locations in each superior court district specified by ordinance adopted pursuant to Article 4 (commencing at Section 69640) of this chapter.
(b) In every county in which such an ordinance is not in effect, at the county seat and at such other locations, if any, as provided in this article.
The superior court shall hold regular sessions commencing on the first Mondays of January, April, July, and October, and special sessions at such other times as may be prescribed by the judges of the court, except that in the City and County of San Francisco the presiding judge shall prescribe the times of holding such special sessions.

In *People v. Taylor, 46 Cal. App. 3d 513 - Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 1975:*

> "since enactment of the comprehensive scheme for superior court districts in 1959, a court divided into such districts has been required to "**hold its sessions ... [a]t the location or locations in each superior court district specified by ordinance adopted pursuant to [Government Code sections 69640-69650]**."

NO ORDER FROM CAL. SUPREME CT. ASSIGNING ANY ASSIGNED RETIRED JUDGES OR TRANSFER

The June 22, 2017 order by Kevin R. Culhan also claims the "Chief Justice of the California" [sic] – It is assumed he meant the Chief Justice of the California Supreme Court assigned a reciprocal assignment order pursuant to Cal. Rules of Court, rule 10.630**, however, no such order exists in the record. There are also no records of any orders by the Chief of the California Judicial Council assigning any retired judges in case # P17CRF0114 (or the related P17CRF0089) including the judge who presided at the grand jury, Thomas A. Smith – and retired judges used in the appeal of case # S14CRM0465.** The retired judges used in S16CRM0096 are also suspect. The letter below from the Judicial Council of California was a response to a public records request. Any order assigning retired judges, or transferring a case to another judge or venue is a judicial administrative record, not an adjudicative record.

In re Harris, 855 P. 2d 391 - Cal: Supreme Court 1993:

> As we explained in *In re Zerbe (1964) 60 Cal.2d 666 [36 Cal. Rptr. 286, 388 P.2d 182]:* **"Habeas corpus is available in cases where the court has acted in excess of its 839*839 jurisdiction.** [Citations.] **For purposes of [the writ of habeas corpus], the term `jurisdiction' is not limited to its fundamental meaning, and in such proceedings judicial acts may be restrained or annulled if determined to be in excess of the court's powers as defined by constitutional provision, statute, or rules developed by courts." (Id. at pp. 667-668.) This view is consistent with the statutory scheme governing habeas corpus, which provides that a prisoner may be discharged from custody "When the jurisdiction of [the committing] court ... has been exceeded."** (§ 1487, subd. 1, italics added.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

DEBORAH C. BROWN
Chief Counsel, Legal Services

August 8, 2017

Todd Robben
X5073288, Bed/Bldg J/55
Rio Cosumnes Correctional Center
12500 Bruceville Rd.
Elk Grove, CA 95757

You have reached the "public access to judicial administrative records" (PAJAR) team at the Judicial Council of California (the Council), policymaking body of the California courts.

Your request was reviewed pursuant to California Rules of Court, rule 10.500, "public access to judicial administrative records."

The Council does not have any judicial administrative records responsive to your request. Pursuant to rule 10.500(c)(1) adjudicative records that are not covered by the rule include "any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court." Additionally, pursuant to rule 10.500(e)(1)(D) only superior courts are required to provide certified copies of judicial administrative records.

For more information about the Public Access to Judicial Administrative Records Project and a link to the applicable rule of court, please visit our website at *http://www.courts.ca.gov/publicrecords.htm*. For information about the assigned judges program (AJP), please visit our website at: *http://www.courts.ca.gov/documents/Assigned_Judges_Program.pdf*.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-7446 • Fax 415-865-7664 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

DEBORAH C. BROWN
Chief Counsel, Legal Services

December 29, 2017

Todd Robben
CDCR # BE6907, G-Wing 344
Deuel Vocational Institution
P.O. Box 600
Tracy, CA 95378

This letter is in response to your recent correspondence addressed to the Judicial Council of California (the Council), the policy-making body of the California courts. Due to the length of your correspondence, as well as the requests therein, we are providing you with as much general information as possible.

Your request for copies of judicial assignment orders was responded to in our letter dated August 8, 2017. Such records are not judicial administrative records, as we advised you, and not covered under California Rule of Court, rule 10.500. We advised you of how to obtain copies of such court and/or adjudicative records as well as where to obtain further information about the Assigned Judges Program (AJP).

The Judicial Council is not a court or adjudicative body; it is also not an investigatory law enforcement body. This office does not have access to your court records, nor can this office intervene with a court on your behalf. To obtain records, please contact the court in which the proceedings took place. To file papers, you must follow the procedures for the court in question. You may want to contact the court clerk for more information, or visit the online self-help center at *www.courts.ca.gov*. Contact information for all California trial courts is on the California Courts website, located at *www.courts.ca.gov* under "Courts."

To the extent that you are seeking intervention in a particular case, please note that the Judicial Council is not authorized to intervene on behalf of a party in a case, nor may we offer legal advice to a member of the public as to how to proceed with, or in, a lawsuit or prosecution. Rather, concerns as to substantive rulings in a case may be addressed through the appropriate procedural mechanisms, such as motions for reconsideration, writs, and appeals. As we are not authorized to provide legal advice to the public, you may wish to consult with an attorney.

Assuming the State relies on Cal. Constitution Art.6 Sec. 6. (e) “The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge’s consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.” – **No order exists in the record(s) of case 3 P17CRF0089, P17CRF0114 or S16CRM0096 or S14CRM0465.**

The following Judicial Council of California FACT SHEET is from https://www.courts.ca.gov/documents/Assigned_Judges_Program.pdf

JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue
San Francisco, CA
94102-3688
Tel 415-865-4200
TDD 415-865-4272
Fax 415-865-4205
www.courts.ca.gov

FACT SHEET August 2016

Assigned Judges Program

At the request of the presiding judges and justices of the trial and appellate courts, the Chief Justice—assisted by the Assigned Judges Program (AJP) of the Judicial Council of California—issues temporary judicial assignment orders to active or retired judges and justices to cover vacancies, illnesses, disqualifications, and calendar congestion in the courts.

What is the authorization for judicial assignments?

Article VI, section 6 of the California Constitution provides that the Chief Justice "shall seek to expedite judicial business and to equalize the work of the judges." To accomplish this, the Chief Justice may provide for the temporary assignment of any judge to a court. A retired judge in the program may be assigned to any court and has all the powers of the position to which he or she is assigned.

The Assigned Judges Program is governed by standards and guidelines adopted by the Chief Justice to maintain the effectiveness and quality of judicial assignments. These standards and guidelines set out eligibility requirements and procedures for serving in the program. The California Rules of Court describe the procedure for periodic review of judges serving on assignment as well as a formal process for dealing with complaints (see Cal. Rules of Court, rule 10.603(c)(4)(E)(i–iv)).

When is judicial assistance provided?

The Chief Justice issues assignments to a superior or appellate court at the request of the presiding judge or justice (or his or her designee). On behalf of the Chief Justice, the Judicial Council of California receives 350 to 450 such requests each month. Judicial assistance is provided to cover vacancies, illnesses, disqualifications, and calendar congestion; for replacement of judges who attend training or serve as faculty for the Center for Judiciary Education & Research (CJER); and to allow judges who sit on the Judicial Council and its advisory committees and task forces to attend meetings. In addition, if a judge retires or is elevated and has unfinished matters in his or her previous court, he or she may be assigned to complete those matters.

What criteria are used to decide which courts receive assistance?

Under criteria established by the Chief Justice, the staff of the Assigned Judges Program (part of the Court Operations Services) recommend assignments to the Chief Justice. To develop the recommendations, staff give greatest priority to courts that are at risk of dismissing criminal cases, followed by courts with the most vacancies and disqualification matters. Every effort is made to fill requests, although the number of requests may exceed the number of judges available for assignment.

How are assignments made?

Presiding judges and justices or their designees submit requests for judicial assistance to the AJP staff, who act on behalf of the Chief Justice. A request must include an explanation of why and when the assistance is needed and for how long. AJP staff, familiar with courts' assignment needs and with the availability and experience of active and retired judges, consult a list of judges serving in the Assigned Judges Program. Before making a recommendation to the Chief Justice, staff consider each judge's experience, expertise, and availability; the distance he or she is willing to travel; and the length of time he or she is willing to serve.

How long do assignments last?

A judge can be assigned for any length of time, depending on the court's need and the judge's availability. Assignments are generally granted for up to 30 days. The Chief Justice can renew an assignment if the presiding judge or justice or his or her designee requests the renewal.

What is a reciprocal assignment?

A reciprocal assignment is an order, issued annually by the Chief Justice and governed by rule 10.630 of the California Rules of Court that enables judges in neighboring counties to hear matters in each other's courts. Reciprocal assignments are issued upon the agreement of the presiding judges of the courts involved. They are updated periodically to reflect changes on the bench.

CALIFORNIA CONSTITUTION VIOLATES THE U.S. CONSTITUTION

In June on 2017 the El Dorado Judge Roster[14] listed the following judges:

Superior Court of California, County of El Dorado

Hon. Vicki Ashworth

Hon. Steven C. Bailey

Hon. Suzanne N. Kingsbury

Hon. Kenneth J. Melikian

Hon. Warren C. Stracener

Hon. Dylan M. Sullivan

Hon. James R. Wagoner

In this petition, the Petitioner addresses three cases;S14CRM0465, S16CRM0096 and P17CRF0114 - actually case # P17CRf0089 is addressed to despite that case being dismissed.

In the three cases the Petitioner was subjected to the Superior Courts use of over five retired judges (Jerald Lasarow, Daniel Proud, Douglas Phimister, Buckley, Thomas A. Smith, Candice Beason, Gary Hahn and Robert Baysinger).

Petitioner asserts Art 6, Sec 6(e) of the California Constitution which states **"The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.**" violates the U.S. Constitution 5th and 14th Amendment due-process clause and equal protection (as well as due-process & equal protection of Cal const. Art 1, Sec 7 & 15) of the "fundamental" and "inalienable" right to have his trial(s) (including pre-trial hearings) presided over by an un-bias duly elected *de jure* (not de facto) judge, or a *de jure* judge appointed by the

[14] https://web.archive.org/web/20170603123017/https://www.courts.ca.gov/2948.htm

Governor (Cal. Const. Art. 6, Sec 16(c)[15] and 16(d)(2)[16], since a "retired" judge is, after all, not a judge at all.

"The assignment of a retired judge to act temporarily as a regular sitting judge is sui generis. That is to say, such a judge is unlike a judge who is either appointed or elected to office. "The manner, method, or criteria for selection of duly qualified assigned judges is within the inherent power of the Supreme Court and within the discretion of the Chief Justice in the exercise of her [or his] constitutional authority to make the assignments." (*Mosk v. Superior Court (1979) 25 Cal.3d 474, 483 [159 Cal. Rptr. 494, 601 P.2d 1030],* fn. omitted; see also *People v. Ferguson (1932) 124 Cal. App. 221, 231 [12 P.2d 158]* [Chief Justice has "discretion of the broadest character" in the assignment of judges].)" *People v. Superior Court (Mudge), infra.*

Petitioner is a class-of-one[17] for equal protection calcification purposes as well as a class of defendants that are denied an elected or Governor appointed judge who is under oath to obey the Constitutions (U.S. & Cal.). Petitioner and other criminal defendants (and civil parties) are not informed – there is no disclosure that the presiding judge is retired, a retired judge has no education requirements, a retired judge is not accountable to the electorate **"Although prior to retirement all judges may have to "answer to the electorate," a retired judge appointed by the chief justice is no longer subject to election."** *People v. Superior Court (Mudge), infra*. nor are retired judges accountable to the California Judicial Council ("CJP") for ethics violations. a retired judge does not take an oath to uphold the U.S. & California Constitutions. Article 6, Section 6(e) also deprives the State Legislature from prescribing the number of judges in each county court pursuant to Cal. Const. Art. 6, Sec 4.[18]

---

[15] Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

[16] The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

[17] One can have a successful equal protection claim as a "class-of-one" without being a member of a racial, gender, ethnic or other group. See *Village of Willowbrook v. Olech, 528 U.S. 562 (2000)*

[18] In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each

The “Separation of powers” pursuant to Cal. Const. Art. 3, Sec. 3 is violated since the judicial branch assigning retired judges usurps both the executive and legislative branch.

"The Chief Justice has long had constitutional authority to assign any lower court judge, who is otherwise qualified, to the Supreme Court to sit in place of a disqualified Supreme Court justice. The 1926 constitutional amendment which created the Judicial Council (Cal. Const., art. VI, § 1a, now § 6) provided that the Chief Justice, as chairman of the Judicial Council, "shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred." As amended in 1966 and 1974, this provision now reads: "The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court." (Cal. Const., art. VI, § 6, par. 5th.)[4]" *Mosk v. Superior Court, 601 P. 2d 1030 - Cal: Supreme Court 1979*

Constitutional amendments to the California Constitution must not violate the United States Constitution. See *Reitman v. Mulkey, 387 US 369, 373 [18 L.Ed.2d 830, 833, 87 S.Ct. 1627.*[19]

Criminal defendants (and civil litigants) brought before a retired judge without disclosure that the judge is retired and therefore does is not required to meet the on-going education requirements, is not accountable to the CJP for ethics complaints/violations, or accountable to the electorate – and consent of the parties (defendant) are denied substantive due-process and equal protection of the law. People classified as defendants, civil litigants and appellants brought before a retired judge are guaranteed under the 14th Amendment to the U.S. Constitution that a state must treat an individual or class of individuals the same as it treats other individuals or classes in like circumstances not brought before a retired judge.

---

affected county concurs, the Legislature may provide that one or more judges serve more than one superior court. In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

[19] Affirming judgments of Supreme Court of California holding that State constitutional amendment initiative erasing statutory protection against racial discrimination in housing denied equal protection of laws under Fourteenth Amendment to the United States Constitution.

In other words, people brought before retired judges are in a class of people being denied equal protection of the laws (due-process & equal protection) when other people have the safeguards against having their case presided and decided by someone who is not a *de jure* (or even de facto) judge. …A retired judge is after all, not a judge at all. Said people (class of individuals) and/or an individual also are also classified as a “class-of-one”. This Petitioner is both an individual and a class of people subjected to non-disclosed use of retired judges without consent.

Unlike the legal underpinnings set forth in the California Constitution, Article 6, Section 21 which allows for the court to assign a “temporary judge” (usually a commissioner or even a lawyer) acting as judge *pro tempore*) which provides: "On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the state bar, sworn and empowered to act until a final determination of the cause." - Art 6, Sec 6 of the California Constitution does not require “stipulation” or even “disclosure”…

In re Horton, 813 P. 2d 1335 - Cal: Supreme Court 1991:

> The judicial power of the state is vested in the Supreme Court, Courts of Appeal, superior courts, municipal courts, and justice courts. (Cal. Const., art. VI, § 1; McHugh v. Santa Monica Rent Control Bd. (1989) 49 Cal.3d 348, 355 [261 Cal. Rptr. 318, 777 P.2d 91].) **The California Constitution provides that the Governor appoints superior court judges when there are vacancies, but that after appointment, on completion of the term, superior court judges must sit for nonpartisan election. (Cal. Const., art. VI, § 16, & art. II, § 6.) It 90*90 also provides for qualifications (Cal. Const., art. VI, § 15), a six-year term (Cal. Const., art. VI, § 16), and limited grounds for removal (Cal. Const., art. VI, § 18).**
>
> Since 1862, our Constitution has contemplated the use of court commissioners to perform "chamber business" (see Cal. Const. of 1849, art. VI, § 11, as amended Sept. 3, 1862; Cal. Const., former art. VI, § 14), now referred to as "subordinate judicial duties." (Cal. Const., art. VI, § 22; Rooney v. Vermont Investment Corp. (1973) 10 Cal.3d 351, 361-362 [110 Cal. Rptr. 353, 515 P.2d 297].) In addition, since 1879, our Constitution has permitted a cause to be tried in the superior court by a temporary judge. (Cal. Const. of 1879, former art. VI, § 8; see also Cal. Const., former art. VI, § 5, as amended in 1928.) The original provision was that such a judge must be "a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause." (Ibid.) This provision was repealed in 1926, but was

reinstated in article VI, section 5 in 1928 to provide for trial by a temporary judge "[u]pon stipulation of the parties litigant or their attorneys of record...." (Cal. Const., former art. VI, § 5, as amended in 1928.) **The current version of this language, as revised in 1966, provides: "On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause." (Cal. Const., art. VI, § 21.)[1]**

(1) The jurisdiction of a court commissioner, or any other temporary judge, to try a cause derives from the parties' stipulation. (Rooney v. Vermont Investment Corp., supra, 10 Cal.3d at p. 360**.) Thus in the absence of a proper stipulation, the judgment entered by the court commissioner in this case would be void.** *(People v. Tijerina, supra, 1 Cal.3d at p. 49; In re Frye (1983) 150 Cal. App.3d 407, 409-410 [197 Cal. Rptr. 755].)*

A retired judge is not elected or appointed by the Governor. A retired judge is not accountable to CJP the for ethics violations. In *People v. Superior Court (Mudge), 54 Cal. App. 4th 407 - Cal: Court of Appeal, 2nd Appellate Dist., 6th Div. 1997* **"Although prior to retirement all judges may have to "answer to the electorate," a retired judge appointed by the chief justice is no longer subject to election. This is the case whether or not the parties seek to disqualify the judge through a section 170.65 stipulation. If a retired judge must be answerable to the electorate, then the Chief Justice's constitutional power could never be exercised."**

A retired judge does not comply with the education requirements of an elected or appointed judge "**the Legislature also appears to have been motivated by the California District Attorney's Association claim that "unlike active judges who deal daily with the constantly changing state of California criminal law and procedure, retired judges, who sometimes sit irregularly or infrequently, often are not familiar with recent changes in criminal law, which works to the disadvantage of both parties."** (Sen. Com. on Criminal Procedure, Analysis of Assem. Bill No. 1736 (1995-1996 Reg. Sess.) June 6, 1995, p. 4.)" *People v. Superior Court (Mudge),supra.* There is but little doubt that the laws relating to criminal procedure are complex. (E.g., *People v. Rosbury (1997) 15 Cal.4th 206 [61 Cal. Rptr.2d 635, 932 P.2d 207*].)

"… A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases" *In re Murchison 349 US 133, 75 S. Ct. 623, 99 L. Ed. 942 - Supreme Court, 1955.* **"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal**

contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County, 118 US 425 - Supreme Court 1886*

An assigned retired judge is bias and they are encouraged to rule in favor of the prosecutor since they receive 92% of their salary. If they rule against the prosecutor, they will not be called back. The use of unconstitutional retired judges without the consent of the parties (a criminal defendant) is a racket and ripe with corruption. In El Dorado Co. Judges Lasarow , Phimister, Proud and Thomas sit as regular judges on a regular basis accumulating 92% of their salaries plus a per diem. Other would be appointed judges by the Governor and/or elected judges are denied an opportunity to become a judge.

"Government Code section 68543.5 provides for the compensation of a retired judge assigned to sit in a court. That section provides, inter alia, "Whenever a judge retired as such under the Judge's Retirement Law is assigned to sit in a court, he shall be compensated while so sitting at a rate equal to 92 percent of the full compensation of a judge of the court to which he is assigned. A retired judge of a justice court assigned to sit in a court shall be compensated while so sitting at the full compensation of a judge of the court to which he is assigned." *Stewart v. Bird, 100 Cal. App. 3d 215 - Cal: Court of Appeal, 3rd Appellate Dist. 1979*

Webster's dictionary[20] defines Retired as:

Definition of RETIRED:

1: SECLUDED - a retired village

2: withdrawn from one's position or occupation : having concluded one's working or professional career

3: received by or due to one in retirement

[20] https://www.merriam-webster.com/dictionary/retired

Judicial Council Watcher

California's 9.1 billion dollar reality check

Is the Chief subverting the constitution with assigned judges?

Posted on June 25, 2011

https://judicialcouncilwatcher.com/2011/06/25/is-the-chief-subverting-the-constitution-with-assigned-judges/

27 comments

As a recent op-ed from the reformer indicated, the assigned judges program is being abused. Wouldn't it be great if, as the Administrative Office of the Courts ("AOC") or Judicial Council you could pick the judge that heard your case? Better yet, wouldn't it be swell if you picked someone with judicial-political aspirations of going to a higher court? As illustrated by the reformers case, this is precisely what is happening.

The assigned judges program is ripe for abuse by the AOC and it is being abused. According to some preliminary statistics gathered from the AOC, about 400 judges served as assigned judges in 2010. Out of those 400 judges, about a third of them (133) sat on the bench managing a courtroom and being re-appointed to the bench every 60 days for many, many years.

In many cases, many of these 133 of the 'good ol boys club' retire on a Friday and start collecting their pensions. On Monday, they return to the exact same courtroom they served in previously before they retired and they are earning nearly double their pay.

Prior to their retirement they filled the slot of an elected judicial officer, subject to retention elections and CJP oversight. Once appointed, they are no longer subject to retention elections nor CJP oversight. They are free to roam California's courtrooms as loose cannons accountable to only the AOC, which as we know, means they are accountable to no one.

Assigned judges are a vehicle under which judges can be backfilled due to absences, workload or challenges and require re-appointment to the bench by the chief justice every 30-60 days. These are intended as temporary assignments and while most assigned judges might spend no more than 90 days per year sitting on the bench, some of the assigned judges 'good ol boys club' have been sitting as an assigned judge in the same courtroom, collecting two salaries for greater than 10 years. This brings us to the controversial use of perpetual appointment as an abuse of authority. Does the Chief Justice have the right to

appoint and re-appoint a judge to the bench for years at a time and undermine the will of the electorate?

Meet Retired Judge Jack Halpin of Shasta County. Retired from the bench, he has been re-appointed in perpetuity since 1994 – for ***over seventeen years.*** *While he should have been subject to three retention elections, he is above the law and has been subjected to no retention elections. It must be nice to be Jack Halpin.*

With only AOC oversight (and we all know how that goes: bury the dirt and leave no trace) **and the locals questioning weather or not Judge Halpin *suffers from dementia*** the sole determinant of his fitness for the bench is two hundred miles south inside the AOC.

Of course, having no method whatsoever to determine Judge Halpin's fitness for the bench and for his respected service as a member of the "good ol boy's club" Judge Halpin enjoys the uncommon perk of absolute judicial immunity. He is fit for the bench because the AOC re-assigned him to the bench and that's the end of it. All complaints against Jack Halpin *spanning over a decad*e are without merit because the AOC says they are. Of course, should anyone actually file suit to question this, it will be the same group that appointed him that will work to defend him. They will pay for and pick the counsel, they will choose the venue and the judge to hear any such case. Unlike judges going before the CJP who must get their own legal counsel, Judge Halpin can rely on a far higher power to defend him in the AOC.

He is free to accept bribes. He is free to rule against responsible parents and railroad children into cottage industries, knowing that responsible parents will fight like hell to get their kids back whereas irresponsible parents rarely will. While this is a disease that affects parts of the bench all over California, it's especially sinister when the judge is assigned, cannot be held accountable by the people and is, in effect, accountable to no one.
According to the AOC, there are 133 "Jack Halpins" throughout the California Court system, subverting the constitution at the hands of the chief justice. These people are re-appointed in perpetuity without ever having to stand up to a retention election.

This disease, as we understand it began with Chief Justice Ronald George before his appointment of the judge to the Scott Peterson case. Whereas it had previously been customary to assign a case to a court and permit the local court to determine which local judge would hear the case, Scott Peterson was the first defendant to ever have his case heard by an assigned judge appointed by the Chief Justice. When Chief Justice George was called on it, a new (unwritten) rule of court was introduced that would permit him to not only determine the venue but determine the judge. Of course, it was made retroactive just like SBx211.

We further understand from the AOC that 26 of the 133 positions being filled by long term assigned judges are **authorized positions that the Governor should easily be able to make appointments to fill their slots.** Of course, NO ONE HAS TOLD THE GOVERNOR THIS ***because these positions are already filled – with assigned judges.***

Judicial Council Watcher calls upon the Chief Justice to remake these rules of court and ***comply with the spirit and intent of the California Constitution.*** Repeal the rule that

permits the AOC to appoint the actual judge and limit such cases to appointing the venue. Establish a rule of court that limits appointments to the same court to no more than three consecutive re-appointments to the same court in a year and ***stop abusing this process.*** Furthermore, no judge should be above the law and not subject to CJP oversight. Since we all know that AOC oversight is equivalent to no oversight whatsoever, we call upon the state legislature to pass a law in the absence of rules of court that subject assigned judges *and court commissioners* to the same rules and oversight as other judges.
No one should be above the law or subverting the California Constitution.
Most especially the Chief Justice.

Produced by Yen Interactive Media on behalf of Justice California for Judicial Council Watcher

Retired Judges Grumble at Assignment Program Reforms, as Audit Raises Questions

LAW.COM
ALM MediaApril 9, 2019

https://finance.yahoo.com/news/retired-judges-grumble-assignment-program-011830090.html

Elaine Howle, California State Auditor

California's assigned judges program, a **constitutionally provided** system that uses retired jurists to cover judicial absences, is under mounting scrutiny amid allegations of cost overruns, questionable practices and new rules that some judges say amount to age discrimination.

A **report** released Tuesday by state Auditor Elaine Howle found that in 2016 the judiciary spent nearly $7 million to send retired judges, assigned by the chief justice, to five courts that **workload data** suggest should have had enough judges on the bench to handle absences due to illnesses, training sessions or case disqualifications.

Howle's report concluded that the assigned judges program, with a $27 million annual budget in 2016, lacked any procedures that would ensure courts requesting judicial temps had tried to find available in-house replacements or from other trial courts.

"Further, we found that the program had no mechanism for program staff to review whether the courts requesting additional resources already had more judicial positions than its workload justifies," Howle's audit said. "In fact, program staff consistently reported that they did not even question the courts' requests but simply attempted to fill them as best they could."

During Howle's review of a whistleblower complaint against the assigned judges program, investigators learned that judicial administrators were already looking into similar problems with the assignment system, including a projected cost overrun in 2018, the audit said.

Judiciary officials last spring instituted new rules for the program. Retired judges are now restricted to 120 days of assigned work a year and a retroactive, lifetime cap of 1,320 total days in the program. Judges must wait 90 days after their retirement to join the program, and administrators must consider a court's overall judicial staffing when analyzing a temp request. The rules also give each court a budgeted number of days they can use assigned judges.

Assigned judges are paid just under $830 a day plus whatever pension they already receive.

"The state auditor's review reinforces our own earlier review of the assigned judges program, which resulted in the announcement of various program changes," Martin Hoshino, the Judicial Council's administrative director, said in an email Tuesday to The Recorder.

Hoshino said branch executives agree with the auditor's recommendations, "particularly the recommendation to review the trial courts' compliance with the recent program changes. The presiding judges in each of our state's 58 superior courts are key partners in the program and we will be following up with them, as the auditor recommends."

The auditor said the changes would help the program run "in a more efficient manner."

But not everyone is happy about the new rules. Some retired judges don't like the lifetime service cap or the retroactive nature of the new rules.

"It's a violation of law," said Quentin Kopp, a retired San Mateo County Superior Court judge. "It discriminates on the basis of age in its effect."

Kopp, who once served in the assigned judges program, said he represents a handful of retired jurists who allege the new rules unfairly block them from work because of their years of service. He said the retirees have filed a complaint with the state Department of Fair Employment and Housing, a potential precursor to a lawsuit.

The new rules allow the chief justice to grant exemptions for situations such as a judge's unexpected absence or a rural court location where few qualified jurists live.

Tani Cantil-Sakauye, chief justice of California. Credit: Diego M. Radzinschi / ALM

In a March 28 **letter** to Gary Nadler, a Sonoma County Superior Court judge who chairs a Judicial Council committee of presiding judges, Chief Justice Tani Cantil-Sakauye wrote that over a recent three-month period courts submitted 121 rules-exemption requests for assigned judges. Of those requests, staff recommended, and Cantil-

Sakauye said she approved, 88—most of them for retired jurists who have already served more than 1,320 days.

Cantil-Sakauye wrote that staffers are working on "a more defined process" for rule waiver requests.

Their use varies widely from court to court. The 10 courts with the biggest demand for temporary judges include the state's largest trial courts, according to data provided by the Judicial Council. Los Angeles County Superior Court, for instance, used 23,777 days of service from assigned judges between 2013 and 2018. But also on the top-10 list was rural Tulare County Superior Court with 5,012 days.

Judicial Council records show that 20 retired judges were each paid at least $1.2 million for various tenures of work in the assigned program between 1999 and 2018. The top-earning retiree received $1.9 million over that time span. Those payments did not include pension disbursements or reimbursements for travel costs.

SECTION 68118 & RIGHT TO A JURY POOL VICINAGE FROM A CROSS-SECTION OF THE COMMUNITY

Section 68118 states **"Nothing contained in this chapter shall be construed to curtail the right of a defendant in a criminal case to a fair and speedy trial or authorize the trial of such a defendant by jurors drawn from a jury panel of a court outside the county of trial."**

Here, Petitioner's rights to a fair and speedy trial were usurped along with his right to a jury pool and panel (Vicinage) from a cross-section[21] of the community[22] in the *locus delicti* [23] i.e.

[21] **Cross-section**

https://www.merriam-webster.com/dictionary/cross%20section

a composite representation typifying the constituents of a thing in their relations

[22] **Community**

https://www.merriam-webster.com/dictionary/community

1: a unified body of individuals: such as a: the people with common interests living in a particular area broadly : the area itself the problems of a large community b: a group of people with a common characteristic or interest living together within a larger society a community of retired persons a monastic community c: a body of persons of common and especially professional interests scattered through a larger society the academic community the scientific community d: a body of persons or nations having a common history or common social, economic, and political interests the international community e: a group linked by a common policy f: an interacting population of various kinds of individuals (such as species) in a common location

territorial venue of South Lake Tahoe, El Dorado Co. (where the alleged crime occurred) in violation of penal code 777, U.S. Constitution 6th and 14th amendments(due-process & equal protection[24]) and California Constitution Art 1, Sec 15 & 16. Petitioner made several objections on the record at pre-trial hearings, a CCP 170.6 filing, other filings, at the Marsden motion hearing and his counsel stated on the record that the Defendant (this Petitioner) objected to the venue and vicinage of Sacramento Co. rather than El Dorado Co.

Black Law Dictionary 4th edition defines "community" as:

COMMUNITY. Neighborhood; vicinity, synonymous with locality. Conley v. Valley Motor Transit Co., C.C.A.Ohio, 139 F.2d 692, 693. People who reside in a locality in more or less proximity. State ex inf. Thompson ex rel. Kenneppe v. Scott, 304 Mo. 664, 264 S.W. 369, 370. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interests. In re Huss, 126 N.Y. 537, 27 N.E. 784, 12 L.R.A. 620; Sacred Heart Academy of Galveston v. Karsch, 122 S.W.2d 416, 417, 173 Tenn. 618.

It connotes a congeries of common interests arising from associations—social, business, religious, governmental, scholastic, recreational. Lukens Steel Co. v. Perkins, 107 F.2d 627, 631, 70 App.D.C. 354.

The term "community," as used in a statute proNlding that communities may be incorporated for the purpose of supplying inhabitants with water, should be construed to include all the inhabitants of a district having a community of interest in obtaining for themselves in common a water supply for domestic use. Hamilton v. Rudeen, 112 Or. 268, 224 P. 92, 93.

In connection with the rule requiring, for purposes of impeachment, a knowledge of the character of the witness in the community or neighborhood in which he resides, the term "community" means, generally, where the person is well known and has established a reputation. Craven v. State, 22 Ala.App. 39, 111 So. 767, 769.

2a: a social state or condition - The school encourages a sense of community in its students.
b: joint ownership or participation community of goods c: common character : LIKENESS
community of interests d: social activity : FELLOWSHIP
3: society at large the interests of the community

23 ***locus delicti*** - The place where the tort, offence, or injury has been committed. SOURCE: Black's Law 4th ed.

24 Petitioner is a "class of one", "indigent prisoner" and "white minority" for the purpose of class based animus for "equal protection" under U.S. 14th amend. - Non-Hispanic whites are now a minority in California, according to new census data. https://www.cbsnews.com/news/whites-now-a-minority-in-california/

In *People v. Posey, 82 P. 3d 755 - Cal: Supreme Court 2004* " Penal Code section 777 states the general rule for venue in criminal actions: **"[E]xcept as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed." In other words, under section 777 venue lies in the superior court of the county in which the crime was committed, and a defendant may be tried there.** (See generally 4 Witkin & Epstein, Cal.Criminal Law (3d ed. 2000) Jurisdiction and Venue, § 50, pp. 139-141; see also id., §§ 13-18, pp. 101-108 [discussing the effect of trial court unification]; id. (2003 supp.) §§ 13, 14, 16, 18, pp. 18-19 [same].)"

In *People v. Guzman (1988) Cal. Supreme Ct. 45 Cal. 3d 915, 933* **"Vicinage is the term used to describe the right of drawing a jury from the locality in which a crime was committed" "Absent a showing that there is a reasonable likelihood of an unfair trial, a community retains the right to try its' own crimes."** *Guzman, 45 Cal. 3d at 936-37, 755 P.2d at 929, 248 Cal. Rptr. at 479*."

Petitioner objected to the venue change and jury pool/panel and vicinage of Sacramento Co. instead of El Dorado Co. The community was denied its right to try its' own crimes and the trial was unfair to both the Petitioner and the community.

The record shows the El Dorado D.A. cites *People v. Guzman, supra* in their justification statement. Which cites *Williams v. Florida (1970) 399 U.S. 78 [26 L.Ed.2d 446, 90 S.Ct. 1893*, the United States Supreme Court considered which aspects of the common law jury trial procedure had been made mandatory for the states through the Sixth and Fourteenth Amendments. Some features, the court held, were not constitutionally mandated, because the framers had declined to require all the "accustomed requisites" of a jury in the language of the Sixth Amendment. **Nevertheless, Williams held, the vicinage right was guaranteed by the Sixth Amendment because it was expressly mentioned therein.** (*399 U.S. at p. 97 [26 L.Ed.2d at p. 458*].) Following Williams in *People v. Jones (1973) 9 Cal.3d 546 [108 Cal. Rptr. 345, 510 P.2d 705]*, we found it "abundantly clear the `vicinage' requirement as stated in the Sixth Amendment, namely trial by a jury of the district wherein the crime shall have been committed, is an essential feature of jury trial preserved ... by the Sixth Amendment and made binding upon the states by the Fourteenth Amendment." (Id., at p. 551.) "The principles to be drawn from *Alvarado v. State (Alaska 1971) 486 P.2d 891*, warrant further analysis in light of

the majority's reliance upon that decision. **The Supreme Court of Alaska was primarily concerned with securing an impartial jury which reflected a cross-section of the community rather than with the "vicinage" requirement of the Sixth Amendment. Footnote [9]** This conclusion is supported by the following language: "The narrow issue with which we are presented in this case, then, is whether ... Alvarado's jury panel was drawn from a fair cross section of the community." (P. 898.) Later the court concluded: "As we have already noted, under certain circumstances it may be permissible to exclude the area of the crime from the source of jury selection [fn. omitted].... Our ultimate objective is only that juries be selected at random from a source which reflects a fair cross section of the community in which the crime has allegedly occurred; if this goal is attained, the accused will truly have been judged by a jury of his peers. [Fn. omitted.] **What we do hold, then, is that an individual should not be forced, against his will, to stand trial before a jury which has been selected in such a manner as to exclude a significant element of the population of the community in which the crime was allegedly committed."** (Italics added; pp. 904-905.)" id.

"To recapitulate, **we hold that the Sixth and Fourteenth Amendments to the United States Constitution as interpreted in Williams and Peters, guarantee a criminal defendant in a state trial the right to be tried by an impartial jury comprising a representative cross-section of, and selected from residents of, the judicial district where the crime was committed.** (2) Since the alleged crime in the instant case occurred within the 77th Street Precinct in the Central District and since the jury was drawn from a panel which excluded all residents from the Central District, including those residing in the 77th Street Precinct, the juror-residence requirement contained in the Sixth Amendment and made applicable to the states through the Fourteenth Amendment was violated." *People v. Jones, supra.*

In *People v. Danielson, 838 P. 2d 729 - Cal: Supreme Court 1992* "The Sixth Amendment of the United States Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law**...." Included in this constitutional guarantee is the right to a trial by a jury residing in the vicinage, applicable in state courts through the Fourteenth Amendment.** (See *Williams v. Florida (1970) 399 U.S. 78, 96 [26 L.Ed.2d 446, 457-458, 90 S.Ct. 1893]; Hernandez v. Municipal Court (1989) 49 Cal.3d 713, 721-724 [263 Cal. Rptr. 513, 781 P.2d 547] [Hernandez].*)"

The California Supreme Court in Price v. Superior Court *(2001) 25 Cal.4th 1046, 1054 [108 Cal.Rptr.2d 409, 25 P.3d 618* has apparently revised its position that vicinage is not protected by U.S. 6th & 14th amendments, vicinage is only incorporated into the Cal. Const. Art. 1 Sec 16.

In *People v. Sering, 232 Cal. App. 3d 677 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 1991* **"Venue and vicinage, although logically distinct concepts (People v. Bismillah (1989) 208 Cal. App.3d 80, 87 [256 Cal. Rptr. 25]), are nevertheless closely related, because vicinage usually follows venue (ibid.), the boundaries for proper vicinage being coterminous with the boundaries for proper venue.** (*Hernandez v. Municipal Court, supra, 49 Cal.3d at p. 729.*)"

Stevenson v. Lewis, 384 F. 3d 1069 - Court of Appeals, 9th Circuit 2004:

Although Cal. Const. Art. 1 Sec 16 includes a vicinage right, Petitioner asserts the vicinage requirement is incorporated into the U.S. 6th amendment via U.S. 14th amendment and the Bill of Rights if this habeas corpus is to proceed to the federal court where the issue remains untested by the Ninth Circuit Court of Appeal or U.S. Supreme Court.

The vicinage clause of the Sixth Amendment guarantees an accused "the right to a ... jury of the ... district wherein the crime shall have been committed, which district shall have been previously ascertained by law." U.S. Const. amend. VI. At the time of its adoption, the Sixth Amendment, like the rest of the Bill of Rights, applied only to the federal government and therefore only to federal prosecutions. Cf. *Barron v. Baltimore, 32 U.S. 243, 247, 250-51, 7 Pet. 243, 8 L.Ed. 672 (1833).* However, the Fourteenth Amendment Due Process Clause extended certain rights guaranteed by the Bill of Rights to protection against state action. See *Duncan v. Louisiana, 391 U.S. 145, 147-48, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).* Not all of the rights guaranteed by the Sixth Amendment were incorporated; rather, only those rights that are "fundamental to the American scheme of justice" or "essential to a fair trial" apply to the states. Id. at *148-49, 88 S.Ct. 1444.*

The Supreme Court has not decided whether the Fourteenth Amendment incorporated the Sixth Amendment's vicinage right. Neither have we. The only circuits to squarely address the issue have concluded that the Fourteenth Amendment did not extend federal vicinage protection to the states. See *Caudill v. Scott, 857 F.2d 344, 345-46 (6th Cir.1988); Cook v. Morrill, 783 F.2d 593, 594-96 (5th Cir.1986); Zicarelli v. Dietz, 633 F.2d 312, 320-26 (3rd Cir.1980).* Most state courts to address the issue have likewise held that the vicinage clause does not apply to the states. See, e.g., *Price v. Superior Court, 25 Cal.4th 1046, 108 Cal.Rptr.2d 409, 25 P.3d 618, 628-33 (2001); State v. Bowman, 588 A.2d 728, 730 (Me.1991); Commonwealth v. Duteau, 384 Mass. 321, 424 N.E.2d 1119, 1125-26 (1981); People v. Lee, 334 Mich. 217, 54 N.W.2d 305, 308 (1952); Sailor v. State, 733 So.2d 1057, 1062 n. 6 (Fla.Dist.Ct.App.1999);*

Garza v. State, 974 S.W.2d 251, 259 (Tex.App.1998); Bath v. State, 951 S.W.2d 11, 19 (Tex.App.1997).

A few state courts have assumed that the vicinage clause does apply to the states. See, e.g., State v. Morgan, 559 N.W.2d 603, 609 (Iowa 1997); Mareska v. State, 534 N.E.2d 246, 248-50 (Ind.Ct.App.1989).

Heeding our obligation to avoid deciding constitutional issues needlessly, we decline to decide, and express no view on, the incorporation question. See *Christopher v. Harbury, 536 U.S. 403, 417, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002); Shaw v. Terhune, No. 02-16829, 2004 WL 1774634, at *4 (9th Cir. Aug.10, 2004).* Here, the California Court of Appeal assumed that the vicinage requirement applied to the states, based on then-controlling California case law,[1] and concluded that Stevenson's vicinage rights were not violated. In California, when a crime is committed in two counties or when acts necessary to commit a crime occur in two counties, an accused can be prosecuted in either county. See Cal.Penal Code § 781;[2] *People v. Campbell, 230 Cal.App.3d 1432, 281 Cal.Rptr. 870, 877-78 (1991); People v. Williams, 36 Cal.App.3d 262, 111 Cal.Rptr. 378, 381-84 (1974).*

Petitioner asserts the 6th and 14th (due-process & equal-protection) amendments would mandate a "fundamental"[25] vicinage right to state criminal defendants of the "**promise of a jury of one's peers means a jury selected from a representative cross-section of the entire community**." described below.

The cross-section is incorporated in the U.S. 6th amendment. The equal-protection clause of U.S. 14th amendment would also mandate a jury of a cross-selection of the community based in part on the class of people's race, ethnic and economic background. Petitioner, a minority white male was forced to have his case tried by a mostly black jury vicinage in another Sacramento county instead of a jury vicinage of a cross selection of the community of South Lake Tahoe (El Dorado Co.). Conversely, black or Hispanic defendants would be denied equal protection if they were tried before a jury vicinage made up of other races if at the whim of the prosecution it was to their advantage to change the venue and vicinage. A black defendant would complain if his/her case

[25] A fundamental constitutional right to a jury trial among his/her peers representative of a cross-section of the community. One that the defendant controls, not counsel. See Williams v. Florida, 399 US 78 - Supreme Court 1970 MR. JUSTICE MARSHALL, dissenting in part. "I adhere to the holding of Duncan v. Louisiana, 391 U. S. 145, 149 (1968), that **"[b]ecause . . . trial by jury in criminal cases is fundamental to the American scheme of justice . . . the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee." And I agree with 117*117 the Court that the same "trial by jury" is guaranteed to state defendants by the Fourteenth Amendment as to federal defendants by the Sixth. "Once it is decided that a particular Bill of Rights guarantee is `fundamental to the American scheme of justice' . . . the same constitutional standards apply against both the State"**

was transferred from Sacramento Co. or Oakland, Alameda Co. or other urban areas with high numbers of blacks making up the jury pool vicinage in California (or other areas of the country) to rural areas of El Dorado Co. or like rural areas with a mostly white jury pool vicinage. …Especially after the Black Lives Matter movement. Discrimination, racism, riots, protests would be the norm…

In *Price v. Superior Court, 25 P. 3d 618 - Cal: Supreme Court 2001* – the holding is inapposite, inconsistent, and obsolete with the demands of societies demands to have a constitutionally fair jury vicinage drawn from the cross-selection of the community (city or county) where the crime occurred. Today, society realizes the U.S 14th amendment mandates due-process and equal-protection with the diverse racial and economic populations in the State of California. …And society is well aware that an over zealous, raciest prosecutor will be more than willing to exploit a jury vicinage to oppress a criminal defendant who chooses to take his/her case to trial.

In *Ramos v. Louisiana, 140 S. Ct. 1390 – U.S Supreme Court 2020*:

> "The State points to the fact that Madison's proposal for the Sixth Amendment originally read: **"The trial of all crimes . . . shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites. . . ."[**39] Louisiana notes that the House of Representatives approved this text with minor modifications. Yet, the State stresses, the Senate replaced "impartial jury of freeholders of the vicinage" with "impartial jury of the State and district wherein the crime shall have been committed" and also removed the explicit references to unanimity, the right of challenge, and "other accustomed requisites." In light of these revisions, Louisiana would have us infer an intent to abandon the common law's traditional unanimity requirement.
>
> **But this snippet of drafting history could just as easily support the opposite inference. Maybe the Senate deleted the language about unanimity, the right of challenge, and "other accustomed prerequisites" because all this was so plainly included in the promise of a "trial by an impartial jury" that Senators considered the language surplusage.** The truth is that we have little contemporaneous evidence shedding light on why the Senate acted as it did.[40] So rather than dwelling on text left on the cutting room floor, we are much better served by interpreting the language Congress retained and the States ratified. And, as we've seen, at the time of the Amendment's adoption, the right to a jury trial meant a trial in which the jury renders a unanimous verdict." *Id at F/N 47*. "**So today the Sixth Amendment's promise of a jury of one's peers means a jury selected from a representative cross-section of the entire community**. See *Strauder, 100 U. S., at 307-308; Smith v. Texas, 311 U. S. 128, 130 (1940); Taylor, 419 U. S., at 527*.

In *People v. Daniels, 400 P. 3d 385 - Cal: Supreme Court 2017*:

"This is the essence of the jury trial right**. "The purpose of the jury trial . . . is to prevent oppression by the Government. `Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.' [Citation.]** Given this purpose, **the 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 responsibility that results from that group's determination of guilt or innocence."** (*Williams v. Florida (1970) 399 U.S. 78, 100 26 L.Ed.2d 446, 90 S.Ct. 1893], quoting Duncan v. Louisiana (1968) 391 U.S. 145, 156 [20 L.Ed.2d 491, 88 S.Ct. 1444].)*

In *Taylor v. Louisiana, 419 US 522 - Supreme Court 1975*:

"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 over-conditioned or biased response of a judge. *Duncan v. Louisiana, 391 U. S., at 155-156.* 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 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 531*531 because sharing in the administration of justice is a phase of civic responsibility." *Thiel v. Southern Pacific Co., 328 U. S. 217, 227 (1946) (Frankfurter, J., dissenting).*"

"Accepting as we do, however, the view that the Sixth Amendment affords the defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be excluded or given automatic exemptions based solely on sex if the consequence is that criminal jury venires are almost totally male. To this extent we cannot follow the contrary implications of the prior cases, including *Hoyt v. Florida*. If it was ever the case that women were unqualified to sit on juries or were so situated that none of them should be required to perform jury service, that time has long since

passed**. If at one time it could be held that Sixth Amendment juries must be drawn from a fair cross section of the community but that this requirement permitted the almost total exclusion of women, this is not the case today. Communities differ at different times and places. What is a fair cross section at one time or place is not necessarily a fair cross section at another time or a different place.** Nothing persuasive has been presented to us in this case suggesting that all-male venires in the parishes involved here are fairly representative of the local population otherwise eligible for jury service.

Our holding does not augur or authorize the fashioning of detailed jury-selection codes by federal courts. The 538*538 fair-cross-section principle must have much leeway in application. The States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions so long as it may be fairly said that the jury lists or panels are representative of the community. *Carter v. Jury Comm'n, supra*, as did *Brown v. Allen, supra; Rawlins v. Georgia, supra*, and other cases, recognized broad discretion in the States in this respect. We do not depart from the principles enunciated in *Carter*. But, as we have said, Louisiana's special exemption for women operates to exclude them from petit juries, which in our view is contrary to the command of the Sixth and Fourteenth Amendments.

It should also be emphasized that in holding that petit juries must be drawn from a source fairly representative of the community we impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population. Defendants are not entitled to a jury of any particular composition, *Fay v. New York, 332 U. S. 261, 284 (1947); Apodaca v. Oregon, 406 U. S., at 413 (plurality opinion);* but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof. The judgment of the Louisiana Supreme Court is reversed and the case remanded to that court for further proceedings not inconsistent with this opinion."

In *United States v. Rodriguez-Moreno, 526 US 275 - Supreme Court 1999:*

As we confirmed just last Term, the "`locus delicti [of the charged offense] must be determined from the nature of the crime alleged and the location of the act or acts constituting it.' " *United States v. Cabrales, 524 U. S. 1, 6-7 (1998)* (quoting *United States v. Anderson, 328 U. S. 699, 703 (1946)*).[1] In performing this inquiry, a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts.[2] See *Cabrales, supra, at 6-7; Travis v. United States, 364 U. S. 631, 635-637 (1961); United States v. Cores, 356 U. S. 405, 408-409 (1958); Anderson, supra, at 703-706*.

MONDAY, SEPTEMBER 18, 2017, MORNING SESSION

--oOo--

The matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, came on regularly this day before Honorable Steve White, Assigned Judge of the Superior Court of the State of California, for the County of El Dorado, Department 21 of Sacramento Superior Court.

The People were represented by Dale Gomes, Deputy District Attorney for the County of El Dorado.

The Defendant was represented by Russell Miller, Attorney at Law.

The following proceedings were then had outside the presence of the jury:

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Good morning.

MR. MILLER: Good morning.

MR. GOMES: Good morning.

THE COURT: Parties and counsel are present. The jurors are in the hallway.

When we recessed last Thursday with the jury unsworn, there remained a question respecting the selection of venue in this matter. I provided, inter alia, a couple of citations to the parties. One was Price versus Superior Court, a 2001 case, 25 Cal. 4th, 1046, the Sixth Amendment vicinage clause is not incorporated into the Fourteenth Amendment, and,

therefore, is not applicable to the states.

California Constitution Article I Section 16 impliedly guarantees vicinage rights but is limited in that the legislature may designate the place for trial as one having reasonable relationship or nexus to commission of offense.

Also the citation People versus Guzman, G-U-Z-M-A-N, 1988 at 45 Cal. 3d 915, 933, quote:

> The vicinage right is not a personal one. A change of venue to insure a fair trial, even over an accused's objections, does not threaten that respect for the individual, which is the lifeblood of the law.

Citing Faretta at 422 U.S. page 834.

> Nor does the right exist solely to protect fair and impartial fact finding. Its waiver pursuant to the provisions of Section 1033(a) is a tactical matter within counsel's power to control.

Before we proceed I would like to address the issue of venue.

Mr. Miller?

MR. MILLER: Well, Your Honor, I have reviewed the Court's memo and information. I have researched the issue myself. I have taken into consideration in my analysis and balanced between my client's interests, and

I am willing to assent to a Sacramento County jury for tactical and strategic reasons.

THE COURT: All right.

Mr. Gomes?

MR. MILLER: May I?

THE COURT: Go ahead.

MR. MILLER: I would also say that I have reviewed this with my client. I did Friday morning after receiving the Court's input and doing some of my own research, and I would inform the Court that my client adamantly objects to a Sacramento County jury.

THE COURT: Okay. Thank you.

Mr. Gomes?

MR. GOMES: The People are prepared to assent to the Sacramento County jury as well, Your Honor.

THE COURT: All right.

Please bring the jury in.

MR. GOMES: As we do that, Your Honor, I would just let you know that my first witness is not outside when I just stepped out. He was en route from South Lake Tahoe and was at Watt Avenue about 20 minutes ago. Just so you know.

THE COURT: All right. I am going to be giving some instructions anyway. So I think we'll be fine.

You have a scheduling issue this afternoon, Mr. Miller?

MR. MILLER: I'm sorry?

THE COURT: You have a scheduling issue this

"venue provisions also serve to protect the interests of the community in which a crime or related activity occurs, vindicat[ing] the community's right to sit in judgment on crimes committed within its territory." *People v. Simon (2001) Cal. Supreme Ct. 25 Cal.4th 1082, 1095.* In *Price v. Superior Court, 25 P. 3d 618 - Cal: Supreme Court 2001* The California Constitution contains an independent, common law vicinage right in Article I, section 16, which has been codified in California Penal Code § 777 (providing that **"except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed."** *See People v. Clark, 372 P. 3d 811 - Cal: Supreme Court 2016* **"For vicinage rights under the state Constitution, "the vicinage right implied in article I, section 16 of the California Constitution ... constitutes simply the right of an accused to a trial by an impartial jury drawn from a place bearing some reasonable relationship to the crime in question."**

In *People v. Jones, 510 P. 2d 705 - Cal: Supreme Court 1973* F/N 9**: "What we do hold, then, is that an individual should not be forced, against his will, to stand trial before a jury which has been selected in such a manner as to exclude a *significant element* of the population of the community in which the crime was allegedly committed."** (Italics added; pp. 904-905.)"

In *People v. Chadd, 621 P. 2d 837 - Cal: Supreme Court 1981* **"The rule is a reflection of the fundamental principle of our law that "the power of the courts to proceed" — i.e., their jurisdiction over the subject matter — cannot be conferred by the mere act of a litigant, whether it amount to consent, waiver, or estoppel** (*Summers v. Superior Court (1959) 53 Cal.2d 295, 298 [1 Cal. Rptr. 324, 347 P.2d 668]; Sampsell v. Superior Court (1948) 32 Cal.2d 763, 773 [197 P.2d 739],* and cases cited), **and hence that the lack of such jurisdiction may be raised for the first time on appeal**. (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union (1968) 69 Cal.2d 713, 721 [73 Cal. Rptr. 213, 447 P.2d 325]; Petty v. Manpower, Inc. (1979) 94 Cal. App.3d 794, 798-799 [156 Cal. Rptr. 622].)"*

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court". *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).*

The record shows the El Dorado D.A. cites Gov Code 68115 in their justification statement.:

a) **When war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625 , threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe, the presiding judge may request and the Chairperson of the Judicial Council may, notwithstanding any other law, by order authorize the court to do one or more of the following:**

(1) Hold sessions anywhere within the county.

(2) Transfer civil cases pending trial in the court to a superior court in another county. **A transfer shall not be made pursuant to this paragraph except as follows:**

(A) With the consent of all parties to the case, a pending civil case may be transferred to a superior court in any county.

(B) Upon a finding by the court that extreme or undue hardship would result unless the case is transferred for trial, a pending civil case may be transferred to any superior court in an adjacent county or to any superior court within 100 miles of the border of the county in which the court impacted by the emergency is situated. In addition to the foregoing, if a court is located within an area identified to be within the boundary of a state of emergency proclaimed by the Governor pursuant to Section 8625 , a pending civil case may be transferred to any superior court within 100 miles of the outer boundary of the area proclaimed to be experiencing a state of emergency.

(3) Any civil case so transferred pursuant to paragraph (2) shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council. This section does not affect a court's authority under Section 69740 .

(4) Declare that a date or dates on which an emergency condition, as described in this section, substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a of the Code of Civil Procedure . This paragraph applies to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.

(5) Declare that a date on which an emergency condition, as described in this section, prevented the court from either (A) conducting proceedings governed by Section 825 of the Penal Code , or Section 315 , 334 , 631 , 632 , 637 , or 657 of the

Welfare and Institutions Code , or (B) accepting the filing of petitions for purposes of Section 313 or 631 of the Welfare and Institutions Code , be deemed a holiday for purposes of computing time under those statutes. This paragraph applies to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.

(6) Extend the time periods provided in Sections 583.310 and 583.320 of the Code of Civil Procedure to bring an action to trial. The extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.

(7) Extend the duration of any temporary restraining order that would otherwise expire because an emergency condition, as described in this section, prevented the court from conducting proceedings to determine whether a permanent order should be entered. The extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.

(8) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code , extend the time period provided in Section 825 of the Penal Code within which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than seven days, with the number of days to be designated by the Chairperson of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order.

(9) Extend the time period provided in Section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 court days.

(10) Extend the time period provided in Section 1382 of the Penal Code within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.

(11) Within the affected area of a county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code , extend the time periods provided in Sections 313 , 315 , 632 , and 637 of the Welfare and Institutions Code , with the number of days to be designated by the Chairperson of the Judicial Council. The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency, but the time period shall not be extended to more than seven days. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. With regard to the time periods provided in Sections 632 and 637 of the Welfare and Institutions Code , this paragraph applies only if the minor has been charged with a felony.

(12) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code , extend the time period provided in Sections 334 and 657 of the Welfare and Institutions Code within which a hearing on a juvenile court petition shall be held by not more than 15 days, with the number of days to be designated by the Chairperson of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. With regard to the time periods provided in Section 657 of the Welfare and Institutions Code , this paragraph applies only if the minor has been charged with a felony.

(b) The limitations on extensions of time provided for in subdivision (a) set forth the maximum respective extensions allowable from the time when the Chairperson of the Judicial Council makes a determination that circumstances warranting relief under this section exist. The limitations on extensions of time do not preclude the Chairperson of the Judicial Council, at the request of a presiding judge, from granting further extensions, up to the maximum permitted under the relevant paragraph, upon making a renewed determination that circumstances warranting relief under this section continue to exist.

In this case, there was no war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625… Petitioner also did not consent as mandated.

The venue change, vicinage (jury pool), use of retired judges and Sacramento Judge Stave White were all without jurisdiction and unlawful violations of the statues and both California and U.S. Constitutions (Cal. Const. Art. 1 Sec 15 & 16 and U.S. 6th and 14th).

In *People v. Simon, 25 P. 3d 598 - Cal: Supreme Court 2001:*

For the reasons discussed below, we conclude that pursuant to the general legal doctrine that a party may forfeit a right by failing to assert, it in a timely fashion, a defendant in a felony proceeding forfeits a claim of improper venue when he or she fails specifically to raise such an objection prior to the commencement of trial. **As we shall explain, in light of the fundamental 390*390 purposes underlying criminal venue provisions, the interests of both the accused and the state support a requirement that any objection to the proposed location of a felony trial must be specifically raised prior to the commencement of trial, before the defendant is required to undergo the rigors and hardship of standing trial in an assertedly improper**

locale, and before the state incurs the time and expense of conducting a trial in that county.

We granted review to clarify the proper procedure for raising a claim of improper venue in a felony proceeding.

Traditionally, venue in a criminal proceeding has been set, as a general matter, in the county or judicial district in which the crime was committed. Under the provisions of Penal Code section 777,[4] that continues to be the general rule in California. That statute provides in part: "[E]xcept as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed."[5]

Although under section 777 the county in which a felony was committed is, in the absence of another statute, the locale designated as the place for trial, in California numerous statutes—applicable to particular crimes or in specified circumstances—long have authorized the trial of a criminal proceeding in a county other than the county in which the offense itself occurred. Thus, for example, section 786 has provided, since the original enactment of the Penal Code in 1872, that when property taken by burglary, robbery, theft, or embezzlement in one county has been brought into another county, the trial of the initial burglary, robbery, theft, or embezzlement offense may be held in either county. Similarly, section 783 long has provided that when a criminal offense is committed on a railroad train, a boat, a common carrier, or in a motor vehicle in the course of "its voyage or trip," the offense may be tried in any county "through, on, or over which" the vehicle passed in the course of the trip or voyage, without regard to the specific location where the offense occurred. Section 781, the provision relied upon by the prosecution in the present case, represents another such example, providing that when a criminal offense is committed in part in one county and in part in another, or when "acts or effects thereof constituting or requisite to the consummation of the offense" occur in two or more counties, the offense may be tried in any of the counties in which such acts or effects occurred.[6]

396*396 As past decisions recognize, venue provisions applicable to criminal proceedings serve a variety of purposes. First, "[v]enue in the place where the crime was committed promotes the convenience of both parties in obtaining evidence and securing the presence of witnesses." (People v. Guzman (1988) 45 Cal.3d 915, 934, 248 Cal.Rptr. 467, 755 P.2d 917.) **Second, from the perspective of a defendant, statutory enactments that provide for trial in a county that bears a reasonable relationship to an alleged criminal offense also operate as a restriction on the discretion of the prosecution to file charges in any locale within the state that it chooses, an option that, if available, would provide the prosecution with the considerable power to choose a setting that, for whatever reason, the prosecution views as favorable to its position or hostile or burdensome to the defendant's. As one leading criminal treatise explains: "The principal justification today for the venue requirement of trial in the vicinity of the crime is to `safeguard against the unfairness and hardship involved when an**

accused is prosecuted in a remote place.'" (1 Wharton's Criminal Procedure (13th ed.1989) § 34, p. 183, quoting United States v. Cores (1958) 356 U.S. 405, 407, 78 S.Ct. 875, 2 L.Ed.2d 873; see, e.g., United States v. Johnson (1944) 323 U.S. 273, 275-278, 65 S.Ct. 249, 89 L.Ed. 236.) Finally, venue provisions also serve to protect the interests of the community in which a crime or related activity occurs, "vindicat[ing] the community's right to sit in judgment on crimes committed within its territory." (People v. Guzman, supra, 45 Cal.3d at p. 937, 248 Cal.Rptr. 467, 755 P.2d 917.)

In analyzing the procedural requirements governing venue, it is important to recognize at the outset that although the applicable California 397*397 statutes generally employ the terms "jurisdiction" and "jurisdictional territory" in designating the proper venue for the trial of a criminal proceeding (see, e.g., § 777, quoted at fn. 5, ante), the issue of venue in criminal as well as in civil cases does not involve a question of "fundamental" or "subject matter" jurisdiction over a proceeding. As a leading treatise explains: "If the crime is one over which California can and does exercise its legislative jurisdiction because it was committed in whole or in part within the state's territorial borders, California courts have jurisdiction to try the defendant. [Citation.] Moreover, if the charge is brought in a competent court (i.e., superior court for felonies, municipal court for misdemeanors), that court, no matter where located in the state, may have subject matter jurisdiction of the offense. [Citation.] [¶] Thus, venue is not jurisdictional in the fundamental sense; and, both in civil and criminal cases, a change of venue from the superior court of one county to the same court in another county does not affect its jurisdiction over the subject matter of the cause." (4 Witkin & Epstein, Cal.Criminal Law (3d ed. 2000) Jurisdiction and Venue, § 45, p. 135, italics added (Witkin & Epstein); see also 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 701, pp. 892-893.)

Although this point is a basic one, use of the term "jurisdiction" at times has created confusion in the venue context (as it has in other contexts [7]) and may be at least in part responsible for the inconsistency that the Court of Appeal noted between earlier and more recent California appellate decisions that have considered questions regarding the procedural requirements for raising an objection to venue in a criminal proceeding. (See, e.g., People v. Megladdery, supra, 40 Cal. App.2d 748, 762, 106 P.2d 84.) Nonetheless, even if there once may have been some doubt as to this matter, it is now established beyond question that the issue of venue does not involve a matter of subject matter jurisdiction. If only the court or courts designated by the relevant venue statute possessed subject matter jurisdiction over the proceeding, "no change of venue from the locality could be valid, for subject matter jurisdiction cannot be conferred on a court...." (4 Witkin & Epstein, supra, Jurisdiction and Venue, § 45, p. 136.) Because it is beyond dispute that a change of venue may be ordered in a criminal case under appropriate circumstances, and also beyond dispute that any superior court to which a felony proceeding has been transferred has subject matter jurisdiction over the proceeding,[8] all modern decisions recognize that 398*398 criminal venue statutes do not involve a court's jurisdiction in the fundamental sense of subject matter jurisdiction.

It is equally well established that a defendant's right to be tried in the venue authorized by statute is a right that is subject to waiver by the defendant. As noted

above, in the absence of another applicable statute the venue of a felony proceeding in California is set by statute in the county in which the alleged offense occurred. (§ 777.) In many instances, however, a defendant, rather than insisting upon the right to be tried in that locale, will move for a change of venue, viewing trial in the location in which the crime occurred, by a jury drawn from that locale, as unduly prejudicial. (§ 1033.) If a defendant's motion for change of venue is granted, and the proceeding is transferred to a county other than the county designated by the applicable venue statute, the court to which the proceeding has been transferred clearly has authority over the matter and the defendant has waived any right to object to the venue of the trial.

Although it is clear that a defendant waives his or her right to object to the venue of a criminal trial when the defendant affirmatively moves for a change of venue, the question presented by this case is whether a defendant properly should be held to have forfeited his or her right to object to such venue by failing specifically to raise such an objection in a timely fashion.[9]

The United States Supreme Court never has directly addressed the issue under federal law, but the lower federal courts generally agree that a forfeiture of the right to object to the venue of a criminal trial may result from the inaction of the defendant. The case of Hagner v. United States (D.C.Cir.1931) 54 F.2d 446 contains what frequently is cited as the seminal discussion of the issue. In Hagner, the defendants were charged with using the federal mail for fraudulent purposes, based upon the mailing of a letter from Pennsylvania to Washington, D.C. Under the wording of the federal mail fraud statute as it read at the time of the offense, venue properly was only in the place where the letter was mailed (i.e., Pennsylvania), but the prosecution in Hagner was brought and tried in the District of Columbia. The defendants in Hagner did not object to venue prior to trial, but on appeal they contended that their convictions should be reversed because the evidence at trial failed to establish venue in the District of Columbia court. The federal circuit court in Hagner rejected this contention, explaining: "In the case now under consideration ... the defendants] ... appeared, and upon their arraignment pleaded not guilty. They were represented by counsel. 399*399 They might have pleaded to the jurisdiction. They did not. They elected to go to trial, on an indictment duly charging a violation of a law of the United States, in a court having general jurisdiction of the class of offenses charged. This, we think, was as complete an agreement to waive their constitutional privilege to refuse to be tried in the District of Columbia as though it were in express words." (54 F.2d at p. 449.) Subsequent federal cases confirm that "[d]efects relating to venue are waived unless asserted prior to trial" (United States v. Dryden (5th Cir.1970) 423 F.2d 1175, 1178; see, e.g., Harper v. United States (5th Cir.1967) 383 F.2d 795), particularly when the defect with regard to venue is apparent on the face of the accusatory pleading. (See, e.g., United States v. Jones (2d Cir.1947) 162 F.2d 72, 73; United States v. Price (2d Cir.1971) 447 F.2d 23, 27.)

A significant number of our sister states also follow the rule that objections to the place of trial in a criminal proceeding are forfeited by a defendant unless raised before trial, although in many states this forfeiture rule has been established by a specific

statute or court rule rather than by judicial decision. (See, e.g., 720 Ill. Comp. Stat. Ann. § 5/1-6(a) [cited in People v. Gallegos (1997) 689 N.E.2d 223, 226]; Iowa Code § 803.2 [cited in State v. Allen (Iowa 1980) 293 N.W.2d 16, 18]; La.Code Crim. Proc. Ann., art. 615 [cited in State v. Gatch (La.Ct.App.1996) 669 So.2d 676, 681]; Md. Rules Proc, rule 4-252 [cited in Spencer v. State (1988) 543 A.2d 851, 856-857]; Minn. Rules Crim. Proc, rule 10.01 [cited in State v. Blooflat (Minn.Ct.App. 1994) 524 N.W.2d 482, 483-484]; Utah Code Ann. § 76-1-202 [cited in State v. Cauble (Utah 1977) 563 P.2d 775, 777].) In State v. McCorkell (1992) 63 Wash.App. 798, 822 P.2d 795, the appellate court reached this conclusion in the absence of a specific statutory provision, explaining: "Proper venue is not an element of a crime [citation], and is not a matter of jurisdiction. [Citation.] Rather, proper venue is a constitutional right which is waived if a challenge is not timely made. [Citations.] ... [¶] ... [¶] ... While prior cases make it clear that a defendant's constitutional right to proper venue is waived if not timely asserted, none has defined the boundaries of timeliness. We hold that a criminal defendant waives any challenge to venue by failing to present it by the time jeopardy attaches." (Id. at pp. 796-797, fn. omitted; see also State v. Dent (1994) 123 Wash.2d 467, 869 P.2d 392, 399-400.)[10] On the other hand, there are a number of recent out-of-state decisions that hold that a defendant does not forfeit an objection to venue by failing specifically to raise the objection prior to trial. (See, e.g., Navarre v. State (Fla.Dist.Ct.App. 1992) 608 So.2d 525, 526; Jones v. State (2000) 272 Ga. 900, 537 S.E.2d 80, 83; State v. Miyashiro (1982) 3 Haw.App. 229, 647 P.2d 302, 304; State v. True (Me.1975) 330 A.2d 787, 789; People v. Greenberg (1997) 89 N.Y.2d 553 [678 N.E.2d 878, 879-880, 656 N.Y.S.2d 192, 193-194].)

As noted by the opinion of the Court of Appeal in the present case, past California decisions do not provide consistent guidance on this question.

400*400 On the one hand, a series of very early California Supreme Court decisions held that, because "[t]he plea of not guilty puts in issue all the material averments of the indictment, including that of the locus delicti" (People v. Bevans (1877) 52 Cal. 470, 470-471), and because the prosecution bears the burden of proof on the question of venue, a judgment of conviction is subject to reversal on appeal (and to remand for a new trial) when the evidence at trial does not affirmatively establish that the trial was conducted in a statutorily authorized venue. (See, e.g., People v. Parks (1872) 44 Cal. 105; People v. Roach (1874) 48 Cal. 382; People v. Fisher (1876) 51 Cal. 319, 321-322; People v. Bevans, supra, 52 Cal. 470, 471; People v. Aleck (1882) 61 Cal. 137, 137-138.)[11] Although none of these early decisions discussed the question of waiver or forfeiture—or, indeed, even recognized that a defendant could waive or forfeit the right to be tried in a statutorily designated venue—all of them apparently proceeded from the assumption that a defendant adequately preserves the right to object to venue simply by entering a plea of not guilty, at least when the defect in venue is not apparent on the face of the accusatory pleading. Indeed, one early decision—People v. More (1886) 68 Cal. 500, 9 P. 461—went so far as to hold that when an accusatory pleading adequately alleged that the crime in question was committed in the county in which the charge was brought, the superior court lacked authority in ruling on a motion under section 995 even to consider the issue of venue or

to set aside an information on the ground that the evidence before the magistrate did not establish venue in the county where the proceeding had been filed.[12]

On the other hand, later California Court of Appeal decisions have recognized a defendant's general ability to challenge venue at a pretrial stage—not only when the accusatory pleading itself allegedly reveals a defect in venue (see, e.g., People v. Goscinsky (1921) 52 Cal.App. 62, 64, 198 P. 40), but also when the evidence at the preliminary hearing or before the grand jury fails to support venue in the court in which the proceeding is to be tried. (See, e.g., Bogart v. Superior Court (1964) 230 Cal.App.2d 874, 875-876, 41 Cal. Rptr. 480; In re Huber (1930) 103 Cal. App. 315, 316-317, 284 P. 509.) In contrast to the decision in People v. More, supra, 68 Cal. 500, 504, 9 P. 461, which suggested that the issue of venue generally is not appropriate for determination prior 401*401 or to trial, more recent appellate decisions strongly have voiced a directly contrary view, declaring that "[p]retrial resolution of venue questions is, in our opinion, eminently superior to disposition of the matter by jury verdict," and explaining that "[because ... venue is a waivable right, it is most appropriate that it be met, or waived, at the outset of proceedings." (People v. Sering, supra, 232 Cal.App.3d 677, 684, fn. 3, 283 Cal.Rptr. 507.) In addition, the more recent Court of Appeal decisions explicitly have recognized that the question of venue constitutes "a nonfundamental aspect of jurisdiction which may be waived either by defendant's consent or failure to object." (People v. Gbadebo-Soda (1995) 38 Cal. App.4th 160, 170, 45 Cal.Rptr.2d 40, italics added; People v. Campbell (1991) 230 Cal. App.3d 1432, 1443, 281 Cal.Rptr. 870.) Thus, unlike the earlier line of decisions, the Court of Appeal decisions that have addressed venue claims within the past decade have found, under a variety of circumstances, that a defendant has waived the right to raise on appeal an objection to venue by failing to take timely steps in the trial court specifically to raise or preserve the venue question. (See, e.g., People v. Sering, supra, 232 Cal.App.3d 677, 685-687, 283 Cal.Rptr. 507 [defendant waived issue of venue by failing to request instructions on venue at trial]; People v. Remington, supra, 217 Cal.App.3d 423, 429-431, 266 Cal.Rptr. 183 [defendant, who raised an objection to venue at the preliminary hearing, waived the right to object to venue on appeal by failing at trial to renew the objection to venue]; People v. Anderson (1991) 1 Cal.App.4th 1084, 1088-1089, 3 Cal.Rptr.2d 247 [defendant waived any venue objection by failing to raise the issue at trial]; People v. Tabucchi, supra, 64 Cal.App.3d 133, 141, 134 Cal.Rptr. 245 [defendant waived venue objection by pleading guilty].) The holdings in Sering, Remington, and Anderson are clearly inconsistent with the early decisions indicating that a defendant's entry of a plea of not guilty is itself sufficient to preserve for appeal the issue of venue.

In view of the conflict between the line of very early California Supreme Court decisions and the line of much more recent California Court of Appeal decisions, it is evident that a reexamination of the appropriate procedure for challenging venue in a felony proceeding is in order.

In undertaking this reexamination, we begin with a consideration of the current California statutory provisions that relate to the issue of venue. As we shall see, although there is no current California statute that prescribes the procedure for

challenging venue in a criminal felony proceeding, related legislative provisions shed considerable light on the general procedural doctrine that bears on the question before us.

Perhaps the most closely related statutory provision is section 1462.2, which sets forth the procedure for challenging venue in a misdemeanor proceeding. Section 1462.2 initially provides that the proper court for the trial of a misdemeanor offense is "[a]ny municipal court ... established in the county within which the offense charged was committed, or the superior court in a county in which there is no municipal court....." The section then goes on to provide that "[i]f an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof other than the court herein designated as the proper court for the trial, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time of pleading, requests an order transferring the action or proceeding to the proper court.... The judge must, at the time of arraignment, inform the defendant of the right to be tried in the county 402*402 wherein the offense was committed." (Italics added.)[13] Thus, under section 1462.2, a defendant in a misdemeanor proceeding forfeits the right to object to venue unless he or she raises the objection at the time a plea to the charge is entered.

In addition to the statutory provision relating to venue in misdemeanor proceedings, the statutory provisions relating to venue in civil actions also provide that when a defendant believes that an action has been filed in an improper or unauthorized venue and wishes to object to trial of the proceeding in that venue, the defendant must object specifically and promptly or the objection will be forfeited. In civil actions, an objection that a proceeding has been brought in the wrong venue is raised by filing a motion to change venue, specifying that the court designated in the complaint is not the proper venue for trial. (Code Civ. Proc, § 397, subd. (a).) Code of Civil Procedure section 396b, subdivision (a) provides that even when a civil action or proceeding is commenced in an improper venue, the action nonetheless may be tried in the court where commenced "unless the defendant, at the time he or she answers, demurs, or moves to strike, or ... within the time otherwise allowed to respond to the complaint," files a notice of motion for an order transferring the action to the proper court.[14] Thus, as with misdemeanors, any objection that a civil action has been brought in the wrong venue must be raised by a defendant specifically and at the very outset of the proceeding or it will be considered to have been forfeited.

Although the foregoing statutes do not apply to criminal felony proceedings, they demonstrate that, as a general matter, the familiar legal doctrine providing that a right may be forfeited by a party's failure to assert the right in a timely fashion is applicable to the right to be tried in a statutorily designated venue.

Over the past decade, this court has had occasion in a number of decisions 403*403 to discuss the basic rationale of the forfeiture doctrine. As we explained in People v. Saunders, supra, 5 Cal.4th 580, 590, 20 Cal.Rptr.2d 638, 853 P.2d 1093: "`"The purpose of the general doctrine of waiver is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a

fair trial had....'" [Citation.] `"No procedural principle is more familiar to this Court than that a constitutional right," or a right of any other sort, "may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." ...' [Citation.] [¶] `The rationale for this rule was aptly explained in Sommer v. Martin (1921) 55 Cal.App. 603 at page 610, 204 P. 33 ...: "`In the hurry of the trial many things may be, and are, overlooked which would readily have been rectified had attention been called to them. The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal"'` [Citation.]" (Fn. omitted; see, e.g., People v. Scott (1994) 9 Cal.4th 331, 353-356, 36 Cal.Rptr.2d 627, 885 P.2d 1040; People v. Welch (1993) 5 Cal.4th 228, 235, 19 Cal.Rptr.2d 520, 851 P.2d 802; People v. Walker (1991) 54 Cal.3d 1013, 1023, 1 Cal.Rptr.2d 902, 819 P.2d 861.)

In light of the nature and fundamental purpose of the venue safeguard, we conclude that under the general forfeiture doctrine, a defendant in a felony proceeding who fails timely to assert an objection to the venue in which the proceeding has been brought and is to be tried should be found to have forfeited any right to object to trial in that venue. As discussed above, the question of venue does not involve a matter of a court's fundamental authority or subject matter jurisdiction over a proceeding. Instead, the right to be tried in a statutorily designated venue is intended, from the perspective of an accused, as a safeguard against being required to stand trial in an unrelated and potentially burdensome distant location. This protection can be meaningfully afforded to a defendant only if he or she objects to venue before being required to proceed to trial in the allegedly improper locale. If a defendant's timely challenge to venue is sustained, the trial can be conducted in the proper location, before the parties, the witnesses, and the court have incurred the burden and expense of a trial in an unauthorized venue.

Furthermore, because even when a criminal charge is filed in a county other than a statutorily authorized venue, a defendant may not view the location in which the charge has been filed as unduly burdensome or undesirable, but on the contrary may prefer for strategic reasons to be tried in that venue rather than in a statutorily designated locale, there is a compelling basis for not permitting a defendant who has remained silent and has allowed the proceeding to go forward in the initial location, thereafter to raise a claim of improper venue during trial or on appeal. As the United States Supreme Court pointed out in a somewhat related context, in the event a defendant were not required to raise such a claim in a timely fashion prior to trial, "[s]trong tactical considerations would militate in favor of delaying the raising of the claim in the hopes of an acquittal, with the thought that if those hopes did not materialize, the claim could be used to upset an otherwise valid conviction at a time when reprosecution might well be difficult." (Davis v. United States (1973) 411 U.S. 233, 241, 93 S.Ct. 404*404 1577, 36 L.Ed.2d 216 [discussing importance of requiring that any objection to the composition of the grand jury that returned the indictment be made by a timely pretrial motion].)

Accordingly, taking into account the nature and purpose of the venue safeguard and the substantial state interest in protecting the integrity of the process from improper "sandbagging" by a defendant, we conclude that a defendant who fails to raise a timely objection to venue in a felony proceeding forfeits the right to object to venue either at trial or on appeal. (Accord, People v. Jones (1973) 9 Cal.3d 546, 556, fn. 7, 108 Cal.Rptr. 345, 510 P.2d 705 [claim that jury panel is not representative of community is waived if not timely asserted]; People v. Laster (1971) 18 Cal. App.3d 381, 387, 96 Cal.Rptr. 108 [claim that venue should have been changed in light of prejudicial pretrial publicity is forfeited if not timely asserted]; People v. Wilson (1963) 60 Cal.2d 139, 146-148, 32 Cal.Rptr. 44, 383 P.2d 452 [constitutional and statutory right to speedy trial deemed waived if not asserted in timely fashion].)[15]

Moreover, contrary to the position reflected in many of the early California venue cases discussed above, in our view a defendant cannot be found to have timely and adequately objected to venue simply by entering a not guilty plea to a felony charge. It is true, as defendant maintains, that under section 1019 a not guilty plea generally puts in issue every material allegation of the accusatory pleading—including any allegation in the accusatory pleading regarding the alleged location of the charged offense—and thus a not guilty plea clearly does not constitute a concession by the defendant that the proceeding has been filed in an appropriate venue and does not relieve the prosecution of its burden of establishing venue when a claim of improper venue is timely raised.[16]

405*405 For a number of reasons, however, we conclude that the entry of a not guilty plea cannot in itself reasonably be regarded as constituting an objection to venue. To begin with, although a not guilty plea represents a general denial by the defendant of his or her guilt of the charged offense, such a plea does not necessarily signify that the defendant challenges the location where the offense is alleged to have occurred, and, absent a more specific indication, such a plea ordinarily would not be understood as addressed to that subsidiary or ancillary point. Thus, from a realistic perspective, the entry of a not guilty plea cannot reasonably be viewed as putting either the court or the prosecution on notice that the defendant contests the alleged location of the crime. Second, to the extent a not guilty plea constitutes a denial of any allegation in an accusatory pleading regarding the location of an offense or any other allegation relevant to venue, this does not mean that the entry of the not guilty plea is the equivalent of the defendant's registering an objection to the proposed site of the trial. As explained above, even when a defendant is of the view that the criminal proceeding has not been filed in an authorized venue, he or she nonetheless may prefer for strategic purposes to be tried in the location where the proceeding has been filed rather than in a statutorily designated venue. Thus, the entry of a not guilty plea in itself simply does not indicate that the defendant objects to being tried in the location where the proceeding has been filed.

Under these circumstances, we conclude that a defendant's entry of a not guilty plea cannot reasonably be treated as a timely assertion of an objection to venue. Indeed, the misdemeanor venue statute described above—which, as noted, provides that any objection to venue is forfeited "unless the defendant, at the time of pleading,

requests an order transferring the action or proceeding to the proper court" (§ 1462.2)—-is inconsistent with an assumption that, as a general matter, a simple plea of not guilty in a criminal case is sufficient in itself to raise and preserve an objection to venue. Because an objection to venue, if sustained, does not signify that the defendant will avoid a trial on the charges altogether, but instead means only that he or she will face trial in another location, a defendant who objects to standing trial in the original locale must bring a specific objection to venue to the attention of the court in a timely fashion. Accordingly, we conclude that insofar as past California decisions hold that the entry of a not guilty plea is sufficient to constitute a timely objection to venue (see People v. Parks, supra, 44 Cal. 105; People v. Bevans, supra, 52 Cal. 470, 471; People v. Aleck, supra, 61 Cal. 137, 137-138; People v. More, supra, 68 Cal. 500, 504, 9 P. 461), these decisions are in error and are overruled.

Having concluded (1) that a defendant who fails to assert a timely objection to venue forfeits the right thereafter to object to venue, and (2) that a defendant's entry of a not guilty plea is insufficient to assert such an objection, we must determine at what point a defendant in a felony 406*406 proceeding must object specifically to venue in order for the objection to be considered timely. Although, as we have seen, the current misdemeanor venue statute— section 1462.2—provides that an objection to venue must be raised when the defendant first enters a plea to the charge, in the absence of an analogous statutory provision explicitly applicable to felony proceedings we do not believe that it would be appropriate to extend to the felony context such a stringent timeliness rule. Recent Court of Appeal decisions have indicated that in felony proceedings a claim of improper venue properly may be raised by demurrer (if the defect in venue appears on the face of the accusatory pleading), by a challenge to venue specifically raised before the magistrate at the preliminary hearing, or by a motion under section 995 challenging the validity of an indictment or information. (See, e.g., People v. Remington, supra, 217 Cal.App.3d 423, 429, 266 Cal.Rptr. 183; People v. Mitten, supra, 37 Cal.App.3d 879, 881-882, 112 Cal.Rptr. 713; Bogart v. Superior Court, supra, 230 Cal.App.2d 874, 875-876, 41 Cal.Rptr. 480.) These cases have not suggested that an objection to venue in a felony proceeding is timely only if lodged at the time the defendant enters a plea.

Instead, we conclude that, in the absence of an explicit statutory provision establishing an earlier time by which a challenge to venue must be raised in a felony proceeding, a specific objection to venue by a defendant should be considered timely if made prior to the commencement of trial. Although in many instances it may be reasonable to expect a defendant to raise such an objection at an earlier point in time—particularly when the defendant is fully aware from the outset of the proceedings of the facts or evidence relevant to the venue issue—a number of considerations persuade us that the commencement of trial represents an appropriate standard of timeliness to adopt by judicial decision.

First, many of the decisions from other jurisdictions that have addressed the issue of timing have concluded that a defendant waives any challenge to venue if he or she fails to assert such an objection "prior to trial." (See, e.g., United States v. Dryden,

supra, 423 F.2d 1175, 1178; State v. McCorkell, supra, 63 Wash.App. 798, 822 P.2d 795, 797 ["by the time jeopardy attaches"].) Second, the current California court rule governing the related matter of the time for filing a motion for change of venue in a criminal proceeding provides that "[e]xcept for good cause shown, the application [for change of venue] shall be filed at least 10 days prior to the date set for trial ...." (Cal. Rules of Court, rule 4.151, formerly rule 841 as amended and renumbered eff. Jan. 1, 2001, italics added.) Because under this rule a motion for change of venue is timely even if made shortly before trial, it appears reasonable, in the absence of a contrary legislative provision or court rule, also to treat an objection to venue as timely so long as the objection is asserted prior to the commencement of trial. On the other hand, given the respective interests of both the defendant and the state, we conclude that, in the absence of unusual circumstances, it is appropriate to consider untimely an objection to venue that is raised for the first time after the start of trial.[17]

407*407 In sum, under the general principles governing the forfeiture doctrine, and in light of the existing procedural rules in analogous areas, we conclude that a defendant who wishes to object to venue in a felony proceeding must make a specific objection to venue prior to the commencement of trial. A defendant who fails to raise such an objection prior to trial ordinarily will be deemed to have forfeited such a claim. To the extent that prior decisions of this court or the Court of Appeal are inconsistent with this conclusion (see People v. Parks, supra, 44 Cal. 105; People v. Roach, supra, 48 Cal. 382; People v. Fisher, supra, 51 Cal. 319; People v. Bevans, supra, 52 Cal. 470, 471; People v. Aleck, supra, 61 Cal. 137; People v. Meseros (1911) 16 Cal.App. 277, 116 P. 679; People v. Pollock (1938) 26 Cal. App.2d 602, 80 P.2d 106; People v. Megladdery, supra, 40 Cal.App.2d 748, 106 P.2d 84), those decisions are overruled or disapproved.

IV

Finally, defendant contends that even if this court determines that a defendant's failure to raise an objection to venue in a felony proceeding prior to trial constitutes a forfeiture of the right to challenge venue at trial or on appeal, it would be unfair to apply such a rule retroactively to this case. In support of this position, defendant emphasizes that at the time of his trial the line of early California Supreme Court decisions described above (see ante, 108 Cal.Rptr.2d at pp. 400-401, 25 P.3d at p. 611) had not been overruled, and that none of the more recent Court of Appeal decisions that have applied the forfeiture doctrine in the venue context specifically had held that a defendant is required to object to venue prior to trial.

In view of both of these circumstances, we agree with defendant that our holding in this case—that a defendant in a felony proceeding who wishes to object to venue must make a specific objection to venue prior to the commencement of trial— should be applied only prospectively. (See, e.g., People v. Welch, supra, 5 Cal.4th 228, 237-238, 19 Cal.Rptr.2d 520, 851 P.2d 802.) Indeed, at oral argument, the Attorney General conceded the propriety of applying any such newly announced rule prospectively only.

Accordingly, in this case, we shall not treat defendant as having forfeited his venue claims by failing specifically to object to venue prior to trial.

As we shall explain, however, we nonetheless conclude that the Court of Appeal properly rejected defendant's venue claims. Defendant initially maintains that the trial court erred in failing to direct a verdict in his favor on the issue of venue on the theory that the evidence at trial was insufficient to establish that Contra Costa County was a proper county for trial of the assault charges against him. This contention clearly lacks merit. As noted above, section 781 expressly provides that when a criminal offense is committed in part in one county and in part in another, or when "acts or effects thereof 408*408 constituting or requisite to the consummation of the offense" occur in two or more counties, the offense may be tried in any county in which such acts or effects occurred. Numerous decisions establish that the provisions of section 781 must be given a liberal interpretation to permit trial in a county where only preparatory acts have occurred (see, e.g., People v. Price, supra, 1 Cal.4th 324, 385, 3 Cal.Rptr.2d 106, 821 P.2d 610; People v. Douglas (1990) 50 Cal.3d 468, 493, 268 Cal.Rptr. 126, 788 P.2d 640; People v. Powell, supra, 67 Cal.2d 32, 63, 59 Cal.Rptr. 817, 429 P.2d 137), and in People v. Bismillah, supra, 208 Cal.App.3d 80, 85-87, 256 Cal.Rptr. 25, the Court of Appeal correctly held, on facts very similar to those presented here, that when criminal conduct in one county results in a police pursuit and an assault on a pursuing officer in another county, under section 781 the assault charge may be tried in the county where the initial criminal conduct occurred. Thus, under the controlling cases, it is clear that the evidence supported venue in Contra Costa County.

Defendant further contends that even if the evidence was sufficient to support a finding of venue in Contra Costa County, the trial court erred in failing to instruct the jury on the question of venue. The Attorney General, in briefing before this court, suggests that the numerous California decisions holding that the issue of venue presents a question of fact to be determined by a jury are outmoded and should be reconsidered. We have no occasion to address that issue here because, even were we to assume that a defendant is entitled to have the question of venue submitted to the jury when the issue has been preserved and the defendant has timely tendered an adequate proposed instruction, in the present case defendant failed to tender such an instruction. As the summary of the trial court proceedings set out above discloses (ante, 108 Cal. Rptr.2d at pp. 391-393, 25 P.3d at pp. 603-605), although the trial court afforded the parties a specific opportunity to research the venue issue, defense counsel failed to provide the court with a proposed jury instruction on venue at the pre-closing-argument jury instruction conference and, when questioned by the court at that conference, did not produce any specific authority supporting the giving of such an instruction. Of course neither the absence nor the presence of a pattern jury instruction on a given subject excuses a party from the ordinary obligation to submit proposed instructions to the trial court, as set forth in section 1093.5. (Cf. People v. Alvarez (1996) 14 Cal.4th 155, 217, 58 Cal. Rptr.2d 385, 926 P.2d 365; People v. Eckstrom (1974) 43 Cal.App.3d 996, 1006, 118 Cal.Rptr. 391; People v. Roth (1964) 228 Cal.App.2d 522, 527-528, 39 Cal.Rptr. 582.) Under these circumstances, the trial court did not err in denying defendant's request. (See, e.g., People v. Ramos (1997) 15 Cal.4th 1133, 1180-1181,

64 Cal. Rptr.2d 892, 938 P.2d 950 [citing § 1093.5]; People v. Terry (1969) 70 Cal.2d 410, 420, fn. 4, 77 Cal.Rptr. 460, 454 P.2d 36.)[18]

In *In re Harris, 855 P. 2d 391 - Cal: Supreme Court 1993:*

"Habeas corpus has become a proper remedy in this state to collaterally attack a judgment of conviction which has been obtained in violation of fundamental constitutional rights. [Citations.]

The denial of a fair and impartial trial amounts to a denial of due process of law [citation] and is a miscarriage of justice within the meaning of that phrase as used in section 4, article VI, of the Constitution of this state. [Citations.] **Fundamental jurisdictional defects, like constitutional defects, do not become irremediable when a judgment of conviction becomes final, even after affirmance 826*826 on appeal**. [Citation.] However, the petitioner must show that the defect so fatally infected the regularity of the trial and conviction as to violate the fundamental aspects of fairness and result in a miscarriage of justice. [Citation.]" (*In re Winchester, supra, 53 Cal.2d at pp. 531-532.*)"

"Claims that could have been raised on appeal are not cognizable on habeas corpus unless the petitioner can show that (**1) clear and fundamental constitutional error strikes at the heart of the trial process;(2) the court lacked fundamental jurisdiction;(3) the court acted in excess of jurisdiction not requiring a redetermination of facts;** or (4) a change in law after the appeal"

Historically, habeas corpus provided an avenue of relief for only those criminal defendants confined by a judgment of a court that lacked fundamental jurisdiction, that is, jurisdiction over the person or subject matter. (See *Ex parte Long (1896) 114 Cal. 159 [45 P. 1057].*) (11) Although this strict jurisdictional view of habeas corpus has changed over the years, **it is clear that a true lack of fundamental jurisdiction in the strict sense of the phrase results in a void judgment**, for the court was entirely without power over the subject matter or the parties. (See *People v. Superior Court (Marks) (1991) 1 Cal.4th 56, 66 [2 Cal. Rptr.2d 389, 820 P.2d 613]; Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 288 [109 P.2d 942, 132 A.L.R. 715*].) **A judgment rendered by a court wholly lacking jurisdiction may be challenged at any time.**

UNLAWFUL AND ILLEGAL CLOSING OF THE COURTROOM

The April 11, 2017 letter from the El Dorado Co. Assistant Public Defender Tim Pappas explains that he witnessed the **unlawful and illegal closing of the courtroom** (violations of U.S. 6th and 14th amend. & Cal Const. Art. 1, Sec 15) during the arraignment in case # P17CRM0089 which was the first case – the same charges as P17CRF0114. At that arraignment, Petitioner was not assigned a lawyer at the time and he attempted to demur

(move to dismiss) the charges on grounds that there was no crime committed, the judge/court lacked jurisdiction and the conflict-of-interest with the El Dorado D.A.

DDA Dale Gomes also closed the courtroom as documented by El Dorado Co. Public Defender Tim Pappas and the courtroom was closed during the trial in Sacramento. The conspiracy and cumulative prosecutorial misconduct so infected this trial that the Petitioner was denied due-process (U.S. 14th amendment).

People v. Hill, 17 Cal. 4th 800 - Cal: Supreme Court 1998:

"A prosecutor's ... intemperate behavior violates the federal Constitution when it comprises a pattern of conduct `so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.'" (*People v. Gionis (1995) 9 Cal.4th 1196, 1214 [40 Cal. Rptr.2d 456, 892 P.2d 1199*]; *People v. Espinoza (1992) 3 Cal.4th 806, 820 [12 Cal. Rptr.2d 682, 838 P.2d 204*].) Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves **`"`the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.'"** (People v. Espinoza, supra, 3 Cal.4th at p. 820.)" (*People v. Samayoa (1997) 15 Cal.4th 795, 841 [64 Cal. Rptr.2d 400, 938 P.2d 2] (hereafter Samayoa).)*

Prosecutors, however, are held to an elevated standard of conduct. **"It is the duty of every member of the bar to `maintain the respect due to the courts' and to `abstain from all offensive personality.'** (Bus. & Prof. Code, 820*820 § 6068, subds. (b) and (f).) **A prosecutor is held to a standard higher than that imposed on other attorneys because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state.** (People v. Kelley (1977) 75 Cal. App.3d 672, 690 [142 Cal. Rptr. 457].) As the United States Supreme Court has explained, the prosecutor represents `a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.' (Berger v. United States (1935) 295 U.S. 78, 88 [79 L.Ed. 1314, 1321, 55 S.Ct. 629].) **Prosecutors who engage in rude or intemperate behavior, even in response to provocation by opposing counsel, greatly demean the office they hold and the People in whose name they serve**. (See People v. Bain (1971) 5 Cal.3d 839, 849 [97 Cal. Rptr. 684, 489 P.2d 564]; People v. Kelley, supra, 75 Cal.3d 672, 680-689.)" (People v. Espinoza (1992) 3 Cal.4th 806, 819-820 [12 Cal. Rptr.2d 682, 838 P.2d 204]; see also People v. Herring (1993) 20 Cal. App.4th 1066, 1076 [25 Cal. Rptr.2d 213].)

2. The Issue Is Preserved for Appellate Review

(4a) At the threshold, respondent contends defendant forfeited appellate review of all his claims of prosecutorial misconduct, because as to each claim his defense counsel, Daniel Blum, either failed to interject a timely and specific objection, failed to request an admonition or curative instruction, or both. (5) "As a general rule a defendant may not complain on appeal of

prosecutorial misconduct unless in a timely fashion — and on the same ground — the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety. (People v. Berryman (1993) 6 Cal.4th 1048, 1072 [25 Cal. Rptr.2d 867, 864 P.2d 40].)" (Samayoa, supra, 15 Cal.4th at p. 841.)

The foregoing, however, is only the general rule. A defendant will be excused from the necessity of either a timely objection and/or a request for admonition if either would be futile. (People v. Arias (1996) 13 Cal.4th 92, 159 [51 Cal. Rptr.2d 770, 913 P.2d 980]; People v. Noguera (1992) 4 Cal.4th 599, 638 [15 Cal. Rptr.2d 400, 842 P.2d 1160].)

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

EL DORADO COUNTY
OFFICE OF
THE PUBLIC DEFENDER

PUBLIC DEFENDER
TERI M. MONTEROSSO

PLACERVILLE OFFICE

ASSISTANT PUBLIC DEFENDER
TIMOTHY R. PAPPAS

DEPUTY PUBLIC DEFENDERS
BETH BALES
WILLIAM DITTMANN
SUSAN GELLMAN
MATTHEW JOHNSON
TODD JONES
DEANNA LOPAS
CLIFFORD SAFRANSKI
DENA STONE
AMIE WHITTIER

3976 DUROCK ROAD, SUITE 104
SHINGLE SPRINGS, CA 95682
PHONE (530) 621-6440
FAX (530) 387-2252
****

SOUTH LAKE TAHOE OFFICE

ASSISTANT PUBLIC DEFENDER
MARK A. RALPHS

DEPUTY PUBLIC DEFENDER
BRIDGET MATOS
JAMES WARDEN

1360 JOHNSON BLVD.
SUITE 106
SOUTH LAKE TAHOE, CA 96150
PHONE (530) 573-3115
FAX (530) 542-4801

April 11, 2017

Mr. Todd Christian Robben
El Dorado County Jail
300 Forni Road
Placerville, California 95667-5400

Re: LEGAL REPRESENTATION

Dear Mr. Robben:

After our visit in the jail on April 5, 2017, I spoke to the Public Defender at length about your pending felony case [P17CRF0089], and the subsequent indictment [P17CRF0114]. I also discussed with her the unlawful closure of the courtroom at your arraignment before Judge Proud, attended by Deputy District Attorney (DDA) Dale Gomes, on March 21, 2017, and the fact that the transcript of that illegal arraignment does NOT reflect that the courtroom had illegally been closed to the general public at the insistence of DDA Gomes before Judge Proud took the bench.

Because I am a witness to these illegal proceedings, the Public Defender has made a determination that this Office cannot represent you in the pending cases. In order to ensure that you can cogently communicate with your appointed counsel, I have enclosed the court minute orders for both pending felony cases, as well as the transcript from the arraignment on March 21, 2017. This letter will further serve as my statement concerning the proceedings at that arraignment.

We have communicated with the Court that this Office has a legal conflict in your cases, and we have asked the court to appoint an attorney from the conflict panel administered by Adam Clark.

Sincerely,

TERI M. MONTEROSSO
PUBLIC DEFENDER

By: _____
Timothy R. Pappas
Assistant Public Defender

TRP/aa

The closed courtroom issue in case P17CRF0089 continued with case # P17CRF0114 from pre-trial hearings through the trial. Here, trial counsel Russell Miller knew and conspired with D.D.A. Dale Gomes and Judge Steve White. This issue shows violations of Cal. Const. Art 1, Sec 15, U.S. 5th, 6th and 14th amendments and amounts to conspiracy, fraud-upon-the-court, prosecutorial misconduct and is a structural error that mandates the conviction in case # P17CRF0114 to be reversed per se without showing prejudice. This issue is made both independent of IAC/CDC and IAAC and as an IAC/CDC/IAAC issue. Trial counsel was not just "ineffective" – he was part of the conspiracy which is CDC (Constructive Denial of Counsel). Appellate counsel Robert L. S. Angres would not be able to argue this hidden issue on appeal, only habeas corpus if he was appointed. Had Mr. Angres filed a habeas corpus on this issue, this Petitioner would have had his conviction reversed since it is a structural error which requires a reversal per se.

This closed courtroom issue prevented the public and press from observing the case which was ripe with corruption as shown in this pleading. It is shown by the El Dorado Assistant Public Defender Tim Pappas that the records (court reporter) do not reflect the illegal/unlawful closure. This is why it is important to have court watchers, the public, family, friends and the press appear at trial to witness these issues and be witnesses like Tim Pappas.

Here, this court would need to conduct an evidentiary hearing to hear from Russell Miller, Dale Gomes, Steve White, Tim Pappas and others like members of the press, friends, family and this Petitioner who can testify to the closure of Judge Steve White's courtroom during the pre-trial and trial of case # P17CRF0114.

In *People v. Thompson, 785 P. 2d 857* - Cal: Supreme Court 1990 "**A defendant has both a constitutional and a statutory right to public trial. (Cal. Const., art. I, § 15; Pen. Code, § 686, subd. 1.**

In *People v. Woodward, 4 Cal.4th 376 (Cal. 1992)* **"a public trial ordinarily is one "open to the general public at all times."** (*People v. Byrnes (1948) 84 Cal.App.2d 72, 73 [190 P.2d 290];* see *People v. Hartman (1894) 103 Cal. 242, 245 [37 P. 153].)* **The Sixth Amendment public trial guarantee creates a "presumption of openness" that can be rebutted only by a showing that exclusion of the public was necessary to protect some "higher value," such as the defendant's right to a fair trial, or the government's interest in preserving the confidentiality of the proceedings."**

"some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." *Arizona v. Fulminante, 499 U.S. 279, 308 (1991) (plurality opinion).* **These so-called "structural errors" are "defects in the constitution of the trial mechanism" which affect the "entire conduct of the trial from beginning to end," and include, inter alia, "the absence of counsel for a criminal defendant," "the presence on the bench of a judge who is not impartial," and "the right to a public trial."** Id. at 309-10.

In *Neder v. United States, 527 US 1 - Supreme Court 1999* citing *Waller v. Georgia, 467 U. S. 39 (1984)* **(denial of public trial) - "Those cases, we have explained, contain a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself."** *Fulminante, supra, at 310*. **Such errors "infect the entire trial process,"** *Brecht v. Abrahamson, 507 U. S. 619, 630 (1993),* and **"necessarily render a trial fundamentally unfair,"** *Rose, 478 U. S., at 577*. **Put another way, these errors deprive defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . .and no criminal punishment may be regarded as fundamentally fair."** Id., at 577-578.

In *Waller v. Georgia, 467 U.S. 39 (1984*) at 50:

> **"the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee. We agree"**
>
> "See, e.g., Douglas v. Wainwright, 714 F.2d 1532, 1542 (CA11 1983) (citing cases), cert. pending, Nos. 83-817, 83-995. See also Levine v. United States, 362 U.S. 610, 627, n. (1960) (BRENNAN, J., dissenting) **("[T]he settled rule of the federal courts [is] that a showing of prejudice is not necessary for reversal of a conviction not had in public proceedings").** The general view appears to be that of the Court of Appeals for the Third Circuit. It noted in an en banc opinion that a requirement that prejudice be shown "would in most cases deprive [the defendant] of the [public-trial] guarantee, for it would be difficult to envisage a case in which he would have evidence available of specific injury." United States ex rel. Bennett v. Rundle, 419 F.2d 599, 608 (1969). While the benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance, the Framers plainly thought them nonetheless real. See also State v. Sheppard, 182 Conn. 412, 418, 438 A.2d 125, 128 (1980) ("Because demonstration of prejudice in this kind of case is a practical impossibility, prejudice must necessarily be implied"); People v. Jones, 47 N.Y.2d 409, 416, 391 N.E.2d 1335, 1340 (1979) ("The harmless error rule is no way to gauge the

great, though intangible, societal loss that flows" from closing courthouse doors)." f/n 9 Waller v. Georgia, supra.

In *Waller v. Georgia, 467 US 39 - U.S. Supreme Court 1984:*

"The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions . . . ." ' " Ibid. (quoting In re Oliver, 333 U. S. 257, 270, n. 25 (1948), in turn quoting 1 T. Cooley, Constitutional Limitations 647 (8th ed. 1927)).[4]

In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury. See *In re Oliver, supra, at 270, n. 24; Douglas v. Wainwright, 714 F. 2d 1532, 1541 (CA11 1983), cert. pending, Nos. 83-817, 83-995; United States ex rel. Bennett v. Rundle, 419 F. 2d 599, 606 (CA3 1969).*

In *People v. Bui, 183 Cal.App.4th 675 (Cal. Ct. App. 2010):*

"The court concluded that if the trial court barred spectators from the courtroom as the defendant alleged, he was denied his Sixth Amendment right to have a public trial and that he need not demonstrate prejudice. (Owens, at pp. 63-64, 66.) Owens is distinguishable on its facts. Not only was voir dire in that case closed to the public for an entire day, but all members of the public were excluded. (Id. at p. 62.) Further, even Owens appears to recognize, in contrasting "a mere fifteen or twenty-minute closure," that the Sixth Amendment right to a public trial "is not trammeled . . . by a trivial, inadvertent courtroom closure." (Bowden v. Keane (2d Cir. 2001) 237 F.3d 125, 129.)

The court rejected the defendant's argument that the absence of his family and friends at trial raised special concerns, finding that the same standard applied to family members as to the general public. (Owens, supra, 483 F.3d at p. 62, fn. 12.)

Habeas corpus relief was granted on remand. (Owens v. U.S. (D.Mass. 2007) 517 F.Snpp.2d 570.)"

In re Oliver, 333 U.S. 257 (1948):

The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the lettre de cachet. All of these institutions

obviously symbolized a menace to liberty. In the hands of despotic groups each of them had become an instrument for the suppression of political and religious heresies in ruthless disregard of the right of an accused to a fair trial. Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. One need not wholly agree with a statement made on the subject by Jeremy Bentham over 120 years ago to appreciate the fear of secret trials felt by him, his predecessors and contemporaries. Bentham said: ". . . suppose the proceedings to be completely secret, and the court, on the occasion, to consist of no more than a single judge, — that judge will be at once indolent and arbitrary: how corrupt soever his inclination may be, it will find no check, at any rate no tolerably efficient check, to oppose it. Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance."

Radin, The Right to a Public Trial, 6 Temp. L.Q. 381, 389. **The criminal procedure of the civil law countries long resembled that of the Inquisition in that the preliminary examination of the accused, the questioning of witnesses, and the trial of the accused were conducted in secret.** Esmein, A History of Continental Criminal Procedure 183-382 (1913); Ploscowe, Development of Inquisitorial and Accusatorial Elements in French Procedure, 23 J. Crim. L. Criminology 372-386. The ecclesiastical courts of Great Britain, which intermittently exercised a limited civil and criminal jurisdiction, adopted a procedure described as "in name as well as in fact an Inquisition, differing from the Spanish Inquisition in the circumstances that it did not at any time as far as we are aware employ torture, and that the bulk of the business of the courts was of a comparatively Page 269 unimportant kind. . . ." 2 Stephen, History of the Criminal Law of England, 402 (1883). The secrecy of the ecclesiastical courts and the civil law courts was often pointed out by commentators who praised the publicity of the common law courts. See e.g., 3 Blackstone, Commentaries *373; 1 Bentham, Rationale of Judicial Evidence, 594-595, 603 (1827). The English common law courts which succeeded to the jurisdiction of the ecclesiastical courts have renounced all claim to hold secret sessions in cases formerly within the ecclesiastical jurisdiction, even in civil suits. See, e.g., Scott v. Scott, [1913] A.C. 417.

Davis v. United States, 247 F. 394, 395; Keddington v. State, 19 Ariz. 457, 459, 172 P. 273; Williamson v. Lacy, 86 Me. 80, 82-83, 29 A. 943, 944; Dutton v. State, 123 Md. 373, 387, 91 A. 417, 422; Jenks, The Book of English Law 91 (3d ed. 1932). **Some authorities have said that trials in the Star Chamber were public, but that witnesses against the accused were examined privately**

with no opportunity for him to discredit them. Apparently all authorities agree that the accused himself was grilled in secret, often tortured, in an effort to obtain a confession and that the most objectionable of the Star Chamber's practices was its asserted prerogative to disregard the common law rules of criminal procedure when the occasion demanded. 5 Holdsworth, A History of English Law, 163, 165, 180-197 (2d ed. 1937); Radin, The Right to a Public Trial, 6 Temp. L.Q. 381, 386-388; Washburn, The Court of Star Chamber, 12 Am. L. Rev. 21, 25-31.

Radin, The Right to a Public Trial, 6 Temp. L.Q. 381, 388. The lettre de cachet was an order of the king that one of his subjects be forthwith imprisoned or exiled without a trial or an opportunity to defend himself. In the eighteenth century they were often issued in blank to local police. Louis XV is supposed to have issued more than 150,000 lettres de cachet during his reign. This device was the principal means employed to prosecute crimes of opinion, although it was also used by the royalty as a convenient method of preventing the public airing of intra-family scandals. Voltaire, Mirabeau and Montesquieu, among others, denounced the use of the lettre de cachet, and it was abolished after the French Revolution, though later temporarily revived by Napoleon. 13 Encyc. Brit. 971; 3 Encyc. Soc. Sci. 137.

Other benefits attributed to publicity have been: (1) Public trials come to the attention of key witnesses unknown to the parties. These witnesses may then voluntarily come forward and give important testimony. 6 Wigmore, Evidence § 1834 (3d ed. 1940); Tanksley v. United States, 145 F.2d 58, 59.

(2) **The spectators learn about their government and acquire confidence in their judicial remedies**. 6 Wigmore, Evidence § 1834 (3d ed. 1940); 1 Bentham, Rationale of Judicial Evidence 525 (1827); State v. Keeler, 52 Mont. 205, 156 P. 1080; 20 Harv. L. Rev. 489.

Jenks, The Book of English Law 91 (1932); Auld, Comparative Jurisprudence of Criminal Process, 1 U. of Toronto L.J. 82, 99; Radin, The Right to a Public Trial, 6 Temp. L.Q. 381; Criminal Procedure in Scotland and England, 108 Edinburgh Rev. 174, 181-182; Holmes, J. in Cowley v. Pulsifer, 137 Mass. 392, 394; State v. Osborne, 54 Or. 289, 295-297, 103 P. 62, 64-66. People v. Murray, 89 Mich. 276, 286, 50 N.W. 995, 998: **"It is for the protection of all persons accused of crime — the innocently accused, that they may not become the victim of an unjust prosecution, as well as the guilty, that they may be awarded a fair trial — that one rule [as to public trials] must be observed and applied to all."** Frequently quoted is the statement in 1 Cooley, Constitutional Limitations (8th ed. 1927) at 647: **"The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested**

spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions. . . ."

Page 271 1 Bentham, Rationale of Judicial Evidence 524 (1827).

In giving content to the constitutional and statutory commands that an accused be given a public trial, the state and federal courts have differed over what groups of spectators, if any, could properly be excluded from a criminal trial. But, unless in Michigan and in one-man grand jury contempt cases, no court in this country has ever before held, so far as we can find, that an accused can be tried, convicted, and sent to jail, when everybody else is denied entrance to the court, except the judge and his attaches. And without exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter with what offense he may be charged. **In Gaines v. Washington, 277 U.S. 81, 85-86, this Court assumed that a criminal trial conducted in secret would violate the procedural requirements of the Fourteenth Amendment's due process clause,** although its actual holding there was that no violation had in fact occurred, since the trial court's order barring the general public had not been enforced. Certain proceedings in a judge's chambers, including convictions for contempt of court, have occasionally been countenanced by state courts, but there has never been any intimation that all of the public, including the accused's relatives, friends, and counsel, were barred from the trial chamber.

Compare People v. Murray, 89 Mich. 276, 50 N.W. 995; and People v. Yeager, 113 Mich. 228, 71 N.W. 491, with Reagan v. United States, 202 F. 488. For collection and analysis of the cases, see 6 Wigmore, Evidence § 1834 (3d ed. 1940); Orfield, Criminal Procedure from Arrest to Appeal 385-387 (1947); Radin, The Right to a Public Trial, 6 Temp. L.Q. 381, 389-391; Note, 35 Mich. L. Rev. 474; 8 U. of Det. L.J. 129; 156 A.L.R. 265.

"For the purposes contemplated by the provision of the constitution, the presence of the officers of the court, men whom [sic], it is safe to say, were under the influence of the court, made the trial no more public than if they too had been excluded." People v. Hartman, 103 Cal. 242, 244, 37 P. 153, 154.

See, e.g., State v. Beckstead, 96 Utah 528, 88 P.2d 461 (error to exclude friends and relatives of accused); Benedict v. People, 23 Colo. 126, 46 P. 637 (exclusion of all except witnesses, members of bar and law students upheld); People v. Hall, 51 A.D. 57, 64 N.Y.S. 433 (exclusion of general public upheld where accused permitted to designate friends who remained). "No court has gone so far as affirmatively to exclude the press." Note, 35 Mich. L. Rev. 474, 476. **Even those who deplore the sensationalism of criminal trials and advocate the exclusion of the general public from the courtroom would preserve the rights of the accused by requiring the admission of the press,**

friends of the accused, and selected members of the community. Radin, The Right to a Public Trial, 6 Temp. L.Q. 381, 394-395; 20 J. Am. Jud. Soc. 83.

Cases are collected in 27 Ann. Cas. 35.

In the case before us, the petitioner was called as a witness to testify in secret before a one-man grand jury conducting a grand jury investigation. In the midst of petitioner's testimony the proceedings abruptly changed. The investigation became a "trial," the grand jury became a judge, and the witness became an accused charged with contempt of court — all in secret. Following a charge, conviction and sentence, the petitioner was led away to prison — still without any break in the secrecy. Even in jail, according to undenied allegations, his lawyer was denied an opportunity to see and confer with him. And that was not the end of secrecy. His lawyer filed in the State Supreme Court this habeas corpus proceeding. Even there, the mantle of secrecy enveloped the transaction and the State Supreme Court ordered him sent back to jail without ever having seen a record of his testimony, and without knowing all that took place in the secrecy of the judge's chambers. In view of this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment's guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison.

Second. **We further hold that failure to afford the petitioner a reasonable opportunity to defend himself against the charge of false and evasive swearing was a denial of due process of law. A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense — a right to his day in court — are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel**. Michigan, not denying the existence of these rights in criminal cases generally, apparently concedes that the summary conviction here would have been a denial of procedural due process but for the nature of the charge, namely, a contempt of court, committed, the State urges, in the court's actual presence.

The following decisions of this Court involving various kinds of proceedings are among the multitude that support the above statement: Snyder v. Massachusetts, 291 U.S. 97, 116; Powell v. Alabama, 287 U.S. 45, 68-70; Hovey v. Elliott, 167 U.S. 409, 418; Holden v. Hardy, 169 U.S. 366, 390-391; Morgan v. United States, 304 U.S. 1, 14-15, and cases there cited.

GRAND JURY LACKED JURISDICTION AND VIOLATES CONSTITUTIONAL DUE-PROCESS & EQUAL PROTECTION

At the onset, unlike a civil grand jury, El Dorado County does not have a criminal grand jury impaneled each year. With all judges being recused/disqualified from El Dorado Co. there was no presiding judge to even impanel a criminal grand jury pursuant to penal code 904.6(a) & (b). There is no record from the Chief Justice of the California Supreme Court or Judicial Counsel assigning retired Thomas A. Smith as a presiding judge or even a judge in case # P17CRF0114.

As addressed, the El Dorado D.A. had started case # P17CRF0089 and with that case still open requiring a preliminary hearing pursuant to penal code 859, they proceeded to open another case # P17CRF0114 using a grand jury to obtain an indictment.

In *Adams v. California Dept. of Health Services 487 F. 3d 684* - Court of Appeals, 9th Circuit, 2007 (citing U.S. Supreme Court case law *The U.S. v. The Haytian Republic*): **"Plaintiffs generally have "no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant."** *Walton, 563 F.2d at 70; see also Curtis, 226 F.3d at 138-39; Serlin v. Arthur Andersen & Co., 3 F.3d 221, 223-24 (7th Cir.1993); Oliney v. Gardner, 771 F.2d 856, 859 (5th Cir.1985); Zerilli v. Evening News Ass'n, 628 F.2d 217, 222 (D.C.Cir.1980); Sutcliffe Storage & Warehouse Co. v. United States, 162 F.2d 849, 851 (1st Cir.1947).* **To determine whether a suit is duplicative, we borrow from the test for claim preclusion. As the Supreme Court stated in *The United States v. The Haytian Republic* *154 U.S. 118, 124, 14 S.Ct. 992, 38 L.Ed. 930 (1894)*, "the true test of the sufficiency of a plea of 'other suit pending' in another forum [i]s the legal efficacy of the first suit, when finally disposed of, as 'the thing adjudged,' regarding the matters at issue in the second suit." Thus, in assessing whether the second action is duplicative of the first, we examine whether the causes of action and relief sought, as well as the parties or privies to the action, are the same.**

See *The Haytian Republic, 154 U.S. at 124, 14 S.Ct. 992* ("There must be the same parties, or, at least, such as represent the same interests; there must be the same rights asserted and the same relief prayed for; the relief must be founded upon the same facts, and

the . essential basis, of the relief sought must be the same." The elementary principle which governs the availability of the plea of "other suit pending" was thus stated in Watson v. Jones, 13 Wall. 679, 715: "When the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or, at least, such as represent the same interest, there must be the same rights asserted and the same relief prayed for. This relief must be founded on the same facts, and the title, or essential basis of the relief sought, must be the same." "It is contended, however, that, although the two suits involved the assertion of different rights, as the rights asserted 125*125 in the last suit were in existence at the time the first suit was brought, therefore they should have been asserted in that suit, and could not be afterwards relied upon in a separate suit, in a different forum. In support of this proposition we are referred to the case of *Stark v. Starr, 94 U.S. 477, 485*, and this language is quoted from the opinion in that case: "It is undoubtedly a settled question that a party seeking to enforce a claim legal or equitable must present to the court, either by the pleadings or proofs, all the grounds upon which he expects a judgment in his favor. He is not at liberty to split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit, if the first fail. There would be no end to litigation if such a practice were permissible." Id.

Unlike the prevailing case *People v. Carrington, infra* this Petitioner relies on the U.S. Supreme Court and Ninth Circuit Court of Appeal along with doctrine of "claim preclusion" and "other suit pending" and avoiding "piecemeal litigation" "duplicate prosecution" and "duplicate litigation".

Additionally, Petitioners "inalienable" and "fundamental" rights of the U.S. 5th & 14th amendment and Cal. Cost. Art 1, Sec 1, 7 & 15 due-process and equal protection is violated since the prosecution is forum shopping by having two cases open at the same time so if the grand jury indictment failed they still had a second bite-at-the-apple with the original case # P17CRF0089 remaining open.

People v. Carrington, 211 P. 3d 617 - Cal: Supreme Court 2009:

> "Defendant contends the grand jury, as an "arm of the superior court," lacked authority to act as long as the stay was in effect. To the contrary, neither

the pendency of the complaint nor the stay of proceedings on that complaint affected the jurisdiction of the grand jury. In the prosecution of a felony, the People may proceed "either by indictment or . . . by 181*181 information." (Cal. Const., art. I, § 14; see Pen. Code, §§ 682, 737.) It is within the discretion of the prosecution to accept dismissal of a complaint and begin new proceedings by seeking an indictment. (People v. Uhlemann (1973) 9 Cal.3d 662, 664, 669 [108 Cal.Rptr. 657, 511 P.2d 609].) After a complaint has been filed, the prosecution is not prohibited from seeking an indictment on the same charges, even prior to dismissal of the complaint. (Sherwood v. Superior Court (1979) 24 Cal.3d 183, 187 [154 Cal.Rptr. 917, 593 P.2d 862] [grand jury did not lack jurisdiction to indict the defendant while a complaint was pending against him on the same charge].)

The stay issued by the superior court did not affect the prosecution's right to seek an indictment. That order stayed "all proceedings in the Municipal Court of this county on the case of The People v. Celeste Simone Carrington, CRSf239675." An indictment and an information initiate "separate proceedings." (People v. Combes (1961) 56 Cal.2d 135, 145 [14 Cal.Rptr. 4, 363 P.2d 4] [error committed in connection with the complaint does not affect subsequent proceedings under an indictment for the same charges]; see People v. Grace (1928) 88 Cal.App. 222, 228 [263 P. 306] ["The mere fact that the same offense was charged in the indictment that had previously been charged in the information does not establish any legal relation or connection between the information and the indictment . . . and manifestly no error committed in connection with the one proceeding could affect the other."].) The stay simply did not apply to any potential grand jury proceedings in the superior court.

Defendant also contends that the prosecutor's action in convening a grand jury while a stay was in effect constituted unfair and unconstitutional forum shopping, violating her rights to due process and fundamental fairness. By seeking an indictment, the prosecution may have avoided some delay in obtaining a probable cause determination while defendant's venue challenge to the complaint was being litigated. The prosecution, however, did not obtain any unfair advantage in doing so. It did not avoid a ruling on the venue issue. Defendant demurred to the indictment, alleging that San Mateo County was not a proper venue for trial of the Santa Clara County offenses, and the superior court overruled that demurrer. (See §§ 917, 1004, subd. 1.) The prosecutor's decision to pursue an indictment was not unlawful and did not result in any unfair advantage over the defense. Consequently, defendant's constitutional rights were not violated."

At the time the grand jury had issued its indictment on March 23, 2017, the Petitioner was in jail unlawfully on the related case # P17CRF0089. The Petitioner was scheduled to be released from jail on/about March 09, 2017 from case # S16CRM0096.

Petitioner was not appointed conflict-free counsel in case # P17CRF0089 pursuant to penal code 858(a) “When the defendant first appears for arraignment on a charge of having committed a public offense, the magistrate shall immediately inform the defendant of the charge against him or her, and of his or her right to the aid of counsel in every stage of the proceedings.” Also see U.S. Constitution 6th amendment and Cal. Constitution Art 1, Sec 15. Here, Petitioner was actually denied counsel at a critical stage in the proceedings.

In *United States v. Marion,* 404 U.S. 307, 324, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971) Pre-indictment delay that results in actual prejudice to a defendant "makes a due process claim concrete and ripe for adjudication. "pre-indictment delay in this case caused substantial prejudice to appellees' rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused. *Brady v. Maryland, 373 U. S. 83 (1963); Napue v. Illinois, 360 U. S. 264 (1959)* .” Id.

The indictment was delayed as the Petitioner was jailed for 18 months in case # S16CRM0096 and the D.A. filed case # P17CRF0089 as Petitioner was without counsel and then filed case # P17CRF0114 on the delayed indictment.

The Petitioner was prejudiced by the delay since he could have defended the charges in case P17CRF0089 & P17CRF0114 during his time in jail. From the time he was supposed to be released from jail on/about March 09, 2017 to March 23, 2017 the Petitioner was unlawfully jailed with no arrest warrant (it is alleged a Ramey warrant was issued – it does not exist) with any timely hearing. Petitioner was without counsel during from March 09, 2017 to March 23, 2017 where he could have moved to quash and/or dismiss said charges on numerous grounds already listed, most notably that the alleged crimes were not criminal (they were free speech) and the court/judge lacked jurisdiction and the entire D.A. office was a conflict-of-interest.

Petitioner was denied a right to a preliminary hearing after the indictment pursuant to Cal. Constitution Art. 1,Sec. 14.1 which is unconstitutional since it violates this Petitioner’s (and every other defendant in California who suffers an indictment) inalienable and fundamental rights of due-process and equal protection pursuant to the U.S. Constitution 14th amendment and Cal. Constitution Art. 1 Sec 7 & 15 and separation of powers pursuant to Cal. Const. Art. 3, Sec. 3 since the prosecutor controls the grand jury.

In *Hawkins v. Superior Court, 586 P. 2d 916 - Cal: Supreme Court 1978:*

> **"The prosecuting attorney is typically in complete control of the total process in the grand jury room: he calls the witnesses, interprets the evidence, states and applies the law, and advises the grand jury on whether a crime has been committed.** (See Judicial Council of Cal., Annual Rep. (1974) p. 58; Kranitz, The Grand Jury: Past — Present — No Future (1959) 24 Mo.L.Rev. 318, 328; Calkins, Abolition of the Grand Jury Indictment in Illinois (1966) U.Ill.L.F. 423, 431.) **The grand jury is independent only in the sense that it is not formally attached to the prosecutor's office; though legally free to vote as they please, grand jurors virtually always assent to the recommendations of the prosecuting attorney, a fact borne out by available statistical and survey data.** (See Morse, A Survey of the Grand Jury System (1931) 10 Ore.L.Rev. 101, 153-154, 304, 325-326; Note, Some Aspects of the California Grand Jury 590*590 System (1956) 8 Stan.L.Rev. 631, 653-654; Note, Evaluating the Grand Jury's Role in a Dual System of Prosecution: An Iowa Case Study (1972) 57 Iowa L.Rev. 1354, 1369.) **Indeed, the fiction of grand jury independence is perhaps best demonstrated by the following fact to which the parties herein have stipulated: between January 1, 1974, and June 30, 1977, 235 cases were presented to the San Francisco Grand Jury and indictments were returned in all 235.**
>
> **The pervasive prosecutorial influence reflected in such statistics has led an impressive array of commentators to endorse the sentiment expressed by United States District Judge William J. Campbell, a former prosecutor: "Today, the grand jury is the total captive of the prosecutor who, if he is candid, will concede that he can indict anybody, at any time, for almost anything, before any grand jury."** (Campbell, Eliminate the Grand Jury (1973) 64 J.Crim.L. & C. 174.) Another distinguished federal jurist, Judge Marvin E. Frankel, put it this way: **"The contemporary grand jury investigates only those whom the prosecutor asks to be investigated, and by and large indicts those whom the prosecutor wants to be indicted."**

Petitioner (and every other defendant) is in a class of defendants that were indicted using an unconstitutional grand jury scheme, and Petitioner (and every other defendant) is in a "class-of-one" for the purpose of equal protection. Indicted defendants unlike defendants who are prosecuted with a complaint/information do not receive a fundamental right of a preliminary hearing.

Again, in *Hawkins v. Superior Court, 586 P. 2d 916 - Cal: Supreme Court 1978:*

(1a), (2a) **It is undeniable that there is a considerable disparity in the procedural rights afforded defendants charged by the prosecutor by means of an information and defendants charged by the grand jury in an indictment.[1] The defendant accused by information "immediately becomes entitled to an impressive array of procedural rights, including a preliminary hearing before a neutral and legally knowledgeable magistrate, representation by retained or appointed counsel, the confrontation and cross-examination of hostile witnesses, and the opportunity to personally appear and affirmatively present exculpatory evidence.** (Pen. Code, § 858 et seq.; Jennings v. Superior Court (1967) 66 Cal.2d 867 [59 Cal. Rptr. 440, 428 P.2d 304].)" (Johnson v. Superior Court (1975) 15 Cal.3d 248, 256 [124 Cal. Rptr. 32, 539 P.2d 792] (conc. opn. by Mosk, J.).)

In vivid contrast, the indictment procedure omits all the above safeguards: the defendant has no right to appear or be represented by counsel, and consequently may not confront and cross-examine the witnesses against him, object to evidence introduced by the prosecutor, make legal arguments, or present evidence to explain or contradict the charge. Penal Code section 939.7 captures the spirit of the proceeding by declaring as a matter of law, "The grand jury is not required to hear evidence for the defendant...." If he is called to testify, the defendant has no right to the presence of counsel, even though, because of the absolute secrecy surrounding grand jury proceedings, he may be completely unaware of the subject of inquiry or his position as a target witness.[2] This remarkable lack of even the most basic rights is compounded by the absence from the grand jury room of a neutral and detached magistrate, trained in the law, to rule on the admissibility of evidence and insure that the grand jury exercises its indicting function with proper regard for the independence and objectivity so necessary if it is to fulfill its purported role of protecting innocent citizens from unfounded accusations, even as 588*588 it proceeds against those who it has probable cause to believe have committed offenses.

3) **Under the traditional two-tier test of equal protection, a discriminatory legislative classification that impairs fundamental rights will be subjected to strict scrutiny by the courts, and the state will be required to bear the heavy burden of proving not only that it has a compelling interest which justifies the classification but also that the discrimination is necessary to promote that interest.** (See, e.g., *Serrano v. Priest (1976) 18 Cal.3d 728, 761 [135 Cal. Rptr. 345, 557 P.2d 929*], and cases cited.)

(1b) **For the reasons stated in part I, ante, the denial of a postindictment preliminary hearing deprives the defendant of "such fundamental 593*593 rights as counsel, confrontation, the right to personally appear, the right to a hearing before a judicial officer, and the right to be free from unwarranted prosecution. These guarantees are expressly or impliedly grounded in both the state and federal Constitutions and must by any test be deemed `fundamental.'"** (*Johnson v. Superior Court (1975) supra, 15 Cal.3d 248, 266* (conc. opn. by Mosk, J.).)

Justice Douglas put the matter succinctly when he wrote: **"It is, indeed, common knowledge that the grand jury, having been conceived as a bulwark between the citizen and the Government, is now a tool of the Executive."** (United States v. Dionisio (1972) 410 U.S. 1, 23 [35 L.Ed.2d 67, 82, 93 S.Ct. 764] (dis. opn.).)

The domination of grand jury proceedings by the prosecuting attorney no doubt derives at least in part from the grand jury's institutional schizophrenia: it is expected to serve two distinct and largely inconsistent functions — accuser and impartial factfinder. (See Comment, The Preliminary Hearing Versus the Grand Jury Indictment: "Wasteful Nonsense of Criminal Jurisprudence" Revisited (1974) 26 U.Fla.L.Rev. 825, 836-838, 842-843; Note, Criminal Law — Grand Juries, Exemplars and Prosecutors (1973) 22 De Paul L.Rev. 737, 749-750.) In one role, "Basically the grand jury is a law enforcement agency" (United States v. Cleary (2d Cir.1959) 265 F.2d 459, 461, and cases cited), **participating in the prosecutorial task of discovering criminal conduct and the perpetrators thereof; putting on its other hat, the grand jury is expected to be a neutral body, protective of the individual against prosecutorial abuses. It seems self-evident that to the extent it succeeds at one function it must fail at the other. Almost all observers of the system conclude that this conflict of roles has prevented the grand jury from being objective, generally to the detriment of indicted defendants.**

The problem of excessive prosecutorial influence is not solved by the availability of judicial review, for the same lack of objectivity, however inadvertent, which affects the grand jurors when they vote to indict infects the record for purposes of review. Excluded from the grand jury room, the defense has no opportunity to conduct the searching cross-examination necessary to reveal flaws in the testimony of prosecution witnesses or to expose dubious eyewitness identifications.[5] This lack of defense participation in the development of the reviewable record creates a heavy bias in favor of a finding that the grand jury indictment was based on probable cause. For example, in United States v. Boberg (8th 592*592 Cir.1977) 565 F.2d 1059, **the federal appellate court emphasized that the prosecutor's interrogation of the defendant as a witness before the grand jury consisted "almost entirely of leading questions," and the ensuing indictment rested on the defendant's "cryptic responses" to such**

questions. The court admonished that "This kind of interrogation always creates a great risk that the witness will misunderstand the questions or that the prosecutor will put words in the witness' mouth," and warned all prosecutors that it would "strictly scrutinize for fairness" any similar indictment obtained thereafter. (Id., at pp. 1062-1063.)

It is clear from the foregoing that a defendant charged by indictment is seriously disadvantaged in contrast to a defendant charged by information. (See also Dash, The Indicting Grand Jury: A Critical Stage? (1972) 10 Am. Crim. L.Rev. 807, 814-815; Judicial Council of Cal., Annual Rep. (1974) pp. 47, 52-55.) **Indeed, current indictment procedures create what can only be characterized as a prosecutor's Eden: he decides what evidence will be heard, how it is to be presented, and then advises the grand jury on its admissibility and legal significance. In sharp contrast are information procedures in which the defendant is entitled to an adversarial, judicial hearing that yields numerous protections, including a far more meaningful probable cause determination. Yet the prosecuting attorney is free in his completely unfettered discretion to choose which defendants will be charged by indictment rather than information and consequently which catalogue of rights, widely disparate though they may be, a defendant will receive. He may act out of what he believes to be proper law enforcement motives, or he may act whimsically; no case law or statutory guidelines exist to circumscribe his discretion. We examine below the constitutionality of permitting the prosecuting attorney to make such discriminatory classifications.**

Petitioner requests the court to declare to Cal. Constitution Art. 1,Sec. 14.1[26] unconstitutional on the grounds in violates U.S. 14th amendment and Cal Constitution Art, 1 Sec 7 & 15 on due-process and equal protection. California Constitution Art. 3, Sec 1 **states "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land."**

In *Johnson v. Superior Court, 539 P. 2d 792 - Cal: Supreme Court 1975 F/N 10* "The traditional response that the grand jury is per se constitutional because of its express mention in

---

[26] At the June 5, 1990, Primary Election, the voters approved an initiative constitutional amendment and statute that was designated on the ballot as Proposition 115 — the self-styled "Crime Victims Justice Reform Act." Section 2 of the measure added section 14.1 to article I of the California Constitution: "If a felony is prosecuted by indictment, there shall be no post-indictment preliminary hearing."

both the United States (U.S. Const., 5th Amend.) and California Constitutions (Cal. Const., art. I, § 14) is unpersuasive. Although both charters speak of the grand jury as an institution, neither delineates how the system is to be administered, these matters being legislatively and judicially mandated. It is not the existence of the grand jury which is at issue — that is constitutionally recognized; it is the procedure, not defined in either charter, which is conditionally inadequate."

The Fifth Amendment right of a federal defendant to indictment by a grand jury is not incorporated by the due process clause of the Fourteenth Amendment and thus does not apply to the states. See *Hurtado v. California, 110 US 516 - Supreme Court 1884*

Again, in *Hawkins v. Superior Court, 586 P. 2d 916 - Cal: Supreme Court 1978:*

> **Under the traditional two-tier test of equal protection, a discriminatory legislative classification that impairs fundamental rights will be subjected to strict scrutiny by the courts, and the state will be required to bear the heavy burden of proving not only that it has a compelling interest which justifies the classification but also that the discrimination is necessary to promote that interest. (See, e.g., Serrano v. Priest (1976) 18 Cal.3d 728, 761 [135 Cal. Rptr. 345, 557 P.2d 929], and cases cited.)**

> **(1b) For the reasons stated in part I, ante, the denial of a postindictment preliminary hearing deprives the defendant of "such fundamental 593*593 rights as counsel, confrontation, the right to personally appear, the right to a hearing before a judicial officer, and the right to be free from unwarranted prosecution. These guarantees are expressly or impliedly grounded in both the state and federal Constitutions and must by any test be deemed `fundamental.'" (Johnson v. Superior Court (1975) supra, 15 Cal.3d 248, 266 (conc. opn. by Mosk, J.).)**

This Petitioner and other defendants are denied their 6th amendment right and Cal. Const. Art, 1 Sec 15 to counsel during a grand jury proceeding. In *Johnson v. Superior Court, 539 P. 2d 792 - Cal: Supreme Court 1975*:

> **In *Powell* v. *Alabama* (1932) 287 U.S. 45, 69 [77 L.Ed. 158, 170, 53 S.Ct. 55, 84 A.L.R. 527], the Supreme Court declared that a person accused of crime "required the guiding hand of counsel at every stage in the proceedings against him." If this were in fact the law this opinion 265*265 would be unnecessary, because it is irrefutable that the**

grand jury proceeding is a "stage," and indeed a critical stage, of the criminal justice process. Unfortunately, to date courts have been loathe to shine the revealing light of due process analysis into the secret recesses of the grand jury room. Because of this reticence, the state is permitted to subject an individual to the trauma of a felony trial without even cursory consideration of his side of the story. This, I submit, is a patent violation of the due process clauses of the federal and state Constitutions, rivaled only by its equally blatant violation of equal protection of the law.

IV

Under traditional equal protection analysis it has now become axiomatic that persons similarly situated must receive like treatment under the law. (*In re Antazo* (1970) 3 Cal.3d 100, 110 [89 Cal. Rptr. 255, 473 P.2d 999].) **If "fundamental rights" are not involved the state may justify classifications if they are reasonably related to a legitimate state goal. If fundamental rights or "suspect classifications" are involved the state bears the heavy burden of demonstrating a "compelling" interest. As stated in** *Serrano* v. *Priest* (1971) 5 Cal.3d 584 [96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187], **"`in cases involving "suspect classifications" or touching on "fundamental interests,"... the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. [Citations.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose.'"** (*Id.,* at p. 597, quoting *Westbrook* v. *Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal. Rptr. 839, 471 P.2d 487].)

In all criminal cases the district attorney, and by extension the state, makes a distinction between those defendants who will be prosecuted by indictment and those who will be prosecuted by information. One class of defendants receives a preliminary hearing with the attendant rights heretofore enumerated, while the other class receives no preliminary hearing and no procedural protections. The two classes are in all other respects identical and indeed, as the instant case demonstrates, embrace not only the same crimes but occasionally the same individual. The classification is not based on any state objective which may be considered legitimate, but rather is grounded on the arbitrary goal of 266*266 **vesting in the People vast prosecutorial advantages which the grand jury system affords.**[12]

Moreover, these classifications are not mere economic discriminations to which the rational relation test may be applied, but rather involve such fundamental rights as counsel, confrontation, the right to personally appear, the right to a hearing before a judicial officer, and the right to be free from unwarranted prosecution. These guarantees are expressly or impliedly grounded in both the state and federal Constitutions and must by any test be deemed "fundamental." Accordingly, as *Serrano* teaches, in order to justify such a selective denial of fundamental guarantees the state must show not only a compelling interest but also that the classifications are necessary to that end.

The goal of prosecutorial advantage could not, of course, be deemed "compelling." Indeed this goal could not even be termed "legitimate." But even assuming arguendo there is some heretofore unperceived purpose for initiating certain prosecutions by grand jury indictment which would satisfy the compelling interest test — an assumption that is extravagantly generous — it is nevertheless clear that the denial to these defendants of a postindictment preliminary hearing could not possibly be "necessary" to achieve that hypothetical goal.[13]

This court has on a number of occasions supplemented existing criminal or quasi-criminal procedures when the demands of equal protection warranted it. In *In re Gary W.* (1971) 5 Cal.3d 296 [96 Cal. Rptr. 1, 486 P.2d 1201], we determined that due process and equal protection required that a youth whose normal discharge date from the Youth Authority was deferred because of the authority's conclusion that he was dangerous to the public (Welf. & Inst. Code, §§ 1800-1803) was entitled to a jury trial on the issue of "dangerousness." We pointed out 267*267 that the Legislature had extended the right to trial by jury to other classes of persons subject to civil commitment and concluded there was no compelling state interest to support a distinction for this class of juveniles.

Similarly, in *In re Franklin* (1972) 7 Cal.3d 126 [101 Cal. Rptr. 553, 496 P.2d 465], we applied *Gary W.* and held that persons committed to a mental institution following an acquittal on a criminal charge by reason of insanity were entitled to a jury trial should they thereafter assert that they no longer constitute a danger to society. Most recently, in *People* v. *Feagley* (1975) 14 Cal.3d 338 [121 Cal. Rptr. 509, 535 P.2d 373], we considered "whether the state may constitutionally deny to persons committed under the mentally disordered sex offender law the right to a unanimous jury which it grants to persons committed under the [Lanterman-Petris-Short] Act." (*Id.,* at p. 352.) We found neither a rational basis nor a compelling interest to justify the classification, and accordingly held the scheme constituted a "wholesale

denial of equal protection of the laws under both the California and federal Constitutions." (*Id.,* at p. 358.)[14]

For the foregoing reasons I am of the view that equal protection requires that all criminal defendants have the same opportunity to prove to a magistrate that there is no probable cause to bind them over for trial. "The purpose of the preliminary hearing is to weed out groundless or unsupported charges of grave offenses, and to relieve the accused of the degradation and the expense of a criminal trial. Many an unjustifiable prosecution is stopped at that point, where the lack of probable cause is clearly disclosed." (*Jaffe* v. *Stone* (1941) 18 Cal.2d 146, 150 [114 P.2d 335, 135 A.L.R. 775].) A proceeding of such significance cannot, consistent with the constitutional mandate of equal protection, be selectively denied.

V

It may be argued that to afford an indicted defendant the right to demand a postindictment preliminary hearing would be a superfluous 268*268 formalism because the issue of probable cause had already been decided by the grand jury. However, the facts of the instant case provide an excellent demonstration of the potential value of such a postindictment hearing.

As the majority note, "Not only did the district attorney fail to inform the grand jury of petitioner's [prior] preliminary hearing testimony, but he also created the false impression that petitioner would refuse to testify if called." (*Ante,* p. 253.) It appears obvious that the district attorney was determined to initiate this prosecution in a forum that would preclude petitioner from testifying in his own behalf. If this tactic would be unavailing because of the defendant's right to a subsequent preliminary hearing, a prosecutor would have no incentive to engage in such devious gamesmanship. The safeguard of an available preliminary hearing is clearly preferable to the majority's proposal of depending upon this prosecutor — the same one who misrepresented petitioner's desire to testify and engaged in the "clear misconduct" of referring to petitioner's invocation of *Miranda* — to take the responsibility of protecting petitioner's rights by presenting the exculpatory evidence.

In addition to the likelihood that recognition of this right would preclude instances such as the case at bar from arising in the future, there is also a strong possibility that problems such as *Uhlemann* (see fn. 12, *ante*) henceforth will be avoided. While a rule requiring a postindictment preliminary hearing would not remove the incentive to forum shop among magistrates, it would remove any advantage to be gained from seeking an indictment. This would at least insure that the defendant is always given the opportunity to

confront the witnesses against him, and, if he chooses, to present his own evidence through his own attorney, In factual contexts such as the case at bar such an opportunity might well provide the critical difference.

The alternative of leaving the grand jury structure in the posture here formulated by the majority is unsatisfactory for a number of reasons. First, under the majority's rule the prosecutor need inform the grand jury only of the existence and nature of exculpatory evidence *of which he is aware,* thus by obvious implication excluding from the grand jury's consideration evidence solely in the defendant's possession which might adequately explain away the charge. In the present case, had there not been a prior preliminary hearing it is likely the district attorney would have been unaware of petitioner's exculpatory evidence. Under the 269*269 majority's formulation, however, there would be no way in which petitioner could have halted this unwarranted prosecution prior to trial.

Secondly, the district attorney need not call the defendant to testify or even inform the grand jury of its statutory right to order the defendant or his evidence produced. Rather, the majority are content to leave it to the grand jury, *sua sponte,* to "exercise its power under the statute to order the evidence produced." (*Ante,* p. 256.) Thirdly, and perhaps most importantly, one may seriously question the enthusiasm and zeal that a prosecuting attorney seeking an indictment will bring to the task of presenting the accused's exculpatory evidence. I suggest that the proper person to present the accused's evidence is the accused through his attorney, and the proper forum is one which will permit the development not only of affirmative exculpatory evidence but also evidence gleaned from adequate cross-examination and confrontation of the state's witnesses.

The administrative burden of requiring preliminary hearings for all indicted defendants would be negligible. Some indicted defendants may choose to waive the subsequent preliminary hearing. But even if none do so, no court congestion will eventuate. The vast majority of felony prosecutions in California are begun by information with an attendant preliminary hearing. For example, in 1971 only 4.1 percent of the felony filings were prosecuted by indictment. (Alexander & Portman, *Grand Jury Indictment Versus Prosecution by Information — An Equal Protection-Due Process Issue* (1974) 25 Hastings L.J. 997, 1014.) **To incorporate these few indicted defendants into the general administrative mainstream would obviously present no problem. Seldom are we given an opportunity to correct such a massive deprivation of rights by so minimal an effort.**

We would not be the first court to recognize the necessity of requiring postindictment preliminary hearings. Recently the Supreme Court of Michigan, exercising the inherent power of the court over matters of

criminal procedure, held that all indicted defendants are entitled to such examinations as a matter of right. By relying on inherent power the Michigan court avoided what was characterized as "serious questions of equal protection and due process ... since [the present system] denies to an accused indicted by a multiple-man grand jury what has become recognized as a fundamental right in most criminal cases — the right to a preliminary examination." (*People* v. *Duncan* (1972) 388 Mich. 489 [201 N.W.2d 629, 635].)

270*270 **While the pragmatic result obtained by the Michigan Supreme Court is sound, I would face the constitutional issues and hold instead that the due process and equal protection clauses of the state and federal Constitutions do require that all indicted defendants receive a postindictment preliminary examination.[15] Unless this very minimal safeguard is interposed between the state and the accused individual I fear the current grand jury procedure is constitutionally infirm. "`[T]en centuries of usage give a very striking respectability to any institution; and grand juries existed before the feudal law and have survived its extinction. They are perhaps the oldest of existing institutions; but if they are to continue, they must rest on their continuing utility, not on their antiquity, for future toleration.'"[16]**

Wright, C.J., concurred.

According to the California Constitution, while the voters may amend the constitution, they may not *revise* it. The electors may amend the Constitution by initiative." CAL. Const. art. XVIII, § 3. "[A] revision of the constitution may be accomplished only by convening a constitutional convention and obtaining popular ratification, or by legislative submission of the measure to the voters." *Raven v. Deukmejian, 801 P.2d 1077, 1085 (Cal. 1990)* (interpreting CAL. CAL. Const. art. XVIII, §§ 1-2). Despite the Cal. Supreme Court decision in *Raven v. Deukmejian, supra* **Prop 115 unlawfully revised the California constitution since it nullified Section 1 Article 7 due-process and equal protection for indicted criminal defendants since it repealed Art. 1, Sec. 7 as it applies to indicted defendants.**

Cal. Const. Art. 1, Sec. 14.1 repeals Art. 1, Sec. 7 due process & equal protection for indicted criminal defendants **"Moreover, a constitutional provision generally should not be construed to impliedly repeal another constitutional provision."** *Bowens v. Superior*

Court, 820 P. 2d 600 - Cal: Supreme Court 1991. citing *ITT World Communications, Inc. v. City and County of San Francisco (1985) 37 Cal.3d 859, 865 [210 Cal. Rptr. 226, 693 P.2d 811] [ITT World Communications]* at p. 865.

Here, this Petitioner does argue equal protection and that he and other similar situated indicted defendants are, in fact, and as a matter of law, in a protected class unlike as apparently argued the case in *Bowens v. Superior Court, 820 P. 2d 600 - Cal: Supreme Court 1991* stating "Therefore, because the state's denial of preliminary hearings to indicted defendants neither works to the disadvantage of a suspect class nor encroaches on a fundamental right, the People need only assert a rational basis for the enactment of article I, section 14.1, in seeking to establish its constitutionality. "In cases where a classification burdens neither a suspect group nor a fundamental interest, `courts are quite reluctant to overturn governmental action on the ground that it denies equal protection of the laws."

In *City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985)* **("The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike.").**

As a class of one - "an individual may state a claim for violation of equal protection by pleading: (1) the claimant is similarly situated, in all relevant respects, to others, (2) has been treated differently, and (3) the difference in treatment has no rational basis. The only additional gloss the Court adds to this guiding principle-gleaned from Sioux City-is "that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person.., against intentional and arbitrary discrimination." See *Olech v. Vill. of Willowbrook, 160 F.3d 386, 387-88 (7th Cir. 1998).*

In *Village of Willowbrook v. Olech, 528 US 562 - Supreme Court 2000* The U.S. Supreme Court upheld the lower court decision and stated **"Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.** See *Sioux City Bridge Co. v. Dakota County, 260 U. S. 441 (1923); Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty., 488 U. S. 336 (1989).* In so doing, we have explained that "`**[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person**

within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co., supra, at 445 (quoting Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350, 352 (1918)).*"

Here, Petitioner is (1) similarly situated to other criminal defendants when an accusation is alleged, (2) Petitioner is treated differently and rather than having a preliminary hearings, he is indicted using a grand jury, and (3) there is no rational basis since the prosecution initially brought case # P17CRF0089 which required a preliminary hearing. No reason for secrecy.

The D.A. Vern Pierson D.D.A. Dale Gomes knew he had a weak case, and the media was interested in the allegations of pedophilia and child molestation amongst the El Dorado Co. Superior court judges (as well as Nevada judge John Tatro). D.A. Vern Pierson D.D.A. Dale Gomes elected to carry out their "selective prosecution" in total secret (like they did the trial as shown above) and the records do not reflect an accurate transcript of the pre-trial and grand jury hearings described above and below where records are missing.

This Petitioner concurs and adopts the reasoning in the dissenting opinion below in *Bowens v. Superior Court, supra* however, **Petitioner would urge the criminal grand jury to be declared unconstitutional since it is now used by prosecutors not only to pursue weak fabricated cases and selective prosecution – it is used to cover-up police who murder innocent people as will be explained.**

MOSK, J.

I dissent. It is a maxim of jurisprudence that "For every wrong there is a remedy." (Civ. Code, § 3523.) Today, the majority purport to fabricate an exception for violations of the equal protection clause of article I, section 7, of the California Constitution. In such a labor I cannot, and will not, join.

In *Hawkins* v. *Superior Court* (1978) 22 Cal.3d 584, 586-587 [150 Cal. Rptr. 435, 586 P.2d 916], we concluded that "an accused is denied the equal protection of the laws guaranteed by article I, section 7, of the California Constitution when prosecution is by indictment and he is deprived 50*50 of a preliminary hearing and the concomitant rights which attach when prosecution is by information."

The basis of our holding was that there was a "considerable disparity in the procedural rights afforded defendants charged by the

prosecutor by means of an information and defendants charged by the grand jury in an indictment. The defendant accused by information `immediately becomes entitled to an impressive array of procedural rights, including a preliminary hearing before a neutral and legally knowledgeable magistrate, representation by retained or appointed counsel, the confrontation and cross-examination of hostile witnesses, and the opportunity to personally appear and affirmatively present exculpatory evidence.' [¶] In vivid contrast, the indictment procedure omits *all* the above safeguards...." (22 Cal.3d at p. 587, italics in original, fn. and citations omitted.)

In *Hawkins,* we further concluded that the "appropriate remedy for the constitutionally infirm treatment of indicted defendants is not to eliminate or alter radically the general indicting function of the grand jury; indeed, that function is explicitly sanctioned in the California Constitution and specifically implemented by the Legislature. Until such time as the Legislature may prescribe other appropriate procedures, the remedy most consistent with the state Constitution as a whole and least intrusive on the Legislature's prerogative is simply to permit the indictment process to continue precisely as it has, but to recognize the right of indicted defendants to demand a postindictment preliminary hearing prior to or at the time of entering a plea....

"The state constitutional provision recognizing the grand jury's indicting function — article I, section 14 — is no bar to our holding herein. It provides, `Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.' The term `law,' of course, encompasses judicial decisions as well as legislative enactments. Thus, while the Constitution authorizes the use of grand juries to indict criminal defendants, it leaves to the Legislature and the courts the task of developing procedures, consistent with other state constitutional provisions, for implementing that mode of initiating prosecutions." (22 Cal.3d at pp. 593-594, citations omitted.)

At the June 5, 1990, Primary Election, the voters approved an initiative constitutional amendment and statute that was designated on the ballot as Proposition 115 — the self-styled "Crime Victims Justice Reform Act."

Section 2 of the measure added section 14.1 to article I of the California Constitution: "If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing."

51*51 Section 3 of the initiative purported to add the following relevant text to section 24 of article I of the state charter: "In criminal cases the right[] of a defendant to equal protection of the laws ... shall be construed by the

courts of this state in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States...."

Section 5 of the initiative added section 30 to article I of the state charter, to provide in subdivision (b) thereof that hearsay may be admitted at preliminary examinations, as prescribed by regular legislation or popular initiative.

Section 8 of the measure added section 1203.1 to the Evidence Code, to provide that section 1203 of that code, generally allowing the cross-examination of hearsay declarants, is not applicable at preliminary examinations.

Section 16 of the initiative amended section 866 of the Penal Code on three points relevant here. First, on the People's request, the defendant at a preliminary examination must make an offer of proof as to the expected testimony of a witness, and may subsequently call the witness only if his testimony would be reasonably likely to negate an element of a crime, impeach a prosecution witness or declarant, or establish an affirmative defense. Second, the preliminary examination may not be used for discovery. Third, the taking of depositions is not compelled or authorized.

Section 18 of the initiative, in pertinent part, added a new subdivision (b) to section 872 of the Penal Code, which allows hearsay at preliminary examinations if given by a law enforcement officer who satisfies certain requirements.

On January 10, 1991, the Grand Jury of the County of Alameda, on behalf of the People, handed up an indictment to the superior court against petitioner Robert Bowens. In separate counts, it accused Bowens of selling heroin, in violation of Health and Safety Code section 11352, on December 4 and 7, 1990. It separately alleged that he had suffered a prior conviction of possession of narcotics for sale within the meaning of Penal Code section 1203.07, subdivision (a)(3) (ineligibility for probation or suspension of sentence) and Health and Safety Code section 11370.2, subdivision (a) (enhanced punishment).

At arraignment, Bowens moved the superior court for a postindictment preliminary examination or any other appropriate relief to remedy the violation of his state constitutional right to equal protection, as construed in 52*52 *Hawkins,* arising out of the deprivation of such an examination prior to indictment. He was unsuccessful.

He then petitioned the Court of Appeal for the First Appellate District for a writ of mandate and/or prohibition against the superior court, and requested a stay. There too he was unsuccessful, meeting with summary denial.

Thereupon, he petitioned this court for review and requested a stay. Here, he was successful. We limited the issue to "whether in light of Proposition 115 a defendant is entitled to a post-indictment preliminary examination or any other remedy." We then directed issuance of an alternate writ of mandate. The writ issued.

As I shall explain, the superior court erred by denying Bowens's motion and the Court of Appeal erred by refusing his petition. Even after Proposition 115, there is a violation of the equal protection of the laws under article I, section 7, of the California Constitution when some defendants are prosecuted by information after a preliminary examination and others are prosecuted by indictment without any such examination. A violation of this sort can obviously be avoided. If not avoided, however, it must be remedied. A postindictment preliminary examination is no longer available for the purpose, but other mechanisms are.

The initial question to be addressed is whether, after Proposition 115, there remains the violation of the state constitutional right to equal protection found by *Hawkins.* The answer is affirmative.

Recall that at the time of *Hawkins,* there was a "considerable disparity in ... procedural rights" (22 Cal.3d at p. 587) between defendants prosecuted by information and those prosecuted by indictment. The former were entitled, inter alia, to "a preliminary hearing before a neutral and legally knowledgeable magistrate, representation by retained or appointed counsel, the confrontation and cross-examination of hostile witnesses, and the opportunity to personally appear and affirmatively present exculpatory evidence." (*Ibid.,* internal quotation marks omitted.) By contrast, the latter enjoyed none of these safeguards.

After Proposition 115, this considerable disparity in procedural rights survives. The initiative gives nothing whatever to defendants prosecuted by indictment. Moreover, it takes little away from defendants prosecuted by information. Such defendants are still entitled to a hearing before a neutral 53*53 and legally knowledgeable magistrate. Here, the measure makes no change. Such defendants are still entitled to representation by retained or appointed counsel. Here too, the measure makes no change. Such defendants are still entitled to confront and cross-examine hostile witnesses. True, the measure somewhat limits their rights in

this regard by relaxing the rules involving hearsay. But the relaxation it effects is itself quite limited. (See *Whitman* v. *Superior Court* (1991) 54 Cal.3d 1063, 1072-1075, 1082 [2 Cal. Rptr.2d 160, 820 P.2d 262].) Finally, such defendants are still entitled to personally appear and affirmatively present exculpatory evidence. As to appearance, the measure yet again makes no change. As to evidence, it does little more. Certain restrictions and conditions are indeed imposed. But none appreciably affects *exculpatory* evidence.

To be sure, after Proposition 115 the preliminary examination may not be used for discovery. But the availability *vel non* of discovery did not constitute any significant aspect of the considerable disparity in procedural rights that we discerned in *Hawkins.* There, we simply observed that the preliminary examination "serves a number of pragmatic functions for the accused," among them discovery, and that the grand jury inquiry is not comparable in this regard. (22 Cal.3d at pp. 588-589.) A dissenting justice read our observation to "suggest[] that the preliminary examination serves an essential secondary function of providing the accused with pretrial discovery regarding the case against him." (*Id.* at p. 619 (dis. opn. of Richardson, J.).) It did no such thing.

In conducting my analysis, I have not overlooked sections 2 and 3 of Proposition 115. Apparently, these two provisions amount to an attempt to overrule *Hawkins* in its entirety. Section 3 was intended to effectively abrogate the state constitutional right to equal protection and, as a result, to remove the violation we had found *and* to eliminate the remedy we had ordered. Section 2 had a different purpose. Recall that in *Hawkins* we stated that the Legislature and the judiciary had broad authority under the state charter to prescribe procedures for prosecution by indictment, including the power to require or allow postindictment preliminary examinations. Section 2 was intended to withdraw that authority as to such examinations.

Proposition 115's attempt to overrule Hawkins in toto was unsuccessful. It appears that section 2 is valid. Henceforth, neither the Legislature nor the judiciary seemingly has authority to require or allow postindictment preliminary examinations. But it is unquestionable that section 3 is *not* valid. We so held, unanimously, in *Raven* v. *Deukmejian* (1990) 52 Cal.3d 336, 349-355 [276 Cal. Rptr. 326, 801 P.2d 1077]. Therefore, *the state constitutional right* 54*54 *to equal protection has* not *been abrogated.* It follows that the violation we found in *Hawkins* remains. But through the operation of section 2, the remedy we ordered therein is no longer available.

The majority conclude to the contrary. They rest on the premise that Proposition 115 "plainly contemplated" the overruling of *Hawkins* in its

entirety. (Maj. opn., *ante,* at p. 45.) True, the promoters of the initiative may have intended that result. But as *Raven* teaches, they failed in that regard.

The majority effectively construe the words of Proposition 115's apparently valid section 2 to contain the substance of its unquestionably invalid section 3. Such a construction is insupportable. It ignores the independent purpose and effect of the two related provisions. It would also render section 2 redundant in pertinent part to section 3. Section 3, if valid, would have abrogated the state constitutional right to equal protection and would thereby have removed the violation and eliminated the remedy. Section 2 would then abrogate a right already abrogated, remove a violation already removed, and eliminate a remedy already eliminated. An interpretation yielding redundancy should be avoided. (*City and County of San Francisco* v. *Farrell* (1982) 32 Cal.3d 47, 54 [184 Cal. Rptr. 713, 648 P.2d 935].) I recognize that section 2 makes the remedy we ordered in *Hawkins* no longer available. But contrary to the majority's repeated, bald assertions, the unavailability of this particular remedy — which we viewed in *Hawkins* to be neither permanent nor necessary — does not itself abrogate the constitutional right or remove the constitutional violation.

The next issue to be considered is: Can a violation of the state constitutional right to equal protection be avoided? Yes, obviously so. The People may prosecute all defendants by indictment. Or they may prosecute all by information. Or they may choose to prosecute some by indictment and some by information *if* the Legislature makes the two procedural modes substantially similar — as by giving defendants subject to grand jury inquiry rights similar to those enjoyed by defendants facing preliminary examination. It might even be enough if the indictment process was simply opened. True, there would not be a neutral and legally knowledgeable magistrate to preside over the grand jury inquiry. But defendants could be allowed representation by retained or appointed counsel, confrontation and cross-examination of hostile witnesses, and an opportunity to personally appear and affirmatively present exculpatory evidence.

The issue that follows is this: If not avoided, must a violation of the state constitutional right to equal protection be remedied? Again, yes and obviously so. As noted, "For every wrong there is a remedy." (Civ. Code, 55*55 § 3523.) This principle seems peculiarly applicable when, as here, the wrong is of constitutional dimension.

The final question concerns remedies. After Proposition 115, a postindictment preliminary examination is no longer available. Moreover, it appears that any substantial equivalent to such a procedure is impliedly barred. But notwithstanding the majority's implication, other constitutionally

permissible mechanisms are surely available. For the future, I would leave the choice to the Legislature in the first instance. For the case at bar, I would require a form of relief that is consistent with this opinion.

For all the reasons stated above, I conclude that the superior court erred by denying Bowens's motion and the Court of Appeal erred by refusing his petition.

I would therefore reverse the order of the Court of Appeal with directions to cause the issuance of a peremptory writ as prayed.

THE CRIMINAL GRAND JURY SCHEME IS UNCONSTITUTIONAL AND MUST BE ABOLISHED

Petitioner requests declaratory relief the court to declare unconstitutional the criminal grand jury pursuant to Cal. Constitution Art 1 sec 14 which states "**Felonies shall be prosecuted as provided by law, either by indictment** or, after examination and commitment by a magistrate, by information." Here, the indictment part is unconstitutional which states "states "Felonies shall be prosecuted as provided by law, either by indictment".

The grand jury system has turned into a racket where the prosecutor can railroad an innocent person and then cover-up a murder by a police officer. Since the grand jury is done in a secret environment, the public is denied transparency into how the prosecutor performs (or does not perform) its duty.

For the reasons above – a total denial of due-process and equal protection (U.S. 14th amend. & Cal. Const. Art, 1, Sec 7 & 15) and the right to counsel (U.S. 6th amend. & Cal. Const. Art. 1, Sec 15) along with the fact it alos denies victims of crime i.e. people murdered by police, like Kris Jackson, Stephon Clark and their families due-process and a speedy open trial pursuant to Cal. Const. Art 1, Sec. 28 – The "crime victims act" also known as Marcy's Law. Cal Const. Art. 1, Sec. 28 lists an array of constitutional rights for victim of unlawful poice conduct sich as "excessive force" "perjury" "conspiracy" "false arrest" …and "murder". Included in the rights to crime victims include:

(1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) **Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California.** The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. **California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.**
(3) The rights of victims pervade the criminal justice system. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).

(4) **The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance**.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.
(8) To accomplish the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime.

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:
(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.
(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite

the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
(13) To restitution.
(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
(B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
(14) To the prompt return of property when no longer needed as evidence.
(15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

(16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
(17) To be informed of the rights enumerated in paragraphs (1) through (16).

(c) (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.
(2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.
(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.
(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.
(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following:
(1) Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.
(2) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the

Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(4) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(5) Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

(6) Reform of the parole process. The current process for parole hearings is excessive, especially in cases in which the defendant has been

convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.
(g) As used in this article, the term "serious felony" is any crime defined in subdivision (c) of Section 1192.7 of the Penal Code, or any successor statute.

Why Grand Juries Do Not (and Cannot) Protect the Accused[27]

80 Cornell L. Rev. 260 (1995), Cornell Law Review, Volume 80, Issue 2 January 1995 Article 10 by Andrew D. Leipold,

There have been calls to abolish the grand jury in this country almost since the inception of the institution. F/N 244

Many states found the arguments persuasive, and, beginning with Michigan in 1859, F/N 245 **more than half abolished the grand jury requirement**. F/N 246

These arguments have, of course, been unsuccessful at the federal level. One reason may be a misunderstanding of the extent to which grand juries serve as a screen. A second, perhaps more telling, explanation may be the size of the task. Political support for the move would be low. The only well-defined constituency who would feel an immediate impact of an improved screening function would be criminals and criminal defense lawyers, two groups that most citizens hold in low (and perhaps equal) regard.2 47 Changing the Constitution is hard enough when trying to balance the budget or stop people from burning the flag; it would be even harder to muster the popular support needed to change a little-understood piece of the criminal justice system. Practical difficulties aside, some have argued that other justifications for retaining grand juries exist, even if their inability to screen is conceded. Two frequently cited reasons for retention are the institution's ability to investigate crimes, and the importance of citizen participation in the criminal process. Neither justification withstands scrutiny.

F/N 244 See Younger, supra note 4, at 56. As early as 1792 a Pennsylvania judge warned of the dangers of giving grand juries too free a hand. See id at 59.

F/N 245 Id. at 66-70.

---

[27] Available at: http://scholarship.law.cornell.edu/clr/vol80/iss2/10

F/N 246 See 2 LAFAVE & ISRAEL, supra note 7, § 15.1, at 278-79 & n.12 (listing jurisdictions). England abolished grand juries in 1933. YOUNGER, supra note 4, at 226.

F/N 247 There would be others who would support changes in the screening function. Academics who have criticized the current system would support some types of reform. Business executives and politicians whose careers depend on their reputations might also support reform, hoping that a stronger screening function would make it less likely that weak charges would be filed against them. But at the grass-roots level, it seems unlikely that those who cannot imagine being accused of a crime would be stirred to action in large numbers to lobby for those who will be accused of crimes

---

Recently D.A. Vern Pierson along with judge James Wagoner recently worked together in *People ex rel. Pierson v. Superior Court, 7 Cal. App. 5th 402 - Cal: Court of Appeal, 3rd Appellate Dist. 2017* **"to order unconstitutional a 2015 law that requires prosecutors to use public preliminary hearings, rather than closed-door grand jury proceedings, in cases involving peace officers' use of lethal force. The law's stated purpose was to increase transparency and accountability in court proceedings that determine whether charges will be brought against an officer who uses deadly force during an arrest. The Attorney General expressed concern that the Court of Appeal's ruling was not supported by the language or history of the California Constitution, and that its holding may have broader consequences."**[28]

DA Vern Pierson's editorial in Sunday's Bee, how the false narrative "hands up don't shoot" led first to a bad law and ultimately a good compromise

Posted: September 09, 2017

Source: https://www.eldoradoda.com/press/release/index.html?NewsID=46917

[28] https://oag.ca.gov/news/press-releases/attorney-general-becerra-urges-review-people-ex-rel-pierson-v-superior-court

Two years ago, with much fanfare, Senate Bill 227 became law, banning the use of grand juries in officer-involved shooting cases. This misguided legislation was passed in part due to the widely disseminated narrative that Michael Brown was shot and killed in Ferguson, Mo., by a police officer while trying to surrender and shouting, "Hands up don't shoot."

This narrative also included the local district attorney covering up the shooting using a grand jury. Ironically, Senate Bill 227 passed out of the Legislature and became law after then-Attorney General Eric Holder debunked the entire salacious narrative in a detailed 83-page report.

Every day, law enforcement officers put their lives on the line to keep us safe. Unfortunately, their job has been getting more difficult and more dangerous over the last few years.

The anti-police rhetoric has been fueled by misguided politicians, special interest groups, false narratives in the news media, and yes, the misconduct of a few. While not as prevalent as the media has portrayed, officer-involved fatal-force cases do occur and occasionally these very difficult cases need to be investigated by a grand jury.

The district attorney has the responsibility to investigate any potential criminal activity, regardless of whom the suspect may be, and hold that person or persons accountable for their actions. Furthermore, the public is entitled to a comprehensive, professional and transparent investigation. The grand jury is an essential tool and the misguided ban imposed by SB 227 in fact made it more difficult to investigate use-of-force cases.

Not only was SB 227 objectionable for these reasons, but also because it clearly violated the California Constitution. As a result, my office, supported by prosecutors throughout California, challenged this new law in court.

Earlier this year, the 3rd District Court of Appeal struck down SB 227, finding it unconstitutional. Supporters of SB 227 unsuccessfully challenged this opinion in the California Supreme Court.

At the same time, California prosecutors sought to maintain the grand jury as an effective tool to investigate use-of-force cases, yet modify the rules to ensure transparency in cases not resulting in an indictment. On Sept. 1, with very little fanfare, a bipartisan fix was finally signed into law.

Assembly Bill 1024, authored by Assemblyman Kevin Kiley, R-Rocklin, now requires a court to disclose all or a part of a grand jury indictment proceeding transcript if the grand jury decides not to return an indictment concerning an offense that involves a shooting or use of excessive force by a peace officer. In an era where political posturing and grandstanding seem to drive discourse, it's refreshing to see the system work on behalf of Californians.

We would all be better served by dialing down the rhetoric and refocusing on concrete solutions rather than narratives and political talking points. A good place to start is the catastrophic crisis of our jails and prisons being transformed into expensive and ineffective mental health facilities. Californians deserve no less.

View Sac Bee article

DISTRICT ATTORNEY VERN PIERSON'S SACRAMENTO BEE ARTICLE *FAKE NEWS: "HANDS UP, DON'T SHOOT"*

FEBRUARY 2, 2017

Source: https://blog.edcda.com/2017/02/02/vern-piersons-sacramento-bee-article-fake-news-hands-up-dont-shoot/

At the 1893 World's Exposition, "Rattlesnake King" Clark Stanley famously took a live snake, sliced it open and tossed it into boiling water, and then scooped foam off the top – calling his "cure-all" snake oil. Not long thereafter, an examination of the oil revealed it was worthless. The term snake oil became synonymous with a fraud. The sale of snake oil continues on to today in the form of "fake news."

Last year, the California Legislature, much like those in the turn of the century who purchased snake oil, bought into a "fake news story" regarding the death of Michael Brown in Ferguson, Missouri. The "story" goes like this – Brown was murdered while holding up his hands and uttering "hands up don't shoot" and the corrupt DA covered it up using a grand jury. One year after the shooting, this fraud convinced the California Legislature to pass SB 227, which banned grand juries from investigating use of force cases.

To fully appreciate the scope of that fraud, it must be noted that the United States Department of Justice, led by then AG Eric Holder, conducted an exhaustive investigation into the case. This DOJ report completely refuted the "hands up, don't shoot" claim, finding that shortly after Brown committed a robbery and was contacted by Officer Wilson, a struggle occurred inside the police car in which Brown was shot in the hand struggling for control of Officer Wilson's gun. The DOJ report states that "[t]he autopsy results confirm that Wilson did not shoot Brown in the back…"

Holder's report finds that all credible evidence supports Brown moving towards Wilson, briefly lifting and then dropping his hands and "charging" Officer Wilson.

Despite the evidence, just two days after the shooting, The New Yorker posted an article highlighting protesters with their hands in the air chanting, "Don't shoot me." The article laments the shooting of an "eighteen year old running away from the officer, not towards him." That same day, the Wall Street Journal posted a story commencing with "Hands up don't shoot" and Time magazine posted a similar story calling Brown a "gentle giant." In only two days major media outlets and protestors had adopted this false narrative.

Not only was **SB 227** objectionable because it was passed on the basis of the fake news, but also because it clearly violated the **California Constitution**. As a result, my office, supported by prosecutors throughout California, challenged this new law. Last week, the 3rd District Court of Appeal struck down SB 227, finding it unconstitutional. Like the Court of Appeal, we believe the real problem is transparency, and are committed to working with the legislature on an appropriate constitutional fix.

Every day law enforcement officers put their lives on the line to keep us safe. Unfortunately, their job has been getting more and more difficult over the last few years. The anti-police rhetoric sweeping the country has been fueled by some misguided politicians, special interests groups, and fake news stories in the media. Although not as prevalent as the media has portrayed, officer involved fatal force cases do occur and occasionally these very difficult cases need to be investigated by a grand jury. The District Attorney has the responsibility to investigate any potential criminal activity, regardless of who the suspect may be, and hold that person or persons accountable for their actions. And, the public is entitled to a comprehensive, professional and transparent investigation. The **grand jury** is essential to this process.

Vern Pierson is elected District Attorney of El Dorado County. He has been a prosecutor for 25 years and has investigated and prosecuted law enforcement misconduct on numerous occasions as a deputy attorney general and district attorney.

To view article, click here

Here, D.A. Vern Pierson peddled his influence to cover-up a murder[29] by a South Lake Tahoe police officer of an unarmed black man by using his corrupt grand jury to secretly and non-transparently let a corrupt cop get away with murder. D.A. Vern Pierson slow played the family of Kris Jackson (in violation of Cal. Const. Art. 1, Sec. 28) and denied them (and the People of California) due-process and equal protection using a secret closed door corrupt grand jury to cover-up the murder of Kris Jackson.

Tahoe Daily Tribune action

South Lake Tahoe police-involved shooting investigation still under wraps

December 9, 2015

Jack Barnwell
jbarnwell@tahoedailytribune.com

Source: https://www.tahoedailytribune.com/news/crime-fire/south-lake-tahoe-police-involved-shooting-investigation-still-under-wraps/

SOUTH LAKE TAHOE — The attorney representing the family of a Sacramento man who died in June expressed frustration over the delay of a final investigation report by the El Dorado County District Attorney's Office.

Alan Laskin, a Sacramento-based attorney, said Monday, Dec. 7, that he requested information related to the death of Kris Jackson, 22, multiple times to no avail.

Jackson was shot on June 15 at Tahoe Hacienda Inn on Lake Tahoe Boulevard by a South Lake Tahoe police officer.

According to police reports at the time, officers responded to the motel to investigate an alleged domestic dispute. After entering the hotel room, officer

[29] https://www.sacbee.com/news/local/crime/article24714634.html

Joshua Klinge reportedly assessed the situation and saw Jackson near the window of his motel room. The department later stated that Klinge felt Jackson represented a threat.

Jackson was transported to Barton Memorial Hospital for treatment, but died from his wound.

The District Attorney's Office assumed responsibility for the investigation and Klinge was placed on paid administrative leave.

The District Attorney's office reported Monday that it was still wrapping up the final investigation, and the report will likely be released in the next few weeks.

Laskin said the length of the investigation was disconcerting.

"My clients have been waiting since June 15 to find out what happened," he said.

The only information Laskin's office was able to obtain were medical records from Barton Memorial Hospital. He said the records showed that the bullet's entrance wound was in Jackson's back.

He said the family plans to bring a civil suit over Jackson's death.

D.D.A. Vern Pierson, acting as California District Attorneys Association president then attacks the NFL for running a youtube video[30] of murdered Sacramento resident Stephon Clark, a black man, who was shot by Sacramento police[31] who edited their body cameras audio/video, claimed they only shot five rounds (when 20 were fired with 8 hitting Mr. Clark) and claimed Mr. Clark had a gun which turned out to be a cell phone.

California Prosecutors Ask NFL to Take Down Shooting Video

By The Associated Press
Aug. 4, 2020

---

30 Stephon Clark's Legacy | #EveryonesChild https://youtu.be/4sJhNoFbcdY

31 S.A.C.: A Stephon Clark documentary https://youtu.be/OKX5dIuXGsA
RAW VIDEO: Police release footage from fatal Stephon Clark shooting https://youtu.be/FvCsU4w3Yec

SACRAMENTO, Calif. — California prosecutors on Tuesday asked the NFL to remove a video produced as part of the league's Inspire Change campaign, saying it misrepresents the circumstances leading to the fatal shooting of a Black man in 2018.

The video shows Sequette Clark speaking about the death of her son, Stephon Clark, who was killed in the backyard of his grandparents' home. The shooting led to weeks of protests in Sacramento and across the nation, sometimes disrupting games by the NBA's Sacramento Kings.

"Though well-intentioned, the video performs a disservice instead of a public service by omitting the crucial facts which preceded Mr. Clark's tragic death," California District Attorneys Association president Vern Pierson said in a statement.

Among other things, the video doesn't mention that he was suspected of vandalism and was running from police, he noted. Clark turned toward them holding what the two officers said they thought was a gun, but it was a cellphone.

Read more: NY Times[32]

D.A. Vern Pierson (apparently now the California District Attorneys Association president) is a disgrace to not only El Dorado Co. – but the entire State of California to exhibit his white supremacist, Ku Klux Klan ("KKK") hillbilly justice attitude as both the D.A. of El Dorado Co. (a world-wide tourist destination) and, of course, the Great State of California (a multi-cultural symbol, a world-wide tourist destination and community of all races). D.A. Vern Pierson discredits law enforcement at a time when leaders in this Country need to acknowledge their wrongdoings and be working on and promoting healing & reform rather than stoking the flames of racial divide and abuse of power/force by rouge police officers.

As D.A. Vern Pierson makes national news promoting his bigotry and racism against people of color, and his support of corrupt murdering cops – it is to be noted that D.A. Vern Pierson is silent on the attempt to legalize and legitimatize pedophilia in the State of California under SB145[33] (and therefore D.A. Vern Pierson, like Los Angeles County District Attorney

[32] https://www.nytimes.com/aponline/2020/08/04/business/ap-us-california-police-shooting-nfl.html
[33] https://californiaglobe.com/legislature/ca-democrats-author-bill-to-protect-sex-offenders-who-lure-minors/

Jackie Lacey supports pedophilia) – along with former California Attorney General and Senator Kamala Harris[34] (who D.A. Vern Pierson worked with to cover-up pedophilia/child-molestation in the churches and courts). Under Senate Bill, SB 145, the offenders would not have to automatically register as sex offenders if the offenders are within 10 years of age of the minor.

CA Democrats Author Bill to Protect Sex Offenders Who Lure Minors[35]

SB 145, by Wiener (D-San Francisco) and Eggman (D-Stockton), as it was originally written, said offenders would not have to automatically register as sex offenders if the offenders are within 10 years of age of the minor.

The bill is sponsored by Los Angeles County District Attorney Jackie Lacey's office. California Globe reached out to DA Lacey several times, but she and her office declined to comment.

In the interim, amendments had not been made to the bill until Monday March 4, outlined below copied directly from the bill. Notably, Assemblywoman Eggman has been removed from the bill.

Existing law, the Sex Offender Registration Act, amended by Proposition 35 by voters in 2012 (Ban on Human Trafficking and Sex Slavery), requires a person convicted of a certain sex crime to register with law enforcement as a sex offender while residing in California or while attending school or working in California.

As it was written prior to amendments, SB 145 would allow a sex offender who lures a minor with the intent to commit a felony (i.e. a sex act) the ability to escape registering as a sex offender as long as the offender is within 10 years of age of the minor. No specification is made as to whether the sexual offender is straight or LGBT. "SB 145 appears to allow adults to victimize minors by luring them with the intent to have sex, and then shields the predator from being automatically registered as a sex offender, as in the case of a 25 year old luring a 15 year old for sex," I wrote Feb. 19.

---

[34] AS SAN FRANCISCO DISTRICT ATTORNEY, KAMALA HARRIS'S OFFICE STOPPED COOPERATING WITH VICTIMS OF CATHOLIC CHURCH CHILD ABUSE https://theintercept.com/2019/06/09/kamala-harris-san-francisco-catholic-church-child-abuse/

[35] https://californiaglobe.com/legislature/ca-bill-to-protect-sex-offenders-who-lure-minors-receives-minor-amendments/

The statute's 14 year age limitation does not apply to luring, so in effect, 19-year-olds luring 9-year-olds and 20-year-olds luring 10-year-olds would not automatically have been mandated to register as sex offenders.

Also notable is this: "This bill would authorize a person convicted of certain offenses involving minors to seek discretionary relief from the duty to register if the person is not more than 10 years older than the ~~minor.~~ *minor and if that offense is the only one requiring the person to register."*

SAN FRANCISCO SEN. SCOTT WIENER INTRODUCES BILL TO DECRIMINALIZE MEN HAVING SEX WITH BOYS

This is what the left calls "progress"

Chris Menahan | Information Liberation - **AUGUST 13, 2020** 125 Comments

Source: https://www.infowars.com/san-francisco-sen-scott-wiener-introduces-bill-to-decriminalize-men-having-sex-with-boys/

IMAGE CREDITS: MEERA FOX/GETTY IMAGES.

San Francisco state Senator Scott Wiener has introduced a new bill to decriminalize adult men having sex with boys and he and his allies in the media are smearing all opposition as "homophobic" and "anti-Semitic."

From The Federalist, "No California Shouldn't Decriminalize Adult Sex With 14-Year-Olds":

LGBT activists have pushed reasonable notions of equality to its limits with obscene perversions. State Sen. Scott Wiener, D-San Francisco — the same lawmaker who co-sponsored a bill in 2017 to remove the felony penalty for knowingly exposing another person to HIV — has introduced a bill, Senate Bill 145 to give judges more flexibility in sentencing gay men who abuse minors.

Under current law — which Wiener, who is gay, describes as "horrific homophobia" — a straight 24-year-old male who has sex with a 15-year-old girl can avoid being put on the sex-offender list if the judge feels the situation does not deserve it, but a gay man in the same scenario with a similar-aged boy would not be given the same option.

The sickness we should worry about in schools is evident in the social media posting of an English teacher concerned that parents will see what he's teaching their children

Wiener's argument is one of evolving social standards. In 2015, the California Supreme Court upheld the long-standing separation of vaginal sex from other forms of sex-based on the misguided idea that if pregnancy occurred, placing the father on the sex-offender list could ruin his chances of providing for his family. The extreme of the scenario would be an 18-year-old man with a 17-year-old girlfriend.
Wiener's bill, however, is not so straightforward. He argues all forms of sex should be treated equally under the law.

The Law Will Protect Exploitation of Minors
Moreover, while there is room for flexibility in a ruling in which a boy turns 18 while his girlfriend is still 17 and her father presses charges, the bill defines the age minimum at 14. Recognizing that minors cannot legally consent to sex, Wiener argues that if a minor age 14 to 17 voluntarily has sex with an adult who is less than 10 years older, the judge should decide based on the individual facts of the case whether the adult should be placed on the sex-offender registry. Data provided by Wiener's office states, "[A]t least 2,400 people on the [CA] sex-offender registry, and potentially hundreds more, have been convicted of non-vaginal sex with a minor age 14 or older."

Wiener himself similarly painted all opponents of the bill as homophobes and anti-Semites, writing: "Those who think homophobia & antisemitism are over are not paying attention."

The left loves to talk about "extremism" on the right and yet NAMBLA is effectively now part of the mainstream for the Democratic Party in California.

> As I reported last week, San Francisco has approved an ordinance to reopen gay bathhouses in the name of aiding the city's "economic and cultural recovery" while most small businesses are shut down and STDs are at record levels. This is what the left calls "progress."

Indeed, D.A. Vern Pierson (The President of the California District Attorney Association) Pierson is implicated in the pedophile scandal as well since he knows there are crimes, including other crimes, being committed by law enforcement and various judges – D.A. Vern Pierson can blackmail and coerce said cops & judges to perform as he desires (obstruction of justice and influence peddling) or they will be prosecuted for their criminal activity.

Since this Petitioner has been attacked by the El Dorado District Attorney ("D.A.") as a "threat to society" & "conspiring to kill a judge" & "delusional" & "crazy"" …spreading "fake news" …and a "madman " with plans to have others kill everyone involved in these series of false arrests and convictions - this Petitioner is compelled to defend himself, regain his reputation, clear his record, be made whole and set the record straight on exactly who's the threat to society, delusional, crazy, unfit, demented and malevolent madman Vern Pierson utilizing his position of District Attorney ("D.A.") to carry out personal vendettas with his cronies like Deputy D.A. ("D.D.A.") Dale Gomes, D.D.A. Michael Pizzuti, Investigator Bryan Kuhlmann and other psychopaths. This Petitioner did not spread "fake news", he has passed court mandated psychological examinations and is definitely not delusional, a threat to society or a madman. The very "authorities" who should have investigated other peoples claims of child molestation were the ones who covered it up and retaliated against this Petitioner for bring it to light.

Indeed, **"The Enemy of My Enemy Is My Friend"** – an ancient proverb. Society labels people to fit into a group or demagogy. This Petitioner is a constitutionalist, a civil-rights activist, a freedom-fighter and an enemy of tyrants. He is an independent critical thinker. It needs to be clarified that this Petitioner has stated his disgust with corrupt police, judges and D.A.s - This Petitioner's gotten a bad rap by the cops and courts and he wants to state on the record that he is not opposed to all police acting as "peace officers", judges and D.A.s *- just the corrupt ones.*

For example, Petitioner respects El Dorado Co. Sheriff John D'Agostini for his stated Constitutional principals. Petitioner has gone on the recode to thank Douglas County D.A. Mark

Jackson for respecting the Constitution and the Petitioner's rights as explained later in this petition when D.A. Mark Jackson dismissed false charges in Carson City, NV. Indeed, cops have a legitimate job as civil service employees many of whom make well over $100,000.00 and even $200,000.00 dollars a year[36]. Murdering innocent and non-threatening people and fabricating false charges against anyone and any race is not a legitimate job – it's murder, fraud, conspiracy, etc.

In the "marketplace of ideas" under the 1st Amendment of the U.S. Constitution case law regarding true threats and fighting words – "Corrupt cops that lie need to die" is well within the scope of today's "marketplace of ideas" – Of course the cops who killed Kris Jackson and Stephon Clark and many others including George Floyd despite Mr. Floyd's extensive criminal history[37] and hideous of home invasion of a pregnant woman, being high on meth (dropping his bindle of dope[38] in the surveillance video) …fentanyl[39] …as he battled COVID-19 …and Mr. Floyd being a former porn star[40] and freemason[41] – Mr. Floyd did not deserve 8 minutes and 45 seconds of a corrupt cop kneeling on his neck - these cops, and corrupt prosecutors, lawyers, & judges should get the death penalty once convicted using a public preliminary hearing and trial, along with cops who frame innocent people. It would curtail the rampant corruption and end intentional police wrongdoing.

This Petitioner is troubled by the current state of the Nation and on-going lawlessness, looting, riots, etc. The clash between police and citizens and the political strife caused by provocateurs financed by George Soros. The statistically disproportionate murder of blacks by police is troubling and so is the fact more whites are shot by police than any other race in the United States[42].

---

[36] https://transparentcalifornia.com/salaries/2018/south-lake-tahoe/

[37] Commentator Candace Owens, who, in a roughly 18-minute video that's been viewed more than 6 million times, made several accusations about Floyd's past and the events that led to his death. She said: "No one thinks that he should have died in his arrest, but what I find despicable to be is that everyone is pretending that this man lived a heroic lifestyle when he didn't. …I refuse to accept the narrative that this person is a martyr or should be lifted up in the black community. …He has a rap sheet that is long, that is dangerous. He is an example of a violent criminal his entire life — up until the very last moment."

[38] George Floyd Dropping Square White Baggie https://www.youtube.com/watch?v=kbUms4RB4Uw

[39] Floyd on meth, fentanyl and COVID-19 https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/04/869278494/medical-examiners-autopsy-reveals-george-floyd-had-positive-test-for-coronavirus

[40] George Floyd Porn Star https://www.bitchute.com/video/rtOkZ2WkgHFL/

[41] George Floyd a Freemason? https://www.bitchute.com/video/OiMvUCCBlw8/

[42] Number of people shot to death by the police in the United States from 2017 to 2020, by race https://www.statista.com/statistics/585152/people-shot-to-death-by-us-police-by-race/

This Petitioner, a white male, has his own plight and is not a left wing or right wing political ideologist, gang member or ALT-Right, Proud Boys, antifa, Black Lives Matter, Boogaloo or Juggalo… Quicklabeled by some as a "conspiracy theorist" - this "Outlaw Blogger" Petitioner is aligned with the "truth movement" exposing/fighting government corruption and he's inspired by Voltaire who said: **"I wholly disapprove of what you say—and will defend to the death your right to say it."**

BLM and Antifa can protest. So can this petitioner. Antifa can burn the U.S. flag since the U.S. Supreme Court declared it's a 1st amendment right of free speech in *Texas v. Johnson, 491 U.S. 397*, a landmark decision of the US Supreme Court that invalidated prohibitions on desecrating the American flag. This Petitioner can burn the antifa flag – This Petitioner is 100 percent anti antifa.

BLM supporters can take a knee for the National Anthem, antifa can burn Bibles. This Petitioner will stand for the flag and respect the Bible and God. Some will call the Petitioner a Right wing extremist for his views and his profound agreement with Ronald Reagan's belief that the nine most terrifying words in the English language are "I'm from the government, and I'm here to help" and **"government is not the solution to our problem; government is the problem."** Other's will claim a lift wing liberal because of the profound agreement with John F. Kennedy's philosophy **"Those who make peaceful revolution impossible will make violent revolution inevitable"** and "**The very word secrecy is repugnant in a free and open society, and we are as a people, inherently and historically, opposed to secret societies, to secret oaths, and to secret proceedings. We decided long ago that the dangers of excessive and unwarranted concealment of pertinent facts far outweigh the dangers which are cited to justify it."**

That said, the BLM movement in El Dorado Co. (and the State of California) should do "*everything* conceivable and *everything* possible" to "*permanently* remove"[43] D.A. Vern Pierson from office since he is a corrupt white supremacist, KKK, bigot, child-molesting &

[43] Peacefully, legal and non-lethal of course. This Petitioner has always used non-violent protests and encourages people to express their 1st amendment rights even if he disagrees with them. The Petitioner disapproves the recent violence and riots used by antifa and rouge BLM provocateurs against innocent people and business.

"When it gets down to having to use violence, then you are playing the system's game. The establishment will irritate you – pull your beard, flick your face – to make you fight. Because once they've got you violent, then they know how to handle you. The only thing they don't know how to handle is non-violence and humor."— John Lennon

pedophile supporter. **"Power tends to corrupt and absolute power corrupts absolutely"**. --Lord Action. **"Rebellion to Tyrants is Obedience to God"** --Thomas Jefferson

This Petitioner is also not directly affiliated with QANON found the following article very, very interesting as it appeared when he was writing this petition.

TRUMP ASKED IF HE SUPPORTS 'CONSPIRACY THEORY' THAT HE'S 'SAVING WORLD FROM SATANIC PEDOPHILES'

'I haven't heard that, but is that supposed to be a bad thing?' president responds

Jamie White | Infowars.com[44] - AUGUST 19, 2020

President Trump signaled his support of fighting the Satanic New World Order and the pedophiles that run it when asked by a reporter if he supported the Q Anon movement.

During a White House press briefing Wednesday, a reporter asked Trump if he subscribes to the Q Anon movement's "belief that you are secretly saving the world from this Satanic cult of pedophiles and cannibals. Does that sound like something you are behind?"

"I haven't heard that, but is that supposed to be a bad thing or a good thing?" Trump replied. "If I can help save the world from problems, I'm willing to do it, I'm willing to put myself out there."

"And we are actually. We're saving the world from a radical left philosophy that will destroy this country, and when this country is gone, the rest of the world would follow."

The mainstream media and Big Tech have been ramping up their attacks on the Q Anon movement in recent weeks.

Just today, one of the first questions asked to White House Press Secretary Kayleigh McEnany was whether President Trump ever talked about Q Anon in private.

"No, I never heard of that," McEnany said. "There's a lot of media focus on that, but I've certainly never heard that from the President."

Facebook also announced today that they have removed thousands of Q Anon groups and pages across its and Instagram's platform.

[44] https://www.infowars.com/trump-asked-if-he-supports-conspiracy-theory-that-hes-saving-world-from-satanic-pedophiles/

> "Facebook on Wednesday banned about 900 pages and groups and 1,500 ads tied to the pro-Trump conspiracy theory QAnon, part of a sweeping action that also restricted the reach of over 10,000 Instagram pages and almost 2,000 Facebook groups pushing the baseless conspiracy theory that has spawned real-world violence," NBC reported.

The Petitioner incorporated the "everything-but-the-kitchen-sink" approach in order to articulate the story billed as **"The most corrupt criminal case the world has ever seen"** encompassing two states (California & Nevada) against one innocent man, a whistle-blower, who exposed massive police/government/judicial racketeering, pedophilia, & malfeasance …and how far the fascist government (including the FBI) went to cover-up, discredit and silence this Petitioner for protesting corruption in El Dorado County, standing up for his rights and exposing among other things, pedophilia in the court system.

GRAND JURY IRREGULARITIES

The grand jury and the court/judge lacked jurisdiction. The grand jury was commenced in case # P17CRF0114 using another unlawfully assigned retired judge Thomas A. Smith (no order from Judicial Council or Chief Justice of the Cal. Supreme Court).

Since El Dorado County does not have a criminal grand jury impaneled each year. With all judges being recused/disqualified from El Dorado Co. there was no presiding judge to even impanel a criminal grand jury pursuant to penal code 904.6(a) & (b). The Presiding judge of El Dorado Co. Judge Suzanne Kingbury was recused and pursuant to CALIFORNIA JUDGES ASSOCIATION Judicial Ethics Committee Opinion No. 62[45] "No single judge, even the presiding judge, may recuse an entire bench from hearing a case. It is appropriate for the presiding judge to poll the entire bench to determine whether any judge is not disqualified from hearing a particular case. Although the presiding judge may exercise his/her administrative authority to arrange for the case to be heard in another jurisdiction, it may not be advisable to do so." "If the presiding judge is himself or herself disqualified the assignment to a qualified judge should be made by an acting presiding judge appointed for this purpose." Id.

[45] https://www.caljudges.org/docs/Ethics%20Opinions/Op%2062%20Final.pdf

CALIFORNIA JUDGES ASSOCIATION
Judicial Ethics Committee
Opinion No. 62

ETHICAL LIMITATIONS ON PRESIDING JUDGE'S AUTHORITY TO RECUSE THE ENTIRE BENCH

I. Introduction

The Ethics Committee has received a number of requests from presiding judges for advice on how to proceed when it appears to the presiding judge that all judicial officers on the court are disqualified. These questions present both ethical and administrative issues which sometimes seem to overlap. This opinion clarifies the ethical rules that should govern presiding judges' resolution of these issues.

II. Applicable Canons and Authorities

Canon 3B(1): A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

Cal. Code Civ. Proc. § 170: A judge has a duty to decide any proceeding in which he or she is not disqualified.

Cal. Code Civ. Proc. §170.1(a)(6): [A judge shall be disqualified if] (6)(A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.
(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.
(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Cal. Code Civ. Proc. § 170.3(a), (b), (c) (in relevant part):
(a)(1) If a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal. . . .
(b)(1) A judge who determines himself or herself to be disqualified . . . may ask the parties and their attorneys whether they wish to waive the disqualification . . . .
(c)(1) If a judge who should disqualify himself or herself 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 . . . .

Cal. Code Civ. Proc. § 170.8: When there is no judge of a court qualified to hear an action or proceeding, the clerk shall forthwith notify the Chairman of the Judicial Council of that fact. The judge assigned by the Chairman of the Judicial Council shall hear the action or proceeding . . .

Gubler v. Commission on Judicial Performance (1984) 37 Cal. 3d 27, 54 (disapproved on other grounds in *Doan v. Commission on Judicial Performance* (1995) 11 Cal. 4th 294, 325).

California Rules of Court 10.603 (a): The presiding judge is responsible for (1) Ensuring the effective management and administration of the court, consistent with any rules, policies, strategic plan, or budget adopted by the Judicial Council or the court.

California Rules of Court 10.608: Each judge must (1) hear all assigned matters unless: (a) he or she is disqualified; or (b) he or she has stated in writing the reasons for refusing to hear a cause assigned for trial, and the presiding judge, supervising judge or master calendar judge has concurred.

Rothman, David, *California Judicial Conduct Handbook* (3d Ed.) §5.10 & Appendix F. Ethics Opinions 45 and 55.

III. Discussion

Disqualification under Canon 3E and Code of Civil Procedure Sections 170.1 et seq.

The question whether the entire bench is disqualified arises in a number of contexts, including, by way of example only: (1) when a judge of the court is a party to a case, (2) when the spouse or child of a judge of the court is a party to the case, (3) when a judge of the court is a witness in a case, (4) when a judge of the court is a victim of a crime in the court's jurisdiction, and (5) when the outcome of the case directly affects all the judges on the bench. In such circumstances and others, the presiding judge may believe that all of the judges on the court are disqualified to hear the case because a person aware of the facts might reasonably entertain a doubt that any of the judges could be impartial. However, the presiding judge is not empowered to make that determination.

Except in the context of a challenge under Civil Procedure Code §170.3(c), no judge may declare another judge to be disqualified to hear a case.[1] This rule is implicit in CCP §170.3, which makes the judge's personal determination of disqualification the first step in the disqualification analysis.

---

[1] On occasion, a party may file a written verified statement pursuant to Civil Procedure Code §170.3(c) declaring that all judges on the court are disqualified. Such a challenge presents a legal issue that must be resolved in the context of the litigation.

E.g., if *a judge determines himself or herself to be disqualified*, the judge must notify the presiding judge and withdraw from the proceedings (CCP §170.3(a)(1)); *a judge who determines himself or herself to be disqualified* may ask the parties whether they wish to waive the disqualification (CCP §170.3(b)(1)); if *a judge who should disqualify himself or herself refuses or fails to do so,* any party may file with the clerk a written verified statement objecting to the hearing before the judge. CCP §170.3(c)(1). As explained below, the presiding judge may exercise his/her administrative authority to reassign a case that should, for some reason, not be heard by any of the judges on the bench. However, if the presiding judge wishes to declare that all the judges on the bench are disqualified, he/she may only do so by polling the individual members of the bench for their individual determinations.

It is important that presiding judges remind judges that unless they are disqualified, they have a *duty* to hear all assigned matters. The presiding judge should explain that the mere fact that a judge is in the same courthouse as a Court employee (or a member of that Court employee's family) involved in a case assigned to that judge does not call for automatic disqualification of any judge on the bench. Presiding judges should be careful not to invite improper disqualification when it is not warranted.

Presiding Judge's Administrative Authority

The ethical opinion stated above does not restrict a presiding judge's authority to reassign a case pursuant to his/her administrative authority. CRC 10.603(a) assigns to the presiding judge the responsibility for ensuring the effective management and administration of the court, which includes assigning and reassigning cases. A presiding judge may invoke such an administrative remedy without determining that all the judges on the bench are disqualified. The presiding judge's options may include (1) the assignment of a case to an assigned judge already on assignment to the court and (2) the establishment of reciprocal relationships with courts in other counties whereby cases that the presiding judge believes will engender mass recusals are automatically reassigned to the other county. Presiding judges are cautioned, however, that any administrative remedy has a significant limitation: determination that the entire bench is actually *disqualified* is a prerequisite to the Judicial Council's reassignment of the case to another jurisdiction. CCP § 170.8.[2]

IV. Conclusion

No single judge, even the presiding judge, may recuse an entire bench from hearing a case. It is appropriate for the presiding judge to poll the entire bench to determine whether any judge is not disqualified from hearing a particular

[2] If the presiding judge is himself or herself disqualified the assignment to a qualified judge should be made by an acting presiding judge appointed for this purpose.

case. Although the presiding judge may exercise his/her administrative authority to arrange for the case to be heard in another jurisdiction, it may not be advisable to do so.

2008/09 JUDICIAL ETHICS COMMITTEE
(May 2009)

James R. Dabney, Chair
Mary Jo Levinger, Vice Chair
Dodie A. Harman, Secretary
Barry Baskin
Daniel J. Buckley
Julie M. Conger
Mary E. Fuller
Robert A. Glusman
Thomas E. Hollenhorst
Barbara A. Kronlund
Edward F. Lee
Lisa B. Lench
Anthony J. Mohr
Deborah A. Ryan
Robert J. Trentacosta
Joanne B. O'Donnell, Ex-Officio
Timothy L. Fall, Board Liaison
Richard J. Hanscom, Board Liaison

There is no record from the Chief Justice of the California Supreme Court or Judicial Counsel assigning retired Thomas A. Smith as a presiding judge or even a judge in case # P17CRF0114.

The concept that an indictment found by a jury "`not legally constituted'" is void is rooted in *Bruner v. Superior Court (1891) 92 Cal. 239, 249 [28 P. 341].* In Bruner, the superior court improperly appointed a private citizen to summon grand jurors instead of the sheriff. (*Id. at pp. 241-242, 251*.) The court held the grand jury was therefore not a legal one, and the indictment it returned was void for lack of jurisdiction. (*Id. at pp. 251-252, 256*.)

Here, Thomas A. Smith was essentially a "private citizen" and a former judge who was admonished by the CPJ for abusing his job as a judge to stalk women on the DMV computer systems.

The record shows case # P17CRF0114 being transferred to Sacramento with no reference to any legal authority or reciprocal order by the Chief Justice of the California Supreme Court or Judicial Council.

COMMISSION ON JUDICIAL PERFORMANCE
101 Howard Street, Suite 300
San Francisco, CA 94105

Contact: Victoria B. Henley
Director/Chief Counsel
(415) 904-3650

FOR RELEASE
November 25, 1996

JUDICIAL PERFORMANCE COMMISSION ISSUES PUBLIC ADMONISHMENT OF JUDGE THOMAS A. SMITH

The Commission on Judicial Performance has publicly admonished Judge Thomas A. Smith of the El Dorado County Municipal Court, Cameron Park Division. The admonishment is attached.

The commission is composed of six public members, three judges and two lawyers. The Chairperson is the Honorable William A. Masterson of the Court of Appeal, Second Appellate District in Los Angeles.

PUBLIC ADMONISHMENT OF JUDGE THOMAS A. SMITH

The Commission on Judicial Performance has ordered Judge Thomas A. Smith publicly admonished for improper actions within the meaning of Article VI, section 18 of the California Constitution, as set forth in the following statement of facts and reasons found by the commission:

Judge Smith abused his judicial office in 1995 when he utilized the court's computer to obtain and disclose confidential information from computerized records of the Department of Motor Vehicles for a friend.

The California Vehicle Code provides penalties (a fine not exceeding $5,000 or imprisonment in the county jail not exceeding one year, or both and civil penalties up to $100,000) for improper disclosure of this information.

The judge's actions on behalf of his friend were improper and unlawful, and constituted disregard of the Code of Judicial Conduct in effect in 1995: Canon 2 required that "A judge should avoid impropriety and the appearance of impropriety in all of the judge's activities." Canon 2A provided: "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2B provided: "A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. ..."

The Supreme Court in McCullough v. Commission on Judicial Performance (1989) 49 Cal.3d 186 stated, "Using the power of the bench to benefit a friend is a casebook example of wilful misconduct" (at p. 193).

In arriving at this disposition, the commission took into consideration that the judge's conduct was limited to a single instance, the judge candidly admitted wrongdoing and expressed recognition that his action demonstrated "a lapse of good judgment" and he said he has "vowed" to never again access Department of Motor Vehicles information for an unofficial purpose.

The vote of the commission on issuance of the public admonishment was 9 ayes and 1 no (one member was absent).

SUPERI.. COURT OF CALIFORNIA, COUN. . OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
TODD CHRISTIAN ROBBEN

Case No: P17CRF0114

MINUTE ORDER

==========
GRAND JURY INDICTMENT
Date: 03/23/17 Time: 11:41 am Dept/Div: 1
==========
Charges: 1) 422 PC-F G, 2) 140(A) PC-F G, 3) 71 PC-F G, 4) 422 PC-F G 5) 71 PC-F G, 6) 422 PC-F G, 7) 664/71 PC-F G, 8) 664/71 PC-F G
--- MORE CHARGES for this Case/defendant ---

Honorable JUDGE THOMAS A. SMITH presiding
Clerk: S. Sams
Court Reporter: Linda A Street CSR 8256

Deputy District Attorney Dale Gomes present.
Defendant NOT present, currently in custody.

The Grand Jury appears in court, 18 members are present upon roll call.

Court inquires of Foreperson if twelve or more Grand Jurors received evidence, participated in deliberations & returned the Indictment to the Court.
To which the reply is yes.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 422 PC as alleged in count 1.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 140(a) PC as alleged in count 2.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 71 PC as alleged in count 3.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 422 PC as alleged in count 4.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 71 PC as alleged in count 5.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 71 PC as alleged in

Case Number : P17CRF0114 People vs. TODD ROBBEN

count 5.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 422 PC as alleged in count 6.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 664/71 PC as alleged in count 7.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 664/71 PC as alleged in count 8.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 664/71 PC as alleged in count 9.

The Court having received & reviewed the indictment finds it to be a true bill as to Count(s) 1 2 3 4 5 & orders it filed & sealed until after arraignment
The Court having received & reviewed the indictment finds it to be a true bill as to Count(s) 6 7 8 9 & orders it filed & sealed until after arraignment
---
IN RE: Bail
Oral motion on behalf of Mr. Gomes regarding request set bail at $200000.00.

COURT'S RULING:
Motion is GRANTED.
Bail set at $200000.00.

HEARING
A hearing will be set in Sacramento Superior Court.

Defendant is ORDERED to appear at the next hearing

Court reporter ordered to prepare transcript of proceedings.

Case is ordered SEALED by order of the court.

The People retain the exhibits and exhibit list from the Grand Jury Indictment.

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR

we're waiting to hear back from the County of Sacramento for a calendar date. I'm not sure how you want to handle that in terms of setting a future date in Sacramento.

THE COURT: I'll set bail in the sum of $200,000. And then request court clerk again contact the Sacramento Superior Court to find a date when the defendant can be transported to Sacramento for his arraignment on the information.

That concludes these proceedings unless there's any other grand jury business.

THE CLERK: An order that we seal the transcript. And all the exhibits be retained by the District Attorney's office.

THE COURT: That will be the order of the Court. The transcript is of course sealed.

And the People may maintain possession of the exhibits.

MR. GOMES: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

---oOo---

The exhibits below show there was not a complete record since the 02-10-2017 is missing –the grand jury was never “sworn in” or given a handbook. Penal code 911 states "The following oath shall be taken by each member of the grand jury: “I do solemnly swear (affirm) that I will support the Constitution of the United States and of the State of California, and all laws made pursuant to and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which the grand jury shall have or can obtain legal evidence. Further, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, nor the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court.”

In *Cummiskey v. Superior Court, 839 P. 2d 1059 - Cal: Supreme Court 1992:*

> Under the California Constitution, article I, section 23, "One or more grand juries shall be drawn and summoned at least once a year in each county." (See also §§ 904, 905.) After the names of the grand jury are drawn and the jury is summoned (§ 906), **it is sworn pursuant to the oath contained in section 911, and then is "charged by the court"** (§ 914). The jury is also informed of its "powers" and "duties" as a panel. (§ 914.1.) These powers and duties are set forth commencing with section 925 and include sections 939.8 (informing grand jury an indictment shall be returned when evidence 1025*1025 would "warrant a conviction by a trial jury"), 939.7 (giving grand jury power to subpoena additional witnesses), and 939.2 (informing grand jury that superior court judge may issue subpoena at grand jury's request), which provisions we discuss in greater detail below.
>
> **When the present grand jury was impaneled, each member was given a copy of the "Grand Jury Handbook,"** which sets forth all statutory provisions relating to grand juries. The jury was then further instructed by the superior court on the standard of proof necessary to return an indictment as follows:
>
> "What is the degree of evidence sufficient to warrant the return of an indictment? The law specifically provides that an indictment should be found when all of the evidence before you, taken together, if unexplained or uncontradicted, would, in your judgment, provide sufficient cause to believe that a public offense was committed and that the person accused is guilty of it. For sufficient cause there must be enough evidence to support a strong suspicion or probability of (1) the commission of the crime or crimes in question, and (2) the

accused's guilt thereof. In determining the existence of sufficient cause, you may consider circumstantial evidence, that is, proof based on logical inference. Conjecture and surmise alone, however, can never be sufficient. Only when the evidence measures up to the standard fixed by law may you return an indictment. **To do otherwise would be a violation of your oath."** (Hereafter "sufficient cause" instruction.)"

It appears no penal code 939.5 admonishment was given to the grand jury by the "foreman". Instead it was done by D.D.A Dale Gomes which mandates reversal since the grand jury was not independent, and the deputy district attorney used authority of the judicial branch.

In *Hawkins v. Superior Court, 586 P. 2d 916 - Cal: Supreme Court 1978*:

In California, grand jurors are required by law to pledge their neutrality. (Pen. Code, § 911; see § 939.5.) Contrary to the majority's unwarranted accusation that the grand jury lacks independence and is dominated by the prosecuting attorney, we have stressed that "A grand jury's function is to return an indictment against a person only when the evidence presented to it indicates that he has committed a public offense. **It is no Star Chamber tribunal empowered to return arbitrary indictments unsupported by any evidence. On the contrary the necessity of basing an indictment upon evidence is implicit in section 921 of the Penal Code...."** (Greenberg v. Superior Court (1942) 19 Cal.2d 319, 321 [121 P.2d 713], italics added.)

Moreover, grand jury proceedings contain additional safeguards against arbitrary action. In view of the serious consequences and possible harm to the accused's reputation if information regarding the grand jury's investigation were disclosed, its proceedings are conducted in total secrecy (Pen. Code, §§ 924.1-924.3, 939); **every indicted defendant is entitled to a <u>complete</u> transcript of the proceedings** (id., §§ 938.1, 995a; People v. Pipes (1960) 179 Cal. App.2d 547 [3 Cal. Rptr. 814]); witnesses, including suspects, are protected by the privilege against self-incrimination (Evid. Code, §§ 930, 940); only evidence admissible at trial may be considered by the jurors (Pen. Code, § 939.6, subd. (b)); and the jurors are authorized to order additional evidence presented to them when they have reason to believe it will explain away the charge (id., § 939.7).

619*619 Most importantly, under a recent decision of this court, the prosecution must inform the grand jury "of evidence reasonably tending to negate guilt." (Johnson v. Superior Court (1975) 15 Cal.3d 248, 255 [124 Cal. Rptr. 32, 539 P.2d 792].) Under Johnson, defense counsel may submit exculpatory evidence to the grand jury simply by first presenting such evidence to the

> prosecution. The foregoing safeguards, coupled, of course, with the fact that every defendant (1) may seek judicial review of the indictment (Pen. Code, §§ 995, 999a), and (2) is entitled to the full panoply of procedural due process rights at his trial, amply protect the indicted defendant from arbitrary or capricious action by either the prosecution or the grand jury itself.

In *Avitia v. Superior Court, 6 Cal. 5th 486 - Cal: Supreme Court 2018* "section 939.5 provides: **"Before considering a charge against any person, the foreman of the grand jury shall state to those present the matter to be considered and the person to be charged with an offense in connection therewith. He shall direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire. Any violation of this section by the foreman or any member of the grand jury is punishable by the court as a contempt." These statutes serve to ensure the impartiality and independence of the grand jury."**

In *Williams v. Superior Court of San Joaquin County, Cal: Court of Appeal, 3rd Appellate Dist. 2019* "After selection, section 939.5 authorizes **`the foreman of the grand jury'** to `direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire.'"

In McGill v. Superior Court of Orange County, Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. 2011 **"Chief among these protections is section 939.5, which is the requirement of a neutral grand jury. It is easy to glance over the text of the statute (aren't all juries supposed to be neutral?), but section 939.5 contains an important protection in the context of perjury charges: "*Before considering a charge against any person*, the foreman of the grand jury shall state to those present the matter to be considered and the person to be charged with an offense in connection therewith. He shall direct any member of the grand jury *who has a state of mind in reference to the case* or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire. Any violation of this section by the foreman or any member of the grand jury is punishable by the court as a contempt."** (Italics added.)"

With the grand jury being secretive, there is no way to even know if the draw was performed legally or if the jury members made up a cross section of the community with it

could not have since it was from Placerville, not South Lake Tahoe (see jury and vicinage issue below regarding the trial – the similar argument applies to the grand jury). **However, since the grand jury lacked the 19 jurors required, there was actually no grand jury to begin with.**

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

---o0o---

ORIGINAL

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Case No. P17CRF0114

TODD CHRISTIAN ROBBEN,

Defendant.

/

CONFIDENTIAL

---o0o---

GRAND JURY HEARING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 21, 22 AND 23, 2017

EL DORADO CO. SUPERIOR CT.

FILED APR 10 2017

BY Diana Dennis Deputy

---o0o---

A P P E A R A N C E S

For the Plaintiff: VERN PIERSON, District Attorney
El Dorado County
515 Main Street
Placerville, Ca 95667
BY: DALE GOMES, Deputy

Reported By: Linda Dunbar-Street, CSR #8256

I-N-D-E-X

---o0o---

PLACERVILLE, CALIFORNIA

TUESDAY, MARCH 21, 2017, 1:45 P.M.

---oOo---

(Grand Jurors were pre-instructed on 2-10-17.)

(The Court Reporter was previously duly sworn.)

MR. GOMES: On the record. We have all 22 remaining criminal grand jurors in the room including our currently three remaining alternates.

I'm going to proceed with an opening statement on the case of People versus Todd Christian Robben. The case involving Mr. Robben is going to involve a number of witnesses, and I'll start at the outset listing those witnesses. Mr. Thomas Watson is the City Attorney for the City of South Lake Tahoe. David Cramer is a criminal defense attorney here in El Dorado County and the Northern California community. He practices in multiple counties. Detective Jake Herminghaus is a detective for the City of South Lake Tahoe Police Department. Newton Knowles is an investigator for the State Bar of the State of California. He will not testify but he's -- he'll be referenced, so it's important for me to alert you to his name in case you know him. Bryan Kuhlmann is an Investigator for the El Dorado County District Attorney's office. Officer Shannon Laney is a police officer for the City of South Lake Tahoe Police Department. Detective John Robertson is a detective for the El Dorado County Sheriff's Department. Investigator, I think he's a senior investigating or supervising investigator Mark Torres-Gil is an investigator for the California State Bar. And Mike Weston is a civilian

The grand jury violated penal code § 888.2(c) by having only 18 of the required number of persons on March 22, 2017 and March 23, 2017 when the grand jury lacked 19 juriors prior to, and when it handed down the indictment.

As used in this title as applied to a grand jury, **"required number"** means:

(a) Twenty-three in a county having a population exceeding 4,000,000.

(b) Eleven in a county having a population of 20,000 or less, upon the approval of the board of supervisors.

(c) Nineteen in all other counties.

(Amended by Stats. 1994, Ch. 295, Sec. 1. Effective January 1, 1995.)

In *Williams v. Superior Court, 15 Cal. App. 5th 1049 - Cal: Court of Appeal, 3rd Appellate Dist. 2017* **"It is undisputed that the "required number" of jurors in San Joaquin County is 19.** (§ 888.2, subd. (c).)".

There was no "grand jury" pursuant to California Constitution Art. 1, Sec 14, 14.1 & 23 and Penal code § 908 which states:

> **If the required number of the persons summoned as grand jurors are present and not excused, the required number shall constitute the grand jury.** If more than the required number of persons are present, the jury commissioner shall write their names on separate ballots, which the jury commissioner shall fold so that the names cannot be seen, place them in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury. If less than the required number of persons are present, the panel may be filled as provided in Section 211 of the Code of Civil Procedure . If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as provided above.

In *People v. Garcia, 258 P. 3d 751 - Cal: Supreme Court 2011*:

> We first summarize the statutory scheme which regulates this process, and which gave rise to the challenged procedures. The grand jury scheme, which codified prior law, has been in effect for decades. (See § 888 et seq., added by

Stats. 1959, ch. 501, § 2, p. 2443; see also Stats. 1959, ch. 501, § 20, p. 2458; People v. Superior Court (1973 Grand Jury) (1975) 13 Cal.3d 430, 436 & fn. 5 [119 Cal.Rptr. 193, 531 P.2d 761] (1973 Grand Jury).)

(1) Each county must have at least one grand jury drawn and impaneled every year. (§ 905; see Cal. Const., art. I, § 23.) **The grand jury consists of "the required number of persons returned from the citizens of the county before a court of competent jurisdiction,"** and sworn to inquire into both "public offenses" within the county and "county matters of civil concern." (§ 888; see § 888.2 [specifying "required number" of grand jurors based on county size]; see also §§ 904.4-904.8 [authorizing "additional" grand juries depending on county size].) This general authority over both criminal and civil matters involves three functions: (1) weighing criminal charges and deciding whether to present indictments (§ 917), (2) evaluating misconduct claims against public officials and deciding whether to formally seek their removal from office (§ 922), and (3) acting as the public's "watchdog" by investigating and reporting upon local government affairs. (§§ 919-921, 925 et seq.; see McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170 [245 Cal.Rptr. 774, 751 P.2d 1329] (McClatchy).) In counties with a single grand jury, that one body performs all three functions. (See 76 Ops.Cal.Atty.Gen. 181, 182 (1993) [concluding that any additional grand jury authorized by statute is restricted to criminal matters and may not perform civil oversight functions].)[14]

D.D.A Dale Gomes selected the grand jury and excused jurors on the grand jury which mandates only the foreman can do so. D.D.A. violated the separation of powers (Cal. Const. Art 3, Sec. 3) and compromised the grand jury's ability to act independently and impartially which violated Petitioner's due process under U.S. 14th amend. and Cal. Const Art 1 Sec 7.

In *Avitia v. Superior Court, 6 Cal. 5th 486 - Cal: Supreme Court 2018* **"The prosecutor's actions could have led grand jurors to believe they were beholden to the prosecutor during the decision making process."** (See *De Leon v. Hartley (N.M. 2013) 2014-NMSC-005 [316 P.3d 896, 901] (De Leon)* **[setting aside an indictment where the district court permitted the prosecutor to select the grand jury without the court's involvement]**; *Williams v. Superior Court (2017) 15 Cal.App.5th 1049, 1061 [224 Cal.Rptr.3d 68]* **[setting aside an indictment where "[t]he prosecutor's actions supplanted the court's role in the proceedings and, because the excusal colloquy took place in front of the other jurors, allowed the remaining jurors to mistakenly believe the prosecutor had legal authority to approve a hardship request"].)**

In *Williams v. Superior Court of San Joaquin Cnty. 15 Cal.App.5th 1049, 1060 (Cal. Ct. App. 2017):*

“McGill also discussed the broader line of authority recognizing "the ‘manner’ by which a grand jury investigation is conducted may also invalidate a grand jury's indictment." (McGill, supra, at p. 1508, 128 Cal.Rptr.3d 120 ; accord Stark, supra, 52 Cal.4th at p. 417, 128 Cal.Rptr.3d 611, 257 P.3d 41.) Specifically, **"due process rights might be violated if the grand jury proceedings are conducted in such a way as to compromise the grand jury's ability to act independently and impartially."** (People v. Thorbourn (2004) 121 Cal.App.4th 1083, 1089, 18 Cal.Rptr.3d 77.) **Courts have explained that, "the determination whether a defendant's due process rights have been violated in this regard ultimately depends on whether the error at issue ‘substantially impaired the independence and impartiality of the grand jury.’"** (Packer , supra , 201 Cal.App.4th at p. 167, 133 Cal.Rptr.3d 649.) **We conclude the facts in this case reveal a substantial impairment.**

Some courts have characterized such a challenge as being made under section 995, subdivision (a)(1)(B**)"to the probable cause determination underlying the indictment, based on the nature and extent of the evidence and the manner in which the proceedings were conducted by the district attorney."** (People v. Superior Court (Mouchaourab), supra, 78 Cal.App.4th at pp. 424-425, 92 Cal.Rptr.2d 829 ; accord Dustin v. Superior Court (2002) 99 Cal.App.4th 1311, 1320, 122 Cal.Rptr.2d 176.) As discussed above, we need not decide if this is an accurate understanding of the law.

By deciding that Juror No. 15 should be excused for hardship, the deputy district attorney used authority of the judicial branch. It is unclear from the limited record before us whether the superior court would have agreed that Juror No. 15 should have been excused for "undue hardship." (See Code Civ. Proc., § 204, subd. (b).) We will never know because the court never decided the issue. The fact that the excused juror was not replaced suggests the court was not made aware of what happened, effectively preventing the drawing of another grand juror who might have impacted deliberations.

The prosecutor's actions supplanted the court's role in the proceedings and, because the excusal colloquy took place in front of the other jurors, allowed the remaining jurors to mistakenly believe the prosecutor had legal authority to approve a hardship request. Thus, the deputy district attorney expanded his power over the grand jury proceedings and the grand jurors themselves. Instead of merely providing information or advice (§ 935), he asserted actual control over them. If this case involved a petit jury instead of a grand jury, we are confident these same facts would produce justifiable outrage by the court and opposing counsel. But here, the possibility of an objection

was structurally foreclosed: The court was not present and grand jury proceedings necessarily exclude defense counsel.

In denying petitioner's motion to dismiss the indictment, the superior court focused its analysis on the missing 19th juror, but our concern is with the impact the deputy district attorney's actions had on the grand jurors that remained**. "[I]rregularities at grand jury proceedings should be closely scrutinized because protection of the defendant's rights is entirely under the control of the prosecution without participation by the defense."** (Berardi v. Superior Court, supra, 149 Cal.App.4th at pp. 495-496, 57 Cal.Rptr.3d 170.) **The deputy district attorney's improper use of judicial authority went to the very structure the Legislature has provided to keep these constitutional fixtures necessarily independent.** (Cf. De Leon v. Hartley (N.M. 2013) 2014-NMSC-005, 316 P.3d 896, 899 **[holding that permitting district attorney to take over the court's role of deciding who shall serve as grand jurors "is to sacrifice any perception that the grand jury is an entity distinct from the prosecutor that is capable of serving as a barrier against unwarranted accusations"].)**

We must, therefore, conclude that the deputy district attorney's improper excusal of Juror No. 15 and corresponding reduction of the required number of jurors substantially impaired the jury's independence and impartiality, and may have contributed to its determination that probable cause existed to accuse petitioner of the charged crimes. For these reasons, petitioner's motion to dismiss the indictment against him based on the improper excusal of Juror No. 15 should have been granted.

In *Ruiz-Martinez v. Superior Court of Santa Cruz County, Cal: Court of Appeal, 6th Appellate Dist. 2019:*

This case is not like the New Mexico case of De Leon, cited in Avitia. In that case, **"[a]fter the initial orientation and swearing in of the grand jurors [once a court jury clerk had deleted some names on a list of 100 potential grand jurors based on hardship reports that she had received], the process of selecting and excusing jurors for individual grand jury sessions was transferred to the district attorney's office with no apparent further involvement by the district court."** (De Leon, supra, 316 P.3d at pp. 897-898**.) "[T]here was virtually no record made of the informal excusal process . . . apparently used [by the prosecutor.]"** (Id. at p. 901.) "[T]he list of those grand jurors who were called for the session of the grand jury that indicted [p]etitioner [De Leon] reflects that several grand jurors were excused—though by whom is unclear. Indeed, the list of grand jurors used by the district attorney's office contains many notations suggesting active involvement by someone within the district attorney's office in deciding who would ultimately serve at the session of the grand jury that indicted [the] [p]etitioner." (Id. at p. 898.) **In De Leon, the Supreme Court of New Mexico held that "when undeniable irregularities in**

the grand jury process are brought to the court's attention well in advance of trial, . . . a grand jury indictment resulting from that flawed process must be quashed." (Id. at p. 901.) No showing of prejudice was required. (Ibid.)

Unlike De Leon, we have a record of what occurred. In addition, unlike De Leon, the California Supreme Court concluded in Avitia that "a section 939.5 violation is `not inherently prejudicial[ ]'" (Avitia, supra, 6 Cal.5th at p. 497) and held that **"[w]hen a defendant seeks to set aside an indictment before trial under section 995(a)(1)(A) on the ground that the prosecutor violated section 939.5, the indictment must be set aside only when the defendant has shown that the violation reasonably might have had an adverse effect on the independence or impartiality of the grand jury."** (Id. at pp. 497-498, see id. at p. 495.) We do not agree that in this case, the prosecutor's actions reasonably might have had an adverse effect on the independence or impartiality of the grand jury. The record does not suggest that her conduct undermined the grand jury's integrity or its protective role against an overzealous prosecutor.

In light of our conclusions, we cannot say that the prosecutor's actions materially impaired the core function of the grand jury in violation of the doctrine of separation of powers. (See In re Rosenkrantz (2002) 29 Cal.4th 616, 662 ["the separation of powers doctrine is violated only when the actions of a branch of government defeat or materially impair the inherent functions of another branch."]; see Loving v. United States (1996) 517 U.S. 748, 757 ["one branch of the Government may not intrude upon the central prerogatives of another"].) In addition, we do not find that petitioner's due process rights were violated since it was not shown that he reasonably might have been deprived of a properly constituted, independent, and impartial grand jury.

PLACERVILLE, CALIFORNIA

WEDNESDAY, MARCH 22, 2017, 8:45 P.M.

---oOo---

MR. GOMES: Let's take roll. Let's start with [redacted] (GJ08).

GRAND JUROR [redacted] (GJ8): Here.

MR. GOMES: [redacted] (GJ06).

GRAND JUROR [redacted] (GJ06): Here.

MR. GOMES: And [redacted] (GJ01).

GRAND JUROR [redacted] (GJ01): Here.

MR. GOMES: [redacted] (GJ04).

GRAND JUROR [redacted] (GJ04): Here.

MR. GOMES: [redacted] (GJ11).

GRAND JUROR [redacted] (GJ11): Here.

MR. GOMES: [redacted] (GJ16).

GRAND JUROR [redacted] (GJ16): Yes.

MR. GOMES: [redacted] (GJ17).

GRAND JUROR [redacted] (GJ17): Here.

MR. GOMES: [redacted] (GJ12).

GRAND JUROR [redacted] (GJ12): Here.

MR. GOMES: [redacted] (GJ14).

GRAND JUROR [redacted] (GJ4): Here.

MR. GOMES: [redacted] (GJ10).

GRAND JUROR [redacted] (GJ10): Here.

MR. GOMES: [redacted] (GJ18).

GRAND JUROR [redacted] (GJ18): Here.

MR. GOMES: [redacted] (GJ15).

GRAND JUROR [redacted] (GJ15): Here.

MR. GOMES: [redacted] (GJ19).

GRAND JUROR [redacted] (GJ19): Here.

MR. GOMES: [redacted] (GJ05).

GRAND JUROR [redacted] (GJ05): Here.

MR. GOMES: [redacted] (GJ09).

GRAND JUROR [redacted] (GJ09): Here.

MR. GOMES: [redacted] (GJ07).

GRAND JUROR [redacted] (GJ07): Here.

MR. GOMES: [redacted] (GJ03).

GRAND JUROR [redacted] (GJ03): Here.

MR. GOMES: [redacted] (GJ21).

GRAND JUROR [redacted] (GJ21): Here.

MR. GOMES: [redacted] (GJ20).

GRAND JUROR [redacted] (GJ20): Here.

MR. GOMES: [redacted] (GJ23) is an alternate who is not here. [redacted] (GJ25) alternate is not here. [redacted] (GJ22) is an alternate who is not here. And [redacted] (GJ24) is an alternate who is not here.

So we have 19. And [redacted] (GJ21), you're an alternate.

GRAND JUROR [redacted] (GJ21): I was not here yesterday.

MR. GOMES: I know. And so I'm going to let you go today because we started a case yesterday afternoon. Not your fault. But we just took off without you. So you can't really sit and hear the rest of the case because you missed a portion of it yesterday. So we've got 19.

GRAND JURY FOREPERSON (GJ18): Is everybody signed in? Do we only have 18? We have 18.

MR. GOMES: You're right. I should have kept an alternate yesterday afternoon. We're fine. We can roll with 18. That's not a big deal. I didn't even think about the fact we were down one. So I'm going to excuse you. I'm going to have you come back Thursday at 10:30.

New letters are coming today I'm told for you.

I'm going to call Officer Shannon Laney.

(Shannon Laney entered the grand jury hearing room.)

GRAND JURY FOREPERSON (GJ18): You do solemnly swear that the evidence you shall give in this matter pending before the grand jury shall be the truth, the whole truth, nothing but the truth, so help you God?

THE WITNESS: I do.

GRAND JURY FOREPERSON (GJ18): Thank you.

SHANNON LANEY,

A witness called before the Grand Jury, was sworn and testified as follows:

EXAMINATION

BY DALE GOMES, Deputy District Attorney:

Q Good morning. How are you?

A Good. How are you, sir?

Q Good. Tell us what you do for a living.

A I'm a police sergeant for the City of South Lake Tahoe Police Department.

Q And how long have you been a sworn police officer for the City of South Lake Tahoe?

A 17 years.

Q In that 17 years I'm going to go out on a limb and say

PLACERVILLE, CALIFORNIA

THURSDAY, MARCH 23, 2017, 8:45 A.M.

---oOo---

MR. GOMES: Let's go on the record. I'm going to take roll to get us started. [redacted] (GJ08)?

GRAND JUROR [redacted] (GJ08): Here.

MR. GOMES: [redacted] (GJ06).

GRAND JUROR [redacted] (GJ06): Here.

MR. GOMES: [redacted] (GJ01).

GRAND JUROR [redacted] (GJ01): Here. Thank you.

MR. GOMES: [redacted] (GJ04).

GRAND JUROR [redacted] (GJ04): Here.

MR. GOMES: [redacted] (GJ11).

GRAND JUROR [redacted] (GJ11): Here.

MR. GOMES: [redacted] (GJ16).

GRAND JUROR [redacted] (GJ16): Yes.

MR. GOMES: [redacted] (GJ17).

GRAND JUROR [redacted] (GJ17): I'm here. Or good morning.

MR. GOMES: [redacted] (GJ12).

GRAND JUROR [redacted] (GJ12): Here.

MR. GOMES: [redacted] (GJ14).

GRAND JUROR [redacted] (GJ14): Here.

MR. GOMES: [redacted] (GJ10).

GRAND JUROR [redacted] (GJ10): Here.

MR. GOMES: [redacted] (GJ18).

GRAND JUROR [redacted] (GJ18): Here.

MR. GOMES: [redacted] (GJ15).

GRAND JUROR [redacted] (GJ15): Here.
MR. GOMES: [redacted] (GJ19).
GRAND JUROR [redacted] (GJ19): Here.
MR. GOMES: [redacted] (GJ05).
GRAND JUROR [redacted] (GJ05): Here.
MR. GOMES: [redacted] (GJ09).
GRAND JUROR [redacted] (GJ09): Here.
MR. GOMES: [redacted] (GJ07).
GRAND JUROR [redacted] (GJ07): Here.
MR. GOMES: [redacted] (GJ03).
GRAND JUROR [redacted] (GJ03): Here.
MR. GOMES: [redacted] (GJ21) is not here. I think he's going to be joining us again mid morning after we finish this case.
[redacted] (GJ20).
GRAND JUROR [redacted] (GJ20): Here.
MR. GOMES: And our alternates who are excused until mid morning [redacted] (GJ23), not here; [redacted] (GJ25), not here; [redacted] (GJ22), not here; and [redacted] (GJ24), not here. Correct?
GRAND JURY FOREPERSON (GJ18): Correct.
MR. GOMES: Okay. We're ready to roll. I'm going to call my next witness which is Mark Torres-Gil.
(Mark Torres-Gil entered the grand jury hearing room.)
MR. GOMES: Raise your right hand before you have a seat.
GRAND JURY FOREPERSON (GJ18): You do solemnly swear that the evidence you shall give in this matter pending before the grand jury shall be the truth, the whole truth, and nothing

If you don't say that one more time you'll live until your last day, right? But at some point when you remove the -- when the conditional aspect of your threat becomes a pretense, it's not real, and what the real intent of the threatener is is to put the fear of death in his victim's mind. That's what distinguishes his actions from a single isolated threat that is too unconditional or unconnected to warrant criminal prosecution.

Any other questions before I leave you to do your part? Yes, sir?

GRAND JUROR [redacted] (GJ19): Question, [redacted] (GJ19). Are those misdemeanors or felonies on each of those counts?

MR. GOMES: All of the charges alleged in the proposed indictment are felony charges.

Anything else?

This packet is your exhibit list. Your exhibit lists are in the envelope. Your proposed indictment is on top. I'm going to give you all of this. I'm going to leave everything else in here and I'll step out.

---o0o---

(The grand jury was in deliberation from 10:18 until 10:31.)

---o0o---

PLACERVILLE, CALIFORNIA.

THURSDAY, MARCH 23, 2017, 1:05 P.M.

HON. THOMAS A. SMITH, JUDGE

---oOo---

MR. GOMES: Let's go on the record, Your Honor. If you don't mind I'm going to take roll to make sure our 18 have returned.

Ms. [redacted] (GJ08).

GRAND JUROR [redacted] (GJ08): Here.

MR. GOMES: [redacted] (GJ06).

GRAND JUROR [redacted] (GJ06): Here.

MR. GOMES: [redacted] (GJ01).

GRAND JUROR [redacted] (GJ01): Here.

MR. GOMES: [redacted] (GJ04).

GRAND JUROR [redacted] (GJ04): Here.

MR. GOMES: [redacted] (GJ11).

GRAND JUROR [redacted] (GJ11): Here.

MR. GOMES: [redacted] (GJ16).

GRAND JUROR [redacted] (GJ1): Yes.

MR. GOMES: [redacted] (GJ17).

GRAND JUROR [redacted] (GJ17): Here.

MR. GOMES: [redacted] (GJ12).

GRAND JUROR [redacted] (GJ12): Here.

MR. GOMES: [redacted] (GJ14).

GRAND JUROR [redacted] (GJ14): Here.

MR. GOMES: [redacted] (GJ10).

GRAND JUROR [redacted] (GJ10): Here.

MR. GOMES: [redacted] (GJ18).

GRAND JUROR [redacted] (GJ18): Here.
MR. GOMES: [redacted] (GJ15).
GRAND JUROR [redacted] (GJ15): Here.
MR. GOMES: [redacted] (GJ19).
GRAND JUROR [redacted] (GJ19): Here.
MR. GOMES: [redacted] (GJ05).
GRAND JUROR [redacted] (GJ05): Here.
MR. GOMES: [redacted] (GJ09).
GRAND JUROR [redacted] (GJ09): Here.
MR. GOMES: [redacted] (GJ07).
GRAND JUROR [redacted] (GJ07): Here.
MR. GOMES: [redacted] (GJ03).
GRAND JUROR [redacted] (GJ03): Here.
MR. GOMES: And [redacted] (GJ20).
GRAND JUROR [redacted] (GJ20): Here.
MR. GOMES: All 18 of the criminal grand jurors are back and present who heard the case of People versus Todd Robben.
THE COURT: The Court notes from the taking of roll that all 18 of our grand jurors are present. Has the jury selected a foreperson?
GRAND JURY FOREPERSON (GJ18): That would be me.
THE COURT: Would you please present to the Court an indictment. I understand the grand jury has reached an indictment in this case?
GRAND JURY FOREPERSON (GJ18): Yes.
THE COURT: Why don't you hand that to Mr. Gomes and he can present it to the Court.
Did twelve or more jurors receive all of the evidence in

this indictment and did the same twelve or more grand jurors participate in the deliberations on this indictment?

GRAND JURY FOREPERSON (GJ18): Yes, Your Honor.

THE COURT: And did those same twelve or more grand jurors vote to return this indictment?

GRAND JURY FOREPERSON (GJ18): Yes, Your Honor.

THE COURT: The record will reflect that the indictment has been handed to the Court, which will be assigned case number P17CRF0114.

The record will further reflect that it contains a list of the witnesses in this case. The Court finds the indictment to be a true bill. Court will be ordered to file the indictment.

With respect to a warrant, is there a request that the --

MR. GOMES: Your Honor, Mr. Robben is in custody in El Dorado County jail. I believe he's being currently held no bail because of his refusal to submit to an arraignment. I would ask for bail to be set at $200,000. That's scheduled bail relative to the charges he's been indicted on roughly. 50,000 on each 422 and 10,000 on the additional PC 71 charges that are not duplicates of the 422.

THE COURT: Bail will be fixed at the sum $200,000.

Should this matter then be set for an arraignment in the County of Sacramento before a visiting judge there?

MR. GOMES: It has been assigned, as I have been informed, to a Judge Curtis Fiorini in the County of Sacramento, but the County of Sacramento has not given us a calendar date as of yet. And I was told this morning that

we're waiting to hear back from the County of Sacramento for a calendar date. I'm not sure how you want to handle that in terms of setting a future date in Sacramento.

THE COURT: I'll set bail in the sum of $200,000. And then request court clerk again contact the Sacramento Superior Court to find a date when the defendant can be transported to Sacramento for his arraignment on the information.

That concludes these proceedings unless there's any other grand jury business.

THE CLERK: An order that we seal the transcript. And all the exhibits be retained by the District Attorney's office.

THE COURT: That will be the order of the Court. The transcript is of course sealed.

And the People may maintain possession of the exhibits.

MR. GOMES: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

---oOo---

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

---oOo---

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs. Case No P17CRF0114

TODD CHRISTIAN ROBBEN,

Defendant.

_____/

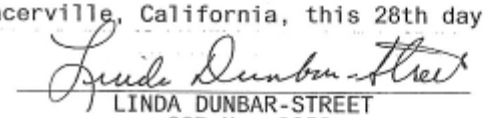
STATE OF CALIFORNIA)
) ss.
COUNTY OF EL DORADO)

I, LINDA DUNBAR-STREET, Certified Shorthand Reporter of the State of California, do hereby certify the foregoing pages 1 through 191 are a true and accurate transcription of my said stenographic notes taken in the above-entitled matter on:

DATE OF PROCEEDINGS: March 21, 22 and 23, 2017

I further declare, pursuant to CCP 237(a)(2), all personal juror identifying information has either been redacted or did not appear in the Reporter's Transcript in the above-entitled case.

Dated at Placerville, California, this 28th day of March, 2017.



LINDA DUNBAR-STREET
CSR No. 8256

Mountain Democrat

GRAND JURY DISBANDED

By Cole Mayer

Source: https://www.mtdemocrat.com/news/grand-jury-disbanded/

An order dated Feb. 22 and signed by Judge Steven Bailey discharged the entire 2012-2013 El Dorado County Grand Jury.

According to the court order, the Grand Jury fell below the minimum of 12 active jurors and was thus discharged. No annual report had been made and there was no time left to select new members before the next Grand Jury is selected.

Ray Van Asten, the foreman of the Grand Jury, said he was bound by statute on saying why the members of the jury resigned, noting that anything that happens in the Grand Jury chamber is considered confidential. "We fell under the maximum number of jurors required," he said, noting that was all he could really say.

Grand Juror Kirk Smith echoed the sentiment, adding that he had joined as a "matter of service" and to "serve the need for oversight," and that being a member had "not been about payment." He added that he was "sorry it happened" regarding the discharge.

"By statute, (the Grand Jury) expires in June," explained Presiding Judge Suzanne Kingsbury. Given the time it would take, she said, to mail out summons for replacing members or to get volunteers — the county uses a hybrid system to fill the Grand Jury — to interview for a foreperson and to train the Grand Jury, the

group would “not accomplish anything in the time left.” She noted that some of the members had not resigned, but that new members would not be able to take part in interviews for matters that had already been under investigation, which is also set forth by a statute. “Literally, they would have to start over,” Kingsbury said.

With no options left, the Grand Jury was discharged. The selection process for the 2013-2014 Grand Jury will, however, begin in May with summons being sent out and advertisements made. The process will be “up and running shortly,” Kingsbury said. The new Grand Jury will be overseen by Judge Douglas C. Phimister, as Kingsbury makes it a practice to rotate the judges overseeing the Grand Juries.

As the Grand Jury is no longer empaneled, Kingsbury’s intention is that the information that had been collected will be passed on to the next Grand Jury, “who (will) then need to do independent analysis” on the information, she said. They can then determine what to do with the information, if anything. Given the circumstances, no annual report will be made this year.

Discussion | 31 comments

- **Informed** March 08, 2013 - 8:02 am

  14 jurors resigned at one time. 4 previously quit at one time. You forgot to mention that in your article. The community should be asking what caused that. This article was completely watered down. Judge Bailey was removed from his post, not rotated out. Dig a little deeper Mt. Democrat.

  Reply Report abusive comment

- **Evelyn** March 08, 2013 - 8:15 am

  THIS is the article on the disbanding of the Grand Jury published by "The Lake Tahoe News" on March 1st.

  Reply Report abusive comment

- **Raul** March 08, 2013 - 8:20 am

  This story came out in the Lake Tahoe News last week. They covered it much more in depth than the Dumpacrap. Names mentioned in thier story include Ron and Daddy Briggs, Baily, The DA, accusations of mistrust, illeagal activities by certain GJ members, secret meetings with former Supervisor Sweeny and a member of the GJ who "poisoned" the group, Etc,Etc etc. You know,

Buisiness as usual on Fair Lane.You can be assured that Joe Harn is somewhere in the mix with his lapdog Rafferty. The good ol boys win another one. Lets honor those memebers of the Grand jury that would not disgrace thier position and integrity by providing a cover up for the questionable deeds of certain elected officials

Reply Report abusive comment

- **1036-Frank**March 08, 2013 - 8:52 am

Time to disband the Grand Jury until further notice and then replace it with something that isn't under any elected politician's or Gob's supervision. Until then it is pointless and powerless. There has been so much swept under the rug in this county regarding the Gob's corruption that the carpets are as high as Pyramid Peak.

Reply Report abusive comment

- **observer**March 08, 2013 - 9:37 am

El Dorado County scandals always conveniently vanish into thin air. We don't talk about them; they didn't happen. Magic. Vested interests protecting vested interests = the GOBs at work & at play ..... and the GOBs network includes lots of unelected people.

Reply Report abusive comment

- **Phil Veerkamp**March 08, 2013 - 9:50 am

observer - UFOs, chemtrails, bigfoot and cold fusion always conveniently vanish into thin air. We don't talk about them; they didn't happen. Magic. Vested interests protecting vested interests = the GOBs at work & at play ..... and the GOBs network includes lots of unelected people . . . something about proving a negative . . . blather . . . “they” . . .

Reply Report abusive comment

- **James E.**March 08, 2013 - 9:54 am

The Grand Jury disbands. What juicy criminality did they come across that resulted in their being sent home? Or, maybe they were just inept and not up to the task. When will we know the rest of the story? Crime or ineptness.

Reply Report abusive comment

- **James E.**March 08, 2013 - 10:02 am

And, now going to the national scene. Fox News recommended yesterday impeachment of the president over the supervised release of undocumented immigrants. Sorry, never going to fly. However, if Fox News really wants to impeach the president, I suggest his impeachment over his failure to follow international and federal law to investigate and prosecute war crimes -- additionally his failure makes him an accessory after the fact. Now, this would make a real impeachment case. But, again, won't fly because no one is interested or cares about war crimes. Simply, no impeachments in our future.

Reply Report abusive comment

- **DB Smith** March 08, 2013 - 10:08 am

Colonel, the Bummer should have released them to Sheriff Joe in Arizona rather than just out into the streets. Did you say something about supervised?

Reply Report abusive comment

- **James E.** March 08, 2013 - 10:19 am

DB, I was repeating what was said on Fox News when they called for impeachment. I see that Sheriff Joe fell down and broke his arm. Guess the Deputy Sheriff will be in charge until he gets out of the hospital.

Reply Report abusive comment

- **James E.** March 08, 2013 - 10:24 am

Ashley Judd is moving forward with her run against Senator McConnell in Kentucky. McConnell has already put out ads noting that Judd has been naked in movies. I await Judd putting out ads alleging that McConnell has been naked in the Senate. Wonder how she got the photographs?

Reply Report abusive comment

- **DB Smith** March 08, 2013 - 10:30 am

When I think of Ashley Judd I immediately think of her soul sister Janeane Garofalo. Yuck and double Yuck!

Reply Report abusive comment

- **James E.** March 08, 2013 - 10:30 am

Oh, another comment about impeachment over war crimes. The House and Senate impeach, and given that many House and Senate members knew about the war crimes and did nothing, the impeachment would put them in the frying pan too. See how the rule of law gets perverted through conspiracy.

Reply Report abusive comment

- **James E.** March 08, 2013 - 10:34 am

DB, I wasn't aware of a connection between Ashley and Janeane? Were they in a movie together?

Reply Report abusive comment

- **James Smith** March 08, 2013 - 1:21 pm

The article in the Lake Tahoe paper alludes to the issue, but neither of these so called newspapers really wants to investigate. I think everyone knows that 14 people don't resign all at once unless there is a major corruption issue.

Reply Report abusive comment

- **sunshine** March 08, 2013 - 1:32 pm

To shine a little more light on the subject -This seems to correspond with the time Supervisor Mark Neilson was investigated by the Grand Jury for violation of the Brown Act. All of the information that the Grand Jury acquired for trial was handed over by the Grand Jury foreman to Judge Riley. Then Judge Riley quickly went on vacation and could not be reached when the court could not find the Grand Jury information for prosecution. The presiding judge threw the case out. It does take a lot of GOBs to protect GOBs

Reply Report abusive comment

- **James E.** March 08, 2013 - 6:43 pm

I remember Supervisor Mark Neilson. I saw him numerous times walking on Main Street. Very well dressed -- would have been home on 45th and Madison in NYC. Perhaps dressed by Paul Stuart at the 45th and Madison store. He died while on vacation in Japan. Big secret as to cause of death??

Reply Report abusive comment

- **observer** March 09, 2013 - 8:16 am

Foaming is not as ignorant as he always pretends to be.

Reply Report abusive comment

- **R Smith** March 10, 2013 - 7:38 pm

Unlike many of the Mountain Democrat's editorials, the story by the Democrat of the Grand Jury's disbandment was rather sheepish as compared to the same story by the Lake Tahoe News. Many of the Democrat's editorials take delight in shredding the county's citizens who volunteer to serve on district boards and committees. Much of the editorial information is wrong, out of context, half baked and contains a large load of self-serving pudding cooked up in the office of the county auditor. With all these kudos from the "Oldest Newspaper in the West", why would any citizen volunteer to do their civic duty? We now see that this same question has visited the Grand Jury (GJ) and produced a mass resignation. The scuttling of the GJ could not come at a more critical time for the citizens of the county. In February members of the GJ visited a few of the Fire Departments in the county in search of the truth which they evidently found. Sometime during these encounters they felt the need to apologize for the anguish caused by misinformation and down right lies provided to them by unnamed county officials. They did so and a report from them would soon be forthcoming. Since then come the GJ resignations and the demise of the GJ along with the report. One could only hope that an investigation into the resignations and the disbandment of the GJ, undertaken by a new GJ, under a new overseer, would find that there was no wrongdoing in this case and thereby restore the public trust.

Reply Report abusive comment

- **1036-Frank** March 11, 2013 - 12:45 pm

I would quietly and quickly bring in the same investigators who were used in the Tahoe Police Officer's arrest for corruption charges, I would then interview the members of the GJ as to what actually happened and why. I would have it taken to the Federal Courthouse in Sac in front of a legitimate functioning Grand Jury without local interference. This is how it should be done, this is how you clean up a county. After this the civilian Grand Jury locally may be able to resume if not supervised by any elected Gob politician or their representative.

Reply Report abusive comment

- **Walking Tall** March 11, 2013 - 1:29 pm

Frank, you assume that anyone wants to clean up the corruption and investigate the wrong doing here in river city...not The GOB's are being reborn and promoted as fast as the old one leave with their retirement money. Gee see a pattern here and to think that the new Sheriff was going to

clean up, well he has as he is making his GOB money just like the DA and the list goes on. The names have changed but the game is the same, so no wonder why the GJ stopped their investigation as they were getting close to the truth about the supes. We all knew that no one would ever be held accountable and the beat goes on....

Reply Report abusive comment

- **1036-Frank**March 11, 2013 - 3:42 pm

They don't call this "Corruption County" for nothing. Having seen it first hand and witnessed it over some decades and loudly spoken up about what I saw and what was needed to change it, I can talk a little about it. There are times when it comes crashing down on the empire they, the Gob's, have built and sometimes they get away with a huge retirement and a quick moving trip out of state. It took a number of years to build the corruption, as it will to dismantle it. Like termites, the woods around here seem full of these Gob's and their associates and every time you look under a board a few more come crawling out, but people aren't as blind as it was years ago and from what I see, there are more people who know a little more now and their patience is running out. I can guess the Grand Jury discovered the same, which is just as well they resigned, because it would have to go to an outside agency for any action anyway, the political players in the county have to be disqualified from any local corruption cases, which in turn makes a local GJ pointless for now as it has been in the past.

Reply Report abusive comment

- **Evelyn**March 26, 2013 - 9:44 pm

"Opinion: Harassment among El Dorado County grand jurors" - **HERE**

Reply Report abusive comment

- **Phil Veerkamp**March 26, 2013 - 10:05 pm

Evely, in your opinion, do you believe in the context of "GOB network" that foreman, Ray Van Asten might be considered part of the "GOB network" (whatever that is). I know that term is terribly imprecise and may be "in the eye of the beholder". But foreman, Ray Van Asten= GOB?

Reply Report abusive comment

- **Phil Veerkamp**March 26, 2013 - 10:41 pm

LINK - Monday, October 24, 2011 - Ray Van Asten running for EID Div. 1

Reply Report abusive comment

- **Evelyn** March 27, 2013 - 2:48 am

I know nothing about him.

Reply Report abusive comment

- **victim** May 22, 2013 - 4:14 pm

Judge James Wagoner threatens to arrest people acting under the First Amendment right to file Grand Jury Complaints. see his punishment http://cjp.ca.gov/res/docs/public_admon/Wagoner_DO_9-13-11.pdf RE: "2009 couple." From what I can see, when official complaints with prima facie evidence of local corruption, the "advisory Judges" are there to intervene on behalf of the corrupt. El Dorado County has gained their policy from cold war USSR soviet policy to rule with a heavy hand and violate the rights of citizens. Member of the Grand Jury who acquiesce to this open corruption should be imprisoned, but we know that will never happen. It's unfortunate that sick little evil minds can ruin lives in order to silence complaints. But EDC citizens vote for them so they must like it.

Reply Report abusive comment

- **RE Editorial** May 22, 2013 - 4:21 pm

Another shill reporter going to grow up as a yes man for the local corruption! How do they look in the mirror? What do they see?

Reply Report abusive comment

- **Counsel of Judicial Performance** May 22, 2013 - 4:23 pm

Somebody simply file a complaint to cjp.ca.gov against the advisory judge for dismissing jurors. There will be an investigation, and if any wrong doing occurred the judge will be punished. Anybody can file the complaint and and the more the better!

Reply Report abusive comment

- **cjp.ca.gov** May 22, 2013 - 4:26 pm

The EDC grand jury has already seen a judge intimidating witnesses and was punished http://cjp.ca.gov/res/docs/public_admon/Wagoner_DO_9-13-11.pdf yes file a complaint on

this! It is in the San Francisco jurisdiction, and they hate red neck racist civil right abuser types like these judges.

Reply Report abusive comment

- **Grand Jury off to rocky start | Twain Harte Times** August 30, 2013 - 7:35 pm

[...] up with in their report. Assuming, of course, that the grand jury isn't disbanded like the grand jury in El Dorado County earlier this [...]

LAKE TAHOE NEWS

El Dorado County Grand Jury disbanded

On: March 1, 2013, By: admin, In: Featured Articles, News, 27 Comments

By Kathryn Reed

Cached source:

https://web.archive.org/web/20130525155210/http://www.laketahoenews.net/2013/03/el-dorado-county-grand-jury-disbanded/

Steve Bailey, the Superior Court judge who oversees the volunteer board, signed a court order Feb. 22 dissolving this year's jury. The document says the reason is because the grand jury numbers dropped below the minimum of 12 and "that due to the lateness of the year, alternate jurors cannot be sworn in and trained and thereafter conduct meaningful investigations before the statutory discharge of the jury in June 2013 …."

Bailey is out of town this week at a conference and could not be reached. He oversees the grand jury that looks into county matters, even though he is married into a politically charged family with deep roots on the West Slope.

There had been 19 active grand jury members, with 14 of them resigning this year. Sources close to the situation told Lake Tahoe News one member of the grand jury was regularly meeting with former El Dorado County Supervisor Jack Sweeney to tell him what the grand jury was doing. This violates state Penal Code.

That individual essentially became a poison pill within the group, creating distrust and disharmony, and prevented others from doing the job they were tasked with.

Sweeney is good friends with Supervisor Ron Briggs. On Dec. 18, 2012, John Briggs, father of the supervisor, was before the Board of Supervisors representing the Briggs Family Trust. On a 4-0 vote, with Supervisor Briggs recusing himself, the others agreed to purchase 5.2 acres from the trust on which a future courthouse is likely to be built.

Judge Bailey is the brother-in-law of the supervisor and son-in-law to the elder Briggs. And it is Bailey who watches over the grand jury, which looks into county matters, of which his in-laws are intricately involved in.

Judges receive regular training on ethics and are charged with determining whether a matter they are assigned creates an impermissible conflict of interest per the Code of Civil Procedure.

Ray Van Asten, who was foreman of the 2012-13 grand jury, told Lake Tahoe News he is one of the jurors who quit. But he would neither say why, nor talk about what led to others quitting. “We are unable to say what happens inside the jury room,” Van Asten said. It is not known what the grand jury was investigating.

“What they are looking at or not is not something I could talk about if I knew,” Suzanne Kingsbury, presiding judge of the El Dorado County Superior Court, told Lake Tahoe News. She said in the 28 years she has lived in the county (she has been on the bench 17 of those years) she does not know of a time when a grand jury was discharged midterm.

“The purpose of the civil grand jury is to act as a public watchdog and examine the operations of cities, counties and special districts. I think that the role of the grand jury in our state is a critical one,” Kingsbury said. Even so, there will be no grand jury report in June. It is possible that whatever this term’s jury was investigating could be taken up by the next grand jury that is seated.

Comments

Comments (27)

1. 

   max planck says - Posted: March 1, 2013

   Hopefully our District Attorney, Vern Pierson, will look into what appears to be obvious in your face corruption. A scared trust has been broken and needs to be repaired. Or maybe this will be politics as usual. How sad the public watchdog has tainted itself.

2. 

   Steve says - Posted: March 1, 2013

   A grand jury is required by law in all California counties. This smells very poorly.

3. 

   copper says - Posted: March 1, 2013

   This is El Dorado County which so many hereabouts think should take over management of the “corrupt” City of South Lake Tahoe. There’s a big difference between corruption and simple ineptitude.

4. 

   4-mer-usmc says - Posted: March 1, 2013

   The Baily/Briggs connection sounds nepotistic and reproachful. From this reporting it appears like the watchdog Grand Jury appointees don’t want to be associated with something possibly tainted although it was not disclosed when during this year those 14-members resigned. There’s a big difference between losing one or two a month over eight months and having 14-resign all at once or in a very short time period. Good for former Grand Jury Foreman Van Asten for maintaining the integrity of an appointee and not publically disclosing privileged and confidential information.

5. 

S. Cofant says - Posted: March 1, 2013

El Dorado County has been a Teapublican cesspool of corruption for generations. A quick research of the Briggs family of greedy wingnuts tells an ongoing story of ******, bigotry and good old GOP family values. They also have plenty of support in the foothills which are infested with knuckledragger gun nuts, tax evaders and hate radio lovers. That's how we end up with "representatives" like the Gaines' and McClintock.

6. 

AROD says - Posted: March 1, 2013

S. Covant you are right on the money. Have you ever tried talking with Rep Tom McClintock? Complete Tea Party idiot towing the Rebuplican line.

7. 

John says - Posted: March 1, 2013

There's a big difference between corruption and simple ineptitude.

X2

8. 

Stan Paolini says - Posted: March 1, 2013

for the looks of the comments meet the term: I WOULD RATHER BE RED THAN DEAD!

9. 

Old Long Skiis says - Posted: March 1, 2013

Grand Jury disbanded? Nepotisim on the west slope?
I wonder what the grand jury was looking into that got the judge to get rid of the lot of them ?Either by fireing them or pressuring them to quit. Now the Judge is unavailabe for comment?
Strange days indeed. Old Long Skiis

10. 

Bijou Bill says - Posted: March 1, 2013

There would be very, very few people that would know more about the generational ways of crony deal-making in El Dorado Co. than you Stan Paolini. Why do you think the Grand Jury disbanded?

11. 

"HangUpsFromWayBack" says - Posted: March 1, 2013

In deed Honesty and fairness is something that's been dying for some time,we all see it, smell it, feel it, but can't change a thing.

Morals are in the dumpsters and good people are left to wonder like helpless victims of society.

People with money can get away with anything NOW DAYS!

12. 

EDC says - Posted: March 1, 2013

The 2011-2012 Grand Jury looked into a fire protection district in regards to Measure F. The people that wrote measure F are the same people that worked on Judge Bailey's Campaign. Judge Bailey then hand selected who he wanted to sit on the 2012-2013 Grand Jury with the help of their foreman, Ray Van Asten, so that the new Grand Jury wouldn't make issues worse for the judge. Nothing can be done about any of these issues because everyone in El Dorado County is in bed with each other. They all have dirt on each other so nobody is willing to stick their neck out and do what is right. Politics is a nasty game!

13. 

Informed says - Posted: March 1, 2013

EDC have you personally looked at the Judges filings for his campaign? If you had then you would know that niether of the two crooks you are referring to had anything to do with his campaign. The dynamic duo simply used his name to add credibility to thier resume. The Judge recused himself immediatly from the investigatin as soon as he was made aware of their mis use of his name. You should also take note that these individuals are currently being prosecuted for their mis-deeds with the measure. Your allegations are way off base.

14. 

EDC says - Posted: March 2, 2013

Informed. I seek clarification. If the consulting company didn't work on the judge's campaign, then why did they put the judge on their resume?

15. 

sunriser2 says - Posted: March 2, 2013

Now that this distraction is gone maybe the judge can decide on some of the cases that have been pending for years.

16. 

Informed says - Posted: March 2, 2013

EDC, have you reread the answer it was for "credability", these two have always used underhanded means to further their lies. Now that they are caught and will be held to answer we will all know the truth. Which is you will not find a better Judge than Steve Bailey, he takes action and is not affected by politics.

17. 

Tonto says - Posted: March 2, 2013

What is most important for all to ask is what was the Jury investigating and who applied the pressure on the members to quit. There just happens to be a County Supervisor (Nutting) who has and is being investigated for his wrong doing and has applied pressure throughout his political life. What Judge Bailey did was what he is required to do and when the member numbers dropped he did just that. Better focus on the reasons behind this not the correct action taken by Judge Bailey, watch and see if the DA holds the Supervisor (Nutting) accountable. Of course don't hold your breath as this won't happen as the DA has already been bought off.

18. 

Informed says - Posted: March 2, 2013

EDC, They did it for "Credability" thinking that no one would check, however when Judge Bailey found out they were exposed.
Alarcon and Dellinger are crooks and put several people on their resume that were not supporters. These two are slime and are part of the "Nutting Team" of slime politics in our county.
Look up their names and you will see that they're thick as thieves, current court cases are the real proof that all can read about.
All one has to do is a little homework and you will see all their dirty deeds, name dropping is the name of the game with them and no one is safe.

19. 

Informed Also says - Posted: March 5, 2013

The Grand Jury was likely also investigating fire departments and fire districts and the county funding of them along with internal contracts held by these departments and districts. The termination of an undersized Grand Jury is likely OK. The question becomes, why did so many jury members quit? Suspicions arise with the knowledge that the Grand Jury was about to report that a county official/officials had, for whatever reason, given the Grand Jury misleading information that led to unnecessary investigation by them. The county's termination of aid to fire funding

was likely also on their minds. What better way to squelch a report critical of county official's dealings than by whatever means, terminate the jury prior to the report. The question is, was any law broken if the Grand Jury was lied to by an official and do we have a case of jury tampering? Your speculation is as good as mine.

20. 

John says - Posted: March 5, 2013

"The Grand Jury was likely also investigating fire departments and fire districts and the county funding of them along with internal contracts held by these departments and districts."

Does it make you feel cool to throw completely unsubstantiated rumors out with no backup or even a basic hypothesis?

21. 

Informed Also says - Posted: March 6, 2013

John, my comments must have come close to the bull's eye because, out of all the other comments concerning this matter, mine was the only one you required proof. Proof is the crux of the matter because, Grand Jury members are forbidden to publicly disclose their investigations except in their final report. In this case, there will be no final report, making the information it would have contained shuttered to history. It is doubtful that we will ever know the truth. When you consider that the Grand Jury is almost the last line of defense citizens have to combat wrong doing by government, this event was a sad day for El Dorado County. Have a nice day.

22. 

EDC resident says - Posted: March 7, 2013

John says – POSTED: MARCH 5, 2013

"Does it make you feel cool to throw completely unsubstantiated rumors out with no backup or even a basic hypothesis?"

Well John, it is NOT an unsubstantiated rumor. In early February of this year, 7 of the Grand Jury members made a visit to the Garden Valley, Mosquito, and Georgetown fire departments, with the intention of getting to the bottom of the allegations of the discontinuation of county funding has had on the aforementioned districts.

What they found was that they were grossly misinformed by county officials, and said they would be writing a report stating the EDC's need for stable funding from the county.

Considering the backlash/embarrassment that this report would cause for the person/persons responsible for the lack of necessary funding, I'm not a bit surprised that the main person in question had his "buddy" take care of the problem before it bit him squarely in the a$$.

You can believe what you want to John, I really don't give a ****. I was present, you were not.

Good day sir.

23. 

Barry says - Posted: March 8, 2013

What other issues did the grand jury not want to get involved in? Supposedly complaints have been made and inquiries made regarding the Public Guardians department and their illegal activities in their efforts to protect our senior citizens. Its about time for some legal action, but, wait, that would be the Grand Jury, which doesn't exist right now.

24. 

scadmin says - Posted: March 8, 2013

If you have facts to support your assertion about illegal activities of the Public Guardian, you don't need to tell the grand jury, you can report to local law enforcement. Should you be uncomfortable with that approach, the California Attorney General in Sacramento has a unit that deals with elder physical & financial abuse.

25. 

sparrow says - Posted: March 12, 2013

The grand jury needed to be dismantled. We need a fresh set of eyes for our community. I know from first hand experience that legal issues handled here are very bias and questionable. The good old boys network seems to be one sited and with the recent dealings with the South Shore Police department allegations, it seems appropriate for the Feds to get a handle on the judicial committee in town.

26. 

EDC resident says - Posted: March 26, 2013

Gee…what do you know? A Grand Juror states that things are not all that grand the county..

http://inedc.com/1-4128

27. 

Inabler says - Posted: March 26, 2013

EDC, welcome to LTN. That website picked up LTN's story … http://www.laketahoenews.net/2013/03/opinion-harassment-among-el-dorado-county-grand-jurors/. If you got the morning email, you would would get the headlines sent to ya every morning from LTN.

In *Avitia v. Superior Court*, *6 Cal.5th 486 (Cal. 2018):*

As for the independence of the grand jury, the prosecutor unquestionably influenced the composition of the grand jury by removing Juror No. 18. But mere influence over the composition of the grand jury is not impermissible; section 935 provides that the prosecutor may "giv[e] information or advice relative to any matter cognizable by the grand jury."

The facts here are different from cases where the prosecutor was actively involved in the selection of grand jurors or excused a grand juror in the presence of other grand jurors.

In those cases, the prosecutor's actions could have led grand jurors to believe they were beholden to the prosecutor during the decisionmaking process. (See De Leon v. Hartley (N.M. 2013) 316 P.3d 896, 901 (De Leon) [setting aside an indictment where the district court permitted the prosecutor to select the grand jury without the court's involvement]; Williams v. Superior Court (2017) 15 Cal.App.5th 1049, 1061, 224 Cal.Rptr.3d 68 [setting aside an indictment where "[t]he prosecutor's actions supplanted the court's role in the proceedings and, because the excusal colloquy took place in front of the other jurors, allowed the remaining jurors to mistakenly believe the prosecutor had legal authority to approve a hardship request"].)

In this case, nothing in the record suggests that the prosecutor was improperly involved in the selection of the grand jurors or in the grand jury's subsequent decisionmaking process. Instead, the record indicates that the prosecutor dismissed Juror No. 18 outside the presence of other grand jurors after the grand jury heard Juror No. 18 express concern about his own bias. The fact that the prosecutor dismissed Juror No. 18 outside the presence of the other grand jurors does not make the dismissal any less unlawful. But it reduced the likelihood that the independence of the remaining grand jury was impaired. The other members had no reason to think that the prosecutor, as opposed to the foreperson, dismissed Juror No. 18. On the record before us, the foreperson was the only grand juror who could have known that he was not the one who removed Juror No. 18, and even the foreperson did not necessarily know it was the prosecutor who had done so. Avitia therefore has not shown that the error reasonably might have affected the impartiality or independence of the grand jury in an adverse manner.

Dustin v. Superior Court (2002) 99 Cal.App.4th 1311, 122 Cal.Rptr.2d 176 is distinguishable. The court there held "it was error for the trial court to have placed the burden on defendant to show prejudice as a result of the denial of his right to a transcript of the entire grand jury proceedings." (Id. at p. 1326, 122 Cal.Rptr.2d 176.) But the court did so where "[i]n the absence of a transcript, coupled with the fact that no judge or defense representative was present, it is difficult to imagine how a defendant could ever show prejudice." (Ibid.) Further, the court said the prosecutor apparently excluded a court reporter "for the express purpose of precluding discovery by the defendant of his opening statement and closing argument" and that **"the prosecutor's behavior is relevant in addressing whether dismissal is an appropriate remedy for the failure to provide a complete transcript of the grand jury proceedings."** (Id. at pp. 1323–1324, 122 Cal.Rptr.2d 176.) No similar circumstance is present here.

Although we conclude that Avitia's motion fails on the facts before us, we emphasize that prosecutors must be mindful of the dictates of section 939.5 and conform their conduct accordingly. **We agree with the New Mexico high court's admonition that the "entity charged with the actual selection and excusal of grand jurors is of paramount importance to the process. As such, the statutory provisions assigning that role ... should be seen as mandatory, not directory, because they are critical to ensuring that the process of impaneling a grand jury is impartial and free of unfair influences. [Citations.] [¶].... [¶] The manner in which grand jurors are selected and excused goes to the very heart of how the public views the integrity of the grand jury system. [¶].... [¶] And if the integrity of the grand jury is called into question, there is little hope that the public at large, or the accused in particular, will view the grand jury as capable of returning well-founded indictments or serving as a realistic barrier to an overzealous prosecution." (De Leon , supra , 316 P.3d at pp. 900–901.) Section 939.5 makes clear that the foreperson, not the prosecutor, has authority to dismiss grand jurors. The prosecutor, who " ' "is in a peculiar and very definite sense the servant of the law" ' "** (People v. Eubanks (1996) 14 Cal.4th 580, 589, 59 Cal.Rptr.2d 200, 927 P.2d 310), is expected to know the law and to follow it.

The grand jury was a sham, the D.D.A. Dale Gomes knew he could not pass a preliminary hearing on the merits and instead had his secret meeting with his friends under the guise of a “grand jury”. Since three of the “victims” failed to show up (Newton Knowles, Steven Bailey and Suzanne Kingsbury) this Petitioner cannot be indicted on those charges since there was no relevant or competent evidence and testimony presented to the grand jury in violation of evidence code 1200 (a) “Hearsay evidence” is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. (b) Except as provided by law, hearsay evidence is inadmissible. (c) This section shall be known and may be cited as the hearsay rule. "it is unreasonable to expect that the grand jury could limit its consideration to the admissible, relevant evidence," thereby denying this Petitioner due process. See *People v. Backus (1979) 23 Cal.3d 360, 393 [152 Cal. Rptr. 710, 590 P.2d 837]*. “(Pen. Code, § 939.6, subd. (b).) (12) An indictment based solely on hearsay or otherwise incompetent evidence is unauthorized and must be set aside on motion under Penal Code section 995. (*People v. Anderson (1968) 70 Cal.2d 15, 22 [73 Cal. Rptr. 550, 447 P.2d 942]; Rogers v. Superior Court (1955) 46 Cal.2d 3, 8 [291 P.2d 929].)” People v. Backus, supra.*

The grand jury was denied exculpatory information they requested such as exculpatory evidence as to Petitioner's mental health report that proved Petitioner was "not a threat" and information they requested about Petitioner's ownership of firearms when D.D.A. Dale Gomes and Investigator Bryan Kuhlmann knew Petitioner had passed a mental health examination and was shown to be not a threat and Petitioner had a Post Traumatic Stress Disorder ("PTSD") identified as Legal Abuse Syndrome ("LAS"). D.D.A. Dale Gomes and Investigator Bryan Kuhlmann knew Petitioner's shotgun had been confiscated by the South Lake Tahoe Police during the search of his home during the Nevada criminal proceedings – Petitioner did not own a firearm at the time of the grand jury.

California law provides that a defendant has a due process right not to be indicted in the absence of a determination of probable cause by a grand jury acting independently and impartially in its protective role. (*Greenberg v. Superior Court (1942) 19 Cal. 2d 319, 321-322; Parks v. Superior Court (1952) 38 Cal. 2d 609, 611; Cal. Const., art. I, § 14; Johnson v. Superior Court (1975)15 Cal. 3d 248, 253; Cummiskey v. Superior Court (1992) 3 Cal. 4th 1018, 1022, fn. 1.)* In *Johnson*, our Supreme Court recognized: **"The grand jury's "historic role as a protective bulwark standing solidly between the ordinary citizen and an overzealous prosecutor"** (*United States v. Dionisio [(1973) 410 U.S. 1] at p. 17 [35 L.Ed.2d at p. 81*]) **is as well-established in California as it is in the federal system. "If [exculpatory] evidence exists, and [the grand jury] have reason to believe that it is within their reach, they may request it to be produced, and for that purpose may order the district attorney to issue process for the witnesses ([former] § 920, Pen. Code), to the end that the citizen may be protected from the trouble, expense, and disgrace of being arraigned and tried in public on a criminal charge for which there is no sufficient cause. A grand jury should never forget that it sits as the great inquest between the State and the citizen, to make accusations only upon sufficient evidence of guilt, and to protect the citizen against unfounded accusation, whether from the government, from partisan passion, or private malice."** (*In re Tyler (1884) 64 Cal. 434, 437 [1 P. 884].)"*

you from being able to arrest him for committing a criminal threat?

A Yes.

MR. GOMES: I don't have any other questions for Investigator Kuhlmann. Anybody -- yes, sir?

GRAND JUROR [redacted] (GJ10): [redacted] (GJ10). I'm not sure how deep your investigation went, but did you explore any evidence of prior history of similar activity or mental health indications? And finally, is he a known owner of any firearms?

MR. GOMES: That's a lot of questions there. I'll say I don't think Investigator Kuhlmann has the foundational capacity to address Mr. Robben's mental health. He's not a mental health professional, so that is not something he has the capacity to answer.

I do think you can answer whether or not you have any knowledge of Mr. Robben owning firearms.

THE WITNESS: I do not know if he owns any firearms.

MR. GOMES: Was there another element to that?

GRAND JUROR [redacted] (GJ10): Just prior history to similar history prior to the Nevada incident. Has this been a systemic pattern with him?

MR. GOMES: Hold on. I'm thinking.

I don't think that Investigator Kuhlmann can answer that question with sufficient personal knowledge of the answer which means his answer would be inadmissible.

Yes, sir?

GRAND JUROR [redacted] (GJ16): [redacted] (GJ16), number

Evidence was used from Petitioner computers and cell phones that was obtained with an unlawful warrant as will be explained later. The grand jury was fed lies about Petitioners intend, state-of-mind and involvement in issues from Carson City, NV where Petitioner was "fully cleared" of anything to do with shootings John Tatro's home, or fire bombs, etc. Google search metadata on Petitioner's computer related to "ANFO"[46] and pipe bombs, etc were all related to stories on his websites related to the false flag Oklahoma City bombing[47] and Timothy McVeigh and a pipe bomb incident[48] in South Lake Tahoe. There was no "Anarchists Cookbook" in the evidence presented and even if there was, it's freely available on the public Internet[49] and dark web which offers much more than just a "cookbook".

Graphics and images were used that were related to stories that included "hit-man for hire" and "You will die" which cam from the newspapers –all this is explained in detail later in this pleading which includes the newspaper articles.

David Cramer was later impeached when he claimed Petitioner threatened to put a bullet in his head because that is not what was said. D.D.A. Dale Gomes only told the grand jury a fraction of the facts and issues related to Shannon Laney's perjury on the DUI case. D.D.A Gomes only stated that this Petitioner was claiming Officer Laney only forgot to check a box on a form when D.D.A Dale Gomes knew Petitioner had written a comprehensive assessment of the perjury and false evidence used in the DUI case which was included as evidence in case # P17CRF0114.

Said comprehensive assessment was a petition for writ-of-mandate in the El Dorado Superior Court (which exists in the record of case # P17CRF0114) and shows how Officer Laney had no probable case for the traffic stop (no proof of speeding – no radar printout), the audio/video dash camera was edited to remove footage of the DUI field sobriety tests

---

[46] ANFO (or AN/FO, for ammonium nitrate/fuel oil) is a widely used bulk industrial explosive. Its name is commonly pronounced as "an-fo". It consists of 94% porous prilled ammonium nitrate (NH4NO3) (AN), which acts as the oxidizing agent and absorbent for the fuel, and 6% number 2 fuel oil (FO). https://en.wikipedia.org/wiki/ANFO

[47] Federal Grand Juror Hoppy Heidelberg Exposes Oklahoma City Bombing False Flag Operation: https://www.newswars.com/federal-grand-juror-hoppy-heidelberg-exposes-oklahoma-city-bombing-false-flag-operation/

[48] https://sltpdwatch.wordpress.com/2016/05/04/a-suspicious-device-found-wednesday-morning-in-front-of-the-el-dorado-county-courthouse-in-south-lake-tahoe/

[49] http://bnrg.cs.berkeley.edu/~randy/Courses/CS39K.S13/anarchistcookbook2000.pdf

conducted on the hill which was clearly recorded prior to the tests. Officer Laney claimed the camera conveniently stopped working just as the testing would have been recorded to show he conduced a one-leg-stand on the step incline on the hill under the Heavenly Ski Resort gondola at the Stateline of Nevada and California. Officer Laney claimed the GoPro camera was sent to GoPro for repair and to try to obtain footage – no RMA (Repair Authorization Number) or proof was ever provided that the camera was sent to GoPro.

Were you able to use this video to document the field sobriety test?
A. I was not.
Q. Why not?
A. Well, I was having a problem with the GoPro cameras. The one on my -- on my bike here stops working randomly. I actually had to have it replaced by GoPro. I also -- the field sobriety tests weren't conducted in this area. I walked him to an area off of Montreal where the sidewalk is flat and level. This was an incline. You kind of can tell from the video, but it was an incline area that I didn't want to do the balance test on.
Q. Okay. Is that typical procedure to bring a person to a flat and level location to conduct the field sobriety test?
A. It is.
Q. And which of the tests are affected by that to your knowledge?
A. Any of the balance tests; the one-leg-stand and the line-walk test are the two balance tests that I use.
Q. Okay. So from this point on, you're still asking those questions you described earlier; is that fair to say?
A. That's fair to say.
Q. And at some point and time, do you have to get Mr. Robben up in order to have field sobriety tests conducted?
A. Yes.

114

VANESSA HUESTIS, CSR NO. 13997

Q. Okay.
A. And it's on the video here, I actually stand him up and uncuff him before it shuts off.
Q. And did it shut off at approximately 10, 10-plus minutes?
A. Yeah, very soon. You can see I stand him up and uncuff him.
Q. Is it routine that you put the field sobriety tests on camera?
A. Yes, if I can. It depends on the vehicle position. I mean, it depends on the road and if the car is in the right position. The patrol cars you can manually turn the cameras; I can't on my motorcycle.
Q. Okay. So if you're in a patrol car, you might be doing the video a little bit differently than you are with this?
A. Correct.
Q. So at this point, is Mr. Robben cooperative with you?
A. He is.
Q. Okay. And we are at 10:31 on the video. And maybe if you can explain what's going on right now.
A. With the help of Deputy Perry we helped Mr. Robben to his feet, and I removed the handcuffs.
Q. Is that where the video stops?
A. Yes.
Q. And you took him to what area off the camera? To the right or to the left?

Petitioner asserts Officer Laney conducted the one-leg-stand test on the hill, Officer Laney claims it was done on the lower part of the hill on a flat surface. Officer Laney was impeached when he told how he conducted the Horizontal Gaze Nystagmus ("HGN") test at trial when he was, in fact, caught in a perjury trap since he claimed he conducted the test incorrectly at the pre-trial suppression hearing and switched his testimony at trial so it met the National Highway Traffic Safety Administration ("NHTSA") regulations. Officer Laney also signed a temporary license form (after he confiscated Petitioner's drivers license) "under penalty of perjury" that he gave a copy to this Petitioner when he did not. The other SLTPD officer who assisted Officer Laney claimed he complied with Cal. Code of Regulation Title 17 CCR, §1219.3 which provides that the breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to collection of the breath sample, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked. Said 15 minute continuous observation was not, in fact, conducted (after the SLTPD Officer claimed it was) when it was proven it was not, and this Petitioner regurgitated within that 15 minute time period which would have rendered the evidence inadmissible pursuant to the evidence code § 352 (The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) **create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.**)

D.D.A. Dale Gomes let the grand jury down a rabbit hole of lies, false conclusions, incorrect legal theory and disinformation to paint the picture of an urgent need to obtain his indictment including misstatements about the Petitioner's state of mind where it was disclosed that Petitioner believed his speech was protected (subjective intent) and D.D.A Dale Gomes then went on to confuse the grand jury that the Petitioner was wrong and his speech although to making threats to kill anyone, collectively when added up, put the people in fear that reached the elements to meet the requirements of the penal codes he needed to get his indictment.

The D.D.A. Dale Gomes refers to the grand jury indictment as a "superseding indictment" when technically, it is not - A superseding indictment is an indictment that has added charges and/or defendants to an earlier indictment[50].

---

[50] A superseding indictment is an indictment filed without the dismissal of a preceding indictment. *See* *United States v.Rojas-Contreras,* 474 U.S. 231, 237, 106 S.Ct. 555, 558, 88 L.Ed.2d 537 (1985) (Blackmun, J. concurring). - https://www.avvo.com/legal-answers/what-does-superseding-process-or-superseding-indic-948055.html

Needless to say these cumulative issues have resulted in a miscarriage-of-justice, fraud-upon-the-court, violations of the separation-of-powers (The D.A. i.e. executive branch doing the work of the judicial branch - see *Avitia, supra, 6 Cal.5th at p. 495*) "any semblance of independence crumbled as she [the D.A.] exercised her unbridled authority."), due-process violations of both the California (Art. 1, Sec 7) and U.S. Constitutions (U.S. 14th amendment) and prosecutorial misconduct which have usurped Petitioner's substantial rights to a fair trial. The appropriate standard of review is the narrow one of due process and not the broad exercise of supervisory power. See *Darden v. Wainwright, 477 U.S. 168, 181 (1986)*. A defendant's due process rights are violated when a prosecutor's misconduct renders a trial "fundamentally unfair." See id.; *Smith v. Phillips, 455 U.S. 209, 219 (1982)* ("the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor").

"One can find no less than a dozen and a half published cases around the United States that repeat the maxim that a grand jury would indict a ham sandwich"[51] unless you're a South Lake Tahoe cop who murdered Kris Jackson[52] and has your friends in the D.A. Office cover-up for you using the secrecy of the grand jury system[53] and claim it is for transparency.

---

[51] In " *McGill v. Superior Court, 195 Cal. App. 4th 1454 - Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. 2011* [F/N 26**] " The "ham sandwich" line, at least as it appears in the cases, can be traced back to a comment by the chief justice of New York State's highest court** (the equivalent of its supreme court), though, interestingly enough, the chief justice appears to have been first quoted in Tom Wolfe's novel, The Bonfire of the Vanities (1987). The quote appears to have been first picked up in a published opinion by the West Virginia Supreme Court, in Kerns v. Wolverton (1989) 181 W.Va. 143, 147, fn. 4 [381 S.E.2d 258, 262] ["Tom Wolfe reflected on this perception in his novel The Bonfire of the Vanities: `**Grand-jury hearings had become a show run by the prosecutor**. With rare exceptions, a grand jury did whatever a prosecutor indicated he wanted them to do. Ninety-nine percent of the time he wanted them to indict the defendant, and they obliged without a blink. They were generally law-and-order folk anyway. They were chosen from long-time residents of the community. Every now and then, when political considerations demanded it, a prosecutor wanted to have a charge thrown out. No problem; he merely had to couch his presentation in a certain way, give a few verbal winks, as it were, and the grand jury would catch on immediately. But mainly you used the grand jury to indict people, and in the famous phrase of Sol Wachtler, chief judge of the State Court of Appeals, **a grand jury would "indict a ham sandwich," if that's what you wanted.'"**

[52] **DA Final Report Officer Involved Shooting Kris Michael Jackson**
https://www.edcgov.us/Government/ELDODA/Press%20Release/2017/Documents/2017-06-21%20OIS%20REPORT%20KRIS%20MICHAEL%20JACKSON%20FINAL.pdf

[53] **California court backs grand juries in charges on police killings**
https://www.sfgate.com/crime/article/California-court-backs-grand-juries-in-charges-10849107.php

complete.

Any other questions or concerns?

GRAND JUROR [redacted] (GJ15): [redacted] (GJ15). We've heard a lot of testimony attesting to the fact that he never -- he never says "I'm going to kill you." I mean, he always refers to other groups or this is going to happen, we're going to have a revolution, we're going to, you know. So again, I know that being in his mind that's why he thought he would never be charged, I think, because he thought he would never -- he never made. But again, I guess what you're alluding to is the perception of the recipient of the threat.

MR. GOMES: I think candidly there's no question Mr. Robben believed he was insulating himself from prosecution by saying so and so is going to die and somebody is going to put a bullet in so and so's head. Not me. Somebody is going to put a bullet in so and so's head.

And I think fundamentally his analysis of the law of making a criminal threat is partially right. Unfortunately it's partially wrong too, in that at some point when you do this over and over and over again your actual intent to communicate a real and direct threat becomes clear. And even though you put a conditional language on it, I think at some point the reality that you're trying to put in the mind of your victim the idea that you or somebody on your behalf is going to harm them becomes real.

So you can say, you know, you can condition your threat and say, you know, if you say that one more time I'm going to kill you, you son of a bitch. That's a conditional threat.

If you don't say that one more time you'll live until your last day, right? But at some point when you remove the -- when the conditional aspect of your threat becomes a pretense, it's not real, and what the real intent of the threatener is is to put the fear of death in his victim's mind. That's what distinguishes his actions from a single isolated threat that is too unconditional or unconnected to warrant criminal prosecution.

Any other questions before I leave you to do your part?

Yes, sir?

GRAND JUROR [redacted] (GJ19): Question, [redacted] (GJ19). Are those misdemeanors or felonies on each of those counts?

MR. GOMES: All of the charges alleged in the proposed indictment are felony charges.

Anything else?

This packet is your exhibit list. Your exhibit lists are in the envelope. Your proposed indictment is on top. I'm going to give you all of this. I'm going to leave everything else in here and I'll step out.

---oOo---

(The grand jury was in deliberation from 10:18 until 10:31.)

---oOo---

The above exhibit shows D.D.A Dale Gomes asserted a misstatement of law. Petitioner contends it amounted to the improper use of a deceptive or reprehensible method to persuade the grand jury and so infected the trial with unfairness as to make the resulting indictment a denial of his federal constitutional right to due process of law (U.S. 14th) and a reliable judgment.

Petitioner argues in depth about the 1st amendment rights issues and "true threats" later in this petition to which he is factually innocent in this case which mandates a "subjective" requirement as opposed to just an "objective" standard as discussed below.

The Petitioner never made a threat to kill anyone himself, D.D.A. Dale Gomes answers the grand jury that threats will be carried out by others. Here, D.D.A. has misinformed the grand jury about the law which amounts to prosecutorial misconduct.

In *NY ex rel. Spitzer v. Operation Rescue National, 273 F. 3d 184 - Court of Appeals, 2nd Circuit 2001:*

> We are also troubled by the District Court's willingness to characterize a broad range of protestor statements as "threats" without giving them the full analysis required by the First Amendment. When determining whether a statement qualifies as a threat for First Amendment purposes, a district court must ask whether **"the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution...."** United States v. Kelner, 534 F.2d 1020, 1027 (2d Cir.), cert. denied, 429 U.S. 1022, 97 S.Ct. 639, 50 L.Ed.2d 623 (1976). Although proof of the threat's effect on its recipient is relevant to this inquiry, United States v. Malik, 16 F.3d 45, 49 (2d Cir.), cert. denied, 513 U.S. 968, 115 S.Ct. 435, 130 L.Ed.2d 347 (1994), **a court must be sure that the recipient is fearful of the execution of the threat by the speaker (or the speaker's co-conspirators). Thus, generally, a person who informs someone that he or she is in danger from a third party has not made a threat, even if the statement produces fear. This may be true even where a protestor tells the objects of protest that they are in danger and further indicates political support for the violent third parties.** See Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists, 244 F.3d 1007, 1015 (9th Cir.2001), rehearing en banc granted, 268 F.3d 908 (9th Cir. 2001). The evidence adduced at the hearing contains many such statements that do not constitute threats even though they may have increased the recipient's apprehension of harm. Yet the District Court did not pay due attention to this difference.

The above case comes form the 2nd circuit court of appeal which is the very court that penal code 422 originates[54] and their own interpretation of their own law is very, very clear about the unconditional element and "**a court must be sure that the recipient is fearful of the execution of the threat by the speaker (or the speaker's co-conspirators). Thus, generally, a person who informs someone that he or she is in danger from a third party has not made a threat, even if the statement produces fear. This may be true even where a protestor tells the objects of protest that they are in danger and further indicates political support for the violent third parties."**

D.D.A. Dale Gomes stated above to the question "We've heard a lot of testimony attesting to the fact he never says "I'm going to kill you" I mean he always refers to other groups…" D.D.A Dale Gomes said 'I think candidly there's no question Mr. Robben believed he was insulating himself from prosecutions …and I think fundamentally his analysis of making a criminal threat is partially right…"

Improper remarks by a prosecutor can "`so infect[] the trial with unfairness as to make the resulting conviction a denial of due process.'" (*Darden v. Wainwright (1986) 477 U.S. 168, 181, 106 S.Ct. 2464, 91 L.Ed.2d 144; Donnelly v. DeChristoforo (1974) 416 U.S. 637, 642, 94 S.Ct. 1868, 40 L.Ed.2d 431; cf. People v. Hill (1998) 17 Cal.4th 800, 819, 72 Cal.Rptr.2d 656, 952 P.2d 673.)* **Under state law, a prosecutor who uses deceptive or reprehensible methods to persuade either the court or the jury has committed misconduct, even if such action does not render the trial fundamentally unfair.** (*People v. Hill, supra, 17 Cal.4th at p. 819, 72 Cal.Rptr.2d 656, 952 P.2d 673; People v. Berryman (1993) 6 Cal.4th 1048, 1072, 25 Cal.Rptr.2d 867, 864 P.2d 40 (Berryman); People v. Price (1991) 1 Cal.4th 324, 447, 3 Cal.Rptr.2d 106, 821 P.2d 610.)*

A criminal trial is not an experimental forum for prosecutors to test the outer limits of advocacy. "The prosecutor's job isn't just to win, but to win fairly, staying well within the rules." *(U.S.v. Kojayan (9th Cir. 1993) 8 F.3d 1315, 1323; italics added.)*

---

[54] In *People v. Bolin, 956 P. 2d 374 - Cal: Supreme Court 1998* "In reaching this conclusion, we begin with the original source of the statutory language. In 1981, this court invalidated former section 422 as unconstitutionally vague. (*People v. Mirmirani (1981) 30 Cal.3d 375, 388, 178 441*441 Cal.Rptr. 792, 636 P.2d 1130.)* **The Legislature subsequently repealed the statute and enacted a substantially revised version in 1988, adopting almost verbatim language from United *States v. Kelner (2d Cir.1976) 534 F.2d 1020*. (See Stats.1987, ch. 828, § 28, p. 2587; Stats.1988, ch. 1256, § 4, pp. 4184-4185.)"**

The due process rights of one indicted by a grand jury are violated if the grand jury proceedings are conducted in such a way as to compromise the grand jury's ability to act independently and impartially. (*People v. Superior Court (Mouchaourab) (2000) 78 Cal.App.4th 403, 435.)* **Under these standards, if claimed errors rendered the grand jury proceeding fundamentally unfair, by substantially impairing the grand jury's ability to act independently and impartially and to allow a grand jury to independently reject charges which it may have believed unfounded, a due process violation will be shown.**

The protective role traditionally played by the grand jury is reinforced in California by statute. The forerunner of section 939.7 was former section 920 of the Penal Code, the section cited in *In re Tyler, supra*. Section 920 provided: **"The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses."**

Further, a grand jury cannot protect citizens from unfounded obligations if it is invited to indict on the basis of incompetent and irrelevant evidence. *(People v. Backus (1979) 23 Cal. 3d 360, 393.)* **An indicted defendant is entitled to enforce this right through means of a challenge under section 995 to the probable cause determination underlying the indictment, based on the nature and extent of the evidence and the manner in which the proceedings were conducted by the district attorney.** (*Backus, supra, 23 Cal. 3d at p. 393; Cummiskey, supra, 3 Cal. 4th at p. 1022, fn. 1.)*

Defendants are entitled to due process in the grand jury proceedings to the extent that the proceedings are controlled by the prosecutor. Due process may be violated if grand jury proceedings "are conducted in such a way as to compromise the grand jury's ability to act independently and impartially in reaching its determination to indict based on probable cause" *(Berardi v. Superior Court (2007) 149 Cal. App. 4th 476, 494.)* Although a prosecutor does not have the same duty to instruct a grand jury as a trial judge does a petit jury..., **an indictment may be set aside under Penal Code section 995, subdivision (a)(1)(B) "based on the nature and extent of the evidence and the manner in which the proceedings were conducted by the district attorney".** (*People v. Gnass (2002) 101 Cal.App.4th 1271, 1313.)*

Petitioner was denied effective assistance of trial counsel (IAC/CDC) for the failure to file any PC 995 motion or other motions to quash or dismiss based on the grand jury issues listed above. Had trial counsel filed said motions, the indictment would have been dismissed or the issue could have been raised on appeal which would have resulted in reversal. Appellate counsel was ineffective & CDC for failing to argue IAC or CDC of trial counsel on appeal (since the issue was addressed in Petitioner's Marsden motion) or habeas corpus where the issues could have been expanded. Said issues mandate reversal per se. **Petitioner was unaware of all the issues such as the grand jury only having 18 jurors, and D.D.A Dale Gomes acting as the Foreman, the denial of exculpatory evidence to the grand jury since he only received the transcript after his appeal was decided. Petitioner had no way to argue these issues on habeas corpus prior to that.**

As will be later explained in this petition, evidence was presented to the grand jury that would have been inadmissible in trial such as computer and cell phone data which was obtained by a warrant issued by Judge Steven Bailey who was recused. Judge Bailey then ordered a "special master" – from case # P16CRM0096 to review said cell phone and computer data. A "pretext" recording was also used to unlawfully surreptitiously record a phone conversation between the South Lake Tahoe City Attorney Thomas Watson and this Petitioner.

The article below shows that the El Dorado D.A. under Vern Pierson has a history of grand jury prosecutorial misconduct and violations of innocent victims Constitutional rights as D.A. Vern Pierson abuses his office to carry out vendettas against the people of El Dorado County.

\

\

\

\

\

\

\

\

Court papers just filed in El Dorado County Superior Court accuse DA Vern Pierson of Improperly Instructing the Grand Jury in a manner that deprived Political Target Supervisor Ray Nutting of his Constitutional Right of Due Process.

Placerville Newswire | Aug 20 2013

http://web.archive.org/web/20160307095848/http://inedc.com/1-5734

and

http://web.archive.org/web/20141029044733///www.inedc.com/1-5734

Editor's Note: We have just received a copy of the court filing and we are providing these sections without alteration. We will continue to report on this issue after we have processed the complete document.

INTRODUCTION

Convening a criminal grand jury to consider an indictment against an accused person, while permitted under California law, is far less common than the process of complaint, preliminary hearing, information and trial. Without debating the merits and demerits of the two different approaches, the fact is that proceeding by grand jury indictment deprives the accused of the basic procedural protections included under an information proceeding, including the right to be represented by counsel, the right to an adversary proceeding including the cross-examination of witnesses and objection to improper questioning, the right to present exculpatory evidence and witnesses favorable to the defense, and the participation of an impartial magistrate to ensure that evidence presented is admissible over objection.

It is important to emphasize that the role of the grand jury is, first and foremost, protective of the rights of the accused. The Supreme Court majority opinion in Johnson v. Superior Court (1975) l5 Cal.3d 248, 253 reminds us of the grand jury's role as a "protective bulwark standing solidly ***between*** the ordinary citizen and an overzealous

prosecutor."' (italics added, quoting United States v. Dionisio (1973) 410 U.S. 1, I7 [35 L. Ed. 2d 67, 93 S. Ct. 764].)

Accused persons in the course of a grand jury criminal investigation are provided by law with an alternate set of protections which, when faithfully observed, serve to protect the rights of the accused.‘ On the other hand, the grand jury process is filled with opportunities for manipulation ranging from mere mischief to outright misconduct on the part of impassioned or overzealous prosecutors. The sole remedy available to the accused is to proceed by motion to set aside the indictment. While we do not intend here to accuse the prosecution of misconduct in the grand jury process, we believe that Ray Nutting’s constitutional rights to due process and equal protection have been violated in this matter.

Footnotes: In [G]rand jury secrecy serves to protect the "accused's reputation." (Hawkins v. Superior Court (1978) 22 Cal.3d 584, p. 618 (dis. opn. of Richardson, J.).) Other protections Justice Richardson noted are: Every indicted defendant is entitled to a complete transcript of proceedings. All witnesses, regardless of whether they are targets, are protected against self- incrimination. Grand jurors are authorized "to order additional evidence" if "they have reason to believe it will explain away the charge ." (Ibid. (dis. opn. of Richardson, J .).) And prosecutors must inform the grand jury of any evidence "'reasonably tending to negate guilt."' (Id. at p. 619 (dis. opn. of Richardson, J .), quoting Johnson v. Superior Court (1975) I 5 Cal.3d 248, 255 [124 Cal. Rptr. 32, 539 P.2d 792] (Johnson).) (McGill v. Superior Court (201 l) 195 Cal. App. 4th l454)

A significant portion of California’s high court, including two justices in Johnson and five in Hawkins, have been explicit in their dismay over, as the Hawkins majority put it, ‘**pervasive prosecutorial influence**’ over grand juries. (Id. at S87). What tension there has been in our high court's ' jurisprudence has not been over what grand juries ought to be, but what, in practice, they are. In Hawkins, a majority of the Supreme Court took the view that, by the late 1970's, grand jury independence had become a ‘fiction.’ For example, the Hawkins majority opinion is often cited for its colorful line that

‘current indictment procedures create what can only be characterized as a prosecutor's Eden: he decides what evidence will be heard, how it is to be presented, and then advises the grand jury on its admissibility and legal significance.’”

(Id. at p. 592) (McGill v. Superior Court, (201 l) l95 cal.App.4"‘ 1454, 1469-1470, fn. omitted.)]

… Roger Hedgecock, a member of the San Diego County Board of Supervisors, and a candidate for Mayor of San Diego, was accused of failing to disclose economic interests and campaign contributions as required under the Political Reform Act of 1974 (Act). He was charged with conspiracy to violate provisions of the Act, and l2 counts of perjury related to errors or omissions in the disclosure statements.

The Supreme Court granted review to address two issues, one of which is significant here; “whether in a perjury prosecution based on errors or omissions in disclosure statements required by the Act, is the materiality of the errors or omissions an element of the offense to be determined by the jury?” (People v. Hedgecock, (1990) 5] Cal.3d 395, 396). The Court concluded that it was.

“We reject the Attorney General's contention that because the Act requires candidates to disclose any contribution over $100 and requires office holders to report any source of income over $250, the failure to do so is inherently material. This approach would be of little assistance in determining whether a partial or inaccurate disclosure...is material. Such a definition would be so broad as to render the term virtually superfluous. Further, the Act provides less drastic sanctions for relatively minor violations. [fn. omitted] We are persuaded that the legislation was intended to permit prosecution for perjury, a felony punishable by imprisonment for up to four years, only in cases involving more serious violations of the Act...” (People v. Hedgecock, ibid, 405)

“We therefore conclude that, in a perjury prosecution based on a failure to comply with the disclosure provisions of the Act, an omission or misstatement of fact is material if there is a substantial likelihood that a reasonable person would consider it important in evaluating (l) whether a candidate should be elected to, or retained in, public office, or (2) whether a public official can perform the duties of office free from any bias caused by concern for the financial interests of the official or the official’s supporters.” (People v. Hedgecock, ibid, 406, 407)

Accordingly, the grand jury should have been instructed as to the materiality standard articulated by the Court in Hedgecock, as outlined above. The prosecution’s failure to properly instruct the grand jury requires that the indictment as to the alleged violation of Penal Code section 1 18 (Perjury) set forth in Count ll, be dismissed.

The Manner in Which the Grand Jury Proceedings were Conducted Ran Afoul of Ray Nutting’s Constitutional Right to Due Process

1. Failure to Present Exculpatory Evidence to the Grand Jury,

The district attorney’s office apparently began its investigation of conflict of interest allegations involving Ray Nutting in April, 2012, more than a year before the grand jury would be asked to consider the indictment. The pace of the investigation accelerated in early 2013. During that time, the District Attorney’s Office gathered thousands of pages of documents from various entities and agencies, executed search warrants, conducted forensic audits of Mr. Nutting’s bank account records, analyzed the Cal Fire Prop 40 grant award records and interviewed Mr. Nutting on five separate occasions. In addition, they conducted a number of interviews with other witnesses.”

The interviews are especially informative. Part interview and part proselytizing, the District Attorney’s investigators devote much of their time trying to convert the non-believers to see the circumstances from their perspective - their version of the case. As we show below, most of the witnesses are unconvinced. Rather than abandon a theory that clearly doesn’t hold water, the presentation of evidence to the grand jury is

orchestrated to avoid discussion of these sensitive topics. Thus, it deprives the grand jury of the information needed to discharge their duties and is a fundamental violation of Ray Nutting's constitutional right to due process.

Penal Code section 939.7 provides:

"The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses."

Of course, the grand jury can only discharge its duty under section 939.7 if they are aware that the evidence may exist. ". . .[I]f the district attorney does not bring exculpatory evidence to the attention of the grand jury, the jury is unlikely to learn of it. We hold, therefore, that when a district attorney an indictment is aware of evidence reasonably tending to negate guilt, he is obligated under 939.7 to inform the grand jury of its nature and existence, so that the grand jury may exercise its power under the statute to order the evidence produced." (Johnson v. Superior Court (1975) l5 Cal.3d 248, 255) (italics added)

In 1997, section 939.71 was added to the penal code:

"939.7 l. (a) lf the prosecutor is aware of exculpatory evidence, the prosecutor shall inform the grand jury of its nature and existence. Once the prosecutor has informed the grand jury of exculpatory evidence pursuant to this section, the prosecutor shall inform the grand jury of its duties under Section 939.7. If a failure to comply with the provisions of this section results in substantial prejudice, it shall be grounds for dismissal of the portion of the indictment related to that evidence.

(b) It is the intent of the Legislature by enacting this section to codify the holding in Johnson v. Superior Court, 15 Cal. 3d 248, and to affirm the duties of the grand jury pursuant to Section 939.7."

The defense submitted a package of exculpatory evidence with a request that the evidence be presented to the grand jury. The prosecutor advises the grand jury about that evidence:

Mr. Clinchard: "So at this point in time, I am going to tell you just briefly about an exhibit, that is Exhibit Number 7. And this is a packet given to our office as part of our request to them of what's called a Johnson letter, give us exculpatory information.

And so this packet you see here is Exhibit 7. It is 141 pages long. And generally — and you can look at as much or as little as you want. Generally the first few pages are from a website. And then there's 14 pages that are dated May 6, 2013, but not signed by anyone. It's uncertain who actually wrote it. It references multiple different exhibits within that l4-page document.

In looking through those various attached 24 different exhibits — and you feel free to review them as much or as little as you want - I believe approximately 80 to 90 percent of them have already been admitted here in one form or fashion. But that is a document that you have available to you in the grand jury room. And that's Exhibit 7 given to our office by Ray Nutting's attorney, David Weiner." (R.T. 333:1 l 334:1)

We will show in the following pages that significant exculpatory evidence was available — both in information provided by the defense but trivialized by the prosecution, and evidence which the prosecution had gathered through its own investigation. At a minimum, the prosecution failed to discharge its affirmative duty to bring the evidence to the grand jury's attention. "The question is not whether the prosecutor has substantial evidence of guilt, or that there is evidence that might reasonably tend to negate a defense. The question is whether the prosecutor has information that reasonably tends to negate guilt.

"Now, we are not saying that the grand jury necessarily had to believe such a scenario. This is not a substantial evidence case—the grand jury still might have indicted McGill for perjury.

"**But they were entitled to have the chance to consider it.**" (McGill v. Superior Court (People) (2011) l95 Cal.App.4th 1454, 1507.)
The Grand Jury was entitled to have considered the following exculpatory evidence within the possession and control of the District Attorney.

a. <u>"Evidence Reasonably Tending to Negate Guilt " Known or Available to the Prosecution but not Presented to the Grand Jury,</u>
The testimony and exhibits presented to the grand jury by the district attorney represent only a small portion of the evidence available, and overwhelmingly, only the evidence that supports his version of events. Following are examples of the information known to the prosecutors, but not presented to the grand jury:

- Cal Fire, not the SCRMC, controls the Prop 40 Grant Program.
- *Cal Fire retains all the substantive decision making authority consistent with the CFIP program criteria.*
- *SCRMC is responsible for contract administration and disbursement of funds to landowners, subject to approval of the project or inspection of work by Cal Fire.*
- *The SCRMC Board takes formal action to approve the grants between Cal Fire and SCRMC.*
- *The SCRMC Board does not take any formal action to approve individual Prop 40 landowner grants, nor encumbering funds to individual private landowners.*
- RCDs have no direct role in the Prop 40 Grant Program.
- The RCD Boards do not take any action to approve landowner grants under the program.
- The RCD Boards do not encumber funds to landowners, or approve payments under authorized grants.

- The RCDs had no involvement in the award of grants to Ray Nutting.
- Ray Nutting did not receive any preferential treatment. Ray Nutting did not receive special benefit or preferential treatment as a result of his vote to approve RCD funding; allegations to the contrary lack proper foundation and create a false inference.
- Assertion that he received 20% of the Prop 40 Grant Funds is inaccurate, irrelevant and prejudicial.
- Cal Fire approved projects on a “first-come, first-served” basis, making the participant grant rating/ranking process unnecessary.
- The review and approval of invoices and the payment to Mr. Nutting was consistent with the practice of Cal Fire for similar projects.
- The RCDs have received an annual funding allocation from the El Dorado County Board of Supervisors on the same basis for at least the past 25 years.
- The funding allocation is based on an agreement negotiated by a prior board member under which the RCDs relinquished their legal authority to levy property taxes within the districts. (GJ Exhibits 4-5:] 105, 4-6:1 128, 4-7:1 l5 l , 4-8:1 164)
- Tahoe RCD did not relinquish those rights, and continues to receive a share of property taxes after the passage of Proposition l3. (Ibid.)
- Ray Nutting did not receive any special consideration or preferential treatment because of his vote for the funding allocations. (EE-B. C — MarkEgbert4-4-l3: 705]-52; 7078-7079. Also, EE-B. C — AlHubbard_24-l6-l3:6938)
- Ray Nutting’s 2007 Prop 40 grant application was submitted to Cal Fire, reviewed and ready to be funded before Cal Fire engaged SCRMC in the process.
- Refer to note (GJ Exhibit 2-6b :743) “OK to fund J. Calvert 4/ l6/2006” note on CFIP Agreement Checklist (Cal Fire form)
- The grant was delayed by the Attomey General’s advice that Cal Fire could not contract directly with landowners under Prop 40. (See Cal Fire “intemal advice”; GJ Exhibit 2-2: 555-59)
- During the discussions between SCRMC and Cal Fire about grant administration, Cal Fire indicated that a group of applications were “reviewed and prioritized” and ready to be funded. (EE-A. SCRMC Binder:4l32)
- Ray Nutting’s grant was funded in the first round of grants after the SCRMC framework was in place. (EE-A. SCRMC Binder: 4122)
- Ray Nutting was a private citizen when the 2007 Prop 40 grant application was transferred to SCRMC and executed (2007). (Oath of Office; January 5, 2009. GJ Exhibit 2-3)
- At the conclusion of the first series of grants (2007 through 2010), SCRMC retumed approximately $400,000 of unspent grant money to Cal Fire. (EE-A. SCRMC Binder: 4077)

End of part one of this story. Watch for more later this week

Section Category:
Local News
Politics
Crime

- Log in or register to post comments

COMMENTS

IT'S ABOUT TIME!

Paula wrote, "It's about time!"

Submitted by anonghost on Tue, 08/20/2013 - 09:22Permalink

- Log in or register to post comments

IMPEACH VERN PEARSON

While I worked to get Vern Pierson elected to his first term as DA in 2007, and he has certainly failed to meet the high standards he espoused in that campaign and what citizens expect of an ethical DA. He has become infamous for suppressing citizen rights.

Submitted by Frank Stephens on Tue, 08/20/2013 - 09:27Permalink

- Log in or register to post comments

DA/GRAND JURY

Looking forward to reading the next installment. Keep it coming.

Submitted by Vic Subia on Tue, 08/20/2013 - 10:09Permalink

- Log in or register to post comments

GRAND JURY MEMBER IS WORKING FOR VERN PIERSON

R.j. Carter worte. "My question is why one of the “Improperly Instructed” disbanded Grand Jury members that indicted Ray Nutting still investigating and reporting back to the prosecution…..My wife and I are longtime friends of Ray's in-laws and we’ve also been friends with Ray and his wife Jen for many years.... One Sunday, we (my family and Rays) all went out to Sunday breakfast... Immediately after Ray and his family got up and left one of the former members of the disbanded Grand Jury that indicted Ray, sat down at the empty table across from us and began taking pictures of us (Ray was already gone)…After taking several pictures, he then to goes outside where our wives were sitting and begins taking pictures of them… The next day, Monday, June 10th while waiting outside the Courthouse for Ray’s arraignment, I see the same former Grand Jury member enter the courthouse and have a privately discussion with the prosecution... This ex-Grand Jury member was also present at Ray’s 2nd Arraignment in South Lake Tahoe, again reporting to the prosecution… Question is who’s payroll is this guy on??... Was this Grand Jury member also working for Vern Pierson when he indicted Ray???....It’s obvious this Grand jury member is working for Vern Pierson and the prosecution, because that’s who he’s reporting back to and now, Court papers have just been filed in El Dorado County Superior Court accusing DA Pierson of Improperly Instructing the same Grand Jury that this mystery man was a member of … The icing on

the cake is, after doing a little investigating on my own to find out the name of the guy who was taking pictures of my family I get a call from a sheriff's detective who tells me to basically mind my own biz and leave the guy alone… And the plot thickens…"

Submitted by anonghost on Tue, 08/20/2013 - 11:34Permalink

- Log in or register to post comments

YOU SAY ITS OBVIOUS?

I would think so too. But as you see, these bozo's in this news blog ignore evidence made public that indicts James Wagoner for committing felonies of obstructing a grand jury from a complaint where Vern Pierson is favoring criminals over crime victims. In fact, John O'Sullivan was a victim of this, and Vern Pierson allowed a favored "retired sheriff" who openly stated "he would kill O'Sullivan," actually carry out the threat. Did it matter that O'Sullivan was suing Pierson and EDC because they ignored the Supreme Court mandate that Pierson and all U.S. officials provide a "rational basis" when victims of abuse of power show that official acts are "irrational" and deprive rights, including the right to live, even if you sue the person who controls law enforcement. This power Vern Pierson wields determines who lives or dies if you complain about someone who has his illegal influence. You see this more publicly when Former Gov. Arnold shortened the sentence of a murderer whose father happened to be an elected politician. Macias v. Sonoma County Sheriff Mike Ihde (9th. cir. 2000) discusses this "arbitrary denial of government services," as a means of punishing those who in power view complainants as "cavalier." In the most extreme cases, People like Vern Pierson or James Wagoner can abuse their power to commit "murder by proxy," and silence complainers. Other abuse of power is to fix trials, exclude evidence, fabricate evidence, right out in the open, and so far, the only unbiased decisions have come outside of the jurisdiction of El Dorado County, including Sacramento, I point to San Francisco Counsel on Judicial Performance. They had no jurisdiction to prosecute, but they did establish the elements that prove felony was committed by Judge James Wagoner. Yet this is the only "obvious" facts that are established, yet you say, taking picture of your wife is "obvious." No wonder nothing gets done! Again, the minor premise is taking pictures of your wife, and the major premise is ignored, i.e. prima facie evidence that can put Wagoner in prison with Mike Carona, yet you're more concerned with using "picture takers" to establish guilt. NO wonder EDC is such a corrupt county, its seemingly intelligent citizens major on the minors. I mean no offense by pointing this out! Overcome your reaction to my "cavalier" comment. In other words, fix your fallacy that is misleading you, and don't engage in retaliation of real facts that cut your nose to spite your face, this is what Vern Pierson does. He cannot stand to criticism, he becomes a wild crazed venomous animal and destroys abusing power we trust him with.

Submitted by Paradigm Shift on Tue, 08/20/2013 - 12:05Permalink

- Log in or register to post comments

IS INEDC CENSORING COMMENTS?

I have posted without success here a few times. Vern Pierson had a complaint filed against him in 2007 to EDC grand jury case GJ07-007. Judge James Wagoner obstructed the grand jury and engaged in racketeering tactics right out in the open, in fact providing enough evidence to allow the California Commission on Judicial Performance to indict him and find him guilty of "obstructing a grand jury investigation."

This case was hidden as a "private admonishment." Nevertheless, Wagoner, undaunted with violating the constitutional rights of civil right activists, acting in a pattern of conduct was found guilty of obstructing justice against Penny Arnold, an outspoken civil right activist. Those who are viewed by Vern Pierson, according to the Sacramento Bee, as "Cavalier," a confession by Pierson in a letter to the Board of Supervisors made public record, are punished by El Dorado county officials for legal free speech they call "cavalier." INEDC news seems to be hiding this case, yet whining about Vern Pierson "allegations" that he is influencing a grand jury, but ignoring prima facie cases that substantiate this pattern of conduct by Pierson and his crony Judge in his Pocket James Wagoner. Ironically, Pierson is suing a political organizer with Wagoner as the Judge, and these so called journalists or activist have no clue of how destructive ignoring proven cases will be to their own cases. Sadly, it is comical to watch. Logical premises are ignored, and typical band wagon fallacy seems all that can come out of individuals in EDC who acquiesce to politics here. Aside from the banning of witch burning, Citizen in EDC seem to have the same mentality of those who were oppressed by the inquisitors of the Dark Ages. EDC officials have been found guilty of actual torture in the Kathleen Pastula case, by settling out of court damages 6 figure damages paid to Kathleen, who rightly deserved to be reimbursed for her suffering at the hands of these dark age inquisitors such as Vern Pierson and James Wagoner who have abandoned officials capacity by relinquishing the Constitution. Due to the Judicial Counsel findings, Vern Pierson is obligated to prosecute James Wagoner in the 2009, and 2011 Judicial Counsel findings where James Wagoner is given a pass, a "get out of jail free card, where Orange County elected sheriff Mike Carona did not have a corrupt District Attorney, and is serving a 5.5 year prison sentence for the same crimes committed by James Wagoner. It is obvious to infer that Wagoner will influence cases in favor of Pierson's wishes, regardless of the justice, or he to will be labled as "cavalier," and face the wrath of relentless prosecution, such as Ray Nutting is undergoing. It seems Pierson, using state tax dollars is looking into Nuttings elementary school report cards to find any "inconsistency" or what Nutting claims are "clerical error." Nutting, in the past ignored other citizen crime victims who discovered and successfully prosecuted James Wagoner who abused his power to protect Vern Pierson's corruption from being discovered and made public by the 2007 grand jury. The comical thing, is why would "alorcon" or "dellinger" cover up the past prima facie cases and simply allege Pierson is only harming them, yet evidence has been made public that they are corrupt? It all has to do with ones ability to rationalize logic from an Aristotelian analysis. You either understand major premises of a syllogism, our you are confused without knowing. That is my opinion.

Submitted by Paradigm Shift on Tue, 08/20/2013 - 11:46

Petitioner had no counsel assigned in violation of U.S. 6th amendment & Cal. Const. Art 1, Sec. 15 as the grand jury took place and he was called to testify before the grand jury where he declined to be questioned before the grand jury pursuant to U.S. 5th amend. A lawyer

named David Weiner did talk to this Petitioner prior to the grand jury hearing despite not being appointed. Mr. Weiner was asked to talk to the Petitioner by the court and D.A. office who advised Petitioner who was going to testify at the grand jury not to testify to avoid any "perjury trap".

Petitioner was without appointed counsel during the grand jury who could have filed a PC 1424 motion to disqualify the D.A. for conflict-of-interests described later in this filing. Also, counsel could have attacked the jurisdiction issues by a motion to dismiss or petition for writ of mandate to the Court of Appeal. Exculpatory evidence could have been presented had a lawyer informed the grand jury. Petitioner did not have sufficient law library access or resources in the county jail to produce the proper motions. See *Stark v. Superior Court, 257 P. 3d 41 - Cal: Supreme Court 2011* " This court has recognized that the manner in which the grand jury proceedings are conducted may result in a denial of a defendant's due process rights, requiring dismissal of the indictment. (*Backus, supra, 23 Cal.3d at pp. 392-393.*)[25] That showing requires a demonstration that the prosecutor suffered from a conflict of interest that substantially impaired the independence and impartiality of the grand jury.

The Petitioner had been unlawfully incarcerated during this time between case # P17CRM0089 and P17CRF0114 in the Placerville / El Dorado Co. jail with no lawyer to file a habeas corpus. No preliminary hearing ever even took place in case # P17CRM0089 in violation of PC 859(b) which requires a preliminary hearing within 10 days after arraignment.

The court attempted to appoint counsel named David Brooks in case # P17CRF0089 who was a known conflict-of-interest since he was the law partner of David Jeffrey Cramer SBN #225848 who accused Petitioner of criminal threats. Petitioner was unlawfully held in custody as case # P17CRF0089 set idle and the D.A. filed a new case # P17CRF0114 using the grand jury to obtain an indictment. Here, the D.A. had two cases pending at the same time against the same defendant with the same charges. Of the two or lawyers were assigned to case # P17CRF0114 when the El Dorado Public Defender withdrew as a conflict since they had witnessed the unlawful/illegal activity at the hearings in case # P17CRF0089 (see letter from the Public Defender Tim Pappas above).

The following embedded exhibits show a cumulative mix of issues. Unlawfully assigned retired judges Daniel B. Proud as presiding, retired judge Gary Hahn presiding on 03-14-17, and retired judge Thomas A. Smith presiding at the grand jury on 03-23-17. NOTE: The record

fails to list the retired judges as being assigned or retired. Petitioner attempts to demurrer (move to dismiss) before entering a plea in case # P17CRF0089 and explains the jurisdiction and conflicts-of-interest with the D.A. office.

Appointed counsel David Brooks withdraws on 03-08-17 although he is not listed on the courts roster as a "conflict lawyer". The jurisdiction appears to be set and reset to/from South Lake Tahoe (SL) and Placerville courts (PL). The cases are transferred to Sacramento with no order from the Cal. Supreme Court ever existing.

This Petitioner did attempt to demurrer the complaint prior to entering a plea in case # P17CRM0089 for lack of jurisdiction, conflict-of-interest with the D.A., the judge had been disqualified prior, and no crime had occurred due to free speech. The following exhibits show Judge Daniel B. Proud violation California Penal Code Section 1024 which states "If the defendant refuses to answer the accusatory pleading, by demurrer (PC 1004) or plea, a plea of not guilty must be entered."

\

\

\

\

\

\

\

\

\

\

\

\

\

\

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT 7 HON. DANIEL B. PROUD, JUDGE

---oOo---

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs. Case No P17CRF0089

TODD CHRISTIAN ROBBEN,

Defendant.
_____/

STATE OF CALIFORNIA)
) ss.
COUNTY OF EL DORADO)

I, LINDA DUNBAR-STREET, Certified Shorthand Reporter of the State of California, do hereby certify the foregoing pages 1 through 8 are a true and accurate transcription of my said stenographic notes taken in the above-entitled matter on:

DATE OF PROCEEDINGS: March 21, 2017

I further declare, pursuant to CCP 237(a)(2), all personal juror identifying information has either been redacted or did not appear in the Reporter's Transcript in the above-entitled case.

Dated at Placerville, California, this 6th day of April, 2017.

Linda Dunbar-Street

LINDA DUNBAR-STREET
CSR No. 8256

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT 7

HON. DANIEL B. PROUD, JUDGE

---oOo---

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Case No. P17CRF0089

TODD CHRISTIAN ROBBEN,

Defendant.

---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 21, 2017

---oOo---

A P P E A R A N C E S

For the Plaintiff: VERN PIERSON, District Attorney
El Dorado County
515 Main Street
Placerville, CA 95667
BY: DALE GOMES, Deputy

For the Defendant: TODD CHRISTIAN ROBBEN
In Propria Persona

CERTIFIED TRANSCRIPT

Reported By: Linda Dunbar-Street, CSR #8256

PLACERVILLE, CALIFORNIA

TUESDAY, MARCH 21, 2017, 8:19 A.M.

DEPARTMENT 7 HON. DANIEL B. PROUD, JUDGE

---oOo---

THE COURT: All right. This is the matter of People versus Todd Christian Robben, P17CRF0089.

MR. GOMES: Dale Gomes for the People.

THE COURT: Morning. And you're Mr. Robben?

THE DEFENDANT: Yes.

THE COURT: All right. I have a note here that this matter has been assigned to the Honorable Curtis M. Fiorini in Sacramento County. Do we have a date yet?

THE CLERK: We do not.

THE COURT: The Court is going to go ahead and at the direction of the Presiding Judge transfer this matter to the Sacramento County Superior Court, the Honorable Curtis M. Fiorini. And we'll get -- we should be getting a date as to when his next appearance is today, and then they'll notify you when this takes place.

MR. GOMES: Your Honor, may I just make a record?

Mr. Robben, last week you indicated you were not interested in being arraigned on the present charges because you wanted to file a demurrer. You have another opportunity today to be arraigned on these charges. Is it still your wish to delay until you have a chance to file a demurrer?

THE DEFENDANT: Actually what happened is I did file a motion to disqualify the District Attorney because of the conflict of interest. I'm suing Dale Gomes and Vern Pierson.

appointed lawyer?

THE COURT: No.

MR. GOMES: Mr. Robben, do you want to be arraigned, yes or no?

THE DEFENDANT: Is there a grand jury today?

MR. GOMES: Yes or no, do you want to be arraigned?

THE DEFENDANT: You know, you're going two different routes. You want to arraign me and you want to try to have a grand jury today. Is there a grand jury today?

MR. GOMES: Yes or no?

THE DEFENDANT: Answer my question, Mr. Gomes.

THE COURT: I'm not going to play this game. Sir, do you want to waive time and be arraigned?

THE DEFENDANT: Court has no damn jurisdiction over me. This is a joke. I'm sitting here. I haven't been booked. I haven't been arrested. There's no charges filed. I don't even know what the charges are. Dale Gomes has -- can't be the District Attorney here. There's a motion. Has the Court received my motion, yes or no?

THE COURT: I haven't received any motions, Mr. Robben, nothing. So the question again is do you want to be arraigned today or do you want to waive time to be arraigned?

THE DEFENDANT: Court has no jurisdiction. There is no arraignment as far as I'm concerned.

THE COURT: Just answer my question.

MR. GOMES: Let's just arraign him, Judge.

THE COURT: All right. Mr. Robben, I want to advise you that you have certain constitutional rights. You have the

MR. GOMES: The only thing --

THE COURT: I'll take that as a no.

MR. GOMES: The only thing today is arraignment or not. The other issues you'll get litigated. You'll have a full and fair opportunity to do those things. The question today is do you want to be arraigned on the present charges or waive time for arraignment again? That's the only question for you right now.

THE DEFENDANT: I demurrer the complaint because you don't have jurisdiction over the complaint. Court doesn't have jurisdiction over me.

THE COURT: I'm going to take that as a no, Mr. Gomes.

THE DEFENDANT: I don't waive time either.

MR. GOMES: I'm concerned about the record. I just want to be clear. I know it's difficult.

THE DEFENDANT: Here's the bottom line. I'm sitting here illegally. I haven't been arrested. I haven't been booked. I haven't been charged. I'm falsely imprisoned in the jail, and I want to be released today right now.

MR. GOMES: We can get your clock started by arraigning you today.

THE DEFENDANT: Especially this judge. I'm suing you too, pal.

MR. GOMES: We can get you arraigned today and start your clock, or you can continue to waive time for your arraignment. It's up to you. Which would you like to do today? Do you want to waive time and file your demurrer to these charges?

THE DEFENDANT: Who are these people here? Is this my

appointed lawyer?

THE COURT: No.

MR. GOMES: Mr. Robben, do you want to be arraigned, yes or no?

THE DEFENDANT: Is there a grand jury today?

MR. GOMES: Yes or no, do you want to be arraigned?

THE DEFENDANT: You know, you're going two different routes. You want to arraign me and you want to try to have a grand jury today. Is there a grand jury today?

MR. GOMES: Yes or no?

THE DEFENDANT: Answer my question, Mr. Gomes.

THE COURT: I'm not going to play this game. Sir, do you want to waive time and be arraigned?

THE DEFENDANT: Court has no damn jurisdiction over me. This is a joke. I'm sitting here. I haven't been booked. I haven't been arrested. There's no charges filed. I don't even know what the charges are. Dale Gomes has -- can't be the District Attorney here. There's a motion. Has the Court received my motion, yes or no?

THE COURT: I haven't received any motions, Mr. Robben, nothing. So the question again is do you want to be arraigned today or do you want to waive time to be arraigned?

THE DEFENDANT: Court has no jurisdiction. There is no arraignment as far as I'm concerned.

THE COURT: Just answer my question.

MR. GOMES: Let's just arraign him, Judge.

THE COURT: All right. Mr. Robben, I want to advise you that you have certain constitutional rights. You have the

right to be represented by an attorney at all stages of the proceedings. If you can't afford an attorney, the Court will appoint one to represent you if you're without funds. You have the right to, if you're charged with a misdemeanor, and in this case it's a felony charge, you have right to enter a -- have a preliminary hearing within 10 court days of the entry of plea, within 60 calendar days of your arraignment to determine whether or not a crime has been committed and whether or not there is sufficient cause to believe that you are guilty of that crime. If you're bound over you have the right to a speedy and public trial. At your trial you have the right to see, hear, and confront witnesses against you. You have the right to use the subpoena power of the Court to compel witnesses to appear on your behalf. You have the right to remain silent, and although you may if you choose, you cannot be compelled to testify at your preliminary hearing or your trial. You have the right to be released on reasonable bail or O.R. if you qualify, or if you fail to appear you can be charged with additional charges.

At this time I want to know do you want to enter a plea of guilty, not guilty, no contest? Do you want an attorney? What do you want to do?

MR. GOMES: We should probably do a full reading of the complaint, Your Honor, under these circumstances.

THE COURT: All right. Mr. Robben, in Count One of P17CRF0089 it alleges that on or about the 10th day of April, 2016, in the County of El Dorado, you were in violation of Penal Code Section 71, commonly known as threatening a public

officer. That is a felony.

Count Two alleges that on or about the 10th day of April, 2016, in the County of El Dorado, you were in violation of Penal Code section 422, a felony, commonly known as criminal threats.

Count Three alleges that on or about the 24th day of May, 2016, in the County of El Dorado you were in violation of Penal Code 71, commonly known as threatening a public officer.

Count Four alleges that on or about the 24th day of May, 2016, in the County of El Dorado, you were in violation of Penal Code section 422, a felony, commonly known as criminal threats.

Count Five alleges that on or about the 27th day of November, 2016, in the County of El Dorado, you were in violation of Penal Code Section 71, commonly known as threatening a public officer, also a felony.

Count Six alleges that on or about the 27th day of November, 2016, in the County of El Dorado you were in violation of Penal Code section 422, a felony, commonly known as criminal threats, a felony.

Count Seven alleges that on or between the 1st day of January, 2016, and the 31st day of March, 2016, in the County of El Dorado you were in violation of Penal Code section 422, a felony, commonly known as criminal threats.

Count Eight alleges that on or between the 1st day of January, 2016, and the 31st day of March, 2016, in the County of El Dorado, you were in violation of Penal Code section 140(a), a felony commonly known as threatening a witness.

Those are the charges against you Mr. Robben. How do you plead?

THE DEFENDANT: I don't wish to enter a plea because I'm going to demurrer.

THE COURT: I'm going to enter not guilty pleas. We'll not waive time on this on his behalf. I'll enter not guilty pleas to each of the charges. We'll show time is not waived.

Matter will be transferred to Sacramento County and we'll get you the date. Anything else?

MR. GOMES: No, Your Honor. Thank you.

(Whereupon, the proceedings were concluded.)

---oOo---

OTSCASPRT 4/04/17 EL DORADO COUNTY SUPERIOR COURT
CASE PRINT Page: 1

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE ....: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant : ROBBEN, TODD CHRISTIAN Defn : 1 of 1

Defendant Waived 60-day rule for (No 60-day waiver given) on 0/00/00
Date Filed : 03/07/17

District Attorney : D. Gomes Continuances: 1
Defense Attorney : Pro Per Age in Days : 27
Custody Status ...: Incustody - Bail: Last Trial : 05/20/17

Charge Information

Ct		Plea	Status	Sev
001 ARREST	71 PC THREATEN SCHOOL OFFICER/OFFICIAL/EMPLOYEE	None		F
001 FILED	71 PC THREATEN SCHOOL OFFICER/OFFICIAL/EMPLOYEE	NG	Active	F
002 FILED	422 PC THREATEN CRIME W/INTENT TO TERRORIZE	NG	Active	F
003 FILED	71 PC THREATEN SCHOOL OFFICER/OFFICIAL/EMPLOYEE	NG	Active	F
004 FILED	422 PC THREATEN CRIME W/INTENT TO TERRORIZE	NG	Active	F
005 FILED	71 PC THREATEN SCHOOL OFFICER/OFFICIAL/EMPLOYEE	NG	Active	F
006 FILED	422 PC THREATEN CRIME W/INTENT TO TERRORIZE	NG	Active	F
007 FILED	422 PC THREATEN CRIME W/INTENT TO TERRORIZE	NG	Active	F
008 FILED	140(A) PC THREAT OF FORCE AGAINST VICTIM/WITNESS	NG	Active	F

Disposed Cases

Case Number	Expires	Convicted/Warrant Charges	Status
S16CRM0096	00/00/00	14601.2(A) VC, 14601.5(A) VC, 4462.5 VC	Appeal
S14CRM0465	03/06/17	23152(B) VC, 23152(A) VC, 1214.1(A) PC	A/R Fine
S13CRF0199	00/00/00	Closed	
P17CRF0114	00/00/00	Active	

Criminal Protective Order/Firearm Surrender (DV)

Date	Type	Status	Expire

Case Action Information

Action	Div	Description	Status
3/22/17		N0 ACTION TAKEN ON MOTION-CASE TRANSFER TO SACRAME	

.SCASPRT EL DORADO COUNTY SUPERIOR COURT
4/04/17 CASE PRINT Page: 2

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE ....: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant : ROBBEN, TODD CHRISTIAN Defn : 1 of 1

3/21/17 RECEIVED: EMERGENCY MOTION TO DISQUALIFY D.A. OFFICE

7 PRE-PRELIMINARY HEARING Dispo
Honorable JUDGE DANIEL B. PROUD presiding
Clerk: A. Mitchell
Court Reporter: Linda A Street CSR 8256
Bailiff D. Cook

Deputy District Attorney D. Gomes present.

Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.

COURT ORDERS:
Case transferred to Sacramento County.
Case assigned to: The Honorable Curtis M. Fiorini.

The People indicate that the Defendant still needs to be arraigned and that the People are not satisfied that the Defendant was fully arraigned at the last two proceedings.

Defendant arraigned and advised of the following rights:
COUNSEL: You have the right to an attorney at all stages of the proceedings and if it is determined you cannot afford an attorney, the court will appoint one to represent you. If the court appoints an attorney for you, then upon conclusion of your case, the court will conduct a hearing to
determine your ability to pay for the costs of appointed counsel. You may be ordered to pay all or a part of such costs within your ability. Such an
order may be enforced only by civil judgment. You have the constitutional right to represent yourself at all stages of the proceedings.
REASONABLE BAIL: If you are in custody you have the right to be released on reasonable bail pending further proceedings.
SPEEDY TRIAL: You have the right to a speedy public trial before a jury or judge and the right to have that trial within 60 days if you are in custody

JTSCASPRT EL DORADO COUNTY SUPERIOR COURT
4/04/17 CASE PRINT Page: 3

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE ...: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .. ROBBEN, TODD CHRISTIAN Defn : 1 of 1

JURY TRIAL: You have the right to trial by jury or you can waive that right and be tried by the court alone sitting without a jury.
PRELIMINARY HEARING: You have the right to a Preliminary Examination within ten (10) Court days following plea.
SUBPOENA: You have the right to the issuance of subpoenas to compel witnesses in your behalf to appear in court and testify.
SELF INCRIMINATION: You have the right to remain silent and no adverse emphasis will be drawn from the fact if you choose not to testify.
CONFRONTATION: You have the right to face, confront and examine and cross-examine your accusers in open court.
PRIOR ALLEGATION: You are advised that as to the prior allegations in the complaint, you are entitled to all of the rights set forth hereinabove and that the prior allegation must be proved beyond a reasonable doubt.
PLEA: You have the right to plead guilty, not guilty, no contest, once in jeopardy, not guilty by reason of insanity.
CONTINUANCE: You have the right to a reasonable continuance.
Defendant advised of maximum/minimum penalty.
Defendant advised that if he/she pleads guilty or is found guilty, he/she could be deported if alien

---

A Formal Reading of the Complaint is made on the record.

The Defendant refuses to enter a plea and indicates that he would like to file a Demurrer

---

PLEA
Court enters plea of NOT GUILTY as to all counts. Plea is accepted and entered into the minutes of the Court.

Time is NOT waived.

***The Court is in contact with Sacramento County to obtain a court date for the Defendant.

JTSCASPRT EL DORADO COUNTY SUPERIOR COURT
4/04/17 CASE PRINT Page: 4

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE ....: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant : ROBBEN, TODD CHRISTIAN Defn : 1 of 1

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.
Bail to remain as previously set.
NOTE: Case is set at No Bail

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR ACCT

MINUTE ORDER END

3/16/17 Filed: CERTIFICATE OF OES HEARING.

Filed: OES HEARING ROOM.

Filed: AFFIDAVIT FOR ATTENDANCE OF OUT OF STATE WITNESS .

7 PRELIMINARY HEARING Vacate
7 No Minutes

3/15/17 OES HEARING ROOM FILED

CERTIFICATE OES HEARING ROOM FILED

AFFIDAVIT FOR ATTENDANCE OF OUT OF STATE WITNESS FILED

3/14/17 7 PRE-PRELIMINARY HEARING Dispo
Honorable Judge Assigned GARY R HAHN presiding
Clerk: A. Mitchell
Court Reporter: Linda A Street CSR 8256
Bailiff D. Cook

Deputy District Attorney D. Gomes present.
Special Appearance made by David Brooks - Indigent Panel Attorney.
Defendant is present IN CUSTODY.

D. Brooks conflicts out as Counsel for the Defendant.

At this time the Court refers this case to the Assigned Judge's Program.

HEARING
Preliminary Hearing previously set is ordered

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant : ROBBEN, TODD CHRISTIAN Defn : 1 of 1

vacated.
Hearing continued on the motion of the Court.
03/21/2017 at 8:00 in Department 7.

On 03/08/17 - the Court entered a plea of not guilty to all counts.

At this time the Defendant does not wish to proceed any further with the Court or District Attorney.

Time is NOT waived.

The Court finds good cause to continue the hearing.
REASON: Reassignment of Case

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR ACCT

MINUTE ORDER END

3/08/17 7 FELONY IN CUSTODY ARRAIGNMENT Dispo
Honorable JUDGE DANIEL B. PROUD presiding
Clerk: DAROS
Court Reporter: Linda A Street CSR 8256
Bailiff D Cook

Defendant is present IN CUSTODY.
Deputy District Attorney D. Gomes present.
Defendant proceeds in Propria Persona.

Defendant arraigned and advised of the following rights:
COUNSEL: You have the right to an attorney at all stages of the proceedings and if it is determined you cannot afford an attorney, the court will appoint one to represent you. If the court appoints an attorney for you, then upon conclusion of your case, the court will conduct a hearing to
determine your ability to pay for the costs of

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

appointed counsel. You may be ordered to pay all or a part of such costs within your ability. Such an
order may be enforced only by civil judgment. You have the constitutional right to represent yourself at all stages of the proceedings.
REASONABLE BAIL: If you are in custody you have the right to be released on reasonable bail pending further proceedings.
SPEEDY TRIAL: You have the right to a speedy public trial before a jury or judge and the right to have that trial within 60 days if you are in custody
JURY TRIAL: You have the right to trial by jury or you can waive that right and be tried by the court alone sitting without a jury.
PRELIMINARY HEARING: You have the right to a Preliminary Examination within ten (10) Court days following plea.
SUBPOENA: You have the right to the issuance of subpoenas to compel witnesses in your behalf to appear in court and testify.
SELF INCRIMINATION: You have the right to remain silent and no adverse emphasis will be drawn from the fact if you choose not to testify.
CONFRONTATION: You have the right to face, confront and examine and cross-examine your accusers in open court.
PRIOR ALLEGATION: You are advised that as to the prior allegations in the complaint, you are entitled to all of the rights set forth hereinabove and
that the prior allegation must be proved beyond a reasonable doubt.
PLEA: You have the right to plead guilty, not guilty, no contest, once in jeopardy, not guilty by reason of insanity.
CONTINUANCE: You have the right to a reasonable continuance.
Defendant advised of maximum/minimum penalty.
Defendant advised that if he/she pleads guilty or is found guilty, he/she could be deported if alien

---

PLEA
Court enters plea of NOT GUILTY as to all counts.
Plea is accepted and entered into the minutes of

OTSCASPRT EL DORADO COUNTY SUPERIOR COURT
4/04/17 CASE PRINT Page: 7

CASE NUMBER: P17CRF0089 DEFENDANT STATUS: Active
ARREST NBR : 1604-0797 ARREST DATE ...: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

the Court.

HEARING
PRE-PRELIMINARY HEARING set for 03/14/2017 at 8:00 in Department 7.
Time is NOT waived.

PRELIMINARY HEARING SET FOR 03/16/2017 at 8:00 in Department 7

The Defendant has a conflict with the Director of the Indigent Conflict Panel.
The Court appoints Attorney David Brooks to obtain counsel for the Defendant.

CUSTODY STATUS
Remanded to the custody of the Sheriff until next appearance.
Bail set at $0.00.
---------- NO BAIL ----------
CC DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR ACCT
==========MINUTE ORDER END==========

3/07/17 People's request for bail filed.

Jurisdiction reset to PL

Jurisdiction set to SL by OTS310.

Complaint Filed by TBARB

**** No Local DMV data available for this case ****
**** END OF CASE PRINT ****

JTSCASPRT EL DORADO COUNTY SUPERIOR COURT
4/04/17 CASE PRINT Page: 1

CASE NUMBER: P17CRF0114 DEFENDANT STATUS: Active
ARREST NBR : EA1604-0797 ARREST DATE ...: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

Defendant Waived 60-day rule for (No 60-day waiver given) on 0/00/00
Date Filed : 03/23/17

District Attorney : Dale Gomes Continuances: 0
Defense Attorney : Age in Days : 0
Custody Status ...: Incustody - Bail: Last Trial .: No Arraign

Charge Information

Ct		Plea	Status	Sev
001 ARREST	422 PC THREATEN CRIME W/INTENT TO TE ERRORIZE	None		F
001 FILED	422 PC THREATEN CRIME W/INTENT TO TE ERRORIZE	None	Active	F
002 FILED	140(A) PC THREAT OF FORCE AGAINST VICTIM /WITNESS	None	Active	F
003 FILED	71 PC THREATEN SCHOOL OFFICER/OFFICI AL/EMPLOYEE	None	Active	F
004 FILED	422 PC THREATEN CRIME W/INTENT TO TE ERRORIZE	None	Active	F
005 FILED	71 PC THREATEN SCHOOL OFFICER/OFFICI AL/EMPLOYEE	None	Active	F
006 FILED	422 PC THREATEN CRIME W/INTENT TO TE ERRORIZE	None	Active	F
007 FILED	664/71 PC ATTEMPTED THREATEN SCHOOL OFFI CER/OFFICIAL/EMPLOYEE	None	Active	F
008 FILED	664/71 PC ATTEMPTED THREATEN SCHOOL OFFI CER/OFFICIAL/EMPLOYEE	None	Active	F
009 FILED	664/71 PC ATTEMPTED THREATEN SCHOOL OFFI CER/OFFICIAL/EMPLOYEE	None	Active	F

Disposed Cases

Case Number	Expires	Convicted/Warrant Charges	Status
S16CRM0096	00/00/00	14601.2(A) VC, 14601.5(A) VC, 4462.5 VC	Appeal
S14CRM0465	03/06/17	23152(B) VC, 23152(A) VC, 1214.1(A) PC	A/R Fine
S13CRF0199	00/00/00	Closed	
P17CRF0089	00/00/00	Active	

Criminal Protective Order/Firearm Surrender (DV)

Date	Type	Status	Expire

Case Action Information

Action	Div	Description	Status

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
2850 Fairlane Court Ste 120
Placerville, CA 95667

People of the State of California
VS.
TODD CHRISTIAN ROBBEN

Case No: P17CRP0089

MINUTE ORDER

==========

PRE-PRELIMINARY HEARING
Date: 03/21/17 Time: 8:00 am Dept/Div: 7

==========

Charges: 1) 71 PC-F G, 2) 422 PC-F G, 3) 71 PC-F G, 4) 422 PC-F G
5) 71 PC-F G, 6) 422 PC-F G, 7) 422 PC-F G, 8) 140(A) PC-F G

Honorable JUDGE DANIEL B. PROUD presiding
Clerk: A. Mitchell
Court Reporter: Linda A Street CSR 8256
Bailiff D. Cook

Deputy District Attorney D. Gomes present.

Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.

COURT ORDERS:
Case transferred to Sacramento County.
Case assigned to: The Honorable Curtis M. Fiorini.

The People indicate that the Defendant still needs to be arraigned and that the People are not satisfied that the Defendant was fully arraigned at the last two proceedings.

Defendant arraigned and advised of the following rights:
COUNSEL: You have the right to an attorney at all stages of the proceedings and if it is determined you cannot afford an attorney, the court will appoint one to represent you. If the court appoints an attorney for you, then upon conclusion of your case, the court will conduct a hearing to determine your ability to pay for the costs of appointed counsel. You may be ordered to pay all or a part of such costs within your ability. Such an order may be enforced only by civil judgment. You have the constitutional right to represent yourself at all stages of the proceedings.
REASONABLE BAIL: If you are in custody you have the right to be released on reasonable bail pending further proceedings.
SPEEDY TRIAL: You have the right to a speedy public trial before a jury or judge and the right to have that trial within 60 days if you are in custody

320

3/27/18

Case Number : P17CRF0089 People vs. TODD ROBBEN Page: 2

JURY TRIAL: You have the right to trial by jury or you can waive that right and be tried by the court alone sitting without a jury.
PRELIMINARY HEARING: You have the right to a Preliminary Examination within ten (10) Court days following plea.
SUBPOENA: You have the right to the issuance of subpoenas to compel witnesses in your behalf to appear in court and testify.
SELF INCRIMINATION: You have the right to remain silent and no adverse emphasis will be drawn from the fact if you choose not to testify.
CONFRONTATION: You have the right to face, confront and examine and cross-examine your accusers in open court.
PRIOR ALLEGATION: You are advised that as to the prior allegations in the complaint, you are entitled to all of the rights set forth hereinabove and
that the prior allegation must be proved beyond a reasonable doubt.
PLEA: You have the right to plead guilty, not guilty, no contest, once in jeopardy, not guilty by reason of insanity.
CONTINUANCE: You have the right to a reasonable continuance.
Defendant advised of maximum/minimum penalty.
Defendant advised that if he/she pleads guilty or is found guilty, he/she could be deported if alien

---

A Formal Reading of the Complaint is made on the record.

The Defendant refuses to enter a plea and indicates that he would like to file a Demurrer.

PLEA
Court enters plea of NOT GUILTY as to all counts. Plea is accepted and entered into the minutes of the Court.

Time is NOT waived.

***The Court is in contact with Sacramento County to obtain a court date for the Defendant.

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.
Bail to remain as previously set.
NOTE: Case is set at No Bail

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR ACCT

==========MINUTE ORDER END==========
==========MINUTE ORDER END==========
==========MINUTE ORDER END==========

321

OTSCASPRT EL DORADO COUNTY SUPERIOR COURT
4/04/17 CASE PRINT Page: 2

CASE NUMBER: P17CRF0114 DEFENDANT STATUS: Active
ARREST NBR : EA1604-0797 ARREST DATE ....: 4/10/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

3/30/17 Jurisdiction reset to sl

Case is SEALED by the order of the court

Jurisdiction reset to pl

3/23/17 1 GRAND JURY INDICTMENT Active
Honorable JUDGE THOMAS A. SMITH presiding
Clerk: S. Sams
Court Reporter: Linda A Street CSR 8256

Deputy District Attorney Dale Gomes present.
Defendant NOT present, currently in custody.

The Grand Jury appears in court, 18 members are present upon roll call.

Court inquires of Foreperson if twelve or more Grand Jurors received evidence, participated in deliberations & returned the Indictment to the Court.
To which the reply is yes.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 422 PC as alleged in count 1.

The Grand Jury presents to the Court an Indictment accusing Todd Christian Robben of committing the crime of 140(a) PC as alleged in count 2.

Jurisdiction set to SL by OTS310.

Indictment Filed by SSAMS

**** No Local DMV data available for this case ****
**** END OF CASE PRINT ****

No lawyer was ever actually appointed to case # P17CRF0089. The first lawyer in P17CRM0114 was John Casey who was appointed as a conflict lawyer although he is not listed on the courts roster as a "conflict lawyer".

Mr. Casey represented Douglas Lewis in a previous criminal matter from Nevada where Mr. Lewis was convicted of assaulting Petitioner in a case involving the Justin Brothers Bail Bonds company discussed later below. Several Nevada cases make there way into the California case # P17CRF0114. As will be explained later. Unlawful evidence of a charged crime such as a surreptitious recording by a jailhouse informant Keith Furr is used in an attempt to show Petitioner solicited murder for Nevada Judge John Tatro despite all Nevada cases being resolved in the favor of this Petitioner …And the actual person who fired gunshots at Judge Tatro's home was identified and charged …and had nothing to do with this Petitioner. Petitioner sued the Justin Brothers in civil court and prevailed.

Mr. Casey withdrew as a conflict-of-interest. Mr. Casey unlawfully overrode the Petitioner's fundamental right to enter his own plea and Mr. Casey a plea of NOT GUILTY on April 14, 2017 in place of this Petitioner when Petitioner wanted to demurrer pursuant to PC 1004 (move to dismiss) prior to entering a plea as was done by him in pro per in case # P17CRF0089 which challenged jurisdiction from the beginning. Alternatively, Mr. Casey also could have filed a plea in abatement since there were two pending cases (P17CRF0089 and P17CRF0114) and then filed a motion to dismiss i.e. PC 995 and/or non-statutory motion since the grand jury lacked jurisdiction, lacked 19 jury members, other irregularities such as the D.D.A. Dale Gomes acting as the foemen, no record of jurors being sworn in, the judge Thomas A. Smith not being lawfully assigned and the alleged crime(s) not actually constituting an offences since the speech was 1st amendment protected speech, etc. Mr. Casey was clearly part of the conspiracy as will be explained.

Grounds for dismissal included lack of territorial jurisdiction, the trial court judge and grand jury judge lacked jurisdiction based on unlawful judge assignments and having two pending criminal cases pending against Petitioner with the same charges at the same time (P17CRF0089 & P17CRF0114), unlawful venue change, the facts stated do not constitute a public offense, failure to comply with PC § 952 in charging an offense, each count shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified it contains matter which, if true, would

constitute a legal justification or excuse of the offense charged i.e. U.S. 1st amendment free speech, or other legal bar to the prosecution such as the violation of the U.S. Constitution such as U.S. 14th due-process for the conflict-of-interest with D.A. Vern Pierson and Dale Gomes along with the use of bias judges explained in this pleading.

Mr. Casey violated penal code 1018 where only this Petitioner can enter a plea. **"To begin with, since its inception the law of California has required that each plea be entered by the defendant both personally and in open court.** (Stats. 1851, ch. 29, § 301, p. 245; Pen. Code, § 1018.)" *People v. Chadd, 621 P. 2d 837 - Cal: Supreme Court 1981.* "

Penal Code section 1018 mandates **"Unless otherwise provided by law every plea must be put in *by the defendant himself* in open court." (Italics added in original.) This provision applies to pleas of not guilty by reason of insanity as well as to other pleas**. (See *People v. Gaines (1962) 58 Cal.2d 630, 636 [25 Cal. Rptr. 448, 375 P.2d 296*].)

"Penal Code section 1018 unequivocally provides that "Unless otherwise provided by law every plea must be put in by the defendant himself in open court. …penal Code section 1016 enumerates the five pleas that may be entered …unless otherwise provided by law, the pleas enumerated in section 1016 must be put in by the defendant himself in open court. The purpose of section 1018 is to ensure that the defendant in a criminal action personally puts in issue the issues raised under any of the pleas included in section 1016. Since the withdrawal of a plea removes from litigation an issue that the defendant has personally put in issue, the withdrawal must also be by the defendant personally. Otherwise the issues to be litigated would not include those raised by defendant personally." *People v. Gauze, 542 P. 2d 1365 - Cal: Supreme Court 1975.* **"Appellant has the right to represent himself in entering his plea (except in death penalty or life without parole cases)"** *People v. Shaver, 239 Cal. App. 2d 213 - Cal: Court of Appeal 1966*

Penal Code 1018:

Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant himself or herself in open court.

Penal code 1003.

Both the demurrer and plea must be put in, in open Court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.
(Enacted 1872.)

Penal code 1004.

The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if any information or complaint that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information;

3. That more than one offense is charged, except as provided in Section 954;

4. That the facts stated do not constitute a public offense;

5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.
(Amended by Stats. 1951, Ch. 1674.)

Penal code 1005.

The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the accusatory pleading or it must be disregarded.
(Amended by Stats. 1951, Ch. 1674.)

Penal code 1006.

Upon the demurrer being filed, the argument upon the objections presented thereby must be heard immediately, unless for exceptional cause shown, the court shall grant a continuance. Such continuance shall be for no longer time than the ends of justice require, and the court shall enter in its minutes the facts requiring it.
(Amended by Stats. 1927, Ch. 609.)

Penal code 1007.

Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the demurrer to an indictment or information is overruled, the court must permit the defendant, at the defendant's election, to plead, which the defendant must do

forthwith, unless the court extends the time. If the demurrer is sustained, the court must, if the defect can be remedied by amendment, permit the indictment or information to be amended, either forthwith or within such time, not exceeding 10 days, as it may fix, or, if the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new information or the submission of the case to the same or another grand jury. If the demurrer to a complaint is sustained, the court must, if the defect can be remedied, permit the filing of an amended complaint within such time not exceeding 10 days as it may fix. The orders made under this section shall be entered in the docket or minutes of the court.
(Amended by Stats. 1998, Ch. 931, Sec. 382. Effective September 28, 1998.)

Penal code 1008.

If the demurrer is sustained, and no amendment of the accusatory pleading is permitted, or, in case an amendment is permitted, no amendment is made or amended pleading is filed within the time fixed therefor, the action shall be dismissed, and, except as provided in Section 1010, the court must order, if the defendant is in custody, that he be discharged or if he has been admitted to bail, that his bail be exonerated, or, if money or other property has been deposited instead of bail for his appearance, that such money or other property be refunded to him or to the person or persons found by the court to have deposited such money or other property on his behalf.
(Amended by Stats. 1951, Ch. 1674.)

Here, the court, judge, prosecutor and John Casey had conspired ahead of time to set-up this sham since Mr. Casey appeared at the arraignment before the Petitioner even requesed counsel when he would have chosen to defend himself in pro per with co-counsel and assert the demurre on the issues described above. Additionally, the Petitioner's actual name was not on the indictment, the name in all capital letters is a Uniform Commercial Code ("UCC") nom-de-guerre – a strawman name of a fictitious corporation as opposed to the flesh and blood man. In other words, TODD CHRISTIAN ROBBEN is a government created entity whereas Todd Christian Robben is this flesh and blood Petitioner… This Petitioner never consented to the courts jurisdiction and he did not stand under (under-stand) the jurisdiction of the court or the charges. Here the court, judge and D.A. paid John Casy and Russell Miller to re-present this Petitioner to the jurisdiction of the court unlawfully and in conflict of this Petitioner's direction and rights. The court operated as a private kangaroo court (closed to the public) and operated under Admiralty Law(Law of the Sea) rather than Common Law or Constitutional Law (Law of the Land).

The exhibits below from Black's Law Dictionary (4th edition) prove said assertion:

https://archive.org/details/BlacksLaw4th/page/n1249/mode/1up?q=name

NAME. The designation of an individual person, or of a firm or corporation. Riley v. Litchfield, 168 Iowa 187, 150 N.W. 81, 83, Ann.Cas.1917B, 172._

A person's "name" consists of one or more Christian or given names and one surname or family name. Blakeney v. Smith, 183 Miss. 151, 183 So. 920, 921. It is the distinctive characterization in words by which one is known and distinguished from others, - and description, or abbreviation, is not the equivalent of a "name." Putnam v. Bessom, 291 Mass. 217, 197 N.E. 147, 148. Custom gives one" his father's family name, and such prxnomina as his parents choose to put before it, but this is only general rule, from which individual may, depart, if he choose. In re" Cohen, 142 Misc. 852, 255 N.Y.S. 616, 617. As to the history of Christian names and surnames and their use and relative importance in law, see In re Snook, 2 Hilt., N.Y., 566.

https://archive.org/details/BlacksLaw4th/page/n484/mode/1up?q=corporation

CORPORATION. An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. Dartmouth College v. Woodward, 4 Wheat. 518, 636, 657, 4 L.Ed. 629; U. S. v. Trinidad Coal Co., 137 U.S. 160, 11 S.Ct. 57, 34 L.Ed. 640; Andrews Bros. Co. v. Youngstown Coke Co., 86 F. 585, 30 C.C.A. 293; Porter v. Railroad Co., 76 Ill. 573; Nebraska Wheat Growers' Ass'n v. Smith, 115 Neb. 177, 212 N.W. 39, 44; State v. Thistle

A proper noun is the name of a person, place or thing. An all capitalized name is not a proper noun, is not a person, place or thing, and is not a true name. “Your” all capitalized name on a credential — or any other government document — is not a proper noun. IT IS NOT YOU.

A judge at arraignment must ask you for your true name. But don’t be fooled. He is asking for the real person who will be responsible for paying the damages to the peace and dignity of their all capitalized artificial entity.

Incompetent people

If you respond to a non-proper noun as if it was your name, guess what happens. The judge immediately takes silent judicial notice that you are incompetent.

Fatuus praesumitur qui in proprio nomine errat. A person is presumed to be incompetent who makes a mistake in his own name (that is, does not know his own name).

Blacks Law Dictionary first edition: Fatuus praesumitur qui in proprio nomine errat

History

Back when the United States was a free country, most people kept their Constitutional rights.

Vol. 4 Bacon’s Abridgment, (D) of Misnomer, and want of Addition (1832), page 7:
“Misnomer is a good plea in abatement, for since names are the only marks and indicia which human kind can understand each other by, if the name be omitted or mistaken, there is a complaint against nobody. And…if the defendant has been arrested by a wrong name, the court will set aside the proceedings…and discharge him if in custody.” — Here is a link to an earlier edition of 1793, this quote is on page 38.

Under the U.S. Constitution a misnomer is fatal to all legal instruments. According to New Abridgment of the Law, by Matthew Bacon, 1846, Volume VII, published by Thomas Davis, Philadelphia, Pennsylvania.:

"If the Christian name be wholly mistaken, this is regularly fatal to all legal instruments...and the reason is, because it is repugnant to the Christian religion, that there should be a Christian without a name of baptism, or that such a person should have two Christian names...and therefore if a person enters into a bond by a wrong Christian name, he cannot be declared against by the name in the obligation, and his true name brought in an alias, for that supposes the possibility of two Christian names; and you cannot declare against the party by his right name, and aver he made the deed by his wrong name."

But if you were born into the U.S Government by their baptism, then you have the name they gave you. Your all caps government credentials authorize you to present* yourself in commerce.
* (Greek word *exon*, for those of you who suspect a connection to the Mark of the Beast prophecy). Perhaps, just perhaps, this has something to do with the Pope's 1452 instructions to explorers who find new land to claim for the Pope (Papal Bull "Doctrine of Discovery"):

"to take all their possessions and property and to put them into perpetual slavery."

Pursuant to the Corpus Juris Secundum (C.J.S.) legal encyclopedia, volume 7, section 4 an Attorney is:

"His first duty is to the courts and the public, not to the clients, and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter. The office of attorney is indispensable to the administration of justice and is intimate and peculiar in its relation to, and vital to the well-being of, the court. An attorney has a duty to

> aid the court in seeing that actions and proceedings in which he is engaged as counsel are conducted in a dignified and orderly manner, free from passion and personal animosities, and that all causes rought to an issue are tried and decided on their merits only;to aid the court…"

Mr. Casey conspired to block the Petitioner's constitutional right to self defense (*Faretta v. California*) and Mr. Casey block Petitioner's constitutional right to demurrer the charges. **"[t]o satisfy the Constitution, counsel must function as an advocate for the defendant, as opposed to *a friend of the court*."** *Jones v. Barnes, 463 U.S. 745, 758 (1983) (Brennan, J., dissenting) (citing Anders v. California, 386 U.S. 738, 744 (1967))* (emphasis added).

Here, Petitioner was constructively denied counsel or, in the alternative, counsel was ineffective IAC/CDC. Mr. Casey was certainly a conflict-of-interest since has withdrew over the conflict once it was exposed. Mr. Casey is not normally used in El Dorado Co. or Sacramento Co. as a "conflict lawyer". The conspiracy to use Mr. Casey and the previous lawyer, David Brooks (David Cramer's law partner) is fraud-upon-the-court and also proves a pattern of prosecutorial misconduct of D.A. Vern Pierson and his D.D.A Dale Gomes who was part of the conspiracy. Appellate counsel Robert L.S. Angres, a friend-of-the-court IAAC/CDC also conspired to sabotage this Petitioner's appeal by failing to argue this points and his cumulative failure to argue the other points discussed in this petition.

SPEEDY TRIAL VIOLATIONS & IAC/CDC

Russell Miller was the third lawyer assigned to the case P17CRF0114. Trial counsel Russell Miller counsel conspired to sabotage Petitioner's case where he failed to file any pre-trial 1538.5 or 995 or non-statutory motions to dismiss, failed to call any witnesses or obtain mental health records the prove Petitioner was proven to not be a threat. Mr. Miller filed poorly written and a late motion to disqualify the D.A. for conflict-of-interest. Mr. Miller violated Petitioner's statutory speedy trial rights pursuant to PC 1382, Cal Const. Art. 1, Sec. 15 and U.S. 6th amendment when he moved to file a continuance over the objection of this Petitioner which set the trial date past 60 days after arraignment on 04-14-2017.

California's penal codes 686(1) and 1382(a)(2) amplify and supplement the California and U.S. Constitutional rights to a speedy trial within 60 days. Here, Petitioner's Constitutional rights were violated pursuant to Cal. Const. Art. 1, Sec. 15 and U.S. Const. 6th amendment. In *Rhinehart v. Municipal Court, 677 P. 2d 1206 - Cal: Supreme Court 1984* "(1) **The right to a speedy trial is a fundamental right.** (*Sykes v. Superior Court (1973) 9 Cal.3d 83, 88 [106 Cal. Rptr. 786, 507 P.2d 90].*) **It is guaranteed by the state and federal Constitutions. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) The Legislature has also provided for "`a speedy and public' trial as one of the fundamental rights preserved to a defendant in a criminal action. (§ 686, subd. 1.)"** (Sykes, supra, 9 Cal.3d at p. 88.) **To implement an accused's constitutional right to a speedy trial, the Legislature enacted section 1382**. (*Owens v. Superior Court (1980) 28 Cal.3d 238, 249 [168 Cal. Rptr. 466, 617 P.2d 1098].)* (2a) That section **"constitutes a legislative endorsement of dismissal as a proper judicial sanction for violation of the constitutional guarantee of a speedy trial and as a legislative determination that a trial delayed more than [the prescribed period] is prima facie in violation of a defendant's constitutional right."** (Sykes, supra, 9 Cal.3d at p. 89, fn. omitted.) **Thus, an accused is entitled to a dismissal if he is "brought to trial" beyond the time fixed in section 1382.** (Id., at pp. 88-89.)"

"The federal constitutional right to a speedy trial, as explained in *Barker v. Wingo (1972) 407 U.S. 514 [33 L.Ed.2d 101, 92 S.Ct. 2182*], is a fundamental right, which can be waived only through a voluntary, knowing, and intelligent decision by the defendant himself. (See *407 U.S. at pp. 525-526 [33 L.Ed.2d at p. 114].)" People v. Johnson, 26 Cal.3d 557 (Cal. 1980).*

"The power of appointed counsel to control judicial strategy and to waive nonfundamental rights despite his client's objection (see *Townsend v. Superior Court (1975) 15 Cal.3d 774, 781 [126 Cal.Rptr. 251, 543 P.2d 619*] and cases there cited) presumes effective counsel acting for the best interest of the client. As the court pointed out in *People v. Corona (1978) 80 Cal.App.3d 684, 720 [145 Cal.Rptr. 894]*, **"[e]ffectiveness . . . is not a matter of professional competence alone. It also includes the requirement that the services of the attorney be devoted solely to the interest of his client undiminished by conflicting considerations." Thus when the public defender, burdened by the conflicting rights of clients entitled to a speedy trial, seeks to waive one client's right, that conduct cannot be justified on the basis of counsel's right to control judicial proceedings. The public defender's decision under these circumstances is**

not a matter of defense strategy at all; it is an attempt to resolve a conflict of interest by preferring one client over another. As a matter of principle, such a decision requires the approval of the disfavored client. (Cf. ABA Code of Prof. Responsibility, EC 5-16.) We conclude that the consent of appointed counsel to a postponement of trial beyond the statutory period, if given solely to resolve a calendar conflict and not to promote the best interests of his client, cannot stand unless supported by the express or implied consent of the client himself." *People v. Johnson, supra.*

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

Friday, April 21, 2017

3CT643

Morning Session

---oOo---

The Proceedings in the matter of the People of the State of California, Plaintiff, versus Todd Christian Robben, the Defendant, Complaint Number P17CRF0114, came on regularly before the Honorable Curtis M. Fiorini, Judge of the Superior Court, County of El Dorado, State of California, sitting in Department 26.

The People were represented by Dale Gomes, Deputy District Attorney, for the County of El Dorado, State of California.

The Defendant, Todd Christian Robben, was personally present and represented by Russell Miller, Attorney at Law, for the County of El Dorado, State of California.

The following proceedings were then had, to wit:

---oOo---

THE COURT: We're on the record. People of the State of California versus Todd Robben.

Can counsel state their appearance for the record please.

MR. GOMES: Good morning, your Honor.

Dale Gomes for the People.

MR. MILLER: Russell Miller appearing with Mr. Robben at this moment, waiting for the court to confirm my appointment.

THE COURT: It's my understanding that the court was notified, Mr. Robben, by Mr. Casey that he has a conflict in

your case. I believe you are aware of that.

THE DEFENDANT: M-hm.

THE COURT: At this point in time, Mr. Miller, will you stand in for Mr. Casey?

MR. MILLER: Yes, I will.

THE COURT: In light of his representation that there is a conflict representing Mr. Robben, I will relieve Mr. Casey as the appointed attorney.

I do order that the El Dorado County find another attorney to represent Mr. Robben, a court appointed attorney that does not have a conflict.

Mr. Miller, my understanding is you are that person?

MR. MILLER: I am, your Honor. Thank you very much.

THE COURT: Do you accept that appointment?

MR. MILLER: I do, your Honor.

THE COURT: Mr. Robben's matter is on for a bail review hearing today. He entered not guilty pleas last week, the 60th day is June 13th, and we have TRC and trial dates set, but Mr. Robben's notified the court that there are other issues with his case, and I am expecting other motions, but since you are just coming in, would you like to set a further proceeding date so you can meet with Mr. Robben and file appropriate motions on his behalf?

MR. MILLER: Yes, your Honor, I will do that.

I'm wondering if court and counsel are available on the afternoon of the 28th or would this court allow a date or a setting of a date during the week?

THE COURT: Next week -- Thursday is available next

week; right?

THE CLERK: Yes, your Honor.

THE COURT: Thursday, the 27th, we're in another trial and we're dark that day. We are available but if that doesn't work -- is a Friday better?

MR. GOMES: I'm in trial Tuesday through Thursday starting next week on a homicide case.

THE CLERK: Friday at 1:30 or the morning, we have a discovery motion and one J&S both at 9 a.m. and at 1:30 we have rulings on a codefendant case.

THE COURT: We can work that in either way.

MR. MILLER: I would request the afternoon calendar. I have two jury trial sentencings on the morning of the 28th.

THE COURT: Does that work for the People?

MR. GOMES: I can make that work, your Honor.

THE COURT: We'll keep all the other dates in place. We'll set Mr. Robben's matter for further proceedings and a bail review hearing on April 28th at 1:30.

MR. MILLER: Thank you very much.

MR. GOMES: The only thing I can think of, your Honor, is, I've given Mr. Miller a copy of our discovery file but what's probably not included in that is the grand jury indictment and the grand jury transcripts which the Court ordered last week to Mr. Casey. I assume the Court authorized Mr. Casey just to hand those off to Mr. Miller?

THE COURT: Sure. I'm assuming you want that information, Mr. Miller.

I will make that order and make sure that Mr. Casey

gets that information to you, Mr. Miller, and if he doesn't or if there's any difficulty, let us know.

MR. MILLER: I'll get ahold of Mr. Casey when I leave here over the lunch hour.

MR. GOMES: All right, thank you.

THE COURT: Sounds good. Thank you all.

Mr. Robben, I'll see you next Friday.

THE DEFENDANT: Did the court ever get my habeas corpus petitions? Did they make it here?

THE COURT: It has not yet. I had asked my clerk to look for it and it's my understanding they haven't found it.

THE CLERK: That's correct, your Honor.

THE COURT: I know you want to get that but meet with Mr. Miller and see if he can.

THE DEFENDANT: It was sent to Bicentennial.

THE CLERK: Correct. Yes. Usually they make their way back here. But because it may have stated that it's an El Dorado County case, they may have returned it to you.

THE DEFENDANT: Is there going to be somebody finding out what's going on with that?

THE CLERK: Being that I don't have the documents, I can assume that's what happened.

THE DEFENDANT: What's going on too is, in the jails, I have about four bags of legal mail that's being withheld from me.

Is there anyway I can get a court order here in open court to have the jail release all my mail, you know, my legal mail and my commissary pencils, paper, envelopes so I can have

correspondence because these habeas corpus motions, these are from me, not from any attorney, to the court and my motion to disqualify the district attorney, the entire office, including Dale Gomes --

THE COURT: You wanted to get that before.

THE DEFENDANT: -- who's being sued by me right now, and all the other conflicts that are going to prevent me from having a fair hearing so he needs to be recused, and I'll talk to this gentleman [indicating] about that, but if there's any conflict we'll deal with that. By the way, it was filed by me.

THE COURT: Okay.

THE DEFENDANT: So the motion to disqualify Dale Gomes, Vern Pierson, and the entire El Dorado District Attorney's office, it's me.

I've had a problem, your Honor, with the other courts. My cases were also transferred to Placer County, okay, and they didn't file my legal filings. El Dorado County didn't do that. There's actually a lawsuit because I'm suing the Superior Court Clerks for violating my, you know, 1st Amendment right to access the courts and 14th Amendment due process. And there's some debate whether or not they have immunity but there's no immunity for declaratory relief and an injunction, okay.

THE COURT: Mr. Robben, let's do this. I know there's things you want to get before me and I want you to --

THE DEFENDANT: I'm being blunt.

THE COURT: -- be able to properly file it. We'll do some follow up and see if we can locate those habeas. In the

meantime, talk to Mr. Miller about that too so he can look into it.

MR. MILLER: You can't get your mail to Sacramento or El Dorado?

THE DEFENDANT: It was mailed to the court. They gave me the address -- El Dorado County gave me the address Bicentennial. That was mailed a week and a half ago. They would have had that last week early, like, Monday or Tuesday or Wednesday at the latest.

So, like I said, this is fishy behavior. I'm not sure if it went back to El Dorado County. Now it's El Dorado County holding my mail. There's problems with them sending my mail, and I actually had to file a complaint with the U.S. Postmaster and federal complaints about mail fraud, not sending my legal mail and not receiving my legal mail.

THE COURT: Between now and Friday, we'll double check the filing and see if it actually got filed there, and Mr. Miller can talk to you and look into it as well and we can take that up.

THE DEFENDANT: I'll talk about all the other issues intertwined. There's more in those habeas corpus petitions like the delay and getting to court after the indictment.

MR. MILLER: We'll discuss that.

THE DEFENDANT: We'll talk about that today; right?

MR. MILLER: Not today. I'll come visit you well before next Friday.

THE COURT: Okay, we'll see you next Friday.

Take care, sir.

Friday, April 28, 2017 3CT643

Afternoon Session

---oOo---

The Proceedings in the matter of the People of the State of California, Plaintiff, versus Todd Christian Robben, the Defendant, Complaint Number P17CRF0114, came on regularly before the Honorable Curtis M. Fiorini, Judge of the Superior Court, County of El Dorado, State of California, sitting in Department 26.

The People were represented by Dale Gomes, Deputy District Attorney, for the County of El Dorado, State of California.

The Defendant, Todd Christian Robben, was personally present and represented by Russell Miller, Attorney at Law, for the County of El Dorado, State of California.

The following proceedings were then had, to wit:

---oOo---

THE COURT: We're on the record. People of the State of California versus Todd Robben, who's present with his counsel Mr. Miller. The People are represented by Deputy District Attorney Dale Gomes. The matter is on for further proceedings.

Mr. Miller.

MR. MILLER: It was on for further proceedings, and I might note a bail review.

I'm still digesting most of the information that I have, as well I need more information that I'm pursuing, so we're going to ask to continue further proceedings, as well as

the bail review, to the 12th day of May, that's two weeks from today, back at 1:30 in this department please.

THE COURT: Is that date and time agreeable with the People, Mr. Gomes?

MR. GOMES: It is, your Honor. Thank you.

THE COURT: May 12th at 1:30 in department 26 for further proceedings and bail review.

We'll see you then.

MR. MILLER: Thank you very much.

THE COURT: Thank you.

---oOo---

Monday, May 15, 2017 3CT642

Afternoon Session

---oOo---

The Proceedings in the matter of the People of the State of California, Plaintiff, versus Todd Christian Robben, the Defendant, Complaint Number P17CRF0114, came on regularly before the Honorable Curtis M. Fiorini, Judge of the Superior Court, County of El Dorado, State of California, sitting in Department 26.

The People were represented by Dale Gomes, Deputy District Attorney, for the County of El Dorado, State of California.

The Defendant, Todd Christian Robben, was personally present and represented by Russell Miller, Attorney at Law, for the County of El Dorado, State of California.

The following proceedings were then had, to wit:

---oOo---

THE COURT: We're on the record. People of the State of California versus Todd Robben, who's present with his counsel Mr. Miller. People are represented by Dale Gomes.

The matter is on for further proceedings and there's some things that you wish to put on the record and request, Mr. Miller.

MR. MILLER: Yes. Thank you.

We had been on calendar last Friday, and my goal was to get a copy of the transcript from the grand jury, and I was able to get that from madam clerk. I think we all got our copies Friday afternoon. I've been able to make a copy of that

for my client for his review. Gave it to him today.

Also, the Sacramento County system, if you will, what we would call our JIMS system, shows that my client has a detainer out of El Dorado County, as well as it has a case other than the one ending in 114.

It's my information and belief that the second case was superceded by the grand jury indictment. I would ask that the other case be dismissed with prejudice and that whatever the detainer from El Dorado County is either be identified so it could be litigated as necessary or simply withdrawn.

THE COURT: Mr. Gomes, any objection to dismissing the superceded case 0089, superceded by the indictment, bail in that case has been set at 200,000, and the court lifting the detainer? I think the detainer was maybe put in place when he got transferred here to Sacramento County.

MR. GOMES: No objection.

THE COURT: I'll lift that so the bail is set appropriately.

That request is granted. Case P17CRF0089 is dismissed with prejudice as superceded by case P17CRF0114, that's the case we're proceeding on with the indictment, and I order that the hold, the detainer hold, be lifted and that the bail that was previously set at 200,000 remain set at that amount.

MR. MILLER: Thank you.

Then I think it would be proper -- I'm still, for euphemism if I may, wrapping my brain around the issues in this case, that we've had an informal conversation about some of them, and I still plan on making every effort to be prepared to

begin the jury trial on the date set or certainly within what we now believe is the statutory period of time.

But I would also inform the Court, I'm trying to make a determination as to the indictment date and the arraignment date and what I believe is or isn't the 60th day.

THE COURT: So do you -- right now we have the TRC set for May 26th. Do you want to confirm that date?

MR. MILLER: Please.

THE COURT: We'll also confirm the jury trial for now of June 5th at 9 o'clock. Both of those dates here in department 26.

MR. MILLER: Thank you.

THE COURT: Anything further on behalf of the defense for today?

MR. MILLER: No, not for today.

THE COURT: Ms. Gomes, anything on behalf of the People?

MR. GOMES: No thank you, your Honor. Thank you.

THE COURT: Mr. Robben, we'll see you here on May 26th in a couple of weeks.

---oOo---

Friday, May 26, 2017 3CT 642

Morning Session

---oOo---

The Proceedings in the matter of the People of the State of California, Plaintiff, versus Todd Christian Robben, the Defendant, Complaint Number P17CRF0114, came on regularly before the Honorable Curtis M. Fiorini, Judge of the Superior Court, County of El Dorado, State of California, sitting in Department 26.

The People were represented by Dale Gomes, Deputy District Attorney, for the County of El Dorado, State of California.

The Defendant, Todd Christian Robben, was personally present and represented by Russell Miller, Attorney at Law, for the County of El Dorado, State of California.

The following proceedings were then had, to wit:

---oOo---

THE COURT: We are on the record. People of the State of California versus Todd Robben, present with his counsel Mr. Miller. People are represented by Dale Gomes. The matter is on for a trial readiness conference today.

Mr. Miller, there's some issues you wanted to bring up today?

MR. MILLER: Yes, there are.

THE COURT: Go ahead.

MR. MILLER: A number of them.

The first one is, I am giving oral notice to court and counsel that I will be filing a motion to continue this trial

date. I will be filing it based on good cause. As I've been informed, even as this morning, there's still more discovery coming my way.

And I also will need time, as I have discussed in chambers -- I want my client to know we meet in chambers.

THE COURT: Sure. Please.

MR. MILLER: And then we come out here and talk about what we talked about in chambers so there's nothing hidden.

THE COURT: Sure.

MR. MILLER: And one of my concerns at this point is jurisdiction. I have read through all of the minute orders that have been provided by madam clerk. I have read through that come both from El Dorado County and Sacramento County, and I can't get them to match for jurisdictional issues.

So I'm requesting the assistance of the Court to provide what authority and procedure was used to have Mr. Robben's case moved from El Dorado County to Sacramento County. And then even more specifically, how it is that it was moved and assigned to you, your Honor.

THE COURT: Okay.

MR. MILLER: Certainly don't misunderstand. We're glad we're not up there, but we want to make sure that due process is followed.

THE COURT: No problem. Those are issues that were handled by the executive offices of both courts that I was not involved in. So I will contact them and make sure the authority for the transfer, the procedure for that transfer, is documented and provided to you so if there's any issues with it

you can make sure to address them.

MR. MILLER: I certainly appreciate that.

I will have my 1050 filed by Tuesday morning. That will be our first court date after the holiday.

THE COURT: Okay.

MR. MILLER: As well as then, I'm going to ask to come back to this court on June 1st. I believe our calendaring system only allows for a 1:30 calendar; however, everyone should know that we anticipate actually being before your Honor between 3:00 and 3:30 in the afternoon to hear my 1050.

THE COURT: We're in a jury trial right now that should be finishing up right before that so that should be perfect timing.

MR. MILLER: Great.

THE COURT: I'll notice your motion pursuant to 1050 and we'll set it for hearing on June 1st on the 1:30 calendar in department 26 with no time waivers being entered with actual arrival time around 3:00 or 3:30.

MR. MILLER: I would appreciate that.

Rather than doing an oral motion to continue -- even though I don't believe it would be opposed -- I feel it would be more prudent for me to lay out by declaration the reasons I'm asking for it and so I would like to have that as part of the court file.

THE COURT: That would be appreciative so I have all your reasons for that motion in advance as well.

MR. MILLER: Thank you very much.

THE COURT: Thank you.

3CT 641

Thursday, June 1, 2017

Afternoon Session

---oOo---

The Proceedings in the matter of the People of the State of California, Plaintiff, versus Todd Christian Robben, the Defendant, Complaint Number P17CRF0114, came on regularly before the Honorable Curtis M. Fiorini, Judge of the Superior Court, County of El Dorado, State of California, sitting in Department 26.

The People were represented by Dale Gomes, Deputy District Attorney, for the County of El Dorado, State of California.

The Defendant, Todd Christian Robben, was personally present and represented by Russell Miller, Attorney at Law, for the County of El Dorado, State of California.

The following proceedings were then had, to wit:

---oOo---

THE COURT: Calling the case of the People State of California versus Todd Robben. This is case number P17CRF0114.

Counsel, state your appearance for the record.

MR. CLINCHARD: James Clinchard for the People.

MR. MILLER: Good afternoon, your Honor.

Russell Miller with Mr. Robben, who's present and in custody.

THE COURT: Mr. Miller, Mr. Robben had some issues. We're technically on today for a motion for a continuance that was filed on his behalf.

MR. MILLER: That is correct, your Honor.

66

WEDNESDAY, JUNE 7, 2017 3CT 641

AFTERNOON SESSION

--o0o--

The matter of The People of the State of California, plaintiffs versus Todd Robben, Defendant, Case Number P17CRF0114 came on regularly this day before Honorable Curtis M. Fiorini, Judge of the Superior Court of the State of California, for the County of El Dorado, sitting in Superior Court of Sacramento County in Department 26 thereof.

The People were represented by Dale Gomes, Deputy District Attorney, in and for the County of El Dorado.

The Defendant, Todd Robben, was personally present and represented by Russell Miller, Attorney at Law acting as his counsel.

Katherine Greiner, Official Shorthand Reporter, was personally present upon the Court and acting.

The following proceedings were had, to wit:

THE COURT: Good afternoon, everybody.

MR. MILLER: Good afternoon, your Honor.

THE COURT: We're on the record in People of the State of California versus Todd Robben. Present with counsel, Mr. Miller. Mr. Gomes is here for the People.

This matter's on the continued hearing for the Trial Readiness Conference and some pending matters.

Mr. Miller.

MR. MILLER: Yes, your Honor. At this time Mr. Robben needs to declare to the Court whether he is

66

66

actually filing the 170.1 CCP and we'll go forward from there.

THE COURT: And, Mr. Robben, for your information we did receive the letter that you indicated you mailed last weekend. So we have received it and lodged it with the file for now.

So when we broke you were going to take some time to consider whether you wanted to actually file that at this point in time or reserve your right to file that later.

THE DEFENDANT: Yeah. I do have some questions with what's going on because it was "received" not "filed."

THE COURT: Certainly.

THE DEFENDANT: And Mr. Miller did give me a copy of a portion of the record in this case. Okay. So I was able to see that way back on the '89 case when that first started I had filed a 1424 motion. Okay. So that was actually stamped received and put into the file. But it was never heard.

THE COURT: Okay.

THE DEFENDANT: So looking at the motion here by Mr. Miller for the continuance, one thing I've noticed is that he's filed this in Sacramento.

THE COURT: Okay.

THE DEFENDANT: So when I mailed my motion to the Court here in Sacramento it appears what they did is give it to the court clerk in El Dorado County to file or, in that case, mark received.

THE COURT: Okay.

THE DEFENDANT: And some of my other motions are just flat out missing related to -- to the case that I filed when I learned that there was another case filed, the 114 case.

THE COURT: Okay.

THE DEFENDANT: The 114 regarding the jurisdiction. In other words, there's issues, okay. This is when I mentioned last time that the public defender by the name of Tim Pappas had come to talk with me on April 5th when I was in jail in El Dorado County at the courthouse in Placerville. He said he was getting some phone calls on that case and he said that he looked at the record and at that time I was pro per. I had no lawyer assigned, okay.

And what the Court did is they assigned a guy named David Brooks, okay. Now, David Brooks is the law partner of David Cramer. David Cramer is one of the people complaining that I made threats to. Okay.

And I knew that because of the address, okay. Hillsdale Boulevard in El Dorado Hills. So I put two and two together it's pretty easy to find out some shenanigans going on there.

But Mr. Pappas pointed out about ten different things to me that I wrote down with -- regarding the '89 case. And one of them was that from the day of the arraignment, okay, until -- in other words, Rule Number -- Penal Code 859(b) is ten days to the preliminary hearing, okay. So after the arraignment that would be ten business days, okay. Ten court days.

69

THE COURT: Ten court days.

THE DEFENDANT: And the ten court days had come and gone by that time, by April 5th. And according to the rule or Penal Code and the case law, the case had to be dismissed, okay, with prejudice under Penal Code 1387. Okay.

So one of my motions to the Court was to have the case dismissed early on, okay. And there's been a problem with El Dorado County not filing my mailings, okay. So when I say -- I want to make sure the term is correct, I mailed my motions to the court clerk and they're not either getting filed or received or put into the file. They're beck screened, okay. So that's actually one of my lawsuits in federal court is against the court clerks --

THE COURT: Okay.

THE DEFENDANT: -- in El Dorado County. And the same thing happened in Placer County and the same thing essentially's happening here in Sacramento County. So I need to supplement my complaint with the Court -- federal court with the facts.

The facts are that as a prisoner I'm using the mail system. I have witnesses that I'm sending mail out of legal motions in these cases and they are not getting put into the file. They're not getting filed. So there is a difference between being stamped "received" and "filed" as indicated on the record.

So that 1424 motion has never been heard and we still have Dale Gomes here who is a defendant and actually,

69

70

you know, he's also going to be a witness, okay, in the federal case.

THE COURT: I don't mean to cut you off, but I think those are some of the issues Mr. Miller needed time to look into as part of this motion to continue.

THE DEFENDANT: Right.

THE COURT: Is that correct, Mr. Miller?

MR. MILLER: Yes, your Honor.

THE COURT: The jurisdictional issues it's everything you're talking about I think he's been looking into it.

THE DEFENDANT: I --

MR. MILLER: I know I'm interrupting. To the point of case ending '89 and jurisdictional issues if there's fault with '89, then there would be fault with 114.

THE COURT: Correct.

MR. MILLER: And I've got that -- some of the things I think Mr. Robben might be referring to though, are his writs and that's not -- that's not in this court. So some of the things I think he's mailed to file or only marked received deal with issues other than our criminal case.

THE COURT: Okay.

MR. MILLER: Is that fair?

THE DEFENDANT: Well, no, because --

MR. MILLER: Oh.

THE DEFENDANT: -- filings have been made specifically in the '89 case and that's in the record. Okay. Do you have a copy of the record? Have you seen the

70

record, you know?

THE COURT: I have.

THE DEFENDANT: Okay. So in there there's a motion handwritten by me on 1424 motion to recuse the district attorney.

THE COURT: I remember that being in there.

THE DEFENDANT: Okay. So that's being ignored and hasn't been heard. So that should have been heard. Okay.

Please understand, you know, I've been incarcerated on this -- these two cases here since March 9th when I was supposed to be released from the other case, okay. That's come and gone, okay. That was the driving on a suspended license.

So on the last day Dale Gomes here decided to file these charges on actually the 8th.

THE COURT: Okay.

THE DEFENDANT: My last 48 hours in jail, so he brought this new case.

THE COURT: Sure. So I understand the jurisdictional issue, I understand the issue with the 1424 you want that to be heard. Again, I believe those are things that Mr. Miller's looking into whether they would be --

THE DEFENDANT: Well --

THE COURT: Is that correct, Mr. Miller?

MR. MILLER: Yes, your Honor.

THE DEFENDANT: So the problem is that I've been given a copy of this motion for continuance which I object

72

to. And I just made some notations on the motion because I'm not going to allow this motion to go forward because right off the bat, it's filed in the wrong case. It's filed in P17CRF0089. Okay. So, as you know, everybody knows, we're on the 114 case right now.

THE COURT: Yes. Okay.

THE DEFENDANT: So this motion isn't even filed in the current case. If it is, it's a fugitive document, okay. So there is no motion filed in 114 so it doesn't even exist.

For the sake of talking about it, the header on it here says "Superior Court of California, County of Sacramento." The other filings by the district attorney and so on and so forth this is still an El Dorado County case.

THE COURT: It is.

THE DEFENDANT: So that would be a problem. And -- and the other thing is on the Points and Authorities or -- or actually the declaration number five he wants to continue the matter until "May 17th, 2017," which was last month. So I know that's a typo. He meant July. But, as you know, these things are very important.

So right now this document hasn't been filed and I object to any kind of continuance. I've already been in jail. I'm not waiving my right to speedy trial.

THE COURT: Okay.

THE DEFENDANT: And the motions I filed early on which were very timely, okay, address the jurisdiction of

72

the court, okay. The '89 case it's on the record. I said at the very beginning when they had to close court, okay, Tim Hassel (Phonetic) said that they brought the public out because when I sit down and I explain to the Court what's going on the public, perhaps the news media, they were embarrassed to find out that Daniel Proud, the judge who is also the presiding judge in El Dorado County on this case, okay, according to the minutes, was, you know, as a defendant in my civil rights cases, okay.

And what I've also found out is that Daniel Proud is actually a retired judge, okay. So he's being assigned to these cases, okay. He's not an elected judge like you are, okay. So I didn't know that. I didn't know who Daniel Proud was or none of the persons Phimister, or even Lasarow. These are the judges that they commonly use in El Dorado County to sit and hear matters without informing, you know, the --

THE COURT: Sure.

THE DEFENDANT: -- the litigants, that the judge is actually an assigned judge, a retired judge.

So the way the Court rules work, is it's very clear that assigned judge has to be assigned by the Judicial Council slash the Supreme Court, okay. This is what's been done, when it's done it's put into the minutes.

So the minutes, you know -- and I can give you an example on my previous cases, it said that it had to go to the Judicial Council, okay, to get an order and it's actually signed by the Chief Justice Tani, whatever her

74

name is.

MR. MILLER: Cantil.

THE COURT: Cantil-Sakauye.

THE DEFENDANT: Thank you. So at least it looks legit, okay. When I get out I'm going to make sure these in fact were legitimate things. Only because I have fabricated things happen in the court, okay.

So, in this case Daniel Proud, who has no jurisdiction -- and I did point this out in the '89 case, I said, you know, Daniel, you don't have any jurisdiction. And I refer to him as Daniel, because I didn't want to refer to him as a judge, your Honor. Because I didn't give the court any credibility I wouldn't even step into court, into the bar. Here, I'm forced in.

But the point is, this court has no jurisdiction. And Mr. Miller agrees that that is true, that he's an attorney, the 114 case is manifested out of thin air.

So it's really kind of an extension of the other case but the other case was dismissed, okay, but the case should be dismissed with prejudice under the Penal Code 1387 based on one of my motions which was the violation of Penal Code 859(b).

So if you have the annotated statutes -- I looked it up on the law kiosk and under Penal Code 1387 Rule -- or Penal Code 859(b) qualifies for the case to be dismissed and the district attorney's barred from bringing another case, which is what they did. So now this case that we're sitting on right now, 114, has to be dismissed.

74

74

THE COURT: Okay.

THE DEFENDANT: So it has to be dismissed now. This is -- asking for a continuance for me to sit here until July 17th. It's been six months and I've got bursitis in my left shoulder. I haven't been able to move my arm.

THE COURT: Okay.

THE DEFENDANT: My mom's on her death bed. I've been in jail for one year come June 15th. The real purpose is to prevent me from pursuing my peaceful civil litigation against El Dorado County, the City of South Lake Tahoe, and the police and so on and so forth.

Which now, you know, I mean that's a peaceful resolution so I can be made whole for my damages financially, have my record cleared and some other things, you know, that I think should happen which are the perpetrators on the other side there, the El Dorado County, that the police officers that lied should be held accountable for their actions. They should be fired.

And I want charges pressed, so I did file an FBI investigation into these matters including complaints with the El Dorado District Attorney's Office.

THE COURT: Okay.

THE DEFENDANT: So we've got these things going on.

THE COURT: All right. Let me -- Mr. Robben, I understand. I have the picture. I wanted you to be able to talk to me and explain all that. But where we are right now before I can take any action, what's before me that's properly filed, I understand, Mr. Miller, that your motion

76

to continue is intended to be in front of me in this El Dorado County case; correct?

MR. MILLER: Yes.

THE COURT: And Mr. Miller indicated that he wanted to make that motion pursuant to 1050 and offered to reduce that to writing for the record, so I will accept that.

That motion's before me. Also the issue regarding the 170.1.

THE DEFENDANT: Right.

THE COURT: So before I can rule on anything I need to know whether you want to personally serve me with that 170.1 petition or not. We have that here. That would trigger certain proceedings where I would have to respond to those. And we need to know whether you want to disqualify me or move to disqualify me for cause before we do anything else and so --

THE DEFENDANT: And --

THE COURT: We need to know that now.

THE DEFENDANT: I understand that and I respect that because that is the facts that motion was made orally which can be made orally, okay. With the Court not filing my motions I have to make motions orally, okay.

And on that note, in order -- the Court's already acknowledged that my motion has been entered into the record and it's being considered.

THE COURT: Which motion? I'm talking about the --

THE DEFENDANT: The motion 171.(a)(6)(a)(i)(i)(i) which is --

76

77

THE COURT: I received your letter through mail under 170.1, but 170.3 requires personal service to trigger that procedure. So if that's your request, you, of course, can serve that with me today; you can do that. Or if you do not want to exercise that challenge at this point in time, then we'll proceed on the other matters.

THE DEFENDANT: Uhh.

THE COURT: You take a moment to touch base with Mr. Miller.

THE DEFENDANT: Well, the service -- I mean, I've read -- that's what I want to look at. It does say it can be made orally. I mean you've been served orally through my words here spoken, spoken word.

THE COURT: So do you want to challenge me for cause that's the first question? If so, I need to be personally served or my clerk needs to be personally served with what you filed so far.

THE DEFENDANT: Okay. Can you print out what I have? Make a photo copy.

THE COURT: We can make a photocopy. I want to make sure you check with Mr. Miller, if that's what you want to do today.

THE DEFENDANT: Yeah. And, well, we need to make sure the cart isn't before the horse here, okay. Because right now that appears to be the case. So if that's the case, the Court's going to accept the motion that means I'm representing myself, so we need to --

THE COURT: It does not. That's Faretta. It does

77

78

not.

MR. MILLER: No.

THE COURT: You have -- a party has the right to file the 170.1. You're represented by Mr. Miller, you still have that right to file that.

THE DEFENDANT: Okay.

THE COURT: So it's separate and apart from Faretta.

THE DEFENDANT: I also want to file a Faretta motion so I'm making that right now orally as well that I need to make that motion.

THE COURT: You want to go Faretta?

THE DEFENDANT: Right. I'm getting motions for continuances that I do not agree with. There's been back door meetings in your office that's what we talked about. There's been --

THE COURT: There's been no back door. We've met informally regarding the schedule today.

THE DEFENDANT: Well, in the past that's being called meet and confer. The problem is I'm not here. It's not transparent to me, okay. So I can --

MR. MILLER: Well, I'm going to interrupt.

THE COURT: Go ahead, Mr. Miller.

MR. MILLER: Every -- it is our county's policy to meet and confer with the judge prior to any hearing simply to let the judge know what the general outline is. And we've made a record of that.

Most specifically last time we were here, I even

78

79

said while we were on the record, yes, we did, here's what we talked about, and here's where we are. There is no back door meetings.

THE DEFENDANT: No, I'm not involved in what's happened so --

MR. MILLER: You're talking --

THE COURT: Okay.

THE DEFENDANT: Coming into this court, okay, and waiting all day in the holding tank.

THE COURT: Well, Mr. Robben, you want to go Faretta? You want to represent yourself? Is that what you're telling me?

THE DEFENDANT: I do. Yeah, yeah.

THE COURT: Okay. Give him the form, please, madam clerk.

THE DEFENDANT: I need co-counsel, too, since the Court --

THE COURT: I'm not going to give you co-counsel if you go Faretta. I'll give you some advisement, but you're not entitled to co-counsel.

THE DEFENDANT: Okay. Well, we're moving forward on the 170 motion today, too.

THE COURT: Okay. Well, then we'll do that first. I'm not going to hear your Faretta if you file the 170.1.

THE DEFENDANT: Okay. Then the motion if you want to make the photocopy so you can be served.

THE COURT: Let's do that. Never mind on the Faretta I can't rule on that if he's going to proceed first

79

with the 170.1.

THE DEFENDANT: Incidentally, what's happening is the civil rights litigation is filed and it's being amended right now, okay.

THE COURT: We don't have to do the Faretta, we're dealing with the 170.1.

THE BAILIFF: Okay.

THE DEFENDANT: So what's happening is a conspiracy is really all of you conspiring against me. Look, I've asked for motions to be filed. I filed 1424 motions.

THE COURT: Mr. Robben, since you've been -- since you've been before me you've been represented by counsel so only your counsel can file motions before me. That's why whatever you've been filing or sending to the court has been lodged and received by the court. Only your attorney can file motions before the Court.

If you want to file your 170 -- but you have the right under 170.1 to file that.

THE DEFENDANT: Uh-huh.

THE COURT: So we'll proceed pursuant to the 170.1.

Madam clerk, also the district attorney's entitled to copies of that. I want to make sure the district attorney has those copies.

Mr. Miller, I don't know if you have a copy of that or not.

MR. MILLER: I do not. I did not make any.

THE COURT: Mr. Miller, my understanding this is not your request but rather your client, Mr. Robben's

request.

MR. MILLER: Yes.

THE DEFENDANT: The request for what?

THE COURT: The 170.1.

THE DEFENDANT: Of course, yes. Conflicts here all around here of violations of my rights.

THE COURT: Okay.

THE DEFENDANT: I've already been -- like I said, this is the 60th day was yesterday on this matter. Okay. Somehow when the other lawyer who was -- the previous lawyer, the bounty hunter in my case, Mr. Casey, somehow agreed the 13th was some sort of a date within the 60 days. We've established that the day of the 23rd of March was the day of the indictment which started the clock for the 60 days.

THE COURT: Okay.

THE DEFENDANT: Which would have ended yesterday.

THE COURT: Okay.

THE DEFENDANT: Okay.

THE COURT: For the record, I disagree. The 60th day for the record is June 13th because that's the 60 days from the date of the arraignment. So if you're filing the 170.1 I'll deem and accept personal service of that.

You did declare that was under penalty of perjury so it's a written, verified statement pursuant to 170.3(c)(1).

You did set forth your grounds constituting the grounds for disqualification.

The statement was presented at the earliest

82

practical opportunity after discovery of the fact that Mr. Robben constitutes for grounds of this disqualification.

The causative statement needs to be served on each party. We'll make sure that that's done for you and I'll receive a copy of that.

We'll note for the record that the clerk has been personally served and I have a copy.

THE DEFENDANT: Can I get a copy, too, please?

THE COURT: Sure. We'll make sure you get a copy.

THE DEFENDANT: I need to update the motion as well. I need to make sure it's current with --

MR. MILLER: No, that's okay.

THE COURT: You want to supplement it provide more --

THE DEFENDANT: I do want to supplement that because --

THE COURT: Okay.

THE DEFENDANT: Because with --

THE COURT: I'll let you talk to Mr. Miller about how to make sure the Court gets your supplement.

THE DEFENDANT: And the corruption, yeah.

THE COURT: That requires me to respond within ten days of today a written verified answer. And so I intend to do that. In order to do that I'm going to stay the action. I do note the last day the 60th day was June 13th.

That's over Mr. Robben's objection. I understand he disagrees with that.

82

83

In order to proceed with this section at his request, I am going to stay the action. The matter needs to go to another judge for determination of whether I should be recused from the case or not. And as soon as the ruling on the disqualification is made the matter will be reset for trial.

For the record, I am taking this request to recuse me at this time in the proceedings as an implied request for a continuance in order to determine whether I should be disqualified or not, the statute does.

What I intend to do, Mr. Miller and Mr. Gomes, is contact Debbie Nogle who's the Court Executive Officer, notify her of today's proceedings. If the parties could stipulate to the judge that would hear this motion to disqualify me, if not, then there's a procedure where Judicial Council will appoint the judge to hear that.

MR. GOMES: The People are prepared to submit to whatever judicial assignment is made.

THE COURT: Okay. They have to do the stipulation by both parties. So I'll just have Miss Nogle contact the two of you with regard to the procedure. From here on I won't be involved in that since this request has been made.

If you do stipulate to a judge to hear that, that's fine. If not, then the procedure requires Judicial Council to appoint the judge to hear the disqualification motion.

MR. MILLER: Thank you.

THE COURT: Thank you.

83

84

MR. GOMES: Will we set a return date at this point? You have ten days to respond and then the reviewing court has a short period of time to issue a ruling, I think five days after that.

THE COURT: Well, it specifically indicates the question of disqualification shall be heard in terms of by another judge, agreed upon by all the parties and in the event the parties are unable to agree then within five days of notification of the judge's answer by a judge selected by the chairperson of the Judicial Council, then the clerk shall notify the executive officer of the Judicial Council of the need for the selection.

The selection shall be made as expeditiously as possible, is how the code section reads. And then the judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and the answer and any written argument that the judge requests or the judge may set the matter for hearing as promptly as practicable.

So I'm not going to set any further hearing date because it's now in the hands of the judge that's going to be assigned to hear this disqualification.

MR. GOMES: I understand your hesitation on setting dates. I would just rather this not land in a date-less limbo at this point.

THE COURT: Okay.

MR. GOMES: My calculation is the 10th day for the Court to issue its written response would be the 19th of

84

85

June. I'm wondering if maybe we could have just a review date set. It doesn't necessarily have to be set here in Department 26, per se, but somewhere so we can just stay on track.

THE COURT: Sure. Why don't we set it in Department 47 which is the Master Calendar so they'll be able to tell you where to go.

MR. GOMES: Maybe that Friday -- no, that Friday's not good for me. Any time that week before Friday. Any time that week other than Friday? I don't know how your Master Calendar works.

MR. MILLER: We have an open presiding judge.

THE COURT: Correct.

MR. GOMES: How about the 26th? That would be a week after your response, your ten day deadline is due, so maybe we'll have some insight at that point.

THE COURT: Is that date agreeable for you, Mr. Miller?

MR. MILLER: I'm double checking. But I would also say if this will expedite matters -- that's a Monday, the 26th.

MR. GOMES: Correct.

MR. MILLER: Yes, that will be fine.

I will not enter into a stipulation for an assigned judge. So if that speeds up the process of getting it to the Judicial Council more rapidly I would appreciate that.

I think Mr. Robben has expressed in general terms that everybody in the room is part of the conspiracy or at

85

86

least the major players here.

THE COURT: Okay.

MR. MILLER: And, therefore, any stipulation may be seen as a further attempt to conspire against his best interests. Therefore, we will not enter into a stipulation.

THE COURT: Okay. I'll make sure the record notes that.

MR. MILLER: Thank you.

THE COURT: And then we'll set the matter for June 26th at nine a.m. The morning?

MR. GOMES: I can make whatever works. However the Court would prefer it.

THE COURT: Nine a.m. department?

THE CLERK: 47, any time, your Honor.

THE COURT: Okay. We'll set it at nine a.m. Department 47. And then if either party needs to adjust the time I'll let you work that out with Master Calendar.

MR. GOMES: Thank you.

MR. MILLER: Thank you.

THE COURT: Thank you.

THE DEFENDANT: I need to supplement the motion for disqualification, so.

THE COURT: The filing that you --

THE DEFENDANT: Okay. How should I go about doing that?

THE COURT: Check with Mr. Miller so he can forward whatever you need to get forwarded to the Court to be

86

considered. It won't go to me. It will go to the judge who is going to hear it.

THE DEFENDANT: Well, how do I check with you when I don't really --

MR. MILLER: When do you think you'll have that supplement done?

THE DEFENDANT: As early as tomorrow.

MR. MILLER: Well, okay. I will come by -- I'll give you more time to think about it and review everything. I'll come by and pick up your supplement Thursday evening. Will it be done by then? That's tomorrow evening.

THE DEFENDANT: Yeah.

MR. MILLER: Okay.

THE COURT: All right. That concludes these proceedings. Thank you everybody.

THE CLERK: The document was filed June 6th, it should be filed June 7th.

THE COURT: The record will reflect it was personally served on June 7th.

--o0o--

MONDAY, JUNE 26, 2017 3CT640

--oOo--

The matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, came on regularly this day before Honorable Steve White, Assigned Judge of the Superior Court of the State of California, for the County of El Dorado, Department 21 of Sacramento Superior Court.

The People were represented by Dale Gomes, Deputy District Attorney for the County of El Dorado.

The Defendant was represented by Russell Miller, Attorney at Law.

The following proceedings were then had:

THE COURT: Good morning.

In the matter of the People of the State of California versus Todd Christian Robben, P17CRF0114, the record will show Mr. Robben is present in custody with his counsel Mr. Miller. Mr. Gomes is here on behalf of the People.

Mr. Robben, this case was just assigned to this Court, and I know very little about it except that there are two matters that need to be addressed this morning:

One, is the setting of a trial date, and, two, is I am given to understand from the file that you had earlier filed a motion to represent yourself pursuant to the Faretta case.

Is that still the status? Do you still wish to request leave to represent yourself, sir?

THE DEFENDANT: Yeah. Because what's -- yes, sir.

What's going on is my lawyer here is not representing me at all, and he -- I don't know if he actually filed that 1050 motion. Is that filed?

THE COURT: Well, let me do this:

What I want to do is -- I'm in a trial on another case right now, and so what I would like to do is set the motion to represent yourself at a date very near in time. It will be about two weeks out because I am having surgery on my Achilles this Friday, and I will be out for about a week, and then I will come back in and hear your motion on the issue of representing yourself, but we would go ahead and set a court date today for the trial, and then the motion to represent yourself will be addressed well before the trial date.

THE DEFENDANT: Yeah. Okay.

So I also have -- was -- was that 1050 motion filed in this case?

THE COURT: I have just gotten the file. So I don't know the status of it.

THE DEFENDANT: Yeah, because there's also some petitions that I filed for habeas corpus in this case, and this Court doesn't seem to be filing my petitions.

And it's very clear that the judge from El Dorado County, who presided on this case, his name is Daniel Proud -- he is a retired judge, and he was improperly assigned by the judicial council.

THE COURT: Well, let me do this, Mr. Robben:

I don't want to waste your time by advancing these issues that I can't address right now. Every issue that you have filed something on will be in the files that are in front of me, and before I see you next, I will have reviewed all of that, and so I could address substantively whatever issues you want to raise outside of -- in addition to the Faretta issue.

THE DEFENDANT: Okay. Well, that's a problem, because I have mailed things to this Court, and they haven't been filed, okay? They have either been marked "received", which is not filed, or they just haven't been filed at all.

And that's an ongoing problem with El Dorado County. Other cases that I have had from El Dorado County can transfer over to Placer County. So there is an issue with that.

And there's actually a federal litigation pending on that because it's a violation of my First Amendment access to the courts and my Fourteenth Amendment to due process. So that's in the federal court.

And this Court here, this Sacramento Court, is having the same problem, but the problem right out of the gate here is that I did send some information to the chief judge of this Court. I'm not sure who that person is, but this Court has no jurisdiction. The only jurisdiction this Court has is to dismiss this case

because Daniel Proud was a -- is a retired judge --

THE COURT: Sir, you are going into the merits of this, and I'm just not able to address the merits at this time.

THE DEFENDANT: Right.

THE COURT: Both because I'm in another trial --

THE DEFENDANT: Right.

THE COURT: -- but also because I need to read all the pleadings that you have provided to the Court. Whether they have been filed or just received, I need to look at those and need to have some time to give you an opportunity to be heard on it and also to hear from Mr. Miller and Mr. Gomes.

THE DEFENDANT: Okay. Well, Mr. Miller isn't -- he's part of the problem here, is because there's been a conspiracy that's been going on.

THE COURT: Well, again, you are getting into the merits of your argument. I'm not just trying to -- I'm not just trying to shine you on or push you down the road here. I just can't do this this morning. I have to look at your arguments and your motions, any that are received and/or filed. I will need to look at those before I can address this.

THE DEFENDANT: Okay. Then I'll send some new information to you in Department 21.

THE COURT: Okay.

THE DEFENDANT: Which is what this department

is.

And hopefully they get here, because other filings that I have mailed have not been properly filed in this case, and I have been in jail past my right to a speedy trial under the Penal Code 1382.

So I have been in jail here since March 9th on this particular case.

THE COURT: All right. Well, let me do this right now, Mr. Robben:

I am going to set for the purposes of the Faretta motion, as well as anything else that's filed between now and then, the 21st of July at 9:00 a.m.

Mr. Miller, Mr. Gomes, does that work for both of you?

MR. MILLER: Yes, Your Honor.

MR. GOMES: I will make it work, Your Honor.

THE COURT: And then I would like to set the trial date at this time. 60 days takes us to August 25th.

Counsel, have you had an opportunity to confer, and is there a date you would like?

MR. GOMES: If the 60th day is the 25th, I would ask for maybe the 14th of August.

MR. MILLER: That's agreed.

THE DEFENDANT: I would already object to that. You know, we are past the 60 days on a 1382 Penal Code here since --

THE COURT: This is what I am going to respond

to you on that, Mr. Robben:

I will note your objection. I will indicate to you that the 60 days began to run anew, in the Court's understanding, at the time the matter was assigned to this Court.

If you are right, I will look at the merits of your situation. If you are right, then I will address that on the merits when I see you on the 14th.

THE DEFENDANT: And if that is the case, that the case was already past the 60 days when it was assigned to this Court?

THE COURT: I understand what you are saying, but I need to look at the --

THE DEFENDANT: But there is no -- there is no time waiver, and the Court has no jurisdiction.

Is that on the record, please?

THE COURT: You are all on the record.

THE DEFENDANT: Okay. The only jurisdiction you have is to determine that you don't have any jurisdiction. You don't even have determined -- they can't even set court days here until it's decided.

THE COURT: I need you to be silent for just a moment because I want to ask again for the date that the parties are requesting.

MR. GOMES: The 14th of August, Your Honor.

THE COURT: The 14th of August at 9:00 a.m. in this department for trial.

The record that you have made today indicates

the concerns that you are raising, Mr. Robben. I will look at those.

Obviously if this Court doesn't have jurisdiction, then that's the case, and the matter will no longer be with this Court. At the present time, based on the file that I have in front of me, which I haven't completely reviewed, and based upon the record made today, I am satisfied that this Court does have jurisdiction.

If I am wrong, that will be corrected.

Thank you all. That concludes this matter this morning.

MR. MILLER: Thank you.

MR. GOMES: Thank you, Your Honor.

(Pause.)

THE COURT: Before you go, while we're still on the record, I want to provide you, Mr. Robben -- I don't know if you already got this from somebody, but I want to provide you with advisements concerning the rules and procedures for representing yourself, issues of access to the law library, investigators, that sort of thing, and also an indication of what the potential exposure is on this case.

Counsel, do you have just an approximate on the potential exposure? We can --

MR. GOMES: It's four years, plus eight months times 12, I think. So that's probably eight years. Probably about 12 years, theoretical max exposure.

THE COURT: Mr. Miller, does that sound right to you as well?

MR. MILLER: Yes. I believe it's a 13, 14-count indictment.

THE COURT: All right.

And what you're being provided today, Mr. Robben, is a record of Faretta warnings. We'll address this more fully when I see you again on the 21st.

And then county jail inmate pro per status and privileges, it's an order; it's not issued yet, but just to give you an idea of what the terms are that will be in the order if your motion is granted, and then policy and procedure for in-custody pro per defendants regarding investigators and other related matters, so those will be physically provided to you today. You may have already seen these. I don't know, but I just want to be sure you have them.

THE DEFENDANT: Yes, I have seen them.

And the other thing is there has been a 10 -- what is it -- what is it, a 1224 motion to disqualify the District Attorney here. Dale Gomes is a defendant in one of my civil litigations going on in the federal court, along with his boss Vern Pierson, who -- I have done a recall protest and previous litigation.

So that was filed in the earlier case, which --

THE COURT: So that would be in the --

THE DEFENDANT: -- which this case stems from

two cases. So the other one hasn't been filed.

And that's the whole problem. We have got a lot of fraud upon the Court here, that I just don't see how this case would be moving forward and have Dale Gomes even continue to be on this case.

You know, this has been going on since before -- actually March. So March, April, May, June, July.

THE COURT: Okay. Again, that falls under --

THE DEFENDANT: Going on five months.

THE COURT: Okay. Sir, that falls under the heading of things I will have to look into and address on the 21st when I see you next.

THE DEFENDANT: Your Honor, you don't understand that this case stems from the other case, which was the P17CRF00 -- I think it was 89, okay?

And then this case actually is that case, if you look at it, because that's what the --

THE COURT: Thank you, Mr. Robben. We are not going to be able to give any more time to this proceeding, this matter today. I will give you that time when I see you on the 21st. I will at that time have read everything.

So I will be in --

THE DEFENDANT: I don't think you have everything.

THE COURT: I will by then.

THE DEFENDANT: Because everything hasn't been

filed, and that's the problem.

THE COURT: Okay. Well, send me anything you think I don't have.

THE DEFENDANT: Okay.

THE COURT: I'll read it. I promise you.

THE DEFENDANT: Well, the first thing right off the bat is Daniel Proud never had jurisdiction and neither did Thomas A. Smith.

THE COURT: All right. You need to go back now. I understand your argument. I can't rule on it until I have reviewed the merits of it.

We'll see you on the 21st.

THE DEFENDANT: All right.

(Proceedings continued to July 21, 2017.)

--oOo--

FRIDAY, JULY 21, 2017 3CT639

--oOo--

The matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, came on regularly this day before Honorable Steve White, Assigned Judge of the Superior Court of the State of California, for the County of El Dorado, Department 21 of Sacramento Superior Court.

The People were represented by Dale Gomes, Deputy District Attorney for the County of El Dorado.

The Defendant was represented by Russell Miller, Attorney at Law.

The following proceedings were then had:

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Good morning.

MR. GOMES: Good morning, Your Honor.

MR. MILLER: Good morning, Your Honor.

THE COURT: In the matter of the People of the State of California versus Todd Christian Robben, P17CRF0114, the record will show that Mr. Robben is present in custody, with his counsel Mr. Miller, and Mr. -- is it Gomes or Gomez?

MR. GOMES: Gomes, Your Honor.

THE COURT: Mr. Gomes is present on behalf of the People.

This is before the Court for consideration of the Defendant's Faretta motion. Also for potential

trial setting, if I remember correctly.

And I also want to indicate that the Court filed on July 7th an order striking the Defendant's challenge for cause, and the Court received on July 17th the Defendant's ex parte motion to alter or amend or reconsider the order striking the Defendant's challenge for cause, which I have read and considered and which is denied.

Before we address the issue of the Defendant representing himself, Mr. Miller, is there anything you wish to say in that connection?

MR. MILLER: No, Your Honor.

THE COURT: One of the concerns I have, Mr. Robben, before I decide whether you can represent yourself, has to do with your competence to do that, and what I am talking about is not your competence in terms of being an intelligent individual or being able to write pleadings but has more to do with your ability to follow the rules of the Court, not present the kinds of problems that occur when a defendant doesn't follow the orders of the Court or counsel doesn't follow an order of the Court or a ruling by the Court, and that's one of the things that concerns me a little bit.

So I would like to hear from you briefly in that regard.

THE DEFENDANT: Sure.

Dale Gomes is not supposed to be in the hearing. This is a confidential hearing between me and

my attorney.

THE COURT: A Faretta hearing is not a confidential hearing.

THE DEFENDANT: Okay. Well, it's also gonna be --

THE COURT: If you are talking about a Marsden hearing --

THE DEFENDANT: Yeah, it's gonna be a combination of the two, actually, here. So it would be best if Dale Gomes was --

THE COURT: Well, if you want a Marsden hearing, you need to let me know that, and I will do that, have a Marsden hearing.

THE DEFENDANT: What I have in mind is both, but before we get started on that, the Court just doesn't have any jurisdiction.

And I did file the 170.6, and that's a preemptory (sic) challenge. So I --

THE COURT: Yes, but you --

THE DEFENDANT: I don't understand where you are -- you can't deny the preemptory (sic) challenge.

THE COURT: You didn't comply with the 170.6 requirements --

THE DEFENDANT: So I --

THE COURT: -- as I indicated.

THE DEFENDANT: You're not --

THE COURT REPORTER: Can we do one at a time, please.

THE COURT: So this is the thing I am getting at. You need to wait until I am finished before you talk, and you need to be addressing matters that are directly germane.

If you wish to take some review of this, seek to have an appellate court review this, that is an option that you can consider independent of what we are doing in court today. In other words, it doesn't work for you to just say, *Oh, you don't have jurisdiction.* I already found that I do have jurisdiction. If there is a higher court that will conclude to the contrary, that's where it would have to come from, from a higher court.

THE DEFENDANT: Well, what I have also recently found out is you made the decision on the finding of my habeas corpus that I did send to this Court -- at least one of the habeases (ph). The other habeas, I still don't know if there's been a case assigned to that because I haven't received my mail.

So I don't know if the mail is being lost in El Dorado county jail. I've had a lot of problems with my legal mail, things getting filed in the courts, especially El Dorado County, and it's actually led to a civil rights complaint because that would be a violation of my First Amendment right to access to the courts and my Fourteenth Amendment --

THE COURT: Let's don't go on a long rabbit trail here. Just stay to the point.

THE DEFENDANT: Well, it's happening here.

So -- so if you decided my habeas corpus, that -- again, I just don't see how you could be a fair judge if you already know some of the merits of the case that were addressed in the habeas corpus that you denied, and in -- you were appointed now to this case, and 176. -- 170.6 motion was signed under the penalty perjury. I made my statement, and that was a --

THE COURT: Take it to a higher court if you wish to overrule me.

THE DEFENDANT: So, see, the Court here doesn't have jurisdiction because --

THE COURT: Mr. Robben, we are not going to discuss that.

THE DEFENDANT: When --

THE COURT: No.

THE DEFENDANT: When the chief -- it says right here under Penal Code Section --

THE COURT: Mr. Robben, we are not going to discuss that. Remain silent. You have a lawyer.

We'll do the Marsden hearing at this time.

Mr. --

THE DEFENDANT: The Court has no jurisdiction.

THE COURT: Mr. --

THE DEFENDANT: The Court has no jurisdiction. You can't hear --

THE COURT: Mr. Robben.

THE DEFENDANT: You cannot make a decision.

THE COURT: Remain silent.

THE DEFENDANT: You have no jurisdiction.

THE COURT: Mr. Miller?

MR. MILLER: Your Honor, might I just suggest we proceed on the Faretta first because the Faretta certainly, if granted, precludes any need for any further court resources on any other issues.

MR. GOMES: And I agree with that, Your Honor.

THE COURT: That's true. I am happy to do it in that order.

MR. MILLER: Thank you.

THE COURT: Now, again, Mr. Robben, the concern I have if you represent yourself, is that you have trouble constraining and restraining yourself from just going off on tangents about jurisdiction and so forth. If you represent yourself, you have to stay tethered to the matters which are before the Court.

THE DEFENDANT: Well, what's gone on in this case is -- is that the obviously we have had a lot of problems. There's two cases filed. There was a -- what we call the 89-case (ph), the first case. I found through three attorneys, four if you include the Public Defender's office from El Dorado County -- which I don't know why they recused that. I didn't request them to be disqualified.

In fact, Tim Pappas with the Public Defender's office is a very honorable person who came and spoke to me in the jail in El Dorado County about the issues in

my case. Okay. And I have been blocked.

So I have had these attorneys assigned to me that --

THE COURT: How is this germane to what we are talking about right now?

THE DEFENDANT: Well, it leads up to -- to -- to Russell Miller representing me but not defending me, okay? So he's been --

THE COURT: That's not germane to your Faretta motion. Your motion right now is to represent yourself.

THE DEFENDANT: Right, but --

THE COURT: Nothing to do with Mr. Miller.

THE DEFENDANT: Well, yes, it does because Mr. Miller isn't defending me. He's not even contracted through Sacramento.

MR. MILLER: May I have just a moment?

THE COURT: Mr. Miller.

(Unreported discussion was then had between Mr. Miller and the Defendant.)

MR. MILLER: Thank you, Your Honor.

THE COURT: Mr. Robben?

THE DEFENDANT: The reason I need to represent myself, obviously, is that nothing has been done in this case. There's been no pretrial motions filed other than a continuance.

(Further unreported discussion was then had between Mr. Miller and the Defendant.)

THE DEFENDANT: Yes, it is. It is talking

about --

THE COURT: You don't have to give a reason for wanting to represent yourself. The issue I have to determine is whether you are capable of representing yourself. And --

THE DEFENDANT: Of course, I am capable.

THE COURT: Don't talk when I am talking.

The issue is whether you are capable of representing yourself under the rules of Faretta and Indiana versus Edwards.

And all of the things you are doing right now do not reassure me that you can follow the rules in the courtroom, and if you can't do that, then I have strong reservations about permitting you to represent yourself.

MR. MILLER: Just another moment.

(Further unreported discussion was then had between Mr. Miller and the Defendant.)

MR. MILLER: Thank you, Your Honor.

THE DEFENDANT: So this -- this is the scenario where I have represented myself, defended myself, I should say, in court before, and I know the rules, and what I do know is that pretrial motions needed to be filed long ago that weren't filed, and they include things like the suppression hearing, okay?

THE COURT: The issue, again, Mr. Robben, is not what you think Mr. Miller should have done that he didn't do. The issue is your ability to follow the rules of the Court.

THE DEFENDANT: I -- that is what I am trying to say.

THE COURT: And I am asking you to reassure me that you can do that, and instead of reassuring me you can do that, you continue to advert to things that have nothing to do with my decision about whether you can represent yourself.

(Further unreported discussion was then had between Mr. Miller and the Defendant.)

MR. MILLER: Thank you again, Your Honor.

THE DEFENDANT: So I do believe that I can represent and defend myself and to file the necessary pretrial motions that need to be filed and address the issues that I have with this case.

And one of the things I will need is the form that you gave me that indicated I will be able to have an investigator because, like I said, some of the issues that have come up here are things like filing, mail is not getting filed.

So I need -- I do need an investigator and somebody to help me because things aren't getting done. My access to the law library has been restricted. They just moved me down to the RCC (sic) camp over there, and so this week I haven't had access to the legal law library, and the access that I did have, I have been able to produce abundant results of the law that I see that needs to be dealt with.

(Further unreported discussion was then had

between Mr. Miller and the Defendant.)

THE DEFENDANT: I will follow your rules of the Court, and I will comply with the orders and -- when I do represent myself, and then I will file the appropriate motions.

THE COURT: Let me ask you, Mr. Miller, you have had more contact with Mr. Robben than the Court has, certainly by far:

Do you have anything to offer in terms of your perception of his competency in this regard?

MR. MILLER: It would be my observation that Mr. Robben is an intelligent, mature adult, that Mr. Robben reads well, comprehends within bounds and has written a number of filings that have been received by courts.

I would say that he has the capability of reading the law and understanding it within the limits of not being legally trained.

I would also suggest, though, that Mr. Robben has a strong personal feeling about motivations, and he does -- as this Court's already noticed this morning, constantly falls back on why he wants to do something, and I am trying to explain to him that all he has to do is tell the Court what his educational background is, what his legal experiences have been.

It's my information, from my research, he's represented himself in the past. It's also my information that he bounces back and forth between

wanting to represent himself and having counsel. I think Mr. Robben feels very strongly about certain issues, and he feels he needs a platform to speak them at any opportunity, and I am trying to explain to him he has to follow the Court's orders and the Court's rules. That would go down to simply as far as one person speaking at a time.

He is very fixated on the issue of jurisdiction. I have tried to explain to him that's not what we are talking about here today. We are talking about whether or not he's competent to be his own lawyer and whether or not he will follow the Court's orders and the Rules of Court.

He has that capability. It's whether he chooses to use it or not is something he'll have to decide.

THE COURT: Mr. Robben?

THE DEFENDANT: Just some of my representation that I have done has been in criminal court, okay?

In fact, the previous case that I was representing -- defending myself -- I want to get the term correct, defending myself, and then I was arrested, but I did write the pretrial motions, and at trial I was assigned a lawyer for trial, okay, because I was in jail. The DA had taken my work product and my computer and made it impossible.

And that's what's happening here, is that I am doing the best I can, which is I am very, very competent

with criminal law in California and Nevada. I have gotten myself out of a situation in Nevada very similar to this that -- that I was doing all the research, okay? And then I was put in jail.

And they did have a Public Defender take over, okay? But my law got me out of the situation. So that is what was used.

And that's what I have been trying to do with Russell here, and I know he's a dammed good attorney. So it's just I -- I haven't had the attention of his busy mind, and that's unfortunate because it's put me into this position.

So there are things, like I said, that needed to be done. As we all know in a criminal case, before we can move -- in other words, if they are not done, then the Court's going to say that I have consented or conceded to these things that have already been done.

So I feel that I need to backtrack. It's been very fragmented because I have been represented by originally John Casey, okay, in this particular case, but before that another fella by the name of David Brooks, and there's just been conflicts with -- that need to be unwound, and I figured out how to unwind it, and I have been frustrated.

THE COURT: Tell me a little bit about your educational background.

THE DEFENDANT: Well, my education background is that I am a high school graduate. Sonora High

School, 1987. I have attended some college.

What happened is I got out of high school and got into the computer industry in 1987. I worked for my father and continued to progress right when the industry took off and wound up working at Stanford University School of Medicine, Adobe Systems and start-up companies down in Silicon Valley during the dot-com area. I rode that.

And I was offered a job at Heavenly Ski Resort. My grandparents had built a cabin up there in the '50s. So I took the opportunity to live in South Lake Tahoe. It was a dream job. I was a skier. I ran a computer network at Heavenly Ski Resort.

I wound up working for the State of Nevada at the Department of Taxation, and through that experience, some legal problems came up. I was terminated with my job as a whistle blower. I thought I did the right thing when they were embezzling money and then some other wrongdoing. They came after me. So I had to navigate some civil law. So that would be the civil law, federal law and then Nevada State law.

And I was retaliated against with criminal charges for basically serving a subpoena to another person, the State pilot who was fired for retaliation, is what it was. He was also a whistle blower.

Long story short, basically I did get myself out of a very similar situation to this, a very similar case. It was alleged threats.

What I have done is studied the law for the last six or seven years and --

THE COURT: Let me say a few things to you.

I am prepared to grant your motion to represent yourself, if that's really what you want to do, but I want to tell you something:

You're smart enough to know, and you have referenced in your own comments here, however prolix and all over the place they were, the risks of representing yourself, the situations that present if you don't object to something or if you are found to have assented to something by your silence or you have failed to stay on track, which you had trouble doing this morning. If you represent yourself, you are going to have to follow the same rules that Mr. Gomes follows. You have to follow the rules that I set down consistent with the Evidence Code and all the other laws which relate to the trial of a case.

And the irony here is that you have one of the finest lawyers available anywhere who could do that, and as intelligent as you are, I am confident that you won't be able to do that.

It doesn't mean you can't represent yourself, but I will require that you stay focused on the issues at hand, that you not go off on filibusters about jurisdiction and the like. We won't have that.

THE DEFENDANT: And my take on that is that my expertise, to be honest with you, would be writing these

pretrial motions that I do know about. I do know about the -- obviously, you know, how to recuse a judge and the 995 motion and a 1385 -- the motion to suppress evidence, okay?

And I know that there's things in my case that warrant these, okay? That the warrant -- the search warrants were issued by a recused judge, for example, and they were void, and the information was used in the grand jury and that 995 motion and so forth.

(Further unreported discussion was then had between Mr. Miller and the Defendant.)

THE DEFENDANT: Well, I will comply to the law to the best of my knowledge and your rulings.

The problem is going to be, like I was explaining, is -- for example, if I am on the witness stand, how am I supposed to be examined, okay? So some of these things are impossible.

If I am doing my case in chief, you are going to say I am testifying, because I'm gonna be telling the jury my side of the story, and I have already been through these before, and the judge has said, *Well, Mr. Robben, you're testifying*, and it gets garbled up, okay?

Because it does get very confusing, as you probably -- I don't know if you have seen a person represent themselves but --

THE COURT: Many times.

THE DEFENDANT: But it becomes difficult, and I

have seen these stumbling blocks.

So already looking at the landscape, I know my shortcomings.

My strengths are in pretrial motions, and that's what's frustrated me to make this proposal, that I represent myself so they can get done, because they haven't gotten done, and the only thing that has been filed was a motion to continue, and I didn't waive my right to a speedy trial.

And under -- and the People broke the first -- Lomax in 2010, the Supreme Court has said that a busy schedule wasn't a good cause. So that's what's happened here, and the case has been delayed.

And I am good at studying the law and getting the case law, because that's what I do, and I am very, very good at that.

And the problem is going to be -- it's not that -- that I don't respect you or rules. I do respect the rules. That's why I am trying to do this, because I see that -- that the rules aren't being respected when I am being -- in other words, my right to a speedy trial under the Penal Code, that is spelled out, wasn't being honored, and it's not my fault that there is a delay.

I'm not gonna continue on, but the -- your jurisdiction, I didn't -- I didn't consent to a venue change, okay? A pretrial judge's --

THE COURT: Do you understand you are doing just the things that I have asked you not to do? All of

the things you are just doing now are what I told you not to do.

THE DEFENDANT: And that's what -- if I represent myself, I can put it in the motions so that they are within the format. And --

THE COURT: You are entitled to --

THE DEFENDANT: -- I'm trying to explain why.

THE COURT: You are entitled to represent yourself if you are competent to do so. You don't have to tell me why you want to represent yourself or how you will do it as long as you comply with the rules of the Court and follow the law.

THE DEFENDANT: Right and --

THE COURT: And so far I'm not very optimistic about your prospects in that regard.

THE DEFENDANT: Okay. The shortcomings are going to be --

(Further unreported discussion was then had between Mr. Miller and the Defendant.)

THE DEFENDANT: I would follow the rules.

THE COURT: What I am going to do is -- if you don't have the paperwork we gave you last time for representing yourself, I am going to have that provided again to you. I am going to put this matter out for one week or whatever date works for the parties.

I want you to meet one more time with Mr. Miller in regard to your intention to represent yourself. When I see you back, if it's still your wish

to represent yourself, then I will grant that, but if you don't follow the procedures and comply with the Court's direction not to go off on tangents that have nothing to do with what we are doing in moving a case to trial and through trial, then I am going to terminate your right to represent yourself, because we cannot have a trial turn into a circus because the defendant, however intelligent -- and you are plainly intelligent, and I respect that -- won't follow the rules.

When I say you're not going to go into an area, as in jurisdiction or something before the jury, you're not going into that area. That's not going to happen.

Mr. Gomes?

MR. GOMES: Your Honor, I don't know that I have any ability to persuade the Court on the timing of this, but we -- we actually are set for trial right now three weeks from Monday.

So from my standpoint, I am a little anxious to get this issue resolved so that I can either begin preparing for trial, subpoenaing my witnesses and moving that direction or not.

So is it possible that we could deal with this this afternoon? Not that I am so anxious to stick around Sacramento all day, but I will if necessary, but if there's a way we can get done sooner rather than later.

THE COURT: Mr. Miller?

MR. MILLER: Yes, Your Honor.

May I inquire if this department is presently conducting a jury trial?

THE COURT: We are open.

MR. MILLER: Pardon me?

THE COURT: We are open right now.

MR. MILLER: Could we come back Monday afternoon?

I appreciate the Court's suggestion that I meet with Mr. Robben one more time, and I will not be able to do that today when I get back. I have other issues that I need to handle.

So Monday afternoon, if that works better?

THE COURT: Mr. Gomes?

MR. GOMES: Unfortunately, I have to be in South Lake Tahoe Superior Court Monday morning and in Placerville Superior Court Monday afternoon. I cannot do Monday.

MR. MILLER: How about Tuesday?

MR. GOMES: I could do Tuesday.

THE COURT: Let's do Tuesday at 4 o'clock.

MR. MILLER: Thank you.

THE DEFENDANT: I wanted to ask you when you would be talking to me so we can --

MR. MILLER: Between now and Tuesday.

THE DEFENDANT: Can you narrow it down, because just in the past you said you were gonna visit me and --

THE COURT: Mr. Robben, Mr. Robben.

THE DEFENDANT: -- that is RCC (sic).

MR. MILLER: I have got to go to RCCC, Your Honor, to see him. So I will make an effort to do so either Sunday or Monday, but I will see him before 4 o'clock on Tuesday.

THE DEFENDANT: Because I would be willing to make a decision today, just --

THE COURT: I understand.

The paperwork is in front of you. See you on Tuesday at 4 o'clock.

MR. MILLER: Thank you.

--oOo--

Mr. Miller claimed he had a calendar conflict since he was in trial on another case and not available for the 06/05/2017 trial. PC 987.05 mandates counsel must be ready for trial when appointed. Petitioner objected to Mr. Miller's continuance and asserted his right to a speedy trial. In *People v Lomax (2010) Cal Supreme Ct. 49 Cal.4th 530 112 Cal.Rptr.3d 96 234 P.3d 377:*

A criminal defendant's right to a speedy trial is guaranteed by the Sixth Amendment to the federal Constitution and article I, section 15 of the California Constitution. "The California Legislature has `re-expressed and amplified' these fundamental guarantees by various statutory enactments, including Penal Code section 1382. (*Townsend v. Superior Court (1975) 15 Cal.3d 774, 779 [126 Cal.Rptr. 251, 543 P.2d 619*].)" (*People v. Harrison (2005) 35 Cal.4th 208, 225 [25 Cal.Rptr.3d 224, 106 P.3d 895].*) **At all relevant times, section 1382 has required that, "unless good cause to the contrary is shown," the court "shall order the action to be dismissed" if a defendant is not brought to trial within 60 days after the filing of an information.** (§ 1382, subd. (a)(2); see Stats. 1992, ch. 278, § 1, p. 1108.)

"Defense counsel, as part of his or her control of the procedural aspects of a trial, ordinarily has authority to waive the statutory speedy trial rights of his or her client, even over the client's objection, as long as counsel is acting competently in the client's best interest. [Citations.] This is because statutory speedy trial rights are not among those rights that are considered so fundamental that they are `beyond counsel's primary control.' [Citations.] **On the other hand, our concern for the client's right to the assistance of unconflicted counsel has led us to conclude that appointed defense counsel lacks authority to waive his or her client's statutory speedy trial rights when the client personally objects to a continuance and the sole reason for the continuance is defense counsel's obligation to another client.** [Citations.]" (*Barsamyan v. Appellate Division of Superior Court (2008) 44 Cal.4th 960, 969 [81 Cal.Rptr.3d 265, 189 P.3d 271].)*

In *People v. Johnson (1980) Cal. Supreme Ct. 26 Cal.3d 557 162 Cal. Rptr. 43*:

"We summarize briefly our conclusions respecting the speedy trial issue. We conclude, first, that when a client expressly objects to waiver of his right to a speedy trial under section 1382, counsel may not waive that right to resolve a calendar conflict when counsel acts not for the benefit of the client before the court but to accommodate counsel's other clients. Secondly, we conclude that, at least in the case of an incarcerated defendant, the asserted inability of the public defender to try such a defendant's case within the statutory period because of conflicting obligations to other clients does not constitute good cause to avoid dismissal of the charges. Finally, we reaffirm the holding of *People v. Wilson (1963) 60 Cal.2d 139 [32 Cal. Rptr. 44, 383 P.2d 452]*, that a defendant seeking post-conviction review of denial of a speedy trial must prove prejudice flowing from the delay of trial; we affirm here because defendant proved no prejudice."

This Petitioner's argument fits the above case law since Mr. Miller's conflicting obligations to another client were not "good cause", Petitioner objected and asserted his speedy trial rights. Petitioner was prejudiced because case # P17CRF0089 should have been dismissed for the speedy trial violation of PC 859(b) failure to bring defendant to preliminary hearing in the mandated 10 days. Also pursuant to *Mason v. Superior Court of Placer Cnty., 242 Cal.App.4th 773 (Cal. Ct. App. 2015*) "A failure to hold the defendant to answer is the equivalent of a section 871 dismissal of the arson charges in the complaint, even if there is no express order. (*People v. Superior Court (Martinez) (1993) 19 Cal.App.4th 738, 744, 23 Cal.Rptr.2d 733 (Martinez.)"*. "Subject to numerous exceptions (§§ 1387, 1387.1), the general rule of section 1387 is that "[a]n order terminating an action pursuant to this chapter, or Section . . . 871 . . . is a bar to any other prosecution for the same offense if it is a felony . . . and the action has been previously terminated pursuant to this chapter, or Section . . . 871. . . ." (§ 1387, subd. (a).) The basic purpose of this section is to limit improper successive prosecutions which harass a defendant. *(People v. Cossio (1977) 76 Cal.App.3d 369, 372 [142 Cal.Rptr. 781]; Lee v. Superior Court (1983) 142 Cal.App.3d 637, 640 [191 Cal.Rptr. 361] .)" People v. Superior Court (Martinez), supra.*

Case P17CRF0114 should have been dismissed on the lack of good cause for the delay and the petitioner's objection and assertion of his speedy trial rights. If the trial court had granted Petitioner's motion to dismiss, the state would have been barred from refiling the charges against him pursuant to PC 1387.

Section 1387 generally provides a "two dismissal" rule barring further prosecution of a felony if the action against the defendant has twice been previously terminated according to the provisions of that statute. (*People v. Superior Court (Martinez) (1993) 19 Cal.App.4th 738, 742, 23 Cal. Rptr.2d 733 (Martinez).)* With certain exceptions, section 1387, subdivision (a), provides regarding felony offenses: "An order terminating an action pursuant to this chapter [chapter 8 of title 10 of part 2, i.e., sections 1381-1388], or Section 859b, 861, 871, or 995, is a bar to any other prosecution for the same offense if it is a felony ... and the action has been previously terminated pursuant to this chapter [chapter 8 of title 10 of part 2, i.e., sections 1381-1388], or Section **859b**, **861**, **871**, or **995...."**

Case # P17CRF0089 was unlawfully transferred to Sacramento, Russell Millller was never appointed counsel in that case, nor was the case lawfully assigned to Judge Curtis M. Fiorini according to the record.

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
901 H STREET, SUITE 612
SACRAMENTO, CA 95814
Telephone: (916) 447-7223
Facsimile: (916) 444-6456

Attorney for Defendant,
TODD ROBBEN

Filed in Sac not EI Dor

FILED/ENDORSED
JUN 1 2017
By R. Sauceda Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO EI Dorado

THE PEOPLE OF THE STATE OF, CALIFORNIA, Plaintiff, vs. TODD ROBBEN, Defendant.	Case No.: P17CRF0089 NOTICE OF MOTION FOR CONTINUANCE DATE: 6/1/17 TIME: 1:30 p.m. DEPT: 26

TO THE ABOVE ENTITLED COURT AND THE DISTRICT ATTORNEY, SACRAMENTO COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that on June 1, 2017, in Department 26, at 1:30 p.m., or as soon thereafter as the matter may be heard, the defendant, **TODD ROBBEN**, will make a motion that the court order the above-entitled trial continued pursuant to Penal Code § 1050 until July 17, 2017 or any date thereafter convenient to Court and Council. This matter is currently scheduled for trial assignment on beginning June 5, 2017.

This motion is made on the following grounds: Russell W. Miller, Jr., attorney for Defendant, is currently in an in-custody trial, *People v. Franks*, Sacramento County Superior Court Case No. 15F01671, in Department 40 of the Sacramento County Superior Court. Mr. Franks is charged with a violation of Penal Code §187 in the first degree with the allegation of a prior "Strike" conviction. This trial is expected to last through the week of June 19, 2017.

As well, the case of People v. Robben is complex with many Constitutional issues involved. I am still investigating many issues regarding the viability of the People's case.

This motion will be based on the attached memorandum of points and authorities, court records and pleadings in the court files in this case and arguments and evidence presented at the hearing in this matter.

DATED: May 26, 2017

RUSSELL W. MILLER, JR.
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

THE DEFENDANT IS ENTITLED TO A CONTINUANCE ON A SHOWING OF GOOD CAUSE.

Penal Code § 1050(b) provides that:

> "To continue any hearing in a criminal proceedings, including the trial, a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary."

Penal Code § 1050(e) further provides that "Continuances shall be granted only upon a showing of good cause...." The request must be supported by declarations, unless the court first finds good cause to excuse the notice and declaration requirement. The declaration must be executed under penalty of perjury. (*Brown v. Superior Court* (1987) 189 CA 3d 260, 265, 234 CR 416.)

The grant or denial of a motion for continuance is an act within the Court's discretion (*Ungar v. Sarafite* (1964) 376 US 575, 589, 84 S. Ct. 841, 11 L. Ed. 2d 921), but this discretion is not without bounds:

> "While the determination of whether in any given case a continuance should be granted normally rests in the discretion of the trial court, that discretion may not be exercised in such a manner as to deprive the defendant of a reasonable opportunity to prepare his defense. (*Jennings v. Superior Court* (1976) 66 C. 2d 867, 59 CR 440.)

Although the Court must consider the welfare of witnesses (Penal Code § 1050(g).) and the right of the People to a speedy disposition (Penal Code § 1050(a).), it must also consider the defendant's right to a fair trial. (*People v. Courts* (1985) 37 C. 3d 784, 794, 201 CR. 193; *People v. Murphy* (1963) 59 C. 2d 818, 31 CR. 306 (error to deny continuance to prepare following last-minute amendment by prosecution).)

The defendant is entitled by statute to a continuance at arraignment to secure counsel. (Penal Code § 859.)

The defendant is entitled by statue to a continuance at the time set for preliminary hearing to secure counsel. (Penal Code § 860.)

If a defendant cannot secure counsel for the preliminary hearing, it must be postponed "for not less than two or more than five days." (Penal Code § 860.)

The constitutional right to counsel (United States Constitution, Amendment VI; California Constitution article I, section 15) requires that a defendant be given a reasonable continuance to secure counsel of his or her choice (*People v. Courts* (1985) 37 C. 3d 784, 789, 210 CR. 193; *People v. Byoune* (1966) 65 C.2d 345, 54 CR. 749), if the defendant can show that he or she is financially able to secure counsel. (*People v. Lee* (1967) 249 CA. 2d 234, 241, 57 CR. 281; *People v. Parks* (1964) 230 CA. 2d 805, 811, 41 CR. 329.)

The right to counsel (United States Constitution, Amendment VI; California Constitution article I, section 15) includes the right to adequately prepare a defense (*People v. Maddox* (1967) 67 C. 2d 647, 652, 63 CR. 371), including the right to prepare and argue motions and objections before, during, and after trial. (*Cooper v. Superior Court* (1961) 55 C. 2d 291, 302, 10 CR. 842; *People v. Sarazzawski* (1945) 27 C.2 d 7, 17, 161 P. 2d 934; Penal Code § 1049 (five day period to prepare for trial required after plea).)

New counsel has the same right to a reasonable time to prepare as did previous counsel. (*People v. Simpson* (1939) 31 CA. 2d 267, 88 P. 2d 175.)

The unavailability of a witness whose testimony has a legitimate tendency to prove or disprove a fact that could influence the decision in the case is good cause for a continuance. (*People v. Dunstan* (1922) 59 CA. 574, 584, 211 P. 813; *Owens v. Superior Court* (1980) 28 C. 3d 238, 250, 168 CR. 466.)

Physical incapacity of the defendant or defense counsel is good cause for a continuance. (*People v. Crovedi* (1966) 65 C. 2d 199, 53 CR. 284.)

When a defendant joins in requesting a continuance caused by defense counsel's court commitments on behalf of other clients, the court must grant the continuance until either defense counsel can appear or the defendant can obtain other counsel. (*People v. Manchetti* (1946) 29 C. 2d 452, 458, 175 P. 2d 533.)

CONCLUSION

For the above reasons, defendant requests a continuance of the jury trial assignment in this matter from June 5, 2017 to July 17, 2017.

DATED: May 26, 2017

RUSSELL W. MILLER, JR.
Attorney for Defendant

DECLARATION OF RUSSELL W. MILLER, JR. IN SUPPORT OF MOTION FOR CONTINUANCE

I, RUSSELL W. MILLER, JR., do hereby declare that:

1. I am the attorney for TODD ROBBEN.

2. This case is presently set for trial assignment on June 5, 2017 at 9:00 a.m. in Department 26.

3. A continuance of the trial is necessary due to my being in trial in the Sacramento County Superior Court. This trial is anticipated to last through the week of June 19, 2017.

4. The Honorable Raul Thorbourne of the Judge of the Sacramento County Superior Court has estimated that the jury in People v. Watkins should receive the case for deliberation during the week of June 19, 2017.

5. I respectfully request that the trial assignment in this matter be continued until May 17, 2017 or any date thereafter that is convenient to Court and Counsel so I may be able to complete the trial of *People v. Franks* in Department 40 of the Sacramento County Superior Court and properly prepare for the above captioned matter.

6. The defendant is not willing to waive time for this purpose.

7. I respectfully request this Honorable Court to find Good Cause for granting this motion to continue.

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

DATED: May 26, 2017

RUSSELL W. MILLER, JR.
Attorney for Defendant

Mr. Miller moved for a continuance to torpedo Petitioner's speedy rights pursuant to PC 1382. Mr. Miller's June 1, 2017 motion to continue was defective in that he requested the matter to be continued to May 17, 2017 when he meant July 17, 2017 (CT 207). He used Superior Court of Sacramento on the header and used the incorrect case number P17CRF0089 (Both appear corrected after his filing on CT 202).

In *Townsend v. Superior Court (1975) Cal: Supreme Court 15 Cal.3d 774 543 P.2d 619 126 Cal. Rptr. 251*:

> "In general, it is well established that the power to control judicial proceedings is vested exclusively in counsel. (*People v. Kirkpatrick, supra, 7 Cal. 3d 480, 486; People v. Floyd (1970) 1 Cal. 3d 694, 704 [83 Cal. Rptr. 608, 464 P.2d 64] People v. Merkouris, supra, 46 Cal. 2d 540, 554.)* **It follows that "[e]xcept where representation by counsel is so ineffective that it can be described as a 'farce and a sham'** [citations], an attorney may ordinarily waive his client's rights ...." (*People v. Hill (1967) 67 Cal. 2d 105, 114 [60 Cal. Rptr. 234, 429 P.2d 586].*)"

In this case, Mr. Miller was such a Constructive Denial of Counsel and so IAC/CDC that it can only be described as a farce, a sham and where counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates [and that] counsel's acts or omissions resulted in the withdrawal of a potentially meritorious defense.

It is proof of a conspiracy exists in Mr. Miller's fraudulent billings to El Dorado Co. where he billed $4,500.00 dollars a week claiming to be working on the case 40 hours per week when he did not. At the time of Mr. Miller's billing claim, no records of the case # P17CRF0114 had even been transferred to Mr. Miller since the grand jury indictment was still "sealed" on April 21, 2017. The false billing confirms a conspiracy and fraud-upon-the-court.

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorneys at Law
901 H STREET, SUITE 612
SACRAMENTO, CA 95818
Telephone: (916) 447 7223
Facsimile: (916) 447 6456

Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. TODD ROBBEN, Defendant.	Case No(s): P17CRF0114 DECLARATION IS SUPPORT OF SUPPLEMENTAL PAY

1. I, Russell W. Miller Jr., am an attorney duly licensed to practice law in all courts of the State of California.
2. I was appointed on April 21, 2017 by this Honorable Court to represent Mr. Todd Robben inasmuch as he has been deemed to be indigent.
3. This case is both complex and voluminous.
4. This case will involve a great deal of counsel time and efforts inasmuch as there appear to be a number of complicated issues that actually surround the above-entitled case.
5. This case will also involved a great deal of investigation and research involving but not limited to file and court records from a number of jurisdictions both within the States of California and beyond.

6. This case will most certainly involve United States Federal issues for points of clarification and research.

7. Mr. Robben has filed a number of actions on his own volition. Those files must be reviewed for a determination of relevance to the present matter.

THEREFORE, it is respectfully requested that the court deem this matter to be an extraordinary case, for which appointed counsel will be paid at the rate of $100/hour per this Honorable Court's Order.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

Executed this 28th day of April, 2017

Russell W. Miller Jr.
Appointed Attorney for
TODD ROBBEN

ORDER

Good cause appearing, the court finds that the reasonable compensation for ~~series~~ services necessarily to be performed by appointed counsel pursuant to his appointment by this Court is to be paid at the rate ~~of~~ of $100/hour, IT IS SO ORDERED.

Dated 5/3/17

The Honorable Curtis M. Fiorini
Judge Presiding in this matter as
Superior Court Judge of the State
of California

IT IS RESPECTIVELY requested that this Honorable Court enter its ORDER

In the minutes of the above-entitled matter P17CRF0114.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO

CLAIM AND ORDER FOR COMPENSATION OF COURT APPOINTED ATTORNEY/EXPERT

Name, Address and Telephone No. of Attorney/Expert
Russell W. Miller, Jr., SBN 187728
901 H Street, Suite 812
Sacramento, CA 95814
916/447.7223

Space Below for Use of Court Clerk Only
EL DORADO CO. SUPERIOR COURT

FILED 5/15/2017 (DATE)

BY S. THURMAN (DEPUTY)

Case Name: People v Todd Robben

CASE NUMBER: P17CRF0114 (Lead case number if multiple cases)

REPRESENTING: (Check one)
MINOR CHILD:
ADULT: X

I. Claim:

I, Russell W. Miller, Jr., do hereby request an award of [redacted] (claim minimum is $100) as reasonable compensation and expenses relating to my court appointment in this case, for the dates indicated below:

Nature of Action:
Client(s) Name: Todd Robben (Only last name of juvenile)

Nature of Case: felony

Crimes or Matters Charged: PC 422

Court Appointment:
Appointed By: Curtis M. Fiorini (Name of Appointing Judge)

Appointment Date: 04/21/17 (Date of Case Appointment)

Date Case Closed: (Leave blank if not closed)

Dates of Services Covered By This Claim:
04/21/17 (First Date on This Claim) 04/30/17 (Last Date on This Claim)

II. Claim History:
List the total Amount paid (individually or cumulative) to date for each claim submitted for this case (in this department). Include this claim.

Date	Amount	Date	Amount	Date	Amount	Date	Amoun
05/15/17	4,406.00						
							[redacted]

ORDER

Good cause appearing, the court finds that the reasonable compensation for the services necessarily performed, and for the expenses necessarily incurred, by the claimant pursuant to his appointment by this court is [redacted], and IT IS ORDERED that such sum be paid to [redacted]
(Claim minimum is $100, unless final claim)

5/15/2017
Date

SEE ATTACHED ORDER
Judge of the Superior Court

The court will expect counsel for the minor children, in a Family Law case, to file an OSC to collect attorney's fees from the parents once the case is concluded. This rule does not apply to dependency or delinquency cases.

No investigator was ever used, no witnesses ever called, no pretrial challenging the right of a retired judge to hold office by a *quo warranto* proceeding[55], no penal code 995 or 1538.5 suppression motions filed despite clear 4th amendment violations of unlawful search and seizure, lack of jurisdiction, and the 1st amendment free speech was not a crime. Had a 995 or 1385.5 been file along with a demurrer as discussed previously and other pre trial motions – this Petitioner would have been exonerated and since case P17CRF0089 had to be dismissed there was not third refilling pursuant to PC 1387 on dismissals pursuant to PC sections 859b, 861, 871, or 995.

Mr. Miller's haphazard motion was filed in the wrong court (Sacramento not El Dorado), he filed in the wrong case number (P17CRF0089 not P17CRF0114) and requested a continuance to May 17, 2017 when he signed it on May 26, 2017! (It is assumed he meant July 17, 2017).

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

[55] A quo warranto proceeding require consent of the State Attorney General and takes considerable time, See *Nicolopulos v. City of Lawndale, 111 Cal. Rptr. 2d 420 - Cal: Court of Appeal, 2nd Appellate Dist., 4th Div. 2001*

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorneys at Law
901 H STREET, SUITE 612
SACRAMENTO, CA 95814
Telephone: (916) 447 7223
Facsimile: (916) 447 3406

Attorney for Defendant
TODD ROBBEN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA,	**Case No.: P17CRF0114**
Plaintiff,	**NOTICE OF MOTION TO DISMISS PURSUANT TO PENAL CODE §1382(2)**
v	
TODD ROBBEN,	**Date:TBD** **Time:TBD** **Dept:21**
Defendant.	**Trial Date:**

TO THE DISTRICT ATTORNEY OF EL DORADO COUNTY AND/OR HIS REPRESENTATIVE:

PLEASE TAKE NOTICE that on _____, 2017, at _____ or as soon thereafter as the matter may be heard in Department 21 of the above-entitled court, Defendant TODD ROBBEN will move for an order dismissing the action.

This motion will be made on the grounds that the defendant was denied the statutory right to a speedy trial as guaranteed by §1382(2) of the Penal Code and the California State

Constitution in that the defendant was not brought to trial within 60-days after the filing of the information and there was no good cause for the delay beyond this period of time.

The motion will be based on this notice of motion, on the memorandum of points and authorities served and filed herewith, on the records on file in this action and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: 8-17-17

RUSSELL W. MILLER, JR.
Attorney for Defendant
TODD ROBBEN

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorneys at Law
901 H STREET, SUITE 612
SACRAMENTO, CA 95814
Telephone: (916) 447 7223
Facsimile: (916) 447 3406

Attorney for Defendant
TODD ROBBEN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA,	**Case No.: P17CRF0114**
Plaintiff,	**POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PURSUANT TO PENAL CODE §1382(2)**
v	
TODD ROBBEN,	
Defendant.	

Defendant submits the following points and authorities in support of the motion to dismiss:

I

UNLESS GOOD CAUSE TO THE CONTRARY IS SHOWN, THE COURT MUST ORDER THE ACTION DISMISSED WHEN A DEFENDANT IS NOT BROUGHT TO TRIAL WITHIN THE STATUTORY PERIOD

Penal Code §1382(s) provides in part:

"The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases: …

"(2) When a defendant is not brought to trial in a superior court within 60 days after the finding of the indictment or filing of the information. …"

II

THE DEFENDANT IS NOT REQUIRED TO SHOW PREJUDICE WHEN THERE HAS BEEN A VIOLATION OF THE STATUTORY RIGHT TO SPEEDY TRIAL.

In *Overly v Municipal Court for Livermore Pleasanton Judicial Dist.* (1981), 1 Dist) 121 CalApp 3d 377 at 382, the Court of Appeal held that a violation of statutory right to speedy trial result in dismissal of prosecution.

"When there has been a violation of *statutory guarantee* of a speedy trial constitutional right, prejudice to the accused I presumed. He need not make any showing of actual prejudice. There is no balancing of his prejudice against the People's justification. Rather, the People have the burden of showing good cause for delay."

III

THE TERM "BROUGHT TO TRIAL" MEANS CALLING THE CASE FOR TRIAL AND BEING READY THERREAFTER TO TRY THE MATTER TO ITS CONCLUSION

In *Rhinehart v Municipal Court* (1984) 35 Cal 3d 772 at 200, the Court of Appeal held that bringing a defendant to trial within the meaning of Penal Code §1381 requires a good-faith initiation of trial proceedings.

Similarly, in *Thomas v Superior Court* (1984, 2nd Dist) 162 Cal App 3d 728, the appellate court held that an accused is "brought to trial" within the meaning Penal Code §1382 when a case has been called for trial by a judge who is normally available and ready to try the case to conclusion.

IV

FACTS OF THE PRESENT CASE

Mr. Robben was indicted on March 23, 2017. The statutory period requiring the defendant to be arraigned within 15 calendar days or April 7, 2017. 60 days from March 7, 2017 would have been June 6 2017. June 6, was a Tuesday in 2017. The court set a jury trial date for June 5, 2017. That date came and went without the defendant's trial commencing. Defense filed a motion to continue to be heard on June 6, 2017. That motion was not heard on the 6th. A motion to continue was granted on June 7, 2017.

REQUEST FOR JUDICIAL NOTICE

The moving party requests that the Court take judicial notice of its Court file in the above-entitled matter, People v. Todd Robben, El Dorado County Superior Court case number P17CRF0114 pursuant to California Evidence Code §§ 452 and 453.

Dated: 8-17-17

RUSSELL W. MILLER, JR.
Attorney for Defendant
TODD ROBBEN

VERN PIERSON
District Attorney
Dale R. Gomes, SBN 209793
Deputy District Attorney
515 Main Street
Placerville, CA 95667
(530) 621-6472

CALIFORNIA SUPERIOR COURT

COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, v. TODD CHRISTIAN ROBBEN, DEFENDANT.	No.: P17CRF0114 RESPONSE TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO PENAL CODE SECTION 1382

El Dorado County District Attorney Vern Pierson, by Dale R. Gomes, Deputy District Attorney, file this response to the defendant's motion to dismiss pursuant to Penal Code section 1382.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

On March 23, 2017, in El Dorado County Superior Court case number P17CRF0114 an El Dorado County grand jury indicted petitioner on felony violations of Penal Code section 422 (Counts 1, 4, and 6), Penal Code section 140, subdivision (a) (Count 2), Penal Code section 71 (Counts 3 and 5) and Penal Code section 664/71 (Counts 7, 8 and 9). On April 12, 2017, in case P17CRF0114 Judge Proud took judicial notice of the El Dorado County Superior Court minutes from March 21, 2017, wherein the case was ordered transferred to Sacramento County Superior Court.

A hearing date was set for April 14, 2017, in Sacramento County Superior Court Department 26 in front of Judge Fiorini. Judge Proud appointed attorney John Casey to represent petitioner. Petitioner was ordered transported to Sacramento County pending the next hearing date.

Petitioner was arraigned on the Indictment in this case in Sacramento County Superior Court Department 26 by Judge Fiorini on April 14, 2017. Petitioner entered a plea of not guilty and a denial to any special allegations and a bail hearing was set for April 21, 2017. The court granted petitioner's motion to unseal the indictment and transcript and provide them to the defense. A jury trial was set for within statutory time limits on June 5, 2017, with a trial readiness conference on May 26, 2017.

On April 21, 2017, attorney John Casey declared a legal conflict and requested to be relieved. Judge Fiorini relieved Mr. Casey and Russ Miller was appointed to represent petitioner. Mr. Miller accepted appointment. The case was continued for further proceedings and bail motion to April 28, 207 in Department 26 of the Sacramento Superior Court.

On April 28, 2017, petitioner was present with attorney Russ Miller and moved to continue the matter to May 12, 2017, in the same department. On May 12, 2017, Mr. Miller appeared and petitioner's appearance was waived. A copy of the transcript was released to Mr. Miller, who requested the hearing continue to May 15, 2017. On May 15, 2017, Mr. Miller appeared with petitioner and moved to lift the El Dorado County detainer hold. The court granted petitioner's motion and ordered the hold lifted forthwith. The trial readiness and trial dates previously set

were confirmed.

The parties appeared before Judge Fiorini on May 26, 2017, at which time the defendant through his attorney orally noticed a motion to continue the jury trial for good cause and indicated a motion would be filed by May 30, 2017. The court set a hearing on June 1, 2017, for further trial readiness and to hear petitioner's motion to continue the jury trial.

On June 1, 2017, the parties appeared in Department 26 and defendant filed his motion to continue the currently set jury trial. The motion was continued to June 6, 2017, because the defendant's attorney was engaged in a jury trial and unavailable at which time petitioner's motion was again continued to June 7, 2017.

When the parties appeared on June 7, 2017, petitioner filed in pro per a Code of Civil Procedure § 170.1 challenge as to Judge Fiorini. Petitioner was not willing to stipulate to assignment of a reviewing judge and the court directed the clerk to deliver the file to the Master Calendar Clerk for referral to the Administrative Office of the Courts for assignment. The defendant's jury trial was formally vacated, criminal proceedings were stayed and a further court date was set on June 26, 2017, in Sacramento Superior Court Department 47.

ARGUMENT

A. DEFENDANT WAS NOT DENIED ANY RIGHT PROVIDED TO HIM BY PENAL CODE SECTION 1382.

As it applies in the present case, California Penal Code section 1382 provides that a defendant may be entitled to a dismissal if he "is not brought to trial within 60 days of the defendant's arraignment on an indictment." However, Penal Code section 1382 specifically provides for exceptions to this rule when "good cause to the contrary is shown".

In the present case, the defendant was arraigned on the indictment on April 14, 2017, and was scheduled to commence his jury trial on June 5, 2017, well within the 60 day limitation set forth in section 1382. The People were prepared to afford the defendant his right jury trial beginning June 5, 2017. However, on May 30, 2017, the defendant through his attorney sought a "good cause" continuance of that trial. Furthermore, on June 7, 2017, prior to the court ruling on his motion to continue, the defendant personally filed a CCP 170.1 challenge on the judge assigned to hear his trial. Both of these circumstances created "good cause" to continue the defendant's trial and prevented the defendant's trial from commencing prior to the expiration of the 60 day window proscribed by section 1382.

The only delays and continuances in the present case have been of the defendant's own design. The defendant cannot demand a delay in the proceedings to litigate collateral issues that are important to him, and then later demand a dismissal because his requested delays were afforded to him at his behest.

CONCLUSION

Based on the foregoing, the District Attorney's Office respectfully requests that the court deny the defendant's motion

to dismiss.

Dated: August 25, 2017

Respectfully submitted,

VERN PIERSON
District Attorney

DALE R. GOMES
Deputy District Attorney

Mr. Miller did file a motion to Dismiss pursuant to 1382, however the motion was defective in that he states 'Mr. Robben was indicted on March 23, 2017. The statutory period requiring the defendant to be arraigned within 15 calendar days or April 7, 2017. 60 days from March 7, 2017 [sic] would have been June 6 2017. June 6, was Tuesday in 2017. The court set a jury trial date for June 5, 2017. That date came and went without the defendant's trial commencing. Defense filed a motion to continue to be heard on June 6, 2017. That motion was not heard on the 6th. A motion to continue was granted on June 7, 2017."

Mr. Miller clearly mistakes "60 days from March 7, 2017 [sic] would have been June 6 2017" – he meant April 7, 2017. It is not clear what statute required the defendant to be arraigned within 15 days after indictment (or the filing of the indictment) since Mr. Miller fails to refer to any statute or penal code here and it appears he meant PC 1382 (a)(1):

> (a)The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:
>
> (1)When a person has been held to answer for a public offense and an information is not filed against that person within 15 days.
>
> (a)(2) In a felony case, **when a defendant is not brought to trial within 60 days of the defendant's arraignment on an indictment** or information, or reinstatement of criminal proceedings pursuant to Chapter 6 …

Mr. Miller appears to have failed to realize that the 15 day rule applied only to cases with a preliminary hearing, not an indictment which mandates 60 days after the arraignment indictment which was filed which was March 23, 2017. **However, this Petitioner was NOT "held to answer" within 48 hours of the indictment pursuant to Penal Code 825** which says a person who is arrested must be brought to court within 48 hours (not including weekends and court holidays) of arrest. If the District Attorney has not filed charges by that time, the person must be released from custody. Sixty days from March 23, 2017 would have been approximately May 23, 2017. **The arraignment in case # P17CRF0114 was April 14, 2017.** Mr. Miller was IAC (Ineffective Assistance of Counsel) for his failure to move for dismissal on the proper argument listed above, the unreasonable delay in making the motion and waiting to 08-21-2017 "Defendant loses speedy trial 1382 right after unreasonable delay in

making motion (waiting to the 61st day)" *People v. Wilson (1963) Cal. Supreme Ct. 60 Cal.2d 139, 145 f/n 3.*

In this case, Mr. Miller was so IAC/CDC that it can only be described as a farce, a sham and proof of a conspiracy exists in Mr. Miller's fraudulent billings to El Dorado Co. where he billed $4,500.00 dollars a week claiming to be working on the case 40 hours per week when he did not.

As previously explained this IAC issue complies with the *Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674, 1984 U.S. LEXIS 79, 52 U.S.L.W. 4565 (U.S. May 14, 1984)* two prong test in order to show that assistance of counsel was so defective as to require reversal or setting aside of a death sentence: (1) the counsel's performance must be deficient, and (2) that deficient performance must have prejudiced the defendant so much as to have deprived him of a the right to a fair trial.

The CDC claim does not require Petitioner to prove any prejudice.

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

WEDNESDAY, SEPTEMBER 13, 2017, MORNING SESSION

--oOo--

The matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, came on regularly this day before Honorable Steve White, Assigned Judge of the Superior Court of the State of California, for the County of El Dorado, Department 21 of Sacramento Superior Court.

The People were represented by Dale Gomes, Deputy District Attorney for the County of El Dorado.

The Defendant was represented by Russell Miller, Attorney at Law.

The following proceedings were then had:

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Good morning.

In the matter of the People of the State of California versus Todd Robben, P17CRF0114, the record will show that Mr. Robben is present with his counsel Mr. Miller. Mr. Gomes is here on behalf of the People.

There is a jury panel in the hallway, but before we bring them in, I want to address some pending issues:

One is the Defendant's motion for dismissal pursuant to 1382 of the Penal Code.

Is that matter submitted?

MR. GOMES: Yes.

MR. MILLER: Unless there's questions by the

Court, it's submitted.

THE COURT: All right. The motion is denied.

It's not well-founded. The delays and continuances which are offered in terms of the timetable are almost entirely the consequence of the Defendant's actions, delaying matters to litigate collateral issues, and there is no legal basis or factual basis for granting of that motion.

It is denied.

There was another issue that was raised yesterday by Mr. Miller, raised with this judge by Mr. Miller yesterday, having to do with whether the jurors should be selected from an El Dorado County venire rather than Sacramento County since this is an El Dorado County case.

I researched this matter to large extent last night and have concluded that there isn't a problem presented by a Sacramento panel being used rather than an El Dorado panel being used, and my primary and very short summary, Counsel, on that is that this is not a jurisdictional issue. There may be a venue issue, which I am having researched further, but that venue issue does not preclude the Court from selecting a jury from a Sacramento citizenry as opposed to El Dorado citizenry.

But I am having this matter -- my own research on it reviewed, and this matter is also being addressed with the judicial council, which is the body by which the case was transferred to Sacramento County to have

D.A. CONFLICT-OF-INTEREST VIOLATED U.S. 14TH AMENDMENT & IAC

Mr. Miller's IAC/CDC is also evident on his other haphazardly written motion to disqualify the entire El Dorado D.A. office pursuant to PC 1424 where he cites wrong case law and cites civil code 128 and filed the motion well past any meaningful timeframe, and he failed to comply with PC 1424 and mail the State Attorney General 10 court days before the motion was to be heard, or properly and timely serve the D.A.

Mr. Miller should have also included the U.S. 14th amendment due-process violation and Discriminatory prosecution constitutes adequate grounds for reversing a conviction *(People v. Winters, (1959)171 Cal. App.2d Supp. 876, 878 [342 P.2d 538]*) when the defendant proves: "(1) `that he has been deliberately singled out for prosecution on the basis of some invidious criterion;' and (2) that `the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities.'" *People v. Superior Court (Hartway), 562 P. 2d 1315 - Cal: Supreme Court 1977* . Retaliatory, Selective & Vindictive prosecution were also a proper issues (U.S. 14th due-process & equal protection) since this was a clear set of cases based on perjury, fabricated evidence, knowledge the Petitioner was innocent and retaliation for the filing of lawsuits, complaints, protests, recalls, etc. This court will see that this Petitioner was clearly convicted on false charges and given the maximum upper term sentences for minor crimes. Petitioner was sentenced to the maximum 18 months for the alleged driving on a suspended license case # S16CRM0096 for a first time offence! Petitioner received the maximum upper term sentence in case # P17CRF0114 when the charges were non-violent "wobblers" (could be misdemeanors) and Petitioner had no prior felonies or prison history.

In *People v. Vasquez, 137 P. 3d 199 - Cal: Supreme Court 2006*:

> As we explained at length in Eubanks, public prosecutors in California are required to exercise their discretionary functions, which are broad in scope and subject to only limited review, "`with the highest degree of integrity and impartiality.'" (Eubanks, supra, 14 Cal.4th at p. 589, 59 Cal.Rptr.2d 200, 927 P.2d 310, quoting People v. Superior Court (Greer) (1977) 19 Cal.3d 255, 267, 137 Cal.Rptr. 476, 561 P.2d 1164.) **Impartiality, in this context, means not that the prosecutor is indifferent to the conviction or acquittal of the defendant—the prosecutor does not share in the neutrality expected of the judge and jury—but that the prosecutor is "expected to**

exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual." (Eubanks, at p. 590, 59 Cal.Rptr.2d 200, 927 P.2d 310.) **The public prosecutor's proper interest "`"is not that it shall win a case, but that justice shall be done."'"** (Id. at p. 589, 59 Cal.Rptr.2d 200, 927 P.2d 310.)

In section 1424, the Legislature established a substantive test for a motion to disqualify the district attorney: "The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial." The statute demands a showing of a real, not merely apparent, potential for unfair treatment, and further requires that that potential "rise to the level of a likelihood of unfairness." (Eubanks, supra, 14 Cal.4th at p. 592, 59 Cal.Rptr.2d 200, 927 P.2d 310.) **Although the statute refers to a "fair trial," we have recognized that many of the prosecutor's critical discretionary choices are made before or after trial and have hence interpreted section 1424 as requiring recusal on a showing of a conflict of interest "`so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings.'"** (Eubanks, at p. 593, 59 Cal.Rptr.2d 200, 927 P.2d 310, quoting People v. Conner, supra, 34 Cal.3d at p. 148, 193 Cal.Rptr. 148, 666 P.2d 5.)

Below is an article from the Placerville newspaper where D.D.A. Dale Gomes used the platform to express his support for his boss, D.A. Vern Pierson who has direct influence over D.D.A. Gomes.

Mountain Democrat

Vern Pierson seeking another term as DA

By Pat Lakey

He has put the likes of Phillip and Nancy Garrido behind bars for kidnapping an 11-year-old Jaycee Dugard and holding her for years that included repeated sexual assault.

He has argued before the court that the man who ran down Placerville California Highway Patrol officer Scott Russell deserved to die — and that's the verdict the jury rendered against David Zanon.

He has looked after his staff of crack attorneys and investigators, along with support staff, by putting them into a building that fits their caliber, quarters he worked hard to bring to reality.

Now El Dorado County District Attorney Vern Pierson wants more time to continue doing the job he treats with passion. He is seeking re-election in June to the post he has held since 2007.

Read more: https://www.mtdemocrat.com/news/vern-pierson-seeking-another-term-as-da/

Discussion | 10 comments

- **John C.Garon** April 08, 2018 - 11:31 pm

Pierson is a long-time GOP hack who has always put his career and party ahead of long-term improvements in the DA's office. It's time for those who believe in term limits to put their actions where their mouth is.

Reply Report abusive comment

- **Dale R Gomes** April 09, 2018 - 5:43 pm

Mr. Garon with all due respect you could not be more wrong. What exactly is it that you think you know about my DA's office? Have you ever even been inside the building? Were you ever inside the building before Vern Pierson took over? Do you have any idea what the District Attorney's Office does? Do you have any idea how much this District Attorney's Office has changed for the better under the leadership of Vern Pierson? Your commentary suggests that all of these questions are merely rhotorical. You clearly have no idea what you are talking about. Come on over to my office. Introduce yourself and lets talk about the incredible progress this DA's Office

has made over the past 11 years. That is, unless you are more interested in partisanship than you are in the truth. Dale Gomes Deputy District Attorney

- **Richard** April 11, 2018 - 1:43 pm

Why of course Gomes, "come on over to my office", "let's talk". This seems to be the problem with young political motivated bullies. You believe your superior, your snobbish, rude and absolutely arrogant. You don't care about your day to day obligation to the people of El Dorado County or where ethical lines are drawn. Using County facilities and time to pursue a political agenda is obviously just fine with you. And Gomes, using veterans, non-profits that help children as a vehicle to promote anyone's re- election, just makes me sick. Having attend the events you site, and having set the bench mark for raising money for veterans, it makes me doubly sick. Where I'm not planning to vote for Vern because of his affiliations with Trump/McClintock, do Vern a favor, don't write another thing at work having to do with anyone's re-election campaign.

Mr. could have easily contacted the other people, namely Dan Dellinger to testify or file affidavits that this Petitioner attended meetings about the 2016 recall to remove D,A. Vern Pierson from office and this Petitioner was paid by the recall effort and created the recall website https://neighborsagainstcorruption.wordpress.com/. This Petitioner did sign the actual petition and even attempted to gather signatures in South Lake Tahoe before being arrested in 2016 in the S16CRM0096 case. The Petitioner did not sign the initial petition sent to the County Recorders office since he lived in Tuolumne County and his signature was not required since there were enough signatures to initiate the recall – Petitioner's signature was not required.

An example of the e-mail exchanges between Petitioner and Dan Dellinger:

Draft Outline & Text For Neighbors Against Corruption Website Inbox ×

Dan Dellinger <dandellinger@infostations.com> Jan 26, 2016, 5:34 PM
to me

Hi Ty –

Here is the draft outline & text for our website. I still have to write the Bonus Scandal section. Hopefully we will get some more stories. I am also attaching some other things we might use. Let us talk when you get a chance to look at this.

THANKS!!!

Dan
(530) 644-5663
(530) 363-4174

8 Attachments

WHY SHOULD WE ...

pierson-petition-fo...

Website Outline & ...

Recall of Pierson & Harn Planning & Organization Meeting Thursday February 18 - robben.ty@gmail.com - Gmail - Google Chrome

mail.google.com/mail/u/0/?ui=2&view=btop&ver=1nj101dboqm98&q=neighborsagainst&qs=true&search=query&th=%23thread-f%3A1525656102342318512%7Cmsg-f%3A1525656102342318512&qt=agains...

Recall of Pierson & Harn Planning & Organization Meeting Thursday February 18 Inbox ×

Dan Dellinger <dandellinger@infostations.com> Mon, Feb 8, 2016, 4:50 PM
to Dan

Hi Everyone –

We are now officially *Neighbors Against Corruption* and it is time for us to have another planning meeting.

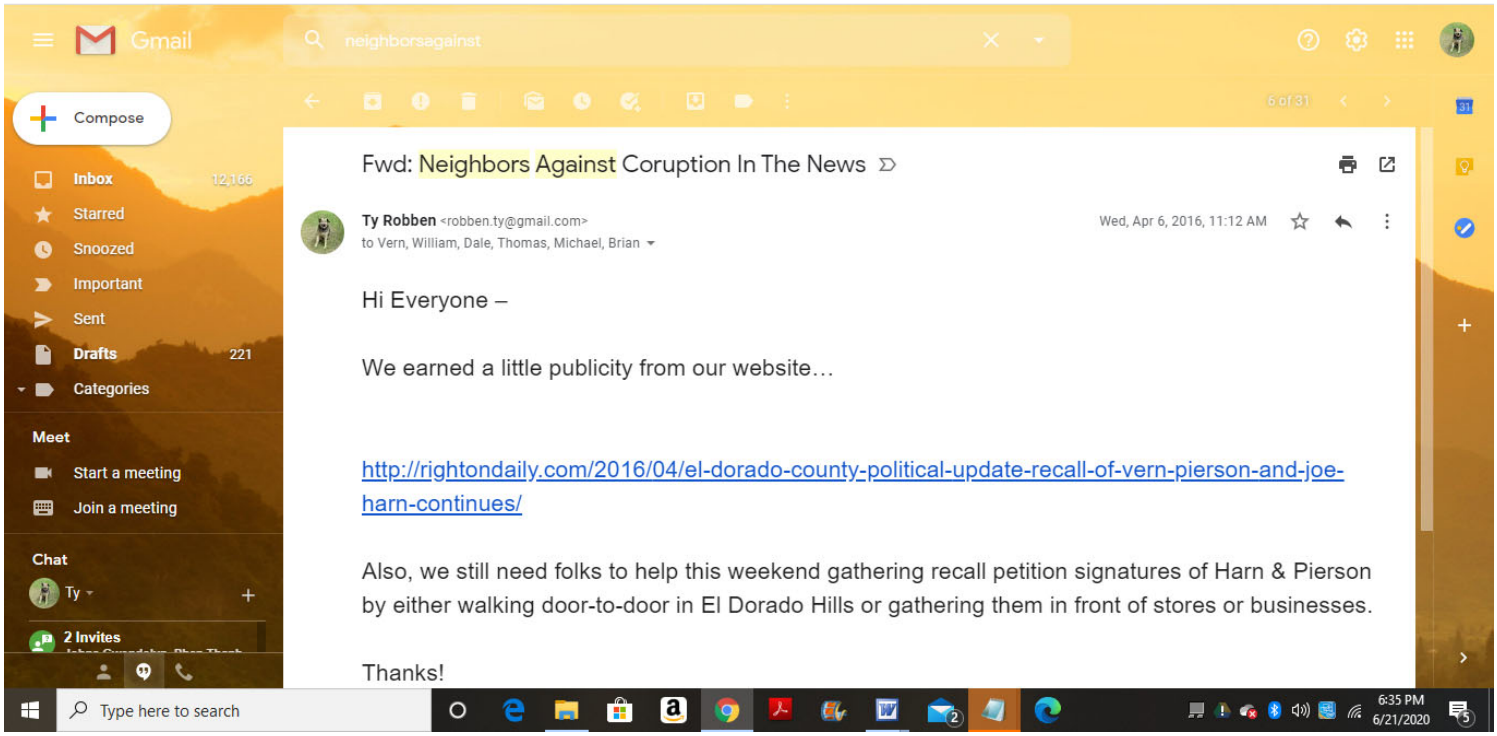
We need you to help so please make every effort to attend this important meeting.

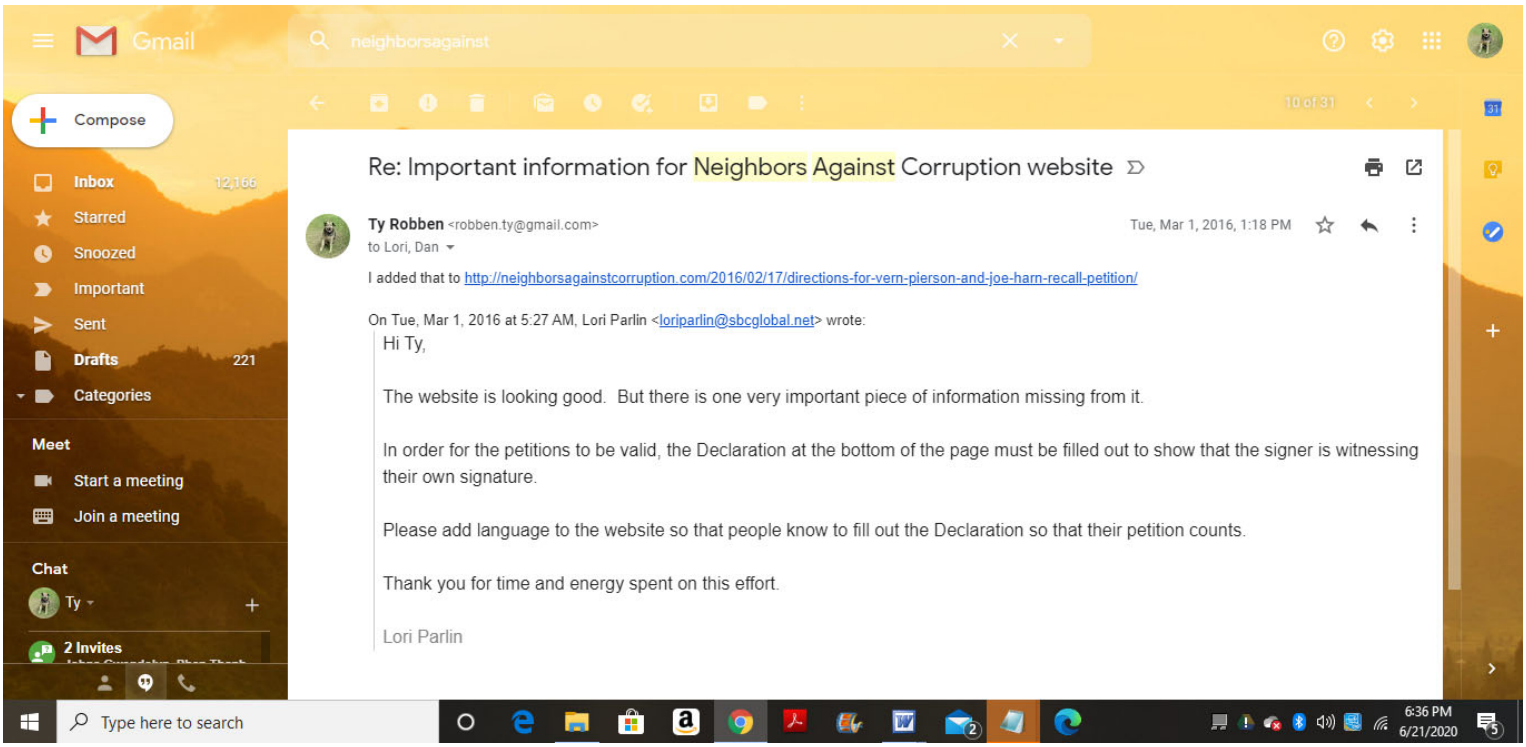
Date: Thursday February 18, 2016

Time: 3:00 PM (1500 hours for some of you)

Where: Colima De Oro Mexican Restaurant (back room)
649 Pleasant Valley Rd

Type here to search 6:33 PM 6/21/2020


Gmail
neighborsagainst
Compose
Inbox 12,166
Starred
Snoozed
Important
Sent
Drafts 221
Categories
Meet
Start a meeting
Join a meeting
Chat
Ty
2 Invites
Fwd: Neighbors Against Coruption In The News
Ty Robben <robben.ty@gmail.com>
to Vern, William, Dale, Thomas, Michael, Brian
Wed, Apr 6, 2016, 11:12 AM
Hi Everyone –
We earned a little publicity from our website…
http://rightondaily.com/2016/04/el-dorado-county-political-update-recall-of-vern-pierson-and-joe-harn-continues/
Also, we still need folks to help this weekend gathering recall petition signatures of Harn & Pierson by either walking door-to-door in El Dorado Hills or gathering them in front of stores or businesses.
Thanks!
Type here to search
6:35 PM
6/21/2020


Gmail
neighborsagainst
Compose
Inbox 12,166
Starred
Snoozed
Important
Sent
Drafts 221
Categories
Meet
Start a meeting
Join a meeting
Chat
Ty
2 Invites
Re: Important information for Neighbors Against Corruption website
Ty Robben <robben.ty@gmail.com>
to Lori, Dan
Tue, Mar 1, 2016, 1:18 PM
I added that to http://neighborsagainstcorruption.com/2016/02/17/directions-for-vern-pierson-and-joe-harn-recall-petition/
On Tue, Mar 1, 2016 at 5:27 AM, Lori Parlin <loriparlin@sbcglobal.net> wrote:
Hi Ty,
The website is looking good. But there is one very important piece of information missing from it.
In order for the petitions to be valid, the Declaration at the bottom of the page must be filled out to show that the signer is witnessing their own signature.
Please add language to the website so that people know to fill out the Declaration so that their petition counts.
Thank you for time and energy spent on this effort.
Lori Parlin
Type here to search
6:36 PM
6/21/2020

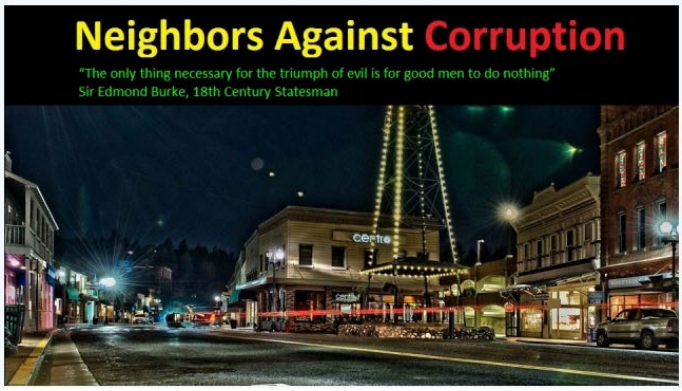
Neighbors Against Corruption

"The only thing necessary for the triumph of evil is for good men to do nothing"
Sir Edmond Burke, 18th Century Statesman

About

About Neighbors Against Corruption

Posted on February 5, 2016



Welcome

Contact: edcneighborsagainstcorruption@gmail.com

Thank you for taking time out of your busy schedule to exercise your civic duty to learn about our County Government and the people we, as voters, selected to oversee and manage our local government.

Like you, we want them managing our County government in an honest manner to impartially provide the services we expect and demand.

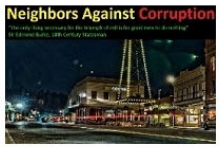
Donate Today – Please Mail Completed Petitions and Contributions to:

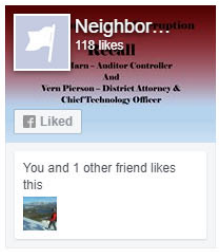
Neighbors Against Corruption P.O. Box 268 Shingle Springs, CA 95682

FPPC # pending

CLICK HERE : Directions for Vern Pierson and Joe Harn recall petition

Don't be afraid to sign the petitions. Government Code §6253.5 provides that the recall petitions: "shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions."





Blog Stats
- 3,659 hits

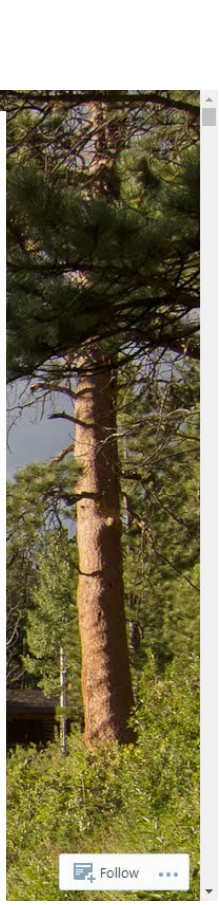
Recent Posts
- FIGHTING THE SOUTH LAKE TAHOE COPS FOR DUE PROCESS RIGHTS
- Ninth Circuit Panel Suggests Perjury Prosecution For Lying Prosecutors like Vern Pierson
- MUST SEE VIDEO: Ray Nutting Talks about the Recall election of Vern Pierson and Joe Harn
- Directions for Vern Pierson and Joe Harn recall petition
- Vern Pierson & Joe Harn recall efforts in the news
- About Neighbors Against Corruption

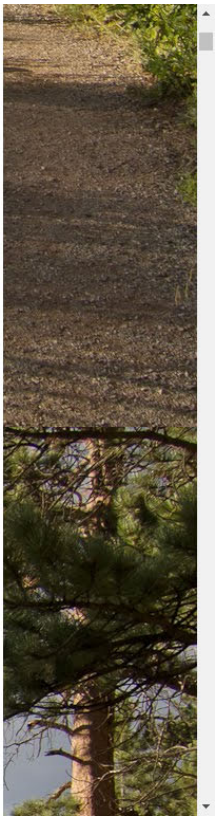
Recent Comments

El Dorado County Nei... on Ninth Circuit Panel Suggests P...

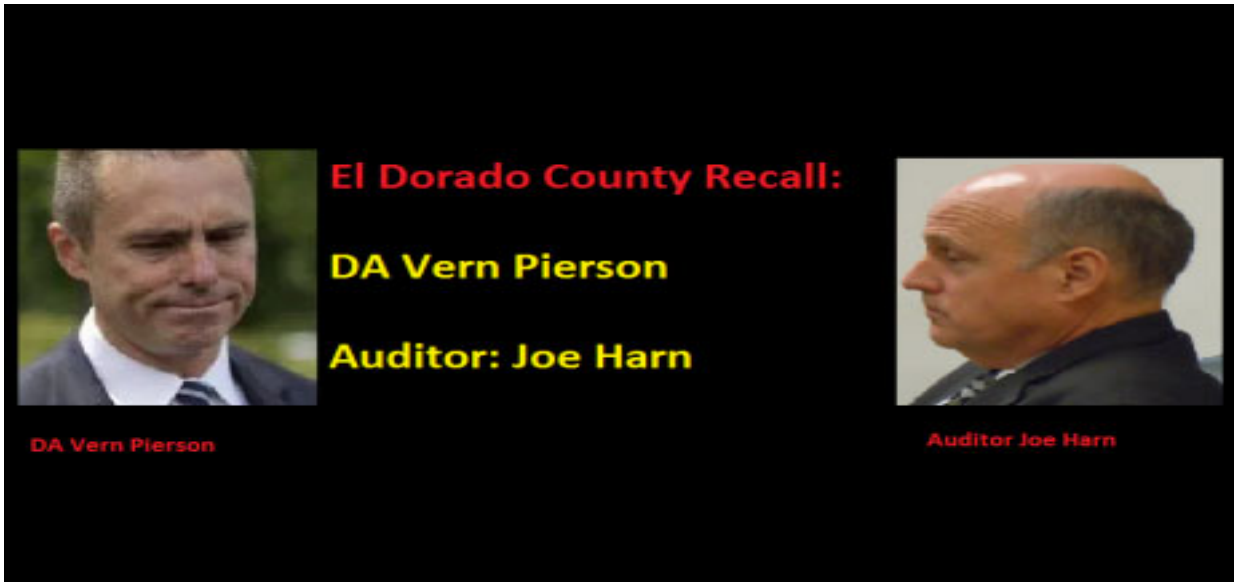
Top Clicks
- None

Archives
- April 2016
- March 2016
- February 2016





Mountain Democrat



DA also on recall list

By Amanda Williams

https://www.mtdemocrat.com/news/da-also-on-recall-list/

Efforts to recall El Dorado County District Attorney Vern Pierson are under way.

The county Elections Department received and verified 20 signatures supporting the recall. The notice of intent to circulate a recall petition and affidavit of service was given to Elections officials on Nov. 24.

The proponents of the petition list the grounds for recall as: “We the voters are seeking relief from the tyranny of our elected officials who have engaged in malfeasant acts and corrupt practices, including but not limited to abusing power and resources of office to pursue criminal prosecutions and civil litigation against innocent persons and businesses for personal and political reasons such as generating career building publicity and punishing political enemies; participating in an immoral scheme whereby some county elected officials receive

non-performance bonuses ...; participating in an immoral scheme whereby the district attorney receives extra pay as county chief technology officer, thereby gaining access to all e-mail messages moving through the county Internet system, including the Public Defender's Office; and abusing court rules to discredit judges for personal and political reasons."

The notice was served by former El Dorado County Interim IT director Kelly Webb and had many of the same signatures that appeared on the notice given to El Dorado County Auditor-Controller Joe Harn. All five El Dorado County supervisors also received notices of intent to circulate recall petitions.

Seven days later the Elections Department received Pierson's argument against the recall action, which pointedly singles out one of the recall proponents, Cris Alarcon.

"For almost nine years it's been an honor to serve as your district attorney. The men and women of El Dorado County law enforcement continue to admirably serve the people of this county. I am particularly proud of everyone in the District Attorney's Office," Pierson wrote. "From holding murderers and other criminals accountable to building one of the first paperless prosecutor offices, they are second to none.

"Criminals, however, don't like to be held to account. After serving as chair of the county Charter Review Committee, Cris Alarcon was stopped by a sheriff's deputy. Alarcon gave the deputy an Arizona license and claimed to be an Arizona resident. The plate tag on his car was stolen from his elderly neighbor. His wife admitted he did it to avoid license and registration," the district attorney continued. "My office convicted him of multiple charges, including receiving stolen property, driving on a revoked license and false registration. Last year I was re-elected by a margin of 3 to 1. My opponent, a Placer County resident, claimed to live with Alarcon. Now this vengeful criminal seeks to waste thousands of your tax dollars on this bogus recall campaign. Don't be conned by this criminal!"

Alarcon pleaded no contest to nine charges in July 2012, including receiving stolen goods-a vehicle registration tag, driving on a suspended or revoked license, displaying false registration on a vehicle, driving without insurance and not having current registration. Five additional charges were dropped, and the charge of receiving stolen goods, a felony, was downgraded to a misdemeanor. Alarcon was sentenced to four years summary probation and was directed to pay fines of up to $6,516 in sequence for three different incidents and obey search and seizure terms that were applied to the case.

Civil charges were also filed against Alarcon and Dan Dellinger, another recall proponent, by the District Attorney's Office in 2012, "on suspicion of fraudulently obtaining taxpayer financed contracts with the Pioneer Fire Protection District related to illegal campaign activity to expressly advocate a position in favor of the passage of a tax increase (Ballot Measure F), which voters approved in November 2011."

The El Dorado County Elections Department must receive approximately 10,625 valid signatures by the 160-day deadline to place the recall on the June 2016 ballot. Pierson was first elected as district attorney in 2006, and is up for re-election in 2018.

D.A Vern Pierson & El Dorado County Auditor-Controller Joe Harn gets recall notice

By Chris Daley

https://www.villagelife.com/news/harn-gets-recall-notice/

El Dorado County Auditor-Controller Joe Harn has received a Notice of Intention to Circulate Recall Petition.

Recall proponents cite five issues from which they are "seeking relief from the tyranny of our elected officials who have engaged in malfeasant acts and corrupt practices."

Citing a violation of California State Penal Code, the notice states that Harn failed "to make authorized payments for reasons of personal or political motivation." A second charge reads: "Failure to produce and submit required county bill payment disclosure reports to the Board of Supervisors in violation of County Ordinance Code ..."

Revisiting an issue controversial two years ago, proponents claim Harn engaged in "an immoral scheme" in which certain elected officials received additional pay and pension benefits for reasons such as "simply being re-elected or possessing the certificates required to hold office." The latter refers to Harn's having a Certified Public Accountant license.

The notice also states that the auditor-controller failed "to protect the fiscal integrity of the county by willfully refusing to prepare a complete Cost Allocation Plan."

Finally, proponents charge Harn with "engaging in inappropriate conduct" such as "harassment of employees, vendors and staff of other agencies."

In an e-mail to Village Life Harn wrote, "Being county auditor-controller is a lot like being an umpire. I do my best to call the balls and strikes fairly. I don't vote on the budget. I don't write county policies. I don't write state law regarding county spending. I do have a duty to point out cases where the county attempts to spend money in violation of our policies or state law. Occasionally people get mad at the umpire. I am not surprised that there are 20 people who want me out of office."

In order to file a Notice of Intention to Circulate Recall Petition, proponents must secure at least 20 signatures from resident voters.

Former county Information Technologies acting and interim director Kelly Webb, the primary proponent of the recall effort, sent the notice to Harn by certified mail Nov. 24.

The retired county employee is currently suing the county for discrimination, and names Harn in her lawsuit, along with El Dorado County's District Attorney Vern Pierson and Human Resources Director Pamela Knorr. Webb alleges that the three conspired to remove her from her position in Information Technologies and demote her back to her previous position as a CAO analyst. Pierson was later appointed to oversee Information Technologies.

As interim IT director, Webb was also directly involved in the Cost Allocation Plan — the topic of a recent El Dorado County Grand Jury report. According to information provided by the Auditor-Controller's Office, it was Webb's inexperience keeping the appropriate billing records and time sheets that created problems with the CAP.

Harn told Village Life Thursday that he filed a response with the Elections Department Dec. 1, and served his document to Webb via certified mail.

As permitted under state Elections Code regarding recall, the elected official may make a formal response of not more than 200 words within seven days of receiving the notice.

In information shared with Village Life, Harn focused on several achievements related to "protecting tax dollars and ensuring our county stays debt-free." He writes that he has "strongly opposed reckless spending and borrowing …" and convinced the Board of Supervisors not to adopt "the most expensive Cadillac retirement plans plaguing nearby government agencies."

His response continues, "Without reservation, I've insisted that big, out-of-county developers pay their fair share for road improvements and libraries — or go develop elsewhere."

He concludes by noting that in 2013 he successfully advised the Board of Supervisors to reduce the county's share of Department of Motor Vehicle fees thereby reducing residents' overall DMV fees.

Once the Notice of Intention to Circulate Recall Petition has been validated and certified by the county Elections Department, Elections Code allows proponents 120 days to circulate the countywide petition to acquire signatures from 10,625 resident, registered voters in order to move the petition onto a countywide ballot.

"However, they will need to collect more than that to turn in since some might be rejected," Registrar of Voters Bill Schultz wrote in an e-mail to Village Life.

The larger petition must include greater detail with more specific charges and/or allegations. The Elections Department must validate and then certify the documents within a time frame of 88 to 125 days before the next election — June 2016.

When discussing the recall petitions served to the five county supervisors in October, Assistant Registrar of Voters Linda Webster told Village Life that her staff would go through the petition "line by line" and check all relevant statements. If corrections are needed, Webster said her office will send it back to the proponents.

MUST SEE VIDEO CORRUPTION IN EL DORADO COUNTY: RAY NUTTING TALKS ABOUT THE RECALL ELECTION OF VERN PIERSON AND JOE HARN

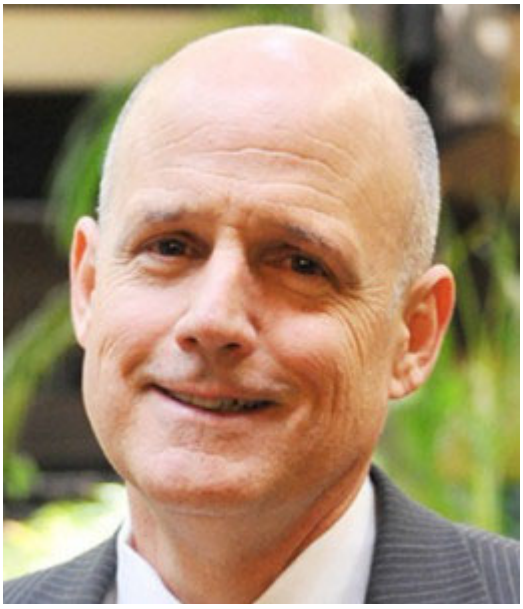
Posted on February 21, 2016 under Uncategorized, vern pierson

Follow

Ray Nutting's interview can be watch here: https://www.youtube.com/watch?v=G0h1QikNBtA

WHY SHOULD WE RECALL OUR AUDITOR-CONTROLLER & DISTRICT ATTORNEY?

Every person we elect to public office works for "the people" – us. We pay their lavish salaries and expect them to work hard on our behalf. Unfortunately, some elected officials turn out badly and need to be fired. Here are just a few of the reasons some of us think Auditor-Controller Joe Harn and District Attorney Vern Pierson should be fired:



Auditor-Controller Joe Harn & His Corrupt Practices –

- **Auditor Controller Joe Harn Petition for Recall: harn-petition-for-recall-letter**

Failure to make authorized payments for reasons of personal and political motivation in violation of California State Penal Code Sections 424 and 425.

- Participating in an immoral scheme whereby some County Elected Officials receive non-performance bonuses increasing the amount of both their six figure base salaries and retirement pensions for reasons such as simply being re-elected or possessing the certificates required to hold office. Failure to protect the fiscal integrity of the County by willfully refusing to prepare a complete Cost Allocation Plan.
- Failure to produce and submit required County bill payment disclosure reports to the Board of Supervisors in violation of County Ordinance Code Sections 3.16.130 and 3.16.140.

- Engaging in inappropriate conduct including: harassment, bullying, and disrespectful conduct towards County employees, vendors, and staff of other agencies.

District Attorney Vern Pierson & His Corrupt Practices –

- **District Attorney Vern Pierson Petition for Recall: pierson-petition-for-recall-letter**

Abusing the power and resources of office to pursue criminal prosecutions and civil litigation against innocent persons and businesses for personal and political reasons, such as, generating career building publicity and punishing political enemies.

- Participating in an immoral scheme whereby some County Elected Officials receive non-performance bonuses increasing the amount of both their six figure base salaries and retirement pensions for reasons such as simply being re-elected or possessing the certificates required to hold office.
- Participating in an immoral scheme whereby the District Attorney receives extra pay ($104.00 per hour) as "County Chief Technology Officer", thereby gaining access to all e-mail messages moving through the County internet system including the Public Defender's Office.
- Abusing court rules to discredit Judges for personal and political reasons.
- Failing to impanel a Criminal Grand Jury to investigate his political ally Auditor-Controller Joe Harn for official misconduct to determine if Harn

should be removed from office as recommended by the 2014-15 Civil Grand Jury in their report "Putting Political Gain Over What's Right For The County".

If you agree that we as citizens should fire Joe Harn and Vern Pierson for their corrupt practices and bad behavior, then please help us get the 10,626 signatures we need to exercise our civil rights by placing their recall election on the ballot by signing and circulating both official recall petitions with your friends and neighbors!

Some of our local community leaders who have experience successfully qualifying ballot measures in our County are joining forces with another community group and are starting a recall of all 5 EDC supervisors now. I don't not have much detail yet.

These leaders contacted me this weekend because they are also tired of the corruption and **want to circulate recall petitions against both Joe Harn and Vern Pierson at the same time** and asked me if I would help with the Pierson & Harn recall effort only. So I am writing to you to see if you are interested in working on the Pierson & Harn portion of this recall, not the others at this time. Things are moving very quickly!!!
Please follow these directions carefully:

Step 1: Who can sign a Petition?
Any registered voter can sign a Recall Petition for the countywide positions of District Attorney and Auditor. If you need assistance with determining whether or not you are a registered voter, you may call the Elections Department during normal business hours: (530) 621-7480

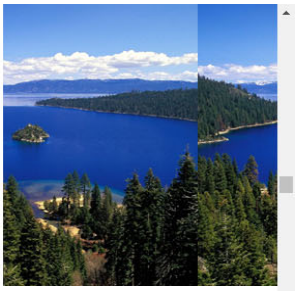
Step 2: Click and Print the Petitions:

Step 3: Complete the numbered signature blocks

- Print your name and residence address, as you are registered to vote.
- Sign your signature underneath your printed name, and print the name of the city in which you live and your zip code.
- Do **not** use "ditto marks" anywhere on the Petition.

- You do not have to fill in all of the signature blocks for the petition to be valid. You may submit your petition with as few as one completed signature block.

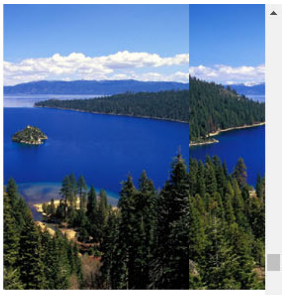
Step 4: Mail to: Neighbors Against Corruption, P.O. Box 268, Shingle Springs, CA 95682



BODY CAMERAS ON EVERY PLACERVILLE OFFICER (SLTPD NEXT?) THEY NEED THIS

Posted on April 23, 2016 under Uncategorized

Follow



2011–2014 SALARIES FOR SOUTH LAKE TAHOE

1,240 EMPLOYEE RECORDS FOUND – PAGE 1 OF 25

Download records | View cost per resident, median pay and more | View all agencies

Search within these records:

Year
2014

Name	Job title	Regular pay	Overtime pay	Other pay	Total benefits	Total pay & benefits
GSTETTENBAUER, GREGORY S	Division Chief South Lake Tahoe, 2011	$101,840.90	$0.00	$82,039.15	$76,428.16	$260,308.21
Jeffrey S Reagan	POLICE SERGEANT South Lake Tahoe,	$91,555.14	$47,652.28	$32,325.72	$81,900.41	$253,433.55

Shannon J Laney	POLICE SERGEANT South Lake Tahoe, 2013	$88,017.83	$16,345.99	$22,793.90	$74,002.64	$201,160.36
ADLER, JOSHUA H	POLICE SERGEANT South Lake Tahoe, 2012	$88,017.83	$14,760.15	$23,839.29	$70,486.07	$197,103.34

FORMER SLTPD JOHNNY POLAND OFFICER RECEIVES 18-MONTH PRISON SENTENCE

Posted on September 11, 2013 by agent provocateur under South Lake Tahoe Police Corruption

Johnny Gerald Poland, 45, a former South Lake Tahoe police officer, was sentenced Wednesday to 18 months in prison for one count of obstruction of an official proceeding, according to a U.S. Department of Justice news release.

Poland pleaded guilty in May to the one federal obstruction charge.

A federal complaint was issued Jan. 22 by Christopher Campion, a special agent of the Federal Bureau of Investigation, citing Poland with five federal obstruction charges.

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorneys at Law
901 H STREET, SUITE 612
SACRAMENTO, CA 95814
Telephone: (916) 447 7223
Facsimile: (916) 447 3406

Attorney for Defendant
TODD ROBBEN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v TODD ROBBEN, Defendant.	Case No.: P17CRF0114 NOTICE OF MOTION TO DISQUALIFY PROSECUTING ATTORNEY Date:TBD Time:TBD Dept:21 Trial Date:8/14/17

TO THE DISTRICT ATTORNEY OF EL DORADO COUNTY AND/OR HIS REPRESENTATIVE:

PLEASE TAKE NOTICE that on _____, 2017, at _____ or as soon thereafter as the matter may be heard in Department 21 of the above-entitled court, Defendant TODD ROBBEN will move for an order disqualifying Deputy District Attorney Dale Gomes and the entire El Dorado County District Attorney's office from the prosecution of the above entitled matter.

This motion will be made on the grounds that the defendant will be denied the statutory right to a fair and unbiased prosecution of his matter.

The motion will be based on this notice of motion, on the memorandum of points and authorities served and filed herewith, on the records on file in

this action and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated:24 July 2017

RUSSELL W. MILLER, JR.
Attorney for Defendant
TODD ROBBEN

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorneys at Law
901 H STREET, SUITE 612
SACRAMENTO, CA 95814
Telephone: (916) 447 7223
Facsimile: (916) 447 3406

Attorney for Defendant
TODD ROBBEN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v TODD ROBBEN, Defendant.	Case No.: P17CRF0114 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISQUALIFY PROSECUTING ATTORNEY Date:TBD Time:TBD Dept:21 Trial Date:8/14/17

Defendant submits the following memorandum of points and authorities in support of the motion to disqualify the prosecuting attorney:

I

THE COURT HAS BOTH THE STATUTORY AND CONSTITUTIONAL POWER TO DISQUALIFY THE PROSECUTING ATTORNEY

In *People v Superior Court of Contra Costa County* (1977) 19 Calk 3d 255 at 261 n4, the Supreme Court explained the bases for a trial court's power to disqualify the prosecuting attorney:

"Section 128 of the Code of Civil Procedure provides in part, 'Every court shall have power: …5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a juridical proceeding before it, in every matter appertaining thereto …' Although in civil cases the disqualification power of the trial court has been only suggestively traced to section 128 [citation omitted], the purpose and text of the statute are broad enough to encompass such a power. Furthermore, section 128 has been applied to criminal as well as civil cases."

This power of the court was further defended by the appellate court in *People v Municipal Court for Santa Monica Judicial Dist.* (1978, 2nd Dist) 77 Cal App 3d 294 at 298-299.

"The power to bar a duly authorized prosecutor or prosecuting agency from participation in a particular case exists only 'in appropriate circumstances.' … If such circumstances are present, or there is an undue appearance of their presence, then a trial court acts within it discretion if I bars the prosecutor from participation in the criminal proceeding."

II

A CONFLICT OF INTEREST EXISTS WHEN A PROSECUTOR SUFFERS FROM PREJUDICE AGAISNT THE DEFENDANT WHICH AFFECTS, OR APPEARS TO AFFECT, HIS ABILITY TO PERFORM HIS FUNCTIONS IMPARTIALLY

After holding that a conflict of interest existed where the mother of a homicide victim is employed in the same district attorney's office in which the prosecution was being prepared, the court in *People v Superior Court of Contra Costa County* (1977) 19 Cal 3d 255 at 267, n8 stated:

"The preservation of prosecutorial impartiality is perhaps most important during the charging process, the phase of a criminal proceeding

when the prosecutor' discretion is most apparent. As the court in Pellegrino noted, 'the theme which runs throughout the criminal procedure in this state is that all persons should be protected from having to defend against frivolous prosecutions, and that one major safeguard against such prosecutions is the function of the district attorney in screening criminal cases prior to instituting a prosecution.' [Citations omitted.] Surely an essential aspect of this safeguard must be the prosecutor's freedom from any personal or emotional involvement in a controversy which might bias his objective exercise of judgment."

In *People v Conner* (1983) 34 Cal 3d 141 at 148-149, the Supreme Court explained the meaning of the term "conflict" within the provisions of Penal Code §1424.

"In our view a 'conflict,' within the meaning of section 1424, exists whenever the circumstances of a case evidence a reasonable possibility that the [prosecution] … may not exercise its discretionary function in an evenhanded manner. Thus, there is no need to determine whether a conflict is 'actual,' or only gives an 'appearance' of conflict."

The Supreme Court also concluded that the protection of prosecutorial impartiality is a major purpose of the court's power of recusal. Even under Penal Code §1424, it may be appropriate to recuse an entire prosecutorial office where there is substantial evidence that a particular deputy's animosity toward the accused may affect his or her colleagues.

Dated: 7-24-17

RUSSELL W. MILLER, JR.
Attorney for Defendant
TODD ROBBEN

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorneys at Law
901 H STREET, SUITE 612
SACRAMENTO, CA 95814
Telephone: (916) 447 7223
Facsimile: (916) 447 3406
Attorney for Defendant
TODD ROBBEN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v TODD ROBBEN, Defendant.	Case No.: P17CRF0114 DECLARATION IN SUPPORT OF MOTION TO DISQUALIFY PROSECUTING ATTORNEY

I, Russell W. Miller Jr., declare:

I am the attorney representing the defendant, Todd Robben, in the above-entitled action.

The following facts exist that create a conflict of interest between the Office of the District Attorney and the defendant such as would render it unlikely that the defendant would receive a fair trial:

1. The defendant has filed an action against the District Attorney of El Dorado County, Mr. Vern Pierson in U. S. Federal Court. The suit is under review by the Eastern District of California Federal District Court in Sacramento, California.

2. The defendant has filed an action against Deputy District Attorney of El Dorado County, Mr. Dale Gomes in U. S. Federal Court. The suit is under review by the Eastern District of California Federal District Court in Sacramento, California.

3. The defendant has filed an action against the entire District Attorney's Office of El Dorado County in U. S. Federal Court. Specifically, the Clerk of the Court in and for El Dorado County. The suit is under review by the Eastern District of California Federal District Court in Sacramento, California.

4. The defendant has filed an action against the entire the Honorable James Wagoner and the Honorable Daniel Proud judges of the El Dorado County Superior Court in U. S. Federal Court. Specifically, the Clerk of the Court in and for El Dorado County. The suit is under review by the Eastern District of California Federal District Court in Sacramento, California.

5. The entire Judicial Bench of El Dorado County did recuse themselves in light of issues arising from this prosecution.

6. The El Dorado judiciary, the District Attorney's Office of Eldorado County and the City Attorney of South Lake Tahoe have a closed and long standing working and personal relationship.

7. Mr. Thomas Watson, City Attorney for South Lake Tahoe, is a named alleged victim in the present matter.

8. The defendant has filed complaints against Mr. Vern Pierson and Mr. Dale Gomes with the State Bar Association.

9. The defendant has filed numerous complaints against numerous El Dorado County officials with the Federal Bureau of Investigation.

10. The defendant belongs to Neighbors Against Corruption specifically naming the El Dorado County District Attorney and County Auditor Joe Harn.

VERN PIERSON, DISTRICT ATTORNEY
COUNTY OF EL DORADO, STATE OF CALIFORNIA
BY: EDWIN KIM
Deputy District Attorney
State Bar #290482
515 Main Street
Placerville, CA 95667
Telephone: (530) 621-6415

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. TODD C. ROBBEN, Defendant(s)	Case No.: P17CRF0114 **OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY** Date: 8/7/2017 Dept: 21 Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. CALIFORNIA PENAL CODE SECTION 1424 DETAILS THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS TO DISQUALIFY THE DISTRICT ATTORNEY AND THE OFFICE

Defendant's Motion to Disqualify Prosecuting appears to be citing to Section 128 of the California Code of Civil Procedure as the procedural and substantive statute by which Deputy District Attorneys (and the office) may be disqualified. The motion cites to *People v. Superior Court of Contra Costa County* and *People v. Municipal Court for Santa Monica Judicial Dist.*, which discuss the appropriateness and standards by which a defendant may disqualify a prosecutor. These cases predate the 1980 adoption of California Penal Code section 1424

(hereafter "Section 1424"), which was created and passed in response to substantial increases of unnecessary prosecutorial recusals. (California Penal Code section 1424, *People v. Merritt* (1993) 19 Cal.App.4th 1573, 1578).

Section 1424 details the procedural and substantive requirements for a motion to disqualify prosecutors. (*Haraguchi v. Superior Court* (2008) 43 Cal. 4th 706, 711). Therefore any discussions of Section 128 of the California Code of Civil Procedure and cases that predate Section 1424, while historically interesting, are irrelevant for the purpose of this motion. It is Section 1424 that controls.

b. A Quick Overview of a Motion to Disqualify

The defendant may make a motion to disqualify a prosecutor and the entire office under Penal Code section 1424. The defendant must provide notice to the Attorney General and the district attorney's office at least 10 days prior to the date of the hearing and must: state the legal basis for the request for disqualification, the facts setting the grounds for disqualification, and must include an affidavit made by witnesses competent to testify to the facts alleged. (Penal Code section 1424, section (a), subsection (1)). Both the Attorney General's office and the district attorney's office may file a motion in opposition, file affidavits, and/or appear at the hearing. (*Id.*)

The trial court then determines whether, based on the motions and affidavits of all parties, an evidentiary hearing on the matter must be heard. The defendant has the burden of a prima facie showing that the prosecutor/office must be disqualified pursuant to 1424. (Penal Code section 1424, section (a), subsection (1); *Spaccia v. Superior Court* (2012) 209 Cal. App. 4th 93, 108-111; *Packer v. Superior Court* (2014) 60 Cal. 4th 695, 710-711.) A prosecutor may be disqualified if two elements are met: (1) whether a "reasonable possibility" of less than impartial treatment exists AND (2) whether any such possibility is so great that it is more likely than not the defendant will be treated unfairly during some portion of the criminal proceedings (*Packer v. Superior Court* 60 Cal 4th at 709-710; *Haraguchi v. Superior Court* 43 Cal. 4th at 713). Thus the defendant must place in his affidavit facts that, if credited, would fulfill both those elements. If the defendant does not, the court must deny the motion.

If the defendant makes a prima facie showing, then an evidentiary hearing will be ordered. The defendant bears the burden of showing a genuine conflict, a burden that is especially heavy when the defendant is seeking to disqualify an entire office. (*Haraguchi v. Superior Court*, *supra*, 43 Cal.4th at 709; *People v. Trinh* (2014) 59 Cal.4th 216, 229). The legal test is the same; however, the standard is now by preponderance.

In this case, the defendant has not complied with the notice requirements of the statue nor has the defendant made the prima facie showing required to even get to a hearing. The motion should be denied.

II. DEFENDANT FAILED TO NOTICE ALL PARTIES OF INTEREST WITHIN 10 DAYS OF THE HEARING

The defendant must provide notice of the motion to disqualify a district attorney to both the District Attorney's Office and the Attorney General's Office at least 10 court days before the motion is set to be heard. (California Penal Code section 1424, section(a), subsection (1)). "The district attorney or the Attorney General, or both, may file affidavits in opposition to the motion and may appear at the hearing on the motion and may file with the court hearing the motion a written opposition to the motion." (*Id.*) The standard for review of a Section 1424 appeal is for abuse of discretion. (*Haraguchi v. Superior Court*, 43 Cal.4th. at 711.)

In this case, the People were not provided with the motion until August 4, 2017, the date which the defendant made the motion. It is the People's belief that the defendant has not served the Attorney General's office at all. The court should deny the motion for this reason as notice to both offices is required by statute, as evidenced by the usage of "shall".

This requirement makes sense as the Attorney General's office is a party of interest in a motion to disqualify: they would have to prosecute the defendant's criminal violations if the entire district attorney's office were disqualified. By not providing notice to the Attorney General's Office, the defendant is depriving the office of its statutory right to file an affidavit in opposition to the motion, file a written opposition, or appear for the hearing.

The court should not grant a motion when a party of interest is unable to even respond due to the defendant's own lack of compliance with a clear notice requirement. Nor should the court grant any defense motion to continue the trial set on August 14, 2017. The motion to disqualify was filed with the court on July 27, 2017, though notice was not provided to the district attorney's or the Attorney General's office. Had the defendant notified both the district attorney's office and Attorney General's office in a timely manner, the motion could have properly been addressed within 10 days of the filing prior to the set trial date.

This failure to provide proper notice is not good cause for the defense to request or be granted a continuance to file this motion with proper notice.

III. THE DEFENDANT HAS NOT MADE A PRIMA FACIE SHOWING THAT DALE GOMES OR THE DISTRICT ATTORNEY'S OFFICE SHOULD BE DISQUALIFIED

Notice "*shall* contain a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the moving party and *shall* be supported by affidavits of witnesses who are competent to testify to the facts set forth in the affidavit [emphasis added]." (*Id.*)

a. The Declarant Has Not Shown that He is Competent to Testify to the Factual Statements Made in his Declaration

In his declaration, counsel for the defendant ,Russell W. Miller Jr., states that he is the attorney representing the defendant in this criminal action. He does not state any other basis for which he would have knowledge of the factual declarations he made in his declaration. He does, however, number his factual declarations from #1-#12.

Only factual declarations #5, #7, and #12 would logically arise from being defense counsel. Declarations #1-#4, it is presumed, concern civil actions and would not necessarily be within the defense counsel's knowledge. They would be in his client's, but the declarant would not be able to testify as to the facts based solely on statements made to him by the defendant as they would be hearsay without an exception and not something the declarant would have

knowledge of. It is worth noting that the declarations of the civil suits have no case numbers, dates, statements as to whether the parties have been served, or what the basis of the action is.

Likewise, it is unclear how defense counsel would be competent to testify to declaration #6 and declarations #8 -#11.

The People are not disparaging the trustworthiness or professionalism of defense counsel; however Section 1424 explicitly states that the declaration shall be made by witnesses who are competent to testify as to the information within. Mere declaration upon belief is not sufficient to be competent to testify. As the court may only consider motions and affidavits/declarations in determining whether a hearing should be set, the declarant had to include the basis for his competency to be able to testify to the information in the declaration. His failure to do so should be considered a lack of ability to testify to the information declared to. If the declarant is not competent to testify to the information within the declaration, the information cannot be utilized to consider whether an evidentiary hearing is warranted or not.

Thus, the People would request only factual declarations #5, #7, and #12 be considered by the court.

b. Even If the Entire Declaration Were Considered In Favor towards the Defendant, He Still Has Not Made a Prima Facie Showing that the Prosecutor Should Be Disqualified or Made Any Statements Rebutting the Presumption that the Prosecutor Will Act Properly

Prior to having an evidentiary hearing, the court must look at the motions and affidavits and determine if the defendant has met a burden of a prima facie showing that the prosecutor should be disqualified. The elements are: (1) whether a "reasonable possibility" of less than impartial treatment exists AND (2) whether any such possibility is so great that it is more likely than not the defendant will be treated unfairly during some portion of the criminal proceedings . (Penal Code section 1424, section (a), subsection (1); *Spaccia v. Superior Court* (2012) 209 Cal. App. 4th 93, 108-111; *Packer v. Superior Court* (2014) 60 Cal. 4th 695, 710-711.)

The defendant "bear[s] the burden of demonstrating a genuine conflict; in the absence of any such conflict, a trial court should not interfere with the People's prerogative to select who is

to represent them." (*Id.* at 709.) The defendant must prevail on both parts of the two part test in order for there to be a disqualification.

"The recusal of an entire prosecutorial office is a serious step, imposing a substantial burden on the People, and the Legislature and the courts may reasonably insist upon a showing that such a step is necessary to assure a fair trial." (*People v. Hamilton* (1989) 48 Cal.3d 1142, 1156.) Moreover, "[d]isqualification of an entire prosecutorial office from a case is disfavored by the courts, absent a substantial reason related to the proper administration of justice." (*People v. Hernandez* (1991) 235 Cal.App.3d 674, 679-680.) The showing of a conflict of interest necessary to justify so drastic a remedy must be especially persuasive. (*Id.* at p. 678; see also *People v. Petrisca* (2006) 138 Cal.App.4th 189, 195.)

In considering a motion for disqualification, the court must presume the district attorney properly and conscientiously will discharge his or her duties and has performed official duty properly. (*Melcher v. Superior Court (2017) 10 Cal. App. 5th 160*, 170)

Even if one were to consider all of the defendant's factual allegations contained in the declaration in favor of the defendant, the defendant has not alleged facts to show that it is more likely than not that the defendant will be treated unfairly.

The defendant has not stated that Mr. Dale Gomes, Mr. Vern Pierson, or the District Attorney's Office was aware of the legal action the defendant has filed against them (a requirement that is glaring considering he has already left a party of interest unnoticed in this very motion). He has not provided any information as to the action, whether it is of such nature that a prosecutor would be more likely than not to treat him unfairly or if the suit is related to this prosecution or not. Quite frankly, it is not an unheard of for defendants to complain or sue district attorney's offices in an attempt to avoid criminal penalties or for other benefits.

Similarly, the defendant has not provided through motion or affidavit, information that Mr. Pierson, Mr. Gomes, or the District Attorney's Office was aware of any of the facts that the defendant is claiming, that those facts would make any of the prosecutors more likely than not to treat him unfairly, or even how there would be a reasonable possibility that a less than impartial

treatment would occur to the defendant. Being sued or complained about by defendants is not a new thing, after all.

Notably, the defendant has not provided any affidavit or argument in his motion that would rebut the presumption that a prosecutor will properly and conscientiously discharge his or her duties properly. While the case discussing the presumption is analyzing the hearing, the presumption logically exists in the analysis of whether or not the hearing should occur as, the defendant must provide facts that would prevail at a hearing if found true. And in order to prevail at the hearing, the presumption must be rebutted by facts, which must be shown in the motion or declarations. No facts or arguments in motions or declaration provided by defense rebuts this presumption.

IV. CONCLUSION

As the defendant has not made a prima facie showing that, pursuant to Section 1424, the prosecutor should be disqualified, no evidentiary hearing is required. The motion should be dismissed. If a hearing is granted, the People will make further oral arguments on this matter.

Dated: August 7, 2017

Respectfully submitted,

VERN PIERSON
District Attorney

By: _____
EDWIN KIM,
Deputy District Attorney

MONDAY, AUGUST 7, 2017 3CT 638

MORNING SESSION

---o0o---

The matter of the People of the State of California versus Todd Christian Robben, Defendant, No. P17CRF0114, came on regularly, before the Honorable Steve White, Judge of the Superior Court of California, County of El Dorado, State of California, sitting in Department 21 thereof.

The People were represented by Dale Gomes, Deputy District Attorney for the County of El Dorado, State of California.

The Defendant Todd Christian Robben was personally present and represented by Russell Miller, Attorney at Law, Sacramento, California, as his counsel.

The following proceedings were then had, to-wit:

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Good morning.

MR. GOMES: Good morning, your Honor.

MR. MILLER: Good morning, your Honor.

THE COURT: In the matter of the People of the State of California versus Todd Robben. P17CRF0114.

Record will show that Mr. Robben is present in custody with his counsel, Mr. Miller.

Mr. Gomes is here on behalf of the El Dorado County District Attorney's Office and the People of the State of California.

This is before the Court for continuing proceedings in

the defendant's motion to disqualify the District Attorney in this matter.

The District Attorney was not properly served, nor was the Attorney General served, as should have been the case, and as Section 1424 of the Penal Code requires.

The People have filed opposition to the defendant's motion to disqualify, which the Court has read, as well as the defendant's papers, as were read previously.

The defense has also filed a notion -- a motion for continuance in this case.

Let me go directly to you, Mr. Gomes.

MR. GOMES: Yes, sir.

THE COURT: Do you want to just submit on your papers?

MR. GOMES: I'd like to supplement a little bit the factual record that we made on Friday.

I do think that we're -- and -- and I'll -- I'll alert the Court that I assigned a task of filing this written response and drafting this written response to an attorney in my office because I was in another trial and unavailable to deal with it this weekend.

He took a couple of approaches I necessarily wouldn't have taken. I think it can be addressed on the merits.

I think that the defense's affidavit and declaration in support of their motion is deficient and does not in any way support a ruling that the El Dorado County District Attorney's Office should be or needs to be recused from this matter.

I think an important factual foundation that needs to

be supplemented from Friday or stated for the record for the Court to understand, and this motion in full context that -- the procedural history that has taken place prior to the defendant ever being prosecuted in El Dorado County.

And that procedural history began in Carson City, Nevada where the defendant was charged with serious felony violations for threatening to murder a Superior Court judge in the State of Nevada.

The Carson City District Attorney's Office charged him with conspiracy to commit murder on a public official.

Then began what historically was his first of many attempts to disqualify public officials from his personal prosecutions, that being the Carson City District Attorney's Office.

What happened in Carson City then, and I -- I'm telling the Court this because I think it is important factual context, is that ultimately the Carson City District Attorney's Office was, in fact, recused from that prosecution which set in place the defendant's pattern now of attempting to recuse both judges and District Attorney's whenever he finds himself in the cross-hairs of the criminal justice system.

His case was transferred to Douglas County Nevada where inexplicably the District Attorney in the Douglas County Nevada did not have the wherewithal or the courage or the confidence to prosecute that case, and the defendant's case was dismissed in State of the Nevada.

That has now lead to the defendant's subsequent

behavior of taking direct, but hopefully ineffectual, steps in most instances or in at least in this instance. 'Cuz in most instances, it has worked to recuse both judges and prosecutors from his cases with the ultimate hope that he finds himself before a judge or a prosector who won't have the courage or the wherewithal to prosecute.

I think that's very important context because you have to see the defendant's history and the fact that the defendant succeeded in this -- in this course of conduct in the past.

So he now has engaged in a set of behaviors and actions designed to first recuse judges, which somehow worked in El Dorado County, as the Court has seen, and now prosecutors, in order to hopefully, eventually find that one just right prosecutor or a judge who is going to dismiss the cases against him.

So all of the defendant's vague and factually specific -- sorry for the inartfulness of my language, allegations in his motion, are manufactured by this defendant for this purpose.

His apparent lawsuit, that I still haven't seen or been served with in Federal District Court suing me, doesn't say what his cause of action is against me. He doesn't certify what I have done to warrant any type of -- of civil remedy on his behavior -- or anything like that.

The same is true of the El Dorado County District Attorney's Office. He says he sued us. I believe him, but he doesn't say for what or why or why he believes there is

any merits behind the lawsuits that he has filed. And the same is true with the District Attorney of El Dorado County.

Just simply filing a lawsuit is easy. This defendant has demonstrated that. If it wasn't easy, he couldn't do it.

But filing those lawsuits, that does not then render me or my office incapable of dealing with him, like we deal with hundreds and thousands of criminal defendants postured just like him. He's going to get what he's going to get based upon what the State of California dictates and what justice requires.

And he shouldn't be allowed to manufacture conflict of interest with a judge, with a defense attorney or with a prosecutor simply because he hopes if he does it enough times and in enough ways, he'll ultimately get the judge or the prosecutor that he prefers.

I'll submit on that, your Honor.

THE COURT: All right. Thank you, Mr. Gomes.

Mr. Miller.

MR. MILLER: Yes, your Honor.

I did receive the People's opposition this morning from Madam Clerk. I haven't had an adequate opportunity to review all of it. I understand where it comes from and the genesis of it.

However, when the prosecution wants to go back to what happened in Carson City, actually, it's the same thing as I believe has happened here.

And that is the civil action was filed prior to the

criminal action. It was filed precedent and therefore, it wasn't a method to obstruct justice. But nevertheless, that's not my argument today.

I have read and in respect to some of the points that the People brought up, I have filed a motion to continue. I made mention of that and gave notice to Mr. Gomes. I would have that filed and heard today.

I'm simply going to ask for a little bit more time to, if you will, file and research the issues.

One of the points though they do bring on it, and that is that I need to have had an affidavit. Well, my declaration is one. I believe the Court can -- can consider that.

Secondly, a great deal of the information that came from my client -- and my client's not required to file an affidavit if represented by counsel I do not believe under the Civil Code.

And I was able to go on to the federal site and look up cases, and I have a case number in Federal Court. Federal Court uses a different system then we do in state court. You file a civil action and it must go through a review process.

And that finishes the review process, then the Federal Court notifies the plaintiff that they can go forward or not. And I believe that no notification from the Federal Court has been issued or received by my client.

Therefore, some of the -- whether Mr. Gomes has been served or whether Mr. Pierson's been served or not is not

of -- within the power or the authority of myself or my client.

So I'm asking for the motion on -- under 1424, to be continued. I'm asking for the continuance for a variety of reasons.

And now the research and response to the 1424, I would also ask for adequate opportunity to serve the Attorney General.

I read it as may. They read it as must. I think it's just in the best interest of everyone if the Attorney General is served, and so I wish to do that.

So I'd like --

THE COURT: I thought it said shall. I -- I may be wrong.

MR. MILLER: Well, I remember -- I read the part that said that the District Attorney or the Attorney General may file a response.

THE COURT: Right. But that has to do with the response.

MR. MILLER: Right.

So I would like an opportunity to serve the Attorney General so this motion can be properly heard.

THE COURT: Shall be served on the District Attorney and the Attorney General --

MR. MILLER: Okay.

THE COURT: -- at least 10 days -- 10 court days before the motion is heard.

Mr. Gomes.

MR. GOMES: I don't have any problem with the Court considering any of the information contained in the affidavit attached to the defense's motion.

I'll withdraw a portion of what -- my office's response. Object to the Court considering those things.

I'm fine with the Court considering those things as represented, presentation made by Mr. Robben's attorney in good faith, with a good faith belief in the truth and veracity thereof.

THE COURT: So you're waiving any procedural objections?

MR. GOMES: As to that information, yes.

THE COURT: Mr. Miller.

MR. MILLER: Yes, your Honor.

Well, I think I appreciate that, and I'm still requesting an opportunity to file a response.

I would say for the record my client has prepared what he believes would be supplement points and authorities and argument to my motion.

And I will take that, and I will consider what he has suggested for me. And I will include all the parts that I believe are relevant and proper to include in the motion.

Therefore, I'd ask to -- for the Court to continue the matter as contained in my motion for continuance, and ask to set a new date at least 10 days out.

And I'll have the Attorney General served today.

THE DEFENDANT: Actually, I would like to file this

because I --

THE COURT: No, you're not the lawyer. Remain silent.

All right. Is the matter submitted?

MR. GOMES: Yes, your Honor.

THE COURT: Mr. Miller, is the matter submitted?

MR. MILLER: Yes, your Honor.

THE COURT: The defendant's motion to disqualify the District Attorney of El Dorado County is denied.

The Court has considered all of the pleadings in this matter, the history of this case, and the representations of the defendant in respect to advancing this motion. I am satisfied without any reservation that the motion is without merit.

This is, in the Court's view, almost entirely a contrivance of the defendant for purposes of preempting his own prosecution. He has a pattern of doing this.

And it will be unavailing in this instance. The mere fact that there is concurrent civil litigation is insufficient to justify actual qualification.

Additionally, an intense personal involvement in the litigation, constituting bias, must be shown.

I cite in that regard, People versus Battin, B-a-t-t-i-n, 1978, 77 Cal. App. 3rd, 635.

I'm also very mindful of the perspectives set forth in People versus Hamilton, 1989, 48 Cal. Third, 1142 at 1156, which observes in pertinent part that the recusal of an entire prosecutorial office is a serious step imposing a substantial burden on the People, and the Legislature, and

the courts may reasonably insist upon a showing that such a step is necessary to assure a fair trial.

I have no reservation at all, and no question about Mr. Gomes's ability to be objective and to conduct the executive function in connection with this case without any embroilment or overreach.

The motion is denied on its merits.

Let's go to the defense motion for a continuance.

This is a motion, over the defendant's own objection it appears.

And the purpose offered by Mr. Miller in his declaration has to do with investigating further accusations and allegations that may relate to the People presenting 1101 (B) evidence.

Let me, Mr. Miller, let you expand on that a little bit and then we'll go to Mr. Gomes.

MR. MILLER: Thank you, your Honor.

I received during the course of discovery information in a video that comes out of the Nevada state prosecution.

And in an informal meet and confer with Mr. Gomes, I understand it's his intention to use that potentially as 1101 (B) type evidence.

I need to have that investigated more thoroughly. I need to find the people that are involved in that.

As well, we have spent, this Court notes, a great deal of time with pretrial motions. And they've been lengthy and arduous. I need more time to spend with my client and with my investigator to actually ferret out the merits of the

case itself.

So to represent Mr. Robben competently, I'm requesting a continuance to the week of September 18th.

THE COURT: Mr. Gomes.

MR. GOMES: The evidence that Mr. Miller references I -- I believe is -- is an audio recording not a video. But it is critical, and it is evidence I intend to offer.

It's an audio recording of the defendant having a conversation while in jail in the Carson City, Nevada County Jail wherein he offers to pay somebody $5,000 to kill Judge Tatro, who is a judge presiding over some of his cases in that state.

It was the impetus, if you will, of the prosecution that we referenced earlier that took place in Carson City, Nevada, that very recording. So it is powerful and compelling evidence that I think Mr. Miller needs to deal with thoroughly and completely before he can call ready for trial.

THE COURT: How long have you had this audio?

MR. GOMES: How long have I had it?

THE COURT: How long has -- when did you grant discovery in Nevada?

MR. GOMES: It would have been -- come over his original discovery, maybe -- I don't know.

MR. MILLER: Three weeks. I probably haven't had it a month I would have to say.

The original discovery did come over. However, then the People did send me a supplemental disc suggesting there

was more to it and that's when I received this.

And I -- I watched the video so it's there --

MR. GOMES: Video.

MR. MILLER: -- young man in a yellow suit. I -- I watched 'em.

THE COURT: Let me inquire, Mr. Miller and Mr. Gomes, in this regard.

I know Mr. Gomes, you're in trial in El Dorado County right now?

MR. GOMES: I am.

THE COURT: I'm about ready to begin a trial, go about two or three weeks counsel; is that right?

Record reflect I'm addressing counsel in the other matter.

What I'd be inclined to do Mr. Miller, is to trail this case to begin immediately after the trial I just referenced concludes, which would probably be two or three weeks out.

MR. MILLER: I would make every effort to be prepared by then.

I would also inform the Court that I spent from first time that I took -- was assigned to Mr. Robben's case, I was also assigned to a trial in Department 40. A young man, People versus Franks. That took quite a long time and quite an amount of my attention so I wasn't able to give Mr. Robben a great deal of attention at the outset. So I'm preparing.

But if the three weeks -- I'll make every effort.

THE COURT: Let's do that.

And my other concern is I'm going to be gone for two weeks at the end of September --

MR. MILLER: Okay.

THE COURT: -- so --

MR. MILLER: Thank you.

THE COURT: -- and first two weeks of October I think.

MR. GOMES: And just so the Court is apprised of -- of my schedule, I start evidence tomorrow.

The Court told our jury that we would be in session through -- I can't see your calendar over there, but I want to say the 24th of August.

Is the top month over there August over there?

THE COURT: Yes.

MR. GOMES: All right. So three weeks. Our weeks are Tuesday, Wednesday, Thursday, our court weeks for trial.

And so I don't think we'll necessarily go all the way to the 24th. That's what we told our jury.

I -- I think we probably have a good chance to have it to the jury by the 22nd or 23rd. So just to give the Court context of where I am.

THE COURT: Why don't we do this, Mr. Miller? Why don't we all of us just stay in touch as these cases progress, Mr. Gomes's case, anything that you have on your calendar, Mr. Miller, and then the case that I'm in trial on, and anticipate that sometime in late August we may be able to begin this trial.

MR. MILLER: May I request that the Court find good

cause to grant my continuance request in part to the 28th? That's three weeks out.

Does that make -- it's late August I think is what the Court was suggesting.

MR. GOMES: It would give me some flexibility 'cuz that will give us a 10-day trail window. And at this point I don't know what my witness situation is going to be like going out to the 21st.

THE COURT: All right. I find good cause based on this record and the earlier representations made by both counsel to grant over the defendant's objection the motion for a continuance to the 28th of August at which time we'll begin trial.

MR. MILLER: Thank you, your Honor.

THE COURT: Thank you, all.

THE DEFENDANT: I'd like to file my motion. This is just another preemptory (sic) challenge on you, Mr. White.

THE COURT: We're all over. Out.

THE DEFENDANT: This is verify -- to verify a preemptory challenge on you.

THE COURT: Deputy, take him out.

THE DEFENDANT: Can I get this filed, please?

THE COURT: No.

The record should reflect counsel referred to in the other case are Mr. White and Mr. Satchel.

THE DEFENDANT: Steve, are you refusing to file this? Is that what's going on?

THE COURT: Remove the defendant now.

THE BAILIFF: All right. Stand up.

THE DEFENDANT: Steve, there is -- you're being sued. You don't have any jurisdiction in this case. Filing a complaint against you. You will not be hearing this case, Mr. White.

(proceedings concluded)

--o0o--

Petitioner must not be denied due-process under the U.S 6th & 14th amendment because of his incompetent appointed lawyer as shown above.

In the above embedded exhibit it should be noted this Petitioner was thrown out of the courtroom by the bias/corrupt judge White when he attempted to file another CCP 170.6 motion. A trial judge may not deny the parties their procedural due process rights by preempting their ability to present their case. *In Inquiry Concerning Broadman (1999) 48 Cal.4th CJP Supp. 67*.

The trial court Judge Steve White denied the motion to disqualify the D.A. office claiming it was without merit and claimed it was for purposes of preempting the prosecution and that this Petitioner has a pattern of doing this. J**udge White stated "Additionally, an intense personal involvement in the litigation, constituting bias, must be shown. I cite in that regard, *People v Battin (1978) 77 Cal. App. 3rd 635*."**

The *Battin* case actually states "Turning first to defendant's reference to the suit brought by the employees' association, we note that the Supreme Court in Greer stated, **"[n]or should a prosecutor try a defendant with whom he is embroiled in civil litigation."** (Id. at p. 261, relying on *Sinclair v. State, 278 Md. 243 [363 A.2d 468], and Ganger v. Peyton, 379 F.2d 709*.)"

In *People v. Superior Court (Greer), 561 P. 2d 1164 – Cal. Supreme Court 1977*:

> **"A fair and impartial trial is a fundamental aspect of the right of accused persons not to be deprived of liberty without due process of law. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. I, § 7, subd. (a);** see, e.g., Tumey v. Ohio (1927) 273 U.S. 510 [71 L.Ed. 749, 47 S.Ct. 437, 50 A.L.R. 1243]; In re Murchison (1955) 349 U.S. 133, 136 [99 L.Ed. 942, 946, 75 S.Ct. 623]; People v. Lyons (1956) 47 Cal.2d 311, 319 [303 P.2d 329]; In re Winchester (1960) 53 Cal.2d 528, 531 [2 Cal. Rptr. 296, 348 P.2d 904].)
>
> **It is the obligation of the prosecutor, as well as of the court, to respect this mandate.** (Berger v. United States (1935) 295 U.S. 78, 88 [79 L.Ed. 1314, 1321, 55 S.Ct. 629]; People v. Lyons, supra, 47 Cal.2d at p. 318; People v. Talle (1952) 111 Cal. App.2d 650, 676-678 [245 P.2d 633].) Nor is the role of the prosecutor in this regard simply a specialized version of the duty of any attorney not to overstep the bounds of permissible advocacy. The prosecutor is a public official vested with considerable discretionary power to decide what crimes are to be charged and how they are to be prosecuted. (People v. Municipal Court (Pellegrino) (1972) supra, 27 Cal. App.3d 193, 203-204; Ganger v. Peyton (4th Cir.1967) supra, 379 F.2d 709, 713.) In all his activities, his duties are conditioned by the fact that he "is the representative not of any ordinary

party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, **therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.** As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." (Berger v. United States (1935) supra, 295 U.S. 78, 88 [79 L.Ed. 1314, 1321]; People v. Lyons (1956) supra, 47 Cal.2d at p. 318; see also Ganger v. Peyton, supra, 379 F.2d at p. 713; United States v. Cox (5th Cir.1965) 342 F.2d 167, 193 (Wisdom, J., concurring).)

Thus not only is a judicial requirement of prosecutorial impartiality reconcilable with executive discretion in criminal cases, it is precisely because the prosecutor enjoys such broad discretion that the public he serves and those he accuses may justifiably demand that he perform his functions with the highest degree of integrity and impartiality, and with the appearance thereof.[8] One of the reasons often cited for the institution of public prosecutions is that "Americans believed that an officer in a position of public trust could make decisions more impartially than could the victims of crimes or other private complainants," persons who often brought prosecutions under the older English system of criminal justice. (Miller, Prosecution (Am. Bar Foundation 1969) p. 295; see Meister v. People (1875) 31 Mich. 99, 103; 3 Holdsworth, A History of English Law (7th ed. 1956) p. 621, 9 Holdsworth, id., pp. 241, 244-245.) **This advantage of public prosecution is lost if those exercising the discretionary duties of the district attorney are subject to conflicting personal interests which might tend to compromise their impartiality.** In short, the prosecuting attorney "`is the representative of the public in whom is lodged a discretion which is not to be controlled by the courts, or by an interested individual. ...'" (Italics added.) (United States v. Cox, supra, 342 F.2d at p. 192.)

Undeniably there are circumstances in which the participation of a district attorney in a criminal trial as prosecutor would be improper. For example, it would not be proper for such an attorney to prosecute a client or former client, without that client's consent, for a crime "relating to a matter in reference to which [the attorney] has obtained confidential information by reason of or in the course of his employment by such client or former client." (Rules of Prof. Conduct, rule 4-101; Young v. State (Fla.App. 1965) 177 So.2d 345; State v. Leigh (1955) 178 Kan. 549 [289 P.2d 774]; People v. Gerold (1914) 265 Ill. 448, 471-480 [107 N.E. 165, 175-178]; see Corbin v. Broadman (1967) 6 Ariz. App. 436 [433 P.2d 289]; Annot., 31 A.L.R.3d 953, 963-978.) **Nor should a prosecutor try a defendant with whom he is embroiled in civil litigation.** (Ganger v. Peyton (4th Cir.1967) 379 F.2d 709; Sinclair v. State (1976) 278 Md. 243 [363 A.2d 468].)

There were at least two civil suites against Vern Pierson and one with Vern Pierson named as a co-defendant. Other “victims” in case # P17CRF0114 are named as defendants in various civil rights lawsuits filed by this Petitioner including Judge John Tatro from Carson City

Nevada, D.A. Vern Pierson, D.D.A. Dale Gomes, South Lake Tahoe Police Officer Shannon Laney, the City of South Lake Tahoe City Attorney Thomas Watson, El Dorado County, El Dorado County Superior Court Clerks (along with Third District Court of Appeal Clerks & Clerks from the California Supreme Court – for failing to file Petitioner's legal filings) Judges Steven Bailey, Suzanne Kingsbury and James Wagoner are also named.

In *People v. Vasquez, 137 P. 3d 199 - Cal: Supreme Court 2006:*

" *Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, 249-250, 100 S.Ct. 1610, 64 L.Ed.2d 182, the federal high court observed that **"[p]rosecutors are also public officials; they too must serve the public interest" and that consequently "[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors** 381*381 **into the prosecutorial decision and in some contexts raise serious constitutional questions." In the case before it, however, the court found it unnecessary to say "with precision what limits there may be on a financial or personal interest of one who performs a prosecutorial function, for here the influence alleged to impose bias [an institutional financial interest in increased enforcement] is exceptionally remote."** (*Id.* at p. 250, 100 S.Ct. 1610 fn. omitted.)

The Supreme Court gave the problem of an interested prosecutor further attention in *Young v. U.S. ex rel. Vuitton et Fils S.A.* (1987) 481 U.S. 787, 790, 107 S.Ct. 2124, 95 L.Ed.2d 740 (*Vuitton*), holding improper a district court's appointment, to prosecute a criminal contempt for violations of an injunction against trademark infringement, of attorneys who also represented the trademark holder. Special criminal contempt prosecutors, like United States Attorneys, should have an undivided duty to see justice done. (*Id.* at pp. 803-804, 107 S.Ct. 2124.) The interest of the government in "dispassionate assessment of the propriety of criminal charges for affronts to the Judiciary" is not necessarily congruent with the private client's interest in the monetary benefits of enforcing the court's injunction. (*Id.* at p. 805, 107 S.Ct. 2124.) Because of the attorneys' ethical duties to their private client, moreover, the conflict was unusually manifest: while ordinarily "we can only speculate whether other interests are likely to influence an enforcement officer," where a prosecutor also represents an interested private party, "the ethics of the legal profession *require* that an interest other than the Government's be taken into account." (*Id.* at p. 807, 107 S.Ct. 2124.)

State Court Filings:

1. ROBBEN vs CITY OF So. Lake Tahoe et al SC20160053
   WRIT OF MANDATE – UNLIMITED 3/29/2016

2. ROBBEN VS EL DORADO CO. SUPERIOR COURT PCL20160174
   WRIT OF MANDATE 5/13/2016

3. ROBBEN vs EDC DISTRICT ATTORNEY et al SC20130106
   WRIT OF MANDATE - UNLIMITED 6/20/2013

Federal Court Filings:

Robben v. El Dorado County et al 2:2016cv02698 | US District Court ...
https://dockets.justia.com/docket/california/caedce/2.../306115
Nov 14, 2016 **...** Plaintiff: **Todd Robben**. Defendant: El Dorado County, Vern Pierson, Dale Gomes , Mike Pizzuti and El Dorado County District Attorney.

Robben v. El Dorado County et al 2:2016cv02695 | US District Court ...
https://dockets.justia.com/docket/california/caedce/2.../306085
Nov 14, 2016 **...** Plaintiff: **Todd Robben**. Defendant: El Dorado County, Lynn Cavin, Mary Ann Swenney and John D'Agostini. Case Number: 2: ...

Robben v. City of South Lake Tahoe et al 2:2016cv02696 | US ...
https://dockets.justia.com/docket/california/caedce/2.../306093
Nov 14, 2016 **...** Plaintiff: **Todd Robben**. Defendant: City of South Lake Tahoe, Shannon Laney, Cory Wilson, Chris Webber and Brian Uhler. Case Number: 2: ...

(PC) **Robben** v. Norling, No. 2:2016cv02699 - Document 31 (ED Cal ...
https://law.justia.com/cases/federal/district-courts/california/caedce/2.../31/
(PC) **Robben** v. Norling, No. 2:2016cv02699 - Document 31 (E.D. Cal. 2018) case opinion from the Eastern District of California US Federal District Court.

for **Robben** v. Carson City, Nevada et al
https://docs.justia.com/cases/federal/district-courts/nevada/nvdce/3.../102
Filing 102. ORDER that 95 Emergency Ex Parte Motion to Waive PACER Costs and Fees is GRANTED with the following provisions: (1) On or before February ...

Todd Robben v. California Supreme Court, et al 19-15213 | U.S. ...
https://dockets.justia.com/docket/circuit-courts/ca9/19-15213
Feb 6, 2019 **...** Plaintiff / Appellant: **TODD ROBBEN**. Defendant / Appellee: FRANK A. MCGUIRE, ANDREA K. WALLIN, CALIFORNIA SUPREME COURT, ...

Todd Robben v. John D'Agostini 19-16014 | U.S. Court of Appeals ...
https://dockets.justia.com/docket/circuit-courts/ca9/19-16014
May 14, 2019 **...** Other case filed on May 14, 2019 in the U.S. Court of Appeals, Ninth Circuit.

Robben v. Justin, et al 2:2013cv00238 | US District Court for the ...
https://dockets.justia.com/docket/california/caedce/2.../249905

Feb 6, 2013 **...** Plaintiff: **Todd Robben**. Defendant: Richard Justin, Dennis Justin, Jeff Robben and BailBonds Inc. (BBI) of Fallon, Nevada. Case Number: 2: ...

Robben v. El Dorado County et al 2:2016cv02697 | US District Court ...
https://dockets.justia.com/docket/california/caedce/2.../306096
Nov 14, 2016 **...** Plaintiff: **Todd Robben**. Defendant: El Dorado County, El Dorado County Sheriff, John D'Agostini, Rosen, Sapien and Joe Britton.

Mountain Democrat

Man protests alleged corruption outside courthouse, DA's Office

By Cole Mayer

https://www.mtdemocrat.com/news/man-protests-corruption-outside-courthouse-das-office/

A protest concerning possible corruption in El Dorado County was the result of what the organizer described as a kidnapping and assault by bounty hunters illegally trying to detain him.

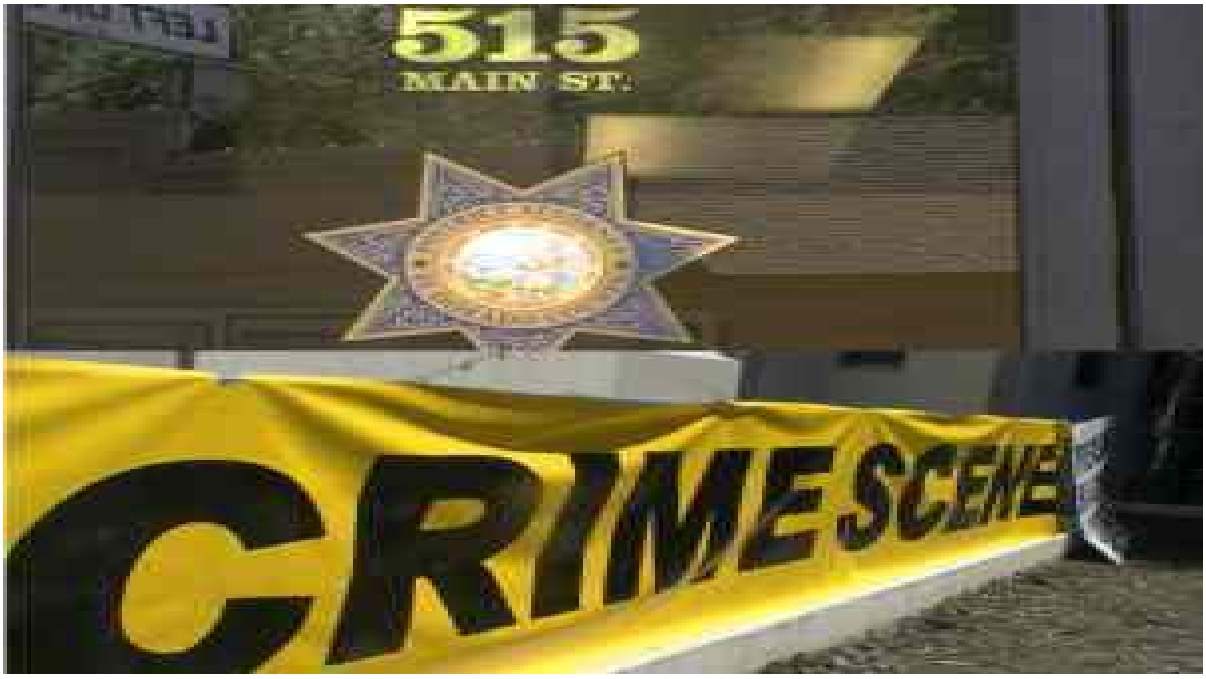
Todd "Ty" Robben, a former IT worker for the Nevada Department of Taxation, was arrested after he supposedly harassed a member of the Nevada Department of Transportation. He said, however, that he was simply trying to serve her a subpoena.

“She was complaining she had not been personally served,” he said, so he went in person to do it. As a result, a district attorney in Carson City, Nev. charged him with assault and disturbing the peace.

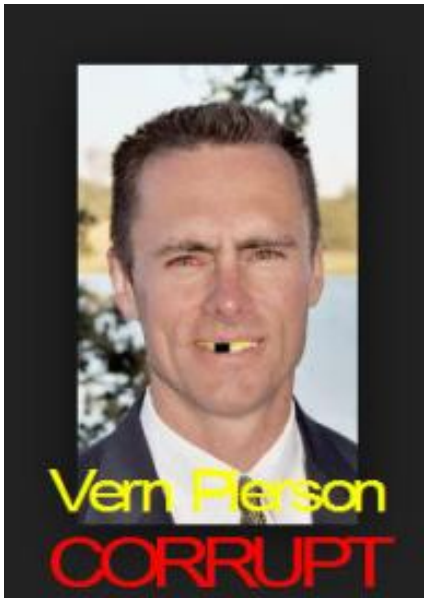
The roles were seemingly reversed when bounty hunters showed up at Robben’s door, kicking it in, tasing him three times and slashing his tires, he claimed.

“They were ‘bounty hunters’ but they used a warrant and acted as agents of the court,” something they are not allowed to do, he said. He claims they did not follow Penal Code 847.5 — an out-of-state bounty hunter must file an affidavit with a judge of the county and receive permission to collect the bounty.

El Dorado County District Attorney Vern Pierson agreed wrongdoing had occurred, he said, and one of the bounty hunters, Doug Lewis, had charges brought against him.



"However, Dennis Justin of the Justin Bros. Bail Bonds Co. from Carson City was the main 'perp' who conspired and acted directly with Mr. Lewis," Robben claims. "Mr. Justin used a battering ram with Mr. Lewis and took down my front door, entered my home, tased me three times and chased me into the forest." He also alleges that Justin admitted to him of slashing Robben's tires.



But, because Lewis took a plea deal for only two charges, and because Justin, who Robben described as the "ringleader," was never charged, Robben suspects corruption. In order to gain public attention, he protested outside of the Main Street courthouse and the DA's Office. With oversized "crime scene" tape and signs, Robben and a few others protested.

"This protest was planned … in response to the DA shutting me down and not taking my phone calls or returning e-mails," Robben said. "I felt the only thing I could do is talk with my signs and a PA system to express my issues with DA Pierson outside his office and ask the press to get him to answer. This is what

we have to do to get our elected officials to do their job and talk to us. It's sad and I know he could do better. I want to support him, but this is outrageous." He later said, "People are sick of corruption."

Pierson, however, said that everything about the case was handled properly.

"I strongly support and would defend Mr. Robben's exercise of his First Amendment rights," Pierson said of the protest. "Having said that, I'm aware of the circumstances surrounding the Reno bounty hunters contacting South Lake Tahoe Police Department and ultimately taking him into custody on behalf of Nevada law enforcement. His case was handled properly by our office."

After Robben's attorney spoke with the District Attorney's Office, Robben revealed that the reason they are not prosecuted is that they "can't prove Dennis Justin was here." He said that Justin never denied it, however, and again pointed out that Justin allegedly admitted to slashing Robben's tires. If there is no prosecution, Robben said, he will call for the resignations of Pierson and deputy district attorney Bill Clark, who is handling the case.

Richard Justin, brother of Dennis Justin, said that they would be unable to comment on the matter due to pending lawsuits. But, "the truth will come out," he said.

The protest, which began around 12:30 p.m., lasted until 6 p.m. Capt. Mike Scott of the Placerville Police Department noted that, at least through 5 p.m., there were no calls of public disturbance related to the protest.

Robben is suing Justin in Sacramento Federal Court; Justin is countersuing for defamation.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff,

-vs-

DOUGLAS LEWIS,

Defendant(s).
_____/

DKT:

DA #: 12-12-006486

AGENCY REPORT #:
SLPD 1210-1438

DEPARTMENT 3

CRIMINAL COMPLAINT

The District Attorney of El Dorado County, based upon information and belief, hereby alleges:

COUNT 1

On or about the 18th day of October, 2012, in the County of El Dorado, the crime of unlawful arrest by bondsperson of fugitive from another state, in **PENAL CODE SECTION 847.5**, a Misdemeanor, was committed by DOUGLAS LEWIS, who, as the agent of a bondsperson or other person who was bail for Todd Robbens in the State of Nevada, did take said Todd Robbens into custody as a fugitive from the State of Nevada without complying with the requirement of Penal Code Section 847.5 that he first request and secure a warrant of arrest from a magistrate of the State of California.

COUNT 2

On or about the 18th day of October, 2012, in the County of El Dorado, the crime of AGGRAVATED TRESPASS, in violation of **PENAL CODE SECTION 602.5(b)**, a Misdemeanor, was committed by DOUGLAS LEWIS, did, without consent of the owner, owner's agent and the person in lawful possession thereof, unlawfully enter and remain in a noncommercial dwelling house, apartment and other residential place while a resident and another authorized person was present.

COUNT 3

On or about the 18th day of October, 2012, in the County of El Dorado, the crime of VANDALISM OF A DWELLING , in violation of PENAL CODE SECTION 603, a

Misdemeanor, was committed by DOUGLAS LEWIS, who was a person, other than a peace officer engaged in the performance of his/her duties as such, who did unlawfully, forcibly, and without the consent of the owner, representative of the owner, lessee, and representative of the lessee thereof, enter a dwelling house, cabin, and other building located at 610 Mary Street, Carson, NV, occupied and constructed for occupation by humans, and damage, injure, and destroy property of value in, around, and appertaining to such dwelling house, cabin, and other building.

COUNT 4

On or about the 18th day of October, 2012, in the County of El Dorado, the crime of BATTERY, in violation of **PENAL CODE SECTION 242**, a Misdemeanor, was committed by DOUGLAS LEWIS, who did willfully and unlawfully use force and violence upon the person of Todd Robben.

COUNT 5

On or about the 18th day of October, 2012, in the County of El Dorado, the crime of DAMAGE OR TAKE PART OF VEHICLE, in violation of **VEHICLE CODE SECTION 10852,** a Misdemeanor, was committed by DOUGLAS LEWIS, who did unlawfully injure and tamper with a vehicle and the contents therof and did break and remove a part of the vehicle without the consent of the owner, to wit, Todd Robben.

Based upon information and belief, the undersigned certifies in his/her official capacity and under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated below at El Dorado County, California.

VERN R. PIERSON
District Attorney

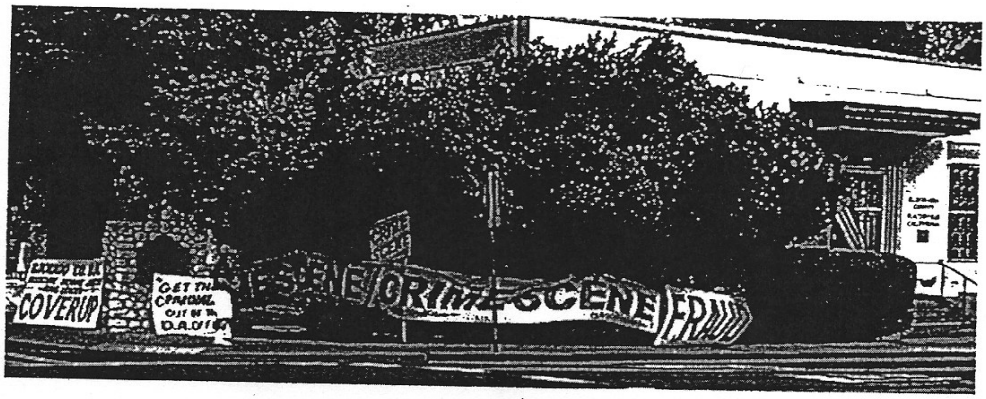
By: _____
HANS M. UTHE
Assistant District Attorney

Dated: March 7, 2013
tr

LOCATION OF CRIME: CITY OF SOUTH LAKE TAHOE

Pursuant to Penal Code §1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code §1054.3 and pursuant to the provisions of Penal Code §1054.7.

WARNING: Penal Code Section 1054.2 makes it a Misdemeanor Criminal Offense for an **attorney** receiving discovery to disclose certain confidential information regarding victims and witnesses to defendants and others. Attorneys should review this code section carefully before sharing reports received in discovery with anyone.



El Dorado DA Vern Pierson gets protested with "World's Largest CRIME SCENE Tape"

Crime Scene at District Attorney' s Office – Widespread Public Support

EDC In El Dorado County

LOCAL NEWS FROM EL DORADO HILLS TO PLACERVILLE TO TAHOE

ONLINE NEWSPAPER POWERED BY PLACERVILLE NEWSWIRE

HOME | SUBSCRIBE | ADVERTISE | SUBMIT NEWS/EVENTS | FREE CLASSIFIEDS | LOCAL EVENTS | ABOUT | MEDIA KIT | NEWS 41 | CHANNEL 2

Original story:http://www.inedc.com/1-4705

Broad Support, and lack of objectors, indicate a widespread belief among the public that there is some kind of corruption in the administration of fair and equal justice in El Dorado County.

Placerville Newswire | May 21 2013

Placeville Newswire Note: I observed the protest for about one hour and during that time about 20% of the passing vehicles yelled out expressing support for the protesters. One patron having lunch with his wife at the Pizzeria across the street expressed support for the protest but with this caveat, "Good Luck, they do what they want in El Dorado County." **It was clear that there was widespread public perception that there was some form of corruption in the administration of justice in El Dorado County.**

From the protest organizer:
In a nutshell, DA Pierson charged one of 5 perpetrators who kick in my door, tased me 3 times, slashed my tires and tried to kidnap me (arrest me) on behalf of the Carson City Nevada Court. They were "bounty hunters" but they used a warrant and acted as agents of the court. Only Sheriff or Police serve warrants. They acted under the color of law and as mercenaries by using the said warrant. DA Pierson agrees to most of this and charged Doug Lewis the hired "bounty Hunter". However, Dennis Justin of the Justin Bros Bail Bonds Co. from Carson City was the main "perp" who conspired and acted directly with Mr. Lewis. Mr. Justin used a battering ram with Mr. Lewis and took down my front door, entered my home, tased me 3 times and chased me into the forest! Mr. Justin admitted to slashing my car tires too.

If you get a chance, google California Penal code 847.5 (they violated this).
DA Pierson did in fact charge Mr. Lewis, and I am good with that. However, they offer him a plea deal to 2 charges. I always felt Dennis Justin should be charged since he was the "ring leader". But since Mr. Justin acted in collusion with the Carson City court, the court is implicated in a RICO (Racketeering Influenced Corrupt Organization).

I am suing Dennis Justin in Sacrament Federal Court in a multi million dollar lawsuit. Dennis Justin has counter sued me for defamation for calling him a fraud and because I protested is Justin Bros Bail Bonds offices in Carson City and Reno. ...It's really a SLAPP lawsuit and I feel it is a public concern that he operating using a bounty hunter with a "revoked" business license and they violated 5 criminal count. Justin Bros also undermines Nevada law and buys bonds using California bonds at 10% premium rather that Nevada's 15% premium, that would be fraud and a public concern.

DA Pierson must charge Dennis Justin and deal with the RICO by forwarding to the FBI since it would be federal or deal with that himself.

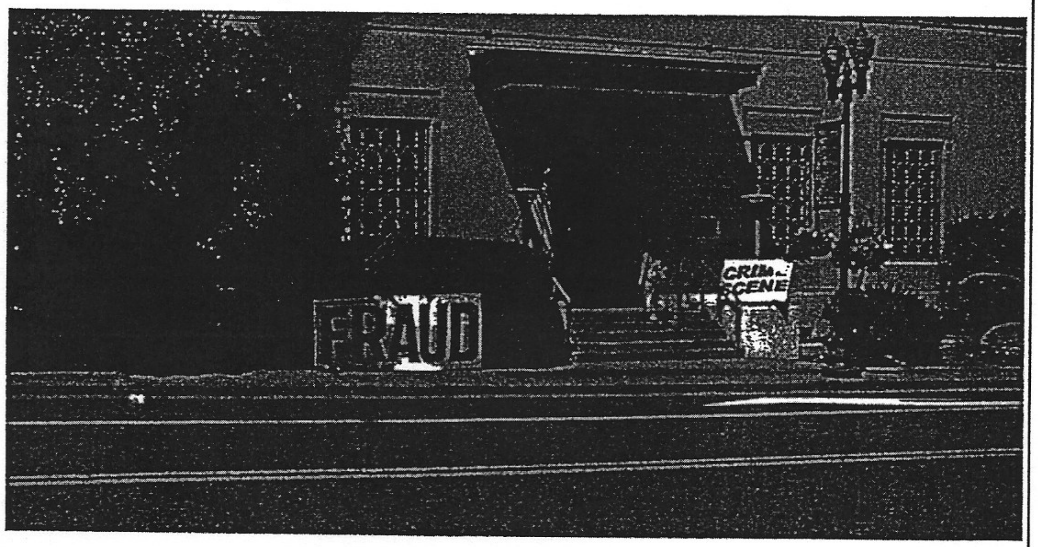
We we're running behind schedule today since my friends came from Reno and hit road construction... sorry for that. The wind was an issue, but it mellowed out and we

did get the worlds second largest crime scene banner hung. The big banner was too much of an issue with the wind.

This protest was planned last Friday in response to the DA shutting me down and not taking my phone calls or returning emails. I felt the only thing I could do is talk my signs and a PA system to express my issues with DA Pierson outside his office and ask the press to get him to answer. This is what we have to do to get our elected officials to do their job and talk to us. It's sad and I know he could do better. I want to support him, but this is outrageous.

I also found out he acts as the IT Director for El Dorado Co! This brings him another $100K income (I am told not vetted). I was told how busy he is and the DA is short staffed, over worked, etc. I feel another person should be the IT director, and let the DA focus on the matters of the DA office. I am outraged by the story about the court staff taking paycuts and protesting, yet others are literally getting rich on the Taxpayer's dime and others are suffering.

-Todd "Ty" Robben



Inside: A Mt. News look at the Johnny Poland case. Page 16

FREE

TAHOE MOUNTAIN NEWS

Serving Lake Tahoe's South Shore Since 1994 Vol. 19, No. 8 • February 2013

Photo by Taylor Flynn

Ty Robben stands in front of one of his giant banners protesting the SLT Police Department.

Going for broke

Local resident Ty Robben is taking on the authorities in a bizarre case involving Nevada officials, bounty hunters, and the South Lake Tahoe Police Department. To try to get to the bottom of it all, the *Mountain News* has filed a California Public Records Act request.

See the story at http://www.mountainnews.net/201302/#/1

Photo by Taylor Flynn

Local resident Ty Robben holds a protest against the SLT Police Department on Jan. 28.

Man on a mission

By Heather Gould

Ty Robben says he'd rather be leading a normal life as a regular guy than leading protests against local law enforcement, but says seeking justice is his first priority.

The local man is objecting to police conduct following an October 18 incident at his Sierra Tract home in which bounty hunters from Nevada attempted to capture him – illegally, he says – on a contempt of court warrant out of Carson City. Out on bail for charges related to subpoena service gone awry, he had failed to show up for a required check-in, due to illness, which he says was caused by poisoned food in the Carson City jail. But Robben, 43, says sending in the forces was unnecessary. Robben told the *Mountain News* authorities knew his exact location, because he was wearing a GPS device at the time and he also says he had checked in with the court by phone.

Robben says he wasn't going anywhere anyway. "I'm not a flight risk It's basically the parking ticket of criminal charges," nothing serious enough to cause him to abscond, he said.

The "nucleus" of his woes, he says, began in 2007, when, he says, he and another employee of the Nevada Department of Taxation brought to the attention of their superiors operational failures in the department's computer system – like, it couldn't add right – failures to properly audit the mining industry, the transmission of pornography by some employees and the use of racial slurs by one of the managers. In return, says Robben, he was fired. He subsequently filed suit against the state and his case is currently on appeal.

As his court case initially proceeded, he asserted that the Nevada Attorney General handled it improperly and illegally, leading him to protest Nevada state government in Carson City with giant "crime scene" tape and other signs in front of state offices.

Robben deployed similar signs

Continued on Page 34

"Ty Robben case"

Continued from Page 32

along Al Tahoe Boulevard on January 28 as part of his protest against the South Lake Tahoe Police Department.

Continuing the saga, last August Robben attempted to serve a Nevada state official with a subpoena for a friend who had fought to get his state pilot's job back after being fired in what the friend claimed was retaliation for exposing wrongdoing and unsafe practices at the Department of Transportation. The woman Robben was serving said she felt threatened by Robben and later received a restraining order against him, though Robben denies he was menacing in any way and said that she actually ran over his toe. Charges were filed against Robben, including assault, which were later dropped except one. He took a deal on a disorderly conduct charge to avoid jail time. If Robben complies with all court conditions for a year, that charge will be dismissed also.

While incarcerated in the Carson City jail, says Robben, he was put on suicide watch, a ploy to imprison him in solitary confinement, he says, had his food poisoned and was burdened with excessive bail. He denies involvement in the recent shooting of Judge John Tatro's home, the same judge who issued the contempt of court warrant and set Robben's bail. He does contend that Tatro and the majority of officials involved in his case are all connected in one way or another as former classmates, colleagues, friends, parents and such. "It's an incestuous little situation down there." No wonder, he says, Nevada received a D- for corruptibility from the Center for Public Integrity.

While he might seem a little out there and somewhat of a loose cannon, Robben wrote in an email to the *Mountain News*, " Am I a threat? Maybe, to . . . political careers . . . but I have no immediate or long range plans to go postal with AR15's and AK47's. Instead I am using my first amendment rights to free speech." Robben said his protests are a way to "let off steam" and also provide solace for others who may be facing a similar situation.

He provided a letter from the El Dorado County Mental Health Department stating that in his current mindset, he does not qualify for mental health services, which essentially means he is sane, he says. "Do I sound 'off' or crazy? I know this story could make people think that because the facts are outrageous, but it is all true and that is why I am taking it to the press and complaining about this."

His complaint against the South Lake Tahoe Police Department is two -fold.

1. The South Lake Tahoe Police Department is dragging its feet in completing a report on the October incident and forwarding it to the District Attorney for possible criminal prosecution and has failed to provide him with a copy of the report and;

2. The police department allowed the bounty hunters to proceed in violation of the provisions of California state law and though standing by when the incident occurred to "keep the peace," he says, failed to intervene as the bounty hunters committed "burglary, assault, batter(y) with deadly weapons, kidnapping, vandalism, trespassing, giving false info to a peace officer, stalking and harassment, etc.," Robben wrote in an email to the *Mountain News*. He said he was "tased" three times and had to flee into a nearby meadow to escape. "It was like Rambo," he said."Fortunately nothing happened. It could have been a lot more serious."

> "Do I sound 'off' or crazy? I know this story could make people think that because the facts are outrageous, but it is all true and that is why I am taking it to the press and complaining about this."
>
> – Ty Robben
> Police protester

Robben says he did not seek medical attention because he was in "shock" and worried about being accosted again by the bounty hunters, or maybe even being taken in by police, if he ventured out. He has retained an attorney and has filed a civil suit against the bounty hunters. He also aired his complaints before the city council at its January 22 meeting and a special February 11 meeting.

In an email from police Lieutenant Brian Williams shared by Robben with the *Mountain News*, Williams said Robben may not have fully understood police procedures and laws regarding the investigation and preparation of reports and the amount of time it takes. He concedes the department fumbled by not clearly directing Robben about how to file a report at first.

happens with all kinds of cases . . . While you might have the impression that the SLTPD is a decently sized agency–our investigative resources are quite limited (only 3 detectives). This means that many cases are investigated by patrol officers and supervisors in-between their normal day-to-day work (patrolling, responding to calls for service, etc.)."

Neither the police department nor the El Dorado County District Attorney's office would provide a copy of the report to the *Mountain News* and neither offered a legal reason for the report's withholding. When originally asked, police spokeswoman Lieutenant Dave Stevenson said the matter was in the hands of the district attorney and directed all questions and requests for comment to that office. Assistant District Attorney Bill Clark told the *Mountain News* that the police department was in fact the legal custodian of the report and so decisions regarding its disclosure would have to come from the police, acknowledging the situation was a "catch-22."

The *Mountain News* filed a California Public Records Act request to obtain the report. "This is public information and the public has a right to know. This kind of game playing between two agencies is unacceptable," said *Mountain News* publisher Taylor Flynn. "Just put it out there so the public can assess what's going on."

Clark did say the matter was a low priority, given other, more pressing matters, such as pretrial hearings in the case of the alleged killer of Richard Swanson, a teenage gas station attendant slain in Tahoe in more than 30 years ago. He said the report was a lot tamer than Robben's rendition of events and outlined only misdemeanor crimes by the bounty hunters.

Clark told the *Mountain News* the report was brief, only a few pages long. Uhler said the report was 108 pages in his email.

Meanwhile, Robben has launched two websites – nevadastatepersonnel-watch.wordpress.com/ and sltpdwatch.wordpress.com – devoted to his case. He has also become involved in the Lawless America movement, dedicated to exposing judicial and government corruption throughout the nation.

These days Robben says he is self employed in the IT field and also sells the "crime scene" banners he uses in his protests. Many of his sales come from communities such as Berkeley, which he calls the "epicenter for selling protest signs."

TAHOE TRIBUNE COVERS THE SOUTH LAKE TAHOE POLICE PROTEST

TAHOE DAILY Tribune

Your News. Your Tahoe. • tahoedailytribune.com

Police protest draws handful of supporters

By Adam Jensen

Reno resident Mike Weston, left, and South Lake Tahoe resident Ty Robben string up oversized crime scene tape during a police protest along Al Tahoe Boulevard Monday afternoon. Adam Jensen / Tahoe Daily Tribune

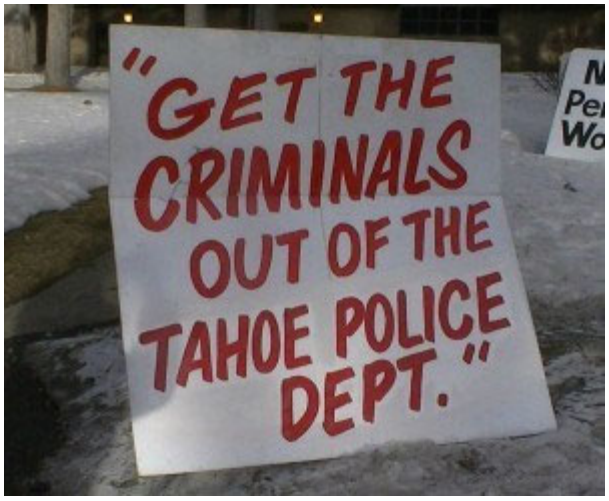
Ty Robben was pushing the envelope regarding the city's sign ordinances.

A man who is upset about South Lake Tahoe Police Department's handling of an incident involving bounty hunters at a Sierra Tract home protested alleged police corruption Monday. Todd "Ty" Robben unfurled oversized crime-scene tape and posted numerous signs on Al Tahoe Boulevard Monday afternoon alleging malfeasance by police.

Robben is angered by the department's response to an October incident in which he says **Nevada bounty hunters illegally entered his Pinter Avenue house** to serve a misdemeanor contempt of court warrant out of Nevada without the required documentation from California.

He said he was **shocked with a Taser** during the incident, **but escaped** what he considers an attempted **kidnapping by the bounty hunters**. **"What I'm saying**

is justice delayed is justice denied," Robben said at the start of Monday's demonstration. **"They're not giving me a straight answer on the delay."**
South Lake Tahoe Police Chief Brian Uhler was surprised by the protest, saying he has been in contact with Robben regarding the status of the investigation as recently as Friday.



The department has made "steady progress" on the investigation of the bounty hunters' behavior, Uhler said. He questioned the need for urgency on the incident because it does not present an ongoing threat to public safety.

The police chief also questioned the use of language on some of the protest signs that could be offensive to some and said **Robben was pushing the envelope regarding the city's sign ordinances.** He said the department supports people's constitutional rights to free speech and didn't want to make a big deal about the possible infractions.

Police have submitted information on the October incident to the El Dorado County District Attorney's Office, Uhler said. Whether or not criminal charges will arise form the incident is unknown.

The District Attorney's Office sent the investigation of the incident back to police in December for further information gathering last month. Assistant District Attorney Hans Uthe said on Tuesday afternoon that documentation of the incident was re-submitted to prosecutors about 10 a.m. Monday.

Despite the signs alleging corruption, Robben said he doesn't feel that most police are corrupt, but said that it is up to them to prove they are not. He said he hoped the protest would bring exposure to people with similar complaints.

"This is what we can do as citizens," Robben said, describing himself as a patriot."

Three people were at the protest when it started around noon. Several people stopped by to inquire about the reasons for the signs.

Fliers advertising the protest included a picture of recently arrested South Lake Tahoe police officer Johnny Poland. Robben said the protest was planned prior to Poland's arrest.

This is not the first time Robben has used protests to draw attention to alleged corruption by government officials.

Robben organized similar protests in front of the Nevada Attorney General's Office in April, alleging the Carson City Court Clerk's Office manipulated transcripts and improperly allowed the Nevada Attorney General's Office to file court documents late in his fight to be reinstated to a job with the Nevada Department of Taxation, according to an article in the Nevada Appeal.

In September 2009 Robben filed a lawsuit alleging he was the victim of discrimination and was demoted after bringing complaints to managers.

Robben was arrested in Carson City in August on misdemeanor counts of assault and breach of peace for an incident in which he says he was legally attempting to serve a subpoena on Nevada Department of Transportation Director Susan Martinovich earlier in the month, according to the article.

Robben said that Martinovich ran over his toe with a car while he was attempting to serve the subpoena, the Appeal reported. Martinovich has said she felt threatened during the incident and was later granted a restraining order against Robben.

Prosecutors said Robben pleaded no contest to a disorderly conduct charge to settle the case in November, according to a subsequent Nevada Appeal article.

Note: The "disorderly conduct charge" charge is delayed and Ty Robben has not been convicted of that trumped up charge.

— The Associated Press contributed to this story.

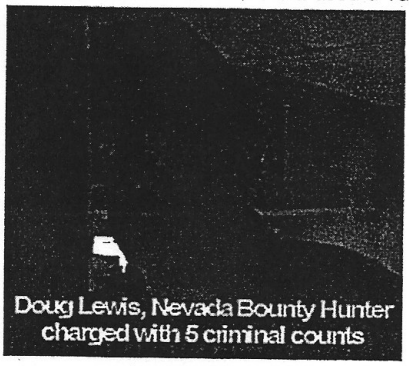
Lake Tahoe News covers Justin Brothers Bail Bonds / Doug Lewis criminal charges

LAKE TAHOE NEWS

Carson City bounty hunter faces charges in S. Tahoe

On: March 13, 2013, By: admin, In: News, 3 Comments

Five misdemeanor charges have been filed against a Carson City bounty hunter in regards to his actions in South Lake Tahoe. Douglas Lewis with Justin Brothers Bail Bonds has been charged with unlawful arrest, aggravated trespass, vandalism, battery and damaging a vehicle. The incident occurred in October at the South Lake Tahoe home of Ty Robben. Robben wanted felony charges filed against the suspect. He said the bounty hunters broke down his door and used a Taser on him.



Doug Lewis Nevada Bounty Hunter with Justin Brothers Bail Bonds

Robben has since filed a civil suit against the Carson City firm and has protested the Justin Brothers with the large crime scene tape. "Protesting will continue against the Justin Bros for the duration" Robben said. It was the delay in action that led Robben in January to protest near the South Lake Tahoe Police Department.

Doug Lewis starred in a TV show called Bounty Hunter watch it here:http://youtu.be/dckPsFvYrdc?t=7m48s

Doug Lewis is also doing business on a permanently revoked Nevada business license according to the Nevada Secretary of State website http://nvsos.gov/SOSEntitySearch/corpsearch.aspx?st=c&ss=nevada%20bail%20enforcement

TAHOE DAILY Tribune

Your News. Your Tahoe. • tahoedailytribune.com

Charges filed in police protest case against Justin Brothers Bail Bonds 'Bounty Hunter' Doug Lewis

The El Dorado District Attorney' s Office has filed charges against a bail bondsman for an October incident that spurred a protest against the South Lake Tahoe Police Department.

On Thursday, Assistant District Attorney Hans Uthe filed five misdemeanor counts against bail bondsmen Douglas Lewis for an October incident in the Sierra Tract neighborhood in which bounty hunters allegedly entered the home of Todd "Ty" Robben in an attempt to bring him into custody on a Nevada warrant.

The counts against Lewis include unlawful arrest, aggravated trespass, vandalism, battery and damaging a vehicle, according to court documents.

A man who answered the phone at Justin Brothers Bail Bonds Tuesday morning declined to say how Lewis could be reached. The man said there is no comment on the charges before hanging up. During the October incident, bondsmen from the company entered the Pinter Avenue home of Robben and shocked him with a Taser in an attempt to take him into custody, according to Robben' s account of the incident. Robben contends the bondsmen did not have a legal warrant for the search. The pace of the investigation into the incident led Robben to organize a protest against the police department along Al Tahoe Boulevard in January

source: http://www.tahoedailytribune.com/southshore/5522111-113/incident-robben-bail-bondsmen

COMMENTS:

Ty Robben · Top Commenter ·

I want to say thank you to the South Lake Tahoe Police and El Dorado County District Attorney for getting this done. Please see more at https://nevadastatepersonnelwatch.wordpress.com/.

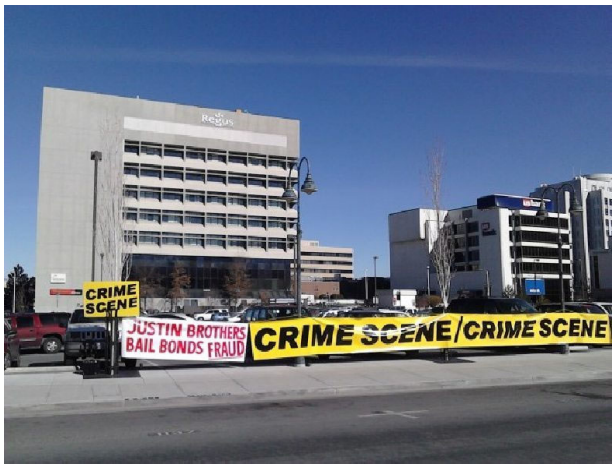
Reply · Like · Follow Post · 3 seconds ago

THIS IS RENO
LOCAL NEWS & EVENTS

Protesters target Justin Brothers Bail Bonds

https://thisisreno.com/2013/03/opinion-protesters-target-justin-brothers-bail-bonds/

The Justin Brothers Bail Bonds company was the target of a protest held March 26, 2013 with protesters unfurling the "World's Largest CRIME SCENE tape" and other large signs like "Justin Brothers FRAUD" and "End the Rampant CORRUPTION."



What's all the commotion about? Protester Ty Robben said he was the victim of illegal activity by the Justin Bros (Dennis and Richard Justin) along with their "bounty hunter" Doug Lewis from Reno and Carson City. Robben said the Justin Bros are the subjects of a multi-million dollar lawsuit, five criminal charges (assault, battery with taser gun, violation of 847.5, etc.) and complaints with the Nevada Secretary of State for alleged failure to have a valid business license and the Nevada Division of Insurance for alleged fraudulent business activity related to the bail bond and bounty hunter (also called bail recovery) industry in Nevada.

Robben said he was originally involved in a legal situation for serving a court subpoena for the previous state pilot, Jim Richardson, to the former Nevada Department of Transportation Director Susan Martinovich. Robben was on bail for what he said was an trumped up misdemeanor charge of assault which he said was later dismissed. While on bail, and although not a "fugitive," Robben said he was wanted by the Justin Bros for an alleged violation of his pre-trial conditions.

Robben said the Justin Bros claim they had a warrant from the Carson City Justice Court signed by Judge John Tatro. The problem, Robben said, was that bail bondsmen and bounty hunters are not deputized peace officers, and they crossed into South Lake Tahoe in the State of California where Mr. Robben lives.

Robben said the bounty hunters kicked in his front door and tasered him 3 times. Robben said he was able to outrun the bounty hunters in the thick woods around his Tahoe home. He said the bounty hunters then slashed his car tires.

"These idiots acted above the law by acting under the color of law" said Robben, pointing out that bounty hunters like Dog the Bounty Hunter (who has a new series coming out April 2013 on CMT) are basically citizens and not deputized law enforcement. Bounty hunters do not serve warrants — police or the Sheriff typically perform that duty, Robben said.

Robben, who is represented by Sacrament attorney Julius Engel, said he has filed a multi-million dollar civil lawsuit against the Justin Bros in Sacramento Federal Court as case ROBBEN v. JUSTIN et al., Case No.: 2:13-cv-00238-MCE-DAD.

SO. LAKE TAHOE NEEDS TO IMPLEMENT A CITIZEN REVIEW BOARD FOR SO. TAHOE POLICE INTERNAL AFFAIRS COMPLAINTS.

Posted on February 23, 2016 by agent provocateur under South Lake Tahoe Police Corruption

Greetings So. Lake Tahoe City Council:

I am requesting an "agenda item" to be placed on the next city council meeting to address citizen complaints against the police. The city needs to implement a Citizen review board for So. Tahoe police internal affairs complaints. Complaints against SLTPD officers known as "internal affairs" complaints appear to be covered-up by the corrupt SLTPD.

Many cities in California have implemented citizen review boards and South Lake Tahoe is a major tourist destination. The locals also deserve accountability. My experience is that the SLTPD covers-up citizen complaints against their personnel.

This cover-up and white-washing must stop and there must be accountability and transparency in the SLTPD especially with the false arrests, police shootings, excessive force and neglect of SLTPD officers to follow State laws and withholding police reports from crime victims.

See https://nacole.org/wp-content/uploads/184430.pdf
"In many communities in the United States, residents participate to some degree in overseeing their local law enforcement agencies. The degree varies. The most active citizen oversight boards investigate allegations of police misconduct and recommend actions to the chief or sheriff. Other citizen boards review the findings of internal police investigations and recommend that the chief or sheriff approve or reject the findings. In still others, an auditor investigates the process by which the police or sheriff's department accept or investigate complaints and reports to the department and the public on the thoroughness and fairness of the process.

Citizen oversight systems, originally designed to temper police discretion in the 1950s, have steadily grown in number through the 1990s. But determining the proper role has a troubled history. This publication is intended to help citizens, law enforcement officers and executives, union leaders, and public interest groups understand the advantages and disadvantages of various oversight systems and

components. In describing the operation of nine very different approaches to citizen oversight, the authors do not extol or disparage citizen oversight but rather try to help jurisdictions interested in creating a new or enhancing an existing oversight system by: Describing the types of citizen oversight.

Presenting programmatic information from various jurisdictions with existing citizen oversight systems. • Examining the social and monetary benefits and costs of different systems. The report also addresses staffing; examines ways to resolve potential conflicts between oversight bodies and police; and explores monitoring, evaluation, and funding concerns. No one system works best for everyone. Communities must take responsibility for fashioning a system that fits their local situation and unique needs. Ultimately, the author notes, the talent, fairness, dedication, and flexibility of the key participants are more important to the procedure's success than is the system's structure."

Thank You,
-Ty Robben

The above news articles are only a portion of press that has covered this Petitioner on the narrow issues concerning the South Lake Tahoe police and El Dorado D.A. in what was a cover-up of neglect by the police for their part in allowing a home invasion and attempted interstate kidnapping occur under their watch when the Justin Brothers bail bondsmen and their bounty hunters failed to obtain a legal warrant pursuant to penal code 847.5 which states

"If a person has been admitted to bail in another state, escapes bail, and is present in this State, the bail bondsman or other person who is bail for such fugitive, may file with a magistrate in the county where the fugitive is present an affidavit stating the name and whereabouts of the fugitive, the offense with which the alleged fugitive was charged or of which he was convicted, the time and place of same, and the particulars in which the fugitive has violated the terms of his bail, and may request the issuance of a warrant for arrest of the fugitive, and the issuance, after hearing, of an order authorizing the affiant to return the fugitive to the jurisdiction from which he escaped bail. The magistrate may require such

additional evidence under oath as he deems necessary to decide the issue. If he concludes that there is probable cause for believing that the person alleged to be a fugitive is such, he may issue a warrant for his arrest. The magistrate shall notify the district attorney of such action and shall direct him to investigate the case and determine the facts of the matter. When the fugitive is brought before him pursuant to the warrant, the magistrate shall set a time and place for hearing, and shall advise the fugitive of his right to counsel and to produce evidence at the hearing. He may admit the fugitive to bail pending the hearing. The district attorney shall appear at the hearing. If, after hearing, the magistrate is satisfied from the evidence that the person is a fugitive he may issue an order authorizing affiant to return the fugitive to the jurisdiction from which he escaped bail.

A bondsman or other person who is bail for a fugitive admitted to bail in another state who takes the fugitive into custody, except pursuant to an order issued under this section, is guilty of a misdemeanor."

This Petitioner was not absconding from bail or a fugitive in that case. And it should be noted that this Petitioner prevailed on his appeals and other court cases related to the false criminal charges from Carson City, Nevada. These false charges and convictions in El Dorado County are clearly a series of retaliatory prosecution for this Petitioner's continued exercise of his constitutional rights including 1st amendment free speech (protests, websites, exposing corruption, and use of political hyperbole, rhetoric, satire and stating the facts in a profile public forum) as well as 1st amendment (grievances & right to petition) access to the courts to sue the wrongdoers. …and use commercial liens to obtain payments against the individuals, cities, counties and states.

The conflict-of-interest can be observed in the recent news articles and private websites of El Dorado D.A. Vern Pierson and his former Deputy D.A Dale Gomes who is now apparently a criminal defense lawyer in Placerville, CA. It's clear that D.A. Vern Pierson and Dale Gomes had a personal vendetta to attack and discredit this political enemy by claims of "fake news" being spread on this Petitioner's popular websites including the now decommissioned http://NevadaStatePersonnelWATCH.wordpress.com which had over a million views and thousands of daily "hits/views"… The website was taken down during the Petitioner's time in jail/prison and no reason has been provided from Wordpress.com as to any cause of action or alleged "violations of use". http://JudgeTatroScandals.worpress.com was also taken down with no reason given.

http://web.archive.org/web/20160219020659/https://nevadastatepersonnelwatch.wordpress.com/

The other websites http://NeighborsAgainstCorruption.wordpress.com and http://SLTPDwatch.wordpress.com remain active since there is and never was any violations of use policy…

Facebook Says Page Celebrating "Dead Cops" Doesn't Violate its Community Standards

While it bans page critical of 'Drag Queen Story Hour'.

Paul Joseph Watson | Infowars.com - June 11, 2020 74 Comments

https://www.infowars.com/facebook-says-page-celebrating-dead-cops-doesnt-violate-its-community-standards/

Facebook has refused to remove a page celebrating "dead cops," saying that it does not violate their community standards.

The page is titled The Only Good Cops Are Dead Cops and openly incites violence against police officers. However, when it was reported to Facebook moderators, they reviewed the page and said that although it may be "offensive," it doesn't violate any specific community standards.

Meanwhile, another Facebook page set up by concerned parents that was critical of 'Drag Queen Story Hour' was banned by the social media giant.

500 Mom Strong was removed for “transphobic language,” including one post that merely stated, “Reminder: Women don’t have to be polite to someone who is making them uncomfortable.”

Also see: https://thewashingtonsentinel.com/facebook-insists-page-celebrating-dead-cops-doesnt-violate-facebook-rules/

D.D.A. Dale Gomes was so proud of his rigged conviction he brags about it on his new “criminal defense” website

https://www.dalegomeslaw.com/case-results

The man who led anti-South Lake Tahoe Police, El Dorado County Sheriff, District Attorney and Judge campaigns will be spending the next seven years in prison after he was given the maximum sentence October 27, 2017 in Sacramento Superior Court.

Todd "Ty" Christian Robben had been found guilty by a jury September 25 on eight felony charges which involved threats and attempted threats targeted at a number of public officials including Superior Court Judges in El Dorado County, a South Lake Tahoe Police lieutenant, an investigator from the State Bar, the South Lake Tahoe City Attorney, and a local attorney who represented the defendant on a misdemeanor appeal.

All judges sitting on the El Dorado County bench recused themselves due to Robben's threats so the case was heard in Sacramento before a Sacramento Superior Court Judge on an assignment handed down by the California Supreme Court.

After learning of the verdict, **District Attorney Vern Pierson issued the following statement: "I am pleased that a jury has convicted Mr. Robben of these crimes. I hope this sends a strong statement that El Dorado County won't tolerate threats or intimidation against judges or other public officials."**

Through intimidation and spreading fake news smear tactics, Robben was also known to use size-exaggerated crime scene tape to surround Carson City government buildings, the El Dorado County complex on the corner of Johnson Boulevard and Al Tahoe Boulevard in South Lake Tahoe and also in Placerville. He also ran two websites that targeted law enforcement and government with veiled threats of violence. He was seen numerous times in local courts and had threatened to disrupt a Nevada Day Parade with his crime scene tape antics.

A fired Nevada Department of Taxation employee, Robben also had run-ins with a Carson City judge, a district attorney and a sheriff in Carson City.

In 2014, Robben was accused of solicitation to commit murder and intimidation against Carson City Judge John Tatro in which formal charges were filed but later dismissed by a presiding judge in Douglas County.

Former Carson City District Attorney Neil Rombardo, Assistant District Attorney Mark Krueger and Carson City Sheriff Ken Furlong were subjects of intimidation by Robben but charges were never filed.

Source: http://www.southtahoenow.com/story/10/28/2017/ty-robben-spend-next-seven-years-prison

CarsonNOW.org
Your One Stop for Carson City News

Man who threatened public officials in California and Nevada given maximum prison sentence

https://carsonnow.org/story/10/28/2017/man-who-threatened-public-officials-california-and-nevada-given-maximum-prison-sent

Submitted by Jeff Munson on Sat, 10/28/2017

The man who once threatened to disrupt the Nevada Day Parade and led anti-Carson City, South Lake Tahoe Police, El Dorado County Sheriff's Office, district attorney and judge campaigns will be spending the next seven years in prison after he was given the maximum sentence Friday in Sacramento Superior Court.

Todd "Ty" Christian Robben had been found guilty by a jury Sept. 25 on eight felony charges which involved threats and attempted threats targeted at a number of public officials including Superior Court Judges in El Dorado County, a South Lake Tahoe Police lieutenant, an investigator from the State Bar, the South Lake Tahoe City Attorney, and a local attorney who represented the defendant on a misdemeanor appeal.

All judges sitting on the El Dorado County bench recused themselves due to Robben's threats so the case was heard in Sacramento before a Sacramento Superior Court Judge on an assignment handed down by the California Supreme Court.

After learning of the verdict, District Attorney Vern Pierson issued the following statement: “I am pleased that a jury has convicted Mr. Robben of these crimes. I hope this sends a strong statement that El Dorado County won’t tolerate threats or intimidation against judges or other public officials.”

Through intimidation and spreading fake news smear tactics, Robben was also known to use size-exaggerated crime scene tape to surround Carson City government buildings, the El Dorado County complex on the corner of Johnson Boulevard and Al Tahoe Boulevard in South Lake Tahoe and also in Placerville.

He also ran two websites that targeted law enforcement and government with veiled threats of violence. He was seen numerous times in local courts and had threatened to disrupt a Nevada Day Parade with his crime scene tape antics.

A fired Nevada Department of Taxation employee, Robben also had run-ins with a Carson City judge, a district attorney and a sheriff in Carson City.

In 2014, Robben was accused of solicitation to commit murder and intimidation against Carson City Judge John Tatro in which formal charges were filed but later dismissed by a presiding judge in Douglas County.

Former Carson City District Attorney Neil Rombardo, Assistant District Attorney Mark Krueger and Carson City Sheriff Ken Furlong were subjects of intimidation by Robben but charges were never filed.

D.A. Vern Pierson's website(s) promote a story about this Petitioner that his department did not even prosecute. His story is outdated since this Petitioner prevailed in the case below on appeal. IT does show that D.A. Vern Pierson has a vendetta against this Petitioner for exposing his corruption and the pedophiles in the El Dorado Co, Sacramento Cr. and Carson City judicial system. The news articles of Petitioner's victory on appeal are presented in these pleadings. It should be noted that the Director of NOT who evaded service went to high school with the Carson City Sheriff and Judge John Tatro. Vern Pierson's blog https://vernpierson.weebly.com/ appears to have two posts – one on Ray Nutting and this one on this Petitioner. Both are meant to defame Mr. Pierson's political enemies despite both Mr. Nutting and this Petitioner having prevailed on their cases.

Jailed ex-Taxation worker convicted

http://vernpierson.blogspot.com/2014/03/courtesy-here-ty-robben-fired-state.html

and

https://vernpierson.weebly.com/

Courtesy nevadaappeal.com

HERE

Ty Robben, the fired state Taxation employee who has been waging a campaign against the state and Carson City's criminal justice system for more than a year, was convicted Friday of misdemeanor disorderly conduct.

The conviction results from what the judge ruled was his failure to meet conditions of his plea agreement in a case involving his alleged assault on then-Nevada Department of Transportation Director Susan Martinovich. He originally was charged with assault when he ran alongside her vehicle, banging on it and trying to pull open the door. He said he was trying to lawfully serve her with papers in a case involving another fired state employee.

Under the deal, the charge was reduced to disorderly conduct and will be dismissed after a year if Robben meets conditions including seeking counseling for anger management and other issues.

Judge John Tatro, Sheriff Ken Furlong and NDOR Director all were classmates at Carson High School:

Where did all the Carson graduates go?

Not far! According to the Carson High School Alumni Directory last printed in 2006, many of Carson High grads are alive and well living right here in Carson City or in a nearby Northern Nevada community.

It has been a fascinating experience tracking down former CHS graduates, and I felt I had hit the jackpot when former CHS coach Ron McNutt dropped by the Chamber to give me a copy of the alumni directory providing me with a wealth of information on CHS graduates.

The CHS Alumni Directory goes as far back as 1953 detailing the whereabouts of the graduates, what colleges or universities they attended, who they married and where they are now living. According to the white pages devoted to where the graduates now live, over 3,000 call Carson City home.

The second most popular place for CHS graduates to live is in Reno with Sparks a close second. While some have moved to Gardnerville and Minden, it's not as many as you may think since most have favored staying very close to home.

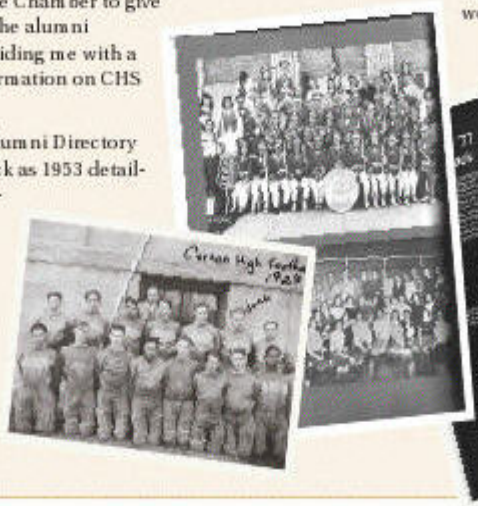
Surprisingly, not as many graduates as would have been expected have migrated to the Golden State. Seems many preferred their home state.

When you look at those who are always in the news in our city, note that most are graduates of CHS. This fact alone quantifies our informal study. Our soon to be ex-Senator Mark Amodei, our mayor Bob Crowell, Judge John Tatro, Sheriff Kenny Furlong, Fire Chief Stacy Giomi, NDOT Director Susan Martinovich, [illegible] Congressman Dean Heller and so many others are Carson alumni.

We found some very recognizable names among the 1953 graduates: Amodei (Shirley), Furlong (Timothy and Yvonne), Quillici (Gloria), Richards (Garth), Whittemore (Charles Allen). Classes remained small until what seemed like a population explosion in 1961 when subsequent classes continued to grow as Carson City grew. In 1953, our population was at 4,500 and by 1961 had grown to 7,846.

In the 100 years since the first documented class in 1906, CHS has graduated 17,750 between 1953-2006 and that figure should be close to 20,000 by now. As stated in the directory, "the accomplishments of this group are vast and widespread from local personalities to those known nationwide." CHS has graduated outstanding athletes, scientists, many doctors, military heroes, actors, musicians, politicians, great chefs and so many more of which we all can be proud.

Seems the climate is right for incubating success at CHS and this is great for our business community. ■



According to the Carson District Attorney's office, he failed to meet the conditions he agreed to in the October 2012 deal.

Assistant District Attorney Mark Krueger said Robben was brought before Judge Nancy Oesterle on Dec. 13, convicted on the disorderly conduct charge and sentenced to 60 days in jail. He was given credit for some 50 days of time served, so that sentence expires in about a week.

But Robben remains in jail in lieu of $50,000 bail on charges he libeled and attempted to intimidate Justice of the Peace John Tatro, including what Tatro said he sees as threats to his wife and children.

He lost an attempt three weeks ago to reduce his bail and disqualify the District Attorney's Office from prosecuting the case. He is appealing that ruling to district court.

When he was charged in the case involving Martinovich, he was brought before Tatro. He was incensed by what he saw as unfair treatment by the judge and began a campaign to remove Tatro from office including a website that contains elements the sheriff's investigators ruled were illegal.

They charged him with felony stalking electronically and attempting to intimidate a public official and intimidating that official's family -- both felonies. He also was charged with intimidating a public official, a gross misdemeanor, and libel.

He is still in jail awaiting a preliminary hearing in that case.

http://vernpierson.wordpress.com/

Posted 9th March 2014 by Pesce

CarsonNOW.org
Your One Stop for Carson City News

Prosecutor drops charges against man accused of murder-for-hire plot

Submitted by admin on Fri, 04/11/2014 - 8:22am

https://carsonnow.org/story/04/11/2014/prosecutor-drops-charges-against-man-accused-murder-hire-plot

The Douglas County District Attorney dropped charges Thursday against a man whom Carson City prosecutors had said tried to hire a jail inmate to kill Justice of the Peace John Tatro.

Ty Robben, a former Nevada Taxation Department employee, was being held on the charge with a $50,000 bail. **Mark Jackson, the district attorney brought on as special prosecutor after Carson City's DA was removed from the case**, said he reviewed the evidence before him and made the decision.

In a statement Jackson said: **"Based on a full and complete review of all the evidence and the existing constitutional, statutory and case law, I filed a notice of dismissal today in the Carson Township Justice Court."**

Last month Jackson dropped charges of stalking, libel and two counts of intimidation of Tatro and his family, saying there wasn't enough evidence that Robben was stalking him and his family, and that Nevada's libel law was vague.

Tahoe Daily Tribune lake tahoe action

Charges against Tahoe man dropped

News NEWS | April 11, 2014

Geoff Dornan
gdornan@nevadaappeal.com

https://www.tahoedailytribune.com/news/charges-against-tahoe-man-dropped/

All charges against South Tahoe resident Ty Robben have now been dropped.

Douglas County District Attorney Mark Jackson, the special prosecutor named to handle the cases, previously dismissed libel and harassment charges. He served notice Thursday that he was dropping the charge Robben tried to hire a hit man to kill Justice of the Peace John Tatro.

Jackson was brought in after the Carson City DA's office was disqualified from handling the case.

"Based on a full and complete review of all the evidence and the existing constitutional, statutory and case law, I filed a notice of dismissal today in the Carson Township Justice Court," Jackson said in a statement.

He said that means Robben's $50,000 bail has been lifted, and all pending charges against him have been dismissed.

"It is my understanding that Mr. Robben is in the process of being released from the Carson City Jail," Jackson said.

Robben stopped by the Tahoe Daily Tribune Friday and said he was hoping to restore his life and family. He thanked his attorneys for their work to get him released.

"Thank you to Mark Jackson for standing up and supporting the U.S. Constitution," Robben said.

Two weeks ago, Jackson dismissed the other case against Robben, which accused him of libel and stalking and two counts of attempting to intimidate Tatro and his family.

He did so stating that Nevada's libel law was "unconstitutionally vague." The stalking charge, he said, simply didn't have enough evidence to support it.

Robben has been battling the state and criminal justice system since he was terminated by the Taxation Department. He was angry with Tatro for his conviction on charges of disorderly conduct centered on his attempt to — allegedly — serve papers on behalf of a friend on then-NDOT Director Susan Martinovich.

Mountain Democrat

Charges dropped: DA protester out of prison

https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-prison/

By Cole Mayer - Published on April 17, 2014

A man known for protesting the El Dorado County District Attorney's Office and charged with soliciting the murder of a judge in Nevada was released from prison and his charges dismissed.

South Lake Tahoe resident Ty Robben was released last week after Douglas County, Nev., District Attorney Mark Jackson dismissed the solicitation of murder charge, along with a charge of criminal libel — a charge that is not used in California.

Both the criminal libel and solicitation of murder charge concerned Judge John Tatro, Robben said. But, Robben told the Mountain Democrat he was exercising his First Amendment rights for the first charge, and he was not soliciting anything on the second charge. Rather, another prisoner — while Robben, known as "Top Ramen" while incarcerated on the libel charge — propositioned him with a $5,000 "roofing job," Robben said.

Jackson confirmed he dismissed the charges due to lack of evidence and unlikelihood of conviction. He also noted that the Carson City, Nev., DA's Office was originally on the case, but was taken off due to having been named in a federal lawsuit Robben filed against them.

Robben credits his faith with seeing him through his time in prison. "My faith in the Lord got me through the darkest period in my life and I pray that I can start to forgive these people for the unforgivable acts of government retaliation using the criminal justice system after I had filed a federal lawsuit in Reno two weeks before I was arrested in California," he said.

Ty Robben speaks at the Feb 11, 2013 South Lake Tahoe City Council Meeting re: SLTPD corruption

1.1K views · Feb 16, 2013
YouTube › WATCHDOWG

Carson City 911 NV NDOT Dir. Susan Martinovich HIT and RUN and Sheriff COVER-UP

1.5K views · Aug 28, 2012
YouTube › WATCHDOWG

https://www.youtube.com/watch?v=two3wtVCvsM

https://www.youtube.com/watch?v=NsMMnwZpAC0

The above news articles are just a few that attempt to describe a conflicting narrative between various law enforcement agencies, courts/judges, District Attorneys, etc. in two states (California and Nevada)… Before going too far afield and off topic, it must be said that this Petitioner has been wrongfully charged with crimes he did not commit and he is the victim of a smear campaign by several elected officials who attempt to cover-up their own misconduct. Petitioner wsa a whistle-blower at the Nevada Department of Taxation where hundreds of millions of dollars were embezzled by the Director and the state. The Director, Dino DiCianno was fired. The IT computer system that Petitioner worked on was also defective and cost the Taxpayers millions of dollars…

By Ed VogelLAS VEGAS REVIEW-JOURNALCAPITAL BUREAU

March 11, 2011 - 1:02 pm

Don't miss the big stories. Like us on Facebook. Like 265K

CARSON CITY — State Taxation Director Dino DiCianno "retired" abruptly Friday, less than 24 hours after he told legislators that his staff for the past two years has not audited mining companies to determine if they are properly paying state taxes.

And Gov. Brian Sandoval ordered an audit of mining operators' books to ensure they are paying their required state net proceeds of minerals taxes.

These issues were covered also in the news. Along the way, the courts were used to issue protective orders against this petitioner to fire him from his job. Petitioner prevailed in federal court and the state had judgment taken against it for retaliation. The matter is still pending as to the back pay and front pay.

The courts in Nevada using their corrupt judges backdated court filings for the state Attorney General and were caught doing so. The Reno NBC TV news covered the story and since that time this Petitioner has been harassed by the Nevada and California courts and law enforcement over false criminal charges. Petitioner fought back legally using non-violent remedies like lawsuits, protests, etc.

LAS VEGAS REVIEW-JOURNAL®

Taxation Department losing tens of millions of dollars a year, ex-employees say

By Ed Vogel LAS VEGAS REVIEW-JOURNAL CAPITAL BUREAU

Source: http://lvrj.com/news/government/taxation-department-losing-tens-millions-dollars-year-ex-employees-say

CARSON CITY — The state is losing tens of millions of dollars a year in tax revenue because of an inefficient computer system that prevents department auditors from reviewing the tax records of companies in a timely manner, according to two former Nevada Taxation Department employees.

They place the blame primarily on a computer system that, while not antiquated, is slower and not user friendly, saying that a new system is needed.

The department's annual report, released Jan. 15, shows 1.24 percent of businesses in the state were audited during the past fiscal year, **almost half the total** in the 2006-07 year, **just before a new $40 million tax accounting system went online.**

Audit Nevada Taxation Department for FRAUD

They also said that mismanagement by former Taxation Director Dino DiCianno has contributed to the department's inability to perform more audits and that he deliberately stopped audits of the mining industry. DiCianno closed the agency's Elko office in June 2010 as part of a cost-cutting plan by former Gov. Jim Gibbons, though the mining industry was booming and the auditor there could have recovered millions in unpaid mining taxes, they said.

DiCianno, who did not return a phone call seeking comments Tuesday, abruptly retired from state government in March, a day after telling legislators that mining companies had not been audited for two years because he lacked qualified auditors to check their records.

Taxation Department executives told legislators that the mining industry operated on a "self-reporting" tax system. After DiCianno's departure, new Gov. Brian Sandoval required the department to undertake mining industry audits.

That work produced $1.2 million in additional revenue from audits in the fiscal year that ended June 30, although the employees said much more could have been secured except for a three-year statute of limitations on unpaid taxes.

Still the employees and their union representative said far more revenue could be secured if the number of audits returned to the total of past years.

“It is our members’ assertion the total number of audits is down because of the computer and software system,” said Vishnu Subramaniam, executive director of the American Federation of State, County and Municipal Employees Local 4041. “Individuals have to pay their fair share of taxes. We should expect the same from Nevada businesses.”

Although no one was critical of his performance, new Taxation Director William Chisel did not return three messages left by the Review-Journal on his office phone over the past week and a half. Sandoval, however, expressed support Tuesday for Chisel, adding it is the director’s plan to concentrate audits on companies where the returns can be greater.

“I will have a conversation with the director,” Sandoval said. “Mr. Chisel’s background is as an auditor. They are developing systems to go after the higher returning entities.” Subramaniam arranged for the two former Taxation Department employees to speak with a Review-Journal reporter. They both requested anonymity.

One is still employed in state government. He said he told legislators before the meeting in March that **DiCianno was not having the department audit mining companies.** He said he previously worked for a mining company and is proficient in auditing their records. Instead, he was assigned to audit businesses where the return for the state was far less.

This employee said no net proceeds of minerals audits were performed for 10 years.

“We did sales tax audits. We did business tax audits. We did everything <u>but</u> net proceeds of minerals,” he said. “I was stifled by Dino (DiCianno).”

The other source, who said he is familiar with the computer system, said, “It wasn’t right from the beginning. It has been completely dysfunctional.” The system will not even properly add up numbers, he said.

As an example, he said the system software would show a 990 answer for adding up a group of numbers with an actual sum of 1,000. Replacing it with a new system would cost $100 million, he added. Auditors for the Taxation Department do not need

accounting degrees but can take a couple of night courses to qualify for the job, according to the former taxation auditor. He said pay is too low to attract highly qualified people. According to the state Personnel Division, tax auditors are paid $39,108 to $69,029 a year, depending on their experience. A person with a high school degree with previous auditing experience who has completed six credit hours of college accounting classes can be an auditor. “I would always collect or recover five times or more what I earn,” he said. “The jobs pay for themselves.”

The annual report shows salary expenditures by the Taxation Department increased by about $450,000 to slightly more than $20 million a year in the past fiscal year. Subramaniam said Sandoval needs to take the leadership to ensure the Taxation Department does more audits and businesses know they are being watched so they will pay their taxes, but with a 1.24 percent audit rate, businesses realize they can fudge their taxes with impunity. “The least we could be doing is to ensure that Nevada businesses are paying their fair share in taxes — that they are paying what they’re supposed to be paying,” Subramaniam said.

Contact Capital Bureau Chief Ed Vogel at evogel@reviewjournal.com or 775-687-3901.

Nevada Department of Taxation Audits

Year	Audits	Revenue produced	Pct. of businesses audited
2010-11	1,066	$16.2 million	1.24%
2009-10	1,254	15.0	1.35
2008-09	1,397	16.2	1.51
2007-08	1,346	13.4	1.45
2006-07	1,994	19.3	2.08
2005-06	1,668	12.45	2.32

SOURCE: Nevada Department of Taxation annual report, 2010-11

Department Organization and Function (continued)

Compliance staff also conducts investigations to ensure businesses are registered, anonymous tips regarding tax evasion are followed-up, individuals are located through skip tracing, etc. As the need arises, this section may issue tax deficiency notices, approve payment plans, file liens and withholds; and it may close a business as a measure of last resort which includes seizure of assets and subsequent sales of these assets to meet tax obligations. This section also holds taxpayer educational workshops for the public and oversees the Voluntary Disclosure program.

Compliance - Audit section administers a comprehensive audit program to ensure taxpayer compliance. This section is responsible for ensuring financial compliance with laws relating to all of the above named taxes. This section verifies the accuracy of taxpayer credit or refund requests and also administers discovery programs based on a comparison of information from other taxing authorities. Audit staff also assist with taxpayer information and education including proper reporting and record keeping requirements, and conduct taxpayer workshops.

The audit staff conducted 950 sales and use tax audits during Fiscal Year 2011-12. The total net collections from audit billings during this period was $12,742,042. Audits billed may be collected in succeeding fiscal years, set up on payment plans, or may ultimately be reduced through negotiated settlement agreements approved by the Nevada Tax Commission. In addition, based on a 2003 legislative change, audits and other procedures for enforcement must be applied as uniformly as possible, not only among taxpayers subject to a particular tax but also among different taxes, and must consider a weighting of indicators of non-compliance.

The following is a comparison of statistics describing Revenue and Audit sales and use tax activity for the last six fiscal years.

FISCAL YEAR	NUMBER OF AUDITS	NET COLLECTIONS FROM AUDIT BILLINGS
2006-07	1,994	19,303,760
2007-08	1,346	13,422,434
2008-09	1,397	16,180,051
2009-10	1,254	14,977,785
2010-11	1,066	16,168,554
2011-12	950	12,742,042

	GROSS SALES AND USE TAXES	COLLECTIONS AS % OF GROSS TAX	AUDIT COVERAGE
2006-07	3,740,336,053	0.52%	2.08%
2007-08	3,585,817,879	0.37%	1.45%
2008-09	3,122,729,836	0.52%	1.51%
2009-10	2,968,104,048	0.50%	1.35%
2010-11	3,142,104,568	0.51%	1.24%
2011-12	3,344,395,525	0.38%	1.17%

NV Taxation 2012 annual report shows worse stats than 2011. Notice the Audit Coverage percentage is down, the number of audits is down and Net collections is down.

Wednesday, April 4, 2012 nevadaappeal.com

Protesters: Attorney general withholding evidence

Nevada Appeal Capitol Bureau

A group of five protesters staked out the front of the attorney general's office Tuesday, charging that state attorneys have withheld evidence in some cases and improperly manipulated court transcripts in others.

The group was led by Tonya Brown and Ty Robben, both of whom are suing the state over their claims. Brown says false charges were added to her brother's inmate file by a Department of Corrections computer glitch, which she said caused the Parole Board to deny him release. She also says deputy AGs withheld evidence in her brother's case. He later died in prison.

Robben is suing for reinstatement to his job with the Nevada Department of Transportation. He has accused the Carson City court clerk's office of improperly allowed the attorney general's staff to file documents late in his case. He also says staffers manipulated transcripts.

Brown said these are all civil rights violations that should be dealt with. To get attention from drivers passing the AG's office during the lunch hour, they held up a 3-foot high, 20-foot-long banner reading "Crime Scene."

Tonja Brown and Ty Robben demonstrate in front the Attorney General's office regarding the department withholding evidence, a Brady law violation.

JIM GRANT / NEVADA APPEAL

Massive CRIME SCENE at Nevada Attorney Generals office !!!

WATCHDOWG • 2.6K views • 8 years ago

SEE - http://www.NevadaStatePersonnelWatch.wordpress.com for more information KOLO Reno News covers the Massive ...

https://www.youtube.com/watch?v=gbk0rKPnbfs

KRNV investigates Nevada Attorney General & Carson City District Court BACKDATING SCANDAL

WATCHDOWG • 1.9K views • 8 years ago

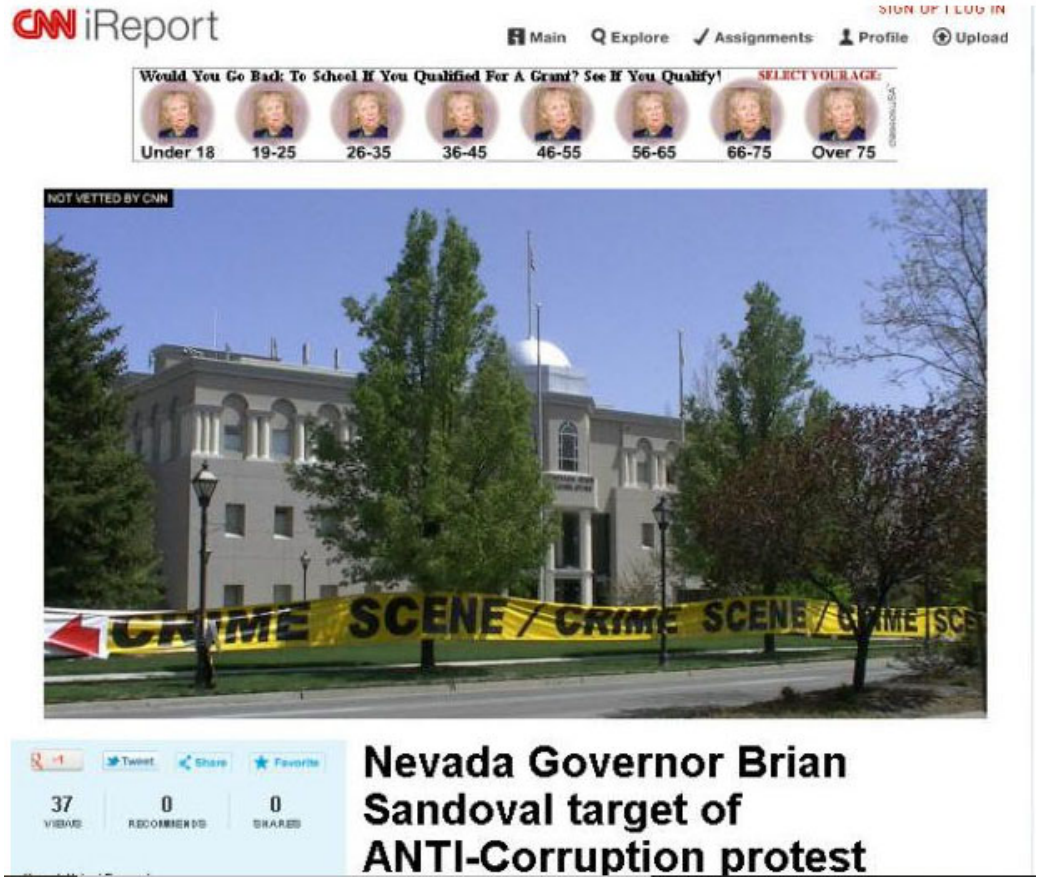
SEE - http://www.NevadaStatePersonnelWatch.wordpress.com for more information KRNV investigates Nevada Attorney General ...

PEOPLE PROTEST Catherine Cortez Masto + Nevada Attorney General's ABUSE OF POWER

WATCHDOWG • 1.7K views • 8 years ago

SEE - http://www.NevadaStatePersonnelWatch.wordpress.com for more information On April 03, 2012 a group of Nevada citizens ...

https://www.youtube.com/watch?v=O-K9Hhx47LQ



This Petitioner exposed massive corruption on a wide & deep scale in the courts and law enforcement agencies on his websites. Much of this is covered in the record of case # P17CRF0114 in interviews Petitioner gave to investigators. The news articles cover bits and parts. What is profound is the massive cover-up of the allegations of child molestation by several judges and others described in the record and the attempt by trial counsel Russell Miller to claim the allegations were false or made-up…

These allegations are serious and normally must be investigated – even if false… Here, Petitioner in his role as an activist in the communities of El Dorado Co. and Carson City, NV with massive press coverage, he learned of all kinds of corruption and wrongdoing. **Petitioner even has the names of victims that claim to have knowledge of said molestation by various judges and others – yet law enforcement and the FBI fail to even investigate those issues! Instead, they retaliate against this Petitioner…**

It is true, according to reliable sources these people are all members of the same club …or secret society. More will come out on this issue in the future. With Jeffrey Epstein's

scandal coming out, the problem in the various churches (especially the Catholic church) so to will everything else in the realm of judges/prosecutors/police, etc.

El Dorado Confidential: What Connection does Psycho DA Vern Pierson Have to a Confirmed Sex Offender? (CONTENT WARNING)

Vern Pierson 1 Response »

https://rightondaily.com/2014/01/el-dorado-confidential-what-connection-does-psycho-da-vern-pierson-have-to-a-confirmed-sex-offender-content-warning/

Posted by Aaron F Park at 5:00 am

(This post is rated R due to extremely strong, yet factual content)

An excuse.

If you read the recent column in the In Eldorado County website – you'd realize that a story broken right here on the Right On Daily Blog about former EID GOP leader Ken Steers has a direct nexus to DA Vern Pierson. Apparently, Vern Pierson was a "celebrity" bartender at the event that Steers got lit up at.

It remains to be seen if Vern Pierson will actually prosecute his ally and donor.

What is clear to this blogger is that Pierson is willing to abuse his office to target political opponents. Witness Daniel Dellinger and Cris Alarcon. Both were fingered in an 2011-2012 El Dorado Grand Jury report over a local ballot measure. Since the Grand Jury is shrouded by secrecy, there is no standard for evidence and no way for the accused to know what their recommendation was based on.

A pedophile?

I will get to that in a bit – Alarcon and Dellinger ran the campaign for a fire district in El Dorado County. It included some campaign discussion prior the ballot measure, not after. This is the standard. The Grand Jury / Vern Pierson said that they used public funds for campaigning without

any concern about the fact that case law is clear. It is not possible to campaign for anything prior to there being a ballot measure filed.

Vern Pierson is prosecuting them both based on the recommendation of the Grand Jury that they misappropriated public funds. They were alleged to have done so before the local ballot measure was filed. The case will likely get thrown out – but it appears that Vern is attempting to punish both Alarcon and Dellinger, two of his most effective antagonists.

It also appears that like Ken Steers, El Do County Auditor-Controller Joe Harn is in on the attempted lynching. (That is when they aren't being over-served or over-serving people whilst playing celebrity bartender)

Enter Kevin Hurtado. Hurtado is 45. Hurtado is gay and has a very young boyfriend. Ryan Donner is now 24.

Hurtado and Donner had a run-in with Cris Alarcon and Dan Dellinger which started about four years ago when Donner showed up at a El Do Board of Supervisors Meeting wanting to get involved in local politics.

Like smart operatives – when someone new shows up, you vet them. The vetting revealed that Donner had a boyfriend with a past. That is Kevin Hurtado.

A few months later this Kevin Hurtado offered to help with a boy scout event for the Pollock Pines Chamber. Alarcon outed Hurtado as a sex offender because of the nature of the event.

A story dated 12/19/2001 on the Tahoe Daily Tribune about Hurtado reveals that he was tried related to molesting several young boys:
Hurtado's victims were all boys between the ages of 10 and 11. It began in 1986 when Hurtado, then in his early 20s, became a counselor at a wilderness camp in Santa Cruz County. Over three summers he molested seven boys. It ended in 1988 when one child reported Hurtado's nighttime activities. Hurtado would orally copulate and masturbate the boys.
It is rare for local media sources to leave a story up for 12 years. Most of the time, they archive them on microfilm – this story is still easily accessible on the internet. Continuing to quote the story:

All three psychologists agreed that Hurtado was a pedophile.
Ultimately, Hurtado completed his parole for his pedophilia conviction from the events in the 1980's. After seeing this story and being alerted to the public outing – I searched a public website and found that Kevin Hurtado is indeed a registered sex offender. It appears that the Hurtado on facebook and in the media story are all the same Kevin Hurtado.

According to accounts, Kevin Hurtado threatened Cris Alarcon.

Somehow, Ryan Donner made his way onto the Grand Jury about a year after the public outing of his boyfriend Kevin Hurtado. (Here is a picture of the two of them together on a cruise, that is dated late 2010)
Ryan Donner served on the 2011-2012 El Dorado Grand Jury. Not coincidentally, they recommended prosecuting Cris Alarcon and Daniel Dellinger over a local ballot measure campaign.

Alarcon and Dellinger have an air-tight case. It appears that Vern Pierson knows this, but is using the “Grand Jury Made me do it” defense.

And Pierson’s rampage is based on a Grand Jury that could easily have been influenced by the young boyfriend of a publicly outed pedophile?

Here is the last Irony – Auditor-Controller Joe Harn disbursed $10,000 after reviewing everything related to the local ballot measure campaign! Does that mean Vern Pierson should be prosecuting him too?

Small County Politics can be ugly.

THE NAMES OF AT LEAST 1,000 PEOPLE APPEAR IN SEALED COURT DOCUMENTS ASSOCIATED WITH JEFFREY EPSTEIN

Time Magazine - BY MADELEINE CARLISLE UPDATED: SEPTEMBER 5, 2019

https://time.com/5668489/jeffrey-epstein-sealed-names/

The names of at least 1,000 people appear in sealed court documents associated with Jeffrey Epstein, a court heard on Wednesday. Whether to make them public is the latest skirmish in a years-long legal battle that continues to play out even after Epstein’s death.

The revelation came after attorneys for a “John Doe” asked a federal judge in New York not to release the names of people who were not directly involved with the 2015 defamation lawsuit filed by Epstein accuser Virginia Roberts Giuffre against Epstein’s longtime confidante Ghislaine Maxwell.

The case was settled in 2017, but the details are only just now emerging. A day before Epstein’s death in August, a massive cache of documents from the suit was unsealed—revealing accusations against prominent figures, including former New Mexico Gov. Bill Richardson and former Sen. George Mitchell. Within the files, Giuffre alleged Maxwell acted as Epstein’s “madame” and was “one of the main women” whom Epstein used “to procure under-aged girls for sexual activities.”

Former FBI Chief Ted Gunderson Tried To Warn You Of An Elite Satanic Pedophile Network, But You Didn't Listen

Source: https://www.infowars.com/posts/former-fbi-chief-tried-to-warn-you-of-an-elite-satanic-pedophile-network-but-you-didnt-listen/

https://banned.video/watch?id=5f976c72fb2c9201aed56e12

Former FBI Chief Ted Gunderson Exposes Satanic Ritual Child Abuse

https://www.youtube.com/watch?v=Jo3tCUxtm_s

After retiring from the FBI, Gunderson set up a private investigation firm, Ted L. Gunderson and Associates, in Santa Monica. In 1980, he became a defense investigator for Green Beret Doctor Jeffrey R. MacDonald, who had been convicted of the 1970 murders of his pregnant wife and two daughters. Gunderson obtained affidavits from Helena Stoeckley confessing to her involvement in the murders. He also investigated a child molestation trial in Manhattan Beach California. In a 1995 conference in Dallas, Gunderson warned about the supposed proliferation of secret Satanic groups, and the danger posed by the New World Order, an alleged shadow government that would be controlling the US government. He also claimed that a "slave auction" in which children were sold to men in turbans had been held in Las Vegas, that four thousand ritual human sacrifices are performed in New York City every year, and that the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City was carried out by the US government. Gunderson believed that in the US there is a secret widespread network of groups who kidnap children and infants, and subject them to Satanic ritual abuse and subsequent human sacrifice.

THEDURAN

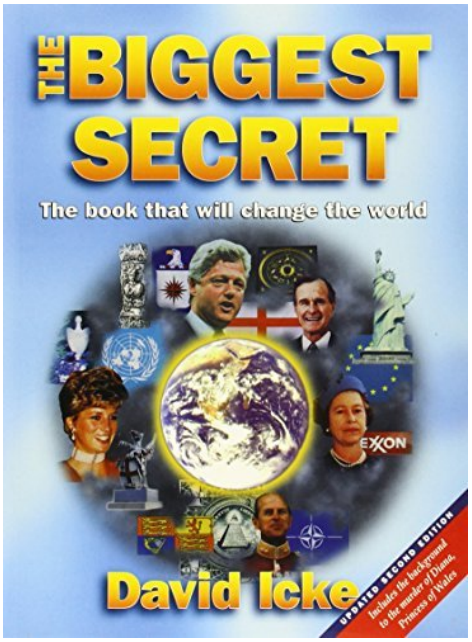
Ted Gunderson Asking Bill Barr and Assistant AG Robert Mueller III to Look into FBI Obstruction Involving CIA-linked Child Trafficking/Abduction Rings

Sourece: https://theduran.com/ted-gunderson-asking-bill-barr-and-assistant-ag-robert-mueller-iii-to-look-into-fbi-obstruction-involving-cia-linked-child-trafficking-abduction-rings/

> Ted retired from the FBI in about 1980 and set up a private investigation firm that worked on murder and missing persons cases. He is most known for his work related to exposing child sex trafficking and exploitation rings, including the McMartin pre-school case, the Finder's Cult and case of the abduction of Johnny Gosch. Despite Ted's voluminous output of information, including books and videos, and seemingly sincere demeanor, he still has his detractors and their has remained some controversy concerning who he actually worked for and what his true mission was.
>
> Setting Gunderson's sincerity aside, we thought these letters to Bill Barr and Robert Swan Mueller III were noteworthy.

David Icke's book "The Biggest Secret"

"What the victims have told me would be almost unbelievable were it not coming from so many different, unconnected sources and were not the stories across the world not telling the same basic tale, even down to the details of the rituals and the mind programming techniques. The children, and the traumatized adults they become, have nowhere to turn. **Their stories are so astonishing that few believe them and they are frightened of going to the police because they know that the Satanic network includes top police officers, judges, civil servants, media people, politicians, and many others who control our 'free' society**.



Questions like "Who are you going to tell?" and "Where are you going to run?" are used to break their spirit. Their sense of hopelessness makes them think there is nothing they can do to seek justice, so they give up and stop trying.

The vast majority of Freemasons are not Satanists or child abusers, but there is a far greater ratio of them in secret societies like the Masons, than outside.

How can you have confidence in justice therefore when, for instance, the Manor of St James's Freemasonry Lodge, No 9179, consists of the leading operational police officers from all the major units of London's Metropolitan Police, including the Anti-Terrorist Squad, Fraud Squad, and the Complaints Investigations Branch which is supposed to investigate allegations of police wrong-doing!

The St James's Lodge further includes senior figures from the Home Office, judiciary, and the Directorate of Public Prosecutions, **which decides if a person will or will not be prosecuted. The whole 305 system of investigation, prosecution, and trial, or the suppression of them, can be achieved by members of this one lodge working together.** What chance has a child got against that?

"I can understand people finding it difficult to believe, it's extraordinary, but yet, everything is showing that it is happening. Young kids are drawing pictures of the type of thing that don't come on TV. I've been dealing with this for the last two years, I've come across many cases of ritualistic abuse and a lot of it happens all over the place; people have really got to wake up." (Quoted Blasphemous Rumours, p 30.)

Satanic ritual abuse is a global network, another pyramid of interconnecting groups, with the high and mighty of society among their

numbers, top politicians, government officials, bankers, business leaders, lawyers, judges, doctors, coroners, publishers, editors and journalists. All the people you need, in fact, to carry out and cover up your rituals and crimes against humanity. It is not that researchers see Satanists everywhere. The ratio of them in leading positions is very high because that's the way it is meant to be. The Satanic networks control the system and so they ensure that there is a far, far, higher ratio of Satanists in positions of power than there are in the general population.

The higher you go up the pyramids, the more Satanists you find. Most of the non-Satanists are filtered out before they reach those levels. The result of all this for the children involved is beyond the imagination of anyone who has not experienced the level of trauma that they must suffer.

The network has among its number, via its countless secret societies, the leading judges, policemen, politicians business people, top civil servants, media owners and editors. Under these kings and generals of the network come the corporals and the foot soldiers who have no idea of the scale of the Agenda they are involved in. If the Brotherhood want someone framed, prosecuted, or murdered, it happens. **If they want one of their people protected from prosecution, it happens.** If they want a controversial proposal like a new road, a building or law change to be approved, they make sure one of their guys is appointed to head the official 'inquiry' to make the decision they want.

This network selects the prime ministers through their manipulation of all political parties and appoints the leading government officials. The Black Nobility networks do the same in other countries, including, no, especially, in the United States. See .. .*And the Truth Shall Set You Free* for details of this.

Bohemian Grove – from "The Biggest Secret"

There is a sexual playground for leading American and foreign politicians, mobsters, bankers, businessmen, top entertainers, etc, who are initiates of the Babylonian Brotherhood. **It is called Bohemian Grove, 75 miles north of San Francisco in California**, near the hamlet of Monte Rio alongside the Russian River in Sonoma County.

I went to the area in 1997 to have a look around and when I told the hotel receptionist where I was going she warned me to be very careful because some people who had been to investigate had never been seen again. Here at Bohemian Grove, Cathy, and others I have interviewed, say they were forced to serve the perversions of their abusers. These include Satanic rituals, torture, child sacrifices, and blood drinking, which take place on the exclusive 2,700 acre estate in among the redwood trees. As Cathy says in her book: "Slaves of advancing age or with failed programming were ritually murdered at random in the wooded grounds of Bohemian Grove and I felt it was only a matter of time until it would be me".26 She says the Grove has a number of rooms for different perversions including a

Dark Room, a Leather Room, a Necrophilia Room, and one known as the Underground Lounge, spelt as 'U.N.derground' on the sign.

I've seen a covertly taken picture of robed men at Bohemian Grove standing alongside a large fire worshipping a 40 foot stone owl (see picture section). The owl is the symbol of Moloch or Molech, an aspect of Nimrod/Baal. Moloch demands the sacrifice of children and it was to this deity that the children of the Babylonians, Hebrews, Canaanites, Phoenicians and Carthaginians, were sacrificially burned. This picture provided visual support for the claims over many years that Druid rituals were being performed at the Grove with people in red robes marching in procession chanting to the Great Owl, Moloch. The Romans called the owl by the same word that meant witch. The Greeks said the owl was sacred to Athene, the ancient Mesopotamian 'Eye Goddess', and her staring owl-like images have been found throughout the Middle East.27 The owl was also the totem of Lilith, the symbol of the bloodline genes passed on through the female, and other versions of the triple goddess of the Moon. The owl has been symbolized as a witch in bird form and is associated with witches in the symbols of Halloween.

The symbolism of being able to see in the dark and with a 360 degree range of vision are also appropriate for a Brotherhood deity. These world famous Brotherhood initiates at Bohemian Grove burn a Celtic wicker effigy at the start of their 'camp' to symbolize their 'religion'. The population of Britain has been manipulated into doing the same every November 5th when effigies of Guy Fawkes are burned to mark the day on which he tried to blow up Parliament.

A local community newspaper, The Santa Rosa Sun, reported in July 1993 about the Cult of Canaan and the legend of Moloch at Bohemian Grove, but police investigations into alleged murders on the site have predictably led nowhere. **Regular attendees at Bohemian Grove are known as 'grovers' and among them are people like George Bush; Gerald Ford; Henry Kissinger; Dick Cheney; Alan Greenspan, the head of the Federal Reserve; Jack Kemp (Bob Dole's running mate at the 1996 US election); Alexander Haig, the former Defense Secretary; Casper Weinberger and George Shultz, former Secretaries of State; and a long list of the best known politicians, businessmen, media people, and entertainers in the world, let alone America.** Steve Bechtel, the head of the world's biggest construction company, attended Bohemian Grove in the 1980s while his company enjoyed massive contracts thanks to the spending decisions of the World Bank and its president A. W. Clausen, another 'grover'. According to researchers, there is a waiting list of some 1,500 people anxious to pay the initiation fee of $2,500 and annual dues of $600.

This is a 'summer camp' and Satanic centre for the Elite who run the planet and this is where many of the real decisions are made before they become public. I have a picture from 1957 of Ronald Reagan and Richard Nixon sitting at a table at Bohemian Grove listening to Dr Glenn Seaborg, who was involved in the discovery of plutonium and worked on the Manhattan Project which produced the bombs that were dropped on

Japan. Doctor Edward Teller, the 'father of the H-bomb', was also a member. Both Reagan and Nixon, part of this Elite Satanic club more than 40 years ago, would go on to become presidents of the United States. In fact, every Republican president since Herbert Hoover in 1945 has been a member and most Democrats, including Bill Clinton.

It was in Sonoma County, not far from Bohemian Grove, that 12-year-old Polly Klaas was murdered, quite obviously by Satanists, in October 1993. She was kidnapped from her bed while her mother and sister slept in the next room. Her grandfather, Joe, had publicly endorsed a book called Breaking The Circle Of Satanic Ritual Abuse by the former Satanist, Daniel Ryder. It exposed the ties between Satanists and the mind control programmes MKUltra and Project Monarch. While a man was reluctantly charged with Polly's murder, the facts point conclusively to a retaliation by the Satanists against her grandfather. A woman called the FBI to say she had escaped from a coven in Sonoma County and that Polly might be killed as part of a five-day Satanic Halloween Festival. She said Polly might be found near the Pythian Road on Highway 12 which, coincidentally, is close to a 1,600 acre spread called the Beltane Ranch. The FBI ignored this warning and Polly's body was later found near the Pythian Road. She had been sexually assaulted and decapitated, but the authorities claimed she had been strangled. The man who kidnapped her, **Richard Alan Davis, was not even charged with the murder by the Sonoma County District Attorney's office until they were forced to act by protests from police officers.**

Corey Feldman To Release Documentary On The 'Biggest Problem In Hollywood' – Pedophilia

https://davidicke.com/2020/02/17/corey-feldman-release-documentary-biggest-problem-hollywood-pedophilia/

'The topic of pedophilia and the trafficking of children has gained a lot of attention within the past year alone, more than we've ever seen from the mainstream. This is due in large part to revelations like the entire Jeffrey Epstein/Prince Andrew Saga, which brought even more attention to this issue. Another example is the rampant child porn haring that's been happening within the Pentagon.

And so there is a growing awareness to the fact that this type of activity is going on in places of high power amongst many people who seem to be above the law. Fortunately we have seen some prosecutions, like the recent conviction of the Vatican's Cardinal George Pell for sexually abusing children. The list is long. In fact, more details have emerged suggesting that one of Epstein's main jobs was to entrap high profile people into committing these very types of crimes.

This Petitioner has been accused of being a threat to the very people who have an interest in suppressing his voice (and his life, liberty & freedom). This Petitioner shown tremendous restraint by not retaliating against anyone despite the amount of violence and corruption used against him (and his family) by the police, prosecutors & judges involved (many of which are all part of the "brotherhood" explained above) and that story will come out very soon.

Although this Petitioner has used strong language – he is fully protected under the first amendment. As the United States erupts with protests/riots/chaos over police killing unarmed black citizens and ANTIFA (ANTI Fascist) and BLM (Black Lives Matter) movements take control of politics and press coverage which demonstrate a massive collective consciousness in major cities across the globe and even small towns including Placerville, So. Lake Tahoe and Carson City, NV. People are calling for reform and even defunding the police, abolishing the courts, releasing violent prisoners. Indeed, the world has woken up and some kind of reform is being demanded by all political parties.

This Petitioner is not affiliated with ANTIFA or BLM or any organized militia, Boogaloo movement, alt-right, etc. This Petitioner considers himself a "Constitutionalist" and he respects a Constitutional Sheriff such as El Dorado Co. John D'Agostini and similar Oath Keepers who respect the God given rights of the People unlike D.A. Vern Pierson and his deputy D.A. Dale Gomes and a few judges named in this petition.

This Petitioner has a problem with tyrants who abuse their power, corrupt cops, corrupt D.A.s, corrupt lawyers and corrupt judges (oath breakers) who destroy people and their families under the guise of law enforcement. Petitioner has problems with child molesters, and in particular, those who act under the color of law or in a church to exploit their victims.

JUDGE STEVEN BAILEY ISSUED UNLAWFUL WARRANT AND ORDERS AFTER BEING DISQUALIFIED

Judge Steve Bailey recused on/about 04/11/2016 in case # P16CRM0096. Then, after being recused, Judge Bailey issued an order assigning Special Master Michael McLaughlin on

06/21/2016 and Judge Bailey issued a search warrant on 06/21/2016 to obtain Petitioner's computer and cell phone for what would become case # P17CRF0114

The exhibits below show that Judge Steve Bailey's warrant was used to unlawfully search and seize Petitioner's cell phone, computer and date in violation of U.S. 4th Amendment. Any information gathered and used in the investigation, grand jury and at trial was inadmissible. Petitioner did file a CJP ethics complaint against Judge Steve Bailey from jail. A lawful warrant was required for a cell phone and computer search. See *Riley v. California, 134 S. Ct. 2473 - Supreme Court 2014* the U.S. Supreme Court held that a warrant is generally required to search a cell phone seized incident to arrest. *573 US at 401, 403.*

Failure to raise 4th Amendment claims of illegally obtained evidence may amount to ineffective assistance of counsel if the claim of illegal evidence is meritorious and there is a reasonable probability that the defendant would not have been convicted if his 4th Amendment rights had been respected. *Kimmelman v. Morrison 477 U.S. 365, 375, 106 S. Ct. 2574, 2582–83, 91 L. Ed. 2d 305, 319 (1986).* (holding that restrictions on federal habeas review of Fourth Amendment claims announced in *Stone v. Powell* do not extend to Sixth Amendment claims of ineffective assistance of counsel where "the principal allegation and manifestation of inadequate representation is counsel's failure to file a timely motion to suppress evidence allegedly obtained in violation of the Fourth Amendment") **("Where defense counsel's failure to litigate Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice.").**

ASE NUMBER: S16CRM0096 DEFENDANT STATUS: Appeal
RREST NBR : ARREST DATE ....: 3/21/16
RREST AGY : SOUTH LAKE TAHOE POLICE
efendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

which he is entitled under CCP 170.6.

Although defendant's motion is procedurally defective; given his status as a self-represented litigant; the court will accept his motion and deem it filed and served as of Monday 4/18/16.

Having considered the matter; this judicial officer believes his recusal would further the interests of justice.

(See CCP 170.1 subd. (a)(6)(A)(i).)
Judge Steven C. Bailey hereby recuses himself (See ibid.)

Pursuant to CCP section 170.1(a)(6)(3) & CCP 170.3(c)(1) and CCP 170.6 and 170.8 the above entitled matter referred to Judge James Wagoner for reassignment.

All previously set dates are hereby vacated.

CUSTODY STATUS
O.R./Conditional O.R. Release continued

CC: Todd Robben 1051 Pebble Beach Ct.
Minden NV 89423

CC: District Attorney's Office SLT via court box

==========MINUTE ORDER END==========
==========MINUTE ORDER END==========
==========MINUTE ORDER END==========
==========MINUTE ORDER END==========
==========MINUTE ORDER END==========

JT hearing set on 05/09/2016 at 8:30 is VACATED due to 170.1 CCP.

PTC hearing set on 04/26/2016 at 8:30 is VACATED due to 170.1 CCP.

MX3 hearing set on 04/26/2016 at 8:30 is VACATED due to 170.1 CCP.

MX2 hearing set on 04/26/2016 at 8:30 is VACATED due to 170.1 CCP.

CASE NUMBER: S16CRM0096 DEFENDANT STATUS: Appeal
ARREST NBR : ARREST DATE ....: 3/21/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

MX1 hearing set on 04/26/2016 at 8:30 is VACATED due to 170.1 CCP.

4/11/16 EX PARTE MOTION TO STRIKE PLAINTIFF'S EX MOTION FILED

MAILING ADDRESS CHANGE FOR TODD ROBBEN FILED

Notice of Motion to Suppress Evidence & Motion FILED

MOTION FOR PEREMPTORY CHALLENGE FILED

---

4 EX-PARTE MINUTE ORDER RE: MOTION FOR PEREMPTORY CHALLENGE Dispo
Honorable JUDGE STEVEN C. BAILEY presiding
Clerk: J. Incopero

On 04/21/16 defendant filed a timely motion pursuant to CCP 170.6 against the Honorable Suzanne N. Kingsbury.

The Honorable Judge then referred the matter to the Assistant Presiding Judge for reassignment.

Thereafter on 04/05/16 Assistant Presiding Judge James R. Wagoner assigned the matter to the Honorable Steven C. Bailey.

On 04/11/16 defendant filed a motion pursuant to CCP 170.6 seeking to disqualify the Honorable Steven C. Bailey from hearing the matter.

The matter was filed with the statutory time frame but for other reasons is denied.

Pursuant to CCP 179.6(a)(4) a party is permitted one challenge.

Defendant has already filed a timely motion to disqualify Judge Kingsbury.

Therefore having exercised a challenge defendant has exhausted his challenges.

CASE NUMBER: S16CRM0096 DEFENDANT STATUS: Appeal
ARREST NBR : ARREST DATE ....: 3/21/16
ARREST AGY : SOUTH LAKE TAHOE POLICE
Defendant .: ROBBEN, TODD CHRISTIAN Defn : 1 of 1

6/21/16 Jurisdiction reset to Placerville

Jurisdiction reset to SLT

4 EX-PARTE MINUTE ORDER RE: SPECIAL MASTER APPOINTED Dispo
Honorable JUDGE STEVEN C. BAILEY presiding
Clerk: J. Incopero

COURT ORDERS:
Court appoints Michael McLaughlin to be Special Master regarding the search warrant signed by this court on 6/21/16.

Michael McLaughlin has accepted the appointment as Special Master.

Upon conclusion of the obligation of the Special Master; Mr. McLaughlin to submit billing for reimbursement to the court.

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.

Judge's signature _____
The Honorable Steven C. Bailey

CC: Michael McLaughlin via attorney's box
==========MINUTE ORDER END==========

6/17/16 7 HEARING RE: Appointment of Counsel (Pre-Dispo) Dispo
Honorable Judge DOUGLAS C. PHIMISTER presiding
Clerk: DAROS
Court Reporter: Linda A Street CSR 8256
Bailiff B Schaub

Defendant is present IN CUSTODY.
Deputy District Attorney D. Gomes present.
Defendant proceeds in Propria Persona.

The Defendant requests an attorney be appointed
Motion is GRANTED.
Public Defender Appointed.
Public Defender declares a conflict.
Public Defender is RELIEVED as Attorney of Record.

CERTIFIED COPY
SUPERIOR COURT OF CALIFORNIA
County of El Dorado

SEARCH WARRANT

Electronic Communications Device In Police Custody

Penal Code §§ 1524.3; 1546 et seq.

The People of the State of California
To Any Peace Officer in El Dorado County

Warrant No. S16SW0079

ORDER: An affidavit by Investigator Bryan Kuhlmann, which was sworn to and subscribed before me on this date, has established probable cause for the issuance of this search warrant which you are ordered to execute in the manner below.

Place(s) to be searched: *El Dorado County District Attorney's Office Evidence Storage, South Lake Tahoe Office, 1360 Johnson Blvd., Suite #105, South Lake Tahoe, CA 96150*

1) **Device(s) to be searched and seized**: White Samsung Galaxy S4 cell (model SCH-1545V, Serial# 256691488206366516, IMEI#990003426125346) phone collected from Todd Robben on 6/15/16 and now in law enforcement custody in the El Dorado County District Attorney's Office evidence room in South Lake Tahoe.

2) Black Dell inspirion 15 laptop computer, Serial #3JHQ912 collected from Todd Robben on 6/15/16 and now in law enforcement custody in the El Dorado County District Attorney's Office evidence room in South Lake Tahoe.

Evidence to be seized:

1) For the following property and evidence located within the device White Samsung Galaxy S4 cell (model SCH-1545V, Serial# 256691488206366516, IMEI#990003426125346) pertaining to the threats to SLT City Attorney Tom Watson, SLTPD Sgt. Laney, and SLTPD Ofc. Webber:

   A. Data that may identify the owner or user of the above-described cellular communication device(s).
   B. Address books and calendars.
   C. Audio and video clips from 3/21/16 through 6/15/16.
   D. Call histories and call data from 3/21/16 through 6/15/16.
   E. Photographs and associated metadata from 03/21/16 through 6/15/16.
   F. Text messages (SMS), multimedia messages (MMS), chats, Kik messges, recorded messages and subscriber information modules [SIM cards].
   G. E-mail messages and attachments, whether read or unread from 3/21/16 through 6/15/16.
   H. Messaging Apps, KIK, Snapchat, Voxer, Whatsapp, Trillion, Imo messenger, Ebuddy, Viber, Kakko, Skype, Tango, Line from 03/21/16 through 6/15/16.

H. Internet World Wide Web (WWW) browser files including, but not limited to, browser history,browser cache, stored cookies; browser favorites, auto-complete form history and stored passwords from 3/21/16 through 6/15/16.

I. Global position system (GPS) data including, but not limited to coordinates, way points and tracks from 3/21/16 through 6/15/16.

J. Documents and other text based files.

K. Voicemails stored on the device from 3/21/16 through 6/15/16.

L. Notes

M. Binary Code, ASCII Code, Meta Data, deleted data, deleted folders.

With respect to the above items listed above and its subsections above, the executing law enforcement officer(s) is\are authorized to view, photograph, record, copy, forensic image and conduct forensic analysis of any and all data, programs and applications on the above-described cellular communication device(s), as well as on any data storage devices and or mediums attached to those cellular communication device(s) relevant to this investigation.

2) For the following property and evidence located within the device Black Dell Inspirion 15 laptop computer, Serial #3JHQ912:

A. Data that may identify the owner or user of the above-described laptop computer.

B. Address books and calendars.

C. Email messages and attachments, whether read or unread from 3/21/16 through 6/15/16.

D. Internet World Wide Web (WWW) browser files including, but not limited to, browser history, browser cache, stored cookies; browser favorites, auto-complete form history and stored passwords from 3/21/16 through 6/15/16.

E. Documents and other text based files.

F. Binary Code, ASCII Code, Meta Data, deleted data, deleted folders.

With respect to the above items listed above and its subsections above, the executing law enforcement officer(s) is\are authorized to view, photograph, record, copy, forensic image and conduct forensic analysis of any and all data, programs and applications on the above-described laptop computer relevant to this investigation.

Evidence classification: The electronic communications and/or data described above is evidence of a crime as follows: *[Check one or more]*

X It tends to prove that a felony was committed

X It tends to prove that a particular person committed a felony

☐ It tends to prove that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under the age of 18 years has occurred or is occurring

Additional orders (If checked)

X Off-Site Search Authorization: If the device(s) described above is found in the place described above, it may be removed from the premises and searched at a secure location. Officers may, if necessary, seek the assistance of a civilian expert in this field to conduct the search.

X Special Master: The court authorizes the appointment of a Special Master pursuant to Penal Code section 1524, subdivision (d), to conduct the aforementioned search at the site listed on this Search Warrant. The Special Master shall accompany searching Peace Officers during the service of this Search Warrant. The Special Master shall seize any material that relates to a privilege, but is otherwise approved for seizure by this Search Warrant. The material shall be placed in a container and sealed, to be held and inspected by the Special Master, pending

further order of the Special Master and / or the Court issuing this Search Warrant. If the data is in electronic form, the Special Master shall issue specific instructions for the search of the storage medium, in the Special Master's discretion. The cost of any Special Master shall be incurred by the Court, consistent with *People v. Laff, (2001) 25 Cal.4th. 703, 737-744.*

Disposition of communications and/or data: Pursuant to Penal Code §§ 1528(a), 1536. all devices, communications, and/or data seized pursuant to this search warrant shall be retained in Affiant's custody pending further court order.

6/21/16 @ 10:03 AM
Date

Judge of the Superior Court
Steven C. Bailey

This is a true certified copy of the records if it bears the seal, imprinted in purple ink, the date of issuance and an original signature.

JUN 21 2016

El Dorado County, California
By _____
Deputy Clerk

NOTICE OF EXECUTION OF SEARCH WARRANT
ELECTRONICS COMMUNICATIONS/DEVICE

AGENCY NAME: El Dorado County District Attorney's Office

AGENCY ADDRESS: 1360 Johnson Blvd. Suite #105, SLT, CA 96150

Dear: Todd Robben

Records or information concerning your electronic communication(s)/device information held by the entity named in the attached search warrant were obtained by the El Dorado County District Attorney's Office pursuant to a search warrant issued by the Honorable Judge BASLEY, Judge of the El Dorado County Superior Court.

These records were requested for a criminal investigation pertaining to the a death threats investigation

1) The property seized is: For the following property and evidence located within the device White Samsung Galaxy S4 cell (model SCH-1545V, Serial# 256691488206366516, IMEI#990003426125346) pertaining to the threats to SLT City Attorney Tom Watson, SLTPD Sgt. Laney, and SLTPD Ofc. Webber:

   A. Data that may identify the owner or user of the above-described cellular communication device(s).
   B. Address books and calendars.
   C. Audio and video clips from 3/21/16 through 6/15/16.
   D. Call histories and call data from 3/21/16 through 6/15/16.
   E. Photographs and associated metadata from 03/21/16 through 6/15/16.
   F. Text messages (SMS), multimedia messages (MMS), chats, Kik messges, recorded messages and subscriber information modules [SIM cards].
   G. E-mail messages and attachments, whether read or unread from 3/21/16 through 6/15/16.
   H. Messaging Apps, KIK, Snapchat, Voxer, Whatsapp, Trillion, Imo messenger, Ebuddy, Viber, Kakko, Skype, Tango, Line from 03/21/16 through 6/15/16.
   H. Internet World Wide Web (WWW) browser files including, but not limited to, browser history,browser cache, stored cookies; browser favorites, auto-complete form history and stored passwords from 3/21/16 through 6/15/16.
   I. Global position system (GPS) data including, but not limited to coordinates, way points and tracks from 3/21/16 through 6/15/16.
   J. Documents and other text based files.
   K. Voicemails stored on the device from 3/21/16 through 6/15/16.
   L. Notes
   M. Binary Code, ASCII Code, Meta Data, deleted data, deleted folders.

With respect to the above items listed above and its subsections above, the executing law enforcement officer(s) is\are authorized to view, photograph, record, copy, forensic image and conduct forensic analysis of any and all data, programs and applications on the above-described cellular communication device(s), as well as on any data storage devices and or mediums attached to those cellular communication device(s) relevant to this investigation.

2) For the following property and evidence located within the device Black Dell Inspirion 15 laptop computer, Serial #3JHQ912:

A. Data that may identify the owner or user of the above-described laptop computer.
B. Address books and calendars.
C. Email messages and attachments, whether read or unread from 3/21/16 through 6/15/16.
D. Internet World Wide Web (WWW) browser files including, but not limited to, browser history, browser cache, stored cookies; browser favorites, auto-complete form history and stored passwords from 3/21/16 through 6/15/16.
E. Documents and other text based files.
F. Binary Code, ASCII Code, Meta Data, deleted data, deleted folders.

With respect to the above items listed above and its subsections above, the executing law enforcement officer(s) is\are authorized to view, photograph, record, copy, forensic image and conduct forensic analysis of any and all data, programs and applications on the above-described laptop computer relevant to this investigation.

If you wish further information you may contact: Investigator Bryan Kuhlmann

Dated: 6-22-16

DA42

Investigator

Attachment: Search Warrant No. S16SW0079

Notice Served by: STEACY DA45

on: 6.22.16

Method of service: PERSONAL AT JAIL (JWS)

FELDMAN McLAUGHLIN THIEL LLP
Michael J. McLaughlin, State Bar No. 161044
178 U.S. Highway 50, Suite B
Post Office Box 1309
Zephyr Cove, NV 89448
(775) 580-7431 (Telephone)
(775) 580-7436 (Facsimile)
mike@fmttahoe.com (Email)

Appointed Special Master

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

STATE OF CALIFORNIA, Plaintiff, v. TODD CHRISTIAN ROBBEN, Defendants.	Case No: S16CRM0096 **REPORT OF SPECIAL MASTER AND PROPOSED ORDER**

The above-captioned Court signed a search warrant (Warrant No. S16SW0079) on June 21, 2016, authorizing the search and seizure of a white Samsung Galaxy S4 cell phone and a black Dell Inspiron 15 laptop computer (the "storage mediums"), both collected from Defendant Todd Robben on June 15, 2016. The search warrant requested that the Court appoint a special master to conduct an initial search of the storage mediums, to determine if any materials stored in electronic form are privileged, and to issue specific instructions for the law enforcement's search of the storage mediums to protect the privileged materials from disclosure to law enforcement. The undersigned was appointed special master in the above-captioned action pursuant to the minute order entered herein on June 21, 2016.

Thereafter, forensic images of the hard drives of the storage mediums were procured and, on August 8, 2016, a second search warrant (S16SW0100) was issued by the Court authorizing

the search and seizure of the forensic images and authorizing the engagement of a forensic expert to assist in the search.

Thereafter, the special master engaged Don Vilfer with Californsics as forensic expert for purposes of processing and categorizing files located on the forensic images of the storage mediums to assist the special master in reviewing the data to determine what, if any, data is protected from disclosure.

BLACK DELL INSPIRON 15 LAPTOP COMPUTER

Attached hereto as Exhibit 1 is a document prepared by the expert and captioned as "Robben Potentially Privileged File List," which contains a list of all data extracted from the computer hard drive and considered to be potentially privileged. The special master has reviewed all materials identified on the Robben Potentially Privileged File List.

The materials have been highlighted in either yellow or orange. Yellow indicates the materials are protected from disclosure by the work product doctrine or the attorney-client privilege. Orange indicates that the materials are not protected.

A substantial portion of the items extracted from the computer are pleadings that are unsigned, appear to be in draft form or otherwise do not have any indication that they were actually filed with any court. Accordingly, the special master cannot determine whether these items are a part of the public record. If the pleadings were filed, then law enforcement can obtain copies from court files. If the pleadings were not filed, then they are Mr. Robben's work product.

"The work product privilege bars the use of statutory discovery procedures to obtain '[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories' (Code Civ. Proc., § 2018.030, subd. (a)), and bars discovery of '[t]he work product of an attorney, other than a writing,' unless denial of discovery would unfairly prejudice a party. (Code Civ. Proc., § 2018.030, subd. (b).) This privilege reflects 'the policy of the state to … [¶] (a) [p]reserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases[; and] [¶] (b) [p]revent attorneys from taking

undue advantage of their adversary's industry and efforts.' (Code Civ. Proc., § 2018.020.)" *People v. Smith* (2007) 40 Cal. 4th 483, 515.

Litigants appearing *in propria persona* may assert the work product privilege. *Dowden v. Superior Court* (1999) 73 Cal. App. 4th 126, 128, 136. The pleadings highlighted in yellow on the Robben Potentially Privileged File List are Mr. Robben's work product.

Several of the items extracted are Mr. Robben's notes, research and other materials containing Mr. Robben's impressions, conclusions, opinions, or legal research or theories and, as such, they are also protected by the work-product doctrine. The following items are protected by the attorney-client privilege and are the work product of attorneys Adam Spicer and/or Adam Clark:

(i) DUI Questuionnaire.docx;

(ii) DUI Questionnaire.pdf;

(iii) Robben – 1538 (bad stop, detention and arrest).doc;

(iv) Robben Appeal Final Draft (1).pdf;

(v) Robben Appeal Final Draft (2).pdf;

(vi) Robben Appeal Final Draft (3).pdf; and

(vii) Robben Appeal Final Draft.pdf

Accordingly, the materials referenced above (and marked in yellow on the Robben Potentially Privileged File List) are protected from disclosure by the work product doctrine and/or attorney-client privilege, as noted. These materials shall be removed or deleted from the forensic image of the computer hard drive by the forensic expert. Once removed, the forensic image of the computer hard drive may be delivered to El Dorado County District Attorney Investigator Bryan Kuhlmann for inspection in accordance with the search warrants.[1]

The materials identified below (and marked in orange on the Robben Potentially Privileged File List) are not protected from disclosure and may remain on the forensic image of the computer hard drive:

---

[1] Note that the materials identified as ".tmp" files (such as "WRL0004.tmp") are Word documents saved in the temporary file folder on the computer and all consist of drafts of pleadings.

File	Description of Document
14111215.doc	Tentative Ruling on Petition for Name Change, Case No. MSN15-1478, Costa Contra County Probate Court
15-main.pdf	Conformed copy of Defendants' Reply in Support of Motion to Dismiss, *Robben v. Carson City, et al.*, Case No. 15-cv-00529-MMD-VPC, United States District Court, District of Nevada
A9R1fg8bfs w8fjss 2wc.pdf	City of South Lake Tahoe Police Department Citizen's Personnel Complaint form (blank)
Certify (1).pdf	Appeal Not Selected Notice from Court of Appeal Third Appellate District to Todd Robben and Andrea R. Austin (Office of the State Attorney General), *Robben v. Department of Motor Vehicles,* C080542, Calaveras County No. 15CV40748
Docket 53 (1) (1).doc	Word copy of conformed copy of Defendants' Renewed Motion For Summary Judgment, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada
Docket_53.txt	Copy of conformed copy of Defendants' Renewed Motion For Summary Judgment, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada, saved to Notepad
Interview #1 w Thompson.AVI	Video of Detective Gomes interview with Chris Thompson, 03/12/2014
PICT0005 2014.01.18 22.33.28.AVI	Video of interview (unknown), 01/18/2014
PP10UC EE_ER Retiremt-13.doc	Pay Policy 10, Unclassified Employees On Employee/Employer Paid Retirement, Compensation Schedule, Effective: January 01, 2013
R62039089-20140119124533.asf	Video interview (unknown), 01/09/2014
R62039211-20140121085711.asf	Video interview (unknown), 01/21/2014
R62039211-20140129083455.asf	Video interview (unknown), 01/29/2014
robben v carson city MSJ order.doc	Word copy of Order re Summary Judgment, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada
robben v carson city MSJ order.pdf	Pdf copy of Order re Summary Judgment, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada

ROBBEN.pdf	Memorandum from El Dorado County District Attorney re production of evidence, March 31, 2016
robben-order-mcgee-appeal.txt	Notepad copy of Sua Sponte Interlocutory Order: 1) Vacating Judgment of Conviction; 2) Granting the Request for Reappointment of the Carson City D.A., *Robben v. Carson City Justice Court*, Case No. 13 OC 00335 1B, First Judicial District Court, State of Nevada
RT Vol 1.doc	Word version of Reporter's Transcript of Appeal, Vol. 1, *People v. Robben*, Case No. S1 S14CRM0465, El Dorado County Superior Court, Appellate Division (incomplete)
RT Vol 1.pdf	Pdf version of Reporter's Transcript of Appeal, Vol. 1, *People v. Robben*, Case No. S14CRM0465, El Dorado County Superior Court, Appellate Division
RT Vol 1-ilovepdf-compressed.docx	Word version of Reporter's Transcript of Appeal, Vol. 1, *People v. Robben*, Case No. S1 S14CRM0465, El Dorado County Superior Court, Appellate Division
strike 1.pdf	Conformed copy of Motion to Strike Documents 49 and 50, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada
strike 2.pdf	Conformed copy of Motion to Strike Document 52, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada
strike 2.pdf	Conformed copy of Motion to Strike Document 55, *Robben v. Carson City, et al.*, Case No. 3:13-cv-00438-MMD-VPC, United States District Court, District of Nevada
VIDEO0243.3gp	Video clip of driving (undated)
VIDEO0252.3gp	Video clip of (unknown) hearing
Volume 3 of 3 (1st half).PDF	Record on Appeal, *Robben v. State of Nevada,* Case No. 11 OC 001661B, First Judicial District Court, State of Nevada
Volume 3 of 3 (2nd half).PDF	Record on Appeal, *Robben v. State of Nevada,* Case No. 11 OC 001661B, First Judicial District Court, State of Nevada

WHITE SAMSUNG GALAXY S4 CELL PHONE

The expert has prepared and document captioned as "Extraction Report, Samsung SCH-i545 Galaxy S IV (Android)," which contains a list of all data extracted from Mr. Robben's cell phone and considered to be potentially privileged. The special master has reviewed all materials identified on the Extraction Report. Since the Extraction Report includes the content of the various emails and messages, it is not being produced herewith. However, should either party desire to view the Extraction Report, same will be made available upon request with the privileged information redacted.

The extracted data is numbered 1 through 102, commencing on page 3 of the Extraction Report. Item 1 and Items 5 through 51 consist of emails and text messages between Mr. Robben and attorney Adam Spicer and are protected from disclosure by the attorney-client privilege. These items shall be removed or deleted from the forensic image of the cell phone before it is produced to the District Attorney's office.

Items 2, 3 and 4 consist of contact information for attorney Adam Spicer. These items contain not protected information and are not protected from disclosure.

Items 52 through 58 consist of calendar entries for court appearances and are not protected from disclosure.

Item 59 is a chat message from Tonja Brown to Mr. Robben containing no privileged information. It is not protected from disclosure.

///

///

///

Items 60 through 102 are text messages that appear to be to/from Mr. Robben and various individuals who do invoke not appear to be attorneys and the content of the messages contain no information that would be protected from disclosure by the attorney-client privilege or work-product doctrine. These texts are not protected from disclosure.

Respectfully Submitted,

DATED: November 29 2016

FELDMAN McLAUGHLIN THIEL LLP

By: _____
Michael J. McLaughlin
Special Master

ORDER

IT IS SO ORDERED

DATED: _____, 2016

_____
Judge of the Superior Court

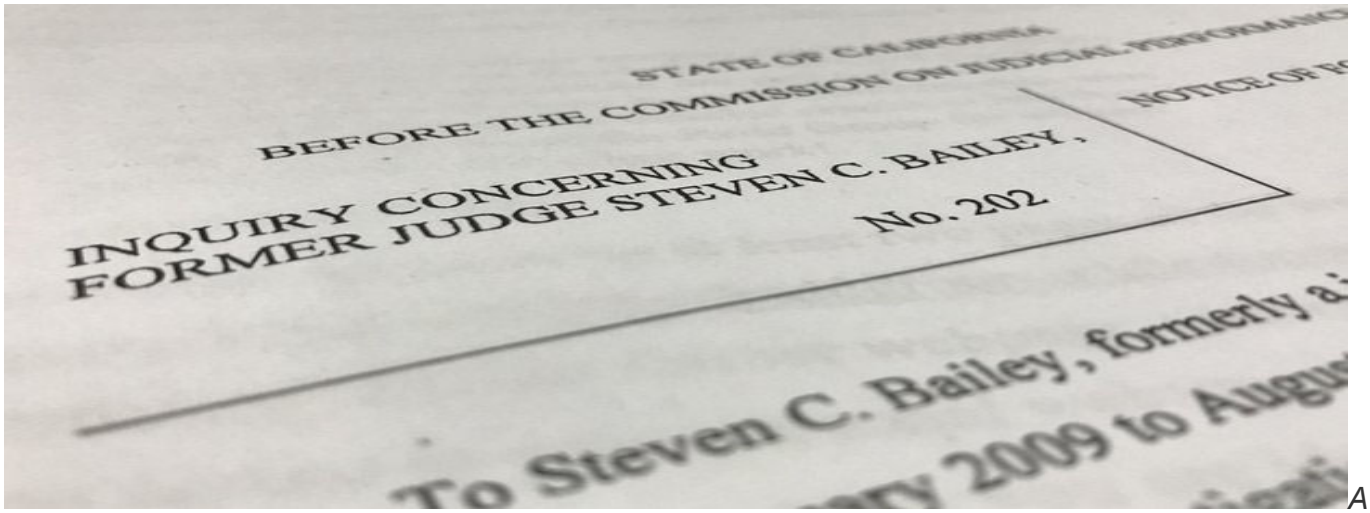
LAW.COM

Former El Dorado Judge Is Banned From Serving on Bench Ever Again

Steven Bailey called the censure "a political hit by a Democrat-dominated commission designed to damage me politically."

By **Cheryl Miller** | February 27, 2019 at 04:25 PM

https://www.law.com/therecorder/2019/02/27/former-el-dorado-judge-is-banned-from-serving-on-bench-ever-again/



A Commission on Judicial Performance document in the ethics case against Steven Bailey.

Steven Bailey, the former trial court judge and unsuccessful Republican attorney general candidate in 2018, has been barred from ever holding a judicial office in California again.

Steven Bailey, the former trial court judge and unsuccessful Republican attorney general candidate in 2018, has been barred from ever holding a judicial office in California again.

The Commission on Judicial Performance announced Wednesday it has censured Bailey for misconduct committed during his eight years on the El Dorado County bench, which ended with his 2017 retirement. The

> punishment is the most severe that the commission can level short of removing a sitting judge from office.
>
> "We believe there is a very high probability that Judge Bailey will engage in future misconduct if he were to return to the bench," commissioners wrote. "There is little likelihood of reform when a judge has engaged in multiple ethical violations on and off the bench during the entire course of his or her judicial career, fails to appreciate the impropriety of the misconduct, and continues to engage in the same conduct despite being advised of the ethical impropriety."
>
> Reached by text on Wednesday, Bailey called the censure "a political hit by a Democrat dominated commission designed to damage me politically." Bailey said he "sought, received, and followed ethics advice … that is now being second guessed 10 years later." The majority of the commission's 11 members were Democrats at the time they were appointed. The politicians and political bodies that appointed them—the governor, the Assembly speaker, the Senate Rules Committee and the California Supreme Court—are all Democrats or have Democratic majorities.
>
> Asked for comment about Bailey's claims, Gregory Dresser, the commission's director and chief counsel, pointed to an exchange from the Jan. 30 hearing on the charges. Bailey had been asked by CJP Chairwoman Nanci Nishimura whether he believed the proceedings amounted to political retaliation. "I'm not suggesting that," Bailey said, according to a transcript of the hearing. "But in, you know, the height of a political campaign, when the commission staff … they file an accusation based on conduct that was at that point over six months old … there was almost no action other than letters from the commission staff up until I announced I was going to retire. And then all of a sudden, it went into hyper speed."

Ineffective Assistance of Counsel (IAC) and Constructive Denial of Counsel CDC was furthered by trial counsel's (Russell Miller) failing to file pre-trial suppression 1385.5 and PC 995 motions where 4th amendment violations occurred when recused Judge Steven Bailey issued a warrant for Petitioner's cell phone and computer and then from misdemeanor case # S16CRM0096 (where Judge Bailey was recused from) assigned a non-California lawyer as special master to review the data – after Judge Bailey was recused! - *People v. Ellers (1980) 108 Cal. App.3d 943, 952 [166 Cal. Rptr. 888]* "**defendant's case was "seriously damaged" by his attorney's failure to move to suppress evidence."** Petitioner was prejudiced because said 4th amendment violations and unlawful orders were used to obtain evidence used in the grand jury and trial. Had the evidence been challenged, the grand jury indictment

would have had to be dismissed and said evidence could not have been used at trial. With the grand jury indictment being dismissed, Petitioner would not have been indicted.

Here, appellate counsel Robert L.S. Angres is CDC/IAAC since he fails to argue a 4th amendment claim under IAC/CDC on appeal which could have been done since it is all on the record and Mr. Angres could have filed a habeas corpus petition. Said violation was irrelevant evidence before the grand jury and the jury trial.

In *People v. Backus, 590 P. 2d 837 - Cal: Supreme Court 1979":*

> **"… . It follows therefore that when the extent of incompetent and irrelevant evidence before the grand jury is such that, under the instructions and advice given by the prosecutor, it is unreasonable to expect that the grand jury could limit its consideration to the admissible, relevant evidence, the defendants have been denied due process and the indictment must be dismissed …"**

Judge Steven Bailey lacked jurisdiction to issue the warrant and assign the Special Master. In *Christie v. City of El Centro (2006) 135 Cal.App.4th 767, 776*, the court "conclude[d] that **because [the trial judge] was disqualified at the time he granted the City's motion for nonsuit, that ruling was null and void and must be vacated regardless of a showing of prejudice."**

UNLAWFUL SURREPTITIOUS VOICE RECORDINGS FROM NEVADA AND A "PRETEXT" CALL VIOLATED THE CALIFORNIA PRIVACY ACT, THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 (18 U.S.C. § 2510 ET SEQ.), U.S. 4TH & 14TH AMENDMENTS

Unlawful surreptitious voice recordings from Nevada and a "pretext" call by So. Lake Tahoe City Attorney Thomas Watson which violated the California Privacy Act – and Mr. Watson committed a misdemeanor - since there was no warrant or court order to obtain said surreptitious voice recordings and Petitioner was not informed and did not consent, nor did the

phone company. This violates Petitioner U.S. 4th amendment right to be free from an unlawful search & seizure and any exception provided by penal code section 633 was unlawful prior to the former section 640 since a U.S. 4th amendment constitutional right was violated along with California Constitution Art. 1, Sec. 13..

Petitioner also asserts a violation of California Constitution Art. 1, Sec,1 described in *Porten v. University of San Francisco, 64 Cal. App. 3d 825 - Cal: Court of Appeal, 1st Appellate Dist., 4th Div. 1976:*

> **Cal. Const. SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Italics added.)**
>
> The new language was first construed by the California Supreme Court in White v. Davis, supra, 13 Cal.3d 757: "the full contours of the new constitutional provision have as yet not even tentatively been sketched, ..." (White v. Davis, supra, at p. 773; see also Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, 656 [125 Cal. Rptr. 553, 542 P.2d 977].)
>
> (2) The elevation of the right to be free from invasions of privacy to constitutional stature was apparently intended to be an expansion of the privacy right. The election brochure argument states: **"The right to privacy is much more than `unnecessary wordage.' It is fundamental to any free society. Privacy is not now guaranteed by our State Constitution.** This simple amendment will extend various court decisions on privacy to insure protection of our basic rights." (Cal. Ballot Pamp. (1972) p. 28.)[1] (Italics added.)
>
> (3) The constitutional provision is self-executing; hence, it confers a judicial right of action on all Californians. (White v. Davis, supra, 13 Cal.3d at p. 775.) **Privacy is protected not merely against state action; it is considered an inalienable right which may not be violated by anyone**.[2] 830*830 (See Annenberg v. Southern Cal. Dist. Council of Laborers (1974) 38 Cal. App.3d 637 [113 Cal. Rptr. 519]; 26 Hastings L.J. 481, 504, fn. 138 (1974).)
>
> **The California Supreme Court has stated that the privacy provision is directed at four principal "mischiefs": "(1) `government snooping' and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records."** (White v. Davis, supra, 13 Cal.3d at p.

775.) **The White case concerned the use of police undercover agents to monitor class discussions at a state university. In ruling on the sufficiency of a complaint challenging the legality of such a practice, the Supreme Court found that a cause of action had been stated on the basis that the practice threatened freedom of speech and association and abridged the students' and teachers' constitutional right of privacy. The White court noted that the police surveillance operation challenged there epitomized the kind of governmental conduct which the new constitutional amendment condemns.** (See White v. Davis, supra, 13 Cal.3d at p. 775.)

California's wiretapping law is a "two-party consent" law. California makes it a crime to record or eavesdrop on any confidential communication, including a private conversation or telephone call, without the consent of all parties to the conversation. See Cal. Penal Code § 632 which also states "(d) Except as proof in an action or prosecution for violation of this section, **evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section is not admissible in any judicial, administrative, legislative, or other proceeding**."

Cal. Penal Code § 632:

(a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars ($10,000) per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) For the purposes of this section, “person” means an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

(c) For the purposes of this section, “confidential communication” means any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but

excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

(d) Except as proof in an action or prosecution for violation of this section, evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section is not admissible in any judicial, administrative, legislative, or other proceeding.

(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, if the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility, (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

In *People v. Jones, 30 Cal. App. 3d 852 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 1973:*

Penal Code section 631 states: "Any person who ... intentionally taps, or makes any unauthorized connection ... with any telegraph or telephone wire ... is punishable by a fine ... or by imprisonment ... or both...."..... .... "Except as proof in an action, or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial ... proceeding."

Penal Code section 633 qualifies section 631: "Nothing in Section 631 ... shall be construed as rendering inadmissible any evidence obtained by the above-named persons (law enforcement and police officers) ... which they could lawfully overhear or record prior to the effective date of this chapter."

Before Penal Code section 631 was enacted, old Penal Code section 640 prohibited wiretapping. Section 640 did not provide specifically for excluding illegally obtained evidence; evidence obtained in violation of section 640 would not necessarily have been inadmissible unless a constitutional right was also violated. Penal Code section 631 specifically makes inadmissible any evidence obtained in violation of it.

The exception provided by section 633 makes admissible any evidence which would have been lawfully obtained before enactment of section 631. Sections 631 and 633 exclude evidence which would have been excluded before enactment of section 631; also excluded is all evidence unlawfully obtained under section 631 which would have been unlawfully obtained under old section 640.

Section 631 makes unlawful any "unauthorized" wiretap. Old section 640, from which section 631 was derived, also proscribed unauthorized wiretaps. The authorization required for a legal wiretap under section 640 was the consent of the subscriber to the telephone, and the consent of the telephone company

(*People v. Trieber, 28 Cal.2d 657, 662-664 [171 P.2d 1*]). Jones, the subscriber to the telephone bugged in this case, did not consent to the tap. The wiretap, therefore, would have been unlawful under old section 640, and the exception provided by section 633 does not apply. Trieber's interpretation of the word "unauthorized" applies to section 631 (*People v. Superior Court [Young], 13 Cal. App.3d 545, 548 [91 Cal. Rptr. 699]).* (1) The evidence in question, obtained without the required authorization, was unlawfully obtained under section 631, and was therefore properly excluded.

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. § 2510 et seq.) also known as the "Wiretap Act" prohibits the unauthorized, nonconsensual interception of "wire, oral, or electronic communications" by government agencies as well as private parties, establishes procedures for obtaining warrants to authorize wiretapping by government officials. This was also violated since no warrant was issued nor did this Petitioner consent to any wiretap or recording.

The wiretapping section of the bill was passed in part as a response to the U.S. Supreme Court decisions *Berger v. New York, 388 U.S. 41 (1967)* and *Katz v. United States, 389 U.S. 347 (1967)*, which both limited the power of the government to obtain information from citizens without their consent, based on the protections under the Fourth Amendment to the U.S. Constitution. In the Katz decision, the Court **"extended the Fourth Amendment protection from unreasonable search and seizure to protect individuals with a 'reasonable expectation of privacy.'"**

Since the government (SLTPD police investigators) participated in the pretext call, Petitioner's 4th amendment rights trumps the California Constitution Art. 1, Sec, 28(f)(2) (Truth in evidence), said pretext call was subject to the exclusionary rule. *Katz v. United States, supra.* which precludes Searches conducted without warrants have been held unlawful **"notwithstanding facts unquestionably showing probable cause,"** *Agnello v. United States, 269 U. S. 20, 33*, **for the Constitution requires "that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police** . . . ." Wong Sun v. United States, 371 U. S. 471, 481-482. **"Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes," *United States v. Jeffers, 342 U. S. 48, 51,* and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment[18]—subject only to a few specifically established and well-delineated exceptions.[19]**

It is difficult to imagine how any of those exceptions could ever apply to the sort of search and seizure involved in this case. Even electronic surveillance substantially contemporaneous with an individual's arrest could hardly be deemed an "incident" of that arrest.[20] 358*358 Nor could the use of electronic surveillance without prior authorization be justified on grounds of "hot pursuit."[21] And, of course, the very nature of electronic surveillance precludes its use pursuant to the suspect's consent.[22]." *Katz v. United States, supra*

Indeed, as stated in *People v. Murphy, 503 P. 2d 594 - Cal: Supreme Court 1972* **"It is equally clear, however, that the requirements outlined in Katz were intended to protect such persons only from the "uninvited ear"** (*Katz v. United States, supra, 389 U.S. 347, 352 [19 L.Ed.2d 576, 582]*)"

Trial counsel Russell Miller was IAC for the failure to file a PC 1385.5 suppression motion to have said recording suppressed for the 4th amendment violation (unlawful search & seizure). In *People v. Coyle (1969) 2 Cal. App. 3d 60 [83 Cal. Rptr. 924*], **the court held that a 1538.5 motion was a proper way to attack the use by the People of a tape recording of a telephone conversation allegedly unlawfully obtained.**

In *People v. CAMEL, Cal: Court of Appeal, 3rd Appellate Dist. 2017*:

> **A defendant who believes that evidence was "obtained in violation of the Fourth Amendment of the United States Constitution or of [California's Wiretap Act[2]]" may move to suppress its use at trial. (§ 629.72.)** Such a motion is "subject to review in accordance with the procedures set forth in Section 1538.5." (§ 629.72; People v. Jackson (2005) 129 Cal.App.4th 129, 145-146 (Jackson).)
>
> Under the current version of the Wiretap Act, "the designated judge may authorize a wiretap if [1] there is probable cause to believe that an individual has committed, is committing, or is about to commit one or more of the listed crimes (§ 629.52, subd. (a)); [2] there is probable cause to believe that communications concerning the illegal activities will be obtained through that interception (§ 629.52, subd. (b)); [3] there is probable cause to believe that the communications device will be used by the person whose communications are to be intercepted (§ 629.52, subd. (c)); and [4] `[n]ormal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous' (§ 629.52, subd. (d))." (People v. Leon (2007) 40 Cal.4th 376, 384 (Leon).)

"The magistrate's determination of probable cause is entitled to deferential review. [Citations.]" (People v. Kraft (2000) 23 Cal.4th 978, 1041.)

"The analysis of a [wiretap] suppression motion focuses on violations of the statutory procedures and not on constitutional violations, because while it is possible to violate a core principle of the statute without violating the Fourth Amendment it would not seem possible to violate the Fourth Amendment without also violating a core statutory principle." (Jackson, supra, 129 Cal.App.4th at p. 149.) Therefore, the first question to be answered in analyzing a motion to suppress wiretap evidence is whether the defendant established a violation of the Wiretap Act. If the defendant did not establish a violation of the Wiretap Act, there is no constitutional violation and no suppression. (Ibid.)

The truth-in-evidence clause of the California Constitution prevents the suppression of evidence for state statutory violations. By its terms the truth-in-evidence clause does not apply to a statute "hereafter enacted by a two-thirds vote of the membership in each house of the Legislature."[60] Section 629.72 was enacted in 1995,[61] 13 years after the adoption of the truth-in-evidence clause. At the time of its enactment there were 40 members of the Senate. The bill passed the Senate by a vote of 28 to two (92 percent). There were 80 members of the Assembly. The bill passed by a vote of 62 to five (77.5 percent).[62] Thus, suppression of evidence under section 629.72 is not prohibited by the truth-in-evidence clause of the California Constitution. See *People v. Jackson, 28 Cal. Rptr. 3d 136 - Cal: Court of Appeal, 2nd Appellate Dist., 7th Div. 2005*

Petitioner was prejudiced since said exclusion of evidence would have prevented the conviction of penal code 71 since the prosecutor relied on the pretext call to establish alleged threats were used to influence Mr. Watson into returning the Petitioner's automobile. Mr. Miller also did not play the recording, or have it transcribed which if played to the jury (if not excluded) would have shown there were no threats made. Petitioner remembers the call and he was very polite to Mr. Watson – didn't want any problems and looked forward to resolving this issues. The jury would have understood the call was a ruse and it would have had a negative effect on the prosecution. Appellate counsel was IAAC/CDC for failing to argue said IAC/CDC of trial counsel on appeal or habeas corpus which he could have requested funding from the Court of Appeal.

The jailhouse snitch recording from Carson City Nevada by Keith Wayne Furr was also not admissible since it was alleged to have been conducted by the Carson City Sheriff with Mr. Furr wearing a “wire” in the jail cell to which both Mr. Furr and Petitioner occupied.

First, Petitioner has first hand knowledge from Mr. Furr that said recording was not done by a “wire” and instead obtained via the cell intercom. Mr. Furr was remanded to custody after being released from custody as part of a deal to provide “Confidential Informant” (“CI”) information to obtain the conviction of this Petitioner. When Mr. Fur was remanded into custody in the Carson City jail, he was put into the “hole”, a high security area inside the jail where Petitioner was housed. There this Petitioner asserts under penalty of perjury (this entire pleading is made under penalty of perjury) that Mr. Fur told him the CCSO (Carson City Sheriff Office) and Carson City D.A. listened via the cell intercom and told Mr. Fur he would be charged with conspiracy and solicitation for murder unless he agreed to claim he wore a wire and record the header to said recording to make it appear a wire was worn by Mr. Fur.

Since Petitioner had been charges with three crimes against Judge John Tatro (Intimidation of a public official, Internet stalking and libel) any use of a government agent and confidential informant violated Petitioner’s U.S. 6th amendment rights since Petition was represented by counsel (Nevada Public Defender). See *Massiah v. United States, 377 U.S. 201 (1964)* - The Massiah rule applies to the use of testimonial evidence in criminal proceedings deliberately elicited by the police from a defendant after formal charges have been filed. ... The Sixth Amendment guarantees a defendant a right to counsel in all criminal prosecutions. The events that trigger the Sixth Amendment safeguards under Massiah are (1) the commencement of adversarial criminal proceedings and (2) deliberate elicitation of information from the defendant by governmental agents. Also, see *Brewer v. Williams, 430 U.S. 387 (1977)* Government attempts to obtain incriminating statement related to the offense charged from the defendant by overt interrogation or surreptitious means is a critical stage and any information thus obtained is subject to suppression unless the government can show that an attorney was present or the defendant knowingly, voluntarily and intelligently waived his right to counsel. *Also see Illinois v. Perkins, 496 U.S. 292 (1990)* Deliberate elicitation is defined as the intentional creation of circumstances by government agents that are likely to produce incriminating information from the defendant. Also see *Kuhlmann v. Wilson, 477 U.S. 436 (1986)*. Clearly express questioning (interrogation) would qualify but the concept also

extends to surreptitious attempts to acquire information from the defendant through the use of undercover agents or paid informants.

In *Brady v. Maryland, 373 U.S. 83 (1963),* was a landmark United States Supreme Court case that established that the prosecution must turn over all evidence that might exonerate the defendant (exculpatory evidence) to the defense. The prosecution failed to do so for Brady, and he was convicted. Brady challenged his conviction, arguing it had been contrary to the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In this case, Petitioner had told trial counsel Mr. Miller to subpoena Mr. Fur for his testimony or obtain an affidavit from Mr. Fur and other s who were housed in the "hole" with Petitioner. It was a high profile situation and covered by the newspapers that Petitioner had but a hit (solicitation for murder) on Carson City Judge John Tatro. Mr. Miller was IAC and Mr. Angre IAAC for failure to argue this issue on appeal or habeas corpus.

The recording violates California privacy law as well the same way Thomas Watson's "pretext" call violates the law. In *People v. Conklin, 522 P. 2d 1049 - Cal: Supreme Court 1974*: "it has been held that evidence obtained pursuant to a federal warrant authorizing a wiretap but not in compliance with California law is not admissible in a California state court." (*People v. Jones (1973) 30 Cal. App.3d 852, 855 [106 Cal. Rptr. 749*]. Said recording was a violation of U.S. 4th amendment and not admissible just like Thomas Watson's "pretext" call violates the California privacy laws (and Nevada). Said Omnibus Crime Control and Safe Streets Act of 1968 (Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. § 2510 et seq.)) also prohibits the use of said surreptitious recordings.

Also, Specific Assurances were made by Mr. Fur and the recordings used in case # P17CRF0114 were not the full set of recordings that show Mr. Fur specifically assuring this Petitioner he was not a snitch and any communication would be confidential, that's why he referred to the hit-man as a "roofer" and a "roofing job.

A reasonable inference to be drawn from this case is that the resulting expectations would have been reasonable, had there been some representations or inquiries regarding privacy that were met with assurances. This inference is supported by the case of *People v. Hammons, 263 Cal Rptr. 747 (Cal.App. 2 Dist. 1989), cert. denied, 111 S.Ct. 102 (1991)* in which a California court found that law enforcement officers' actions had fostered the suspects'

expectations of privacy, and therefore, the expectations were reasonable. See also, *State v. Calhoun, 479 So.2d 241 (Fla.App. 4th Dist. 1985)*. In *Sorrells v. US, 287 U.S. 435 (1932)*- Entrapment is, "When the criminal design originates, not with the accused, but is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefore."

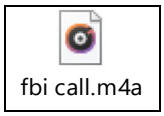
Trial counsel was IAC/CDC for failure to exclude said recording and Petitioner was made prejudice by the grand jury and the trial jury hearing an unflattering recording of Petitioner discussing the murder of Judge Tatro and allowing the prosecutor to show Petitioner in bad light in a bad situation.

Trial counsel was also IAC/CDC for failing to investigate the situation, call Mr. Fur or other inmates as witnesses or even the special prosecutor Mark Jackson from Douglas County who dismissed the cases against Petitioner on insufficient evidence and constitutional issues.

Mr. Miller did not even obtain any warrant information from Nevada proving it does not exist. Mr. Miller even failed to contact the Nevada Public Defender's Office to inquire with the team of lawyers who defendant the Petitioner and obtain information that would have assisted the Petitioner. Said Nevada Public Defender lawyers should have been called to testify that the jailhouse records were unlawful. Also, said Public Defender lawyers and their investigators would be able to elaborate of the alleged libel/slander issues and Internet stalking issues which were dismissed. Other people including the Public Defender lawyers and other former inmates of the Carson City jail and other people who could have been identified would have been able to back-up Petitioner claims against Judge John Tatro such as the requirement for a breathalyzer test before taking the bench, the Levis Minor shooting of John Tatro's frond door with a B.B. gun as retaliation for John Tatro's affair with Levi's mother Crystal. Victims and law enforcement people could have been investigated and called as witnesses regarding the allegations of child molestation by John Tatro. These issues were used to discredit this Petitioner who was unable to defend himself against the allegations of harassment against John Tatro when those original charges (Intimidation, Internet stalking, and libel) were all dismissed because they were (1) true and (2) protected first amendment speech.

John Taro could have sued this Petitioner in civil court for defamation, he did not knowing he would lose when the facts were proven against him. The same is true for the alleged "victims" in case # P17CRF0114 where D.A. Vern Pierson claims this Petitioner published "fake news" – here they would lose too since they would not be able to overcome the evidence against them (including child molestation).

The jail recording ultimately showed that Mr. Fur was the one who solicited this Petitioner and Petitioner refused to pay Mr. Fur $5,000.00 for the "roofing job" (murder). Petitioner did call his attorney in Sacramento named Julius Engel who was working a civil case against the Justin Brothers Bail Bondsmen on a recorded line. Petitioner requested his attorney, Mr. Engel to call the FBI to report the setup going on with the CCSO and Mr. Fur.

FBI CALL: recording - CLICK HERE: 

or here: https://www.youtube.com/watch?v=xpnhagGN0uA

Said FBI call(s) were available to trial counsel Mr. Miller (they are on youtube as shown above) and Mr. Engel lives in Sacramento, CA. It was clear by the recording and the fact the case was dismissed this Petitioner did not "solicit" murder… The El Dorado D.A. asserted the Nevada D.A. was intimidated by this Petitioner. This could have been explained by D.A. Mark Jackson to the jury that this Petitioner was innocent and the charges were brought by the Carson City Sheriff (CCSO) and Carson City D.A. as retaliation since Petitioner had sued them in federal court – just like the case with the El Dorado D.A. Vern Pierson and D.D.A. Dale Gomes. It is pretty much the same situation.

Appellate counsel was IAAC/CDC for failing to argue IAC/CDC of trial counsel on appeal or habeas corpus which he could have requested funding from the Court of Appeal and CCAP (had he been assigned by the CCAP). Since Petitioner was prejudiced with the grand jury and grand jury and trial jury hearing evidence that was inadmissible.

There was a massive attempt by the CCSO to use Confidential Informants and recruit inmates as Confidential Informants "CIs" by the use of recording Petitioner via the cell intercom. All recordings were not provided by the CCSO (or El Doradro Co. D.D.A.. Dale Gomes) including calls made by Petitioner to his lawyer Julius Engel which were recorded.

This entire scandal could have been investigated and exposed since it would have provided extensive information of the Levi Minor shoot incident, the breathalyzer issue, and child molestation issues involving John Tatro and others.

The Carson City issues should have been excluded from the grand jury and jury trial in Petitioner's case # P17CRF0114 had trial counsel Mr. Miller moved to suppress or exclude said evidence. Since it was allowed, Mr. Miller should have used the opportunity to exploit the issue to expose a massive unlawful use of CIs in Carson City, NV (and their jailhouse intercoms) which encompass much more than just the Petitioner's case(s) – it was (and still is) a massive violation of the criminal justice system in Nevada that affects many people and not just this Petitioner. In Orange County a recent scandal of the unlawful use of jailhouse snitches (CIs) exposed the O.C. Sheriff and jeopardized numerous high profile cases. [56]

The following news story tells the story of Mr. Fur (the star witness) right after being released and having his charges dismissed so he could be a "snitch" i.e. CI against this

---

[56] Orange County Informant Scandal Underscores Need for Reform
https://www.innocenceproject.org/informantscandalreform/

Veteran prosecutors at center of Orange County jailhouse informant scandal resign
https://www.ocregister.com/2019/11/14/veteran-prosecutors-at-center-of-orange-county-jailhouse-informant-scandal-resign/

Court filing raises new questions about Orange County's handling of informant scandal
https://www.latimes.com/california/story/2019-08-22/court-filing-raises-new-questions-about-orange-countys-handling-of-informant-scandal

Orange County's Snitch Scandal explained
https://www.youtube.com/watch?v=Q6VEfX89MF8

Informant says he was planted in Orange County jail to snitch
https://www.cbsnews.com/news/informant-says-he-was-planted-in-orange-county-jail-to-snitch/

Inside the snitch tank: A secret jail-informant network
https://www.youtube.com/watch?v=xi9XLnxRCHU

New Evidence In California Jail Snitch Scandal Raises Questions About State, Federal Probes
As attorney general investigations languish, continuing misconduct in Orange County threatens to unravel dozens of new cases, a public defender says.
https://www.huffpost.com/entry/orange-county-informant-scandal-becerra-sessions_n_5b4e87d1e4b0b15aba89aa25

Report faults Orange County DA in jailhouse informant scandal
https://www.abajournal.com/news/article/report_faults_orange_county_da_in_jailhouse_informant_scandal

The Orange County informant scandal just got a lot nuttier
https://www.washingtonpost.com/news/the-watch/wp/2016/03/11/the-orange-county-informant-scandal-just-got-a-lot-nuttier/

Petitioner. This was why he was returned into custody and spilled his guts. Other cell mates of the Petitioner could have been called since Petitioner has first hand knowledge that the Carson City Sheriff unsuccessfully attempted to coerce other inmates to snitch on Petitioner and at least one other than Mr. Fur cooperated, albeit unsuccessfully alleging he wrote a “kite” (a request to jail guards) claiming Petitioner was planning on killing John Tatro. Other incidents occurred where the Carson City Sheriff claimed Petitioner was “suicidal” and had him talk with a psychologist. These claims were false – Petitioner never planned to kill John Tatro or kill himself. Petitioner did complain about the Carson City Sheriff poisoning his food and nothing was ever done. As the world has taken note – Jeffrey Epstein did NOT commit suicide, he was killed to cover-up other high profile people’s participation in a massive pedophile scheme. Although the pedophile schemes in Carson City, NV and El Dorado Co. are not as sensational as Mr. Epstein’s – they do, in fact, exist and include various judges and other high profile people that would have an interest in quashing (killing) this Petitioner.

Below is a California Prison Focus newspaper that contains a letter from an inmate that describes his treatment in prison with his food being poisoned by the CDCR employees. This is very common treatment by the psychopathic idiots working in the corrections and local sheriff offices in the United States.

\

\

\

\

\

\

\

\

\

\

\

CALIFORNIA PRISON FOCUS

PRISON FOCUS

Number 59 September 2019

Serving The Interests Of Prisoners And Their Loved Ones On The Outside For Almost Thirty Years

Retaliation is the Mode of Operation

In 2013 I was placed on a special transport from Pelican Bay State Prison to High Desert State Prison for an assault on a c/o. Upon arrival I was immediatly segregated away from all other prisoners, in ASU. This planned decision by correctional staff afforded them an isolated area to: threaten/harrass me, contaminate/poison my food, deprive me of all basic hygeine, clothing, personal property, and discard my medical request for help forms and CDCR 602 Appeals.

This treatment continued for approxiately 3 weeks until I became seriously ill, because when the c/o's were not throwing my food trays into my cell at me they were contaminating/ poisoning my food with some unidentified toxic substance that caused me to suffer a severe stomach infection (bacteria) ... I feel apprehensive when accepting food that's served by c/o's.

[About a year later] I filed a §1983 civil Suit in Federal Court for violating my 8th & 14th Amendments rights and for retaliation.... Compensation is not my primary objective, I want to also expose c/os so that interested parties will understand that CDCR has not changed their illegal behavior(s) towards prisoners.

The court did appoint an attorney to represent me in this case, though in the last 5 months he has not responded to my inquiries so I no longer know if he represents me.

CarsonNOW.org
Your One Stop for Carson City News

Carson City Sheriff's Office report details initial arrest that led to recovery of 60 stolen weapons

Submitted by Jeff Munson on Tue, 02/18/2014 - 11:25am

https://www.carsonnow.org/story/02/18/2014/carson-city-sheriffs-office-report-details-initial-arrest-led-recovery-60-stolen-we

More details have emerged following the arrest Friday of a Dayton man that led to **Carson City and Lyon County authorities to recover approximately 60 stolen weapons, a stolen vehicle and narcotics.** Three others were also arrested.

Keith Furr, 52, was arrested on charges of being an ex-felon in possession of a firearm, contempt of court and criminal contempt and is being held in Carson City with a bail of $23,500.

According to the arrest report, deputies were dispatched Friday at around 3 p.m. to the area of Clearview Drive and South Edmonds after a person called dispatch to advise there was a vehicle stuck on top of the next to Prison Hill.

Upon arrival on their assigned patrol motorcycles, deputies Trotter and Kepler observed the vehicle and traveled up the dirt roads that led to the top of the hill. Once at the top the officers realized the motorcycles could not negotiate the terrain any further and so they got off of their motorcycles and walked for approximately 1 mile to the vehicle.

When they were approximately 100 meters from the vehicle they observed Fur carrying a short-barrel AR-15 and a white metal carrying case. The man immediately attempted to walk past the officers and appeared nervous, making movements like he was about to run from the officers, the arrest report states.

The officers asked the man who the gun belonged to and Fur said a man that he did not know handed the weapon and a case to him and told him to carry it to the top of the hill. Fur stated the man would meet him shortly thereafter, the arrest report states.

Deputy Kepler walked to the vehicle and checked the license plate through dispatch and advised the plate came back to a subject in Lyon County and then walked back to speak with Fur. As the officer returned, Sgt. Humphrey informed the deputies that Fur was a felon. Fur also admitted to this, the arrest report states. Deputy Kepler and Trotter took the man into custody at 5:12 p.m. for being an ex-felon in possession of a firearm.

Dispatch advised Fur was on alternative sentencing, which then placed a hold on Fur for violation of conditions of probation and violation of a court monitored sentence.

Through the combined efforts Carson City Sheriff's Office and Lyon County Sheriff's Office, four people were arrested for felony and misdemeanor charges and parole violations. During the investigation approximately 60 stolen weapons, a stolen Chevy pickup with a camper shell and illegal narcotics were recovered, authorities from both agencies said.

Both Carson City Sheriff's Office SET and Lyon County Gang Unit are still following up on leads to other crimes and suspects as a result of the arrests. Because of the investigation and leads into the case, the names of the three other suspects have not been released.

CarsonNOW.org
Your One Stop for Carson City News

https://www.carsonnow.org/story/09/30/2013/carson-city-sheriffs-officers-make-numerous-drug-misdemeanor-arrests-over-weekend

Carson City sheriff's officers make numerous drug, misdemeanor arrests over weekend

Submitted by Jeff Munson on Mon, 09/30/2013 - 4:28pm

Two men were arrested Sept. 27 and face felony drug charges after Carson City Sheriff's Special Enforcement Team officers found methamphetamine in a console of a van. Both men denied the meth was theirs.

Keith Wayne Furr, 51, and William Dale French, 42, of Dayton were arrested in the 4900 block of Highway 50 East at 5:28 p.m.

According to the arrest report, an officer was patrolling eastbound Highway 50 near Sunrise Road when he noticed a Chevy van with an expired California plate traveling westbound. The officer followed the van to a mobile home park where it drove into a space. The men got out of the vehicle and went around to the back of a mobile home. The men were given instructions to stop what they were doing and put up their

hands, which they didn't do, each rummaging through their pockets, according to the arrest report.

Officers continued to give verbal commands with their weapon drawn. The men complied. Both men waived their Miranda rights and agreed to speak. Fur was the driver of the van. While officers talked to the men they noticed French had an open container of Smirnoff Vodka that was half empty in his rear pocket.

French told officers that he was a passenger in the van and was just getting a ride. He stated that Furr saw the officer on Highway 50 and stated he knew it was a cop. French told officers that Furr was nervous and drove quickly into the mobile home park. He said they didn't know anyone who lived in the mobile home park.

A K9 did a drug sniff of the yard of the mobile home park where the dog located a small amount of marijuana along with some cash near a grill. French was asked about the marijuana and he stated it was Furr's and he is the one who hid it. Officers spoke with Furr who stated that French was the one with the marijuana and was hid it. Furr also stated he knew the officers who stopped him were part of the SET team from the sheriff's office when he was driving on Highway 50, according to the arrest report.

Department of Alternative Sentencing assisted with the investigation as it was learned that Furr was on a list that allowed for searches. The K9 conducted the search of the van. In the van a hypodermic device was found along with a small amount of methamphetamine and another open bottle of alcohol in the middle console of the van, within reach of both men, the arrest report states.

Officers again asked both about the meth and hypodermic device. Furr said it belonged to French and French said it belonged to Furr, the arrest report states.

Officers then learned that the rear plate of the van had a valid 2014 registration sticker however the registration was expired as of 2010, according to California DMV. The plate was taken for evidence and later booked at the sheriff's office for fictitious registration. Dispatched advised Furr did not have a valid license in Nevada or California.

Both men were booked. Furr faces the following charges: felony possession of methamphetamine, gross misdemeanor destruction of evidence. Misdemeanors include possession of marijuana, no valid driver's license, expired registration, no proof of insurance, possession of a hypodermic device, violation of conditions, open container and fictitious registration. Bail: $11,179. French faces a felony charge of possession of methamphetamine and a gross misdemeanor charge of destruction of evidence. He also faces the following misdemeanor charges: Possession of marijuana, possession of a hypodermic device and open container. Bail: $6,874.

Tahoe man Released after local DA's office Disqualified -- New DA Drops Charges

Image:

Image Detail:
Ty Robben and supporters Protesting Vern Peirson's Politically Motivated Actions

In a stunning turn of events South Tahoe man Ty Robben has been released from jail, his $50,000 bail is dropped, and all other charges were dropped after new DA reviews the case. Robben is best known on the Western Slope of El Dorado County by his protest of El Dorado County District Attorney related to his failure to prosecute the Nevada bounty hunters that Robben claimed acted illegally in California.

Cris Alarcon, Placerville Newswire | 2014-04-15

http://web.archive.org/web/20140416213526/http://inedc.com/1-8418

Ty Robben has always claimed that he was the victim of a politically motivated prosecution in Nevada for being a high-level governmental whistleblower. His claims included that the El Dorado County District Attorney was working in concert with Nevada authorities in this political witch hunt.

Robben was arrested twice in El Dorado County, once by Nevada Bounty Hunters that acted in California without the needed authority and then transported Robben to Nevada. A second time was about a month ago when increased charges in Nevada caused the EDC Sheriff to exercise a legitimate arrest warrant. He spent nearly a month in a Nevada jail before a new DA stepped in to review the case and subsequently setting Robben free finding the charges without substance.

In what is a bitter sweet victory for Robben, he now is trying to put his life back together after spending a month in jail. The Nevada DA Mark Jackson wrote, **"“Based on a full and complete review of all the evidence and the existing constitutional, statutory and case law, I filed a notice of dismissal today in the Carson Township Justice Court.”** County DA Mark Jackson was brought in after the Carson City DA’s office was disqualified from handling the case.
Douglas County DA Mark Jackson said that means Robben’s $50,000 bail has been lifted, and all pending charges against him have been dismissed.

“It is my understanding that Mr. Robben is in the process of being released from the Carson City Jail,” Jackson said.
Robben stopped by the Tahoe Daily Tribune Friday and said he was hoping to restore his life and family. He thanked his attorneys for their work to get him released.
“Thank you to Mark Jackson for standing up and supporting the U.S. Constitution,” Robben said.

Two weeks ago, Jackson dismissed the other case against Robben, which accused him of libel and stalking and two counts of attempting to intimidate Tatro and his family.

He did so stating that Nevada’s libel law was “unconstitutionally vague.” The stalking charge, he said, simply didn’t have enough evidence to support it.

Judge Tatro Corrupt as hell says many Reno area residents. Robben has been battling the state and criminal justice system since he was terminated by the Taxation Department.

He was angry with Tatro for his conviction on charges of disorderly conduct centered on his attempt to — allegedly — serve papers on behalf of a friend on then-NDOT Director Susan Martinovich.

Robben said Judge Tatro and Assistant DA Mark “Freddie” Krueger must resign and criminal charges must be filed against Judge Tatro for filing a false report against me! He went on to make this statement:

Thank you Douglas County DA Mark Jackson for respecting the US Constitution and my 1st & 14th Amendment rights in these matters and the honor to respect the law(s) and look at the facts unbiased.

Special thanks Attorney Jarrod Hickman and to the entire State of Nevada Public Defenders office including the folks behind the scenes answering my numerous phone calls from jail.

Robben finished his statement with this question:
Are you aware of the ruling in Times v. Sullivan (1964) which states this, in part:

“As Americans we have a profound national commitment to the principle that debate on Public Issues should be uninhibited, robust, and wide open. And that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”

At this time it is unknown if El Dorado County DA Vern Pierson is one of the governmental officers that Robbens intends to sue related to his prosecution and arrest.

External links;

http://www.tahoedailytribune.com/southshore/snews/10998082-113/robben-jackson-charges-carson

Related Stories:

- **Tahoe Man charged with soliciting to kill judge**

... South Lake Tahoe resident Todd Christian **Robben**, 44, is in custody awaiting trail on two counts of intimidating Judge ... the peace. South Lake Tahoe resident Todd Christian **Robben**, 44, is in custody awaiting trail on two counts of intimidating Judge ...
Admin - 04/13/2014 - 19:38 - 0 comments

- **A "writ of mandate" was filed in El Dorado Court to compel Vern Pierson's DA office to do its job**

... the former El Dorado DA to perform his duty. TY **ROBBEN** | June 24 2013 I (Ty **Robben**) filed a writ-of-mandamus (mandate) in the El Dorado Superior Court to ...
Admin - 06/24/2013 - 10:53 - 3 comments

- **Crime Scene at District Attorney's Office - Widespread Public Support**

2196 reads ...

Admin - 05/21/2013 - 08:03 - 1 comment

- **El Dorado DA Vern Pierson spending thousands of Taxpayer dollars with Caulfield Law firm to quash CA "victims Rights" laws**

... other acts of terror . El Dorado County resident Ty **Robben** from South Lake Tahoe believes otherwise. After doing the ... we have here, is a failure to communicate " says Ty **Robben**. When the DA obstructs justice, we have people getting murdered like ...
Admin - 08/05/2013 - 06:46 - 2 comments

- **El Dorado County DA Vern Pierson Accused of Grand Jury Abuse**

... edit reply **ROBBEN** v PIERSON writ of mandate hearing this Friday ...
Admin - 08/20/2013 - 11:33 - 11 comments

- **ANTI CORRUPTION Protest Monday May 20th 2013 @ high noon El Dorado County District Attorney Vern Pierson**

... Nevada Watchdog | May 19 2013 **Robben**'s issues started last fall when bounty hunters busted down his door. Now **Robben**'s wants charges filed against Dennis Justin of the "Justin Bros Bail ...
Admin - 05/20/2013 - 06:26 - 1 comment

- **Placerville DA Vern Pierson's assistant outed as anonymous shill blogger "Justice Insider"**

... DA shill blogger "Justice Insider". Ty **Robben** | June 6 2013 Interesting comments on the flurry of Vern ... who he was at the "crime scene" and entered the home of Ty **Robben** with his cohort Doug Lewis using a "battering ram". Mr. Justin describes ...
Admin - 06/06/2013 - 04:48 - 3 comments

- **Pressure on El Dorado County DA to prosecute Dennis Justin of the "Justin Bros Bail Bonds" Co.**

... for burglary, assault and battery incident against Ty **Robben** in South Lake Tahoe, CA PR Pond | May 15 2013 ... 18th, 2012 burglary, assault and battery incident against Ty **Robben** in South Lake Tahoe, CA. Dennis Justin was clearly at the scene and ...
Admin - 05/15/2013 - 07:15 - 0 comments

- **Calif. State Court of Appeals to Investigate DA Vern Pierson's Work**

... Pierson 's watch has come under fire. Todd "Ty" **Robben** filed a petition ... “Witch Hunt” on El Dorado County Supervisor ...
Admin - 11/11/2013 - 15:32 - 2 comments

- **Residents protest South Lake Tahoe police**

... to the streets Monday to make their feelings known. Ty **Robben** organized the Jan. 28 demonstration along Al Tahoe Boulevard. **Robben**’s issues started last fall when bounty hunters busted down his door. ...
Admin - 01/30/2013 - 05:22 - 0 comments

NEVADA APPEAL | Lahontan VALLEY NEWS

Carson DA moves to reinstate charges against Ty Robben

SOURCE: https://www.nevadaappeal.com/news/crime/carson-da-moves-to-reinstate-charges-against-ty-robben/

Crime | April 25, 2014

Geoff Dornan

gdornan@nevadaappeal.com

The Carson City District Attorney’s office is moving to reinstate criminal charges against Ty Robben — including that he tried to solicit a hit man to kill Justice of the Peace John Tatro.

Two cases involving Robben were turned over to the Douglas County DA’s office after Senior District Judge Charles McGee in Reno disqualified the Carson DA’s office from handling them.

But two months after that ruling, McGee, of his own volition, entered an order saying he would reconsider that decision in light of an April opinion by the Nevada Supreme Court effectively reversing the precedent he relied on in disqualifying the DA. While McGee said he still has concerns, he would like to see the issue briefed and would consider reinstating the Carson DA’s office.

But in between his first order and the second one, issued April 15, Douglas DA Mark Jackson dismissed the solicitation-to-commit-murder charge as well as the libel, stalking and harassment charges filed in the first case. He said in the dismissal notices that there wasn't enough evidence to prove the charges beyond a reasonable doubt.

Putting Carson City back in charge would allow the office to refile the charges against Robben, including solicitation to commit murder, a Category B felony punishable by up to 15 years in prison.

In the request for reappointment, Assistant DA Mark Krueger emphasized that the Carson DA's office "reviews the evidence provided by law enforcement and charges only those crimes in which the Carson City District Attorney's office believes occurred and can be proven at trial beyond a reasonable doubt."

Krueger declined to comment on the filing, but the court document states that his office maintains "there has never been a conflict of interest" in the cases against Robben.

Robben, meanwhile, is taking his claims the office is unconstitutionally harassing him, violating his rights and covering up corruption in the Carson judicial system to the federal level. He said he will sue the DA's office and Krueger in federal court and that he has already been interviewed by the FBI.

Robben's troubles began when he was terminated from the Department of Taxation. His appeals of the termination were rejected at every level.

He got into legal trouble after an incident in which he said he was trying to serve papers on then-NDOT Director Susan Martinovich on behalf of another fired state worker. He became angered with Tatro after the judge convicted him in that case. His anger escalated, and his conduct resulted in the first batch of charges. He was in jail when he allegedly tried to get another prisoner to connect him with a hit man to murder the judge.

Robben was released from jail after the charges were dropped this month.

At the September 12, 2017 hearing on the In Limine motions Judge Steve White abused his discretion (which he did not have since he was sitting with no jurisdiction) by allowing the prosecution to use evidence from the Carson City, NV case(s) which were "charged" crimes against this Petitioner. "The rules governing the admissibility of evidence under Evidence Code section 1101(b) are well settled. **Evidence of defendant's commission of other crimes, civil wrongs or bad acts is not admissible to show bad character or predisposition to**

criminality, but may be admitted to prove some material fact at issue such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident." (*People v. Cage (2015) 62 Cal.4th 256, 273 (Cage)*.)

Even if admissible under Evidence Code section 1101, evidence of prior bad acts must also satisfy Evidence Code section 352. (*People v. Leon (2015) 61 Cal.4th 569, 597-598*.) Section 352 requires consideration **of "`whether the probative value of the evidence "is `substantially outweighed by the probability that its admission [would] . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.'"'** (*Leon, supra, at p. 599.)*

We review for an abuse of discretion. (*Cage, supra, 62 Cal.4th at p. 274*.) Appellate counsel Robert L.S. Angres was IAAC/CDC for failing to argue this issue since the evidence and testimony by Carson City, NV Judge John Tatro and Carson City Sheriff Dan Gomes was prejudicial to this Petitioner and tainted the grand jury and trial jury with evidence that should not have been admitted.

In *People v. Kipp, 956 P. 2d 1169 - Cal: Supreme Court 1998*:

> **Evidence that a defendant has committed crimes other than those currently charged is not admissible to prove that the defendant is a person of bad character or has a criminal disposition; but evidence of uncharged crimes is admissible to prove, among other things, the identity of the perpetrator of the charged crimes, the existence of a common design or plan, or the intent with which the perpetrator acted in the commission of the charged crimes.** (Evid.Code, § 1101.)
>
> Evidence of uncharged crimes is admissible to prove identity, common design or plan, or intent only if the charged and uncharged crimes are sufficiently similar to support a rational inference of identity, common design or plan, or intent. (*People v. Ewoldt (1994) 7 Cal.4th 380, 402-403, 27 Cal. Rptr.2d 646, 867 P.2d 757.*) On appeal, the trial court's determination of this issue, being essentially a determination of relevance, is reviewed for abuse of discretion. *(People v. Scheid (1997) 16 Cal.4th 1,14, 65 Cal.Rptr.2d 348, 939 P.2d 748; People v. Alvarez (1996) 14 Cal.4th 155, 201, 58 Cal.Rptr.2d 385, 926 P.2d 365; People v. Gordon (1990) 50 Cal.3d 1223, 1239, 270 Cal.Rptr. 451, 792 P.2d 251; see also People v. Hayes (1990) 52 Cal.3d 577, 617, 276 Cal.Rptr. 874, 802 P.2d 376; United States v. Khan (9th Cir.1993) 993 F.2d 1368, 1376.)*
>
> To be relevant on the issue of identity, the uncharged crimes must be highly similar to the charged offenses. (*People v. Ewoldt, supra, 7 Cal.4th 380, 403, 27 Cal. Rptr. 2d*

646, 867 P.2d 757.) Evidence of an uncharged crime is relevant to prove identity only if the charged and uncharged offenses display a "`pattern and characteristics ... so unusual and distinctive as to be like a signature.'" (Ibid., quoting 1 McCormick on Evidence (4th ed. 1992) § 190, pp. 801-803.) "The strength of the inference in any case depends upon two factors: (1) the degree of distinctiveness of individual shared marks, and (2) the number of minimally distinctive shared marks." (*People v. Thornton (1974) 11 Cal.3d 738, 756, 114 Cal.Rptr. 467, 523 P.2d 267*, italics in original, disapproved on other grounds in *People v. Flannel (1979) 25 Cal.3d 668, 684, fn. 12, 160 Cal.Rptr. 84, 603 P.2d 1.*)

Viewing the evidence in the light most favorable to the trial court's ruling, the charged and uncharged offenses displayed common features that revealed a highly distinctive pattern. In both instances, the perpetrator strangled a 19-year-old woman in one location, carried the victim's body to an enclosed area belonging to the victim (Howard to her car, Frizzell to her motel room), and covered the body with bedding (Howard with a blanket, Frizzell with a bedspread). The caked dirt and mud on the clothing and body of Antaya Howard indicated 729*729 that she had not been assaulted and strangled in her car, and both the trial court and the jury could reasonably infer that her killer had carried her body from the place where she was killed to her car and had covered it with the blanket that the police removed when they opened the car. The undisturbed condition of the bedding in Tiffany Frizzell's motel room indicated that she had not been assaulted and killed on the bed, and the absence of any signs of forced entry into the motel room or of a struggle within that room, suggested that Frizzell had been killed elsewhere and the perpetrator had thereafter carried her body to the motel room, placed it on the bed, and covered it with the bedspread. This inference draws added support from the testimony of Loveda N. that she had observed in defendant's van a bag that was later discarded in a residential area and found to contain Frizzell's clothing and personal effects. The presence of this bag in defendant's van supports the inference that Frizzell had been in defendant's company away from the motel and had been killed in a location other than the motel. We note also that the bodies of both victims were found with a garment on the upper body, while the breasts and genital area were unclothed, that in neither instance had the victim's clothing been torn, and that the bodies of both victims had been bruised on the legs.

Based on both the number and the distinctiveness of the shared characteristics, we conclude that the trial court did not abuse its discretion when it ruled that the charged and uncharged offenses display a pattern so unusual and distinctive as to support an inference that the same person committed both.

A lesser degree of similarity is required to establish relevance on the issue of common design or plan. (*People v. Ewoldt, supra, 7 Cal.4th 380, 402, 27 Cal. Rptr.2d 646, 867 P.2d 757.*) For this purpose, "the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual." (*Id. at p. 403, 27 Cal.Rptr.2d 646, 867 P.2d 757*.) Here, the common features noted above indicate that when defendant committed the charged Howard offenses and the uncharged Frizzell offenses he was acting pursuant to a

common plan or design to forcibly rape and to kill the young women he had chosen as his victims.

The least degree of similarity is required to establish relevance on the issue of intent. *(People v. Ewoldt, supra, 7 Cal.4th 380, 402, 27 Cal.Rptr.2d 646, 867 P.2d 757*.) For this purpose, the uncharged crimes need only be "sufficiently similar [to the charged offenses] to support the inference that the defendant "'probably harbor[ed] the same intent in each instance." [Citations.]'" (Ibid.) Considering the shared characteristics noted above, we conclude also that the trial court did not abuse its discretion when it ruled that the charged and uncharged offenses are sufficiently similar to support an inference that defendant harbored the same intents — to rape and to kill — in each instance.

There is an additional requirement for the admissibility of evidence of uncharged crimes: The probative value of the uncharged offense evidence must be substantial and must not be largely outweighed by the probability that its admission would create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury. (*People v. Ewoldt, supra, 7 Cal.4th 380, 404-405, 27 Cal.Rptr.2d 646, 867 P.2d 757*.) On appeal, a trial court's resolution of these issues is reviewed for abuse of discretion. (Id. at *p. 405, 27 Cal.Rptr.2d 646, 867 P.2d 757.*) A court abuses its discretion when its ruling "falls outside the bounds of reason." (*People v. De Santis (1992) 2 Cal.4th 1198, 1226, 9 Cal.Rptr.2d 628, 831 P.2d 1210.)*

\

\

\

\

\

\

\

\

\

\

\

\

\

TUESDAY, SEPTEMBER 12, 2017

--oOo--

The matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, came on regularly this day before Honorable Steve White, Assigned Judge of the Superior Court of the State of California, for the County of El Dorado, Department 21.

The People were represented by Dale R. Gomes, Deputy District Attorney.

The Defendant was represented by Russell Miller, Attorney at Law.

The following proceedings were then had:

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Good afternoon.

MR. MILLER: Good afternoon.

THE COURT: In the matter of the People versus Todd Christian Robben, P17CRF0114, the record will show Mr. Robben is present with his counsel Mr. Miller. Mr. Gomes is present on behalf of the People.

This is before the Court right now to address in limine motions preceding the jury selection set for tomorrow.

The Court issued this morning tentative rulings as to most of the motions that have been filed by the parties.

What I would like to do, Counsel, if you have

the tentative before you is to go through them to determine which issues remain pending.

So **People's Number One** I granted as a tentative.

Is that submitted?

MR. MILLER: Yes, Your Honor.

THE COURT: **One** is granted.

Two I granted. Is that submitted?

MR. MILLER: Yes, Your Honor.

THE COURT: **Three** I granted. Is that submitted?

MR. MILLER: Yes, Your Honor.

THE COURT: **Four** is reserved pending argument on the Defendant's motions.

One I granted. Is that submitted?

MR. GOMES: Yes.

THE COURT: Mr. Gomes.

Two I denied.

Is that submitted, Mr. Miller?

MR. MILLER: It is, with the caveat that the Court's offered the defense --

THE COURT: Yes. In other words, I will rule according to my proposed tentative there.

MR. MILLER: Thank you. Submitted, Judge.

THE COURT: That's the order.

You can shorthand your objections to incorporate federalizing by virtue of indicating that it's an objection, hearsay on Crawford and hearsay and

Sixth Amendment or the like.

Number Three is reserved pending argument.

Number Four is granted.

Is that submitted, Mr. Gomes?

MR. GOMES: No, Your Honor.

THE COURT: **Number Five** is granted.

Is that submitted, Mr. Gomes?

MR. GOMES: Yes.

THE COURT: And **Number Six** is granted.

Is that submitted?

MR. GOMES: Yes.

THE COURT: All right. **Number Seven** is reserved.

Number Eight is granted, with the exception of the discussion of the 1101(b) evidence issue. So why don't we treat that as not submitted at this time. We'll address that.

Number Nine, do you wish to submit on that? I denied that to address it when and if a witness is proffered.

Mr. Miller?

MR. MILLER: Yes, Your Honor.

THE COURT: And --

MR. MILLER: We'd submit on the Court's ruling.

THE COURT: Submit on my ruling. That will be the order then.

And **Number Ten** is granted.

Is that submitted?

MR. GOMES: Yes.

THE COURT: **Number Eleven** is granted.

Is that submitted?

MR. GOMES: Yes.

THE COURT: All right. Let's address the larger issue here, which is the proposed 1101(b) evidence. The People argue that it is relevant and also that it should be admitted under 1101(b).

Let's have you make your argument on this, Mr. Gomes.

MR. GOMES: So the 1101(b) I think is the secondary basis for its admissibility. I think --

THE COURT: 351 and 1101(b).

MR. GOMES: Yes. I think the evidence is directly relevant to prove elements of the offenses and most pointedly the elements of the 422 offenses that require the People to prove both reasonable fear on the part of the Defendant's intended victims as well as actual sustained fear.

THE COURT: Let me -- I understand completely your thesis. Let me ask you to detail to the greatest extent possible what you intend to proffer that would come directly under 351, which the alleged victims in this matter, I assume, had knowledge of. Is that your contention?

MR. GOMES: Yes, yes. Not all of the alleged victims, but a number of the alleged victims had knowledge of the assaults on Judge John Tatro in Carson

City, Nevada that occurred around somewhere around 2012 or 2013.

They further had knowledge that, at least some of them, that Todd Robben was a suspect in those assaults and remained a suspect until after he was in custody in this case.

In conjunction with that, I intend to prove that the Defendant, using his websites and his means to communicate with the public, made direct, express and deliberate references to the assaults on Judge Tatro and Judge John Tatro's house, intending those references to be communicated to not just his intended victims in this case but other people, and I intend to prove he intended them to be communicated to his victims because he directed his victims to those website repeatedly and incessantly in his e-mail communications to the victims and references in jail calls to these websites, websites that he has taken candid ownership of at all times up till now. When he's been interviewed by law enforcement, he's admitted these are his, he's responsible for them, and in his communications on all levels, he's admitted responsibility for both these websites and the contents of these websites.

The websites -- and I attached a couple of items from the websites to illustrate, but they actually make references to the threats made against Judge John Tatro. The image of the Christmas card, if you will, that I attached as an exhibit, that came from

the Defendant's website. That was a picture that was published in the newspaper or online, I don't know where, that the Defendant retrieved and then published himself on his website of this threatening Christmas card that was mailed to John Tatro's house on Christmas Eve of 2013 or 2014.

The People's theory is that the Defendant's purpose in publishing that, in addition to other information about the attacks on John Tatro, was not to get himself prosecuted for committing crimes he didn't commit, those attacks on Judge Tatro, but it was to suggest to his then current victims and potential other victims that he needed to be taken seriously and that the threats that he was making needed to be taken seriously and to further suggest that he might very well have been responsible for those things that happened to Judge Tatro.

And I don't know that there's any other reasonable interpretation of the way the Defendant published these things on his website and then directed his victims to go review the website in order to see that he was highlighting this.

Part and parcel to that, I intend to offer jail conversations that the Defendant has had over the last year and a half with an associate, where he makes specific reference to the assaults on Judge John Tatro, and he makes those references in the context of his present victims, whether it be Judge Kingsbury or

Judge Wagoner or Judge Bailey, where he tells his friend, for lack of a better word, that he's gonna get the word out and make sure people go to Judge Kingsbury's house and that she gets the "John Tatro" treatment.

So in order to understand --

THE COURT: Does he, in fact, reference it by name?

MR. GOMES: By name. By absolutely -- usually it's just "Tatro", is how he references the judge. He references "Tatro" and what happened to "John Tatro".

His statements to -- and the friend he is speaking to is a guy named Mike Weston. These are audio-recorded jail conversations.

In order to understand the threat that the Defendant is making against some of these charged victims, you have to understand what happened to Judge Tatro, because without that background, the threat doesn't make sense, but with it, it absolutely and unequivocally is a threat. It's nothing less than a threat, and it can be only interpreted as a threat.

The references are quite specifically to people shooting into the homes of El Dorado County Superior Court judges' homes -- houses, and he makes reference to having maps and locations and knowing where these people live and arranging that the same thing happen to them that happened to Judge Tatro.

So the substantive relevance of the events that

Todd Robben was responsible for those things, but I do intend to prove that Todd Robben wanted his victims to believe -- or at least to fear that he was responsible for those things, and that is the primary way he attempted to instill fear in these individuals.

So the 1101(b) side I think is simpler. He -- the historical record we have gone over in this courtroom before, the Defendant actually managed to get the charges of solicitation to commit murder against Judge Tatro dismissed after his case was transferred on his motion out of Carson City and the Carson City Courts and the Carson City District Attorney's office.

The Douglas County, Nevada District Attorney's office then reviewed that case and actually dismissed a very serious charge of solicitation to commit murder against Judge Tatro.

The evidence in that regard is an audio-recorded conversation the Defendant had with a fellow inmate in Carson City jail, where they make reference --

Yes, sir.

THE COURT: And this occurs, this recorded conversation, after the shots were fired at Tatro's house and all of that?

MR. GOMES: Yes, yes.

So the timeline, those things have already happened. Mr. Robben is in custody in Carson City, Nevada on unrelated charges but has his own reasons to

be unhappy with Judge Tatro, and his assertions in his jailhouse conversations relative to the solicitation to hire somebody to killed Judge Tatro are virtually identical to what he does in this case, and they are always cautioned in the same way that cautioned -- attempted to caution in this case.

And what I mean by that is he says something to the effect of, *I'm gonna defeat you in court* or *I'm gonna defeat him in court, I'm gonna prevail, and you're gonna have to pay me all this money, and then you're really gonna be sorry, but if -- but if not, then I'm gonna use my second amendment and then we'll see who's really sorry* or something to that effect.

But the pattern is always the same. The pattern is, *I'm gonna take you out in court. I'm gonna defeat you using the law because I'm much smarter than you and I'm much better than you, but if you somehow manage to find a way to beat me, then I'm gonna hurt you in another way which involves violence.*

The nature of the threat of violence might always be slightly different, and we have the exact same type of statements in the jail calls with Mike Weston here in El Dorado County, where he promises Mike how he's gonna prevail and how he's gonna win, but, if not, then there's gonna be violence, and there's gonna be shooting at the houses, and there's gonna be people who are really sorry, people with bullets in their heads.

And the phrases I am using are as close to

quotations that I can without just quoting to you his choice language, but the nature of the threats against Tatro were the same. They were, *I'm gonna beat him. I'm gonna beat him in court, but if I don't, well, we're gonna hire this guy.* He's referred to him in the conversation. The two of them refer to him as a roofer.

THE COURT: Define as distinctly and tightly as you can the tether of this evidence to our case through 1101(b). What would you specifically be seeking to establish that's relevant to this case about his threats to Judge Tatro?

MR. GOMES: I think -- my theory is that the Defendant's success in Carson City, Nevada has set in place his current course of conduct. He succeeded. He intimidated his way into getting the case transferred out of Carson City's District Attorney's office and then ultimately out of the Carson City courts, and then transferred to Douglas County, Nevada, where he then successfully intimidated the DA there to dismiss those charges.

That set in -- in the course of the next few years when the Defendant got in trouble, he then engaged in identical behavior that got his case dismissed in Carson City, Nevada, the behavior being motions to transfer -- not transfer -- motions to recuse the District Attorney, motions to recuse every judge who he's ever been presented in front of, threats to expose corruption. Threats to expose, you know, illegality in

the operations of the government that then were buttressed by threats of violence if those things did not get his desired outcome.

When you look at what happened in Carson City, it worked, and it has now led to what has been happening for the last year and a half in El Dorado County.

He has been led to believe that if he just files enough recusal motions, makes enough allegations of corruption or misconduct or in any way intimidates public officials enough, that he can work his way out from underneath the responsibility of his actions.

And when you look at the two scenarios and exactly what he did with Judge Tatro and what he's now tried to do here, they are identical. The only difference is the El Dorado County District Attorney's office has elected not to bow to this intimidation and to his threats.

So the nature of the -- the solicitation part of this goes -- in terms of to kill Judge Tatro, is both 1101(b), but it is also substantive because Judge Kingsbury, Judge Wagoner, Judge Bailey, Officer Shannon Laney, the City Attorney of South Lake Tahoe Mr. Tom Watson all were -- the Defendant was well-known to all of them, and the Defendant's being a suspect in these acts of violence against Judge Tatro were well-known to all of them, and the Defendant, in his communications with these people, used that information in his hopes that the judges would recuse themselves,

Mike Weston would release his car and dismiss the cases, the DA would dismiss the cases.

THE COURT: Do this, though, for me, Mr. Gomes, before we go to Mr. Miller:

There is a clear demarcation between the 351 evidence of his citing and adverting to the threats against Judge Tatro and claiming some connection to those or even some responsibility for those himself and the alleged victims in El Dorado County being aware of that.

That's clear. I don't think that's a close issue. I will hear from Mr. Miller on it.

MR. GOMES: Okay.

THE COURT: But the actual threat that he made against Judge Tatro, tell me why that also should be admitted.

MR. GOMES: Well, that goes directly to my victims' sustained fear.

THE COURT: Because they are aware of his actual --

MR. GOMES: They are aware. Not all of them, but the City Attorney is, Shannon Laney is, the three judges in El Dorado County are. They are -- were absolutely aware of the investigation of -- and -- well -- and the Defendant's attempted prosecution, I should say, because it had already happened, his case, and it was very well publicized. There's newspaper articles about the Defendant's case being charged, the

Defendant's case being dismissed, and the extent to which anybody who the Defendant would choose to try to threaten or intimidate, the extent to which them knowing that he had actually taken steps to try to hire somebody to murder a sitting Superior Court judge I think is about as compelling evidence as I could ever come up with to prove why somebody's fear, number one, is reasonable, which I have to prove, and, number two, sustained when it comes to those 422 charges.

I mean, I -- we have all kind of experienced this, and we all have experienced it with Mr. Robben. We all sit back and think, *How serious should I take these threats? Is he just -- is he just a talker or is he ever actually gonna follow through with the things he suggests?*

Well, he's taken some action that I can prove in this court to try to follow through with a pretty profound threat of violence against a judge. I mean, that's direct evidence of why these victims should take these threats seriously and should be in sustained fear if and when the Defendant attempts to target them with his threatening behavior.

THE COURT: All right.

Mr. Miller?

MR. MILLER: Well, we certainly object to that, Your Honor, on a number of grounds. Since we're in the 300s, it would be 352 as the principal one.

The other one is I don't think it meets the

elements of 1101(b), because the conduct that we're having alleged against Mr. Robben here today in this court is not the same conduct that they are alleging or was originally alleged up in Carson City.

As a matter of fact, the Carson City allegations are far more severe than they are down here.

So I think the prejudice is great inasmuch as the People would like to be able to say not only did he threaten but some threat was carried out by someone, and he's not displeased with the fact that Judge Tatro was, in fact, recognized.

I think it takes it back to my statement, *The enemy of my enemy is my friend.* There's been no association linked at all between Mr. Robben and the fellow that is truly now the suspect and held to answer. Not at all.

As a matter of fact, also, you take Judge Wagoner and Judge Bailey and Judge Kingsbury:

In their testimony, they are not afraid. Judge Wagoner specifically says, *I'm not afraid. If a judge can't handle some kind of threats from different people, then he should step down and not be a judge.*

The only reason that Judge Wagoner said that he stepped aside from the case was because my client had taken the lawful action of calling the judge before the judicial council and saying, *Hey, this guy isn't any good*, and at that particular point, that's when Judge Wagoner said in his grand jury testimony, *That's*

why I stepped aside.

I think what the People are trying to do is bootstrap what most probably was real conduct, but it was in the Carson City, Nevada, and they are trying to slap that over the top of what is very thin conduct in this particular case.

Judge Bailey said he wasn't afraid. Judge Wagoner wasn't afraid. Judge Kingsbury wasn't afraid. They are all saying they are not afraid.

Now, what the People have to do is prove that, A, they are wrong or gave false testimony, and that they are afraid, and it must be sustained, because my client simply refers back to conduct of another individual.

My client was thoroughly investigated on what had happened to Judge Tatro up in the state of Nevada. He's not a suspect. He's been thoroughly vetted for it. He was investigated through the FBI. He's been investigated to a hound's tooth. He's not there.

That doesn't mean that he can't be happy it happened. It doesn't mean that he can't say, *Look, here's an example of what happens to corrupt officials.* My client's done nothing more than say, *I find these people to be corrupt*, and he's done nothing more than file a public complaint, and he's followed all the channels he needs to follow. This Court is well aware of exactly what he does and how he does it.

The People want that to seem like it's intimidation. Well, if I tell -- if someone tells

another that, *I'm going to lawfully report your misconduct, misconduct that's in my eyes, I'm gonna report it and have it reviewed*, there is nothing wrong with that, but then to bring in what happened to Judge Tatro, where there is this alleged murder-for-hire plot, it is just trying to make the issue here even more damning without presenting actual real evidence on these specific allegations.

THE COURT: Let me walk us all through this in the way I'm seeing this and see if I am missing something here:

What the People are asserting is, by virtue of their pleadings in this matter and the grand jury indictment, that certain alleged victims were afraid, meeting the elements of 422, and has, to the extent they prosecute that matter, an obligation to present the evidence based upon which that fear resulted.

You're saying, Mr. Miller -- and I know the testimony you are referring to, but you're saying they are not afraid. They said they weren't afraid. If they were to come into court here in the course of the trial and say, *No, I wasn't afraid*, then I am inclined to the view that it would not be relevant to present all the reasons why they should be afraid. If they are not afraid, they are not afraid.

I'm assuming that they are not going to come in and say that. I don't know, but what I would be inclined to do on this is to rule that this is probative

evidence. It comes in under 351. It could be trimmed by virtue of 352 based upon the concern that it would be unduly prejudicial to the Defendant, but if the Defendant is asserting on his own affirmative action that the alleged victims in our case should be aware that he threatened Judge Tatro and that that which happened or could have happened to Judge Tatro was prospective for Judge Tatro in Nevada might befall the alleged victims in this case, that's all relevant, and there's no reason to exclude that.

It's not, in the Court's view, unduly prejudicial to Mr. Robben that his own actions, which laid the landscape for the threats against the people in El Dorado County, that he doesn't have good standing to come in and say, *That evidence shouldn't come in because that would be prejudicial to me.*

So my view, Mr. Miller, would be if -- unless indeed the alleged victims here weren't scared, in which case I don't think we'd get to the concern that you raise, I don't think that would come in, assuming that they do come in, some or -- I mean, one or more victims -- alleged victims comes to this stand and testifies that they were afraid of Mr. Robben, and then the question would be, *Why were you afraid? What kept you in sustained fear,* and so forth, the People are entitled to elicit all the relevant factors to that end.

If one of those is that, *Well, he made a threat and offered money to carry out the threat when he was in*

Nevada to a judge there and I knew about it because, among other things, he wanted me to know about it, that's all relevant, and that all comes in under 351.

And I don't see it even as 1101(b) evidence. We're not looking for a pattern of conduct. We're not looking for a signature MO or anything like that.

So I -- I don't see how the Defendant prevails on this issue. Let me come back to you, Mr. Miller, and let you respond to my observations.

MR. MILLER: If -- I will.

First of all, I don't believe that the People are going to be able to establish the credibility of those threats without bringing in the alleged witness that was in Carson City. I just don't --

THE COURT: That's a different issue.

MR. MILLER: So -- that's how it would get in, and I thought the Court was touching on "when", and then for me a logical progression would be if when, then how.

But also the People have acknowledged that all these witnesses or all these alleged victims don't know about -- or didn't know about the issues that went on in Carson City, and I think it's gonna put a terrible burden on the Court to sit here and try to ferret through them and say, *Oh, you did and you didn't.* In other words, *It applies to you, sir, but not to you, ma'am.*

And that information comes in before our jury, it comes in in a blanket, and that jury is gonna

consider it any way they choose during deliberation.

So if Judge Bailey is not afraid -- I am just picking an example -- and he says, *I'm not afraid* to the -- in his previous statement and yet he -- he and the jury have already heard about Carson City, then I believe that prejudices my client in the counts and the allegations with Judge Bailey.

So how are we going to parse this up and who gets to hear what?

THE COURT: Well, I don't think that presents a problem, because if Judge Bailey were to say, *I was not afraid*, Mr. Gomes wouldn't be permitted to say, *Well, aren't you afraid because he committed this in Nevada and so forth, shouldn't you have fear based upon that*, he's not going to be able to do that.

And if, however, Judge Wagoner comes in and says, *I was afraid*, or some other alleged victim comes in and says, *I was afraid*, the People are entitled to present evidence as to the basis of that fear and the quality of that fear as in it was a sustained fear that he might be killed.

MR. MILLER: Maybe --

THE COURT: And the fact that the jury hears that as to, say, three victims and not two others is neither here nor there. It's still evidence in the case. It's possibly a candidate for a limiting instruction as to the witnesses who were testifying they never heard of it, if that occurs, but the jury is

entitled to hear that evidence as to those alleged victims to whom it applies.

Mr. Gomes?

MR. GOMES: I just wanted to point out the real issue doesn't relate to the three judges who are just attempted PC 71 victims. It relates to the 422 victims, which are David Cramer, who is one of his former attorneys, Tom Watson, a former City Attorney, Officer Shannon Laney, if we wind up having him as a witness.

THE COURT: So none of the judges are 422 victims?

MR. GOMES: None of them are charged as 422 victims.

THE COURT: All right.

MR. GOMES: They are all charged as PC 71 victims.

So it kind of conflates the issue a little bit to lump them in. I don't know -- we only know Wagoner, who testified at the hearing that he was not afraid.

I don't know what Judge Kingsbury will say in that regard. I kind of think she might say she has some fear because of the way she's coming here, but I've never taken a statement from her. I've never heard it. So we'll see.

And Bailey is in the same context, but it's not as -- really the point. The point is relative to the 422 victims that I have to prove both reasonable fear and sustained fear on their parts.

THE COURT: Right. Well, the comments all abide here. They simply should be reframed to relate to whoever is a 422 victim here. If there is a 422 victim here whose fear is based in part, and I would think probably significant part, on actually believing that the Defendant made a genuine threat to a judge in Nevada and even took -- even advanced the idea that he was going to take action to have it carried out, that is a very legitimate factor for the basis of their being afraid, and it's relevant evidence.

I could say, well, you know, under 352 that would be unduly prejudicial, it should be enough that the jury is just aware that the judge is afraid, but -- I mean, the 422 alleged victim is afraid, but merely limiting the People to just presenting the conclusory mindset of fear is not appropriate, is not fair to the People, that they have to be able to prove their case, present evidence in their case, and this is fairly compelling evidence, there would be a basis for fear on the part of these people.

So I would -- let me give you one last opportunity to be heard on this, Mr. Miller.

MR. MILLER: Well, Your Honor, I go to the concept that I don't limit it to just 422s, because even if you look at the proposed jury instruction by the People on a PC 71, it includes virtually, by concept, the same elements. It still says there has to be some fear that deters this official from their job.

MR. GOMES: I have -- I was on a telephone conference with the District Attorney, the elected official in Douglas County, Nevada who made the decision, and I could candidly say that I left the conversation baffled and confused.

And my conclusion was he was a coward. I would say that to him. I would say it to anybody who would listen. He made no reasonable argument on why he dismissed a case that he had audio-recorded evidence to prove in powerful ways. I didn't understand. It made no sense to me. It was a decision he made. He was the elected official in that county who was in charge.

But when the group of us hung up that phone call with him, I -- well, I'll just say what I said. I looked up at my boss, the elected official in my county, and said, *I told you so*, because that is what I thought had happened there, and he gave no reasonable explanation other than that.

We had heard rumors that there was some law in Nevada that didn't exist in California that this audio-recording was inadmissible, and that's -- was our misunderstanding, and he clarified that. There is no such law in Nevada. This audio-recording is equally as admissible there as it is here. He just decided he didn't want to proceed with the prosecution.

THE COURT: Mr. Miller?

MR. MILLER: Just in -- I do know 1101(b) includes uncharged prior conduct. I really do, but the

idea that we have here is this was charged. This was investigated. This was thoroughly reviewed by two different jurisdictions, and one of them lawfully, if you will, recused the county and the other one reviewed -- the elected official reviewed.

Now, whether they are a coward or not, I don't know. Don't know. Never had the pleasure or displeasure of meeting the people, but an elected official reviewed the facts under the law and said, *No, thank you.*

Now, to me that carries more weight than somebody having uncharged prior misconduct that he was maybe only a suspect in.

THE COURT: All that means, though, is that it wasn't proved beyond a reasonable doubt to the satisfaction of a jury or a bench trial, and that's all that means.

MR. MILLER: Well, it was an ethical stand, I think as it was by that -- by that particular elected official, and I believe that carries more weight.

That's my argument.

THE COURT: Okay. Anything else?

MR. GOMES: Not on this point.

MR. MILLER: No, thank you.

THE COURT: My ruling is that it will be admitted under 351, and it may be admissible as well under 1101(b), but I find it admissible on simply being relevant to the People's case in chief.

If there is some curative or limiting instruction, Mr. Miller, that you wish to advance, do let me know, and obviously confer with Mr. Gomes in that regard, too.

MR. MILLER: I will, Your Honor.

THE COURT: Mr. Gomes, if you want such instruction, let me know. I may on my own conclude to give some limiting instruction, but the fact that the People are going to make very clear that the Defendant was, in the judgment of the People themselves, not responsible or in any way involved in or connected with the actual physical crime that was committed against Judge Tatro, it has a tertiary role in the Nevada calculus of events of just making the threat after the fact.

Let's go to the other issues outstanding.

The defense had moved to exclude, in their motion **Number Three**, any and all mention of opinion evidence by any law enforcement, and I reserve that pending argument.

Let me know -- you know, law enforcement and lay people can give opinions. Is there something you want in particular that you're looking at in your motion?

MR. MILLER: Yes, Your Honor.

It goes to virtual underlying character evidence: *He's the type of person. He is an intimidating person.* If he's not specifically

intimidating to that particular witness, then the attitude or the opinion.

I respect Mr. Gomes. He has an opinion of my client, but that has not -- that's not evidence, and it should only come in if, in fact, that relates somehow to an element of the crime.

Law enforcement oftentimes, if you will, they categorize people, and I think that's improper.

THE COURT: Well, if you'll submit, I will instruct that there not be any gratuitous offerings of opinions. If the People ask some relevant question to which an opinion is an appropriate response, absent a sustained objection, that would be permitted.

MR. MILLER: Then I submit, Your Honor.

THE COURT: So you're not going to say, *In your opinion, is he such and such and so and so.* You're not going to ask a question like that.

So this one is denied, that motion, with the understanding reached on this record at this time.

Now, it seemed to me, Mr. Gomes, that in the course of this afternoon's record you said you had an issue with excluding any and all mention of Mr. Robben invoking his constitutional rights at any time.

MR. GOMES: I do, Your Honor.

THE COURT: Let me hear that.

MR. GOMES: Well, I think the Court is envisioning this motion to be more narrowly construed than what it is, and you're thinking probably of his

Fifth and Sixth Amendment rights to remain silent, so on and so forth.

THE COURT: Right.

MR. GOMES: But the motion isn't directed at his Fifth and Sixth Amendment rights.

THE COURT: This is on -- about all the litigation or --

MR. GOMES: No. The Defendant utilizes reference to his Second Amendment rights repeatedly and often as a means to threaten his victims.

And so my objection to this is narrowly focused to that fact. The Defendant will make reference to using his Second Amendment rights once his First Amendment rights have failed to get him the remedies he is seeking, and that is designed to be a threat. It's meant to be a threat. It is absolutely a threat, and we have it in audio-recorded statements in a number of places, in e-mails and the like. We have it in writing and recorded, where the Defendant is making reference to his constitutional right to keep and bear arms, but he's asserting it in a threatening manner, intending to suggest to his victims and is, in fact, suggesting to his victims that he's gonna use that right to come and do them harm if these things are not resolved to his satisfaction.

THE COURT: Mr. Miller, let me give you a new tentative and see if this is acceptable to you:

My tentative would be to grant your motion with

respect to his invocation of constitutional rights, with the specific exception of the Second Amendment.

MR. MILLER: Thank you.

THE COURT: Submitted?

MR. MILLER: Submitted.

THE COURT: That will be the order.

MR. GOMES: Just as a caveat, I do anticipate there's gonna be evidence, Your Honor, of the Defendant making reference to his First Amendment rights in the context of saying, *This is what I do. I am exercising my First Amendment rights.*

I am assuming the Court is not suggesting that we have to redact anything like that?

THE COURT: No, and I would expand the order to include as an exception the First Amendment as well.

MR. MILLER: Thank you.

THE COURT: Submitted?

MR. MILLER: Yes, Your Honor.

MR. GOMES: Yes.

THE COURT: That will be the order.

And I think maybe the only one left was the motion to exclude any and all bad character evidence.

Is there any -- let me just hear from the parties what they expect other than the substantive evidence about conduct.

Mr. Miller, are you, so far as you know at this time, intending to put on character -- good character evidence yourself?

MR. MILLER: No, Your Honor. We are staying away from character evidence at this time.

THE COURT: So then the matter -- this is granted insofar as it's perceived to relate to typical character evidence, exclusive of relevant evidence in the case itself.

MR. MILLER: Just one --

THE COURT: Go ahead, Mr. Miller.

MR. MILLER: I'm sorry. If we finished with the motions, did the Court have an opportunity to give a tentative ruling on my filing of the 1382 sub (2)?

THE COURT: No, but I will give that to you tomorrow morning.

MR. MILLER: Okay. Thank you.

THE COURT: I could give you the ruling that it's denied, but I could give you a further explication.

(Unreported discussion was then had between counsel.)

THE COURT: I can give it to you first thing in the morning. It's denied, but I will give you further ruling.

Anything else to address at this time?

MR. GOMES: You do a sixpack?

THE COURT: Yes. We'll do 18. I will do a pretty aggressive and wide-scoped voir dire, big strike zone. If I look to you and -- say, it looks like somebody is plainly not going to make it, I may look to counsel and ask if you submit or wish to inquire and

submit and that person is gone. If you want to inquire, of course, you can.

And then the first thing we'll do is cut through the obvious "for causes" and hardships, and so when we approach the real focused voir dire, it will be a well-winnowed group, and we'll move at a pretty good clip, and we'll have a jury tomorrow.

Whenever we get a jury tomorrow, we'll recess, and then we'll resume at 9 o'clock on Thursday, opening statements, and you will present the evidence.

THE COURT: Mr. Miller?

MR. MILLER: I have one more issue, if I may.

I brought it up by e-mail I think to Court and counsel this morning, and if that's late for the Court, I apologize. It's something I had brought up in Department 26 awhile back.

And that was where the venire should come from, and I think the Court understands my position. This is an El Dorado County case. You are sitting as an El Dorado County judge. This is not a change of venue. I believe that the venire should come from El Dorado County.

THE COURT: All right. I wasn't aware that you had raised this issue before. The first I saw of it was this morning when you communicated that to the Court and counsel.

I don't think that that's an issue that gets traction, but I do want to look at that a little bit.

We do have a Sacramento County venire tomorrow, and we are going to proceed with jury selection.

And I also would observe parenthetically that Mr. Robben would be worse off if he had an El Dorado County venire. So that is the chances of his prevailing -- or the chances of the People prevailing, I will phrase it that way, greater in El Dorado County than here, but that is a parenthetical footnote.

MR. MILLER: Would the Court allow -- now that Mr. Robben actually has a copy of the People's proposed resolution, certainly subject to judicial approval --

THE COURT: Yes.

MR. MILLER: -- would the Court allow Mr. Robben to accept that tomorrow morning after he has a chance to read it overnight?

THE COURT: He may attempt to accept it.

MR. MILLER: Thank you.

THE COURT: I don't commit to accepting the plea, but I don't say I won't. I just don't want to, by whatever I say right now, lead Mr. Robben to think that that plea would be accepted. It may or may not be.

MR. MILLER: I appreciate that. We had discussed the fact that I wanted Mr. Robben to have a chance to analyze it. It was e-mailed to me. I have provided him with a copy.

THE COURT: Fair enough.

THE DEFENDANT: Could I expand on that just so I know what you are saying?

MR. MILLER: He's telling us he's not going to make a decision right now. He's not going to give us an indication.

THE COURT: It's up to the judge whether a plea negotiation is accepted.

So what I am saying right now, Mr. Robben, is that I am permitting you to have this night to consider whatever the offer presently pending is, and I'm not expressing a view as to whether I would or would not accept it should you choose to propose to enter that plea. I want to look at it more closely.

MR. MILLER: Thank you.

THE COURT: I haven't looked at it or considered it since it was referenced last time the parties were here.

And I will see you all in the morning.

MR. GOMES: Thank you, Your Honor.

(Evening recess.)

--oOo--

The above exhibits are very ,very troubling because the array of unethical prosecutorial misconduct that occurred with D.D.A.. Dale Gomes claiming this Petitioner was a "suspect" in the shooting of Carson City, NV Judge John Tatro's home when, in fact, Petitioner was only, at best, a "person of interest" at the onset of the shooting incident. Petitioner was fully cleared by the Carson City Sheriff after he fully cooperated with the investigation into the incident. In, fact, the Carson City Sheriff and D.A. had obtained video of the incident from a home security system from Judge Tatro which proved it was not this Petitioner. Also, DNA was recovered from the letters sent to Judge Tatro which was not from this Petitioner. The actual suspect was caught during the time this Petitioner was in jail.

The recordings of the solicitation for murder were unlawful as explained earlier since there was no warrant, Keith Furr did not wear a "wire" and the jail cell intercom was used instead. Said violations run afoul to California privacy laws and federal law as described earlier. Trial counsel was IAC for the failure to investigated or even talk with the special prosecutor, Mark Jackson to hear his side of the story and call him as a witness if needed. With D.D.A. Dale Gomes making comments that this Petitioner intimidated Douglas Co. D.A. Mark Jackson (which is a lie – no protests or any website posts, etc. were ever done against D.A. Mark Jackson and this Petitioner was in jail at the time)… In *Donnelly v. DeChristoforo, 416 US 637 - Supreme Court 1974* **"so infected the trial with unfairness as to make the resulting conviction a denial of due process."**

FILED

Case No. 14 CR 00123 1C

Dept. No. I

2014 APR 10 PM 2:52

JUSTICE OF THE PEACE

BY _____ CLERK

IN THE JUSTICE COURT OF CARSON TOWNSHIP
IN AND FOR CARSON CITY, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TODD CHRISTIAN ROBBEN,

Defendant.

_____/

AMENDED NOTICE OF DISMISSAL (NRS 174.085(5))

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

The State of Nevada, by and through Douglas County District Attorney Mark B. Jackson, as Special Prosecutor, hereby gives Notice of Dismissal pursuant to NRS 174.085(5), of the criminal complaint filed in this case on January 27, 2014.

Count I, SOLICITATION TO COMMIT MURDER, a category B felony in violation of NRS 199.500(2), is being dismissed on the basis that there is insufficient evidence to prove the charge beyond a reasonable doubt at trial.

The State requests that the Court exonerate any bond posted by the Defendant.

Dated this 10th day of April, 2014.

By: Mark B Jackson
MARK B. JACKSON
Douglas County District Attorney as
Special Prosecutor

Case No. 13 CR 01781 1C

Dept. No. I

IN THE JUSTICE COURT OF CARSON TOWNSHIP

IN AND FOR CARSON CITY, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TODD CHRISTIAN ROBBEN,

Defendant.

/

NOTICE OF DISMISSAL (NRS 174.085(5))

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

The State of Nevada, by and through Douglas County District Attorney Mark B. Jackson, as Special Prosecutor, hereby gives Notice of Dismissal pursuant to NRS 174.085(5), of the criminal complaint filed in this case on October 29, 2013.

Count I, STALKING BY ELECTRONIC MEANS, a category C felony in violation of NRS 200.575(1) and (3), is being dismissed on the basis that there is insufficient evidence to prove the charge beyond a reasonable doubt at trial.

Count II, LIBEL, a gross misdemeanor in violation of NRS 200.510, is being dismissed on the basis that the statute is unconstitutionally vague and overly broad and impermissibly allows for punishment of truthful statements which are protected by the First and Fourteenth Amendments of the United States Constitution. *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).

Count III, INTIMIDATING A PUBLIC OFFICER, a category C felony in violation of NRS 199.300(1)(a) and NRS 199.300(3)(a), is being dismissed on the basis that there is insufficient evidence to prove the charge beyond a reasonable doubt at trial.

///

///

Count IV, INTIMIDATING A PUBLIC OFFICER, a gross misdemeanor in violation of NRS 199.300(1)(a) and NRS 199.300(3)(b), is being dismissed on the basis that there is insufficient evidence to prove the charge beyond a reasonable doubt at trial.

The State requests that the Court exonerate any bond posted by the Defendant.

Dated this 26th day of March, 2014.

By: Mark B Jackson
MARK B. JACKSON
Douglas County District Attorney as
Special Prosecutor

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

D.D.A.. Dale Gomes had told Thomas Watson the Petitioner was a suspect in the arson (fire bomb) and shooting of Carson City, NV Judge John Tatro's house which violates CA Evidence Code § 352[57] and prejudiced Petitioner and caused undue distress and fear on Mr. Watson and his family when D.D.A.. Dale Gomes committed prosecutorial misconduct because he knew that Petitioner was fully cleared of any involvement with the Carson City incidents at John Tatro's home.

D.D.A. Dale Gomes relies heavily on the incidents from Carson City, NV (arson and a shooting incident a Judge John Tatro's home) to deceive, mislead, confuse, sensationalize and install fear in the victims, lawyers, the court and the grand jury and trial jury knowing that the **Petitioner had been fully cleared of any involvement well before and prior to filing charges in case # P17CFR0114** as shown by the newspaper article below from December 2015 where the DNA was matched to another person.

D.D.A.. Dale Gomes manipulated the trial using deception and prosecutorial misconduct to put and keep victims in fear that Petitioner was a crazy arsonist, an assassin and he hires hit-men to carry out hit dirty work.

Carson City issues DNA warrant in judge threats case

Crime | December 19, 2015

Taylor Pettaway
tpettaway@nevadaappeal.com

Source: https://www.nevadaappeal.com/news/crime/carson-city-issues-dna-warrant-in-judge-threats-case/

Carson City law enforcement officials announced Friday they have issued a DNA arrest warrant for the suspect involved in a shooting incident of a local judge.

[57] The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury

The Carson City Sheriff's Office has been conducting a three-year long investigation into multiple death threats against Carson City Judge John Tatro and his family. In 2012, an unknown suspect fired shots into Tatro's residence; in 2014, a Christmas card with the message "You will die" written inside was sent to the house; and in May 2015, an incendiary device was placed outside the residence. Officials said they are confident that all the incidents are related and perpetrated by the same suspect.

Sheriff Ken Furlong and Carson City District Attorney Jason Woodbury have made the decision to proceed with a DNA warrant to try to catch the man. This kind of warrant is extremely rare in criminal cases, because it provides a DNA marker, but doesn't provide a name for the suspect. Furlong said this warrant is necessary because they have exhausted every other option to identify the suspect.

"It's a first in that we are so close because we know who he is, we just don't have a name," Furlong said.

The DNA for the warrant came off of the envelope mailed to the Tatro residence last December.

The warrant was issued because the statute of limitations for the shooting would have been up this December, meaning if the warrant wasn't issued and the police did discover who the suspect is, the DA wouldn't be able to prosecute. By having this warrant, they can essentially extend the statute of limitations so that the suspect can still be persecuted if caught.

The DNA will be in CODIS, the FBI's national DNA index, so if the man is arrested on other charges somewhere else, the Sheriff's Office and DA will be notified.

The District Attorney's office checked with other offices in the area, including the Major Violator's Unit in Washoe County, and no one can remember this type of warrant being issued before, Woodbury said. The name on the warrant will appear as John Doe until a suspect is identified and the criminal complaint will be amended to include the name.

"I researched the issue exhaustively," Woodbury said. "We are on solid legal ground."

The Sheriff's Office has worked with numerous outside agencies including the state investigation division to investigate possible suspects outside the region, though Furlong said he believes the suspect is in the Northern Nevada area. Officials said they have cleared a large number of suspects, though they have not completely eliminated anyone.

Furlong said one of the most frustrating parts about the case is that there is a lack of motive. Officials are unsure if the suspect is related to any of Tatro's cases or if it is another incident that caused the anger.

“We know he has a message to say,” Furlong said. “This has been a long-term anger aimed at just one person. We don’t know his motive and its frustrating because without a motive it could be anything, but there is a deep anger. Shooting a gun is an intense anger and he has a rage that he hasn’t been able to let go.”

Both officials said this case is high priority, despite the lack of personal and property damage.

“In the sense of being hurt, in the sense of somebody’s losing property of a significant value, there are more significant cases that our two offices are dealing with,” Woodbury said. “What I think causes all of us to take this case so seriously is the threat to the criminal justice system. We are not a society that allows people to shoot into a judge’s home.

“We don’t allow our public officials to be intimidated and the reason we don’t allow that is that we need them, the criminal justice system needs them to be able to do their jobs fearlessly,” Woodbury added. “They need to be fearless of the consequences and certainly fearless of the threat of some sort of physical harm coming to them or their family and that’s what’s been so significant to us it that a public official is being targeted in this case and it is a threat to this system.”

Investigators believe the suspect is an adult while male between the ages of 35-60. They also believe the man lives north of Carson City, possibly in the Reno/Sparks area, due to footage of the suspect’s car entering and leaving Carson City via I-580 at Carson Street at the time of the incendiary incident.

If anyone has any information, contact the Carson City Sheriff’s Office at 775-887-2014, Detective Sam Hatley at 775-283-7852, Lt. Brian Humphrey at 775-283-7850. Anyone who wishes to remain anonymous can contact Secret Witness at 775-322-4900. Information can also be sent to shatley@carson.org or bhumphrey@carson.org.

talking about, is it?
A It's talking about the appeal on the DUI and the 14601 case.
Q The present prosecution didn't exist yet; it was still just an investigation?
A Correct.
Q Okay. Continuing on.
(People's Exhibit Number 18 was continuing to be played for the jury.)
Q (By MR. GOMES) Pausing the recording at 13:29, there is a reference to a person named "Tatro" by the Defendant at this point in the recording?
Do you know who "Tatro" is.
A Yes, I do.
Q Who is Tatro?
A Judge Tatro is the judge from Carson City.
Q And this is Judge John Tatro?
A Yes, Carson City, Nevada.
Q And at this point in the investigation, is this the same judge who the Defendant was a suspect involved in targeting his home with violent acts?
A Yes.
Q Just a little earlier in the recording, the Defendant makes reference to a Reno federal court. Did your investigation uncover any connections between the Defendant and the Reno federal district courts?
A Yes.
Q How is he connected to those courts?
A He's got -- he is suing people in Nevada for

Q (By MR. GOMES) Did you pull this image off of one of the Defendant's websites in April of 2016 when you were reviewing all the documentation on his websites?

A Yeah. April or March of 2016, yes.

Q Okay. And so the event that you learned about relative to Judge Tatro that was an active pending investigation at that time was what?

A I'm sorry. Can you repeat that question?

Q Yeah.

Getting back to this, as you developed your investigation, you told us you determined that there was some crime involving Judge Tatro as a victim, that you learned about at the time you were pulling these images off that provided some context or relevance or why this mattered to you.

A Correct. Judge Tatro, Carson City judge, his house had been fired upon through his front door, at least a couple of projectiles from a firearm into his residence, and the second event was that someone laid a incendiary device, some sort of device that was designed to either blow up or turn -- start a fire at his residence, it was laid right out in front of his residence, and it was --

Q As of March and April 2016, these were still active, open pending investigations?

A Yes.

Q And at that time fair to say that this

Defendant was a suspect in those investigations?
A Yes, he was.
Q Provided some particular context or relevance to these images you were preserving?
A Yes.
Q Now, Investigator Kuhlmann, it's fair to say also, though, that a different, unconnected suspect has now been arrested and charged for those events of terrorizing Judge Tatro?
A Yes, that's true.
Q And fair to say that law enforcement has no reason to believe that there is a connection between Todd Christian Robben and that suspect?
A That is true.
Q All right. Let's go to Exhibit 8, and I'm gonna shrink [image] this a little bit.
Okay. Is this another image that you pulled off of the Defendant's websites?
A Yes, it is.
Q And what are we looking at here?
A Mr. Robben has banners that he possesses and that he talks about.
MR. MILLER: Objection; lack of foundation.
MR. GOMES: I can lay further foundation.
THE COURT: All right.
Q (By MR. GOMES) In your investigation and your historical knowledge of the Defendant, have you known the Defendant to engage in an act of political free

they were accurate, yes.

Q Okay. Do you now know that charges were brought against or investigation of those allegations were, in fact, made against Mr. Robben?

A Allegation -- my understanding is as investigation of Mr. Robben in that circumstance was made, yes.

Q Yes.

And do you also understand that that investigation lead to showing Mr. Robben had nothing to do with the shooting of judge -- the house of a judge?

A I'm unaware of that.

Q Okay. So you didn't keep up with what was going on; you just took it in?

A Candidly, once Mr. Robben no longer threatened me, I did not continue to follow Mr. Robben's criminal career.

Q So he's not threatening you now?

A He's in custody.

Q He's not threatening you now?

A I have not received an e-mail threat from him in awhile, no.

Q Let me ask you about those e-mail threats:

And you remember looking at the exhibits just a few minutes ago, right?

A Yes, sir.

Q Okay. They said, "I want this or that". It was kind of conditional, wasn't it?

A Yes.
Q Or he will leave you alone?
A Leave me alone and my family, because it was important that he leave my family alone.
Q Okay. Because you had perceived this threat to you and your family?
A I believed that he was dangerous and that he threatened my family and myself, yes.
Q Now, what -- what made you think that your family was involved?
A The context of "murder", the context of shooting at a judge's home, which was my knowledge at the time, could result in my family members being injured or killed.
Q Could have?
A Yes.
Q And yet you had no idea if a shooting incident of another judge's home had anything to do with Mr. Robben?
A Again, it was in the context of what I knew at the time, sir.
Q So if you were to hear something that made you think ill of Mr. Robben, you were believing it?
MR. GOMES: Objection; it's argumentative.
THE COURT: Sustained.
MR. MILLER: Nothing further.
THE COURT: Mr. Gomes?
MR. GOMES: Just one thing.

D.D.A.. Daniel Gomes also exploits an email Petitioner sent out that there would be a “Bloodbath” referring to the fact that Petitioner sent out a an email that he was if fear that he would be killed because a warrant was issued for a failure to appear in case # S16CRM0096. There, an unlawfully assigned retired judge refused to allow Petitioner to call in telephonically to the court for pre-trial hearings after the judge refused to travel to South Lake Tahoe and unlawfully move the venue to Placerville which made it impossible for the Petitioner to attend since he had no transportation. The judge and court lacked jurisdiction over the Petitioner and said warrant was illegal. D.D.A.. Dale Gomes intentionally and wrongfully deceives the court and jury that the Petitioner did not threaten anyone and instead made it clear he would be the victim of a bloodbath and in fact, the Sheriff used guns to take Petitioner into custody when Petitioner had no weapons.

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

MR. GOMES: Two things, if I may --

THE COURT: Go ahead.

MR. GOMES: -- to supplement the record:

Number one, he did not provide the Courts or the District Attorney's office with his actual location. He was hiding. We did find him, but it was not where he -- the address that he provided, which was an address in the City of South Lake Tahoe.

And, number two, in the midst of the search for him, he put in writing e-mails to the District Attorney's office that if we attempted to effect his arrest pursuant to the bench warrant that was now issued, that he would resist the arrest with deadly force and that there would be a bloodbath that would ensue.

I think this is exactly what the flight after a crime is all about, when somebody knows they are in trouble --

THE DEFENDANT: It's not true.

MR. GOMES: -- and they have a reason --

THE DEFENDANT: The bloodbath was gonna be on me, that they're shoot me, man. This is totally out of context.

THE COURT: Be quiet, Mr. Robben.

THE DEFENDANT: They were gonna shoot me, assault me.

THE COURT: Mr. Robben, be quiet.

THE DEFENDANT: That's what's going on here.

they were accurate, yes.

Q Okay. Do you now know that charges were brought against or investigation of those allegations were, in fact, made against Mr. Robben?

A Allegation -- my understanding is as investigation of Mr. Robben in that circumstance was made, yes.

Q Yes.

And do you also understand that that investigation lead to showing Mr. Robben had nothing to do with the shooting of judge -- the house of a judge?

A I'm unaware of that.

Q Okay. So you didn't keep up with what was going on; you just took it in?

A Candidly, once Mr. Robben no longer threatened me, I did not continue to follow Mr. Robben's criminal career.

Q So he's not threatening you now?

A He's in custody.

Q He's not threatening you now?

A I have not received an e-mail threat from him in awhile, no.

Q Let me ask you about those e-mail threats:

And you remember looking at the exhibits just a few minutes ago, right?

A Yes, sir.

Q Okay. They said, "I want this or that". It was kind of conditional, wasn't it?

A Yes.
Q Or he will leave you alone?
A Leave me alone and my family, because it was important that he leave my family alone.
Q Okay. Because you had perceived this threat to you and your family?
A I believed that he was dangerous and that he threatened my family and myself, yes.
Q Now, what -- what made you think that your family was involved?
A The context of "murder", the context of shooting at a judge's home, which was my knowledge at the time, could result in my family members being injured or killed.
Q Could have?
A Yes.
Q And yet you had no idea if a shooting incident of another judge's home had anything to do with Mr. Robben?
A Again, it was in the context of what I knew at the time, sir.
Q So if you were to hear something that made you think ill of Mr. Robben, you were believing it?
MR. GOMES: Objection; it's argumentative.
THE COURT: Sustained.
MR. MILLER: Nothing further.
THE COURT: Mr. Gomes?
MR. GOMES: Just one thing.

like Mr. Robben was trying to couch -- or his pattern is to say, *Oh, some third party is gonna do it*, right?

A Yes.

Q Okay. Well, in fact, in Carson City, some third party did it, right?

Mr. Robben did not shoot as Judge Tatro's house?

A No.

Q Some people completely unknown to Mr. Robben did it?

A Correct.

Q Now, the fact that something sad happens to another person, we don't feel sad, that's not against the law, is it?

A No.

Q And it's not bad to use it as an example; that's not unlawful in your training, is it?

A It's not unlawful.

Q Okay. Your suspicion is that you were told to investigate -- I will back up. Let me rephrase.

You were told to investigate possible threats made by Mr. Robben against government officials, right?

A Yes.

Q And so you went out and investigated to find facts that would or would not support that, right?

A Yes.

Q And in your investigation you then suspected that some of these phrases used by Mr. Robben could, in

TESTIMONY OF

DANIEL GOMES, witness called on behalf of the People:

DIRECT EXAMINATION

by DALE GOMES, Deputy District Attorney:

Q And good afternoon, Detective? Deputy?

A Sergeant.

Q Sergeant. Sorry. I was wrong on all counts.

A That's okay.

Q First of all you and I share the same very wonderful last name?

A Correct.

Q Do you know me?

A I do not.

Q Other than in a professional capacity?

A No.

Q We're not related in any way?

A No.

Q Other than our very limited involvement in this particular case, we have never worked together or have done anything professional together?

A Correct.

Q Just get that out.

Do you know a person named Todd Christian Robben?

A I do.

Q Do you see that person in this courtroom today?

A I do.

Q Please point to him and identify an article of

(Unreported discussion was then had between the Court and counsel at the bench.)

THE COURT: Call your witness, please.

MR. GOMES: I am gonna call Deputy Dan Gomes.

THE COURT: Ladies and gentlemen, before this witness is sworn, let me explain that sometimes we will bring in witnesses essentially out of order. It's not uncommon at all in the sense that it doesn't follow the chronology or the ideal order of witnesses for purposes of laying down the case. Scheduling reasons and all sorts of logistical challenges are being dealt with.

So this witness is a witness that's kind of out of order, but it will -- that is to say you wouldn't normally hear from him until after you have heard from some other witnesses, but we are going to hear from him now.

Please raise your right hand, sir.

THE CLERK: Do you solemnly state that the testimony you are about to give in the case now pending before the Court will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please have a seat.

Would you please state and spell your first and last name.

THE WITNESS: Daniel Gomes, G-O-M-E-S.

THE COURT: You may proceed.

MR. GOMES: Thank you, Your Honor.

TESTIMONY OF

DANIEL GOMES, witness called on behalf of the People:

DIRECT EXAMINATION

by DALE GOMES, Deputy District Attorney:

Q And good afternoon, Detective? Deputy?

A Sergeant.

Q Sergeant. Sorry. I was wrong on all counts.

A That's okay.

Q First of all you and I share the same very wonderful last name?

A Correct.

Q Do you know me?

A I do not.

Q Other than in a professional capacity?

A No.

Q We're not related in any way?

A No.

Q Other than our very limited involvement in this particular case, we have never worked together or have done anything professional together?

A Correct.

Q Just get that out.

Do you know a person named Todd Christian Robben?

A I do.

Q Do you see that person in this courtroom today?

A I do.

Q Please point to him and identify an article of

clothing that he's wearing?
A Mr. Robben is sitting right there in a blue long-sleeved shirt.
THE COURT: Identifying the Defendant Mr. Robben.
MR. GOMES: Thank you, Your Honor.
Q (By MR. GOMES) Going back to -- several years, 2012 or 2013, I will let you clarify for me what year, did you participate in an investigation involving this Defendant while he was housed in your Carson City County jailhouse?
A I did.
Q What year did that take place?
A 2014.
Q 2014.
And that investigation was initiated how?
A I was in the detective division at the time, and an inmate in the Carson City jail filled out an inmate request form, requesting to speak with a detective about something that was going on inside the facility.
Q And did you wind up then meeting with that particular inmate?
A I did.
Q Do you remember that inmate's name?
A Keith Furr.
Q And Keith Furr was somebody who was incarcerated in the jail with Todd Christian Robben at

the time?
A Yes.
Q And after your conversations with Mr. Furr, did you formulate an investigative game plan? Did you decide what you wanted to do?
A I did.
Q What did you decide to do?
A I interviewed Mr. Furr, and then at that time we decided -- we gathered the information of what was going investigated, and we decided to put a wire on Mr. Furr and send him back into the cell.
Q So you put some type of recording device on Mr. Furr so that you could both record and listen to the interaction that he had with the Defendant?
A Correct.
Q And you did this on one occasion or more than one occasion?
A It was more than one occasion.
Q How many times did you wire up Mr. Furr and send him into the jail cell with the Defendant?
A I believe it was twice.
Q The subject matter, if you will, that you were investigating, did it involve a particular victim?
A It did.
Q Who was that?
A Judge John Tatro.
Q And as of the time of your investigation in 2014, were there other active investigations involving

Judge John Tatro as a victim?
A Yes.
Q And what were those active investigations, generally speaking?
A There was bullets that were fired into the front door of Judge Tatro's house.
Q And was it your Sheriff's Department in Carson City that was the lead investigative agency for that crime?
A Yes.
Q As of your investigation in the -- I guess the winter of 2014, was Todd Christian Robben an active suspect in the earlier victimization of Judge Tatro's house?
A Yes.
Q Fair to say as of now, this Defendant Todd Christian Robben has been cleared as a responsible party for that?
A Yes.
Q Somebody else has been captured?
A Correct.
Q Charged?
A Correct.
Q And is in the process of being prosecuted?
A Correct.
Q Fair to say that you were -- you cannot find any connection between the currently charged suspect and this Defendant?

The following exhibit is testimony from Carson City Judge John Tatro:

nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please have a seat.

Please state and spell your first and last name.

THE WITNESS: John Tatro, J-O-H-N T-A-T-R-O.

THE COURT: You may proceed.

MR. GOMES: Thank you, Your Honor.

TESTIMONY OF

JOHN TATRO, witness called on behalf of the People:

DIRECT EXAMINATION

by DALE GOMES, Deputy District Attorney:

Q Good morning, sir.

A Good morning.

Q First of all, tell us what you do for a living?

A I'm a Justice of the Peace, a Municipal Court judge in Carson City, Nevada.

Q How long have you been a Municipal Court judge in Carson City, Nevada?

A It will be 23 years in January.

Q And what did you do before that?

A I was a hearing officer at the State Gaming Control Board. Administrative hearings, I held.

Q Practicing law?

A No.

Q No.

Over the course of your career as a Municipal Court judge, what have your responsibilities been?

A I hear -- well, Municipal Court and Justice Court. So I hear several cases. The protective orders. Small claims, formal civil actions, evictions.

I have hear on the criminal side misdemeanors, gross misdemeanors, felonies at all stages.

We do -- for misdemeanors I conduct, you know, from beginning to end the trial, the arraignment, all of that, any hearings.

And then on felonies, I conduct preliminary hearings to determine if there is enough probable cause to send them off to District Court for trial.

Q Okay. Over the course of your professional career as a judge in Carson City, Nevada, has a person by the name of Todd Christian Robben ever appeared in your courtroom?

A He has.

Q And if you saw that person again, would you recognize him?

A I would.

Q Do you see him here in the court?

A I do.

Q Can you point to him and describe any article of clothing he is wearing, sir.

A He is seated to my right wearing a blue collared shirt with the collar open.

THE COURT: Identifying the Defendant Mr. Robben.

MR. GOMES: Thank you, Your Honor.

Q (By MR. GOMES) Sir, as you think back, can you tell us how you first encountered the Defendant.
A Well, I believe the first was -- was a protective order hearing. I believe he had several protective orders against him. I heard some, and another judge heard some others.
Q So these were not criminal cases at this point?
A Correct.
Q They were some type of civil protective order hearing?
A Yes.
Q And you presided over some of those hearings?
A I did.
Q Did you issue protective orders against the Defendant?
MR. MILLER: Objection; relevance.
THE COURT: Overruled.
THE WITNESS: I did.
Q (By MR. GOMES) And just to be clear, make sure we all understand the context, this is like a civil restraining order, where someone said, *Judge, hey, order this guy to leave me alone*?
A Correct.
Q To put it pretty simply?
A Sure.
Q And you heard some evidence in those hearings?
A I did.
Q Did you hear evidence from the Defendant?

A I did.
Q And you made the decision to issue those protective orders?
A I did.
Q Was that the last of your encounters with Todd Christian Robben?
A No, it was not.
Q How did you encounter him again, sir?
A He had a criminal case.
Q And did that criminal case appear in your courtroom?
A It did.
Q Do you remember when this was?
A I believe it was either 2011 or 2012.
Q And do you remember the nature of that case? A relatively low-level misdemeanor-type case?
A It was.
The charge I think started off as a battery but they didn't charge -- they didn't go forward on that. They went forward on a disorderly conduct. I can't remember the exact charge.
Q To be fair, almost the lowest level misdemeanor charge on the books?
A Yes.
Q In California we call it disturbing the peace.
A Right.
Q Something similar to that?
A Similar.

Q And you were assigned to preside over this case at which stage?
A The beginning when he was first arrested.
Q And does that mean like an arraignment?
A Yes.
Q And anything beyond that?
A We had a bail hearing or two.
Q And during these initial hearings involving the Defendant, was the Defendant appearing in your courtroom?
A He was.
Q In custody or out of custody or both?
A Might have been both.
Q And anything about those court appearances stand out in your memory?
A I remember them, yes.
Q Not knowing the volume that you deal with in Carson City, I'm gonna guess that you handle a lot of cases?
A I do.
Q A lot of low level misdemeanor cases?
A I do.
Q Do they all stand out in your memory?
Can you think back to 2011 and remember a lot of your misdemeanor arraignments?
A No, I don't.
Q What was it about Todd Christian Robben's early court appearances that stand out to you?

A Well, I don't remember at what juncture this was, if this was the first appearance or the second, but he was out, and I don't know if I released him or if he posted bail, but he was out, and the District Attorney brought a motion to have him rearrested and put a pretty high bail on him.

And so we had a hearing in his absence to raise the bail to $500,000 on his low level misdemeanor because he, according to the DA, was suicidal and making threats of killing himself and/or killing a judge.

Q Now, at that point you weren't that judge?

You weren't that judge the threats were being made against, as far as you knew?

A I think I was.

Q Oh, at that point you were?

A Yeah.

Q And you heard this bail hearing. Did you agree to raise the Defendant's bail?

A I did. It was extraordinary, and I'd never put a bail on a misdemeanor that high, but because of the way it came in, I did just very temporarily.

Q And was the Defendant taken into custody pursuant to that new bail amount?

A He was.

Q Did he appear in your courtroom again?

A He did.

Q Anything unusual happen at the Defendant's next court appearance?

A Well, he was very upset.
Q How could you tell that?
A Because he was not sitting calmly and very upset with me, and he said so.
Q What did he say?
A I don't remember exactly what he said.
Q Do you remember generally what he said?
A Generally that this was terrible that he should have such a high bail and this was, you know, a kangaroo court and lots of things like that.
Q Did you continue to preside over the Defendant's misdemeanor prosecution at this point?
A I did.
Q And did he appear in your courtroom again?
A He did.
Prior to that I lowered his bail.
Q Okay. So you didn't maintain this extraordinarily high bail?
A It was for, like, three days.
Q And what led you to lower it?
A I think a psychologist saw him in the jail and said that probably he wasn't suicidal and -- I'm trying to remember this. I don't -- I didn't look at any of this before.
Q Fair to say that in your professional judgment as the magistrate, reviewing all the facts, you decided that that high bail wasn't warranted?
A Correct.

Q And you agreed to lower his bail to a more traditional bail amount, relative to his offenses?
A I did.
Q And was he released from custody at that point?
A He was some point in there. I'm not sure if it was that day or shortly after. I don't remember how that happened.
Q And did he appear in your courtroom again?
A He did.
Q Anything extraordinary happen at the next appearance?
A He ended up pleading to the charge of disorderly conduct.
Q In front of you?
A Yes.
Q Did you sentence him?
A No. No, I deferred sentencing.
Q Okay. Let's make sure we all understand procedurally what happened:
At the point in time he enters, like, a no contest plea, and you had the power, the ability to impose some type of sentence on him?
A I did.
Q Did you choose not to exercise that power or was there a bargained-for agreement or something between the two of you?
A There was an agreement.
Q And did you abide by the agreement that the

District Attorney and the Defendant had entered into?
A I did.
Q Which included that you would not be sentencing him at that time?
A Right.
Q Now, in California I think we call this, like, a deferred entry of judgment?
A Similar.
Q Something where a person can go about their business, abide by the law, and the whole case will just get dismissed if they do everything the way they are supposed to?
A That's correct.
Q Did the Defendant ever appear in your courtroom again?
A I don't think so.
Q Did your encounters with Todd Christian Robben end at that point?
A They did not.
Q How did they continue?
A Well, he -- he sponsored a website or had a website, and he continually was putting things up on the website about me and my family, made up things about -- about I'm an alcoholic, I have to do a PBT test, blow in the -- do a breath test every day before I go on the bench.

He said that I was a child molester and that I had been arrested, like, five or -- a bunch of times for

driving under the influence and that the Sheriff wouldn't follow through because I was a political figure and that I would be arrested for battering my wife. That I had --

It was all made up. None of this happened; that there was domestic batteries and I would be taken to an executive jail suite in Reno instead of Carson City and serve out.

So this stuff was --

Q It was being published on the website?

A It was.

Q Do you remember the website it was being published on?

A It's personnelwatch, perhaps. Personnelwatch was one of them. I can't remember the names.

Q There was more than one?

A There were.

Q And these assertions about you, none of them were true?

A They were not true. Are not true.

Q During what period of time, as you think back, were you being alerted that these websites were making these allegations against you?

A It was in 2012. I -- especially it got heavy in, like, the fall or late summer of 2012.

Q What had come of the Defendant's deferred entry of judgment misdemeanor disposition?

A I don't believe anything had happened at that

point.
Q So nobody had violated the terms and conditions of his deferred entry of judgment?
A Not yet.
Q Or had thrown him back in jail or anything like that?
A I don't believe so.
Q So how did your interactions with the Defendant continue from there?
A Well, he continued with the websites.
Plus he was protesting in Carson City. He would have these banners that -- I don't remember what they said. They had my name on them and that I needed to be out of office and that -- I can't remember what they exactly said, but that I -- I shouldn't be a judge and --
Q Are you an elected official or are you appointed?
A I'm elected.
Q And what is your term?
How long does your term last before you have to face reelection each time?
A Six years.
Q So every six years you have to face reelection.
When was the last time you faced reelection?
A Five years ago, 2012.
Q Right about the time this was taking place?
A Right.

Q And as you think back, were the Defendant's political protests -- was it a one-time event or did he do this more than one time relative to protesting you personally?
A More than once.
Q And he did this out of the courthouse where you worked?
A Courthouse, the State Capitol, the Attorney General's office.
Q A number of protests?
A Yeah.
Q Very large signs?
A Yeah, he had big signs.
Q Okay.
A Professionally done.
Q Did he ever utilize a sign he liked to call *The World's Largest Crime Scene Tape*?
A He did.
Q Okay. So that was one of his -- just a big yellow crime scene tape that he wrapped around government buildings?
A He did.
Q In conjunction with protesting you personally?
A Yes.
Q Okay. How did your interactions with the Defendant continue from there?
Before, actually, I take it you got reelected in 2012.

A I did.
Q And how did your interactions with the Defendant continue at that point?
A Well, he continued on the website. In fact, we were going to my -- I recall that we were going to my niece's wedding in Park City, Utah, and we were getting ready to leave, and I got a call from a Deputy Sheriff to look at it.

So I looked at it, and he had posted up -- he got a picture of my family. Sorry.

He got a picture of my family off my wife's website that -- she's a realtor in Carson City, and on her website she had a picture -- we have a family portrait. He took a picture of it, and he doctored it up and put, you know, horns on me and made me look like a joker and put little captions coming from my kids' heads like *My Daddy's a Jerk*, you know, different things. I can't remember what they said, but it was very disturbing to me, because now it's, like, it isn't just me, he's crossed the line.

And so we left town. We went to the wedding, and it was paramount on my mind. I mean, I was very nervous, and the police started -- they were already doing drive-by -- or passing checks at my residence every night, because they monitored the website, is what I understand, and during that time they really amped it up.
Q Do you remember when this was?

The above "Joker" image of John Tatro is protected speech and definitely not a threat. Mr. Tatro had filed a criminal libel charge against this Petitioner in Nevada. The case was dismissed as discussed later in these pleadings since Petitioner's statements about John Tatro were, in fact, true (breathalyzer tests, domestic violence, allegations of child molestation / pedophilia no law degree, etc.). The Nevada Revised Statute ("NRS") 200.510 was declared unconstitutional as well:

> NEVADA–A federal judge in Las Vegas declared Nevada's criminal libel law unconstitutional in late September after the Nevada Press Association challenged the law and the Nevada Attorney General agreed that the law was unconstitutional.
>
> The statute defined criminal libel as "malicious defamation" that tended "to blacken the memory of the dead," or "impeach" the honesty or integrity of living persons, "thereby exposing them to public hatred, contempt or ridicule."

Under the statute, the truth of a published statement was no defense against a criminal conviction, unless the statement was published "for good motive and for justifiable ends."

In accordance with an agreement between the Nevada Press Association and the Attorney General, Judge Johnnie Rawlinson issued a final judgment stating that the law was unconstitutionally broad and violated the First Amendment by providing punishment for the publication of truthful statements. (Nevada Press Association v. Del Papa; Media Counsel: Kevin Doty, Las Vegas)

Source: https://www.rcfp.org/criminal-libel-law-declared-unconstitutional/

See Also:

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988), was a landmark decision of the US Supreme Court ruling that the First and Fourteenth Amendments prohibit public figures from recovering damages for the tort of intentional infliction of emotional distress (IIED), if the emotional distress was caused by a **caricature, parody, or satire of the public figure** that a reasonable person would not have interpreted as factual.[1]

In an 8–0 decision, the Court ruled in favor of *Hustler* magazine, holding that a parody ad published in the magazine depicting televangelist and political commentator Jerry Falwell Sr. as an incestuous drunk, was protected speech since Falwell was a public figure and the parody could not have been reasonably considered believable. Therefore, the Court held that the emotional distress inflicted on Falwell by the ad was not a sufficient reason to deny the First Amendment protection to speech that is critical of public officials and public figures.[1][2]

Tahoe man Released after local DA's office Disqualified -- New DA Drops Charges

Image:

Image Detail:
Ty Robben and supporters Protesting Vern Peirson's Politically Motivated Actions

In a stunning turn of events South Tahoe man Ty Robben has been released from jail, his $50,000 bail is dropped, and all other charges were dropped after new DA reviews the case.

Robbens is best known on the Western Slope of El Dorado County by his protest of El Dorado County District Attorney related to his failure

to prosecute the Nevada bounty hunters that Robben claimed acted illegally in California.

Cris Alarcon, Placerville Newswire | 2014-04-15

Cached: http://web.archive.org/web/20140416213526/http://inedc.com/1-8418

Original: http://inedc.com/1-8418

Ty Robben has always claimed that he was the victim of a politically motivated prosecution in Nevada for being a high-level governmental whistleblower. His claims included that the El Dorado County District Attorney was working in concert with Nevada authorities in this political witch hunt.

Robben was arrested twice in El Dorado County, once by Nevada Bounty Hunters that acted in California without the needed authority and then transported Robbens to Nevada. A second time was about a month ago when increased charges in Nevada caused the EDC Sheriff to exercise a legitimate arrest warrant. He spent nearly a month in a Nevada jail before a new DA stepped in to review the case and subsequently setting Robbens free finding the charges without substance.

In what is a bitter sweet victory for Robbens, he now is trying to put his life back together after spending a month in jail. The Nevada DA Mark Jackson wrote, **"“Based on a full and complete review of all the evidence and the existing constitutional, statutory and case law, I filed a notice of dismissal today in the Carson Township Justice Court.”** County DA Mark Jackson was brought in after the Carson City DA’s office was disqualified from handling the case. Douglas County DA Mark Jackson said that means Robben’s $50,000 bail has been lifted, and all pending charges against him have been dismissed.

“It is my understanding that Mr. Robben is in the process of being released from the Carson City Jail,” Jackson said.
Robben stopped by the Tahoe Daily Tribune Friday and said he was hoping to restore his life and family. He thanked his attorneys for their work to get him released.
“Thank you to Mark Jackson for standing up and supporting the U.S. Constitution,” Robben said.

Two weeks ago, Jackson dismissed the other case against Robben, which accused him of libel and stalking and two counts of attempting to intimidate Tatro and his family.

He did so stating that Nevada's libel law was "unconstitutionally vague." The stalking charge, he said, simply didn't have enough evidence to support it.

Judge Tatro Corrupt as hell says many Reno area residents. Robben has been battling the state and criminal justice system since he was terminated by the Taxation Department.
He was angry with Tatro for his conviction on charges of disorderly conduct centered on his attempt to — allegedly — serve papers on behalf of a friend on then-NDOT Director Susan Martinovich.

Robben said Judge Tatro and Assistant DA Mark "Freddie" Krueger must resign and criminal charges must be filed against Judge Tatro for filing a false report against me! He went on to make this statement:

Thank you Douglas County DA Mark Jackson for respecting the US Constitution and my 1st & 14th Amendment rights in these matters and the honor to respect the law(s) and look at the facts unbiased.

Special thanks Attorney Jarrod Hickman and to the entire State of Nevada Public Defenders office including the folks behind the scenes answering my numerous phone calls from jail.

Robben finished his statement with this question:
Are you aware of the ruling in Times v. Sullivan (1964) which states this, in part:

"As Americans we have a profound national commitment to the principle that debate on Public Issues should be uninhibited, robust, and wide open. And that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

At this time it is unknown if El Dorado County DA Vern Pierson is one of the governmental officers that Robbens intends to sue related to his prosecution and arrest.

External links;

https://www.tahoedailytribune.com/news/charges-against-tahoe-man-dropped/

http://www.tahoedailytribune.com/southshore/snews/10998082-113/robben-jackson-charges-carson

A That was, like, in September or October of 2012.
Q All right. And did your interactions with the Defendant continue from there?
A Well, yeah. He continued, you know, the website and those sorts of things, and protesting would happen.
You know, I mean, the signs were big, and Carson City is small. So when they -- when they happened, it was --
MR. MILLER: Your Honor, I object.
That's nonresponsive. I believe the question was "interactions".
THE COURT: Sustained.
THE WITNESS: Okay.
MR. MILLER: Move to strike.
THE COURT: The answer is struck.
Q (By MR. GOMES) As you think back to this point in time, so we're now in the fall of 2012, in the months that followed that period of time, did something ensue at your house that led you to contact law enforcement via the emergency telephone line 9-1-1?
A Yes, it did.
Q What was that, sir?
A A shooting.
Q When did that take place?
A It was December 11th, 2012, at 4:30 in the morning.

Q And tell us -- first of all, where were you?
A In bed.
Q And who else was home?
A My wife.
Q The two of you were home.
What did you perceive?
A Well, I woke up to a loud noise. We weren't sure exactly what it was. We ran out from the bedroom into -- we just put up the Christmas tree the night before, and ran out into the living room where the tree was. I thought the tree had fallen maybe. I didn't know.

And I saw that there were little pieces of the Christmas tree, little parts of branches on the floor, and bulbs had been shattered and were on the floor.

So trying -- I'm looking at it trying to figure out what happened, and then I hear something that I think is -- we both hear something that we think is, like, running water, and I thought, *Is it raining?*

And so I opened -- we had shutters in the living room right behind the tree. So I opened the shutters, and I look out, and -- there's a sliding glass door behind the shutters, and the glass had shattered from bullet -- bullets and was following down. It sounded like running water. So I realized that's not water. That's --

And then I saw the holes in the shutter because I --

MR. MILLER: Objection, Your Honor. This is a narrative.

THE WITNESS: Sorry.

THE COURT: Overruled.

You can finish the sentence.

THE WITNESS: At that point I realized that these were bullet holes.

So that's what I perceived, and I looked at the front door and saw two holes in the front door, and then across the room were two holes where the bullets exited.

So...

Q (By MR. GOMES) Did you call 9-1-1 at that point?

A I did.

Q And Carson City Sheriff's office responded and initiated an investigation?

A They did.

Q At that point in time were you questioned about who you thought might be responsible for this?

A I was.

Q Did you have your own suspicions?

A I did.

Q Did you share those suspicions with the Sheriff's office?

A On 9-1-1, yes, I did.

Q And who did you say thought might be responsible?

A The Defendant, Ty Robben.

Q Did you name any other names?
A I don't believe I did.
Q And he was the one name that came to your mind?
A Yes.
Q Now, we're gonna come back to this area, but fair to say that as we fast-forward in time now almost five years, somebody other then Todd Christian Robben has been arrested and charged and deemed responsible for these acts of terrorism at your house?
A That's true.
Q Who is that person?
A His name is John Thomas Aston.
Q And Mr. Aston is actually in the process of being prosecuted in Carson City for these crimes against you and your family?
A Correct.
Q Okay. Going forward from this event where bullets were shot into your home in December of 2012, were there any other acts of attempted terrorism, if you will, at your home?
A Well, I mean, I received a threatening Christmas card in December of 2014. So...
Q Two years later?
A Yes.
Q And tell me about that card.
A It was a Christmas card on the outside. Open it up, and in big letters it said, *You will die.*
Q How did you receive this card, sir?

A Through the U.S. mail.
Q At your personal home mailbox?
A Yes.
Q Do you remember where you received it?
A December 23rd, 2014.
Q If you saw a picture of this card, would you recognize it now?
A Yes.
Q All right. I'm gonna show you by publishing People's Exhibit Number 10.
Maybe. (Visualizer is blurry.)
Do you recognize that?
A No.
Q Just kidding?
There we go.
Okay. Sir, do you recognize that?
A I do.
Q Is that a picture of this card you received in the mail on December 23rd, 2014?
A Yes, it is.
Q And at some point -- first of all, did you report receiving this threatening card to the Carson City Sheriff's office?
A I did.
Q And did they again initiate another investigation?
A They did.
Q As you sit here today, do you know if anybody

has been charged or found responsible for sending you this card?
A Same person.
Q Same person that shot into your home has been deemed responsible for mailing this Christmas card to you?
A Yes.
Q At any point after receiving this card, did you become aware of the fact that this card was published on one of the Defendant's websites?
Todd Christian Robben, that Defendant, not the Defendant who sent it to you.
A No, I didn't.
Q Okay. Was there another event at your house where somebody left a potentially explosive object on your front doorstep?
A Yes.
Q When did that happen, sir?
A It was May 13th, 2015.
Q And tell me about what you experienced in this regard?
A That morning my wife was going to work out at 6:00 a.m. I was making coffee in the kitchen. I wasn't working out, and she came running back in the house very upset, said something bad's out there.
I went and looked. It was on -- right on the driveway right up against our garage door were two one-gallon, like, milk jugs that were half full with

liquid and paper, and then there were some burnt and some not burnt stick matches -- wooden stick matches laying around on the ground next to the jugs.

Q And did you report the presence of these objects to Carson City Sheriff's office as well?

A I did.

Q And did they initiate an investigation into that?

A They did.

Q Has anybody been deemed responsible for leaving those objects outside of your home at that day?

A Same man as the shooting and the card.

Q Same man?

A Yes.

Q At what point, if you know, was he identified as the responsible party for this and then charged in Carson City?

A Well, actually his DNA was found on the card and on the fire bomb, and it was same DNA.

So they issued a warrant because we had a car in the -- we knew what the car was. The car was a Mercedes that was used in the shooting and the fire.

So they did a DNA warrant -- the District Attorney got a warrant with just his DNA on it.

Q In other words, you had a DNA profile --

A Right.

Q -- but no identity connected to that particular profile?

A Right.
Q Do you know when they managed to connect the responsible party to that DNA?
A Yes. March of this year.
Q March of 2017 he was identified, and then sometime thereafter charged and arrested, charged and is now being prosecuted?
A Correct.
Q Okay. Fair to say that right up to this moment, there's no known connection between this man and this particular Defendant, Todd Christian Robben?
A Well, that's -- yeah, that's what the Sheriff's office says.
Q Okay. And that's what I am getting at. Is the law enforcement investigation hasn't connected them in any way together?
A Right.
Q Okay. The misdemeanor charge, that the Defendant received the deferred entry of judgment disposition, did that charge ever come back before you?
A Not -- no, not before me because I recused after the shooting.
Q Okay. Let's talk about that:
When did you -- at what point did you decide you needed to recuse yourself from presiding over any cases involving this Defendant, Todd Christian Robben.
A About the point where two bullets came through my door, and I immediately thought he's the one that

shot the bullets through, I figured I couldn't be objective any more.

THE COURT: This may be clear to everybody, but briefly state what "recusal" means.

THE WITNESS: I'm sorry. I took myself off the case. I felt that I had to disqualify myself from his -- any of his cases.

THE COURT: Thank you.

Q (By MR. GOMES) At that moment you suspected that he had tried to shoot you and your family, and you thought probably not the best case for you to hear; would be pretty hard for you to be fair?

A Correct.

Q The events that took place at your home, the shooting incident and the Christmas cards received, did those events receive some notoriety, if you will, within the local media in the Carson City area?

A They did.

Q How so?

A Well, the TV news in Reno ran -- put together a secret witness kind of a video and ran it a lot on TV with pictures of the car, the Christmas card and the fire bombs.

Q And did local newspapers cover the story as well?

A They did.

Q Okay. Including publishing pictures of the same?

A They did. In fact, there were billboards around town as well, and through -- like, in Lake Tahoe and Reno, and billboards with the same information on it.

Q Okay.

MR. GOMES: Your Honor, at this point I don't have any other questions for this witness. Thank you.

THE COURT: All right.

Mr. Miller?

MR. MILLER: Thank you.

CROSS-EXAMINATION

by RUSSELL MILLER, Attorney at Law, Counsel on behalf of the Defendant:

Q Good morning.

A Good morning.

Q Now, you have been a judge for quite some time?

A I have.

Q And your constituents keep reelecting you?

A They do.

Q Good. Okay.

Ever practice law?

A No.

Q Any reason?

A I'm not a lawyer.

Q Okay. Let me ask you this:

When Mr. Robben first came before you, I think Mr. Gomes had said it was something like a disturbing the peace charge would be here in California.

A Well, it actually started as a battery.
Q Okay. In front of you?
A Yes --
Q Okay. So the DA charged --
A -- I think.
Q -- a battery?
A I believe -- I'm trying to remember how it started. They might have written him a citation, actually.
Q Okay. Something really low level?
A Yes.
Q Okay. Do you remember that it came about because Mr. Robben was serving a subpoena on someone and they resisted the service?
A Correct.
Q Do you remember who it was he was trying to serve?
A Susan Martinovich. She was the Director of the Nevada Department of Transportation.
Q Okay. So it was another official in the state of Nevada?
A Correct.
Q Okay. And even at some point do you remember Mr. Robben voicing to you that not only did she resist lawful service, but she actually ran over his foot getting away from him?
A I remember he said that.
Q Okay. And do you also remember that of these

protective orders, what was -- this lady you just named, was she one of the people that asked for a protective order?

A Actually, she was, yeah.

Q Yeah. And based on he was trying to lawfully serve her a document?

But there was another information for you to make that decision?

A Correct, correct.

Q Okay. That's true.

Now, Mr. Robben became critical of your judgment on the bench; would that be fair to say?

A Yeah, that would be fair.

Q Okay. It's kind of -- I'm playing it down, aren't I?

A Yes, you are.

Q He was very unhappy?

A He did not like me.

Q And he felt that you had made decisions that really impinged on his Constitutional rights?

A Yes, he did.

Q He thought, even back then, you weren't fair, were prejudiced against him?

A He did.

Q Okay. And he protested against you?

A He did.

Q Lawfully protested?

A He did.

Q He said unkind things?
A Some of it wasn't lawful, I don't think, but some of it was lawful.
Q Okay. He told lies about you, from your standpoint?
A He told lies about me, yes.
Q Okay. I'm sorry. I wasn't questioning your credibility. He told lies about you, period?
A Period.
Q And that hurt your feelings?
A Well, I didn't like having that information out there.
Q Sure. Because it's not true, for one thing, right?
A That's correct.
Q Okay. But then when he was -- at one point I think you had said he came before you, and out of custody, and then the prosecutor and the Court had a hearing, like an ex parte hearing?
A Yes.
Q Okay. And an ex parte hearing is a hearing where just one side, one party goes in front of the judge and says, *Hey, Judge, I've got something you need to hear, and I don't need anybody else to be in the room when you hear it*?
A Yes.
Q Okay. And it's lawful; we have ex parte hearings, right?

A Right, right.
Q But you had an ex parte hearing about a man's liberty, his freedom?
A We did.
Q And you didn't let him be there?
A Correct.
Q Was he notified?
A I don't believe so.
Q Was his lawyer notified?
A I don't know if he had a lawyer at that point.
Q Okay. But you had arraigned him on the charge, right?
A Yes.
Q Okay.
A Yes.
Q So did he get a lawyer appointed right away?
A I don't believe so.
Q So he basically got arraigned and didn't have a lawyer?
A Right, because he wasn't facing a jail sentence, would be the norm, and I don't believe he was at that point.
Q Even -- so what's the possible punishment for the crime he was arraigned on?
A Yeah, well -- yeah, if it was battery, well, or disorderly conduct, it could be up to six months in jail.
Q So his liberty really was at stake?

A Well, if the District Attorney, though, indicates at that time that they are not gonna seek to impose a jail sentence, then we don't appoint an attorney.
Q Okay. But raising his bail did, in fact, impose a jail sentence -- well, not a jail sentence but at least being taken into custody?
A Definitely.
Q Okay. And he stayed in custody for three days?
A I believe that was it.
Q Something like that?
A Right.
Q That's a good estimate.
And then he was brought back before you?
A Right.
Q And you discussed the case and bail and his freedom?
A Correct.
Q And he entered into a plea of deferred entry of judgment?
A I don't know if he entered it at that point, but -- no, I believe he entered that later.
Q Okay. But you lowered his bail again?
A Did, yes, dramatically.
Q How dramatically, if you recall?
A I think it went from $500,000 down to five or ten.
Q Okay. Something very manageable for virtually

anyone?
A Well, not for anyone, but I -- I felt for him.
Q Okay. All right.
So at this particular point, though, he keeps showing up -- well, he keeps showing up in court, and at some point you sanctioned a resolution between Mr. Christian -- or Todd Christian Robben and the DA, right?
A Say that again. I'm sorry.
Q Okay. You -- well, let me back up just so we are all on the same song sheet here:
If a defendant wants to enter a plea and it's an offer from the prosecutor, the Court still has to sanction that plea, right?
A Right, right.
Q You, as the judge, can say, *No, I don't like it*?
A I can.
Q Right.
At some point you ordered Mr. Robben to have a psychological evaluation?
A I did.
Q And that was based on what it is that the prosecutor had told you?
A Yes, in part, yeah.
Q He said that Mr. Robben was a threat to himself and a threat to others?
A He did.

Q Okay. The psychological evaluation came back to you? Is that --
A It did.
Q And the result of the evaluation -- or the conclusion by the psychologist was he's not a threat?
A He was a -- yeah, that is right, a minimal --
Q Yeah.
A Imposed a minimal threat.
Q Isn't it fair to say that they kind of put him on a scale: You're a very high threat, you're a medium threat, you're a low threat, right?
A I suppose.
Q Okay. And that's when you decided to lower his bail or you had already lowered it?
A I think I had already lowered it at that point.
Q Okay. But that is when -- some time after the evaluation is when you agreed to sanction a deferred entry?
A There were two psychologists. So there was the -- the first psychologist, I believe he saw a Dr. McAllister (ph) I believe in the jail.
Q Okay.
A And then he saw another psychologist for an in-depth evaluation, Martha Mahaffey.
Q And Ms. Mahaffey, through her conclusion, you sanctioned this no-punishment-right-away kind of resolution?
A That was a part of it.

Q So it was, *Go out, don't break the law and this little case will go away*, in the vernacular?
A Pretty much.
Q Okay. Good.
Now, you have had some personal attacks on you?
A Yes.
Q And physical attacks?
A Correct.
Q On you and your home?
A Yes.
Q Okay. And your first thought process was, *Hey, it's Todd Robben*?
A It was.
Q And, being very judicial, you said, *Hey, I'm thinking he's a bad guy, and I can't be fair and impartial any longer*?
A Right.
Q *So I recuse* -- that's our word. You withdraw from the case?
A Right, correct.
Q Because you couldn't be fair?
A I didn't feel I could at that point.
Q Okay. Well, you -- well, that makes sense, because you thought he was the one doing all these things?
A I did.
Q You later found out that it was a guy named John Thomas Aston?

A Correct.
Q And Mr. Aston had appeared before you?
A He had.
Q A number of times?
A Two or three.
Q And did he ever voice his anger at you?
A I had no recollection of Mr. Aston.
Q Okay. Did you -- after you found out he was the perpetrator, the real threat, did you go back and, like, review your files or anything to kind of bring yourself up to date?
A Oh, yes. Of course, I did, yes.
Q And what was Mr. Aston -- what was his story with you?
A Well, he had a speeding ticket, and then -- in, like, 2000, and in 2005 he had another vehicle traffic infraction, and then in 2011, he was arrested for carrying a sawed-off shotgun and a concealed weapon.
Q And you presided over these events?
A I did.
Q And so he was silently angry at you, as far as you knew?
A Yeah, yes.
Q Okay. Now, this shooting near Christmas, and your suspicion to the 9-1-1 operator was, *Hey, it's this guy Todd Robben*, right?
A Right.
Q I mean that's a pretty quick conclusion on your

part, wasn't it?
A Oh, it was.
Q Yeah. Okay.
Fair to say you were wrong?
A I was wrong.
Q Now, you recused yourself from Mr. Robben's cases after the shooting, and it went to a different Carson City judge?
A Actually a judge from Las Vegas. A senior judge from Las Vegas actually presided over the remainder of the case. I don't think there was another judge in between.
Q Okay.
A There may have been, but I'm not positive.
Q Not of note, right?
A Right.
Q So a judge comes up from the southern part of your state, and he now presides over --
A She.
Q She, thank you, the judge --
A Right.
Q -- presides over whatever else happens with Mr. Robben?
A Right.
Q Okay. Do you know if Mr. Robben was ever arrested for any other issues dealing with you?
A He was.
Q Okay. And this Las Vegas judge is the one that

presided over those?
A No. I think Judge Albright, a senior judge from Reno, did.
Q Okay. So it still wasn't you; it was somebody else?
A Right.
Q Okay. Have you ever tried to contact Mr. Robben and let him know that you were wrong?
A No.
Q Well, fair to say you had reason to come to your conclusion, right?
A Fair to say, yes.
Q Okay. And because you were suspicious?
A Very.
Q But all suspicions don't always turn out to be true, do they?
A No, they don't.
Q Thank you.
MR. MILLER: Nothing further at this point.
THE COURT: Mr. Gomes?
MR. GOMES: Thank you, Your Honor. Very briefly.

REDIRECT EXAMINATION

by DALE GOMES, Deputy District Attorney:
Q Sir, prior to you making the decision to recuse yourself from any case involving this Defendant, had he ever made a motion before you to remove you from his case?

A I don't think so.
Q The decision you made was independent of any requests made by the Defendant?
A True.
Q Okay.
MR. GOMES: Thank you, Your Honor.
THE COURT: Mr. Miller?
MR. MILLER: Just if I may follow up on that just for a moment.

RECROSS-EXAMINATION

by RUSSELL MILLER, Attorney at Law, Counsel on behalf of the Defendant:

Q I will call you judge, may I?
A Sure.
Q You personally evaluated your position, your thoughts and the law, and you came to a personal decision that this wasn't a case you could preside over?
A Correct.
Q Thank you.
MR. MILLER: Nothing further.
THE COURT: Mr. Gomes?
MR. GOMES: Nothing further, Your Honor. Thank you.
THE COURT: Thank you, Judge Tatro. You may step down, sir.
THE WITNESS: Thank you.
THE COURT: You're excused.
THE WITNESS: Thank you.

CarsonNOW.org
Your One Stop for Carson City News

Carson City authorities ask for help in finding person who shot at judge's home

Submitted by Jeff Munson on Tue, 12/11/2012 - 3:05pm

https://www.carsonnow.org/story/12/11/2012/carson-city-authorities-ask-help-finding-person-who-shot-judges-home

By Jeff Munson

Carson City authorities continue to investigate an early Tuesday morning shooting in which Justice Court Judge John Tatro's home was hit with gunfire.

A 911 call was made at 4:24 Tuesday morning where judge Tatro told dispatch that someone had fired shots into his home. When deputies arrived they were unable to locate any suspects but did find two bullet holes in the front door of the residence.

The bullets passed through the front door traveling out the rear window hitting the back fence. No one in the residence was injured. At this time investigators have not identified any suspects or motive for the shooting.

Carson City Sheriff Ken Furlong said there is no "solid suspect" at this time and is looking to the public for help.

"Somebody knows something about this that will lead to the shooter," Furlong said.

Extra security has been placed at the Carson City Courthouse and at the residence of all the Carson City judges. The Carson City Sheriff's Office is asking the community for help in the matter. Anyone with information is urged to call the Carson City Sheriff's Office at 775-887-2008.

Furlong suggested that if anyone has information and doesn't wish to be identified they can go through Secret Witness at (775) 322-4900.

Nevada Appeal | Lahontan Valley News

Man arrested for allegedly making threats against Judge Tatro

Local | March 21, 2017

Taylor Pettaway
tpettaway@nevadaappeal.com

https://www.nevadaappeal.com/news/local/man-arrested-for-allegedly-making-threats-against-judge-tatro/

The Carson City Sheriff's Office and District Attorney have now arrested the man believed to be responsible for the four-year long threats investigation against Justice of the Peace John Tatro.

Officials arrested 73-year-old John Thomas Aston on Monday on felony fourth-degree arson, felony aggravated stalking and felony discharging a firearm into an occupied residence. Aston is believed to have made several physical and written threats against Tatro and his family over four years.


John Aston

Sheriff Ken Furlong and District Attorney Jason Woodbury held a press conference Tuesday morning to announce Aston's arrest.

"We have been working on this investigation for four plus years and we are proud today to be able to bring you in," Furlong said. "In the last 15 years, this is the largest investigation the Sheriff's Office has mounted."

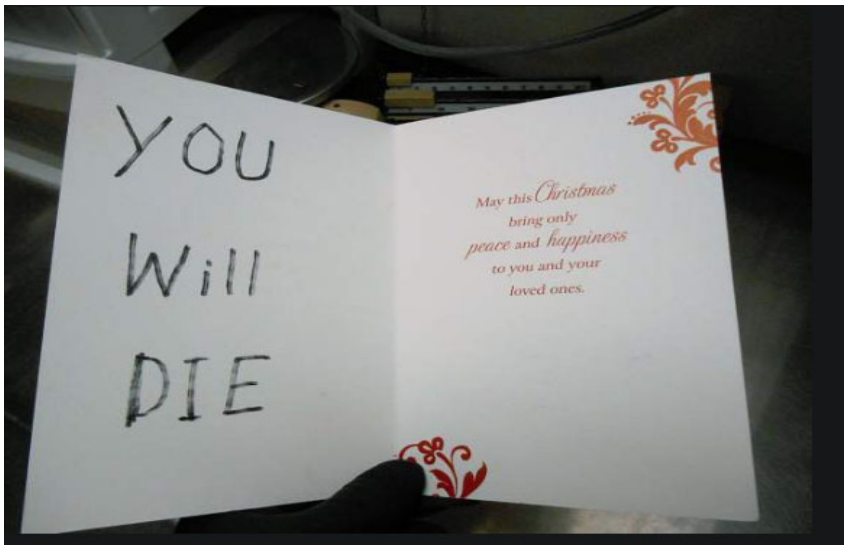
The investigation began on Dec. 11, 2012, when deputies responded to reports of someone

shooting at the judge's front door in the early morning hours. The next incident occurred on Dec. 23, 2014, when Tatro received a Christmas card with the phrase "You will die" written inside. The third incident occurred May 13, 2015, when the suspect attempted to ignite several milk jugs filled with rubbing alcohol and several used and unused matches.

Until recently, officials had no identification on the suspect. It was Dec. 10, 2015, when they applied for a DNA warrant, a document that would allow them to issue an arrest warrant based on DNA evidence taken from the card and milk jugs without having the name of the suspect.

"Utilizing the DNA profile the District Attorney and Sheriff's Office applied for the arrest warrant for discharging a firearm into an occupied structure, a category B felony," Woodbury said.

Woodbury said it was crucial for them to get the DNA warrant at that time, because the day it was filed was the last day for the statute of limitations for the discharge charge.



Investigators spent thousands of hours searching for the vehicle seen at the scene of two of the incidents as well as information on the identification of the suspect. Carson Detective Samuel Hatley said their lead came from Veterans Hospital Police Detective Brad Norman, who had heard Aston make comments against the judge, as well as seeing Aston carry newspaper clippings of the incidents even several years after publication. Norman arrested Aston for a weapons warrant from 2011.

Upon investigation, detectives discovered a storage unit and, inside, it was discovered Aston had a 1980 gold Mercedes sedan that matched the description of the vehicle

seen on scene at the Tatro shooting, several firearms and incendiary devices that matched those used at the Tatro scene. Detectives also found documents containing research on Tatro and his family including employment and addresses.

“Everyone is glad this has come to an end,” Hatley said. “Tatro has spent several years looking over his shoulder and having to change his lifestyle to keep himself and his family safe.”

Through investigation it was discovered Aston had appeared in Tatro’s court in 2005 for a traffic violation. Tatro also was the judge who issued the warrant for the weapons charge.

“His name never came up over the last four years, and it appears that this started over the traffic incident,” Furlong said. “In his mind it became such an agitating event that he took it out on the judge.”

The original DNA warrant has now been amended to name Aston for the criminal complaint.

Aston has now been charged with felony fourth degree arson, felony discharging a firearm into an occupied residence and felony aggravated stalking. His bail has been set at $250,000. If his charges run consecutively, Aston could face up to 25 years in prison.

Furlong credited Hatley for his dedication in bringing Aston to justice.

“I really want to thank Sam for his relentless work in this case,” Furlong said. “He never gave up and that is the reason why we are where we are in this case.”

Several agencies contributed in the case, including the Department of Public Safety’s Investigation Division, the FBI, Sparks Police Department, Washoe County Sheriff’s Office, Washoe County Crime Lab, South Lake Tahoe Police Department and several more.

“This was something important to pursue for a fundamental reason, in Carson City, anytime a person fires a firearm into a residence it is a serious matter,” said Woodbury. “But because he seemed to be targeting a judge, and the acts were pretty violent even if no one got hurt. But he was targeting a judge and we take that seriously because they have a job to do and need to be able to do it without fear of violence … these acts were against the integrity of the criminal justice system.”

Aston is scheduled to have his first appearance this week in court.

Man accused of threatening Carson City judge dies in prison

Submitted by Jeff Munson on Thu, 10/26/2017 - 10:15am

https://www.carsonnow.org/story/10/26/2017/man-accused-threatening-carson-city-judge-dies-prison

The man accused of firing shots into the home of Carson City Judge John Tatro, setting up an explosive device outside the home and sending a threatening Christmas card has died, Carson City law officials confirm.

John Aston, 74, died Thursday morning, 6:25 a.m. in the infirmary at the Northern Nevada Correctional Center. News of his death has been confirmed by the Carson City Sheriff's Office.

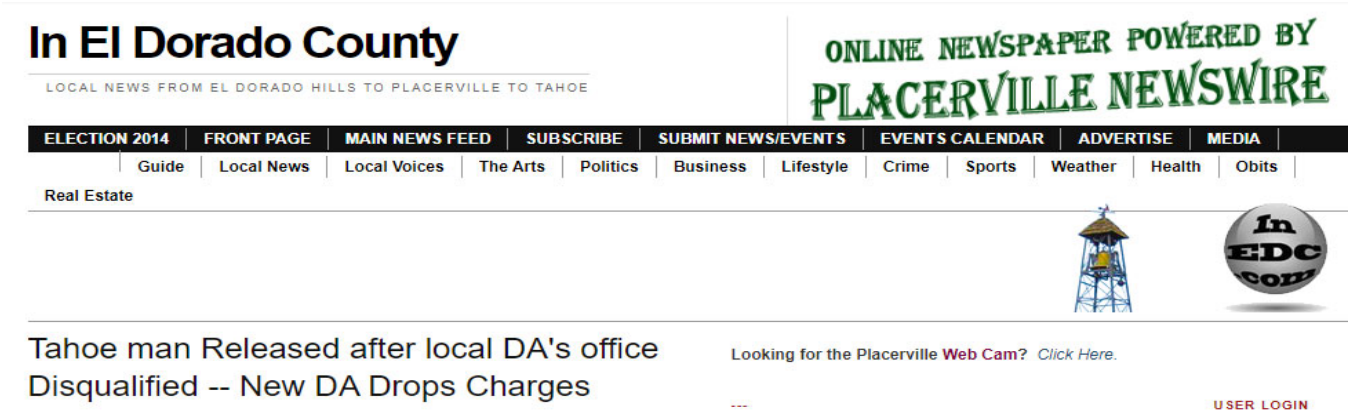
The Carson City Sheriff's Office Coroner responded. An autopsy will be scheduled per NRS 209.3815. Next of kin have been notified.

Aston was sentenced in August to prison terms of 12 to 32 months and 16 to 40 months on the two offenses to be served consecutively. The sentences follow Aston's convictions in June for carrying a loaded revolver concealed in his waistband without a concealed carry permit and for having a sawed-off shotgun in his vehicle.

Officers also discovered three additional firearms, hundreds of rounds of ammunition, holsters, knives, cash, binoculars, and a map of northwestern Nevada in Aston's car following his 2011 arrest. The convictions in this case are not related to the accusations involving Tatro.

Last month, Aston pled not guilty to three felony counts regarding the Tatro threats. Trial was set to begin May 30, 2018.

Trial counsel did not call a single witness to help this Petitioner's case where in addition to the above witness and Dan Dellinger who was motioned prior in relation to the recall effort and also would have been helpful to describe the abusive, vindictive ad retaliatory regime under El Dorado D.A. Vern Pierson. Mr. Dellinger, a political consultant, was wrongfully prosecuted by D.A. Pierson and he was acquitted along with Cris Alarcon.



InEDC: In a Stunning Rebuke of El Dorado County DA Vern Pierson's Charges, Jury find Dellinger & Alarcon Not Guilty of all charges

May 23, 2014, 8:00 pm

NOTE: This story has been deleted – it appears to be deleted from SLTPDwatch unlawfully - it was originally posted on http://InEDC.com and reposted on https://sltpdwatch.wordpress.com/2014/05/23/inedc-in-a-stunning-rebuke-of-el-dorado-county-da-vern-piersons-charges-jury-find-dellinger-alarcon-not-guilty-of-all-charges/

Dan Dellinger and Cris Alarcon WIN – Vern Pierson loses again! In what can only be termed as a crushing defeat of the District Attorney's charges, the jury returns after just 47 minutes of deliberations to exonerate Dan Dellinger and Cris Alarcon of all charges in a unanimous 12 to 0 decision.

Same with former El Dorado Co. County Board Supervisor Ray Nutting who was also wrongfully prosecuted by D.A. Pierson (Mr. Nutting was acquitted too).

Publisher's ink: Was this trial all for 'Nutting?'

By Richard Esposito

https://www.villagelife.com/commentary/publishers-ink-was-this-trial-all-for-nutting/

Now that the dust has settled following the trial of Supervisor Ray Nutting, many readers are wondering what cost to county taxpayers was spent on this losing endeavor? Losing you ask? Wasn't Supervisor Nutting found guilty of something?

Let's see. District Attorney Vern Pierson charged Supervisor Nutting with four felonies and at the end of the day he lost on three of those counts. The jury was hung 7-5 on the fourth. That only confirms the jury didn't have enough solid evidence to connect the dots.

For those following the play-by-play here in this newspaper, it was obvious the DA's case against Nutting was weak. If not for Nutting's ill-fated attempt to meet bail, the DA would have been left holding an empty bag.

In hindsight, had Supervisor Nutting opted to spend the night in jail instead of scrambling for bail, more of his constituents would be hailing him a local folk hero. And the county wouldn't be spending a hundred grand to fill his seat on the board.

Remember, the misdemeanors he *was* convicted of occurred after his arrest. And yes, he's smart enough to know the rules about asking/receiving money from staff and vendors doing business with the county. Ahh … if not for this strange twist of fate.

And fate it seems will now see voters in District 2 choosing between six candidates to occupy his vacant seat. Jennifer Nutting, Ray's wife and staunch supporter during his trial, is one of the six. Her entry in this special election has many county residents shaking their heads. Is this an act of vengeance against

those targeting her husband? Could she possibly win this election and become a force to be reckoned with, with her husband counseling behind the scenes? Stay tuned …

The damage to Ray Nutting is done. The DA's Office accomplished what they intended. It offered him a plea deal early on seeking his resignation from the board — an offer that included dropping all the felony charges and pleading guilty to the misdemeanors. He declined. Smelling a witch hunt he preferred to face his accusers and salvage his dignity.

He lost his case but remains determined to seek vindication through the courts. And who knows, if he should win an appeal, could he reclaim his seat on the board?

Of course other questions were raised during the trial. Like who was exchanging information between the DA's Office and the Board of Supervisors during the preliminary investigation? Or, why the Board of Supervisors voted 5-0, including Nutting, to review how Proposition 40 grants were received and dispersed by the county dating back four years? What a coincidence in timing.

This behind the scenes power struggle between the good old boys, and well, the good old boys here in El Dorado County rages on. If it wasn't so contentious and downright dirty, this feud between the Hatfields and McCoys would be much more entertaining. Apparently the taxpayers enjoy a good fight, especially one I suspect they're paying dearly to watch.

And if by chance Jennifer Nutting wins this popularity contest in September to recapture the seat snatched away from her husband, the county might find one way to save a couple of bucks. Print her last name only on the nameplate located at the front of the Board of Supervisors' rostrum. It could then be reused by her and her husband. Whether he wins an appeal or not.

Richard Esposito is publisher of Village Life and the Mountain Democrat.

3rd Appellate Court Upholds Ray Nutting's Ouster and Vern Pierson Writes His Own Epitath

Vern Pierson 1 Response »

Posted by Aaron F Park at 5:59 pm Jul 31 2014

https://rightondaily.com/2014/07/3rd-appellate-court-upholds-ray-nuttings-ouster-and-vern-pierson-writes-his-own-epitath/

Vern Pierson is an idiot. Kind of like another of El Dorado County's idiots minus the chemicals, Vern just can't help himself.

We saw the news in the Sac Bee today – but Vern Pierson could not help himself:

"*This joint prosecution by the California Attorney General's Office and the DA's Office, and the District Court's decision today, has proven once again that no one is above the law … even the politically powerful," El Dorado County District Attorney Vern Pierson said in a statement.*"

Pierson will die by the same sword – the self-righteous abusers of their own power always do.

For those of you not privy to the situation – allow me to sum it up in few sentences.

Vern Pierson is the El Dorado County DA. He decided to use his office to light up some of his political enemies. Ray Nutting made himself an easy target because of his lacksadasical devil-may-care attitude toward his paperwork. Nutting beat the felony rap, but had to raise bail money. He was convicted of violating the political reform act over how he raised his bail money – a misdemeanor no less – but not on the original charges Pierson brought.

A judge threw him out of office over the equivalent of bar fight conviction, then the appeals court upheld the decision. The Bee did not go in to the reasons why – BTW, it is actually rare for an appeals court to overturn any decision no matter how absurd.

Pierson's chest-beating should be a wake-up call to the political class in El Dorado County, you could be next unless you do something about Pierson. Vern Pierson has turned on dozens of people during his reign of terror in El Dorado County. Vern Pierson's chest-beating is also a fitting political epitath for himself, because when Pierson is brought to justice, he will fall far harder than Ray Nutting ever did.

BTW – since it is a Misdemeanor conviction, Ray Nutting can still run for Supervisor again in the future.

If I was Vern Pierson, I'd have shut up. I'd have let Clinchard and his assistant make the statement. Instead, exhibiting the out of control psychosis rational people recognize, Pierson had to dance on the grave.

That is even dumber than his handshakes.

Placerville NewsWire

MObile LOcal enabled

Nutting Files $600,000+ Civil Rights Complaint Against County - Demands Jury Trial

http://www.inedc.com/14/nutting-files-600000-civil-rights-complaint-against-county-demands-jury-trial

Former Supervisor Ray Nutting has Filed a Civil Rights Complaint Against County and Demands Jury Trial, and asks for over $600,000 in damages from both the county and the employees as individuals.

Last week several current and former El Dorado County employees and elected office holders were served documents that they are a party to a Federal Civil Rights lawsuit filed by former county Supervisor Ray Nutting alleging that he was illegally deprived of his office by bad acts of the county employees. The lawsuit seeks $100,000 each in damages and a Jury Trial as set out in Rule 38 of the Federal Rules of Civil Procedure.

Pat Hammer sued D.A. Vern Pierson in 2011 in the federal court *Hamer v. El Dorado County, Dist. Court, ED California 2011* case No. CIV S-08-2269 KJM EFB PS.

"Plaintiffs contend that the conduct constituting retaliation was not a "failure to arrest people," or a "failure to hear" plaintiffs' speech, but rather was defendants' conduct of "arrest[ing] criminals and releas[ing] them to assault his accusers because they complained to defendants peers causing them damages, their motive for vindictive animus and retaliation." *Id.* at 2, 3.

Plaintiffs contend that they contacted Bob Berger, an El Dorado County Republican Party Committee member, and explained that defendants were "ignoring a public safety issue," and that Mr. Berger then contacted Bauman's office about the issue. *Id.* at 3, 4. Plaintiffs allege that Bauman's office "responded by falsely libeling plaintiffs, stating that her county had 'arrested' plaintiffs in an overt but ignorant attempt to recruit Mr. Berger into a conspiracy to believe that the plaintiffs were El Dorado County criminal defendants that were under `numerous arrests.'"

Mr. Hammer also obtained relief from the California Judicial Commission on an ethics complaint against El Dorado Co. Judge James Wagoner and could have testified about the false charges, corruption in the D.A. office (retaliation, etc) and how Judge James Wagoner is unethical and corrupt. .

See the CJP order here:

https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Wagoner_DO_9-13-11.pdf

"The judge's conduct was also aggravated by the fact that he received an advisory letter in 2009 for abusing his authority with regard to individuals who were not before him.

He wrote letter to married couple (PATRICK MICHAEL HAMER; DONNA LEE HAMER) , who had submitted information to the grand jury, ordering them to "cease and desist" contact with the grand jury about matters which they had been advised the grand jury no longer desired contact. He improperly threatened to enforce the order with sanctions such as contempt. The commission concluded that Judge Wagoner's conduct as described above constituted, at minimum, improper action."

These people and others in the recall committee would have been willing to testify about their experiences and why they feel D.A. Pierson should be recalled and their malicious prosecutions & false arrests. A number of South Lake Tahoe people would have been willing to testify about SLTPD corruption and retaliation.

Surly Nevada D.A. Mark Jackson would have been excellent to explain why he dropped multiple charges including the solicitation for murder of Judge Tatro as explained previously. D.A. Jackson also could elaborate on the other dismissed charges which alleged intermediation, libel and internet stalking against Judge Tatro where Petitioner was simply running his websites. Judge Taro claims fake news was put on the website about a shooting

incident where Levi Minor shot at his home with a B.B. gun in retaliation for the affair Judge Taro had with his mother Crystal who worked at the courthouse. The story was if fact, true.

Petitioner was in jail with Mr. Minor and heard the story first hand. At one point Judge Tatro's home was, in fact, shot at with a real gun. This Petitioner was questioned about the incident and cleared. These crazy stories were documented on Petitioner's blog (and will be again) and perhaps a book of all the crazy corruption scandals he has survived.

This would have shown the jury (and everyone else like the press and their followers who were kept away from the unlawfully closed courtroom) that this Petitioner tells the truth about real life corruption and he can back it up. In fact, victims of Judge Tato's molestation could have been asked to testify in some confidential manner to back up the claims of pedophilia that is still being covered-up…

Certainly, Mike Weston was willing to testify on behalf of this Petitioner. It is true he could not testify at the grand jury since he had the flu at the time. However, calls were played to the jury between Petitioner and Mr. Weston. Mr. Weston would let the jury know Petitioner's story of years of false charges, false imprisonment being in and out of jail on false charges, the loss of Petitioner's job, family and home(s) all based on lies and retaliation. Mr. Weston would explain how Petitioner help him win his legal criminal case by writing legal briefs in court to overturn a simple obstruction of a peace office conviction in Reno, NV. Mr. Weston would explain the protests with "The World's Largest CRIME SCENE Tape" and how we met and developed out friendship and most importantly Mr. Weston could explain why this Petitioner is upset and lashes out in such a way the jury would sympathetic towards Petitioner's plight.

The psychologist from Reno, NV - Dr. Martha Mahaffey Ph. D. who produced a detailed report on this Petitioner was a must have witness to explain why she declared Petitioner to not be a threat in her report commission by Judge Taro in Carson City. The report is discussed in the trial and the jury understands an evaluation occurred that declared Petitioner to not be a threat, however, the witness would have been able to elaborate, answer questions under oath and convince the jury that the Petitioner has been subjected to what is called Legal Abuse Syndrome (LAS") a form of PTSD from years of retaliation and being falsely charged with crimes he did not commit, incarcerated for extended periods in maximum security solitary confinements… She could explain to the jury about the toll it has taken on the Petitioner who worked all his life, was a professional IT computer/network engineer and everything he's

worked for has been destroyed by malicious vindictive acts of government employees abusing their positions to retaliate and destroy the Petitioner. Ms. Mahaffy could explain how this Petitioner may express himself with strong words and use his 1st Amendment rights rather than going postal and killing everyone involved with weapons, firearms and ANFO explosives…. She could explain that the Petitioner knows he is right and will prevail to create change in the system along the lines of other people who've used non-violent protests and antics to change the system as opposed to using violence as is being done now on the streets of major cities in the name of protesting police killings. Petition has in fact been peaceful, albeit loud and at times radical but no true threats were made to kill anyone.

Other victims of the other pedophiles could have been called as witness to back-up the child molestation claims against the other perpetrators to support these claims. It would have been the perfect venue to showcase these issues under oath. Instead, Russell Miller conspired with D.D.A.. Gomes and Judge Steve White to sabotage Petitioner's case, close off the courtroom. Petitioner witnessed the antics in the courtroom with the judge D.D.A. and his counsel entering the closed courtroom from chambers winking at the Petitioner and smiling.

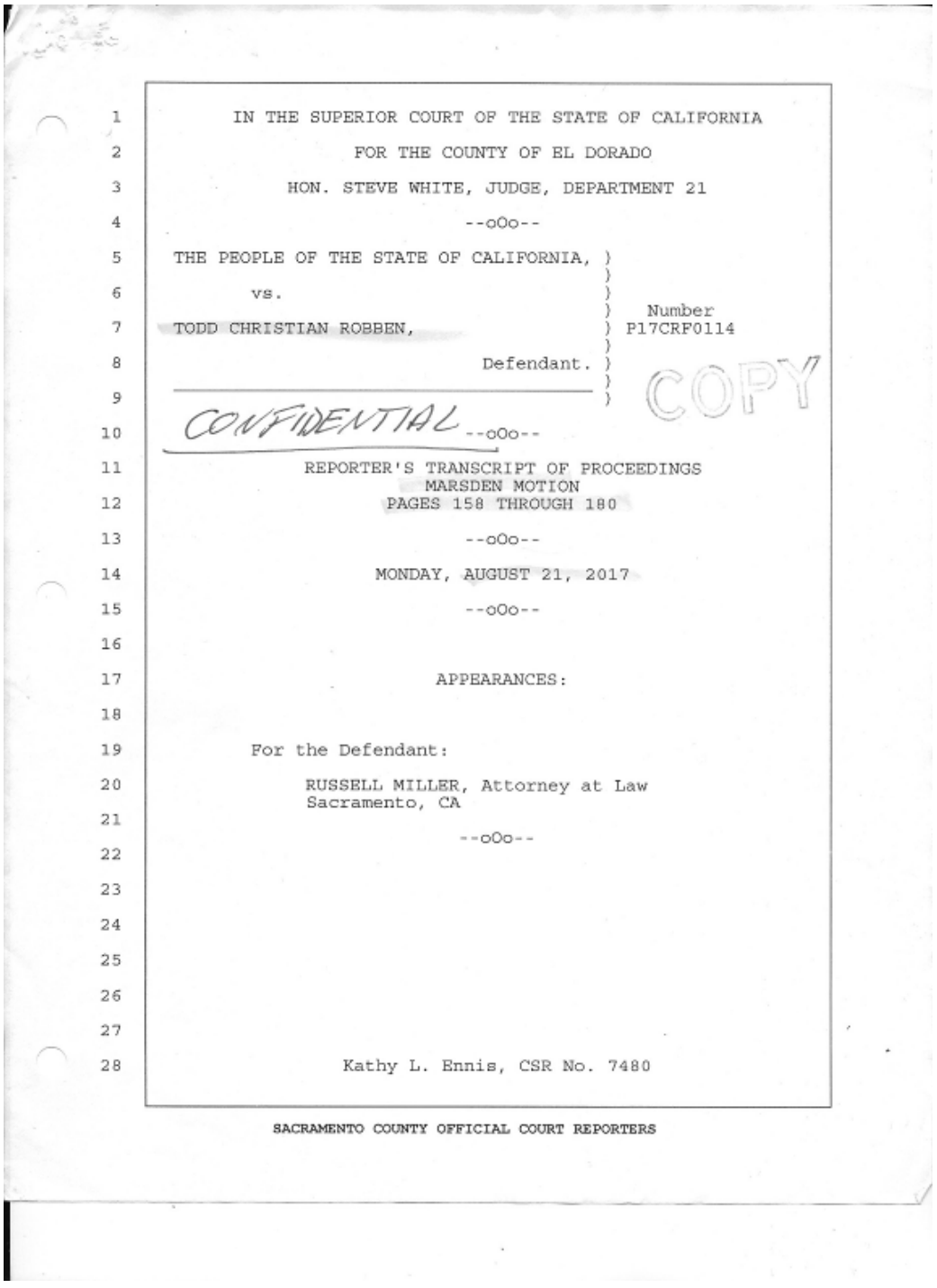
And two "victims" Shannon Laney and Steven Bailey did not even show up at trial which violated Petitioner's 6th amendment and article I, section 15 of the California Constitution right to confrontation.

All this is in the record and rather than continue to cut and past the record here, this court just needs to read it from beginning to end. The entire first part of the pre-trial hearings with Judge Curtis M. Fiorini and the Marsden motion hearing describe the conflicts and issues brought up in this petition. The Marsden motion was denied and such a denial was erroneous & unreasonable as were all other decisions/rulings/orders by the bias/corrupt Judge Steve White who failed to even disqualify on the timely and properly filed CCP 170.6 peremptory challenge claiming it was not on time or signed under penalty of perjury when, as this court and everyone else can clearly see it was in fact on time, and the proper statement of bias/unfair judge/trial was made under oath. Everything about this case has been a sham and a kangaroo court[58].

---

[58] **kangaroo court noun**
Definition of kangaroo court from https://www.merriam-webster.com/dictionary/kangaroo%20court
1: a mock court in which the principles of law and justice are disregarded or perverted
2: a court characterized by irresponsible, unauthorized, or irregular status or procedures

The August 21 Marsden Motion Hearing:



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF EL DORADO

HON. STEVE WHITE, JUDGE, DEPARTMENT 21

--oOo--

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
vs.)
) Number
TODD CHRISTIAN ROBBEN,) P17CRF0114
)
Defendant.)
)

COPY

CONFIDENTIAL --oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MARSDEN MOTION
PAGES 158 THROUGH 180

--oOo--

MONDAY, AUGUST 21, 2017

--oOo--

APPEARANCES:

For the Defendant:

RUSSELL MILLER, Attorney at Law
Sacramento, CA

--oOo--

Kathy L. Ennis, CSR No. 7480

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS

(The following proceedings were then had outside the presence of the District Attorney and the general public.)

THE COURT: The record will reflect that after Mr. Gomes leaves, only essential court personnel are present.

Mr. Robben, this will be a confidential proceeding. I am going to order that the record be sealed. You can say whatever it is you want to say to me. The information won't go to the prosecuting attorney.

What I want to know is the reasons why you think Mr. Miller should be replaced with new counsel, and specifically tell me what it is that you think he should have done that he didn't do or is doing that he shouldn't do. Be very specific, and then I will go to Mr. Miller and have him advise me on the same issues.

Go ahead, Mr. Robben.

THE DEFENDANT: Like I said, I didn't get a heads up on this hearing. So I didn't get a chance to bring my notes, but on my memory, Mr. Miller hasn't represented me or defended me one bit. He's filed several motions to continue because his own schedule was precluding him from representing me because he's busy with a trial.

And there's a case, it's the People versus Lomax, L-O-M-A-X, from 2010. It's a California Supreme Court case. Had I known we were having this hearing, I

would have brought the case. In fact, you could probably bring it up and print it out.

There's a section in that case that talks about the right to a speedy trial, both the constitutional right and the Penal Code, which is 1382. I think it's 1382(b).

So on a felony, I had 60 days to be brought to trial, and the fact is that the case law states that the appointed lawyer's busy schedule is not good cause, and that's exactly what his reasoning was for the delay. It's twice now.

So when that came up, I had done my best to try to get that into the other judge, Curtis Fiorini, and to you through my motion that I filed on the Faretta.

And the reason I didn't go through with the Faretta was just I can't really get any justice in the system here. Even coming to court trying to explain the Faretta, you talked over me. The case was assigned to your wife. She talked over me.

THE COURT: Remember, we are just talking about the reasons you want to replace Mr. Miller.

THE DEPENDANT: Right, but it's all sort of intertwined.

I explained my case to Mr. Miller on the jurisdictional issues, and it's very -- very important facts here that -- and points of law about my cases, because there are two cases assigned to Mr. Miller, which was the first case, which was a P17CRF0089, and

this case, the P17CRF0114.

On the first case, the -- a Public Defender by the name of Tim Pappas had come to see me in the Placerville County jail, and he explained to me I was being held unlawfully, which I knew that for different reasons, but one of the things he pointed out in that case is that I was not brought to a preliminary hearing within ten court days under 859(b), which mandates that, and, in fact, it says that the case shall be dismissed. "Shall" means mandated.

So the case should have been dismissed on 859(b), which is critical because this current case needs to be dismissed, among other things. The preferred dismissal would be under a 995 motion for lack of jurisdiction, and -- in other words, the grand jury did not have jurisdiction.

And also the warrant that was used, okay, to seize -- search and seize my computer and my cell phone, that warrant was issued by a judge named Steven Bailey out of El Dorado County. Steven Bailey was recused.

THE COURT: This is getting off the point for the Marsden.

THE DEFENDANT: Well, it's very important because he also assigned a special prosecutor in that case who was -- the special prosecutor who searched my computer was assigned in a case out of -- it's called S16CRM0096, I believe was the case number, and that was a case that the -- Judge Bailey was recused from.

So had Mr. Miller done the work properly, the case would have been dismissed under both of those, and then there would have been a preclusion of any more filings under 1387, okay? Because the District Attorney's gonna keep on coming after me.

And, by the way, I did file a lawsuit in 2016 against the District Attorney, not after they filed these charges in 2017.

So these kinds of things are happening under the watch of Mr. Miller who -- when he filed that 1424 motion to disqualify the District Attorney, I pointed out to him that, first of all, he needed to send a notice to the Attorney General. I read the law.

And, secondly, in detail, the facts and the case law that shows that if there's current or past litigation, civil litigation with a District Attorney, that that would qualify for the entirety -- the removal of the entire office, and so one of them is People versus Britton or Bitton from the '70s, I believe.

And, anyhow, he's not making the right arguments, and there's holes in these very critical things that needed to be done.

And the other thing that Mr. Miller did -- and is actually on the record, and I requested the record so I could point to that but that hasn't been given to me, there is still a pending motion for that that actually needs to be ruled on. If it doesn't get ruled on -- there's some things I needed to do to get that ruled on.

But long story short, Mr. Miller actually admitted that he would meet -- and I would say conspire. He says meet and confer with the District Attorney and Judge Curtis Fiorini and the District Attorney here, Dale Gomes, before the hearing so I would come into the courtroom and they would already discuss how the thing was gonna play out in chambers, okay?

So that's a violation of my due process. There's no transparency. It's not on the record, and really when you look at what happened is everything was a continuance, a continuance and a continuance and a continuance and a continuance. I've got the record back in my box of paperwork of where I am staying, and I've actually gotten a copy of a lot of records from my federal habeas corpus, the discovery on that, and what I have discovered, is a lot of other things.

One of the other things with jurisdiction is that I never consented to the venue change here to Sacramento County, which is under the California Government Code that this case was assigned under -- I don't have that code in front of me. Again, I would have brought that had I known we'd be here, but it's referenced in that record from the chief judge of this court right here when actually he assigned you -- or you were assigned.

I'm still trying to figure that out, because in that record, they show me an order from the Chief Justice of the California Supreme Court and the

chairperson of the judicial council of California, Tani -- I don't know how to really pronounce her name -- Cantil Sakeuye, whatever, and that record, that record actually -- filed a public records request -- a California public records request with the judicial council, who responded that it doesn't exist.

So this order assigning you and the orders assigning the other judges, which included -- first of all, there wasn't one for Curtis Fiorini. The other judge was from El Dorado County, Thomas A. Smith, who presided on the grand jury, and the other judge -- his name escapes me at the present moment, but he was a judge who presided in El Dorado County on this case, and that's when I was transferred over here.

These orders, apparently they don't exist, and they weren't in the record, because I do have a certified record that Mr. -- my attorney -- I forgot your name. I'm all mixed up here trying to think of what is going on.

MR. MILLER: Miller.

THE DEFENDANT: Mr. Miller. Thank you.

Mr. Miller did provide me a certified copy of the record that's signed by the court clerk of El Dorado County. These things are not in those records.

So these are complaints that I have actually made now to judicial council performance -- commission on judicial performance.

As far as I am concerned, you don't have

jurisdiction, and that's what I have been trying to say all the along. You don't have jurisdiction in this case. I don't consent or concede to the jurisdiction of this.

THE COURT: Focus on the Marsden.

THE DEFENDANT: I know. I need to put this on the record.

You don't even have the jurisdiction to make the decision in this. So I don't even concede to that, okay?

So that's a very important thing. I have told that to the federal court on this habeas corpus petition that is actually pending right now, that this Court doesn't have jurisdiction.

And my speedy rights have been violated under the federal, you know, constitution and my Sixth Amendment in the California Constitution and under 1382. Okay. That is a fact, if you look at People versus Lomax.

The other thing, facts are coming into this case this are profoundly disturbing to me, very disturbing, that this District Attorney is allowed to sit here and lie to you, that I filed a federal case against him after he filed these charges against me in 2017. That is a profound lie. As far as I am concerned, that's perjury. He's lying. He's got an oath. He's under obligation to tell the truth. He's lying to you.

There were other lies made about --

THE COURT: Focus on the Marsden.

THE DEFENDANT: Well -- but these things I am channeling through my -- to my attorney, and they are not getting played out.

So I have alleged that he's in a conspiracy with the District Attorney and the Courts to intentionally not bring these things to the table. I did not waive my right to a speedy trial. Motions should have been made very, very early on, and I should not have been sitting in jail here since I have been in custody on this case going back to March 9th, okay?

So I have been in custody, and I have had my hands tied because I have to go through him, okay, to get this out there, and he hasn't done a damn thing. He's promised me he would do these things.

I mean, it started off good with Russell Miller. He said he was going to do certain things, but he hasn't done those things, and Russell Miller is also now, depending on how you want to look at it, the third attorney that's been appointed to this case. The other attorneys all had conflicts as well.

So I recently filed a public records request with the comptroller/auditor of El Dorado County to get the record and contract that Mr. Miller has signed, because he's not being paid through the criminal defense panel in Sacramento County.

That's the other thing: Some things are being brought in from El Dorado County. Like the bail schedule being used against me, they are mixing it with Sacramento County, and, you know, what is it? Is this a Sacramento County case or El Dorado County case? Whose rules are we playing by? Because they are shifting. Is Mr. Miller even lawfully appointed to represent me? Because he's not representing me, and he's working against me.

And I feel that he doesn't even communicate with me. I have talked to a lot of other people that have been represented by Mr. Miller. I have heard both good things about Mr. Miller and I have heard very bad things about Mr. Miller, and other people he hasn't seen in months, who I actually came on the bus with today, that I am in the same dorm with. This is just very disturbing because these are profound violations, like I said, my constitutional rights, my statutory rights, and the trust I have in him doing the job properly when he is actually, I feel, undermining me.

And now I have got to do the work and part of that is -- it's dirty work, okay? I have got to get things done. I have got to get you removed from this case because I don't feel that your decisions so far -- you don't make any sense. You are making decisions. The facts aren't correct.

So I have got to go around Mr. Miller and file writs, in which I have done. I have had to file my own

writs in the Third District Court of Appeal, okay? They denied the writ on the peremptory challenge against you.

So that's going to the California Supreme Court. And a constitutional thing, I will take it up to the United States Supreme Court, and that's where I am at with my petition in the federal court, is that -- look, look, I'm pretty smart, okay, about my constitutional rights and my statutory rights and my rights.

This is not the first case that I have been through that is very similar to this, in Nevada, and I beat that case, okay? And I am doing all the right things to try to settle that thing peacefully in federal court, okay?

So I have got lawsuits against the people in Carson City. That's what I am trying to do here in California.

By the way, I'm from California. So -- and I don't have a criminal history here, okay? I'm not -- I'm a professional guy. I run computer networks, I tried to explain that to you, for big business. The State of Nevada, I worked for the Department of Taxation, Heavenly Ski Resorts.

THE COURT: Remember the Marsden.

THE DEFENDANT: So I'm a very educated person, and I know what's happening to me.

I studied the law for the last five years on these things, okay? And that's what I do.

I go to the law library every opportunity I get. I'm the guy who's got three boxes -- bags full of stuff. Everybody coming to me and --

THE COURT: Anything additional to say on the Marsden motion?

THE DEFENDANT: Mr. Miller and I have major conflict at this point. I have had to -- had -- Mr. Miller, filed complaints against him at the bar -- with actually the FBI, because I have got the FBI complaint going with the District Attorney because I do feel it's a conspiracy. It's racketeering. It's fraud. It's also being added to the federal lawsuit which I have pending in the Court, and there's a case number to that. I don't have the case number, but believe it or not there's a case.

And I -- it's just really at this point impossible because Mr. Miller won't even communicate with me, and the communication has broken down, and he's actually threatened me to file a doubt on me in my competence because I have brought these concerns to him.

And so that's just a threat that I don't need to hear in these conditions when these things that he needed to do should have been done, and now I am having to do them, because I am under a lot of anguish and duress and all that being held up.

I have got physical ailments. I haven't been able to move my left arm now going on for almost a year because of bursitis I developed sleeping on a concrete

slab.

And this is just crazy. I have lost everything because of this, my house, my family, over a bunch of charges that have been totally fabricated from the very beginning from the District Attorney from El Dorado County, a series of their insane games, getting these lawyers that have constantly usurped my rights and destroyed my cases in such a way that -- I know what they are doing, so that they get screwed up on appeal and so on and so forth, and I am sitting here watching all this happen when I can't really do that much about it because I'm incarcerated. If I wasn't incarcerated, I know what I would be able to do legally to get these things resolved, like I did in Carson City.

I had to write my own appeal in Carson City get me out of one of my jams.

THE COURT: Focus on the Marsden.

THE DEFENDANT: Huh?

THE COURT: Focus on the Marsden, please.

THE DEFENDANT: Well, I would say that Mr. Miller, just on what I have said -- it is one of those cases where it's not going to be possible. I do not trust Mr. Miller. I just feel that he's working against me, and, I mean, it's not gonna work out.

THE COURT: All right. Let's hear from Mr. Miller.

Do this for me, if you would, Mr. Miller:

First summarize your experience as a criminal

defense attorney, and then address specifically the concerns that Mr. Robben has raised here.

MR. MILLER: Yes, Your Honor.

I have been a criminal defense attorney for over 20 years. I have tried a hundred cases. I have represented and qualified to handle death penalty cases. I have tried cases throughout Northern California, this county predominantly, but nevertheless -- specifically if I may or would the Court --

THE COURT: Go ahead.

MR. MILLER: Thank you.

I was appointed to the case on the 21st day of April by Judge Fiorini. He was sitting as an El Dorado County judge.

To clear up any possible misunderstanding, this is an El Dorado County case. It's just not being heard in the physical location of El Dorado County. There is no doubt this is an El Dorado County case.

That as far as delays go, I did file a motion to continue, but it was not just because of my busy schedule, it's because I was already engaged in a jury trial, and there is no rule that would suggest I should do two trials simultaneously.

The question about jurisdiction: This Court very succinctly stated this Court has jurisdiction. I have accepted that Court's ruling, and I have moved on to other issues, that the issue of jurisdiction is one that Mr. Robben focuses on, but once this Court has made

a ruling, that's the ruling, and I live with the Court's ruling.

That I do legally disagree with Mr. Robben on several points, that reading the brief head notes to the case doesn't make you knowledgeable about the case itself. It's the specific facts of each case as it applies to the circumstances in the present case.

To make it perfectly clear as well, that in case ending 114, that is the only case I have been appointed on. That's the only case that I represent Mr. Robben on. The previous case was in some manner handled by the El Dorado County courts long before it came down here to Judge Fiorini.

I did absolutely disagree, and I wrote Mr. Robben a letter, that I disagreed with his 170.1 motion against Judge Fiorini, and I did say that to him. I believe that's proper legal counsel. If my client says something or does something that comes into the public purview, I counseled him, and the letter I wrote was marked legal mail. The letter I wrote was confidential. This is the first time I have mentioned it to anyone, but that's the purpose of a Marsden, from what I understand.

We have had 15 court dates. I have written Mr. Robben seven letters. I have teleconferenced with his mother and/or close personal friend three times. I have made eight jail visits, and I have also sent him three e-mails. I believe that qualifies as staying in

communication with my client. If my math is correct, that's over 20 times in roughly a four-month period.

Mr. Robben is fixated on certain issues. I have moved on to the issues of the facts of the case, to defend the case itself at trial.

This Court made it perfectly clear on the 21st of this month that that's what I was supposed to do. I think it was the 21st -- the last time we met, and we set the date of the 28th. I do not delay Mr. Robben's case for any purpose other than the fact that I want to be prepared to defend his right to freedom, and that's what I do.

I do not -- I take and listen to what my clients have to say, but my clients don't dictate how I'll practice law. I have to do what I believe is ethical and is correct by the law.

I have just recently filed a motion that has to suggest that Mr. Robben was not properly arraigned after the indictment, and, therefore, the 60 days for speedy trial has already expired, prior to anyone asking for any continuance. The Court has decided to hear that motion if I'm still his lawyer.

The breakdown of communication can happen a couple of different ways. Mr. Robben would like you to believe it's because I won't do what he wants me to do. Well, I think I have addressed that.

The breakdown in communication, often -- it's a two-way street. I am willing to work with Mr. Robben on

the facts of the case itself. I will not argue jurisdiction any longer. I will argue the legal parameters under Article I Section 15 and Section 5 of the Constitution as to his right to a speedy trial, but the issues of jurisdiction, once ruled upon, is what I move forward with.

I would also suggest that Mr. Robben has phoned me through the California Sacramento County Conflict Criminal Defenders' voicemail system. He's -- he uses it. I'm in this county. He's in this county physically. Therefore, I have taken his -- I have listened to all of his voicemails. Roughly some 26 or -7 of them. Maybe even more.

He is fixated on the concept that when I meet and confer with Mr. Gomes, I am conspiring with Mr. Gomes, or when I would have an in-chambers conferences with the Court and Mr. Gomes, that I am conspiring somehow or other to rob Mr. Robben of his constitutional rights. It could be nothing further from the truth.

This Court is more than familiar. It's almost insulting to have to say it to you, Judge, but our Rules of Court suggest we meet and confer. We iron out what is going to go on the record so it is succinct and it is to the point and there's no rambling about it. I have never, ever conspired against any client.

Mr. Robben says he's spoken with people that like me and people that don't like me. I don't even

know how to address that. Okay. I am sure that's true.

Mr. Robben has made statements during some of those voicemails that are insulting, that are certainly laced with profanity towards myself, which is no -- I don't take issue with it.

I sent him a letter and it said -- I dealt with an issue, and I also suggested in the last paragraph that his vulgarity and obscenity are of no consequence to me, I believe is the phrase I used, or something close to that. It's whatever. He gets to do what he wants -- he thinks he should do.

On the 1424, I certainly don't ever remember Mr. Robben giving me a message about serving the Attorney General. I explained that to this Court, and the issues of procedure were waived by all -- by the prosecution, and the Court accepted that, and the Court ruled on the merits of the issues.

Because a lawyer files a motion doesn't restrict the Court's knowledge or willingness to research the basis of the motion itself. I believe that this Court made a ruling, and I live by the ruling that this Court made.

So other than that, I think I have touched on all the issues that he brought up.

Oh, one more, I'm sorry, the threat of filing a 1368: That's simply not true. I wouldn't threaten any client with anything like that. If I were going to do it, I would do it.

Will I discuss issues with him? Yes. If you want to perceive it as a threat, it's untrue. Mr. Robben knows what a threat looks like. He's made them to me on the phone. All I do is I talk about certain issues.

What I had asked Mr. Robben was at any time had he been evaluated, and he told me, yes, he had been, and it was in another jurisdiction at a preceding time. That's the extent of the conversation I have had with Mr. Robben about 1368.

THE COURT: All right.

Mr. Robben?

THE DEFENDANT: Umm, just to pick up where he left off:

Yeah, I had been evaluated before in the Carson City case, and I was declared not a threat, and I actually told him, *Maybe you should bring that in as a great psychological evaluation on me.* I'm a normal guy in an extraordinary situation.

I'm a constitutionalist. I see what's going on, and I am very, very disturbed about this, and I am a very vocal person. It's been all in the news in Nevada and California about my concerns, and I'm deeply -- deeply concerned about what's happened to me right here in this court and with this attorney and with this District Attorney here.

So I will continue to be very vocal about this because it's an absolute molestation of my

constitutional rights that is sickening and disturbing, and it's profoundly disgusting and will not be tolerated.

But neither can I have Mr. Miller -- I cannot tolerate this -- these lies that he's actually sitting here telling you, that I didn't make these phone calls about the -- because that's how I do reach him now. I used to send messages to him or write letters. I can only do that so many times because I only have so many letters and stamps and so forth.

So I call and leave messages, and I have not threatened him with injury. What I told him is I don't need another lawyer because that's what the other lawyer did:

David Cramer, who was assigned my appeal, now all of a sudden, he's one of these people who's claiming to say that I made a threat against him, when I never did. First of all, he never answered the phone, and he never turned in my appeal, okay?

So I did do what I did do with Mr. Miller. Now, is that a threat? I don't know. It's a promise. I'm gonna file complaints with the bar, and I'm gonna do everything I can to prevent other people from being victims of this legal malpractice and deception and conspiracy, because that's what it is, okay?

If he wants to say meet and confer, so be it.

Now, conspiracy isn't some theory, okay? I don't need to put on an aluminum hat and be called a

conspiracy theorist. A conspiracy is just two or more people planning out how things are gonna go.

So that is what is going on here.

Again, if you look at the record, if there was gonna be planned on how it was gonna go, the record speaks for itself. Everything has been a delay, a continuance, continuance, continuance and continuance, okay?

So a 1424 motion was filed loaded with holes that the defense was easily able to take that motion apart and convinced you that I filed my lawsuit against them after they brought criminal charges against me, which -- which, you know, this is so disturbing, you know, to me, to sit here and just watch this happen, because the case law is profound, that the District Attorney must be disqualified.

Now, he made the motion. Now --

THE COURT: Mr. Robben, we are not going to --

THE DEPENDANT: Right.

THE COURT: -- plow through old matters.

THE DEPENDANT: If he's gonna represent me, the next part of the motion is to file a petition in the Third District Court of Appeal on a writ, because on appeal -- because if this is gonna be a point of appeal, that's how you do it. I've got the case law printed out. I would have brought that so I could refer to it, but, otherwise, they are gonna say on appeal that the defense thought this was an important issue to the case

that had merit and it should have been brought to the Third District Court on a writ petition.

So I have left that with Mr. Miller on the phone call. Haven't heard back. I don't suspect he's gonna do anything because he's not getting paid for that, probably is what he's gonna say. I don't know what he's gonna say or he's just too lazy or too busy to do it.

So then I have got to do it. So I'll be honest with you, I will do it. I know how to write petitions, habeas corpus and so forth.

THE COURT: Mr. Robben, you are no longer being responsive to the issues that were addressed going into this hearing and to the matters to which Mr. Miller responded.

THE DEFENDANT: It is. Mr. Miller has a duty to file a writ petition, and he hasn't responded to me. So the communication has broken down.

THE COURT: Mr. Robben.

THE DEFENDANT: I've left a message with him that this is now --

THE COURT: I want you to now be silent. This phase of the hearing is over. I am going to rule now.

THE DEFENDANT: Go ahead.

THE COURT: First of all, Mr. Miller is one of the finest lawyers available anywhere. The number of contacts he's had, the communication that he has accomplished on his own initiative is quite

considerable. I will tell you that from a lot of experience with a lot of cases.

Based upon his enumeration of the letters he's sent you, the communications with your family, the e-mails, the court visits, I think eight jail visits, all those things are very substantial. So the suggestion that he's not attentive to you or communicating with you or being available to you is simply not well taken based upon the facts.

The record is very clear that you have a very fine lawyer in Mr. Miller in that he's trying very hard on your behalf.

The focus of this Marsden proceeding, Mr. Robben, comes down to whether there's been a breakdown in communication such that Mr. Miller could no longer represent you.

I find there has not been such a breakdown in communication because the problems that you are asserting here are problems that I find, as a factual matter, are entirely the consequence of your own recalcitrant and headstrong and go-at-your-own-way defiant approach to being represented.

There is only so much a lawyer can do when a client goes out of his way to --

THE DEFENDANT: Well, you're a biased judge, prejudiced against me.

THE COURT: I am ruling right now. So don't say anything.

THE DEFENDANT: You are biased, prejudiced, and you're corrupt. So, you know --

THE COURT: Don't say anything. You can take a writ, Mr. Robben.

THE DEFENDANT: You guys are working together, and, you know --

THE COURT: Mr. Robben, one voice at a time.

THE DEFENDANT: You are a member of the lawsuit, and I've got a CJ --

THE COURT: Remove the Defendant. This hearing is over.

The Marsden motion is denied.

THE DEFENDANT: I will be filing another Marsden motion and another 170.1, 171(a)(6)(a)(sic).

Mr. White, it would be best if you get off the case, pal.

(The following proceedings were then had outside the presence of the Defendant, District Attorney and the general public.)

THE COURT: The reporter is directed to transcribe but seal this record until further order of the Court.

We are off the record now.

(Conclusion of Marsden motion.)

--oOo--

CERTIFICATE OF OFFICIAL SHORTHAND REPORTER

State of California)
) ss.
County of Sacramento)

I, Kathy L. Ennis, hereby certify that I am a Certified Shorthand Reporter and that I recorded verbatim in stenographic writing the proceedings had Monday, August 21, 2017, in the matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, completely and correctly to the best of my ability; that I have caused said stenographic notes to be transcribed into typewriting, and the foregoing pages 158 through 180 constitutes a complete and accurate transcript of said stenographic notes taken at the above-mentioned proceedings.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted, if applicable.

Dated: January 12, 2018.

COPY

Kathy L. Ennis, CSR No. 7480

--oOo--

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS

"A trial court's ruling on the admission or exclusion of evidence is reviewed for abuse of discretion." (*People v. Sánchez (2016) 63 Cal.4th 411, 456;* accord *People v. Perez (2017) 18 Cal.App.5th 598, 620*.)

"[A] judge cannot base his disposition of a request for substitution of counsel on his or her own confidence in the current attorney and observations of that attorney's previous demonstrations of courtroom skill." *People v. Hill, 148 Cal. App. 3d 744 - Cal: Court of Appeal, 1st Appellate Dist., 4th Div. 1983.* Despite this, Judge White felt he could deny the motion.

"A defendant is entitled to . . . [new appointed counsel] if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations].' [Citations.]"' [Citation.]" (*People v. Barnett (1998) 17 Cal.4th 1044, 1085* (Barnett) **"[T]he standard expressed in Marsden and its progeny applies equally preconviction and postconviction."** (*People v. Smith (1993) 6 Cal.4th 684, 694*.)

No pre trial 1385.5 suppressions motions or 995 motions as Mr. Miller was clearly too busy …and paid off in this conspiracy (as the record shows). There is no way to explain this deliberately poor performance other than being paid off and the record here proves it where the El Dorado Co. Auditor Joe Harn (who was also being recalled with D.A. Vern Pierson) paid the fraudulent billing invoice from Mr. Miller at $4,506.00 per week… This would have been over $100,000.00K in total and upon discovery and an evidentiary hearing, everyone will find out. It should be noted in the record where when this Petitioner pushed on the judicial assignment issue where there were no order from the Chief Justice or Judicial Council, the answer (lie) he was told is that a Memorandum of Understanding ("MOU") was used in place of the Chief Justice or Judicial Council. A MOU can't transfer venue, assign judges and retired judges… The entire record is a massive fraud-upon-the-court. No MOU exists in the record.

Appellate counsel is IAAC for failing to argue the Marsden issue and had he argued it, the conviction would be set aside. In fact, this is a case a constructive denial of counsel and no prejudice needs to even be shown since Russell Miller did nothing to advocate for this

Petitioner and instead sabotaged the case like he did with the speedy trial issue filing a continuance rather than moving for dismissal.

FRAUD UPON THE COURT

In *Lazar v. Superior Court, 909 P. 2d 981 - Cal: Supreme Court 1996* " A fraud claim requires evidence (1) the defendant made a representation of fact,(2) that he or she knew to be false,(3) and was made with the intent to induce reliance by the plaintiff,(4) the plaintiff actually and justifiably relied on the representation, and (5) there was resulting injury from the reliance"

In *In re Levander, 180 F. 3d 1114 - Court of Appeals, 9th Circuit 1999* **"To constitute fraud on the court, the alleged misconduct must "harm[ ] the integrity of the judicial process."** *Alexander v. Robertson, 882 F.2d 421, 424 (9th Cir.1989).* To determine whether there has been fraud on the court, this circuit and others apply Professor Moore's definition:

"Fraud upon the court" should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985)*, the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. … It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function — thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to **"embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."** *Kenner v. C.I.R., 387 F.3d*

689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated **"a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." For an Officer of the Court to make deceitful representations to this Honorable Court is "fraud upon the Court".** "falsum (fal-səm orfawl-səm), n. [Latin] Roman law.1.A false Statement.2. A crime involving forgery or falsification."Black's Law Dictionary Seventh Edition, p. 619 "False statement.1. An untrue statement knowingly made with the intent to mislead. See PERJURY.2. Any one of three distinct federal offenses: **(1) falsifying or concealing a material fact by trick, or scheme, or device; (2) making a false, fictitious, or fraudulent representation; and (3) making or using a false document or writing.** 18 USCA § 1001" Balk's Law Dictionary Seventh Edition, p. 619 "Fraud on the court. A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding. **Examples are … introduction of fabricated evidence."** Black's Law Dictionary, 7th Edition, pg. 671 **When a court does not apply the correct law or if it rests its decision on a clearly erroneous finding of a material fact."** [*U.S. v. Rahm, 993F.2d 1405, 1410 (9th Cir.'93)*] "A court may also abuse its discretion when the record contains no evidence to support its decision." [*MGIC v. Moore, 952 F.2d 1120, 1122 (9thCir.'91*)].

Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliott v. Lessee of Peirsol, 26 U.S. 328, 340, 1 Pet. 328, 7 L.Ed. 164 (1828)* **("Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them."**); see also *United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010)* **("A void judgment is a legal nullity."); *Wilson v. Carr, 41 F.2d 704, 706***

(9th Cir. 1930) **("if the order is void on its face for want of jurisdiction, it is the duty of this and every other court to disregard it.").**

Appellate counsel's haphazard attempt at writing the appeal was a repugnant disgrace with no meaningful communication – no phone calls or a visit. There a series of mail exchanges that seem to be missing upon writing this filing and can be found in the federal filings. Said mail consisted of arguments about what should be addressed on the appeal and habeas corpus to which Robert L.S. Angers claimed he was not paid to file a habeas despite there being obvious issues for both. The most profound disagreement was over the CCP 170.6 issue which mandates reversal and was obviously left off.

This Petitioner did file a Marsden motion against Robert. L.S. Angres which was denied and it was again filed in the Ca. Supreme Court which denied it. The Court of Appeal refused to allow Petitioner to represent himself (Faretta) on the appeal or act as co-counsel. Petitioner did attempt to file a petitioner for writ of habeas corpus in the Third District Court of Appeal and the court clerk sent the filing back to Petitioner in prison and refused to file Petitioner's supplemental pleading to the appeal brief.

TIMELY FARETTA MOTION DENIED

Mr. Angres argued the denial of the *Faretta v. California, 422 U.S. 806 (1975)* denial by Judge Steve White prior to jury selection. There the Judge appeared to decide it was too late and a delay tactic or so it was argued by the State on appeal based on the record since Judge White failed to hold the required hearing or actually document his decision …and the Court of Appeal bought it because Mr. Angres fail to properly argue the issue which was that clearly Petitioner wasnot satisfied and it was trial counsel Mr. Miller who assisted in the speedy trial violation and conspired with the D.A. and the court to sabotage Petitioner's case by filing poorly constructed motions for a continuance when Petitioner did not waive time, no pre-trial 1538.5 suppression or 995 motion on jurisdiction issues and a very, very incompetent motion to disqualify the D.A. …and no witnesses called or evidence of a very positive psychological evaluation. **"A Faretta request is timely if made before jury impanelment, `unless it is shown to be a tactic to secure delay"**

Avila v. Roe, 298 F. 3d 750 - Court of Appeals, 9th Circuit 2002. People v. Butler, 219 P. 3d 982 - Cal: Supreme Court 2009. **Erroneous denial of a Faretta motion is reversible per se**. *(McKaskle v. Wiggins (1984) 465 U.S. 168, 177, fn. 8 [79 L.Ed.2d 122, 104 S.Ct. 944]* **A court's improper denial of a timely Faretta motion is reversible per se.** (*People v. Dent (2003) 30 Cal. 4th 213, 217; People v. Valdez (2004) 32 Cal.4th 73, 98.)* People v. Barnett, 954 P. 2d 384 - Cal: Supreme Court 1998". ***"Erroneous denial of a Faretta motion is reversible per se. [Citation.]' [Citation.] The same standard applies to erroneous revocation of pro. per. status."*** *(People v. Butler (2009) 47 Cal.4th 814, 824-825 [102 Cal.Rptr.3d 56, 219 P.3d 982].)* In *People v. Bradford, 187 Cal. App. 4th 1345 - Cal: Court of Appeal, 1st Appellate Dist., 5th Div. 2010* **[trial court has discretion in considering midtrial request for self-representation and must consider totality of the circumstances].**

In *People v. Maddox (1967) 67 Cal.2d 647*, a case decided before Faretta, the California Supreme Court held that "upon timely request," a defendant representing himself was entitled to a "reasonable continuance" to prepare his defense. (*People v. Maddox, at p. 648.*) When the defendant therein entered his plea, he requested self-representation but his request was denied. **On the morning trial began, the trial court changed its mind and allowed the defendant to represent himself**, but refused to grant a continuance so he could obtain witnesses and prepare a defense. *Maddox* held the trial court had erred by denying the defendant's earlier self-representation request. (*Id. at p. 651.)* "The dispositive question . . . is whether defendant was entitled to a reasonable continuance at that point to prepare himself for trial." (*Id. at p. 652.*) *Maddox* explained that a defendant, like an attorney, had to be given a reasonable opportunity to prepare a defense. Moreover, the defendant had not been given the statutorily-required five days to prepare for trial (§ 1049), an error of constitutional dimension. (*People v. Maddox, supra, at p. 653.*) *Maddox* explained that to deny the defendant a reasonable continuance would "render his right to appear in propria persona an empty formality[.]" (Ibid.)

labeled it, and it did make reference to previous communications. It didn't reference them having been recorded, though. So I took the reports as part A and part B, and then the recording part was what the People, I anticipated, would use, because it's my understanding they have to provide a transcript of the part they are going to use.

So I thought, okay, that's what he is going to use, and, therefore, I had no reason to believe anything other than that.

But I appreciate Mr. Gomes being forthright, and I'm sure I will get a copy of that transcript rather quickly.

THE COURT: All right. And I will assume that no issue is presented unless and until I hear further from either counsel on this matter.

MR. MILLER: That is correct.

THE DEFENDANT: And one more thing:

I would like to make another Faretta motion before we get started.

THE COURT: Your Faretta motion is untimely, sir. We are picking a jury at this time. I am going to give you a further ruling on your Faretta motion as well in just a moment, but part of my ruling is that it is untimely.

Before we bring the jury in -- the jury panel in, I will be out to conclude my ruling on the Faretta motion.

EACH CHARGE MANDATES REVERSAL

It would be clear from the record this Petitioner was unsatisfied with trial counsel Russell Miller from the beginning just looking at the record and as described in this instant brief. By the time trial was to start, Mr. Miller had no game plan, no witnesses were called, no 995 motion or suppression motion had ever been filed. This Petitioner was knowledgeable of his case and demanded a better performance which he could have done since Russell Miller got the maximum sentence possible.

Some of the charged offences should have been dismissed out of hand at the onset or a challenge to the indictment (PC 995) or motion to dismiss. For example, Counts VII, VIII & IX allege a violation of PC 664/71 (Attempted Threatening a public officer) El Dorado County Judges James R. Wagoner, Steven C. Bailey & Suzanne N. Kingsbury. Since penal code 71 contains "attempt"[59] case law mandates there cannot be an "attempt to attempt" crime. In *People v. Toledo, 26 P. 3d 1051 - Cal: Supreme Court 2001*: "In *In re James M.*, **we held that there is no crime of attempted assault, reasoning that recognition of such a crime would constitute an improper judicial expansion of the crime of assault. In reaching this conclusion, the court in *James M.* emphasized that the crime of assault is itself statutorily defined in section 240 as an "unlawful *attempt*, coupled with a present ability[,] to commit a violent injury on the person of another" (italics added), and that numerous legal commentators and many courts had noted the anomaly of recognizing as a separate crime an attempt to commit an attempt. (*9 Cal.3d at p. 521, 108 Cal.Rptr. 89, 510 P.2d 33.*) Although the court in *James M.* acknowledged that an "attempted attempt" was not as an abstract matter a "logical absurdity" (ibid.,) we nonetheless concluded that the crime of assault represented a legislative judgment as to how far removed from the infliction of a battery criminal liability should be imposed. We held that it improperly would defeat the Legislature's intent and effectively redefine the limits established by the assault statute to**

[59] PC 71 "(a) Every person who, with intent to cause, **attempts to cause**, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense punishable as follows:"

recognize a crime of attempted assault. (*9 Cal.3d at pp. 521-522,108 Cal.Rptr. 89, 510 P.2d 33.*)".

No alleged threats pursuant to PC 71 were directly communicated to any of the alleged victims or requested to be communicated by a third party. All three judges were already disqualified or recused so there was nothing to influence (to do, or refrain from doing, any act in the performance of his duties) and there was no actual true threat.

Both D.D.A.. Dale Gomes and trial counsel Russell Miller entered into a stipulation for the trial court judge to take judicial notice:

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

Let's briefly memorialize the conversation at bench.

Mr. Gomes?

MR. GOMES: Yes, Your Honor.

I -- in response to Mr. Miller's argument that it was a legal impossibility for Mr. Robben to attempt to induce judges to recuse themselves from this case, I am asking the Court to make a finding or Mr. Miller to enter into a stipulation that, in fact, this case was not initiated until March 2017, which is factually accurate, so that I can then counter the assertion that there was some impossibility based upon circumstances beyond his control.

THE COURT: The request was for the Court to take judicial notice, which the Court could. An alternative, so that the Court doesn't express itself on the matter unnecessarily, that Mr. Miller could stipulate to that as a matter of the fact, and then Mr. Gomes can argue that.

Is that your desire, Mr. Miller?

MR. MILLER: It is, Your Honor.

THE COURT: You want to except that stipulation?

MR. GOMES: I will accept that stipulation.

MR. MILLER: And, for the record, I agree with the Court's reasoning. I would prefer it come from the two lawyers than come from the Court.

THE COURT: Thank you.

The stipulation is accepted.

(Recess.)

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Please bring the jury in.

(The following proceedings were then had in the presence of the jury.)

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Mr. Gomes?

MR. GOMES: Thank you, Your Honor.

Well, good morning, ladies and gentlemen.

THE JURY: Good morning.

MR. GOMES: I am gonna spend just a few minutes talking about some of the points that Mr. Miller made, and I'm not gonna be particularly logical in the order that I go. So forgive me for that.

But let's talk first about the idea that it's impossible for the Defendant to have attempted to induce judges to do what he wanted them to do.

Well, there's a stipulation on the record in this case that tells you that this case didn't even begin -- this criminal prosecution didn't even begin until March of 2017. The Defendant spent the summer and fall of 2016 threatening judges and making inflammatory statements towards El Dorado County judges who he had never met, who he had never appeared in front of, who he had no reason to dislike, but he did it for just the one

reason:

He believed that he could push his case right off the table of criminal justice.

If you really think about it, it's a little bit crazy about what he thought, but it worked in Carson City. It got his cases dismissed. He got his cases moved out of Carson City. He got his cases moved away from the judges who had the fortitude to proceed and the prosecutors who had the willingness to press forward.

So now here he is, trying to do the same thing.

Let's talk about the relevance of the pretext phone call that was conducted by Mr. Watson, because Mr. Miller wants to talk about the absence of a threat in that pretext call, but that was not the purpose of that call.

Mr. Watson came in here and provided you his direct testimony about receiving the threats and about his personal reaction to the threats.

Now, Mr. Miller is 100 percent right, that Mr. Watson's opinion over whether or not he was threatened does not carry the day. Mr. Cramer's opinion about whether or not he was threatened does not carry the day. The decision on whether or not the Defendant threatened these people is yours, based upon the evidence.

Whether or not the Defendant threatened Mr. Watson in the pretext call is not the point. The sole purpose and relevance of that pretext call was to

Judge Wagoner was not intimidated by any alleged threat, he recused based on a CJP complaint that was filed against him by this Petitioner which is not a threat of violence

Testimony from Judge James Wagoner (exhibit below) :

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

like, there will be blood, and everyone has to pay with what they -- for what they do. But then at the end he always ends with, this is not a threat and I don't even own a gun. And so that's the language.

Q Okay. And so with that caveat you read the totality of the message, did you perceive it as a threat?

A Well, yes and no. I mean, I perceived it as threatening language. I did not -- I mean, I was not personally afraid, you know, so that's the best way I can answer.

Q So you interpreted language in this message to be threatening?

A Yes.

Q But it didn't frighten you?

A No.

Q But it did lead you to take certain actions?

A Not that language, the reference to the Commission on Judicial Performance. The other part did not cause me to take any specific action.

Q What action were you led into taking based upon the threats to report you to the Judicial Council -- is that what it's called?

A CJP, Commission on Judicial Performance. As a Superior Court judge I have an obligation to make sure that the business of the court, that there is a public perception of fairness in the court. I will say, any time someone makes a specific complaint, either does make a complaint to the Commission on Judicial Performance or indicates that they intend to, I don't want anything that I do subsequent to that

you have for the judge. I'll remind you of your investigative function in case you choose to exercise it. You have a Superior Court judge on the bench under oath, on the stand. Any questions for Judge Wagoner?

GRAND JUROR [redacted] (GJ16): Number 16, [redacted] (GJ16). Can you clarify when you say you did not get threatened because you almost get used to it, but if you really go deep do you -- I do not know how to phrase it. Do you have to watch your back a little bit because of that person versus other people?

THE WITNESS: As a Superior Court judge there is always at least I'll say a potential of encountering -- I encounter people that have been in my court and before me. I see them at Raleys. I see them, you know, at the baseball game. You know, so there's always I'll say at least this potential.

If we think that it rises to a specific threat that we are concerned about there is a judicial security detail from the Judicial Council. We contact them. They come out. They do investigations and everything of that nature.

I was a police officer back in the stone age. I've been a Deputy District Attorney in two places. Assistant District Attorney. Now a judge for over 14 years. So I have an ability to kind of analyze whether I think it's a real threat or not.

And someone like Mr. Robben in particular I call him a gasbag. I do not feel particularly threatened by him, even hearing, you know, this what could be a conspiracy which may wind him up in other issues. But until such time as I see the

threat level come up then that's when I will, if it does, take some other action. At this juncture I don't see that need.

GRAND JUROR [redacted] (GJ01): [redacted] (GJ01). In your capacity as Presiding Judge did you or even can you ask any of those other judges that had recused themselves to reconsider their position on that decision?

THE WITNESS: No. Once they tell me I am recusing myself in this case, you know, I just have to accept that at face value. They're under the same obligations that I am to make that individual assessment and determination.

And so the Presiding Judge acts as kind of a traffic director but not as a -- for example, if someone has a complaint that a judge is doing something wrong, the Presiding Judge does not supervise them to take corrective action. That goes to the CJP. So it's a quasi boss function. So no, I'm not -- I did not have that authority.

GRAND JUROR [redacted] (GJ19): [redacted] (GJ19). Do you know about how many communications you or your office received from Mr. Robben?

THE WITNESS: To my recollection there were three of these letter diatribes that I saw during the course of trying to direct traffic. They were all very similar in nature I'll say.

MR. GOMES: No other questions at this point? We'll give the separation admonition to Judge Wagoner.

GRAND JURY FOREPERSON (GJ18): You are admonished not to reveal to any person except as directed by the Court what questions were asked or what responses were given or any other

clear. He wanted those judges recused. Fundamentally he wants every judge recused. Fundamentally he wants and thinks somehow in his deluded mind that if he can get every judge recused then his cases are just going to go away, I guess. I don't know. I guess that's what he thinks. But that's the theory behind Counts Seven, Eight and Nine. It involves Judge Bailey, Judge Kingsbury, and Judge Wagoner, because those are the three judges he names by name.

And all three of those judges ultimately recused himself not just from his 14601.2 prosecution but this prosecution too, as you heard from Judge Wagoner and his testimony, which is why that case has now been sent -- this case fundamentally to Sacramento County because all of our judges have recused themselves.

So he didn't have to succeed in inducing or preventing action on the part of those judges, but he did. He did. The committing a Penal Code Section 71 doesn't require that the public actor succumb to the threats.

And our only instances where they did in this case are the judges, interestingly enough. But he didn't actually complete the crimes, because in some instances those threats weren't communicated to the judges. As much as he intended that they would be, they weren't.

And the threats have to be communicated in order to complete the crime. So you have attempted crimes on Counts Seven, Eight and Nine relative to the three judges.

Beyond those comments, I'm going to leave this in your hands to decide what you think has been proven by the probable

he lives at 1234 Main Street. And so they get in their car and they have got their crowbar and they have got what they need and they drive the 1234 Main Street, and it's a vacant lot.

Well, that makes it both a legal and factual impossibility because there's nothing to intimidate anymore. There's nothing to break into anymore. It's gone.

And that's what happened with the three judges. Even Mr. Gomes acknowledges that. By the time Mr. Robben got around to doing this alleged attempted violation of Penal Code Section 71, all the judges had already bailed out. There was nobody left to dissuade. They were all gone.

And I argue that's a fact, and a fact that's been acknowledged, and that's what you should consider when you considering the attempts against the three judges. Not the insults. Not the F-bombs. Not the slanderous comments he made, but the law.

We talked about this during actual jury selection. This is a courtroom, not your living room. We make decisions differently here. We take our emotions and we set them aside, and we may, when this whole thing is over, it's all done, it's in the books, completely finished, some day you may want to walk up on the street and look at Mr. Robben and go, You foul-mouthed person. You may want to just do that. You may want to look at him and say, *Oh, my goodness, where*

And even the law enforcement suggested that Mr. Robben was certainly frustrated. He said he was frustrated, and it was never challenged.

I talked to you about "attempting", the last three charges, attempting to do something.

Well, I argue that you can't attempt to do something that's impossible to do, because even Mr. Gomes acknowledges that all the judges had already recused themselves.

I would also tell you that these PC 71s, Penal Code Section 71s, you have to -- you have to -- item two:

> The Defendant communicated the threat directly to his intended victim.

Not indirectly. Directly.

> It reasonably appeared to the intended recipient of the threat that such threat could be carried out; and...

Then it goes on, but the threat was to get rid of him, and they were already gone.

Violation of Penal Code Section 422, the threat, the criminal threats.

Item four:

> The threat was so clear, immediate, unconditional and specific that it communicated to the alleged victim a serious intention in the immediate prospect that the threat would be

The above exhibits show testimony from El Dorado Co. Judge James Wagoner who stated he was not threatened. The other exhibit above shows all judges "ultimately recuesed" – they had recused prior to the case!

Dale Gomes explains to the grand jury that Petitioner did not have to succeed in inducing or preventing action on part of the judges.

The exhibit below is from El Dorado Co. Judge Suzanne Kingsbury explaining she had already recused from the previous case # S16CRM0096. Both Judge Kingsbury and Wagoner had already recused. Judge Steven Bailey did not testify and violated Petitioner's U.S. 6th amendment & Cal. Constitution Art 1, Sec 15 right to confrontation. The record in this habeas shows that Judge Bailey had recused in Case # S16CRM0096.

Suzanne Kingsbury confirms all judges had recused from El Dorado and they had to go to Placer Counry to acquire another judge. Ultimately an assigned Jretired udge Robert Baysinger presided over case # S16CRM0096. All judges were recused going into case # P17CRF0089 & P17CRF0114.

Testimony of Judge Kingsbury below:

\

\

\

\

\

\

\

\

\

\

\

\

\

Q Okay.
A I mean, I would give the person the courtesy of a minute order or something that says they only get one.
Q Okay. You tell them no?
A Correct.
Q Nicely?
A Yes. I'm always nice.
Q Moving forward, did you become aware at some point that there was a criminal investigation, active criminal investigation of the Defendant that was happening contemporaneous to his 14601.2 prosecution?
A I did.
MR. MILLER: Objection; relevance. She's already answered these questions.
THE COURT: Overruled.
Q (By MR. GOMES) You did?
A I did.
Q And at that point the Defendant's 170.6 challenge would not have anything to do with the new case?
A No.
Q And so you were free to hear it if you -- if it was assigned to you or if it landed in your bailiwick, for lack of a better term?
A Yes.
Q Did you receive or have an opportunity at any point to hear any part of this new criminal investigation, whether it be review a warrant or

anything like that?
A Not as far as I know.
Q So move forward now to March of this year, 2017, a criminal complaint was filed in the El Dorado County Superior Court alleging a number of felony counts against Todd Christian Robben. At any point did you take steps to either hear or not hear, preside over or not preside over this new case?
A Yes.
Q Okay. I want to talk about those steps, but first let's talk about what information was at your disposal at that time.
You had already presided over his DUI. As far as you were concerned, that went pretty smoothly?
A I thought so.
Q He didn't actively threaten you or anything during the course of that prosecution?
A Oh, no.
Q He didn't do anything to cause you to feel like you couldn't be fair and impartial as a jurist overseeing his case?
A Absolutely not.
Q And so now we have got this new case. You're aware of at least the fact that he was suspected of some crimes against a judge in Nevada. And now we have got a case. Did you receive about -- what was the nature of the new case?
MR. MILLER: Objection; vague.

THE COURT: Overruled.

THE WITNESS: Yes, that it had something to do with issues that he had with the conduct of the DUI investigation and with the City and the City Attorney.

Q (By MR. GOMES) And I want to back up for half a step, because there was -- or was there a point prior to the Defendant being charged in the criminal complaint where judges from the El Dorado County Superior Court bench recused themselves from reviewing warrants in connection with that investigation?

A As far as I know, yes.

Q Including yourself?

A Yes.

Q Let's talk about you specifically.

What was it, we'll talk about the summer of 2016, that led you to recuse yourself from reviewing warrants in the new case involving suspected threats?

A I think because of the initial recusal on the 14601, knowing that he was not happy with the outcome of the DUI case and that -- I'm trying to think of the best way to phrase this, and that many of his complaints as it related to the City of South Lake Tahoe had to do with what different officers had done relative to that DUI case, I just felt like it was enough of a nexus where it was probably better for another judge to hear it.

Q Fair to say that as of roughly August of 2016, there were no sitting judges in the County of El Dorado

who were willing to even review warrants on the new case?

A Absolutely true.

Q And El Dorado County had to seek out visiting judges in order to even just review documents connected to his investigation?

A Yes. Placer County, to be precise.

Q Fast -- fast forward now through the end of 2016:

Did you ever become aware of the fact that the Defendant was making reference to you in your judicial capacity in his conversations from the El Dorado County jail?

A No.

Q Did you become aware of the fact that the Defendant was making reference to an assault on your home in his conversations from the El Dorado County jail?

A No.

Q Did you become aware of the fact that the Defendant was making reference to the fact that he believed he knew where your home was, from the El Dorado county jail?

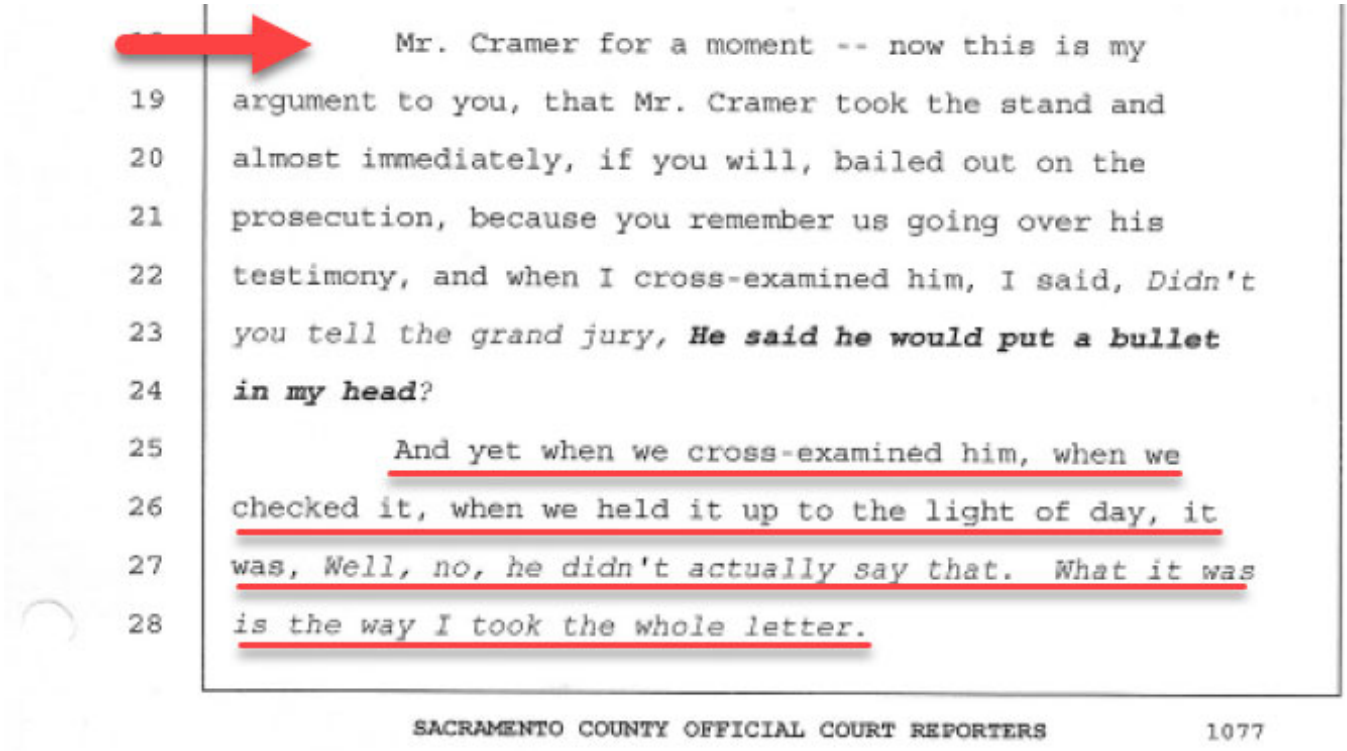
A No.

Q Had you received that kind of information, would it have led you to take any different action in how you handled his pending criminal case?

MR. MILLER: Objection; speculation.

The crimes of penal code 422 (counts IV & VI) against Thomas Watson and David Cramer should have been dismissed on grounds that said speech was protected 1st amendment speech and not a “true threat”. Said speech was alleged to be “conditional” in that it was conditioned on Thomas Watson returning the automobile and David Cramer withdrawing from the case as appointed counsel on appeal.

Said alleged threats were not intended to be true threats (subjective intent) not were they "unequivocal, unconditional, immediate, and specific" – in fact, **Mr. Cramer was impeached at trial since he claimed Petitioner threatened to “put a bullet in his [Cramer’s] head” when Petitioner instead wrote that Mr. Cramer should “Put a bullet in your head”. Mr. Cramer committed perjury and D.A.A Dale Gomes subordinated the perjury.**



Mr. Cramer for a moment -- now this is my argument to you, that Mr. Cramer took the stand and almost immediately, if you will, bailed out on the prosecution, because you remember us going over his testimony, and when I cross-examined him, I said, *Didn't you tell the grand jury,* ***He said he would put a bullet in my head****?*

And yet when we cross-examined him, when we checked it, when we held it up to the light of day, it was, *Well, no, he didn't actually say that. What it was is the way I took the whole letter.*

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS 1077

I'm gonna tell you that's a prior inconsistent statement, by my argument to you, and I think you should look at what Mr. Cramer has to say very, very closely.

There's another concept in our society that's really pretty safe and sound, and I think that it's right and common sense, that if, in fact, somebody accuses you of doing something wrong, all you must do is accept the position of the victim. Once you become a victim, you fit in a protected class of people:

No, I couldn't have done anything wrong. I'm the victim. I'm the victim.

We in California even have laws about how to protect victims and what rights victims have.

And should victims have rights? I am certainly in agreement they should.

We have all been around small children. Two kids, a brother and sister maybe, close in age, "punch-punch" back seat of the car, "punch-punch" on the couch.

Mom looks over and says: Johnny, stop that.

I didn't start it. She started it.

Yeah, you got it wrong, Mom, *I'm the victim here. Go after her. She's the one.* And instantly you fit in this protected class.

Now, Mr. Cramer was seriously criticized by Mr. Robben, and he was seriously criticized to the California State Bar, the people that give us the privilege to practice law, and it is just a privilege.

It can be withdrawn at any time.

I've got all these accusations against me. 700, roughly, unanswered calls. 700. And all of a sudden, but it's because I'm a victim. It's an easy fallback position. Easy fallback positions.

Take a close look at Mr. Cramer's accusations and testimony.

Each individual is not entitled to translate or interpret anything on their own set of rules. That includes Mr. Robben, but it also includes everybody that claimed how they felt.

Mr. Cramer wouldn't be specific with us, but he said Mr. Robben asked him to do things that were beyond the scope of the actual transcript.

Well, the DUI was already up on appeal. There's nothing to do there. So what could he have been talking to him about?

He could have been talking to him about things that maybe Cramer didn't really understand. Mr. Cramer did tell us -- I believe this was his first appeal. And sometimes, I think common sense tells us, when we get put in a tough position and we find ourselves, if you will, another baseball analogy, but if we find ourselves off a little off base, a natural response is to get defensive.

And I argue to you that that's the bias that Mr. Cramer had. Maybe he was just in little over his head, and he got defensive.

Testimony of David Cramer below:

counsel to page 21 and the pages that follow.
Is it okay if I --
MR. MILLER: Sure.
MR. GOMES: May I approach, Your Honor?
THE COURT: You may.
Q (By MR. GOMES) Pick it up wherever you like on page 21 and read it till you think your memory is or is not going to be refreshed.
A (Reviewing.)
THE COURT: Say again the page number.
MR. GOMES: 21. Middle of the page.
THE COURT: Thank you.
MR. MILLER: Your Honor, while that review is taking place, may we approach?
THE COURT: Come on up.
MR. MILLER: Thank you.
(Unreported discussion was then had between the Court and counsel at the bench.)
THE WITNESS: Okay.
Q (By MR. GOMES) Does that refresh your memory as to the timing and nature of the threats that the Defendant made against you prior to your decision to withdraw?
A Yes.
Q And tell us what your memory is?
A It was the way the letters were written, not necessarily the words so much, as they were very important, the words, but some of these words being in

capitals with exclamation points. Again, I have been threatened before but nothing to this degree.

So it's really -- a lot of it was the words but also how it was written.

Q And the words specifically involved a bullet being put in your head?

A Yes.

Q And your law office being torched?

A Blown up or torched, whatever it was.

Q When you decided that you could no longer continue to represent Mr. Robben in his appeal, what step exactly -- or steps did you take to withdraw?

A I believe I first notified Adam Clark at the panel, informed him of a few of these issues, and I think I just wanted to give him a warning or heads-up that I spoke to the appellate division in Placer County, and they advised me simply to just write a letter saying that I could no longer represent him, and they'll appoint a new lawyer.

Q And is that what you did?

A Yes, it is.

Q Was there any obstacles or challenges for you withdrawing your representation?

A No.

Q You wrote a single letter and it was done?

A I'm sorry?

Q You wrote a single letter, and it was done?

A Yes, sir.

Q Now, you mentioned a minute ago that somehow you had some interactions with the California State Bar as it relates to your representation of Mr. Robben?
A Yes.
Q Tell me about those.
A Well, I got a phone call on a Friday morning from the Bar. They are informing me that they received a complaint from Mr. Robben in October, this was sometime after October, and that he had attached some letters that he had sent to you and that they were disturbed by those letters and wanted to warn me, and they informed me that they had contacted the El Dorado County DA's office.
Q So when you say "he" had informed you, the person you're talking to --
A Yes.
Q -- is from the State Bar?
A Yes.
Q Okay. And did they agree to provide you with the letters that they received from Todd Christian Robben?
A Yes.
Q All right.
MR. GOMES: I want to refer the Court and counsel to Exhibit 12 for identification.
Q (By MR. GOMES) Mr. Cramer, take a look at Exhibit 12, and tell me if you recognize this?
A (Reviewing.) I do.

Q And is that a copy of the letter that the State Bar provided you, that they received from Todd Christian Robben?
A It is.
Q At the point in time you got this information from the State Bar, had you already withdrawn your representation of the Defendant?
A Yes.
Q So your professional interactions with him had been terminated by you?
A Yes.
Q And you were, for all intents and purposes, done with Mr. Robben?
A Yes.
Q Once you received this information from the State Bar, did you decide to take a further step and make a report yourself to law enforcement?
A No, I did not.
Q At some point did you decide to make a report to law enforcement about the threats that the Defendant had made to you?
A I don't know if I directly called law enforcement. I may have spoken to somebody to get their advice on whether to report this or not.
Q Now, I'm law enforcement, too.
A Yes.
Q So at some point did you report to the District Attorney's office and the people responsible for

Q Well, *He's a bad lawyer, I want a new lawyer,* that's not gonna ever get you through having somebody taken off a case, is it?
A Most times, no, but I have seen some judges do it.
Q Okay. But even after that particular Marsden letter, you still agreed that you could represent Mr. Robben?
A Yes.
Q And then in People's 14, that's where we have the phrase "put the gun to your head". You still -- after getting that, you knew you could represent Mr. Robben?
A If that was -- it was the last letter.
Q I'm talking about People's 14. Do you need me to show it to you?
A I do.
Q Okay. And while I'm doing that, I will also talk to you just a little bit about People's 15. That was the William Shakespeare quote.
Do you remember that one?
A Yes, I do.
Q Okay. This is People's 13. Let me check my notes and make sure.
In People's 14, excuse me, that's the one I'll show you again, if I may. People's 14.
Do you remember, "You should put a gun to your head", or words to that effect?

A Yes.
Q Okay. And still even after that letter, you still decided you could represent him?
A Yes.
Q Okay. And on People's 15, that's the William Shakespeare phrase, right?
A Let me actually go back to that last answer.
Yes, I could feel I could represent him, but it started in my mind -- you know, again, coupled with everything I knew before, I'm starting to get a little nervous, for lack of a better term, but, yes, I still thought I could represent him on an appeal.
Q You still went ahead?
A Yes.
Q Okay.
A I went ahead.
Q People's 15. Again, I'm taking you back to William Shakespeare.
A Yes.
Q Do you know where that comes from?
A No.
Q You have never heard that before?
A I have heard the phrase.
Q But you don't know the origin of it?
A No.
Q If I were to tell you it was from a play Mr. Shakespeare wrote?
A Yes.

Q Does that sound okay to you?
A I don't understand the question.
Q Okay. Did you ever become knowledgeable, if you will, in William Shakespeare's play Henry the VI?
A No.
Q Okay. So you just think that quote means "go out and start killing lawyers"?
A No, it's just another lawyer joke, but coupled with a letter that he sent it with.
Q Well, you said you don't recall its origin. If I were to tell you its origin comes from the fact that it's a group of --
MR. GOMES: Relevance, Your Honor, and counsel seems to be testifying at this point.
THE COURT: Sustained.
Q (By MR. MILLER) Let me ask you, if I can:
You testified at the grand jury, right?
A I did.
Q And you testified under oath, right?
A I did.
Q And you're testifying under oath here?
A Yes.
Q And you said that -- here that it was a combination of phrases or words used by Mr. Robben that made you feel that he was gonna maybe put a bullet in your head?
A I don't think I said that exactly, but it was the saying or the phrase, those words, as that's what

gave me a concern.
Q And you said that the "put a bullet in your head" came from a letter?
A It was in one of the letters.
Q Okay. Which letter?
A I -- are you asking which letter it said "you should put a bullet in your head" or --
Q No, you said -- do you remember saying he was gonna put a bullet in your head, to the grand jury?
A Yes, I remember saying that. That's what one of the letters said.
Q Okay. Is that part of the letters we have seen today?
A Yes.
Q And it said, "I'm going to put a bullet in your head"?
A I believe that's what the last letter said, yes.
Q That's how you interpreted it?
A Coupled with the last line of "PS", yes.
Q Okay. So is there a quote in this People's 16, the last letter -- and I don't think you meant the last letter. People's 16 is the last letter. That's the one -- that's not the one you're referring to, right?
A No, that is not. When I say last letter, I believe the last letter that was sent to me, not the last letter here in court that was shown to me.
Q Okay. So have you seen that last letter here

in court?
A Yes.
Q And was that the letter that was sent to the Bar Association or is it?
A They sent me a copy of that letter. So I'm gonna have to say yes.
Q Okay. But that was a letter to the Bar Association?
A It came to me as well.
Q And in the letter to the Bar Association, you are testifying that Mr. Robben said, "I will put a bullet in his head"?
A That's the way I interpreted the letter, yes.
Q But that was an interpretation, not a quote?
A I would have to see the letter again. I don't recall the actual words, but, again, my interpretation.
Q Do you -- again, taking you back to your sworn testimony at the grand jury, do you remember saying:

Well, he threatened me.

And you saying -- or you said:

Well, he threatened me.

And the next question was:

What was the nature of the threat, if you will?

And you said:

I'm going to put a bullet in your head.

Is that right?
A If that's what the transcript says, yes.

Q Well, I'm asking you if you recall that?
A Yes.
Q All right. So did you mean that to be a quote or just your interpretation?
A My interpretation, based on the totality of the circumstances.
Q So he never specifically threatened you with that statement?
A I would disagree with you, sir.
I believe, again, that last letter is fairly clear. Coupled with the prior letters and what I was told, I took it as a threat.
Q You took it as a threat --
A I --
Q -- right?
A I don't know how anybody else would take it, but, yes. Yes, I took it as a threat, absolutely.
Q My question then -- I guess I am going to be more specific:
Did Mr. Robben ever say or write to you this phrase, "I'm going to put a bullet in your head"?
A I would have to look at that last letter again.
Q And that's the one from the Bar Association, right?
A It was written to me as well.
Q Up to that letter, you decided you could represent Mr. Robben, right?
A I started to discuss with other lawyers the

issue.
Q Okay. Did they give you advice?
A Some.
Q But even at that particular point, you kept representing him, even after the case was transferred out of the El Dorado County?
A I continued to read the transcripts. It was only in Placer County, though, before I got out of it. I mean, I'm not -- maybe -- a month maybe in Placer County. Maybe a month.
Q Do you recognize during your testimony at the grand jury that you were saying that his threats were getting louder?
A Yes, I do remember saying that.
Q And you say -- now, the very last paragraph says:

> Put a gun to your fucking head and pull the trigger, you piece of shit.

A Yes.
Q Is that the phrase you are referring to?
A I guess. I -- I don't know.
Q Okay. I'm gonna show you what's been previously marked as People's 12 and see if on here you can find an actual direct quote from Mr. Robben saying he was going to put a gun to your head.
A (Reviewing.) To me it's saying:

> Many people in my situation would just put a bullet in David Cramer's fucking

head and call it a day.
Q Okay. Did he say, "I'm gonna put a bullet in your head"?
A He said people in his situation. So the answer to your question is, no, he did not say that like that.
Q Thank you.
A But these words coupled with the "PS" --
Q Made you believe that?
A I took it as a threat, sir.
Q But yet you told the grand jury that was his statement?
A If I misquoted a word, fine, but that was telling me he's putting a bullet in my head.
Q And you went out and bought a gun?
A I did.
Q Never had a gun before?
A No.
Q Ever?
A No.
Q Now, how is -- what is a gun going to do for you?
A Protect me.
Q How?
A If somebody were to try to walk up to me and do something, maybe shoot me, hit me with a bat, I don't know.
Q Okay. Do you carry the gun with you all the time?

A Yes.
Q You had to check it in to get in here?
A I left it in the car.
Q You never filed an appeal or any type of document on Mr. Robben's behalf as his appointed attorney?
A No, I did not.
Q Okay. Did you ever get a notice of appeal, an actual one to begin your appointment?
A I don't get a notice of appeal. That's filed with the Court, and they appoint the conflict panel, and I got assigned.
Q All right. Well, I'm about at the end.
How about you testifying again at the grand jury and you saying that it was a threat to you when you are receiving this accumulation of letters from Mr. Robben, right?
A Yes.
Q Okay. And that was your subjective opinion, right?
A Yes. I'm sure with most people.
Q At least to you, right?
A Yes, to me.
Q Now, Mr. Robben has suggested that he wants you disbarred --
A Yes.
Q -- is that right?
That would put a dent in your professional

career, wouldn't it?
A Yes.
Q Okay. And he said that he's talking to other inmates about how poor a lawyer you are; isn't that right?
A Yes, according to his letters.
Q And that may -- would that affect your ability to represent and/or gain an income?
A No. No, it wouldn't.
Q Okay. Do you remember one of the letters saying: "PS, I won't kill you. I'll just let others do it"?
A Yes.
Q "He needs to go"?
A Yes.
Q That's the letter to the Bar about you?
A I received a copy as well, but, yes, apparently that was the letter to the Bar because they sent me a copy as well.
Q Did you ever respond to the Bar?
A Well, they had contacted me, and they --
Q Okay. Did you respond to the Bar?
A No.
MR. MILLER: Nothing further at this time.
THE COURT: Mr. Gomes?
MR. GOMES: Thank you, Your Honor.

jail. They get one minute before it cuts off. I don't have my phone set up to take calls from the South Lake Tahoe jail, so the couple times I would pick up for that one minute he would scream obscenities at me. Then it would eventually cut off.

Q Okay. So at least a few of these early calls you actually answered?

A Yes.

Q And did you attempt to interact with Mr. Robben at all?

A I just said "I'll come up and see you."

Q And did that seem to satisfy him?

A No.

Q How would he respond in these few calls you picked up?

A Again, he would be loud and verbose, cursing. I don't know if I can really say --

Q I've heard you say it before, Mr. Cramer. I think you can say it here, too. Don't be shy. If you need to quote Mr. Robben you can quote Mr. Robben.

A Well, I mean, he was just, you know, you're not a good lawyer, you're --

Q Go ahead. It's uncomfortable. It's awkward. It's the nature of this process. We have to be able to make a record of what things Mr. Robben said to you to cause the breakdown in this relationship.

A I can't recall -- there were so many things -- exactly. Well, he threatened me.

Q What was the nature of the threat, if you will?

A I'm going to put a bullet in your head.

The last page above (21/28) is from the grand jury where David Cramer lied to the grand jury and misstated the facts. The above transcript also shows the David Cramer was not immediately threatened, he remained on the case despite the letters from the Petitioner and he purchased a gun (not call the police). Mr. Cramer took the William Shakespeare quote "as a lawyer joke". Arguably, Mr. Cramer has threatened this Petitioner with his new gun that he will use it against this Petitioner to kill him… This Petitioner may one day be in Placerville and because of Mr. Cramer's threats to commit GBI, this Petitioner is now in fear for his life because of Mr. Cramer's true threat to use a gun against this Petitioner.

Said threats were not an immediate clear & present danger since Petitioner was in jail at the time Mr. Cramer claimed to be threatened and Petitioner.

Petitioner was in Tuolumne County when **Mr. Watson claimed to be threatened along with his wife who apparently read Mr. Watson's confidential legal mail sent to his city email address.** Again, not an immediate clear & present danger. Said breach of confidentiality violation would appear to run afoul to the Rules of Professional Conduct, Rule 1.6 (former 3-100) Confidential Information of a Client (City of South Lake Tahoe), Business and Professions Code section 6068 (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client (City of South Lake Tahoe). A lawyer's duty to preserve the confidentiality of client information involves public policies of paramount importance. *(In Re Jordan (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].); Commercial Standard Title Co. v. Superior Court (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr.393].*

The exhibits below show the email was sent to Thomas Watson's city email address and that his wife read the confidential mail. Mr. Watson's wife did not testify at the grand jury or trial. **Mr. Watson claims the William Shakespeare quote "Let's Kill All the Lawyers" is funny and he took it as "contextually" as used by William Shakespeare.** From Wikipedia[60]: William Shakespeare's quote **"Let's kill all the lawyers"** is a line from William Shakespeare's *Henry VI, Part 2*, Act IV, Scene 2. The full quote is "The first thing we do, let's kill all the lawyers".[1] It is among Shakespeare's most famous lines,[2] as well as one of his most controversial.[3] **Shakespeare may be making a joke when character "Dick The**

[60] https://en.wikipedia.org/wiki/Let%27s_kill_all_the_lawyers

Butcher" suggests one of the ways the band of pretenders to the throne can improve the country is to kill all the lawyers.

The following testimony is from Thomas Watson:

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

literature class when you read William Shakespeare?
A As an attorney, we frequently hear this reference.
Q It's --
A It's usually in more of a humorous context than I took this to be.
Q Okay. You didn't find this to be funny?
A No.
Q And you -- did you interpret it in the way that it was maybe contextually used in -- by William Shakespeare?
A Yes.
Unfortunately so did my wife, who saw it --
MR. MILLER: Objection; it's beyond the scope of the question.
THE COURT: Sustained.
MR. MILLER: And that's not relevant.
Move to strike.
THE COURT: It's struck.
MR. GOMES: All right.
Q (By MR. GOMES) So let's take a look at what the Defendant wrote below, the caption about killing lawyers. Read this to us, please.
A The appeal is still pending, and I will be collecting my money very soon from you. You know I will be suing you and the City, and I'll get the Complaint ready here as soon as the

A Unfortunately because my e-mail goes to my phone, my wife had read that e-mail, and so I sent her and my 17-year-old daughter out of the city, and I started wearing a bulletproof vest.

Q Now, at this point in May, had you met with law enforcement officials within the City of South Lake Tahoe, the City Police Department?

A Oh, yes. We had had numerous discussions about the situation.

Q And had they provided you with information about Todd Christian Robben from their perspective that impacted the way you interpreted his threatening language?

A Yes. I read previous police reports about contact with Mr. Robben, including a report that indicated he had had a restraining order provided by his brother, which gave me quite a bit of cause.

Q Did they also provide you or did you research on your own information about Mr. Robben's law enforcement contacts in the City of Carson City, Nevada?

A I was provided --

MR. MILLER: Objection; vague as to time.

THE COURT: Overruled.

THE WITNESS: I was provided information that he had been a suspect in a number of other issues, including issues in Carson City.

Q (By MR. GOMES) And those issues relating to what type of conduct?

A That it was alleged that he had shot or assisted in shooting at a judge's house.
Q Among other things?
A Among other things.
Q Did that information weigh on your mind as you evaluated how seriously or not seriously you should take the Defendant's threats?
A Yes.
Q In any of the e-mail correspondence that you received from the Defendant in April and May, did he ever make reference to Judge Tatro?
A Yes.
Q And were those references in the context of suggesting that something similar to what happened to Judge Tatro should happen to you or others in El Dorado County?
A I took it to that, yes.
Q Returning back to that writ of mandate, specifically what was page number 18 from the writ of mandate, discovery page 501, I'm gonna publish this page of that document.
Is this part of that writ of mandate that you received from the Defendant on two occasions, first in March and then in May of 2016?
A Yes.
Q And this particular page makes reference to a Sergeant Laney. You know Sergeant Laney?
A Yes, sir.

Wait for the next question.

Q (By MR. GOMES) What mention would you like to make, sir?

A I would like to mention that it was also addressed to my employers, who are the other individuals at cityofSLT.us as referenced on that e-mail.

Q You stepped on my toes a little bit, because my next question was gonna be who else was this e-mail addressed to.

A Okay.

Q So let's go through that list and tell me if you recognize any of these other e-mails.

First of all, you are twatson@cityofsouthlaketahoe.us?

A That is my work e-mail, yes.

Q And I'm listed there?

A Yes, sir.

Q With my work e-mail at dale.gomes@edcgov.us?

A That's correct.

Q Mr. Vern Pierson, do you know who he is?

A The District Attorney of El Dorado County.

Q And his e-mail address is also listed there.

Brian Uhler is listed there with an e-mail of buhler@cityofslt.us. Do you know who Brian Uhler is?

A Brian Uhler is the Chief of Police at the City of South Lake Tahoe.

Q Uhler, my apologies. I'm glad he wasn't here to hear me butcher his name.

The first thing we do,
Let's kill all the lawyers
William Shakespeare

No true threat was ever made to both Mr. Watson, Ms. Watson or Mr. Cramer. A quote by William Shakespeare “The first thing we do is kill all the lawyers” was hardly meant to be taken as a threat by this Petitioner made in jest.

In re SW, 45 A. 3d 151 - DC: Court of Appeals 2012:

This case presents a third factual permutation — whether words 156*156 threatening on their face can be rendered benign by their context.

The answer must be yes. An actor's pronouncement from the stage, **"The first thing we do, let's kill all the lawyers,"** [11] **cannot reasonably be perceived as a threat by the bar members in the audience**. Similarly, the **utterance "I'm going to kill you," when stated, with a laugh, to a friend after the friend has somehow discomfited the speaker cannot reasonably be perceived as a threat. A threat is more than language in a vacuum. It is not always reasonable — and sometimes it is patently irrational — to take every pronouncement at face value.**

Indeed, even when statements are threatening on their face, it is essential to consider and give full weight to context in order to ensure that the District's threats statutes are applied within constitutional parameters. As the Supreme Court held in Watts v. United States,[12] and this court acknowledged in Jenkins,[13] "[A] statute ... which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech." 394 U.S. at 707, 89 S.Ct. 1399. It is a cornerstone of our democracy that the First Amendment generally "bars the government from dictating what we see or read or speak or hear." Ashcroft v. Free Speech Coal., 535 U.S. 234, 245, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002). "True threats" are an exception to this rule and may be criminalized without violating the First Amendment. Virginia v. Black, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). **But speech is only a "true threat" and therefore unprotected under the Constitution if an "ordinary reasonable recipient who is**

familiar with the[] context [of the statement] would interpret"[14] it as a "serious expression of an intent to cause a present or future harm."[15]

Thus, courts have struck threats convictions on First Amendment grounds where facially threatening language placed in context cannot reasonably be perceived as a threat. See, e.g., Watts, 394 U.S. at 708, 89 S.Ct. 1399; Alexander, 418 F.2d at 157*157 1207. Similarly, courts have held that arrests based on statements that are not objectively threatening violate the First Amendment. For example, in **Fogel v. Collins, 531 F.3d 824 (9th Cir.2008)**, the Ninth Circuit held that a van parked in an apartment complex, painted with the messages, **"I AM A FUCKING SUICIDE BOMBER COMMUNIST TERRORIST!" and "ALLAH PRAISE THE PATRIOT ACT ... FUCKING JIHAD ON THE FIRST AMENDMENT! P.S. W.O.M.D. ON BOARD!" and "PULL ME OVER! PLEASE, I DARE YA[,]"** id. at 827, did not convey a true threat for First Amendment purposes, "in light of the full context available to someone observing the van." Id. at 831 (noting that the "remainder of the van displayed innocuous images and phrases, including some with spiritual meaning, created through the artistic endeavors of [the van owner] and his friends"). **"It makes no difference that the speech, taken literally, may have communicated a threat. Understood in its full context, no reasonable person would have expected that viewers would interpret [the van owner's] political message as a true threat of serious harm."** Id. at 832 (citing Watts, 394 U.S. at 708, 89 S.Ct. 1399; Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 372 (9th Cir.1996)).

In short, a determination of what a defendant actually said is just the beginning of a threats analysis. Even when words are threatening on their face, careful attention must be paid to the context in which those statements are made to determine if the words may be objectively perceived as threatening.[16]

In People v. Thomas, Cal: Court of Appeal, 4th Appellate Dist., 2nd Div. 2020

"Our state high court has ruled that, **"To avoid substantial First Amendment concerns associated with criminalizing speech," the offense of attempted criminal threat must be construed as requiring "proof that the defendant had a subjective intent to threaten and that the intended threat under the circumstances was sufficient to cause a reasonable person to be in sustained fear."** (*People v. Chandler, 332 P. 3d 538 - Cal: Supreme Court 2014 at p. 525.*)

The exhibit below is from the grand jury where D.D.A. Dale Gomes wrongfully informs the jury that a series of speech not amounting to a true threat constitutes a true threat if repeated. Not one of the charges Petitioner was charged ad indicted on requires a “pattern of conduct”. Many not “true threat” strung together or communicated over time can amount to a “true threat” or as California calls it a “criminal threat”. The exhibit also proves

D.D.A. Dale Gomes knew Petitioner state of mind and that Petitioner subjectively operated under the *modus operandi* that his speech was not a true threat and instead protected 1st amendment speech.

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

complete.

Any other questions or concerns?

GRAND JUROR [redacted] (GJ15): [redacted] (GJ15). We've heard a lot of testimony attesting to the fact that he never -- he never says "I'm going to kill you." I mean, he always refers to other groups or this is going to happen, we're going to have a revolution, we're going to, you know. So again, I know that being in his mind that's why he thought he would never be charged, I think, because he thought he would never -- he never made. But again, I guess what you're alluding to is the perception of the recipient of the threat.

MR. GOMES: I think candidly there's no question Mr. Robben believed he was insulating himself from prosecution by saying so and so is going to die and somebody is going to put a bullet in so and so's head. Not me. Somebody is going to put a bullet in so and so's head.

And I think fundamentally his analysis of the law of making a criminal threat is partially right. Unfortunately it's partially wrong too, in that at some point when you do this over and over and over again your actual intent to communicate a real and direct threat becomes clear. And even though you put a conditional language on it, I think at some point the reality that you're trying to put in the mind of your victim the idea that you or somebody on your behalf is going to harm them becomes real.

So you can say, you know, you can condition your threat and say, you know, if you say that one more time I'm going to kill you, you son of a bitch. That's a conditional threat.

If you don't say that one more time you'll live until your last day, right? But at some point when you remove the -- when the conditional aspect of your threat becomes a pretense, it's not real, and what the real intent of the threatener is is to put the fear of death in his victim's mind. That's what distinguishes his actions from a single isolated threat that is too unconditional or unconnected to warrant criminal prosecution.

Any other questions before I leave you to do your part?

Yes, sir?

GRAND JUROR [redacted] (GJ19): Question, [redacted] (GJ19). Are those misdemeanors or felonies on each of those counts?

MR. GOMES: All of the charges alleged in the proposed indictment are felony charges.

Anything else?

This packet is your exhibit list. Your exhibit lists are in the envelope. Your proposed indictment is on top. I'm going to give you all of this. I'm going to leave everything else in here and I'll step out.

---oOo---

(The grand jury was in deliberation from 10:18 until 10:31.)

---oOo---

It had been done. Everything would have been over if Mr. Robben was capable of just dealing with his legal issues in court, like every other citizen in the State of California does.

All right. Now, there's an important legal fact that you need to understand, and I will try to straighten this out:

Someone who intends a statement to be understood as a threat --

This is a point of law I pulled straight out of the instructions you just got.

Someone who intends that a statement be understood as a threat does not have to actually intend to carry out the threatened act or intend to have someone else do so.

Now, there's evidence in this case that the Defendant intended at least third parties to carry out his acts of violence. He certainly posted information on his website suggesting and attempting to inspire third parties to do so.

You also have some pretty good evidence that the Defendant himself intended to carry out these. You have audio-recorded statements of himself saying the same. Okay.

But it's important for you to know that the law does not require me to prove that he did. The law requires me to prove that he made the threat, that he

made the threat with the intent that these individuals take that threat seriously, but don't get hung up on this debate or this argument over whether or not the Defendant really intended to have anybody killed or to kill anybody himself, because that is legally irrelevant in this case.

He's not charged with attempted murder, okay? He's not. Because as far as we know, that's not what he did. Don't go back there and debate over whether or not he committed an attempted murder. He is charged with making threatening statements, and the law does not require that he intend to carrying out any of the threats that he made.

The Defendant made a big deal about not being able to plead to something he didn't do, but it just illustrates the point of his kind of grandiose illusions:

The DUI was a sham. The driving on a suspended license was a sham. The solicitation was really the other guy.

There is nothing about what this Defendant has said or done that he's able to analyze fairly and objectively. He's just a victim, in his own eyes. When he gets in trouble, it's because he's being persecuted. When he drives on a suspended license, it's because Vern Pierson is corrupt.

Can you imagine all the people Vern Pierson has taken out with that classic driving on a suspended

license charge? Oh, the secret weapon that it is.

It's crazy. It really is crazy when you think about it, but that's the way he views the world, and that place ripened to this idea.

Mr. Miller said it over and over again, and I kind of wanted to fall out of my chair every time he did:

No one apologized to Todd Christian Robben.

Judge John Tatro, who has been persecuted and attacked and threatened for years by this man did not apologize? It's maybe the most outrageous idea in this whole case. You have got to be crazy. You have got to be delusional to think that John Tatro owed this man an apology. It's nuts.

When somebody victimizes another person, the police say, *Do you have any idea who might have done this?* **Well, maybe the guy who has been threatening kill me for awhile.**

You see, because if you threaten to kill somebody and then somebody goes out and tries to do your evil deed, you don't get an apology just because you weren't the triggerman, and that's what he wants. It's what he wants. Over and over again he suggested that John Tatro needed to be murdered. In his own words in that recording, he suggested he would be the man who would do it. He talked about the size of the magazine he would use when he did do it, and now he wants an apology because somebody else other than him tried to do

it and failed?

So this is it, ladies and gentlemen:

Mr. Miller raised this point, and I think it is a good one, because you are the buffer between the government and the citizens, and in this case the citizen is Todd Christian Robben. You decide whether or not the government is overreaching. I am the government.

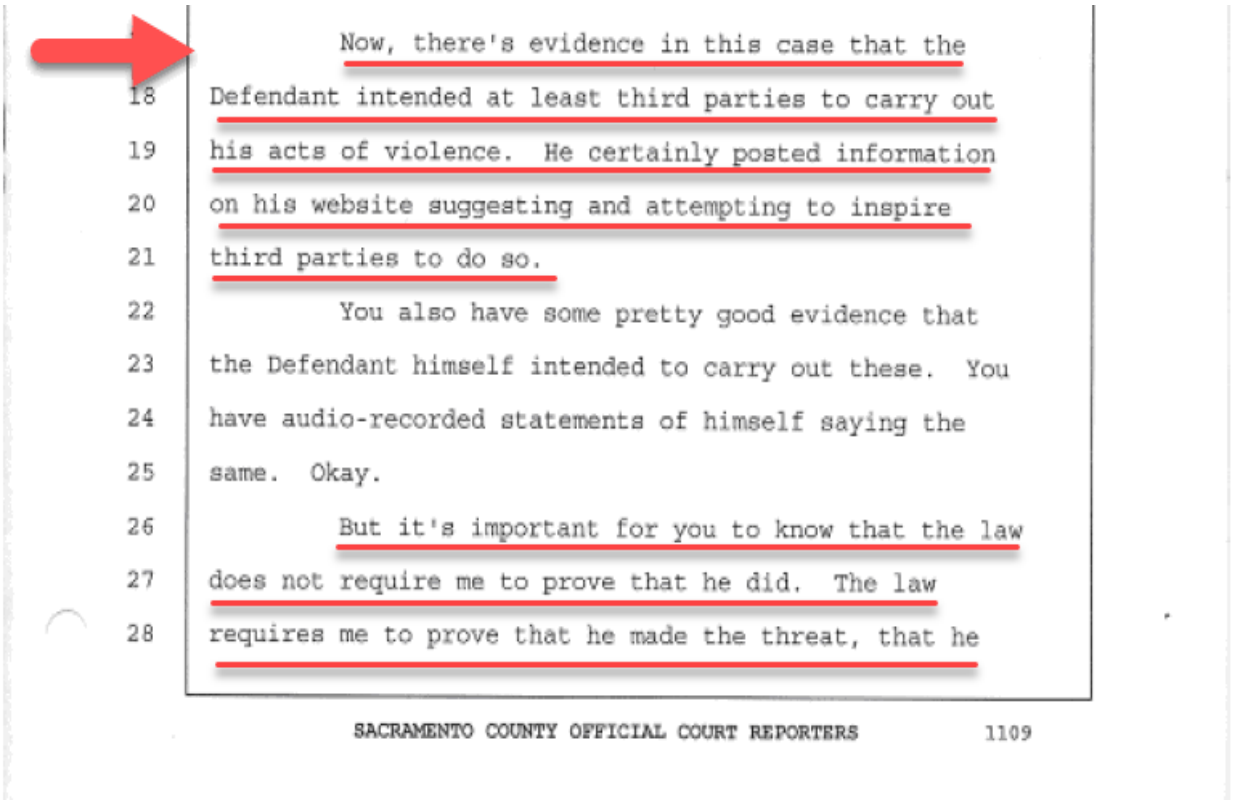
Has he been treated unfairly? Or did he cross the line where the government needed to step in and say, *Enough is enough? You cannot do what you're doing anymore.*

That's where we are. You 12. You look at this evidence and you decide: Is Todd Christian Robben the victim of government persecution? Is he the victim of a government overreach? Or is this just the time when somebody had to stand up and say, *Mr. Robben, you can't do this anymore. You either conduct yourself lawfully without threatening to kill people, without intimidating people with threats of violence or you go to jail. You choose. You choose.*

Ladies and gentlemen, if this is an overreach, then acquit him. If Mr. Robben was conducting himself in a way that is consistent with the laws of the State of California, then acquit him.

If you think somebody like Mr. Robben should be allowed to suggest to public officials that bullets be put through their doors and their windows if they don't

The above (and below) exhibits are profound. D.D.A.. Dale Gomes informs the trial jury that the subjective intend is irrelevant.

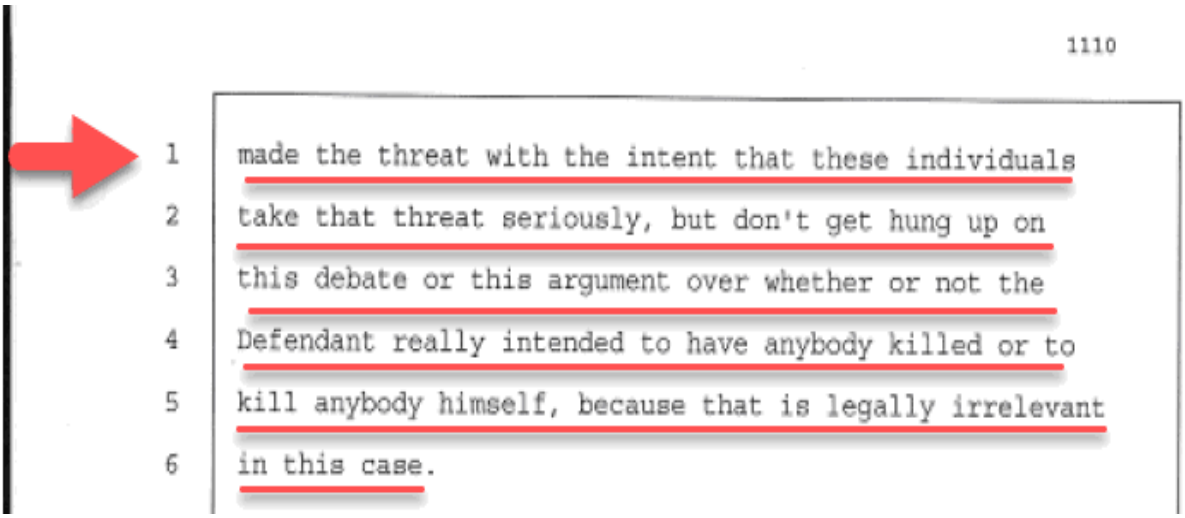


Now, there's evidence in this case that the Defendant intended at least third parties to carry out his acts of violence. He certainly posted information on his website suggesting and attempting to inspire third parties to do so.

You also have some pretty good evidence that the Defendant himself intended to carry out these. You have audio-recorded statements of himself saying the same. Okay.

But it's important for you to know that the law does not require me to prove that he did. The law requires me to prove that he made the threat, that he

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS 1109



1110

made the threat with the intent that these individuals take that threat seriously, but don't get hung up on this debate or this argument over whether or not the Defendant really intended to have anybody killed or to kill anybody himself, because that is legally irrelevant in this case.

PC 422 along with PC 71 and 140(a) requires a subjective intent. PV 422 states **"any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement**, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison."

The other profound issue is that when questioned by the grand jury that Petitioner never made a threat to kill anyone himself , D.D.A.. Dale Gomes answers that threats will be carried out by others. There is no evidence in the phone calls to Mike Weston that this Petitioner made a direct true threat to kill anyone. Here, D.D.A.. has misinformed the grand jury which amounts to prosecutorial misconduct.

In *NY ex rel. Spitzer v. Operation Rescue National, 273 F. 3d 184 - Court of Appeals, 2nd Circuit 2001*

> We are also troubled by the District Court's willingness to characterize a broad range of protestor statements as "threats" without giving them the full analysis required by the First Amendment. When determining whether a statement qualifies as a threat for First Amendment purposes, a district court must ask whether **"the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution...."** United States v. Kelner, 534 F.2d 1020, 1027 (2d Cir.), cert. denied, 429 U.S. 1022, 97 S.Ct. 639, 50 L.Ed.2d 623 (1976). Although proof of the threat's effect on its recipient is relevant to this inquiry, United States v. Malik, 16 F.3d 45, 49 (2d Cir.), cert. denied, 513 U.S. 968, 115 S.Ct. 435, 130 L.Ed.2d 347 (1994), **a court must be sure that the recipient is fearful of the execution of the threat by the speaker (or the speaker's co-conspirators). Thus, generally, a person who informs someone that he or she is in danger from a third party has not made a threat, even if the statement produces**

fear. This may be true even where a protestor tells the objects of protest that they are in danger and further indicates political support for the violent third parties. See Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists, 244 F.3d 1007, 1015 (9th Cir.2001), rehearing en banc granted, 268 F.3d 908 (9th Cir. 2001). The evidence adduced at the hearing contains many such statements that do not constitute threats even though they may have increased the recipient's apprehension of harm. Yet the District Court did not pay due attention to this difference.

The above case comes form the 2nd circuit court of appeal which is the very court that penal code 422 originates[61] and their own interpretation of their own law is very, very clear about the unconditional element and "**a court must be sure that the recipient is fearful of the execution of the threat by the speaker (or the speaker's co-conspirators). Thus, generally, a person who informs someone that he or she is in danger from a third party has not made a threat, even if the statement produces fear. This may be true even where a protestor tells the objects of protest that they are in danger and further indicates political support for the violent third parties."**

D.D.A.. Dale Gomes stated above (and reposted again below) to the question "We've heard a lot of testimony attesting to the fact he never says "I'm going to kill you" I mean he always refers to other groups…" D.D.A. Dale Gomes said 'I think candidly there's no question Mr. Robben believed he was insulating himself from prosecutions …and I think fundamentally his analysis of making a criminal threat is partially right…"

[61] In *People v. Bolin, 956 P. 2d 374 - Cal: Supreme Court 1998* "In reaching this conclusion, we begin with the original source of the statutory language. In 1981, this court invalidated former section 422 as unconstitutionally vague. (People v. Mirmirani (1981) 30 Cal.3d 375, 388, 178 441*441 Cal.Rptr. 792, 636 P.2d 1130.) **The Legislature subsequently repealed the statute and enacted a substantially revised version in 1988, adopting almost verbatim language from United States v. Kelner (2d Cir.1976) 534 F.2d 1020. (See Stats.1987, ch. 828, § 28, p. 2587; Stats.1988, ch. 1256, § 4, pp. 4184-4185.)"**

complete.

Any other questions or concerns?

GRAND JUROR [redacted] (GJ15): [redacted] (GJ15). We've heard a lot of testimony attesting to the fact that he never -- he never says "I'm going to kill you." I mean, he always refers to other groups or this is going to happen, we're going to have a revolution, we're going to, you know. So again, I know that being in his mind that's why he thought he would never be charged, I think, because he thought he would never -- he never made. But again, I guess what you're alluding to is the perception of the recipient of the threat.

MR. GOMES: I think candidly there's no question Mr. Robben believed he was insulating himself from prosecution by saying so and so is going to die and somebody is going to put a bullet in so and so's head. Not me. Somebody is going to put a bullet in so and so's head.

And I think fundamentally his analysis of the law of making a criminal threat is partially right. Unfortunately it's partially wrong too, in that at some point when you do this over and over and over again your actual intent to communicate a real and direct threat becomes clear. And even though you put a conditional language on it, I think at some point the reality that you're trying to put in the mind of your victim the idea that you or somebody on your behalf is going to harm them becomes real.

So you can say, you know, you can condition your threat and say, you know, if you say that one more time I'm going to kill you, you son of a bitch. That's a conditional threat.

life of Judge John Tatro as it is on the threat on the life of Shannon Laney.

Let's talk about the evidence as it relates to the threats against Mr. Cramer and Mr. Knowles. This evidence overlaps. So I have got it together here.

So, remember, these counts are the -- one of them is a criminal threats count, 422, and one of them is a threat against a public official, but here's the letter, the third letter the Defendant sent out, at least part of it. It says:

> Many people in my situation would just --
>
> I can't even read it off my screen.
>
> -- would just put a bullet in David J. Cramer's fucking head and call it a day. Others may torch his law office, kill his family and the people who appointed him and those of you who failed to discipline him, rightfully so.

Now, the Defendant believes himself to be very clever. No two ways about that. He thinks he's found a wrinkle in the law. He thinks if he puts his threats into this "third person", *Oh, somebody is gonna do my dirty deed for me*, that he's somehow insulated himself.

Ladies and gentlemen, you decide whether or not this was a threat, whether or not the Defendant intended it to be communicated as a threat.

Not him. He can play his clever games, his legal research and say, *Aha, I have found my escape hatch.*

But guess what? You decide what's true and what's not true, and you decide whether or not when the Defendant wrote these words, he was intending them to be threatening, whether he was intending the recipient to view them as a threat on their life.

It's not the Defendant's interpretation. It's not the Defendant's preferred idea of how you should receive this that carries the day. It's the evidence itself, when you read those words and you decide what his actual intent was when he wrote them.

The end of that letter says:

> Cramer must be disbarred and not allowed to practice law. If he is allowed to continue, there's going to be problems. Got it?
>
> PS: I won't kill him. I'll just let others do it. He needs to go.

Again, the Defendant thinks he is being cute and clever, saying, *Not me. I'm not gonna kill him. Somebody else.*

But you decide whether or not that's a threat on the lives of David Cramer and Newton Knowles, not the Defendant. Not the Defendant's cute and clever idea about how he is going to escape responsibility for making a criminal threat.

The Defendant gave us his intent, across the board. Admitted to it on cross-examination:

He wanted Watson to return his car. He wanted Knowles to discipline Cramer. He wanted the judges to recuse themselves from his cases, and he wanted to exact revenge on his perceived enemies.

That's what he wanted. Plain as day. He doesn't really make any bones about what he wanted. He tries to play fast and loose and cute and clever with what he perceives as a direct or an indirect threat, but he makes no bones about what he really wanted in this case.

Ladies and gentlemen, there's really only one issue in dispute in this case:

Was the Defendant really threatening these people?

He says he wasn't. He says he conditioned all of his threats sufficiently that these aren't real threats. These don't count. I found a loophole in the law. Yes, they perceived them as threats, but, nope I found a loophole. That's his theory of this case, ladies and gentlemen.

When he sits up there and he tells you that he's not guilty and he cannot possibly take responsibility for anything he didn't do, what he's telling you is, *I found a loophole. I found a way to scare people to death. I found a way to threaten to kill them. I found a way to try to manipulate them into*

doing what I want, without actually violating the law that says you're not allowed to threaten people's lives.

Ladies and gentlemen, it's not his interpretation of what he did that counts. It's yours. It's yours.

Did the Defendant intend to threaten these people when he made these statements? It's really the question.

Did he intend that they perceive these things as threats when he made these statements? That's your question.

It's really simple. It's really simple. As cute and as clever as he'd like to think he is, that was his only purpose and his only intent, to intimidate people with threats. It's his only move. Only move. One-trick pony.

Thank you, ladies and gentlemen.

THE COURT: Thank you, Mr. Gomes.

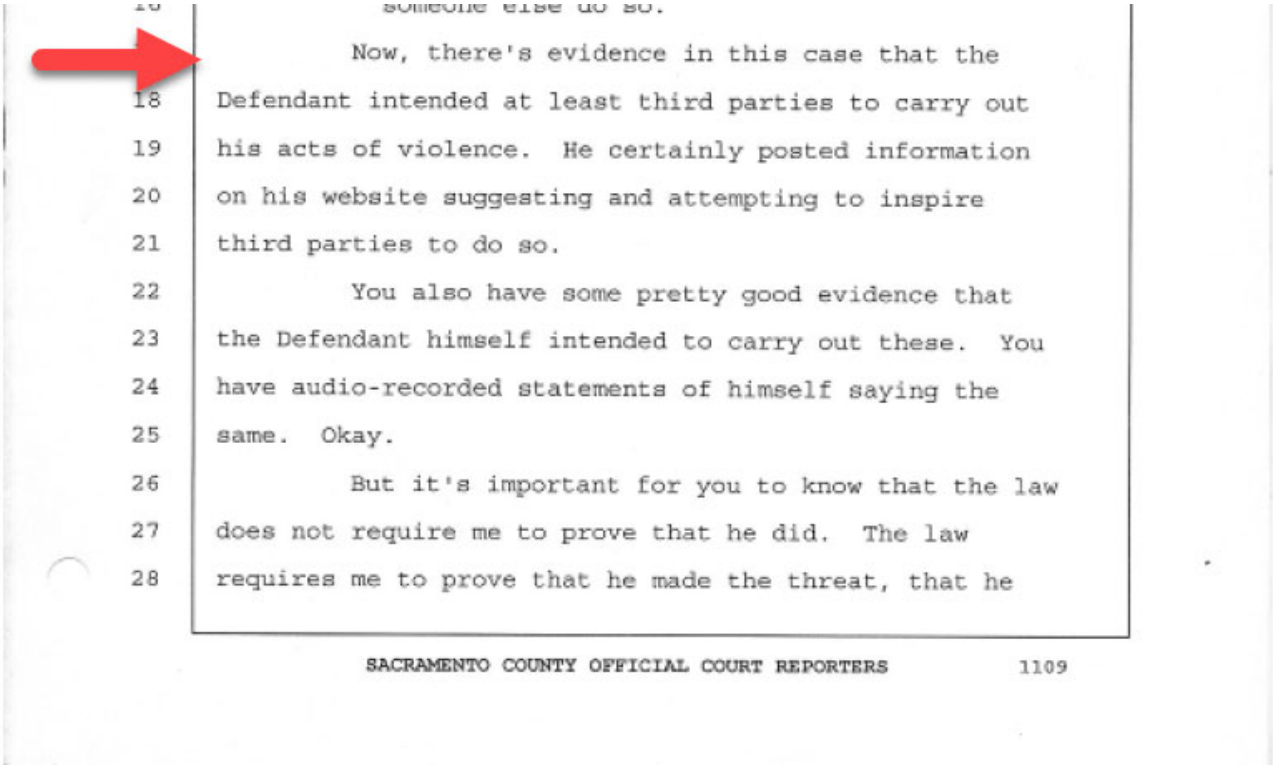
Mr. Miller?

MR. MILLER: May I have a moment to move the podium?

THE COURT: Sure.

(Pause.)

MR. MILLER: Perception, common sense and opinions. It's how the defense started this case, and it's how we're gonna finish this case. It hasn't changed a bit. Nothing much has changed a bit. The People's theory of the case remains constant: My client



someone else do so.

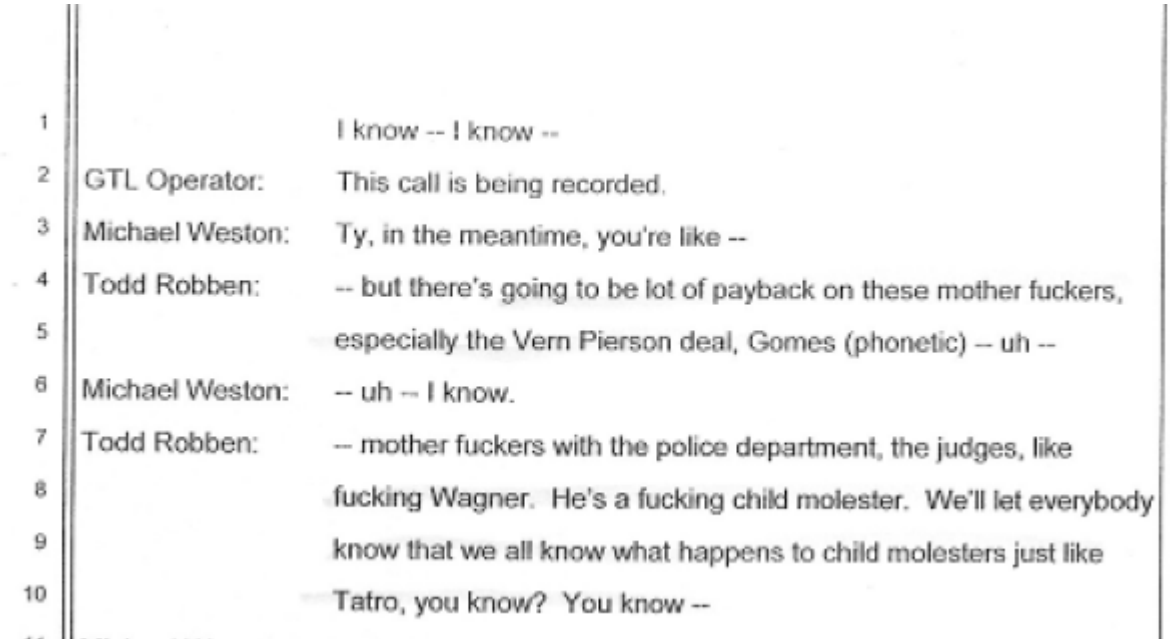
Now, there's evidence in this case that the Defendant intended at least third parties to carry out his acts of violence. He certainly posted information on his website suggesting and attempting to inspire third parties to do so.

You also have some pretty good evidence that the Defendant himself intended to carry out these. You have audio-recorded statements of himself saying the same. Okay.

But it's important for you to know that the law does not require me to prove that he did. The law requires me to prove that he made the threat, that he

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS 1109

The Petitioner did state "there's going to be a lot of payback on these mother fuckers, especially …Vern Pierson …[Dale] Gomes…." And here we have another conflict-of-interest where D.A. Vern Pierson and his D.D.A.. Dale Gomes are going to be paid back by this Petitioner. It does not say this Petitioner is going to kill them. Indeed, this Petition has big plans to remove D.A.. Vern Pierson and now, of all things, former DDA Dale Gomes who is now criminal defense attorney! – Petitioner will do everything possible to remove these criminals from ever practicing law. In fact, Petitioner will seek criminal charges utilizing the civil grand jury and the federal government for violations of, *inter alia*, 18 U.S.C. 241 & 241, conspiracy, perjury, RICO, etc.



1		I know -- I know --
2	GTL Operator:	This call is being recorded.
3	Michael Weston:	Ty, in the meantime, you're like --
4	Todd Robben:	-- but there's going to be lot of payback on these mother fuckers,
5		especially the Vern Pierson deal, Gomes (phonetic) -- uh --
6	Michael Weston:	-- uh -- I know.
7	Todd Robben:	-- mother fuckers with the police department, the judges, like
8		fucking Wagner. He's a fucking child molester. We'll let everybody
9		know that we all know what happens to child molesters just like
10		Tatro, you know? You know --

PENAL CODES 71, 140(a) & 422 ARE UNCONSTITUTIONAL

The recent U.S. Supreme Court case *Elonis v. US, 135 S. Ct. 2001 - Supreme Court 2015:*

> **This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal."** *Id.,* at 252, 72 S.Ct. 240. As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.,* at 250, 72 S.Ct. 240. **The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea,* scienter, malice aforethought, guilty knowledge, and the like**. *Id.,* at 252, 72 S.Ct. 240; 1 W. LaFave, Substantive Criminal Law § 5.1, pp. 332-333 (2d ed. 2003). **Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime."** *United States v. Balint,* 258 U.S. 250, 251, 42 S.Ct. 301, 66 L.Ed. 604 (1922). **We therefore generally "interpret[] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them."** *United States v. X-Citement Video, Inc.,* 513 U.S. 64, 70, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994).
>
> This is not to say that a defendant must know that his conduct is illegal before he may be found guilty. The familiar maxim "ignorance of the law is no excuse" typically

holds true. Instead, our cases have explained that a defendant generally must "know the facts that make his conduct fit the definition of the offense," *Staples v. United States*, 511 U.S. 600, 608, n. 3, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994), even if he does not know that those facts give rise to a crime.

Section 875(c), as noted, **requires proof that a communication was transmitted and that it contained a threat.** The "presumption in favor of a scienter requirement should apply to *each* of the statutory elements that criminalize otherwise innocent conduct." *X-Citement Video*, 513 U.S., at 72, 115 S.Ct. 464 (emphasis added). The parties agree that a defendant under Section 875(c) must know that he is transmitting a communication. **But communicating *something* is not what makes the conduct "wrongful." Here "the crucial element separating legal innocence from wrongful conduct" is the threatening nature of the communication.** *Id.,* at *73, 115 S.Ct. 464*. **The mental state requirement must therefore apply to the fact that the communication contains a threat.**

Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person. Such a "reasonable person" standard is a familiar feature of civil liability in tort law, but is inconsistent with "the conventional requirement for criminal conduct—*awareness* of some wrongdoing." *Staples*, 511 U.S., at 606-607, 114 S.Ct. 1793 (quoting *United States v. Dotterweich*, 320 U.S. 277, 281, 64 S.Ct. 134, 88 L.Ed. 48 (1943); emphasis added). Having liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," *Jeffries*, 692 F.3d, at 484 (Sutton, J., *dubitante*), and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes," *Rogers v. United States*, 422 U.S. 35, 47, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975) (Marshall, J., concurring) (citing *Morissette*, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288). See 1 C. Torcia, Wharton's Criminal Law § 27, pp. 171-172 (15th ed. 1993); *Cochran v. United States*, 157 U.S. 286, 294, 15 S.Ct. 628, 39 L.Ed. 704 (1895) (defendant could face "liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Under these principles, "what [Elonis] thinks" does matter. App. 286.

The Government is at pains to characterize its position as something other than a negligence standard, emphasizing that its approach would require proof that a defendant "comprehended [the] contents and context" of the communication. Brief for United States 29. The Government gives two examples of individuals who, in its view, would lack this necessary mental state—a "foreigner, ignorant of the English language," who would not know the meaning of the words at issue, or an individual mailing a sealed envelope without knowing its contents. *Ibid.* But the fact that the Government would require a defendant to actually know the words of and circumstances surrounding a communication does not amount to a

rejection of negligence. Criminal negligence standards often incorporate "the circumstances known" to a defendant. ALI, Model Penal Code § 2.02(2)(d) (1985). See *id.,* Comment 4, at 241; 1 LaFave, Substantive Criminal Law § 5.4, at 372-373. Courts then ask, however, whether a reasonable person equipped with that knowledge, not the actual defendant, would have recognized the harmfulness of his conduct. That is precisely the Government's position here: Elonis can be convicted, the Government contends, if he himself knew the contents and context of his posts, and a reasonable person would have recognized that the posts would be read as genuine threats. That is a negligence standard.

In support of its position the Government relies most heavily on *Hamling v. United States,* 418 U.S. 87, 94 S.Ct. 2887, 2012*2012 41 L.Ed.2d 590 (1974). In that case, the Court rejected the argument that individuals could be convicted of mailing obscene material only if they knew the "legal status of the materials" distributed. *Id.,* at 121, 94 S.Ct. 2887. Absolving a defendant of liability because he lacked the knowledge that the materials were legally obscene "would permit the defendant to avoid prosecution by simply claiming that he had not brushed up on the law." *Id.,* at 123, 94 S.Ct. 2887. It was instead enough for liability that "a defendant had knowledge of the contents of the materials he distributed, and that he knew the character and nature of the materials." *Ibid.*

This holding does not help the Government. In fact, the Court in *Hamling* approved a state court's conclusion that requiring a defendant to know the character of the material incorporated a "vital element of scienter" so that "not innocent but *calculated purveyance* of filth . . . is exorcised." *Id.,* at 122, 94 S.Ct. 2887 (quoting *Mishkin v. New York,* 383 U.S. 502, 510, 86 S.Ct. 958, 16 L.Ed.2d 56 (1966); internal quotation marks omitted). In this case, "calculated purveyance" of a threat would require that Elonis know the threatening nature of his communication. Put simply, the mental state requirement the Court approved in *Hamling* turns on whether a defendant knew the *character* of what was sent, not simply its contents and context.

Contrary to the dissent's suggestion, see *post,* at 2019-2020, 2022-2023 (opinion of THOMAS, J.), nothing in *Rosen v. United States,* 161 U.S. 29, 16 S.Ct. 434, 40 L.Ed. 606 (1896), undermines this reading. The defendant's contention in *Rosen* was that his indictment for mailing obscene material was invalid because it did not allege that he was aware of the contents of the mailing. *Id.,* at 31-33, 16 S.Ct. 434. That is not at issue here; there is no dispute that Elonis knew the words he communicated. The defendant also argued that he could not be convicted of mailing obscene material if he did not know that the material "could be properly or justly characterized as obscene." *Id.,* at 41, 16 S.Ct. 434. The Court correctly rejected this "ignorance of the law" defense; no such contention is at issue here. See *supra,* at 2009.

* * *

In light of the foregoing, **Elonis's conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding "took deep and early root in American soil" and Congress left it intact here: Under Section 875(c), "wrongdoing must be conscious to be criminal."** *Morissette,* 342 U.S., at 252, 72 S.Ct. 240.

There is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. See Tr. of Oral Arg. 25, 56. In response to a question at oral argument, Elonis stated that a finding of recklessness would not be sufficient. See *id.,* at 8-9. Neither Elonis nor the Government has briefed or argued that point, and we accordingly decline to address it. See *Department of Treasury, IRS v. FLRA,* 494 U.S. 922, 933, 110 S.Ct. 1623, 108 L.Ed.2d 914 (1990) (this Court is "poorly situated" to address an argument the Court of Appeals did not consider, the parties did not brief, and counsel addressed in "only the most cursory fashion at oral argument"). Given our disposition, it is not necessary to consider any First Amendment issues.

2013*2013 Both Justice ALITO and Justice THOMAS complain about our not deciding whether recklessness suffices for liability under Section 875(c). *Post,* at 2013 - 2014 (ALITO, J., concurring in part and dissenting in part); *post,* at 2018 - 2019 (opinion of THOMAS, J.). Justice ALITO contends that each party "argued" this issue, *post,* at 2014, but they did not address it at all until oral argument, and even then only briefly. See Tr. of Oral Arg. at 8, 38-39.

Justice ALITO also suggests that we have not clarified confusion in the lower courts. That is wrong. Our holding makes clear that negligence is not sufficient to support a conviction under Section 875(c), contrary to the view of nine Courts of Appeals. Pet. for Cert. 17. There was and is no circuit conflict over the question Justice ALITO and Justice THOMAS would have us decide—whether recklessness suffices for liability under Section 875(c). No Court of Appeals has even addressed that question. We think that is more than sufficient "justification," *post,* at 2014 (opinion of ALITO, J.), for us to decline to be the first appellate tribunal to do so.

Such prudence is nothing new. See *United States v. Bailey,* 444 U.S. 394, 407, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980) (declining to decide whether mental state of recklessness or negligence could suffice for criminal liability under 18 U.S.C. §

751, even though a "court may someday confront a case" presenting issue); *Ginsberg v. New York,* 390 U.S. 629, 644-645, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968) (rejecting defendant's challenge to obscenity law "makes it unnecessary for us to define further today `what sort of mental element is requisite to a constitutionally permissible prosecution'"); *Smith v. California,* 361 U.S. 147, 154, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959) (overturning conviction because lower court did not require any mental element under statute, but noting that "[w]e need not and most definitely do not pass today on what sort of mental element is requisite to a constitutionally permissible prosecution"); cf. *Gulf Oil Co. v. Bernard,* 452 U.S. 89, 103-104, 101 S.Ct. 2193, 68 L.Ed.2d 693 (1981) (finding a lower court's order impermissible under the First Amendment but not deciding "what standards are mandated by the First Amendment in this kind of case").

We may be "capable of deciding the recklessness issue," *post,* at 2014 (opinion of ALITO, J.), but following our usual practice of awaiting a decision below and hearing from the parties would help ensure that we decide it correctly.

The judgment of the United States Court of Appeals for the Third Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

In Latter-Singh v. Holder, infra below, the Ninth Circuit Court of Appeal affirms a conviction under § 422 requires both proof of the "specific intent to injure"

Latter-Singh v. Holder, 668 F. 3d 1156 - Court of Appeals, 9th Circuit 2012:

A conviction under § 422 requires both proof of the "specific intent to injure" required of crimes involving moral turpitude as well as proof of a threat of "death[] or serious bodily injury" made with the specific intent that the victim believe that the threat will be carried out. Id.; see also Cal. Penal Code § 422. The crime threatened, therefore, would, if carried out, be a crime of moral turpitude under our case law.

Second, § 422 criminalizes only that conduct which results in substantial harm by being "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat," as to "caus[e] the threatened person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety." **Cal. Penal Code § 422. The statute does not**

criminalize "emotional outbursts" or "mere angry utterances or ranting soliloquies, however violent," but rather proscribes a narrow category of speech that "instill[s] fear in others." In re Ryan D., 100 Cal.App.4th 854, 123 Cal.Rptr.2d 193, 198 (2002) (internal quotation marks omitted); see also People v. Wilson, 186 Cal. App.4th 789, 112 Cal.Rptr.3d 542, 555 (2010) **("[A] criminal threat is a specific and narrow class of communication, and the expression of an intent to inflict serious evil upon another person."** (internal quotation marks omitted)). Compare People v. Fierro, 180 Cal.App.4th 1342, 103 Cal.Rptr.3d 858, 862-63 (2010) (internal quotation marks omitted) (finding that substantial evidence supported jury's finding of reasonable, sustained fear where victim testified that threats caused him to fear for his safety for fifteen minutes), with In re Ricky T., 87 Cal.App.4th 1132, 105 Cal.Rptr.2d 165, 170 (2001) (finding no sustained fear, and therefore no violation of § 422, where a student threatened to "get" a teacher, but teacher sent student to the school office and did not report incident until the next day). The crime at issue in Fernandez-Ruiz did not have a similar requirement that the person threatened be in sustained fear of immediate danger to his or his family's safety.

Finally, the mens rea required by § 422 constitutes the evil intent required to render conduct morally turpitudinous. The BIA has held, in the context of a criminal stalking statute, that the intentional transmission of a "threat to kill another or inflict physical injury against the victim," such as the conduct criminalized by § 422, is "evidence of a vicious motive or a corrupt mind." In re Ajami, 22 I. & N. Dec. at 952 (reviewing case law and concluding that "threatening behavior can be an element of a crime involving moral turpitude" (quotation marks omitted)).[2] To reach this conclusion, the BIA cited previous opinions in which it found that intentionally threatening behavior indicated a crime involving moral turpitude. Id. (citing, inter alia, In re F__, 3 I. & N. Dec. 361 (BIA 1949) (involving the mailing of menacing letters that threatened violence to the recipient)).

The BIA is entitled to place great weight on the presence or absence of a mens rea element when determining whether a crime involves moral turpitude. See Marmolejo-Campos, 558 F.3d at 916 1163*1163 (affirming BIA decision where, "after assessing the statutory definition and the nature of the crime, the BIA concluded that given the mens rea involved, the crime was one of moral turpitude") (citation omitted) (internal quotation marks omitted). Section 422 requires not only that a person threaten death or great bodily harm, but also that such threats be made both "willfully" and "with the specific intent that the statement ... be taken as a threat." Cal. Penal Code § 422; see Wilson, 112 Cal.Rptr.3d at 562; see also Rosales-Rosales, 347 F.3d at 717 **("[T]he mens rea required by [§ 422] — willfulness — is volitional in nature.").** The intent to instill great fear of serious bodily injury or death in another constitutes the "vicious motive or corrupt mind" demonstrative of a crime involving moral turpitude. As such, we conclude that § 422 is categorically a crime involving moral turpitude.

In the recent U.S. Supreme Court case *Perez v. Florida, 137 S.Ct.853, 855 (2017)* (Sotomayor, J., concurring in denial of petition for writ of certiorari) **("Together, Watts and Black make clear that to sustain a threat conviction without encroaching upon the First Amendment, States must prove more than the mere utterance of threatening words—some level of intent is required.... These two cases strongly suggest that it is not enough that a reasonable person might have understood the words as a threat—a jury must find that the speaker actually intended to convey a threat.").**

Penal Code Section 71 is a specific intent crime. Pranks, misunderstandings and insane threats are not covered by statute. The totality of the circumstances surrounding the alleged threat should be closely examined, and all percipient witnesses should be expeditiously interviewed. Because the offense is a "specific intent" crime, evidence of voluntary intoxication or mental impairment may be considered when determining the suspect's intent.

There was no reasonable prospect that the threat could be carried out. For example, the case fails if the accused wrote an offensive letter interpreted by the recipient as a threat. Based on the totality of the circumstances, however, the recipient had no reasonable belief that the outlandish threats would ever be carried out. See *People v. Hopkins, 149 Cal. App. 3d 36 - Cal: Court of Appeal, 1st Appellate Dist., 2nd Div. 1983*

In section 71 the proscribed act is the threat and the additional consequence is the interference with the official's duties. From the plain language of the statute, it is clear that section 71 is a specific intent crime, thereby **excluding pranks, misunderstandings and insane threats**. This Petitioner's subjective writings were not crime specific. The "pretext" call the prosecution relies on is a violation of the California Privacy law and federal laws as explained later in this pleading. Petitioner's letter to Mr. Watson and Mr. Cramer was a result of being put into an insane situation as described in this petitioner (being continually wrongfully jailed, pit into solitary confinement, having jail food poisoned, the loss of a job, two homes, a family with a young son, all saving being depleted to the point of being driven homeless over a series a government retaliation schemes) For the record, Petitioner won

his appeal on the driving on suspended license and the City of South Lake Tahoe owes this Petitioner for his automobile …and the City, County & State and various individuals owe this Petitioner for his time in jail, plus damages in excess of $1,000,000.00 per day plus interest he was incarcerated and remains unpaid… Petitioner has started the process of commercial liens against said debtors and their assets. What could have been resolved very easily in 2016 is now a major situation that will bring national attention to the corruption in El Dorado, Co. CA. (and Carson City, NV).

True threats do not encompass political hyperbole and statements uttered in jest like "the first thing we do is kill all the lawyers" . See *Watts v. United States 394 U.S. 705 (1969).* Said statements were uttered out of frustration by the years of insanity inflected upon this Petitioner which has been explained

Count V fails because Petitioner did not threaten Newton Knowles of the State Bar of California pursuant to penal code 71. Mr. Knowles did not testify at the grand jury, instead his manager Mark Torres-Gil testified. Petitioner did not even know who Newton Knowles was and there is no true threat made towards Mr. Knowles nor was there anything to influence (to do, or refrain from doing, any act in the performance of his duties) since Mr. Knowles had already denied the bar complaint against David Cramer. Any alleged threat was not made to Mr. Knowles since Petitioner did not even know who he was and there was no intent by the Petitioner to make a threat to Mr. Knowles. Any alleged threat was not a "true threat"

In *NAACP v. Claiborne Hardware Co., 458 US 886 - Supreme Court 1982* "**Speech does not lose its protected character, however, simply because it may embarrass others or coerce them into action. As Justice Rutledge, in describing the protection afforded by the First Amendment, explained: "It extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. `Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts."** *Thomas v. Collins, 323 U. S. 516, 537*."

The following exhibit shows that their decision to investigate David Cramer was denied and Petitioner was expressing his jest, frustration, angry utterances & ranting soliloquies etc. rather than threatening Mr. Knowles with violence to perform an act**.** **"[S]ection 422 does not punish such things as `mere angry utterances or ranting soliloquies, however violent.'** (*People v. Teal (1998) 61 Cal.App.4th 277, 281 [71 Cal.Rptr.2d 644].)" (In re Ryan D. (2002) 100 Cal.App.4th 854, 861.)* The same would hold for penal code section 71.

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

We sent him a letter on or about November 19th of 2016 explaining that we were keeping this complaint against Mr. Cramer closed and explaining the reasons why we were keeping his complaint against Mr. Cramer closed. And subsequently he filed this petition to the Supreme Court.

Q And was it within your power though when you received this petition from the Supreme Court to change your mind?

A Not at this point. It was out -- once he filed with the Supreme Court it was in the Supreme Court's hands.

Q So only they could change the decision?

A Only they could change it at that point.

Q Okay. But if they directed you to initiate an investigation it would have been done?

A Yes, sir.

Q Did you or any other members of your office or did any -- I changed my mind about that question.

A If you want, there were other things besides calling law enforcement. I don't know if this is helpful or not, but in addition to notifying law enforcement and speaking to an investigator about this matter I -- we also put Mr. Robben on what we call a watch list at the State Bar.

Q What does that mean?

A The watch list, I reported this to our director who handles security at the State Bar north and south and asked that -- the watch list is in effect a higher level of scrutiny. We put his name on a special list. Security guards have his name, his photo if possible, and they keep a special eye out in case he should show up at the building. And

they couldn't find anything to connect Mr. Robben.

Judge Tatro recused himself. Said he couldn't be fair.

Now, that's a statement of personal feelings of bias, and I think you are allowed to consider that when considering his testimony.

I suspected. I had a suspicion, and you were wrong. Suspicions don't count.

How about Mr. Knowles? I still contend Mr. Knowles was not the intended recipient of the letter. I will argue that to you. It went to the California Supreme Court. Mr. Knowles already told us, *I can't discipline anybody. It's the California Supreme Court.*

And that's where the letter went.

Now, it filtered its way back down and through Mr. Knowles. I agree with that, but the question is was he the intended recipient? Or was the entire State Bar?

I mean, it could have named a thousand people. No, no.

Mr. Knowles took it as a threat to him. Well, that's his perception. Remember where we started off by talking about perception?

Ms. Webster, she came in. Very nice lady. The voter registrar. 24 signatures. Seemed to be a big deal.

Only 24 people signed a petition? No, she couldn't say that. She said only 24 signed the initial

Regarding count I, there was no subjective true threat made or communicated to Shannon Laney, of any immediate threat of harm, GBI or death any speech was protected 1st amendment speech. There was no unequivocal, unconditional, immediate, and specific threat in relationship to both count I and II (penal code 422 & 140(a)) (criminal threats and Threatening a witness). Shannon Laney and Judge Steven Bailey did not attend the trial and therefore precluded this Petitioner from cross examination (confrontation clause) of U.S. 6th [62] and 14th amendments as well as Cal. Constitution Art. 1, Sec. 15[63]

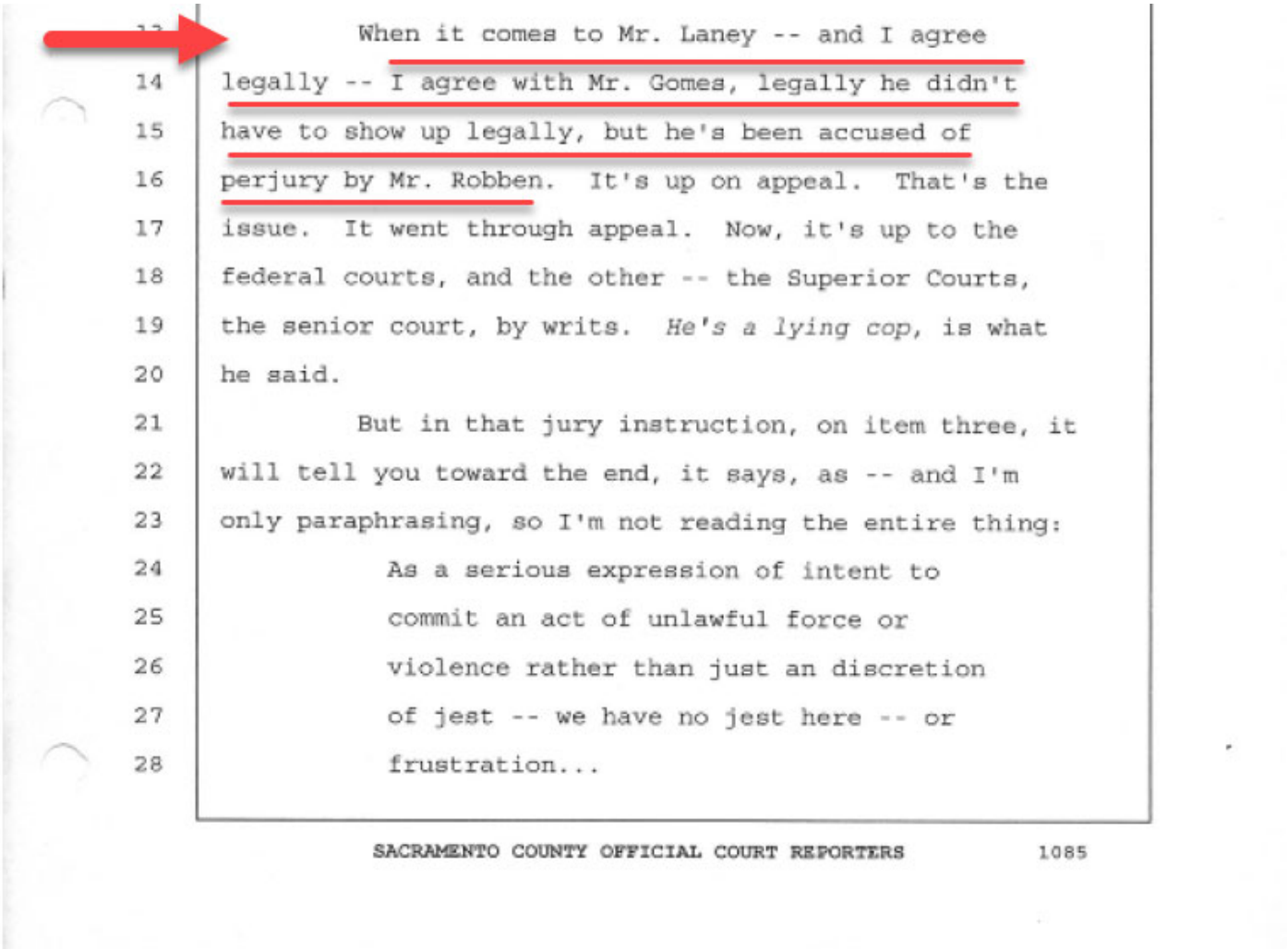
"In all criminal prosecutions the accused shall enjoy the right …to be confronted with the witnesses against him" *Pointer v. Texas 380 US 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 - Supreme Court, 1965; Davis v. Alaska 415 US 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 - Supreme Court, 1974).* **Petition had no prior opportunity to confront the witness, this case did not have a preliminary hearing, and instead, a grand jury indictment was used. No exception exists.** In: *United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984),* No specific showing of prejudice was required in *Davis v. Alaska,supra,* **because the petitioner had been "denied the right of effective cross-examination" which " `would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.' "** Id., at 318 (citing *Smith v. Illinois, 390 U. S. 129, 131 (1968),* and *Brookhart v. Janis, 384 U. S. 1, 3 (1966)).* **Judge Steven Bailey did not even attend the grand jury. Since defendant was indicted by the grand jury, he had no opportunity to confront as he would have had under the criminal complaint -- preliminary hearing route.** (Cf. *California v. Green, 399 U.S. 149 [26 L. Ed. 2d 489, 90 S. Ct. 1930].*) Trial counsel Russell Miller was IAC/CDC for

---

62 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation**; to be confronted with the witnesses against him;** to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

63 SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, **and to be confronted with the witnesses against the defendant.** The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel. Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

failing to object and actually allowed this denial of cross examination to happen. Appellate counsel was IAAC/CDC for failing to argue the IAC/CDC of trial counsel asserted above. Petitioner was made prejudiced - had Russell Miller objected, three counts (PC 664/71, PC 140(a) and PC 422) would have been dismissed at or before trial on a PV 995 motion or non statutory motion to dismiss. Had appellate counsel Robert L.S. Angres argued the IAC/CDC of trial counsel, said convictions on those counts would have been set aside. Mr. Angres was IAAC/CDC for his failure(s).



When it comes to Mr. Laney -- and I agree legally -- I agree with Mr. Gomes, legally he didn't have to show up legally, but he's been accused of perjury by Mr. Robben. It's up on appeal. That's the issue. It went through appeal. Now, it's up to the federal courts, and the other -- the Superior Courts, the senior court, by writs. *He's a lying cop*, is what he said.

But in that jury instruction, on item three, it will tell you toward the end, it says, as -- and I'm only paraphrasing, so I'm not reading the entire thing:

As a serious expression of intent to commit an act of unlawful force or violence rather than just an discretion of jest -- we have no jest here -- or frustration...

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS 1085

Shannon Laney's perjury is showcased later in this pleading under the case # S14CRM0465 heading. Incidentally, **criticizing police officers, "even with profanity, (Fuck You) is protected speech."** *Thurairajah v. City of Fort Smith, Arkansas, 925 F.3d 979, 985 (8th Cir. 2019).* Petitioner did file an Internal Affairs complaints against Shannon Laney and will petition for a complete record pursuant to the California Public Records Act and Senate Bill 1421.[64] **Woman Jailed for Saying 'Fuck the Police' Wins $100,000 Settlement**.[65]

In his concurring opinion in *Lewis v. City of New Orleans (1974) 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214*, Justice Powell noted "words may or may not be 'fighting words,' depending upon the circumstances of their utterance. It is unlikely, for example, that the words said to have been used here would have precipitated a physical confrontation between the middle-aged woman who spoke them and the police officer in whose presence they were uttered. The words may well have conveyed anger and frustration without provoking a violent reaction from the officer. "**Moreover, . a properly trained officer may reasonably be expected to 'exercise a higher degree of restraint' than the average citizen, and thus be less likely to respond belligerently to 'fighting words.' "** (*Id. at p. 135, 94 S.Ct. at 973 (conc. opn. of Powell, J.*).)

The reasoning in *Lewis v. City of New Orleans, supra* was extended to a store manager in *State v. Baccala, 163 A. 3d 1 - Conn: Supreme Court 2017 cert. denied, ___ U.S. ___, 138 S. Ct. 510, 199 L. Ed. 2d 408 (2017*); which reversed a "Store managers are routinely confronted by disappointed, frustrated customers who express themselves in angry terms, although not always as crude as those used by [Baccala]," **The defendant [Baccala] became angry and then proceeded to loudly direct crude and angry comments at F, including "fat ugly bitch, "cunt," and "fuck you, you're not a manager,"** while making gestures with a cane that she was carrying. The case was resolve in Baccala's favor despite the use of crude language.

In this present case, the U.S. Supreme court has already stated police are subjected to "fighting words" and they have been properly trained to exercise a higher degree of

---

64 https://www.npr.org/2019/03/27/707358137/californias-new-police-transparency-law-shows-how-officers-are disciplined

65 https://reason.com/2014/12/15/woman-jailed-for-saying-fuck-the-police/

restraint …less likely to respond to belligerent words. **The other "victims" in this present case in addition to a cop (Laney), there are three lawyers (Cramer, Knowles & Watson) with Mr. Knowles being a State Bar employee who handles disgruntled persons complaints against lawyers, and three judges (Bailey, Kingsbury & Wagoner). The lawyers and judges, like a police officer, are subjected to "fighting words" and they have been properly trained to exercise a higher degree of restraint …less likely to respond to belligerent words just like a store manager in *State v. Baccala, supra.***

In *City of Houston v. Hill (1987) 482 U.S. 451, 107 S.Ct. 2502, 96 L.Ed.2d 398*, the United States Supreme Court recognized Justice Powell's suggestion that **"the 'fighting words' exception . might require a narrower application in cases involving words addressed to a police officer . ,"** and observed that **"[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."** (*Id. at p. 462–463, 107 S.Ct. at 2510.*)

"Although freedom of speech is not limited to political expression or comment on public affairs." See *Olivia N. v. National Broadcasting Co., 126 Cal. App. 3d 488 - Cal: Court of Appeal, 1st Appellate Dist., 4th Div. 1981* citing *Time, Inc. v. Hill (1967) 385 U.S. 374, 388 [17 L.Ed.2d 456, 467, 87 S.Ct. 534*].

In all counts, Petitioner's speech addressed a "public concern" such as corruption if the police department, corruption in the courts with judges, judges involved in pedophilia, corruption with the State bar failure to discipline court appointed lawyers who violate ethical professional codes of regulation, a court appointed lawyer being paid for with public funds who violated ethical duties to file an appeal and maintain communication with his "client", a city attorney who violated ethical duties to return an unlawfully impounded automobile and pay compensation for a tort claim. These issues present concerns to the community at large since all the speech was directed a individuals working in a public capacity – if it can happen to the Petitioner, it can happen to another citizen, or indigent defendant. This Petitioner is a warrior who stood up to pedophile judges and corruption …and he will not stop until there has been justice and the reparations are paid in full.

“The First Amendment protects those engaged in speech which can "be fairly considered as relating to any matter of political, social, or other concern to the community." *Snyder v. Phelps,* 562 U.S. 443, 453 (2011); citing *Connick v. Myers,* 461 U.S. 138, 146 (1983). **Even when speech is arguably "inappropriate or controversial . . . [it] is irrelevant to the question [of] whether it deals with a matter of public concern."** *Snyder v. Phelps, supra*; citing *Rankin v. McPherson,* 483 U.S. 378, 387 (1987). **Deciding whether speech is of public or private concern requires the Court to examine the "content, form, and context" of the speech throughout the "whole record."** *Snyder v. Phelps, supra*. Additionally, the Fifth Circuit has held that **"where speech `complained of misconduct within the police department', it should be classified as speech addressing a matter of public concern."** *Thompson v. City of Starkville, Miss.,* 901 F.2d 456, 463 (5th Cir. 1990); citing *Brawner v. City of Richardson, 855 F.2d 187, 192 (5th Cir. 1988).* Specifically, this district has said **"speech complaining of misconduct within [a public entity] is speech addressing a matter of public concern."** *Scott v. Corrections Corp. of America, 2014 WL 4988383, at *9 (N.D. Miss. 2014);* citing *Alexander v. Eeds, 392 F.3d 138, 142 (5th Cir. 2004).”* In *Roe v. City and County of San Francisco, 109 F. 3d 578 - Court of Appeals, 9th Circuit 1997* **“This standard does not require the communication to be of global importance or "vital to the survival of Western civilization." To deserve First Amendment protection, it is sufficient that the speech concern matters in which even a relatively small segment of the general public might be interested.** *Dishnow v. School Dist., 77 F.3d 194, 197 (7th Cir.1996).* **For this reason, public employee speech reported by the press almost by definition involves matters "of public concern."** *Rode v. Dellarciprete, 845 F.2d 1195, 1202 (3d Cir.1988).* **"Speech that can fairly be considered as relating to any matter of political, social, or other concern to the community is constitutionally protected."** *Gillette v. Delmore,* 886 F.2d 1194, 1197 (9th Cir.1989).”

Songs by rap artists NWA and Ice-T survived 1st amendment speech scrutiny:

"Fuck The Police" by N.W.A

[MC Ren as Court Officer]
Right about now, N.W.A. court is in full effect

Judge Dre presiding
In the case of N.W.A. vs. the Police Department;
prosecuting attorneys are MC Ren, Ice Cube, and Eazy-motherfucking-E

[Dr. Dre as The Judge]
Order, order, order
Ice Cube, take the motherfucking stand
Do you swear to tell the truth, the whole truth and nothing but the truth to help your black ass?

[Ice Cube as Witness]
You goddamn right!

[Dr. Dre]
Well won't you tell everybody what the fuck you gotta say?

[Ice Cube]
Fuck the police coming straight from the underground
A young nigga got it bad 'cause I'm brown
And not the other color so police think
they have the authority to kill a minority
Fuck that shit, 'cause I ain't the one
for a punk motherfucker with a badge and a gun
to be beating on, and thrown in jail
We can go toe to toe in the middle of a cell
Fucking with me 'cause I'm a teenager
with a little bit of gold and a pager
Searching my car, looking for the product
Thinking every nigga is selling narcotics
You'd rather see, me in the pen
than me and Lorenzo rolling in a Benz-o
Beat a police out of shape
and when I'm finished, bring the yellow tape
To tape off the scene of the slaughter
Still getting swoll off bread and water
I don't know if they fags or what
Search a nigga down, and grabbing his nuts
And on the other hand, without a gun they can't get none

But don't let it be a black and a white one
'Cause they'll slam ya down to the street top
Black police showing out for the white cop
Ice Cube will swarm
on any motherfucker in a blue uniform
Just 'cause I'm from, the CPT
Punk police are afraid of me!
HUH, a young nigga on the warpath
And when I'm finished, it's gonna be a bloodbath
of cops, dying in L.A.
Yo Dre, I got something to say

Fuck the police *[4x]*

Example of scene one

[Cop] Pull your goddamn ass over right now
[NWA] Aww shit, now what the fuck you pulling me over for?
[Cop] 'Cause I feel like it! Just sit your ass on the curb and shut the fuck up
[NWA] Man, fuck this shit
[Cop] Aight smartass, I'm taking your black ass to jail!

[Dr. Dre]
MC Ren, will you please give your testimony to the jury about this fucked-up incident?

[MC Ren]
Fuck the police and Ren said it with authority
because the niggas on the street is a majority
A gang is with whoever I'm stepping
and the motherfucking weapon is kept in
a stash box for the so-called law
Wishing Ren was a nigga that they never saw
Lights start flashing behind me
But they're scared of a nigga
so they mace me to blind me
But that shit don't work, I just laugh
because it gives em a hint, not to step in my path

For police, I'm saying, "Fuck you punk!"
Reading my rights and shit, it's all junk
Pulling out a silly club, so you stand
with a fake-ass badge and a gun in your hand
But take off the gun so you can see what's up
And we'll go at it punk, and I'mma fuck you up!
Make you think I'mma kick your ass
but drop your gat, and Ren's gonna blast
I'm sneaky as fuck when it comes to crime
But I'mma smoke 'em now and not next time
Smoke any motherfucker that sweats me
or any asshole that threatens me
I'm a sniper with a hell of a scope
Taking out a cop or two, they can't cope with me
The motherfucking villain that's mad
With potential to get bad as fuck
So I'mma turn it around
Put in my clip, yo, and this is the sound
Yeah, something like that
but it all depends on the size of the gat
Taking out a police, would make my day
But a nigga like Ren don't give a fuck to say

Fuck the police *[4x]*

[NWA] Yeah man, what you need?
[Cop] Police, open now
[NWA] Aww shit
[Cop] We have a warrant for Eazy-E's arrest
[Cop] Get down and put your hands up where I can see 'em
(Move motherfucker, move now!)
[NWA] What the fuck did I do, man what did I do?
[Cop] Just shut the fuck up and get your motherfucking ass on the floor (You heard the man, shut the fuck up!)
[NWA] But I didn't do shit
[Cop] Man just shut the fuck up!

[Dr. Dre]
Eazy-E, won't you step up to the stand and tell the jury how you

feel about this bullshit?

[Eazy-E]
I'm tired of the motherfucking jacking
Sweating my gang, while I'm chilling in the shack, and
shining the light in my face, and for what?
Maybe it's because I kick so much butt
I kick ass, or maybe 'cause I blast
on a stupid-ass nigga
when I'm playing with the trigger
of an Uzi or an AK
'Cause the police always got something stupid to say
They put out my picture with silence
'Cause my identity by itself causes violence
The E with the criminal behavior
Yeah, I'm a gangster, but still I got flavor
Without a gun and a badge, what do ya got?
A sucker in a uniform waiting to get shot
by me or another nigga
And with a gat it don't matter if he's smaller or bigger
(*[MC Ren:]* Size ain't shit, he's from the old school fool)
And as you all know, E's here to rule
Whenever I'm rolling, keep looking in the mirror
And ears on cue, yo, so I can hear a
dumb motherfucker with a gun
And if I'm rolling off the 8, he'll be the one
that I take out, and then get away
While I'm driving off laughing this is what I'll say

Fuck the police *[4x]*

The verdict

[Dre] The jury has found you guilty of being a redneck, white
bread, chickenshit motherfucker
[Cop] Wait, that's a lie! That's a goddamn lie!
[Dre] Get him out of here!
[Cop] I want justice!
[Dre] Get him the fuck out my face!

[Cop] I want justice!
[Dre] Out, right now!
[Cop] Fuck you, you black motherfuckers!

Fuck the police! *[3x]*

"Cop Killer" by Body Count (written by Ice-T)

Cop killer, yeah!

I got my black shirt on
I got my black gloves on
I got my ski mask on
This shit's been too long
I got my twelve gauge sawed off
I got my headlights turned off
I'm 'bout to bust some shots off
I'm 'bout to dust some cops off

I'm a cop killer, better you than me
Cop killer, fuck police brutality!
Cop killer, I know your family's grieving
(Fuck 'em!)
Cop killer, but tonight we get even, ha ha

I got my brain on hype
Tonight'll be your night
I got this long-assed knife
And your neck looks just right
My adrenaline's pumpin'
I got my stereo bumpin'
I'm 'bout to kill me somethin'
A pig stopped me for nuthin'!

Cop killer, better you than me
Cop killer, fuck police brutality!
Cop killer, I know your momma's grieving
(Fuck her!)
Cop killer, but tonight we get even, yeah!

Die, die, die, pig, die!

Fuck the police!
Fuck the police!
Fuck the police!
Fuck the police!

Fuck the police!
Fuck the police!
Fuck the police!
Fuck the police!
Yeah!

Cop killer, better you than me.
I'm a COP KILLER, fuck police brutality!
Cop killer, I know your family's grieving
(Fuck 'em!)
Cop killer, but tonight we get even, ha ha ha ha, yeah!

Fuck the police!
Fuck the police!
Fuck the police!
Fuck the police!

Fuck the police!
Fuck the police!
Fuck the police!
Fuck the police!
Break it down

Fuck the police, yeah!
Fuck the police, for Darryl Gates
Fuck the police, for Rodney King
Fuck the police, for my dead homies
Fuck the police, for your freedom
Fuck the police, don't be a pussy
Fuck the police, have some muthafuckin' courage
Fuck the police, sing along

Cop killer!
Cop killer!
Cop killer!
Cop killer!

Cop killer! Whaddyou wanna be when you grow up?
Cop killer! Good choice
Cop killer! I'm a muthafuckin'
Cop killer!

Cop killer, better you than me
Cop killer, fuck police brutality!
Cop killer, I know your momma's grieving
(Fuck her!)
Cop killer, but tonight we get even!

This Petitioner being an "Outlaw Blogger" on various popular anti-government corruption websites retains his U.S. 1st amendment protections for his blog posts. In *Obsidian Finance Group, LLC v. Cox, 740 F. 3d 1284* - Court of Appeals, 9th Circuit 2014 "**The protections of the First Amendment do not turn on whether the defendant was a trained journalist, formally affiliated with traditional news entities, engaged in conflict-of-interest disclosure, went beyond just assembling others' writings, or tried to get both sides of a story**. As the Supreme Court has accurately warned, a First Amendment distinction between the institutional press and other speakers is unworkable: **"With the advent of the Internet and the decline of print and broadcast media ... the line between the media and others who wish to comment on political and social issues becomes far more blurred."** *Citizens United, 558 U.S. at 352, 130 S.Ct. 876."*

Petitioner blogged under the *nom de guerre* of "Agent Provocateur" and "Nevada Watchdog". Petitioner's "outlaw blog" websites included "Fuck the police" and other artwork of the fuck the police and anti-police artistic genre. Petitioner's fair use of said artwork obtained from the public domain and the Petitioner's bold artistic modifications and enhancements to said artwork is protected by the U.S. first amendment along with his words and "poetry" related to the anti-corruption fuck the police genre.

In re Ryan D., 123 Cal. Rptr. 2d 193 - Cal: Court of Appeal, 3rd Appellate Dist. 2002:

> **Painters and poets ... have always had an equal license in bold invention." (Horace, Epistles, book III.) As an expression of an idea or intention, a painting—even a graphically violent painting—is necessarily ambiguous because it may use symbolism,** exaggeration, and make-believe. **The ambiguity may be resolved by the circumstances surrounding its presentation. However, to be punishable as a criminal threat, a painting that constitutes a "writing" within the meaning of the statutory scheme must fall into a narrow class of expression, i.e., it must constitute a threat to commit a crime that will result in death or great bodily injury; it must be made with the specific intent that it be taken as a threat; it must be so unequivocal, unconditional, immediate, and specific as to convey to the person threatened such a gravity of purpose and an immediate prospect of execution of the threat that it would cause a reasonable person to be in sustained fear for his or her safety or the safety of the person's immediate family; and it must cause the victim to experience such fear.**
>
> **As we shall explain, although the minor's painting was intemperate and demonstrated extremely poor judgment, the evidence fails to establish that the minor intended to convey a threat to the officer.** Moreover, under the circumstances in which it was presented, the painting did not convey a gravity of purpose and immediate prospect of the execution of a threat to commit a crime that would result in death or great bodily injury to the officer. Accordingly, we will reverse the order sustaining the charge of making a criminal threat.

NO MIRANDA RIGHTS WERE READ TO PETITIONER PRIOR TO QUESTIONING AND NO ALLEGED RAMEY WARRANT ISSUED PRIOR TO ARREST & QUESTIONING

The following exhibit is from the grand jury where Petitioner was interviewed by Bryan Payne Detective of the El Dorado Co. Sheriff Department. **Mr. Payne did not read any Miranda rights[66] to this Petitioner before being interviewed and the transcripts below show that a Ramsey warrant was allegedly issued for the arrest of Petitioner in June 2016. No Ramsey warrant exists in the record.**

[66] *Miranda v. Arizona 384 U.S. 436 (1966)*

The Petitioner was taken into custody on an investigative (Ramey) warrant (which is not even in the record), it is also not clear who signed said (missing) Ramey warrant since multiple judges are alleged to have signed it despite it not being in the record. Mr. Payne's interview was to inquire the Petitioner about alleged threats against the victims in case # P17CRF0114, and any information related to a arson and shooting incident against Carson City, Judge John Taro even though Petitioner had been fully cleared of any involvement). Since Petitioner was in custody, he was not free to leave the jail. This Miranda violation usurps Petitioner's 5th, 6th, and 14th U.S. Constitutional amendments and art I § 7 of the California constitution.

***People v. Massey*, 59 Cal. App. 3d 777 - Cal: Court of Appeal, 2nd Appellate Dist., 4th Div. 1976:**

Defendant was arrested, without a warrant, in his own home, on the basis of information given to the police by several persons. After his arrest, and while in custody, he was given his Miranda fn. 2 rights and confessed to the charged burglary. On this appeal, he contends: (1) that the arrest was unlawful because not based on probable cause; and (2) that a confession so obtained may be suppressed by a motion made under section 1538.5 of the Penal Code.

[1a] The theory of the defense is as follows: (1) under subdivision (a) of section 1538.5, the motion provided for by that section may be used "to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure"; (2) under People v. Ramey (1976) 16 Cal. 3d 263 [127 Cal. Rptr. 629, 545 P.2d 1333], "seizure," as used both in the state and federal Constitutions, includes seizures -- i.e., arrests -- of [59 Cal. App. 3d 780] persons as well as seizures of property. fn. 3 From those premises, defendant argues that a confession obtained as the result of an illegal arrest is suppressible under section 1538.5.

It is settled that physical evidence, secured after and as a result of an illegal arrest, can be suppressed by a motion under section 1538.5, as is suppressible physical evidence secured after and as a result of an entry not complying with section 844 or section 1531 of the Penal Code. However, the California cases are by no means explicit as to the application of those rules to a confession obtained after an illegal arrest or illegal entry.

Clearly, a confession obtained after an illegal arrest is suspect and a trial court must determine whether the arrest so affected the voluntariness of the confession as to render it inadmissible. And it is clear that a confession obtained after an illegal arrest must be held inadmissible if that issue is properly raised under

section 402 of the Evidence Code unless the evidence shows that it was not a fruit of the illegality.

In the case at bench, defendant's motion was entitled as one made under section 1538.5. At the hearing, counsel for defendant, after the trial court had indicated some doubt as to the propriety of relying on section 1538.5, stipulated that the motion before the court might be treated as one made under Evidence Code section 402. However, at the close of the hearing, the trial court announced that it treated the motion as made under section 1538.5 "so that it can be consistent with the pleadings."[2] Denial of a section 402 motion can be raised on an appeal from a judgment of guilty entered after a nonguilty plea; but such a denial cannot be raised after a plea of guilty, even though a certificate under section 1237.5 is secured, since the plea of guilty admits all matters essential to a conviction. [1b] Consequently, we treat the appeal before us, as did the trial court in the end, as involving the denial of a section 1538.5 motion, a matter admittedly appealable under subdivision (m) of section 1538.5 if that section was properly invoked.

The California authorities cited to us, and those which we have found, give no clear indication of the answer to the issue. [59 Cal. App. 3d 781] In People v. Superior Court (Keithley) (1975) 13 Cal. 3d 406 [118 Cal. Rptr. 617, 530 P.2d 585], **physical evidence had been seized after, and as the result of, a violation of Miranda; a 1538.5 motion was held to be an appropriate way of attacking the use of that evidence.** In People v. Superior Court (Mahle) (1970) 3 Cal. App. 3d 476 [83 Cal. Rptr. 771], a similar factual situation existed with the same result. In People v. Superior Court (Redd) (1969) 275 Cal. App. 2d 49 [79 Cal. Rptr. 704], there was no arrest, but a confession was a result of a violation of Miranda; the court held that the confession could not be suppressed by a 1538.5 motion, saying (at p. 52): **"It is sufficient for present purposes to hold, as we do, that Penal Code section 1538.5 as enacted is limited solely to questions involving searches and seizures and is inapplicable to the resolution of issues arising from challenged confessions or admissions, except those that constitute the fruit of a search and seizure. There being no contention, nor basis for a contention, that any search and seizure, legal or illegal, was involved in the instant action, the defendants' motion under section 1538.5 should have been denied in its entirety."** (Italics in original.)

In Kirby v. Superior Court (1970) 8 Cal. App. 3d 591 [87 Cal. Rptr. 577], this division of this court permitted the use of a 1538.5 motion to suppress evidence of physical things seen after an unlawful arrest. The case, however, involved a "search" and the opinion deals only with whether things seen, but not actually seized, were the kinds of "intangibles" referred to in section 1538.5. That case advances us one step toward our answer. We conclude that, under the reasoning of Kirby, **a confession is, also, an "intangible thing" within the meaning of section 1538.5.** But Kirby does not tell us whether a confession, obtained only after the kind of seizure involved in an arrest may be suppressed.

In Burrows v. Superior Court (1974) 13 Cal. 3d 238, 251 [118 Cal. Rptr. 166, 529 P.2d 590], police officers had made an unlawful search of defendant's office. Faced with incriminating evidence so found, defendant consented to a search of his car, where other evidence was found. The Supreme Court held that the consent, being a fruit of the original unlawful search, was ineffective to validate the search of the car. In People v. Clark (1969) 2 Cal. App. 3d 510 [82 Cal. Rptr. 682], a confession had followed an illegal arrest and a violation of Miranda. The appeal was on a certificate issued under section 1237.5, but the court assumed that the matter had properly been raised in the trial court by a 1538.5 motion. That case, apart from the assumption, is not helpful. [59 Cal. App. 3d 782] In People v. Coyle (1969) 2 Cal. App. 3d 60 [83 Cal. Rptr. 924], the court held that a 1538.5 motion was a proper way to attack the use by the People of a tape recording of a telephone conversation allegedly unlawfully obtained.

While no case squarely answers the question here before us, we conclude that the use of a 1538.5 motion was proper in the case at bench. **Where the evidence sought to be suppressed is physical evidence, seized or seen, the exclusionary rules serve to protect rights granted by the Fourth Amendment and its state counterpart. In order to protect those rights, Keithley, supra, 13 Cal.3d, and Mahle, supra, 3 Cal.App.3d, invoked the Miranda rule, a rule designed to protect rights granted by the Fifth Amendment and its California counterpart**.

An illegal arrest is a violation of the same Fourth Amendment rights as is a search or seizure of physical property. The rules excluding confessions exist for the same purpose as does Miranda -- namely, to protect Fifth Amendment rights.

We can see no reason why, if a violation of a Fifth Amendment right may be used to show a violation of Fourth Amendment rights, the converse should not be true. Since there was here a "seizure" and an "intangible" thing, we conclude that a Fourth Amendment violation of defendant's rights should permit him to contest the admissibility of a confession obtained as a result of that violation, in a proceeding falling within the literal language of section 1538.5.

Trial counsel Russell Miller was IAC/CDC for the failure to file a PC 1385.5 motion to suppress the unlawful U.S. 4th (and 5th) amendment violation (unlawful search & seizure) of the interview on grounds that said Ramsey warrant was never actually issued and no Miranda rights were given to this Petitioner by Bryan Payne or Bryan Kuhlmann or anyone else prior to questioning.

Trial counsel was IAC/CDC for not filing a PC 995 or 1385.5 motion or motion in limine since said evidence was inadmissible to the grand jury pursuant to PC 939.6(b) "Except as provided in subdivision (c), the grand jury shall not receive any evidence except that which would be admissible over objection at the trial of a criminal action, but the fact that evidence that would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury."

Appellate counsel was IAAC/CDC for failing to arguer these points. Had trial counsel made the proper motion, said evidence would have been inadmissible and the grand jury (and the trial jury) would not have decided to indict or convict. Also the cumulative effect of this error with the other errors would have led to the Petitioner not being indicted or convicted. Had appellate counsel made this argument, Petitioner's appeal would have reversed the conviction.

CA Penal Code § 939.6
(a) Subject to subdivision (b), in the investigation of a charge, the grand jury shall receive no other evidence than what is:

(1) Given by witnesses produced and sworn before the grand jury;

(2) Furnished by writings, material objects, or other things presented to the senses; or

(3) Contained in a deposition that is admissible under subdivision 3 of Section 686.

(b) Except as provided in subdivision (c), the grand jury shall not receive any evidence except that which would be admissible over objection at the trial of a criminal action, but the fact that evidence that would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.

(c) Notwithstanding Section 1200 of the Evidence Code, as to the evidence relating to the foundation for admissibility into evidence of documents, exhibits, records, and other items of physical evidence, the evidence to support the indictment may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statement of a declarant made out of court and offered for the truth of the matter asserted. Any law enforcement officer testifying as to a hearsay statement pursuant to this subdivision shall have either five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

The following testimony is from Bryan Kuhlmann:

MONDAY, SEPTEMBER 18, 2017, AFTERNOON SESSION

--oOo--

The matter of the People of the State of California versus Todd Christian Robben, Defendant, Case Number P17CRF0114, came on regularly this day before Honorable Steve White, Assigned Judge of the Superior Court of the State of California, for the County of El Dorado, Department 21 of Sacramento Superior Court.

The People were represented by Dale Gomes, Deputy District Attorney for the County of El Dorado.

The Defendant was represented by Russell Miller, Attorney at Law.

The following proceedings were then had:

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Please bring the jury in.

Parties and counsel are present.

(The following proceedings were then had in the presence of the jury.)

THE BAILIFF: Come to order. Department 21 is now in session.

THE COURT: Mr. Gomes?

MR. GOMES: Thank you, Your Honor.

Q (By MR. GOMES) Good afternoon, Investigator Kuhlmann. Just a couple of more things.

First of all, on June 15th, 2016, when the Defendant was found and arrested, was any of his property seized in conjunction with his arrest?

Q So why were there five officers?
A There was a -- first of all, there was all the threats out to various public officials.
Q Well --
A Second --
Q Go ahead.
A Second of all, I believe there was a Ramey warrant for those charges, for charges related to threats at the time. So it wasn't just the 14601.
Q You think there was?
A Well, there was.
Q Okay. So there -- was it a warrant for what people saw or you investigated as to the threats?
A Yes, sir.
Q And were they based on the same pictures and information that you had garnered and we showed you in People's 1 through 10?
A They were related to the Tom Watson e-mail.
Q Now, a Ramey warrant is signed by a judge, right?
A Yes, sir.
Q What judge signed the warrant?
A I believe it was Judge Bassinger.
Q Okay. During your direct testimony, you said -- you had read -- there is something about a blood bath; Mr. Robben was fearful that there would be a blood bath; is that right?
A Did I testify to that --

Bryan Payne Detective with El Dorado Co. Sheriff Department:

somebody put a pipe bomb on his front door?
A It was not a pipe bomb. It was a couple jugs of like milk jugs with flammable liquid in there with paper sticking out of the top.
Q So potentially explosive device was put on his front door that never exploded?
A Yes.
Q Was Todd Robben investigated as a suspect in those instances?
A Yes.
Q And as of this minute right now has he fundamentally been cleared?
A Yes.
Q Somebody else was caught?
A Yes.
Q And has there been any connection between Todd Robben and those instances at Judge Tatro's -- let me back this up. Any connection between Todd Robben and the suspect who has been arrested and charged with those instances?
A Not that I know of.
Q So as far as we know Todd Robben is completely innocent of any act of violence against Judge Tatro?
A Correct.
Q At the time of this pretext call had Todd Robben been made aware -- had the actual suspect been caught?
A No.
Q They were still outstanding?
A Correct.

72

LINDA DUNBAR-STREET, CSR #8256 79

The interview was conducted at the El Dorado Co. in South Lake Tahoe Jail. This Petitioner did talk with Mr. Payne in an attempt to answer his questions and prove he was not a threat to anyone and get his side of the story out in order to solve the problem(s).

The following information does show Petitioner's state-of-mind that his subjective intent was not to threaten people or harm people, he was trying to get their attention, trying to resolve the problems and that he was being driven to the point of insanity with a series of false imprisonments, false arrests, harassment, violence, etc. Petitioner does have a Post Traumatic Stress Disorder ("PTSD") called Legal Abuse Syndrome ("LAS") as a result of being falsely arrested and incarcerated for long periods of time. The interview was not recorded and Petitioner asserts that the facts stated are not a true rendition.

Mr. Payne has twisted and bent material facts related to Petitioner's subjective intent on the speech such as stating Petitioner said "I know I can get in trouble" (or something like that)… The transcript appears to be mostly correct as to what was said and looking at it, this court can see there was no subjective intent to use true (or direct) threats by this Petitioner. The court gets a glace into the totality of the circumstances that caused this Petitioner to become enraged to the point of using profanity, harsh and dark language. In being brought to this point, the Petitioner did not act alone, instead, it is a response to the abuse of the legal and "law enforcement" system and a victim of a wicked conspiracy to inflict mental anguish and physical pain along with financial destruction and the destruction upon the Petitioner and destroy his family, job, life, etc. Such wonton infliction of pain, anguish and destruction is surly guaranteed to get a negative response from any normal person.

There is a quote in the transcript below that is important – it's from Thomas Jefferson **"When government fears the people, there is liberty. When the people fear the government, there is tyranny."**

THE WITNESS: Thank you everyone.

(Mark Torres-Gil exited the grand jury hearing room.)

MR. GOMES: I have another witness. Let me peek outside the door and see if the last witness is here yet.

(Brief recess taken.)

(Bryan Payne entered the grand jury hearing room.)

MR. GOMES: Back on the record. Stand up and raise your right hand first, please.

GRAND JURY FOREPERSON (GJ18): You do solemnly swear that the evidence you shall give in this matter pending before the grand jury shall be the truth, the whole truth, and nothing but truth, so help you God.

THE WITNESS: I do.

GRAND JURY FOREPERSON (GJ18): Thank you.

BRYAN PAYNE,

A witness called before the Grand Jury, was sworn and testified as follows:

EXAMINATION

BY DALE GOMES, Deputy District Attorney:

Q Go ahead and have a seat, sir. Thank you. First of all, tell us, Detective Payne, I don't know if I said the words "I'm calling Bryan Payne," but now I'm saying them. You're called. You're sworn. Tell us what you do for a living.

A I'm a detective with the El Dorado County Sheriff's Department.

Q How long have you been a sworn peace officer for the El Dorado County Sheriff's Department?

A About eight years. Hired on in 2008.

Q And how long have you been assigned to the detective division?
A Just over a year and a half.
Q All right. First of all I see you've got a copy of what looks like a police report sitting in front of you under your hands right now?
A I do.
Q Is that a copy of your report, your police report connected to this investigation?
A It is.
Q Do me a favor. Flip over and set it aside. If there's an issue that you don't presently recall and you need to refresh your memory using your report we can do that, but just let us know before we do.
A Okay.
Q All right. In your capacity as a detective with the Sheriff's Department were you assigned the task of attempting to interview Todd Christian Robben in connection to some alleged threats he had made?
A I was, yes.
Q And when did you receive that assignment?
A Last month.
Q And when did you actually complete that assignment?
A Can I look at my report?
Q Just approximately. I don't need precision in terms of day or time. Approximately when did you have a chance to actually sit down and interview Mr. Robben?
A It was about two weeks ago.

Q Where did you interview him at?
A At the South Lake Tahoe jail.
Q He was in custody at the jail at the time?
A He was.
Q And did you make arrangements to have him brought to you in an interview room of some sort?
A I did.
Q Was he cuffed?
A He was not.
Q But he was, in fact, incarcerated?
A He was in jail, yes.
Q Did you give him any kind of admonishment before conducting your interview?
A I did.
Q Tell us what you told him.
A I asked the correctional officers to invite him and ask him if he was willing to come talk to me, and he was. So he came in and we interviewed in just a general nurses office in the jail. I sat in the back of the office. I put a chair next to the door and I let Mr. Robben know he was free to leave. I mean, he essentially lived there, even though he was an inmate. I told him he could leave at any time. The door was unlocked and he didn't have to talk to me.
Q You informed Mr. Robben that any point during the course of your conversation if he wanted to get up and walk out of that room he was free to do so?
A I did.
Q Was he prevented in any way from to go do?

A No.
Q No cuffs or ankle chains?
A No.
Q With that admonishment he agreed to talk to you?
A He did.
Q Did you tell him what you were there to talk about?
A Yes. I told him he had a lot of things going on. I was there to try to find out his situation and try to figure out what was going on.
Q Approximate for us how long did your conversation with Mr. Robben last that day?
A Little over four hours.
Q Long conversation?
A It was a long conversation.
Q Friendly?
A Very friendly.
Q You got along with Mr. Robben pretty well?
A I did.
Q He never got upset with you?
A No.
Q At some point during the course of this four and a half hour conversation did you, in fact, for lack of a better word, bait him?
A I'm sorry.
Q For lack of a better word at some point towards the end of this did you bait him; did you almost try to see if he would get upset with you?
A I did.

Q Confronted him with some accusations?
A Yes.
Q And even then did he get upset?
A He did not.
Q Seemed to maintain a pretty good rapport with you throughout?
A He did.
Q At the end of this conversation did he express a willingness to talk to you in the future if you wanted to talk to him?
A He did. He was open to talking to me.
Q Let's talk a little bit about some of the things that Mr. Robben said to you. First of all, did he give you a background, if you will, of kind of from his perspective what led him to the place he was in now with his legal troubles in El Dorado County?
A He did.
Q Can you give us kind of a brief summary of what Mr. Robben's perspective of what had happened in his life that led him to this point?
A Well, I can. It goes back many, many years to issues that he had in Nevada with Carson City.
Q Okay.
A Essentially he moved up to Tahoe in the nineties to take an IT job with Sierra Ski resort. He ended up going to Department of Information Technology in Carson City. While he was there he felt he was being sexually harassed by a female co-worker. He reported that. He felt retaliated against. He.

felt persecuted there, so he transferred to a different department, Department of Taxation. While he was at Department of Taxation he described himself as Edward Snowden. He was the go-to guy for any wrongdoing. He felt like there was some embezzlement of funds, mines not being audited, female employees not being treated properly. So he told me he was the whistle blower for that organization.

As a result they conspired against him there. He ultimately lost his job. He told me his co-workers there had stalked him. He referred to it as Internet stalking and gang stalking. He said they put sugar in his gas tank, things like that. So ultimately he was being threatened online. He replied to that. He made reference to firearms. That freaked people out. He had to have psychological evaluations.

Q I'm going to stop you for a second. This is responsive to my question, but I'm going to have you slow down just a little bit to make sure that we don't miss anything.

A I apologize. I'm trying to shrink four and a half hours down for you.

Q My question was a loaded question and you're responding appropriately. Continue on with your response to Mr. Robben's -- short story version of Mr. Robben's perspective of how he got here.

A Well, at the sum of all of that he ends up being terminated. He feels like the director of his organization was a golf buddy with a judge so they conspired against him in the court system and so he couldn't get a fair shake.

They end up incarcerating him where they poisoned his

food, try to kill him in jail.
Q And "they" being Carson City, Nevada?
A Correct.
Q Law enforcement?
A That's correct. We're about to move to California.
Q Okay.
A So we get toward the end of Carson City with that. He ends up getting out. He goes on an ankle monitor. He then describes what he says is the worse possible police retaliation, so he can't get a fair shake. They won't let him in the courthouse any more. He gets thrown out.

The police are harassing and stalking him so he moves back to South Lake Tahoe. When he does that an old case catches up with him. Some bounty hunters from Nevada come up to serve a warrant from Nevada. It's a misdemeanor warrant. He feels like they didn't go through the process properly, that they needed to do a few other things to be able to serve that warrant in California.

South Lake Tahoe Police Department comes out for a civil standby. Essentially stands by and watches these Nevada bounty hunters kick in his front door. He says he got tazed a couple of times. Ended up getting away. Turned himself in later, but that ties him in to South Lake Tahoe Police Department.

MR. GOMES: I'm going to pause you right now because I'm going to give the grand jurors an admonishment and provide some information that I think is favorable and beneficial to Mr. Robben and his perspective that I don't have a witness to

present to you, and I think it's my obligation to give this to you.

The incident involving the bounty hunters coming after Mr. Robben in South Lake Tahoe happened. It happened very much like Mr. Robben says it happened. And it was illegal and actually resulted in criminal charges being filed in El Dorado County against the bounty hunters. They made mistakes in the way they tried to execute their warrant and arrest Mr. Robben and they were charged and successfully prosecuted for that.

Q So with that said can you carry on with Mr. Robben's perspective of what happened next?

A Sure. So from his perspective since South Lake Tahoe Police Department was present when this thing happened, that ties in his mind South Lake Tahoe Police Department into that conspiracy against him.

At some point he wants to get a copy of that report. He has difficulty getting that report from South Lake Tahoe Police Department, and so he starts a website and some other various protests there.

So that's what brings us all to California. We fast forward. He ends up getting arrested for a DUI. At some point South Lake Tahoe Police Department pulls him over. The sergeant, Sergeant Laney, conducts a DUI evaluation.

Now he feels in that case he was wrongly convicted of DUI because he says the F.S.T.s were on a hill and the sergeant lied about it being on a hill.

There was a malfunction with one of the in-car patrol cameras and so the video wasn't available for that incident,

so he believes that the department essentially erased or somehow manipulated that device to not have a video.

A second officer came out, did a breathalyzer test. Mr. Robben's BAC evidently was over the legal limit according to him. He feels that the officer who did it put his finger over somehow the exit tube of the device which somehow doubled his blood alcohol concentration.

So the combination lying about being on a hill, no video of the incident from that particular motorcycle who stopped him, and his belief that this other officer then manipulated the legal breath test led him to believe that they conspired against him to get him a DUI conviction.

He claims he wasn't served the notice of his driver's license suspension properly. Ultimately because he had a DUI his driver's license was suspended.

So I know it's convoluted but it all becomes important. As a result of the DUI, which he believes he was wrongly convicted of, his driver's license was suspended. He later is subsequently pulled over for driving on a suspended driver's license and having fake registration tabs on his car. And this is all per Mr. Robben.

At that time his license was suspended because of DUI which he felt that he shouldn't have had in the first place, and so he was cited for driving on suspended license and the fake tabs and all that and his car was towed pursuant to the Vehicle Code.

Q I'm going to stop you right there to just ask a clarifying question. Fair to say that from Mr. Robben's

perspective as he related it to you he believed that his license was unlawfully suspended because the DUI conviction shouldn't have ever happened and was unfair, and therefore he shouldn't have been cited for driving on a suspended license, is that a fair characterization of the way he perceived that at that time?

A That's fair.

Q What does he say happens next?

A Well, he had a couple arguments, one that Judge Kingsbury should have thrown out the evidence in the DUI case and voided his conviction. But subsequently he was provided with a notice of suspension, one, he says he got, one he says he didn't. That part is convoluted, but irrespective, he doesn't believe he should have been cited for having a suspended driver's license.

He's cited. His vehicle was towed, and pursuant to the Vehicle Code it's stored for 30 days so he can't get it back.

He then goes to the City Attorney and wants to get his car released so he wants a hearing. They ultimately denied it and said no, pursuant to the Vehicle Code you were suspended for driving. You can't get it back.

Well, at the end of those 30 days because of the storage fees that accrued over that period he can't afford to get his car back. So he's upset with the city for not giving him his car back before the 30 days expired. He's upset with the police department for citing him and for the prior DUI, and so that's what ultimately led up to he was incarcerated again then for -- ultimately he was convicted of driving on a

suspended license.
Q Let's pause right there. Did he explain how -- to you how he wound up incarcerated again? When he's driving on a suspended license they cite and release him, right? They just gave him a ticket and said show up in court. Did he explain at all how he wound up incarcerated again?
A Well, he essentially says during that court process he claimed a conflict. He had sued some people. He had all the El Dorado County judges removed for conflict. And so they ended up moving it to some other pro tem judge or someone down in Placerville. So he had some issues that it took too long because he had to remove all the judges and so his due process was violated.
Ultimately when it went to court in Placerville with the pro tem judge he lost that case.
Q The driving on suspended license case?
A The driving on suspended license and false registration tabs or the manufactured registration tabs, he did, he lost that case.
Q All right. And what did he say about how this progresses from there?
A Well, he feels like that was wrong because the judge they assigned he said he had no law degree and he believed him to be a pedophile so he didn't think he had jurisdiction to actually convict him for that charge.
Q Did he name a name in that respect, what judge he was referring to?
A He did. It's a judge I'm not familiar with but it's not

in my report.
Q Is it Baysinger?
A It was.
Q Did he make any reference to a different out-of-town judge altogether actually hearing the trial?
A Hearing that trial? I don't recall.
Q So he only references you remember Judge Baysinger and his complaints about Judge Baysinger?
A Right.
Q All right. What does he say happens next?
A From there he lost that case so he filed an appeal. He ended up losing the appeal, and he felt like David Cramer who was assigned to represent him in the appeal -- well, first he felt like the first attorney didn't do a good job because she didn't understand the case. Cramer gets assigned to handle him in the appeal. He tries to meet with Cramer and tell him exactly how he wants his appeal defended. He says Cramer said I'm going to do it the way I'm going to do it, which he didn't appreciate, so they had some rubs. They used negative language towards each other.

Ultimately he looses the appeal, and that's when he filed a Bar complaint against the State Bar against Cramer saying he was ineffective counsel and he was under the influence of drugs and that had to do with him losing his case.
Q Did you ask Mr. Robben if he actually believed that accusation that Mr. Cramer was under the influence of drugs or if it was just one of his ways to get attention?
A He seemed to believe that Cramer was ineffective

counsel --

Q I mean the drugs part.

A And that he was on drugs. He did. He said that he seemed like he was on drugs.

Q Okay. So did you talk to Mr. Cramer specifically about the letters of complaint that he sent to Mr. Cramer and to the State Bar?

A I did.

Q And did you have copies of them with you?

A I did.

Q And did you show 'em to him?

A Yes.

Q Did he acknowledge writing those letters?

A He did.

Q And did you point out to him some of the apparently inflammatory threatening language in those letters?

A Yes.

Q What did he say about that?

A Well, he had different responses. In the letter to Cramer he basically said that Cramer started the whole thing. Cramer conspired against him with the court system to bury him so Cramer deserved what he got.

Now in the other letter that actually went to the State Bar, on State Bar he says disbar Cramer or else there's going to be consequences type. And I had told him -- he didn't know who that letter specifically went to within the Bar, just that it went to somebody at the State Bar. And so when I relayed that there is actually a human body who read this who isn't

involved who didn't do any wrong to him who now has these adverse effects because of the language in the letter, he acknowledged how he could see how that could be taken as a threat and said he didn't intend to terrorize that person and, in fact, later wrote an apology letter.

Q At your request?

A I asked him if he was willing and he said he was so I gave him a pad and pencil.

Q Do you remember what he wrote?

A It was something -- it was two lines. Basically it just said that my letter to David Cramer wasn't directed to you. I didn't mean to threaten you, something to that effect.

Q Okay. In essence I meant to threaten David Cramer, not you?

A Right, essentially.

Q All right. So did you question Mr. Robben about his understanding of his choice of words and how they might be perceived as threatening?

A I did.

Q Did he understand that?

A He did.

Q And what did he say about that?

A Well, he told me that he had studied the law pretty extensively. He knew what a direct threat was. He not making threats. But he said he has to use inflammatory language to get people's attention. That he does it on purpose. That he tries to maximize his First Amendment rights, if you will.

But he acknowledged in that letter when I explained to

him the letter, especially the letter to the State Bar in particular, that he understood that that language could be taken as threatening.

Q And when he told you that he -- that he was doing this on purpose, that he was using inflammatory language on purpose, did he describe what his end game was? He wants attention but he doesn't want negative attention necessarily, right?

A Not necessarily, no. He wants to be heard. I think he feels like he's not being heard. He even made reference he said that he tried to paint the picture that he's sitting in jail and he's mailing these letters out to what he described as a black hole and just felt like the world wasn't hearing him, so he had to be inflammatory on purpose to get people's attention.

Q To what end though? Once he has their attention what did he actually want to have happen? Did he express that to you?

A He wanted to be vindicated. He told me he wanted to be the Erin Brockovich of law enforcement reform. It's convoluted that he would make statements like I understand the that Black Lives Matter movement. And he would refer to police officers or people being shot, and then he would retract and say I'm not going to shoot anyone but someone is going to.

He made comments, you know, that the government should fear the people. The people shouldn't fear the government. He would say this is a war and war is not pretty. And he would make -- he would infer and make these insinuations and say well, I'm not going to do any of that but something needs

to be done.
Q Did he tell you that he wanted his convictions reversed?
A He did.
Q That was one of the things they wanted in response to using these inflammatory, threatening words?
A Yes.
Q Did he tell you he wanted financial compensation for what he believed as the wrong that had been committed against him?
A Yes.
Q That was one of the reasons why he used these threatening and inflammatory language?
A He did.
Q Did he tell you he wanted David Cramer disciplined by the State Bar of the State of California?
A He did.
Q And that was another one of the reasons why he used this threatening and inflammatory language?
A Yes.
Q Did you question him specifically about any of the threatening language he used relative to El Dorado County Superior Court judges?
A I don't recall that.
Q Did he talk at all about his intent to remove judges from hearing his case?
A He did. In fact, he was -- he was proud that he was able to get the judges all removed from the case. He said he had filed a bunch of federal lawsuits and things against people personally.

Q And did he talk about specifically any of the individual judges that he got removed?
A I don't recall specific judges.
Q Did he talk about doing this in just in El Dorado County or in any other jurisdictions?
A No, he had done it in multiple jurisdictions. In fact what he said he was working on now was his case was transferred to Placer County and he had sent some letters. In fact he told me he got interviewed the day before by someone from Placer County because he sent letters over saying he was surprised the judges there weren't being killed because they were crooked also.

He found out since then that Placer County was the henchmen for El Dorado County so now he wanted all the judges removed and his case moved out of Placer County.
Q Did he express where he would like it to be?
A I don't think he said where he wanted it to go.
Q Okay. All right. Did he talk about some of the -- did you talk to Mr. Robben about his websites?
A I did.
Q What did he tell you about his websites?
A Well, that was one of his strategies. He said he files motions, he protests, he paints banners, and he has his websites to expose corruption.

Specifically I brought up some of the things he posted on his websites. You know, the keep calm, kill Judge Tatro, kill all police, let the Lord sort 'em out, something of that effect. Things like kill cops, kill Judge Tatro. He

acknowledged that he understood that he could get in trouble for those and they could be taken wrong.

Q Did he acknowledge those were his posts, those were his messages on his websites?

A He did.

Q And he also acknowledged that these types of post could get him in trouble?

A He did.

Q What did he say about that?

A When I brought up specifically like the one in particular was keep calm, kill Judge Tatro, he kind of laughed. He chuckled and said yeah, I know that could get me in trouble.

And then so as we got into it, you know, again with the subsequent kill all the cops, he said yeah, I understand how that could be taken wrong.

Q Taken wrong?

A Well --

Q Did he tell you the right way he wanted that to be taken?

A No.

Q Okay. Did Mr. Robben use language to describe the circumstances he was in?

A How do you mean?

Q Did he describe his circumstances as being at war?

A He did.

Q Who did he say he was at war with?

A Well, he said that the -- that law enforcement, the court system, and the judges basically had all conspired against him.

Q Did he express to you that he felt legally and personally justified in using the threatening language he was using?
A He did.
Q He believed that it was warranted in his mind?
A He said justified under the circumstances.
Q He seemed sincere about that?
A He did.
Q He believes it?
A He did.
Q From your perspective?
A I think toward the end of the conversation we got into the letter specifically with the State Bar. As we really got into that and I talked about -- we talked about the effects that had on other people, the reader when they read that. As he sat there and thought about it toward the end of our conversation he acknowledged that that language was too far. That he said he sends things out when he's angry and that that -- that basically five years of being oppressed and conspired against has made him, I think he said pissed was his quote, and that made its way into the language that he used.
Q Did Mr. Robben tell you what his intended outcome of all of this would be?
A Ultimately he wanted to be vindicated. He was going to write a book and make a television program. He wanted to be financially compensated. He wanted his name cleared. He wanted the D.A. and several people in our county to be arrested on charges.
Q The D.A., wait a minute. So and did he tell you or

express to you that he believed he would be able to accomplish these things using the justice system?

A He did. He said ultimately he believed that he would prevail.

Q Did you ask him what he would do if he wasn't able to prevail within the justice system?

A I did. Essentially I asked him, you know, my concern was if he goes through all of this, 'cuz he described this continuum where basically he said on one end I just give up and walk away. On the other end is death and destruction were his words. He said, I'm not walking away.

I said, explain to me. He makes inference well, you know, like you see on t.v. Tell me what does that mean. He says well, you see all the time on the news people shooting people. I go oh. He goes, I'm not going to shoot anybody but something has to be done. And so I really wanted to get into that. I said at the end of the day what if you lose all of these legal battles. Well, I'm going to win. I said if you lose do I have to worry about you hurting somebody. His response was something to the effect of I don't know or I don't think so.

Q Did he describe for you the way he would counter these charges if his appeals and writs and motions failed?

A Well, he would -- he would say -- he describes multiple prongs he uses, which is filing affirmative lawsuits, the websites, putting up banners and protesting, connecting with people online to put together these protests.

Q And what I'm getting at here is did he describe he had a

defense plan, how he was going to defend against these charges?

A Ultimately he said if he's charged -- he described there was some phenomenon.

Q Legal abuse syndrome?

A Yeah, he basically said he would plead insanity and he had this legal abuse syndrome that he referenced.

Q Can you say that he would -- did he say he would assert it was a crime of passion?

A He did.

Q That it was caused by mental anguish?

A Yes.

Q And insanity?

A Yes.

Q And that he would blame it on something called legal abuse syndrome?

A Yes.

Q You ever heard of that?

A I have not.

Q From Mr. Robben's perspective did he share with you whether or not he believed he had managed to successfully walk the tight rope between a direct threat as required under the law versus an indirect threat?

A Well, he told me he had studied the law and he was familiar with them and he was careful not to use them.

Q Use them, being direct threats?

A Correct.

Q Did he express to you that he thought he had kind of

figured it out; he's like, I know how I can make threatening statements without breaking the law?

A Yeah, he did.

Q Thinking from Mr. Robben's perspective right now as you spent like you said four plus hours with him, is there anything else he told you about what was going on in his mind or from his perspective that is important for a fair minded person to consider here in evaluating these accusations of him committing these crimes?

A Well, he genuinely seemed to believe he was conspired against and that he was in this fight for his life to try to clear himself. As a result of all these things that had conspired against him over multiple counties over multiple years and through his jobs he had basically been defamed. He had lost his house. He had lost his marriage. So he feels like he has lost all these things because of this defamation he described. He can't get an IT job any more so he now can't get a high paying job. Now he has a criminal record. So he just feels like he's in this place where he really needs to fight back.

MR. GOMES: I don't have any other questions right now for Detective Payne. Do any grand jurors have any questions for the detective? Okay. If we could give him our separation admonition.

GRAND JURY FOREPERSON (GJ18): You are admonished not to reveal to any person except as directed by the Court what questions were asked, or what responses were given, or any other matters concerning the nature or subject of the grand

jury's investigation, which you learned during your appearance before the grand jury, unless and until such time as a transcript of this grand jury proceeding is made public. Violation of this admonition is punishable as contempt of court.

THE WITNESS: Okay.

MR. GOMES: Thank you, sir. I would say you're free to go but I think you're subpoenaed on the next case.

(Bryan Payne exited the grand jury hearing room.)

MR. GOMES: So that was my last witness. It's my intention to proceed straight into instructions and a very brief argument on this case unless anybody needs a break right now. No?

GRAND JUROR [redacted] (GJ09): Juror number nine. I have a question. Is there any way you could read us his letter to the Bar Association?

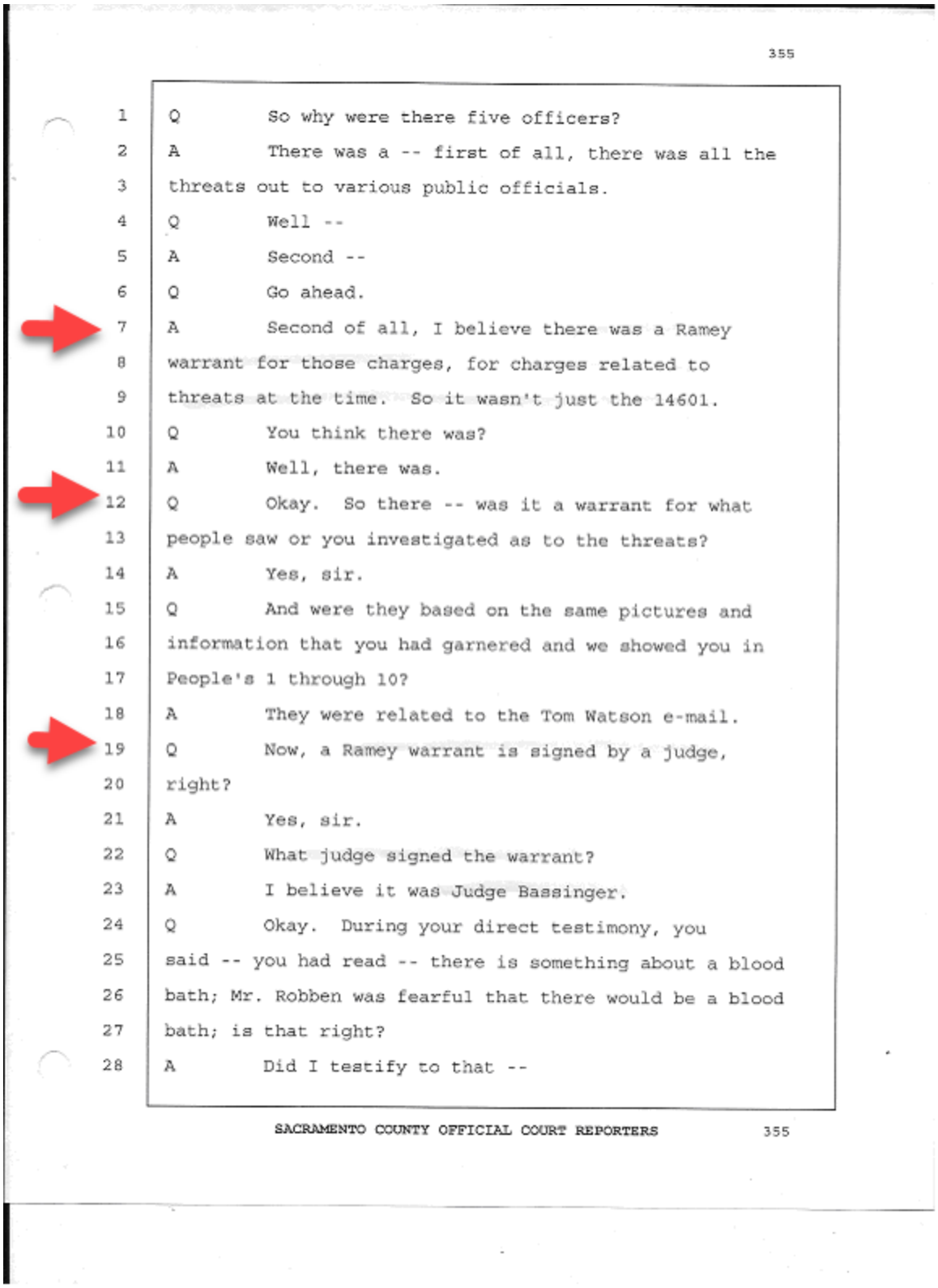
MR. GOMES: Sure. This is Exhibit Number 4.

"I do not have a "pen" or photo copier. The jail does not make photocopies. You make it impossible. You can make the ten copies and copies to serve the State Bar or mail them to me and I'll send them.

"Many people in my situation would just put a bullet in David J. Cramer's fucking head and call it a day. Others may torch his law office, kill his family and the people who appointed him and those of you who fail to discipline him, rightfully so. David J. Cramer must be disbarred. This fucking punk has wronged too many people and he will go down. If you don't, I will "discipline" this mother fucker.

Trial counsel was IAC/CDC for failing to move attack the grand jury indictment by way of a demurrer, non statutory motion to dismiss, PC 1385.5 and 995 motion and/or limine on the above listed issues including the non existent Ramey motion. No record exitsts of said Ramey warrant and "[T]he failure of the trial court to provide an accurate record on appeal" is reversible error. (*People v. Gloria, 47 Cal. App.3d 1, 7 [120 Cal. Rptr. 534*].)" cited by *In re Jose S., 78 Cal. App. 3d 619 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 1978*

The Ramey motion issue does not exist in the record for case P17CRF0089, P17CRF0114 or S16CRM0069 where it was alleged by El Dorado D.A. investigator Bryan Kuhlmann that the Ramey warrant was issued by assigned retired Judge Robert Baysinger during the timeframe of case # S16CRM0096 when Judge Robert Baysinger was allegedly assigned to that case. See Bryan Kuhlmann's sworn testimony below:



355

Q So why were there five officers?
A There was a -- first of all, there was all the threats out to various public officials.
Q Well --
A Second --
Q Go ahead.
A Second of all, I believe there was a Ramey warrant for those charges, for charges related to threats at the time. So it wasn't just the 14601.
Q You think there was?
A Well, there was.
Q Okay. So there -- was it a warrant for what people saw or you investigated as to the threats?
A Yes, sir.
Q And were they based on the same pictures and information that you had garnered and we showed you in People's 1 through 10?
A They were related to the Tom Watson e-mail.
Q Now, a Ramey warrant is signed by a judge, right?
A Yes, sir.
Q What judge signed the warrant?
A I believe it was Judge Bassinger.
Q Okay. During your direct testimony, you said -- you had read -- there is something about a blood bath; Mr. Robben was fearful that there would be a blood bath; is that right?
A Did I testify to that --

SACRAMENTO COUNTY OFFICIAL COURT REPORTERS 355

El Dorado Co. Judge Suzanne Kingsbury states the warrant was issued by the Placer Co. Superior court – see her sworn testimony below.

Testimony from Judge Suzanne Kingsbury:

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

with the Defendant after this encounter when he was a prospective juror?
A I did.
Q And tell me about the next one.
A He had an arrest for a DUI in the City of South Lake Tahoe, and the case was assigned to me -- or it would be a normal -- I mean, I didn't assign the case to myself, but it would be the normal part of the caseload that would come into my department.
Q So the case naturally flowed to you?
A Correct.
Q And it was just a basic misdemeanor DUI?
A Yes.
Q And did you preside over that case from start to finish?
A I did.
Q And did that case go all the way through to a jury trial?
A It did.
Q And a verdict?
A It did.
Q And judgment and sentencing?
A Yes.
Q Anything about your interactions with the Defendant during the prosecution of his DUI case that impacted your ability or your perception of your ability to sit as a judge on any case for him in the future?
A No, I mean, it was -- he wasn't happy with the

outcome, but, I mean, it was a cordial trial, from my perspective.

Q Run-of-the-mill?

A A hundred percent run-of-the-mill.

Q Okay. And about when did that take place?

A Maybe 2014. I might be wrong about -- I -- I have -- in context, my mom was dying during this period of time. So I probably don't have the greatest grasp on the specific date, but it was around or after the homicide trial, which ended in January of 2014.

I don't know when the arrest happened but...

Q Generally about that time?

A Correct.

Q That's close enough.

At the time you presided over the Defendant's run-of-the-mill DUI trial, did you have any knowledge or information about the Defendant and his other contacts with the criminal justice system outside the State of California, other than this bail bondsman thing?

A Only if it was in a paper or something. I mean, I wouldn't necessarily actively seek it out.

Q Well -- and that's what we're getting at, is what information did you have? What -- accurate or inaccurate -- we all know that our newspapers are not perfect, for lack of a better way to describe it, but what information around that time of the DUI trial did you have about Todd Christian Robben, at least that was in the public domain that you had received?

A Just that he had some, from my perspective, fairly low level cases working their way through the justice courts there.
Q In Carson City, Nevada?
A In Carson City, Nevada, correct.
Q At that point in time did you know a person named John Tatro?
A I know who he is. I don't know him personally.
Q And did you know who he was then?
A He was a justice court judge. I think he still is, although he's supposed to be retiring, according to the paper, in Carson City, Nevada.
Q And so this is a person you know by name and reputation but don't have any acquaintance with him?
A No, I wouldn't recognize him if I saw him.
Q And, again, focusing on this time frame back around the DUI, did you have any information with regards to the Defendant and Judge Tatro?
A Yes.
Q And what information did you have in that regard?
A He didn't care for Judge Tatro.
Q The Defendant didn't care for Judge Tatro?
A Correct.
Q How -- how did you come to this belief or this perception?
A Primarily through newspapers.
Q Did you see newspaper articles documenting

events where Judge Tatro was victimized by somebody?
A Correct.
Q Including instances where his home was shot into?
A He -- yes, apparently a shotgun blast went through his front door.
Q And explosive device or apparent explosive devices were left behind?
A Correct.
Q And threatening Christmas cards were mailed to his home?
A Correct.
Q You were aware of all these events just through the fact that they were publicized relatively widely in the Tahoe area, Reno/Tahoe area?
A Right.
Q When you were conducting this DUI trial, so we are focused in on that time, did you have any reason to believe or to connect Todd Christian Robben in any way to those events?
A I'm not sure I understand what you mean by "connect".
Q At some point in time did you receive information that Todd Christian Robben was a suspect?
A Yes.
Q A law enforcement suspect in those events?
A Yes.
Q Do you know when you received that information?

A No.
Q Did you know that information when he was a prospective juror in the death penalty case?
A I think so.
Q Did you?
A I think so.
Q And that was prior to the DUI case?
A I think it was.
Q Okay. And so now going forward, he -- this information, he was just a suspect. He hadn't been charged or arrested on those crimes as far as you knew?
A No, he had not.
Q And that didn't deter you in any way from presiding over his DUI trial?
A No.
And, in fact, as a judge, we will often hear other information about people that are before us, and under the law and under our ethical obligations, we just have to put it aside and judge the case based on what's presented in court.
Q And when you were given the opportunity to sentence the Defendant on his DUI conviction, I take it you had the full range of sentencing options that you have in any DUI case?
A Yes.
Q A maximum of six months in the county jail?
A Correct.
Q Large fines --

A Yes.
Q -- can be imposed?
There is minimum fines that are required to be imposed?
A Correct.
Q Did you give Mr. Robben a disposition any different than anyone else that appears before you convicted of a first time DUI?
A No. I gave him what I would give to a standard first offender. You know, credit for time served in custody, the standard fine, court probation.
And then because he was not pleased with some of the evidentiary things that had happened in the trial, it was my understanding that he wished to appeal, and I also told him that I would stay the fines and fees and other aspects of that pending the outcome of his appeal.
Q So fundamentally you gave him what is the minimum sentence under the law that you're allowed to give him?
A Correct.
Q And you also agreed to not impose the fines until he resolved his appellate issues?
A Right. I stayed them until the appeal was resolved.
Q All right. Now, let's go forward now with this DUI conviction.
Did you encounter Todd Christian Robben again?

A I don't know.
Q Not that you recall, as you sit here?
A (No response.)
Q And, I mean, actually personally see him, he walked into your courtroom or whatever?
A Not that I recall.
Q Okay. When was the next time his name presented itself to you in your professional capacity?
A He had received a citation or been arrested or something based on an allegation that he was driving with a suspended driver's license, and then that would invoke obviously a violation of probation on the DUI case.

So that was the next memory that I had of him in our court.
Q And this would have been in the spring of 2016?
A I think so.
Q Did the Defendant ever actually appear in your courtroom on the violation of his DUI probation?
A No, he did not.
Q Right up until today?
A Correct.
Q Has he -- okay. And -- but you became aware of the fact that this event was charged by the District Attorney's office?
A Yes.
Q Normally if a person is cited or arrested for a driving on a suspended license in the City of South Lake

Tahoe and the District Attorney's office was to file charges under those circumstances, would that be the type of case that would typically be assigned to you?

A Correct.

Q So this would have been a very natural case to come to Department 3, your courtroom in the City of South Lake Tahoe?

A It would.

Q Did it?

A No.

Q Why not?

A Under the Code of Civil Procedure, any litigant in a criminal case -- it also has some application to civil cases, which wouldn't apply here -- a person can file what is called a peremptory challenge of a judge and basically indicate that they believe that that judge is biased or prejudiced. They don't have to state a reason. It's just a form, and then that judge is precluded from handling that case, so long as it's done in the proper manner.

Q And did, in fact, Todd Christian Robben file such a challenge to you in his driving on a suspended license case?

A He did.

Q What did you do?

A I referred it to the assistant presiding judge, who at that time was Judge Wagoner, to reassign the case.

Q And at that point you're done?
A I'm done.
And I will add to that that I still could have theoretically handled the violation of probation because that was a case I had already dealt with uncontested proceedings, but it's just cleaner to have the whole thing go to a different judge.
Q So you allowed both the new case and the violation of probation to be reassigned?
A Absolutely.
Q Now, when somebody files a 170.6 challenge to a judge like yourself, it doesn't last forever and for all purposes, does it?
A Well, it would as to that case.
Q As to a single case?
A Correct.
Q But what if they got another case?
A No, they'd have to -- they'd have to file a new one.
Q Okay. So it's case specific?
A Correct.
Q So let's move forward from this 14601 case.
Were you -- were you involved -- let me back up a half step.
When the Defendant filed his challenge as to you, did he do it under just 170.6 or did he also attach 170.1 and other provisions, if you recall?
A I don't recall, but I think it was just a

170.6.

Q And were you -- I don't know -- withdraw that and try to start over.

At any point did you see the Defendant make any challenges to any other El Dorado County Superior Court judges in conjunction to that 14601.2 prosecution?

MR. MILLER: Objection; lack of foundation.

THE COURT: Overruled.

THE WITNESS: Yes.

Q (By MR. GOMES) And what judges did the Defendant file paperwork seeking to preclude pursuant to either 170.6 or 170.1?

A As far as I am aware, all of them.

Q Every judge in El Dorado County?

A Correct.

Q Okay. Is that how 170.6 works?

A No.

Q You just get one?

A Right.

Q Okay.

A Each side would get one.

Q So I get to exclude you, too, if you want to?

A If you want to, sure. I don't need any more cases.

Q So when somebody files a 170.6 challenge in a case where they have already theirs, is it just ignored? Set aside? Move on?

A Right.

Q Okay.
A I mean, I would give the person the courtesy of a minute order or something that says they only get one.
Q Okay. You tell them no?
A Correct.
Q Nicely?
A Yes. I'm always nice.
Q Moving forward, did you become aware at some point that there was a criminal investigation, active criminal investigation of the Defendant that was happening contemporaneous to his 14601.2 prosecution?
A I did.
MR. MILLER: Objection; relevance. She's already answered these questions.
THE COURT: Overruled.
Q (By MR. GOMES) You did?
A I did.
Q And at that point the Defendant's 170.6 challenge would not have anything to do with the new case?
A No.
Q And so you were free to hear it if you -- if it was assigned to you or if it landed in your bailiwick, for lack of a better term?
A Yes.
Q Did you receive or have an opportunity at any point to hear any part of this new criminal investigation, whether it be review a warrant or

anything like that?
A Not as far as I know.
Q So move forward now to March of this year, 2017, a criminal complaint was filed in the El Dorado County Superior Court alleging a number of felony counts against Todd Christian Robben. At any point did you take steps to either hear or not hear, preside over or not preside over this new case?
A Yes.
Q Okay. I want to talk about those steps, but first let's talk about what information was at your disposal at that time.
You had already presided over his DUI. As far as you were concerned, that went pretty smoothly?
A I thought so.
Q He didn't actively threaten you or anything during the course of that prosecution?
A Oh, no.
Q He didn't do anything to cause you to feel like you couldn't be fair and impartial as a jurist overseeing his case?
A Absolutely not.
Q And so now we have got this new case. You're aware of at least the fact that he was suspected of some crimes against a judge in Nevada. And now we have got a case. Did you receive about -- what was the nature of the new case?
MR. MILLER: Objection; vague.

THE COURT: Overruled.

THE WITNESS: Yes, that it had something to do with issues that he had with the conduct of the DUI investigation and with the City and the City Attorney.

Q (By MR. GOMES) And I want to back up for half a step, because there was -- or was there a point prior to the Defendant being charged in the criminal complaint where judges from the El Dorado County Superior Court bench recused themselves from reviewing warrants in connection with that investigation?

A As far as I know, yes.

Q Including yourself?

A Yes.

Q Let's talk about you specifically.

What was it, we'll talk about the summer of 2016, that led you to recuse yourself from reviewing warrants in the new case involving suspected threats?

A I think because of the initial recusal on the 14601, knowing that he was not happy with the outcome of the DUI case and that -- I'm trying to think of the best way to phrase this, and that many of his complaints as it related to the City of South Lake Tahoe had to do with what different officers had done relative to that DUI case, I just felt like it was enough of a nexus where it was probably better for another judge to hear it.

Q Fair to say that as of roughly August of 2016, there were no sitting judges in the County of El Dorado

who were willing to even review warrants on the new case?

A Absolutely true.

Q And El Dorado County had to seek out visiting judges in order to even just review documents connected to his investigation?

A Yes. Placer County, to be precise.

Q Fast -- fast forward now through the end of 2016:

Did you ever become aware of the fact that the Defendant was making reference to you in your judicial capacity in his conversations from the El Dorado County jail?

A No.

Q Did you become aware of the fact that the Defendant was making reference to an assault on your home in his conversations from the El Dorado County jail?

A No.

Q Did you become aware of the fact that the Defendant was making reference to the fact that he believed he knew where your home was, from the El Dorado county jail?

A No.

Q Had you received that kind of information, would it have led you to take any different action in how you handled his pending criminal case?

MR. MILLER: Objection; speculation.

COUNSEL WAS IAC/CDC FOR FAILING TO CHALLENGE THE CONSTITUTIONALITY OF PC 71, 140(A),& 422 SINCE SAID PENAL CODE CRIMINALIZE PROTECTED SPEECH

Additionally, trial counsel was IAC/CDC for failing to challenge the constitutionality of PC 71, 140(a),& 422 since said penal code criminalize protected speech (1st amendment) since the penal code(s) DO NOT identify “TRUE THREATS” or “FIGHTING WORDS” or “INCITEMENT” in the definition of PC 71, 140(a) or 422. Appellate counsel was IAAC/CDC for failing to argue trial counsel was IAC/CDC. Said unconstitutional statutes/penal codes would have exonerated this Petitioner.

All the statutes should state “true threats” or “fighting words” or “incitement” or even “hate speech” rather than threats since an unlawful threat could mean a threat to sue (which could case financial harm) and threat to file a Citizen Complaint i.e. Internal Affairs complaints against a police officer, call police or some other threat that is not a “true threat” pursuant to the U.S. Supreme Court decisions discussed in this petition including *Watts v. United States (1969) 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664, Elonis v. United States (2015) 575 U.S. ___ [192 L.Ed.2d 1, 135 S.Ct. 2001], Perez v. Florida, 137 S. Ct. 853 - Supreme Court 2017* and others. Had trial counsel argued said penal codes are unconstitutional under the 1st and 14th amendment, petitioner would not have been indicted or convicted.

In *Seals v. McBee, 898 F. 3d 587 - Court of Appeals, 5th Circuit 2018:*

> **"Louisiana Revised Statutes § 14:122 criminalizes "the use of violence, force, or threats" on any public officer or employee with the intent to influence the officer's conduct in relation to his position. Travis Seals threatened police when arrested; he facially challenges Section 14:122 as unconstitutionally overbroad in violation of the First Amendment. The district court agreed with Seals. Because the meaning of "threat" is broad enough to sweep in threats to take lawful, peaceful actions — such as threats to sue a police officer or challenge an incumbent officeholder — Section 14:122 is unconstitutionally overbroad. We affirm the judgment invalidating it."**

"Evaluating an overbreadth challenge requires exploring a statute's constitutional and unconstitutional applications. According to Louisiana, Section 14:122 has no unconstitutional applications because it proscribes only unprotected speech. To be sure, it covers a large swath of unprotected speech, including true threats[24] and core criminal speech, such as extortion[25] and threats to engage in truly defamatory speech made with actual malice.[26] But the statute plainly reaches further. As explained above, Section 14:122 includes threats to sue an arresting officer or even to run against an incumbent unless he votes for a favored bill. Cf. Mouton, 129 So.3d at 54, 59.

Such threats are constitutionally protected. The decision in NAACP v. Claiborne Hardware Co., 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982), is instructive. There, a group of black citizens demanded that public officials desegregate public schools and hire black policeman lest the black community engage in boycotts of private businesses; when their demands were not met, the boycotts began. Id. at 899-900, 102 S.Ct. 3409. Such speech was constitutionally protected even though obviously threatening. Id. at 911-13, 102 S.Ct. 3409. Moreover, a speech during the boycott contained strong language referencing breaking necks and committing other acts of violence; nevertheless, the Court found the speech protected. Id. at 927-29, 102 S.Ct. 3409. Yet on its face, Section 14:122 would criminalize all of that speech.

Louisiana reminds us that a statute may be struck as overbroad only if its overbreadth is "substantial, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." Williams, 553 U.S. at 292, 128 S.Ct. 1830. And the state notes that overbreadth is "strong medicine that is not to be casually employed." Id. at 293, 128 S.Ct. 1830 (citation and internal quotations omitted). We agree, but here the statute sweeps so broadly, encompassing any number of constitutionally protected threats, such as to boycott communities, to run against incumbents, and to sue police officers. Hence, it is overbroad.

A survey of analogous caselaw supports that conclusion. In City of Houston v. Hill, 482 U.S. 451, 455, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987), the Court was faced 598*598 with an ordinance that criminalized assaulting, striking, or in any manner opposing, molesting, abusing, or interrupting "any policeman in the execution of his duty." The ordinance prohibited any speech that interrupts police officers, thus extending well beyond "core criminal conduct" or true threats. Id. at 460-63, 107 S.Ct. 2502. Nor was the ordinance "narrowly tailored to prohibit only disorderly conduct or fighting words." Id. at 465, 107 S.Ct. 2502. Thus, the Court struck it as overbroad. Id. at 467, 107 S.Ct. 2502.

Similarly, in Wilson, 405 U.S. at 519, 528, 92 S.Ct. 1103, the Court struck a Georgia statute that prohibited any "opprobrious words or abusive language, tending to cause a breach of the peace." **Georgia courts had not limited the statute to fighting words or speech that would immediately cause violence; thus the law swept in protected speech and was overbroad.** Id. at 524-25, 92 S.Ct. 1103. Finally, in Lewis v. City of New Orleans, 415 U.S. 130, 132, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974), **the Court was faced with a Louisiana statute that penalized cursing or using "obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty." Again, the Court found overbreadth because the statute extended beyond true threats or speech that would immediately breach the peace.** Id. at 133, 94 S.Ct. 970.

Section 14:122 is at least as overbroad as the laws that were found to be unconstitutional in those cases. It covers the kinds of constitutionally protected speech identified in Claiborne Hardware, 458 U.S. at 889, 102 S.Ct. 3409 — i.e., threats to boycott unless policies are implemented and minorities are hired as police — and much more. Section 14:122 could encompass an innocuous threat to complain to a DMV manager for slow service or a serious threat to organize lawsuits and demonstrations unless the police lower their weapons. And each kind of threat is constitutionally protected. "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." Hill, 482 U.S. at 462-63, 107 S.Ct. 2502. Section 14:122 undermines that freedom and thus is unconstitutional."

==========

In *People v. Wilson (2010) Fifth Dist. COA 186 Cal.App.4th 789, 112 Cal.Rptr.3d 542*:

Sections 422 and 422.5 were repealed in 1987. (*In re Ge M., supra*, 226 Cal.App.3d at p. 1522.) In 1988, section 422 was amended and reenacted to prohibit "criminal" rather than "terrorist" threats. (*In re Ge M.*, at p. 1522; see *People v. Moore* (2004) 118 Cal.App.4th 74, 78-79 [12 Cal.Rptr.3d 649].) Section 422 now states: "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is *so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of*

execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (Italics added.)

The California Supreme Court has extensively described the origins of the statutory phrase italicized *ante,* which the Legislature added to section 422 to ensure the amended statute would pass muster under the First Amendment and not suffer the same constitutional fate as its predecessor.

"The Legislature ... enacted a substantially revised version [of section 422] in 1988, adopting almost verbatim language from *United States v. Kelner[, supra,]* 534 F.2d 1020. [Citations.] In *Kelner,* the defendant, a member of the Jewish Defense League, had been convicted under a federal statute for threatening to assassinate Palestinian leader Yasser Arafat, who was to be in New York for a meeting at the United Nations. Kelner argued that without proof he specifically intended to carry out the threat, his 803*803 **statement was political hyperbole protected by the First Amendment rather than a punishable true threat. (*United States v. Kelner, supra,* 534 F.2d at p. 1025.)**

"The reviewing court disagreed and concluded threats are punishable consonant with constitutional protections `when the following criteria are satisfied. So long as the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution, the statute may properly be applied.' (*United States v. Kelner, supra,* 534 F.2d at p. 1027.) In formulating this rationale, the *Kelner* court drew on the analysis in *Watts v. United States[, supra,]* 394 U.S. 705 ..., in which the United States Supreme Court reversed a conviction for threatening the President of the United States. Defendant Watts had stated, in a small discussion group during a political rally. `"And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J."' (*Id.* at p. 706.) Both Watts and the crowd laughed after the statement was made. (*Id.* at p. 707....) The Supreme Court determined that taken in context, and considering the conditional nature of the threat and the reaction of the listeners, the only possible conclusion was that the statement was not a punishable true threat, but *political hyperbole privileged under the First Amendment.* (*Id.* at pp. 707-708....)

"As the *Kelner* court understood this analysis, the Supreme Court was not adopting a bright line test based on the use of conditional language but simply illustrating *the general principle that punishable true threats must express an intention of being carried out.* (See *United States v. Kelner, supra,* 534 F.2d at p. 1026.) `In effect, the Court was stating that *threats punishable consistently with the First Amendment were only those which according to their language and context conveyed a gravity of purpose and likelihood of execution so as to constitute speech beyond the pale of protected* [*attacks on government and political officials*].' (*Ibid.*) Accordingly, `[t]he purpose and effect of the *Watts* constitutionally-limited definition of the term "threat" is to insure that *only unequivocal, unconditional and specific expressions of intention immediately to inflict injury may be punished—only such threats, in short, as are of the same nature as those threats which are ... "properly punished every day under statutes prohibiting extortion, blackmail and assault*....'" (*Id.* at p. 1027.)" (*People v. Bolin* (1998) 18 Cal.4th 297, 338-339 [75 Cal.Rptr.2d 412, 956 P.2d 374], italics added (*Bolin*).)[2]

804*804 This historical background suggests the inclusion of the language in the current statute—that the threat must be "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat"—was not intended to impose a specific time limitation upon the speaker's intent to execute the threat, but instead to avoid First Amendment challenges and not criminalize constitutionally protected speech.

(1) The current version of section 422 "has been carefully drafted to comport with the detailed guidelines articulated by the *Kelner* court" and is not constitutionally overbroad. (*People v. Fisher* (1993) 12 Cal.App.4th 1556, 1560 [15 Cal.Rptr.2d 889]; see *In re David L.* (1991) 234 Cal.App.3d 1655, 1661 [286 Cal.Rptr. 398] (*David L.*).) "[T]he standard set forth in [the current version of] section 422 is *both the statutory definition of a crime and the constitutional standard for distinguishing between punishable threats and protected speech.* Accordingly, in applying section 422, courts must be cautious to ensure that the statutory standard is not expanded beyond that which is constitutionally permissible. [Citation.]" (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861-862 [123 Cal.Rptr.2d 193], italics added (*Ryan D.*).)

Thus, section 422 cannot be applied to constitutionally protected speech. (*Ryan D., supra,* 100 Cal.App.4th at p. 861.) "`When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the

threat falls outside First Amendment protection.'" (*People v. Toledo* (2001) 26 Cal.4th 221, 233 [109 Cal.Rptr.2d 315, 26 P.3d 1051], italics omitted (*Toledo*), quoting *In re M.S.* (1995) 10 Cal.4th 698, 710 [42 Cal.Rptr.2d 355, 896 P.2d 1365].) In drafting the current version of section 422, "the Legislature limited the punishment for criminal threats to this type of unprotected speech. [Citation.]" (*People v. Jackson* (2009) 178 Cal.App.4th 590, 598 [100 Cal.Rptr.3d 539].)

There are still First Amendment concerns that may be implicated by a prosecution under section 422, however, and those concerns affect the standard of appellate review of a conviction under that statute. When a defendant raises a plausible First Amendment defense in a section 422 case, the reviewing court should make an independent examination of the record to ensure that a speaker's free speech rights have not been infringed by the trier of fact's determination that the communication at issue constitutes a criminal threat. (*In re George T.* (2004) 33 Cal.4th 620, 632-634 [16 Cal.Rptr.3d 61, 93 P.3d 1007] (*George T.*).)

805*805 In this case, however, defendant has not raised any First Amendment arguments, and an independent standard of review is not applicable. When the First Amendment is not implicated, defendant's sufficiency of the evidence challenge is evaluated under the substantial evidence test. (Cf. *George T., supra,* 33 Cal.4th at p. 634; see, e.g., *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1136 [105 Cal.Rptr.2d 165] (*Ricky T.*); *People v. Mosley* (2007) 155 Cal.App.4th 313, 322 [65 Cal.Rptr.3d 856] (*Mosley*); *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1430 [115 Cal.Rptr.2d 924] (*Gaut*); *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1339 [69 Cal.Rptr.2d 728].) "In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears `that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*Bolin, supra,* 18 Cal.4th at p. 331.)

B. *Section 422 and conditional threats*

(2) We now turn to the elements required to prove a violation of the current version of section 422. The California Supreme Court has construed section 422 to require the prosecution to prove five elements: "(1) [T]hat the defendant `willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,' (2) that the defendant made

the threat `with the specific intent that the statement ... is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) **that the threat—which may be `made verbally, in writing, or by means of an electronic communication device'—was `on its face and under the circumstances in which it [was] made, ... *so unequivocal, unconditional, immediate, and specific* as to convey to the person threatened, a gravity of purpose and *an immediate prospect* of execution of the threat,'** (4) that the threat actually caused the person threatened `to be in sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) that the threatened person's fear was `reasonabl[e]' under the circumstances. [Citation.]" (*Toledo, supra,* 26 Cal.4th at pp. 227-228, italics added; see *George T., supra,* 33 Cal.4th at p. 630.)

(3) Section 422 "was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others. [Citation.]" (*People v. Felix* (2001) 92 Cal.App.4th 905, 913 [112 Cal.Rptr.2d 311].) The statute "does not punish such things as `mere angry utterances or ranting soliloquies, however violent.' [Citation.]" (*Ryan D., supra,* 100 Cal.App.4th at p. 861.) Instead, a criminal threat "is a specific and narrow class of communication," and "the expression of an intent to inflict serious evil upon another person. [Citation.]" (*Id.* at p. 863.)

806*806 (4) "A threat is sufficiently specific where it threatens death or great bodily injury. **A threat is not insufficient simply because it does `not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.'** [Citation.]" (*People v. Butler* (2000) 85 Cal.App.4th 745, 752 [102 Cal.Rptr.2d 269] (*Butler*).) In addition, section 422 does not require an intent to actually carry out the threatened crime. (*People v. Martinez* (1997) 53 Cal.App.4th 1212, 1220 [62 Cal.Rptr.2d 303].) Instead, the defendant must intend for the victim to receive and understand the threat, and the threat must be such that it would cause a reasonable person to fear for his or her safety or the safety of his or her immediate family. (*People v. Thornton* (1992) 3 Cal.App.4th 419, 424 [4 Cal.Rptr.2d 519].) "While the statute does not require that the violator intend to cause death or serious bodily injury to the victim, not all serious injuries are suffered to the body. The knowing infliction of mental terror is equally deserving of moral condemnation." (*Ibid.*)

(5) As explained in part I.A., *ante,* the third element required by section 422 was drafted by the Legislature to address First Amendment concerns, using the language from *Kelner* and *Watts,* requiring an "unconditional" threat. The California Supreme Court has explained that "[g]iven the rationale of *Kelner* and *Watts,* it becomes clear the reference to an

`unconditional' threat in section 422 is not absolute." (*Bolin, supra,* 18 Cal.4th at p. 339.) A prosecution "under section 422 *does not* require an unconditional threat of death or great bodily injury." (*Id.* at p. 338, italics added.) Section 422's use of the word "unconditional" from *Kelner* "`was not meant to prohibit prosecution of all threats involving an "if" clause, but only to prohibit prosecution based on threats whose conditions precluded them from conveying a gravity of purpose and imminent prospect of execution.' [Citations.]" (*Bolin,* at p. 339.) "`Most threats are conditional; they are designed to accomplish something; the threatener hopes that they *will* accomplish it, so that he won't have to carry out the threats.'" (*Ibid.*)

(6) "`The use of the word "so" indicates that *unequivocality, unconditionality, immediacy and specificity are not absolutely mandated,* but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim.' [Citation.] `If the fact that a threat is conditioned on something occurring renders it not a true threat, there would have been no need to include in the statement the word "so."' [Citation.] This provision `implies that there are different degrees of unconditionality. A threat which may appear conditional on its face can be unconditional under the circumstances.... [¶] Language creating an apparent condition cannot save the threatener from conviction when the condition is illusory, given the reality of the circumstances surrounding the threat. A seemingly conditional threat contingent on an act highly likely to occur may convey to the victim a gravity of purpose and immediate prospect of 807*807 **execution.' [Citation.]" (*Bolin, supra,* 18 Cal.4th at p. 340.) Thus, the third element's four enumerated statutory elements—unequivocality, unconditionality, immediacy and specificity—are "`simply the factors to be considered in determining whether a threat, considered together with its surrounding circumstances, conveys those impressions to the victim.' [Citation.]" (*People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538 [70 Cal.Rptr.2d 878] (*Melhado*).)**

(7) While the third element of section 422 also requires the threat to convey "`a gravity of purpose and an immediate prospect of execution of the threat,'" it "does not require an immediate ability to carry out the threat. [Citation.]" (*People v. Lopez* (1999) 74 Cal.App.4th 675, 679 [88 Cal.Rptr.2d 252]; see *People v. Smith* (2009) 178 Cal.App.4th 475, 480 [100 Cal.Rptr.3d 471].) "The `immediate *prospect* of execution' in the context of a conditional threat is obviously to be distinguished from those cases dealing with threats of immediate harm, recognized at the very

moment of the threat, such as those which support a defense of duress or necessity. [Citations.]" (*Melhado, supra,* 60 Cal.App.4th at p. 1538, fn. 6.) "How are we to understand the requirement that the prospect of execution be immediate, when, as we have seen, threats often have by their very nature some aspect of conditionality: A threat is made to convince the victim to do something `or else.' ... [W]e understand the word `immediate' to mean that degree of seriousness and imminence which is understood by the victim to be attached to the *future prospect* of the threat being carried out, should the conditions not be met." (*Melhado, supra,* 60 Cal.App.4th at p. 1538.)

(8) "It is clear that the nature of the threat cannot be determined only at face value. Section 422 demands that the purported threat be examined `on its face and under the circumstances in which it was made.' The surrounding circumstances must be examined to determine if the threat is real and genuine, a true threat," and such threats must be "judged in their context." (*Ricky T., supra,* 87 Cal.App.4th at p. 1137; see *People v. Martinez, supra,* 53 Cal.App.4th at p. 1218.) **"[Section 422] does not concentrate on the precise words of the threat. Instead, the statute focuses on the effect of the threat on the victim, to wit, communication of a gravity of purpose and immediate prospect of execution of the threat. These impressions are as surely conveyed to a victim when the threatened harm is conditioned on an occurrence guaranteed to happen as when the threat is absolutely unconditional."** (*People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1158 [38 Cal.Rptr.2d 328], citing *People v. Brooks* (1994) 26 Cal.App.4th 142, 149 [31 Cal.Rptr.2d 283].)

(9) "A communication that is ambiguous on its face may nonetheless be found to be a criminal threat if the surrounding circumstances clarify the communication's meaning. [Citation.]" (*George T., supra,* 33 Cal.4th at 808*808 p. 635.) In determining whether conditional, vague, or ambiguous language constitutes a violation of section 422, the trier of fact may consider "the defendant's mannerisms, affect, and actions involved in making the threat as well as subsequent actions taken by the defendant." (*People v. Solis* (2001) 90 Cal.App.4th 1002, 1013 [109 Cal.Rptr.2d 464] (*Solis*).) "And, just as affirmative conduct and circumstances can show that a criminal threat was made, the absence of circumstances that would be expected to accompany a threat may serve to dispel the claim that a communication was a criminal threat. [Citation.]" (*Ryan D., supra,* 100 Cal.App.4th at p. 860.)

(10) The fourth and fifth elements of section 422 require the victim "reasonably to be in sustained fear" for his or her own safety or the safety of his or her family. (§ 422.) As used in the statute, "sustained" has been

defined to mean "a period of time that extends beyond what is momentary, fleeting, or transitory.... The victim's knowledge of defendant's prior conduct is relevant in establishing that the victim was in a state of sustained fear. [Citation.]" (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 [40 Cal.Rptr.2d 7].)

C. *Cases involving conditional threats*

We will now review relevant cases that address the third element of section 422, that the threat must be "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat."

In *David L., supra,* 234 Cal.App.3d 1655, the minor had been harassing the victim at school for some time. One day, the minor walked up to the victim with a belt wrapped around his fist. The minor pushed the victim against the lockers and swung at him. The victim swung back and knocked the minor down. The next day, the minor called the victim's friend and said he was angry about the fight. The friend asked what he was going to do. The minor told her to listen, and he made a metallic clicking sound into the telephone. The minor said that sound was a gun and he was going to shoot the victim, and the friend related the threat to the victim. A juvenile court found the minor violated section 422. (*David L.,* at p. 1658.)

In *David L.,* the minor argued the evidence did not support the juvenile court's finding that he violated section 422, because his statements on the telephone were mere "juvenile braggadocio," and there was no evidence of "imminent" conduct because he lacked the ability to carry out the threat. (*David L., supra,* 234 Cal.App.3d at p. 1660.) *David L.* rejected these arguments, and held the minor's statements satisfied the statutory elements 809*809 because the threat was immediate and unconditional, it conveyed the immediate prospect of execution, and section 422 did not require the showing of an immediate ability to carry out the stated threat. (*David L.,* at p. 1660.)

"The minor's threat to shoot the victim was not `on its face and under the circumstances in which it [was] made' either conditional or in jest. According to the testimony, *it was without equivocation or ambiguity.* The minor's statement is well within the contemplation of section 422.

"The threat was also sufficiently specific. *Although it did not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.* It is enough to threaten `death or great bodily injury to another person.' The minor's threat to shoot the victim easily

satisfies that element of the statute." (*David L., supra,* 234 Cal.App.3d at p. 1660, italics added.)

David L. was approvingly cited by this court in *Butler, supra,* 85 Cal.App.4th 745, which addressed a situation that erupted after the defendant and his associates harassed and assaulted fellow residents at an apartment complex. The residents were meeting in one apartment to discuss the problem created by the defendant's conduct when the defendant and his friends arrived and tried to break up the meeting. At one point, the defendant grabbed the arm of Virginia, one of the residents, as she was surrounded by five or six of his friends. The defendant told Virginia that "she should mind her own business, that his gang, `El Norte,' owned the apartments," called her demeaning names, and "told her she needed to mind her own business or she `was going to get hurt.' Virginia felt very intimidated because the group had followed her and surrounded her while she was alone; she perceived [the] defendant's statement as a threat; and she was afraid they would hurt her." (*Id.* at p. 749.) A physical altercation later occurred as the defendant and his friends assaulted other residents. (*Id.* at pp. 750-751.) The defendant was convicted of making criminal threats to Virginia, along with assault with a deadly weapon and battery on the other residents. (*Id.* at p. 748.)

Butler rejected the defendant's argument that his statements to Virginia were too ambiguous to constitute a threat under section 422. "A threat is sufficiently specific where it threatens death or great bodily injury. A threat is not insufficient simply because it does `not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.' [Citation.]" (*Butler, supra,* 85 Cal.App.4th at p. 752, quoting *David L., supra,* 234 Cal.App.3d at p. 1660.)

Butler also focused on the circumstances in which the defendant made the statements to Virginia and how he acted before, during, and after the threat: 810*810 "The circumstances here ... establish that defendant's threat to hurt Virginia was a violation of section 422. Virginia was aware [that other residents] were in fear because defendant and his friends had been terrorizing them. Defendant and four or five other teenagers surrounded Virginia at her apartment complex. Defendant not only confronted her, he impressed upon Virginia just how serious he was by grabbing her arm, i.e., committing a battery upon her when he made his threat. In doing so, he emphasized his willingness and intent to hurt her if she did not mind her own business. [Citations.] Defendant further impressed upon Virginia the gravity of the situation by bragging that his gang ... owned the apartments.... Virginia felt very intimidated because the group surrounded her while she was alone, and she perceived defendant's statement to be a threat. *While there was no evidence presented at trial,*

other than defendant's own statements, that defendant was a member of the Nortenos gang, there was no basis for Virginia to doubt this alleged association." (*Butler, supra,* 85 Cal.App.4th at pp. 754-755, italics added, fn. omitted.)

In contrast to *David L.* and *Butler,* the court in *Ricky T., supra,* 87 Cal.App.4th 1132, reversed the juvenile court's finding because of insufficient evidence that the minor violated section 422. The incident in *Ricky T.* began when the 16-year-old minor left class to use the restroom and found the classroom door locked when he returned. The minor pounded on the door, the teacher swung it open, and the door hit the minor. The minor became angry, cursed at the teacher, and said, "`I'm going to get you.'" The teacher sent the minor to the office and the police were called the next day. A week later, the minor admitted to an officer that he told the teacher that he was going to "`kick [his] ass,'" and he was charged with violating section 422. (*Ricky T.,* at pp. 1135-136.)

Ricky T. reversed the juvenile court's finding that the minor violated section 422, and held the circumstances of the minor's statements showed his alleged threats lacked credibility because they were not "serious, deliberate statements of purpose." (*Ricky T., supra,* 87 Cal.App.4th at p. 1137.) The teacher's act of sending the minor to the office did not establish the threat was "so immediate" under section 422, since the police were not contacted until the next day. There was no evidence suggesting a physical confrontation was imminent or that the teacher and minor had any prior history of conflicts. The court concluded the minor's remark, "`I'm going to get you' [was] ambiguous on its face and no more than a vague threat of retaliation without prospect of execution." (*Ricky T.,* at p. 1138.)

==========

From the above case (and *People v. Bolin* (1998) 18 Cal.4th 297, 340 [75 Cal.Rptr.2d 412, 956 P.2d 374] (*Bolin*). **Petitioner asserts "so" is not a modifier or qualifier – it's an intesifer**[67]

"Section 422 proscribes threats which are "so ... unconditional ... as to convey to the person threatened ... an immediate prospect of execution of the threat...." Cases interpreting the "so ... unconditional" element of the offense do not solve our problem in interpreting whether a threat conveys an immediate prospect of execution. **True, as the majority points out, the modifier "so" in section 422 governs the first occurrence of "immediate," as well as "unconditional" (and also "unequivocal" and "specific"), and the Supreme Court relied on "so" to**

[67] https://www.merriam-webster.com/dictionary/intensifier

support its conclusion that a threat need not be absolutely unconditional to fall within the statute's proscription. (*People v. Bolin* (1998) 18 Cal.4th 297, 340 [75 Cal.Rptr.2d 412, 956 P.2d 374] (*Bolin*).) (Maj. opn., *ante,* at p. 818.) The word "so" does not, however, modify "immediate prospect of execution." The entire phrase reads, "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat...." (§ 422.)"

Appellate counsel Robert L.S. Angres was IAAC/CDC for the failure to argue IAC/CDC of trial counsel for the failure to challenge the constitutionality of penal codes 71, 140(a) and 422 and 1st amendment claims on appeal. Had he done so, the conviction would have been reversed on this and/or the cumulative set of issues including IAC issues.

This Petitioner may challenge the constitutionality of the penal codes 71, 140(a) & 422 on habeas corpus. See *In re Davis, 242 Cal. App. 2d 645 - Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 1966.*

The recent U.S. Supreme Court case *Elonis v. United States* (2015) 575 U.S. ___ [192 L.Ed.2d 1, 135 S.Ct. 2001] is on point and overrules current California case law related to PC140(a) discussed below.

Elonis v. United States, supra **mandates a *mens rea* requirement for threat speech i.e. a "subjective" intent that the speaker knew his/her words (alleged threats) were a crime. "only that *mens rea* which is necessary to separate wrongful conduct from `otherwise innocent conduct.'"** *Carter v. United States, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000)* (quoting *X-Citement Video, 513 U.S., at 72, 115 S.Ct. 464).*

Courts "generally interpret criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them," id. (internal quotation marks and citations omitted; alteration in original), the Court found it appropriate to "read into the statute only that *mens rea* which is necessary to separate wrongful conduct" *US v. White, Court of Appeals, 4th Circuit 2016* citing *Elonis v. United States, supra*

Penal code 422 states " states that "any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, **is so unequivocal, unconditional, immediate, and specific** as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison."

The penal code 422 men of common intelligence would read the statute to mean what it says. The part **"is so unequivocal, unconditional, immediate, and specific"** informs the common man said "threat" is …unconditional.

The California Supreme Court has attempted to claim that despite the clear language **"is so unequivocal, unconditional, immediate, and specific"** that this can

mean the alleged threat can be **equivocal, conditional, not immediate, and not specific…**

In *People v. Bolin, 956 P. 2d 374 - Cal: Supreme Court 1998:*

With respect to the substantive claim, section 422 makes it a crime to "willfully threaten[] to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety...." Relying on People v. Brown (1993) 20 Cal.App.4th 1251, 25 Cal.Rptr.2d 76, defendant contends that because the letter did not contain an unconditional threat, it did not constitute a violation of section 422 as a matter of law and was therefore inadmissible as evidence of prior unadjudicated criminal activity. In his reply brief, he further argues that even if section 422 does not mandate an unconditional threat (see, e.g., People v. Stanfield (1995) 32 Cal. App.4th 1152, 38 Cal.Rptr.2d 328), the letter was still insufficient on its face to come within the statutory proscription.

In People v. Brown, the defendant accosted two women approaching their apartment and made several menacing statements as he pointed a gun at the head of one of the women. (20 Cal.App.4th at p. 1253, 25 Cal. Rptr.2d 76.) When the other said they should call the police, the defendant said he would kill them if they did. (Ibid.) A jury found him guilty of violating section 422. The Court of Appeal reversed the judgment, construing the statute to preclude conviction when the threat is conditional in any respect. **"The plain meaning of an `unconditional' threat is that there be no conditions,** `If you call the police ...' is a condition, [¶] **To—by some linguistic legerdemain—construe `unconditional threat' to include a `conditional threat' would only create `serious constitutional problems.**' (People v. Mirmirani ... (1981) 30 Cal.3d 375, 382, 178 Cal.Rptr. 792, 636 P.2d 1130....)" (People v. Brown, supra, 20 Cal.App.4th at p. 1256, 25 Cal.Rptr.2d 76.)

Since Brown, several Court of Appeal decisions have expressly disagreed with this strict interpretation of section 422. (People v. Dias (1997) 52 Cal.App.4th 46, 60 Cal. Rptr.2d 443; People v. Stanfield, supra, 32 Cal.App.4th 1152, 38 Cal.Rptr.2d 328; People v. Brooks (1994) 26 Cal.App.4th 142, 31 Cal. Rptr.2d 283; see also People v. Gudger (1994) 29 Cal.App.4th 310, 34 Cal.Rptr.2d 510 [construing section 76, prohibiting threats against a judge].) We find the reasoning of these subsequent cases more persuasive and now hold

that prosecution under section 422 does not require an unconditional threat of death or great bodily injury.[12]

In reaching this conclusion, we begin with the original source of the statutory language. In 1981, this court invalidated former section 422 as unconstitutionally vague. (People v. Mirmirani (1981) 30 Cal.3d 375, 388, 178 441*441 Cal.Rptr. 792, 636 P.2d 1130.) The Legislature subsequently repealed the statute and enacted a substantially revised version in 1988, adopting almost verbatim language from United States v. Kelner (2d Cir.1976) 534 F.2d 1020. (See Stats.1987, ch. 828, § 28, p. 2587; Stats.1988, ch. 1256, § 4, pp. 4184-4185.) In Kelner, the defendant, a member of the Jewish Defense League, had been convicted under a federal statute for threatening to assassinate Palestinian leader Yasser Arafat, who was to be in New York for a meeting at the United Nations. Kelner argued that without proof he specifically intended to carry out the threat, his statement was political hyperbole protected by the First Amendment rather than a punishable true threat. (United States v. Kelner, supra, 534 F.2d at p. 1025.)

The reviewing court disagreed and concluded threats are punishable consonant with constitutional protections "when the following criteria are satisfied. So long as the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution, the statute may properly be applied." (United States v. Kelner, supra, 534 F.2d at p. 1027**.) In formulating this rationale, the Kelner court drew on the analysis in Watts v. United States (1969) 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664, in which the United States Supreme Court reversed a conviction for threatening the President of the United States. Defendant Watts had stated, in a small discussion group during a political rally, "'And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.'"** (Id. at p. 706, 89 S.Ct. at p. 1400.) Both Watts and the crowd laughed after the statement was made. (Id. at p. 707, 89 S.Ct. at p. 1401.) **The Supreme Court determined that taken in context, and considering the conditional nature of the threat and the reaction of the listeners, the only possible conclusion was that the statement was not a punishable true threat, but political hyperbole privileged under the First Amendment.** (Id. at pp. 707-708, 89 S.Ct. at pp. 1401-1402.)

As the Kelner court understood this analysis, the Supreme Court was not adopting a bright line test based on the use of conditional language but simply illustrating the general principle that punishable true threats must express an intention of being carried out. (See United States v. Kelner, supra, 534 F.2d at p. 1026.) **"In effect, the Court was stating that threats punishable consistently with the First Amendment were only those**

which according to their language and context conveyed a gravity of purpose and likelihood of execution so as to constitute speech beyond the pale of protected [attacks on government and political officials]." (Ibid.) Accordingly, **"[t]he purpose and effect of the Watts constitutionally-limited definition of the term `threat' is to insure that only unequivocal, unconditional and specific expressions of intention immediately to inflict injury may be punished-only such threats, in short, as are of the same nature as those threats which are ... `properly punished every day under statutes prohibiting extortion, blackmail and assault....'"** (Id. at p. 1027.)

Given the rationale of Kelner and Watts, it becomes clear the reference to an "unconditional" threat in section 422 is not absolute. As the court in People v. Stanfield noted, "By definition, extortion punishes conditional threats, specifically those in which the victim complies with the mandated condition. [Citations.] Likewise, many threats involved in assault cases are conditional. A conditional threat can be punished as an assault, when the condition imposed must be performed immediately, the defendant has no right to impose the condition, the intent is to immediately enforce performance by violence and defendant places himself in a position to do so and proceeds as far as is then necessary. [Citation.] It is clear, then, that the Kelner court's use of the word `unconditional' was not meant to prohibit prosecution of all threats involving an `if clause, but only to prohibit prosecution based on threats whose conditions precluded them from conveying a gravity of purpose and imminent prospect of execution." (People v. Stanfield, supra, 32 Cal.App.4th at p. 1161, 38 Cal.Rptr.2d 328; 442*442 People v. Brooks, supra, 26 Cal.App.4th at pp. 145-146, 31 Cal.Rptr.2d 283; see also In re M.S. (1995) 10 Cal.4th 698, 714, 42 Cal. Rptr.2d 355, 896 P.2d 1365.) As the court commented in United States v. Schneider (7th Cir.1990) 910 F.2d 1569, 1570: "Most threats are conditional; they are designed to accomplish something; the threatener hopes that they will accomplish it, so that he won't have to carry out the threats."

Moreover, imposing an "unconditional" requirement ignores the statutory qualification that the threat must be "so ... unconditional... as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution ...." (§ 422, italics added.) "The use of the word `so' indicates that unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim." (People v. Stanfield, supra, 32 Cal.App.4th at p. 1157, 38 Cal.Rptr.2d 328.) "If the fact that a threat is conditioned on something occurring renders it not a true threat, there would have been no need to include in the statement the word `so.'" (People v. Brooks, supra, 26 Cal. App.4th at p. 149, 31 Cal.Rptr.2d 283.) This provision "implies that there are different degrees of unconditionality. A threat which may appear conditional on its face can be unconditional under the circumstances.... [¶] Language creating an apparent condition cannot save the threatener from

conviction when the condition is illusory, given the reality of the circumstances surrounding the threat. A seemingly conditional threat contingent on an act highly likely to occur may convey to the victim a gravity of purpose and immediate prospect of execution." (People v. Stanfield, supra, 32 Cal.App.4th at p. 1158, 38 Cal.Rptr.2d 328.) Accordingly, we reject defendant's threshold contention that the letter was inadmissible because it contained only conditional threats.

The same court that decided *United States v. Kelner* (2d Cir.1976) 534 F.2d 1020 clarified the conditional issue in a later case below:

In *United States v. Carrier*, *672 F. 2d 300 - Court of Appeals, 2nd Circuit 1982:*

"With these concerns in mind, we believe that whether words used are a true threat is generally best left to the triers of fact. Surrounding factual circumstances may not easily be required to be recounted in all indictments. The initial burden is on the government to prove a "true" threat. Only where the factual proof is insufficient as a matter of law should the indictment be dismissed. In Watts the Supreme Court held that defendant's words **"when taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners" should not have gone to the jury.** Most cases are within a broad expanse of varying fact patterns which may not be resolved as a matter of law, but should be left to a jury. Some of the factors a jury must weigh in considering the context in which the words were spoken include the kind of statement made, i.e., merely political hyperbole or specifically directed at the President; the place where it was made; to whom it was made; **how it was spoken, i.e., plainly and unconditionally or in jest.** See United States v. Kelner, 534 F.2d 1020 (2d Cir. 1976)."

In re George T., 93 P. 3d 1007 - Cal: Supreme Court 2004 "With respect to the requirement that a threat be "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat," we explained in *People v. Bolin, supra, 18 Cal.4th 297, 75 Cal.Rptr.2d 412, 956 P.2d 374*, **that the word "so" in section 422 meant that "`unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances. . . .'"** (*Bolin, supra, 18 Cal.4th at p. 340, 75 Cal.Rptr.2d 412, 956 P.2d*

374, quoting *People v. Stanfield (1995) 32 Cal.App.4th 1152, 1157, 38 72*72 Cal.Rptr.2d 328*.) "The four qualities are simply the factors to be considered in determining whether a threat, considered together with its surrounding circumstances, conveys those impressions to the victim." (*People v. Stanfield, supra, 32 Cal.App.4th at pp. 1157-1158, 38 Cal.Rptr.2d 328*.) A communication that is ambiguous on its face may nonetheless be found to be a criminal threat if the surrounding circumstances clarify the communication's meaning. (*People v. Butler (2000) 85 Cal.App.4th 745, 753-754, 102 Cal.Rptr.2d 269*.)"

"As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] **We begin by examining the statute's words, giving them a plain and commonsense meaning.""** (*People v. Scott (2014) 58 Cal.4th 1415, 1421 [171 Cal.Rptr.3d 638, 324 P.3d 827*].) **"[W]e consider the language of the entire scheme and related statutes, harmonizing the terms when possible."** (*Riverside County Sheriff's Dept. v. Stiglitz (2014) 60 Cal.4th 624, 632 [181 Cal.Rptr.3d 1, 339 P.3d 295*]; see *People v. Gonzalez (2014) 60 Cal.4th 533, 537 [179 Cal.Rptr.3d 1, 335 P.3d 1083]*.) In *Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 US 489* - Supreme Court 1982

"[P] erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply."

In *Connally v. General Constr. Co., 269 US 385 - Supreme Court 1926* **"[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process." . "the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of**

law. *International Harvester Co. v. Kentucky, 234 U.S. 216, 221; Collins v. Kentucky, 234 U.S. 634, 638."* Id.

The term "threats" and "threaten" is constitutionally vague and overbroad by a prohibition or chilling effect on constitutionally protected conduct. Penal codes 71, 140(a) and 422 criminalize "pure speech" and said sections of the penal code must be limited only to "true threats"

In *People v. Lowery, 257 P. 3d 72 - Cal: Supreme Court 2011*:

> **"The high court stressed that any statute that "makes criminal a form of pure speech ... must be interpreted with the commands of the First Amendment clearly in mind," and that "[w]hat is a threat must be distinguished from what is constitutionally protected speech."** (Id. at p. 707.) Applying that distinction in Watts, the high court concluded that the defendant's statement about shooting President Johnson was not a "true `threat.'" (Id. at p. 708.)". and, as such, not supporting the conviction for threatening to kill or inflict bodily injury on the President of the United States (id. at pp. 706-707). But the high court did not define that term in Watts.
>
> Consequently, as the Colorado Court of Appeals noted in People v. Stanley (Colo. Ct.App. 2007) 170 P.3d 782, various federal appellate courts construing statutes criminalizing threats "almost uniformly applied an objective [reasonable person] standard ... to determine whether a statement was a true threat." (Id. at p. 787; see, e.g., U.S. v. Malik (2d Cir. 1994) 16 F.3d 45, 49 [using a "reasonable person" standard to decide that evidence was sufficient to establish a true threat]; U.S. v. Kosma (3d Cir. 1991) 951 F.2d 549, 552, 556-557 [upholding conviction for threatening President Ronald Reagan after a court trial at which the judge found the defendant guilty using "the objective, reasonable person standard"]; U.S. v. Orozco-Santillan (9th Cir. 1990) 903 F.2d 1262, 1265 [evidence sufficient to establish true threat].)
>
> Thirty-four years after its 1969 decision in Watts v. United States, supra, 394 U.S. 705, holding that "true threats" fell outside the First Amendment's protection, the high court did define the term: **"`True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. [Citations.] The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats `protect[s] individuals from the fear of violence' and `from the disruption that fear engenders,' in addition to protecting people `from the possibility that the threatened violence will occur.'"** (Virginia v. Black, supra, 538 U.S. 343, 359-360.)

425*425 At issue in Virginia v. Black was a state criminal statute making it unlawful "`for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place.'" (Virginia v. Black, supra, 538 U.S. at p. 348, quoting Va. Code Ann. § 18.2-423.) The Virginia statute also provided that burning a cross would be prima facie evidence of an intent to intimidate. (Virginia v. Black, at p. 348.) The high court observed that the Commonwealth of Virginia could, without violating the First Amendment's free speech protection, "outlaw cross burnings done with the intent to intimidate because burning a cross is a particularly virulent form of intimidation." (538 U.S. at p. 363.)

Nonetheless, the high court struck down the Virginia statute; it reasoned that the statute's provision that burning a cross "shall be prima facie evidence of an intent to intimidate" (Va. Code Ann. § 18.2-423) allowed for a conviction "based solely on the fact of the cross burning itself," thus creating "`"an unacceptable risk of the suppression of ideas"'" (Virginia v. Black, supra, 538 U.S. at pp. 363, 365 (plur. opn. of O'Connor, J., joined by Rehnquist, C. J., Stevens & Breyer, JJ.); see id., at p. 385 (conc. & dis. opn. of Souter, J., joined by Kennedy & Ginsburg, JJ.)).

As explained in Justice O'Connor's plurality opinion in that case, the cross burner might well be engaging in "constitutionally proscribable intimidation." (Virginia v. Black, supra, 538 U.S. at p. 365.) But, the plurality noted, that same conduct might likewise indicate "that the person is engaged in core political speech" protected under the First Amendment. (Virginia v. Black, at p. 365.) The plurality went on to state that although punishing cross burning "done with the purpose of threatening or intimidating a victim" does not run afoul of the First Amendment (Virginia v. Black, at p. 366, italics added), that cannot be said of punishing cross burning intended as "a statement of ideology" or as "a symbol of group solidarity," both of which "`would almost certainly be protected expression'" (id. at pp. 365-366).

BAXTER, J., Concurring. —

The First Amendment allows states "to ban a `true threat.'" (Virginia v. Black (2003) 538 U.S. 343, 359 [155 L.Ed.2d 535, 123 S.Ct. 1536] (Black).) The majority opinion, which I have joined, is consistent with the First Amendment. It upholds the constitutionality of Penal Code section 140, subdivision (a), on the ground that the statute applies "only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, `a serious expression of an intent to commit an act of unlawful violence.'" (Maj. opn., ante, at p. 427, quoting Black, supra, 538 U.S. at p. 359.) **I write separately to discuss more fully the Ninth Circuit's mistaken belief that a "true threat" requires something else, namely, proof that the speaker subjectively intended the statements be**

taken as a threat. (See U.S. v. Bagdasarian (9th Cir. 2011) 652 F.3d 1113, 1116-1118; U.S. v. Cassel (9th Cir. 2005) 408 F.3d 622, 631-633.)

429*429 As this court's opinion points out, decisions prior to Black "`almost uniformly'" applied an objective standard, not a subjective standard, to determine whether a statement was a true threat and thus outside of the protections afforded by the First Amendment. (Maj. opn., ante, at p. 424; see also Doe v. Pulaski County Special School Dist. (8th Cir. 2002) 306 F.3d 616, 622 (en banc) ["All the courts to have reached the issue have consistently adopted an objective test that focuses on whether a reasonable person would interpret the purported threat as a serious expression of an intent to cause a present or future harm."].) To construe Black as upsetting the legal landscape would be a peculiar reading. Black did not criticize the existing case law. Indeed, it did not even purport to announce what criminal intent was constitutionally required. (Strasser, Advocacy, True Threats, and the First Amendment (2011) 38 Hastings Const. L.Q. 339, 377.) Rather, Black involved a criminal statute that expressly included a showing of subjective intent — i.e., a Virginia statute banning cross burning with "`an intent to intimidate a person or group of persons.'" (Black, supra, 538 U.S. at p. 347, quoting Va. Code Ann. § 18.2-423.) The constitutional necessity of such a provision was never at issue.

Rather, the controversy in Black centered on an additional provision of the Virginia criminal statute under which "`any ... burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons.'" (Black, supra, 538 U.S. at p. 363 (plur. opn. of O'Connor, J.) [quoting Va. Code Ann. § 18.2-423].) Because of the prima face provision, the jury was instructed that "`[t]he burning of a cross, by itself, is sufficient evidence from which you may infer the required intent.'" (Id. at p. 364 (plur. opn. of O'Connor, J.).) A historical survey of cross burning, however, called into question the validity of the prima facie provision and the corresponding instruction. Having originated as a means for Scottish tribes to signal each other, cross burning in the United States had become "inextricably intertwined with the history of the Ku Klux Klan" as "a `symbol of hate.'" (Id. at pp. 352, 357.) Even so, a burning cross can convey both a political message or a threatening one. (Id. at p. 357.) A burning cross may stand at times as a "symbol[] of shared group identity and ideology" at Ku Klux Klan gatherings (or in movies depicting the Klan), or it may blaze as "a tool of intimidation and a threat of impending violence." (Id. at pp. 356, 354.) Because of this dual history, "a burning cross does not inevitably convey a message of intimidation" (id. at p. 357) — or, in other words, a burning cross is not inevitably a true threat. Something more would be required to make it a true threat.

One "type of true threat," according to the high court, occurs "where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." (Black, supra, 538 U.S. at 430*430 p. 360.) Although "some cross burnings fit within this meaning of intimidating speech, and rightly so" (ibid.), "[t]he prima facie evidence provision in [Black]

ignores all of the contextual factors that are necessary to decide whether a particular cross burning is intended to intimidate" (id. at p. 367 (plur. opn. of O'Connor, J.)). The plurality then concluded: "The First Amendment does not permit such a shortcut." (Ibid. (plur. opn. of O'Connor, J.); see also id. at p. 380 (conc. & dis. opn. of Scalia, J.) [the jury instruction made it "impossible to determine" whether the verdict rested on the entirety of the evidence, "including evidence that might rebut the presumption that cross burning was done with an intent to intimidate," or whether the jury instead "focused exclusively on the fact that the defendant burned a cross"].) Indeed, "the prima facie provision strips away the very reason why a State may ban cross burning with the intent to intimidate.... The provision permits the Commonwealth to arrest, prosecute, and convict a person based solely on the fact of the cross burning itself" — even when the conduct is "core political speech" and, hence, not a true threat. (Id. at p. 365 (plur. opn. of O'Connor, J.).)

Penal Code section 140, subdivision (a), by contrast, applies only to true threats, not to speech protected by the First Amendment. As our opinion today explains, section 140, subdivision (a), applies "only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, `a serious expression of an intent to commit an act of unlawful violence.'" (Maj. opn., ante, at p. 427, quoting Black, supra, 538 U.S. at p. 359.) Under these circumstances, there need not be any additional showing that the speaker subjectively intended the statements be taken as a threat. The need to punish true threats — i.e., to "`protect[] individuals from the fear of violence' and `from the disruption that fear engenders'" (Black, supra, 538 U.S. at p. 360) — is triggered when a reasonable listener would understand the statements, in context, to be a serious expression of an intent to commit an act of unlawful violence. The fear of violence and the accompanying disruption such fear may cause is in no way diminished by the possibility that the speaker subjectively (and silently) did not intend to make a threat. And Black did not hold otherwise.

Our ruling today is consistent with the understanding of most courts that have considered the issue since Black was decided. (City of San Jose v. Garbett (2010) 190 Cal.App.4th 526, 539 [118 Cal.Rptr.3d 420] [Black does not require the defendant have "an intent that a statement `be received as a threat'"]; U.S. v. Armel (4th Cir. 2009) 585 F.3d 182, 185 ["Statements constitute a `true threat' if `an ordinary reasonable recipient who is familiar with the[ir] context ... would interpret [those statements] as a threat of injury.'"]; U.S. v. Jongewaard (8th Cir. 2009) 567 F.3d 336, 339, fn. 2 ["In this circuit, the test for distinguishing a true threat from constitutionally 431*431 protected speech is whether an objectively reasonable recipient would interpret the purported threat `as a serious expression of an intent to harm or cause injury to another.'"]; Porter v. Ascension Parish School Bd. (5th Cir. 2004) 393 F.3d 608, 616 ["Speech is a `true threat' and therefore unprotected if an objectively reasonable person would interpret the speech as a `serious expression of an intent to cause a present or future harm.'

The protected status of the threatening speech is not determined by whether the speaker had the subjective intent to carry out the threat; rather, to lose the protection of the First Amendment and be lawfully punished, the threat must be intentionally or knowingly communicated to either the object of the threat or a third person." (fns. omitted)]; U.S. v. Zavrel (3d Cir. 2004) 384 F.3d 130, 136; U.S. v. Nishnianidze (1st Cir. 2003) 342 F.3d 6, 14-15 ["A true threat is one that a reasonable recipient familiar with the context of the communication would find threatening"; thus the government had to prove only "that the defendant intended to transmit the interstate communication and that the communication contained a true threat"]; U.S. v. Syring (D.D.C. 2007) 522 F.Supp.2d 125, 129 ["courts in all jurisdictions consider whether a reasonable person would consider the statement a serious expression of an intent to inflict harm..."]; New York ex rel. Spitzer v. Cain (S.D.N.Y. 2006) 418 F.Supp.2d 457, 479 ["The relevant intent is the intent to communicate a threat, not as defense counsel maintains, the intent to threaten."]; Citizen Publishing Co. v. Miller (2005) 210 Ariz. 513 [115 P.3d 107, 114] [under Arizona's test, which is "substantially similar" to Black, "`true threats' are those statements made `in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or to take the life of [a person]'"]; People v. Stanley (Colo.App. 2007) 170 P.3d 782, 789 ["Black does not hold that subjective intent to threaten must be proved."]; State v. DeLoreto (2003) 265 Conn. 145 [827 A.2d 671, 680] ["In the context of a threat of physical violence, `whether a particular statement may properly be considered to be a threat is governed by an objective standard — whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault.'"]; Hearn v. State (Miss. 2008) 3 So.3d 722, 739, fn. 22 ["The protected status of threatening speech is not based upon the subjective intent of the speaker."]; State v. Johnston (2006) 156 Wn.2d 355 [127 P.3d 707, 710] ["`[W]hether a true threat has been made is determined under an objective standard that focuses on the speaker.'"]; see generally Citron, Cyber Civil Rights (2009) 89 B.U. L.Rev. 61, 107, fn. 321 ["Only the Ninth Circuit requires proof that the defendant subjectively intended to threaten the victim."].)

432*432 **Thus, when the high court said, "`True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" (Black, supra, 538 U.S. at p. 359), it did not thereby, for the first time, require proof that the speaker subjectively intended the speech be taken as a threat. The relevant intent remains the intent to communicate, not the intent to threaten.** (Porter v. Ascension Parish School Bd., supra, 393 F.3d at pp. 616-617.) A reading of Black that recasts "`means to communicate'" into a requirement that the speaker "intend[ed] for his language to threaten the victim" (U.S. v. Cassel, supra, 408 F.3d at p. 631) assumes that the single word "communicate" was designed to overrule the

settled law discussed above, and assigns "communicate" much more work than the word ordinarily can bear. Moreover, the high court, in the same paragraph in Black, went on to say that the "prohibition on true threats `protects individuals from the fear of violence' and `from the disruption that fear engenders,' in addition to protecting people `from the possibility that the threatened violence will occur.'" (Black, supra, 538 U.S. at p. 360.) The need for such protection, as noted above, does not depend on whether the speaker subjectively intended to threaten the victim. "A standard for threats that focused on the speaker's subjective intent to the exclusion of the effect of the statement on the listener would be dangerously underinclusive with respect to the first two rationales for the exemption of threats from protected speech." (New York ex rel. Spitzer v. Cain, supra, 418 F.Supp.2d at p. 479.)

One might also question the logic of resting the constitutional determination whether speech qualifies as a true threat on the subjective understanding of the speaker, without regard to whether the speech objectively would be viewed as threatening. (See U.S. v. Bagdasarian, supra, 652 F.3d at p. 1117 & fn. 14.) A statement that is subjectively intended to be a threat but which presents no objective indicators of its threatening nature would not trigger fear in the recipient or cause disruption. Indeed, such speech is unlikely ever to come to the attention of law enforcement. (See People v. Parson (2008) 44 Cal.4th 332, 346 [79 Cal.Rptr.3d 269, 187 P.3d 1] ["`"`intent may be inferred from words, acts, and other objective facts"""].)

In short, the subjective standard created by the Ninth Circuit is both mistaken, in that it purports to define what is a true threat for federal constitutional purposes, and dangerous, in that it compromises the government's ability to protect individuals from the fear of violence and the 433*433 disruption that fear engenders. California has good reason for adopting the objective standard, the standard already used in many other jurisdictions. I therefore join the opinion of the court authored by Justice Kennard.

FOOTNOTE [1] We are not persuaded by the quite recent decision in *U.S. v. Bagdasarian* (9th Cir. 2011) 652 F.3d 1113, in which the United States Court of Appeals for the Ninth Circuit concluded that in *Virginia v. Black, supra*, 538 U.S. 343, the high court held that every statute criminally punishing threats must include as an element of proof the defendant's subjective intent to make a threat.

30 Cal.3d 375 (1981)
636 P.2d 1130
178 Cal. Rptr. 792

THE PEOPLE, Plaintiff and Appellant,
v.
SHAHRAM MIRMIRANI, Defendant and Respondent.

Docket No. Crim. 21945.

Supreme Court of California.

December 7, 1981.

378*378 COUNSEL

John K. Van de Kamp, District Attorney, Donald J. Kaplan, Harry B. Sondheim and Roderick W. Leonard, Deputy District Attorneys, for Plaintiff and Appellant.

Wilbur F. Littlefield, Public Defender, Dennis A. Fischer, George H. Meyerhoff and Melissa Hill, Deputy Public Defenders, for Defendant and Respondent.

Quin Denvir, State Public Defender, and John Denvir as Amici Curiae on behalf of Defendant and Respondent.

OPINION

BIRD, C.J.

Are Penal Code sections 422 and 422.5,[1] which make it a felony to threaten to commit certain crimes "in order to achieve social or political goals," unconstitutionally vague?

I.

On May 1, 1979, Shahram Mirmirani walked into the Van Nuys police station in Los Angeles and spoke with Police Officer Charles Meter. In testimony at the preliminary examination, Meter described their conversation as follows.[2] Mirmirani asked Meter for the names of the two police officers who had arrested him five days earlier for possession of a small marijuana plant in his apartment.[3] Meter told 379*379 Mirmirani that the officers were Billy Kendig and William McAllister. Mirmirani said he wanted to sue them. Clenching his hand into a fist, he gestured toward his chin as if to punch himself. He said that the officers had done that to him so he wanted to do the same to them. Meter asked if he meant "an eye for an eye and a tooth for a tooth," and Mirmirani replied "yes."

Mirmirani went on to say that he did not want money from the officers, but wanted the court to take a child away from each of them. When Meter said the court would not do that, Mirmirani said he would do it himself. He explained that his wife had been pregnant when the officers arrested him, and had then gone into labor and delivered a baby that lived only four or five minutes. He said something about the "Islamic Code"[4] and indicated that after he had taken the life of a child of each of the officers he and his wife would be out of the country within three days. Mirmirani spoke with Meter for approximately one-half hour. They shook hands as Mirmirani left.

Meter testified that he was very disturbed by Mirmirani, in part because Mirmirani appeared very calm, rational and precise. Meter called Kendig and McAllister to the station from their patrol and told them of the conversation. He also informed his superiors at the police station.

McAllister and Kendig both testified that they were concerned by Meter's description of Mirmirani's conduct. They indicated that they were accustomed to threats against their own safety, but their families had never been threatened. They continued with their patrol duties, but returned to the station twice to consult with Meter about precautions to ensure the safety of their families. After the second discussion, they received permission to return home, because they felt they were too concerned to concentrate on their work. Meter suggested that they contact the police psychologist, but neither of them did so.

Meter and his superiors arranged increased police patrols in the neighborhoods in which McAllister and Kendig lived. These patrols continued for at least three days. They also contacted the police department intelligence division, which dealt with threats on police officers, 380*380 and the public disorder intelligence division, which dealt with information relating to "political-type" groups. Neither division had any information about Mirmirani.

The following day, May 2, 1979, Meter accompanied police department investigators to Mirmirani's apartment. The door was opened by a pregnant woman who said she was Mirmirani's wife. When Meter asked Mirmirani why he had said his baby had died, Mirmirani muttered and appeared confused.

Kendig testified that his fears continued for up to two weeks after the initial incident. McAllister testified that his fear eased after he found that Mirmirani's wife was still pregnant. Both officers warned their wives and neighbors about the threats. They changed their schedules for some time after the incident so they could be at home with their families in the evenings.

As a result of these events, Mirmirani was arrested and charged with two violations of section 422, subdivision (a), a felony. At his preliminary examination on the charges, he argued that there was no evidence that his threats had been

made in order to achieve a social or political goal as required by the statute. The magistrate replied, "[Y]ou can call a personal vendetta a social goal, perhaps." Although "[i]t is very difficult to define just what the legislature had in mind," the magistrate held that Mirmirani's threat was both social and political and therefore fell within the purview of the statute. The magistrate felt that the threats were apparently designed to "strik[e] fear at the heart of those who have arrested him in the ordinary course of duty.... There is another side of politics which is our way of life and the way our government is constituted and its orderly processes, where these things are not to be tolerated."

Mirmirani was held to answer. An information was filed against him on July 29, 1979. A motion to set aside the information pursuant to section 995 was filed as well as a demurrer to the information. These motions were based on the contention that there was no evidence that Mirmirani's threats were politically or socially motivated and that sections 422 and 422.5 were unconstitutionally vague and overbroad.

During the argument on Mirmirani's motions, the district attorney conceded that the statute was vague. "I don't know what the words, `to 381*381 achieve social or political goals,' mean[].... I don't think your Honor knows what the words mean.... It's my position that the words `to achieve social or political goals' are the words that create any semblance of unconstitutionality because they are vague, and simply because if the defendant doesn't know what it means and the Court doesn't know what it means, we don't know whether we are talking about a personal goal or a political goal or a general goal. Those words are vague." The district attorney argued that those words should be stricken from the statute.

The trial court overruled Mirmirani's demurrer, but granted the motion to set aside the information under section 995. This ruling was based on the fact there was no evidence to support a finding that Mirmirani made threats to achieve social or political goals. The district attorney appealed from the granting of the section 995 motion. Mirmirani challenged the constitutionality of sections 422 and 422.5.

II.

Section 422 makes it a felony to "willfully threaten[] to commit a crime which will result in death or great bodily injury to another person, with *intent to terrorize another or with reckless disregard of the risk of terrorizing another,"* if such threats cause another person "reasonably to be in sustained fear for his or her[] or their immediate family's safety."[5] (Italics added.) To "terrorize" is defined by section 422.5 as "creat[ing] a climate of fear and intimidation by means of threats or violent action causing sustained fear for personal safety *in order to achieve social or political goals."* (Italics added.)

382*382 (1a) Read together, the two statutes penalize only threats made with intent to achieve "social or political goals."[6] Respondent Mirmirani contends that the phrase "social or political goals" is unconstitutionally vague. Further, he argues that the offending phrase cannot be severed from the rest of sections 422 and 422.5. Therefore, both sections must be declared unconstitutional in their entirety.

(2) **"The requirement of a reasonable degree of certainty in legislation, especially in the criminal law, is a well established element of the guarantee of due process of law. `No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids ... "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."'** (*Lanzetta* v. *New Jersey* [(1939)] 306 U.S. 451, 453 [59 S.Ct. 618, 83 L.Ed. 888], [quoting] *Connally* v. *General Const. Co.* [(1926)] 269 U.S. 385, 391 [46 S.Ct. 126, 70 L.Ed. 322].) Such also is the law of the State of California. (*People* v. *McCaughan* [(1957)] 49 Cal.2d 409, 414 [317 P.2d 974].)" (*In re Newbern* (1960) 53 Cal.2d 786, 792 [3 Cal. Rptr. 364, 350 P.2d 116].)

(3) **If a law is vague, several serious constitutional problems emerge. First, insufficient notice is provided to the citizenry as to what is prohibited. "Vague laws may trap the innocent by not providing fair warning."** (*Grayned* v. *City of Rockford* (1972) 408 U.S. 104, 108 [33 L.Ed.2d 222, 227, 92 S.Ct. 2294].) Second, vague laws do not provide explicit standards to those who must enforce them. **"[V]ague statutory language also creates the danger that police, prosecutors, judges and juries will lack sufficient standards to reach their decisions, thus opening the door to arbitrary or discriminatory enforcement of the law."** (*Pryor* v. *Municipal Court* (1979) 25 Cal.3d 238, 252 [158 Cal. Rptr. 330, 599 P.2d 636]. See also *In re Newbern, supra,* 53 Cal.2d 786, 796.)

383*383 **Finally, when a criminal statute impacts on First Amendment rights, greater precision should be required to survive a void-for-vagueness challenge.[7] "[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man [or woman] may the less be required to act at his [or her] peril here, because the free dissemination of ideas may be the loser."** (*Smith* v. *California* (1959) 361 U.S. 147, 151 [4 L.Ed.2d 205, 210, 80 S.Ct. 215].)

(4) **The crime defined by sections 422 and 422.5 can consist of pure speech. The crime can be committed by words alone, without action or an intent to act. Therefore, the strict standards required by the First Amendment must be applied in analyzing respondent's vagueness**

challenge. "[A] statute such as this one, which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind." (*Watts* v. *United States, supra,* 394 U.S. 705, 707 [22 L.Ed.2d 664, 667].)

To evaluate respondent's claim of vagueness, this court will "look first to the language of the statute, then to its legislative history, and finally to California decisions construing the statutory language. 384*384 [Citation.]" (*Pryor* v. *Municipal Court, supra,* 25 Cal.3d 238, 246.) The meaning of the language of the statute can appear either on the face of the statute or from any "established technical or common law meaning." (*In re Newbern, supra,* 53 Cal.2d 786, 792.)

(1b) The language contained in this statute, "social or political goals," has no established legal meaning. "Social" is defined as of or relating to "human society," "the interaction of the individual and the group," or the "welfare of human beings as members of society." (Webster's New Internat. Dict. (3d ed. 1961) p. 2161.) "Political" is defined as of or relating to "government," "the conduct of governmental affairs," or "politics." (*Id.,* at p. 1755.) Politics is "the art or science of government," "the regulation and control of men living in society," and the "total complex of interacting and [usually] conflicting relations between men living in society." (*Ibid.*)

These definitions do not provide clear lines by which citizens, law enforcement officials, judges and juries can understand what is prohibited and what is not.

The main problem with the statute is that it is all-inclusive. It is virtually impossible to determine what conduct by an individual in a democratic society could not in some way be construed as an attempt to achieve a "social" or "political" goal. At first glance, it might be argued that one who threatened another after a barroom brawl would not be included within the scope of the statute. However, if the brawl started because of a racial epithet and one of the participants hoped to deter members of a certain racial group from coming to that bar, would such threats be made to achieve a goal related to "human society" or to the "conflicting relationships" among men and women in society? Clearly the statute provides no guidance to the police, prosecutor, judge or jury who must decide whether the conduct was motivated by the desire to achieve a social or political goal.

Despite the apparent intent to limit the scope of the statute to threats aimed at achieving "social or political goals," those words in fact provide no limitation at all. They are all-encompassing. Virtually any threat could be construed as an attempt to achieve a goal related to human society, human interactions, or governmental affairs. As a result, the statute leaves to the prosecution, the judge and the jury the impossible task of determining what threats were intended to be included

within its scope. Such unguided discretion is an impermissible violation 385*385 of constitutional due process requirements. "Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgressions. [Citations.]" (*Thornhill* v. *Alabama* (1940) 310 U.S. 88, 98 [84 L.Ed. 1093, 1100, 60 S.Ct. 736].)

The problem in applying this statute was underscored in the trial court. At the preliminary hearing, the defense counsel labeled Mirmirani's actions no more than a "personal vendetta." The magistrate replied, "you can call a personal vendetta a social goal, perhaps," and added that "politics" includes "our way of life...." As interpreted by the magistrate, "social" meant any attempt to revenge a wrong committed by another person and "political" included any threat against the police.

The district attorney who argued against respondent's section 995 motion conceded that the phrase "social or political goals" was unconstitutionally vague. The only recourse was to strike it from the statute.

The superior court judge who ruled on the motion to dismiss assumed that a personal goal would not bring a threat within the statute. He granted the section 995 motion, although he expressed some doubts about the possibility that any threat that impacted on the criminal justice system could fall within the purview of the law.[8]

Legislative history provides no assistance in determining a more precise definition of "social" or "political." Sections 422 and 422.5 were added to the Penal Code in 1977. (Stats. 1977, ch. 1146, § 1, pp. 3684-3685.) The intent-to-terrorize language was added by amendment in the Senate. (Sen. Amend. to Sen. Bill No. 923 (1977-1978 Reg. Sess.) June 1, 1977.) Later, the bill was amended by the Assembly to define "terrorize," including the requirement of an intent to achieve social or political goals. (Assem. Amend. to Sen. Bill No. 923 (1977-1978 Reg. Sess.) Aug. 16, 1977.)

386*386 The statutes were supported by Pacific Gas and Electric Company and by some law enforcement agencies. (*Review of Selected 1977 California Legislation* (1978) 9 Pacific L.J. 423.) The statutes apparently were inspired in part by attacks on California utility installations. (*Id.,* at p. 424.) Nothing in this sketchy legislative history indicates what threats the Legislature intended to penalize when it adopted the language "social or political goals." Further, there are no California cases interpreting this law or the phrase "social or political goals."

Respondent's own conduct is a good example of the vagueness of the line drawn by the Legislature. He allegedly threatened to take some action in order to obtain revenge. Can revenge ever be considered a social goal? On the one hand, it certainly relates to "human society" and to interactions among the citizenry. On the other hand, respondent's concern was purely personal. He acted on his own to achieve satisfaction for himself alone. Since the statute is so vague, these threats arguably could be included within its scope.

Similarly, respondent's attempt at self-help in response to what he considered to be illegitimate police activities arguably reflected a political goal: to obtain revenge without recourse to the accepted political processes of our system of government. Nonetheless, respondent was not connected with any political group and espoused no political beliefs. Was this a "political" threat under the statute? Nothing in the language of the statute, the legislative history or the case law furnishes an answer to this question.

Appellant argues that the statute could be saved by narrowly construing "social" and "political." Social would be defined as relating to the welfare of human beings as members of a society. It would include only goals that impacted on identifiable groups within society. "Political" would be limited to acts relating to government or governmental affairs. Unfortunately, this interpretation does not eliminate the statute's vagueness.

What type of group would trigger the definition of "social"? Is an intent to further one's personal interest outside of the statute, but an intent to help oneself and one's family within it? Similarly, a group of friends could be an identifiable group. Any goal that concerned more than one person might fall within this definition of a "social" goal. Further, an examination into the membership of a group a defendant 387*387 intended to benefit would raise additional First Amendment problems because of its chilling effect on freedom of association.

Narrowing the construction of "political goals" to government or governmental affairs presents the same problem. Would the statute be triggered by *any* reference to a goal that might impact on government? A man would commit no politically motivated crime if he threatened another man in a bar. However, if in the course of his threats he called his victim "a fascist," could a jury conclude that his threats were designed to achieve a goal relating to government — the intimidation of one whose political beliefs differed from his own? Surely, due process requires that criminal statutes provide more guidance to the citizens. This is particularly true when the statutes impinge upon First Amendment protections.

Appellant's final claim is that although the language is vague the statute can be saved by severance of the unconstitutional section. However, appellant overlooks the fact that reading the statute as a whole, it is apparent that the

"social or political goals" provision was intended to *limit* the reach of the entire statute. The Legislature did not intend to criminalize threats that were not made to achieve those goals. If this court were to strike the restriction, the effect would be to *extend* the reach of the law, thereby criminalizing conduct (threats made for purposes other than "political" or "social" goals) that the Legislature did not intend to penalize.

The rule governing severability is clear. "If the provisions are so interdependent that those which are invalid are to be regarded as the condition or consideration upon which others were enacted ... the entire statute must be held invalid." (*Hale* v. *McGettigan* (1896) 114 Cal. 112, 119 [45 P. 1049]; accord *People* v. *Barksdale* (1972) 8 Cal.3d 320, 333 [105 Cal. Rptr. 1, 503 P.2d 257].) The limitation the Legislature attempted to place on the reach of the statute, by confining it to situations in which "social or political goals" were present, is fundamental to the crime the Legislature attempted to punish. (5) (See fn. 9.) (1c) This court cannot redefine that crime to include conduct specifically excluded by the Legislature in an attempt to save the statute from constitutional infirmity.[9]

388*388 **III.**

The phrase "social or political goals" is unconstitutionally vague. Since this section is vital to the statute, the court has no other choice than to find the statute unconstitutional.[10]

The judgment of dismissal is affirmed.

Tobriner, J., and Broussard, J., concurred.

NEWMAN, J., Concurring.

A casual reader might infer that our holding perhaps affects current concern regarding international terrorism. But would that be a fair reading of the Chief Justice's opinion? I think not, and thus I concur (except that I would rely solely on the California Constitution).[1]

"The difference between domestic terror activity and international terror-violence should be noted...." (Friedlander, *Terrorism and International* 389*389 *Law: What Is Being Done?* (1977) 8 Rut.-Cam.L.J. 383, 384.) Our court in this case does not fault the juridical use of the word "terrorism," and the century-old concept of "political offense" is not being challenged. (Cf. Rep. of United Nations Gen. Assem. ad hoc Committee on Internat. Terrorism (1973) 28 U.N. GAOR, Supp. 28, Doc. No. A/9028, p. 11 ("Work of the Sub-Committee of the Whole on the Definition of International Terrorism"); Dugard, *Towards the Definition of*

International Terrorism (1973-1974) 67 Am.J.Int.L., Proc. 94: "[S]tates had accepted the principle of nonextradition in the case of *political offenders* by the middle of the 19th century"; further (p. 95), in the 1937 Convention for the Prevention and Punishment of Terrorism "Western powers retained their discretion to grant asylum to the *political offender*" (italics added); Bassiouni & Derby, *Final Report on the Establishment of an International Criminal Court for the Implementation of ... Relevant International Instruments* (1981) 9 Hofstra L.Rev. 523, 590: "The `political offense exception' is excluded from all international crimes herein"; cf. Friedlander, *supra,* at p. 383: "[T]here is still no acceptable legal definition of terrorism. Perhaps there need not be, if one deals with terrorism essentially as a criminal act." But see, e.g., 22 U.S.C. §§ 286e-11, 2753(f)(1), and 2371(a) ("international terrorism" affects U.S. aid to other countries).

RICHARDSON, J.

I respectfully dissent. In my view, the statutory provisions at issue (Pen. Code, §§ 422, 422.5) are not unconstitutionally vague.

The foregoing provisions, which are contained in a title of the Penal Code entitled "Terrorist Threats" (tit. 11.5), undoubtedly were enacted to proscribe threats of harm by persons seeking to advance some social or political goal rather than to accomplish a purely private or personal purpose. The majority holds that the limitational phrase "to achieve social or political goals" (§ 422.5) is "all-encompassing," providing "no limitation at all." (*Ante,* p. 384.) To the contrary, properly construed the provision reasonably confines the reach of these statutes in an entirely constitutional manner.

In his majority opinion written for the Court of Appeal, Second Appellate District, Division Five, in this case, Justice Stephens upheld the challenged provisions on the following basis: "... Webster's Third New International Dictionary (1966), at page 2161, defines `social' as `relating to or concerned with the welfare of human beings as members of society.' `Political' is defined `of or relating to ... the conduct of governmental 390*390 affairs.' (P. 1755.) It is apparent that the Legislature contemplated the prohibition of threats under section 422 where they are made to advance the cause of an ascertainable group, or are made in furtherance of principles advocated by an ascertainable group, whether in a political or a more general (social) context. Conceivably, threats under section 422 would be prohibited where they contemplate some impact on the conduct of governmental affairs, regardless of the perpetrator's group affiliation. Clearly beyond the purview of the statute are threats made in a purely personal context, as in cases concerning strictly personal pecuniary gain (as in the case of blackmail) or as a result of personal rivalry." (Fn. omitted.)

I fully concur with, and adopt, Justice Stephens' cogent analysis. I further observe that even the dissenting opinion for the Court of Appeal, agreed that "the statute is not unconstitutional on its face.... [T]he adjectives `social' and `political' are sufficiently certain to protect the statute from the vice of vagueness." (Fn. omitted.) Rather, unlike the Court of Appeal majority, the dissenting justice did not believe that the challenged statutes properly applied to defendant's conduct, an issue which the majority herein does not decide and one which, accordingly, I do not address.

Our news media very frequently relate reports of threats of harm uttered by terrorists and others acting in the name of some social or political cause or group, or seeking to advance its aims. The statutory provisions struck down by the majority herein had served an important dual purpose of deterring such threats and subjecting to imprisonment those who made them, thereby inhibiting the subsequent acts of violence or terrorism which, sadly, so often follow.

I would uphold the statute.

Mosk, J., and White, J.,[*] concurred.

Appellant's petition for a rehearing was denied January 14, 1982. Kaus, J., did not participate therein. Tobriner, J.,[†] participated therein. Richardson, J., and Mosk, J., were of the opinion that the petition should be granted.

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

[2] Mirmirani did not testify at the preliminary hearing. In argument, his counsel indicated that Mirmirani's recollection of the conversation was very different and that Mirmirani would assert that Meter misunderstood him because of his heavy accent.

[3] A charge of possession of marijuana was filed against Mirmirani but later dismissed.

[4] Meter was unsure of the exact phrase used by Mirmirani. Meter testified, "At that time the defendant told me that according to the Islamic — he didn't use the word `faith,' but a word similar to it — that by the Islamic code, he was going to take the life of the child of each officer."

[5] Sections 422 and 422.5 read as follows: "§ 422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with intent to terrorize another or with reckless disregard of the risk of terrorizing another, and who thereby either:

"(a) Causes another person reasonably to be in sustained fear for his or hers or their immediate family's safety;

"(b) Causes the evacuation of a building, place of assembly, or facility used in public transportation;

"(c) Interferes with essential public services; or

"(d) Otherwise causes serious disruption of public activities, is guilty of a felony and shall be punished by imprisonment in the state prison."

"§ 422.5. As used in this title, `terrorize' means to create a climate of fear and intimidation by means of threats or violent action causing sustained fear for personal safety in order to achieve social or political goals."

[6] Appellant contends that the definition of "terrorize" in section 422.5 applies only to the "intent to terrorize" clause in section 422, not to the "reckless disregard of the risk of terrorizing" provision. Relying on this distinction, appellant argues that the intent to "achieve social or political goals" limitation applies only to intentional threats, while all reckless threats are included within the statute, no matter what their goals.

This contention is without merit. It is well settled that a word or phrase should be given the same scope or meaning when it appears in separate parts of a statute. (*Pitte* v. *Shipley* (1873) 46 Cal. 154, 160; *Corey* v. *Knight* (1957) 150 Cal. App.2d 671, 680 [310 P.2d 673].) The Legislature clearly intended the definition of "terrorize" to apply to "terrorizing" as well.

[7] Appellant argues that this statute does not impact on First Amendment rights because "threats" are not protected by the First Amendment. While it may be true that the Legislature can constitutionally penalize certain kinds of threats, such a statute must be narrowly interpreted to avoid penalizing protected speech. (*Watts* v. *United States* (1969) 394 U.S. 705, 707-708 [22 L.Ed.2d 664, 667, 89 S.Ct. 1399]; *United States* v. *Kelner* (2d Cir.1976) 534 F.2d 1020, 1024-1027.)

This stringent requirement of precision in drafting statutes restricting speech reflects the treasured role free speech plays in our society. "The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours." (*Cohen* v. *California* (1971) 403 U.S. 15, 24 [29 L.Ed.2d 284, 293, 91 S.Ct. 1780].) "[I]t is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes." (*Terminiello* v. *Chicago* (1949) 337 U.S. 1, 4 [93 L.Ed. 1131, 1134, 69 S.Ct. 894].)

Those who founded our country recognized the value of unfettered speech when they included protection of speech, "the Constitution's most majestic guarantee" (Tribe, American Constitutional Law (1978) § 12-1, p. 576), as one of the first amendments to our Constitution. "They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth.... Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law — the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed." (*Whitney* v. *California* (1927) 274 U.S. 357, 375-376 [71 L.Ed. 1095, 1105-1106, 47 S.Ct. 641] (conc. opn. of Brandeis, J.).)

[8] The judge posed this hypothetical to the district attorney: "Suppose I see you out in the hall this afternoon and I go, `I didn't like your argument up in my court this afternoon. I am either going to punch you out today or I am going to get you as quickly as I can at the first moment I can do you in....' I gave you a climate of fear ... you thought I was going to achieve a social goal of having a deputy district attorney come up and not argue in a frivolous fashion. Am I a terrorist? I sure fit the definition of that section under the outline I just gave you."

[9] The statute contains a severability clause. (Stats. 1977, ch. 1146, § 2, p. 3685.) However, the presence of such a clause is not determinative of the issue of severability. "Such a clause, despite its positive terms, does not deprive the judiciary of its normal power and duty to construe the statute to determine whether the unconstitutional part so materially affects the balance as to render the entire

enactment void. If the court reaches the latter conclusion, it will annul the statute as a whole. [Citations.]" (*California Emp. etc. Com.* v. *Payne* (1947) 31 Cal.2d 210, 214 [187 P.2d 702]; accord, *Fort* v. *Civil Service Commission* (1964) 61 Cal.2d 331, 339-340 [38 Cal. Rptr. 625, 392 P.2d 385].) The vague language in this statute is fundamental to the crime defined by the Legislature. It cannot be severed from the balance of the statute without materially altering the whole. Therefore, the entire statute must be declared void.

[10] This disposition of the case renders it unnecessary to reach respondent's additional constitutional contentions. Respondent argues that the phrases "reasonably to be in sustained fear" and "climate of fear and intimidation" are unconstitutionally vague. In addition, he argued below that the statute was overbroad for it penalized speech protected by the First Amendment. Also, he contended that it violated equal protection by irrationally punishing only those who threaten in order to achieve "social" or "political" goals.

Although the Legislature may constitutionally penalize threats, even though they are pure speech, statutes which attempt to do so must be narrowly directed only to threats which truly pose a danger to society. (See e.g., *Rogers* v. *United States* (1975) 422 U.S. 35, 41-48 [45 L.Ed.2d 1, 7-11, 95 S.Ct. 2091] (conc. opn. of Marshall, J.); *Watts* v. *United States, supra,* 394 U.S. 705, 707-708 [22 L.Ed.2d 664, 667]; *United States* v. *Kelner, supra,* 534 F.2d 1020, 1027 [holding that a threat can be penalized only if "on its face and in the circumstances in which it is made [it] is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution...."].)

[1] This case is unlike *Sei Fujii* v. *State of California* (1952) 38 Cal.2d 718 [242 P.2d 617]. The dicta there regarding the United Nations Charter were discussed recently in Oliver, *The Treaty Power and National Foreign Policy as Vehicles for the Enforcement of Human Rights in the United States* (1981) 9 Hofstra L.Rev. 411, 413-418; and see *The Fujii Era and Beyond* in Lillich & Newman, International Human Rights: Problems of Law and Policy (1979) pages 53-122.

[*] Assigned by the Chairperson of the Judicial Council.

[†] Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

In *State v. Indrisano*, *228 Conn. 795 - Conn: Supreme Court 1994*:

The purpose of the vagueness doctrine is twofold. The doctrine requires statutes to provide fair notice of the conduct to which they pertain and to establish minimum guidelines to govern law enforcement. The United States Supreme Court has set forth standards for evaluating vagueness. **"First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning."** *Grayned v. Rockford,* 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). **"[A] law forbidding or requiring conduct in terms so vague that men of**

common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law." *Baggett* v. *Bullitt,* 377 U.S. 360, 367, 84 S. Ct. 1316, 803*803 12 L. Ed. 2d 377 (1964); see also *State* v. *Schriver,* 207 Conn. 456, 459, 542 A.2d 686 (1988); *State* v. *Cavallo,* 200 Conn. 664, 670, 513 A.2d 646 (1986).

"Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." *Grayned* v. *Rockford,* supra, 108-109. **Therefore, "a legislature [must] establish minimal guidelines to govern law enforcement." (Internal quotation marks omitted.)** *Kolender* v. *Lawson,* 461 U.S. 352, 357-58, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983);

In order to satisfy due process protections, a statute must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned* v. *Rockford,* 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1971). **Not only is specificity required** 821*821 **to provide this adequate notice**; *Papachristou* v. *Jacksonville,* 405 U.S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972); *State* v. *Schriver,* 207 Conn. 456, 459-60, 542 A.2d 686 (1988); **but it is also necessary so that the defendant is not subjected to arbitrary and discriminatory enforcement of the law**. *Grayned* v. *Rockford,* supra, 108; ***Connecticut Building Wrecking Co.* v. *Carothers*, 218 Conn. 580, 591, 590 A.2d 447 (1991). "A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (Internal quotation marks omitted.)** *State* v. *Schriver,* supra, 460.

BERDON, J., dissenting. In my opinion, the disorderly conduct statute, General Statutes § 53a-182, is unconstitutionally vague under the fourteenth amendment to the United States constitution.

The majority's description of the facts of this case obscures the basis for the defendant's conviction as it pertains to the defendant's speech. The trial court concluded, on the basis of the following evidence, that the defendant violated § 53a-182 while attempting to repossess a copy machine for his employer. First, the trial court found that the defendant had been anxious to repossess the machine before the lessee returned and had "said that he couldn't wait," shouting "God damn, I don't have to wait, God damn it"; and that the defendant told Gordon Anderson "in no uncertain terms to keep his nose out of it" when he said "you, old man, stay out of this." Second, the trial court found that the defendant had pushed Bonnie Orgovan in his attempt to leave with the copier.

In order to satisfy due process protections, a statute must "give the person of ordinary intelligence a reasonable opportunity to know what is

prohibited." *Grayned* v. *Rockford,* 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1971). Not only is specificity required 821*821 to provide this adequate notice; *Papachristou* v. *Jacksonville,* 405 U.S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972); *State* v. *Schriver,* 207 Conn. 456, 459-60, 542 A.2d 686 (1988); but it is also necessary so that the defendant is not subjected to arbitrary and discriminatory enforcement of the law. *Grayned* v. *Rockford,* supra, 108; *Connecticut Building Wrecking Co.* v. *Carothers,* 218 Conn. 580, 591, 590 A.2d 447 (1991). "A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (Internal quotation marks omitted.) *State* v. *Schriver,* supra, 460.

When a defendant claims that a statute is void for vagueness under the fourteenth amendment to the United States constitution, ordinarily we limit our inquiry to the applicability of the statute to the defendant's conduct. *United States* v. *Mazurie,* 419 U.S. 544, 550, 95 S. Ct. 710, 42 L. Ed. 2d 706 (1975); *Connecticut Building Wrecking Co.* v. *Carothers,* supra, 588. The statute should be scrutinized on its face, however, if its language "reaches a substantial amount of constitutionally protected conduct. *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 494 [102 S. Ct. 1186, 71 L. Ed. 2d 362] (1982); *Kolender* v. *Lawson,* 461 U.S. 352, 359 n.8 [103 S. Ct. 1855, 75 L. Ed. 2d 903] (1983). Criminal statutes must be scrutinized with particular care, e.g., *Winters* v. *New York,* 333 U.S. 507, 515 [68 S. Ct. 665, 92 L. Ed. 840] (1948); those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application. E.g., *Kolender* [v. *Lawson,* supra, 359 n.8]." (Internal quotation marks omitted.) *Houston* v. *Hill,* 482 U.S. 451, 458-59, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987); see 822*822 *Gooding* v. *Wilson,* 405 U.S. 518, 521, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972); *State* v. *Ball,* 226 Conn. 265, 271, 627 A.2d 892 (1993); *State* v. *Cavallo,* 200 Conn. 664, 670, 513 A.2d 646 (1986).

Facial constitutional scrutiny is not limited to statutes that directly regulate speech by their own terms. In *State* v. *Ball,* supra, we noted that "[t]he Supreme Court of the United States `has applied First Amendment scrutiny to a statute regulating conduct which has the incidental effect of burdening the expression of a particular political opinion.' *Arcara* v. *Cloud Books, Inc.,* 478 U.S. 697, 702, 106 S. Ct. 3172, 92 L. Ed. 2d 568 (1986); see *Texas* v. *Johnson,* 491 U.S. 397, 406-407, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989); *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288, 297-98, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984); *United States* v. *O'Brien,* 391 U.S. 367, 376-77, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968). We have applied such scrutiny to a statute that `could, if drafted ambiguously, impinge upon rights of expression protected by the first amendment ....' *State* v. *Cavallo,* [supra, 671]."

An ambiguously crafted statute, which could reasonably foster confusion over whether the statute prohibits expression that is protected by the first amendment, "is unconstitutional for two reasons: (1) it may deter individuals from exercising their first amendment freedoms for fear of incurring criminal liability; and (2) it vests enforcement officials with undue discretion to interfere with the right to freedom of speech.... Consequently, we carefully scrutinize a statute that is under attack to determine whether its language, as we have construed it, reasonably warrants such uncertainty among members of the public. We will not enforce a statute that could exert such a chilling effect 823*823 on first amendment liberties."[1] (Citations omitted.) *State* v. *Cavallo,* supra.

Therefore, we must determine if § 53a-182 (a) reaches a substantial amount of constitutionally protected conduct. I conclude that it does, in light of its inclusion of the following terms and phrases: "tumultuous... behavior" in subdivision (1); the entire proscription of subdivision (2) ("by offensive or disorderly conduct, annoys or interferes with another person"); "unreasonable noise" in subdivision (3); and "disturbs" in subdivision (4). Each of these terms and phrases substantially implicates speech. "[I]t is now settled that constitutionally protected forms of communication include parades, dances, artistic expression, picketing, wearing arm bands, burning flags and crosses, commercial advertising, charitable solicitation, rock music, some libelous false statements, and perhaps even sleeping in a public park.' J. Stevens, *The* Freedom of Speech,' 102 Yale L.J. 1293, 1298 (1993)." *State* v. *Ball,* supra, 272. Moreover, the terms "obstructs" in subdivision (5) and "congregates" in subdivision (6) of § 53a-182 (a) implicate the right to assemble. See *Coates* v. *Cincinnati,* 402 U.S. 611, 614-15, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971).

Section 53a-182 reaches constitutionally protected speech to at least the same degree as the Connecticut Hunter Harassment Act, codified in General Statutes 824*824 § 53a-183a.[2] *State* v. *Ball,* supra. In *Ball,* we held that "the first amendment threshold is crossed by subsection (b) (1) of § 53a-183a, which criminalizes conduct intended to disturb wildlife while someone is lawfully engaged in hunting, because such interference may be verbal as well as physical." Id.

I conclude that § 53a-182, read as a whole,[3] reaches a substantial amount of conduct protected by the first amendment. The defendant's language in the present case—"God damn, I don't have to wait, God damn it," and "you, old man, stay out of this"—although annoying, offensive and probably noisy—surely is constitutionally protected. "The mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected." *R.A.V.* v. *St. Paul,* U.S. , 112 S. Ct. 2538, 2559, 120 L. Ed. 2d 305 (1992) (White, J., concurring). Although it is not necessary for the defendant to show that his 825*825 own first amendment rights have been adversely affected by the statute, the defendant's standing to attack the constitutionality of § 53a-

182 on its face is nonetheless enhanced by the fact that his conviction was in part predicated on protected speech. See *Young* v. *American Mini Theatres, Inc.*, 427 U.S. 50, 59, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976).

In my facial vagueness analysis of § 53a-182, I begin by examining its prefatory language, which provides that in order to be convicted of disorderly conduct, one must first have the "intent to cause inconvenience, annoyance or alarm" or must "recklessly [create] a risk thereof." The Connecticut Penal Code does not define the terms "inconvenience," "annoyance," or "alarm." Accordingly, we are directed by the legislature to look to the ordinary meaning of these words. "In the absence of an express definition words of a statute are to be given the commonly approved meaning unless a contrary intent is clearly expressed." *DuBaldo* v. *Dept. of Consumer Protection*, 209 Conn. 719, 722, 552 A.2d 813 (1989); see General Statutes § 1-1 (a).

The following definitions provided by Webster's Third New International Dictionary illustrate the vague nature of the language of § 53a-182. First, "inconvenience" is defined as "the quality or state of being inconvenient," and definitions provided for "inconvenient" include "not agreeing," "not suitable," "giving trouble, uneasiness, or annoyance," and "morally unbecoming." Second, "annoyance" is defined as "the act of annoying," and definitions provided for "annoy" include "to irritate with a nettling or exasperating effect especially by being a continuous or repeatedly renewed source of vexation." The definitions of "alarm" range from an "apprehension of an unfavorable outcome" to a "fear or terror resulting from a sudden sense of danger." Each of these words is imprecise 826*826 and indefinite, giving rise to numerous interpretations. An individual, presented with words of this nature, simply has no means of ascertaining what is prohibited. In *Coates* v. *Cincinnati*, supra, 614, the United States Supreme Court held that an ordinance prohibiting conduct "annoying to persons passing by" was unconstitutionally vague. "Conduct that annoys some people does not annoy others. Thus, the ordinance is vague, not in the sense that it requires a person to conform his [or her] conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all. As a result [persons] of common intelligence must necessarily guess at its meaning."[4] (Internal quotation marks omitted.) Id.

Not only is the language in § 53a-182 inadequate to provide notice of the type of conduct prohibited by the statute, but it is precisely the type of language that allows police officers, judges and juries to rely on their own subjective judgment to define conduct that they find inconvenient, annoying and alarming. Language virtually identical to § 53a-182 was found to be unconstitutionally vague in *Marks* v. *Anchorage*, 500 P.2d 827*827 644, 652-53 (Alaska 1972). The defective prefatory language at issue in *Marks* provided that one could not be convicted of disorderly conduct absent the "purpose and intent to cause public *inconvenience, annoyance or alarm* or recklessly create a risk thereof."

(Emphasis in original.) Id., 653. Noting that the United States Supreme Court had found the word "annoying" to be unconstitutionally vague in *Coates* v. *Cincinnati,* supra, the Alaska Supreme Court concluded that "the words `inconvenience' and `alarm' are no less so." *Marks* v. *Anchorage,* supra, 653.

Nevertheless, the majority concludes, in reliance on *Colten* v. *Kentucky,* 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972), that the mens rea predicate language of § 53a-182—"with intent to cause inconvenience, annoyance or alarm or recklessly creating a risk thereof"—passes constitutional muster. I believe *Colten* is inapposite.

The problem with the majority's analysis is that it merely compares the mens rea predicate language of § 53a-182 to that of the Kentucky statute in *Colten.* In *Colten,* however, the United States Supreme Court determined that "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof" passed muster not in isolation, but in conjunction with the conduct-specifying clause of the Kentucky statute—that is, "[c]ongregates with other persons in a public place and refuses to comply with a *lawful* order of the police to disperse...." (Emphasis added; internal quotation marks omitted.) Id., 108, quoting Ky. Rev. Stat. § 473.016 (1) (f) (Sup. 1968).

The statute in *Colten* was a model of clarity compared to the language of § 53a-182 and the language of the *Coates* statute. The conduct clause in *Colten* prohibited 828*828 an easy to understand, distinct act: "Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse...." The conduct provisions of § 53a-182, by contrast, are littered with vague, imprecise words. Indeed, much of the language of the first three subdivisions of § 53a-182 (a) parallels language held unconstitutional in *Marks* v. *Anchorage,* supra.[5] The court in *Marks* noted that "[t]he rest of the ordinance is ... peppered with indefinite words—threatening,' tumultuous behavior,' unreasonable noise' .... The phrase `tumultuous behavior,' for example, might encompass conduct ranging from actual violence to speaking in a loud and excited manner...." Id., 653. Accordingly, the Alaska Supreme Court held that the entire statute was void for vagueness. Id. Like the Alaska ordinance, § 53a-182 also bars "threatening," "tumultuous" behavior and "unreasonable noise," and subdivision (2) of subsection (a) establishes a prohibition that is even more vague than the language held unconstitutional in *Coates* v. *Cincinnati,* supra: It is a crime in Connecticut recklessly to "[annoy] or [interfere] with another person" by "offensive or disorderly conduct."

Furthermore, § 53a-182 (a) (4) makes it a misdemeanor to "[disturb] any lawful assembly or meeting of persons" with a reckless mens rea and without "lawful authority." It is instructive to look to *Houston* v. *Hill,* supra. In *Houston,* the United States Supreme Court held unconstitutional on its face an ordinance making it

unlawful to *interrupt* a police officer in the performance of his duty because "the ordinance 829*829 [was] susceptible of regular application to protected expression." Id., 467. The court distinguished *Colten* by noting that the *Houston* ordinance was "not narrowly tailored to prohibit only disorderly conduct or fighting words, and in no way resembles the law upheld in *Colten."* Id., 465. If we are to apply a resemblance test, the vague subdivisions of § 53a-182 (a) are much closer to the *Houston* ordinance than to the *Colten* prohibition of disobeying police officers. In addition, § 53a-182 is hardly "narrowly tailored." As the defendant's brief points out, it is one of the few disorderly statutes in the country that forbids "disorderly conduct," an inherently circular and vague prohibition. It seems fair to assume that *Colten* is a valid precedent. The manner in which it is distinguished in *Houston* v. *Hill,* supra, 465-66, however, is strong evidence that *Colten* is a limited holding, rather than broad authority that disorderly conduct statutes are to be afforded a limited vagueness standard of review.

There is another matter more fundamental that the majority fails to acknowledge. As I previously pointed out, the United States Supreme Court has characterized the arbitrary enforcement concern—that is, "`the requirement that a legislature establish minimal guidelines to govern law enforcement'"; *Kolender* v. *Lawson,* supra, 358;—as the most important aspect of the vagueness doctrine. Id.; see *Smith* v. *Goguen,* 415 U.S. 566, 574, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974). The discretion on the part of prosecutors, judges and juries to interfere with speech that the vagueness doctrine attempts to control is implicated in an unusual and disturbing manner as follows: The predicate clause and the first three subdivisions of § 53a-182 (a) are mirrored by General Statutes § 53a-181a, creating a public disturbance. To emphasize my point, I set forth the relevant language of the two statutes: 830*830 Section 53a-181a provides in part: "(a) A person is guilty of *creating a public disturbance* when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he (1) engages in fighting or in violent, tumultuous or threatening behavior; or (2) annoys or interferes with another person by offensive conduct; or (3) makes unreasonable noise." (Emphasis added.) Section 53a-182 provides in part: "(a) A person is guilty of *disorderly conduct,* when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) Engages in fighting or in violent, tumultuous or threatening behavior; or (2) by offensive or disorderly conduct, annoys or interferes with another person; or (3) makes unreasonable noise...." (Emphasis added.)

The language of the statutes is nearly identical. For constitutional purposes, however, there is a crucial difference between these two enactments. A conviction under § 53a-182, a misdemeanor offense, creates a criminal record; whereas a conviction under § 53a-181a, a mere infraction, does not result in a criminal record. General Statutes § 53a-181a (b). As a result of this distinction, a

conviction under § 53a-182 can result in the loss of liberty with a maximum sentence of three months,[6] and a maximum fine of $500;[7] the most severe 831*831 sentence authorized under § 53a-181a is a fine of $100.[8] It is difficult to conceive of a manner in which absolute discretion can better be vested in law enforcement personnel than to have two statutes on the books that provide not merely *different* punishments for proof of an identical set of elements, but drastically different punishments: a small fine versus the potential for a loss of liberty and the stigma of a criminal record.

Finally, the terms incorporated in § 53a-182 are so imprecise and subject to such a variety of interpretations that "construing the statute to apply only to `core criminal conduct' ... would be tantamount to ... `rewrit[ing the] statute.'" *Dorman* v. *Satti,* 862 F.2d 432, 436 (2d Cir. 1988), cert. denied, 490 U.S. 1099, 109 S. Ct. 2450, 104 L. Ed. 2d 1005 (1989).[9] In an attempt to save the statute, the majority "perform[s] 832*832 a remarkable job of plastic surgery upon the face" of § 53a-182. *Shuttlesworth* v. *Birmingham,* 394 U.S. 147, 153, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969). Nevertheless, under our state constitution, the task of legislating is committed to the legislature, not to this court. Conn. Const., art. II. "Clearly, this court lacks the authority to reshape public policy by construing a statute in a manner that alters its inherent meaning."[10] *State* v. *Proto,* 203 Conn. 682, 698, 526 A.2d 1297 (1987).

Simply put, what the majority does here is to make a new law and not enforce that which was enacted by the legislature. In *State* v. *Schriver,* supra, 456, we were confronted with a void for vagueness challenge to General Statutes § 53-21 ("Injury or risk of injury to, or impairing morals of, children"). The defendant was convicted of impairing the *mental* health of a child under a provision of § 53-21 that proscribed injuring the health of a minor. Id., 461. Although we recognized that "[u]nder an appropriately tailored penal law, the legislature would have the power to proscribe" the impairment of the mental health of a child; id., 467; and such injury was arguably encompassed in the vague language of the statute, we declined to perform the extensive surgery necessary to save such an ambiguous and standardless statute. We held the following: "Without the aid of prior decisions to lend an authoritative gloss to the potentially limitless language of the statute, any 833*833 effort to conform § 53-21 to the mandate of due process would necessarily entail a wholesale redrafting of the statute. We decline to undertake this activity, which is within the exclusive province of the legislature. *State* v. *O'Neill,* 200 Conn. 268, 288, 511 A.2d 321 (1986); *State* v. *Johns,* 184 Conn. 369, 376-77, 439 A.2d 1049 (1981); see also *Harris* v. *State,* 457 P.2d 638, 647 (Alaska 1969) (refusing to resurrect by judicial fiat a standardless statute prohibiting `crime[s] against nature'); *ABC Interstate Theaters, Inc.* v. *State,* 325 So. 2d 123, 126 (Miss. 1976) (declining to exercise the `legislative function' of revising an unconstitutionally vague obscenity statute)." *State* v. *Schriver,* supra, 468.[11] In the present case, this court should be all the more reluctant to undertake wholesale redrafting of § 53a-

182 when there exist two statutes that reach the same conduct and the same first amendment activities—one a misdemeanor and the other, § 53a-181a, an infraction.

In sum, it is crystal clear that criminal statutes "may be held facially invalid *even if they also have legitimate application."* (Emphasis added.) *Houston* v. *Hill,* supra, 459. "Even if the legislative purpose is a legitimate one of substantial governmental interest, `that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.'" 4 R. Rotunda & J. Nowak, Treatise on Constitutional Law (2d Ed. 1992) § 20.10, p. 39, quoting *Shelton* v. *Tucker,* 364 U.S. 479, 488, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960). I am "mindful that the preservation of liberty depends in part upon the maintenance of social order.... But the First Amendment recognizes, wisely ... that a certain amount 834*834 of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive." (Citation omitted.) *Houston* v. *Hill,* supra, 472.

I fully agree that there is a place and a need for a disorderly conduct statute, but that statute must be narrowly drafted so as not to punish and deter constitutionally protected conduct, and must have sufficient specificity so that it provides to a person of ordinary intelligence fair notice of what is prohibited and avoids undue prosecutorial discretion. That drafting, however, must be left to the legislature. I suspect that this state could survive without a disorderly conduct statute for the few months it would take for the legislature to redraft and adopt an acceptable statute that can pass constitutional muster.

I would hold that § 53a-182 is unconstitutional. Accordingly, I respectfully dissent.

==========

The above case law from *People v. Lowery, supra* must be overturned by the California Supreme Court. It leaves the common man in a conflict since the Ninth Circuit Court of Appeal has determined that "every statute criminally punishing threats must include as an element of proof the defendant's subjective intent to make a threat." in *U.S. v. Bagdasarian (9th Cir. 2011) 652 F.3d 1113*. The U.S. Supreme Court in *Elonis v. United States (2015) 575 U.S. ___ [192 L.Ed.2d 1, 135 S.Ct* requires a "subjective" standard.

“"true threats" "encompass those statements where the speaker *means* to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Black, 538 U.S. at 359, 123 S.Ct. 1536* (emphasis added).” *US v. White, 670 F. 3d 498 - Court of Appeals, 4th Circuit 2012*

In *People v. Murillo, 238 Cal. App. 4th 1122 - Cal: Court of Appeal, 2nd Appellate Dist., 6th Div. 2015*: **"Following oral argument in this matter, we requested the parties to brief the effect of the recent decision in *Elonis v. United States (2015) 575 U.S. ___ [192 L.Ed.2d 1, 135 S.Ct. 2001].* The parties agree that Elonis concerns the mens rea required for conviction of 18 United States Code section 875(c), a federal statute prohibiting a communication that contains a threat to injure another.[3] Our decision here is governed, however, by our Supreme Court's interpretation of section 140, subdivision (a). (*People v. Lowery, supra, 52 Cal.4th 419, 427*.) Therefore, we do not discuss *Elonis*." Footnote [3] The federal statute is similar to our section 422, punishing threats to commit a crime resulting in death or great bodily injury. Section 422 expressly requires that a defendant specifically intend his statement to be taken as a threat.”** Id.

So called “fighting words” and “incitement” fall into other sections such as disturbing the peace. See *Brandenburg v. Ohio, 395 U.S. 444 (1969)*, a landmark decision of the US Supreme Court interpreting the First Amendment to the U.S. Constitution. The Court held that the government cannot punish inflammatory speech unless that speech is **"directed to inciting or producing imminent lawless action and is likely to incite or produce such action."**

In *Ashcroft v. Free Speech Coalition, 535 US 234 - Supreme Court 2002* **"The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse. "[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted . . . ."** *Broadrick v. Oklahoma, 413 U. S., at 612*. **The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process."**

A defendant, has standing to challenge a statute as unconstitutionally overbroad even if the statute, as applied to him, would not be unconstitutional. *Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973)*

There are classes of speech called "true threats" "fighting words" and "incitement" which may fall outside the protection of the 1st amendment and the courts, including the U.S. Supreme Court remain unclear as to what exactly amounts to said non-protected speech. Petitioner's speech did not reach the level of a true threat, fighting words or incitement based on the controlling case law of the doctrines. **"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."** *Texas v. Johnson, 491 US 397 - Supreme Court 1989* citing , *e. g., Hustler Magazine, Inc.* v. *Falwell,* 485 U. S., at 55-56; *City Council of Los Angeles* v. *Taxpayers for Vincent,* 466 U. S. 789, 804 (1984); *Bolger* v. *Youngs Drug Products Corp.,* 463 U. S. 60, 65, 72 (1983); *Carey* v. *Brown,* 447 U. S. 455, 462-463 (1980); *FCC* v. *Pacifica Foundation,* 438 U. S., at 745-746; *Young* v. *American Mini Theatres, Inc.,* 427 U. S. 50, 63-65, 67-68 (1976) (plurality opinion); *Buckley* v. *Valeo,* 424 U. S. 1, 16-17 (1976); *Grayned* v. *Rockford,* 408 U. S. 104, 115 (1972); *Police Dept. of Chicago* v. *Mosley,* 408 U. S. 92, 95 (1972); *Bachellar* v. *Maryland,* 397 U. S. 564, 567 (1970); *O'Brien,* 391 U. S., at 382; *Brown* v. *Louisiana,* 383 U. S., at 142-143; *Stromberg* v. *California,* 283 U. S., at 368-369.

In *Knight Riders of the Ku Klux Klan v. City of Cincinnati, 863 F. Supp. 587 - Dist. Court, SD Ohio 1994* " It is a well-settled principle of First Amendment law that the government cannot regulate speech simply because some may find it offensive." Citing *Texas v. Johnson, 491 U.S. at 414, 109 S.Ct. at 2545*. In this regard, the words of the United States Supreme Court in *Boos v. Barry, 485 U.S. 312, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988*), bear repeating:

"[I]n public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide "adequate `breathing space' to the freedoms protected by the First Amendment." "The mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected" *RAV v. St. Paul, 505 US 377 - Supreme Court 1992.* Justice Louis D. Brandeis established

the "counter-speech" doctrine in his classic concurring opinion in *Whitney v. California (1927)*, when he wrote: "**If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."**

This case is a First Amendment case and the two seminal cases that Petitioner relied on (as demonstrated by his testimony on the record) were ***New York Times Co. v. Sullivan, 376 US 254 - Supreme Court 1964*: "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."** See *Terminiello v. Chicago, 337 U. S. 1, 4; De Jonge v. Oregon, 299 U. S. 353, 271*271 365*. **The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection."**

…Petitioner also relied on *Watts v. United States, 394 U.S. 705 (1969)* where the Court also explained that political hyperbole does not qualify as such a threat. "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." In August 1966, an 18-year-old African American war protestor, Robert Watts, attended an anti-war rally at the Washington Monument. During a small discussion group designed to discuss the problem of police brutality, Watts allegedly said: "They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. . . .They are not going to make me kill my black brothers."

Most recently the U.S. Supreme Court has stated in *Perez v. Florida, 37 . Ct. 853 - Supreme Court 2017* and *Elonis v. United States*, 575 U.S. ___, ___-___, 135 S.Ct. 2001, 2008-2011, 192 L.Ed.2d 1 (2015):

:

> In the courts below and in his petition for certiorari, Perez challenged the instruction primarily on the ground that it contravenes **the traditional rule that criminal statutes be interpreted to require proof of *mens rea,*** see *Elonis v. United States*, 575 U.S. ___, ___-___, 135 S.Ct. 2001, 2008-2011, 192 L.Ed.2d 1 (2015). **In my view, however,**

the jury instruction — and Perez's conviction — raise serious First Amendment concerns worthy of this Court's review. But because the lower courts did not reach the First Amendment question, I reluctantly concur in the Court's denial of certiorari in this case.

Statutes criminalizing threatening speech, however, "must be interpreted with the commands of the First Amendment clearly in mind" in order to distinguish true threats from constitutionally protected speech. *Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (*per curiam*). **Under our cases, this distinction turns in part on the speaker's intent.**

We suggested as much in *Watts.* There, we faced a constitutional challenge to a criminal threat statute and expressed "grave doubts" that the First Amendment permitted a criminal conviction if the speaker merely "uttered the charged words with an apparent determination to carry them into execution." *Id.,* at 708, 707, 89 S.Ct. 1399 (emphasis and internal quotation marks omitted).

Virginia v. Black, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003), made the import of the speaker's intent plain. There, we considered a state statute that criminalized cross burning "`with the intent of intimidating any person.'" *Id.,* at 348, 123 S.Ct. 1536 (quoting Va.Code. Ann. § 18.2-423 (1996)). **We defined a "true threat" as one "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."** 538 U.S., at 359, 123 S.Ct. 1536. We recognized that cross burning is not always such an expression and held the statute constitutional "insofar as it ban[ned] cross burning *with intent* to intimidate." *Id.,* at 362, 123 S.Ct. 1536 (emphasis added); *id.,* at 365, 123 S.Ct. 1536 (plurality opinion).

A four-Member plurality went further and found unconstitutional a provision of the statute that declared the speech itself "`prima facie evidence of an intent to intimidate.'" *Id.,* at 363-364, 123 S.Ct. 1536. The plurality reached this conclusion because "a burning cross is not always intended to intimidate." *Id.,* at 365, 123 S.Ct. 1536. Two separate opinions endorsed this view. See *id.,* at 372, 123 S.Ct. 1536 (Scalia, J., joined by THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) ("The plurality 855*855 is correct in all of this"); *id.,* at 386, 123 S.Ct. 1536 (Souter, J., joined by KENNEDY and GINSBURG, JJ., concurring in judgment in part and dissenting in part).

Together, *Watts* and *Black* make clear that to sustain a threat conviction without encroaching upon the First Amendment, States must prove more than the mere utterance of threatening words — *some* level of intent is required.

And these two cases strongly suggest that **it is not enough that a reasonable person might have understood the words as a threat — a jury must find that the speaker actually intended to convey a threat.**

E-Mails to Sen. McConnell Found Not to Be Criminally Threatening:

"Weiss's comments were also steeped in 'rage and frustration,' and they were indisputably violent. Nonetheless, read in context, the statements predicted that other people would hurt Senator McConnell, not that Weiss would."

EUGENE VOLOKH |THE VOLOKH CONSPIRACY | 7.28.2020 5:00 PM

Source: https://reason.com/2020/07/28/e-mails-to-sen-mcconnell-found-not-to-be-criminally-threatening/

Howard Weiss had sent eight e-mails (anonymously) to Senator Mitch McConnell in 2018 and 2019 via the Senator's online form. Today's decision[68] by Judge Charles Breyer (N.D. Cal.) in United States v. Weiss, concluded that the e-mails didn't fall within the "true threats" exception, as it has been defined within the Ninth Circuit:

A statement is objectively a true threat only if it "would be understood by people hearing or reading it in context as a serious expression of an intent to kill or injure" another person. **In United States v. Bagdasarian, the Ninth Circuit reversed the defendant's conviction for threatening to kill presidential candidate Barack Obama**, holding that predictive and exhortatory statements, such as **"Obama fk the niggar, he will have a 50 cal in the head soon," were not true threats**. **Such statements conveyed "no explicit or implicit threat on the part of [the defendant] that he himself will kill or injure Obama."** The defendant's further statement, **"[S]hoot the nig," was "an imperative intended to encourage others to take violent action, if not simply an expression of rage or frustration,"** but it did not suggest that the defendant himself was going to shoot Obama.

Weiss's comments were also steeped in "rage and frustration," and they were indisputably violent. Nonetheless, read in context, the statements predicted that other people would hurt Senator McConnell, not that Weiss would. See, e.g., Opp'n Ex. A1 **(stating, "You will die in the street by DC resistance motherfucker!!!!!"** but not identifying himself as being part of the "DC

[68] https://www.courtlistener.com/recap/gov.uscourts.cand.354062/gov.uscourts.cand.354062.30.0.pdf

resistance"); Opp'n Ex. A5 (stating**, "The Kentucky Resistance is going to hang you by your pussy lips and punish you,"** but not identifying himself as being part of "The Kentucky Resistance"); Opp'n Ex. A7 (stating, **"The Kentucky Resistance says they are going to cut your throat from ear to ear and then your gook wife's," and using the word "they");** Opp'n Ex. A8 **(stating, "… the Kentucky Resistance is going to totally execute you. They have stated you are a deadman! And soon. We are so glad to hear that they are finally going to take action. We cannot wait to know you are dead," and using the word "they").**

It is true that Senator McConnell's staff considered some of these messages threatening. See, e.g., Opp'n Ex. A1 ("Please see below threats that came in through our online message system"). **But just as the statement, "Obama fk the niggar, he will have a 50 cal in the head soon" was not a true threat, see Bagdasarian, no reasonable jury could find that Weiss's statements predicting that other people would harm Senator McConnell met the definition of true threats,** see also **New York ex rel. Spitzer v. Operation Rescue Nat'l, 273 F.3d 184, 196 (2d Cir. 2001) ("generally, a person who informs someone that he or she is in danger from a third party has not made a threat, even if the statement produces fear. This may be true even where a protestor tells the objects of protest that they are in danger and further indicates political support for the violent third parties.")….**

A statement is subjectively a true threat if the defendant "made the statements intending that they be taken as a threat." "The speaker need not actually intend to carry out the threat."

Here, though the government asserted at the motion hearing that Weiss's conduct meets the subjective test for a true threat, it provided no support for that assertion. In fact, the government asserts repeatedly in its briefing that Weiss had the intent to harass Senator McConnell, but never mentions an intent to threaten. See, e.g., Opp'n at 1 ("Defendant Howard Weiss is charged with the harassing use of a telecommunications device … with intent to harass U.S. Senator Mitch McConnell."); id. ("From October 2018 through October 2019, defendant used his cell phone to send a total of eight emails to Senator McConnell … with the intent to harass Senator McConnell"); Opp'n at 20 ("the references to Senator McConnell are simply direct and circumstantial evidence of defendant's intent to harass a specific person"), id. at 21 (arguing that the relevant intent was the intent to harass, not the intent to convey a political opinion).

The only evidence of Weiss's intent that the Court is aware of comes from Weiss's interview with law enforcement, in which he admitted to having an intent to harass the Senator, rather than to threaten him. He told law enforcement that he decided to harass Senator McConnell because the senator made political decisions with which he disagreed. He admitted that he used racial slurs in furtherance of his intent to harass the Senator, saying, "that's just terrible harassment, that's just anger and bullshit."

Weiss's words were violent and repugnant, as even he seems to have eventually understood. But because he did not convey that he himself would harm Senator McConnell, and the government has not identified any basis for concluding that Weiss intended to threaten, rather than harass, the Senator, the "true threat" exception does not apply.

Here are the e-mails, which were quoted in part above:

turtle, If you push this for Friday, the resistance is coming to DC to slash your throat. You will die in the street by DC resistance motherfucker!!!!! You will not live to regret it!!!!!! …

turtle cum drinker, The yelling resistance should have put a bullet in your head and then kill all the people you love! …

[Subject:] Your intelligence is zero … You motherfucking scumbag crook turtle[.] Go fuck yourself. I have been furloughed and you heartless bastard could give a shit. You fucking criminal. Someone needs to kill you! You are going to lose next election and we will get rid of your satanic evil ass you loser fuckhead

[Subject:] You are a criminal Russian asset … Turtle, You motherfucking chinc lover, Russian paid scumbag. With your fucking chinc father-in-law bank rolling you. You fucking animal better get ready for the biggest loss of your shitty heartless evil toxic life. We know you will believe this is just unimportant bullshit, however you better not….

[Subject:] Losers will die turtle, … Go fuck yourself you fucking criminal motherfucker. In 2020, You are fucking a closed case. You are a fucking dog who will be put down!!! The Kentucky Resistance is going to hang you by your pussy lips and punish you for what you think you got away this. Your consequential decision will afford you the most torture you will ever endure. scalia was the biggest asshole in the judicial system ever.

[Subject:] The 2020 election … You racist fucking criminal chinc loving motherfucker. You are going down in2020 and then you will suffer the consequences and they will burn your life down!

[Subject:] We need your chink whore to go back "To where the fucking gook came from. You motherfucking racist scum. The Kentucky Resistance says they are going to cut your throat from ear to ear and then your gook wife's." …

[Subject:] The gravity of your nonexistence … Whether you believe it or not, after watching Frontline the Kentucky Resistance is going to totally execute you. They have stated youare a deadman! And soon. We are so glad to hear that they are finally going to take action. We cannot wait to know you are dead.

PETITIONER IS FACTUALLY INNOCENT

The Petitioner is Factually Innocent since he was denied a constitutionally fair trial to prove his innocence, insufficient evidence, his speech was protected under the 1st Amendment of the U.S. Constitution and the judge Steve White was without jurisdiction to issue his null/void order. The State cannot prove that he had the requisite mental state ("*mens rea*") to constitute a crime – Petitioner did have the “subjective intent” requirement which requires courts look at to determine true threats. Even D.D.A.. Dale Gomes admitted Petitioner did not have the mental state ("*mens rea*") requirement and DDA Dale Gomes told the grand jury Petitioner did not threaten to harm anyone – other people were alleged to be the perpetrators of any harm statutes are unconstitutional since they criminalize free speech. Trial counsel was IAC/CDC since he failed to file 1385.5 and 995 motions (for reasons presented in this petition including the grand jury irregularities) or seek declaratory relied from the federal court on the unconstitutionality of penal codes 71, 422 and 140(a) and how the law was applied to this Petitioner. Appellate counsel was IAAC/CDC for failing

to argue this on appeal or habeas corpus as explained throughout this petition. The cumulative effects of IAC/CDC and IAAC resulted in a wrongful conviction.

In People v. Thomas, Cal: Court of Appeal, 4th Appellate Dist., 2nd Div. 2020

"Our state high court has ruled that, **"To avoid substantial First Amendment concerns associated with criminalizing speech," the offense of attempted criminal threat must be construed as requiring "proof that the defendant had a subjective intent to threaten and that the intended threat under the circumstances was sufficient to cause a reasonable person to be in sustained fear."** (*People v. Chandler, 332 P. 3d 538 - Cal: Supreme Court 2014 at p. 525*.)

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

complete.

Any other questions or concerns?

GRAND JUROR [redacted] (GJ15): [redacted] (GJ15). We've heard a lot of testimony attesting to the fact that he never -- he never says "I'm going to kill you." I mean, he always refers to other groups or this is going to happen, we're going to have a revolution, we're going to, you know. So again, I know that being in his mind that's why he thought he would never be charged, I think, because he thought he would never -- he never made. But again, I guess what you're alluding to is the perception of the recipient of the threat.

MR. GOMES: I think candidly there's no question Mr. Robben believed he was insulating himself from prosecution by saying so and so is going to die and somebody is going to put a bullet in so and so's head. Not me. Somebody is going to put a bullet in so and so's head.

And I think fundamentally his analysis of the law of making a criminal threat is partially right. Unfortunately it's partially wrong too, in that at some point when you do this over and over and over again your actual intent to communicate a real and direct threat becomes clear. And even though you put a conditional language on it, I think at some point the reality that you're trying to put in the mind of your victim the idea that you or somebody on your behalf is going to harm them becomes real.

So you can say, you know, you can condition your threat and say, you know, if you say that one more time I'm going to kill you, you son of a bitch. That's a conditional threat.

If you don't say that one more time you'll live until your last day, right? But at some point when you remove the -- when the conditional aspect of your threat becomes a pretense, it's not real, and what the real intent of the threatener is is to put the fear of death in his victim's mind. That's what distinguishes his actions from a single isolated threat that is too unconditional or unconnected to warrant criminal prosecution.

Any other questions before I leave you to do your part?

Yes, sir?

GRAND JUROR [redacted] (GJ19): Question, [redacted] (GJ19). Are those misdemeanors or felonies on each of those counts?

MR. GOMES: All of the charges alleged in the proposed indictment are felony charges.

Anything else?

This packet is your exhibit list. Your exhibit lists are in the envelope. Your proposed indictment is on top. I'm going to give you all of this. I'm going to leave everything else in here and I'll step out.

---oOo---

(The grand jury was in deliberation from 10:18 until 10:31.)

---oOo---

The above exhibits show a continued pattern of prosecutorial misconduct

A CRIMINAL DEFENDANT IS ENTITLED TO DUE PROCESS AND FUNDAMENTAL FAIRNESS IN THE GRAND JURY PROCEEDINGS:

California law provides that a defendant has a due process right not to be indicted in the absence of a determination of probable cause by a grand jury acting independently *10 and impartially in its protective role. (*Greenberg v. Superior Court (1942) 19 Cal. 2d 319, 321-322; Parks v. Superior Court (1952) 38 Cal. 2d 609, 611; Cal. Const., art. I, § 14; Johnson v. Superior Court (1975)15 Cal. 3d 248, 253; Cummiskey v. Superior Court (1992) 3 Cal. 4th 1018, 1022, fn. 1.*) In Johnson, our Supreme Court recognized: **"The grand jury's "historic role as a protective bulwark standing solidly between the ordinary citizen and an overzealous prosecutor"** *(United States v. Dionisio [(1973) 410 U.S. 1] at p. 17 [35 L.Ed.2d at p. 81])* is as well-established in California as it is in the federal system. **"If [exculpatory] evidence exists, and [the grand jury] have reason to believe that it is within their reach, they may request it to be produced, and for that purpose may order the district attorney to issue process for the witnesses ([former] § 920, Pen. Code),** to the end that the citizen may be protected from the trouble, expense, and disgrace of being arraigned and tried in public on a criminal charge for which there is no sufficient cause. A grand jury should never forget that it sits as the great inquest between the State and the citizen, to make accusations only upon sufficient evidence of guilt, and to protect the citizen against unfounded accusation, whether from the government, from partisan passion, or private malice." (*In re Tyler (1884) 64 Cal. 434, 437 [1 P. 884*].)"

The protective role traditionally played by the grand jury is reinforced in California by statute. The forerunner of section 939.7 was former section 920 of the Penal Code, the section cited in *In re Tyler, supra*. Section 920 provided: "The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses." **Further, a grand jury cannot protect citizens from unfounded obligations if it is invited *11 to indict on the basis of incompetent and irrelevant evidence.** *(People v. Backus (1979) 23 Cal. 3d 360, 393.)* **An indicted defendant is entitled to enforce this right through means of a challenge under section 995 to the probable cause determination underlying the indictment, based on the nature and extent of the evidence and the manner in which the proceedings were conducted by the district attorney.** (*Backus, supra, 23 Cal. 3d at p. 393; Cummiskey, supra, 3 Cal. 4th at p. 1022, fn. 1.*)

Defendants are entitled to due process in the grand jury proceedings to the extent that the proceedings are controlled by the prosecutor. Due process may be violated if grand jury proceedings "are conducted in such a way as to compromise the grand jury's ability to act independently and impartially in

reaching its determination to indict based on probable cause" (*Berardi v. Superior Court (2007) 149 Cal. App. 4th 476, 494*.) **Although a prosecutor does not have the same duty to instruct a grand jury as a trial judge does a petit jury..., an indictment may be set aside under Penal Code section 995, subdivision (a)(1)(B) "based on the nature and extent of the evidence and the manner in which the proceedings were conducted by the district attorney"....** (*People v. Gnass (2002) 101 Cal.App.4th 1271, 1313*.)

The due process rights of one indicted by a grand jury are violated if the grand jury proceedings are conducted in such a way as to compromise the grand jury's ability to act independently and impartially. (*People v. Superior Court (Mouchaourab) (2000) 78 Cal.App.4th 403, 435*.) **Under these standards, if claimed errors rendered the grand jury proceeding fundamentally unfair, by substantially impairing the grand jury's ability to act *12 independently and impartially and to allow a grand jury to independently reject charges which it may have believed unfounded, a due process violation will be shown.**

US v. Bagdasarian, 652 F. 3d 1113 - Court of Appeals, 9th Circuit 2011:

Subjective Intent:

Even if "shoot the nig" or "[he] will have a 50 cal in the head soon" could reasonably have been perceived by objective observers as threats within the factual context, this alone would not have been enough to convict Bagdasarian under 18 U.S.C. § 879(a)(3).

The Government must also show that he made the statements intending that they be taken as a threat. **A statement that the speaker does not intend as a threat is afforded constitutional protection and cannot be held criminal**. In Black, the Court explained that the State may punish only those threats in which the "speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." 538 U.S. at 359, 123 S.Ct. 1536. And in Gordon, we held as a matter of statutory interpretation that Congress "construe[d] `knowingly and willfully' [in § 879] as requiring proof of a subjective intent to make a threat,'" and thus requires the application of a subjective as well as an objective test. 974 F.2d at 1117 (alterations in original) (quoting 128 Cong. Rec. 21,218 (1982)).

We have explained, supra at 1118-21, why neither of Bagdasarian's statements on its face constitutes a true threat unprotected by the First Amendment. Most significantly, one is predictive in nature and the other exhortatory. For the same reasons, the evidence is not sufficient for any reasonable finder of fact to have concluded beyond a reasonable doubt that Bagdasarian intended that his statements be taken as threats. See Jackson, 443 U.S. at 319, 99 S.Ct. 2781. Both under the constitutional requirement established in Black that we must read into § 879, and under the statutory requirement that we found extant in Gordon, the district

court's inference of Bagdasarian's intent to threaten is unreasonable taken in context and does not, even when considered in the light most favorable to the prosecution, lie within the permissible range of interpretations of his message board postings. As a matter of law, neither statement may be held to constitute a "true threat."

As we discussed in the previous section, the prediction that Obama "will have a 50 cal in the head soon" is not a threat on its face because it does not convey the notion that Bagdasarian himself had plans to fulfill the prediction that Obama would be killed, either now or in the future. Neither does the "shoot the nig" statement reflect the defendant's intent to threaten that he himself will kill or injure Obama. Rather, "shoot the nig" expresses the imperative that some unknown third party should take violent action. The statement makes no reference to Bagdasarian himself and so, like the first statement, cannot reasonably be taken to express his intent to shoot Obama.[22]

1123*1123 As with our analysis of the objective test, we do not confine our examination of subjective intent to the defendant's statements alone. Relying on United States v. Sutcliffe, 505 F.3d 944 (9th Cir.2007), the Government points to the two facts that we discussed in our analysis of objective understanding as evidence that Bagdasarian intended to make a threat: (1) that he was later found to possess a .50 caliber gun like the one he mentioned in the "Obama fk the niggar" posting, and (2) that the Election Day email referred to the use of "a 50 cal on a nigga car." Neither fact is sufficient to prove beyond a reasonable doubt that Bagdasarian intended to make a threat when, two weeks before Election Day, he posted the two statements for which he was indicted.

In Sutcliffe, we affirmed a conviction under another threat statute, 18 U.S.C. § 875(c), which, in addition to the knowing transmission of an interstate threat, requires specific intent to threaten. 505 F.3d at 952, 960-61; see also United States v. Twine, 853 F.2d 676, 680 (9th Cir.1988). We held that the district court did not abuse its discretion by allowing the Government to present evidence of the defendant's gun possession to demonstrate that he actually intended to threaten violence. Id. at 959. The fact of the defendant's gun possession was not determinative of the defendant's intent, however, but just one among many pieces of evidence relevant to the language and context of the threats that we considered in determining that the defendant had the requisite specific intent to threaten. Most important in Sutcliffe were the first-person and highly specific character of messages such as "I will kill you," "I'm now armed," and "You think seeing [your license plate number posted on my website] is bad ... trust us when we say [it] can get much, much, worse.... [I]f you call this house again..., I will personally send you back to the hell from where you came." Id. at 951-52 (first omission and second alteration in original).

Given that Bagdasarian's statements, "Re: Obama fk the niggar, he will have a 50 cal in the head soon" and "shoot the nig" fail to express any intent on his part to take any action, the fact that he possessed the weapons is not sufficient to establish that

he intended to threaten Obama himself. Similarly, the Election Day emails do little to advance the prosecution's case. They simply provide additional information—weblinks to a video of debris and two junked cars being blown up and to an advertisement for assault rifles available for purchase online—that Bagdasarian may have believed would tend to encourage the email's recipient to take violent action against Obama. But, as we have explained, incitement to kill or injure a presidential candidate does not qualify as an offense under § 879(a)(3).[23]

Taking the two message board postings in the context of all of the relevant facts and circumstances, the prosecution failed to present sufficient evidence to establish beyond a reasonable doubt that Bagdasarian had the subjective intent to threaten a presidential candidate. For the same reasons that his statements fail to meet the subjective element of § 879, given any reasonable construction of the words in his postings, those statements do not constitute a "true threat," and they are therefore protected speech under the First Amendment. See Black, 538 U.S. at 359, 1124*1124 123 S.Ct. 1536. Accordingly, his conviction must be reversed.

The transcripts prove there was no intent to issue true threats and Petitioner was subjectively operating under his 1st amendment rights. The entire transcript really shows a pattern of bullying from the states of Nevada and California officials to file repeated false charges, plant informants in Petitioner's cell and harass him until he blows up and get pissed off and starts cussing and using harsh words because he is angry at the people continuing to do this to him. There was never an imminent threat.

The appellate counsel failed to make arguments and have the appellate court review the speech in the Third Dist. Court of Appeal case # C086090 pursuant to *In re George T.,Cal: Supreme Court (2004) 16 Cal.Rptr.3d 61 93 P.3d 1007 33 Cal.4th 620:*

"We conclude that a reviewing court should make an independent examination of the record in a section 422 case when a defendant raises a plausible First Amendment defense to ensure that a speaker's free speech rights have not been infringed by a trier of fact's determination that the communication at issue constitutes a criminal threat. (Bose, supra, 466 U.S. 485, 104 S.Ct. 1949, 80 L.Ed.2d 502.) Contrary to the Attorney General's contention, neither Bose nor Harte-Hanks, nor any other high court decision, limits independent review to specific First Amendment contexts. Rather, both Bose and Harte-Hanks emphasize that the high court has engaged in independent review in various First Amendment contexts, including "fighting words" (Street v. New York (1969) 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572), "obscenity" (Jenkins v. Georgia (1974) 418 U.S. 153, 94 S.Ct. 2750, 41 L.Ed.2d 642; Miller v. California (1973) 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419), "inciting imminent lawless action" (Hess v. Indiana (1973) 414 U.S. 105, 94 S.Ct. 326, 38 L.Ed.2d 303), "peaceful assembly" (Edwards

v. South Carolina (1963) 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697), "clear and present danger to integrity of court" (Pennekamp v. Florida (1946) 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295), and "failure to issue license for religious meeting in public park" (Niemotko v. Maryland (1951) 340 U.S. 268, 71 S.Ct. 325, 95 L.Ed. 267). (Harte-Hanks, supra, 491 U.S. at pp. 685-686, fn. 33, 109 S.Ct. 2678; Bose, supra, 466 U.S. at pp. 505-508, 104 S.Ct. 1949.) More recently, the high court applied the independent review standard in deciding whether a parade constituted protected speech (Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., supra, 515 U.S. 557, 115 S.Ct. 2338, 132 L.Ed.2d 487) and whether a group "engage[d] in `expressive association'" (Boy Scouts of America v. Dale (2000) 530 U.S. 640, 648, 120 S.Ct. 2446, 147 L.Ed.2d 554). The high court did so without reference to the unique nature of the specific First Amendment question involved. What is evident is that the high court has employed the independent review standard in varied First Amendment 70*70 contexts as an added safeguard against infringement of First Amendment rights.[8]"

At trial, Petitioner explained he was asserting his first amendment rights to free speech pursuant to *New York Times Co. v. Sullivan (1964) 376 U.S. 254* the landmark decision of the U.S. Supreme Court in which the Court ruled that the freedom of speech protections in the First Amendment to the U.S. Constitution restrict the ability of American public officials to sue for defamation. **"profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."**

Petitioner also, at trial, explained he understood the first amendment to cover political hyperbole as addressed in *Watts v. United States (1969) 394 U.S. 705 [22 L.Ed.2d 664, 89 S.Ct. 1399]*, where the defendant said to a political gathering that **"if inducted into [the] Army (which he vowed would never occur) and made to carry a rifle `the first man I want to get in my sights is LBJ.'"** The U.S. Supreme Court considered the speech political hyperbole rather than a true threat.

Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969), **makes it clear that the First Amendment protects speech that advocates violence, so long as the speech is not directed to inciting or producing imminent lawless action and is not likely to incite or produce such action**. So do *Hess v. Indiana, 414 U.S. 105, 94 S.Ct. 326, 38 L.Ed.2d 303 (1973)* **(overturning disorderly conduct conviction of antiwar protestor who yelled "We'll take 1072*1072 the fucking street later (or**

again"), and *NAACP v. Claiborne Hardware Co., 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982)* where **"if we catch any of you going in any of them racist stores, we're gonna break your damn neck."** But despite this, **the Supreme Court unanimously held that Evers' speech was constitutionally protected.** The Court found that Evers **"emotionally charged rhetoric . . . did not transcend the bounds of protected speech set forth in Brandenburg.**

In *City of Houston v. Hill, 482 U.S. 451 (1987):* Justice William J. Brennan Jr., who authored the Court's opinion, wrote that **"the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers."**

He added that the **"freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."** He reasoned that the ordinance could not be read only to prohibit disorderly conduct or fighting words. Justice Lewis F. Powell Jr. concurred in finding the ordinance unconstitutional, but he questioned the breadth of Brennan's analysis. **"In many situations, speech of this type directed at police officers will be functionally indistinguishable from conduct that the First Amendment clearly does not protect,"** Powell wrote. "Although the preservation of liberty depends in part upon the maintenance of social order, the First Amendment requires that officers and municipalities respond with restraint in the face of verbal challenges to police action, since a certain amount of expressive disorder is inevitable in a society committed to individual freedom, and must be protected if that freedom would survive." *Pp. 482 U. S. 471-472.*

Some of the charged offences should have been dismissed out of hand at the onset or a challenge to the indictment (PC 995) or motion to dismiss. For example, Counts VII, VIII & IX allege a violation of PC 664/71 (Attempted Threatening a public officer) El Dorado County Judges James R. Wagoner, Steven C. Bailey & Suzanne N. Kingsbury. Since penal code 71 contains "attempt"[69] **case law mandates there cannot be an "attempt to attempt" crime.** In *People v. Toledo, 26 P. 3d 1051 - Cal: Supreme Court 2001*: **"In *In re***

[69] PC 71 "(a) Every person who, with intent to cause, **attempts to cause**, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense punishable as follows:"

***James M.*, we held that there is no crime of attempted assault, reasoning that recognition of such a crime would constitute an improper judicial expansion of the crime of assault. In reaching this conclusion, the court in *James M.* emphasized that the crime of assault is itself statutorily defined in section 240 as an "unlawful *attempt*, coupled with a present ability[,] to commit a violent injury on the person of another" (italics added), and that numerous legal commentators and many courts had noted the anomaly of recognizing as a separate crime an attempt to commit an attempt. (*9 Cal.3d at p. 521, 108 Cal.Rptr. 89, 510 P.2d 33.*) Although the court in *James M.* acknowledged that an "attempted attempt" was not as an abstract matter a "logical absurdity" (ibid.,) we nonetheless concluded that the crime of assault represented a legislative judgment as to how far removed from the infliction of a battery criminal liability should be imposed. We held that it improperly would defeat the Legislature's intent and effectively redefine the limits established by the assault statute to recognize a crime of attempted assault**. (*9 Cal.3d at pp. 521-522,108 Cal.Rptr. 89, 510 P.2d 33.*)".

No alleged threats pursuant to PC 71 were directly communicated to any of the alleged victims or requested to be communicated by a third party. **All three judges were already disqualified or recused so there was nothing to influence (to do, or refrain from doing, any act in the performance of his duties) and there was no actual true threat**.

clear. He wanted those judges recused. Fundamentally he wants every judge recused. Fundamentally he wants and thinks somehow in his deluded mind that if he can get every judge recused then his cases are just going to go away, I guess. I don't know. I guess that's what he thinks. But that's the theory behind Counts Seven, Eight and Nine. It involves Judge Bailey, Judge Kingsbury, and Judge Wagoner, because those are the three judges he names by name.

And all three of those judges ultimately recused himself not just from his 14601.2 prosecution but this prosecution too, as you heard from Judge Wagoner and his testimony, which is why that case has now been sent -- this case fundamentally to Sacramento County because all of our judges have recused themselves.

So he didn't have to succeed in inducing or preventing action on the part of those judges, but he did. He did. The committing a Penal Code Section 71 doesn't require that the public actor succumb to the threats.

And our only instances where they did in this case are the judges, interestingly enough. But he didn't actually complete the crimes, because in some instances those threats weren't communicated to the judges. As much as he intended that they would be, they weren't.

And the threats have to be communicated in order to complete the crime. So you have attempted crimes on Counts Seven, Eight and Nine relative to the three judges.

Beyond those comments, I'm going to leave this in your hands to decide what you think has been proven by the probable

The crimes of penal code 422 (counts IV & VI) against Thomas Watson and David Cramer should have been dismissed on grounds that said speech was protected 1st amendment speech and not a “true threat”. Said speech was alleged to be “conditional” in that it was conditioned on Thomas Watson returning the automobile and David Cramer withdrawing from the case as appointed counsel on appeal. There were no threats to cause GBI or death.

Said alleged threats were not "unequivocal, unconditional, immediate, and specific" in fact, Mr. Cramer was impeached at trial since he claimed Petitioner threatened to “put a bullet in his [Cramer’s] head” when Petitioner instead wrote that Mr. Cramer should “Put a bullet in your head”. Said threats were not immediate since Petitioner was in jail at the time Mr. Cramer claimed to be threatened and Petitioner was in Tuolumne County when Mr. Watson claimed to be threatened and no true threat was ever made to both Mr. Watson or Mr. Cramer. A letter was sent to Mr. Cramer demanding that Mr. Cramer get off the Petitioner’s appeal since Mr. Cramer did not make sure the appeal was filed (it was not) and Mr. Cramer refused to communicate or answer phone calls from Petitioner. Mr. Cramer was not an appellant attorney, he never did any appeal in the past. Mr. Cramer told Petitioner to “fuck off” when he met Petitioner in the jail. It was a total breakdown in the relationship and Mr. Cramer was part of the conspiracy to sabotage Petitioner’s appeal and he was assigned by another previous lawyer, Adam Clark, and not the court. In the letter, Petitioner included the famous words of William Shakespeare “First we kill all the lawyers” which is not a true threat.

In re SW, 45 A. 3d 151 - DC: Court of Appeals 2012:

> This case presents a third factual permutation — whether words 156*156 threatening on their face can be rendered benign by their context.
>
> The answer must be yes. An actor's pronouncement from the stage, **"The first thing we do, let's kill all the lawyers,"** [11] cannot reasonably be perceived as a threat by the bar members in the audience. Similarly, the utterance "I'm going to kill you," when stated, with a laugh, to a friend after the friend has somehow discomfited the speaker cannot reasonably be perceived as a threat. A threat is more than language in a vacuum. It is not always reasonable — and sometimes it is patently irrational — to take every pronouncement at face value.

Indeed, even when statements are threatening on their face, it is essential to consider and give full weight to context in order to ensure that the District's threats statutes are applied within constitutional parameters. As the Supreme Court held in Watts v. United States,[12] and this court acknowledged in Jenkins,[13] "[A] statute ... which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech." 394 U.S. at 707, 89 S.Ct. 1399. It is a cornerstone of our democracy that the First Amendment generally "bars the government from dictating what we see or read or speak or hear." Ashcroft v. Free Speech Coal., 535 U.S. 234, 245, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002). "True threats" are an exception to this rule and may be criminalized without violating the First Amendment. Virginia v. Black, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). But speech is only a "true threat" and therefore unprotected under the Constitution if an "ordinary reasonable recipient who is familiar with the[] context [of the statement] would interpret"[14] it as a "serious expression of an intent to cause a present or future harm."[15]

Thus, courts have struck threats convictions on First Amendment grounds where facially threatening language placed in context cannot reasonably be perceived as a threat. See, e.g., Watts, 394 U.S. at 708, 89 S.Ct. 1399; Alexander, 418 F.2d at 157*157 1207. Similarly, courts have held that arrests based on statements that are not objectively threatening violate the First Amendment. For example, in Fogel v. Collins, 531 F.3d 824 (9th Cir.2008), the Ninth Circuit held that a van parked in an apartment complex, painted with the messages, "I AM A FUCKING SUICIDE BOMBER COMMUNIST TERRORIST!" and "ALLAH PRAISE THE PATRIOT ACT ... FUCKING JIHAD ON THE FIRST AMENDMENT! P.S. W.O.M.D. ON BOARD!" and "PULL ME OVER! PLEASE, I DARE YA[,]" id. at 827, did not convey a true threat for First Amendment purposes, "in light of the full context available to someone observing the van." Id. at 831 (noting that the "remainder of the van displayed innocuous images and phrases, including some with spiritual meaning, created through the artistic endeavors of [the van owner] and his friends"). "It makes no difference that the speech, taken literally, may have communicated a threat. Understood in its full context, no reasonable person would have expected that viewers would interpret [the van owner's] political message as a true threat of serious harm." Id. at 832 (citing Watts, 394 U.S. at 708, 89 S.Ct. 1399; Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 372 (9th Cir.1996)).

In short, a determination of what a defendant actually said is just the beginning of a threats analysis. Even when words are threatening on their face, careful attention must be paid to the context in which those statements are made to determine if the words may be objectively perceived as threatening.[16]

Penal Code Section 71 is a specific intent crime. Pranks, misunderstandings and insane threats are not covered by statute. The totality of the circumstances surrounding the

alleged threat should be closely examined, and all percipient witnesses should be expeditiously interviewed. Because the offense is a “specific intent” crime, evidence of voluntary intoxication or mental impairment may be considered when determining the suspect’s intent.

There was no reasonable prospect that the threat could be carried out. For example, the case fails if the accused wrote an offensive letter interpreted by the recipient as a threat. Based on the totality of the circumstances, however, the recipient had no reasonable belief that the outlandish threats would ever be carried out. See *People v. Hopkins, 149 Cal. App. 3d 36 - Cal: Court of Appeal, 1st Appellate Dist., 2nd Div. 1983*

In section 71 the proscribed act is the threat and the additional consequence is the interference with the official's duties. From the plain language of the statute, it is clear that section 71 is a specific intent crime, thereby excluding pranks, misunderstandings and insane threats. This Petitioner’s subjective writings were not crime specific. The “pretext” call the prosecution relies on is a violation of the California Privacy law and federal laws as explained later in this pleading.

Count V fails because Petitioner did not threaten Newton Knowles of the State Bar of California pursuant to penal code 71. Petitioner did not even know who Newton Knowles was and there is no true threat made towards Mr.. Knowles not was there anything to influence (to do, or refrain from doing, any act in the performance of his duties) since Mr. Knowles had already denied the bar complaint against David Cramer. Any alleged threat was not made to Mr. Knowles since Petitioner did not even know who he was and there was no intent by the Petitioner.

Regarding count I, there was no subjective true threat made or communicated to Shannon Laney, any speech was protected 1st amendment speech. There was no unequivocal, unconditional, immediate, and specific threat in relationship to both count I and II (penal code 422 & 140(a)) (criminal threats and Threatening a witness). Shannon Laney did not attend the trial and therefore precluded this Petitioner from cross examination (confrontation clause) of U.S. 6th [70] and 14th amendments as well as Cal. Constitution Art. 1, Sec. 15.[71]

---

[70] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been

In his concurring opinion in *Lewis v. City of New Orleans (1974) 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214*, Justice Powell noted "words may or may not be 'fighting words,' depending upon the circumstances of their utterance. It is unlikely, for example, that the words said to have been used here would have precipitated a physical confrontation between the middle-aged woman who spoke them and the police officer in whose presence they were uttered. The words may well have conveyed anger and frustration without provoking a violent reaction from the officer. **Moreover, . a properly trained officer may reasonably be expected to 'exercise a higher degree of restraint' than the average citizen, and thus be less likely to respond belligerently to 'fighting words.' "** (*Id. at p. 135, 94 S.Ct. at 973 (conc. opn. of Powell, J.*).)

In *City of Houston v. Hill (1987) 482 U.S. 451, 107 S.Ct. 2502, 96 L.Ed.2d 398*, the United States Supreme Court recognized Justice Powell's suggestion that "the 'fighting words' exception . might require a narrower application in cases involving words addressed to a police officer . ," and observed that **"[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."** (*Id. at p. 462–463, 107 S.Ct. at 2510.*)

The most serious accusation is an article on the SLTPDwatch website that does not even mention Shannon Laney (or picture Mr. Laney) and was written by Radley Balko. An opinion that cops that lie need to die is protected first amendment speech and expresses a view in the public to debate i.e. the "marketplace of ideas" – Should cops that lie (and kill innocent people) get the death sentence?

---

previously ascertained by law, and to be informed of the nature and cause of the accusation**; to be confronted with the witnesses against him;** to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

[71] SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, **and to be confronted with the witnesses against the defendant.** The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel. Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

COPS THAT LIE NEED TO DIE

Posted on April 16, 2016 by agent provocateur under Uncategorized

How do we fix the police 'testilying' problem? Kill the fuckers.

By Radley Balko April 16, 2014

https://sltpdwatch.wordpress.com/2016/04/16/cops-that-lie-need-to-die/

Back in 1967, former U.S. attorney and New York criminal judge Irving Younger warned that the criminal justice system was providing cops with heavy incentives to lie in court. (Note: The transcription of the article below contains some punctuation errors.)

On March 20, in McCray v. Illinois, the Supreme [Court] held that when, on being questioned as to whether there was probable cause to arrest a defendant, a policeman testifies 'that a "reliable informant" told him that the defendant was committing a crime the policeman need not name the informant[.] Justice Stewart, for himself: and four other members of the Court, said that "nothing in the Due Process Clause of the Fourteenth Amendment requires a state court judge in every such hearing to assume the arresting officers are committing perjury."

Why not? Every lawyer who practices in the criminal courts knows that police perjury is commonplace. The reason is not hard to find. Policemen see [themselves] as fighting a two-front war — against criminals in the street and against "liberal" rules of law in court. All's fair in this war, including the use of perjury to subvert "liberal" rules of law that might free those who "ought" to be jailed. And even if his lies are exposed in the courtroom, the policeman is as likely to be indicted for perjury by his co-worker, the prosecutor, as he is to be struck down by thunderbolts from an avenging heaven.

It is a peculiarity of our legal, system that the police have unique opportunities (and unique temptations) to give false testimony. …

The difficulty arises when one stands back from the particular case and looks at a series of cases. It then becomes apparent that policemen are committing perjury at least in some of them. and perhaps in nearly all of them. Narcotics prosecutions in New York City can be so viewed. Before Mapp [v. Ohio] the policeman typically [testified] that [he] had stopped the defendant for little or no reason, searched him, and found narcotics on [his] person. This had the ring of truth. It was an illegal search (not based upon probable cause"), but the evidence was admissible because Mapp had not yet been decided. Since it made no difference, the policeman testified truthfully. After, the decision in Mapp it made a great deal of difference.

For the first few months, New York policemen continued to tell the truth about the circumstances of their searches, with the result that evidence was suppressed. Then the police made the great discovery that if the defendant drops the narcotics on the ground, after which the police man arrests him, then the search is reasonable and the evidence is admissible. Spend a few hours in the New 'York City Criminal Court nowadays and you will hear case after case in which a policeman testifies that the defendant dropped the narcotics on the ground whereupon the policeman arrested him.

Usually the very language of the testimony is identical from one case to another. This is now known among defense lawyers and prosecutors as "dropsy" testimony. The judge has no reason to disbelieve it in any particular case, and of course the judge must decide each case on its own evidence, without regard to the testimony in other cases. Surely, though, not in every case was the defendant unlucky enough to drop his narcotics at the feet of a policeman. It follows that at least in some of these cases the police are lying.

That was nearly 50 years ago. We still haven't figured out how to solve the problem.

One by one, five police officers took the witness stand at the Skokie courthouse late last month for what would typically be a routine hearing on whether evidence in a drug case was properly obtained.

But in a "Perry Mason" moment rarely seen inside an actual courtroom, the inquiry took a surprising turn when the suspect's lawyer played a police video that contradicted the sworn

testimony of the five officers — three from Chicago and two from Glenview, a furious judge found.

Cook County Circuit Judge Catherine Haberkorn suppressed the search and arrest, leading prosecutors to quickly dismiss the felony charges. All five officers were later stripped of their police powers and put on desk duty pending internal investigations. And the state's attorney's office is looking into possible criminal violations, according to spokeswoman Sally Daly.

"Obviously, this is very outrageous conduct," a transcript of the March 31 hearing quoted the judge, a former county prosecutor, as saying. "All officers lied on the stand today. … All their testimony was a lie. So there's strong evidence it was conspiracy to lie in this case, for everyone to come up with the same lie. … Many, many, many, many times they all lied."

All five are veteran officers. Glenview Officer Jim Horn declined to comment Monday, while the other four — Sgt. James Padar and Officers Vince Morgan and William Pruente, all assigned to narcotics for Chicago police, and Glenview Sgt. Theresa Urbanowski — could not be reached for comment.

As Michelle Alexander pointed out in a New York Times op-ed last year, a Brooklyn judge recently had the same revelation.

In 2011, hundreds of drug cases were dismissed after several police officers were accused of mishandling evidence. That year, Justice Gustin L. Reichbach of the State Supreme Court in Brooklyn condemned a widespread culture of lying and corruption in the department's drug enforcement units. "I thought I was not naïve," he said when announcing a guilty verdict involving a police detective who had planted crack cocaine on a pair of suspects. "But even this court was shocked, not only by the seeming pervasive scope of misconduct but even more distressingly by the seeming casualness by which such conduct is employed."

In fact, Younger's warning has been repeated ad nauseam over the years by other judges, defense attorneys, conscientious police chiefs, numerous academics and law journal articles, and whistleblowers.

There are a number of reasons for the "testilying" problem. As Alexander points out, even since Younger's time, the federal government only worsened the incentives by instituting a number of grants that reward police agencies for raw numbers of stops, arrests and convictions, particularly in drug cases. There are professional and financial incentives for racking up the stats, for police agencies as a whole, for the brass who lead them and for individual police officers. And there's very little pushback for going too far to achieve those numbers.

But one unfortunate truth is that police lying has long been encouraged by the Exclusionary Rule, the rule that (usually) prohibits evidence found during an illegal search from being used against a suspect at trial. This is an unfortunate truth because the Exclusionary Rule is also the only real deterrent to illegal searches. Eliminate the Exclusionary Rule, and cops may well stop lying about how they obtain evidence, but there will then be very little to stop them from violating the Fourth Amendment with impunity, based on little more than hunches. Remember, they're lying to hide the fact that they may have violated someone's civil rights. Remove the incentive to lie about the violation without removing or at least combating the incentive to commit the violation in the first place, and you've only fixed the coverup. You haven't fixed the underlying crime. And this is one scenario where the crime is actually quite a bit worse than the coverup.

So what do we do? My fellow Washington Post blogger Randy Barnett has suggested trading the Exclusionary Rule for increased liability for cops who commit constitutional violations in the form of financial awards to victims, whether they're eventually found guilty or innocent. Barnett suggests that the awards be paid by police departments (and ultimately taxpayers), not individual police officers. This seems like a policy that would be politically difficult to enact into law. Given how pressure from police groups has made it difficult to pass basic reform even on a policy such as civil asset forfeiture — a much more obvious injustice to most people — convincing lawmakers to force agencies to pay awards to convicts because the evidence used to convict them was found in an illegal search seems like a tough sell. It also rests on the assumption that frequent awards for illegal searches will eventually move voters to push for reform. I'm just not convinced that will happen.

The answer may actually lie in how those Chicago cops got caught. The ubiquity of citizen-shot video, along with the onset of mandatory dashboard camera and lapel camera videos, is making it increasingly difficult for cops to get away with lying. Interestingly, Younger hinted at this 47 years ago.

In March 1966, the American Law Institute promulgated a Model Code of Pre-Arraignment Procedure, which provides that the police must make a tape recording of their questioning of an arrested person in order "to help eliminate factual disputes concerning what was said." More recently the 20th police precinct in New York City has begun to tape-record all interviews with suspects.

But there will be no tape recordings on the streets . . .

Perhaps not in 1967. But that is more and more the case today. All of those recordings are catching more and more cops in the act of lying. Every time a recording shows a cop to have lied, a number of things happen. First, that particular cop is (hopefully) disciplined. That probably doesn't happen as often as it should, but judges and prosecutors tend to treat perjury much more seriously than they do an illegal search. Yes, in an ideal world, cops would be

disciplined as harshly for the act of violating someone's civil liberties as they are for lying about doing so to a judge or jury after the fact. But we have to work with what we have.

Second, it serves as a warning to other cops who are lying or might lie in the future in police reports and courtrooms. The cameras are rolling. Eventually, you'll be exposed. And third, it begins to undermine the prestige that police testimony holds with judges, prosecutors and political officials. It isn't that cops are inherently dishonest people. But they are in fact merely people, subject to the same failings, temptations, bad incentives and trappings of power as someone in any other profession. Put another way, the problem isn't that cops aren't capable of telling the truth. The problem is that the courts have treated cops as if they're incapable of lying. Video is changing that.

Of course, for video to change police behavior, the video needs to exist. So the move toward dashboard cameras and lapel cameras is a good thing — provided there are safeguards to protect the privacy of regular citizens inadvertently recorded by those cameras. We also need the courts, or perhaps state legislatures, to adopt or pass a "Missing Video Presumption" — if there should be audio or video of an incident, and there isn't, the courts should presume that the audio or video would not have supported the claims of the party that failed to preserve the evidence. (That would seem to be the police in most cases, but it could also be a suspect who destroys incriminating video on his surveillance camera or cellphone.) These policies — with a robust Exclusionary Rule and proper sanctions against cops shown by video to have committed perjury — won't forever end the illegal searches or the practice of "testilying." But they should begin to tilt the incentives, so that there's at least as much to lose by skirting the Fourth Amendment (and then lying about it) as there is to gain. Radley Balko blogs about criminal justice, the drug war and civil liberties for The Washington Post. He is the author of the book "Rise of the Warrior Cop: The Militarization of America's Police Forces."

Other exhibits use in case # P17CRF0114 just show what is common 1st amendment speech such as a post[72] titled "KILL 'EM ALL AND LET GOD SORT IT OUT[73]

72 https://sltpdwatch.wordpress.com/2016/05/28/kill-em-all-and-let-god-sort-it-out-fuck-the-sltpd/

73 "***Caedite eos. Novit enim Dominus qui sunt eius.***" is a phrase reportedly spoken by the commander of the Albigensian Crusade, prior to the massacre at Béziers on 22 July 1209. A direct translation of the Latin phrase is "**Kill them. For the Lord knows those that are His own.**" Papal legate and Cistercian abbot Arnaud Amalric was military commander of the Crusade in its initial phase and leader of this first major military action of the Crusade, the assault on Béziers, and was reported to have uttered the order by Caesarius of Heisterbach.

Less formal English translations have given rise to variants such as "Kill them all; let God sort them out." Some modern sources give the quotation as *Neca eos omnes. Deus suos agnoscet*, evidently a translation from English back into Latin, and so omitting a biblical reference to 2 Timothy 2:19 evident in the original.[1]

The phrase has been adopted by members of the US military in various conflicts, such as the Vietnam War,[10] and is used as an unofficial slogan by certain units. In parts of the War on Terror, the variant "Kill them all. Let Allah sort them out" has been used.[1]

– FUCK THE SLTPD" Both of these statements are protected free speech. The statement "KEEP CALM and KILL BAD COPS" is also free speech[74] protected by the 1st amendment. **Criticizing police officers, "even with profanity, (Fuck You) is protected speech."** *Thurairajah v. City of Fort Smith, Arkansas, 925 F.3d 979, 985 (8th Cir. 2019).* Petitioner did file an Internal Affairs complaints against Shannon Laney and will petitioner for a complete record pursuant to the California Public Records Act and Senate Bill 1421.[75]

Woman Jailed for Saying 'Fuck the Police' Wins $100,000 Settlement.[76]

Obviously the "KILL 'EM ALL AND LET GOD SORT IT OUT" motto was popular with the Vietnam solders and the flag can be purchased[77] from amazon.com for $4.99.

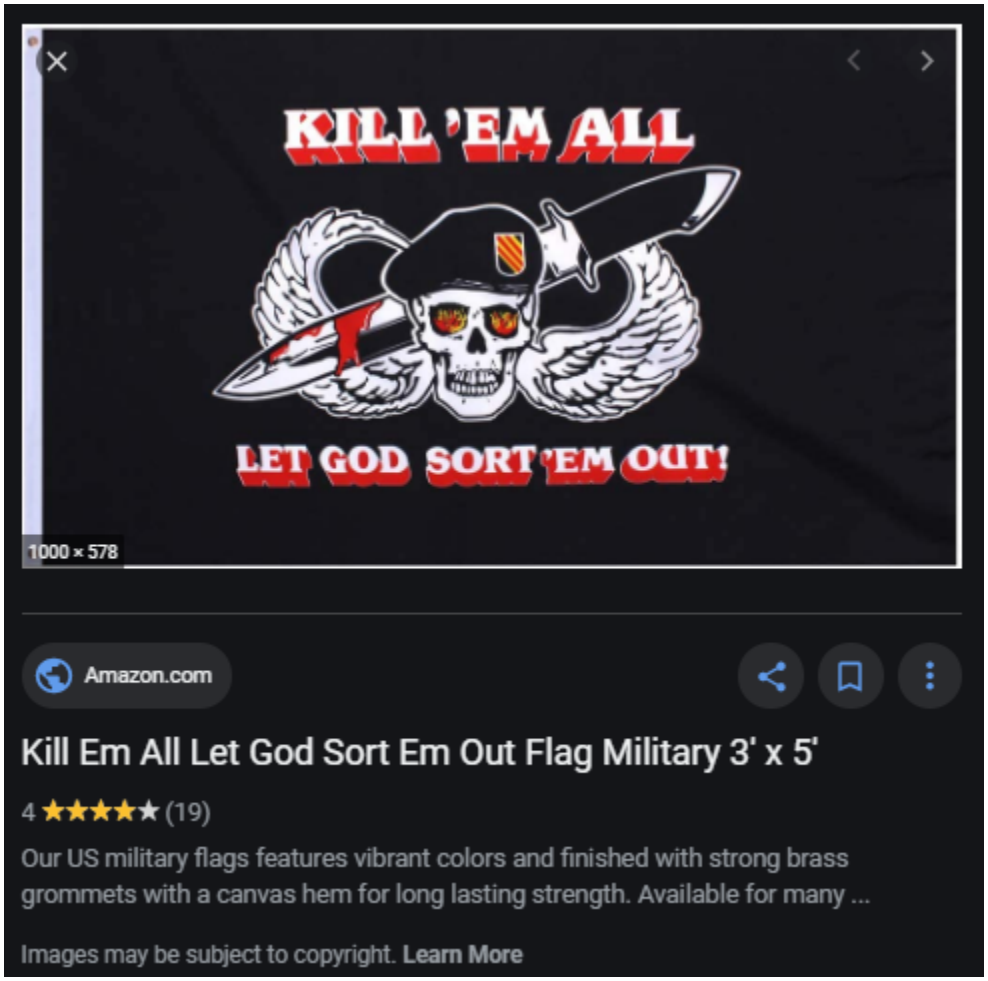
---

74 https://www.google.com/search?q=Keep+calm+and+kill+cops&sxsrf=ALeKk00AP5OjPNrHtYmhXnLgflcvKXRopw:1595217819267&source=lnms&tbm=isch&sa=X&ved=2ahUKEwi7rtO7-drqAhXPG80KHQmfC5IQ_AUoAXoECAsQAw&biw=1366&bih=625

75 https://www.npr.org/2019/03/27/707358137/californias-new-police-transparency-law-shows-how-officers-are disciplined

76 https://reason.com/2014/12/15/woman-jailed-for-saying-fuck-the-police/

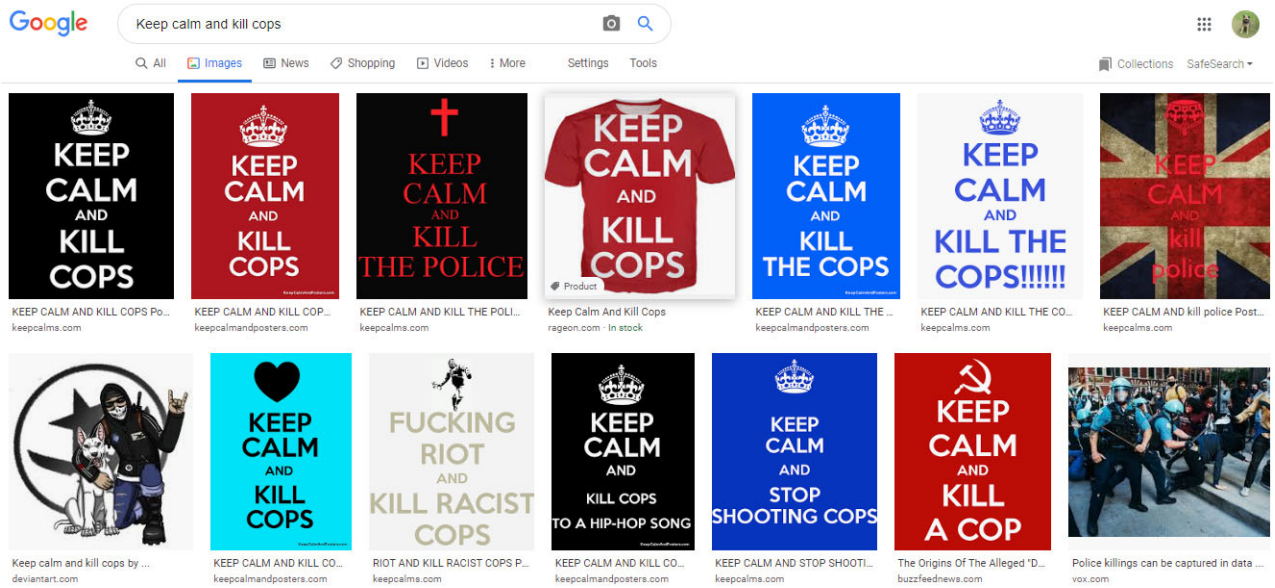
77 https://www.amazon.com/Kill-All-Sort-Flag-Military/dp/B000CKX8YS



…and KEEP CALM AND KILL A COP meme can be found on Google and BuzzFeed[78]

[78] https://www.buzzfeednews.com/article/tasneemnashrulla/protesters-against-police-brutality-arent-advocating-for-dea

Get the T-shirt at: https://www.rageon.com/products/keep-calm-and-kill-cops



As shown, you can get the image on Google, news websites can post the image, you can get the shirts and flags on Amazon,com - …and this Petitioner was sentenced to the upper term in prison for posting the same thing on his website? Ay person including a tourest in South Lake Tahoe could be arrested for wearing a shirt with “Fuck the police” “Kill cops” or “Kill ‘em all let God sort it out”.

Another post[79] that ruffled their feathers was the following where the case law can be found on Lexis Nexus, Westlaw or Google Scholar and the images on Google[80] here:

WHEN A CORRUPT DA IS “BLOWN AWAY” EVERYONE WINS

YOUR RIGHT OF DEFENSE AGAINST UNLAWFUL ARREST

“Citizens may resist unlawful arrest to the point of taking an arresting officer’s life if necessary.” Plummer v. State, 136 Ind. 306. This premise was upheld by the Supreme Court of the United States in the case: John Bad Elk v. U.S., 177 U.S. 529. The Court stated: “Where the officer is killed in the course of the disorder which naturally accompanies an

79 https://sltpdwatch.wordpress.com/2016/04/17/when-a-corrupt-da-is-blown-away-everyone-wins/

80 https://www.google.com/search?q=the+only+good+cop+is+a+dead+one&tbm=isch&ved=2ahUKEwiO-4DR-9rqAhWTbqwKHeZbAJcQ2-cCegQIABAA&oq=the+only+good+&gs_lcp=CgNpbWcQARgBMgIIADICCAAyAggAMgIIADICCAAyAggAMgIIADICCAAyAggAMgIIADoECAAQQzoFCAAQsQM6BAgjECc6BwgAELEDEEM6CAgAELEDEIMBUNv3SFi0oElg8rRJaAJwAHgAgAHKAYgB6BCSAQYwLjE1LjGYAQCgAQGqAQtnd3Mtd2l6LWltZ8ABAQ&sclient=img&ei=4BkVX46LOJPdsQXmt4G4CQ&bih=625&biw=1366

attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no right. What may be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed."

"An arrest made with a defective warrant, or one issued without affidavit, or one that fails to allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break away. lf the arresting officer is killed by one who is so resisting, the killing will be no more than an involuntary manslaughter." Housh v. People, 75 111. 491; reaffirmed and quoted in State v. Leach, 7 Conn. 452; State v. Gleason, 32 Kan. 245; Ballard v. State, 43 Ohio 349; State v Rousseau, 241 P. 2d 447; State v. Spaulding, 34 Minn. 3621.

"When a person, being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and if, in the reasonable exercise of his right of self defense, his assailant is killed, he is justified." Runyan v. State, 57 Ind. 80; Miller v. State, 74 Ind. 1.

"These principles apply as well to an officer attempting to make an arrest, who abuses his authority and transcends the bounds thereof by the use of unnecessary force and violence, as they do to a private individual who unlawfully uses such force and violence." Jones v. State, 26 Tex. App. I; Beaverts v. State, 4 Tex. App. 1 75; Skidmore v. State, 43 Tex. 93, 903.

"An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault and battery." (State v. Robinson, 145 ME. 77, 72 ATL. 260).

"Each person has the right to resist an unlawful arrest. In such a case, the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self- defense." (State v. Mobley, 240 N.C. 476, 83 S.E. 2d 100).

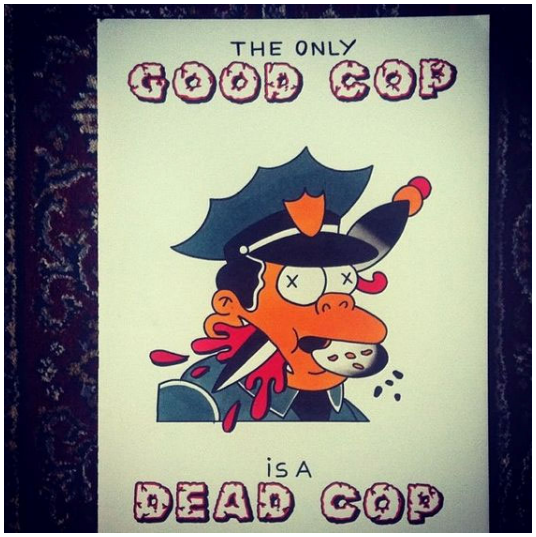
"One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody, without resistance." (Adams v. State, 121 Ga. 16, 48 S.E. 910).

"Story affirmed the right of self-defense by persons held illegally. In his own writings, he had admitted that 'a situation could arise in which the checks-and-balances principle ceased to work and the various branches of government concurred in a gross usurpation.' There would be no usual remedy by changing the law or passing an amendment to the Constitution, should the oppressed party be a minority. Story concluded, 'If there be any remedy at all … it is a remedy never provided for by human institutions.' That was the 'ultimate right of all

human beings in extreme cases to resist oppression, and to apply force against ruinous injustice.'" (From Mutiny on the Amistad by Howard Jones, Oxford University Press, 1987, an account of the reading of the decision in the case by Justice Joseph Story of the Supreme Court.

As for grounds for arrest: "The carrying of arms in a quiet, peaceable, and orderly manner, concealed on or about the person, is not a breach of the peace. Nor does such an act of itself, lead to a breach of the peace." (Wharton's Criminal and Civil Procedure, 12th Ed., Vol.2: Judy v. Lashley, 5 W. Va. 628, 41 S.E. 197).

You are also within your rights not to answer any questions without a lawyer present, and if possible, to demand a video recording be made of the entire encounter that you or your lawyer keep as evidence, so that federal prosecutors can't get away with charging you with making false statements to a government investigator and testilying about what you said. See this article.



As a practical matter one should try to avoid relying on the above in an actual confrontation with law enforcement agents, who are likely not to know or care about any of it. Some recent courts have refused to follow these principles, and grand juries, controlled by prosecutors, have refused to indict officers who killed innocent people claiming the subject "resisted" or "looked like he might have a gun". Once dedicated to "protect and serve", far too many law enforcement officers have become brutal, lawless occupying military forces.

WHEN SHOULD YOU SHOOT A COP

JUNE 28, 2011 BY *LARKEN ROSE* *883 COMMENTS*

That question, even without an answer, makes most "law-abiding taxpayers" go into knee-jerk conniptions. The indoctrinated masses all race to see who can be first, and loudest, to proclaim that it is NEVER okay to forcibly resist "law enforcement." In doing so, they also inadvertently demonstrate why so much of human history has been plagued by tyranny and oppression.

https://www.youtube.com/watch?v=cElTyqJkMEw&feature=emb_logo

In an ideal world, cops would do nothing except protect people from thieves and attackers, in which case shooting a cop would never be justified. In the real world, however, far more injustice, violence, torture, theft, and outright murder has been committed IN THE NAME of "law enforcement," than has been committed in spite of it. To get a little perspective, try watching a documentary or two about some of the atrocities committed by the regimes of Stalin, or Lenin, or Chairman Mao, or Hitler, or Pol Pot, or any number of other tyrants in history. Pause the film when the jackboots are about to herd innocent people into cattle cars, or gun them down as they stand on the edge of a ditch, and THEN ask yourself the question, "When should you shoot a cop?" Keep in mind, the evils of those regimes were committed in the name of "law enforcement." And as much as the statement may make people cringe, the history of the human race would have been a lot LESS gruesome if there had been a lot MORE "cop-killers" around to deal with the state mercenaries of those regimes.

People don't mind when you point out the tyranny that has happened in other countries, but most have a hard time viewing their OWN "country," their OWN "government," and their OWN "law enforcers," in any sort of objective way. Having been trained to feel a blind loyalty to the ruling class of the particular piece of dirt they live on (a.k.a. "patriotism"), and having been trained to believe that obedience is a virtue, the idea of forcibly resisting "law enforcement" is simply unthinkable to many. Literally, they can't even THINK about it. And humanity has suffered horribly because of it. It is a testament to the effectiveness of authoritarian indoctrination that literally billions of people throughout history have begged and screamed and cried in the face of authoritarian injustice and oppression, but only a tiny fraction have ever lifted a finger to actually try to STOP it.

Even when people can recognize tyranny and oppression, they still usually talk about "working within the system"–the same system that is responsible for the tyranny and oppression. People want to believe that "the system" will, sooner or later, provide justice. The last thing they want to consider is that they should "illegally" resist–that if they want to achieve justice, they must become "criminals" and "terrorists," which is what anyone who resists "legal" injustice is automatically labeled. But history shows all too well that those who fight for freedom and justice almost always do so "illegally"–i.e., without the permission of the ruling class.

If politicians think that they have the right to impose any "law" they want, and cops have the attitude that, as long as it's called "law," they will enforce it, what is there to prevent complete tyranny? Not the consciences of the "law-makers" or their hired thugs, obviously. And not any election or petition to the politicians. When tyrants define what counts as "law," then by definition it is up to the "law-breakers" to combat tyranny.

Pick any example of abuse of power, whether it is the fascist "war on drugs," the police thuggery that has become so common, the random stops and searches now routinely carried out in the name of "security" (e.g., at airports, "border checkpoints" that aren't even at the border, "sobriety checkpoints," and so on), or anything else. Now ask yourself the uncomfortable question: If it's wrong for cops to do these things, doesn't that imply that the people have a right to RESIST such actions? Of course, state mercenaries don't take kindly to being resisted, even non-violently. If you question their right to detain you, interrogate you, search you, invade your home, and so on, you are very likely to be tasered, physically assaulted, kidnapped, put in a cage, or shot. If a cop decides to treat you like livestock, whether he does it "legally" or not, you will usually have only two options: submit, or kill the cop. You can't resist a cop "just a little" and get away with it. He will always call in more of his fellow gang members, until you are subdued or dead.

Basic logic dictates that you either have an obligation to LET "law enforcers" have their way with you, or you have the right to STOP them from doing so, which will almost always require killing them. (Politely asking fascists to not be fascists has a very poor track record.) Consider the recent Indiana Supreme Court ruling, which declared that if a cop tries to ILLEGALLY enter your home, it's against the law for you to do anything to stop him. Aside from the patent absurdity of it, since it amounts to giving thugs with badges PERMISSION to "break the law," and makes it a CRIME for you to defend yourself against a CRIMINAL (if he has a badge), consider the logical ramifications of that attitude.

There were once some words written on a piece of parchment (with those words now known as the Fourth Amendment), that said that you have the right to be free from unreasonable searches and seizures at the hands of "government" agents. In Indiana today, what could that possibly mean? The message from the ruling class is quite clear, and utterly insane. It amounts to this: "We don't have the right to invade your home without probable cause … but if we DO, you have no right to stop us, and we have the right to arrest you if you try."

Why not apply that to the rest of the Bill of Rights, while we're at it? "You have the right to say what you want, but if we use violence to shut you up, you have to let us." (I can personally attest to the fact that that is the attitude of the U.S. "Department of Justice.") "You have the right to have guns, but if we try to forcibly and illegally disarm you, and you resist, we have the right to kill you." (Ask Randy Weaver and the Branch Davidians about that one.) "You have the right to not testify against yourself, but when we coerce you into confessing (and call it a 'plea agreement'), you can't do a thing about it." What good is a "right"–what does the term "right" even mean–if you have an obligation to allow jackboots to violate your so-called "rights"? It makes the term absolutely meaningless.

To be blunt, if you have the right to do "A," it means that if someone tries to STOP you from doing "A"–even if he has a badge and a politician's scribble ("law") on his side–you have the right to use whatever amount of force is necessary to resist that person. That's what it means to have an unalienable right. If you have the unalienable right to speak your mind (a la the First Amendment), then you have the right to KILL "government" agents who try to shut you up. If you have the unalienable right to be armed, then you have the right to KILL "government" agents who try to disarm you. If you have the right to not be subjected to unreasonable searches and seizures, then you have the right to KILL "government" agents who try to inflict those on you.

Those who are proud to be "law-abiding" don't like to hear this, and don't like to think about this, but what's the alternative? If you do NOT have the right to forcibly resist injustice–even if the injustice is called "law"–that logically implies that you have an obligation to allow "government" agents to do absolutely anything they want to you, your home, your family, and so on. Really, there are only two choices: you are a slave, the property of the politicians, without any rights at all, or you have the right to violently resist "government" attempts to oppress you. There can be no other option.

Of course, on a practical level, openly resisting the gang called "government" is usually very hazardous to one's health. But there is a big difference between obeying for the sake of self-preservation, which is often necessary and rational, and feeling a moral obligation to go along with whatever the ruling class wants to do to you, which is pathetic and insane. Most of the incomprehensible atrocities that have occurred throughout history were due in large part to the fact that most people answer "never" to the question of "When should you shoot a cop?" The correct answer is: When evil is "legal," become a criminal. When oppression is enacted as "law," become a "law-breaker." When those violently victimizing the innocent have badges, become a cop-killer.

The next time you hear of a police officer being killed "in the line of duty," take a moment to consider the very real possibility that maybe in that case, the "law enforcer" was the bad guy and the "cop killer" was the good guy. As it happens, that has been the case more often than not throughout human history.

UPDATE:
Larken Rose narrated the text he wrote, and the video below was edited by Pete Eyre, and published in November, 2012.

Related post: http://www.copblock.org/whenshouldyoushootacop/

Since this case is likely to proceed to the federal courts where the Ninth Circuit can address the issues of 1st amendment and true threats, Petitioner asserts he did not subjectively intend on his speech to be taken as a threat.

In *People v. Lowery, 257 P. 3d 72 - Cal: Supreme Court 2011*:

BAXTER, J., Concurring. —

The First Amendment allows states "to ban a `true threat.'" (*Virginia v. Black* (2003) 538 U.S. 343, 359 [155 L.Ed.2d 535, 123 S.Ct. 1536] (*Black*).) The majority opinion, which I have joined, is consistent with the First Amendment. It upholds the constitutionality of Penal Code section 140, subdivision (a), on the ground that the statute applies "only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, `a serious expression of an intent to commit an act of unlawful violence.'" (Maj. opn., *ante,* at p. 427, quoting *Black, supra*, 538 U.S. at p. 359**.) I write separately to discuss more fully the Ninth Circuit's mistaken belief that a "true threat" requires something else, namely, proof that the speaker *subjectively* intended the statements be taken as a threat.** (See *U.S. v. Bagdasarian* (9th Cir. 2011) 652 F.3d 1113, 1116-1118; *U.S. v. Cassel* (9th Cir. 2005) 408 F.3d 622, 631-633.)

429*429 As this court's opinion points out, decisions prior to *Black* "`almost uniformly'" applied an objective standard, not a subjective standard, to determine whether a statement was a true threat and thus outside of the protections afforded by the First Amendment. (Maj. opn., *ante,* at p. 424; see also *Doe v. Pulaski County Special School Dist.* (8th Cir. 2002) 306 F.3d 616, 622 (en banc) ["All the courts to have reached the issue have consistently adopted an objective test that focuses on whether a reasonable person would interpret the purported threat as a serious expression of an intent to cause a present or future harm."].) To construe *Black* as upsetting the legal landscape would be a peculiar reading. *Black* did not criticize the existing case law. Indeed, it did not even purport to announce what criminal intent was constitutionally required. (Strasser, *Advocacy, True Threats, and the First Amendment* (2011) 38 Hastings Const. L.Q. 339, 377.) Rather, *Black* involved a criminal statute that expressly *included* a showing of subjective intent — i.e., a Virginia statute banning cross burning with "`an intent to intimidate a person or group of persons.'" (*Black, supra*, 538 U.S. at p. 347, quoting Va. Code Ann. § 18.2-423.) The constitutional necessity of such a provision was never at issue.

Rather, the controversy in *Black* centered on an additional provision of the Virginia criminal statute under which "`any ... burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons.'" (*Black, supra,* 538 U.S. at p. 363 (plur. opn. of O'Connor, J.) [quoting Va. Code Ann. § 18.2-423].) Because of the prima face provision, the jury was instructed that "`[t]he burning of a cross, by itself, is sufficient evidence from which you may infer the required intent.'" (*Id.* at p. 364 (plur. opn. of O'Connor, J.).) A historical survey of cross burning, however, called into question the validity of the prima facie provision and the corresponding instruction. Having originated as a means for Scottish tribes to signal each other, cross burning in the United States had become "inextricably intertwined with the history of the Ku Klux Klan" as "a `symbol of hate.'" (*Id.* at pp. 352, 357.) Even so, a burning cross can convey both a political message or a threatening one. (*Id.* at p. 357.) A burning cross may stand at times as a "symbol[] of shared group identity and ideology" at Ku Klux Klan gatherings (or in movies depicting the Klan), or it may blaze as "a tool of intimidation and a threat of impending violence." (*Id.* at pp. 356, 354.) Because of this dual history, "a burning cross does not inevitably convey a message of intimidation" (*id.* at p. 357) — or, in other words, a burning cross is not inevitably a true threat. Something more would be required to make it a true threat.

One "type of true threat," according to the high court, occurs "where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." (*Black, supra,* 538 U.S. at 430*430 p. 360.) Although "some cross burnings fit within this meaning of intimidating speech, and rightly so" (*ibid.*), "[t]he prima facie evidence provision in [*Black*] ignores all of the contextual factors that are necessary to decide whether a particular cross burning is intended to intimidate" (*id.* at p. 367 (plur. opn. of O'Connor, J.)). The plurality then concluded: "The First Amendment does not permit such a shortcut." (*Ibid.* (plur. opn. of O'Connor, J.); see also *id.* at p. 380 (conc. & dis. opn. of Scalia, J.) [the jury instruction made it "impossible to determine" whether the verdict rested on the entirety of the evidence, "*including* evidence that might rebut the presumption that cross burning was done with an intent to intimidate," or whether the jury instead "focused exclusively on the fact that the defendant burned a cross"].) Indeed, "the prima facie provision strips away the very reason why a State may ban cross burning with the intent to intimidate.... The provision permits the Commonwealth to arrest, prosecute, and convict a person based solely on the fact of the cross burning itself" — even when the conduct is "core political speech" and, hence, not a true threat. (*Id.* at p. 365 (plur. opn. of O'Connor, J.).)

Penal Code section 140, subdivision (a), by contrast, applies only to true threats, not to speech protected by the First Amendment. As our opinion today explains, section 140, subdivision (a), applies "only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, `a serious expression of an intent to commit an act of unlawful violence.'" (Maj. opn., *ante,* at p. 427, quoting *Black, supra,* 538 U.S. at p. 359.) Under these circumstances, there need not be any additional showing that the speaker *subjectively* intended the statements be taken as a threat. The need to punish true threats — i.e., to "`protect[] individuals from the fear of violence' and `from the disruption that fear engenders'" (*Black, supra,* 538 U.S. at p. 360) — is triggered when a *reasonable listener* would understand the statements, in

context, to be a serious expression of an intent to commit an act of unlawful violence. The fear of violence and the accompanying disruption such fear may cause is in no way diminished by the possibility that the speaker subjectively (and silently) did not intend to make a threat. And *Black* did not hold otherwise.

Our ruling today is consistent with the understanding of most courts that have considered the issue since *Black* was decided. (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 539 [118 Cal.Rptr.3d 420] [*Black* does not require the defendant have "an intent that a statement `be received as a threat'"]; *U.S. v. Armel* (4th Cir. 2009) 585 F.3d 182, 185 ["Statements constitute a `true threat' if `an ordinary reasonable recipient who is familiar with the[ir] context ... would interpret [those statements] as a threat of injury.'"]; *U.S. v. Jongewaard* (8th Cir. 2009) 567 F.3d 336, 339, fn. 2 ["In this circuit, the test for distinguishing a true threat from constitutionally 431*431 protected speech is whether an objectively reasonable recipient would interpret the purported threat `as a serious expression of an intent to harm or cause injury to another.'"]; *Porter v. Ascension Parish School Bd.* (5th Cir. 2004) 393 F.3d 608, 616 ["Speech is a `true threat' and therefore unprotected if an objectively reasonable person would interpret the speech as a `serious expression of an intent to cause a present or future harm.' The protected status of the threatening speech is not determined by whether the speaker had the subjective intent to carry out the threat; rather, to lose the protection of the First Amendment and be lawfully punished, the threat must be intentionally or knowingly *communicated* to either the object of the threat or a third person." (fns. omitted)]; *U.S. v. Zavrel* (3d Cir. 2004) 384 F.3d 130, 136; *U.S. v. Nishnianidze* (1st Cir. 2003) 342 F.3d 6, 14-15 ["A true threat is one that a reasonable recipient familiar with the context of the communication would find threatening"; thus the government had to prove only "that the defendant intended to transmit the interstate communication and that the communication contained a true threat"]; *U.S. v. Syring* (D.D.C. 2007) 522 F.Supp.2d 125, 129 ["courts in all jurisdictions consider whether a reasonable person would consider the statement a serious expression of an intent to inflict harm..."]; *New York ex rel. Spitzer v. Cain* (S.D.N.Y. 2006) 418 F.Supp.2d 457, 479 ["The relevant intent is the intent to communicate a threat, not as defense counsel maintains, the intent to threaten."]; *Citizen Publishing Co. v. Miller* (2005) 210 Ariz. 513 [115 P.3d 107, 114] [under Arizona's test, which is "substantially similar" to *Black,* "`true threats' are those statements made `in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or to take the life of [a person]'"]; *People v. Stanley* (Colo.App. 2007) 170 P.3d 782, 789 ["*Black* does not hold that subjective intent to threaten must be proved."]; *State v. DeLoreto* (2003) 265 Conn. 145 [827 A.2d 671, 680] ["In the context of a threat of physical violence, `whether a particular statement may properly be considered to be a threat is governed by an objective standard — whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault.'"]; *Hearn v. State* (Miss. 2008) 3 So.3d 722, 739, fn. 22 ["The protected status of threatening speech is not based upon the subjective intent of the speaker."]; *State v. Johnston* (2006) 156 Wn.2d 355 [127 P.3d 707, 710] ["`[W]hether a true threat has been made is determined under an objective standard that focuses on the speaker.'"]; see generally Citron, *Cyber Civil Rights* (2009) 89 B.U. L.Rev. 61, 107, fn. 321 ["Only the

Ninth Circuit requires proof that the defendant subjectively intended to threaten the victim."].)

432*432 Thus, when the high court said, "`True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" (*Black, supra,* 538 U.S. at p. 359), it did not thereby, for the first time, require proof that the speaker subjectively intended the speech be taken as a threat. The relevant intent remains the intent to *communicate,* not the intent to threaten. (*Porter v. Ascension Parish School Bd., supra,* 393 F.3d at pp. 616-617.) A reading of *Black* that recasts "`means to communicate'" into a requirement that the speaker "intend[ed] for his language to *threaten* the victim" (*U.S. v. Cassel, supra,* 408 F.3d at p. 631) assumes that the single word "communicate" was designed to overrule the settled law discussed above, and assigns "communicate" much more work than the word ordinarily can bear. Moreover, the high court, in the same paragraph in *Black,* went on to say that the "prohibition on true threats `protects individuals from the fear of violence' and `from the disruption that fear engenders,' in addition to protecting people `from the possibility that the threatened violence will occur.'" (*Black, supra,* 538 U.S. at p. 360.) The need for such protection, as noted above, does not depend on whether the speaker *subjectively* intended to threaten the victim. "**A standard for threats that focused on the speaker's subjective intent to the exclusion of the effect of the statement on the listener would be dangerously underinclusive with respect to the first two rationales for the exemption of threats from protected speech."** (*New York ex rel. Spitzer v. Cain, supra,* 418 F.Supp.2d at p. 479.)

One might also question the logic of resting the constitutional determination whether speech qualifies as a true threat on the *subjective* understanding of the speaker, without regard to whether the speech objectively would be viewed as threatening. (See *U.S. v. Bagdasarian, supra,* 652 F.3d at p. 1117 & fn. 14.) A statement that is subjectively intended to be a threat but which presents no objective indicators of its threatening nature would not trigger fear in the recipient or cause disruption. Indeed, such speech is unlikely ever to come to the attention of law enforcement. (See *People v. Parson* (2008) 44 Cal.4th 332, 346 [79 Cal.Rptr.3d 269, 187 P.3d 1] ["`"`intent may be inferred from words, acts, and other *objective* facts"""].)

In short, the subjective standard created by the Ninth Circuit is both mistaken, in that it purports to define what is a true threat for federal constitutional purposes, and dangerous, in that it compromises the government's ability to protect individuals from the fear of violence and the 433*433 **disruption that fear engenders. California has good reason for adopting the objective standard, the standard already used in many other jurisdictions.** I therefore join the opinion of the court authored by Justice Kennard.

PENAL CODE 422 IS UNCONSTITUTIONAL

Penal Code 422 is also unconstitutional as written and interpreted by the California Supreme Court which attempts to rewrite the statute to include conditional threats when the law clearly states unconditional. In *People v. Bolin, 956 P. 2d 374 - Cal: Supreme Court 1998*:

"In reaching this conclusion, we begin with the original source of the statutory language. In 1981, this court invalidated former section 422 as unconstitutionally vague. (*People v. Mirmirani* (1981) 30 Cal.3d 375, 388, 178 441*441 Cal.Rptr. 792, 636 P.2d 1130.) **The Legislature subsequently repealed the statute and enacted a substantially revised version in 1988, adopting almost verbatim language from *United States v. Kelner* (2d Cir.1976) 534 F.2d 1020. (See Stats.1987, ch. 828, § 28, p. 2587; Stats.1988, ch. 1256, § 4, pp. 4184-4185.)"**

In ***United States v. Kelner* (2d Cir.1976) 534 F.2d 1020:**

> In confronting this problem of interpreting the threat statute consistently with the First Amendment, the Supreme Court did not accept the solution argued for by appellant and by Judge J. Skelly Wright, dissenting in *Watts, supra,* 402 F.2d at 687, of conditioning conviction upon proof of a specific intent to carry out the threat made. In alleviation of Judge Wright's concerns lest men go unprotected by the First Amendment and be convicted "of using offensive language, with some implication against the President's life, which [is] meant as jest, as rhetoric," *id.* at 689, **the Court construed the word "threat" to exclude statements which are, when taken in context, not "true threats" because they are conditional and made in jest.** 397 U.S. at 708, 89 S.Ct. at 1401, 22 L.Ed. at 667. In effect, the Court was stating that threats punishable consistently with the First Amendment were only those which according to their language and context conveyed a gravity of purpose and likelihood of execution so as to constitute speech beyond the pale of protected "vehement, caustic . . unpleasantly sharp attacks on government and public officials." *See New York Times Co. v. Sullivan,* 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686, 701 (1964). We believe that this limitation upon the word "threat" is a construction which satisfies First Amendment concerns as fully as would appellant's and Judge Wright's requirement that specific intent to carry out the threat be proven.[8]
>
> 1027*1027 **The purpose and effect of the *Watts* constitutionally-limited definition of the term "threat" is to insure that only unequivocal, unconditional and specific expressions of intention immediately to inflict injury may be punished—only such threats, in short, as are of the same nature as those threats which are, as Judge**

Wright recognizes, "properly punished every day under statutes prohibiting extortion, blackmail and assault without consideration of First Amendment issues." *Watts, supra,* 402 F.2d at 690.

The *Watts* requirement of proof of a "true threat," it may be seen, works ultimately to much the same purpose and effect as would a requirement of proof of specific intent to execute the threat because both requirements focus on threats which are so unambiguous and have such immediacy that they convincingly *express* an *intention* of being carried out. These qualities of unequivocal immediacy and express intention are the most, perhaps, that even Judge Wright's and the appellant's proposed requirement of specific intent could demand in any event since such an intent may be proved circumstantially; the jury under that test would have the "almost impossible task of evaluating [a defendant's] subjective mental processes in relation to executing his apparent intent as that intent was manifested by his words and gestures in context." *Id.* at 684 (opinion of Burger, *Circuit Judge*).

It is for these reasons that we believe a narrow construction of the word "threat" in the statute here, 18 U.S.C. § 875(c), as approved in *Watts,* 394 U.S. at 708, 89 S.Ct. at 1401, 22 L.Ed.2d at 667, is consonant with the protection of First Amendment interests. Even where the threat is made in the midst of what may be other protected political expression, such as appellant's reference to "justice" and "equal rights under the law," **the threat itself may affront such important social interests that it is punishable absent proof of a specific intent to carry it into action when the following criteria are satisfied. So long as the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution, the statute may properly be applied. This clarification of the scope of 18 U.S.C. § 875(c) is, we trust, consistent with a rational approach to First Amendment construction which provides for governmental authority in instances of inchoate conduct, where a communication has become "so interlocked with violent conduct as to constitute for all practical purposes part of the [proscribed] action itself."** T. Emerson, *supra,* at 329.[9]

1028*1028 The question of the application of the First Amendment to the statute here is properly for the court rather than the jury under *Dennis v. United States,* 341 U.S. 494, 511-15, 71 S.Ct. 857, 868-870, 95 L.Ed. 1137, 1153-1155 (1951).[10] We must determine under the circumstances of this case whether appellant's statement unambiguously constituted an immediate threat upon the life or safety of Arafat and his aides. As we have already indicated, appellant's language met the criteria we have set forth. It was not made in a jesting manner; the military uniforms and the presence of the .38 pistol emphasize this. The language was unequivocal and **unconditional**: "We are planning to assassinate Mr. Arafat." It was immediate: "We have people who have been trained and who are out now . .." It was specific as to target: "Arafat and his lieutenants." Therefore, in accordance with the above, we conclude that the threat was within the constitutionally permissible scope of the statute and we reject appellant's fourth claim of error.[11]

With regard to appellant's final argument, we hold that the cross-examination of Kelner's character witnesses was proper. Of first note is the fact that the failure of appellant to

object below should preclude his objection here. *United States v. Indiviglio,* 352 F.2d 276 (2d Cir. 1965) (en banc), *cert. denied,* 383 U.S. 907, 86 S.Ct. 887, 15 L.Ed.2d 663 (1966). Even had timely objection been made, however, the cross-examination of the witnesses was proper. The four character witnesses had testified as to Kelner's present reputation for peacefulness as well as for truth and veracity. As such, evidence postdating the indictment but predating the witness's testimony was relevant and cross-examination of the witnesses regarding their awareness of appellant's post-indictment arrest was proper. *United States v. Lewis,* 157 U.S.App.D.C. 43, 482 F.2d 632, 643 (1973). The allowable scope of the impeaching inquiry should be tested by comparison with the reputation asserted. *Michelson v. United States,* 335 U.S. 469, 483-84, 69 S.Ct. 213, 222, 93 L.Ed. 168, 177-78 (1948). We would be hard put, moreover, even if there were error in this respect, to find such error other than harmless.

Judgment affirmed.

MULLIGAN, Circuit Judge (concurring):

I agree that the conviction of the appellant Kelner must be affirmed. The language of the threat and the circumstances in which it was made as set forth in Judge Oakes's opinion are in my view clearly within the statute [18 U.S.C. § 875(c)] and do not constitute protected speech within the First Amendment. The threat here cannot be sensibly characterized as an "exposition of ideas," *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1029*1029 1031, 1035 (1942) or the "communication of information or opinion," *Cantwell v. Connecticut,* 310 U.S. 296, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 1221 (1940).

The reason for this separate opinion is that I cannot accept Judge Oakes's obiter dicta, "So long as the threat on its face and in the circumstances in which it is made is so unequivocal, **unconditional,** immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution, the statute [18 U.S.C. § 875(c)] may properly be applied." There is no doubt that the threat here is well within the rule announced. However, I see no reason to set forth a test for future cases which may well involve threats within the statute and not protected by the First Amendment, but which would not fall within the proposed rubric.

For example, if the threat here had been made in the same setting but had been phrased, "We plan to kill Arafat a week from today unless he pays us $1,000,000," I would hold that the threat is still well within § 875(c) and not protected under the First Amendment although the threatened homicide is not immediate, imminent or **unconditional** under the test proposed by Judge Oakes. We have already held that a threat to assassinate the President some two weeks later is within a comparable statute, 18 U.S.C. § 871. *United States v. Compton,* 428 F.2d 18 (2d Cir. 1970), cert. denied, 401 U.S. 1014, 91 S.Ct. 1259, 28 L.Ed.2d 551 (1971). Although the opinion does not advert to the issue of immediacy, I would not think that that argument would change the result.

It is true that in *Watts v. United States,* 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969)[1] the Court, in reversing a conviction under § 871, characterized a threat to

assassinate President Johnson as conditional. However, the setting was entirely different from that encountered here. The defendant there was an eighteen-year-old who was participating in a public rally of the W.E.B. DuBois Club on the Washington Monument grounds. He joined a gathering scheduled to discuss police brutality. After a suggestion by one member of the group that young people get more education before expressing their views, the defendant stated:

They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. They are not going to make me kill my black brothers.

394 U.S. at 706, 89 S.Ct. at 1400, 22 L.Ed.2d at 666. I do not think that *Watts* stands for the proposition that a conditional threat is necessarily protected by the First Amendment. The circumstances of the threat made in that case indicate that the assassination was impossible since the defendant never intended to serve in the Armed Forces; that it was considered as a joke by the audience and that it was made in a setting of political and social discussion which should be encouraged and not condemned.

In sum, I believe that in view of the myriad circumstances which will attend the making of such threats and the rich vocabulary of invective available to those prone to indulge in the exercise condemned by the statute, the better course here is to decide each case on its facts, at least until such time as the Supreme Court provides further elucidation. Moreover, the proposed requirement that the threat be of immediate, imminent and **unconditional** injury seems to me to be required neither by the statute nor the First Amendment.

In *People v. Bolin, 956 P. 2d 374 - Cal: Supreme Court 1998*:

With respect to the substantive claim, section 422 makes it a crime to "willfully threaten[] to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety...." Relying on *People v. Brown* (1993) 20 Cal.App.4th 1251, 25 Cal.Rptr.2d 76, defendant contends that because the letter did not contain an unconditional threat, it did not constitute a violation of section 422 as a matter of law and was therefore inadmissible as evidence of prior unadjudicated criminal activity. In his reply brief, he further argues that even if section 422 does not mandate an unconditional threat (see, e.g., *People v. Stanfield* (1995) 32 Cal. App.4th 1152, 38 Cal.Rptr.2d 328), the letter was still insufficient on its face to come within the statutory proscription.

In *People v. Brown*, the defendant accosted two women approaching their apartment and made several menacing statements as he pointed a gun at the head of one of the women. (20 Cal.App.4th at p. 1253, 25 Cal. Rptr.2d 76.) When the other said they should call the police, the defendant said he would kill them if they did. (*Ibid.*) A jury found him guilty of violating section 422. The Court of Appeal reversed the judgment, construing the statute to preclude conviction when the threat is conditional in any respect. "The plain meaning of an `unconditional' threat is that there be no conditions, `*If* you call the police ...' *is* a condition, [¶] To—by some linguistic legerdemain—construe `unconditional threat' to include a `conditional threat' would only create `serious constitutional problems.' (*People v. Mirmirani* ... (1981) 30 Cal.3d 375, 382, 178 Cal.Rptr. 792, 636 P.2d 1130....)" (*People v. Brown, supra,* 20 Cal.App.4th at p. 1256, 25 Cal.Rptr.2d 76.)

Since *Brown,* several Court of Appeal decisions have expressly disagreed with this strict interpretation of section 422. (*People v. Dias* (1997) 52 Cal.App.4th 46, 60 Cal. Rptr.2d 443; *People v. Stanfield, supra,* 32 Cal.App.4th 1152, 38 Cal.Rptr.2d 328; *People v. Brooks* (1994) 26 Cal.App.4th 142, 31 Cal. Rptr.2d 283; see also *People v. Gudger* (1994) 29 Cal.App.4th 310, 34 Cal.Rptr.2d 510 [construing section 76, prohibiting threats against a judge].) We find the reasoning of these subsequent cases more persuasive and now hold that prosecution under section 422 does not require an unconditional threat of death or great bodily injury.[12]

In reaching this conclusion, we begin with the original source of the statutory language. In 1981, this court invalidated former section 422 as unconstitutionally vague. (*People v. Mirmirani* (1981) 30 Cal.3d 375, 388, 178 441*441 Cal.Rptr. 792, 636 P.2d 1130.) **The Legislature subsequently repealed the statute and enacted a substantially revised version in 1988, adopting almost verbatim language from *United States v. Kelner* (2d Cir.1976) 534 F.2d 1020. (See Stats.1987, ch. 828, § 28, p. 2587; Stats.1988, ch. 1256, § 4, pp. 4184-4185.)** In *Kelner,* the defendant, a member of the Jewish Defense League, had been convicted under a federal statute for threatening to assassinate Palestinian leader Yasser Arafat, who was to be in New York for a meeting at the United Nations. Kelner argued that without proof he specifically intended to carry out the threat, his statement was political hyperbole protected by the First Amendment rather than a punishable true threat. (*United States v. Kelner, supra,* 534 F.2d at p. 1025.)

The reviewing court disagreed and concluded threats are punishable consonant with constitutional protections "when the following criteria are satisfied. So long as the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution, the statute may properly be applied." (*United States v. Kelner, supra,* 534 F.2d at p. 1027.) In formulating this rationale, the *Kelner* court drew on the analysis in *Watts v. United States* (1969) 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664, in which the United States Supreme Court reversed a conviction for threatening the President of the United States. Defendant Watts had stated, in a small discussion group during a political rally, "'And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to

get in my sights is L.B.J.'" (*Id.* at p. 706, 89 S.Ct. at p. 1400.) Both Watts and the crowd laughed after the statement was made. (*Id.* at p. 707, 89 S.Ct. at p. 1401.) The Supreme Court determined that taken in context, **and considering the conditional nature of the threat** and the reaction of the listeners, the only possible conclusion was that the statement was **not a punishable true threat**, but political hyperbole privileged under the First Amendment. (*Id.* at pp. 707-708, 89 S.Ct. at pp. 1401-1402.)

As the *Kelner* court understood this analysis, the Supreme Court was not adopting a bright line test based on the use of conditional language but simply illustrating the general principle that punishable true threats must express an intention of being carried out. (See *United States v. Kelner, supra,* 534 F.2d at p. 1026.) "In effect, the Court was stating that threats punishable consistently with the First Amendment were only those which according to their language and context conveyed a gravity of purpose and likelihood of execution so as to constitute speech beyond the pale of protected [attacks on government and political officials]." (*Ibid.*) Accordingly, "[t]he purpose and effect of the Watts constitutionally-limited definition of the term `threat' is to insure that only unequivocal, unconditional and specific expressions of intention immediately to inflict injury may be punished-only such threats, in short, as are of the same nature as those threats which are ... `properly punished every day under statutes prohibiting extortion, blackmail and assault....'" (*Id.* at p. 1027.)

Given the rationale of *Kelner* and *Watts,* it becomes clear the reference to an "unconditional" threat in section 422 is not absolute. As the court in *People v. Stanfield* noted, "By definition, extortion punishes conditional threats, specifically those in which the victim complies with the mandated condition. [Citations.] Likewise, many threats involved in assault cases are conditional. A conditional threat can be punished as an assault, when the condition imposed must be performed immediately, the defendant has no right to impose the condition, the intent is to immediately enforce performance by violence and defendant places himself in a position to do so and proceeds as far as is then necessary. [Citation.] It is clear, then, that the *Kelner* court's use of the word `unconditional' was not meant to prohibit prosecution of all threats involving an `if clause, but only to prohibit prosecution based on threats whose conditions precluded them from conveying a gravity of purpose and imminent prospect of execution." (*People v. Stanfield, supra,* 32 Cal.App.4th at p. 1161, 38 Cal.Rptr.2d 328; 442*442 *People v. Brooks, supra,* 26 Cal.App.4th at pp. 145-146, 31 Cal.Rptr.2d 283; see also *In re M.S.* (1995) 10 Cal.4th 698, 714, 42 Cal. Rptr.2d 355, 896 P.2d 1365.) As the court commented in *United States v. Schneider* (7th Cir.1990) 910 F.2d 1569, 1570: "Most threats are conditional; they are designed to accomplish something; the threatener hopes that they *will* accomplish it, so that he won't have to carry out the threats."

Moreover, imposing an "unconditional" requirement ignores the statutory qualification that the threat must be "so ... unconditional... as to *convey to the person threatened, a gravity of purpose and an immediate prospect of execution* ...." (§ 422, italics added.) "The use of the word `so' indicates that unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution

to the victim." (*People v. Stanfield, supra,* 32 Cal.App.4th at p. 1157, 38 Cal.Rptr.2d 328.) **"If the fact that a threat is conditioned on something occurring renders it not a true threat, there would have been no need to include in the statement the word `so.'"** (*People v. Brooks, supra,* 26 Cal. App.4th at p. 149, 31 Cal.Rptr.2d 283.) **This provision "implies that there are different degrees of unconditionality. A threat which may appear conditional on its face can be unconditional under the circumstances.... [¶] Language creating an apparent condition cannot save the threatener from conviction when the condition is illusory, given the reality of the circumstances surrounding the threat. A seemingly conditional threat contingent on an act highly likely to occur may convey to the victim a gravity of purpose and immediate prospect of execution."** (*People v. Stanfield, supra,* 32 Cal.App.4th at p. 1158, 38 Cal.Rptr.2d 328.) **Accordingly, we reject defendant's threshold contention that the letter was inadmissible because it contained only conditional threats.**

Alternatively, defendant argues that the letter still does not meet the statutory definition because the threat lacked immediacy and Halfacre did not testify he feared for his safety. We need not definitively resolve these contentions.[13] Even if the trial court should have excluded the letter, we find no reasonable possibility the error affected the verdict. (*People v. Brown* (1988) 46 Cal.3d 432, 446-148, 250 Cal.Rptr. 604, 758 P.2d 1135.) Although some of the language in the letter is menacing, it also reflects defendant's concern for his daughter's and granddaughter's well-being, a point stressed by the defense in mitigation. Moreover, the nature and circumstances of the threats would not necessarily provoke serious concern, especially considering defendant was incarcerated and would at the least have to make outside arrangements to effect them. Halfacre waited four months before giving the letter to his probation officer, during which time apparently nothing had happened.

More importantly, the letter paled compared to other aggravating evidence, which the prosecutor focused on in closing argument. In particular, the guilt phase testimony revealed defendant as a calculating and callous individual, willing to kill defenseless victims, including his friend and partner Huffstuttler, in cold blood to protect his drug enterprise. In addition, the assault with great bodily injury against Matthew Spencer and attempted manslaughter against Kenneth Ross confirmed defendant's pattern of resorting to violence in dealing with problems. Given this history, it is unlikely the jury accorded the letter much, if any, weight fixing the penalty at death.

See *In re George T., 126 Cal. Rptr. 2d 364 - Cal: Court of Appeal, 6th Appellate Dist. 2002:*

The First Amendment of the United States Constitution guarantees the freedom of speech and expression. That guarantee is not without limitation. For example, language which incites imminent lawless action, (*Brandenburg v. Ohio* (1969) 395 U.S. 444, 448, 89 S.Ct. 1827, 23 L.Ed.2d 430) or language which constitutes a true threat are not protected by the First Amendment. (*United States v. Kelner* (1976) 534 F.2d 1020, 1027 (*Kelner*).) The latter is the exception at issue here.

Kelner, the seminal case on the criminal punishment of pure speech from which the language of Penal Code section 422 was lifted almost verbatim, analyzed the difference between protected speech and threats which could be punished criminally. *Kelner* considered those circumstances under which an unequivocal threat, which has not ripened into an overt act, is punishable under the First Amendment, even though it may also involve elements of expression. (*Kelner, supra,* 534 F.2d at p. 1026.) That case defined punishable, or "`true threats'" as "those which according to their language and context conveyed a gravity of purpose and likelihood of execution so as to constitute speech beyond the pale of protected `vehement, ...'" (*Ibid.*) The court continued: "only unequivocal, **unconditional** and specific expressions of intention immediately to inflict injury may be punished." (*Id.* at p. 1027; compare Pen.Code, § 422.)

Kelner found guidance from *Watts v. United States* (1969) 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664 (*Watts*). In *Watts,* the defendant, while participating in a political rally, said he would ignore a draft 380*380 notice and that, if the government made him carry a rifle, the first person he wanted to get his sights on was President Lyndon B. Johnson. (*Id.* at p. 706, 89 S.Ct. 1399.) The U.S. Supreme Court reversed the conviction because, under the facts, the statement was not a "true `threat'" but mere political hyperbole. (*Id.* at p. 708, 89 S.Ct. 1399.) *Kelner* found that, as in *Watts,* only true threats were punishable, and excluded threats, which in context, were conditional and made in jest. (*Kelner, supra,* 534 F.2d at p. 1026.)

In *People v. Gudger, 29 Cal. App. 4th 310 - Cal: Court of Appeal, 2nd Appellate Dist., 2nd Div. 1994* the court explained PC 76 and 422 and the criminalization of "pure speech" as opposed to "true threats"… It is very, very clear the courts are confused about what constitutes a criminalized "true threat" as opposed to 1st amendment protected "pure speech"… This Petitioner was sure to express his protected 1st amendment pure speech… Again, if his speech was intended to be a true threat, it would have been stated as such and action backing up any threats would have been carried out to kill the people involved. Obviously this was not the case.

People v. Gudger, 29 Cal. App. 4th 310 - Cal: Court of Appeal, 2nd Appellate Dist., 2nd Div. 1994:

I. *Constitutionality of Section 76*

(1a) Appellant was convicted of violating section 76, which punishes "[e]very person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected state official, exempt appointee of the Governor, or judge, or the immediate family of the official, appointee, or judge, with the specific intent that the statement is to

be taken as a threat, and the apparent ability to carry out that threat by any means...." Appellant attacks the statute as unconstitutionally overbroad in that it brings within its sweep and criminalizes speech which does not constitute a true threat. According to appellant, section 76 is unconstitutionally defective 316*316 because it does not contain language limiting the application of the statute to threats which are so unequivocal, unconditional, immediate and specific as to convey to the person threatened an immediate prospect of the execution of the threat.

(2) Statutory overbreadth, as distinct from the related and occasionally overlapping concept of statutory vagueness, is a defect by which a statute, seeking to regulate an area of state interest, reaches too far and punishes innocent behavior. Overbreadth "offends the constitutional principle that `a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.'" (*Zwickler* v. *Koota* (1967) 389 U.S. 241, 250 [19 L.Ed.2d 444, 451, 88 S.Ct. 391], quoting *NAACP* v. *Alabama* (1964) 377 U.S. 288, 307 [12 L.Ed.2d 325, 338, 84 S.Ct 1302].) **A statute that is clear, precise and not unconstitutionally vague for lack of any fair warning of the conduct proscribed** (see *Papachristou* v. *City of Jacksonville* (1972) 405 U.S. 156, 162 [31 L.Ed.2d 110, 115-116, 92 S.Ct. 839]) **may nonetheless be defectively overbroad in that it prohibits constitutionally protected conduct.** (See *Aptheker* v. *Secretary of State* (1964) 378 U.S. 500, 508-509 [12 L.Ed.2d 992, 998-999, 84 S.Ct. 1659].)

The statute before us punishes the mere utterance of words and thus regulates the delicate area of speech. (3) "[A] function of free speech under our system of government is to invite dispute.... Speech is often provocative and challenging.... That is why freedom of speech, though not absolute, [citation] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." (*Terminiello* v. *Chicago* (1949) 337 U.S. 1, 4 [93 L.Ed. 1131, 1134, 69 S.Ct. 894].) "[C]ertain well-defined and narrowly limited classes of speech" (*Chaplinsky* v. *New Hampshire* (1942) 315 U.S. 568, 571 [86 L.Ed. 1031, 1033, 62 S.Ct. 766]), such as the lewd and obscene, the libelous and the so-called "`fighting' words" (*id.* at p. 572 [86 L.Ed. at p. 1035]) which "`have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed'" (*Gooding* v. *Wilson* (1972) 405 U.S. 518, 524 [31 L.Ed.2d 408, 524, 92 S.Ct. 1103]), may be constitutionally proscribed and punished by properly drafted statutes.

Similarly, a statute may constitutionally criminalize speech which threatens to take the life of or to inflict bodily harm upon a government official in view of the state's valid and overwhelming interest in protecting the safety 317*317 of its public officials and permitting them to perform duties without interference from threats of physical violence. (See *Watts* v. *United States* (1969) 394 U.S. 705, 707 [22 L.Ed.2d 664, 666-667, 89 S.Ct. 1399] [statute punishing threats to the life of the president found "constitutional on its face"]; *United States* v. *Kelner* (2d Cir.1976) 534 F.2d 1020, 1027 **[penalizing specific threats of physical injury is a valid aspect of government's constitutional responsibility to ensure domestic tranquility].) "Although the Legislature may constitutionally penalize threats, even though they are pure speech, statutes**

which attempt to do so must be narrowly directed only to threats which truly pose a danger to society." (*People* v. *Mirmirani* (1981) 30 Cal.3d 375, 388, fn. 10 [178 Cal. Rptr. 792, 636 P.2d 1130].)

(4) Where, as here, the statute is attacked as overbroad, "[i]t matters not that the words [a speaker] used might have been constitutionally prohibited under a narrowly and precisely drawn statute." (*Gooding* v. *Wilson, supra,* 405 U.S. at p. 520 [31 L.Ed.2d at p. 413].) The societal value and importance to the individual of constitutionally protected speech is deemed to justify "attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." (*Dombrowski* v. *Pfister* (1965) 380 U.S. 479, 486 [14 L.Ed.2d 22, 28, 85 S.Ct. 1116].) The specific speech uttered is thus relevant only to the sufficiency of the evidence and not to the constitutionality of the statute. "It is the [statute] on its face that sets the standard of conduct and warns against transgression. The details of the offense could no more serve to validate [a statute] than could the details of an offense charged under an ordinance suspending unconditionally the right of assembly and free speech." (*Coates* v. *Cincinnati* (1971) 402 U.S. 611, 616 [29 L.Ed.2d 214, 218-219, 91 S.Ct. 1686].)[4]

(1b) Appellant's attempt to invalidate section 76 as unconstitutionally overbroad focuses on a related statute, section 422, which proscribes terrorist 318*318 threats and contains certain defining language which has ensured the constitutionality of that statute, but which is not contained in section 76.[5] An analysis of appellant's argument requires a review of the history of section 422 and the rationale for the language in that statute, which requires the threats to be "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat." (§ 422.)

The original version of section 422 (Stats. 1977, ch. 1146, § 1, pp. 3684-3685) prohibited threats of death or great bodily injury made with the intent to "terrorize" another. In *People* v. *Mirmirani, supra,* 30 Cal.3d 375, the Supreme Court held section 422 and a companion statute (§ 422.5) unconstitutionally vague. The two related statutes criminalized threats made with the intent to accomplish "`social or political goals,'" a phrase so all-inclusive and vague that determining what conduct was prohibited was impossible. (*People* v. *Mirmirani, supra,* at pp. 382-388.) Since the court invalidated former section 422 on vagueness grounds, it was unnecessary to determine whether the statute was also unconstitutionally overbroad in that it penalized protected speech. Nonetheless, the court, noted that a statute which penalizes speech amounting to a threat "must be narrowly directed only to threats which truly pose a danger to society. [Citations.]" (*People* v. *Mirmirani, supra,* 30 Cal.3d at p. 388, fn. 10.)

In support of the principle that a statute which penalizes threatening speech must be narrowly directed only to truly dangerous threats, the *Mirmirani* court relied upon *Watts* v. *United States, supra,* 394 U.S. 705, and an opinion interpreting *Watts, United States* v. *Kelner, supra,* 534 F.2d 1020. In *Watts,* the United States Supreme Court concluded that a federal statute which prohibited knowingly and willfully threatening to kill or physically harm the president was "constitutional on its face" in view of the "overwhelming interest in protecting the safety of [the] Chief Executive and

in allowing him to perform his duties without interference from threats of physical violence." (394 U.S. at p. 707 [22 L.Ed.2d at p. 667].) **Nonetheless, the court cautioned that a statute which criminalizes a form of pure speech must be interpreted with the commands of the First Amendment clearly in** 319*319 **mind, and a true threat must be distinguished from constitutionally protected speech.** (*Id.* at pp. 706-708 [22 L.Ed.2d at pp. 666-668].)

The defendant's conviction in *Watts* was set aside because his comments (i.e., "`I am not going [for a draft physical exam**.] If they ever make me carry a rifle the first man I want to get in my sights is [President Johnson].'") constituted "political hyperbole," rather than a "true `threat'" when "[t]aken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners [who laughed]."** (394 U.S. at pp. 706, 708 [22 L.Ed.2d at pp. 666, 667].) Since the evidence was insufficient in that it revealed mere political hyperbole and not a true threat, the court in *Watts* was not required to decide whether a true threat must include the specific intent to carry it into execution. (*Id.* at pp. 707-708 [22 L.Ed.2d at pp. 666-668].) That question was subsequently decided in another case cited by the *Mirmirani* court, *United States* v. *Kelner, supra,* 534 F.2d 1020.

In *Kelner,* the defendant was convicted of transmitting in interstate commerce a threat to injure another person. He argued that since he did not intend to carry out his threats, the statements he made were not threats within the meaning of the statute. The court in *Kelner* disagreed with the defendant, but relied on *Watts* and acknowledged that to satisfy First Amendment concerns, punishable threats must be limited to those statements which, according to their language and context, convey a gravity of purpose and a likelihood of execution. (*United States* v. *Kelner, supra,* 534 F.2d at p. 1026.)

The court in *Kelner* concluded that proof of specific intent to carry out the threat is not constitutionally compelled, as long as circumstances are such that the threats "are so unambiguous and have such immediacy that they convincingly express an intention of being carried out." (534 F.2d at p. 1027, italics omitted.) **The statute may be properly applied as long as "the threat on its face and in the circumstances in which it is made is *so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution.* ..."** (*United States* v. *Kelner, supra,* 534 F.2d at p. 1027, italics added; see *People* v. *Fisher* (1993) 12 Cal. App.4th 1556, 1559-1560 [15 Cal. Rptr.2d 889] [speech proscribed by section 422 is not protected by the First Amendment just because speaker does not intend to implement the threat].)

According to appellant, after *Mirmirani* and its tacit approval of the unconditional requirement of a threat, as described in *Kelner,* and the Legislature's reenactment of section 422 (added by Stats. 1988, ch. 1256, § 4, pp. 4184-4185, as amended by Stats. 1989, ch. 1135, § 1, pp. 4195-4196), 320*320 **which incorporated almost verbatim the *Kelner* "unconditional" language emphasized above, section 76 must likewise incorporate such unconditional language to pass constitutional muster.** Certainly, section 422 "has been carefully drafted to comport with the detailed guidelines articulated by the *Kelner* court" (*People* v. *Fisher, supra,* 12 Cal. App.4th at p. 1560) and thus "is not unconstitutionally overbroad...." (*Ibid.*) Indeed, section 76 would likewise be

immune from attack as unconstitutionally overbroad if it contained the detailed guidelines articulated in *Kelner.*

Nonetheless, the question remains whether section 76, as drafted, is unconstitutionally overbroad. To resolve this question, it is necessary to analyze the rationale in *Kelner* which prompted the guidelines articulated by the court to determine whether other language, as in section 76, could have the same purpose and effect and thus also satisfy constitutional concerns. **In *Kelner,* the court discussed *Watts* and determined that the reason for the Supreme Court's constitutionally limited definition of the term "threat" was to ensure that only a "true threat" may be punished.** (*United States* v. *Kelner, supra,* 534 F.2d at p. 1027.) The court thus observed that the requirement in *Watts* of proof of a true threat has "much the same purpose and effect as would a requirement of proof of specific intent to execute the threat because both requirements focus on threats which are so unambiguous and have such immediacy that they convincingly express an intention of being carried out." (*Ibid.,* italics omitted.) Obviously, no ritualistic, talismanic phrase is required as long as only true threats are proscribed and First Amendment concerns are thus satisfied.

The language in section 76 contains two critical elements which combine to satisfy the requirement that only true threats, and not political hyperbole, joking expressions of frustration, or other innocuous and constitutionally protected speech, are punished. The language of section 76 requires, in pertinent part, (1) "the specific intent that the statement is to be taken as a threat" and (2) "the apparent ability to carry out that threat by any means."

Although there is no requirement in section 76 of specific intent to execute the threat, the statute requires the defendant to have the specific intent that the statement be taken as a threat and also to have the apparent ability to carry it out, requirements which convey a sense of immediacy and the reality of potential danger and sufficiently proscribe only true threats, meaning threats which "convincingly express an intention of being carried out." (*United States* v. *Kelner, supra,* 534 F.2d at p. 1027.) Section 76 is therefore worded in a manner which satisfies what decisions subsequent to *Watts* and *Kelner* have viewed as a guideline for determining whether there is a true threat: "whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the 321*321 statement as a serious expression of intent to harm or assault. [Citations.]" (*U.S.* v. *Orozco-Santillan* (9th Cir.1990) 903 F.2d 1262, 1265; accord, *U.S.* v. *Mitchell* (9th Cir.1987) 812 F.2d 1250, 1255; *United States* v. *Merrill* (9th Cir.1984) 746 F.2d 458, 462.)

Thus, section 76, while not a verbatim duplication of the unconditional language of the *Kelner* decision, adequately expresses the notion that the threats proscribed are only those "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution." (*United States* v. *Kelner, supra,* 534 F.2d at p. 1027.) Accordingly, section 76 is not constitutionally overbroad, and appellant's attack on the statute is without merit.

There was no true threat to kill Shannon Laney or anyone else. In his concurring opinion in *Lewis v. City of New Orleans (1974) 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214*, Justice Powell noted "words may or may not be 'fighting words,' depending upon the circumstances of their utterance. It is unlikely, for example, that the words said to have been used here would have precipitated a physical confrontation between the middle-aged woman who spoke them and the police officer in whose presence they were uttered. The words may well have conveyed anger and frustration without provoking a violent reaction from the officer."

David Cramer was told to get off my case, and in fact, many people have stated David Cramer has crossed the line and has brought these "threats" upon himself. David Cramer had never been appointed for appellate work prior to working on Petitioner's appeal, he did not respond to Petitioner's phone calls to even make sure the appeal was filed (it was not).

In *Garza v. Idaho, 139 S. Ct. 738 - Supreme Court 2019:*

> **With that context in mind, we turn to the precise legal issues here. As an initial matter, we note that Garza's attorney rendered deficient performance by not filing the notice of appeal in light of Garza's clear requests. As this Court explained in Flores-Ortega:**
>
> **"We have long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes."** 528 U.S. at 477, 120 S.Ct. 1029 (citations omitted); see also id., at 478, 120 S.Ct. 1029.

MR. MILLER: Which county, sure.
THE WITNESS: I have retained cases in many different counties.
Q (By MR. MILLER) Okay. Most of your retained cases come from which county?
A I guess El Dorado would be the most.
Q Thank you.
Appeals: You were appointed to do a misdemeanor appeal for Mr. Robben; is that correct?
A Yes.
Q On his conviction for driving on a suspended license?
A Yes.
Q And that's all you were appointed for?
A Yes.
Q Okay. How many appeals have you been appointed to?
A That was probably the first appeal I was actually appointed on.
Q Okay. Now, in your initial conversation with Mr. Robben when you went to the jail to visit him, did you find it a little odd that a man who was convicted of driving on a suspended license was still in custody?
A Odd?
Q Odd.
A I have seen a lot of things in my 15-year career. I would not call it odd.
Q Okay. Did Mr. Robben ask you, as part of the

David Cramer was paid off and conspired to sabotage the appeal and cause a conflict with the Petitioner and then file a felony complaint against this Petitioner. The record shows he conspired with Adam Clark who runs the firm named El Dorado Law that appoints counsel to indigent defendants in El Dorado Co. There was a conspiracy with David Cramer, Adam Clark and Vern Pierson and Dale Gomes to incarcerate this Petitioner since they thought the Petitioner was involved in the shooting of Carson City, NV Judge John Tatro's house (even though the Petitioner had been cleared of that).

David Cramer came to the county jail high on cocaine and this is well know by people who know him. David Cramer brought the problems on himself and told this appellant to "fuck off" on the first meeting.

Trial counsel was IAC/CDC for failing to move attack the grand jury indictment by way of Just of a demurrer, motion to dismiss, PC 1385.5 and 995 motion or limine on the above listed issues. Additionally, trial counsel was IAC/CDC for failing to challenge the constitutionality of PC 71, 140(a),& 422 since said penal code criminalize protected speech (1st amendment) since the penal code DO NOT identify "TRUE THREATS" in the definition of PC 71 or 422. The term "threats" is vague and overbroad by a prohibition or chilling effect on constitutionally protected conduct. See ***Brandenburg v. Ohio**, 395 U.S. 444 (1969)*, was a landmark decision of the US Supreme Court interpreting the First Amendment to the U.S. Constitution. The Court held that the government cannot punish inflammatory speech unless that speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

On appeal, Petitioner's counsel, Robert L.S. Angres failed to argue these issues of IAC/CDC or augment the appeal by way of habeas corpus. Said arguments would have dismissed the charges pre-trial and Petitioner would have been exonerated.

Most recently the U.S. Supreme Court has stated "it is not enough that a reasonable person might have understood the words as a threat — a jury must find that the speaker actually intended to convey a threat."

Perez v. Florida, 137 S. Ct. 853 - Supreme Court 2017 :

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT.

The petition for a writ of certiorari is denied.

Justice SOTOMAYOR, concurring in the denial of certiorari.

Robert Perez is serving more than 15 years in a Florida prison for what may have been nothing more than a drunken joke. The road to this unfortunate out-come began with Perez and his friends drinking a mixture of vodka and grapefruit juice at the beach. Sentencing Tr. 24, App. to Pet. for Cert. (Sentencing Tr.). As the group approached a nearby liquor store to purchase additional ingredients for the mixture, which Perez called a "Molly cocktail," *ibid.,* a store employee overheard the group's conversation, *id.,* at 25. The employee apparently believed he was referencing an incendiary "Molotov cocktail" and asked if it would "burn anything up." *Ibid.* Perez claims he responded that he did not have "that type" of cocktail, and that the whole group laughed at the apparent joke. *Ibid.* Imprudently, however, the inebriated Perez continued the banter, telling another employee that he had only "one Molotov cocktail" and could "blow the whole place up." App. C to Brief in Opposition 82. Perez later returned to the store and allegedly said, "`I'm going to blow up this whole [expletive] world.'" *Id.,* at 121. Store employees reported the incident to police the next day. Sentencing Tr. 15, 34.

The State prosecuted Perez for violating a Florida statute that makes it a felony "to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person." Fla. Stat. § 790.162 (2007). The trial court instructed the jury that they could return a guilty verdict if the State proved two elements. First, the State had to prove the *actus reus;* that is, the threat itself. The instruction defined a threat as 854*854 "a communicated intent to inflict harm or loss on another when viewed and/or heard by an ordinary reasonable person." App. F to Brief in Opposition 350. Second, the State had to prove that Perez possessed the necessary *mens rea*; that is, that he intended to make the threat. Circularly, the instruction defined intent as "the stated intent to do bodily harm to any person or damage to the property of any person." *Ibid.* This instruction permitted the jury to convict Perez based on what he "stated" alone — irrespective of whether his words represented a joke, the ramblings of an intoxicated individual, or a credible threat. The jury found Perez guilty, and because he qualified as a habitual offender, the trial court sentenced him to 15 years and 1 day in prison. Sentencing Tr. 44.

In the courts below and in his petition for certiorari, Perez challenged the instruction primarily on the ground that it contravenes the traditional rule that criminal statutes be interpreted to require proof of *mens rea,* see *Elonis v. United States,* 575 U.S. ___, ___-___, 135 S.Ct. 2001, 2008-2011, 192 L.Ed.2d 1 (2015). In my view, however, the jury instruction — and Perez's conviction — raise serious First Amendment concerns worthy of this Court's review. But because the lower courts did not reach the First Amendment question, I reluctantly concur in the Court's denial of certiorari in this case.

* * *

The First Amendment's protection of speech and expression does not extend to threats of physical violence. See *R.A.V. v. St. Paul,* 505 U.S. 377, 388, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). Statutes criminalizing threatening speech, however, "must be

interpreted with the commands of the First Amendment clearly in mind" in order to distinguish true threats from constitutionally protected speech. *Watts v. United States,* 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (*per curiam*). Under our cases, this distinction turns in part on the speaker's intent.

We suggested as much in *Watts.* There, we faced a constitutional challenge to a criminal threat statute and expressed "grave doubts" that the First Amendment permitted a criminal conviction if the speaker merely "uttered the charged words with an apparent determination to carry them into execution." *Id.,* at 708, 707, 89 S.Ct. 1399 (emphasis and internal quotation marks omitted).

Virginia v. Black, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003), made the import of the speaker's intent plain. There, we considered a state statute that criminalized cross burning "`with the intent of intimidating any person.'" *Id.,* at 348, 123 S.Ct. 1536 (quoting Va.Code. Ann. § 18.2-423 (1996)). We defined a "true threat" as one "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." 538 U.S., at 359, 123 S.Ct. 1536. We recognized that cross burning is not always such an expression and held the statute constitutional "insofar as it ban[ned] cross burning *with intent* to intimidate." *Id.,* at 362, 123 S.Ct. 1536 (emphasis added); *id.,* at 365, 123 S.Ct. 1536 (plurality opinion).

A four-Member plurality went further and found unconstitutional a provision of the statute that declared the speech itself "`prima facie evidence of an intent to intimidate.'" *Id.,* at 363-364, 123 S.Ct. 1536. The plurality reached this conclusion because "a burning cross is not always intended to intimidate." *Id.,* at 365, 123 S.Ct. 1536. Two separate opinions endorsed this view. See *id.,* at 372, 123 S.Ct. 1536 (Scalia, J., joined by THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) ("The plurality 855*855 is correct in all of this"); *id.,* at 386, 123 S.Ct. 1536 (Souter, J., joined by KENNEDY and GINSBURG, JJ., concurring in judgment in part and dissenting in part).

Together, *Watts* and *Black* make clear that to sustain a threat conviction without encroaching upon the First Amendment, States must prove more than the mere utterance of threatening words — *some* level of intent is required. And these two cases strongly suggest that it is not enough that a reasonable person might have understood the words as a threat — a jury must find that the speaker actually intended to convey a threat.

* * *

The jury instruction in this case relieved the State of its burden of proving anything other than Perez's "stated" or "communicated" intent. This replicates the view we doubted in *Watts,* which permitted a criminal conviction based upon threatening words and only "`an *apparent* determination to carry them into execution.'" 394 U.S., at 707, 89 S.Ct. 1399. And like the prima facie provision in *Black,* the trial court's jury instruction "ignore[d] all of the contextual factors that are necessary to decide whether a particular

[expression] is intended to intimidate." 538 U.S., at 367, 123 S.Ct. 1536 (plurality opinion).

Context in this case might have made a difference. Even as she argued for a 15-year sentence, the prosecutor acknowledged that Perez may have been "just a harmless drunk guy at the beach," Sentencing Tr. 35, and it appears that at least one witness testified that she did not find Perez threatening, Pet. for Cert. 8. Instead of being instructed to weigh this evidence to determine whether Perez actually intended to convey a threat — or even whether a reasonable person would have construed Perez's words as a threat — the jury was directed to convict solely on the basis of what Perez "stated."

In an appropriate case, the Court should affirm that "[t]he First Amendment does not permit such a shortcut." *Black,* 538 U.S., at 367, 123 S.Ct. 1536 (plurality opinion). The Court should also decide precisely what level of intent suffices under the First Amendment — a question we avoided two Terms ago in *Elonis.*

RESPONSE TO PROBATION REPORT:

DEFENDANT'S RESPONSE TO PROBATION REPORT

\

\

\

\

\

\

\

\

\

\

\

\

\

\

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
Attorney at Law
901 H STREET, SUITE 612
EL DORADO, CA 95814
Telephone: (916) 447 7223
Facsimile: (916) 244 0773

Attorney for Defendant
TODD CHRISTIAN ROBBEN

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA,	**Case No.: P17CRF0114**
Plaintiff,	**RESPONSE TO PROBATION REPORT AND RECOMMENDATIONS**
v	
TODD CHRISTIAN ROBBEN,	**Date: October 27, 2017**
	Time: 9:00
Defendant.	**Dept: 21**

Defendant, TODD CHRISTIAN ROBBEN (hereinafter "ROBBEN"), having been found guilty by Jury Trial of the crimes shown accurately in the Probation Report now comes before this Honorable Court for the Entry of Judgment and Execution of Sentence. A Report and Recommendation of the EL DORADO County Probation Department has been received by ROBBEN and his Attorney of Record.

///

///

Undisputed Facts

The facts that are included in the report are those recorded by law enforcement at or near the time the accident occurred. Mr. ROBBEN relies on the evidence produced at trial and the memory of the Court as a more accurate and thorough summation of the facts. This would be the most effective supplement the probation officer's report which is nothing more than a brief summary of the initial law enforcement reports.

Defendant's Personal Information

Mr. ROBBEN's personal information is accurately and correctly stated in the Pre-Sentence Probation Report.

Direct Response to Comments Submitted

By Probation Officer Angela Hastings

As noted on page 8 – The victim's statements should be taken by the Court with a great deal of gravity. Not a single responding victim made any indication of a desire for Mr. Robben to be sentenced to state prison. Specifically, Mr. Cramer's statement was articulate and compelling for a grant of probation.

As noted in page 10 – Mr. ROBBEN has a minimal previous criminal record.

As well, his risk level was determined to be "Low". Mr. ROBBEN made a number of "hollow" comments and attempted "veiled" threats that were solely intended to ruin someone's day as he felt so many of his had been by these individuals.

///

Rule 4.414 (a) (1) – Mr. ROBBEN respectfully disagrees with the probation officer's conclusion as to this consideration.

Mr. ROBBEN never intended nor addressed any of his comments to Ms. Watson. She only became aware of the comments because she took her husband's phone and searched the contents. This was a totally unintended result.

FACTORS FOR PROBATION

Mr. ROBBEN respectfully joins in the findings of the probation officer with the following additions:

Rule 4.414 (a) (7) – Mr. ROBBEN respectfully disagrees with the probation officer's conclusion that the crime was without extenuating and unusual circumstances. Mr. ROBBEN perceived he had been treated unfairly by the government. His direct comments all went to that conclusion. The probation officer fails to take into consideration that for the apparent minimal crimes of a DUI and driving on a suspended license a sentence of 18-months was imposed. A sentence that was greater and harsher than anyone else known to him in the entire county of El Dorado.

Rule 4.414(a) (9) – Mr. ROBBEN did not take advantage of a position of trust or confidence to commit any crime.

Rule 4.414 (b) (2) – Mr. ROBBEN was found to have violated his grant of informal probation by driving on a suspended license. Mr. ROBBEN was incarcerated at the time these present charges were filed.

Rule 4.414 (b) (7) – Mr. ROBBEN clearly stated his level of remorse during his testimony. He vowed to "take down" the web sites and discontinue any further similar conduct.

Rule 4.414(b) (8) – Mr. ROBBEN respectfully submits he will not be a danger to anyone if he is to receive a grant of probation.

Circumstances in Aggravation

Rule 4.421 (a) (1) – Mr. ROBBEN respectfully submits this is not applicable and should not be considered as Circumstance in Aggravation. Mr. ROBBEN did not directly threaten or intend any bodily injury to anyone. There was no evidence of any high degree of cruelty, viciousness or callousness. Yes, there was talk of great bodily injury but none was intended. Mr. Robben respectfully requests this circumstance in Aggravation be deleted from the report.

Circumstances in Mitigation

Mr. ROBBEN would respectfully ask the Court to also take into consideration these additional Circumstances in Mitigation:

Rule 4.423 (a) (3) – Mr. ROBBEN submits that his feelings and emotions regarding his unusual treatment by the El Dorado County authorities led to his conduct.

Mr. ROBBEN would further and respectfully ask the Court to consider that he had been a law abiding citizen for decades before the present incident. Mr. Robben was 46-years old at the time of his first conviction for a misdemeanor DUI.

///

///

///

Argument for Mitigation

The defense offers the following information to augment and supplement the Pre-Sentence Probation Report filed with this Court:

Mr. ROBBEN respectfully argues the factors in mitigation far outweigh those in aggravation.

It is argued that Mr. ROBBEN's psychological stress levels have been aggravated his incarceration. His physical health has worsened over the last 2-years. The medical care he has received would certainly seem inadequate. Hopes of receiving more complete medical care in a state prison would be unreasonable.

The People had just prior to the beginning of the jury trial shown an acceptance that a grant of formal probation would be appropriate. This was communicated to Mr. ROBBEN. He did reject the offer and the trial commenced. However, the offer did include conditions of probation the People felt appropriate under the circumstances known to them at the time. Mr. ROBBEN argues the circumstances present before the commencement of the trial are actually lesser in gravity subsequent to testimony being given. Specifically, Judge Bailey failed to offer testimony and Mr. Cramer certainly "downgraded" his previous testimony to the Grand Jury.

The Court could order terms and conditions of formal probation that would include but not limited to No Contact Orders for the victims and an order to cease and desist the operation/management of the web sites published at trial.

Closing

It is therefore respectfully requested that this court take into consideration the factors and supplemental facts present along with the oral

argument that will be presented herein and find that Mr. ROBBEN be given a grant of formal probation and sentenced to a fair amount of time for his convictions.

Dated: October 13, 2017

Respectfully submitted,

Russell W. Miller, Jr.
Attorney for the Defendant,
TODD ROBBEN

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
901 H STREET, SUITE 107
EL DORADO, CA 95814
Telephone: (916) 447-7223
Facsimile: (916) 444-6456

Attorney for Defendant
TODD ROBBEN

FILED/ENDORSED
OCT 25 2017
By V. BUTLER, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF, CALIFORNIA, Plaintiff, vs. TODD ROBBEN, Defendant(s).	Case No.: P17CRF0114 DEFENSE PETITION TO REDUCE CHARGES TO MISDEMEANORS FOR ALL PURPOSES DATE: 27 October 2017 TIME: 9:00 a.m. DEPT.: 21

TO THE ABOVE-ENTITLED COURT, THE DISTRICT ATTORNEY AND PROBATION OFFICER OF EL DORADO COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that on October 27, 2017, in Department 21 of the above entitled court, at 9:00 a.m., or as soon thereafter as the matter may be heard, defendant, **TODD ROBBEN**, will Petition the Court to declare the offense in renumbered Counts One, Two, Three, Four, Five, Six, Seven and Eight of the charging document to be a misdemeanor for all purposes.

The grounds for this Petition are that declaring these offenses to be misdemeanors is in the interest of justice.

This petition is based on the attached declaration of defendant, all papers filed and records in this action, evidence taken at the hearing on this Petition and argument at that hearing.

WHEREFORE, the defendant respectfully request this request be granted forthwith.

DATED: October 13, 2017

RUSSELL W. MILLER, JR.
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DECLARE THESE OFFENSES TO BE MISDEMEANORS

I.

AUTHORITY TO DECLARE AN OFFENSE TO BE A MISDEMEANOR

Penal Code §17(b) provides:

> "When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:…
>
> '(3) When the court grants probation to a defendant without imposition of sentence and on application of the defendant or probation officer thereafter, the court declare the offense to be a misdemeanor.'"

The offenses in this case, violations of Penal Code §§496(a), 475(b), 484(e) and 530.5 are alternate felony/misdemeanors, so they fit within the ambit of Penal Code §17(b).

In *People v. Superior Court (Alvarez)* (1997) 14 C4th 968, 978, 60 CR2d 93, the California Supreme Court addressed the criteria to be applied in exercising discretion to grant a misdemeanor reduction under Penal Code §17(b). Among relevant factors are the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his or her character traits as evidence by trial behavior and demeanor. When it is appropriate, the court should consider general sentencing objectives, such as those set forth in California Rule of Court 4.410.

The Supreme Court indicated that the trial court must focus on the individual defendant as well as the public interest:

> (1) "[A] determination made outside the perimeters drawn by individualized consideration of the offense, the offender, and the public interest 'exceeds the bounds of reason.'" 14 C4th at 978.

(2) The court should weigh "the various sentencing considerations commensurate with the individual circumstances." 14 C4th at 979.

(3) "The record should reflect a thoughtful and conscientious assessment of all relevant factors including the defendant's criminal history." 14 Cal. 4th at 979.

(4) The sentencing court must focus "on considerations that are pertinent to the specific defendant being sentenced." 14 C4th at 980.

In the present matter, all counts can be either a felony or a misdemeanor by law. All counts dealing with violations of Penal Code §71 were much less in gravity than others of the same class of conduct that were deemed felonious. No physical action or conduct was under taken by Mr. Robben or anyone else who may have known of the statements made by him. All counts dealing with violations of Penal Code §422 were, again, much less in gravity than other threats made and deemed felonious.

All counts dealing with violations of Penal Code §§664/187 were diminimus in nature and unknown to the victims. Specifically, Judge Bailey chose not to testify. Mr. Robben argues this certainly demonstrates the gravity in which the statements were taken.

Judge Wagoner testified that any statements of "that type" would not be of any consequence to him in his official capacity. And finally, Judge Kingsbury testified she could not have been any part of any proceedings regarding Mr. Robben from her personal and professional ethical standards regardless of Mr. Robben's statements.

CONCLUSION

For the above reasons, defendant asks this Court to reduce the charges of all Penal Code §§ from felonies to misdemeanors for all purposes.

DATED: October 13, 2017

RUSSELL W. MILLER, JR.
Attorney for Defendant

DECLARATION OF DEFENDANT IN SUPPORT OF PETITION TO DECLARE THE OFFENSES TO BE MISDEMEANORS

I, Russell W. Miller Jr., declare that:

1. I, Russell W. Miller Jr., am the attorney for the defendant in this action.
2. On or about November 17, 2016, the jury returned verdicts of guilty on all counts. The jury's verdicts were restricted to the charges as plead in the Indictment.
3. The defense moved to have the counts reduced to misdemeanors pursuant to Penal Code §17(b) at the close of the People's Case-In-Chief. The Petition was denied at that time with the understanding the motion to reduce was a proper matter for the time of sentencing.
4. I have researched appellate opinions from throughout the State of California regarding the propriety of the present motion.

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

Executed this 13th day of October, 2017, at Sacramento, California.

Russell W. Miller Jr, Attorney at Law

RUSSELL W. MILLER JR., SBN 187728
MILLER LAW GROUP
901 H STREET, SUITE 107
EL DORADO, CA 95814
Telephone: (916) 447-7223
Facsimile: (916) 444-6456

Attorney for Defendant
TODD ROBBEN

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF, CALIFORNIA, **Plaintiff,** **vs.** **TODD ROBBEN,** **Defendant.**	**Case No.: P17CRF0114** **ORDER DECLARING OFFENSE TO BE MISDEMEANOR PURSUANT TO PENAL CODE §§ 17(b)**

This Court held a hearing on this matter on 27Octover 2017. The Court has also reviewed (1) Defendant's motion to declare the offense in this case to be misdemeanor.

The Court finds that the defendant is eligible for the relief sought and that this relief is in the interest of justice.

The Court therefore orders and hereby declares the all Counts in this case to be reduced to misdemeanors under Penal Code §17(b).

DATED: _____

_____
JUDGE OF THE SUPERIOR COURT
The Honorable Steve White

Pages 612 through 629

CASE NO. P17CRF0114

PEOPLE VS TODD CHRISTIAN ROBBEN

PROBATION OFFICER'S REPORT AND RECOMMENDATION

Pages 612 through 629 removed and placed in a SEALED envelope marked CONFIDENTIAL

MAY NOT BE EXAMINED WITHOUT COURT ORDER
(CONFIDENTIAL DOCUMENTS PURSUANT TO PENAL CODE §1203.05 AND GOVERNMENT CODE §6254(F))

THE PRIOR CONVICTIONS MUST BE REVERSED

Petitioner attacks the prior convictions used to enhance the current sentence (case P17CRF0114) in cases S14CRM0465 and S16CRM0096 where he is factually innocent of the alleged crimes. Petitioner requests this court to set-aside (reverse) the wrongful convictions in S16CRM0096 & S14CRM0465 by way of habeas corpus (PC1473), and/or motion to vacate (PC 1473.6, 1473.7 & 1385) and/or common law *coram nobis* as well as a non statutory writ of habeas corpus or motion to vacate. Petitioner was incarcerated since June 2016 and without proper means to collaterally attack these wrongful convictions. PC 1473.6, 1473.7 mandate a hearing.

CA Penal Code § 1473.6 (2017)

(a) Any person no longer unlawfully imprisoned or restrained may prosecute a motion to vacate a judgment for any of the following reasons:

(1) Newly discovered evidence of fraud by a government official that completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence.

(2) Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment.

(3) **Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment**. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph.

(b) For purposes of this section, "newly discovered evidence" is evidence that could not have been discovered with reasonable diligence prior to judgment.

(c) The procedure for bringing and adjudicating a motion under this section, including the burden of producing evidence and the burden of proof, shall be the same as for prosecuting a writ of habeas corpus.

(d) A motion pursuant to this section must be filed within one year of the later of the following:

(1) The date the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the misconduct or fraud by a government official beyond the moving party's personal knowledge.

(2) The effective date of this section.

CA Penal Code § 1473.7 (2017)
(a) A person no longer imprisoned or restrained may prosecute a motion to vacate a conviction or sentence for either of the following reasons:

(1) The conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.

(2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

(b) A motion pursuant to paragraph (1) of subdivision (a) shall be filed with reasonable diligence after the later of the following:

(1) The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal.

(2) The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final.

(c) A motion pursuant to paragraph (2) of subdivision (a) shall be filed without undue delay from the date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section.

(d) All motions shall be entitled to a hearing. At the request of the moving party, the court may hold the hearing without the personal presence of the moving party if counsel for the moving party is present and the court finds good cause as to why the moving party cannot be present.

(e) When ruling on the motion:

(1) The court shall grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the grounds for relief specified in subdivision (a).

(2) In granting or denying the motion, the court shall specify the basis for its conclusion.

(3) If the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

(f) An order granting or denying the motion is appealable under subdivision (b) of Section 1237 as an order after judgment affecting the substantial rights of a party.

(Added by Stats. 2016, Ch. 739, Sec. 1. (AB 813) Effective January 1, 2017.)

"For every wrong there is a remedy" (Civ. Code, sec. 3523) - "Our state Constitution guarantees that a person improperly deprived of his or her liberty has the right to petition for a writ of habeas corpus. (Cal. Const., art. I, § 11. . . .)" (*People v. Duvall (1995) 9 Cal.4th 464,*

474.) The petitioner must be illegally restrained. (Pen. Code, §§ 1473, subd. (a), 1474, subd. 2.) That is, the petitioner must be in custody or otherwise have his or her liberty restrained. **A parolee is "restrained."** (*In re Sturm (1974) 11 2 Cal.3d 258, 265*.); *Jones v. Cunningham (1963) 371 U.S. 236 [9 L.Ed.2d 285, 83 S. Ct. 373*] **[defendant released on parole is still "in custody"** for federal habeas corpus purposes]. Both S16CRM0096 and S14CRM0465 included **a sentence of a fine which suffices to meet the custody requirement for habeas corpus relief.** (*In re Catalano (1981) Cal. Supreme Court 29 Cal.3d 1, 7-9 [171 Cal.Rptr. 667, 623 P.2d 228*].); *People v. Villa, 202 P. 3d 427 - Cal: Supreme Court 2009.* Petitioner was fined in both case # S14CRM0465 & S16CRM0096 and both fines remain unpaid and outstanding, thus Petitioner is still "in custody" for the purpose of a statutory habeas corpus. The Constitutional or non-statutory habeas or motion to set aside judgment or *coram nobis* does not require a custody requirement.

In habeas corpus proceedings attacking a criminal conviction, the case or controversy requirement normally is satisfied, even after all potential custody has expired. Collateral consequences from a state judgment or order may be used to establish that the case is not moot. (*Carafas v. LaVallee (1968) 391 U.S. 234, 237-238* [defendant released while habeas corpus petition pending; not moot because defendant still suffering civil disabilities such as ineligibility to vote or hold certain positions]; Continuing collateral consequences from a criminal conviction ordinarily may be presumed. (*Sibron v. New York (1968) 392 U.S. 40, 55-56.*) For other types of cases, however, such consequences must be "specifically identified, . . . concrete disadvantages or disabilities that had in fact occurred, that were imminently threatened, or that were imposed as a matter of law (such as deprivation of the right to vote, to hold office, to serve on a jury, or to engage in certain businesses)." (*Spencer v. Kemna (1998) 523 U.S. 1, 8*).

Collateral consequences include Petitioner's California drivers license (a liberty interest[81]) is currently affected (not reinstated - allegedly still suspended) by the 2014 DUI case # S14CRM0465 where the DMV requires Petitioner to take an alcohol class as a result of

---

[81] "The right to travel is part of the Liberty of which a citizen cannot deprived without due process of law under the Fifth Amendment. This Right was emerging as early as the Magna Carta." *Kent vs. Dulles, 357 US 116 (1958)*

The right to employment without undue government interference and the right to a driver's license implicate both liberty and property. (*Amunrud v. Bd. of Appeals (2006) 158 Wn.2d 208, 225.*)

the false DUI conviction and subsequent DMV administrative hearing. Said DUI conviction affects Petitioner's ability to obtain work in certain jobs and requires him to pay higher auto insurance. All convictions from cases # S14CRM0465 & S16CRM0096 limit Petitioner's employment prospects and future prospects in holding any government employment or office titles.

Federal courts have made the exceptions to attack prior convictions for actual innocence (*McQuiggin v. Perkins, 133 S. Ct. 1924 - Supreme Court 2013* citing *Holland v. Florida, 560 U.S. ___, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010),* this Court addressed the circumstances in which a federal habeas petitioner could invoke the doctrine of "equitable tolling." Holland held that "a [habeas] petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.)

Jurisdiction errors and also **finding that petitioner satisfied the "in custody" requirement because his "petition can be (and has been) construed as `asserting a challenge to the [current] sentence, as enhanced by the allegedly invalid prior . . . conviction.'")** (quoting *Maleng v. Cook,* 490 U.S. 488, 493 (1989)). This Petitioner's sentence in case # P17CRF0114 was enhanced to the maximum upper term in prison because of both case # S14CRM0465 & S16CRF0096 as shown in the sentencing transcripts and probation report.

Petitioner is entitled to "equitable tolling" is seeking relief since he was imprisoned since June 2016 and unable to properly file habeas corpus petitions from prison. The El Dorado and Sacramento jails did not forward his legal papers to/from each jail or to prison. Some of Petitioner's habeas filings were never even filed in the state courts when they were mailed to them.

Petitioner relies on another exception, which is said to arise in the rare circumstance when, "a habeas petition directed at the enhanced sentence may effectively be the first and only forum available for review of the prior conviction. " *Coss,* 532 U.S. at 406; *see also Daniels v. United States,* 532 U.S. 374, 383 (2001) ("there may be rare cases in which no channel for review was actually available to a defendant with respect to a prior conviction, due to no fault of his own").

In *Lackawanna County District Attorney v. Coss, 532 U.S. 394* (2001):

We stated in *Daniels* that another exception to the general rule precluding habeas relief might be available, although the circumstances of that case did not require us to resolve the issue. See *ante,* at 383-384. We note a similar situation here.

The general rule we have adopted here and in *Daniels* reflects the notion that a defendant properly bears the consequences of either forgoing otherwise available review of a conviction or failing to successfully demonstrate constitutional error. See *supra,* at 403-404; *Daniels, ante,* at 381— 383. **It is not always the case, however, that a defendant can be faulted for failing to obtain timely review of a constitutional claim. For example, a state court may, without justification, refuse to rule on a constitutional claim that has been properly presented to it.** Cf. 28 U. S. C. § 2244(d)(1)(B) (1994 ed., Supp. V) **(tolling 1-year limitations period while petitioner is prevented from filing application by an "impediment . . . created by State action in violation of the Constitution or laws of the United States"). Alternatively, after the time for direct or collateral review has expired, a defendant may obtain compelling evidence that he is actually innocent of the crime for which he was convicted, and which he could not have uncovered in a timely manner.** Cf. *Brady* v. *Maryland,* 373 U. S. 83 (1963); 28 U. S. C. § 2244(b)(2)(B) (1994 ed., Supp. V) (**allowing a second or successive habeas corpus application if "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and . . . the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense").**

406*406 **In such situations, a habeas petition directed at the enhanced sentence may effectively be the first and only forum available for review of the prior conviction.** As in *Daniels,* this case does not require us to determine whether, or under what precise circumstances, a petitioner might be able to use a § 2254 petition in this manner.

Whatever such a petitioner must show to be eligible for review, the challenged prior conviction must have adversely affected the sentence that is the subject of the habeas petition. This question was adequately raised and considered below. As the District Court stated, Coss contended **"that his current sentence [for the 1990 conviction] was *adversely affected* by the 1986 convictions because the sentencing judge considered these allegedly unconstitutional convictions in computing Coss's present sentence."** App. to Pet. for Cert. 105a—106a (emphasis added). The District Court and majority of the Court of Appeals agreed with Coss on this point. See *id.,* at 107a; 204 F. 3d, at 459. Judge Nygaard, joined by Judge Roth, dissented to dispute the conclusion that the 1986 convictions had any effect whatsoever on Coss' sentence for the 1990 conviction. *Id.,* at 467-469.

The prior cases S16CRM0096 (alleged driving on a suspended license & displaying false registration tags) and S14CRM0465 (alleged DUI) were used to enhance the sentencing to the maximum “upper term” in case P17CRF0114 according to the sentencing transcripts and probation reports used at sentencing. Petitioner was also denied and constructively denied counsel in both cases as will be explained at trail, on appeal and for habeas corpus in both cases.

In *Daniels v. United States, 532 US 374 - Supreme Court 2001* offers exceptions to the ability to attack a prior conviction where defendant is no longer in custody —there may be rare cases in which no channel for review was actually available to a defendant with respect to a prior conviction, due to no fault of his own.

The exception to this rule is "for § 2254 petitions that challenge an enhanced sentence on the basis that the prior conviction used to enhance the sentence was obtained where there was a failure to appoint counsel in violation of the Sixth Amendment..." Here, Petitioner asserts was “constructively denied counsel” in case # S16CRM0096.

The second exception include a state court refusing without justification to rule on a properly presented constitutional claim and a defendant who obtains compelling evidence of actual innocence after the time for direct or collateral review has expired that could not have been uncovered in a timely manner.

In *Lackawanna County District Attorney v. Coss 532 US 394, 121 S. Ct. 1567, 149 L. Ed. 2d 608 - Supreme Court, 2001*:

> The general rule we have adopted here and in Daniels reflects the notion that a defendant properly bears the consequences of either forgoing otherwise available review of a conviction or failing to successfully demonstrate constitutional error. See supra, at 403-404; Daniels, ante, at 381— 383.
>
> It is not always the case, however, that a defendant can be faulted for failing to obtain timely review of a constitutional claim. For example, a state court may, without justification, refuse to rule on a constitutional claim that has been properly presented to it. Cf. 28 U. S. C. § 2244(d)(1)(B) (1994 ed.,

Supp. V) (tolling 1-year limitations period while petitioner is prevented from filing application by an "impediment . . . created by State action in violation of the Constitution or laws of the United States"). Alternatively, after the time for direct or collateral review has expired, a defendant may obtain compelling evidence that he is actually innocent of the crime for which he was convicted, and which he could not have uncovered in a timely manner. Cf. Brady v. Maryland, 373 U. S. 83 (1963); 28 U. S. C. § 2244(b)(2)(B) (1994 ed., Supp. V) (allowing a second or successive habeas corpus application if "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and . . . the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense").

406*406 In such situations, a habeas petition directed at the enhanced sentence may effectively be the first and only forum available for review of the prior conviction. As in Daniels, this case does not require us to determine whether, or under what precise circumstances, a petitioner might be able to use a § 2254 petition in this manner.

The Court noted a possible exception to this rule in a case where, “after the time for direct or collateral review has expired, a defendant may obtain compelling evidence that he is actually innocent of the crime for which he was convicted, and which he could not have uncovered in a timely manner.” Id. at 405 (emphasis added).

Both cases (S16CRM0096 and S14CRM0465) may also be attacked by PC1473.6:

(a)Any person no longer unlawfully imprisoned or restrained may prosecute a motion to vacate a judgment for any of the following reasons:

(1)Newly discovered evidence of fraud by a government official that completely undermines the prosecutions case, is conclusive, and points unerringly to his or her innocence.

(2)Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment.

(3)Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that

was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph.

(b)For purposes of this section, newly discovered evidence is evidence that could not have been discovered with reasonable diligence prior to judgment.

(c)The procedure for bringing and adjudicating a motion under this section, including the burden of producing evidence and the burden of proof, shall be the same as for prosecuting a writ of habeas corpus.

(d)A motion pursuant to this section must be filed within one year of the later of the following:

(1)The date the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the misconduct or fraud by a government official beyond the moving partys personal knowledge.

(2)The effective date of this section.

Petitioner's prior cases can also be attacked on a non statutory habeas corpus and said cases the convictions were based on fraud-upon-the-court. *City of Los Angeles v. Morgan, 234 P. 2d 319 - Cal: Court of Appeal, 2nd Appellate Dist., 1st Div. 1951* "Likewise in *Forbes v. Hyde, 31 Cal. 342, 347* (oftentimes quoted by the Supreme Court) it is said: **"A judgment absolutely void upon its face may be attacked anywhere, directly or collaterally, whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither the basis nor evidence of any right whatever.".**

CASE S16CRM0096 REQUIRES REVERSAL

In case S16CRM0096 the appeal was transferred to Placer Co. where the appellate division reversed the driving on suspended conviction on issue of failure to issue a Miranda warning.

Petitioner was immune from any violation pursuant to Vehicle Code 41401 "No person shall be prosecuted for a violation of any provision of this code if the violation was required by a law of the federal government, by any rule, regulation, directive or order of any agency of the federal government…"

A remaining conviction for 4462.5 VC – Misuse of Vehicle Registration or License Items was not argued by appellate counsel and must be reversed since Petitioner was immune from conviction. In S16CRM0096 Petitioner was immune from any violation pursuant to Vehicle Code 41401 **"No person shall be prosecuted for a violation of any provision of this code if the violation was required by a law of the federal government, by any rule, regulation, directive or order of any agency of the federal government, the violation of which is subject to penalty under an act of Congress, or by any valid order of military authority."** Petitioner was ordered to federal court on the day of the arrest and vehicle code violations.

Trial counsel was IAC and CDC for the failure to properly argue this issue which mandated a dismissal (explained below). Appellate counsel was IAAC and CDC for failing to argue this immunity on appeal which would have mandated reversal of the remaining conviction.

The following exhibits show Petitioner was ordered to the Reno NV Federal Court on March 21, 2016. Petitioner, out of necessity and without ever being served notice of suspension or expired registration traveled to Reno Nevada and was subsequently stopped and arrested for no probable cause by the South Lake Tahoe Police.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

TODD ROBBEN,

Plaintiff,

v.

CARSON CITY, NEVADA, *et al.*,

Defendants.

Case No. 3:13-cv-00438-RFB-VPC

ORDER

Pending before the Court is a Motion to Reconsider filed *ex parte* by Plaintiff Todd Robben, ECF No. 107. In his motion, Mr. Robben seeks reconsideration of the Court's Order dated February 29, 2016, which denied his earlier motion to appear telephonically for all pretrial hearings. See ECF No. 106. Mr. Robben states in his motion that he does not have reliable transportation, nor does he have the finances, to travel to Las Vegas for hearings. He also states that he does not have a government-issued identification card and therefore will not be able to enter the courthouse. Finally, Mr. Robben argues that it is not his fault that his cases were transferred from Reno, where they were originally filed, to Las Vegas. In addition, Mr. Robben has submitted a notice that he is unable to attend an upcoming hearing scheduled for March 21, 2016 because he does not have any government-issued identification. ECF No. 108.

"As long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 885 (9th Cir. 2001) (internal quotation marks omitted).

The Court finds good cause to partially reconsider its previous Order. Mr. Robben is correct that he was not the one who decided that his cases should be transferred from Reno to Las Vegas. Therefore, the Court will hold its upcoming hearing in Mr. Robben's case in Reno.

However, the Court does not find good cause to reconsider its previous order denying leave for Mr. Robben to appear telephonically. Mr. Robben filed this case in Reno. Litigants do not have a right to telephonic appearances. In order to accommodate Mr. Robben's lack of identification, the Court will order that he be permitted to enter the Reno courthouse by simply identifying himself by first and last name and case numbers. Other than this, he will be subject to all other security and screening procedures for the federal courthouse. The Court notifies Mr. Robben that failure to appear at the scheduled hearing in Reno could result in sanctions, up to and including case-dispositive sanctions such as dismissal of his case.

Therefore,

IT IS ORDERED that Plaintiff Todd Robben's Emergency *Ex Parte* Motion to Reconsider (ECF No. 107) is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that the hearing and oral argument set for March 21, 2016 is RESET to **Monday, March 21, 2016 at 10:00 A.M. in Reno Courtroom [to be determined].** The Court will issue a further Order specifying the courtroom for the hearing.

IT IS FURTHER ORDERED that Plaintiff Todd Robben's Notice regarding inability to attend March 21 hearing (ECF No. 108) is DENIED. Plaintiff Todd Robben shall be permitted to enter the Reno courthouse for his scheduled hearing on March 21, 2016 by identifying himself by first and last name and case numbers. Other than this, he will be subject to all other security and screening procedures for the federal courthouse.

DATED: March 11, 2016.

RICHARD F. BOULWARE, II
United States District Judge

VERN R. PIERSON
El Dorado County District Attorney
State Bar #152268
1360 Johnson Boulevard, Suite 105
South Lake Tahoe, CA 96150
Phone: (530) 573-3100
Fax: (530) 544-6413

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

TODD CHRISTIAN ROBBEN,

Defendant(s).

_____/

DKT: 16CRM0096
DA #: 16-03-001671

CRIMINAL COMPLAINT

DEPARTMENT 3

The District Attorney of El Dorado County, based upon information and belief, hereby alleges:

COUNT 1

On or about the 21st day of March, 2016, in the County of El Dorado, the crime of DRIVING WHEN PRIVILEGE SUSPENDED FOR PRIOR DUI CONVICTION, in violation of **VEHICLE CODE SECTION 14601.2(a)**, a Misdemeanor, was committed by TODD CHRISTIAN ROBBEN, who did willfully and unlawfully drive a motor vehicle upon a highway at a time when his/her driving privilege was suspended and revoked for driving under the influence of an alcoholic beverage and a drug, and their combined influence, and when he/she had knowledge of said suspension and revocation.

COUNT 2

On or about the 21st day of March, 2016, in the County of El Dorado, the crime of FALSE REGISTRATION, in violation of **VEHICLE CODE SECTION 4462(b)**, an ~~Infraction~~, misd was committed by TODD CHRISTIAN ROBBEN, who did willfully and unlawfully display upon a vehicle and present to a peace officer a registration tab, vehicle registration card, identification card, temporary receipt, license plate and/or permit not issued for such vehicle and not otherwise lawfully used thereon.

Based upon information and belief, the undersigned certifies in his/her official capacity and under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated below at El Dorado County, California.

VERN R. PIERSON
District Attorney

By: _____
WILLIAM M. CLARK
Chief Assistant District Attorney

Dated: March 30, 2016
tr

LOCATION OF CRIME: CITY OF SOUTH LAKE TAHOE

Pursuant to Penal Code §1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code §1054.3 and pursuant to the provisions of Penal Code §1054.7.

WARNING: Penal Code Section 1054.2 makes it a Misdemeanor Criminal Offense for an **attorney** receiving discovery to disclose certain confidential information regarding victims and witnesses to defendants and others. Attorneys should review this code section carefully before sharing reports received in discovery with anyone.

The Petitioner's petition for writ of mandate address the above court order in the first few pages of the petition:

TODD ROBBEN
PO Box 1445
Twain Harte, CA 95383
(775)220-6309

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

TODD ROBBEN,

Petitioner, In Pro Se

VS.

CITY OF SOUTH LAKE TAHOE ET AL, EL DORADO COUNTY ET AL, SOUTH LAKE TAHOE POLICE DEPARTMENT, CHIEF BRIAN UHLER, OFFICER BRANDON AUXIER, OFFICER CHRIS WEBBER, SGT. SHANNON LANEY, OFFICER CORY WILSON, EL DORADO COUNTY DISTRICT ATTORNEY VERN PIERSON, DOES 1-100

Respondents,

UNLIMITED CIVIL CASE NO.:

_____

***EX PARTE* EMERGENCY MOTION FOR STAY OF IMPOUND**

NOTICE OF FIRST VERIFIED EMERGENCY PETITION FOR WRIT OF MANDATE & PROHIBITION

FIRST VERIFIED EMERGENCY PETITION FOR WRIT OF MANDATE & PROHIBITION

INJUNCTIVE AND DECLARATORY RELIEF

Judge_____

Dept._____

Trial Date_____

1

VERIFIED PETITION FOR WRIT OF MANDATE, EX PARTE MOTION TO STAY

THIS PETITION IS URGENT AND AN IMMEDIATE
STAY ORDER IS REQUESTED

EMERGENCY STAY REQUEST:

The Petitioner's[1] "automobile" is currently on a **mandatory 30 day impound**[2] unlawfully (and illegally) imposed by the South Lake Tahoe Police Department ("SLTPD") Officer Chris Webber on March 21, 2016 for alleged violation of VC14601.2(a) without probable cause[3] in an unlawfully (and illegal) Stateline "sting" operation/scheme where SLTPD undercover agents put an undercover "tail" on the Petitioner in the State of Nevada – outside their jurisdiction! There was no "moving violation" making the arrest and subsequent 30 day impound unlawful and illegal pursuant to Vehicle Code ("VC") 14601.2(a).

The **Petitioner's driver's license was not legally suspended**[4] as clearly demonstrated herein with this pleading including the fact Officer Webber had DMV access to prove the **Petitioner was not served**.

The Petitioner not "diving" a "motor vehicle" instead, he was **"traveling"** in his private **"not-for-hire" "automobile"** on a **court order**[5] from

---

[1] Petitioner was a "class of one" "traveler" in an "automobile".
[2] 14602.6(a)(1) "A vehicle so impounded **shall** be impounded for 30 days."
[3] Penal Code: 1054.2. (3)(b) **A peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed.**
[4] V.C. § 12801.5(e)"Notwithstanding (V.C.) Section 40300 or any other provision of law, a peace officer **may not** detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person is under the age of 15 years."
[5] The Petitioner is a plaintiff in the Reno federal court. Judge Boulware denied requests for a telephonic hearing and **ordered** Petitioner to attend in person.

U.S. Federal **Judge Richard Franklin Boulware II mandating his appearance in the Reno Federal Court on Monday March 21, 2016** from 10:00am to approximately 12:00pm.

United States District CourtDistrict of Nevada

Notice of Electronic Filing

The following transaction was entered on 3/11/2016 at 9:25 AM PST and filed on 3/11/2016
Case Name: Robben v. Carson City, Nevada et al
Case Number: 3:13-cv-00438-RFB-VPC
Filer:
Document Number: 113
Docket Text:
ORDERED that Plaintiff Todd Robben's Emergency #[107] Ex Parte Motion to Reconsider is GRANTED IN PART and DENIED IN PART. FURTHER ORDERED **that the hearing and oral argument set for March21, 2016 is RESET to Monday, March 21, 2016 at 10:00 A.M. in Reno Courtroom [to be determined].**

The Court will issue a further Order specifying the courtroom for the hearing. FURTHER ORDERED that **Plaintiff Todd Robben's #[108] Notice regarding inability to attend March 21 hearing is DENIED.** Plaintiff Todd Robben shall be permitted to enter the Reno courthouse for his scheduled hearing on March 21, 2016 by identifying himself by first and last name and case numbers. Other than this, he will be subject to all other security and screening procedures for the federal courthouse. Signed by Judge Richard F.Boulware, II on 3/11/2016. (Copies have been distributed pursuant to the NEF - DRM)

3:13-cv-00438-RFB-VPC Notice has been electronically mailed to:

Brian M. Brown bbrown@thorndal.com, lsb@thorndal.com, rct@thorndal.com

JUDGE BEASON WAS DIVESTED OF JURISDICTION WHEN AN INTERLOCUTORY NOTICE OF APPEAL WAS FILED

The assigned trial Judge Candice Beason violated CCP 170.1(b) "A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding" and the Judicial Code of Conduct (Cal. Code Jud. Ethics, Canon 3 3E(5)(f)(i).) "(f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court".

Judge Beason lacked jurisdiction to hold trial or order a judgment of conviction since an interlocutory appeal had been filed June 30, 2016 prior to July 05, 2016 trial and the trial court was divested of jurisdiction during trial and sentencing since the remittitur was not issued until August 17, 2016. See *Libretti v. United States, 516 US 29 - Supreme Court 1995* "The District Court was precluded from undertaking that necessary inquiry only because this pro se petitioner filed an early notice of appeal that divested the court of jurisdiction." **"The trial court does not have jurisdiction over a cause during the pendency of an appeal."** (*People v. Flores (2003) 30 Cal.4th 1059, 1064, 135 Cal.Rptr.2d 63, 69 P.3d 979*.)

In *People v. Scarbrough, 240 Cal. App. 4th 916 - Cal: Court of Appeal, 3rd Appellate Dist. **2015*** **"well-established law provides that the trial court is divested of jurisdiction once execution of a sentence has begun.** (See *People v. Turrin (2009) 176 Cal.App.4th 1200, 1204-1205 [98 Cal.Rptr.3d 471].)* And, **"[t]he filing of a valid notice of appeal vests jurisdiction of the cause in the appellate court until determination of the appeal and issuance of the remittitur."** (*People v. Perez (1979) 23 Cal.3d 545, 554 [153 Cal.Rptr. 40, 591 P.2d 63*]; see *People v. Cunningham (2001) 25 Cal.4th 926, 1044 [108 Cal.Rptr.2d 291, 25 P.3d 519*] **["`an appeal from an order in a criminal case removes the subject matter of that order from the jurisdiction of the trial court'** ..."].) This rule protects the appellate court's jurisdiction by protecting the status quo so that an appeal is not rendered futile by alteration. (*People v. Alanis (2008) 158 Cal.App.4th 1467, 1472 [71 Cal.Rptr.3d 139]*, quoting *Townsel v. Superior Court (1999) 20 Cal.4th 1084, 1089 [86 Cal.Rptr.2d 602, 979 P.2d 963].)* **As a result of this rule, the trial court lacks jurisdiction to make any order affecting a judgment, and any action taken by the trial court while the appeal is pending is null and void.** (*Alanis, supra, 158 Cal.App.4th at pp. 1472-1473.*)

People Case# S16CRMC

vs EL DORADO CO. SUPERIC

TODD ROBBEN FILED JUN 30 2016

BY: Deputy

NOTICE OF APPEAL or

Alternitive Petition for writ of Mandate/Prohi

Mr. Robben appeals 6-15-16

denial of motion To recuse

assigned "child molesting" Judge

Robert F. Baysinger who han

"no law degree"..

Todd Robben

6-29-2016

EL DORADO CO. SUPERIOR

FILED JUL 05 2016

BY _____ Deputy

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs

TODD CHRISTIAN ROBBEN,

Defendant.

EL DORADO COUNTY
SUPERIOR COURT CASE
NO. S16CRM0096

ORDER OF DISMISSAL

The Court examined the notice of appeal and determines that the order appealed from is nonappealable. (Penal Code §1466(b)(1)).

Therefore, the appeal filed on June 30, 2016 is dismissed.

DATED: 7.5.16

Candace J. Beason

CANDACE J. BEASON, ASSIGNED JUDGE

535

EL DORADO CO. SUPERIOR
FILED AUG 17 2016
BY Deputy

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff/Respondent,

Vs

TODD CHRISTIAN ROBBEN

Defendant/Appellant.

EL DORADO COUNTY
SUPERIOR COURT
AND APPELLATE
COURT NO. S16CRM0096

REMITTITUR TO TRIAL COURT CLERK

I, Lynn Cavin, Appeals Clerk of the Superior Court of California, County of El Dorado, do hereby certify that the attached is a true and correct copy of the Order of Dismissal filed July 5, 2016 in the above-entitled matter that has now become final.

WITNESS my hand and seal of the Court affixed at my office on this 17th day of August, 2016.

Lynn Cavin, Appeals Clerk, El Dorado County Superior Court

CMS

534

VENUE UNLAWFULLY MOVED TO PLACERVILLE FROM SOUTH LAKE TAHOE

Case # S16CRM0096 was originally set for trial with South Lake Tahoe as the venue (That's why the S is at the beginning of the case number, CR means criminal and M is misdemeanor). Petitioner was able to attend court in South Lake Tahoe since he housing in that area and transportation to attend court.

The case was unlawfully transferred from South Lake Tahoe to Placerville, CA because the assigned judge, Robert Baysinger did not want to travel to South Lake Tahoe.

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

Mr. Robben's filing for writs and motions and appeals.

So my bottom line on the motion to dismiss for violation of local rule and denial of speedy trial, is basically going to revolve around any delays being caused by Mr. Robben himself, and we are setting the trial within the time periods following denial of his writs.

Does the D.A. have anything further you wish to submit on behalf of the motion to dismiss?

MR. GOMES: No, not on behalf of that motion, your Honor.

THE COURT: Okay. Motion to dismiss is denied.

Motion to disqualify the El Dorado County D.A.'s Office, very lengthy and learned points and authorities and opposition. You guys in the A.G.'s Office don't want any trial experience? What's going on?

Any response to the motion there by the D.A.'s Office?

MR. GOMES: No, your Honor. I'll submit the matter.

THE COURT: Anything further by the A.G.? You're coming in as a basically real party in interest. If I granted the motion, you would be picking it up. I understand your reason for being here, but also your reluctance in accepting the matter without a proper basis for recusal of the office.

MR. BOWERS: Your Honor, we are submitting the matter on our pleading.

THE COURT: I have read and considered both moving papers and the opposition by the D.A. The Court in this matter also does not find a qualifying reason for disqualification of the prosecution.

Again, much of the issue that would be presented is

Mr. Robben's own making. So, again, he is making his own roadblocks and then complaining about having to go over under or around them, and that cannot be allowed, so the motion to disqualify the D.A.'s Office is denied.

Which brings us to the current proceedings today, which I guess are the trial confirmations. Now, I find myself in an issue that I don't like to be in. Mr. Robben's latest request basically telegraphed what he felt the Court's actions would be at this point should he not appear today as ordered. I would note that Mr. Robben was placed on his own recognizance at the initial arraignment and has remained out of custody. There's no bail. There's strictly his promise to appear.

He has indicated some difficulty in getting here because he voluntarily moved from within El Dorado County to -- well, the Sonora area, actually Tuolumne County.

MR. GOMES: His last known address was a P.O. Box there, your Honor, and an actual residence in the state of Nevada that he filed with the Third District Court of Appeal.

THE COURT: Okay. I note it's about as close to come up 49 than come over the hill in Tahoe. That's another issue altogether. This is the county seat. This is a proper venue for this trial proceeding, so I cannot excuse Mr. Robben not being present.

In his last moving papers he alluded to a possible warrant issuance by this Court which would result in an escalation of arrest procedures, perhaps resulting in the use of firearms and resulting in possible injury to persons. I'm very concerned about this. It indicates to me over a

suspended license charge a rather drastic anticipated conclusion.

I'm going to ask you a practical question, Counsel, how many witnesses do you have for this case?

MR. GOMES: Maximum or minimum?

THE COURT: You tell me.

MR. GOMES: Two tops. Two tops.

THE COURT: And they are both police officers?

MR. GOMES: Yes.

THE COURT: Okay. At risk to upsetting your law enforcement officers, the Court at this time will revoke the O.R. of Mr. Robben. Since this is a Vehicle Code matter, that will result in a hold being placed with Department of Motor Vehicles on these Vehicle Code sections. In addition for the nonappearance of the misdemeanor criminal matters that, by the way, do carry a mandatory jail sentence, at least on the 14601.2, upon conviction, I will issue a warrant according to bail schedule for two counts of misdemeanor traffic matters at $15,000. I am going to hold that warrant to the start of the jury trial proceedings.

I'm going to tick off a bunch of your jurors because I'm keeping a panel coming in. If he does not appear, the panel will be excused, that warrant will go out for service on the trial date. This means, Counsel, that you, unfortunately, are going to, with my ruling, have to prepare your case. You're going to have to keep your witnesses on tap. However, as in most criminal matters, you can keep them on a phone contact so they don't have to come over the hill and be prepared for

The venue change violated Petitioners right to a jury trial in the territorial jurisdiction before a jury and vicinage of the cross-section of the community in violation of Cal. Constitution Art, 1, Sec, 15 & 16, U.S. 6th and 14th amendment. This is the same argument as made above in case # P17CRF0114. Incidentally, all arguments made above relate to this case regarding the use of retired judges being unconstitutional, venue and vicinage, etc.

In this case, Judge Baysinger violated the local rules of the El Dorado Superior Court. The presiding judge did not consent (Presiding Judge Suzanne Kingsbury or Assistant Presiding Pudge James Wagoner) – This violated Local Rule 2.00.09:

Local Rule 2.00.09

TRANSFERRING CASES BETWEEN PLACERVILLE AND SOUTH LAKE TAHOE SESSIONS

A. Transfers shall be handled with regard for the present statutory requirements concerning cases entitled to preference. Cases may only be transferred with the specific consent of the presiding judge.

B. If a case has been venued in the Placerville session, all filings in that case must be made in Placerville only**. (1) If a case has been venued in the South Lake Tahoe Session, all filings in that case must be made in South Lake Tahoe only.**

C. The judge in the receiving court shall be the authority on whether a transfer is to take place. Before a case may be transferred, the judge in the receiving court must be consulted as to the cases pending in that court on the date in question.

D. If the judge in the transferring court disagrees with the judge of the receiving court's decision, the presiding judge shall rule as to: (1) Whether the case shall be transferred; (2) Whether it shall take precedence over the cases then pending in the receiving court; and (3) Whether the case being transferred, if it is not to be heard during the trial week it was set for in the transferring court, shall be given precedence over the cases pending in the receiving court.

E. The judge in the receiving court shall have full authority over the case once transferred and any change in trial status or reported settlement shall be made through the receiving court.

F. The judge of the transferring court shall notify counsel of the transfer immediately, and shall advise counsel that all further communications and inquiries concerning the case should be made to the judge of the receiving court assigned to try the case or the calendar clerk of that court.

G. The presiding judge may transfer any case between the 2 sessions for reasons of court convenience, including the availability of a courtroom, the availability of a judicial officer, or for other reasons promoting judicial efficiency as determined by the presiding judge. (Effective January 1, 2006)

1.00.03 CONSTRUCTION AND APPLICATION OF RULES These rules shall be construed and applied in such a manner as to not conflict with the California Rules of Court and shall be liberally construed to serve the proper and efficient administration of justice in the Superior Court of El Dorado County. The civil rules shall apply to all probate and unlawful detainer matters, except where time limits are otherwise prescribed by law. These rules do not apply to small claims division actions or proceedings, unless the text of specific rules otherwise indicates. The CEO of the Superior Court, as court clerk, shall be the official publisher of these rules and shall maintain a set of the rules in the clerk's office of each court for public inspection. Copies shall be made available for sale at a reasonable fee. (Revised January 1, 1999) 1.00.04

DEFINITION OF WORDS USED IN THESE RULES A. The word "court" shall mean the Superior Court in and for the County of El Dorado, as well as all branches and departments of the court. It shall further include any judge, commissioner, or judge pro tempore, who is a duly elected or appointed member of a trial court in this county, and any judge, commissioner, or judge pro tempore, including retired judges, who shall be assigned to a trial court in this county by the chairperson of the Judicial Council. B. The word "person" shall include and apply to corporations, firms, associations, and all other entities, as well as to natural persons. C. The word "affidavit" includes declarations and "declaration" includes affidavits. D. The word "judgment" includes and applies to any judgment, and to any order or decree from which an appeal may lie. E. The use of the masculine, feminine, and neuter gender terms shall include the other genders. (Revised January 1, 1999)

2.00.02 DUTIES OF THE PRESIDING JUDGE A. The presiding judge of the court shall perform the duties specified in California Rules of Court, rule 10.603. In performing those duties, the presiding judge shall be guided by the Standards of Judicial Administration set forth in the California Rules of Court. B. In accordance with the policies of the court and as authorized by California Rules of Court, rule 10.605, an executive committee may be established by the court to advise the presiding judge or to establish policies and procedures for the internal management of the court. An executive committee may be appointed by the presiding judge to advise the presiding judge. C. For purposes of California Rules of Court, rule 10.603(c)(2)(H) (defining "vacation day"): An absence of

four consecutive hours in the morning (8:00 – 12:00) or afternoon (1:00 – 5:00) is vacation time of half a day. An absence of eight consecutive hours is one full day of vacation. Time off for dental and medical visits and for illness will not be charged as vacation time. (Revised July 1, 2013) 2.00.03

ASSISTANT PRESIDING JUDGE If at any time the presiding judge shall be absent, ill, on vacation, or otherwise unable to perform his or her duties, the assistant presiding judge shall perform all the duties and exercise the authority of the presiding judge. If at any time during the term of office both the presiding judge and the acting presiding judge are unavailable because of illness, vacation, or other cause, the senior judge, or other judge as designated by the presiding judge, shall serve as assistant presiding judge during the period of unavailability. (Effective January 1, 1994)

2.00.08 LOCATION AND SCHEDULE OF COURT SESSIONS A. LOCATION

(1) On the Western Slope of the County, sessions of the court may be held in the courtrooms provided in the El Dorado County Courthouse, 495 Main Street, Placerville, CA; Placerville Superior Court, 2850 Fairlane Court, Placerville, CA; Cameron Park Superior Court, 3321 Cameron Park Drive, Cameron Park, CA. El Dorado County Courthouse, 295 Fair Lane, Placerville, CA. Traffic proceedings are heard at the court facility located at 295 Fair Lane, Placerville, CA. Small Claims and Unlawful Detainer proceedings are heard at the court facility located at Cameron Park Superior Court, 3321 Cameron Park Dr., Cameron Park, CA. (2) In the City of South Lake Tahoe, all sessions of the Superior Court, including traffic and small claims, are held in the El Dorado County Courthouse, 1354 Johnson Blvd., South Lake Tahoe, CA. (3) In addition, the court may conduct sessions at any appropriate location within the County of El Dorado at the direction of the judicial officer presiding at the hearing. (Revised July 1, 2012)

B. The Courts take judicial notice of the last preceding census, taken under the authority of the Congress of the United States, that the population of the City of South Lake Tahoe in the County of El Dorado exceeds 7,000, and the City Hall in the City of South Lake Tahoe is more than 30 miles from the courthouse. <u>Therefore, pursuant to the provisions of the Government Code section 69751.5, it is declared that a session of the Superior Court of the State of California, for the County of El Dorado, shall be held in the City of South Lake Tahoe to serve the convenience of the residents of the County and to promote the ends of justice.</u>

C. For the convenience of the courts, there is hereby designated a portion of the County of El Dorado, to be known as the South Lake Tahoe Area.

The delay and unlawful venue change along with an unlawfully and unconstitutionally assigned retired judge whom this Petitioner opposed on the record resulted in a lack of jurisdiction (territory, personal & subject matter) and the delay was caused by Assistant Presiding Judge James Wagoner who wasted over 45 days to obtain an assigned judge which

the Petitioner had put in writing he only wanted an elected judge. This caused the speedy trial delay and there was no "good cause". The issue is detailed in the record. Petitioner was made prejudice by the speedy trial violation and venue change since he was housed in the Tahoe area and had to move and could not attend court in person. The assigned Judge Baysinger denied telephonic access to the pre-trial hearings which resulted in the Judge issuing an arrest warrant for a failure to appear. Petitioner had requested the court to transfer the case to Tuolumne Co. where he could have attended. The judge acted in bad faith, and refused which made any court appearance impossible since Petitioner had no way to get to court. Petitioner asserted his rights and refused to surrender his personal jurisdiction to the court after the court surrendered its jurisdiction.

NO ORDER FROM CAL. SUPREME COURT ASSIGNING RETIRED JUDGES BEASON OR PROUD OR PHIMISTER

As with case # P17CRF0114 the assigned judges used in P16CRM0096 are suspect as to whether there were lawfully assigned by the Chief Justice of the Cal. Supreme Court or Judicial Council since there is no actual order on the record assigning retired Judge Candace Beason along with judges used to decide writ petitions filed in the case – Daniel B. Proud and Douglas C. Phimister both Judge Proud and Phimister were recused anyway since the "entire bench" of El Dorado Co. had been recused. They can't have it both ways, because if Judge Proud and Phimister are part of the bench, then way would they have not presided over the trial? They had recused for cause. Petitioner's due-process pursuant to U.S. 14th amendment rights were violated by having bias judges decide the writ petitions related to case # P16CRM0096 and the appeal of case # S14CRM0465 which was decided after they recused from case # P16CRM0096.

In *Caperton v. A. T. Massey Coal Co. (2009) 556 U.S. ___ [173 L.Ed.2d 1208, 129 S.Ct. 2252]*. The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case, *Tumey v. Ohio, 273 U. S. 510* , but this Court has also identified additional instances which, as an objective matter, require recusal where "the probability of actual bias on the part of the

judge or decisionmaker is too high to be constitutionally tolerable," *Withrow v. Larkin, 421 U. S. 35* . Two such instances place the present case in proper context. Pp. 6–11.

Since no disclosure was provided pursuant to canon 3E and CCP 170.1 as to why each judge recused, an evidentiary hearing would be required to determine the reason each judge recused. This issue will be argued below when case # S14CRM0465 is addressed in full.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
TODD CHRISTIAN ROBBEN

Case No: S16CRM0096

MINUTE ORDER

==========

EX-PARTE MINUTE ORDER RE: Assignment
Date: 04/25/16 Time: 11:00 am Dept/Div: 1

==========

Charges: 1) 14601.2(A) VC-M A, 2) 4462(B) VC-M A

Honorable JUDGE JAMES R. WAGONER presiding
Clerk: S. Sams

Defendant is Not Present.

The entire bench having been recused; this
matter is assigned to Robert F. Baysinger of
the Assigned Judges Program for all purposes.
All matters are set before Judge Baysinger:
HEARING
Trial Setting Conference set for 05/16/2016 at 8:30 in
Department 1.

Motion RE: Recuse DA Office set for 05/16/2016 at 8:30 in
Department 1.

CUSTODY STATUS
O.R./Conditional O.R. Release continued

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR
ACCT

==========MINUTE ORDER END==========

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

EL DORADO CO. SUPERIO
FILED MAY 20 2016
BY Deputy

TODD ROBBEN,

Petitioner,

vs

EL DORADO COUNTY
SUPERIOR COURT,

Respondent.

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Real Party in Interest.

EL DORADO COUNTY
SUPERIOR COURT CASE
NO. PCL20160174
(UNDERLYING CASE NO.
S16CRM0096)

ORDER ON PETITION
FOR WRIT AND STAY

The Petition for Writ filed on May 13, 2016 is summarily denied. Further, the stay issued regarding Superior Court Case No. S16CRM0096 is vacated.

DATED: 5-20-16

HONORABLE DOUGLAS C. PHIMISTER,
ASSIGNED JUDGE OF THE SUPERIOR
COURT APPELLATE DEPARTMENT

DATED: 5/20/16

HONORABLE DANIEL B. PROUD,
ASSIGNED JUDGE OF THE SUPERIOR
COURT APPELLATE DEPARTMENT

302

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

EL DORADO CO. SUPERIOR CT.
FILED JUN 01 2016
BY _____ Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff/Respondent,

Vs

TODD CHRISTIAN ROBBEN,

Defendant/Appellant.

EL DORADO SUPERIOR COURT
AND SUPERIOR COURT APPELLATE
NO. S14CRM0465

DECISION ON APPEAL

DISPOSITION: THE JUDGMENT OF CONVICTION IS AFFIRMED.

DATED:_____

_____
DYLAN SULLIVAN, JUDGE OF THE APPELLATE
DIVISION OF THE SUPERIOR COURT

DATED: May 26, 2016

_____
DOUGLAS C. PHIMISTER, JUDGE OF THE
APPELLATE DIVISION OF THE SUPERIOR COURT

DATED:_____

_____
DANIEL B. PROUD, JUDGE OF THE APPELLATE
DIVISION OF THE SUPERIOR COURT

DISPOSITION: THE JUDGMENT OF CONVICTION IS AFFIRMED.

DATED:_____

_____
DYLAN SULLIVAN, JUDGE OF THE APPELLATE
DIVISION OF THE SUPERIOR COURT

DATED:_____

_____
DOUGLAS C. PHIMISTER, JUDGE OF THE
APPELLATE DIVISION OF THE SUPERIOR COURT

DATED: 5/26/16

_____
DANIEL B. PROUD, JUDGE OF THE APPELLATE
DIVISION OF THE SUPERIOR COURT

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

DEBORAH C. BROWN
Chief Counsel, Legal Services

August 8, 2017

Todd Robben
X5073288, Bed/Bldg J/55
Rio Cosumnes Correctional Center
12500 Bruceville Rd.
Elk Grove, CA 95757

You have reached the "public access to judicial administrative records" (PAJAR) team at the Judicial Council of California (the Council), policymaking body of the California courts.

Your request was reviewed pursuant to California Rules of Court, rule 10.500, "public access to judicial administrative records."

The Council does not have any judicial administrative records responsive to your request. Pursuant to rule 10.500(c)(1) adjudicative records that are not covered by the rule include "any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court." Additionally, pursuant to rule 10.500(e)(1)(D) only superior courts are required to provide certified copies of judicial administrative records.

For more information about the Public Access to Judicial Administrative Records Project and a link to the applicable rule of court, please visit our website at *http://www.courts.ca.gov/publicrecords.htm*. For information about the assigned judges program (AJP), please visit our website at: *http://www.courts.ca.gov/documents/Assigned_Judges_Program.pdf*.

Chambers of the Chief Justice
SUPREME COURT OF CALIFORNIA
350 McALLISTER STREET
SAN FRANCISCO, CA 94102-3660

1045045-16

THE HONORABLE ROBERT F. BAYSINGER, Retired Judge of the Superior Court of California, County of San Joaquin, is hereby assigned to sit as a Judge of the Superior Court of California, County of El Dorado, on the following date(s):

April 25, 2016*

and until completion and disposition of any specific open motion or other matter pending in a case before the judge at the time the assignment ends. Any further motions or other matters in the case may be heard only pursuant to a separate appointment order.

Dated: April 25, 2016

T. Cantil-S.

Tani G. Cantil-Sakauye
Chief Justice of California and
Chairperson of the Judicial Council

*This order is made pursuant to the request for assignment until completion in the matter of *People v. Todd Robben, S16CRM0096.*

cc: Presiding Judge
Hon. Robert F. Baysinger

Original On File With Judicial Council

Note regarding CJA Ethics Opinions No. 45 and No. 48: Superseded in part by CCP sec 170.1(a)(9).
California Judges Association Opinions No. 45, "Disclosure Requirements Imposed by Canon 3E Pertaining to Judicial Disqualification" and No. 48, "Disclosure of Judicial Campaign Contributions," do not presently reflect current law in light of the recent amendment to CCP 170.1 which added CCP 170.1(a)(9) concerning campaign contributions.

OPINION NO. 45

(Issued: January 1997)

DISCLOSURE REQUIREMENTS IMPOSED BY CANON 3E PERTAINING TO JUDICIAL DISQUALIFICATION

I. Introduction

Effective January 15, 1996[1], the California Supreme Court issued the California Code of Judicial Ethics, which modified the Code of Judicial Conduct previously promulgated by the California Judges Association. Canon 3E of the new Code addresses judicial disqualification and disclosure requirements. The Canon moved the disclosure requirements previously listed in the Commentary into the text of the Code. The Ethics Committee has received numerous inquiries seeking guidance on matters of disqualification, disclosure and waiver of disqualification. Because the three concepts are interrelated, yet analytically distinct, they are addressed together in this opinion. Also underlying any analysis of questions of disclosure, disqualification and waiver of disqualification is Canon 2. Canon 2 requires judges to always act in ways that promote public confidence in the integrity and impartiality of the judiciary and to avoid not only impropriety, but its appearance. This opinion should be read in conjunction with Opinion 51 and Opinion 55.

II. Canon 3E and CCP 170.1

Canon 3 generally requires impartiality and diligence in the performance of judicial duties. Canon 3E has been modified in the following manner:

"E. Disqualification

A judge ~~should~~ shall disqualify himself or herself ~~in a proceeding in which the judge's impartiality might reasonably be questioned, or~~ in ~~a~~ any proceeding in which disqualification is required by law*. In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

ADVISORY COMMITTEE COMMENTARY

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, or whenever required by the disqualification provision of the Code of Civil Procedure.

~~A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.~~

However, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only

[1] Final revisions to sections not relevant here took effect April 15, 1996.

judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must ~~timely~~ promptly disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

~~A judge should observe the provisions of the Code of Civil Procedure concerning remittal of disqualification."~~

1996 Changes

Aside from minor, nonsubstantive changes, the Supreme Court modified Canon 3E in two respects: First, it deleted previous language which required a judge to disqualify him or herself "in a proceeding in which the judge's impartiality might reasonably be questioned." This change has the effect of limiting the circumstances under which the judge is disqualified under the Canons to those where "disqualification is required by law." However, the deleted language is substantially the same as that found in CCP 170.1 (a) (6) (c) [a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."] Thus, the operative disqualification language in the new Code is essentially unchanged from the earlier version.

Second, the Supreme Court moved the disclosure requirement from the Commentary to the Code itself and limited the disclosure mandate to trial judges only. The test for disclosure remains the same under the new Code. Its placement in the canons underscores the Supreme Court's view of the importance of the disclosure of information relating to a judge's possible disqualification even though the judge has made an initial determination that he or she is not disqualified.

The mandate that a judge must disqualify him or herself whenever "disqualification is required by law," is a reference to CCP 170.1 et seq. Under 170.1, there are seven legal grounds for disqualification. In summary they are:

1) The judge has personal knowledge of disputed evidentiary facts.

2) The judge has served as a lawyer in the proceeding or for a party.

3) The judge, judge's spouse or minor child has a financial interest in the subject matter or a party.

4) The judge, spouse or close relative is a party.

5) The lawyer or spouse of the lawyer is a close relative of the judge or the judge's spouse is associated in the private practice of law with a lawyer in the proceeding.

6) The judge believes recusal would further the interest of justice, there is a substantial doubt as to the judge's capacity to be impartial, or a person aware of the facts might reasonably entertain a doubt the judge would be impartial. Bias or prejudice toward a lawyer may be grounds. It is the "gray area" in this sixth ground which leads to the most questions.

7) The judge is unable to perceive the evidence or properly conduct the proceeding.

Pursuant to CCP 170.2, it is **not** a ground for disqualification that the judge:

1) Is or is not a member of any racial, ethnic, religious, sexual, or similar group involved in the proceedings;

2) Has previously expressed a view on a legal or factual issue presented;

However, disclosure is required, and desirable, for two reasons. First, disclosure in an abundance of caution will assuage any doubt in most cases. A party or attorney learning of this

affiliation directly from the judge is far less likely to question the judge's impartiality than one who learns about it later from another source. By clearing the air, the judge dispels any potential doubt about impartiality. Merely mentioning the association to counsel is insufficient. The judge must disclose on the record or the clerk's minutes of the proceedings must reflect the disclosure.

Second, and equally important, if the judge fails to disclose, and was incorrect in his or her reasonable person analysis [CCP 170.1 (a) (6) (C)], the judge may have concealed facts that would constitute a basis for a successful challenge to the judge's improper failure to recuse him/herself, thereby effectively depriving the litigant of his/her CCP 170.3 right to challenge the judge.

D. **Facts:** The judge is acquainted with both husband and wife in a pending dissolution to be heard by that judge.

Analysis: The judge must disclose the relationship to all case participants but need not necessarily disqualify. Knowing both parties, the judge may have personal knowledge of disputed evidentiary facts. If so, the judge would be required to declare that he or she is disqualified, [CCP 170.1 (1) (a)], although the disqualification could be waived.

A further consideration would be whether a substantial doubt as to the judge's capacity to be impartial exists. Does the judge know one better than the other? What is the degree to which the judge is acquainted with the parties? Are the judge and parties such good friends that a reasonable person might question whether the judge could be impartial in rendering decisions? If so, the Commentary to Canon 3E and Canon 2 may prevent the judge's participation in the case.

Once again, by clearing the air with full disclosure on the record, the judge dispels any questions of bias, and prompt examination of the issues raised by the disclosure might lead to a conclusion that disqualification is required.

E. **Facts:** Judge found an attorney for his adult son and has agreed to pay son's attorney fees. Attorney now appears before judge on unrelated matter.

Analysis: At a minimum, disclosure is required and disqualification may be required. If the fee paid to the attorney is one that is a flat fee that has been assessed or paid, it would not appear that the judge's hiring the attorney would prevent the judge from participating in other cases in which the attorney appeared. However, Canons 3E and Canon 2 would compel disqualification if a person aware of the facts would reasonably entertain a doubt about the judge's ability to be impartial or otherwise call into question the integrity and impartiality of the judge. In close cases, it is always better to disqualify.

F. **Facts:** Judge hearing a case involving a bank realizes the judge's own home mortgage is with that bank.

Analysis: Judge need neither disqualify nor disclose this arm's length relationship. Here the judge receives no special treatment from the bank but merely engages in the same transaction available to any customer. Judge's status with the bank will not change with the case outcome. Hence, there is no reasonable appearance of bias.

G. **Facts:** Judge retains an interest in former law firm's pension plan. The plan assets fluctuate daily and the judge has neither knowledge of those assets nor management authority over them.

Analysis: Recusal is not required (see analysis in C, above). While the judge need not disclose the pension plan, the judge must disclose the prior firm affiliation. Previous membership in the law firm

does not compel recusal as it does not fall within any of 170.1 grounds. Because the plan assets fluctuate regularly and the judge neither knows the specifics nor controls those assets, this need not be disclosed.

H. **Facts:** Judge receives an unsolicited letter from an out-of-state judge seeking leniency for a criminal defendant about to be sentenced by judge.

Analysis: The California judge must disclose this unauthorized ex parte communication to all parties but need not disqualify. Here there exists little likelihood the letter will have an impact on the judge's impartiality, and disclosure at the first opportunity reinforces this view.

I. ~~**Facts:** Judge has a financial interest in the subject matter of a proceeding. For example, judge's spouse is employed by a government agency party.~~ (See Opinion 55)

~~**Analysis:** Judge must disqualify. Judge may then ask parties if they wish to waive disqualification if judge discloses the basis for the disqualification at time the judge asks about waiver. The recusal may be waived in a writing signed by the parties and their counsel, provided the judge also considers Canon 2 and concludes it would not be violated.~~

~~Note, that in many circumstances the spouse's government agency is not a party to the proceeding, but the government agency brings the action in a representative capacity on behalf of a city, county, state or other body. Under these circumstances there would be no duty to disqualify. Disclosure of the spouse's employment may be appropriate depending on the circumstances even if the judge does not believe disqualification is required.~~

J. **Facts:** A party or counsel states the judge cannot be fair because opposing counsel has appeared before the judge on many occasions over many years.

Analysis: Judge need not disclose or disqualify merely because an attorney has appeared often before the judge even when the judge holds that attorney in high professional esteem, provided the judge believes self not to be prejudiced for or against anyone in the case. If the rule were otherwise, it would simply be impossible for an experienced, well-known judge to get through a lengthy calendar. The process of disclosing how well the judge knew every lawyer present might consume so much time, little would remain for hearing the scheduled cases. It must reasonably be accepted that judges were lawyers once themselves and know lots of lawyers or they would not be judges.

K. **Facts:** A party has threatened to complain to the Commission on Judicial Performance regarding the judge.

Analysis: While the judge should make all parties aware of the threat, the judge need not recuse unless the judge doubts his or her own ability to be fair. Were such threats a valid disqualification ground, any unscrupulous party or lawyer would gain an ability to remove a judge at any point merely by threatening to lodge a complaint, however lacking in merit.

IV. Conclusion

Modified Canon 3E relies solely on statutory grounds for disqualification and disclosure requirements. While the new standard is neither more nor less stringent, it is arguably clearer. Every matter involving a potentially sensitive issue requires the judge to make a three-part analysis of recusal, waiver and disclosure. Judges should look to CCP 170.1 for disqualification grounds and to CCP 170.2 for areas which do not require disqualification. CCP 170.3 (b) governs the process of waiving disqualification.

In summary, judges should consider three things:

1. **Disqualification.** The Legislature has outlined the situations in which disqualification is required or required to be considered [CCP 170.1 (a) (1-6; (b)], and Canon 3E has, in effect, deferred to the Legislature on that issue. If the judge concludes he or she is disqualified, the grounds for disqualification should be clearly stated. Only after that may the court accept a written waiver as set forth in CCP 170.3 (b).

2. **Disclosure.** New Canon 3E has accentuated the importance of disclosure by moving the requirement that trial judges disclose, even when they need not disqualify, from the former Commentary into the new text. Disclosure is required if the judge believes the parties or their lawyers might consider the information relevant to the issue of disqualification [Canon 3E, second sentence]. The Legislature has only addressed disclosure in one situation: when the judge first disqualifies him or herself and thereafter asks the parties and attorneys if they wish to waive the disqualification [CCP 170.3 (b) (1)].

3. **Waiver.** Waiver may only be obtained in circumstances under which the judge has already disqualified him or herself, and simultaneously makes disclosure. [CCP 170.3 (b) (1)]. Even then, there can be no waiver if judge:

   a) has a personal bias or prejudice concerning a party; or

   b) judge served as an attorney or has been a material witness in the matter. [CCP 170.3 (b) (2) (A) (B)].

   Waivers of disqualification must always be in writing and signed by the parties and their counsel.

1995/96 COMMITTEE ON JUDICIAL ETHICS
(finalized by 96/97 Committee, January 1997)

There appears to be an order assigning Robert F. Baysinger as shown above, however the Judicial Council appears to have no record of it when a California Public Records request was send to authenticate said order.

Without any lawful orders assigning, said retired judges were without jurisdiction to issue any orders or judgments. Petitioner did not know Daniel B. Proud and Douglas C. Phimister were retired at the time. Petitioner asserts the assigned judge program and Cal. Constitution Art. 6 Sec 6(e) is unconstitutional pursuant to U.S. 14th amendment due-process clause for reasons stated above (judges lack training, nor accountable to CJP, not elected, bias and predetermined to rule in favor of the prosecutor, the parties are not informed said judge is retired, no consent or disclosure).

NO PROBABLE CAUSE FOR TRAFFIC STOP

Additionally, there was no probable cause for the traffic stop originally since the police knew Petitioner was not served notice of suspension according to their own records and DMV. *In re Murdock, 68 Cal. 2d 313 - (1968) Cal: Supreme Court 68 Cal.2d 313* **"The sole question presented in this proceeding is whether a driver who has no actual knowledge that his license has been suspended or revoked by the department can be guilty of violating section 14601. We hold that he cannot."**

Petitioner posted video on youtube of the FBI special agent Glenn Norling calling the South Lake Tahoe police reporting Petitioner driving where Agent Norling states Petitioner has not been served notice of the suspension and expired registration.

https://www.youtube.com/watch?v=U_OqUHUj1-Y

DRIVER RECORD INFORMATION

DRIVERS LICENSE OR ID CARD #	F.O. BATES NO.	TYPE APP. DATE	MISC. INFO. SUBMITTED BY REQUESTER	REQ. CODE	RECORD DATE
C5334283	SLT LIS	2 092112	243 ANGELICA	63090	040616

50778 ROBBEN, TODD CHRISTIAN

IDENTIFICATION OF DRIVER BASED ON INFORMATION SUBMITTED

DMV A PUBLIC SERVICE AGENCY

BIRTHDATE	SEX	HEIGHT	WEIGHT	EYES	HAIR
041669	M	600	180	BLUE	BROWN

DMV USE ONLY
CL DA7 04/06 BLK 999

2640 PINTER AVE
S LAKE TAHOE CALIF 96150 09/21/12

DRIVER LICENSE INFORMATION

CLASS	ISSUED	EXPIRES	EXT.	RESTRICTIONS	DUP. LIC. ISSUED	LIC. HELD
C&M1 N-COM	092112	041617				1509

OTHER: 18711 TIFFENI DR STE 17
TWAIN HARTE CALIF 06/07/15

ITEM	VIOLATION OR ACC. DATE	CONVICTION DATE	SECTION(S) VIOLATED LOCATION OR ACCIDENT OR OUT-OF-STATE VIOLATION(S)	STATUTE	COURT DISPOSITION TYPE	JAIL OR CWA	AMT.	DOCKET, CITATION OR FR FILE NUMBER	LOCATION OF COURT OR ACCIDENT REPORT NUMBER	VEHICLE LICENSE
ABST	082014	050715	23152B,23152A DMV POINT COUNT 2 COURT PROB 48 MO	VC	CGJQ	002 DA		140465	09660 S LAKE TAHOE	
ABST	111214	011215	16028A DMV POINT COUNT 0	VC	C			403173	05100 SAN ANDREAS	78VB557

COURT PROBATION TERMS THROUGH 050619, VIOLATION DATE 082014, DOCKET NUMBER 140465
SHALL NOT COMMIT CRIMINAL OFFENSE REFUSE BAC TEST, OR DRIVE VEHICLE WITH ALCOHOL IN BLOOD.

CERTIFIED DOCUMENTS — STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

ANY ACCIDENTS SHOWN ABOVE DO NOT NECESSARILY INDICATE DRIVER RESPONSIBILITY

MISC
SERVICE NEEDED, SEE HISTORY BELOW
PROOF CODE 0-DUI/COMPLETE DUI PROGRAM

EL DORADO CNTY DA/INVS/SUPPORT
MARILYN F MEIXNER/INVS/SUPPORT
515 MAIN ST
PLACERVILLE CA 95667

SEE REVERSE FOR EXPLANATION OF CODES

DEPARTMENT ACTION	MAIL ORDER DATE	EFFECTIVE DATE	AUTHORITY SECTION(S) OR OTHER STATE TAKING ACTION	THRU DATE OR TERM	REASON FOR ACTION	SERVICE OF ORDER TYPE	SERVICE OF ORDER DATE	FR FILE NUMBER
SUSPENDED	121614	122514	13353.2 ,END/STA		EXCESSIVE BLOOD ALCOHOL LEVEL	A	121614	
MAILED, NOT RETURNED UNCLAIMED VERBAL OR PERSONAL SERVICE NEEDED.								
SUSPENDED	060515	050715	13352A1		DRUNK DRIVING OR DRUGS	I	061615	
RETURNED UNCLAIMED VERBAL OR PERSONAL SERVICE NEEDED.								

0001025

DL454 (REV 04/97)

The above exhibit shows proof of service was needed and the address in Twain Harte was correct.

The traffic stop was an unreasonable seizure under the U.S. 4th and 14th Amendments to stop an automobile, being driven on a public highway, for the purpose of checking the driving license of the operator and the registration of the car, where there is neither probable cause to do so. See *Delaware v. Prouse, 440 U.S. 648 (1979),* was a United States Supreme Court case in which the Court held that police may not stop motorists without any reasonable suspicion to suspect crime or illegal activity to check their driver's license and auto registration.

Pursuant to V.C. § 12801.5(e): The Unlicensed Driver: "Notwithstanding (V.C.) Section 40300 or any other provision of law, a peace officer may not detain or arrest a person solely on

the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person is under the age of 15 years."

Petitioner was on probation, however the traffic stop was not a “probation” search. The police stated they were informed Petitioner was driving on a suspended license.

In *People v. Sanders, 73 P. 3d 496 - Cal: Supreme Court 2003*:

> [4] In support of its holding that law enforcement **"officers cannot undertake a search without probable cause and then later seek to justify their actions by relying on the defendant's parole status, a status of which they were unaware at the time of their search," the decision in Martinez notes that "[t]he investigation involved suspected criminal activity, not parole violations."** (*In re Martinez, supra, 1 Cal.3d 641, 646, 83 Cal.Rptr. 382, 463 P.2d 734.*) **This observation supports the conclusion that the police were unaware of the suspect's parole status when the search was conducted. It does not suggest that a valid parole search may not be conducted for an investigatory purpose**. (See *United States v. Knights, supra, 534 U.S. 112, 120, 122 S.Ct. 587, 151 L.Ed.2d 497; People v. Reyes, supra, 19 Cal.4th 743, 752, 80 Cal.Rptr.2d 734, 968 P.2d 445.)*

IAC/CDC OF TRIAL COUNSEL AND IAAC/CDC OF APPELLATE COUNSEL

There is also insufficient evidence to convict since Petitioner did not know his registration tags had been marked. Appellate counsel was constitutionally ineffective pursuant to U.S. 6th and 14th amendment to make these obvious arguments when they were informed prior to the appeal. See Evitts v. Lucey :: 469 U.S. 387 (1985).

The driving on suspended conviction was reversed on appeal in S16CRM0096 on a violation of *Miranda v. Arizona 384 U.S. 436 (1966)* – the false registration tags conviction remains and must be reversed for reasons discussed in this pleading the trial court lacked jurisdiction (a pre-trial notice of appeal divested the trial court judge of jurisdiction over a motion to disqualify pursuant to CCP 170.1(b) (A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding), the retired judge was unlawfully assigned to the interlocutory appeal and the remittitur issued after trial, unlawful search & seizure (4th amendment violation), Constructive Denial of Counsel and IAC at trial (counsel appointed less than a week before trial), and insufficient evidence since there was no probable cause to initiate the traffic stop or proof this Petitioner modified the tags.

Trial counsel Rachel Miller was assigned less than a week before the July 05, 2016 trial when Petitioner had been jail since June 15th. 2016. Petitioner only met Ms. Miller on the Friday (approx July 01, 2016) before the Tuesday July 05, 2016 trial.

Petitioner was Pro Per prior to trial and after being arrested, with no hearing on his pro per status being revoked, was appointed counsel. **`Erroneous denial of a Faretta motion is reversible per se. [Citation.]' [Citation.] The same standard applies to erroneous revocation of pro. per. status."** (*People v. Butler (2009) 47 Cal.4th 814, 824-825 [102 Cal.Rptr.3d 56, 219 P.3d 982*].)

At trial, an outburst by this Petitioner occurred to establish on the record that Petitioner was denied his 6th amendment right to self represent and no pre-trial suppression haring had occurred. Said outburst was appropriate to establish a record of the facts. [citation needed from previous habeas corpus filings.] Also see *People v. Hayes, 229 Cal. App. 3d 1226 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 1991* [**where On appeal, the defendant argued that he was deprived of his right to testify and that his outbursts in court constituted an adequate request to testify]**.

\

\

\

\

\

\

\

\

\

\

\

\

\

\

\

A. Yes.
Q. All right. In the process of impounding his vehicle, did you document the details about the vehicle?
A. Yes, sir.
Q. Did that include the vehicle's VIN number?
A. Yes.
Q. The vehicle's license plate number?
A. Yes.
Q. And the vehicle's registration status?
A. Yes. And that was all done by Officer Spaeth who ended up completing the CHP 180 form.
Q. And that's just paperwork you do when you impound a vehicle?
A. Yeah. It's a standard form that we use to impound a vehicle.
Q. After Officer Spaeth went through the paperwork process of conducting this impound, did he direct your attention to the vehicle's license plates?
A. Yes, he did.
MR. GOMES: All right. I'm going to refer the Court and counsel to what's been previously marked as People's Exhibit 5 for identification.
Showing Ms. Miller Number 5.
May I approach, Your Honor?
THE COURT: You may.
Q. (BY MR. GOMES) Officer Webber, take a look. Tell me if you recognize this.
THE DEFENDANT: Look, this trial, folks, is --

THE BAILIFF: Stop.
THE DEFENDANT: -- a sham.
THE BAILIFF: Stop.
THE COURT: Mr. Robben --
THE DEFENDANT: This is a sham trial.
THE BAILIFF: Stop.
THE DEFENDANT: This is a sham. They're not showing you the evidence. They're preventing me from evidence.
THE COURT: Mr. Robben --
THE DEFENDANT: I got this attorney on Friday.
THE BAILIFF: Stop.
THE DEFENDANT: No way.
THE COURT: Okay. Mr. Robben --
THE DEFENDANT: No way. I represented myself. This whole thing is a sham. This lawyer was appointed. The whole thing is a sham.
THE COURT: Mr. Robben, I'm going to ask you to leave the courtroom. I'm going to ask you to leave the courtroom.
THE DEFENDANT: I wasn't given my suppression hearing. No way. No way.
THE COURT: Leave the courtroom.
THE DEFENDANT: No way. This is a sham, kangaroo court. Listen to the recording. Come on, man. I wasn't served. I was never served notice.
(The Defendant left the courtroom.)
THE COURT: All right. Ladies and gentlemen, I'm going to ask you to disregard that outburst. As you can imagine, frequently when somebody is charged with a matter, they can

react emotionally to it. And so you're to disregard any impact of -- what he says is not evidence. You're to disregard it entirely.

I'm going to give him a couple minutes to see if he wants to calm down and return. So I'm going to take about a -- we'll take a break for about 15 minutes.

And I don't know, Deputy. Do you want the jurors in the jury room while we take a break? Would that be easier? Or out in the hallway?

THE BAILIFF: They're welcome to be in there or out and about.

THE COURT: But you're not to discuss the case. Would you prefer to go into the jury room? I want to sort of have a general, either people going into the jury room and hanging out and not discussing the case or going and walking around. Who votes for jury room?

SOME JURORS: Jury room.

THE COURT: Jury room?

Okay. So leave your notebooks on your seats, covered. And you're not to discuss the case at all. But the alternates will go in as well. Okay? Thank you very much.

(Court was in recess from 3:14 p.m. until 3:36 p.m.)

---oOo---

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right. We're back on the record outside the presence of the jury.

Petitioner was essentially denied counsel and/or constructively denied counsel prior to trial (6th and 14th U.S. amend. constitution violations & Cal. Const. Art.1 Sec 15)) and his pre trial motions were not heard in a timely manner such as the PC 1385.5 suppression

motion which was heard AFTER trial! Which denied the Petitioner a pre-trial appeal of the denied suppression motion and the return of seized property – Petitioner's automobile. .

To claim constructive denial of counsel bearing on guilt: defense counsel's assertedly deficient performance "resulted in a breakdown of the adversarial process at trial; that breakdown establishes a violation of defendant's federal and state constitutional right to the effective assistance of counsel; and that violation mandates reversal of the judgment even in the absence of a showing of specific prejudice." (*People v. Visciotti (1992) 2 Cal.4th 1, 84 [5 Cal. Rptr.2d 495, 825 P.2d 388] (dis. opn. of Mosk, J.).)*

> "failings resulted in a breakdown of the adversarial process at trial; that breakdown establishes a violation of defendant's federal and state constitutional right to the effective assistance of counsel; and that violation mandates reversal of the judgment even in the absence of a showing of specific prejudice. (See United States v. Cronic (1984) 466 U.S. 648, 653-662 [80 L.Ed.2d 657, 664-670, 104 S.Ct. 2039] [speaking of the federal constitutional guaranty only]; People v. Ledesma (1987) 43 Cal.3d 171, 242-245 [233 Cal. Rptr. 404, 729 P.2d 839] (conc. opn. of Grodin, J.) [speaking of both the federal and state constitutional guaranties].)[3]
>
> "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." (Herring v. 85*85 New York (1975) 422 U.S. 853, 862 [45 L.Ed.2d 593, 600, 95 S.Ct. 2550]; accord, United States v. Cronic, supra, 466 U.S. at p. 655 [80 L.Ed.2d at p. 665].) In other words, "The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness." (Polk County v. Dodson (1981) 454 U.S. 312, 318 [70 L.Ed.2d 509, 516, 102 S.Ct. 445].) It follows that the system requires "meaningful adversarial testing." (United States v. Cronic, supra, 466 U.S. at p. 656 [80 L.Ed.2d at p. 666].) "When" — as here — "such testing is absent, the process breaks down and hence its result must be deemed unreliable as a matter of law." (People v. Bloom (1989) 48 Cal.3d 1194, 1237 [259 Cal. Rptr. 669, 774 P.2d 698] (conc. & dis. opn. of Mosk, J.); see United States v. Cronic, supra, 466 U.S. at p. 659 [80 L.Ed.2d at p. 668]; see also Rose v. Clark (1986) 478 U.S. 570, 577-578 [92 L.Ed.2d 460, 470-471, 106 S.Ct. 3101] [to similar effect].) to claim constructive denial of counsel bearing on guilt: defense counsel's assertedly deficient performance "resulted in a breakdown of the adversarial process at trial; that breakdown establishes a violation of defendant's federal and state constitutional right to the effective assistance of counsel; and that violation mandates reversal of the judgment even in the absence of a showing of specific prejudice." (People v. Visciotti (1992) 2 Cal.4th 1, 84 [5 Cal. Rptr.2d 495, 825 P.2d 388] (dis. opn. of Mosk, J.).) "

is failings resulted in a breakdown of the adversarial process at trial; that breakdown establishes a violation of defendant's federal and state constitutional right to the effective assistance of counsel; and that violation mandates reversal of the judgment even in the absence of a showing of specific prejudice. (See United States v. Cronic (1984) 466 U.S. 648, 653-662 [80 L.Ed.2d 657, 664-670, 104 S.Ct. 2039] [speaking of the federal constitutional guaranty only]; People v. Ledesma (1987) 43 Cal.3d 171, 242-245 [233 Cal. Rptr. 404, 729 P.2d 839] (conc. opn. of Grodin, J.) [speaking of both the federal and state constitutional guaranties].)[3]

"The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." (Herring v. 85*85 New York (1975) 422 U.S. 853, 862 [45 L.Ed.2d 593, 600, 95 S.Ct. 2550]; accord, United States v. Cronic, supra, 466 U.S. at p. 655 [80 L.Ed.2d at p. 665].) In other words, "The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness." (Polk County v. Dodson (1981) 454 U.S. 312, 318 [70 L.Ed.2d 509, 516, 102 S.Ct. 445].) It follows that the system requires "meaningful adversarial testing." (United States v. Cronic, supra, 466 U.S. at p. 656 [80 L.Ed.2d at p. 666].) "When" — as here — "such testing is absent, the process breaks down and hence its result must be deemed unreliable as a matter of law." (People v. Bloom (1989) 48 Cal.3d 1194, 1237 [259 Cal. Rptr. 669, 774 P.2d 698] (conc. & dis. opn. of Mosk, J.); see United States v. Cronic, supra, 466 U.S. at p. 659 [80 L.Ed.2d at p. 668]; see also Rose v. Clark (1986) 478 U.S. 570, 577-578 [92 L.Ed.2d 460, 470-471, 106 S.Ct. 3101] [to similar effect].)

Counsel (Ms. Miller) was IAC/CDC for stipulating to hear the PC 1538.5 suppression hearing after the trial. This allowed evidence that should have been suppressed to be introduced to the jury.

than by the People.

And then, also, Judge Baysinger was assigned, ruled on some motions, and then subsequently there was a motion to have him removed from the case. That was ultimately denied by Judge Jones. I'm assuming from -- I think I saw that Judge Jones was also an assigned judge in that matter. And I don't know any of those individuals, so I can't speak to them. I'm just going on the court record.

So the prior decision on the motion to dismiss for lack of speedy trial is denied. I've looked at it again. And it appears, based on the history of the recusal motions and the time periods involved, that those account for the delays. So the Court will deny that.

Then we have two, which is a motion to suppress, and I believe counsel have conferred and decided that on that, that you wanted to have that heard concurrent with the trial in this case; is that correct?

MS. MILLER: And we don't have any objection to that, Judge, as long as the matter gets heard and that we can address that after the People rest.

THE COURT: Okay. And then on 3, on the judicial notice, it's my understanding the People were going to submit on that; is that correct?

MR. GOMES: Yes. Absolutely.

THE COURT: All right. And so on judicial notice, that motion is granted.

There's a district attorney's office recusal motion. All right. And let me take just one moment.

In People v. Mendoza Tello, 15 Cal. 4th 264 - Cal: Supreme Court 1997:

> Because claims of ineffective assistance are often more appropriately litigated in a habeas corpus proceeding, the rules generally prohibiting raising an issue on habeas corpus that was, or could have been, raised on appeal (see *In re Harris (1993) 5 Cal.4th 813, 824-841 [21 Cal. Rptr.2d 373, 855 P.2d 391*]; *In re Waltreus (1965) 62 Cal.2d 218, 225 [42 Cal. Rptr. 9, 397 P.2d 1001]; In re Dixon (1953) 41 Cal.2d 756, 759 [264 P.2d 513])* would not bar an ineffective assistance claim on habeas corpus.
>
> An example of when such a determination can be 268*268 made on appeal is found in *People v. Camilleri (1990) 220 Cal. App.3d 1199 [269 Cal. Rptr. 862].* **In that case, a full hearing on a Penal Code section 1538.5 suppression motion was held at trial. The Court of Appeal found that, under the precise circumstances, the superior court lacked jurisdiction to hold the hearing. It also found, however, that the record, including the hearing on the motion, was adequate to conclude that defense counsel ineffectively failed to make a proper suppression motion**. (*People v. Camilleri, supra, at p. 1203.*)

In *People v. Camilleri, 220 Cal. App. 3d 1199 - Cal: Court of Appeal, 6th Appellate Dist. 1990:*

> 1) Where a pretrial suppression motion has been fully litigated, the superior court lacks jurisdiction to entertain a second pretrial suppression motion. Penal Code section 1538.5, subdivision (h), only permits a second suppression motion at trial on the limited bases of lack of earlier opportunity or newly discovered grounds. (People v. Nelson (1981) 126 Cal. App.3d 978, 981-982 [179 Cal. Rptr. 195], and cases there cited; People v. Thomas (1983) 141 Cal. App.3d 496, 501 [190 Cal. Rptr. 408].) However, "if the ineffectiveness of counsel infected the first suppression hearing, the defendant cannot be said to have had opportunity for `full determination'" of the grounds to suppress evidence. (People v. Superior Court (Corona) (1981) 30 Cal.3d 193, 200 [178 Cal. Rptr. 334, 636 P.2d 23].)
>
> (2) **Regardless of the superior court's jurisdiction to entertain a second pretrial suppression motion, defendant is entitled to assert on appeal that he was denied effective assistance of counsel on the first suppression motion**. (Cf. People v. Ledesma (1987) 43 Cal.3d 171, 226-227 [233 Cal. Rptr. 404, 729 P.2d 839].) **A claim of ineffective assistance should be made by petition for habeas corpus instead of appeal when "the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged."** (People v. Pope (1979) 23 Cal.3d 412, 426 [152 Cal. Rptr. 732, 590 P.2d 859, 2 A.L.R.4th 1].) If, however, "there simply

could be no satisfactory explanation" (ibid.), an appeal is appropriate. We view defendant's appeal in this light. Our concern is whether defendant has established a case of ineffective assistance. (3) "To establish constitutionally inadequate representation, the defendant must show that (1) counsel's representation was deficient, i.e., it fell below an objective standard of

A criminal defendant has a right to effective assistance of counsel. (Strickland v. Washington (1984) 466 U.S. 668, 686-688; People v. Ledesma (1987) 43 Cal.3d 171, 215.) To prevail on a claim that counsel was ineffective, a defendant must demonstrate: 1) counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms"; and 2) this deficient performance resulted in prejudice. (People v. Ledesma (2006) 39 Cal.4th 641, 746 [quoting Strickland, at p. 688].) reasonableness under prevailing professional norms; and (2) counsel's deficient representation subjected the defense to prejudice, i.e., there is a reasonable probability that but for counsel's failings the result would have been more favorable." (People v. Babbitt (1988) 45 Cal.3d 660, 707 [248 Cal. Rptr. 69, 755 P.2d 253].)

Had the suppression hearing been conducted prior to trial as it should be, it would have been discovered that the 5th amendment Miranda violation occurred and any evidence obtained would be inadmissible including the license plate and registration tags as described in *People v. Massy, infra*.

People v. Massey, 59 Cal. App. 3d 777 - Cal: Court of Appeal, 2nd Appellate Dist., 4th Div. 1976:

Defendant was arrested, without a warrant, in his own home, on the basis of information given to the police by several persons. After his arrest, and while in custody, he was given his Miranda fn. 2 rights and confessed to the charged burglary. On this appeal, he contends: (1) that the arrest was unlawful because not based on probable cause; and (2) that a confession so obtained may be suppressed by a motion made under section 1538.5 of the Penal Code.

[1a] The theory of the defense is as follows: (1) under subdivision (a) of section 1538.5, the motion provided for by that section may be used "to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure"; (2) under People v. Ramey (1976) 16 Cal. 3d 263 [127 Cal. Rptr. 629, 545 P.2d 1333], "seizure," as used both in the state and federal Constitutions, includes seizures -- i.e., arrests -- of [59 Cal. App. 3d 780] persons as well as seizures of property. fn. 3 From those premises,

defendant argues that a confession obtained as the result of an illegal arrest is suppressible under section 1538.5.

It is settled that physical evidence, secured after and as a result of an illegal arrest, can be suppressed by a motion under section 1538.5, as is suppressible physical evidence secured after and as a result of an entry not complying with section 844 or section 1531 of the Penal Code. However, the California cases are by no means explicit as to the application of those rules to a confession obtained after an illegal arrest or illegal entry.

Clearly, a confession obtained after an illegal arrest is suspect and a trial court must determine whether the arrest so affected the voluntariness of the confession as to render it inadmissible. And it is clear that a confession obtained after an illegal arrest must be held inadmissible if that issue is properly raised under section 402 of the Evidence Code unless the evidence shows that it was not a fruit of the illegality.

In the case at bench, defendant's motion was entitled as one made under section 1538.5. At the hearing, counsel for defendant, after the trial court had indicated some doubt as to the propriety of relying on section 1538.5, stipulated that the motion before the court might be treated as one made under Evidence Code section 402. However, at the close of the hearing, the trial court announced that it treated the motion as made under section 1538.5 "so that it can be consistent with the pleadings."[2] Denial of a section 402 motion can be raised on an appeal from a judgment of guilty entered after a nonguilty plea; but such a denial cannot be raised after a plea of guilty, even though a certificate under section 1237.5 is secured, since the plea of guilty admits all matters essential to a conviction. [1b] Consequently, we treat the appeal before us, as did the trial court in the end, as involving the denial of a section 1538.5 motion, a matter admittedly appealable under subdivision (m) of section 1538.5 if that section was properly invoked.

The California authorities cited to us, and those which we have found, give no clear indication of the answer to the issue. [59 Cal. App. 3d 781]
In People v. Superior Court (Keithley) (1975) 13 Cal. 3d 406 [118 Cal. Rptr. 617, 530 P.2d 585], **physical evidence had been seized after, and as the result of, a violation of Miranda; a 1538.5 motion was held to be an appropriate way of attacking the use of that evidence.** In People v. Superior Court (Mahle) (1970) 3 Cal. App. 3d 476 [83 Cal. Rptr. 771], a similar factual situation existed with the same result. In People v. Superior Court (Redd) (1969) 275 Cal. App. 2d 49 [79 Cal. Rptr. 704], there was no arrest, but a confession was a result of a violation of Miranda; the court held that the confession could not be suppressed by a 1538.5 motion, saying (at p. 52): **"It is sufficient for present purposes to hold, as we do, that Penal Code section 1538.5 as enacted is limited solely to questions involving searches and seizures and is inapplicable to the resolution of issues**

arising from challenged confessions or admissions, except those that constitute the fruit of a search and seizure. There being no contention, nor basis for a contention, that any search and seizure, legal or illegal, was involved in the instant action, the defendants' motion under section 1538.5 should have been denied in its entirety." (Italics in original.)
In Kirby v. Superior Court (1970) 8 Cal. App. 3d 591 [87 Cal. Rptr. 577], this division of this court permitted the use of a 1538.5 motion to suppress evidence of physical things seen after an unlawful arrest. The case, however, involved a "search" and the opinion deals only with whether things seen, but not actually seized, were the kinds of "intangibles" referred to in section 1538.5. That case advances us one step toward our answer. We conclude that, under the reasoning of Kirby, a confession is, also, an "intangible thing" within the meaning of section 1538.5. But Kirby does not tell us whether a confession, obtained only after the kind of seizure involved in an arrest may be suppressed.

In Burrows v. Superior Court (1974) 13 Cal. 3d 238, 251 [118 Cal. Rptr. 166, 529 P.2d 590], police officers had made an unlawful search of defendant's office. Faced with incriminating evidence so found, defendant consented to a search of his car, where other evidence was found. The Supreme Court held that the consent, being a fruit of the original unlawful search, was ineffective to validate the search of the car. In People v. Clark (1969) 2 Cal. App. 3d 510 [82 Cal. Rptr. 682], a confession had followed an illegal arrest and a violation of Miranda. The appeal was on a certificate issued under section 1237.5, but the court assumed that the matter had properly been raised in the trial court by a 1538.5 motion. That case, apart from the assumption, is not helpful. [59 Cal. App. 3d 782] In People v. Coyle (1969) 2 Cal. App. 3d 60 [83 Cal. Rptr. 924], the court held that a 1538.5 motion was a proper way to attack the use by the People of a tape recording of a telephone conversation allegedly unlawfully obtained.

While no case squarely answers the question here before us, we conclude that the use of a 1538.5 motion was proper in the case at bench. **Where the evidence sought to be suppressed is physical evidence, seized or seen, the exclusionary rules serve to protect rights granted by the Fourth Amendment and its state counterpart. In order to protect those rights, Keithley, supra, 13 Cal.3d, and Mahle, supra, 3 Cal.App.3d, invoked the Miranda rule, a rule designed to protect rights granted by the Fifth Amendment and its California counterpart**.

An illegal arrest is a violation of the same Fourth Amendment rights as is a search or seizure of physical property. The rules excluding confessions exist for the same purpose as does Miranda -- namely, to protect Fifth Amendment rights.

> **We can see no reason why, if a violation of a Fifth Amendment right may be used to show a violation of Fourth Amendment rights, the converse should not be true. Since there was here a "seizure" and an "intangible" thing, we conclude that a Fourth Amendment violation of defendant's rights should permit him to contest the admissibility of a confession obtained as a result of that violation, in a proceeding falling within the literal language of section 1538.5.**

Trial counsel, Ms. Miller did file a “Motions in Limine” and she did assert the travel was a necessity, yet she failed to insert the Vehicle Code 41401 **"No person shall be prosecuted for a violation of any provision of this code if the violation was required by a law of the federal government, by any rule, regulation, directive or order of any agency of the federal government, the violation of which is subject to penalty under an act of Congress, or by any valid order of military authority."**

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

PLACERVILLE, CALIFORNIA

WEDNESDAY, JULY 6, 2016, 1:32 P.M.

DEPARTMENT 2 HON. CANDACE J. BEASON, JUDGE ASSIGNED

---oOo---

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right. We are on the record outside the presence of the jury.

And Mr. Robben is present with Ms. Miller. Mr. Gomes for the People.

And on the 1538.5, Ms. Miller, do you wish to be heard?

MS. MILLER: I do, Judge. We would submit on the exam and the testimony, but the basis of the 1538.5 is Mr. Robben objects to the stop based on the case law that -- I'm looking for it right now, but the case law that doesn't allow law enforcement to stop you just for the purposes of checking whether or not you're driving on a suspended license. So --

THE COURT: Is there case law that you wanted to cite to the Court specifically?

MS. MILLER: Yeah. I don't know if. . .

THE DEFENDANT: If we could take a break, I've got it, but we've got to. . .

MS. MILLER: So it's Vehicle Code 12801.5(e). It says notwithstanding Vehicle Code Section 40300 or any other provision of law, a peace officer may not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person is under 16 years of age.

And then there's some case law that comes down from that regarding --

THE COURT: What's a recent case on that?

MS. MILLER: -- being stopped. Let me see here.

So Mr. Robben cited in his brief People v. Mower, 49 --

THE COURT: How do you spell Mower?

MS. MILLER: M-o-w-e-r.

THE COURT: And the citation is what?

MS. MILLER: 49 P3d 1067.

THE COURT: Is there a California citation on that, or is this --

MS. MILLER: No. It looks like it's a federal case.

MR. GOMES: I knew we were going to turn this into a federal case.

THE COURT: And what's the year of the decision?

MS. MILLER: 2002.

THE COURT: Maybe with that, I can Google it and find where it's from, because the Pacific 2d could be Oregon, Washington. I don't know. Does that incorporate Idaho also?

MS. MILLER: I don't know.

THE COURT: Are either of you able to Google it?

THE CLERK: I am. People v. Mower?

THE COURT: M-o-w-e-r. 2002, Pacific 2d.

MR. GOMES: Can I take just a second? Is that all right?

THE COURT: Yes.

MR. GOMES: Thank you.

(The Court conferred with the clerk.)

THE COURT: I don't think so. This is a Compassionate Use Act case. It looks like it's out of California, out of Santa Clara County. Well, it's a Supreme Court case in California. It was a 2002 case, People v. Mower, M-o-w-e-r.

And that's a citation that comes up under the California code -- Vehicle Code?

MS. MILLER: No. This is one that Mr. Robben cited in his brief.

THE COURT: Because, I mean, I can certainly see where you can't just stop people willy-nilly to see if they are driving on a suspended license. But from the language of the code, it sounds like if you had the belief.

MR. GOMES: Actually, the code doesn't deal with driver's license suspensions.

THE COURT: Okay.

MR. GOMES: It deals with unlicensed drivers --

THE COURT: Oh, okay.

MR. GOMES: -- which is a very different circumstance.

THE COURT: Right.

MR. GOMES: And it specifically says a peace officer shall not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person is driving under 16 years of age.

So it's clearly distinguishable in our circumstance but also neither here nor there because the officers had two different independent bases of probable cause to conduct the

investigatory stop that led to the citation in this case, one being the fact that they had probable cause to believe that his driver's license was, in fact, suspended as a result of a prior DUI conviction, but also because his license plate was expired on the vehicle that he was traveling down the highway in.

THE COURT: All right.

Ms. Miller, any additional argument?

MS. MILLER: No. Your Honor, I think Mr. Robben did address most of the issues within his brief. I have read through that. I think the main basis is that the stop can't be just to determine whether or not someone's licensed. There has to be some other probable cause. And so based on that and the evidence that's been presented, we would submit.

THE COURT: All right. The burden is obviously on the Defense in this, and that's why the Court had indicated its situation at the conclusion of the People's case and allowed for additional information to be presented. But the Court does deny the motion. It does appear that the officer, based on the evidence that's been presented, did have probable cause to believe that his license had been suspended and that also that the registration had expired. So those would be two bases for the stop.

Okay. So are we ready for the jury?

MS. MILLER: Yes.

MR. GOMES: You know what, if we can do about a minute, we can start with arguments seamlessly.

THE COURT: Okay.

Rachel D. Miller, SBN 221677
Law Offices of Rachel D. Miller
463 Main Street, Suite D
Placerville, CA 95667
Telephone: (530) 903-8117
Fax: (530) 748-0151

Attorney for Defendant, Todd Robben

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. TODD CHRISTIAN ROBBEN, Defendant.	Case No. S16CRM0096 MOTIONS IN LIMINE Trial Date: 7/5/16 Dept. 2 Time: 8:30 a.m.

TO THE DISTRICT ATTORNEY FOR THE COUNTY OF EL DORADO, AND/OR HIS REPRESENTATIVES:

NOTICE IS HEREBY GIVEN that on the 5th day of July, 2016, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 2 of the above-entitled court, defendant will make the following Motions In Limine:

1) DEFENDANT'S RIGHT TO A SPEEDY TRIAL

Defendant ROBBEN has asserted his right to a speedy trial. He was arraigned on this matter on March 30, 2016 and did not waive time in this matter. Under Penal Code section 1382, the

CMS

416

court has 45 days to bring Defendant to trial in this matter. Defendant at no point waived his right to a speedy trial and asserts that this matter is past the 45 day limit and therefore the court does not have jurisdiction to hear this matter and it must be dismissed. Defendant further alleges that good cause was not presented to continue this matter past the 45 day limit which would have expired in May of 2016.

2) MOTION TO SUPPRESS

Defendant ROBBEN alleges that he timely filed a motion to suppress evidence under Penal Code section 1538.5, however, the court failed to take action upon this motion which was served on all parties and filed timely with the court. Defendant requests that this motion be heard prior to the jury trial commencing.

3) JUDICIAL NOTICE

Defendant ROBBEN requests that the court take judicial notice of all motions, filings, pleadings, and court cases regarding Defendant's ongoing appeal regarding the current pending appeal in the Third District Court of Appeal regarding the Department of Motor Vehicles' suspension of Defendant's license, Court of Appeal Case number C080542.

4) DISTRICT ATTORNEY'S OFFICE RECUSED

Defendant ROBBEN requests that the El Dorado County District Attorney's office be recused in this matter pursuant to Penal

Code section 1424, "... the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial." Defendant operates and edits a website, www.sltpdwatch.wordpress.com, which calls for the political removal of the elected district attorney from office, and defendant was also was actively involved in a grassroots movement to have an electoral recall of the elected District Attorney, Vern Pierson. Defendant does not believe that the office of the district attorney in it's entirety can fairly prosecute this matter to allow defendant to receive a fair trial.

5) DEFENDANT ALLEGES HE DOES NOT NEED A LICENSE TO DRIVE HIS VEHICLE

Defendant ROBBEN alleges he does not need a license to drive a vehicle because he was driving an automobile for personal private use and not for the purposes of commerce.

"The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived." Chicago Motor Coach v. Chicago, 169 NE 221.

"The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by

automobile, is not a mere privilege which a city may prohibit or permit at will, but a common law right which he has under the right to life, liberty, and the pursuit of happiness." Thompson v. Smith, 154 SE 579.

"The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment." Kent v. Dulles, 357 US 116, 125.

"The right to travel is a well-established common right that does not owe its existence to the federal government. It is recognized by the courts as a natural right." Schactman v. Dulles 96 App DC 287, 225 F2d 938, at 941.

Defendant requests that the court dismiss this case under Penal Code section 1385 for failure to state a basis in the complaint for a violation of the vehicle code based on the above case law.

6) NECESSITY

Defendant ROBBEN requests that the court take judicial notice of the current Federal litigation that defendant is involved in and the order from the Federal court requiring him to personally appear for court on March 21, 2016; and requests that the court allow defendant to present the defense of necessity.

SUMMARY

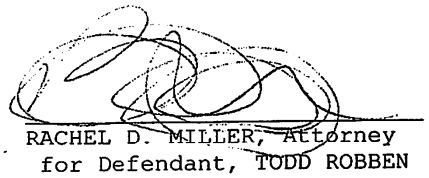
All of the items discussed are specific trial objections relating to their respective subject matters, and they need individually to be ruled on, in an Evidence Code section 402 type setting and before the matters are raised in front of the jury.

CONCLUSION

For the reasons herein and otherwise understood, the objections should be sustained. Defendant humbly prays that this Court so order.

DATED: July 5, 2016

Respectfully submitted,



RACHEL D. MILLER, Attorney
for Defendant, TODD ROBBEN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
TODD CHRISTIAN ROBBEN

Case No: S16CRM0096

MINUTE ORDER

==========
JURY TRIAL
Date: 07/05/16 Time: 8:30 am Dept/Div: 2
==========
Charges: 1) 14601.2(A) VC-M C, 2) 14601.5(A) VC-M C, 3) 4462.5 VC-M C

Honorable CANDACE J BEASON presiding
Clerk: T Thornton
Court Reporter: Jody Ezzell CSR 4131
Bailiff Crawford

Deputy District Attorney D. Gomes present.
Defendant is represented by Rachel Miller.
Defendant is present in custody; appearing at this hearing in civilian clothing.

IN RE: JURY TRIAL - DAY 1

At 8:45 a.m. -
Court and counsel confer in chambers off the record.

IN RE: DEFENSE'S MOTIONS IN LIMINE
The Court has read and considered Defense's Motion in Limine filed this date.

IN RE: MOTION #1 - Defendant has a right to a speedy trial.
COURT ORDERS:
This motion was previously ruled upon therefore it does not apply.

IN RE: MOTION #2 - Defendant requests his PC 1538.5 motion be heard prior to the jury trial commencing.
COURT ORDERS:
The matter will be heard concurrently and decided after the evidence is presented.

1538.5 PC Motion set for 07/05/2016 at 8:30 in Department 2.

IN RE: MOTION #3 - Defendant requests the Court to take judicial notice of all motions/filings/

Case Number : S16CRM0096 People vs. TODD ROBBEN

pleadings and Court cases re: defendant's ongoing appeal.
COURT ORDERS:
Motion is GRANTED.

IN RE: MOTION #4 - Defendant requesting the El Dorado County District Attorney's office be recused.
COURT ORDERS:
Motion was previously ruled upon therefore it does not apply.

IN RE: MOTION #5 - Defendant alleges he does not need a license to drive a vehicle.
COURT ORDERS:
Motion does not apply therefore it is moot.

IN RE: MOTION #6 - Defendant requests that the Court take judicial notice of the current Federal litigation that the defendant is involved in.
COURT ORDERS:
This motion does not apply therefore it is moot.

At 9:10 a.m. -
Court and counsel confer in chambers off the record re: hardships.

At 9:27 a.m. -
Prospective juror(s) excused for cause.
Twenty three prospective jurors excused for hardship.

At 9:43 a.m. COURT CONVENES.
Jury panel is called and sworn.
Fifty four prospective jurors present upon roll call.

Bench Conference Held/Reported 9:48.

At 9:54 a.m. -
AMENDED COMPLAINT filed this date changing Count 2 to a violation of 14601.5(A) VC.
AMENDED COMPLAINT Filed this date adding Count 3 as a violation of 4462.5 VC.

Arraignment and advised of Constitutional rights waived on complaint as amended.

PLEA
Defendant pleads NOT GUILTY to all counts.

Case Number : S16CRM0096 People vs. TODD ROBBEN

Oral motion on behalf of the Defense regarding requesting the Court reconsider
Defense's Motion In Limine #1.
No objection from the People.

COURT ORDERS:
Motion is GRANTED.

Court recesses at 222; reconvenes at 230.

Argument presented by Ms. Miller for the Defense.
Argument presented by Mr. Gomes for the People.

COURT ORDERS:
Motion is DENIED.
Reason: As set forth on the record.

At 2:37 p.m. -
Oral motion on behalf of the Defense regarding requesting a STAY of proceedings to
allow time for an appeal.

COURT ORDERS:
Motion is DENIED.
Reason: As set forth on the record.

People's Exhibit(s) NOS. 1 THRU 5 are/is marked for identification purposes only, OFF THE RECORD.
NO. 1 - DESCRIPTION: CERTIFIED DMV DRIVER LICENSE RECORDS OF DEFENDANT.
NO. 2 - DESCRIPTION: CERTIFIED DMV REGISTRATION RECORDS OF DEFENDANT.
NO. 3 - DESCRIPTION: CERTIFIED DOCUMENT FROM CALAVARAS COUNTY SUPERIOR COURT IN CASE 15CV4078.
NO. 4 - DESCRIPTION: CERTIFIED DOCUMENTS FROM EL DORADO COUNTY CASE S14CRM0465.
NO. 5 - DESCRIPTION: LICENSE PLATES #7BVB557.

At 2:47 p.m. Court Reconvenes.
All present as before.
Jury present in place.

At 2:48 p.m. -
Opening statements by Mr. Gomes for the People.

At 2:53 p.m. -
Opening statements by Ms. Miller for the Defense.

PEOPLE'S CASE IN CHIEF:

Case Number : S16CRM0096 People vs. TODD ROBBEN

At 2:54 p.m. -
People's Witness F.B.I. AGENT GLENN G. NORLING sworn and testifies.
Direct examination begins by Mr. Gomes.
Cross examination of witness by Ms. Miller.
Witness is thanked and excused.

At 3:01 p.m. -
People's Witness OFFICER CHRISTOPHER WEBBER sworn and testifies.
Direct examination begins by Mr. Gomes.
People's Exhibit NO. 5 (premarked) introduced.

At 3:12 p.m. -
Defendant is taken out of the Courtroom due to an outburst in Court.
Court directs the jury to disregard anything that was said during the outburst.

At 3:14 p.m. Court directs a recess.
Jury admonished and excused.

At 3:15 p.m. -
Outside presence of jurors on the record -.
Court and counsel confer RE: options as to continuing the jury trial.

At 3:36 p.m. -
Outside presence of jurors on the record -.
Court addresses the defendant and admonishes him as to any further outbursts.
Defendant addresses the Court as to his rights.

At 3:40 p.m. Court Reconvenes.
All present as before.
Jury present in place.

At 3:40 p.m. -
OFFICER CHRISTOPHER WEBBER previously sworn returns to the witness stand.
Direct examination continues.
Cross examination of witness by Ms. Miller.
Re-direct of witness by Mr. Gomes.
Witness is thanked and excused.

At 3:57 p.m. -
People's exhibit(s) NOS. 1 THRU 5 is/are Admitted into evidence.

At 3:57 p.m. -
The People Rest.

Case Number : S16CRM0096 People vs. TODD ROBBEN

Bench Conference Held/Reported 3:58.

At 4:01 p.m. Court adjourns for remainder of the day.
Jurors ordered to reconvene on 7/6/16 at 9:00 a.m.
Jury admonished and excused.

IN RE: PC 1538.5 MOTION

At 4:02 p.m. -
Outside presence of jurors on the record -.
The Court has read and considered 1538.5 PC Motion and
Peremptory Challenge
filed by the Defendant on 4/4/16.
Oral motion on behalf of the Defense regarding requesting the
Court preserve it's
ruling until tomorrow after the defendant
testifies.

COURT ORDERS:
Motion is GRANTED.

HEARING
Jury Trial (In Progress) to resume 07/06/2016, at 9:00, in
Dept. 2.

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.
Defendant is ORDERED to appear at the next hearing
Bail to remain as previously set.

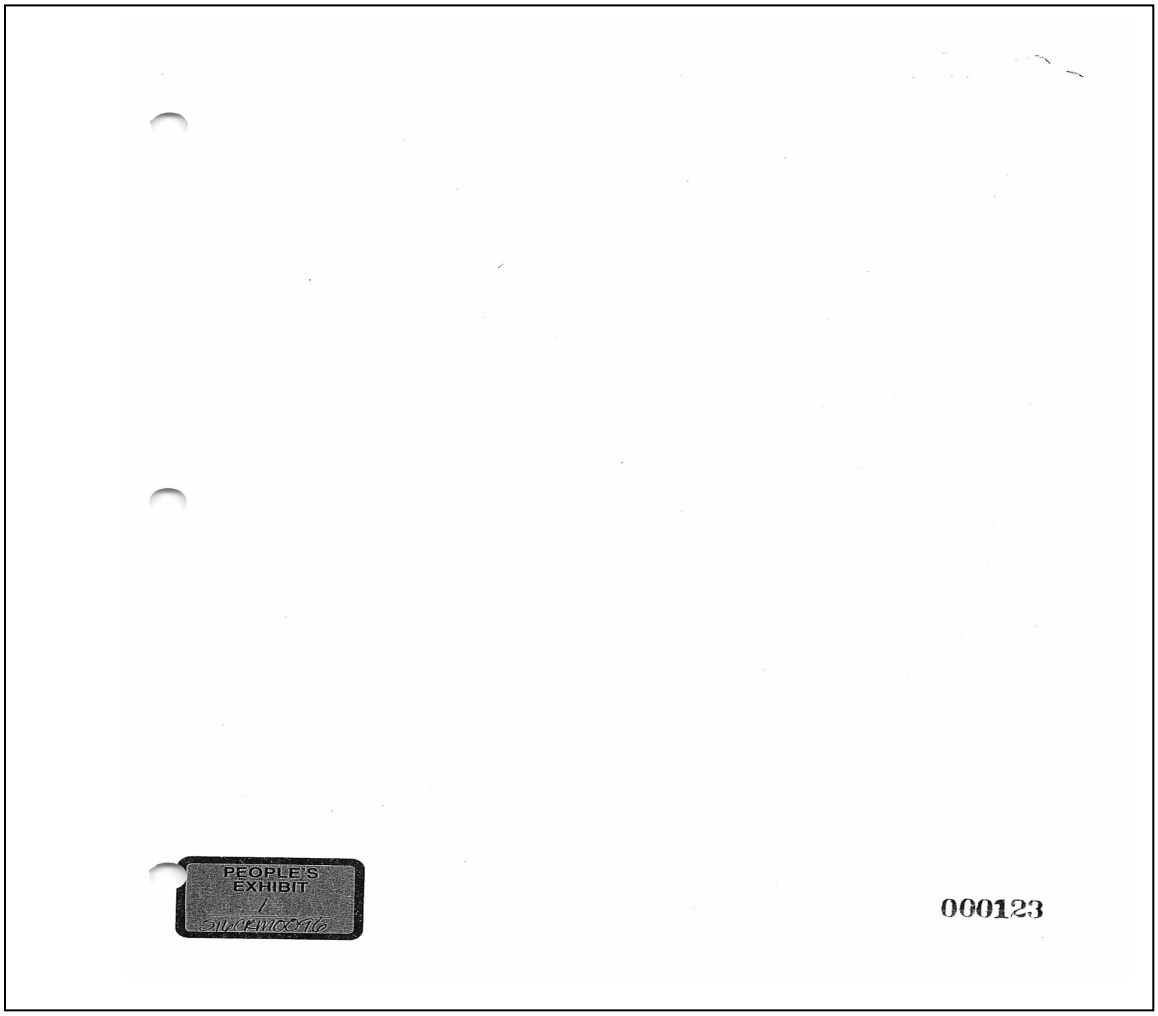
CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR
ACCT

==========MINUTE ORDER END==========

Dispo

DMV SUSPENSION WAS STAYED AND/OR ENDED

Ms. Miller also should have filed a motion to dismiss on VC 41401. Petitioner was immune from prosecution for all vehicle code violations and therefore he is actually innocent. Petitioner had no "actual knowledge" of the suspension(s) nor the expired registration as is shown in the record/transcripts and the police knew that. Missing from the record was the fat that the suspension was stayed pending the appeal process with DMV. **The <u>missing</u> DMV documents showed a start date of the stay and no end date.**



THE COURT: Thank you, Mr. Gomes.

Ms. Miller.

MS. MILLER: Thank you, Judge.

Mr. Gomes, would you be so kind --

MR. GOMES: I'll do whatever you need me to do.

MS. MILLER: -- to put it back on the exhibit section that you had there.

MR. GOMES: There you go.

MS. MILLER: Good afternoon, ladies and gentlemen. Thank you again for being here. We certainly do appreciate you taking the time to make this process work.

My closing is going to be relatively short. I'm going to use this exhibit that Mr. Gomes has. This is also an exhibit that's going to be in evidence, so it's something you'll get.

So we're here to determine whether or not Mr. Robben was driving on a suspended license. I think everything you need to know is right here. I'm going to tell you why.

So let's look at the first line up there where it says he was suspended on December 16th of 2014. There's something on that line I want you to take notice of. I think it's really important.

Right up there where it says "Suspended" and then it gives you two dates and then it gives you the code section, right after that it says something. I think it's kind of important. It says "END/STA." So that signifies that the suspension has either ended or is stayed. That's a big deal. That's exactly why we're here. That's exactly the argument

that Mr. Robben is making.

MR. GOMES: I'm going to object to counsel testifying, testifying inconsistent with the state of our evidence.

THE COURT: And I am not seeing this up close, so let me come around.

MR. GOMES: There's a copy of it right there, if you want the actual copy. It's Exhibit 1. It's the first page of Exhibit 1.

THE COURT: Okay. Okay. As we can see on the line, it says "END/STA." I don't know what that means. I would imagine counsel can argue reasonable inferences, but we don't have any testimony as to what that means. Okay?

MS. MILLER: So I'll let you make your own decision about that, but to me that's pretty clear. So let's look at the next line which then says that -- that notice of suspension was mailed, and it was not returned unclaimed, but there's no evidence that Mr. Robben actually ever got that notice.

Now, this first suspension is an administrative suspension, and that's the one that deals with the second count, which is that he was driving with a blood alcohol of .08 or greater.

And in that suspension, that's something that Mr. Robben has to get notice of, because the only way he knows that there's a suspension is if he gets notice from DMV that there's a suspension. So I think there's two issues on that first suspension that you need to look at.

On the second suspension, this is regarding whether or

not he's got a prior conviction. Now, there was another document that was introduced into evidence that you'll get a chance to take a look at that is a court record regarding the conviction. I want you to look through that document very carefully because there is nowhere in that document -- there's nothing in any single one of those pages that says that Mr. Robben's privilege to drive is suspended. There's nothing in there, because the Court doesn't have the authority to suspend your license. Only the DMV does. And so there is nothing within that document -- you won't see anything in there saying that his license was suspended. So take a look at that.

So how did Mr. Robben know that his license was suspended? The only way he knows is if he gets some notification, right? So here we have clearly that notice was mailed, but it was returned unclaimed and that verbal or personal service is needed.

So why would Mr. Robben say that allegedly his license was suspended? Well, clearly, he was appealing an issue with DMV. But he didn't have good actual notice. And without good actual notice, how do you prove knowledge? I think that's a big problem.

And then we can talk a little bit about this issue of Mr. Robben believing that this is all a conspiracy. Well, we may not believe to the degree that Mr. Robben does, but, clearly, there is some evidence that there's something going on if you have an FBI agent who gets up here and testifies "I got a call from the court. I left my office, and I went to

drive around and find him," looking for him to get this to happen, and then him talking to the 911 dispatch operator, saying "Hey, I know he's not been served correctly, but you might want to arrest him on this."

It might make anybody feel a little bit like a conspiracy here. So there is some evidence to back that up.

Now, the final issue that we have in this case is Count 3, which is the issue of the license plate. And I think that the D.A. meets the first prong -- the first element of that, that it was on the vehicle while Mr. Robben was driving it. I think they've proved that.

But the second part I think is a little more difficult, because the D.A. has to prove that Mr. Robben had actual knowledge that it was on there. This is a specific intent crime. He has to prove a mental state. He has to prove that Mr. Robben had knowledge.

And I think there's speculation. I think that you can guess. But I don't think that there has been proof beyond a reasonable doubt that Mr. Robben has actual knowledge of that. And I think without that, you can't meet that element. So if you can't meet that element, you can't convict him of a crime.

That's what we talked about earlier when we talked about reasonable doubt. This isn't a 50-50. This isn't even clear and convincing. This has to be beyond a reasonable doubt, and there can't be any other reasonable explanation. So if there's any other reasonable explanation, then you can't convict Mr. Robben of the charge.

The “definite” suspensions were set for a period of time of 4 months and apparently 6 months. There was a start date and an end date which had come and gone by the time Petitioner was arrested on March 11, 2016. Petitioner asserts, if anything, his license was not “suspended” …it was in “limbo” since the expiration date of the suspension had ended. As noted in the “Motions for Limine”, Petitioner had a right to travel and no license was required since he was not for hire.

The best the police could have done was inform the Petitioner of the suspension and expired registration and false tag. This would have been a simple fix it ticket situation rather than an illegal arrest and seizure of the automobile.

The following transcripts of case # S16CRM0096 are profound. Here, the FBI knew Petitioner was in Federal Court in Reno, NV as a Plaintiff in the civil rights lawsuit against Carson City et al which includes Judge John Taro. The Federal Court and FBI conspired with the South Lake Tahoe police to entrap this Petitioner when they know Petitioner had not been served notice of the suspension or registration issues.

can talk for a minute, and then I'll come back in. Okay?

THE DEFENDANT: That's fine.

THE COURT: I'll give you just a couple of minutes.

(Court was in recess from 2:24 p.m. until 2:30 p.m.)

---oOo---

THE COURT: All right. We're back on the record.

And so, Ms. Miller, you've had a few minutes to speak with Mr. Robben, and I grabbed another volume of the file so that I could go back through it.

So what -- on the motion to dismiss for lack of speedy trial?

MS. MILLER: Judge, it's still just our position that the case has not been tried in a timely manner. We're now past 90 days since the original arraignment. I understand there is some tolling between judges when there are 170.6 motions being heard.

However, I think the issue that Mr. Robben is trying to address is the fact that there was about a 25-day time period between when this case was transferred down to Judge Wagoner and then retransferred up to South Lake Tahoe in front of Judge Bailey, and so that was no fault of his own. And as a result, his failure to appear wasn't willful. He just wasn't agreeing to the continued personal jurisdiction.

THE COURT: All right. And I have gone through this to see. It does appear that there were successive 170.6s and actual challenges for cause on others and that those did cause delays, and those were exercised by the Defense rather

than by the People.

And then, also, Judge Baysinger was assigned, ruled on some motions, and then subsequently there was a motion to have him removed from the case. That was ultimately denied by Judge Jones. I'm assuming from -- I think I saw that Judge Jones was also an assigned judge in that matter. And I don't know any of those individuals, so I can't speak to them. I'm just going on the court record.

So the prior decision on the motion to dismiss for lack of speedy trial is denied. I've looked at it again. And it appears, based on the history of the recusal motions and the time periods involved, that those account for the delays. So the Court will deny that.

Then we have two, which is a motion to suppress, and I believe counsel have conferred and decided that on that, that you wanted to have that heard concurrent with the trial in this case; is that correct?

MS. MILLER: And we don't have any objection to that, Judge, as long as the matter gets heard and that we can address that after the People rest.

THE COURT: Okay. And then on 3, on the judicial notice, it's my understanding the People were going to submit on that; is that correct?

MR. GOMES: Yes. Absolutely.

THE COURT: All right. And so on judicial notice, that motion is granted.

There's a district attorney's office recusal motion. All right. And let me take just one moment.

recess for five minutes.

MR. GOMES: Thank you.

THE COURT: Thank you.

(END OF PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

* * * * *

(People's Exhibit 1, Certified DMV Driver's License Records of Defendant, was marked for identification.)

(People's Exhibit 2, Certified DMV Registration Records of Defendant, was marked for identification.)

(People's Exhibit 3, Certified Document from Calavaras County Superior Court in Case 15CV4078, was marked for identification.)

(People's Exhibit 4, Certified Documents from El Dorado County Case S14CRM0465, was marked for identification.)

(People's Exhibit 5, License Plates Number 7BVB557, was marked for identification.)

(Court was in recess from 2:37 p.m. until 2:44 p.m.)

---oOo---

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right. We're back on the record.

Mr. Robben is present. Both counsel.

Are we ready for the jury?

MR. GOMES: Maybe give counsel one minute. She was distracted --

THE COURT: Okay.

MR. GOMES: -- and I was showing one other document that

TESTIMONY OF

GLENN G. NORLING,

a witness called by the People, was sworn and testifies as follows:

DIRECT EXAMINATION

BY MR. GOMES:

Q. And good afternoon, sir.

A. Good afternoon.

Q. First of all, can you tell us what you do for a living.

A. Yes. I'm an FBI agent.

Q. And how long have you been an agent for the Federal Bureau of Investigation?

A. I have been an agent for 16 years.

Q. Do you know a person named Todd Robben?

A. Yes, I do.

Q. And do you see that person in this courtroom today?

A. Yes, I do.

Q. Can you point to him and identify a unique article of clothing he's wearing, sir.

A. He's seated right here with a striped shirt and a blue tie.

THE COURT: All right. Indicating Mr. Robben, for the record.

MR. GOMES: Thank you, Your Honor.

Q. (BY MR. GOMES) I'm going to take you back to late March. And, honestly, the date escapes me as I stand here.

THE COURT: It was March 21st.

MR. GOMES: Thank you.

Q. (BY MR. GOMES) March 21st of 2016, did you have occasion to see Mr. Todd Robben driving down the roadway on that day?
A. Yes, I did.
Q. And where were you when you saw him?
A. I had just left my office in the Stateline area.
Q. Of South Lake Tahoe?
A. Yes.
Q. And what vehicle was he driving?
A. He was driving a Subaru.
Q. And did you recognize him by sight?
A. Yes, I did.
Q. And at that point when you saw Mr. Robben driving down the road, did you have any sense or knowledge of the status of his California driver's license?
A. At that point, yes, I did.
Q. What did you believe about his license at that point?
A. I understood that his license had been suspended and he should not be driving.
Q. So seeing him drive down the road and believing that he had a suspended license, what steps did you take?
A. At that point I contacted the South Lake Tahoe Police Department, informed them that I observed Mr. Robben driving while suspended in the -- in Nevada at that point. And then when he crossed into California, I advised them again where he was and he had crossed into the California line. He was driving a California-plated vehicle at the time.
Q. So when I was a kid, there was a saying "Let's not make

a federal case out of it." It kind of applies here, I guess. Driving on a suspended license is not a federal crime?

A. It is not.

Q. Not one of those things that the FBI makes arrests for and indicts people for?

A. Correct.

Q. So you called South Lake Tahoe Police Department, turned it over to them.

A. Yes.

Q. Did you have any more role in this case or investigation other than that?

A. No.

MR. GOMES: Thank you, sir.

Nothing further.

THE COURT: All right. Cross-examination, Ms. Miller.

CROSS-EXAMINATION

BY MS. MILLER:

Q. Good afternoon, Officer.

A. Good afternoon.

Q. You've testified that you initially observed Mr. Robben leaving your office -- is your office located in Nevada or in California?

A. Our office is located in Nevada.

Q. Okay. And had you been at your office prior to observing him?

A. Yes.

Q. And you weren't anywhere else, at the courthouse or anything like that; is that correct?

A. That is correct.
Q. And so your testimony is that this was purely fortuitous that you left your office and happened to observe him on the roadway?
MR. GOMES: Objection. That misstates the witness's testimony.
THE COURT: Sustained.
You can rephrase.
Q. (BY MS. MILLER) So when you -- do you remember what time it was that you left your office?
A. No, I do not recall.
Q. Okay. Do you remember what time you observed Mr. Robben?
A. Off the top of my head, no, I do not.
Q. Okay. And approximately how long, though, was it from when you left your office until when you observed Mr. Robben?
A. Probably within 30 minutes.
Q. Okay. And how far is your office from Stateline?
A. Roughly one mile.
Q. Okay. So within 30 minutes of leaving your office, with the state line being within one mile, you saw Mr. Robben?
A. That is correct.
Q. And you said that -- which way were you driving?
A. I observed Mr. Robben when I was driving into Nevada and also coming back into California, so both directions on 50.
Q. On two different occasions?
A. Correct.
Q. Now, was he driving away from you or towards you the

first time you saw him?
A. The first time I saw him, he was driving away from me.
Q. Okay. That was you driving into California?
A. No. I was driving further into Nevada.
Q. I see. Okay. So you were driving further into Nevada, and he was driving towards the California border; is that correct?
A. Correct.
Q. And then at some point you turned around --
A. Correct.
Q. -- is that correct?
And then you observed him driving into California; is that correct?
A. Yes.
Q. And where were you -- were you headed -- where were you headed when you were leaving your office?
A. I was headed out to look for Mr. Robben.
Q. Okay. So you were -- this was not by chance. You were specifically looking for Mr. Robben.
A. Correct.
MR. GOMES: Objection, Your Honor. Relevance.
THE COURT: Overruled. The answer will remain.
Q. (BY MS. MILLER) And so then when you observed him the first time, is that when you called the police department?
A. I had spoken to the police department prior to that.
Q. Okay. So you had spoken with the police department even prior to observing Mr. Robben?
A. Correct.

Q. And what was the purpose of that?
A. It was to inform them that someone driving with a suspended license might be headed into California --
Q. And how would you have -- I'm sorry. Go ahead.
A. -- rather than calling them to make it an urgent matter.
Q. How would you have knowledge of that if you hadn't even seen him on the road?
A. I had been informed by our Reno office that he had attended court in Reno and a local police officer had informed them that his license was suspended and he should not be driving.
Q. So you received a call from someone else advising you, and then you left your office in an attempt to look for him; is that correct?
A. Correct.
Q. But this is not a federal issue, not something the feds regularly prosecute?
A. That is correct.
Q. So you were just doing your good citizen duty; is that right?
A. Yes.
Q. And did you make contact with Mr. Robben at all?
A. No, I did not.
Q. Okay. And so once you saw him driving towards California and you had contacted the police department, did you do anything else?
A. No.
Q. And did that end your involvement with this particular

issue?
A. Yes.
MS. MILLER: Okay. That's all the questions I have.
THE COURT: Thank you.
Any redirect?
MR. GOMES: No, Your Honor. Thank you.
THE COURT: May the witness be excused?
MR. GOMES: Yes.
MS. MILLER: Yes.
THE COURT: All right. Thank you very much.
THE WITNESS: Thank you, Your Honor.
THE COURT: You are excused.
The People may call their next witness.
MR. GOMES: Thank you, Your Honor. The People call Officer Chris Webber.
THE CLERK: Do you solemnly state under penalty of perjury the evidence you shall give in this issue or matter will be the truth, the whole truth, and nothing but the truth?
THE WITNESS: I do.
THE CLERK: Please take a seat and state for the record your full name, spelling your last name, please.
THE WITNESS: I'm Officer Christopher Webber, Badge Number 193. Webber is W-e-b-b-e-r.
THE COURT: Thank you. And standard spelling on Christopher?
THE WITNESS: Yes.
THE COURT: Thank you.

You may proceed, Mr. Gomes.

MR. GOMES: Thank you, Your Honor.

TESTIMONY OF

CHRISTOPHER WEBBER,

a witness called by the People, was sworn and testifies as follows:

DIRECT EXAMINATION

BY MR. GOMES:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Are you a sworn peace officer for the City of South Lake Tahoe?

A. Yes, I am.

Q. How long have you been a sworn peace officer?

A. I've been a police officer for a little over eight years.

Q. And all that time for the City of South Lake Tahoe?

A. Yes. A short time with San Jose Police Department as well.

Q. All right. Going back to March 21st of this year, what were your responsibilities that day?

A. Routine patrol.

Q. What does that mean? Police officer --

A. Full uniform, driving a marked police vehicle.

Q. And looking for or doing what?

A. Just any kind -- answering any kind of calls for service, looking for traffic violators.

Q. Could be just about anything, I take it.

A. Could be anything, yes, sir.
Q. And on this particular day, did you receive a call from your dispatch alerting you of a suspected driver who was driving on a suspended license?
A. Yes, I did.
Q. Tell us exactly what information you received from dispatch.
A. I received information about a BOLO, which is be on the lookout, for a driver that was driving on a suspended license. The information that was sent to our dispatch was that Special Agent Norling had observed Todd Robben driving on a suspended driver's license.
Q. And where were you when you received this information?
A. I think I was in the midtown area at the time.
Q. Okay. What is midtown? Give us kind of a context, some kind of picture where that is.
A. Probably like in the Ski Run area. It's near Lake Tahoe Boulevard. It's kind of a center point in town.
Q. Okay. And I guess, as you describe the center point of South Lake Tahoe, I'm picturing the Y at Highway 50 and Stateline --
A. Yes.
Q. -- as being your end points?
A. Yes.
Q. So kind of halfway between?
A. Yeah, it was kind of like halfway in between.
Q. All right. And so you received this information via your radio. Did you know a person named Todd Robben at that

time?
A. Yes, I did.
Q. And if you were to see that person on that day, would you have recognized him?
A. Yes.
Q. How about if you were to see him again?
A. Yes.
Q. Do you see him in this courtroom?
A. I sure do.
Q. Could you point to him and identify a unique article of clothing he's wearing.
A. The striped shirt, right here, with the thin tie.
THE COURT: All right. Indicating Mr. Robben for the record.
MR. GOMES: Thank you, Your Honor.
Q. (BY MR. GOMES) So after receiving this information, tell us what you did.
A. I responded over to the Stateline area, because Special Agent Norling got on the police radio channel and was giving us an update of his current location at the time.
Q. And so I take it the directions you were given led you towards Stateline.
A. Yes, sir.
Q. All right. Tell us what you saw.
A. He -- Special Agent Norling was advising that he was headed -- he was still in Douglas County, but he was heading toward the city -- city limits and that he was coming down Lower Loop on Lake Parkway.

Q. So did you position yourself in some way as to intercept the apparent path of travel?
A. Yes, I did.
Q. Where did you put yourself?
A. I was driving northbound on Stateline Avenue towards Lower Loop on Lake Parkway, where he was coming down, which ends up turning into Pine Boulevard.
Q. And is that in the city of South Lake Tahoe and in the state of California?
A. Yes, it is.
Q. All right. Tell us what you saw.
A. I observed a -- a white Subaru matching the description that Special Agent Norling gave our dispatch.
Q. And what exactly was the description? What were you looking for?
A. It was a white-colored Subaru station wagon. Dispatch had a plate for it. Dispatch also advised me that the plates were expired.
Q. All right. So you saw a white Subaru that looked similar to what you had been told to be on the lookout for?
A. Yes.
Q. What did you do at that point?
A. I conducted a traffic enforcement stop.
Q. Okay. Before conducting that traffic enforcement stop, could you see how many occupants were in the vehicle?
A. I couldn't at the time, no.
Q. Did you have any visual on the driver himself?
A. No. Just -- I was at one -- I was at one stop sign, and

he was at the other. I couldn't really see up close.
Q. So you had a matching vehicle make and model, and the license plate you were provided matched as well?
A. As soon as I was able to catch up to the vehicle, I noticed that the plate matched.
Q. All right.
A. And that's why I conducted the traffic enforcement stop.
Q. How exactly did you effect this traffic enforcement stop?
A. I turned left onto Pine Boulevard, and I followed him down Pine Boulevard westbound.
Q. Okay. Did you do something to get his attention?
A. Yes. I activated my overhead emergency red lights.
Q. Any siren?
A. I can't recall if I had the siren. Maybe.
Q. Maybe. Maybe not.
A. Sometimes I do. Sometimes I don't.
Q. Okay. But you at least turned on those red lights?
A. Yes.
Q. Did the driver of that white Subaru seem to respond to your attempt to effect the traffic stop?
A. Yes, he did.
Q. How did he respond?
A. He slowed down abruptly and darted into a parking lot and pulled immediately into a parking stall, at which time I saw the door slightly open and the window start rolling up.
Q. What did you do at that point?
A. I immediately got out of my car, gave him commands. And

the reason why I do that is because a lot of times in law enforcement, when somebody does that, they're getting ready to flee or take off from us.

Q. So I take it that this, at this point, is run-of-the-mill procedure for any traffic stop.

A. Yes.

Q. If you pulled me over and I quickly opened up my door, would you tell me to close my door and stop?

A. Yeah. Or get back into the car.

Q. So it didn't have anything to do with Mr. Robben.

A. Yes.

Q. Did he comply with your commands?

A. Yes, he did.

Q. And tell us what happened next.

A. I walked up to the driver's side window, made contact with him, and I saw him sitting in the driver's seat of the vehicle.

Q. Did you tell him why you stopped him?

A. I don't recall if I did at that time.

Q. Okay. What did you do? Tell us how this went.

A. Well, as soon as I saw him, I immediately recognized him as Todd Robben. And based off the information I was given from my dispatch and knowing -- knowing Mr. Robben from my prior history, knowing him with being uncooperative with law enforcement and I was the only officer on the scene, I detained him in handcuffs at that time.

Q. Okay. So you detained Mr. Robben on suspicion of what?

A. On suspicion that he was driving on a suspended license.

Q. Okay. And so now that you've got him detained, how does your investigation, if you will, progress?
A. I ended up talking to him about his license.
Q. Okay. So you had a conversation with him about the status of his driver's license?
A. Yes.
Q. Okay. Before you even got that far, did you ask him to produce one?
A. I did ask him if he had a driver's license.
Q. And what did he produce for you when you asked for his California driver's license?
A. I recall that he didn't have one. He didn't have it with him.
Q. No driver's license.
A. No, sir.
Q. Okay. So did you then proceed to have a conversation with him about the status of his California driver's license?
A. Yes, sir.
Q. Tell us about that conversation.
MS. MILLER: Objection.
THE COURT: Grounds? Legal grounds?
MS. MILLER: Miranda and hearsay and --
THE COURT: All right. Overruled on Miranda and investigative and also overruled on hearsay.
You may proceed.
Q. (BY MR. GOMES) Tell us about that conversation, Officer.
A. Mr. Robben told me that -- that his -- his license was

allegedly suspended for DUI.
Q. Let me stop you right there. You used finger air quotes when you said the word "allegedly."
A. Yeah.
Q. Did Mr. Robben use the word "allegedly"?
A. He did. I remember him using the word "allegedly."
Q. And did he use the finger quotes?
A. No, he did not.
Q. Okay. So that was your --
A. That was just me.
Q. -- editorializing a little bit?
A. That was just me, because he said -- he said the word "allegedly."
Q. Okay. So he told you his driver's license was allegedly suspended. What -- how did the conversation go from there?
A. I don't remember too much more of a conversation after that. I just know that he was -- he wanted to know why he was stopped. He wanted to know the probable cause for the stop. I recall all that.
Q. Did you give him any replies or responses to his inquiries in that regard?
A. I know that we had a little more of a conversation. I don't recall the entire conversation, no.
Q. Okay. So he told you that his driver's license was allegedly suspended.
A. Yeah.
Q. What did you do from there?
A. At which point Officer Spaeth arrived on the scene, and

then I began issuing him a citation for driving on a suspended license.
Q. And Officer Spaeth is just a backup officer?
A. Yes.
Q. And you say you issued him a citation. Did you place the Defendant under arrest?
A. It was a citation arrest and release. So I ended up releasing him at the scene after arresting him.
Q. Okay. You could have placed him under arrest.
A. Yes, I could have.
Q. Why didn't you?
A. Kind of one of those things where -- you know, in that situation, we impounded his car. He ended up telling me -- I do recall one thing. He did tell me that he was living out of his car, and I already know he was kind of having hard times as it is. I didn't want to arrest somebody in that situation.
Q. You were just being nice?
A. Yeah.
Q. You'll give police officers a bad name if they find out you've done a nice thing.
A. Well, you know, one thing police officers are allowed we're allowed discretion, you know. I mean, you don't always have to take everyone to jail.
Q. And in this particular occasion, you cut Mr. Robben a break and you just gave him a ticket.
A. I gave him a ticket.
Q. Tantamount to a speeding ticket.

A. Yes.
Q. All right. In the process of impounding his vehicle, did you document the details about the vehicle?
A. Yes, sir.
Q. Did that include the vehicle's VIN number?
A. Yes.
Q. The vehicle's license plate number?
A. Yes.
Q. And the vehicle's registration status?
A. Yes. And that was all done by Officer Spaeth who ended up completing the CHP 180 form.
Q. And that's just paperwork you do when you impound a vehicle?
A. Yeah. It's a standard form that we use to impound a vehicle.
Q. After Officer Spaeth went through the paperwork process of conducting this impound, did he direct your attention to the vehicle's license plates?
A. Yes, he did.
MR. GOMES: All right. I'm going to refer the Court and counsel to what's been previously marked as People's Exhibit 5 for identification.
Showing Ms. Miller Number 5.
May I approach, Your Honor?
THE COURT: You may.
Q. (BY MR. GOMES) Officer Webber, take a look. Tell me if you recognize this.
THE DEFENDANT: Look, this trial, folks, is --

THE BAILIFF: Stop.

THE DEFENDANT: -- a sham.

THE BAILIFF: Stop.

THE COURT: Mr. Robben --

THE DEFENDANT: This is a sham trial.

THE BAILIFF: Stop.

THE DEFENDANT: This is a sham. They're not showing you the evidence. They're preventing me from evidence.

THE COURT: Mr. Robben --

THE DEFENDANT: I got this attorney on Friday.

THE BAILIFF: Stop.

THE DEFENDANT: No way.

THE COURT: Okay. Mr. Robben --

THE DEFENDANT: No way. I represented myself. This whole thing is a sham. This lawyer was appointed. The whole thing is a sham.

THE COURT: Mr. Robben, I'm going to ask you to leave the courtroom. I'm going to ask you to leave the courtroom.

THE DEFENDANT: I wasn't given my suppression hearing. No way. No way.

THE COURT: Leave the courtroom.

THE DEFENDANT: No way. This is a sham, kangaroo court. Listen to the recording. Come on, man. I wasn't served. I was never served notice.

(The Defendant left the courtroom.)

THE COURT: All right. Ladies and gentlemen, I'm going to ask you to disregard that outburst. As you can imagine, frequently when somebody is charged with a matter, they can

react emotionally to it. And so you're to disregard any impact of -- what he says is not evidence. You're to disregard it entirely.

I'm going to give him a couple minutes to see if he wants to calm down and return. So I'm going to take about a -- we'll take a break for about 15 minutes.

And I don't know, Deputy. Do you want the jurors in the jury room while we take a break? Would that be easier? Or out in the hallway?

THE BAILIFF: They're welcome to be in there or out and about.

THE COURT: But you're not to discuss the case. Would you prefer to go into the jury room? I want to sort of have a general, either people going into the jury room and hanging out and not discussing the case or going and walking around. Who votes for jury room?

SOME JURORS: Jury room.

THE COURT: Jury room?

Okay. So leave your notebooks on your seats, covered. And you're not to discuss the case at all. But the alternates will go in as well. Okay? Thank you very much.

(Court was in recess from 3:14 p.m. until 3:36 p.m.)

---oOo---

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right. We're back on the record outside the presence of the jury.

that.

THE DEFENDANT: I told her I want to testify. I've got a lot to say about this, ma'am.

THE COURT: Okay. All right. So we'll know that you're going to be ready for that. I'm not going to say anything to the jury. Sometimes people will change their minds for whatever reason.

But I just want to let you know that I'd like to have you here. I said to the jurors after you left that they should disregard what took place, that clearly this is upsetting to you, but that they're to rely on the evidence. So you'll have a chance to present evidence, if that's what you want to do. Okay?

THE DEFENDANT: Uh-huh.

THE COURT: And if there's an outburst, then Deputy Crawford is just instructed to take you out. You know what the options are. Okay? Just so you know.

THE DEFENDANT: I just -- I just wanted -- I was assigned this attorney two hours before this whole trial on late Friday.

THE COURT: Okay.

THE DEFENDANT: Okay. With every judge being recused, I didn't know about all this stuff, and I had my suppression thing, and I've got things pending and everything. And all the series of decisions that have gone in this court -- and my DUI thing is still on appeal.

And every judge that has been recused decided the appeal, and they had to make up the argument for the D.A.

because the D.A. turned in three pages. So it's called a sua sponte decision where they make up a decision that was never argued.

And, look, I write a blog. I study the corruption.

THE COURT: That's a separate --

THE DEFENDANT: Enough is enough.

THE BAILIFF: She cut you off.

THE DEFENDANT: Okay. There's been a lot --

THE COURT: Okay. And I understand your, you know, enough is enough. I get that. But we're going to go through this, and you'll have your chance to present evidence. And I just want you to be clear on that.

All right. With that, we will call for the jury.

(END OF PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

* * * * *

(The jury returned to the courtroom.)

THE COURT: All right. We're back on the record.

All jurors are present. Both counsel. Mr. Robben.

And, Mr. Gomes, you may continue with your direct. I think you had Exhibit -- was it 5?

THE CLERK: Correct.

MR. GOMES: I think it's Exhibit 5.

Q. (BY MR. GOMES) And I think we left off with, Officer Webber, you had taken a look at those. Do you recognize those?

A. Yes, I do.

Q. What do you recognize those to be?

A. These are the license plates off of the Subaru that

Mr. Robben was driving.
Q. All right. And the license plates themselves, ultimately during the course of your investigation, did you remove them from the vehicle and book them into evidence?
A. Officer Spaeth did.
Q. All right. Is that -- is that normal in a 14601.1 case? Do you always take the license plates?
A. No.
Q. Well, why did you do it in this case?
A. Because Officer Spaeth directed my attention to the registration tab on this driver's license -- the rear license plate -- I'm sorry -- rear license plate.
Q. Okay. And what about that tab was significant to you and Officer Spaeth?
A. It was colored red. However, if you look close enough, it is a yellow 2015 registration tab.
Q. Okay. So let's talk about these -- these stickers. When you're out on routine patrol in the city of South Lake Tahoe, are you examining license plates and registration stickers?
A. Yes, sir.
Q. What for?
A. To see if they're current.
Q. And if somebody is driving around with a vehicle that does not have a current sticker, what will you do?
A. Typically make a traffic enforcement stop.
Q. Write them a ticket?
A. Sometimes.

Q. Okay. Not always?
A. Use my discretion.
Q. Okay. Sometimes you're Mr. Nice Guy.
A. Sometimes.
Q. Okay. So in this case -- actually, let's back up a half a step.
On these registration stickers, are they uniquely identifiable by year so that when you're driving around, looking at these stickers, you can quickly identify whether or not it's the current year or some prior year?
A. Yes.
Q. How so?
A. By the color.
Q. And so each individual year on some type of cycle, I take it, has its own unique identifying color.
A. Yes.
Q. And for 2016 registration stickers that are current right now, or maybe are going to expire later on in this year, what color is the sticker?
A. The color is red.
Q. Red, just like the one that we see there --
A. Yes.
Q. -- on Exhibit Number 5.
A. Yes, sir.
Q. In 2015 what color were those stickers?
A. Yellow.
Q. Yellow. Okay.
And the year itself is also prominently displayed on

those stickers, so even if you can't see it from your patrol car, once you get up close, you can just read the year, if you need to.

A. Yes.

Q. And does that particular sticker have a year on it?

A. It does.

Q. Is it 2016?

A. No.

Q. So it's what year?

A. It's 2015. However, if you look at it closely, the 15 looks like it's trying to resemble a 6.

Q. In other words, you examined this and determined that there was more than one way that this sticker had been modified from its original existence?

A. Yes.

Q. And the first way being that it was colored red.

A. It was colored red.

Q. Pretty fancy coloring job, if I do say so myself.

And then also the 6 was modified or attempted to be modified.

A. Yeah, the 5 is modified to be a 6.

Q. To be a 6. Okay.

All right. So based upon the manipulation of the registration stickers, you seized the license plates as well.

A. Yes, we did, sir.

Q. At that point you sent Mr. Robben on his way, gave him a break, and went about your business?

A. Yes, sir.

MR. GOMES: Okay. Officer Webber, thank you very much. Nothing further, Your Honor.

THE COURT: All right. Cross-examination, Ms. Miller.

MS. MILLER: Yes, Judge. Thank you.

CROSS-EXAMINATION

BY MS. MILLER:

Q. Good afternoon, Officer.

A. Good afternoon.

Q. You testified that you were notified by dispatch that there was a call that Mr. Robben was driving on a suspended license; is that correct?

A. Yes.

Q. Did dispatch also notify you that Mr. Robben had not been properly served with the suspension notice?

A. I don't recall. I recall that dispatch said that he had a suspended driver's license.

Q. Would looking at the dispatch notes refresh your recollection?

A. Sure.

MS. MILLER: Judge, can I approach?

THE COURT: Yes.

Q. (BY MS. MILLER) Officer, if you would take a look at what's on the screen.

A. Okay. So the call notes -- I'm going to read them here. "Expired reg. Suspended DL with services needed."

Q. Thank you.

So does that refresh your recollection?

A. Yes, it does.

Q. And so did dispatch advise that you that Mr. Robben had not been properly served?
A. He had not been served, no.
Q. And so based on that information, that would have told you that Mr. Robben had not received the proper paperwork to tell him that his license was suspended; is that right?
A. No. He did not receive the proper paperwork.
Q. And in that note that you read, it reads "Expired registration and suspended driver's license with services needed." Is that correct?
A. I'm sorry. Repeat that.
Q. "Expired registration and suspended license with services needed." Is that correct?
A. Yes.
Q. So service with regard to both the license and the registration; is that correct?
A. I think that's only for the driver's license.
Q. Only for the license?
A. As far as I know.
Q. Okay. So -- but you had that information prior to contacting Mr. Robben; is that correct?
A. Yeah. Uh-huh.
Q. Okay. And then at some point you made contact with Mr. Robben and discussed that issue with him; is that correct?
A. I sure did.
Q. Okay. And when you observed Mr. Robben, was he breaking any other Vehicle code?

A. No. He was stopped at the stop sign and came to a stop as soon as I, you know, activated my overhead emergency lights.
Q. So he was driving properly. He was driving the speed limit and compliant with your -- with your emergency signals.
A. Yes, other than opening up the door and rolling up the window. Other than that, I had no issue. But, like I said, with my prior history with him and I was the only officer on scene, I detained him in handcuffs because it was known that he was possibly driving on a suspended license.
Q. Okay. And had you actually ever met Mr. Robben prior to this incident?
A. I sure have.
Q. And when did that happen?
A. Multiple times.
Q. Did that involve -- I'm sorry.
So you had met him personally on other occasions.
A. I have, yes, on calls for service.
Q. Okay. So you recognized him by sight.
A. I recognized him as soon as I walked up to the driver's side door.
Q. Okay. Do you remember -- do you recall on what other occasions that you met him?
A. A couple different calls for service at his house. I think he lived on -- I want to say Kubel or one of the streets in the Sierra tract. A couple calls there.
One -- one regarding a case where it would involve Carson City Sheriff's Office, involving him and something

with a judge over in Carson City.
Q. Okay.
A. I contacted him then.
And then a few times outside the police department when he was staging a protest against law enforcement outside the police department-sheriff's office. I saw him then too.
Q. Okay.
A. So it's fair to say that myself and a lot of other police officers at the police department know Mr. Robben very well.
Q. Okay. And had those incidents happened within the last year?
A. No, not necessarily in the last year. This is over a couple years.
Q. Okay. Now, when you removed this license plate from the Subaru, did you talk to Mr. Robben about it?
A. I can't remember if I actually talked to him about it. I think it was Officer Spaeth that removed those plates.
Q. Okay.
A. I don't remember if it was myself that removed the plates.
Q. When you were made aware of the situation, did you talk to Mr. Robben about the license plate?
A. I don't really recall. I just recall talking about the driver's license -- his driver's license and -- and how he said his driver's license was allegedly suspended.
Q. Okay. So you don't recall having a conversation with him regarding the registration, just the driver's license.

A. Yeah. I don't really recall that, no.
Q. Okay. And the information that you had received, you testified that you were getting updates directly from Agent Norling; is that correct?
A. Yes.
Q. Okay. So you were getting information from dispatch as well as directly from Agent Norling, correct?
A. Yes.
Q. Okay. And at the time that you contacted him, did you serve him with any paperwork regarding his driver's license?
THE COURT: "He" being Mr. --
Q. (BY MS. MILLER) Did you serve Mr. Robben with any paperwork regarding his driver's license?
A. No, I did not, because he admitted to me that his driver's license was allegedly suspended.
Q. Okay. And why did he -- do you know why he told you it was allegedly suspended?
A. Because he said his DUI was on appeal, if I remember correctly.
Q. Okay. So you were aware that there was ongoing litigation regarding the issue of suspension?
A. That's what I assumed it to be when he said it was on appeal.
MS. MILLER: Okay.
If the Court could give me just a moment, Judge.
THE COURT: Certainly.
(Ms. Miller conferred with the Defendant.)
Q. (BY MS. MILLER) All right. So just to be clear,

Officer, at the time that you -- before you contacted him, you were aware that he had expired registration and his driver's license --

A. Yeah, my dispatch advised that, through Special Agent Norling, that he had expired -- expired registration and a suspended driver's license.

MS. MILLER: Okay. Thank you.

THE COURT: Any redirect?

MR. GOMES: Just very brief, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. GOMES:

Q. Officer Webber, just a couple clarifying questions about this service requirement from DMV.

The Department of Motor Vehicles has a system or a procedure, if you will, for providing service of things like driver's license suspensions and the like to people like Mr. Robben; is that fair to say?

A. Yes, I believe so. They have a -- there's a form. There's a DMV form. I think it's called 310 -- a 310 form.

Q. And that's a form that is one means of proving that somebody was given notice of their suspension.

A. Yes, sir.

Q. And that's a form that you would utilize if you were going to give somebody that notice.

A. Yes.

Q. The point of that is what? To prove that they knew, right?

A. Yeah. And to document it into the system, too, that

that person has been notified of their suspension on their driver's license.
Q. The point is somebody has to know. Before you can hold them accountable, they have to first know.
A. Yes.
Q. And the DMV will also send out certified mail notifications, trying to provide notice to individuals with a suspended driver's license; is that correct?
A. I believe so, yes. Yes.
Q. And sometimes that suffices to prove up a person who sometimes doesn't; is that fair to say?
A. Yeah. Fair to say.
Q. And the dispatch record that Ms. Miller showed you, I believe your words were -- suggested to you that he did not receive the proper paperwork, "he" being the Defendant, Mr. Robben?
A. I'm sorry. Go with your question again.
Q. Yeah. You used a phrase with Ms. Miller when she showed you the dispatch log. The dispatch log said something along the lines of "Driver's license suspended. Service needed."
A. "With services needed."
Q. "With services needed." And you suggested in your answer that that meant to you that he didn't receive the suspension paperwork.
A. Yes.
Q. But it doesn't exactly mean that, does it?
A. I mean, it really all depends. I mean, up until I actually talked to him, which at that point after I detained

him in handcuffs and I talked to him, he admitted that his driver's license was suspended, so he had knowledge of it.

Q. Okay. And so what the dispatch record is saying is that the DMV did not have proof --

A. Yes. I see what you're saying.

Q. -- that he received their notice.

A. Yes. So the DMV -- California DMV didn't have documentation saying that he had been served with his suspension.

Q. Okay. And once you returned that 310 form or he accepts the certified mail notification or any number of other ways that notification could be provided, then that same dispatch log would say what?

A. It would say -- it would typically say "Suspended driver's license with good service."

Q. Okay. And all that's saying is that DMV has evidence that he knows.

A. Yes.

MR. GOMES: Thank you, sir. Nothing further.

THE COURT: All right. Any further cross?

MS. MILLER: No.

THE COURT: All right. May the witness be excused?

MR. GOMES: Yes, Your Honor.

MS. MILLER: Yes.

THE COURT: All right. Thank you very much.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

And Mr. Gomes.

Any witnesses for the Defense?

MS. MILLER: No, Judge.

THE COURT: All right. And since this is a Defense motion. . .

(Ms. Miller conferred with the Defendant.)

THE COURT: A 1538.5 motion is only a motion to suppress search and seizure violations, lack of probable cause, that type of thing. So that's why we're here. And the law -- so on the 1538.5.

So, Ms. Nolan (sic), you don't have any additional witnesses on that?

MS. MILLER: Ms. Miller.

THE COURT: Ms. Miller.

MR. GOMES: Your Honor --

THE COURT: You've been called how many names today?

MR. GOMES: I would have no objection if the Defense prefers the Court to defer its ruling on the motion to suppress until after Mr. Robben testifies. If he wants to -- rather than to have him either forgo that opportunity for purposes of the hearing or testify twice, I'd be happy to just let the Court hear what he has to say in its totality and then rule on the motion to suppress after that, if you want.

(Ms. Miller conferred with the Defendant.)

THE COURT: What happens on a 1538.5 motion, should the Court grant it -- and you're probably familiar with all of that.

THE DEFENDANT: Really.

THE COURT: I'm sure you are. If the Court should grant it, then certain evidence would go out. I'm assuming that it would be your statement that Officer Webber testified to about "allegedly suspended" and also the license plate.

And so if -- as Mr. Gomes has suggested, if you wanted to make your testimony tomorrow during the course of that, I can still grant the 1538.5 if the Court determines that there's been a violation of the Fourth Amendment.

So that's something for you to consider so that you're not testifying twice about the same thing. Do you follow what I'm saying?

MR. GOMES: And, Your Honor, I think Mr. Robben is under the impression that the People were required to file some written opposition to his motion to suppress. That's one of his hang-ups which, as the Court knows, is not the case. We're under no obligation to respond in writing to his motion and can submit on the evidence as we have presented it.

THE COURT: That hasn't been raised to me, so I don't know.

MR. GOMES: I overheard him.

THE COURT: Oh, okay. Well, that -- obviously, no, you don't have to file written opposition, but. . .

THE DEFENDANT: I would just as soon testify now and get it over with.

THE COURT: Well, but see -- let's just play this out so that you understand. If the Court denies your motion, then we'd have trial. We'd continue with trial. And if you want to exercise your right to testify, then you're going to be

testifying about some of the same things. So you're doing it twice.

THE DEFENDANT: Right.

THE COURT: So it doesn't make a use of time -- an appropriate use of time. We have jury instructions to consider. And that's something we can do. But if your attorney is saying she's not calling you as a witness on the 1538.5 -- is that what you're saying?

MS. MILLER: Yes.

THE COURT: Okay. Then --

MS. MILLER: I'm not -- I'm not calling him separately. I'm willing to, as the district attorney has posited, to put the decision on the matter over until tomorrow after he has testified, though it is my intention and my strategy not to call him separately just for the purposes of the 1538.5 because of the fact we're in the middle of trial.

THE COURT: Okay. All right. So because a 1538.5 is a legal motion, then I think you have the right not to call him.

MS. MILLER: I do. And so I guess what I would request at this point is -- from my discussion with Mr. Robben, he does want to testify. So I am requesting that we put the issue of the 1538.5 decision over until tomorrow until after he testifies.

THE COURT: The Court will do that. It's a little unusual, but I'll be happy to do that to preserve the issue.

MS. MILLER: Thank you.

THE COURT: Because tentatively, on its face, we have

knowledge by law enforcement that there is a suspension and that there is a license plate that appears to be modified. So that would be -- for the low level of probable cause to stop and to explore further, then they would have it. So I think it's best to preserve the issue and hear from Mr. Robben.

Now -- and, Mr. Robben, I just want to make sure that it's on the record. You've indicated that you want to testify, but I need to make sure that if that happens, that you waive your right not to testify. Do you know that you have a right not to testify?

THE DEFENDANT: Right.

THE COURT: And no one can make you say anything against yourself. By testifying, you could be saying something against yourself because you may say things that tend to incriminate yourself.

THE DEFENDANT: I want to tell my side of the story here.

THE COURT: Pardon?

THE DEFENDANT: I do want to testify.

THE COURT: Okay. So do you waive your right not to testify, your right against self-incrimination?

THE DEFENDANT: Yes.

THE COURT: Okay. Counsel, join?

MS. MILLER: Yes.

THE COURT: Okay. That he understands in terms of the waiver.

MS. MILLER: Yes.

THE COURT: I understand it may or may not be a tactical decision on your point.

MS. MILLER: I don't think I have the right to keep him from testifying.

THE COURT: You don't. You don't. Definitely not. But I just wanted to make sure that that was clear.

Okay. Now, in terms of jury instructions, the People are required to present the jury instructions to the Court at the end of the People's case. And we're at the end of the People's case, so I expect those tomorrow morning at 8:30. Is that --

MR. GOMES: Yeah, that's fine. When you say present them, I just want to make sure that I present what you're expecting from me. Do you mean present my requested list of instructions or the jury instructions in their modified ready-to-read form?

THE COURT: The jury instructions in their modified ready-to-read form.

MR. GOMES: Okay.

THE COURT: Okay?

And, similarly, if the Defense believes that they're going to have any specials, then I would expect those to be on the ready-to-read form.

Again, we can modify anything. We have the instruction to the jurors that things may be crossed out, added, or deleted. So that issue is covered.

Will there be any other witnesses, other than Mr. Robben --

THE COURT: Thank you.

You may proceed.

MS. MILLER: Thank you, Your Honor.

TESTIMONY OF

TODD CHRISTIAN ROBBEN,

a witness called by the People, was sworn and testifies as follows:

DIRECT EXAMINATION

BY MS. MILLER:

Q. Mr. Robben, do you recall what you were doing on March 21st of 2016?

A. Yes, I do. I was --

Q. What were you doing?

A. -- called to the Reno Federal Courthouse in Nevada for a -- for a case that I have pending against Carson City. I'm actually the Plaintiff in a civil rights case.

THE COURT: Okay. So you need to wait for each question. Ms. Miller will -- realizing you probably aren't familiar with testifying, but she needs to ask a question, and then just answer that specific question, and then she'll ask a follow-up. Okay?

THE WITNESS: So I was called in to court by a judge. I was ordered into court. And I am the Plaintiff, not a Defendant, in that case.

Q. (BY MS. MILLER) Okay. So you were ordered to court in Reno; is that correct?

A. That's correct.

Q. Okay. And so where were you living at the time?

A. I live in Sonora, which is south of here --
Q. Okay.
A. -- by Yosemite.
Q. And what was the status of your -- what was your knowledge of the status of your license at the time?
A. The status -- my knowledge of the status was that the -- there was a charge for this DUI that was in 2014, and it -- by the way, that's still on appeal, even today.

In the process of that appeal, what happens is they -- it's called being stayed. So when you're appealing a conviction, the suspension -- which is -- is a civil matter through the DMV, the Department of Motor Vehicles -- is stayed, meaning it -- it doesn't take effect until the appeal is complete. And that appeal is actually still pending, too, and that's in the Third District Court of Appeal in Sacramento. Okay?

So my position was, being called into court on a court order by a judge, a federal judge, I had no way to get there. And the first suspension from the DMV --
Q. Mr. Robben?
A. -- was stayed other -- my impression was that it was stayed.

THE COURT: Okay. Just stop for a second, and then --
THE DEFENDANT: Go ahead.
THE COURT: -- Ms. Miller --
THE WITNESS: Go ahead.
THE COURT: -- will ask another question.
Q. (BY MS. MILLER) I'm going to stop you there.

A. Go ahead.
Q. So you -- your understanding of the status of your license was that it had been suspended, but because you were appealing the decision, that that suspension was stayed; is that right?
A. That's one part of it. The other part was that there's actually two suspensions, and I'm not here on the first suspension. I'm here on the second suspension, and I never received notice of that suspension.

And this is really the critical part. The first suspension was expired. That was from 2014. It would have been, at the most, I think a six-month suspension. So that time had come and gone.

I had done everything I can in these courts, including this court here that had stonewalled and slow-balled me to the point where it's still on appeal. This is a complete violation of my due process.

THE COURT: Okay. So stop for just a moment --

THE WITNESS: Okay.

THE COURT: -- so Ms. Miller can ask another question. Remember, she's going to ask a question. You answer only that question. And then she'll ask a follow-up. I know she has had a chance to talk to you and knows some of the things you want to say. Okay? Thank you.

Q. (BY MS. MILLER) Okay. So when you were going to drive to Reno, what was your understanding of your ability to do that? Do you believe that you were able to drive at that point?

A. Okay. My -- okay. The DUI had come, and it was going through the courts, being delayed and delayed and delayed, and it's still being delayed, actually.

So that suspension had -- had expired. That was my position. So I was ordered into court. There was no public transportation. There's no bus. I had to get there. I -- my position was that if it was suspended, the suspension period is over. Okay?

I'm being ordered into court. The court systems are not functioning and not giving me my due process. I'm doing everything I can as a citizen, legally. And what I actually did is I looked up the law.

And the United States Supreme Court has said that you don't need a driver's license and you also don't need registration or insurance if you are not for hire. In other words, if you're making tacos or burgers for a -- for a party or a Little League program or your church and feeding those other people, you don't need a license for that.

But if you open up a taco wagon or a barbecue pit down the street, you need a license for that. And the law says -- the United States Supreme Court -- and this is a fact -- you do not need a driver's license if you are not conducting a commercial for-hire business.

In other words, a taxi driver, an Uber driver, a bus driver, somebody who drives a Peterbilt truck, those people require licenses. And if you actually read the vehicle definition, the term -- I was a traveler. That is the term. Quote -- I'll do that. Quote, traveler as opposed to a

driver or an operator, and I was driving an automobile. Okay? Which is defined in the California Vehicle Code as a vehicle not for hire as opposed to a motor vehicle like a rig --

Q. Okay.

A. -- or Peterbilt for hire.

Q. Okay. So your understanding was that you were driving legally because you needed to get to court and you had no other way to get there; is that right?

A. I was doing everything I could in the courts to take care of the suspension, but the suspension had also ended. And I looked up the law, and I was ordered into court, and that's what -- and I had all the papers when Officer Webber pulled me over.

Q. Okay. So let's go through this a little slower, because I think there's some confusion. So your understanding was there was an initial suspension when you were arrested for the DUI, correct?

A. That is correct.

Q. And then at some point later, after you were convicted, there was a second suspension. And on that suspension, you were never served with any paperwork; is that right?

A. Technically, I was actually never served on the first suspension as well, and that's a part of the appeal is that the officer -- his name is -- what's his name? His name escapes me. He's not the officer that's here today.

The officer that cited me on the DUI never served me the notice, although he did mark, under the penalty of perjury,

that he did. So I was never served notice of the first suspension. But I caught wind of that, because I'm the kind of guy who looks up the law and realized I had ten days to file an appeal on that, and I did.

That suspension ended after six months. That was in 2014. This event happened way in the future, which would be March 21st. Okay?

But what happened, okay, is that in -- when -- okay. When you challenge a driving-under-the-influence conviction in court, if you are convicted, you get a second suspension. Normally, it would run concurrently, meaning they both run at the same time.

Since my cases were delayed excessively, the first suspension had run its course. Okay? So what happened is that the second suspension, which you're going to hear the audio here shortly, is I was never served notice of that suspension as well, and that is a fact. So I had no idea that I was served.

And the DMV had my address, because I've got a stack of litigation about that tall with my phone number and my address. That -- if they're going to try to say that it was my fault that they didn't have my address, that is not true, and --

Q. Okay.

A. -- they certainly had my phone number.

Q. So let me stop you real quick and let's go through this. So there was an initial suspension when you were arrested, and your testimony is that you weren't served with the proper

paperwork at that time, correct?
A. That is correct.
Q. And then there was a second suspension after the conviction, and your testimony is that you were not served with any paperwork regarding that suspension as well; is that correct?
A. That is correct. I was not served any paperwork on the second suspension. And I want to talk about the registration --
Q. Hold on. Hold on. We're not there yet.
A. -- and the vehicle tag.
Q. Just a second.
Okay. So then your understanding was, although you had not been served with the proper paperwork, you were aware of the first suspension and you had filed an appeal regarding that suspension, and that appeal is still pending with the Third District Court, correct?
A. That is correct. And it's still my impression that it would be stayed, because, like I said, if you're -- it's not over until it's over. And that's why there is courts. And if you don't prevail on the first round, you can appeal.
And I've always -- I've already actually won on these things. It's just sometimes you have to appeal. So it's still on appeal, and it's been an excessive route.
And I just want to elaborate on that. I'm sitting in this court in Placerville. This stuff happened in South Lake Tahoe. My case is a very political case. It was all over the newspaper --

Q. I understand.
A. -- and that's why we're here. That's why every judge in this court was recused and we have this judge from Los Angeles.
Q. Mr. Robben, please. We've got to stick to the questions that I'm asking. I understand that you're --
A. I'm just letting the jury know what's going on.
Q. I understand. I understand you're -- this is an important case to you.
So your understanding was that, because you were appealing -- appealing the suspension, that it was stayed and you were still legal to drive.
A. That is correct. And as far as the registration -- can we talk about that?
THE COURT: Well, let's let Ms. Miller --
THE WITNESS: Okay. Okay.
THE COURT: -- guide that --
THE WITNESS: Okay. I just don't want to forget that part.
THE COURT: -- and we'll make sure she gets to it. Okay.
THE WITNESS: That red tag is bothering me, folks. That's why I got upset yesterday, because I believe it should be inadmissible evidence here.
Q. (BY MS. MILLER) So at some point you're driving back from the court in Reno --
A. Yes.
Q. -- and you get stopped by the South Lake Tahoe Police

Department, correct?
A. That's correct. Right up literally at the state line, bang. Right when I pulled into California from Nevada --
Q. And so did --
A. -- they pulled me over.
Q. -- they tell you why they pulled you over?
A. I asked -- I asked -- I know my rights. So what happened is they were not following me, tailing me. They came in perpendicular. It happened right behind Harvey's -- Harvey's Casino. There's a road that's actually called Stateline Avenue.

And I had come in, and they were coming this way. Their lights weren't on yet, but -- so they weren't behind me. Okay? So I had pulled forward and started driving. And then Officer Webber got behind me and lit me up, and I pulled over.

And I had -- I asked him, because -- I said, "Well, what am I being pulled over for? I know I wasn't speeding. You weren't behind me." And he couldn't have seen the tags or whatever, you know? I mean, he didn't know -- I don't even see how he knew how I -- who I was, because I have tinted windows. So he couldn't have even seen me, you know? So there was no reason to pull me over that I could possibly see. And that's why I asked him, because in order to pull you over --
Q. Wait a second.
A. -- there needs to be a moving violation.
Q. Mr. Robben, I'm just asking --

A. Go ahead.
Q. -- did he tell you why he pulled you over?
A. Yes, he did. After I asked him, he said that he had -- he didn't say it was an FBI agent. He said an anonymous tip from a caller. And I probed a little harder, and he said an anonymous tip from a law enforcement officer.

And then I wanted the name. I said, "Well, I have the right to confront my accuser. Can I have the name?" And he didn't give me the name, and he didn't disclose that it was an FBI agent following me. But, eventually, I found that out.

Initially, I thought it was a sting, that the California police were conducting a sting on the Nevada side.
Q. Okay.
A. Again, I'm a high-profile person, coming back from a federal court case where I'm suing the government in Carson City, Nevada. So that's why the FBI is following, even though I did nothing wrong.
Q. Okay.
A. And you're going to hear that on the audio --
Q. Okay.
A. -- that I -- I didn't do anything wrong. The FBI agent obviously would have had me arrested, but I was there in my tie with my computer, doing legal business --
Q. Okay. So --
A. -- the right way to do it, not -- not doing anything shady or illegal.
Q. Were you aware that your registration was expired?

A. Actually, uh, the registration was -- let me point something out here. I'm not being charged with driving on an expired registration. I'm being charged on fabricating and forging and coloring -- or what is the actual charge? It's not driving on a suspended or an expired registration. I'm being charged with falsifying this tag that I did not do.

And this is what's concerning is that these people are clearly following me. They know I've been high profile, protesting corruption in a police department --

Q. Okay. I'm going to stop you. Mr. Robben --

A. -- so it's conceivable that they could have colored the tag.

Q. I understand. Did you know your registration was expired?

A. I -- how did that work? There was information that came in the mail about a week before that it was expired --

Q. Okay. Did you ever --

A. -- or something. It was expired or --

Q. Did you ever do anything to alter the tag that was on --

A. I did not alter the tag, and that's what's bothering me is that these people were stalking me. And when you hear the audio, it's a -- I questioned the FBI agent's testimony because, clearly, I was being stalked, tailed, followed, however you want to call it, from the Federal Courthouse in Reno where the car was parked to Lake Tahoe.

Now, he made it sound like he just got off of work and was driving down Highway 50 towards -- you know, looking for me. But he's not here to testify today. But somebody easily

could have colored that tag to create a reason to pull me over. Okay?

Q. Okay. So is it your testimony that you never did anything to alter the tag?

A. That's my testimony. I did not -- I did not alter that tag. I did not color that tag. And, initially, they even said the tag belonged to a Harley-Davidson and made that -- I believe that's been debunked.

And, look, this has been one thing after another. Every charge that's been thrown against me has been dismissed or I've won -- okay? -- on appeal. And this is just another charge, and that's how far that they're going is they're going to color your tags. They're going to send FBI agents over to tail me for no reason.

I'm an innocent man. I've been falsely arrested and thrown in jail. And the officer explained it yesterday. Folks, I've lost everything. I've lost my house. I'm an IT guy. I run computer networks for Stanford University, for start-up companies, for Heavenly Ski Resort, and I worked in the state of Nevada.

You're looking at somebody who exposed a multi-billion dollar sham in Nevada. I ran the computer system for the department of taxation where the government stole billions of dollars from those people, and they came after me.

If you've ever seen that movie called Enemy of the State, you're looking at him. I am the Edward Snowden of Nevada. All over the newspapers.

When you get out of here, Google my name, read my name.

I protested the people here, because what they did is they -- I lived in South Lake Tahoe in California and El Dorado County. They sent police over the county line -- over the state line to have me arrested, which led to people kicking in my doors, the district attorney covering that up, the police department covering it up, the newspapers had to cover it, because they wouldn't give me a police report when I was a crime victim. I had my door kicked in. I was shot with Tasers. Everything. They've destroyed me.

All these charges that they have thrown against me have been dismissed and thrown out, and that's why I have a litigation -- a lawsuit against the State of Nevada at Carson City.

It's not against California or these people. I didn't want to get into it with these people. In fact, I'm begging them to -- you know, we need to have forgiveness here, man. We need to -- everybody made mistakes along the way. Vern Pierson tried to cover it up. It was in the news.

I was on the newspaper here in Placerville on the Mountain Democrat because I had a big crime scene tape in front of his office two years ago. All over the news.

And this is just retaliation. That's what this is all about. It's a massive amount of tax dollars, money, your time sitting here. All these people yesterday -- they called 300 people here yesterday. All this money.

This conviction, folks, is this much. This is like a jaywalking ticket. They have me in jail, folks. Right now I'm in jail -- I'm not going to hide it -- on a half-million-

dollar bail. A half-million-dollar bail.

THE COURT: Mr. Robben, you need to answer her question.

THE WITNESS: A half-million-dollar bail --

THE BAILIFF: Mr. Robben.

THE COURT: Okay.

THE WITNESS: -- for jaywalking.

THE COURT: Okay. Mr. Robben, just so that we're clear, the way it is is question and answer. And I know you have a lot you want to disclose, so I've given you a lot more leeway than I normally would, but we'll just take a deep breath for a moment, a sip of water. We'll give the court reporter a moment to relax her fingers. And then we'll have Ms. Miller follow up in a second.

You may proceed.

Q. (BY MS. MILLER) Mr. Robben, were you cooperative with the police when they contacted you?

A. Yes, very much so. And I want to give -- is it Webber or Wilson?

THE COURT: I think it was Officer Webber.

THE WITNESS: I do -- you know, a lot of people think I'm against the police, and I'm not. I tell them that they have the most important jobs because of everything that they have to do. And I just have a problem when it becomes corrupt and they start using the power to go against people like me who are actually trying to do positive things.

We're the whistleblowers and watchdogs of our communities. And, unfortunately, his superiors and whatnot have decided to exploit a situation -- including a DUI that's

been totally fabricated and still on appeal -- to destroy my life.

But at the end of the day, I've always prevailed, and I will prevail on the DUI, and I will prevail hopefully today, because you will see, when you hear the audio, I was never served. And if I'm not served, then I don't have notice of the suspension.

And I'm not being charged for the other crime -- possibly they could be charging me for driving on a -- on a unregistered thing, but they're not. They're charging me with modifying the license plate, which I did not do. So there you go.

MS. MILLER: Okay. Thank you, Mr. Robben. I don't have any other questions for you.

THE WITNESS: Okay. Thank you. Thank you very much.

THE BAILIFF: Stay right there, sir.

THE WITNESS: Okay. Sure.

THE COURT: Mr. Gomes has a chance to ask questions, also. We've talked about that.

THE WITNESS: No problem.

CROSS-EXAMINATION

BY MR. GOMES:

Q. Good morning, Mr. Robben. How are you, sir?

A. I'm doing great today, Mr. Gomes. How are you doing?

Q. Excellent. My back hurts a little bit.

A. Much better than yesterday.

Q. So you think it's a cover-up, a retaliation.

A. Of course I do, yeah. In fact, I demanded that the D.A.

would bring in a different district attorney. I mean, this has been one sham after another. Every judge has been recused, and they still continue to issue orders, and they've delayed this case, folks.

You have a right to a speedy trial. This case has been delayed well past my right. They violated literally every single constitutional right that I have. Let's talk about that.

My First Amendment, access to the court, protesting.

You know, my Fourth Amendment. This is an illegal search and seizure.

The Fifth Amendment. The Sixth, the right to counsel, things like that. Excessive bail, your Eighth Amendment. Due process, the Fourteenth Amendment. It's been shattered and slow-balled and stonewalled every step of the way.

Q. So one of your complaints -- and you wanted to make a big show about the fact that you're in jail right now. Show us the thing again. What's that? Is that like your little jail I.D.?

A. I've been in jail for three weeks, folks. And what's going on is they're going to try and say that I absconded, but I didn't.

What happened is they have not given me my speedy right, so -- and they gave me a judge that wasn't even a judge.

MS. MILLER: Objection. Narrative. Irrelevant.

THE COURT: Okay. Sustained.

So you're in jail.

All right. You may continue.

Q. (BY MR. GOMES) So, Mr. Robben, we heard from Officer Webber that he cut you a big break when you got caught driving in the state of California on a suspended license. You heard that, right?
A. That's why I said -- that's why I said not every cop is -- not every district attorney and not every cop and not every judge is corrupt. I will be the first to say that.
Q. That was true, right? That's not one of the things you're saying is a cover-up or a lie.
A. I'm not saying -- I'm not saying he marked my tag.
Q. Mr. Robben, stop and let me finish my question.
A. Go ahead.
Q. Officer Webber did not arrest you on March 21st, did he?
A. Well, he issued the citation, which, technically, is an arrest --
Q. Okay.
A. -- and requires a booking.
Q. He didn't take you into custody.
A. He took the car.
Q. Okay. He impounded your vehicle as the law requires.
A. There's actually discretion on that.
THE COURT REPORTER: Okay.
THE COURT: One person at a time.
(The court reporter read back the last question.)
THE WITNESS: That is correct.
Q. (BY MR. GOMES) And you walked away from that scene. Yes or no, Mr. Robben? Did you walk away?
A. With a -- technically, as he stated, the citation is --

it's an arrest. You still have to -- it's basically giving you a ticket, and then you got to go turn yourself in.
Q. Ordering you to appear in court.
A. There's a booking, actually. You've got to go do a booking.
Q. Now --
A. Fingerprints.
Q. -- after that citation was issued, you were charged with driving on a suspended license by this district attorney's office, right?
A. Yes.
Q. Okay. You appeared in court in South Lake Tahoe.
A. Yes.
Q. And you objected to the initial judge that was assigned to your case, said "She can't be fair."
A. Well, I objected to all the judges.
MS. MILLER: Objection. Relevance.
Q. (BY MR. GOMES) We're going to go one at a time.
THE COURT: Overruled based on testimony on direct examination. And so the objection is overruled.
So you can answer the question.
Q. (BY MR. GOMES) We're going to go one at a time. You objected to the first judge, said "No way. She can't be fair."
A. The way that motion is written is --
Q. Mr. Robben, just answer my question, please.
A. I actually recused all judges in El Dorado County specifically because there's a conflict of interest between

the district attorney and all the judges.

The D.A. controls all the judges. Certain judges have committed crimes. The D.A. had blackmail ability over that.

I also did the recall against Vern Pierson. I'm the guy that started the recall effort and the Web site and the protest. And under civil litigation, there's no way that this district attorney is -- look --

THE COURT: Mr. Robben, I'm going to interrupt. I'm going to interrupt, because the question is apparently the first judge you appeared in front of on the citation was a female --

MR. GOMES: Not exactly.

THE COURT: Okay.

Q. (BY MR. GOMES) But the first judge you were assigned to was Judge Kingsbury. You didn't appear in front of Judge Kingsbury. You said, "No way. Not her right." Right? Yes or no?

A. I said no way to all judges. If you'd read the motion -- you can bring that motion out right now. It says the motion disqualified all judges in El Dorado County, except for Judge Sullivan.

Q. Okay. So then you went downstairs in South Lake Tahoe to Judge Bailey. You said "No way. Not him either."

A. Judge Bailey got it. He read my thing because -- no. What happened is Judge -- Susan Kingsbury is the presiding judge for all judges.

Judge Wagoner in Department 1 is the second level judge. Okay? So he got the recusal motion, which was for all

judges, including him. Judge Wagoner took 40 -- or 25, 28 days and issued a decision to have the case heard by Judge Bailey in Tahoe, but he was recused.

So here we got a judge who's been recused making a decision to give it to another judge when the entire court was recused, and that's creating these series of delays.

Q. Okay. Mr. Robben, so let's -- let's try to focus a little bit.

A. I am focused. I know exactly what I wrote. I wrote those motions.

THE COURT: Okay. We need a time line, is what we're going for. So --

THE WITNESS: I know the time line. It was about 28 days from when it happened.

Q. (BY MR. GOMES) Listen to my questions and see if you can answer my questions. And then on redirect, you can tell Ms. Wilson whatever you want to tell Ms. Wilson.

THE COURT: Miller.

MR. GOMES: Ms. Miller. She used to be Ms. Wilson. My apologies.

THE COURT: Okay. I called her something different yesterday, so she's. . .

MR. GOMES: I'm not completely crazy.

Sorry, Ms. Miller.

MS. MILLER: That's all right.

Q. (BY MR. GOMES) All right. I just want to lay out -- look, I'm trying to give you a trial. You asked for it. I want to give it to you. Okay?

A. No problem. I mean, I respect you a lot more today than I did yesterday, so. . .
Q. All right. Well, that's great. So listen up. Listen.
A. I am.
Q. You didn't want Judge Kingsbury, right?
A. I didn't want all the judges.
Q. You didn't want Judge Bailey, did you? You asked that he be recused too.
A. All -- what -- what I'm saying is when I filed it, I said all. Now you're breaking it down into individuals, when I initially -- so you're making it sound like I wrote one up as I went. Well, the initial motion said every judge because of the conflict and the district attorney can blackmail all the judges, because the judges in El Dorado County have committed crimes.

The D.A. is actually the most powerful person in the county, more powerful than the sheriff, more than the judges. The D.A. can prosecute a judge if the judge has committed a crime. Certain judges in this county have committed crimes on the bench. That's why we brought in another judge to get away from the -- the paradigm here.

Q. Let's cut to the chase. You got what you wanted, right? Every single judge in El Dorado County, at your request, was recused.
A. By the time that happened, they continued to make orders when they shouldn't have. Those orders are void, creating further delays --
Q. Yes or no?

A. -- not assigning --
Q. Yes or no? You asked, with no support for it, no reason behind it, no basis. You said, "Recuse them all." And what happened?
A. That's not true. That's not true. I just told these people. The basis for the recusal is that there was a conflict of interest. That's what the whole recall is about. You can go online. You can watch the video. neighborsagainstcorruption.com. Write that down. neighborsagainstcorruption.com.

Everybody probably has heard the name Ray Nutting, right? Vern Pierson went after Ray Nutting. Vern Pierson went after a series of people politically.

I am a political prisoner because I'm an outspoken critic against the corruption, folks. I'm on your side. Okay? I'm a taxpayer. I'm a citizen.

I'm against people like Vern Pierson who are double-dipping. Vern Pierson is also the IT director. So he's making 100,000-plus a year as the district attorney and another 100,000 as the IT director. He's double-dipping, folks. He's collecting a pension from the military as well. He's triple-dipping. He's ripping you off, and he's corrupt.

Look, when the district attorney is prosecuting bank robbers and drug dealers and meth people and robbers and rapists, that's what we want you to do.

When you're going after people politically because we are standing in the way of their political ambitions or we're standing up to the corruption and doing protests and starting

up Web sites, that's what this is all about, folks.

I haven't -- this is a victimless crime. There's nobody even hurt here, except for me. I've lost my family. I've got an 8-year-old kid who doesn't have his dad right now.

Q. Mr. Robben --

A. My wife has leukemia. She's dying. I'm sitting in here in jail. I've lost my house. I was living out of my car. I have nothing. When I walk out, I have a backpack --

MR. GOMES: Objection, Your Honor. Nonresponsive.

THE WITNESS: I don't even have my computer.

THE COURT: Sustained.

Mr. --

THE WITNESS: They've taken my computer and my phone.

THE COURT: Mr. Robben --

THE WITNESS: I have $5 in my pocket.

THE BAILIFF: Mr. Robben, you've got to listen to the judge when she talks to you.

THE COURT: I'm trying to give you as much time, within certain parameters.

THE WITNESS: Go ahead.

THE COURT: But --

THE WITNESS: Go ahead.

THE BAILIFF: Is okay if I sit here?

THE COURT: Sure.

Q. (BY MR. GOMES) Let's focus.

A. I'm focused --

Q. Let's come back -- let's come back full circle.

A. -- very much so.

Q. Officer Webber gave you a citation. He did not take you to jail that day, did he?

MS. MILLER: Objection. Asked and answered.

THE COURT: I think we're just getting back on track, and so I will note that the testimony has been that a citation was issued. Officer Webber did not take Mr. Robben into custody at that time.

Q. (BY MR. GOMES) So you remained out of custody. You appeared in court. In fact, I appeared in court with you at your arraignment on this case, right? It was me and you. Remember that?

A. And the city attorney, Mr. Thomas Watson.

Q. And you don't like him, either, right?

A. I told my attorney when we get this cleared up -- my middle name is Christian.

MS. MILLER: Objection. Relevance.

THE WITNESS: I want forgiveness.

Q. (BY MR. GOMES) Okay.

A. And I want to forgive these people.

THE COURT: All right. Thank you. No -- nothing else.

THE WITNESS: I really do.

Q. (BY MR. GOMES) So --

A. I think it's important to say this.

Q. So, Mr. Robben, we appeared together. You were arraigned, right? The judge read the charges to you?

A. Yes.

Q. Nobody asked that you go into custody that day, right?

A. This charge doesn't require custody.

Q. And I didn't ask for it, did I? You didn't go to jail that day, did you?
A. You put a half-million-dollar bail on me, sir.
Q. Not that day, right? You walked out O.R. That means on your own recognizance, right?
A. This charge doesn't require that.
Q. Okay. So you walked out of court a free man --
A. On a charge that doesn't require it.
Q. -- with a promise to appear, right?
A. That's correct.
Q. Okay. And you --
MS. MILLER: Your Honor, I'm going to object to this line of questioning. Can we approach?
THE COURT: For purposes of a record, you may approach.
* * * * *
(BENCH CONFERENCE)
THE COURT: All right. Ms. Miller.
MS. MILLER: I know -- I know he opened the door to this. I know. But I don't know. This is prejudicial to continue to ask him about how he ended up in custody and his current custody status and --
THE COURT: Well, he raised it as sort of a sympathy factor for him, that it is a giant conspiracy, that they've been out to get him. So I'm going to allow it, but I'll have to try and rein him in from time to time.
All right. Thank you.
(END OF BENCH CONFERENCE)
* * * * *

THE COURT: All right. We're back on the record.

Next question, Mr. Gomes.

Q. (BY MR. GOMES) After you walked out of court on -- what was it? March 30th? Is that the date? Something like that?

A. 31st.

Q. 31st?

A. 21st.

Q. Whatever date it was. You never came back to court voluntarily again, did you? Mr. Robben, we had to go get you.

A. No.

What happened is I filed a motion to -- okay. This is a very important thing that needs to be addressed. Now he's going to try and say I'm absconding. I'm not absconding, folks.

Everybody knows the Constitution of both California and the United States have -- we all have a right to a speedy trial, right? California is even better, that there's a code -- I'm not sure if it's the Penal Code or a statute or whatever they call it. California has even upped the Constitution and says that if you're charged on a misdemeanor crime, you have the right to be in court within 45 days of the arraignment.

My case has been pending well past that. We're past 90 days. So the way -- look, I told you, folks, I read the law. I've been basically doing that for the last three months solid. They took my computer. They'll see every file I downloaded that I read the law.

So the law says that if you concede and agree to setting a court date past that for coming into court, then I concede it. So if they're going to set a court date past the 45 days -- say 50, 60 days past -- and I show up and agree to that, then I concede it.

So I represented myself at the initial phase of this as a pro per litigant, pro se, whatever you want to call it. I didn't have a lawyer. I chose to do it myself because most lawyers won't do what I've had to do. They're not going to recuse the judges. They're not going to go against the system. They're not going to recuse the district attorney. Because they have to work with these people. They make deals with these people.

I said, "Look, we're going to bring in people that" -- what I actually asked for was to move the case down to Tuolumne County where I live, because I don't have a car. So what was going -- here's what was going on --

Q. Mr. Robben --

A. The judge ordered me -- I requested --

Q. Mr. Robben. It's my turn, Mr. Robben.

A. I requested a telephone --

THE COURT: Okay. Right now, stop. Mr. Gomes is going to ask a question.

Q. (BY MR. GOMES) You asked for the case to be transferred, and the judge said no, right?

A. He -- before that, I asked -- okay. Look, I don't have a vehicle, obviously. I live 100 miles south of here by Yosemite, and I filed paperwork.

And this is a very common, very normal protocol, very normal. Not for a trial. You've got to be here in person. But the pretrial motions, they have telephone conferences. This court has V Call, called V -- Virtual Call. You call in. I'm here. I'm just on the telephone.

Q. Mr. Robben --

A. He denied that.

Q. Stop. The question involved your request to transfer the case out of El Dorado County. You made that request.

A. I made a request for a telephone and a request to move it down to Tuolumne County.

Q. The judge denied that request.

A. He denied it without me being here. That's called an ex parte hearing. That means I'm not here.

Q. The judge at that point was a Judge Robert Floyd Baysinger --

A. Right.

Q. -- a judge that was assigned by the Administrative Office of the Courts out of the state of California, right?

A. Judge Baysinger is --

Q. Yes or no, sir?

A. Just Judge Baysinger has no law degree. He's not a real judge.

Q. Mr. Robben, yes or no?

A. That's true. That's why he's not here. I challenged him. He has no law degree. The guy is a fake judge.

Q. You asked the State of California to assign you your own special judge that wasn't from El Dorado County and they did.

A. No, they didn't. Come on.
Q. Judge Baysinger.
A. Judge -- Judge Baysinger has no law degree.
Folks, what they do is they -- even -- I could be making a complaint right now against this judge. This is a retired judge. They're not real judges.
When I asked for a judge, I asked for a real elected judge. The reason is an elected judge reports to the people who elect them. If they want to mess around and play games, like all these other people have, I can stand out here with my sign. I can get in the Mountain Democrat news and make a complaint, and then that judge won't get elected.
Let's face it. Judge Brooks, who ran for reelection, he was a signer on my appeal. He got the hell off my appeal because he knew he couldn't do anything shady, because if he did, he's going to be accountable for it.
So what they -- here's what they do: They bring in referees. They bring in other people that are retired. In -- this particular person, I won't even call him a judge, because I do the research. That's what I do. I get online. I'm a computer expert.
Q. It's my turn now.
A. He had no law degree. No law degree.
Q. My turn now.
A. He had a bunch of complaints with the Bar.
Q. Okay. So you asked for a judge that wasn't an El Dorado County judge. They gave you Judge Baysinger. You objected to Judge Baysinger, didn't you?

A. That's because he has no law degree and he had a whole bunch of complaints from other people. Corrupt as hell. And I said, "No way."

Q. And Judge Baysinger, unlike the El Dorado County judges, who bowed to your intimidation, didn't they?

A. It's not intimidation. It's not intimidation.

Q. What else is it? You say "If you don't do what I want, I'm going to publish bad things about you. I'm going to put you on my Web site. I'm going to say what a lying thief you are."

A. No. It's already on the Web site. Judge Wagoner, for example, had -- if you go to the Judicial Council --

MS. MILLER: Objection. Relevance.

THE COURT: All right. Sustained. Right now there's no question pending about Judge Wagoner.

THE WITNESS: All right.

Q. (BY MR. GOMES) When Judge Baysinger refused to bow out of this case, you continued to try to get him disqualified, didn't you?

A. Anybody can go and look at the judicial performance. There's a commission called the Commission on Judicial Performance. These are public records.

Q. My turn, Mr. Robben. That's the postcard you sent to the court and Judge Baysinger accusing Judge Baysinger of being a child molester, isn't it?

A. That's what the court records say. That's on the court records.

The court records are court records, folks. They're

public records. If you look at public records and you see a judge is a child molester --

Q. Then you filed another motion --

A. -- no law degree.

Q. -- with the court, handwritten, accusing Judge Baysinger of being a child molester again, didn't you, Mr. Robben?

A. Of course. It's on the court record. It's on the court record.

Q. That's the move, right? That's the move: Intimidation, coercion, threats. "If I don't get what I want, then I'm going to intimidate you and get you to dismiss my case, get you to dump my charges, get you to give me my driver's license back."

A. Not at all. That's why I said today is a great day, because we get -- we get to hear the audio, folks. We're going to hear an audio regarding that's going to blow your mind.

They didn't want to play it. Both these people didn't want to play it. That's why I walked out of here yesterday. I said, "This is a kangaroo court." If they're not going to play the evidence that shows that I was never served as evidence.

Q. Sir, my turn again. Here's your tape.

A. There you go.

Q. Who brought it?

A. You did. That's why --

Q. I did. Who asked for it? You asked me for it. What did I say? Your tape. You want to play it, you get to play

your tape.
A. Thank you.
Q. My question again --
A. I didn't call you corrupt.
Q. -- why are you in jail? Why are you in jail?
A. Because you guys --
Q. Did you send this e-mail threatening a bloodbath if we executed the warrant that was issued for your arrest?
A. The bloodbath isn't being a threat on you. It's a threat on me. Because here's what they did and here's what's going on: I said, "There's going to be a bloodbath" --
MS. MILLER: Objection. Relevance.
Q. (BY MR. GOMES) Read it.
A. -- "because" --
MS. MILLER: Excuse me.
THE WITNESS: No. They --
THE BAILIFF: Stop. Stop.
THE COURT: Stop. Just a moment. The objection is overruled. The question, as far as I can remember it, was did you send this e-mail threatening a bloodbath, and the answer would be yes?
THE WITNESS: Yeah.
But let's talk about the bloodbath, folks.
THE COURT: Okay. Just a moment. Just a moment. You'll have a chance on redirect. This is cross-exam.
THE WITNESS: Has this been entered into evidence?
THE COURT: No.
MS. MILLER: No.

THE BAILIFF: Stop.
THE COURT: Stop.
THE WITNESS: Why are we even --
THE BAILIFF: Mr. Robben.
THE WITNESS: Okay.
Q. (BY MR. GOMES) I know you don't want to talk about it --
A. No, I do want to talk about it.
Q. -- but you're in custody. You're not being treated fair. "Look at my bracelet." But you're in custody because you failed to appear. And when Judge Baysinger issued a warrant for your arrest, you threatened a bloodbath if anybody tried to come and serve that warrant on you. Yes or no? Yes or no, Mr. Robben? It's right there in front of you. Let me read it to you.
A. Yeah.
Q. "I have my people calling the Bay Area and Sac news media right now to cover this showdown that may turn into a bloodbath. To see the bloodbath manifesto, read my attached draft of the other thing I am filing."
How many times did you send an e-mail to me, to the attorney general of the state of California, to the governor of the state of California, to the El Dorado superior courts, threatening a bloodbath if anybody came and served a lawful warrant that was issued for your arrest?
A. Let's talk about this, folks. Folks, everybody might have heard of the Oregon showdown.
MS. MILLER: Objection. Nonresponsive.

THE COURT: Sustained. Sustained.

You need to stop. There will be an opportunity on redirect, but right now the question was how many times did you send that type of e-mail to those individuals and entities?

Q. (BY MR. GOMES) How many of those e-mails did you send? Hundreds?

A. No.

Q. Dozens?

A. No. Maybe -- you just showed me, what, three?

Folks, these people want to kill me. The bloodbath --

MS. MILLER: Objection. Beyond the question.

THE WITNESS: -- isn't on them. It's on me.

Q. (BY MR. GOMES) Mr. Robben --

THE COURT: The objection is sustained. It will be stricken.

Q. (BY MR. GOMES) This is not the first time that you have been charged with crimes in these United States when you -- and you responded with threats, intimidation, public postings trying to embarrass public officials, and you name it. This isn't the first time, is it?

A. Every charge that's ever been thrown at me has been dismissed because what they do, folks, this is called -- this is called --

THE COURT: Mr. Robben, there's no question pending beyond that. Okay. Mr. Robben, I know you said you read the law, so you understand the courtroom procedures. There will be --

THE WITNESS: Yeah.
THE COURT: -- an opportunity --
THE WITNESS: Yeah.
THE COURT: -- for Ms. Miller --
THE WITNESS: Okay.
THE COURT: -- to ask you questions.
Q. (BY MR. GOMES) It worked before, didn't it? It worked. You got your case in Nevada dismissed, didn't you, Mr. Robben?
MS. MILLER: Objection. Speculation. Calls for --
THE WITNESS: We'll talk about this.
THE COURT: Overruled.
You can say yes or no. Was it dismissed?
THE WITNESS: Of course, it was dismissed, yeah, because they made false accusations. I actually found the person who shot the judge. It wasn't me. They tried to accuse me, but it was somebody else who -- the judge had an affair with his mom, and the kid shot the judge.
MS. MILLER: Objection. Relevance.
THE COURT: All right. Overruled. The answer will remain. Okay.
Q. (BY MR. GOMES) Excuse me. And when it worked there, you thought for sure it was going to work here.
A. Well, it's working here, yeah. Well --
Q. It's working?
A. Oh, yeah. Yeah. Yeah. Yeah.
There's a whole bunch of people in the community that -- not just me -- that are doing a recall against Vern Pierson.

And the district attorney -- because this is the type of thing they do, folks. They're trying to deceive you that I threatened them with a bloodbath. No. No. No. No. No. Wait. When my side of the story comes out, this is all about me. Okay?

It sure played out like that when they showed up with ten agents with guns pointed at me. I am the bloodbath. I'd point out I do not carry a gun.

Can we point that out?

Just like they shot LaVoy Finicum in Oregon, the FBI agents. Okay? Whether or not he had a gun, there's a debate.

I pointed out I do not have a gun. What I'm doing is using my First Amendment. The Web sites. The protests. I go to city council meetings. And I speak, and I say, "Look. Look at your taxpayer money. Look at what's going on. Here."

I used the newspapers. I used my First Amendment, not the Second Amendment. But what they're going to do is turn it into a bloodbath by killing me.

Okay. I do not have a gun. And that's why I went to the newspaper, because, look, they tried to kill me in Carson City. They poisoned my food. They threw me in jail. That's what happens. When you get thrown in jail, folks, they're going to kill you and they're going to say it was suicide. They're going to say "Mr. Robben hung himself. He committed suicide. He lost everything. We found him in his cell."

So I had to do what I can. It might sound shocking, but I had to get the attention of these people. So that's what I did. "There's going to be a bloodbath." So they read it. The bloodbath isn't me going after them.

Q. My turn again, Mr. Robben.

A. They were coming after me, folks.

Q. My turn again, Mr. Robben.

A. Go ahead.

Q. We started this cross-examination with what are we doing here? This is a driving-on-a-suspended-license case.

A. Yeah. You've turned it into a bloodbath and everything else, haven't we?

Q. No. It's still just a driving-on-a-suspended-license case.

A. That I was never served notice of.

Q. And displaying-false-tabs -- displaying-false-tabs-on-a-vehicle case.

A. That were probably done by one of your agents.

Q. Misdemeanors, right? A couple of misdemeanors. So this big frame-up where Vern Pierson and every judge in El Dorado County and FBI agents and young South Lake Tahoe police officers, the best frame-up job they could do on this famous incredible persona that is Todd Robben is color a registration sticker red?

A. Why not? The seven charges in Carson City included things --

MS. MILLER: Objection.

THE WITNESS: -- equally as bad.

MS. MILLER: Nonresponsive.

THE COURT: That answer will remain. Nothing further. Then Mr. Gomes.

Q. (BY MR. GOMES) We're here because you made a decision to drive a vehicle in the state of California, right?

A. Well, the technical term is "travel." I was not driving. I was traveling.

Q. You can call it whatever you want.

A. Okay.

Q. You got into a car, you started the engine --

A. An automobile.

Q. -- and you made it move, right? You made it go from where you started to where you ended up; is that true, Mr. Robben?

A. I was never served notice of the suspension.

Q. We're going to get to the notice part.

A. Okay.

Q. But the first step is you made a decision to drive.

A. That's actually called travel.

Q. You made a decision to travel in an automobile.

A. That's right, because that's what the law says I could do. I wasn't conducting commercial activity. I was not for hire.

Q. And you made the decision to operate the vehicle yourself rather than have a third party travel with you.

A. I couldn't get a third party. Look, what they're doing is they set these court dates at 8 o'clock on a Monday. People have to work. That's the scenario I'm in.

Q. So that's why we're here. You chose to drive. You chose to travel. Now --
A. If I chose to actually fight myself in a court, that won't give me my due process. I'm still waiting time. It's been three years. This is ridiculous.
Q. Let's get back to what I was saying. We're back to the simple part of all this.
A. All right.
Q. The DMV tries to notify people like you that their driver's license is suspended, right? They send it via certified mail.
A. Yes.
Q. And they sent it to you, even. You told us where you live, right? Twain Harte, Sonora?
A. Yeah.
Q. And, in fact, they did send you a certified notice to your P.O. box or whatever -- it is not really a P.O. box but a mailbox store where you can collect your mail, 18711 Tillers Drive (sic), Number 17-102.
A. Tillers? Tiffany.
Q. I can't read it. It's blurry.
A. Well, see, what's happened is that place closed down. It was one of those postal -- you pay a guy that does postal -- you know. So if I'm not there --
Q. This is where you received mail?
A. I received mail at a P.O. box.
Q. So, Mr. Robben, the DMV tried to notice you, and you're real hung up on the fact that you want to say they didn't.

They failed, right?
A. That's on their records, and you are going to hear that on this -- on this recording that they --
Q. It's DMV records, right? It's in evidence. It says right here on it "Service Needed."
A. Right. There's no dispute.
Q. What's on that -- that audio recording that you like so much is the FBI agent saying "Hey, his driver's license is suspended, but we don't have proof of good service."
A. Wrong. And what the law says -- and there's a Vehicle Code section --
Q. Listen to my question. Is that what you want to hear on that tape?
A. That's one of the things, yeah.
Q. Okay.
A. And that I didn't do anything wrong.
Q. Okay.
A. That's going to be another thing.
Q. Great. So that's your defense: DMV doesn't have proof of service, right?
A. Well, look, if -- look, first of all, I wasn't served the first notice. The officer signed under the penalty of perjury that he did serve me, and he didn't.
A lot of shady things have been going on here, folks. Now we've got a second suspension, and I'm still not served. It's sent to that address, but that was an old address.
Q. So Mr. Robben --
A. And I have a new address, and they have that. And the

law says --
Q. My turn --
A. -- if they don't get it, that they have to use alternative means, which includes a phone --
Q. My turn again, Mr. Robben.
A. Yeah.
Q. So you fancy yourself an expert in the law. You spent the last three months reading the law.
A. Longer than that.
Q. Okay. And you must have focused on the law of driving on a suspended license in California.
A. Oh, yeah.
Q. Vehicle Code Section 14601.2, 14601.5.
A. Yeah.
Q. Okay. So, certainly, you know that the law does not require --
A. Go ahead.
Q. -- formal proof of service from the DMV, does it? Tell us what the law actually requires, Mr. Robben. Why do you looked so stumped?
A. Well, there's some Vehicle Codes that I tried my -- had my lawyer to look up. I'm not sure if she had a chance. That actually -- can we just look at the Vehicle Code and not my interpretation, but read the actual law to the people?
Q. How about this: That's the judge's job.
A. Huh?
Q. Actual knowledge.
A. I didn't have actual knowledge.

Q. Oh, you didn't. Okay. Well, that's interesting, because Exhibit 3 here is you filing an appeal and requesting a stay of DMV suspension.
A. Yeah.
Q. So you told the jury -- you said, "Well, I was pretty sure we stayed that. Didn't count."
A. What court is that, sir?
Q. Which one was this?
A. Calaveras.
Q. Yeah.
A. Yeah.
Q. San Andreas, California.
A. Can I explain this?
Q. Well, you might be able to except for the fact that when we get to the judgment --
A. Uh-huh.
Q. -- from your request for a stay --
A. Yeah.
Q. -- and it was denied.
A. Right.
Q. So, Mr. Robben, I need you to explain to this jury how it was you did not actually know your driver's license was suspended while at the same time filed an appeal of that suspension and a request for a stay.
A. Yes. What's the date on that, sir?
Q. Well, the judgment was from November 15 -- excuse me -- November 19, 2015 --
A. Uh-huh.

Q. -- about four months before you were cited.
Your filing was from March 26, 2015, in Tuolumne County? What county?
A. That county was --
Q. You remember this, right? It's your handwriting. You wrote it. You requested a stay, and the court denied it.
A. I know all about this. Let's talk --
THE COURT: Which exhibit is that, just for a moment, for the record?
MR. GOMES: 5, I think.
THE COURT: Exhibit 5. Thank you.
Q. (BY MR. GOMES) Is that 5, Mr. Robben?
A. Yes -- no. 3.
Q. 3.
THE COURT: Thank you.
THE WITNESS: Yeah, let's talk about this, and thank you for bringing this to my attention so I can explain this to the jury.
First of all, this was filed in El Dorado County in South Lake Tahoe where this case should be being heard right now, because that's where it all happened, and they brought it -- they try to hide things, you know.
So anyhow -- so there's a judge up there named Judge Bailey. His picture is on the wall. When you go out, you'll see him. He's a bald guy. Nice guy. Not a problem with him personally, but he just didn't want to hear my case, which is what is going on in El Dorado County.
MS. MILLER: Objection. Nonresponsive.

THE COURT: All right. Sustained.
Q. (BY MR. GOMES) So, Mr. Robben, quite simply, you did know your driver's license was suspended and you even tried to litigate that suspension in court.
A. No. That --
Look, why are you objecting to my. . .
Look, that's from Calaveras County. They didn't want to hear it in El Dorado County. It was filed in Calaveras County where I was living with my girlfriend.
Q. You also knew --
A. No.
Q. Mr. Robben, my turn again. You also knew --
A. It's on the Third District Court of Appeal where -- that was appealed to a higher level, so it's still on appeal in the --
Q. Mr. Robben --
A. -- Third District Court of Appeal.
Q. You asked --
THE COURT: Okay. So now question and answer.
Q. (BY MR. GOMES) You asked that this court take judicial notice of every record at the Third District Court of Appeal with regards to your pending litigation, didn't you? That's what you want in this case.
A. Is that what I'm asking right now?
Q. No. That's what you asked before the trial started.
A. I -- what are you going to show me?
Q. I'm asking you a question. One of your requests was "I want this judge, Judge Beason, to take judicial notice" --

A. I didn't ask her.
Q. -- "of the Third District Court of Appeal's record on" --
A. That's not true.
Q. She granted the motion in limine. She said yes, and I stipulated to it.
THE WITNESS: You did.
THE COURT: Yes.
THE WITNESS: When? I never received it.
THE COURT: Yes, you did.
THE WITNESS: Obviously, I was in jail.
THE COURT: No. Yesterday --
THE WITNESS: They're not giving me my mail. That's what they do too. They don't give you your mail.
THE COURT: Yesterday in open court before -- outside the presence of the jury, we went over Motions 1 through 6, and I can't remember if that one was --
MR. GOMES: I think it was 3.
THE COURT: 3?
THE WITNESS: I didn't write the motion. She would have wrote it.
THE COURT: Okay.
THE WITNESS: I didn't see that. I didn't know about it.
THE COURT: You were in court, and we went through them one by one.
Okay. Thank you.
Q. (BY MR. GOMES) All right. So, Mr. Robben --

A. Okay.
Q. -- we went over the fact that you willingly traveled in an automobile. We went over the fact that you actually knew that your driver's license was suspended, so much so that you appealed it and asked for a stay. That was denied.
But now let's talk about your conviction, because that's the other part, right? The very simple aspect of this case is the fact that you were previously suspended for a DUI.
A. That's still on appeal.
Q. Okay.
A. It's not over until it's done through the appeal process.
Q. South Lake Tahoe Case Number S14CRM0465, that was your case, right?
A. Yes.
Q. And it was heard to a jury not that much different than this jury right here.
A. Uh-huh.
Q. Right?
A. They were given false evidence. When you present false evidence, like license plates with red things, it confuses the jury.
Q. You accused me of presenting false information yesterday too.
So, Mr. Robben, that jury found you guilty of driving while under the influence of alcohol.
A. We also know that the records on appeal show that the cops committed perjury. They didn't --

Q. Yes or no?
A. -- give me the test right, and it should be inadmissible evidence.
Q. Yes or no, Mr. Robben? They found you guilty.
A. That's on appeal still.
Q. All right.
A. That is true. That is -- yes, but it's on appeal.
Q. So you got a DUI conviction.
A. That's on appeal. It's not done.
Q. You traveled down the road in an automobile, and you knew your driver's license was suspended. Mr. Robben, where is the conspiracy here?
A. The suspension ends -- if it was a six-month suspension, it would have ended after the six months.

There's two. There's the first one. He's trying to get you to believe that -- and I do know. I'm not saying I didn't know about the first one. Obviously, I appealed that.

Now, he's trying -- it's deception, folks, just like he's trying to deceive the bloodbath thing when they're trying to kill me, and I'm saying that I'm the victim of the bloodbath. They're trying to say they're the victim.

Now, he's trying to deceive you into the -- there's two. There's two suspensions. He's trying to make it sound like a -- like a magician -- magic trick that -- and I did know about the first one that expired. I'm not here on that. I'm here on the second one.

This charge that you're charging me with is for driving on a suspended license, which is the second one from the

conviction, which took effect -- when did that take effect? It's different. It did not run concurrent. Do you know when that took effect?

Q. My turn now.

A. Go ahead.

Q. Mr. Robben, did you notice, when the judge read the Criminal Complaint against you, that I charged you with two different counts of 14601?

A. Go ahead.

Q. Both suspensions, Mr. Robben. Both: One for the DUI conviction -- that's the .2 -- and the subsequent conviction, .5. They're both in.

Do you think the suspensions just magically go away?

A. Well, there's a start date and an end date.

Q. Except for the fact that you have obligations that you have to fulfill in order to get your driver's license back.

A. And I did. And the court systems don't work, and that's why all the judges have been recused.

If they don't give you your day in court, folks, that's a denial of your due process. I haven't had my day in court, and I still haven't had my day in court.

I was ordered into federal court by a federal judge. I looked up the law, and it said as long as you're not conducting commercial business, you -- I wasn't driving around, partying. I wasn't pulled over -- there was no alcohol in my system. I was actually complying with this and not driving. My car had been parked.

So I got this court order. And I looked at this -- and

this is the truth. Look, if it was a six-month suspension, the suspension -- the first one was over, because we're well past that. Even the second suspension was over.

So my position is I'm driving on a license that is not suspended because it's not suspended. If there's a six-month suspension, after eight months is it still suspended? I don't know. But I'm doing the right thing, like we all would do, right?

I'm going to court, trying to get my day in court to clear it up, to say "Hey, look at the perjury that was done on the DUI and all the fabricated evidence." They won't give me my day in court because they know I'm right, and that's what this is. This is a challenge. That's why he's making this out to be what it is.

The district attorney wants to prove that they're right at all costs. "We're going to put this guy in jail, $500,000 bail. We're not going to bow to him. He can go to the press and do whatever he wants, but we're not going to give in." Why? This is a very minor crime, folks, that didn't -- we don't even need to be here. Look --

THE COURT: Okay. I'm going to --

THE WITNESS: -- there's two suspensions --

THE COURT: Wait.

THE WITNESS: -- and time ran out.

THE COURT: Okay.

THE WITNESS: Time ran out. I was never served.

THE COURT: Excuse me.

I know the jurors -- we've only been going for about an

hour with the jurors, but we did --

MR. GOMES: Five minutes.

THE COURT: Five minutes?

Is everybody okay for five more minutes?

Okay. So five minutes on cross-examination, and then we'll take a recess.

Q. (BY MR. GOMES) So we got through the simplicity of the driving on a suspended license, and it is really quite simple. So let's talk about this -- this third charge. I'm trying to find my Complaint, and there it is.

Vehicle Code Section 4462.5, unlawfully displaying an altered license tab.

You saw the license plate, right? The fancy color job on the --

A. Well, I'd like to look at that again. Do you have it so I can look at it up close, because it looked like it was pretty fresh.

Q. They look fresh?

A. That's why all the charges were dismissed against me. They fabricate things. Okay? So this is nothing new. All over the news here, you know, that's what they do to whistleblowers.

THE COURT: And that's Exhibit Number --

THE CLERK: 5.

THE COURT: -- 5? It is one of the two plates, the one with the tag.

Q. (BY MR. GOMES) With what? With the intent to avoid compliance with vehicle registration requirements. That's

it, right? Simple as that.

You know your registration is expired. You know your driver's license is suspended. You know you don't want to get pulled over by the police. So you take steps to try to prevent an officer from noticing that your registration is expired.

What step was that? Coloring it in. You should have used a thicker pen. It could have been a lot better. It could have been a lot better.

That's it, though, Mr. Robben. It's just those two counts. It's displaying it with the intent to avoid paying that simple registration fee. Nothing else to this.

Now, you chose to travel. You knew your license was suspended. And you chose not to pay your registration on that old car.

A. That's what you're trying to say. Go ahead.

Q. Well, there's no conspiracy in that. Nobody -- nobody stuffed you into the driver's seat of that car. Nobody forced you to drive from Point A to Point B. And nobody colored in your registration sticker to try to fool the police into thinking you paid your registration.

A. I don't disagree with that. I mean, along with everything else.

Q. It's pretty simple, like this case, isn't it, Mr. Robben? Pay 150 bucks and get your car registered. Pretty simple, right? Go to the DUI class and get your driver's license back. It's pretty simple, right?

And it's your responsibility to do these things. Your

responsibility. It's not D.A. Vern Pierson. It's not the South Lake Tahoe Chief of Police or the South Lake Tahoe City Attorney's Office who's out to get you. Mr. Robben, nobody cares about your little suspended license and your driver's license registration. Okay? It's your responsibility.

The reality is the laws apply to you. The laws apply to me. The laws even apply to old Deputy Crawford over here. Okay?

So you wanted your fair trial. Now you got it.

Nothing further, Your Honor.

THE COURT: All right. We're going to take a morning recess for 15 minutes.

Ladies and gentlemen, please cover your notes. Do not discuss the case, formulate any opinions, reach any conclusions, or make any independent investigation. Thank you.

(Court was in recess from 10:17 a.m. until 10:40 a.m.)

---oOo---

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right. We're back on the record outside the presence of the jury.

There are a few things I want to note for the record. First, the violation of probation we had agreed would be heard simultaneously with this trial. I don't know that we put that on the record before.

And, second of all, on direct -- redirect, I just want

to make sure that we kind of go slowly. Just answer the question.

If there's a point, Ms. Miller, where you feel that you cannot continue asking questions, then at that point, if we need to, we can have Mr. Robben on his own. But I just want to make sure that you're aware that the Court will consider that.

Also, I did receive a written request -- or, actually, three different questions from one of the jurors, and it reads as follows -- I'll turn it over to counsel, but it needs to go with the clerk.

First, is "Is the Defendant legally appealing suspension of his driver's license?"

THE DEFENDANT: Yes.

THE COURT: This is a jury question.

And, then, next "Did he receive a stay?"

Oh, there's actually four.

Next, "If so, does appeal temporarily" -- misspelled -- "suspend the suspension of said license and allow the Defendant to drive?"

Next, "Did the DMV receive verification that the Defendant received notification of his suspension of the driver's license?"

So I don't know if counsel wants a copy made of this.

MR. GOMES: I don't need a copy.

THE COURT: Okay. If anybody wants to -- it might be helpful to --

THE BAILIFF: Just burn a copy?

THE COURT: Yes, please. So two copies, one for both defendants -- well, both attorneys.

MR. GOMES: The last question is an evidence question. I don't think the Court can address the last one.

But the first three I think the Court can and should answer using the Third District Court of Appeal case law that the Court has now taken judicial notice of, and the answer is "Yes, his case is on appeal. No, that appeal does not result in a stay of his driver's license suspension or a stay of his conviction."

MS. MILLER: It doesn't result in the stay of the conviction, but I don't know -- well, if we know 100 percent whether or not it resulted in a stay of the suspension.

THE DEFENDANT: Well, I would say that the stay --

THE BAILIFF: Uh-uh-uh.

THE DEFENDANT: It's my case.

THE BAILIFF: No.

THE COURT: Relax.

THE DEFENDANT: They don't know anything about it.

THE BAILIFF: If the judge asks you or if your attorney asks you, then you can.

THE COURT: And I'll allow you to confer with your attorney. Ms. Miller can go over there --

THE DEFENDANT: All right.

THE COURT: -- to speak with you.

THE DEFENDANT: Because I know what's going on.

THE COURT: Okay.

THE DEFENDANT: I represented myself.

THE COURT: Okay. Okay. I understand that, but for purposes of this case, you're represented. So Ms. Miller is the one who will be speaking in terms of the Court.

THE DEFENDANT: Okay.

THE COURT: But I'm just thinking it through analogously. For example, if you have any kind of a conviction that's on appeal -- let's say you had a domestic violence appeal, and a person is required to do the 52 weeks of domestic violence counseling. They're still required to do it unless a specific stay is imposed.

Similarly, if there's imposition of time, that is not stayed unless either the trial court would stay it or the Court of Appeal does, but absent a specific order, I don't believe it is. But that's --

MR. GOMES: Well, we don't even need an analogy here. The Defendant has made specific requests to superior courts in the state of California, asking to stay his driver's license suspension, and that request was denied. That's Exhibit Number 3 in this case.

So unless the Third District Court of Appeal proactively stayed something at the Defendant's request, nothing has been stayed. In fact, quite the opposite has expressly happened. His request for that to happen has been denied.

MS. MILLER: I agree with Mr. Gomes, that the document that's been entered into evidence does deny the stay, but I believe that that ruling was appealed to the Third District. I'm looking right now to see if there's a specific order.

MR. GOMES: Absent a stay -- a specific stay from the

Third District Court of Appeal, the answer is very simple: No, it is not stayed.

THE COURT: Well, we'll see if the Third District granted a stay.

THE DEFENDANT: It's pending in the Third District.

MS. MILLER: Pardon me?

THE DEFENDANT: It's pending in the Third District. So they haven't said no, but they haven't said yes. And whatever happened in Calaveras doesn't matter because it's in the Third District.

THE COURT: May I see Exhibit 3?

(Off-the-record discussion between the Defendant and Ms. Miller.)

MS. MILLER: Judge, can I make a suggestion?

THE COURT: We're on the record. We're on the record. You have a suggestion to be made, Ms. Miller?

MS. MILLER: I do. Because the Court has taken judicial notice of the Third District's appeal on the DMV issue, I have a printout of the docket here. It does appear from the printout -- and maybe we can print this out so we have something in writing, but there was a petition for writ of supersedeas filed and then there was also a petition for a set aside of the suspension.

THE COURT: When were those?

MS. MILLER: In March and in April of this year. However, it does appear -- although it's not 100 percent clear to me, it does appear that both of those motions may have been denied.

THE COURT: Okay. What date does it appear they may have been denied?

MS. MILLER: April 7th and April 8th.

THE COURT: Okay.

THE DEFENDANT: That's after.

MS. MILLER: And that would have been after the --

THE COURT: Right. But I need to -- I think that would be helpful to print it up so that the Court can at least take judicial notice of it, whether or not you want to mark it as an exhibit or not.

THE DEFENDANT: But the appeal is still pending.

MS. MILLER: Right. The appeal is still pending, but you had filed those prior to being arrested, and they were not --

THE DEFENDANT: That would be after. I was arrested in March. That came afterwards. Do you understand? That's after.

THE COURT: Okay. We're not -- we're not on the record now.

(Off-the-record discussion.)

(END OF PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

* * * * *

(The jury returned to the courtroom.)

THE COURT: We are on the record.

Mr. Robben is present in court and represented by Ms. Miller. Mr. Gomes for the People.

And we took a little bit longer to go over a number of questions that were submitted from a juror. And so both

2015. Actually, it was signed on the 25th and then physically filed with the court of Calaveras County on March 26th.

Then I have a certification. And then I show a judgment that is dated November 19th, 2015, signed by a judge of the Superior Court of the County of Calaveras. I don't know any of the judges there. It may be Barrett or Barra or something of that nature. It looks like a "G" and a "B." There's not a stamp underneath it, so I don't know that.

So it shows that there was a stay requested. It was denied on or about November 19th, 2015, in the County of Calaveras.

Then in the Third District Court of Appeal, it shows on the docket on or about October 26th, 2015, notice of appeal lodged received. Filed in the trial court on or about October 21st, 2015. And this is in the DMV case concerning the stay. It's not in the criminal case from California county -- from Calaveras County.

And I see on --

MS. MILLER: If it helps the Court --

THE COURT: Yes, if you would, please.

MS. MILLER: If it helps the Court, on March 30th there was a writ of supersedeas filed.

THE COURT: Well, I actually show on or about March 29th, 2016, there was the petition for writ of supersedeas, meaning superseding a prior order, and it indicates it was filed by appellant, meaning Mr. Robben. But I don't know what it supersedes, but it indicates "Stay

requested filed with deficiencies."

And then on April 7th, 2016, that was -- an order was filed indicating "The motion filed by Appellant for judicial notice pursuant to CCP" -- that means California Code of Civil Procedure -- "452(d) and 453, motion to set aside DMV suspension pursuant to CCP 473(b), and motion to report El Dorado Deputy D.A. Michael Pizzuti to the appropriate authorities is denied." So the order was denied April 7th.

So the Court has taken judicial notice of those facts, so those exist in the court record.

And then the question was asked "Did he receive a stay?" By those records, it indicates he did not receive a stay from -- in the criminal case from Calaveras County.

That he -- there was a stay of some sort on a writ of supersedeas in the DMV case on March 29th, 2016, and then the motion to set aside the suspension was denied on April 7th, 2016.

And then the next question, is counsel prepared for me to read that?

MS. MILLER: Yes.

THE COURT: Okay. "If so, does appeal temporarily" -- you misspelled "temporarily," though -- "suspend the suspension of said license and allow the Defendant to drive?"

Absent a court order allowing a stay -- so to lift the suspension. Absent a court order, then there is no stay.

And then the final question was "Did the DMV receive verification that the Defendant received notification of his suspension of driver's license?"

And that is a factual question that is to be answered by the evidence presented.

All right. Thank you. And so now at this juncture, Mr. Robben is still on the witness stand.

And, Ms. Miller, you may conduct any redirect.

MS. MILLER: Thank you, Judge.

REDIRECT EXAMINATION

BY MS. MILLER:

Q. So, Mr. Robben, the Court just read some information regarding your request for an appeal of the -- or a request for a stay. And at the time that you drove the vehicle, had you requested a stay from the court?

A. Okay. There's -- there's two suspensions, so I did not know about the second one, but the first one was the one that Mr. Gomes was trying to explain, and that was in the lower court, which was in Calaveras County, and that was denied. And that is on appeal. That's actually called a writ of mandate. That's not an appeal. So I filled out a petition for a writ of mandate, which is an order, in the superior court, which is the lower court. That was denied. But then that was appealed to the Third District Court of Appeal in Sacramento. That's where the stay comes in.

So what he's saying is denied was at the lower court. What I'm trying to say is that I went to the higher court where my assumption is that it would be stayed.

And what these things were -- read off are kind of convoluted, but the appeal is actually still pending. That's against the suspension with the Department of Motor Vehicles.

And let me point out that you get two suspensions. The DMV suspends your license and -- well, they do in both cases, but when you do -- okay. When you go to trial and you lose on criminal, that's another suspension. That's the one I wasn't notified of and we're going to hear that on the audio. I wasn't notified of the first one, but I found out and I did the appeal -- the petition for the writ of mandate. The stay was denied, but then that was appealed to the Third District where my presumption is that it was stayed, and it's still currently pending. Okay?

So that -- that information you heard is very convoluted. The appeal in the Third District is still pending. The appeal in the criminal matter is still pending. In fact, we just got the final -- some final paperwork from this court, but it's actually also now in the higher court. So, basically, everything that's happened here in this court is now in the higher courts, the real Court of Appeal. So everything is still on appeal.

Q. So let me ask you this question: When you were convicted of the DUI, did the court ever tell you at that hearing for your sentencing that your license was suspended?

A. Absolutely not, and that's on the record.

Q. Did you receive any paperwork from DMV after that conviction that you're hearing -- that your driver's license was suspended?

A. No, because they sent that to the wrong address, and that's undisputed because it's even on the DMV records. And the way the law works is that they should use alternative

means, which means they could have called. They certainly had my phone number, and they also had my correct -- my address has changed because I've been moving around a lot. And so they could have sent it to an alternative address.

They could have called. They could have called the court. That's another thing that the law says. They could have called the police department. They do not -- they certainly had -- everybody had my phone number. The phone number hasn't changed.

Q. So --

A. Everybody -- somewhere along the line, you know, either by -- certainly by calling me would have worked, and the proper address is on file. They just sent it to the older address, which was forwarded, but they only do forwarding, you know, like when you move for six months or something. So I wasn't trying to evade service, we'll put it that way. They -- they had the proper ways to contact me.

Q. So the address that Mr. Gomes read off on the DMV paperwork in Twain Harte was not your correct address at the time; is that right?

A. Yeah. That was a business that does -- it's like a Post Boxes Are Us or whatever business. The guy went out of business, and I set up forwarding, and I had to get a regular U.S. post office box. So my mail was coming to that, and then I told all my, you know, bank and people that send me mail, updated that to the current P.O. box.

The DMV, whatever they sent -- because I get stuff from them. It's not my fault that the DMV didn't update their

means, which means they could have called. They certainly had my phone number, and they also had my correct -- my address has changed because I've been moving around a lot. And so they could have sent it to an alternative address.

They could have called. They could have called the court. That's another thing that the law says. They could have called the police department. They do not -- they certainly had -- everybody had my phone number. The phone number hasn't changed.

Q. So --

A. Everybody -- somewhere along the line, you know, either by -- certainly by calling me would have worked, and the proper address is on file. They just sent it to the older address, which was forwarded, but they only do forwarding, you know, like when you move for six months or something. So I wasn't trying to evade service, we'll put it that way. They -- they had the proper ways to contact me.

Q. So the address that Mr. Gomes read off on the DMV paperwork in Twain Harte was not your correct address at the time; is that right?

A. Yeah. That was a business that does -- it's like a Post Boxes Are Us or whatever business. The guy went out of business, and I set up forwarding, and I had to get a regular U.S. post office box. So my mail was coming to that, and then I told all my, you know, bank and people that send me mail, updated that to the current P.O. box.

The DMV, whatever they sent -- because I get stuff from them. It's not my fault that the DMV didn't update their

databases. Okay? That's my position. And they have many databases.

Obviously, I'm getting mail from them because I'm in litigation. We've got two cases going on. Multiple cases with the Department of Motor Vehicles: In Calaveras County. We got the Third District Court. Okay. And I'm in contact with them. They're represented by the state attorney general who definitely has not only that but my e-mail address. That hasn't changed. That's the most reliable way -- my phone and e-mail and my mailing address.

So they were notified that it was sent back, because it says on the printout and on the audio that you're going to hear that they didn't get it. So if I sent something to somebody, it's not a black hole. They sent it to me. It came back, and then it was entered into their database undelivered.

And when I was pulled over after that, I was literally pulled over by three different -- or contacted by the police department. Every officer from the South Lake Tahoe Police I saw after this incident, which occurred on March 21st, was giving me handwritten notices so that now they can say that I have been served, but that was all after the fact.

And the writ of supersedeas that you mentioned, that was April. So this happened on March 21st. That denial was in April. Because when this all happened, I filed the writ of supersedeas in the Third District to try to clear things up. Because, like I said, everything has been stuck, and it still is, and this is just a gross violation of due process, folks.

The court system should work, you know, a little bit faster than taking three years on a DUI.

Q. So if -- so you notified the DMV -- once that business went out and you had to get a new P.O. box, you notified the DMV of that new P.O. box address.

A. Yeah. And that's what I'm trying to say is that they were sending the litigation on all these appeals to the correct address.

And I did move to Angels Camp for a while. I had a girlfriend there, and then her parents died, and she had to move, which -- then I moved back to Sonora, where I'm currently at, and I just got a P.O. box where I have all my mail coming. So everything is coming there. The DMV stuff now comes there. Everything is current. In this window of time when this second suspension, which is why I'm here, was issued, I didn't get notice of it.

And the court -- again, it's not a court thing. When I was convicted, the judge didn't issue this, so it's not on any of the records. Somehow it gets transmitted to the DMV, and then they kick out the mail. The mail just never got to me.

And, again, the suspension on the first one, if they're going to try to play that up, my position is that if it's a six-month suspension, after the six months, it was not suspended. Okay? That was my position. Okay?

You know, it was on appeal, and I'm doing the best I can. I mean, even lawyers really -- the way the legal system works and all these rules and things, it's very complicated,

but I'm -- I'm not evading. I'm not running away. I'm doing everything legally. And I never got served. That's the bottom line.

Q. And you haven't driven since you've gotten notice that there was a suspension.

A. No, I can't. I mean, I don't have my car. They've impounded the car and sold it. So they've literally taken everything I have, folks: My houses, my car, my job, my ability to get a job. So this -- this is -- I mean, I made 100 grand a year and a lot more than that, and now I have nothing because of this.

MS. MILLER: All right. Thank you, Mr. Robben. I don't have any more questions for you.

THE WITNESS: The controversy, the conspiracy?

THE COURT: Did you want to play the audio?

MS. MILLER: I do, Your Honor. I think we can do that as long as there's no further questions from the D.A.

THE WITNESS: What about the conspiracy? We were going to talk about that, the marking of the license plate.

Q. (BY MS. MILLER) Do you believe there's a conspiracy regarding the marking of the license plate?

A. And I do, folks. You're only seeing this much of a thing that's about the size of the Empire State Building. There has been strife because of the stuff I talked about. I brought attention to wrongdoing in the Nevada government.

That, unfortunately, spilt into California, El Dorado County. I never wanted a problem here. My history goes way back. My grandparents moved here in the 1950s, and

they worked for Bill Harrah at the Harvey's in Harrah's Casino. And they built a cabin up there. So I've got a long history in El Dorado County. I love it here.

And, unfortunately, the corruption from Nevada came to my house. The police department had to get involved when my doors got kicked in and I was falsely arrested. Ultimately, the people that did that were arrested, five counts: Assault, battery, property damage. They slashed my car tires. They almost killed my dog. They shot me three times with Tasers.

That's no different than me having a civil matter like with one of you that I might -- you might owe me money and me saying "I'm not going to use the law or the courts. I'm just going to go kick in their door, shoot them with Tasers, and take it, you know? And that's what they did.

And what happened was the police department and the district attorney covered that up, and that's why I had to get the newspaper. So they did a California Public Records request, and it was all over the news, on the front page, and it went on for months, and it went from here to Reno to Las Vegas, and it was a big story.

At the end of the day, I prevailed. I was the victim of a crime. The police department and the D.A. conspired against me.

Now I'm in federal court, again doing the right thing, folks. I'm not taking guns, getting stupid, making threats, killing people. They're threatening me. That's why I said they're going to kill me. There's going to be bloodshed.

It's going to be my blood. They're going to shoot me, and I'm unarmed. And I put that out there that, hey, I'm not walking around with a gun.

When I was arrested three weeks ago, month ago, no guns, nothing. You know what they got? My computer. My laptop computer. Because what have I been doing? Working on this stuff, legally filing motions, doing stuff timely.

And what they're doing is a pattern. It's a clear pattern. They're not serving me the documents. The very first time on the DUI appeal, the officer twice, under the penalty of perjury -- if you or I did that, we'd go to prison, because that is a felony. You know, you can't say you served somebody and then not serve them.

So we have one, two issues on the first one. And then there's more issues of fabricated evidence that was entered. And my position is if they're going to show the jury that this evidence like the license plate, that confuses the jury. These people aren't experts, and they don't know the Evidence Code like I do and they do and the judge.

The Evidence Code says that this evidence should not be presented because it's not -- it's not true evidence. It's not -- it's not valid. It's just not admissible. You know what I mean? Because if the district attorney is going to sit up here and paint a picture that I committed a crime, the jury is going to tend to believe the officer and the badge and the uniform and the man in a suit who has the public trust.

And then there's little ole me with, you know, a

wristband, sitting in jail, who looks, you know, like a criminal, perhaps. They didn't let me get a haircut for the last month. You know, I barely got to shave. And I had to beg to get a suit and tie, instead of coming in here in shackles and an orange clown outfit.

I'm not a criminal, folks. I'm a professional just like some of you who are IT experts. I'm a certified Cisco engineer, Microsoft, and I ran the systems for the state of Nevada, Adobe Systems, Wyse Technology, Stanford University.

I am you. Imagine you in my position. I've done everything I can. I've lost everything. And I have an 8-year-old son, and I've got a wife dying of leukemia, and I'm sitting here losing everything.

And people believe me or Gomes. That's what it is, folks. And when you get out of here, you can go online, and I encourage you to do that, and you can go to the Mountain Democrat and every other news site and read -- and read the public comments from people in the community. They did support me and say "Mr. Robben, he's a great American. He's a constitutionalist."

I'm standing up for you and the Constitution against these people who have a legitimate job, and I told you I want forgiveness. The officer over here, it's not him. It's the people above him, the FBI. Why is the FBI following me? You're going to hear this tape.

It's not -- it's just not right. You know, every charge that has been thrown against me, which were very serious charges, have been fabricated. Okay? This stuff from

Nevada --

MS. MILLER: Okay.

THE WITNESS: They tried to say I solicited murder on a judge. It didn't happen.

Q. (BY MS. MILLER) Mr. Robben, can we move on to the audio?

A. Go ahead.

Q. Thank you.

A. Are we going to play the audio?

MS. MILLER: So I'm done with my questions. If Mr. Gomes doesn't have any further questions. . .

THE COURT: Mr. Gomes, any questions?

MR. GOMES: I'm all done with Mr. Robben, Your Honor.

THE COURT: Okay.

MS. MILLER: Mr. Robben --

THE COURT: One moment. Is there --

THE BAILIFF: I was just going to ask her if she wants to use the audio up here.

MS. MILLER: Yes.

MR. GOMES: Do we have to have that on?

THE BAILIFF: That's usually the easiest way. I've got an IT expert here, so. . .

THE DEFENDANT: I'm actually an IT expert.

THE BAILIFF: No, this is my IT expert. You probably would be able to do that, also.

(Counsel and the bailiff confer regarding setting up the audio.)

(Off-the-record discussion.)

THE COURT: So are we stipulating that this an authentic --

MR. GOMES: We should all confess that my IT person across the street made this, and neither myself nor Ms. Miller have listened to that tape. We've listened to our versions of it, but just in case he recorded the wrong thing.

THE COURT: All right. And the court reporter is not going to be taking down what's on the audio.

Again, the jury is reminded that the audio is the evidence. If there's an issue of authenticity afterwards, then either Mr. Robben or Officer Webber, who's here, can lay the foundation. Okay?

So are you ready to play?

MS. MILLER: Yes.

THE COURT: All right. Thank you.

(The audio is played.)

THE COURT: All right. So that concludes the audio portion we heard. There was a dropped call at some point, and then it started up again. So we heard both phases.

And so any additional evidence or witnesses, Ms. Miller?

MS. MILLER: No, Your Honor. The Defense would rest.

THE COURT: All right. And any rebuttal by the People?

MR. GOMES: No, Your Honor.

THE COURT: All right. So, ladies and gentlemen, you have heard all of the evidence in this matter, but you've not heard the instructions or the arguments of counsel.

And the way it works is after the evidence is completed, we needed additional time to go over the instructions to make

sure that both phases of the trial -- the People's case and Defense case -- have been adequately represented in the instruction.

So, Counsel, how long do you think we need on that?

MR. GOMES: To do the instructions? Not very long. I think we can do it in ten minutes --

THE COURT: All right. And then --

MR. GOMES: -- assuming -- I mean, you two need to review the edits that were made.

THE COURT: All right. And then after that, you want the Court to go ahead and start the instructions, and then we'll have argument after lunch?

MR. GOMES: Sure.

MS. MILLER: That's fine.

THE COURT: Okay. So for the jurors, then, about a ten-minute recess. We'll resume at 11:35. So please cover your notes. Do not discuss the case, formulate any opinions, reach any conclusions, or make any independent investigation.

Thank you.

(The jurors left the courtroom.)

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

(Off-the-record discussions.)

THE COURT: We're outside the presence of the jury. Mr. Robben and both counsel are present.

There was an additional written request. It says "If you have a suspended license, does it nullify your ability to renew your registration?"

And, Mr. Gomes, you said you believed that it does not?

MR. GOMES: Well, the legal answer is no. A vehicle registration is not tied to a driver. A vehicle registration is a vehicle. Anybody can write the check and mail in the thing and register the vehicle, and having a suspended license legally has zero impact on the ability to register a vehicle.

THE COURT: Ms. Miller, do you have --

THE DEFENDANT: Can I point something out?

(The Defendant conferred with Ms. Miller.)

THE COURT: Mr. Robben, I overheard you say to Ms. Miller that if you don't have insurance, that will cancel your registration. I don't believe it cancels -- you can get your license suspended for lack of proof of insurance, but you don't get your -- your registration is not.

THE DEFENDANT: So it's independent?

THE COURT: Right. They are independent.

THE DEFENDANT: That's a question. I don't know the answer.

THE COURT: Yes. No, that is the answer. So then -- so I would -- I'm just going to answer "No."

MR. GOMES: That would be my proposal.

THE COURT: All right. And then the --

MR. GOMES: Here's the additional -- the portion of 13352.2 that I'm asking for.

THE COURT: All right. And it reads "A department shall immediately suspend the privilege of a person to operate a motor vehicle for any of the following reasons:

One, the person was driving a motor vehicle when the person had 0.08 percent or more by weight of alcohol in his or her blood."

All right. And that is an accurate statement of the law. Any objection to that?

MS. MILLER: (Shakes head.)

THE COURT: The answer is a shake of the head.

MS. MILLER: No. No objection.

THE COURT: All right. Because it has a correspondence from the D.A.'s office, we'll photocopy that and take the top portion off that --

THE CLERK: I appreciate that.

THE COURT: -- unless you want to get lots of e-mails, Ms. Thornton.

Okay. And then you indicated there were some modifications requested?

MR. GOMES: I think just some things are coming out.

THE COURT: Okay. What is that?

MS. MILLER: Yeah. The 316 -- yeah, 316.

THE COURT: Additional Instructions on Witness Credibility - Other Conduct?

MS. MILLER: I'd ask that the Court strike the first paragraph.

MR. GOMES: No objection to that.

THE COURT: Okay. And I will strike that. I'm just lining through that. They will get the instruction. Maybe we can --

MR. GOMES: Well, Ms. Thornton has a digital copy of

this, so she can -- she can delete that.

And then the other one is 371 was submitted, and I'm withdrawing that request.

THE COURT: Okay. Let me just check that one. 371 is Consciousness of Guilt: Suppression and Fabrication of Evidence. All right. I'm putting a large "X" through that. It will not be read.

MS. MILLER: And that's it.

THE COURT: All right. Otherwise, it's satisfactory?

MS. MILLER: Yes.

THE COURT: All right.

THE CLERK: Okay. And so can I verify that 316, the first paragraph is going to be taken out?

MR. GOMES: Yes. And 371 is coming out in its entirety.

THE COURT: Right.

MR. GOMES: We do have to make some tweaks --

THE COURT: Okay.

MR. GOMES: -- to the 2220, driving with a suspended or revoked.

THE COURT: All right.

MR. GOMES: So -- and I guess we'll just have to give it twice. And it's in there as 14601.2, and I would propose that we tweak that one this way: "The Defendant is charged in Count 1 with driving while his driving privilege was suspended or revoked, in violation of 14601.2, as a result of a prior DUI conviction."

THE COURT: Okay. That's appropriate.

MR. GOMES: And then --

THE COURT: Well, just a moment. I write slowly.
Okay.
MR. GOMES: And then we need to give it a second time for 14601.5 where we simply say "His license was suspended or revoked for driving a motor vehicle while having a blood alcohol level of more than .08 percent by weight."
THE COURT: Okay. So I'll need another copy of 2220.
THE CLERK: Can you write down what exactly is going to be said, and then I can change it.
THE COURT: Sure. I'll do that.
(The Court conferred with the clerk.)
(END OF PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)
* * * * *
(The jury returned to the courtroom.)
THE COURT: All right. We are on the record. And all jurors are present, Mr. Robben, both counsel.
We did have an additional question, and it asked a legal question, and it is "If you have a suspended license, does it nullify your ability to renew your registration?" And the answer is no.
Also, I'm not going to be able to read all of the instructions before lunch. We're going to recess at noon. And, again, some of them may be repetitive of what we covered yesterday in our instructions, and some of them are common sense, but I'm required to read them to you.
Members of the jury, I will now instruct you on the law that applies to this case. I will give you a copy of the instructions to use in the jury room. Each of you -- I don't

PLACERVILLE, CALIFORNIA

WEDNESDAY, JULY 6, 2016, 1:32 P.M.

DEPARTMENT 2 HON. CANDACE J. BEASON, JUDGE ASSIGNED

---oOo---

* * * * *

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

THE COURT: All right. We are on the record outside the presence of the jury.

And Mr. Robben is present with Ms. Miller. Mr. Gomes for the People.

And on the 1538.5, Ms. Miller, do you wish to be heard?

MS. MILLER: I do, Judge. We would submit on the exam and the testimony, but the basis of the 1538.5 is Mr. Robben objects to the stop based on the case law that -- I'm looking for it right now, but the case law that doesn't allow law enforcement to stop you just for the purposes of checking whether or not you're driving on a suspended license. So --

THE COURT: Is there case law that you wanted to cite to the Court specifically?

MS. MILLER: Yeah. I don't know if. . .

THE DEFENDANT: If we could take a break, I've got it, but we've got to. . .

MS. MILLER: So it's Vehicle Code 12801.5(e). It says notwithstanding Vehicle Code Section 40300 or any other provision of law, a peace officer may not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person is under 16 years of age.

And then there's some case law that comes down from that regarding --

THE COURT: What's a recent case on that?

MS. MILLER: -- being stopped. Let me see here.

So Mr. Robben cited in his brief People v. Mower, 49 --

THE COURT: How do you spell Mower?

MS. MILLER: M-o-w-e-r.

THE COURT: And the citation is what?

MS. MILLER: 49 P3d 1067.

THE COURT: Is there a California citation on that, or is this --

MS. MILLER: No. It looks like it's a federal case.

MR. GOMES: I knew we were going to turn this into a federal case.

THE COURT: And what's the year of the decision?

MS. MILLER: 2002.

THE COURT: Maybe with that, I can Google it and find where it's from, because the Pacific 2d could be Oregon, Washington. I don't know. Does that incorporate Idaho also?

MS. MILLER: I don't know.

THE COURT: Are either of you able to Google it?

THE CLERK: I am. People v. Mower?

THE COURT: M-o-w-e-r. 2002, Pacific 2d.

MR. GOMES: Can I take just a second? Is that all right?

THE COURT: Yes.

MR. GOMES: Thank you.

(The Court conferred with the clerk.)

Nevada precipitated a lot of this or there were underlying issues before, or if it's a physiological situation, but at this juncture there isn't anything to suggest to the Court that he would comply with the terms and conditions of probation.

So while I think it would be better if there were some other scenario in place for him to get treatment and have terms and conditions of probation, that does not seem feasible at this time.

So the Court is going to impose the sentence in this matter. As we know the two different counts on the 14601, would be under 654, so the Court will just sentence on Count 1, and stay Count 2 pursuant to 654.

That will be six months in the county jail, an additional six months for the violation of Vehicle Code Section 4455.5, and an additional six months for the violation of probation. Probation will terminate upon conclusion of that sentence.

And the Court does note that he has 30 days actual credit and 30 days good-time/work-time, for a total of 60 days credit.

By law there are certain fines and fees that the Court must impose. There is a $150 victim restitution fund fine. There is a $60 administrative fee for collection of fines and fees if payments are necessary. There is the cost of $300 for the probation report in this matter. A $40 court operations fees, that's for a total of each conviction it counts as $120, however, in this incident it would be for two counts of it would be $80. And a $30 needs assessment fee, $30 per count,

in this case it would be $60. All of those are payable to the El Dorado Superior Court.

Any other matters before the Court?

MS. MILLER: Judge, I'm confused about your sentence. You mentioned three, 6-month terms. You said you're running Counts 1 and 2, 654 stayed.

THE COURT: 654. So 654 Count 2 is stayed. Then Count 3 is consecutive, and the violation of probation is consecutive. I think that's probably what the question was.

MS. MILLER: That wasn't clear to me. Other than I think in this case, Judge, that seems to be an overly harsh sentence. I would ask the Court run Counts 1 and 3 concurrent, but we would submit on that.

THE COURT: Thank you.

So, Mr. Robben, you have a right to appeal from the jury's verdict and from the Court's sentence. Your notice of appeal must be filed in this court within 30 days.

And if you cannot afford an attorney to represent you on appeal, then the appellate department of the Superior Court will appoint counsel to represent you at no cost to yourself. They will also make transcripts of the trial and proceedings including the sentencing available to you or your counsel.

Do you understand your appeal rights?

THE DEFENDANT: My lawyer is prepared to do that right now.

THE COURT: I'm assuming she was, but I wanted to make sure you understood.

THE DEFENDANT: She is going to be appealing the

rejection of the suppression motion, the trial. And I want to clarify, the sentencing, is that a separate appeal?

THE COURT: They are not separate appeals, they are all part of the appeal process.

And so all I'm saying is that you have a right to appeal from those. And all I was asking is did you understand your appellate rights? Did you understand what I said or not?

THE DEFENDANT: Yeah, the appellate division has been recused. That's the problem with the original appeal on the DUI is they made a decision and have all been recused. It's void.

THE COURT: That's a whole different issue. That's not something that right now needs to be determined.

So that's the order of the Court. Thank you very much.

(Whereupon the proceedings were concluded.)

---oOo---

JUDGE KINGBURY WAS DISQUALIFIED AND WITHOUT JURISDICTION TO REVOKE PROBATION AND THERE WAS NO REVOCATION HEARING

In case S16CRM0096 with the entire bench having been recused/disqualified, Judge Suzanne Kingsbury would have been without jurisdiction to revoke probation in S14CRM0465 for the violation. There was no substantive probation revocation hearing on the matter and any alleged hearing was in case S16CRM0096. Petitioner's 14th amendment due-process rights were violated by the denial of any probation preliminary and final revocation hearing.

In *Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972),* the U.S. Supreme Court established minimal due process requirements for parole revocation proceedings under the Fourteenth Amendment to the U.S. Constitution. *408 U.S. 471, 488-89 (1972)*. With regard to the revocation of probation, the Court subsequently held that **"a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing**, under the conditions specified in Morrissey." *Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973)*. Thus, the State "must provide the same process [found in Morrissey] when terminating a probationer from probation."

Trial counsel Rachel Miller did not properly file the notice of appeal. Ms. Miller checked the wrong box on the form indicating the appeal was for the PC 1385.5 suppression motion and not the final judgment of conviction. Petitioner attempted to have Ms. Miller correct the situation and request bail or O.R. (Release on Own Recognizance) pending the appeal. Ms. Miller refused to answer Petitioners letters of phone calls as shown by the following exhibit where Petitioner literally attempted to call her over 700 times from jail.

Petitioner also attempted to have appointed appellate counsel, David Cramer request bail/O.R. pending the appeal and to make sure the appeal was properly filed. Mr. Cramer refused to answer Petitioner's phone calls when Petitioner attempted to call him over 500 times from jail.

(People's Exhibit Number 17 continued play for the jury.)
Q (By MR. GOMES) Who is Rachel Miller?
THE COURT: One moment, Mr. Gomes.
Ladies and gentlemen, pass the transcripts to your left, please.
MR. GOMES: Sorry, Your Honor.
(Pause.)
THE COURT: Go ahead, Mr. Gomes.
MR. GOMES: Thank you, Your Honor.
Q (By MR. GOMES) Do you know who Rachel Miller is?
A Yes.
Q Who is Rachel Miller?
A The attorney that was representing Mr. Robben in his trial for the driving on a suspended driver's license case.
Q She was an appointed defense attorney in El Dorado County at the time?
A Yes.
Q And during the course of your investigation, did you investigate the Defendant's post trial contacts with attorney Rachel Miller?
A Yes.
Q Was there anything unusual that you identified in terms of the Defendant's contacts or attempts to contact Rachel Miller after that trial concluded until, let's say, October of that same year?
A Yes.

Q What was that?
A He tried to call her over 700 times from the jail.
Q 700 calls?
A Yes.
Q And she was not taking those calls?
A No.
Q All right. This jail conversation that we just listened to occurred in the month of July of 2016?
A July 17th, 2016.
Q And that was shortly after his trial concluded on the driving on a suspended license case?
A Yes.
Q Did you continue to monitor the Defendant's jail conversations over the next couple of months?
A I did.
Q Did you hear him have a number of conversations with this same individual, Mike Weston?
A Yes.
MR. GOMES: I'm gonna refer Court and counsel to Exhibit Number 18 for identification.
I assume we're gonna make the same stipulated agreement that 18 can be played for the jury?
MR. MILLER: Yes, Your Honor.
I have already received it in discovery, and I have had a chance to review it.
THE COURT: And that would be a continuing stipulation should further such exhibits be raised?

MR. MILLER: Yes, Your Honor.

MR. GOMES: Thank you.

THE COURT: Exhibit 18-A is being passed out for the jurors.

Same admonition, ladies and gentlemen: The evidence is what you hear, not what is in the transcript per se.

18 is admitted.

(People's Exhibit Number 18 was then received in evidence.)

(People's Exhibit Number 18 is now being played for the jury and not reported pursuant to stipulation.)

Q (By MR. GOMES) I'm gonna pause the recording for just a second.

This particular jail conversation took place in October of 2016?

A October 5th.

Q Procedurally at that point, was Rachel Miller still the Defendant's court-appointed lawyer?

A No.

Q Who had been appointed to replace her for purposes of his appeal?

A David Cramer.

Q Another court-appointed lawyer in El Dorado County?

A Yes.

(People's Exhibit Number 18 is resuming playing for the jury.)

Q (By MR. GOMES) I'm gonna pause the recording right there again.

In your investigation, did you take steps to

research the number of calls the Defendant made from the jail to attorney David Cramer during this period of time?

A Yes.

Q And I take it you can look at the Defendant's outgoing call log from the jail, and that's how you can research the number of times he called Rachel Miller and the number of times he called -- or attempted to call David Cramer?

A Yeah. You can just put in the name of the individual and a time frame, and it will give you all the calls, but you can also put in specific phone numbers and get all the calls from that specific phone number, and that's the way I did it in this case.

Q So we already heard that he had attempted hundreds of calls to Rachel Miller. Did you also determine how many calls the Defendant attempted to make to David Cramer?

A Over 200.

THE COURT: Mr. Gomes, for purposes of the record, when you pause, I'd like you to either reference the transcript page and line number or some footage number on your CD.

MR. GOMES: There is a time stamp on the CD I can reference, Your Honor.

THE COURT: Go ahead.

MR. GOMES: We are at 5:17 where I paused just now. I will try to do that as I go forward.

RIGHT TO TRAVEL

The Petitioner had/has a right to travel as was addressed in the motions for limine and not considered by the court/judge. The Petitioner was not for hire, he was in a private automobile on an order from the federal judge to appear in a United States federal courthouse.

This Peitioner adopts the theory explained here:

https://www.youtube.com/watch?v=VqFgUZcVDfo&t=314s

And the following argument:

ARGUMENT

If ever a judge understood the public's right to use the public roads, it was Justice Tolman of the Supreme Court of the State of Washington. Justice Tolman stated:

"Complete freedom of the highways is so old and well established a blessing that we have forgotten the days of the Robber Barons and toll roads, and yet, under an act like this, arbitrarily administered, the highways may be completely monopolized, if, through lack of interest, the people submit, then they may look to see the most sacred of their liberties taken from them one by one, by more or less rapid encroachment."

Robertson vs. Department of Public Works, 180 Wash 133, 147.

The words of Justice Tolman ring most prophetically in the ears of Citizens throughout the country today as the use of the public roads has been monopolized by the very entity which has been empowered to stand guard over our freedoms, i.e., that of state government.

RIGHTS

The "*most sacred of liberties*" of which Justice Tolman spoke was personal liberty. The definition of personal liberty is:

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property ... and is regarded as inalienable."

16 C.J.S., Constitutional Law, Sect.202, p.987

This concept is further amplified by the definition of personal liberty:

"Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horse drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct."

II Am.Jur. (1st) Constitutional Law, Sect.329, p.1135

and further ...

"Personal liberty -- consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law."

Bovier's Law Dictionary, 1914 ed., Black's Law Dictionary, 5th ed.;
Blackstone's Commentary 134;
Hare, Constitution, Pg. 777

Justice Tolman was concerned about the State prohibiting the Citizen from the "*most sacred of his liberties*," the Right of movement, the Right of moving one's self from place to place without threat of imprisonment, the Right to use the public roads in the ordinary course of life.

When the State allows the formation of a corporation it may control its creation by establishing guidelines (statutes) for its operation (charters). Corporations who use the roads in the course of business do not use the roads in the ordinary course of life. There is a difference between a corporation and an individual. The United States Supreme Court has stated:

"...We are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for examination on the suit of the State. The individual may stand upon his Constitutional Rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to investigation, so far as it may tend to incriminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life, liberty, and property. His Rights are such as the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his Rights are the refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under warrant of law. He owes nothing to the public so long as he does not trespass upon their rights."
"Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that the State, having chartered a corporation to make use of certain franchises, could not in exercise of its sovereignty inquire how those franchises had been employed, and whether they had been abused, and demand the production of corporate books and papers for that purpose."

Hale vs. Hinkel, 201 US 43, 74-75

Corporations engaged in mercantile equity fall under the purview of the State's admiralty jurisdiction, and the public at large must be protected from their activities, as they (the corporations) are engaged in business for profit.

"...Based upon the fundamental ground that the sovereign state has the plenary control of the streets and highways in the exercise of its police power (see police power, infra.), may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize the fundamental distinction between the ordinary Right of the Citizen to use the streets in the usual way and the use of the streets as a place of business or a main instrumentality of business for private gain. The former is a common Right, the latter is an extraordinary use. As to the former, the legislative power is confined to regulation, as to the latter, it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege."

Hadfield vs. Lundin, 98 Wash 516

It will be necessary to review early cases and legal authority in order to reach a lawfully correct theory dealing with this Right or "privilege." We will attempt to reach a sound conclusion as to what is a "Right to use the road" and what is a "privilege to use the road". Once reaching this determination, we shall then apply those positions to modern case decision.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda vs. Arizona, 384 US 436, 491

and ...

"The claim and exercise of a constitutional Right cannot be converted into a crime."

Miller vs. U.S., 230 F. 486, 489

and ...

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

Snerer vs. Cullen, 481 F. 946

Streets and highways are established and maintained for the purpose of travel and transportation by the public. Such travel may be for business or pleasure.

"The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived."

Chicago Motor Coach vs. Chicago, 169 NE 22?1;
Ligare vs. Chicago, 28 NE 934;
Boon vs. Clark, 214 SSW 607;
25 Am.Jur. (1st) Highways Sect.163

and ...

"The Right of the Citizen to travel upon the public highways and to transport his property thereon, either by horse drawn carriage or by automobile, is not a mere privilege which a city can prohibit or permit at will, but a common Right which he has under the right to life, liberty, and the pursuit of happiness."

Thompson vs. Smith, 154 SE 579

So we can see that a Citizen has a Right to travel upon the public highways by automobile and the Citizen cannot be rightfully deprived of his Liberty. So where does the misconception that the use of the public road is always and only a privilege come from?

"... For while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place for private gain. For the latter purpose, no person has a vested right to use the highways of the state, but is a privilege or a license which the legislature may grant or withhold at its discretion."

State vs. Johnson, 243 P. 1073;
Cummins vs. Homes, 155 P. 171;
Packard vs. Banton, 44 S.Ct. 256;
Hadfield vs. Lundin, 98 Wash 516

Here the court held that a Citizen has the Right to travel upon the public highways, but that he did not have the right to conduct business upon the highways. On this point of law all authorities are unanimous.

"Heretofore the court has held, and we think correctly, that while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place of business for private gain."

Willis vs. Buck, 263 P. l 982;
Barney vs. Board of Railroad Commissioners, 17 P.2d 82

and ...

"The right of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business for private gain in the running of a stagecoach or omnibus."

State vs. City of Spokane, 186 P. 864

What is this Right of the Citizen which differs so "radically and obviously" from one who uses the highway as a place of business? Who better to enlighten us than Justice Tolman of the Supreme Court of Washington State? In State vs. City of Spokane, supra, the Court also noted a very "radical and obvious" difference, but went on to explain just what the difference is:

"The former is the usual and ordinary right of the Citizen, a common right to all, while the latter is special, unusual, and extraordinary."

and ...

"This distinction, elementary and fundamental in character, is recognized by all the authorities."

State vs. City of Spokane, supra.

This position does not hang precariously upon only a few cases, but has been proclaimed by an impressive array of cases ranging from the state courts to the federal courts.

"the right of the Citizen to travel upon the highway and to transport his property thereon in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain in the running of a stagecoach or omnibus. The former is the usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary."

Ex Parte Dickey, (Dickey vs. Davis), 85 SE 781

and ...

"The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business."

Thompson vs. Smith, supra.;
Teche Lines vs. Danforth, Miss., 12 S.2d 784

There is no dissent among various authorities as to this position. (See Am. Jur. [1st] Const. Law, 329 and corresponding Am. Jur. [2nd].)

"Personal liberty -- or the right to enjoyment of life and liberty -- is one of the fundamental or natural rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from nor dependent on the U.S. Constitution. ... It is one of the most sacred and valuable rights [remember the words of Justice Tolman, supra.] as sacred as the right to private property ... and is regarded as inalienable."

16 C.J.S. Const. Law, Sect.202, Pg. 987

As we can see, the distinction between a "Right" to use the public roads and a "privilege" to use the public roads is drawn upon the line of "using the road as a place of business" and the various state courts have held so. But what have the U.S. Courts held on this point?

"First, it is well established law that the highways of the state are public property, and their primary and preferred use is for private purposes, and that their use for purposes of gain is special and extraordinary which, generally at least, the legislature may prohibit or condition as it sees fit."

Stephenson vs. Rinford, 287 US 251;
Pachard vs Banton, 264 US 140, and cases cited;
Frost and F. Trucking Co. vs. Railroad Commission, 271 US 592;
Railroad commission vs. Inter-City Forwarding Co., 57 SW.2d 290;
Parlett Cooperative vs. Tidewater Lines, 164 A. 313

So what is a privilege to use the roads? By now it should be apparent even to the "learned" that an attempt to use the road as a place of business is a privilege. The distinction must be drawn between ...

1. Travelling upon and transporting one's property upon the public roads, which is our Right; and ...
2. Using the public roads as a place of business or a main instrumentality of business, which is a privilege.

"[The roads] ... are constructed and maintained at public expense, and no person therefore, can insist that he has, or may acquire, a vested right to their use in carrying on a commercial business."

Ex Parte Sterling, 53 SW.2d 294;
Barney vs. Railroad Commissioners, 17 P.2d 82;
Stephenson vs. Binford, supra.

"When the public highways are made the place of business the state has a right to regulate their use in the interest of safety and convenience of the public as well as the preservation of the highways."

Thompson vs. Smith, supra.

"[The state's] right to regulate such use is based upon the nature of the business and the use of the highways in connection therewith."

Ibid.

"We know of no inherent right in one to use the highways for commercial purposes. The highways are primarily for the use of the public, and in the interest of the public, the state may prohibit or regulate ... the use of the highways for gain."

Robertson vs. Dept. of Public Works, supra.

There should be considerable authority on a subject as important a this deprivation of the liberty of the individual "*using the roads in the ordinary course of life and business*." However, it should be noted that extensive research has not turned up one case or authority acknowledging the state's power to convert the individual's right to travel upon the public roads into a "*privilege*."

Therefore, it is concluded that the Citizen does have a "*Right*" to travel and transport his property upon the public highways and roads and the exercise of this Right is not a "*privilege*."

DEFINITIONS

In order to understand the correct application of the statute in question, we must first define the terms used in connection with this point of law. As will be shown, many terms used today do not, in their legal context, mean what we assume they mean, thus resulting in the misapplication of statutes in the instant case.

AUTOMOBILE AND MOTOR VEHICLE

There is a clear distinction between an automobile and a motor vehicle. An automobile has been defined as:

"The word `automobile' connotes a pleasure vehicle designed for the transportation of persons on highways."

American Mutual Liability Ins. Co., vs. Chaput, 60 A.2d 118, 120; 95 NH 200

While the distinction is made clear between the two as the courts have stated:

"A motor vehicle or automobile for hire is a motor vehicle, other than an automobile stage, used for the transportation of persons for which remuneration is received."

International Motor Transit Co. vs. Seattle, 251 P. 120

The term `motor vehicle' is different and broader than the word `automobile.'"

City of Dayton vs. DeBrosse, 23 NE.2d 647, 650; 62 Ohio App. 232

The distinction is made very clear in Title 18 USC 31:

"Motor vehicle" means every description or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property.
"*Used for commercial purposes*" means the carriage of persons or property for any fare, fee, rate, charge or other considerations, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Clearly, an automobile is private property in use for private purposes, while a motor vehicle is a machine which may be used upon the highways for trade, commerce, or hire.

TRAVEL

The term "*travel*" is a significant term and is defined as:
"The term `travel' and `traveler' are usually construed in their broad and general sense ... so as to include all those who rightfully use the highways viatically (when being reimbursed for expenses) and who have occasion to pass over them for the purpose of business, convenience, or pleasure."

25 Am.Jur. (1st) Highways, Sect.427, Pg. 717

"**Traveler** -- One who passes from place to place, whether for pleasure, instruction, business, or health."

Locket vs. State, 47 Ala. 45;
Bovier's Law Dictionary, 1914 ed., Pg. 3309

"**Travel** -- To journey or to pass through or over; as a country district, road, etc. To go from one place to another, whether on foot, or horseback, or in any conveyance as a train, an automobile, carriage, ship, or aircraft; Make a journey."

Century Dictionary, Pg. 2034

Therefore, the term "*travel*" or "*traveler*" refers to one who uses a conveyance to go from one place to another, and included all those who use the highways as a matter of Right.

Notice that in all these definitions, the phrase "*for hire*" never occurs. This term "*travel*" or "*traveler*" implies, by definition, one who uses the road as a means to move from one place to another.

Therefore, one who uses the road in the ordinary course of life and business for the purpose of travel and transportation is a traveler.

DRIVER

The term "*driver*" in contradistinction to "*traveler*," is defined as:

"**Driver** -- One employed in conducting a coach, carriage, wagon, or other vehicle ..."

Bovier's Law Dictionary, 1914 ed., Pg. 940

Notice that this definition includes one who is "*employed*" in conducting a vehicle. It should be self-evident that this individual could not be "*travelling*" on a journey, but is using the road as a place of business.

OPERATOR

Today we assume that a "*traveler*" is a "*driver*," and a "*driver*" is an "*operator*." However, this is not the case.

"It will be observed from the language of the ordinance that a distinction is to be drawn between the terms `operator' and `driver'; the `operator' of the service car being the person who is licensed to have the car on the streets in the business of carrying passengers for hire; while the `driver' is the one who actually drives the car. However, in the actual prosecution of business, it was possible for the same person to be both "*operator*" and "*driver*."

Newbill vs. Union Indemnity Co., 60 SE.2d 658

To further clarify the definition of an "operator" the court observed that this was a vehicle "for hire" and that it was in the business of carrying passengers.

This definition would seem to describe a person who is using the road as a place of business, or in other words, a person engaged in the "privilege" of using the road for gain.

This definition, then, is a further clarification of the distinction mentioned earlier, and therefore:

1. Travelling upon and transporting one's property upon the public roads as a matter of Right meets the definition of a traveler.
2. Using the road as a place of business as a matter of privilege meets the definition of a driver or an operator or both.

TRAFFIC

Having defined the terms "automobile," "motor vehicle," "traveler," "driver," and "operator," the next term to define is "*traffic*":

"... Traffic thereon is to some extent destructive, therefore, the prevention of unnecessary duplication of auto transportation service will lengthen the life of the highways or reduce the cost of maintenance, the revenue derived by the state ... will also tend toward the public welfare by producing at the expense of those operating for private gain, some small part of the cost of repairing the wear ..."

Northern Pacific R.R. Co. vs. Schoenfeldt, 213 P. 26

Note: In the above, Justice Tolman expounded upon the key of raising revenue by taxing the "*privilege*" to use the public roads "*at the expense of those operating for gain*."

In this case, the word "*traffic*" is used in conjunction with the unnecessary Auto Transportation Service, or in other words, "*vehicles for hire*." The word "*traffic*" is another word which is to be strictly construed to the conducting of business.

"**Traffic** -- Commerce, trade, sale or exchange of merchandise, bills, money, or the like. The passing of goods and commodities from one person to another for an equivalent in goods or money ..."

Bovier's Law Dictionary, 1914 ed., Pg. 3307

Here again, notice that this definition refers to one "*conducting business*." No mention is made of one who is traveling in his automobile. This definition is of one who is engaged in the passing of a commodity or goods in exchange for money, i.e .., vehicles for hire.

Furthermore, the words "*traffic*" and "*travel*" must have different meanings which the courts recognize. The difference is recognized in Ex Parte Dickey, supra:

"...in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary traffic and travel and obstruct them."

The court, by using both terms, signified its recognition of a distinction between the two. But, what was the distinction? We have already defined both terms, but to clear up any doubt:

"The word `traffic' is manifestly used here in secondary sense, and has reference to the business of transportation rather than to its primary meaning of interchange of commodities."

Allen vs. City of Bellingham, 163 P. 18

Here the Supreme Court of the State of Washington has defined the word "*traffic*" (in either its primary or secondary sense) in reference to business, and not to mere travel! So it is clear that the term "traffic" is business related and therefore, it is a "*privilege*." The net result being that

"traffic" is brought under the (police) power of the legislature. The term has no application to one who is not using the roads as a place of business.

LICENSE

It seems only proper to define the word "*license*," as the definition of this word will be extremely important in understanding the statutes as they are properly applied:

"The permission, by competent authority to do an act which without permission, would be illegal, a trespass, or a tort."

People vs. Henderson, 218 NW.2d 2, 4

"Leave to do a thing which licensor could prevent."

Western Electric Co. vs. Pacent Reproducer Corp., 42 F.2d 116, 118

In order for these two definitions to apply in this case, the state would have to take up the position that the exercise of a Constitutional Right to use the public roads in the ordinary course of life and business is illegal, a trespass, or a tort, which the state could then regulate or prevent.

This position, however, would raise magnitudinous Constitutional questions as this position would be diametrically opposed to fundamental Constitutional Law. (See "Conversion of a Right to a Crime," infra.)

In the instant case, the proper definition of a "*license*" is:

"a permit, granted by an appropriate governmental body, generally for consideration, to a person, firm, or corporation, to pursue some occupation or to carry on some business which is subject to regulation under the police power."

Rosenblatt vs. California State Board of Pharmacy, 158 P.2d 199, 203

This definition would fall more in line with the "privilege" of carrying on business on the streets.

Most people tend to think that "*licensing*" is imposed by the state for the purpose of raising revenue, yet there may well be more subtle reasons contemplated; for when one seeks permission from someone to do something he invokes the jurisdiction of the licensor which, in this case, is the state. In essence, the licensee may well be seeking to be regulated by the licensor.

"A license fee is a charge made primarily for regulation, with the fee to cover costs and expenses of supervision or regulation."

State vs. Jackson, 60 Wisc.2d 700; 211 NW.2d 480, 487

The fee is the price; the regulation or control of the licensee is the real aim of the legislation.

Are these licenses really used to fund legitimate government, or are they nothing more than a subtle introduction of police power into every facet of our lives? Have our "enforcement agencies" been diverted from crime prevention, perhaps through no fault of their own, instead now busying themselves as they "check" our papers to see that all are properly endorsed by the state?

How much longer will it be before we are forced to get a license for our lawn mowers, or before our wives will need a license for her *blender* or *mixer*? They all have motors on them and the state can always use the revenue.

POLICE POWER

The confusion of the police power with the power of taxation usually arises in cases where the police power has affixed a penalty to a certain act, or where it requires licenses to be obtained and a certain sum be paid for certain occupations. The power used in the instant case cannot, however, be the power of taxation since an attempt to levy a tax upon a Right would be open to Constitutional objection. (See "*taxing power*," infra.)

Each law relating to the use of police power must ask three questions:

1. *"Is there threatened danger?*
2. *Does a regulation involve a Constitutional Right?*
3. Is this regulation reasonable?"

People vs. Smith, 108 Am.St.Rep. 715;
Bovier's Law Dictionary, 1914 ed., under "Police Power"

When applying these three questions to the statute in question, some very important issues emerge.

First, "*is there a threatened danger*" in the individual using his automobile on the public highways, in the ordinary course of life and business?

The answer is **No!** There is nothing inherently dangerous in the use of an automobile when it is carefully managed. Their guidance, speed, and noise are subject to a quick and easy control, under a competent and considerate manager, it is as harmless on the road as a horse and buggy.

It is the manner of managing the automobile, and that alone, which threatens the safety of the public. The ability to stop quickly and to respond quickly to guidance would seem to make the automobile one of the least dangerous conveyances. (See Yale Law Journal, December, 1905.)

"The automobile is not inherently dangerous."

Cohens vs. Meadow, 89 SE 876;
Blair vs. Broadmore, 93 SE 532

To deprive all persons of the Right to use the road in the ordinary course of life and business, because one might, in the future, become dangerous, would be a deprivation not only of the Right to travel, but also the Right to due process. (See "*Due Process*," infra.)

Next; *does the regulation involve a Constitutional Right*?

This question has already been addressed and answered in this brief, and need not be reinforced other than to remind this Court that this Citizen does have the Right to travel upon the public highway by automobile in the ordinary course of life and business. It can therefore be concluded that this regulation does involve a Constitutional Right.

The third question is the most important in this case. "*Is this regulation reasonable*?"

The answer is **No!** It will be shown later in "*Regulation*," infra., that this licensing statute is oppressive and could be effectively administered by less oppressive means.

Although the Fourteenth Amendment does not interfere with the proper exercise of the police power, in accordance with the general principle that the power must be exercised so as not to invade unreasonably the rights guaranteed by the United States Constitution, it is established beyond question that every state power, including the police power, is limited by the Fourteenth Amendment (and others) and by the inhibitions there imposed.

Moreover, the ultimate test of the propriety of police power regulations must be found in the Fourteenth Amendment, since it operates to limit the field of the police power to the extent of preventing the enforcement of statutes in denial of Rights that the Amendment protects. (See Parks vs. State, 64 NE 682.)

"With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority."

Connolly vs. Union Sewer Pipe Co., 184 US 540;
Lafarier vs. Grand Trunk R.R. Co., 24 A. 848;
O'Neil vs. Providence Amusement Co., 108 A. 887

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution."

Bacahanan vs. Wanley, 245 US 60;
Panhandle Eastern Pipeline Co. vs. State Highway Commission, 294 US 613

"It is well settled that the Constitutional Rights protected from invasion by the police power, include Rights safeguarded both by express and implied prohibitions in the Constitutions."

Tiche vs. Osborne, 131 A. 60

"As a rule, fundamental limitations of regulations under the police power are found in the spirit of the Constitutions, not in the letter, although they are just as efficient as if expressed in the clearest language."

Mehlos vs. Milwaukee, 146 NW 882

As it applies in the instant case, the language of the Fifth Amendment is clear:

"No person shall be ... deprived of Life, Liberty, or Property without due process of law."

As has been shown, the courts at all levels have firmly established an absolute Right to travel.

In the instant case, the state, by applying commercial statutes to all entities, natural and artificial persons alike, has deprived this free and natural person of the Right of Liberty, without cause and without due process of law.

DUE PROCESS

"The essential elements of due process of law are ... Notice and The Opportunity to defend."

Simon vs. Craft, 182 US 427

Yet, not one individual has been given notice of the loss of his/her Right, let alone before signing the license (contract). Nor was the Citizen given any opportunity to defend against the loss of his/her right to travel, by automobile, on the highways, in the ordinary course of life and business. This amounts to an arbitrary deprivation of Liberty.

"There should be no arbitrary deprivation of Life or Liberty ..."

Barbour vs. Connolly, 113 US 27, 31;
Yick Wo vs. Hopkins, 118 US 356

and ...

"The right to travel is part of the Liberty of which a citizen cannot deprived without due process of law under the Fifth Amendment. This Right was emerging as early as the Magna Carta."

Kent vs. Dulles, 357 US 116 (1958)

The focal point of this question of police power and due process must balance upon the point of making the public highways a safe place for the public to travel. If a man travels in a manner that creates actual damage, an action would lie (civilly) for recovery of damages. The state could then also proceed against the individual to deprive him of his Right to use the public highways, for cause. This process would fulfill the due process requirements of the Fifth Amendment while at the same time insuring that Rights guaranteed by the U.S. Constitution and the state constitutions would be protected.

But unless or until harm or damage (a crime) is committed, there is no cause for interference in the private affairs or actions of a Citizen.

One of the most famous and perhaps the most quoted definitions of due process of law, is that of **Daniel Webster** in his Dartmouth College Case (4 Wheat 518), in which he declared that by due process is meant:

"a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."

See also State vs. Strasburg, 110 P. 1020;
Dennis vs. Moses, 52 P. 333

Somewhat similar is the statement that is a rule as old as the law that:

"no one shall be personally bound (restricted) until he has had his day in court,"

by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and it is oppressive and can never be upheld where it is fairly administered. (12 Am.Jur. [1st] Const. Law, Sect. 573, Pg. 269)

Note: This sounds like the process used to deprive one of the "*privilege*" of operating a motor vehicle "for hire." It should be kept in mind, however, that we are discussing the arbitrary deprivation of the Right to use the road that all citizens have "in common."

The futility of the state's position can be most easily observed in the 1959 Washington Attorney General's opinion on a similar issue:

"The distinction between the Right of the Citizen to use the public highways for private, rather than commercial purposes is recognized ..."

and ...

"Under its power to regulate private uses of our highways, our legislature has required that motor vehicle operators be licensed (I.C. 49-307). Undoubtedly, the primary purpose of this requirement is to insure, as far as possible, that all motor vehicle operators will be competent and qualified, thereby reducing the potential hazard or risk of harm, to which other users of the highways might otherwise be subject. But once having complied with this regulatory provision, by obtaining the required license, a motorist enjoys the privilege of travelling freely upon the highways ..."

Washington A.G.O. 59-60 No. 88, Pg. 11

This alarming opinion appears to be saying that every person using an automobile as a matter of Right, must give up the Right and convert the Right into a privilege. This is accomplished under the guise of regulation. This statement is indicative of the insensitivity, even the ignorance, of the government to the limits placed upon governments by and through the several constitutions.

This legal theory may have been able to stand in 1959; however, as of 1966, in the United States Supreme Court decision in Miranda, even this weak defense of the state's actions must fall.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda vs. Arizona, 384 US 436, 491

Thus the legislature does not have the power to abrogate the Citizen's Right to travel upon the public roads, by passing legislation forcing the citizen to waive his Right and convert that Right into a privilege. Furthermore, we have previously established that this "*privilege*" has been defined as applying only to those who are "*conducting business in the streets*" or "*operating for-hire vehicles*."

The legislature has attempted (by legislative fiat) to deprive the Citizen of his Right to use the roads in the ordinary course of life and business, without affording the Citizen the safeguard of *due process of law.* This has been accomplished under supposed powers of regulation.

REGULATION

"In addition to the requirement that regulations governing the use of the highways must not be violative of constitutional guarantees, the prime essentials of such regulation are reasonableness, impartiality, and definiteness or certainty."

25 Am.Jur. (1st) Highways, Sect. 260

and ...

"Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance of permission."

Davis vs. Massachusetts, 167 US 43;
Pachard vs. Banton, supra.

One can say for certain that these regulations are impartial since they are being applied to all, even though they are clearly beyond the limits of the legislative powers. However, we must consider whether such regulations are reasonable and non-violative of constitutional guarantees.

First, let us consider the reasonableness of this statute requiring all persons to be licensed (presuming that we are applying this statute to all persons using the public roads). In determining the reasonableness of the statute we need only ask two questions:

1. Does the statute accomplish its stated goal?

The answer is **No!**

The attempted explanation for this regulation "*to insure the safety of the public by insuring, as much as possible, that all are competent and qualified*."

However, one can keep his license without retesting, from the time he/she is first licensed until the day he/she dies, without regard to the competency of the person, by merely renewing said license before it expires. It is therefore possible to completely skirt the goal of this attempted regulation, thus proving that this regulation does not accomplish its goal.

Furthermore, by testing and licensing, the state gives the appearance of underwriting the competence of the licensees, and could therefore be held liable for failures, accidents, etc. caused by licensees.

2. Is the statute reasonable?

The answer is **No!**

This statute cannot be determined to be reasonable since it requires to the Citizen to give up his or her natural Right to travel unrestricted in order to accept the privilege. The purported goal of this statute could be met by much less oppressive regulations, i.e., competency tests and certificates of competency before using an automobile upon the public roads. (This is exactly the situation in the aviation sector.)

But isn't this what we have now?

The answer is **No!** The real purpose of this license is much more insidious. When one signs the license, he/she gives up his/her Constitutional Right to travel in order to accept and exercise a privilege. After signing the license, a quasi-contract, the Citizen has to give the state his/her consent to be prosecuted for constructive crimes and quasi-criminal actions where there is no harm done and no damaged property.

These prosecutions take place without affording the Citizen of their Constitutional Rights and guarantees such a the Right to a trial by jury of twelve persons and the Right to counsel, as well as the normal safeguards such as proof of intent and a corpus dilecti and a grand jury indictment. These unconstitutional prosecutions take place because the Citizen is exercising a privilege and has given his/her "*implied consent*" to legislative enactments designed to control interstate commerce, a regulatable enterprise under the police power of the state.

We must now conclude that the Citizen is forced to give up Constitutional guarantees of "Right" in order to exercise his state "privilege" to travel upon the public highways in the ordinary course of life and business.

SURRENDER OF RIGHTS

A Citizen cannot be forced to give up his/her Rights in the name of regulation.

"... the only limitations found restricting the right of the state to condition the use of the public highways as a means of vehicular transportation for compensation are (1) that the state must not exact of those it permits to use the highways for hauling for gain that they surrender any of their inherent U.S. Constitutional Rights as a condition precedent to obtaining permission for such use ..."

Riley vs. Laeson, 142 So. 619;
Stephenson vs. Binford, supra.

If one cannot be placed in a position of being forced to surrender Rights in order to exercise a privilege, how much more must this maxim of law, then, apply when one is simply exercising (putting into use) a Right?

Hoke vs. Henderson, 15 NC 15

and ...

"We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another."

Simons vs. United States, 390 US 389

Since the state requires that one give up Rights in order to exercise the privilege of driving, the regulation cannot stand under the police power, due process, or regulation, but must be exposed as a statute which is oppressive and one which has been misapplied to deprive the Citizen of Rights guaranteed by the United States Constitution and the state constitutions.

TAXING POWER

"Any claim that this statute is a taxing statute would be immediately open to severe Constitutional objections. If it could be said that the state had the power to tax a Right, this would enable the state to destroy Rights guaranteed by the constitution through the use of oppressive taxation. The question herein, is one of the state taxing the Right to travel by the ordinary modes of the day, and whether this is a legislative object of the state taxation.

The views advanced herein are neither novel nor unsupported by authority. The question of taxing power of the states has been repeatedly considered by the Supreme Court. The Right of the state to impede or embarrass the Constitutional operation of the U.S. Government or the Rights which the Citizen holds under it, has been uniformly denied."

McCulloch vs. Maryland, 4 Wheat 316

The power to tax is the power to destroy, and if the state is given the power to destroy Rights through taxation, the framers of the Constitution wrote that document in vain.

"... It may be said that a tax of one dollar for passing through the state cannot sensibly affect any function of government or deprive a Citizen of any valuable Right. But if a state can tax ... a passenger of one dollar, it can tax him a thousand dollars."

Crandall vs. Nevada, 6 Wall 35, 46

and ...

"If the Right of passing through a state by a Citizen of the United States is one guaranteed by the Constitution, it must be sacred from state taxation."

Ibid., Pg. 47

Therefore, the Right of travel must be kept sacred from all forms of state taxation and if this argument is used by the state as a defense of the enforcement of this statute, then this argument also must fail.

CONVERSION OF A RIGHT TO A CRIME

As previously demonstrated, the Citizen has the Right to travel and to transport his property upon the public highways in the ordinary course of life and business. However, if one exercises this Right to travel (without first giving up the Right and converting that Right into a privilege) the Citizen is by statute, guilty of a crime. This amounts to converting the exercise of a Constitutional Right into a crime.

Recall the Miller vs. U.S. and Snerer vs. Cullen quotes from Pg. 5, and:

"The state cannot diminish Rights of the people."

Hurtado vs. California, 110 US 516

and ...

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda, supra.

Indeed, the very purpose for creating the state under the limitations of the constitution was to protect the rights of the people from intrusion, particularly by the forces of government.

So we can see that any attempt by the legislature to make the act of using the public highways as a matter of Right into a crime, is void upon its face.

Any person who claims his Right to travel upon the highways, and so exercises that Right, cannot be tried for a crime of doing so. And yet, this Freeman stands before this court today to answer charges for the "*crime*" of exercising his Right to Liberty. As we have already shown, the term "*drive*" can only apply to those who are employed in the business of transportation for hire. It has been shown that freedom includes the Citizen's Right to use the public highways in the ordinary course of life and business without license or regulation by the police powers of the state.

CONCLUSION

It is the duty of the court to recognize the substance of things and not the mere form.

"The courts are not bound by mere form, nor are they to be misled by mere pretenses. They are at liberty -- indeed they are under a solemn duty -- to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purported to have been enacted to protect ... the public safety, has no real or substantial relation to those objects or is a palpable invasion of Rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Mulger vs. Kansas, 123 US 623, 661

and ...

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

Boyd vs. United States, 116 US 616

The courts are *duty bound* to recognize and stop the *stealthy encroachments* which have been made upon the Citizen's Right to travel and to use the roads to transport his property in the "*ordinary course of life and business*." (Hadfield, supra.)

Further, the court must recognize that the Right to travel is part of the Liberty of which a Citizen cannot be deprived without specific cause and without the *due process of law* guaranteed in the Fifth Amendment. (Kent, supra.)

The history of this *invasion* of the Citizen's Right to use the public highways shows clearly that the legislature simply found a heretofore untapped source of revenue, got greedy, and attempted to enforce a statute in an unconstitutional manner upon those free and natural individuals who have a Right to travel upon the highways. This was not attempted in an outright action, but in a slow, meticulous, calculated encroachment upon the Citizen's Right to travel.

This position must be accepted unless the prosecutor can show his authority for the position that the "*use of the road in the ordinary course of life and business*" is a privilege.

To rule in any other manner, without clear authority for an adverse ruling, will infringe upon fundamental and basic concepts of Constitutional law. This position, that a Right cannot be regulated under any guise, must be accepted without concern for the monetary loss of the state.

"Disobedience or evasion of a Constitutional Mandate cannot be tolerated, even though such disobedience may, at least temporarily, promote in some respects the best interests of the public."

Slote vs. Examination, 112 ALR 660

and ...

"Economic necessity cannot justify a disregard of Constitutional guarantee."

Riley vs. Carter, 79 ALR 1018;
16 Am.Jur. (2nd), Const. Law, Sect. 81

and ...

"Constitutional Rights cannot be denied simply because of hostility to their assertions and exercise; vindication of conceded Constitutional Rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them."

Watson vs. Memphis, 375 US 526

Therefore, the Court's decision in the instant case must be made without the issue of cost to the state being taken into consideration, as that issue is irrelevant. The state cannot lose money that it never had a right to demand from the *Sovereign People.*

Finally, we come to the issue of *public policy*. It could be argued that the *licensing scheme* of all persons is a matter of public policy. However, if this argument is used, it too must fail, as:

"No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution."

16 Am.Jur. (2nd), Const. Law, Sect. 70

So even public policy cannot abrogate this Citizen's Right to travel and to use the public highways in the ordinary course of life and business. Therefore, it must be concluded that:

"We have repeatedly held that the legislature may regulate the use of the highways for carrying on business for private gain and that such regulation is a valid exercise of the police power."

Northern Pacific R.R. Co., supra.

and ...

"The act in question is a valid regulation, and as such is binding upon all who use the highway for the purpose of private gain."

Ibid.

Any other construction of this statute would render it unconstitutional as applied to this Citizen or any Citizen. The Accused therefore moves this court to dismiss the charge against him, with prejudice.

June 10, 1986.
This ends the legal brief.

In addition:

Since no notice is given to people applying for driver's (or other) licenses that they have a perfect right to use the roads without any permission, and that they surrender valuable rights by taking on the regulation system of licensure, the state has committed a massive construction fraud. This occurs when any person is told that they must have a license in order to use the public roads and highways.

The license, being a legal contract under which the state is empowered with policing powers, is only valid when the licensee takes on the burdens of the contract and bargains away his or her rights knowingly, intentionally, and voluntarily.

Few know that the driver's license is a contract without which the police are powerless to regulate the people's actions or activities.

Few (if any) licensees intentionally surrender valuable rights. They are told that they must have the license. As we have seen, this is not the case.

No one in their right mind voluntarily surrenders complete liberty and accepts in its place a set of regulations.

"The people never give up their liberties but under some delusion."

Edmund Burke, (1784)

CASE S14CRM0465

INTRODUCTION – ARRESTING OFFICER DID NOT FILL OUT THE REPORTS

The DUI conviction must also be reversed since the conviction amounts to a miscarriage-of-justice and constitutes errors of constitutional dimension (5th, 6th, and 14th U.S. Constitution amendments) since it was obtained using perjury and false/fabricated evidence, prosecutorial misconduct the trial court judge was bias/prejudice.

The Field Sobriety Tests (FST) and breathalyzer test were not properly performed and did not comply with Cal. Code of Regulation Title 17 (not was the test "performed correctly under the Adams test[82] discussed below – the manufacture of the Dräger alcotest 7510 user manual which also requires a 15 minute observation, and the SLTPD Officer Cory Wilson did not ask this Petitioner is he regurgitated or burped within 15 minutes of the test …and said Dräger alcotest 7510 was used in the vicinity of radio antenna i.e. police radios and computer WIFI which the manual states not to do), IAC of trial and IAAC of appellate counsel, use of a retired judge (with no order of assignment from the Chief Justice of California Supreme Court or Judicial Council) to decide a pre-trial suppression hearing (Timothy Buckley) and the use of both retired and bias/prejudice judges on appeal that had recused (all three judges al the appeal panel retired Judge Douglas Phimister, retired Judge Daniel Proud & Judge Dylan Sullivan were recused from case # P16CRM0096 at the time they decided this appeal for a conflict-of-interest). No orders assigning said retired judges from California Judicial Council or Chief Justice of the California Supreme Court.

What is shocking about this case is that Officer Shannon Laney waited 24 hours to write his report (explained later below) and Officer Laney claims he did not fill out all the **reports "I didn't fill out all the reports, there were two officers involved."** (RT 1, page 51).

---

[82] *In People v. Adams, 59 Cal. App. 3d 559 - Cal: Court of Appeal, 1st Appellate Dist., 4th Div. 1976* (1) In general, the foundational prerequisites for admissibility of testing results are that (1) the particular apparatus utilized was in proper working order, **(2) the test used was properly administered**, and **(3) the operator was competent** and qualified.

complete, I determined that he was operating a motor vehicle while under the influence of alcohol.

Q. And was he put under arrest?

A. He was.

Q. Okay. And then was he taken to the station?

A. He was taken to the station by Officer Wilson, who was in a patrol car, with my department.

Q. The chemical test was eventually performed?

A. A chemical breath test was performed.

Q. Did that confirm your initial observation?

A. It did.

MR. PIZZUTI: Okay.

THE COURT: All right. Mr. Spicer, your witness.

MR. SPICER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SPICER:

Q. Officer, you're trained in how to fill out police reports, right?

A. I am.

Q. And you filled out a police report in this case, didn't you?

A. I did. Well, I filled out my report. I didn't fill out all the reports. There was two officers involved.

Q. Very well.

So you prepared a report in this case?

A. I did.

Q. And was that immediately after this event

The transcript below shows the only other SLTPD Officer involved, Cory Wilson states under oath after being asked if he wrote an arrest report "No. I didn't write a report." (RT 1, page 187)

Here, Evidence Code § 1280 is violated - Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies: (a) The writing was made by and within the scope of duty of a public employee.

Here, both Officers are caught in a perjury trap because based on the record and video, it appears Officer Wilson wrote the reports and Shannon Laney approved said reports the next day. The evidence is in this pleading and on the record. The video showing the breathalyzer test shows Officer Cory Wilson writing his report on a computer. Another report of the warrantless arrest shows it was prepared by Cory Wilson (also note it was never signed by any judge). The unlawfully fabricated report is hearsay since it was not prepared by the arresting officer Shannon Laney and both officers engaged in a conspiracy to violate Petitioner's civil rights in violation of 18 U.S.C. 241 & 242.[83] Said fraud-upon-the-court, perjury and fabricated evidence violates this Petitioner's 14th amendment right to due-process.

---

[83] **18 USC 241:** If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 USC 242: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a

Both Officer Shannon Laney and Cory Wilson violated PC 118.1 which states that "every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years." Also, penal code 115. (a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony. (b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section. "A violation of section 115 requires the offering of an "instrument." An instrument is, at a minimum, a type of document." *People v. Murphy, 253 P. 3d 1216 - Cal: Supreme Court 2011.*

---

dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

A. Yes; that's a booking sheet.
Q. And the booking sheet is something where you just take down general information on a person?
A. Yes; it's all their general information. Their height, weight, Social Security Number, driver's license number, address, and what charges they are there for.
Q. Okay. And now, you did not write an arrest report as part of this; correct?
A. No.
THE COURT: No, that's not correct, or no, you didn't write a report?
THE WITNESS: I'm sorry. No, I didn't write a report.
MR. SPICER: Can we just hold one second while I start the machine?
THE COURT: Oh, sure. The attorneys are sharing Mr. Spicer's projector and information that has been scanned and put in his computer for display on the screen.
MR. SPICER: I just can't listen to questions at the same time.
THE COURT: I understand. Technology is great, but it's not always seamless.
Q. (By Mr. Pizzuti) Okay. I'd ask you to -- let me start this up. I'm trying to get a number indicated of where we start. Oh, thank you.
On the lower right-hand portion of the screen, it says 8:44:57 p.m. I just ask you to take a look at this.

CASE NUMBER: 1408-1766

DATE/TIME OF ARREST: 8/20/2014/2024 hours

48-HR. EXP. DATE/TIME:

DECLARATION AND DETERMINATION

(PROBABLE CAUSE FOR WARRANTLESS ARREST)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

ARRESTEE	DOB	CDL	SSN
Robben, Todd	04/16/1969	C5334283/CA	[redacted]

ARRESTING AGENCY	ARRESTING OFFICER	BADGE/ID NO.
SLTPD	Laney	160

VIOLATIONS ALLEGED
23152 (a), 23152(b)

PLACE OF VIOLATION
Heavenly Village Way, Montreal Ave, SLT — El Dorado County

FACTS ESTABLISHING ELEMENTS AND IDENTIFICATION:

On 8/20/2014 at 2002 hours, I observed a white Subaru driving in excess the posted speed limit. I conducted a traffic enforcement stop and observed the driver had bloodshot watery eyes, and an odor of an alcoholic beverage emitting from his breath. With these observations and poor performance on FST's, I arrested Robben for driving under the influence.

Robben was identified by his California driver's license.

He chose a breath test with the results of .09% BAC.

Officer Wilson writes that he observed a white Subaru... When, in fact, it was Officer Laney

THE ABOVE INFORMATION WAS PREPARED BY: Wilson #209

I RULE ON THE BASIS OF THE FOREGOING DECLARATION THAT THERE

☐ IS ☐ IS NOT

PROBABLE CAUSE TO BELIEVE THIS ARRESTEE HAS COMMITTED A CRIME.

JUDGE:

DATE: TIME:

Not signed by any judge

ASSISTANT D.A. CONCEDED “INSUFFICIENT EVIDENCE” – POLICE OFFICER SHANNON LANEY STATED PETITIONER WAS NOT DRUNK

There was “insufficient evidence” as addressed on a letter from the Assistant D.A., there was a litany of Prosecutorial misconduct as addressed below …And the **Petitioner was not drunk**:

Q. But when he got out of the car you didn't have your hands on him; right?
A. Correct.
Q. And that's when you say he looked unsteady?
A. I saw him a little closer, up front, you know? On the video, I was curious to see if it was on there. And you can kind of see it little bit as he gets out of the car. He's not staggering. He wasn't completely -- he wasn't drunk; he was impaired. So it was a different level. He wasn't quite -- he wasn't that drunk.

The Petitioner’s opening brief explains the case:

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

TODD CHRISTIAN ROBBEN

Defendant and Appellant.
_____/

EL DORADO CO. SUPERIOR COURT NO. S14CRM0465

Appeal from a Judgment of Department 3
of the Superior Court of the State of
California for the County of El Dorado

Honorable **TIMOTHY S. BUCKLEY, ASSIGNED JUDGE**
Honorable **SUZANNE N. KINGSBURY, JUDGE**

APPELLANT'S OPENING BRIEF

I. INTRODUCTION

On April 10, 2015, the above encaptioned court heard a request byAppellant Todd Robben (hereinafter APPELLANT) to suppress evidence pursuant to Penal Code section[1] 1538.5. After the presentation of evidence at the hearing APPELLANT'S request to suppress evidence was denied by Honorable Timothy Buckley. (Clerk's Transcript ("CT") pg. 51.)

Thereafter, on May 7, 2015, following a jury trial, APPELLANT was found guilty of violating Vehicle Code section 23152(a) and Vehicle Code section 23152(b), two misdemeanors. (CT pp. 83-84.)

[1] In all future statutory references the word "section" shall be replaced with the symbol "§".

II. STATEMENT OF THE CASE

On August 22, 2014, a criminal complaint was filed alleging that APPELLANT committed misdemeanor violations of Driving While Having a 0.08% or Higher Blood Alcohol and Driving Under the Influence of Alcohol and/or a Drug (Vehicle Code §§ 23152 (a) and (b).) On August 22, 2014, APPELLANT was arraigned in custody on the complaint, waived time and appointed counsel[2]. (CT 4 - 5.) At the same appearance, APPELLANT was released on his own recognizance. (CT 6.) Thereafter the matter was continued twice on September 19, 2014, and October 31, 2015. (CT 8, 9). On December 19, 2015 the court set this matter for a trial to be heard on February 17, 2015. (CT 10.) Subsequently, on February 10, 2015, the court heard and denied APPELLANT'S first *Marsden*[3] Motion. (CT 34-35.) Thereafter on February 20, 2015, the court held a second *Marsden* hearing. (RT 33.) The court granted APPELLANT'S request, and relieved D. RODGERS. (CT 36.) Later that week, on February 23, 2015, at APPELLANT'S request[4] the court appointed new counsel Adam Spicer (SPICER). (CT 37.)

Following his appointment, SPICER gave notice to the court of his intent to file a motion pursuant to Penal Code § 1538.5, for which the court immediately set a briefing schedule as well as a suppression hearing that was set to be heard on April 10, 2015. (CT 38.) SPICER'S Notice of Motion and Motion to Suppress Evidence were timely filed on March 16, 2015. (CT 39-46.) Thereafter, Deputy District Attorney Michael Pizzuti (PIZZUTI) filed his opposition three days late on April 08, 2015. (CT 47-49.) Subsequently on April 10, 2015, his honor Timothy Buckley, (J. BUCKLEY) presided over the suppression hearing which had been previously set. At the conclusion of the hearing, the court denied APPELLANT'S request, and the matter was set for trial on May 5, 2015. (CT 51-52.)

---

[2] APPELLANT was initially appointed a Public Defender and was subsequently represented by D.P.D. David Rodgers, who shall hereinafter be referred to as D. RODGERS.
[3] *People v. Marsden* (1970) 2 C3d 118.
[4] Reporter's Transcript at pg. 33 line. 14-15. All future references to the Reporter's Transcript shall be abbreviated as "RT".

In anticipation of trial, SPICER on May 4, 2015, filed a Motion In Limine re: Admissibility of Breath Test. (CT 60- 63) *Inter alia*, SPICER argues that the breath test results should be excluded from evidence at trial because the arresting officers did not comply with Title 17 of the California Code of Regulations, in that the arresting officers did not maintain continuous observation of APPELLANT for fifteen minutes prior to having him submit to a an evidentiary breath test at the South Lake Tahoe Jail. (Cal. Code. Regs. Tit.17§ 1219.3.)

The following morning, the trial judge Suzanne Kingsburry (P.J. KINGSBURRY) read and considered SPICER'S motion in limine, and denied said motion after SPICER, submitted the issue to the court without argument. (CT 66; see also RT pg. 77, ln. 20-21). Thereafter trial proceeded as scheduled for three days. On May 7, 2015, after fifty-eight minutes of deliberation APPELLANT was found guilty on both counts, and was thereupon sentenced[5] as follows: two days jail; four year summary court probation; attend three month TRAC 1 program; fines and fees in the amount of $2,184.00. (CT 85-86.)[6]

Following his conviction, on May 18, 2015, by and through trial counsel SPICER, APPELLANT filed a Notice of Appeal in the instant case (CT. 114-115).

III. STATEMENT OF APPEALABILITY

This appeal is from a judgment of conviction oF misdemeanor violations of Vehicle Code § 23152 subdivisions (a) and (b). This appeal is authorized by Penal Code, section 1237 subdivision (a). Appellant's Notice of Appeal was timely filed pursuant to California Rules of Court, Rule 8.853 subdivision (a) on May 18, 2015. (*Ibid.*)

[5] APPELLANT waived time for sentencing and was sentenced immediately upon return of the verdict (RT pg. 512, ln. 28.)
[6] P.J. Kingsburry's ruling does not indicate whether she is sentencing APPELLANT for a violation one or both counts, or whether there are any Penal Code § 654 issues.

IV. STATEMENT OF THE FACTS

A. Arrest

On August 20, 2014 APPELLANT was subject to a traffic stop conducted by South Lake Tahoe Police Officer Shannon Laney (LANEY). The stop was predicated upon LANEY'S observation of APPELLANT allegedly speeding on Montreal Avenue, a surface street located in South Lake Tahoe, California. (RT pg. 95 ln. 11-21.) After performing a U-turn to get behind APPELLANT'S vehicle, LANEY followed APPELLANT a short distance until APPELLANT activated his right turn signal and pulled into Van Sickle Park. (RT pg. 98 ln. 7-14). A GoPro camera affixed to the front of LANEY'S motorcycle unit recorded a portion of the traffic stop; said video was played in open court for the jury. (RT pg. 99.)

B. Investigation

LANEY testified that after the stop, APPELLANT manifested the following objective signs of intoxication: odor of alcohol; red and water eyes; slightly slurred speech; slow and deliberate movements. (RT pg. 102 ln. 8-20.) Thereafter LANEY collected certain documents from APPELLANT and returned to his motorcycle unit to check APPELLANT'S license status and to confirm that APPELLANT did not have any warrants out for his arrest. (RT pg. 105 ln. 16-18.) During this period of time, El Dorado County Sheriff Deputy Perry (PERRY) arrived on the scene. (RT pg. 106 ln. 21-25). Subsequent to PERRY'S arrival, APPELLANT exited his vehicle. (RT pg. 108 ln. 3-4.) Because APPELLANT did not comply with LANEY'S request to re-enter his vehicle, LANEY handcuffed him and directed him to sit on the curb. (RT pg. 110 ln. 21-28.) APPELLANT was subsequently released from the handcuffs, and LANEY administered three separate field sobriety tests (FSTs). (RT pg. 111 ln. 3-10.) LANEY ordered APPELLANT to submit to the following tests: horizontal gaze nystagmus (RT 119 ln. 4-12); one leg stand (RT pg. 120 ln. 12-23); walk and turn (RT pg. 121 ln. 24.)

C. Individual Field Sobriety Tests[7]

1. Horizontal Gaze Nystagmus Test

Under cross examination by SPICER, LANEY testified at trial that, contrary to the NHTSA guidelines for administering the test, he did not hold the stimulus used in the test at a maximum deviation for four seconds because APPELLANT moved his head during the test. (RT. pg. 145 ln. 12-16.) SPICER thereafter contrasted LANEY'S trial testimony with his previous testimony at the suppression hearing held on April 10, 2015, wherein LANEY testified that he did not maintain the stimulus at maximum deviation for four seconds to prevent fatigue nystagmus. (RT pg. 147 ln. 3-13.)

2. One Leg Stand Test

Similarly, under cross examination by SPICER, LANEY testified that pursuant to NHTSA guidelines the one leg stand test should not be administered on individuals that are more than fifty pounds overweight. (RT pg. 156 ln.10-12.) Thereafter, APPELLANT was directed to stand up and LANEY testified that APPELLANT was approximately 6'3" and not morbidly obese[8], but was cut off by APPELLANT before offering an opinion whether APPELLANT was more than fifty pounds overweight. (RT pg. 156 ln. 21) APPELLANT would subsequently testify that he had several physical ailments which limited his ability to complete the one leg stand, specifically: foot and leg pain; flat feet; prior surgery to repair a torn ACL in his right knee; fatigue. (RT pg. 320 ln. 1-25.)

3. Walk and Turn Test

Finally, LANEY testified that APPELLANT failed to perform the walk and turn test. LANEY testified that during the instructional portion of the walk and turn test APPELLANT had difficulty standing still. (RT pg. 123 ln. 4-11.)

//

[7] It is important to note that none of the foregoing FSTs were captured on the GoPro video referenced *supra* at page 4.
[8] APPELLANT subsequently testified that at the time of his arrest he weighed approximately 220 lbs. (RT pg. 337 ln. 2.)

Thereafter, LANEY testified that APPELLANT simply "strolled" instead of following his precise instructions to walk heel to toe for a set distance. (RT pg. 123 ln. 14-27.) APPELLANT would later offer contradicting testimony regarding his performance of this test on direct examination (RT pg. 323 ln. 15-21.)

D. Arrest and Evidentiary Breath Test

Based upon his performance during the foregoing FSTs, APPELLANT was arrested[9] by LANEY for driving under the influence of alcohol, and then transported to the South Lake Tahoe jail by South Lake Tahoe Police Officer Corey Wilson (WILSON). After arriving at the South Lake Tahoe Jail WILSON administered APPELLANT'S evidentiary breath test. (RT pg. 127 ln.1-2.) At trial, the parties stipulated to admission of a video which depicts APPELLANT'S booking at the jail. (RT pg. 189 ln. 4-7.) APPELLANT'S submitted two evidentiary breath tests at the South Lake Tahoe with the following results: .09; .09. (RT pg. 195 line 11; and RT pg. 198 ln. 10.)

Under cross examination by SPICER, WILSON acknowledged that he did not maintain fifteen minutes of constant visual observation of APPELLANT prior to administering the two breath tests, referenced above. (RT pg. 213 ln. 4.) APPELLANT subsequently testified that after arriving at the South Lake Tahoe jail, but prior to his breath test he "burped", which he subsequently described as "kind of a gas coming up like an acid reflex (sic), like a burp, you know." (RT pg. 329 ln. 6, 11-12.)

Both the prosecution and the defense would subsequently offer expert testimony regarding mouth alcohol and whether a burp could have affected the accuracy of APPELLANT'S breath test results. (RT pg. 223-224 ln. 24-23 and RT pg. 363-364 ln. 26-23.)

//

//

[9] (RT pg. 126 ln. 14.)

E. DMV form DS-367

During trial, SPICER directed LANEY'S attention to Defense Exhibit 56, (DS-367) a DMV form which was completed by officer LANEY on August 20, 2014. (RT pg. 166, ln. 1-19.) LANEY did not personally serve the DS-367 on APPELLANT (RT pg. 165 ln. 24.) However, on the DS-367 LANEY stated under penalty of perjury that he had personally served said form on APPELLANT. (RT pg. 166 ln. 23). When questioned by SPICER regarding his inconsistent statements, LANEY claimed to have "checked the wrong box." (RT pg. 167 ln. 6).

SPICER, had previously attempted to illicit this testimony from LANEY at the suppression hearing heard on April 10, 2015. At the suppression hearing, PIZZUTI objected to SPICER'S question as irrelevant. Despite SPICER'S offer of proof that the testimony would be relevant to LANEY'S truth and veracity as a witness, J. BUCKLEY sustained the objection. (RT pg. 69 ln. 16-21.)

V. ARGUMENT

A. J. BUCKLEY COMMITTED REVERSIBLE ERROR WHEN HE REFUSED TO ALLOW SPICER TO QUESTION LANEY REGARDING THE DS-367 FORM AT THE SUPPRESSION HEARING

1. Standard of Review (*People v. Watson* (1956) 46 Cal. 2d 818. (*Watson*).)

The "reasonable probability" test, which was first set forth in *Watson* applies to errors of state law that do not implicate any federal constitutional guarantees. Such errors will be found prejudicial if the defendant shows that it is reasonably probable that he or she would have obtained a more favorable result in the absence of' the error. Erroneous admission of evidence is a type of error that is generally evaluated this standard. (*People v. Price* (l991) 1 CA 4th 324.)

//

//

//

2. Law

"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness … , having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evidence Code § 240.) Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following: … (h) A statement made by him that is inconsistent with any part of his testimony at the hearing. … (k) His admission of untruthfulness. (Evidence Code § 780.) Specific evidence of uncharged criminal conduct is admissible to impeach a witness's character so long as the conduct alleged is a crime of moral turpitude. (see Evidence Code § 1100 *et. seq*.; see also *People v. Collins* (1986) 42 Cal. 3d 378,379.) Perjury is a crime of moral turpitude. (Penal Code § 118; see also *People v. Rollo* (1977) 20 Cal. App. 3d 109, 118.)

3. Analysis

Because LANEY'S testimony at the suppression hearing was being offered to prove that he had had probable cause to detain and arrest APPELLANT, his credibility was at issue. As such, exclusion of evidence that was probative of this fact is an error which would have materially affected the outcome of the hearing.

//

//

//

//

//

//

4. Conclusion

The exclusion of the relevant character evidence at the suppression hearing was in fact prejudicial to APPELLANT because it is reasonably probable that he would have obtained a more favorable result at the suppression hearing if J. BUCKLEY had been aware that LANEY had a propensity for making false statements under penalty of perjury. As such, J. BUCKLEY'S ruling was a prejudicial error which requires that APPELLANT'S conviction should be overturned and this matter should be returned to the trial court.

B. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT BECAUSE SPICER PROVIDED INEFFECTIVE ASSISTANCE TO HIM PRIOR TO TRIAL IN THIS MATTER

1. Standard of Review (*Chapman v. California* (1967) 386 U.S. 18. (*Chapman*).)

When as here the errors alleged amount to a violation of an accused's constitutional rights the court is compelled to apply the *Chapman* standard of review. (*People v. Wright* (2006) 40 Ca1. 4th 81, 93.) Pursuant to *Chapman,* such error will be found prejudicial unless the prosecution can show beyond a reasonable doubt that the error did not contribute to the verdict. (Cal CEB Annual 2014 § 44.36 at pg. 1422.)

2. Law

It is counsel's duty to investigate carefully all defenses of fact and of law that may be available to the defendant, and if his failure to do so results in withdrawing a crucial defense from the case, the defendant has not had the assistance to which he is entitled. (*People v. Ibarra*, 60 Cal. 2d 460, 465; citing *People v. Mattson*, 51 Cal. 2d 777, 790-791.)

//

//

3. SPICER FAILED TO FILE A *PITCHESS*[10] MOTION TO INVESTIGATE WHETHER LANEY HAD A HISTORY OF MAKING FALSE STATEMENTS UNDER PENALTY OF PERJURY

a. Law

Evidence Code sections 1043 to 1047 codify and expand the rules for the discovery of police officer personnel records required by *Pitchess* and its progeny. (*People v. Memro* (1985) 38 Cal. 3d 658, 680.) To initiate discovery of police personnel records, "the defendant must file a motion supported by affidavits showing 'good cause for discovery.'" (*Warrick v. Superior Court* (2005) 35 Cal. 4th 1011, 1019.)

To initiate discovery, the defendant must file a motion supported by affidavits showing "good cause for the discovery," first by demonstrating the materiality of the information to the pending litigation, and second by "stating upon reasonable belief" that the police agency has the records or information at issue. (*Warrick*, *supra*, 35 Cal.4th at 1119.) This two-part showing of good cause is a "relatively low threshold for discovery." (*Ibid*. citing *City of Santa Cruz v. Municipal Court (1989) Cal. 3d 74, 83*; *See also Garcia v. Superior Court* (2007) 42 Cal.4th 63, 72.). That factual scenario, depending on the circumstances of the case, **may consist of a denial of the facts asserted in the police report**. (*Warrick v. Superior Court*, *supra*, 35 Cal.4th 1011, 1025. (emphasis added).)

b. Analysis

In the instant case APPELLANT has repeatedly challenged LANEY'S veracity both as a witness and as an investigating officer. When SPICER became aware that LANEY had perjured himself by indicating that he had served the DS-367 form, SPICER should have immediately brought a *Pitchess* motion to determine if there have been other instances where LANEY had been

[10] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

accused of making false statements by other members of the community.

This evidence, if located, would have been both highly probative of LANEY'S propensity for telling the truth, and would like have been afforded great weight by the jury. In a case such as APPELLANT'S, where the accused and the arresting officer are the two main percipient witnesses, character evidence can and should be given the most weight by the trier of fact.

4. SPICER FAILED TO FILE AN IN LIMINE MOTION TO EXCLUDE THE HORIZONTAL GAZE NYSTAGMUS TEST AND THE ONE LEG STAND TEST.

a. Law

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evidence Code § 352.)

b. Analysis

During the course of the trial in this matter SPICER explored several different errors made during the execution of both the horizontal gaze nystagmus test (HGN test) and the one leg stand test. In example LANEY admitted that he moved the stimulus used in HGN test across APPELLANT'S field of view too quickly[11]. In addition LANEY acknowledged that he did not hold the stimulus at maximum deviation long enough to comply with the NTSB standards for administering the HGN.

//

//

//

//

[11] RT pg. 64 ln. 9.

Similarly, LANEY acknowledged that he administered the one leg stand despite the fact that NTSB guidelines state in should not be used if a suspect is more than fifty pounds overweight or has certain physical impairments. Where, as here, APPELLANT is both overweight and has physical impairments which would otherwise prevent completing the one leg stand the results of that test lack probative value, are extremely prejudicial and therefore should have been excluded

c. Conclusion

The Sixth Amendment guarantees APPELLANT the right to counsel at all phases of a criminal case. Where, as here, counsel's representation fails to provide the accused the protections he is assured under both state and federal law, counsel's ineffectiveness, by itself, deprives his client of his rights under the Sixth Amendment. As such, because SPICER failed to provide APPELLANT adequate representation prior to trial, APPELLANT'S conviction should be overturned and this matter should be returned to the trial court so that these issues can be litigated more thoroughly be competent counsel.

C. EVEN IF *ARGUENDO* NONE OF THE INDIVIDUAL ISSUES ARGUED HEREIN RISE TO THE LEVEL OF ACTUAL PREJUDICE THE TOTALITY OF ALL ISSUES PRESENTED WERE COLLECTIVELY PREJUDICIAL ENOUGH TO DEPRIVE APPELLANT A FAIR TRIAL.

1. Standard of Review (*Chapman v. California* (1967) 386 U.S. 18. (*Chapman*).)

When as here the errors alleged amount to a violation of an accused's constitutional rights the court is compelled to apply the *Chapman* standard of review. (*People v. Wright* (2006) 40 Ca1.4th 81, 93.) Pursuant to *Chapman,* such error will be found prejudicial unless the prosecution can show beyond a reasonable doubt that the error did not contribute to the verdict. (Cal CEB Annual 2014 § 44.36 at pg. 1422.)

//

2. Law

A ground for reversal in a close case is the occurrence of many errors that, if considered separately, might not be deemed seriously prejudicial. The cumulative effect, however, may be sufficient to warrant the conclusion of an unfair trial and hence a miscarriage of justice. (See *People v. Zerillo* (1950) 36 Cal. 2d 222, 233; *People v. Hill* (1998) 17 Cal. App. 4th 800; *People v. Hernandez* (2003) 30 Cal. App. 4th 835, 877.)

The test for cumulative error is whether defendant received due process and fair trial; reversal was required where there was reasonable probability that jury would have reached more favorable verdict but for errors. (*People v. Cuccia* (2002) 97 97 Cal. App.4th 785, 795.)

3. Analysis

The instant case is a close case. It is very likely that but for the many errors made by both court and counsel in this proceeding the jury would have reached a verdict which was more favorable to APPELLANT. Therefore even if the court were to hold that the individual errors referenced in this brief taken in isolation do not warrant reversal, these same errors taken together undoubtedly require that the APPELLANT'S conviction should be overturned and this matter should be returned to the trial court.

//

//

//

//

//

//

//

VI. CONCLUSION

Based on the erroneous exclusion of testimony regarding LANEY's veracity at the suppression hearing, as well as, the ineffective assistance of counsel provided by SPICER, APPELLANT was wrongfully deprived of his substantive and procedural rights to due process as protected by the Sixth and Fourteenth Amendments to the United States Constitution. As such, because APPELLANT'S trial was manifestly unfair his conviction for driving under the influence in violation of Vehicle Code § 23152 subdivisions (a) and (b) must be overturned, and this matter should be remanded back to the trial court with instructions to vacate APPELLANT'S conviction.

Dated: October 16, 2015

Respectfully Submitted,

_____
ADAM C. CLARK, Attorney for Appellant
TODD ROBBEN

APPOINTED COUNSEL OF APPEAL, ADAM CLARK WAS IAAC/CDC

At the time Adam Clark was appointed counsel and he was busy and unable to give the appeal the attention it needed. Adam Clark was IAAC for not arguing all the issues presented by this Petitioner or at least the major issue that a conviction cannot be sustained on the use of fabricated evidence and perjury as has been done here. Mr. Clark assured this Petitioner he would argue those points, there was a Marsden motion filed in this appeal and again, Mr. Clark assured this Petitioner it would get done. It wasn't.

Mr. Clark showed up 30 minutes late to the oral argument… Mr. Clark did not ethically represent this Petitioner in good faith and was ineffective and violated Petitioner's 6th and 14th U.S. Constitutional amendment rights to effective counsel on appeal and due-process. Had Mr. Clark argued these points and focused on the law presented in this petition, the Petitioner would have prevailed on his appeal.

APPELLATE DIVISION JUDGES WERE UNLAWFULLY ASSIGNED BIAS RETIRED JUDGES

Mr. Clark knew that two of the judges on the appeal panel were retired judges and did nothing to address that fact. Petitioner was not aware that Judge Daniel Proud and Douglas Phimister were retired and no assignment order was ever issued. The appeal was decided by bias judges in violation of U.S. 14th amendment due-process.

\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\
\

El DORADO LAW
A Professional Law Corporation

520 MAIN STREET
PLACERVILLE, CA 95667
TELEPHONE (530) 626-5175
FACSIMILE (530) 626-4505
www.ElDoradoLaw.com

Adam C. Clark
John R. Hughes*+
*CERTIFIED FAMILY LAW SPECIALIST
The State Bar of California Board of Legal Specialization
+of Counsel

August 4, 2015

First Class Mail

El Dorado County Superior Court, Appellate Division
495 Main St.
Placerville, CA 95667

Re: People of the State of California v. Todd Robben
Case Number: S14CRM0465
Request to Stay Fines and Fees

Your Honor:

I am writing on behalf of my client Todd Robben to request that the Appellate Division stay his fine and fees in the matter referenced above, which will otherwise become due and owing at the rate of $50 per month as of August 15, 2015.

I am advised and believe that Mr. Robben is currently unemployed and has no appreciable income. At present, Mr. Robben is seeking employment, however, his prospects are very limited due to a prior eight month incarceration in the Carson City jail which culminated in his being released with all charges dismissed on April 10, 2014. Mr. Robben's incarceration, coupled with his subsequent conviction in the matter referenced above, has left him essentially homeless with little to no prospects for gaining employment.

As such, Mr. Robben respectfully requests that the court exercise its discretion in this regard, and stay his fines and fees in this matter pending resolution of his appeal.

Thank you for your attention to this matter.

Respectfully,

ADAM C. CLARK
Attorney at Law

cc: El Dorado County Office of the District Attorney by fax only (530) 621-1280

El DORADO LAW
A Professional Law Corporation

520 MAIN STREET
PLACERVILLE, CA 95667
TELEPHONE (530) 626-5175
FACSIMILE (530) 626-4505
www.ElDoradoLaw.com

Adam C. Clark
John R. Hughes*+
*CERTIFIED FAMILY LAW SPECIALIST
The State Bar of California Board of Legal Specialization
+of Counsel

August 4, 2015

El Dorado County Superior Court, Appellate Division
495 Main St.
Placerville, CA 95667

Re: People of the State of California v. Todd Robben
Case Number: S14CRM0465
Request for Relief from Default

Your Honor:

I am writing to request relief from the default entered by this court in the matter referenced above on July 22, 2015. My default in this matter was due to a calendaring error by my staff. While I am aware that at present I have until August 21, 2015, to file a brief in Mr. Robben's case; due to the length of the record of proceedings in this matter, approximately 700 pages, I doubt that I have adequate to time to review the materials and prepare a brief prior to August 21.

At present, I have the following matters set which will preclude me from completing my appointed task prior to August 21, 2015.

- *In re Marriage of Serota* – Post-Dispositional custody and visitation trial scheduled to be heard on August 5, 2015, time estimate 1 day.
- *People of the State of California v. Michael Hix* – Five defendant no-time waiver trial to be heard in Amador County. Motion to Sever and Suppression Motion to be heard August 6, 2015, time estimate four hours with drive time; Trial time estimate seven days beginning August 11 - August 14 and ending August 18 – 20

In addition, I have the following commitments which limit my ability to complete Mr. Rodden's appeal any earlier than late September or early October.

- Family vacation to Monterey August 21 through August 27, 2015.
- *People of the State of California v. Brian McComber* – five co-defendant cultivation case preliminary hearing set to be heard August 28, 2015, estimate 4 hours.
- *People of the State of California v. Ronald Newman* – two day misdemeanor trial beginning September 1, 2015.
- *People of the State of California v. Tracy Mullarney* – three day misdemeanor trial beginning September 15, 2015
- *People of the State of California v. Richard Smart* – three day misdemeanor trial beginning September 22, 2015.
- *People of the State of California v. Starr Armstrong* – two day misdemeanor trial beginning September 29, 2015.

People v. Rodd Robben
S14CRM0465
Letter re: Relief from Default

In addition to the events listed above, I am also carrying my standard law and motion calendar which includes multiple short cause hearings in Department 5 on September 3, 2015 and September 10, 2015, as well as my regular criminal calendar which normally requires a half days' worth of appearances on most Monday and Friday mornings.

Based on the foregoing, I respectfully request that the court grant me relief from default in this matter, and reset the hearing dates and briefing schedule in this matter so that appellant's opening brief is due on or before October 16, 2015.

Thank you for your attention to this matter.

Respectfully,

ADAM C. CLARK
Attorney at Law

cc: El Dorado County Office of the District Attorney by fax only (530) 621-1280

THE DUI CONVICTION WAS OBTAINED USING FALSE EVIDENCE AND PERJURY AND IAC/CDC OF TRIAL COUNSEL

In the United States, if the prosecution obtains a criminal conviction using evidence that it knows is false, the conviction violates the defendant's constitutional right to due process (e.g., *Napue v. Illinois, 1959*). But courts are divided on the extent of the prosecutor's responsibility to prevent false evidence from infecting trials. In some jurisdictions, if the government knowingly presents false testimony about a significant issue and fails to correct it, courts automatically conclude that the government has violated the defendant's constitutional right to due process (e.g., *United States v. LaPage, 2000 (9th Cir.2000) 231 F.3d 488*)

In *People v. Morrison, 101 P. 3d 568 - Cal: Supreme Court 2004* **"Under well-established principles of due process, the prosecution cannot 698*698 present evidence it knows is false and must correct any falsity of which it is aware in the evidence it presents, even if the false evidence was not intentionally submitted."** (*People v. Seaton (2001) 26 Cal.4th 598, 647, 110 Cal.Rptr.2d 441, 28 P.3d 175* [relying on *Napue v. Illinois (1959) 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217* and other decisions].) **Put another way, the prosecution has the duty to correct the testimony of its own witnesses that it knows, or should know, is false or misleading**. (*In re Jackson (1992) 3 Cal.4th 578, 595, 11 Cal.Rptr.2d 531, 835 P.2d 371*, disapproved on other grounds in *In re Sassounian (1995) 9 Cal.4th 535, 545, fn. 6, 37 Cal.Rptr.2d 446, 887 P.2d 527*.) **This obligation applies to testimony whose false or misleading character would be evident in light of information known to the police involved in the criminal prosecution** (*In re Jackson, supra, 3 Cal.4th at p. 595, 11 Cal.Rptr.2d 531, 835 P.2d 371*), **and applies even if the false or misleading testimony goes only to witness credibility** (id. at *p. 594, 11 Cal.Rptr.2d 531, 835 P.2d 371; Napue v. Illinois, supra, 360 U.S. at p. 269, 79 S.Ct. 1173; cf. Giglio v. United States (1972) 405 U.S. 150, 153-154, 92 S.Ct. 763, 31 L.Ed.2d 104.*) **Due process also bars a prosecutor's knowing presentation of false or misleading argument.** (See *Miller v. Pate (1967) 386 U.S. 1, 6-7, 87 S.Ct. 785, 17 L.Ed.2d 690; Brown v. Borg (9th Cir.1991) 951 F.2d 1011, 1015.*) As we recently summarized, **"a prosecutor's knowing use of false evidence or**

argument to obtain a criminal conviction or sentence deprives the defendant of due process." (*People v. Sakarias, supra, 22 Cal.4th at p. 633, 94 Cal.Rptr.2d 17, 995 P.2d 152.*)

The use of perjured testimony to obtain a conviction violates due process. (*Napue, supra, 360 U.S. at p. 269; People v. Marshall (1996) 13 Cal.4th 799, 829-830.*) **That principle applies even if the false testimony goes only to witness credibility since the "jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence."** (*Napue, supra, at p. 269.*) To prevail on a *Napue* claim, the defendant must show that **(1) the testimony (or evidence) was actually false, (2) the prosecution knew or should have known that the testimony was actually false, and (3) that the false testimony was material**. (*United States v. Zuno-Arce (9th Cir. 2003) 339 F.3d 886, 889.*)

"The prosecution is constitutionally required to report to the defendant and to the trial court whenever a government witness lies under oath. This principle is based on *Mooney v. Holohan (1935) 294 U.S. 103* . . . and *Napue v. Illinois (1959) 360 U.S. 264, 269-272* . . . and has been articulated into three elements. To prevail under these cases, the defendant must show **that (1) the testimony (or evidence) was actually false, (2) the prosecution knew or should have known that the testimony was actually false, and (3) that the false testimony was material.** (*U.S. v. Zuno-Arce (9th Cir. 2003) 339 F.3d 886, 889.*) **A new trial is required if the false testimony could in any reasonable likelihood have affected the judgment of the jury.** (Giglio v. United States (1972) 405 U.S. 150, 154.) "Deliberate deception is "incompatible with `rudimentary demands of justice.'" *Giglio v. United States, supra*. **("[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.")** (quoting *United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976)*)

The Supreme Court has long recognized that due process is denied where `[the] state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured.'" *Mooney v. Holohan, supra.*

See Note, A Prosecutor's Duty to Disclose Promises of Favorable Treatment

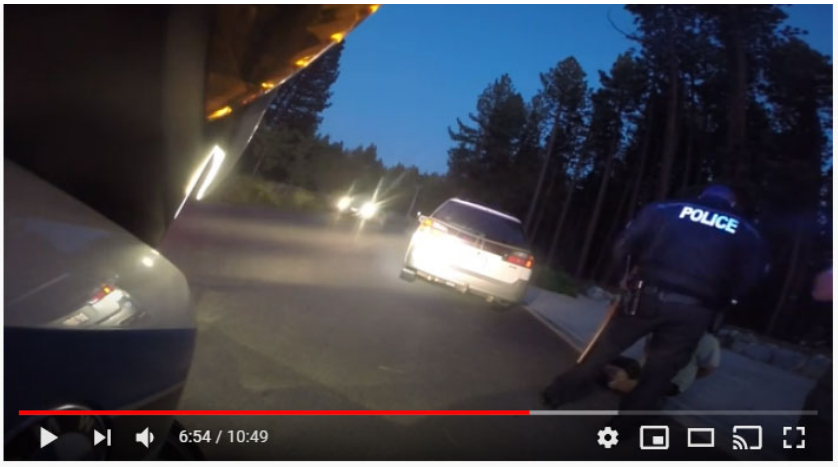
Made to Witnesses for the Prosecution, *94 HARV. L. REV. 887, 896 (1981)* (remarking that **"a jury that hears nothing is better informed than one that is actively misled").** See also *Jackson v. Brown, 513 F.3d 1057, 1076 n.12 (9th Cir. 2008*) (noting that "the prosecution's knowing use of perjured testimony will be more likely to affect our confidence in the jury's decision, and hence more likely to violate due process, than will a failure to disclose evidence favorable to the defendant"). The law has long inferred that a witness who will lie about one fact will lie about others. See *Mesarosh v. United States, 352 U.S. 1, 13-14 (1956)* (refusing to credit witness' testimony in defendant's trial because of witness's false testimony in other settings). Additional concerns arise when the prosecutor knowingly countenances false testimony.

The prosecutor's willingness to do so signals her lack of concern with the fairness of the process and, further, suggests that she is compensating for a weak case and raises the additional concern that she may have allowed other falsities to go uncorrected or withheld other favorable evidence. See infra Section III.C.3. See *United States v. Wong, 431 U.S. 174, 180 (1977)* (recognizing that perjury is never a protected option).

In *Miller v. Pate, 386 US 1 - Supreme Court 1967* "More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. *Mooney v. Holohan, 294 U. S. 103*. There has been no deviation from that established principle. *Napue v. Illinois, 360 U. S. 264; Pyle v. Kansas, 317 U. S. 213; cf. Alcorta v. Texas, 355 U. S. 28*. There can be no retreat from that principle here."

Petitioner's U.S. 14th amendment due-process rights were violated by the knowing use of false evidence and perjury in the trial in case $ S14CRM0465. Petitioner's 6th amendment rights were violated by IAC/CDC of trial counsel Adam Spicer and IAAC/CDC of appellate counsel Adam Clark. The prosecutor was a conflict-of-interest in violation of U.S. 14th amendment (due-process clause) as described in both case S16CRM0096 and P17CRF0114 minus the 2016 recall, the writ of mandate and the 2016 federal lawsuit (since they had no occurred yet). Petitioner had protested D.A. Vern Pierson in 2013 regarding the bounty hunter incident listed above and a writ of mandate was filed against D.A. Vern Pierson on the 14th amendment equal protection claim on the failure to prosecute the Justin Brothers bail bondsmen and their bounty hunter Douglas Lewis.

Because the South Lake Tahoe police officers Shannon Laney and Cory Wilson both failed to perform the Field Sobriety Tests ("FSTs") and the Blood Alcohol Content ("BAC") tests legally. Officer Laney did not perform the eye Nystagmus test properly he was questioned under oath at a pre-trial 1538.5 suppression hearing after he referred to his notes. At trial, he committed perjury and used false evidence (a lie) to claim he performed the Horizontal Gaze Nystagmus (HGN) according to the proper procedure in the NHTSA Manual as discussed below. Officer Laney also wrongfully claims there were no police lights flashing when there clearly were as can be seen on this video (red & blue police lights flashing of the police and sheriff uniforms) at the 6:43 marker https://youtu.be/9--pmlVwBe4?t=403 The expert testimony below will explain that flashing lights would effect and cause nystigmas.



Officer Laney's untrue statement is another perjured statement. Expert testimony proves strobing lights can negatively affect the HGN test.

People v. Leahy, 8 Cal. 4th 587, 607 (1994) ("Certain reactions to alcohol are so common that judicial notice will be taken of them; however, HGN testing does not fall into this category. . . . **HGN test results are scientific evidence based on [a] scientific principle . . .")**

In California, the Kelly test governs (*People v. Kelly (1976) 17 Cal.3d 24 (Kelly)*) **"the admission of expert testimony regarding new scientific methodology."** (*People v. Leahy (1994) 8 Cal.4th 587, 591.*)[2] **Under that test, the proponent of such evidence must establish: (1) the new methodology is reliable by showing it has gained general acceptance in the relevant scientific community; (2) the witness furnishing the testimony is qualified as an expert to give an opinion on the subject; and (3) correct scientific procedures were used in the particular case.** (*Kelly, supra, 17 Cal.3d at p. 30.*) However, as our Supreme Court has

explained, this test "is applicable only to `new scientific techniques,' "that is, "`to that limited class of expert testimony which is based, in whole or part, on a technique, process, or theory which is new to science and, even more so, the law.'" (*People v. Leahy, supra, 8 Cal.4th at p. 605, quoting People v. Stoll (1989) 49 Cal.3d 1136 (Stoll)*.)

In 1999 the New Mexico Supreme Court addressed a case where an officer only counted to three seconds on a HGN test and determined it was a scientific procedure, it was not harmless error and the HGN results were to be excluded on remand.

In State v. Torres, 976 P. 2d 20 - NM: Supreme Court 1999:

> "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise." Rule 11-702. This Court has discerned three prerequisites in Rule 11-702 for the admission of expert testimony: (1) experts must be qualified; (2) their testimony must assist the trier of fact; and (3) their testimony must be limited to the area of scientific, technical, or other specialized knowledge in which they are qualified. See Alberico, 116 N.M. at 166, 861 P.2d at 202; accord State v. Anderson, 118 N.M. 284, 291-92, 881 P.2d 29, 36-37 (1994) (explaining the second and third prerequisites); State v. Stills, 1998-NMSC-009, ¶ 27, 125 N.M. 66, 957 P.2d 51 (explaining the third prerequisite). **Torres contends that the State failed to lay a proper foundation demonstrating that the HGN test was reliable scientific evidence, and therefore that Officer Bowdich's testimony failed to satisfy any of the prerequisites for expert testimony under Rule 11-702. We agree that the HGN testimony was improperly admitted under the evidentiary reliability standard** adopted by this Court in Alberico, 116 N.M. at 166-70, 861 P.2d at 202-06, and explained in both Anderson, 118 N.M. at 290-92, 881 P.2d at 35-37, and Stills, 1998-NMSC-009, ¶¶ 22-34, 125 N.M. 66, 957 P.2d 51.
>
> {24} **Following the lead of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), this Court has established that it is error to admit expert testimony involving scientific knowledge unless the party offering such testimony first establishes the evidentiary reliability of the scientific knowledge. See Alberico, 116 N.M. at 166-69, 861 P.2d at 202-05. This evidentiary reliability standard replaced the older, stricter "general acceptance" standard, which required the proponent to show that the knowledge was generally accepted by the relevant scientific community. Daubert, 509 U.S. at 587-89, 113 S.Ct. 2786 (holding that, with their focus on relevance, the Federal Rules of Evidence superseded the "general acceptance" standard established in Frye v. United States, 293 F. 1013, 1014 (D.C.Cir.1923)); Alberico, 116 N.M. at 167-68, 861 P.2d at 203-04 (rejecting Frye, and citing Daubert favorably). Alberico therefore established evidentiary reliability as the hallmark for the admissibility of scientific knowledge.**

{25} In Anderson, our first scientific knowledge case to follow Alberico, we considered the admissibility of deoxyribonucleic acid (DNA) typing under the restriction fragment length polymorphism (RFLP) method. See Anderson, 118 N.M. at 287-90, 881 P.2d at 32-35. Anderson reaffirmed Alberico's adoption of the evidentiary-reliability standard developed in Daubert, explaining that, "`under the Rules [of Evidence] the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.'"Anderson, 118 N.M. at 291, 881 P.2d at 36 (emphasis added) (quoting Daubert, 509 U.S. at 589, 113 S.Ct. 2786). We explained further that, in considering the reliability of any particular type of scientific knowledge, the trial court should consider the following factors:

(1) whether a theory or technique "can be (and has been) tested"; (2) "whether the theory or technique has been subjected to peer review and publication"; (3) "the known [or] potential rate of error" in using a particular scientific technique"and the existence and maintenance of standards controlling the technique's operation"; and (4) whether the theory or technique has been generally accepted in the particular scientific field. Id. (quoting Daubert, 509 U.S. at 593-94, 113 S.Ct. 2786) (alteration indicating wording in Daubert); cf. E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 557 (Tex. 1995) (listing six factors to aid courts in determining evidentiary reliability).

{26} In Stills, our next scientific knowledge case, we considered whether the polymerase chain reaction (PCR) method of DNA analysis was admissible under the standards adopted in Alberico and reaffirmed in Anderson. See Stills, 1998-NMSC-009, 29*29 ¶¶ 16-25, 125 N.M. 66, 957 P.2d 51. We held that, under the Alberico-Daubert standard, "the trial court did not abuse its discretion in admitting DNA typing evidence under the PCR technique." Id. ¶ 56, 125 N.M. 66, 957 P.2d 51. Like Anderson, Stills reaffirmed this Court's adoption of the evidentiary-reliability standard. Alberico, Anderson, and Stills all stand for the proposition that, in New Mexico, evidentiary reliability is the hallmark for the admissibility of scientific knowledge.

1. Standard of review

{27} "The rule in this State has consistently been that the admission of expert testimony or other scientific evidence is peculiarly within the sound discretion of the trial court and will not be reversed absent a showing of abuse of that discretion." Alberico, 116 N.M. at 169, 861 P.2d at 205; accord Anderson, 118 N.M. at 292, 881 P.2d at 37; Stills, 1998-NMSC-009, ¶ 33, 125 N.M. 66, 957 P.2d 51. However, we have also noted:

An abuse of discretion in a case [involving scientific evidence] can be found when the trial judge's action was obviously erroneous, arbitrary, or unwarranted.... [It] is not tantamount to rubber-stamping the trial judge's decision. It should not prevent an appellate court from conducting a meaningful analysis of the admission [of] scientific testimony to ensure that the trial judge's decision was in accordance with the Rules of Evidence and the evidence in the case.

Alberico, 116 N.M. at 170, 861 P.2d at 206; accord Anderson, 118 N.M. at 292, 881 P.2d at 37; Stills, 1998-NMSC-009, ¶ 33, 125 N.M. 66, 957 P.2d 51.N.M. 66, 957 P.2d 51.

{28} Moreover, the threshold question of whether the trial court applied the correct evidentiary rule or standard is subject to de novo review on appeal. See State v. Elinski, 1997-NMCA-117, ¶ 8, 124 N.M. 261, 948 P.2d 1209 ("[O]ur review of the application of the law to the facts is conducted de novo."); cf. State v. Attaway, 117 N.M. 141, 144-45, 870 P.2d 103, 106-07 (1994) (discussing circumstances in which mixed questions of law and fact are subject to de novo review).[2] We realize that the Alberico-Daubert evidentiary standard gives rise to mixed questions of law and fact, and that the determination of whether to admit or exclude particular testimony under this standard may result from an inquiry that is "`essentially factual.'" Attaway, 117 N.M. at 144, 870 P.2d at 106 (quoting United States v. McConney, 728 F.2d 1195, 1202 (9th Cir.1984) (en banc)); cf. Alberico, 116 N.M. at 168, 861 P.2d at 204 (listing factors for trial courts to consider "in assessing the validity of a particular technique"). All the same, we discern that a trial court's initial determination of whether to apply the Alberico-Daubert standard in a given context requires consideration of "`legal concepts in the mix of fact and law and [the] exercise [of] judgment about the values that animate legal principles.' "Attaway, 117 N.M. at 144, 870 P.2d at 106 (quoting McConney, 728 F.2d at 1202); see also Clarence Morris, Law and Fact, 55 Harv.L.Rev. 1303, 1328-29 (1942) ("If a rule of law must be applied before a conclusion is reached, that conclusion is one of law."). As such, the initial determination of whether to apply the Alberico-Daubert standard entails a conclusion of law that is subject to de novo review. Cf. Edens v. New Mexico Health & Soc. Servs. Dep't, 89 N.M. 60, 62, 547 P.2d 65, 67 (1976) ("[C]onclusions of law are freely reviewable.").

30*30 2. Novelty of scientific knowledge

{29} In making the initial determination of whether the Alberico-Daubert evidentiary standard applies, some courts have established a threshold requirement that the "scientific knowledge" at issue must be novel. See, e.g., Thornton v. Caterpillar, Inc., 951 F.Supp. 575, 577 (D.S.C.1997)("Daubert should only apply to novel scientific testimony."); Johnson v. Knoxville Community Sch. Dist., 570 N.W.2d 633, 637 (Iowa 1997) (same). The better view, however, is that the Alberico-Daubert standard is not limited to novel scientific theories. See Cummins v. Lyle Indus., 93 F.3d 362, 367 n. 2 (7th Cir. 1996) (citing Daubert, 509 U.S. at 592 n. 11, 113 S.Ct. 2786). While it is true that some of our past decisions involved scientific theories that may have been regarded as novel at the time, see, e.g., Alberico, 116 N.M. at 175, 861 P.2d at 211 (post-traumatic stress disorder); Anderson, 118 N.M. at 287-90, 881 P.2d at 32-35 (DNA typing under the RFLP method), we have never held that the Alberico-Daubert evidentiary standard is limited to scientific knowledge that is novel. Further, while a novel scientific theory might be admissible under the Alberico-Daubert standard, notwithstanding the fact that it has not achieved the level of acceptance required to meet the Frye standard, it does not follow that Daubert applies only to scientific knowledge that is novel or not generally accepted. On the contrary, the

Alberico-Daubert standard explicitly incorporates "general acceptance" as a factor for courts to consider in determining the admissibility of scientific testimony, see Anderson, 118 N.M. at 299-300, 881 P.2d at 44-45, and we believe that the novel status of a particular scientific principle or procedure may be addressed in considering this factor. Indeed, in some contexts "novelty" may be nothing more than an antonym for "general acceptance." For these reasons, a finding that the scientific principles underlying HGN testing are generally accepted (or no longer a novelty) does not necessarily preclude consideration of other factors relevant to the Alberico-Daubert inquiry.

3. Scientific knowledge underlying HGN testing

{30} Courts in other jurisdictions disagree about whether the results of HGN testing in particular constitute scientific evidence that is subject to the Alberico-Daubert standard. See State v. Meador, 674 So.2d 826, 833-34 (Fla.Dist.Ct.App.1996) (noting that a minority of states have concluded that the HGN test is not based on scientific expertise, while the majority have concluded that the results of HGN testing are scientific evidence); State v. Merritt, 36 Conn.App. 76, 647 A.2d 1021, 1026-28 (1994) (same); State v. Ruthardt, 680 A.2d 349, 355-56 (Del.Super.Ct.1996) (same). **Today we adopt the majority view that the results of HGN testing constitute scientific evidence that must meet the standard of evidentiary reliability articulated in Alberico and Daubert.**

{31} The rationale for requiring evidence of HGN test results to meet the Alberico-Daubert standard has been well stated by other courts:

> [W]hile most of the field sobriety tests are self-explanatory, HGN is not. When courts have taken judicial notice of the common physical manifestations of intoxication, horizontal gaze nystagmus is not included. Horizontal gaze nystagmus is not just a symptom such as slurred speech or bloodshot eyes, which are commonly understood signs of intoxication.... The phenomena being tested are predicated on a scientific or medical principle that the automatic tracking mechanisms of the eye are affected by alcohol....
>
> ....
>
> ... [T]he significance of the HGN observation is based on principles of medicine and science not readily understandable to the jury. We thus conclude that the HGN test is scientific evidence.... Meador, 674 So.2d at 833-34 (citations omitted); accord Merritt, 647 A.2d at 1026-28; Ruthardt, 680 A.2d at 355-56. We find this reasoning persuasive.

{32} Because we adopt this reasoning, we take this opportunity to correct any misapprehension of the law that may arise from Burke, 1999-NMCA-031, ¶¶ 11-14, 126 N.M. 31*31 712, 974 P.2d 1169. While the Court of Appeals correctly notes that the use of HGN testimony "is not lay opinion under Rule 11-701 NMRA 1999," id. ¶ 12, the discussion of the HGN testimony in that case does not support the general proposition that HGN evidence is "not based on scientific principles," id. ¶ 14. Indeed, "the trial court was never asked" to analyze the HGN evidence under the Alberico-

Daubert standard in Burke because the defendant in that case "did not object below that there was no scientific basis for the officer's testimony; [he] never mentioned either ... Alberico ... or Rule 11-702." Id. We thus limit Burke, 1999-NMCA-031, ¶ 14, 126 N.M. 712, 974 P.2d 1169, to the situation where the trial court is not asked to perform an Alberico-Daubert analysis of HGN evidence, and thus the issue is not preserved for appellate review.

4. Admissibility of HGN test results in this case

{33} Because we conclude that HGN testing involves scientific knowledge, we hold that the HGN evidence in this case must satisfy the requirements of Alberico-Daubert. "In short, `**under the Rules [of Evidence] the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable**.'"Anderson, 118 N.M. at 291, 881 P.2d at 36 (quoting Daubert, 509 U.S. at 589, 113 S.Ct. 2786).

{34} Although "[t]he inquiry envisioned... is ... a flexible one," Daubert, 509 U.S. at 594, 113 S.Ct. 2786, determining the evidentiary reliability of scientific knowledge does require trial courts to consider several factors, see Stills, 1998-NMSC-009, ¶ 27, 125 N.M. 66, 957 P.2d 51; cf. Anderson, 118 N.M. at 291, 881 P.2d at 36 (listing factors). Further, the "overarching subject [of the inquiry] is the scientific validity—and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission. The focus ... must be solely on principles and methodology, not on the conclusions that they generate." Daubert, 509 U.S. at 594-95, 113 S.Ct. 2786; accord Alberico, 116 N.M. at 168, 861 P.2d at 204.

{35} Our review of the record indicates that the trial court did not consider any of the required factors for assessing the evidentiary reliability of HGN testing in this case, nor was there an appropriate focus on principles and methodology. Rather, the trial court simply overruled Torres's objection that the State had failed to establish the evidentiary reliability of Officer Bowdich's HGN testimony, and no application of the Alberico-Daubert standard ensued. Because the trial court allowed the State to continue its questioning of Officer Bowdich concerning the HGN test without a proper inquiry into the evidentiary reliability of this test, we must presume that the trial court viewed the Alberico-Daubert standard as inapposite under the facts of this case. This view is premised on a misapprehension of the law, and we hold that the trial court's decision to admit the HGN testimony without applying the Alberico-Daubert standard is reversible error in this case.

{36} The State proposes three arguments to the contrary, but we remain unconvinced. First, the State relies on State ex rel. Hamilton v. City Court, 165 Ariz. 514, 799 P.2d 855, 858 (1990) (en banc), for the proposition that the proper foundation for HGN evidence "is limited to describing the officer's education and experience in administering the test and showing that proper procedures were followed." This argument is unpersuasive. Unlike New Mexico, the Arizona courts have rejected Daubert in favor of the "general acceptance" standard articulated in

Frye, 293 F. at 1014. See State v. Tankersley, 191 Ariz. 359, 956 P.2d 486, 491 (1998). Given that HGN testimony had been ruled admissible in Arizona courts four years prior to City Court, see State v. Superior Court, 149 Ariz. 269, 718 P.2d 171, 181 (1986) (en banc) we do not find it surprising that the prosecution met the "general acceptance" standard in that case without any additional testimony regarding the scientific principles upon which the HGN test is based. Further, we note that part of the reason the Arizona courts may regard such additional testimony as unnecessary is that they only admit HGN 32*32 evidence for limited purposes such as establishing probable cause and corroborating the results of more reliable sobriety tests such as chemical analyses of breath, blood, or urine. See Superior Court, 718 P.2d at 181-82. Thus, it is not clear that the HGN evidence in this case would be admissible under the Arizona standard, because the State was not using this evidence merely to corroborate a chemical analysis of Torres's blood alcohol content. Indeed, the State offered no such analysis in this case.

{37} Although the State presented evidence at trial as to Officer Bowdich's training and experience with HGN testing, we conclude that his training and experience are not sufficiently probative of the test's evidentiary reliability. We note that some courts have allowed the admission of HGN testimony for limited purposes without a scientific expert laying an appropriate foundation under the relevant admissibility standard. See, e.g., Whitson v. State, 314 Ark. 458, 863 S.W.2d 794, 798 (1993) (holding that admission of HGN evidence for the limited purpose of showing unquantified level of alcohol consumption did not require a preliminary inquiry regarding novel scientific knowledge); State v. Murphy, 451 N.W.2d 154, 157-58 (Iowa 1990) (holding that HGN testing is not unlike any other lay, field-sobriety test and that it therefore requires no admissibility foundation for scientific evidence); City of Fargo v. McLaughlin, 512 N.W.2d 700, 708 (N.D.1994) ("We agree with those cases holding that the only foundation required [for HGN testing] is a showing of the officer's training and experience in administering the test, and a showing that the test was in fact properly administered."); State v. Bresson, 51 Ohio St.3d 123, 554 N.E.2d 1330, 1336 (1990) (holding that HGN evidence is as admissible as would be other field sobriety tests). **Nevertheless, we find persuasive the reasoning of other courts which have held that if police officers are not qualified to testify about the scientific bases underlying the HGN test, they are not competent to establish that the test satisfies the relevant admissibility standard. See, e.g., People v. Leahy, 8 Cal.4th 587, 34 Cal.Rptr.2d 663, 882 P.2d 321, 334 (1994) (in bank);** Merritt, 647 A.2d at 1026-28; People v. Vega, 145 Ill. App.3d 996, 99 Ill.Dec. 808, 496 N.E.2d 501, 504-05 (1986); State v. Witte, 251 Kan. 313, 836 P.2d 1110, 1116 (1992); State v. Borchardt, 224 Neb. 47, 395 N.W.2d 551, 559 (1986); cf. Barrett v. Atlantic Richfield Co., 95 F.3d 375, 382 (5th Cir.1996) (holding that an animal behaviorist was not qualified to testify about the cause of observed chromosomal changes to rats due to their exposure to chemicals, or about the possible effects of similar exposure on humans, because such testimony was beyond his expertise); 4 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence, § 702.06[1], at 702-44 to -45 (Joseph M. McLaughlin ed., 2d ed. 1998) ("The trial court should

exclude proffered expert testimony if the subject of the testimony lies outside the witness's area of expertise.").

{38} As its second argument in support of its contention that the trial court did not err in admitting the HGN evidence, the State cites case law from other jurisdictions for the proposition that HGN testing is generally accepted in the scientific community. See, e.g., Superior Court, 718 P.2d at 180-81, app. A, at 182, app. B, at 182-84 (concluding that HGN testing is generally accepted in the scientific community, and listing scholarly sources in support of this conclusion); People v. Joehnk, 35 Cal. App.4th 1488, 42 Cal.Rptr.2d 6, 9-17 (1995) (concluding, upon a review of the expert testimony introduced at trial as well as a review of the case law of California and other jurisdictions, that HGN testing is generally accepted in the scientific community as a useful tool when combined with other tests and observations); Schultz v. State, 106 Md.App. 145, 664 A.2d 60, 70-74 (1995) (taking judicial notice of the scientific validity of HGN testing based on reported case law and scientific literature). However, in Alberico, we concluded that "[i]t is improper to look for scientific acceptance only from reported case law." 116 N.M. at 167, 861 P.2d at 203. We reaffirm that conclusion today.

{39} The thrust of the policy behind Alberico, Anderson, and Stills is to broaden the trial court's role in admitting evidence of scientific knowledge. Specifically, Alberico 33*33 and its progeny allow a trial court to admit evidence of scientific knowledge that is adequately valid (from a scientific viewpoint) to be sufficiently reliable (from an evidentiary viewpoint). To facilitate this intent, Alberico rejected the principle that general acceptance within a particular scientific discipline was a necessary or sufficient condition for evidentiary admissibility. See Alberico, 116 N.M. at 167, 861 P.2d at 203.

{40} At this point, we do not decide whether HGN testing is adequately valid from a scientific point of view based on reported case law or other authorities. Cf. Vega, 99 Ill.Dec. 808, 496 N.E.2d at 504-05 (refusing to accept evidence regarding the scientific validity of HGN testing for the first time on appeal). Our holding is limited to whether the State provided sufficient support at trial for a threshold determination that the underlying "scientific technique is based upon well-recognized scientific principle and... is capable of supporting opinions based upon reasonable probability rather than conjecture." Alberico, 116 N.M. at 167, 861 P.2d at 203. We hold that the State did not satisfy its Alberico-Daubert burden. Although Officer Bowdich testified that the National Highway Traffic Safety Administration (NHTSA) accepted HGN testing, that the test was nationally certified, and that the test was routinely given, his testimony was insufficient to establish the evidentiary reliability required by Alberico-Daubert. Officer Bowdich was not qualified to testify about the scientific bases of HGN testing, and although his testimony lent support for a conclusion that the test was widely used—thus giving rise to an inference of general acceptance—his testimony did not explain how the test proved intoxication. He therefore did not assist the trier of fact in understanding the scientific validity of the test. In addition, although his testimony supported an inference that various authorities believe HGN testing to be

scientifically valid, his testimony did not provide the trier of fact with a ground on which to evaluate the basis of that belief.

{41} In its final argument, the State asserts that, "[i]f this Court desires, judicial notice may be taken of the limited fact that HGN is a scientific test used to determine whether someone is under the influence." We conclude at this point that HGN testing does not meet the criteria we have previously established for the proper taking of judicial notice:

> This court, since early territorial days, has expressed the view that courts will take judicial notice of matters of common and general knowledge.
>
> The matter of which a court will take judicial notice must be a subject of common and general knowledge. The matter must be known, that is well established and authoritatively settled. Thus, uncertainty of the matter or fact in question will operate to preclude judicial notice thereof.

Rozelle v. Barnard, 72 N.M. 182, 183, 382 P.2d 180, 181 (1963) (citations omitted); accord Holton v. Janes, 25 N.M. 374, 379, 183 P. 395, 397 (1919); see also Hartford Accident & Indem. Co. v. Beevers, 84 N.M. 159, 162-63, 500 P.2d 444, 447-48 (Ct.App.1972) (refusing to take judicial notice of a general law of nature concerning the combustibility of gases where there was no showing as to how this law was affected by variables).

{42} We are not persuaded that HGN testing is "a subject of common and general knowledge," or a matter "well established and authoritatively settled" in New Mexico. We therefore determine that judicial notice of the evidentiary reliability of HGN testing would be inappropriate at this time. Specifically, we hold that because the State failed to establish the evidentiary reliability of HGN testing, the HGN testimony should not have been admitted at trial.

C. Qualification of an Expert in Administering an HGN Test

{43} Torres further contends that apart from failing to lay a proper foundation as to the evidentiary reliability of HGN testing, the State neglected to lay a proper foundation in qualifying Officer Bowdich as an expert in the administration of the HGN test. Like Torres's evidentiary reliability objection, this contention gives rise to Rule 11-702 concerns. To determine the appropriate scope of appellate review concerning this issue, 34*34 we must determine whether the Alberico-Daubert standard applies only to expert testimony that relies on scientific knowledge, or to all forms of expert testimony, including the administration of the HGN test by a trained observer. Courts in other states that have rejected the Frye standard in favor of Daubert are in disagreement as to the scope of Daubert's application. See generally 4 Weinstein & Berger, supra § 702.05[2], at 702-35 to -38 nn. 10-11 (listing and summarizing cases that have come to opposite conclusions on this issue). We believe the better view is expressed by the United States Court of Appeals for the Tenth Circuit, which has concluded that "application of the Daubert factors is unwarranted in cases where expert testimony is based solely upon experience or training." Compton v. Subaru of Am., Inc., 82 F.3d 1513, 1518 (10th Cir.1996); accord Thomas v. Newton Int'l Enters.,

42 F.3d 1266, 1270 n. 3 (9th Cir.1994) ("Daubert was clearly confined to the evaluation of scientific expert testimony. Special concerns arise when evaluating the proffer of scientific testimony that do not arise when evaluating [nonscientific testimony]." (citation omitted)); Edward J. Imwinkelried, The Next Step After Daubert: Developing a Similarly Epistemological Approach to Ensuring the Reliability of Nonscientific Expert Testimony, 15 Cardozo L.Rev. 2271, 2285 (1994) (explaining that the Daubert "test is useless as a criterion for the admissibility of other types of expert testimony").

{44} Under the Tenth Circuit view that we adopt today, the trial court did not err in declining to apply the Alberico-Daubert standard in determining the admissibility of Officer Bowdich's testimony as an expert in the administration of the HGN test. Officer Bowdich's expertise as an administrator of the HGN test was based solely on his experience and training, and we review the trial court's primarily factual ruling on Officer Bowdich's qualifications in this area for an abuse of discretion. See Wood v. Citizens Standard Life Ins. Co., 82 N.M. 271, 273, 480 P.2d 161, 163 (1971).

{45} Regardless of whether the subject matter involves scientific, technical, or other specialized knowledge, however, a witness must qualify as an expert in the field for which his or her testimony is offered before such testimony is admissible.

Under [Federal Rule of Evidence] 702, a witness must qualify as an expert to testify on matters that are scientific, technical, or specialized in nature. The description of the kinds of testimony requiring expertise is broad, and so are the means to qualify a witness as an expert: What is required is "knowledge, skill, experience, training, or education."

It should be noted at the outset that normally the calling party must qualify the witness to testify as an expert first, before any substantive testimony is given.

3 Christopher B. Mueller & Laird C. Kirkpatrick, Federal Evidence § 349, at 602 (2d ed.1994).

{46} We have already held that HGN testing involves scientific knowledge. We have also determined that Officer Bowdich does not qualify as a scientific expert who may establish the evidentiary reliability of HGN testing. Thus, the State finds itself in a quandary: Because HGN testing involves scientific knowledge; only a scientific expert may testify as to its results, and because Officer Bowdich does not qualify as a scientific expert, he may not testify about HGN test results. The question remains, however, whether witnesses who only qualify as non-scientific experts based on their training and experience may testify about the administration of tests involving scientific knowledge after an appropriate foundation regarding such knowledge has been laid by another, scientific expert. In the context of HGN testing, we conclude that such nonscientific experts may testify, provided that another, scientific expert first establishes the evidentiary reliability of the scientific principles underlying the test.

{47} Although experts who lack the qualifications necessary to testify about scientific knowledge cannot establish the evidentiary reliability of the scientific

knowledge underlying the respective tests, they may, because of their training, experience, and specialized knowledge, testify as to the administration and specific results of the test after it has been shown to meet the 35*35 requirement of evidentiary reliability. We note that nystagmus, or jerking of the eyes, "`can be observed directly and does not require special equipment.'"1 Erwin, supra § 10.06[5], at 10-32 (quoting Transportation Safety Inst., NHTSA, U.S. Dep't of Transp., HS 178 R6/92, DWI Detection and Standardized Field Sobriety Testing, Student Manual, at VIII-16 to -18 (1992)). "In administering the HGN test a police officer will move an object back and forth in front of a drinking/driving suspect's face.... The officer will observe the suspect's eyes as they track the moving object, specifically taking note at what point each eye begins jerking." 1 Nichols, supra § 14:32.50, at 298; see also 1 Erwin, supra § 10.06[5], at 10-28 to -32. Based on this description and our review of the record in this case, we conclude that in order to establish the "technical or specialized knowledge" required to qualify a witness as an expert in the administration of the HGN test, there must be a showing: (1) that the expert has the ability and training to administer the HGN test properly, and (2) that the expert did, in fact, administer the HGN test properly at the time and upon the person in question.

{48} In the instant case, we conclude that the State satisfied these two foundational criteria. Regarding his ability and training to administer the HGN test properly, Officer Bowdich testified at trial that he had used the test on a regular basis, that he had conducted numerous HGN tests on subjects who had been drinking and on subjects who had not, and that he had been trained to determine, based on appropriate HGN test techniques, whether an individual had been drinking. This was sufficient. As for administering the HGN test properly at the time and upon the person in question, Officer Bowdich described the HGN test techniques he employed in administering the test to Torres on January 16, 1994, testified that the techniques he employed were those in which he had been trained, and explained that, based on his administering the test to Torres, he determined that Torres "had been drinking quite a bit." Again, this was sufficient. We thus conclude that the State properly qualified Officer Bowdich as an expert in the administration of the HGN test.

{49} Finally, we take the opportunity to correct the misapprehension of the law that may arise from Burke, 1999-NMCA-031, ¶ 15, 126 N.M. 712, 974 P.2d 1169. In that case, our Court of Appeals was confronted with a situation where the State offered an officer's testimony about HGN test results without first establishing that the officer did, in fact, administer the HGN test properly at the time and upon the person in question:

[W]hen confronted with a photocopy of the training manual that the officer used when learning how to give HGN tests, [the officer] admitted that he used improper procedure on virtually every aspect of the test. Specifically, (1) he was looking for smooth tracking of the eyes after, rather than before, the test; (2) he checked for all three of the required clues during the same pass of the object before the subject's eyes, and he checked for these clues in two total passes, rather than checking for each of the three clues during two separate

passes, for a total of six passes; (3) when he checked for maximum deviation, he held the object for two or three seconds, rather than the required four; and (4) he never spent the required four seconds getting to the 45-degree point.

Id. ¶ 3. Because of the officer's improper administration of the test, the Court of Appeals acknowledged that the HGN evidence may have been improperly admitted "[a]s expert testimony of a specific degree of intoxication." Id. ¶ 15. Nevertheless, the Court of Appeals concluded that this officer's HGN testimony was based on personal experience, rather than scientific knowledge. Thus, it held that the evidence was admissible. As discussed earlier, this ruling was incorrect insofar as it suggests that HGN evidence does not rely on scientific knowledge.

{50} **The Court of Appeals also was incorrect in stating, "When used as nonscientific, expert testimony, we believe our Supreme Court would rule that deficiencies in conducting the HGN test such as [those shown above] would go to the weight, not the admissibility, of the evidence...." Id.** ¶ 15. In light of the foundational requirements set 36*36 forth above, it is clear that this is not our view. As the partial dissent in Burke explains, "The officer ... acknowledged that his manner of conducting the test departed substantially from what was required by his training manual. Given that acknowledgment, I do not think that his personal experience with the HGN test provided a sufficient foundation for admitting the results of his test...." Id. ¶ 21 (Hartz, C.J., concurring in part, dissenting in part). We agree with the partial dissent in Burke that the foundational requirements for admitting the results of HGN testing were not met under these circumstances, and we overrule Burke, 1999-NMCA-031, ¶ 15, 126 N.M. 712, 974 P.2d 1169, to the extent it is inconsistent with this opinion.

D. Harmless Error

{51} **The State contends that, even if we find error in the admission of the HGN evidence, that error was harmless. Specifically, the State asserts: "Take away Officer Bowdich's testimony about the HGN test. The remaining evidence established Defendant failed both the finger count and the nose touch tests. Coupled with the personal observations of Officer Byers and Officer Bowdich, the effect, if any of the HGN testimony, was harmless." We disagree.**

{52} In Clark v. State, 112 N.M. 485, 487, 816 P.2d 1107, 1109 (1991), **we explained that "[e]rror in the admission of evidence in a criminal trial must be declared prejudicial and not harmless if there is a reasonable possibility that the evidence complained of might have contributed to the conviction." We conclude that the error in this case was not harmless, because there is a reasonable possibility that the admission of Officer Bowdich's HGN testimony might have contributed to Torres's conviction.**

{53} We note at the outset that the State introduced no results from chemical tests to support its assertion that Torres was intoxicated at the time in question. Indeed, the State concedes that the evidence supporting the finding of Torres's

intoxication was limited to the personal observations of Officers Byers and Bowdich as well as the results of three field sobriety tests, i.e., the HGN test, the finger count test, and the nose touch test. In introducing these observations and tests at trial, the State presented the latter as more accurate than the former, for Officer Bowdich testified that he received at least some sort of training for each of the tests. Furthermore, among the three field sobriety tests, the State presented the HGN test as the most accurate, for Officer Bowdich testified that, of the three tests, he only regularly administered the HGN test in DWI investigations; that, of the three tests, he had only received formal training for the administration of the HGN test; and that, of all field sobriety tests, the HGN test was "the one test that cannot be beat." Hence, the State presented the HGN results to the jury as the most accurate indicator of Torres's intoxication. In this respect, this case is distinguishable from the analysis of harmless error in Burke, 1999-NMCA-031, ¶¶ 16-17, 126 N.M. 712, 974 P.2d 1169, where the prosecution emphasized the specific results of a breath test rather than the HGN evidence. Given the State's emphasis in Torres's trial, there is at least a reasonable possibility that the admission of the HGN evidence might have contributed to his DWI conviction. We thus conclude that the evidentiary error was not harmless.

E. On Remand

{54} **We conclude that the HGN testimony should not have been admitted at trial because it lacked the necessary Alberico-Daubert foundation. We also conclude that it would be appropriate for the trial court, on remand, to make the initial determination of whether HGN testing satisfies the Alberico-Daubert standard.** See Merritt, 647 A.2d at 1027 (adopting the reasoning of "courts [that] have determined that a trial court, not an appellate court, provides the correct forum for the initial determination as to whether the criteria set forth in ... the appropriate state rule of evidence has been satisfied" (footnotes omitted)). In making this determination, the trial court shall consider the factors set forth in Anderson, 118 N.M. at 291, 881 P.2d at 36. If, after considering these factors on remand, the trial court determines that the State has satisfied its 37*37 burden of establishing the evidentiary reliability of HGN testing, then Officer Bowdich may testify about his administration of the HGN test. Further, if this Court or the Court of Appeals later publishes an opinion that decides the evidentiary reliability of HGN testing under the Alberico-Daubert standard, a trial court may reconsider the issue whether to take judicial notice of the test's evidentiary reliability, notwithstanding our conclusion that such judicial notice would be inappropriate at the present time. Cf. 3 Mueller & Kirkpatrick, supra § 353, at 657 (concluding that courts are "right to admit or exclude much evidence without `reinventing the wheel' every time by requiring the parties to put on full demonstrations of the validity or invalidity of methods or techniques that have been scrutinized well enough in prior decisions to warrant taking judicial notice of their status").

IV. CONCLUSION

{55} We hold that Torres's motion for continuance should not have been denied and that this denial prejudiced Torres's defense. **We also hold that the testimony as to the results of the HGN test should not have been admitted at trial.** For these reasons, we conclude that Torres is entitled to a new trial. Accordingly,

we vacate the judgment of the district court and remand this case for a new trial to be conducted in a manner not inconsistent with this opinion.

{56} IT IS SO ORDERED.

The 4th District Court of Appeal stressed that a proper scientific procedure must be used "*Whalley*, however, **did not state the officer had used an improper technique**, but rather had used a technique that was more difficult and required training and experience. **Burns testified she observed Brush's testing technique and found he correctly conducted the test. The People satisfied Kelly's requirement that proper scientific procedures be used.**

In *People v. Joehnk, 35 Cal. App. 4th 1488 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 1995:*

(1a) Appellant argues the use of HGN testing is not generally accepted in the relevant scientific community as reliable and thus its results could not be used by Officer Brush as a basis for his opinion concerning appellant's intoxication. He further argues, assuming HGN testing is generally accepted in the relevant scientific community, a police officer is not qualified to testify concerning the results of the test. Additionally, appellant argues the test in this case was not properly administered and on that basis its results should not have been admitted. (See People v. Leahy (1994) 8 Cal.4th 587, 591, 594-610 [34 Cal. Rptr.2d 663, 882 P.2d 321] (Leahy); People v. Kelly (1976) 17 Cal.3d 24, 30-32 [130 Cal. Rptr. 144, 549 P.2d 1240] (Kelly).)

A. HGN and Intoxication

(2) "Nystagmus is an involuntary rapid movement of the eyeball, which may be horizontal, vertical, or rotatory. [Citation.] An inability of the eyes to maintain visual fixation as they are turned from side to side (in other words jerking or bouncing) is known as horizontal gaze nystagmus, or HGN. [Citation.]" (People v. Ojeda (1990) 225 Cal. App.3d 404, 406 [275 Cal. Rptr. 472].) The theory supporting HGN testing is that intoxicated persons exhibit HGN and that a field test conducted by a police officer can identify the condition. (State v. Superior Court (1986) 149 Ariz. 269 [718 P.2d 171, 181, 60 A.L.R.4th 1103] (Blake); City of Fargo v. McLaughlin (N.D. 1994) 512 N.W.2d 700, 706; see also dis. opn. of Baxter, J., in Leahy, supra, 8 Cal.4th at pp. 622-633.)

1. Test of Admissibility

In Leahy our Supreme Court concluded the results of an HGN test are admissible only if the technique and the scientific basis for it satisfy the requirements of Kelly, supra, 17 Cal.3d at page 30. (Leahy, supra, 8 Cal.4th at pp. 591-592.)

(3) **To satisfy Kelly, new forms of scientifically based evidence must satisfy a three-part test. "First, the party offering the evidence must show that the technique is `"sufficiently established to have gained general acceptance in the particular field in which it belongs."' [Citation.] Second, the proponent of the evidence must establish that `the witness furnishing such testimony' is `properly qualified as an expert to give [such] an opinion....' [Citation.] Third, the proponent must demonstrate that `correct scientific procedures were used in the particular case.'** [Citations.]" (People v. Diaz (1992) 3 Cal.4th 495, 526 [11 Cal. Rptr.2d 353, 834 P.2d 1171].)

1494*1494 (4) "Review of a trial court's decision finding that a new scientific procedure has been `"`sufficiently established to have gained general acceptance in the particular field in which it belongs"" (italics omitted) and therefore that it is admissible in a criminal trial is a `mixed question of law and fact subject to limited de novo review.' [Citation.]

"The appellate court reviews `the trial court's determination with deference to any and all supportable findings of "historical" fact or credibility, and then decide[s] as a matter of law, based on those assumptions' not `"whether [the technique] is reliable as a matter of `scientific fact,' but simply whether it is generally accepted as reliable by the relevant scientific community." [Citations.]' [Citation.]

"In conducting the review, the appellate court primarily relies on the record below [citations] but it may also consider out-of-state opinions and scientific literature bearing on the question whether the scientific technique at issue has gained acceptance in the scientific community. [Citations.]" (People v. Marlow (1995) 39 Cal. App.4th 343, 376 [41 Cal. Rptr.2d 5] review granted July 20, 1995 (S046966).)

2. HGN Evidence

In its motion seeking admission of HGN test results as a basis for Officer Brush's opinion, the prosecution offered both testimony and scientific and professional articles on the nature of HGN and HGN testing.

Dr. Marcelline Burns, a research psychologist, testified she was a founder of the Southern California Research Institute which studies the effects of alcohol and drugs on behavior and performance. In 1975 and again in 1978, Burns conducted tests for the National Highway Traffic Safety Administration (NHTSA) to establish a battery of sobriety tests that could be administered by police officers in the field.

Burns explained the term nystagmus and indicated its horizontal version could be induced by several conditions, including the ingestion of alcohol and other central nervous system depressants. A small number of persons have a congenital condition causing nystagmus. The phenomenon is medically recognized and nystagmus tests are

used by physicians as a tool for determining whether a patient is intoxicated or has neurological problems.

Burns indicated the first studies of nystagmus as an indicator of intoxication were conducted in Finland in the early 1970's. Burns, in her studies for the NHTSA, was interested in developing a valid field test for determining intoxication. The studies found that by using three tests, one of which was 1495*1495 HGN testing, trained officers were correct 81 percent of the time in identifying test subjects with a .10 blood-alcohol level. Later, field studies by other researchers indicated HGN was a valid indicator of intoxication. In Burns's opinion, a correctly conducted HGN test is a highly reliable indicator of intoxication. Burns stated that of the three tests used in the field sobriety examination, that is, the walk and turn test, the one leg stand test and the HGN test, the HGN test is the most sensitive and least subject to the effects of alcohol tolerance.

Burns further testified she keeps current on scientific literature and opinion concerning HGN and its use in detecting intoxication in drivers. She stated the scientific community concerned with HGN as a test for intoxication was comprised of behavioral psychologists, highway safety experts, criminalists and medical doctors concerned with the recognition of alcohol intoxication. Burns stated in this community the HGN test was accepted as a reliable indicator of intoxication and she was unaware of any scientific literature stating it was not.

Burns testified the test is conducted by holding an object, such as a pen, 12 to 15 inches in front of and slightly above the subject's eyes. The object is moved in a horizontal plain from one side to the other. The officer administering the test first watches the smoothness of the subject's eyes in tracking the object. As the eyes reach their maximum lateral deviation, the observer watches the amount of jerking in the eyeball. Burns indicated about half the population shows jerking at this point of deviation naturally, possibly as the result merely of eye strain. Finally, the observer has the subject track the object back to center and then tract it again laterally. The observer's notes the degree of lateral deviation at which the eye first begins to show distinct jerking, i.e., horizontal nystagmus, and determines whether it begins before 45 degrees of deviation from center.

Burns further testified she had observed Officer Brush's technique in using the HGN test and determined he used it correctly.

James Stam, a supervising criminalist for the San Diego Police Department crime laboratory with a bachelor's degree in criminology from the University of California, Berkeley, testified he had been involved in over 30 studies concerning alcohol ingestion and impaired performance and kept current on the literature in that field. Stam stated he was familiar with the HGN test as an indicator of intoxication.

Stam discussed the phenomenon of nystagmus. He noted nystagmus could be caused by a number of conditions other than alcohol ingestion and in 1496*1496 about 4 percent of the population it occurs naturally. Stam noted HGN is an extremely reliable

indicator of alcohol consumption and particularly useful since not affected by alcohol tolerance. He stated, however, HGN testing could not reliably be used to correlate given degrees or types of nystagmus to particular levels of blood alcohol. Stam noted medical doctors used the test in emergency rooms as an indicator of intoxication. It was Stam's conclusion HGN was accepted as a reliable indicator of alcohol consumption in those scientific fields, such as emergency room medicine and criminalistics, which studied and used it.

The People also offered the testimony of independent forensic scientist and toxicologist Richard Whalley. Whalley holds a bachelor's degree in forensic sciences from the University of California, Berkeley, and has extensive experience in forensics, working both for the prosecution and the defense. Whalley has both academic and practical experience with the effect of alcohol on body systems.

Whalley stated nystagmus can be the result of congenital, pathologic or toxic causes. One of the toxic substances that can cause nystagmus is alcohol. The specific mechanism of alcohol induced nystagmus was not understood.[2] Nonetheless, the consumption of alcohol was known to cause detectable nystagmus.

Whalley stated that as a scientist he used the HGN test as an indicator of alcohol consumption and that a finding of nystagmus indicates the subject may have consumed alcohol. Whalley stated he was familiar with the medical literature concerning HGN and that it supports use of the test as one indicator that a subject is under the influence of alcohol. He also stated within the fields of criminalistics and forensic alcohol analysis, HGN was accepted as a reliable indicator that a subject is under the influence of alcohol. Whalley stated, however, the test could not reliably be used to accurately estimate blood-alcohol levels.

Officer Christopher Brush was the officer who administered the HGN test to appellant. Brush was a 12-year veteran of the San Diego Police Department and had been in the traffic division for 4 years. Brush had extensive training and experience on the general subject of driving under the influence 1497*1497 and was trained to give and interpret the results of the HGN test. Brush had used the test several thousand times. Brush was instructed that while a finding of nystagmus indicated the possibility the subject was under the influence of alcohol, such a finding could also be the result of other conditions. The officer was taught that no conclusion was to be drawn solely from the results of the HGN test but rather those results were to be used with other facets of the investigation in concluding whether the subject was under the influence of alcohol.

Dr. Philip Wagner, an internist and emergency room physician, testified for the defense. Wagner testified horizontal nystagmus can be caused by trauma, disease, fatigue or by toxins and exists naturally in some persons. The doctor has conducted a form of HGN test on persons who were intoxicated. Wagner agreed alcohol intoxication could cause nystagmus but stated its physiological mechanism was unknown. The doctor stated it was not possible to distinguish nystagmus caused by the ingestion of alcohol from that caused by any other condition or causes.

Wagner stated he had reviewed the studies linking HGN to alcohol intoxication and believed those studies of poor quality and either biased or flawed. The doctor believed the studies were conflicting on whether officers could accurately measure the angle of onset of horizontal nystagmus.

The doctor was asked if it was an established medical fact that a certain alcohol level can affect the angle of onset of horizontal nystagmus. He stated it was not. Wagner also explained it was not standard practice for physicians to measure for the onset of gaze nystagmus.

On cross-examination Wagner stated a lateral nystagmus test was a routine part of a medical examination and the presence of nystagmus can indicate alcohol intoxication. The test is not, however, specifically used by physicians to determine intoxication. The doctor indicated that until three weeks before his testimony he had done no research on HGN as an indicator of intoxication.

Wagner stated a lateral nystagmus test would be useful when used with other indicators in determining if a patient was intoxicated on alcohol or another depressant. The doctor had seen lateral nystagmus as a result of alcohol intoxication in approximately 1,000 patients. The doctor does not, however, use an angle of onset nystagmus test as part of his examination and does not consider it reliable.

Wagner was unaware of any medical articles stating that a lateral nystagmus test should not be used as one factor in determining whether a person was intoxicated.

1498*1498 Wagner stated if a patient presented a lack of coordination, an odor of alcohol and watery eyes, a lateral nystagmus would be an indication the patient was intoxicated or had used another drug such as an antihistamine.

3. California Cases

Four California cases have dealt with the admissibility of HGN. In People v. Loomis (1984) 156 Cal. App.3d Supp. 1 [203 Cal. Rptr. 767], a police officer offered an opinion of a defendant's blood-alcohol level based on his observation of the angle of onset of lateral nystagmus. The court found HGN to be a new form of scientific evidence and subjected it to the Kelly test of admissibility. The court found no evidence of the reliability or general scientific acceptance of the HGN test as a means of determining blood-alcohol levels and held the evidence inadmissible. (Id. at pp. Supp. 5-7.)

In People v. Ojeda, supra, 225 Cal. App.3d 404, an officer was allowed to testify that he observed lateral nystagmus in the defendant and that based on his experience he associated the phenomenon with persons under the influence of alcohol. The Court of Appeal noted no objection was made below on the basis HGN testing lacked general scientific acceptance. The court limited its review to whether the officer was qualified to testify that based on his experience nystagmus was a reliable indicator of alcohol

intoxication. The court found the officer's experience using the technique qualified him to so testify. (Id. at pp. 406-409.)

In People v. Williams (1992) 3 Cal. App.4th 1326 [5 Cal. Rptr.2d 130] (Williams), an officer was allowed to testify that based on all his observations, including the HGN testing, it was his opinion defendant had consumed alcohol. The trial court concluded the testimony was admissible, holding it was lay rather than expert opinion. The Court of Appeal disagreed, concluding that insofar as the opinion was based on the results of the HGN test, it required knowledge, training and experience beyond that commonly held and, thus, was not the proper subject of lay opinion. (Id. at pp. 1332-1333.)

The court in Williams assumed the officer was qualified to administer the test and observe nystagmus but held attributing test findings to a particular cause required an expertise the officer had not demonstrated. The court stated: "Without some understanding of the processes by which alcohol ingestion produces nystagmus, how strong the correlation is, how other possible causes might be masked, what margin of error has been shown in statistical surveys and a host of other relevant factors, [the officer's] opinion on causation, notwithstanding his ability to recognize the symptom, was unfounded. It should have been excluded." (3 Cal. App.4th at p. 1334.) The 1499*1499 court concluded results of HGN testing might be admissible if linked to qualified expert testimony concerning those matters. (Id. at pp. 1333-1334.)

The court in Williams further noted the People offered the testimony of the supervisor of the alcohol analysis section of the county regional crime lab. The expert did not comment on the particular test given by the officer or what caused the observed nystagmus. The expert testified generally about the administration of the HGN test and about the various possible causes for nystagmus. The court concluded on the record before it the expert's testimony was not admissible to give the jury a factual basis for concluding the officer's observation of nystagmus indicated intoxication. The court concluded the expert's information too general for providing such a predicate. The expert stated while alcohol could cause nystagmus, many other factors could cause it as well, and he did not quantify the relationship between nystagmus and alcohol ingestion. The expert indicated a disagreement in the scientific community concerning the accuracy of the HGN for detecting alcohol and indicated some experts found it meaningless. (3 Cal. App.4th at p. 1335.)

In Williams the parties agreed the results of an HGN test were inadmissible unless generally accepted in the relevant scientific community as required by Kelly. The court concluded it would be inappropriate to address the question on the record before it.

In Leahy, the court held the results of HGN testing were inadmissible unless it was first shown the technique was generally accepted as reliable in the relevant scientific community. The record in that case, however, was insufficient to make such a determination and the matter was remanded for a Kelly hearing. (8 Cal.4th at pp. 604-613.)

Justice Baxter dissented on several grounds from the conclusion it was necessary that HGN testing satisfy the Kelly test of admissibility. Justice Baxter observed that HGN testing differed markedly from other techniques or processes to which Kelly had been applied. The Kelly test was designed for situations in which testimony was based on esoteric methods or apparatus, the evaluation of which was beyond common capabilities. HGN testing, Justice Baxter argued, did not fit in that category. The nature of the test was readily comprehensible and there was no mystery about the manner of evaluation or its meaning as one factor in an officer's opinion concerning intoxication. The technique simply did not carry an "`undeserved aura of certainty'" (Leahy, supra, 8 Cal.4th at p. 619 (dis. opn. of Baxter, J.)), nor purport to provide some definitive truth. Justice Baxter acknowledged the situation might be different if the officer used the test as a means of determining a blood-alcohol level. (Id. at pp. 617-619.)

1500*1500 Justice Baxter noted the core premises of HGN testing, that is, that intoxicated persons exhibit nystagmus and that a properly trained individual can observe nystagmus, were undisputed. (8 Cal.4th at pp. 622-624 (dis. opn. of Baxter, J.).)

4. Authority From Other Jurisdictions

The HGN field sobriety test has been in wide use nationally for many years and has been reviewed by the courts of a host of states. The legal landscape concerning the test is made relatively complex by several factors. First, many states no longer apply a Kelly/Frye-style general acceptance test. (See Frye v. United States (D.C. Cir.1923) 293 F. 1013, 1014 [54 App.D.C. 46, 34 A.L.R. 145].) Having adopted the Federal Rules of Evidence and in particular rule 702 (28 U.S.C.), they use a more liberal test for the admission of scientific evidence like that defined in Daubert v. Merrell Dow (1993) 509 U.S. ___ [125 L.Ed.2d 469, 113 S.Ct. 2786] (Daubert).[3] Other states have concluded HGN testing to be nonscientific in the Frye sense and consider it no different than the other components of the field sobriety test which do not require a scientific basis for their admission. (See, e.g., State v. Murphy, supra, 451 N.W.2d 154, 157-158; State v. Nagel (1986) 30 Ohio App.3d 80 [506 N.E.2d 285, 286].)[4]

Second, cases have dealt with several uses of the technique. For example, courts have dealt with the assertion by some law enforcement agencies that HGN can be used not just as a general indicator of intoxication but also as a reliable device for determining a blood-alcohol level. (See, e.g., People v. Loomis, supra, 156 Cal. App.3d at pp. Supp. 5-7.) (As noted the People made no such claim in this case and their experts stated no such correlation could reliably be made.)

1501*1501 Finally, the nature of the Kelly/Frye rule itself and the practicalities of litigation make for an uneven and somewhat unreliable body of case authority. The core of the Kelly/Frye rule is that the admissibility of new scientific evidence is not dependent on the evaluation of the technique or process by judges but rather on a finding that a clear majority of the relevant scientific community accepts the technique as reliable. The courts to a great extent are dependent on the records in individual cases in making this

Kelly/Frye determination. While a body of scientific literature may exist concerning a technique, it is unwise to rely too heavily on such literature without expert testimony evaluating it and without cross-examination concerning that evaluation. (See Leahy, supra, 8 Cal.4th at pp. 611-612.) The records in cases can vary depending not only on the experts who testify but on the point in the development of a technique and its review by the scientific community at which the evidentiary hearing is held.

The most important case applying a Kelly/Frye analysis to HGN testing is Blake, supra, 718 P.2d 171. At trial, the state offered the testimony of Dr. Marcelline Burns, one of the experts in the present case, a police sergeant from the Los Angeles Police Department and two police sergeants from Arizona. The experts testified concerning the development, uses and general acceptance of the technique in the highway safety field. (Id. at pp. 173-174.) In two appendices the court included lists of literature concerning HGN submitted by the state and found by the court. (See id. at pp. 182-184.) The defense offered no experts, instead it argued there was a paucity of literature from the appropriate scientific community, which it defined as neurology, ophthamology, pharmacology and criminalistics, and that the relevant community had not yet had a chance to evaluate the technique. (Id. at pp. 179-180.)

Like our Supreme Court, the Arizona Supreme Court concluded HGN testing relied on a scientific rather than a common experience basis and thus had to satisfy the Frye test. The court first sought to identify the relevant scientific community to which HGN testing belonged. The court concluded a relevant community is often "self-selecting," that is, only those scientists interested in a new technique are likely to evaluate it. The court concluded HGN was a behavioral phenomenon dealing with the effects of alcohol on eye movement and thus would be of interest to behavioral psychologists. The court also reasoned that because the effects of alcohol are of interest to scientists in the area of highway safety, they should be included in the relevant scientific community as well. (718 P.2d at pp. 179-180.)

The court rejected any argument that scientists concerned with traffic safety or the enforcement of drunk driving laws were somehow biased. It 1502*1502 noted the studies which led to the field sobriety test, of which HGN testing was a part, were funded by the NHTSA to give officers a reliable means of distinguishing between impaired and unimpaired drivers. The court noted law enforcement had no interest in unreliable field sobriety tests. (718 P.2d at p. 180.)

The court stated a small part of the neurological community concerns itself with the effects of alcohol on performance and thus should be included in the relevant scientific community. The court also included the criminalistics community concerned with the detection of drunk drivers. The court further noted no argument was made that either pharmacology or ophthalmology was concerned with the issue and the court did not include those fields in the relevant community. (718 P.2d at p. 180.)

Having defined the relevant community, the court noted that universal acceptance in that community was not required nor was it necessary the technique be absolutely

accurate or certain. It found the evidence supported the following conclusions: "(1) HGN occurs in conjunction with alcohol consumption; (2) its onset and distinctness are correlated to BAC [blood-alcohol content]; (3) BAC in excess of .10 percent can be estimated with reasonable accuracy from a combination of the eyes' tracking ability, the angle of onset of nystagmus and the degree of nystagmus at maximum deviation; and (4) officers can be trained to observe the phenomena sufficiently to estimate accurately whether BAC is above or below .10 percent." (718 P.2d at p. 181.)

While the court found sufficient evidence to support the conclusion that HGN testing was generally accepted as a means of determining blood-alcohol levels, the court for constitutional and statutory reasons rejected its admissibility for that purpose. The court held the evidence of the results of HGN testing was admissible only to corroborate the accuracy of chemical tests and as evidence that a suspect was under the influence of alcohol. (718 P.2d at pp. 181-182.) In State ex rel. Hamilton v. City Court of City of Mesa (1990) 165 Ariz. 514 [799 P.2d 855, 857-860], the court reaffirmed its decision in Blake.[5]

In State v. Klawitter (Minn. 1994) 518 N.W.2d 577, the Supreme Court of Minnesota addressed the admissibility of a 12-step "drug recognition protocol" as evidence that a defendant was driving under the influence of a 1503*1503 controlled substance. One component of that protocol was HGN testing. A Frye hearing was conducted to determine whether HGN testing was generally accepted as reliable in the scientific community to which it belonged. Dr. Marcelline Burns, one of the experts who testified in this case and in the Blake case, a police sergeant, an optometrist and a jail physician testified that nystagmus was a reliable and accepted indicator of drug use. (State v. Klawitter, supra, 518 N.W.2d at pp. 581-583.)

Defense experts stated while nystagmus might indicate drug use, police officers could not be trusted to perform the test since even physicians had difficulty performing the test and the symptom could be caused by other conditions. Other defense experts questioned the studies on which the drug protocol was based and the adequacy of review of the protocol by the scientific community. (518 N.W.2d at pp. 583-584.)

With regard to the nystagmus portion of the test, the court stated: "All of the experts recognized that the tests for nystagmus employed in the drug evaluation are standard neurological tests. The defense experts' challenge was directed to the utility of the tests for ascertaining drug impairment. The defense experts did not suggest that the use of certain drugs may not cause nystagmus but, rather that nystagmus is not `necessarily' present in all cases of drug use. It is not contended, however, that the presence or absence of nystagmus is determinative of the presence of drugs, but only that nystagmus, when it is present, may be an element supportive of a conclusion of drug impairment based on the elements of the protocol, taken as a whole." (518 N.W.2d at p. 585.) With certain restrictions the court allowed the admissibility of an officer's opinion concerning drug impairment based on the protocol. (Id. at p. 586.)

Of particular interest in a review of cases applying Frye to HGN testing is the Kansas Supreme Court's opinion in State v. Witte (1992) 251 Kan. 313 [836 P.2d 1110] (Witte)). Witte is similar to several cases dealing with HGN testing, including our Supreme Court's Leahy opinion, in that it declares such testing to have a scientific basis and remands the matter to the trial court for a Frye hearing. Witte is particularly important, however, since it suggests that if the Arizona Supreme Court was deciding Blake in 1992 instead of 1986 and had before it the literature the Kansas court reviewed, it might have decided the case differently. (Id. at pp. 1119-1121.)

The court in Witte concluded the literature on the topic indicated a mixed reaction to HGN testing. The court cites five publications, two from American Jurisprudence Proof of Facts, one from the DWI Journal, one from Erwin, Defense of Drunk Driving Cases, and one from Nichols, Drunk 1504*1504 Driving Litigation, indicating HGN testing was not accepted in the scientific community.[6] The court stated these sources were either not mentioned in the Blake case or were written after that case was decided. (836 P.2d at p. 1119.)

The Witte court also noted a disagreement in the literature concerning the correlation between blood-alcohol level and the angle of onset of lateral nystagmus. The court stated had the Blake court been aware of this "new" information, it might not have determined that HGN testing was generally accepted as reliable. (836 P.2d at pp. 1120-1121.)

5. Discussion
(1b) We begin by noting the relatively humble claims made in this case for HGN testing. First, there is no claim HGN testing alone can determine whether a suspect is under the influence of alcohol nor determine a blood-alcohol level. Such testing is a component of a three-part field sobriety test which itself is only part of an officer's total observations of a suspect and is only one basis for an officer's opinion concerning intoxication. Neither is it claimed that HGN is caused only by alcohol intoxication. The proponents of the technique readily concede nystagmus can be caused by a number of conditions and toxins. In light of these concessions, we tend to agree with the following observation by the Iowa Supreme Court: "[T]he principal obstacle to the admissibility of the horizontal gaze nystagmus test may be its pretentiously scientific name." (State v. Murphy, supra, 451 N.W.2d at p. 156.)

That nystagmus testing is neither definitive nor able to determine intoxication alone, does not, of course, render it irrelevant. Evidence is relevant if it has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.)

With these observations in mind, we consider whether HGN testing as used in this case satisfies scrutiny under Kelly. The specific question, given the evidentiary use to which the testing was put, is whether a clear majority of the relevant scientific community accepts that the three-part HGN test is useful, when viewed with other relevant indications, in deciding whether a subject is under the influence of alcohol.

1505*1505 We conclude the evidence offered by the prosecution in this case establishes HGN testing is so accepted. The People's three experts, Burns, an eminent behavioral psychologist whose research resulted in the field sobriety test adopted by the NHTSA (including the HGN part of the test), Stam, a police department criminalist with extensive knowledge and experience in the field of alcohol ingestion and impaired performance, and Whalley, a highly qualified independent criminalist with extensive experience concerning alcohol impairment, all testified the three-part nystagmus test administered by Officer Brush is a useful tool, in conjunction with other indicators, in forming an opinion concerning intoxication. Each of the witnesses also testified the technique was accepted as such in the relevant scientific community.

Several matters in this regard require comment. Only Burns defined the relevant scientific community to which nystagmus testing, as a component of alcohol impairment investigation, belongs. She defined this community as behavioral psychologists, her field, highway safety experts, criminalists and medical doctors concerned with the recognition of alcohol intoxication. This definition is essentially that stated by the Arizona Supreme Court in Blake.

(5), (1c) We think this definition of the relevant scientific community is a correct one. Science is not a collection of monolithic and exclusive entities. Often, especially in forensic science, a technique or procedure may be of interest to subsets of scientists in several fields and conversely of no interest to other scientists in those fields. Thus, as the court in Blake noted, the relevant scientific community with regard to a particular theory or technique may be self-selected. While this fact can create complications in identifying scientific communities with new techniques when self-selection has not yet occurred, it is of little concern when, as here, the technique has been in existence for many years. Under such circumstances, a scientific community, if self-selected, can be identified. We conclude that Stam's and Whalley's reference to the relevant scientific community was to the same multidiscipline community defined by Burns and the Arizona Supreme Court in Blake.

Next, it is necessary to consider Burns's status as an expert. Burns was much involved in the development of the field sobriety test used in this case and its nystagmus component. She is a long-time proponent of the technique. In Kelly our Supreme Court voiced reservations about an expert on the issue of general acceptance who "has virtually built his career on the reliability of the [technique in question]." (Kelly, supra, 17 Cal.3d at p. 38.) The court stated such an expert might be too closely identified with the endorsement of the technique to assess fairly and impartially the extent of opposing scientific views. (Ibid.; see also People v. Brown (1985) 40 Cal.3d 512, 530 [220 Cal. Rptr. 637, 709 P.2d 440].)

1506*1506 In Kelly the expert was the sole witness to testify concerning the technique in question. In addition, that expert's scientific qualifications were suspect. (Kelly, supra, 17 Cal.3d at pp. 36, 38.) In this case Burns's testimony suffered from neither of these problems. She was open fully to cross-examination and the defense was able to

present any evidence it wished in opposition to her opinions. We have no reservations about the testimony of Burns.

We next consider the testimony of defense expert Wagner. We think Wagner's testimony of little value. Wagner is a physician whose interest in the use of nystagmus testing as a field sobriety test, and the research concerning it, did not arise until he was asked to testify in this case. Not surprisingly, Wagner offered no opinion concerning the general acceptance of nystagmus testing as a reliable part of a field determination of intoxication. The doctor testified he was unaware of any medical literature stating a lateral nystagmus test should not be used as one factor in determining whether a person was intoxicated. Indeed, if we correctly understand the doctor's testimony, he stated a lateral nystagmus test is a routine part of a medical examination and that the presence of nystagmus can indicate intoxication.

Wagner's testimony in large part was an attack on the nature and form of the studies cited in support of the use of nystagmus testing as a field sobriety technique. The doctor believed the tests were poorly done and either flawed or biased. However, we see nothing in the record to support Wagner's qualifications to come to such conclusions. Whatever Wagner's qualifications as a physician, he is not a research scientist, nor a neurologist, nor a criminalist with a particular interest in nystagmus as an indicator of intoxication.

Next, we discuss the suggestion in Witte, supra, 836 P.2d at pages 1119-1121, that were the Arizona Supreme Court to consider HGN testing in 1992 rather than 1986, it might, in view of literature not mentioned in Blake or subsequently published, reach a different conclusion on the admissibility of HGN testing.[7]

We first note the courts in Witte and Leahy had a different problem than the one facing this court. In both those cases the issue was not the review of a Kelly hearing but rather whether such a hearing was required at all. Thus, 1507*1507 any indication that a controversy existed concerning the general acceptance of HGN testing or concerning its reliability was of importance.

Witte cites one set of articles which questions whether HGN testing is generally accepted in the relevant scientific community. However, each of the articles cited is from a legal, not a scientific, publication. (See fn. 7, ante.) (6), (1d) While such articles may be useful as educational and research devices for the bench and bar, and while they may alert a court to the need for a full review of a technique, they are generally not authoritative materials either on primary scientific issues or on the ultimate issue of consensus in the relevant community.[8]

Witte also discusses scientific publications questioning whether there is a demonstrable correlation between the angle of onset of lateral nystagmus and particular blood-alcohol levels and the fact nystagmus can be caused or affected by factors other than alcohol ingestion. Given the form of citations to those publications, it is clear the court did not

access them directly but instead found them noted in a legal article it had reviewed.[9] (Witte, supra, 836 P.2d at pp. 1119-1121.)

Once again, given the procedural posture in Witte, the court was correct to note such authority and cite its existence as a basis for remanding the matter for a full hearing on HGN testing. We do not, however, find Witte or its citations particularly illuminating in our procedural posture. First, given that the People in this case disavowed any claim that angle of nystagmus onset could be correlated with particular blood-alcohol levels, concerns about the ability of the technique to produce such results is meaningless. Further, as we have noted, we find, given the use to which the People put HGN testing in this case, the fact the condition can be caused or affected by other conditions is simply not determinative.

Having reviewed the record in this case and case authority from this and other jurisdictions, we conclude that a consensus drawn from a typical cross-section of the relevant, qualified scientific community accepts the HGN testing procedures used in this case as a useful tool when combined 1508*1508 with other tests and observations in reaching an opinion whether a defendant was intoxicated.[10]

B. HGN Testing by Officer Brush

(7) Appellant argues, even assuming HGN testing satisfies Kelly, it was nonetheless error to allow an officer without scientific qualifications to form opinions concerning intoxication based on nystagmus findings. In Leahy our Supreme Court stated: "Defendant objects to this limited remand procedure, contending that even if Kelly were deemed satisfied, the question would remain whether police officers were qualified to testify regarding the HGN results. We reject this contention. Once it has been shown that HGN testing is generally accepted in the scientific community, no reason exists why police officers would be deemed unqualified to administer and report results of those tests. Thus, in future case, once the Kelly standard has been met, as reflected by a published appellate precedent, the prosecution will not be required to submit expert testimony to confirm a police officer's evaluation of an HGN test. Of course, nothing would prevent the defendant from challenging that evaluation with expert testimony of his own." (Leahy, supra, 8 Cal.4th at p. 611.)

Appellant also argues the People in this case failed to satisfy that prong of Kelly requiring that proper scientific procedures be used in the particular case. (Kelly, supra, 17 Cal.3d at p. 30.) Appellant bases his argument on the 1509*1509 statement by criminalist Whalley that Officer Brush's testing technique made it more difficult to determine the onset of nystagmus. Whalley, however, did not state the officer had used an improper technique, but rather had used a technique that was more difficult and required training and experience. Burns testified she observed Brush's testing technique and found he correctly conducted the test. The People satisfied Kelly's requirement that proper scientific procedures be used.

The judgment is affirmed.

Froehlich, J., and Hoffman, J.,[*] concurred.

Petitioner has asserted the improper technique was used for the HGN test, and he also asserts the other two remaining FSTs (one-leg stand and walk-and-turn) were also not performed legally because the one leg stand was done on the hill/incline where Officer Laney lied and edited the dash camera video to end prior to the FSTs to conceal the proof. Indeed, Petitioner had knee surgery (ACL replacement), Petitioner has “flat foot/feet” and was over 50 poUnds overweight at the time of the DUI arrest which renders the one-leg-stand inadmissible when performed on a step incline and the dash camera video was edited to remove said video footage. Petitioner actually did perform the walk-the-line test yet since there is no video, Officer Laney claims Petitioner did a “stroll’. Trial counsel should have filed a motion liminie to exclude all FSTs and the breath test prior to the case going to the jury.

Trial counsel should have appealed (interlocutory – pre-trial appeal) the denial of the PC 1538.4 suppression motion since he did provide an offer-of-proof as to the truth and veracity of the witness Shannon Laney. Counsel stated” truth and veracity” and later explained that the charge was dependant on the truth and veracity of Officer Laney which was relevant in this case since overwhelming evidence now demonstrates the Officer Shannon Laney had a propensity to make knowing false statements of material facts as demonstrated and proven in this pleading which include perjury about the HGN test, and signing the DMV DS-367 form “under penalty of perjury” that he served a copy to this Petitioner. Those two incidents are undisputed as shown in this pleading.

Since Officer Laney is proven to have made untrue statements of material facts (facts that would have ended the case favorably for this Petitioner in dismissal or acquittal), other contested facts were subject to attacking his truth an veracity as a witness regarding the edited dash-camera video (showing the one-leg-stand performed on the hill), the reason for the traffic stop (alleged speeding or profiling/retaliation?), the walk-the-lie FST truth that Petitioner did complete the test (Officer Laney attempted to hold Petitioner in the start position – Petitioner proceeded to do the test successfully) and other false statements concerning alleged red watery eyes, etc.

Appellate counsel was IAAC/CDC for not arguing this since it would have mandated reversal. Also, in the appeal where appellate counsel did attack the sustained objection to the truth and veracity of Officer Laney, appellate counsel was IAAC/CDC for not including the "truth in evidence" clause in the California Constitution Art. 1, Sec, 28(f)(2)

In *People v Algire (2013) 222 Cal.App.4th 219 (Algire)* "`[I]n 1982, the California voters passed Proposition 8. Proposition 8 enacted article I, section 28 of the California Constitution, which provides in relevant part: "Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial . . . motions and hearings. . . ." (Cal. Const., art. I, § 28, subd. (f), par. (2).)' [Citation.] The `Truth-in-Evidence' provision in subdivision (f), paragraph (2), of article I, section 28 of the California Constitution (article 1, 28(f)(2)) **`was intended to permit exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States Constitution. . . .' (*In re Lance W. (1985) 37 Cal.3d 873, 890 (Lance W.*).) Section 28(f)(2) is applicable not only to judicially created rules of exclusion [citation], but also to statutory evidentiary restrictions [citations]."** (*Algire, supra, 222 Cal.App.4th at p. 227*.)

The D.A. conceded to the Title 17 violation which can be suppressed using PC 1538.5 because it is an unlawful search and seizer of the person[84] (the Petitioner). The was no proof other than Officer Laney's claim that Petitioner was speeding since there is no dash camera video or radar proof. Trial council was denied the ability to question Officer Laney's veracity at the hearing as described in the transcripts.

Trial counsel should have moved in limine to exclude the evidence (breathalyzer results and all FSTs) prior to the jury decided the case. Trial counsel also should have moved for a judgment of acquittal pursuant to Section 1118.1 before the case went to the jury which provides that: "In a case tried before a jury, the court on motion of the defendant or on its own motion, at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to

[84] [1a] The theory of the defense is as follows: (1) under subdivision (a) of section 1538.5, the motion provided for by that section may be used "to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure"; (2) under *People v. Ramey (1976) 16 Cal. 3d 263 [127 Cal. Rptr. 629, 545 P.2d 1333*], **"seizure," as used both in the state and federal Constitutions, includes seizures -- i.e., arrests -- of [59 Cal. App. 3d 780] persons** as well as seizures of property.

sustain a conviction of such offense or offenses on appeal." By its terms, section 1118.1 only governs the court's power to acquit for legal insufficiency of the evidence *"before* the case is submitted to the jury for decision."

Had trial counsel made these motions, Petitioner would have prevailed since the evidence of the breath test was inadmissible (as described in these pleadings) as well as the HGN FST test. With only two FST tests which also should have been not allowed into evidence since they were not actually preformed properly. Additionally, expert testimony supports the claims that said breath test and FSTs were not preformed pursuant to Title 17 and NHTSA standards and there were not enough “clues” to establish probable cause - the prosecutor lacked sufficient evidence to obtain the convictions for both VC 23152(a) and VC 23152(b).

Appellate counsel was IAAC/CDC for not arguing these issues in addition to all the issues addressed in this section on the appeal. Had trial counsel moved to exclude (motions in limine), suppress, and move for a judgment of acquittal there would have been no evidence of the DUI and Petitioner would have been acquitted. Judge Kingsbury also abused her discretion by claiming the Title 17 violation (breath test) and incorrect method went to the weight along with the HGN test when both should have been excluded because of the controlling case law and the evidence code 352(b) (create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury).

Trial counsel Adam Spicer recklessly focused his efforts on the theory of a rising BAC with the expert witness rather than focusing on the Title 17 violation on the breathalyzer test. This was fatal to a proper defense and constitutes legal malpractice since Mr. Spicer would have known such a defense would directly conflict with material evidence that the Petitioner had consumed 2 Corona beers (3 at the most) within 2 hours of driving.

Mr. Spicer’s insistence on the wrong theory caused his expert witness to discredit this Petitioner’s drinking patters (2 to 3 beers) which was exploited by the prosecution in his closing statements. **It must be noted that there was confusion by the information received by the expert witness since the report (filed 24 hours after the incident and not by the arresting Officer Shannon Laney as discussed earlier) stated Petitioner “stopped drinking two hours previously” rather than within two hours as this Petitioner asserted at trial.**

had about one standard drink, unabsorbed in his stomach at the time of driving, and absorbed the alcohol after driving but before the test, he would likely have been below a .08 when driving. Do you recall that?
A. Yes, I do.
Q. Do you agree with that?
A. Yes.
Q. If -- you had no facts at the time that you made that report that said there was anything unabsorbed in his stomach; isn't that correct?
A. That's true. In fact, I don't know if there was or was not.
Q. Right. So that's a big if, isn't it?
A. It's an if that always exists because very rarely to we know in fact what's in that person's stomach, as I addressed earlier. There are studies, in clinical studies, where we take out the contents of the stomach. But in typical forensic cases that I deal with, we don't have that information. We can deduce it sometimes that a person is fully absorbed if we have multiple test results over time. But in the case like this that we do not have that, establishing what is in a person's stomach in either direction cannot be established. I cannot do that.
Q. And you only had one piece of information that was given to you in the report, and that was that Mr. Robben had stopped drinking two hours previously; correct?
A. Yes. It was not -- the drinking pattern was not

credible, but I was given that information in the police report.
Q. So why did you give them that when you considered that police report, you put down exactly .09 percent, .09 percent, and yet when you have that information that a person stopped drinking two hours previously, you don't use that at all?
A. I certainly do. I look at it and say is the drinking pattern credible. And in fact, drinking patterns given to law enforcement at the time of arrest are rarely credible.
Q. Okay. So it's just pure speculation on your part as to whether there was anything absorbed or unabsorbed in his stomach; correct?
A. No. It's a fact whether there was something unabsorbed -- one must be true. There was either unabsorbed alcohol or there wasn't. It is not speculation to say one of those must be true.
Q. I mean, it's either day or night, one of those must be true; right? But what did you say about the alcohol in his stomach? Why are you bringing this up? Are you trying to show the defense that hey, hey if there was alcohol in his stomach, you might have a defense at this?
A. No. The fact of the matter is one has to be true. He either did or did not. If he did, he could have been rising. I feel like I explained that very well in my letter. There are three possibilities; rising, plateau, or falling; the absorptive phase, post-absorptive phase,

You have two versions of events that are in complete contradiction. And when you look at one, what the instruction tells you is that you must decide. You have to make that call of who to believe. Do you believe the People's expert, or do you believe the defendant's story. We know the defendant was called by his own expert untruthful, so we know his story is untrue. Counsel, to his credit, did not argue hey, all right. Let's be real. My client had five or six beers. He lied, he lied, he lied. He didn't do that. Why didn't he do that? Because he's ethical. He didn't lie beyond the evidence. You have to consider the evidence.

What is your evidence? Your evidence is that it was an .09 and the People's expert that says in an hour, you're burning off .08, or a little bit higher. So what we're talking about in reality is the person is not like the defendant said. But you're talking about the defendant being .09 and higher. This is really what's going on. He's drinking. In an hour, two maybe. That's the time he says he's at the house; right? Drinking, drinking, drinking; not like he says. He's drinking a bunch. You've got to get to this point.

What did the defense expert say you have to drink to get to an .09? How many Coronas do you have to drink to get to an .09? Oh, about five. You have to drink five. If he's going to be doing five, what is it that he's burning off? Like our expert told you, if he's .09 at the test and he's up here after 45 minutes, he's probably

This issue is certainly IAC/CDC of trial counsel to use the rising BAC defense when the science was sketchy at best and the theory has the Petitioner exposed to the claim he had to consume more than 2 or 3 Corona beers (up to 6 or more) which did not happen.

The Marsden motions and hearing transcripts shoe that the Petitioner was developing his defense theory when the Public Defender David Rogers was assigned and later removed. Petitioner was dissatisfied at Mr. Rogers for the total failure to make pre-trail motion such as the 1385.5 suppression motion and a PC 1424 motion to disqualify the entire El Dorado D.A. office as a conflict-of-interest and the shockingly unconscionable acts of not calling two witnesses (John Huls & John Robben) and an expert witness. The Marsden motion prove Petitioner's defense plan was to attack the probable cause issues and credibility of Officer Laney. Petitioner demanded a Pitchess motion be filed and Adam Spicer knew of past complaints against the officers that would have helped discredit them. Mr. Spicer communicated to the Petitioner that he had recently completed a DUI defense class and had new tactics he was eager to try out in this case.

As the case progressed and discovery occurred, the evidence became clear that there were problems with the breath test (Title 17 and other failures that rendered an improperly administered test). It became evidence Officer Shannon Laney's dash camera video had been edited and no effort was put in by Mr. Spicer to acquire any RMA (Repair Authorization Number) from GoPro to verify if Officer Laney's claim was, in fact, true that is was sent in for repair. No effort was made to obtain a copy of any video from the Sheriff Deputy Perry's vehicle or even call Deputy Perry as a witness. Mr. Spicer failed to exploit the video that does show flashing red & blue lights as included in this petition. Said flashing lights effect and cause HGN. Officer Laney claimed there were no flashing lights – the video shows flashing lights. Mr. Spicer failed to exploit the certificate of probable cause not being signed by a judge …and being written by Officer Wilson, not Laney. …And Mr. Spice failed to even exploit the police report and move to dismiss or motion in limine to have all testimony from both Officer Laney and Wilson struck since the report was fraudulently prepared and submitted and their testimony was based of that questionable report. Also, Mr. Spicer could have moved for dismissal on the prosecutorial misconduct with the conspiracy issue involving th Public

Defender addressed earlier (and the other prosecutorial misconduct using known false/fabricated evidence and perjury).

Mr. Spicer started off without filing the PC 1424 claiming he thought the D.D.A. Michael Pizzuli was being fair. Mr. Spicer then said he wasn't going to file the Pitchess motion and instead go forward with the PC 1385.5 suppression motion to glean information from Officer Laney. Said PC 1385.5 hearing was productive for the gleaning of the information related to the HGN test which was later used to impeach Officer Laney where Laney claimed a 3 second test and NHTSA require 4 seconds …At trial Officer Laney claimed he held the stimulus for 4 seconds thus impeaching his earlier testimony and rendering the HGN test as being not performed to NHTSA standards.

Mr. Spicer may or may not have failed to properly cross-examine Officer Laney on the DS-367 form being signed under the penalty of perjury issues when his question was objected to and sustained despite the offer of proof (truth and veracity of the witness). Mr. Spicer being a local lawyer would have know the assigned retired judge Timothy S. Buckley was not legally assigned since there was no record of an assignment order. Mr. Spicer should have appealed the denial of the 1385.5 motion.

Pursuant to landmark case of *Strickland v. Washington, 466 U.S. 668 (1984*) had Mr. Spicer's deficient performance and incompetent "rising alcohol" legal theory not been a factor and had Mr. Spicer defendant the Petitioner has the Petitioner instructed him to do based on the facts of the case – there would have been no confusion over scientific theories which certainly confused the jury. In fact the court/judge was required by controlling case law to remove the breath test results and the HGN test results. Had Mr. Spicer filed a motion in limine after it was established that the breath test did not comply with the Title 17 and it was not properly administered (Adams test) and the Officer Cory Wilson had perjured himself claiming he did observe the Petitioner for 15 minutes when, if fact, he did not. Said Motion in limine also could have been before the jury issued their verdict, there could be no DUI with no breath test or HGN.

Mr. Spicer had no reason proffer a theory of rising BAC as a defense. I was indeed reckless, ineffective and malpractice… Had Mr. Spice not pursued the rising BAC defense and instead pursued the other solid defenses insisted upon by this Petitioner, the Petitioner would have prevailed. This is a sham because this Petitioner really had faith in Mr. Spicer and to this

day this Petitioner feels let down and frustrated that such a good young lawyer would sell out his "client" in this manner knowing that this Petitioner knew he was being deceived after Mr. Spicer took an about face on the desired defense strategy. Mr. Spicer decided to do some "horse-trading"[85] and clearly sabotaged this Petitioner's case to his gain.

Petitioner had also explained to his counsel that Cory Wilson had restricted the flow of the breathalyzer when the test was performed. Said restricted flow and other manipulation would increase the BAC reading[86].

This issue was only brought up in that the prosecution expert witness was questioned if it was possible and he said no. However, the defense expert witness cannot obtain a Dräger Alcotest 7510 sice they only sell to law enforcement. Here, Petitioner's expert witness cannot test the accuracy of the instrument/machine to even determine if it can be manipulated.

The following videos show the booking process. The video shows Officer Cory Wilson not maintain a continued observation of the Petitioner. The video cannot clearly show or not show Officer Cory Wilson blocking the exit port of the breathalyzer. The video does show that Petitioner was not unstable, Petitioner's hand and figure coordination are not impacted to take off his shoes

---

85 " "To a large extent . . . horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long" *Missouri v. Frye, 132 S. Ct. 1399 - Supreme Court 2012*

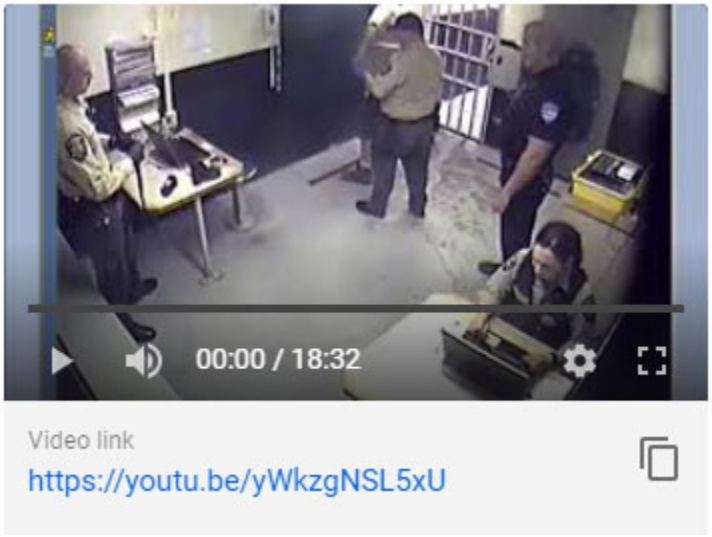
86 A lawyer (who specializes in defending people accused of driving drunk) **explains how police typically hold the breathalyzers, and how it is easy to cover up the hole through which the air leaves the breathalyzer, accidentally or deliberately, when doing so. He bubbles air through a standardized alcohol solution into a breathalyzer, and produces the correct measurement of .040 (half the legal limit, I think). Then he repeats the process, but this time covers up the exhaust hole of the breathalyzer. Under those conditions, the reading is .091.**

See video here: https://www.youtube.com/watch?v=eqlq25PRbko

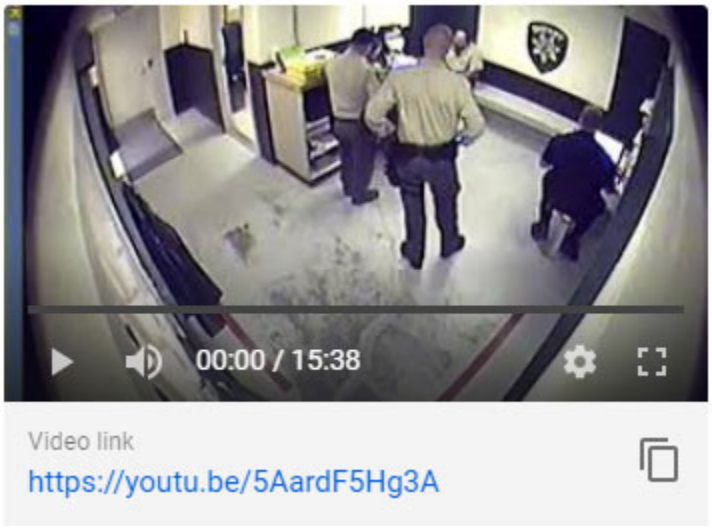
Real time- Unedited Video of Dräger (DOJ BAC Section), Police Grade, **Dräger 7510 evidential** (breathalizer®) EPAS breath testing machine convicting an innocent man of being 3X the legal BAC limit. A man with a 0.00% BAC reading .24% BAC. This would be an Extreme DUI which is a serious misdemeanor carrying a mandatory minimum County jail sentence, a 9 month extended alcohol program, upwards of $4,000 in court fines, a mandatory loss of driver's license for anywhere from 4 months to 4 years, and it stays on your DMV driving record for 10 years, and could be the foundation for a felony leading to a State Prison commitment.

Video here: https://www.youtube.com/watch?v=x5ocxc2iEys

and socks. After the breath test is complete, the video shows Officer Cory Wilson typing a report on the laptop computer.



Camera # 1 Video Link: https://youtu.be/yWkzgNSL5xU



Camera # 2 Video Link: https://youtu.be/5AardF5Hg3A

actually I think a couple of the people aren't with the company any longer -- they came out. Someone who is like their equipment people came out and took the instrument apart and showed us all the pieces and put it back together.

Q. Okay. So it's fair to say you got a lot of experience with this Drager Alcotest 7510?

A. A lot is a relative term. I got the adequate training.

Q. Okay. Are you -- strike that.

Prior to the introduction of the Alcotest 7510, did you work with any other Drager machines?

MR. PIZZUTI: Is there an offer of proof of relevance?

THE COURT: What's the relevance?

MR. SPICER: Withdrawn.

THE COURT: Okay.

Q. (By Mr. Spicer) Mr. Palecek, do you know of any way the operator of a breath test machine can manipulate the results?

A. Not ours.

Q. But it is possible on some other machines?

A. I believe so.

Q. Now, with the Alcotest 7510 it's not possible to manipulate?

A. No.

Q. And why is that?

A. Because I get to play with these things. And

anything that any defense expert would want to try and challenge, I did, and it did not affect it.

Q. Well, that's interesting you brought that up. Is it true that Drager only sells the Alcotest 7510 to law enforcement?

A. I'm not a part of that, but I believe that's what they do.

Q. So if a defense expert wanted to run some other tests, if that were true, he couldn't then; right?

A. Not that I'm aware of.

Q. Okay. In your test did you try blocking the exit port?

A. You go it.

Q. That's a yes?

A. Yes.

Q. Okay. Very good. And that didn't affect the results at all?

A. Not at all.

Q. Okay. Let's talk about the machine itself. Did I hear you say at above .01 percent blood alcohol content, Drager says there's a 5 percent margin of error?

A. Whether it's a blood or it's an accuracy test, above -- .1 and above is 5 percent; below that is 0-0-5 is automatic.

Q. Okay. And I'm sorry if my terminology isn't lining up with yours perfectly.

A. It's okay. You call it a machine, and I call it an instrument.

Breathalyzer source code must be disclosed - Florida police can't use breathalyzers unless the source code can be reviewed, a state court decides.

https://www.cnet.com/news/breathalyzer-source-code-must-be-disclosed/

Declan McCullagh

Nov. 3, 2005 3:51 p.m. PT

> Florida police can't use electronic breathalyzers as courtroom evidence against drivers unless the innards are disclosed, a state court ruled Wednesday.
> A three-judge panel in Sarasota County said that a defense expert must have access to the source code--the secret step-by-step software instructions--used by the Intoxilyzer 5000. It's a simple computer with 168KB of RAM (random access memory) that's manufactured by CMI of Owensboro, Ky.
>
> "Unless the defense can see how the breathalyzer works," the judges wrote, the device amounts to "nothing more than a 'mystical machine' used to establish an accused's guilt."
>
> The case, one of the first to test whether source code used in such devices will be divulged, could influence the outcome of hundreds of drunk-driving prosecutions in the state. So far, Florida courts have been split on the topic, with some tossing out cases involving breath alcohol tests and others concluding that the information about the machine's workings should remain a trade secret.
>
> In one similar 1988 case, Florida defense attorneys discovered that the police had mechanically modified a breath test machine so much that its results were no longer valid and could not be admitted as evidence in a prosecution.
>
> The Sarasota judges didn't require the public disclosure of the source code. Rather, they ordered that it must be given to a defense expert who will keep it in confidence and return it when his analysis is complete. That analysis could show bugs or reveal that the code was modified after the Intoxilyzer was certified for use by the state--meaning the device's output could not be used in court.

Researchers say a breathalyzer has flaws, casting doubt on countless convictions

Exclusive: Two researchers say a police breathalyzer, used across the US, can produce incorrect breath test results, but their work came to a halt after legal pressure from the manufacturer.

https://www.zdnet.com/article/draeger-breathalyzer-breath-test-convictions/

The source code behind a police breathalyzer widely used in multiple states -- and millions of drunk driving arrests -- is under fire.

It's the latest case of technology and the real world colliding -- one that revolves around source code, calibration of equipment, two researchers and legal maneuvering, state law enforcement agencies, and **Draeger, the breathalyzer's manufacturer.**

This most recent skirmish began a decade ago when Washington state police sought to replace its aging fleet of breathalyzers. When the Washington police opened solicitations, the only bidder, Draeger, a German medical technology maker, won the contract to sell its flagship device, the Alcotest 9510, across the state.

But defense attorneys have long believed the breathalyzer is faulty.

Jason Lantz, a Washington-based defense lawyer, enlisted a software engineer and a security researcher to examine its source code. The two experts wrote in a preliminary report that they found flaws capable of producing incorrect breath test results. The defense hailed the results as a breakthrough, believing the findings could cast doubt on countless drunk-driving prosecutions.

The two distributed their early findings to attendees at a conference for defense lawyers, which Draeger said was in violation of a court-signed protective order the experts had agreed to, and the company threatened to sue.

Their research was left unfinished, and a final report was never completed.

Draeger said in a statement the company was protecting its source code and intellectual property, not muzzling research.

"Pursuant to a protective order, Draeger provided the source code to both of the defense experts in Snohomish County," said Marion Varec, a spokesperson for Draeger. "That source code is highly proprietary and it was important to Draeger that the protective order limit its use to the purposes of the litigation at issue." Draeger says it believes that one of the experts entrusted to examine the source code was using it in violation of the protective order, so Draeger sent the expert a cease and desist letter. Draeger says it "worked with the expert to resolve the issue."

Of the law firms we spoke to that were at the conference and received the report, none knew of Draeger's threat to launch legal action. A person with a copy of the report allowed ZDNet to read it.

The breathalyzer has become a staple in law enforcement, with more than a million Americans arrested each year for driving under the influence of alcohol -- an offense known as a DUI. Drunk driving has its own economy: A multi-billion dollar business for lawyers, state governments, and the breathalyzer manufacturers -- all of which have a commercial stake at play.

Yet, the case in Washington is only the latest in several legal battles where the breathalyzer has faced scrutiny about the technology used to secure convictions.

TRIAL BY MACHINE

When one Washington state driver accused of drunk-driving in 2015 disputed the reading, his defense counsel petitioned the court to obtain the device's source code from Draeger.

Lantz, who was leading the legal effort to review the Alcotest 9510 in the state, hired two software engineers, Falcon Momot, a security consultant, and Robert Walker, a software engineer and decade-long Microsoft veteran, who were tasked with examining the code. The code was obtained under a court-signed protective order, putting strict controls on Momot and Walker to protect the source code, though the order permitted the researchers to report their findings, with some limitations. Although the researchers were not given a device, the researchers were given a binary file containing the state's configuration set by Washington State Patrol.

Although their findings had yet to be verified against one of the breathalyzers, their preliminary report outlined several issues in the code that they said could impact the outcome of an alcohol breath test.

A Draeger Alcotest 9510 device, with a reading in Dutch. (Image: NunspeetOost/Twitter)

In order to produce a result, the Alcotest 9510 uses two sensors to measure alcohol content in a breath sample: An infrared beam that measures how much light goes through the breath, and a fuel cell that measures the electrical current of the sample. The results should be about the same and within a small margin of error -- usually within a thousandth of a decimal point. If the results are too far apart, the test will be rejected.

But the report said that under some conditions the breathalyzer can return an inflated reading -- a result that could also push a person over the legal limit.

One attorney, who read the report, said they believed the report showed the breathalyzer "tipped the scales" in favor of prosecutors, and against drivers.

One section in the report raised issue with a lack of adjustment of a person's breath temperature.

Breath temperature can fluctuate throughout the day, but, according to the report, can also wildly change the results of an alcohol breath test. Without correction, a single digit over a normal breath temperature of 34 degrees centigrade can inflate the results by six percent -- enough to push a person over the limit.

The quadratic formula set by the Washington State Patrol should correct the breath temperature to prevent false results. The quadratic formula corrects warmer breath downward, said the report, but the code doesn't explain how the corrections are made. The corrections "may be insufficient" if the formula is faulty, the report added.

Issues with the code notwithstanding, Washington chose not to install a component to measure breath temperature, according to testimony in a 2015 hearing, and later confirmed by Draeger.

Kyle Moore, a spokesperson for Washington State Patrol said the police department "tested and approved the instrument that best fit our business needs," and believes the device can produce accurate results without the breath temperature sensor.

The code is also meant to check to ensure the device is operating within a certain temperature range set by Draeger, because the device can produce incorrect results if it's too hot or too cold.

But the report said a check meant to measure the ambient temperature was disabled in the state configuration.

"The unit could record a result even when outside of its operational requirements," said the report. If the breathalyzer was too warm, the printed-out results would give no indication the test might be invalid, the report said.

Draeger disputed this finding. A spokesperson said the Washington devices check their temperature, the check is enabled, and that the devices will not produce a reading while the device is outside its operational temperature range.

When asked, a Washington State Patrol spokesperson would not say if the breathalyzer was configured to allow breath tests outside its operational temperature range, saying only that the device "has been tested and validated in various ambient temperatures."

The report also scrutinized the other sensor -- the fuel cell -- used to measure a person's alcohol levels. Any fuel cell will degrade over time -- more so when the breathalyzer is used often. This decay can alter the accuracy of test results. The code is meant to adjust the results to balance out the fuel cell's decline, but the report said the correction is flawed. Breathalyzers should be re-calibrated every year, but the state's configuration limits those adjustments only to the first six months, the report added.

"We also note that the calibration age does not account for the use frequency of conditions; a unit that has been used hundreds of times per day would have the same correction as one used only once or twice in several months," the report said.

Concluding the nine-page report, the researchers say they are "skeptical" that the Alcotest 9510 can produce a reliable measurement of breath alcohol.

"Although the apparatus states its output in very absolute terms, we recommend interpreting the results with extreme caution," the report said.

LEGAL BATTLES

Although Momot and Walker's code review was limited to devices in Washington, similar concerns dragged other states into protracted legal battles, forcing prosecutors to defend not only the breathalyzer but also how it's configured.

But the line between Draeger's source code and each state's configuration is blurry, making it difficult to know who is responsible for incorrect results.

Draeger said in an email that the "calibration and adjustment procedures depend on the instrument, additional equipment and materials, and the persons performing these procedures." When asked about the guardrails put in place to prevent calibration errors, the company said, "only trained and certified personnel perform special instrument certification procedures."

Washington State Patrol said the device produces accurate results, even without certain sensors installed.

US government pushed tech firms to hand over source code

If source code gets into the wrong hands, the damage would be incalculable.

Read More

Draeger's breathalyzer is widely used across the US, including in California, Connecticut, Massachusetts, New Jersey, and New York. It's often the only breathalyzer used in the states where they were bought.

In both New Jersey and Massachusetts, defense lawyers raised concerns. By acquiring the devices used by the states, lawyers commissioned engineers to analyze the code who say they found flaws that they say could produce incorrect results.

But defense teams in both states largely failed to stop their state governments from using the devices, public records show.

New Jersey's top court found in 2008 that a similar Alcotest breathalyzer -- said to use the same underlying algorithms as the Alcotest 9510 -- was "generally scientifically reliable" and can be used with some configuration changes. One such change was to adjust the breathalyzer's results for women over age 60 -- who often aren't able to produce the minimum breath volume of 1.5 liters required for a test. But defense lawyers argued that these changes were never put into place.

The same court ruled five years later that the breathalyzer "remains scientifically reliable, and generates results that are admissible" in court.

In nearby Massachusetts, a scandal that blew up in 2017 involving alleged failings in the breathalyzer threw thousands of prosecutions into disarray, because "all but two of the 392 machines" examined in the state had not been properly calibrated.

A district judge ruled that breath test results from miscalibrated devices for two years prior to September 2014 were "presumptively unreliable," said Joe Bernard, a defense attorney who led the case against the Alcotest 9510 in Massachusetts.

Bernard, and his colleague Tom Workman, a computer forensic expert who later trained as a lawyer and consulted on the case, obtained the state's source code and produced a report.

In a phone call, Workman criticized the Draeger breathalyzer, arguing that it can produce widely inflated results. One section of his report claimed the device had a litany of programming errors, including code that -- like in Washington -- apparently fails to correct for fuel cell fatigue.

But the court rejected the findings and found the source code still produced sound scientific results.

"THROW CAUTION TO THE WIND"

While legal battles were ongoing, Washington waited to push ahead with its deployment, but the ruling in New Jersey case in 2008 was seen as a vote of confidence.

Almost a year later, Washington State Patrol's toxicologist said in an email seen by ZDNet that the police department should "throw caution to the wind" to deploy the device to police officers across the state without commissioning an independent source code evaluation -- though she recommended confirming with the chief of police.

When asked whether an independent evaluation was ever commissioned, a Washington State Patrol spokesperson would not comment further and referred back to the legal filings in the case.

A later email in 2015 confirmed that the Washington State Patrol "never commissioned" an independent evaluation.

Moses Garcia, a former Washington state prosecutor who now works for a non-profit providing local governments in the state with legal advice, said in an email that the earlier breathalyzer in the New Jersey case had already been deemed admissible, and that the newer Alcotest 9510 uses the "same basic algorithms and formulas" as its predecessor.

The former prosecutor criticized the defense's discovery effort as "speculation."

"In adopting and approving the [Alcotest 9510], the Washington breath alcohol program exceeds, by far, the scientific standards accepted in the scientific community for breath test instrument validation," he said.

Five years after the contract was signed, Washington State Patrol began deploying hundreds of Draeger breathalyzers in 2014 -- sparking interest from defense attorneys in the state.

Not long after, defense attorneys in the state sought access to the devices.

Lantz was granted access to the source code used for Momot and Walker's code review by a local county court. In one of several recent phone calls with ZDNet, he recounted how he set out to see if there were problems with the state's device.

"We thought we would find something but nothing like this," he said.

SETTLEMENTS AND SETBACKS

Hundreds of DUI lawyers descended on Las Vegas in mid-2017 for their annual gathering.

At the event, the two researchers shared their findings, which claimed the Alcotest 9510 having a "defective design."

Word spread quickly. Draeger sent the researchers a cease and desist letter claiming defamation and alleging the two violated a protective order, designed to protect the source code from leaking.

Draeger and the researchers settled before a case was filed in court, avoiding any protracted legal battle. A legal case disputing the fine print of the order could have taken years to resolve.

Draeger said it "remains willing to provide the source code for use in other litigation in Washington, so long as a proper protective order is in place."

Beyond a tweet by Walker pointing to a settlement statement on his site, there was little to indicate there had been any legal action against the pair.

The statement said that the two experts "never intended to violate the protective order" and denied any wrongdoing. But the two sides "agree" the draft report was based on incomplete data and not finished -- and that "no one in possession of the report should rely on it for any purpose."

We reached out to Walker with questions, but he referred only to the settlement statement on his company's website, and he declined to comment further.

Draeger would not say why the settlement did not include a retraction on the report's findings.

"There has not been an evidentiary hearing in Washington. If and when there is one, Draeger will cooperate fully," a spokesperson said.

But Lantz paints a different picture. The defense attorney said he believes there "really was no technical violation of the protective order," because the report didn't disclose any source code.

"I do believe that [Draeger] is trying to interpret the protective order to be something that it's not," he said. "If we could go back in time, I would've asked that the report was not handed out -- just because of the optics of it."

Lantz said the protective order is vague, but contends it was framed to prevent the researchers from using the source code or their findings for commercial gain -- effectively preventing Momot and Walker from using their knowledge to build their

own competing devices. He believes the order gives Draeger near complete control over the code and anything the company deems "protected" information.

That's when Draeger "began developing a strategy on how to block" the researchers' report, said Lantz, because the company didn't want the "pervasive exposure of these flaws."

"I believe that interest of Draeger's to protect their bottom line overlaps with the state's interest to keep juries from hearing this information about the problems," he said.

Draeger maintained that it is protecting its intellectual property. The company said in response that it "takes very seriously the proprietary nature of its source code," and "protects proprietary information as a sound business practice," which can include various types of communications or agreements for a particular matter.

Momot and Walker are no longer involved with the case, but Sam Felton, a Washington-based software engineer, is set to conduct another review of the Alcotest 9510 code. When contacted, Felton would not speak in specifics about his findings to date, citing his own protective order, except that he found things in the code that caused him "to have concerns."

And Lantz, now at a new law firm, is working on starting discovery proceedings in neighboring King County, home of Seattle, the largest city in the state.
==========

Greater oversight of breath-test technology suggested

27 October 2015 - By James Greenland

https://www.lawsociety.org.nz/news-and-communications/latest-news/greater-oversight-of-breath-test-technology-suggested

The recall of hundreds of roadside breath-testing devices reveals a need for greater oversight of how police test and choose evidentiary equipment, Dunedin criminal defence lawyer and excess breath alcohol specialist Sarah Saunderson-Warner says.

She would support the establishment of an independent testing and review committee, as Canada did in the 1960s, to ensure that devices relied on to prosecute allegedly drunk drivers are accurate and meet performance standards.

Police will likely have to waive nearly 100 drink-driving convictions and tickets after calibration inconsistencies were discovered between the recently introduced Dräger Alcotest 7510NZ devices used for roadside testing, it was reported last week.

"It's hard to know how far it goes", Ms Saunderson-Warner, who is also a member of the New Zealand Law Society's Criminal Law Committee, says.

"I wouldn't guarantee they are all going to walk.

"The key point is that the approval process wasn't robust enough, and the new devices should not have been approved until any faults were ironed out."

National manager of road policing Superintendent Steve Greally says all 400 devices have been returned to Dräger for testing to establish what caused the issue and how many devices were affected.

"Dräger are treating this as an urgent priority," Greally says.

The Dräger Alcotest 7510NZ (7510) was introduced by police in a notice pursuant to the Land Transport Act 1998 on 16 February.

At about the same time as the 7510 devices were deployed, reportedly to mostly rural areas, police introduced a three-step roadside breath testing regime, which allowed them to conduct screening and evidentiary tests on a single device without the need for an often long drive in a squad car to the nearest station, or a shameful walk to the 'booze-bus'.

A 'passive' test first tells police if there is any alcohol on a driver's breath. Next, a 'screening' test indicates whether a driver is above or below the limit for their age and licence. Finally, if a driver is above the limit, an 'evidentiary' test is administered, which forms the basis of a charge and prosecution.

The problem, according to Ms Saunderson-Warner, is that police choose, test, and rollout new testing devices without oversight from any independent body.

Police choose the devices, which are approved by the Minister for Police, police test the devices, and police periodically check the devices for accuracy, she says.

If there is a trial for an excess breath alcohol offence, during which police rely on evidence procured by a breath-testing device such as the 7510, police must produce to the court a 'certificate of compliance' certifying the efficacy and accuracy of the device.

Under the current compliance conditions, the 7510 devices must be calibrated at least every 12 months, and have a maximum period of service of 15 years.

"When you have that certification process, it is extra important that the initial process of testing and certifying is robust."

Superintendent Greally says police, as part of the tender process, contracted an independent expert to test the Dräger 7510 and a device made by another manufacturer.

"This testing was conducted independently of police in a purpose-built lab. This process confirmed the Dräger 7510 as the preferred device," he says.

"Before taking delivery of the Dräger devices from the German manufacturer, they were calibrated in New Zealand at Dräger laboratory in Wellington before being rolled out to police."

He says it was during a recent check by Dräger that the fault was discovered.

"The Dräger Alcotest 7510 was independently tested against and approved to meet the international standard for evidential breath analysers.

"These standards are set and maintained by the International Organization of Legal Metrology and include testing before and during deployment.

"All Dräger devices are calibrated annually on behalf of Police by Dräger New Zealand," he says.

The certificate of compliance under s 75A(3) of the LTA is "for all purposes conclusive evidence of the matters stated in the certificate, and neither the matters stated in the certificate nor the manufacturer's specifications for the device concerned may be challenged, called into question, or put in issue in any proceedings in respect of an offence involving excess breath alcohol recorded by the device".

The effect, Ms Saunderson-Warner says, is that defence counsel have no opportunity to test the efficacy of devices police have adopted for evidentiary breath-testing, and no power to challenge the devices' readings.

That contrasts with the situation where evidentiary blood samples are taken, she says. There, police and defence are each given a separate sample, taken at the same time. The defence then has an opportunity to independently test and potentially challenge the police's evidentiary sample.

Superintendent Greally says tickets and prosecutions will be waived or withdrawn where a direct link is shown between a faulty device and a positive evidential breath test.

"The exception is where blood test results have been elected, which will still be prosecuted by Police as normal if the driver is found to be over the legal limit," he says.

"At this stage, no person has been sentenced to imprisonment as a result of offences linked to a faulty device, but testing of the devices continues."

A "quick check" of her live excess breath alcohol files showed that none of her clients had been tested using the 7510 device, Saunderson-Warner says.

In Canada, breath-test devices used by police are "rigourously" tested by an independent Alcohol Test Committee, established in the 1960s to ensure the accuracy of evidentiary devices. Read more.

Meanwhile, police will continue drink driving enforcement at the same intensity using the Dräger 6510 device while the faults are being investigated, Superintendent Greally says.

"This will mean that those who fail the breath screening test will be required to accompany the officer to either the police station or booze bus to undergo an evidential breath test, blood test or both."

Testing of breathalyzers completed but cause of fault still unknown

MARTY SHARPE

17:26, Nov 17 2015

https://www.stuff.co.nz/national/74133856/testing-of-breathalysers-completed-but-cause-of-fault-still-unknown

Testing of faulty breathalysers that saw dozens of motorists evade fines or convictions for drink-driving has been completed, but the cause of the fault is yet to be found.

Police said on Tuesday that all 400 of the Drager 7510 devices had now been tested, with 70 failing.

The state-of-the-art devices, which were introduced only in May, were withdrawn last month after a random spot test revealed problems with some of them.

Superintendent Steve Greally, national manager of road policing, said all the units had now been tested in Germany by the manufacturer, Drager.

"Police are continuing to closely monitor the progress of Drager in Germany as they continue to undertake detailed scientific testing of

the devices to narrow down the cause of the problem, which is expected to take 2-3 more weeks.

"However, potential issues such as errors during the calibration process, or damage or vibration during transportation, have been ruled out," Greally said.

"Drager advise that other components are now being tested, and conditions the instruments were exposed to from manufacture through to operation are also being examined.

"The Alcotest 7510 is made up of a number of complex systems and components, including both hardware and software, but Drager have assured police that good progress is being made."

Of the 70 devices that have failed, 34 have returned positive evidential breath test readings. From the 34 devices, there were 103 positive evidential test results. Four of those were superseded when motorists subsequently chose to have a blood test and failed, so they would be prosecuted as normal.

The 19 people convicted on the strength of tests on the faulty units alone would have their convictions withdrawn, and 16 others would have charges dropped.

Twenty-six infringement notices issued for lower-level readings would also be withdrawn.

The Drager 7510 units cost about $900 each. They administer three different breath-alcohol tests and provide the evidential reading that is used in court, eliminating the need for drivers who fail roadside tests to be retested in a booze bus.

Police statistics show that, in May and June, 4210 people were caught drink-driving, generating $280,200 in fines. Figures from July onwards were not yet available.

ADAM T. SPICER, SBN 273110
2197 Lake Tahoe Blvd., Suite 5
S. Lake Tahoe, CA 96150
Office: (530) 539-4130
Fax: (530) 544-3570

Attorney for Defendant
TODD CHRISTIAN ROBBEN

Superior Court of the State of California
County of El Dorado

People of the State of California,

Plaintiff,

vs.

Todd Christian Robben,

Defendant.

SCN: S14CRM0465

NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE PURSUANT TO PENAL CODE SECTION 1538.5

Date: April 10, 2015
Time: 1:30pm
Dept: 3

To the clerk of the above-entitled court and to the District Attorney for the County of El Dorado:

PLEASE TAKE NOTICE that on the above date and time, or as soon thereafter as counsel may be heard in the courtroom of the above-entitled court, the defendant will move for an order suppressing the following evidence:

1. Any and all observations of law enforcement personnel
2. Any and all alleged statements of Defendant
3. Any and all alleged statements of witnesses
4. Any and all evidence of chemical test samples
5. Any and all other evidence that is the product of the illegal warrantless enforcement stop, detention and arrest in this case

This motion will be made on the ground that the search and seizure was unreasonable in violation of the Fourth and Fourteenth Amendments to the United States Constitution and violated the defendant's reasonable expectation of privacy. More

specifically, the police action was without a warrant and lacked sufficient probable cause or reasonable suspicion to justify a stop, detention or arrest of Mr. Robben.

This motion will be based on this notice of motion and memorandum of points and authorities served and filed herewith, on such supplemental memoranda of points and authorities as may hereafter be filed with the court or stated orally at the conclusion of the hearing on the motion, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: March 16, 2015

Respectfully submitted,

Adam T. Spicer
Attorney for Defendant
TODD CHRISTIAN ROBBEN

Memorandum of Points and Authorities

Statement of Facts

On August 20, 2014 Mr. Todd Robben was arrested for allegedly driving under the influence. He was stopped by Officer Laney for allegedly speeding on Montreal Avenue. MVARS video shows that as Mr. Robben approached the stop sign at Heavenly Valley Road he stopped and activated his left turn signal. Officer Laney reached Mr. Robben at this point in time with police lights activated. Mr. Robben changed his turn signal from left to right and stopped alongside the curb without incident.

Mr. Robben is alleged to have shown objective signs of intoxication. Officer Laney collected documents from Mr. Robben and went to speak with other officers that had arrived on scene. Mr. Robben exited his vehicle to speak with the officers and he was put into handcuffs. He walked over to curb and sat down. After a few minutes, Mr. Robben began field sobriety testing. The tests administered or attempted were the one leg stand, the walk and turn and the horizontal gaze nystagmus. Mr. Robben did not complete a preliminary breath test.

Mr. Robben was arrested for DUI and transported to the jail by Officer Wilson. Mr. Robben entered the jail booking room at 8:45pm. A second video is available of Mr. Robben in the jail booking room. He can be seen on video taking the first breath sample at 8:48pm and the second breath sample at 8:50pm. Mr. Robben's booking process was completed without incident.

Argument

1. A detention is unlawful without reasonable suspicion

A detention is unlawful unless the police have reasonable suspicion for that detention. "To justify an investigative stop or detention, the circumstances known or apparent to the officer must include specific and articulable facts which, viewed objectively, would cause

a reasonable officer to suspect that (1). some activity relating to crime has taken place or is occurring or about to occur, and (2). the person the officer intends to stop or detain is involved in that activity.[1] The corollary to this rule is that an investigative stop or detention predicated on circumstances which, when viewed objectively, support a mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in good faith."[2] A detention based on an anonymous tip without suitable corroboration is insufficient to justify an investigative stop and frisk, even if the tip alleges that the suspect is in possession of a firearm.[3]

In the present case, Mr. Robben believes that law enforcement acted without reasonable suspicion to stop or detain him and that any such evidence or information obtained there from must be suppressed as violative of his Fourth Amendment rights.

2. The officers illegally arrested the defendant because they lacked either a warrant or probable cause

A police officer may arrest a person without a warrant: 1) whenever probable cause exists to believe the person has committed a felony; or 2) whenever probable cause exists to believe a misdemeanor has been committed in the officer's presence.[4]

Probable cause "is shown if a man of ordinary care and prudence would be led to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty.[5] Law enforcement officers must have probable cause before they may lawfully arrest a person for any crime.[6] To determine if the police acted with probable cause for arrest, the court will only look at the facts and circumstances presented to the officer at the time he was required to act.[7]

---

[1] In re Tony C., 21 Cal. 3d 888, 893, 148 Cal. Rptr. 366, 582 P.2d 957 (1978)
[2] People v. Conway, 25 Cal. App.4th 385, 388-389]
[3] Florida v. J.L., 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000)
[4] Cal. Penal Code section 386; In re Thierry S., 19 Cal. 3d 727 (1977)
[5] People v. Ingle, 53 Cal. 2d 407 (1960)
[6] People v. Mower, 49 P. 3d 1067 (2002)
[7] U.S. v. Wartson, 400 F. 3d 25 (1968)

Whether or not probable cause exists is evaluated on a case-by-case basis, applying a "totality of the circumstances" test.[8] This standard takes into account an officer's common sense and experience to determine whether there is "a fair probability" that a crime has been committed.[9]

When an arrest and/or a search are accomplished without a warrant, the burden is on the prosecution to show that the police activity was constitutional.[10] The prosecution's burden of proof is to establish by a preponderance of the evidence that the challenged police action was lawful.[11]

The officers in this case acted without a warrant or probable cause. Accordingly, defendant is prepared to prove in his reply to the government opposition to this motion and at the hearing on this motions that any evidence thereby obtained by police without a warrant or probable cause must be suppressed pursuant to the Fourth Amendment.

3. If the evidence in this case was obtained through an unlawful arrest or detention then the evidence must be suppressed

In *Wong Sun v. U.S.*,[12] the U.S. Supreme Court made it clear not all evidence discovered after an illegal arrest or detention must be suppressed. Although it suppressed the evidence against one of the defendants, the court stated it was not holding "all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."[13]

---

[8] See U.S. v. Sokolow, 490 U.S. 1, 8, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989).
[9] Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).
[10] People v. Laiwa, 34 Cal. 3d 711, 725, 195 Cal. Rptr. 503, 669 P.2d 1278 (1983); People v. Pace, 92 Cal. App. 3d 199, 204, 154 Cal. Rptr. 811 (1st Dist. 1979).
[11] People v. Superior Court, 18 Cal. App. 3d 316, 95 Cal. Rptr. 757 (2d Dist. 1971)
[12] 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)
[13] Wong Sun v. U.S., 371 U.S. 471, 487-488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)

Relevant factors in this attenuation analysis "include the temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence, the presence of intervening circumstances and the flagrancy of the official misconduct."[14]

Here, because the enforcement stop itself is the first illegal government action, everything subsequent to that stop is the 'fruit of the poisonous tree.' If law enforcement had not made the stop of Mr. Robben, there would not have been any observation of him, any statements by him and there would not have been a chemical test sample. Furthermore, because the prolonged detention and arrest were without probable cause as well, any evidence subsequently obtained is tainted as well. Therefore, in light of the Constitutional violation, Mr. Robben moves this court for an order suppressing the following evidence:

1. Any and all observations of law enforcement personnel
2. Any and all alleged statements of Defendant
3. Any and all evidence of chemical test samples
4. Any and all other evidence that is the product of the illegal warrantless enforcement stop, detention and arrest in this case.

4. Title 17 Requirement for a 15 minute observation period were not followed in this case

Section 1219.3 of Title 17 of the California Code of Regulations states: "The breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to the collection of the breath sample, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked."

Although continuous observation has been held "not to require direct and unbroken eye contact for the 15 minute period,"[15]that is only the case if "other means of

---

[14] People v. Boyer, 38 Cal. 4th 412, 448, 42 Cal. Rptr. 3d 677, 133 P.3d 581 (2006); Brown v. Illinois, 422 U.S. 590, 603-604, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975)).
[15] Manriquez v. Gourley, 105 Cal.App.4th 1227 (2003)

uninterrupted observation are adequate.[16] At the very least, an officer must be certain that the defendant has not burped or regurgitated for 15 minutes prior to the breath test.

Mr. Robben has alleged that he burped prior to the breath test being administered in this case. He has brought this allegation forward in multiple writs that he has filed concerning his administrative DMV suspension relating to this same event. Therefore, Mr. Robben moves this court for an order suppressing the breath test against him as unreliable and in violation of California regulations due to an inadequate observation period.

Conclusion

For all the reasons stated above, Mr. Robben moves this court for an order suppressing the evidence against him based on California Penal Code Section 1538.5 and the Federal and California Constitutions.

Date: March 16, 2015

Respectfully submitted,

Adam T. Spicer
Attorney for Defendant
TODD CHRISTIAN ROBBEN

[16] *Id.*

VERN PIERSON, District Attorney
Michael Pizzuti, Deputy District Attorney, SB# 159489
515 Main Street
Placerville, CA 95667
(530) 621-6472
(530) 621-1280 - fax
Attorneys for the Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

TODD CHRISTIAN ROBBEN,

Defendant.

Case No.: S14CRM0465

PEOPLE'S OPPOSITION TO MOTION TO SUPPRESS EVIDENCE

DATE: April 10, 2015
TIME: 1:30 p.m.
DEPT: 3

To the court, the Honorable Suzanne G. Kingsbury and to Defendant and his counsel, Adam Spicer:

Defendant moves to dismiss claiming the search was unreasonable under the 4th and 14th Amendments to the United States Constitution, and also claims that the testing methods employed by the officer violated Title 17. The People oppose the motion. The police detention and arrest of the defendant did not result in any constitutional violations. Title 17 violations, if any, are irrelevant.

//

//

//

CMS

APR 08 2015

47

I.

STATEMENT OF FACTS

The People accept the facts as presented in the defense motion to dismiss.

LAW AND ARGUMENT

II.

The 4th Amendment to the United States Constitution protects persons from unreasonable searches and seizures but evidence may be suppressed as the fruit of an unconstitutional search and seizure "only if exclusion ..is mandated by the federal exclusionary rule applicable to evidence seized in violation of the 4th Amendment. (*People v. Maihkio* (2011) 51 Cal.4th 1074, 1089.) A violation of a statute does not render an arrest unreasonable under the 4th Amendment and such violations cannot serve as the basis for the application of the exclusionary rule. (*People v. McKay* (2002) 27 Cal.4th 601, 622) As a general matter, the decision to stop an automobile is reasonable when the police have probable cause to believe that a traffic violation has occurred. (*Whren v. United States* (1996) 517 U.S. 806, 810.) "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal. 4th 224, 231.) Officers may question a suspect during a traffic stop and that questioning is neither a search nor a seizure. (*People v. Tully* (2012) 54 Cal.4th 952, citing *People v. Brown* (1992) 62 Cal.App.4th 493, 496.)

Here, the defendant was stopped for speeding which is a vehicle code violation that allowed the officer to cite and temporarily detain the defendant. After stopping the defendant, the officer noted objective signs of alcohol impairment that warranted further investigation. That investigation included questioning and the administration of field sobriety tests that confirmed the officer's opinion that the defendant was under the influence of alcohol. The stop, detention and arrest were therefor reasonable under the

4th Amendment. The defense motion also cites potential violations of California Code of Regulation Title 17. However, as noted above, a violation of a statute is not grounds for suppression under the 4th Amendment.

CONCLUSION

Based upon the above, the People respectfully request the court deny the defense motion to suppress evidence.

Dated: April 6, 2015

Respectfully submitted,

VERN PIERSON
District Attorney

Michael Pizzuti
Deputy District Attorney

Trial counsel did file a pre-trial motion in limine to exclude the unlawful and improperly administered breath test which should have been granted by the judge Suzanne Kingsbury who abused her discretion in denying said motion based on the extensive case law below.
If the court concludes trial counsel's motion was not sufficiently written, it is IAC of counsel not to include the array of case law (listed below) available that was available at that time that shows the trial court must exclude said breath test. Appeal counsel Adam Clark was IAAC for failing to argue this as abuse of discretion of the trial judge (Suzanne Kingsbury) and/or IAC of trial counsel Adam Clark.

A reading of the transcripts show Officer Laney claimed Petitioner was doing 35 miles per hours in a 25 MPH zone based on his radar. Petitioner was not pulled over for any of the three points related to a DUI (weaving, erratic driving, etc.). Officer Laney claimed to have had prior contact with the Petitioner. Petitioner has no recollection of ever meeting Officer Laney since he had no prior criminal history in South Lake Tahoe or El Dorado County. Officer Laney profiled the Petitioner and based on what he had heard from other SLTPD employees Officer Laney had a negative/bias perception of the Petitioner who had protested the SLTPD and received local news coverage over the bounty hunter incident addressed above where SLTPD was neglect and attempted to cover-up the issue.

Officer Laney admitted he felt threatened by the Petitioner who was larger than him and based on Petitioners history of being "uncooperative". Officer Laney called for backup and El Dorado Co. Sheriff Deputy Perry arrived in an estimated five minute period. Officer Laney Deputy Perry claimed Deputy Perry had prior contact with Petitioner. Here, Petitioner had never had any problems with law enforcement other than the bounty hunter incident. Petitioner was profiled as a problem and Officer Laney proceeded to frame the Petitioner with a fabricated DUI charge where no FST was actually conducted properly, nor did Petitioner actually fail any of the FSTs, a preliminary breathalyzer is not mandated by law which Petitioner knew and declined to partake. Officer Laney did not perform the one-leg-stand on the flat surface as he claims – that's why he edited the dash camera video to cut out his error.

SLTPD police officers in case # P16CRM0096 had audio recorders to record any voice conversation. Here, no audio recording was provided – a Brady violation (*Brady v. Maryland, 373 U.S. 83 (1963))* because it would have proven Petitioner complained about the one-leg-stand on the hill.

Trial counsel Adam Spicer did call Deputy Perry as a witness and abruptly decided not to call him as a witness. Deputy Perry could have offered information and the dash camera from his vehicle (which was parked behind Officer Laney's motorcycle) may have shown the scene to prove the one-leg-stand was done on the hill and the walk-the-line test.

Q. Okay. And had Deputy Perry arrived at this point?
A. He arrived before that point, before Mr. Robben stepped out of his car.
Q. And where was Deputy Perry's car at this point?

KATHRYN A. BOOKER, CSR NO. 8336 - (530) 573-3094 59

A. His car was behind my motorcycle kind of to the -- it would have been on the left side of my motorcycle if you're sitting on it.
Q. Okay. Are his headlights pointing towards you guys at this point?
MR. PIZZUTI: I'm going to object again for relevance.
THE COURT: Objections is?
MR. SPICER: I'll withdraw the question.
THE COURT: All right.

These issues would have further impeached Officer Laney and said FST evidence should have been excluded from trial and the case dismissed.

Appellate counsel failed to include these issues of IAC of trial counsel and Adam Clark incorrectly argued the DS-367 issue under the "reasonable probability" test when he should have

argued the violation of U.S. 14 th amendment due-process. The issues was a matter of perjury. The Supreme Court has long recognized that due process is denied where `[the] state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured.'" *Mooney v. Holohan :: 294 US 103 (1935).*

A. J. BUCKLEY COMMITTED REVERSIBLE ERROR WHEN HE REFUSED TO ALLOW SPICER TO QUESTION LANEY REGARDING THE DS-367 FORM AT THE SUPPRESSION HEARING

1. Standard of Review (*People v. Watson* (1956) 46 Cal. 2d 818. (*Watson*).)

The "reasonable probability" test, which was first set forth in *Watson* applies to errors of state law that do not implicate any federal constitutional guarantees. Such errors will be found prejudicial if the defendant shows that it is reasonably probable that he or she would have obtained a more favorable result in the absence of' the error. Erroneous admission of evidence is a type of error that is generally evaluated this standard. (*People v. Price* (l991) 1 CA 4th 324.)

ADAM T. SPICER, SBN 273110
2197 Lake Tahoe Blvd., Suite 5
S. Lake Tahoe, CA 96150
Office: (530) 539-4130
Fax: (530) 544-3570

Attorney for Defendant
TODD CHRISTIAN ROBBEN

Superior Court of the State of California
County of El Dorado

People of the State of California,

Plaintiff,

vs.

Todd Christian Robben,

Defendant.

SCN: S14CRM0465

NOTICE OF MOTION IN LIMINE AND MOTION IN LIMINE RE ADMISSIBILITY OF BREATH TEST EVIDENCE

Date: May 5, 2015
Time: 8:30am
Dept: 3

To the clerk of the above-entitled court and to the District Attorney for the County of El Dorado:

PLEASE TAKE NOTICE that on the above date and time, or as soon thereafter as counsel may be heard in the courtroom of the above-entitled court, the defendant will move for an order excluding and/or limiting any and all testimony about the alleged breath test in this case.

This motion will be based on this notice of motion and memorandum of points and authorities served and filed herewith, on such supplemental memoranda of points and authorities as may hereafter be filed with the court or stated orally at the conclusion of the hearing on the motion, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: May 2, 2015

Respectfully submitted,

Adam T. Spicer
Attorney for Defendant
TODD CHRISTIAN ROBBEN

Memorandum of Points and Authorities

Argument

1. The Trial Court Has Discretion To Make Evidentiary Rulings Prior To Trial

A trial court has discretion to rule on evidentiary matters prior to their actual admission into evidence. (Ev C §402; People v. Jennings, 46 Cal. 3d 963, 975, 251 Cal. Rptr. 278, 760 P.2d 475 (1988)).

2. The Following Evidence Should Be Excluded From This Trial By The Court

Mr. Robben moves this court for an order excluding all testimony about the alleged breath test in this case. Mr. Robben alleges violations of Title 17 of the California Code of Regulations make the evidence so unreliable that a jury should not be permitted to hear such evidence.

Section 1219.3 of Title 17 of the California Code of Regulations states: "The breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to the collection of the breath sample, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked."

Although continuous observation has been held "not to require direct and unbroken eye contact for the 15 minute period,"[1] that is only the case if "other means of uninterrupted observation are adequate.[2] At the very least, an officer must be certain that the defendant has not burped or regurgitated for 15 minutes prior to the breath test.

Mr. Robben has alleged that he burped prior to the breath test being administered in this case. He has brought this allegation forward in multiple writs that he has filed concerning his administrative DMV suspension relating to this same event. Therefore,

---

[1] Manriquez v. Gourley, 105 Cal.App.4th 1227 (2003)
[2] *Id.*

Mr. Robben moves this court for an order excluding the breath test against him as unreliable and in violation of California regulations due to an inadequate observation period.

Conclusion

For all the reasons stated above, Mr. Robben moves this court for an order excluding the breath test against him

Date: May 2, 2015

Respectfully submitted,

Adam T. Spicer
Attorney for Defendant
TODD CHRISTIAN ROBBEN

SOUTH LAKE TAHOE, CALIFORNIA

PROCEEDING, TUESDAY, MAY 5, 2015 8:30 A.M.

DEPARTMENT 3 HON. SUZANNE N. KINGSBURY, JUDGE

---oOo---

(PROCEEDINGS OUT OF THE PRESENCE OF THE JURY.)

(People's Exhibits 1 - 5 were premarked for identification.)

(Defendant's Exhibits 51 - 62 were premarked for identification)

---oOo---

THE COURT: All right. We're on the record outside the presence of the jury. Although she has lots of fine coaching, this is Ms. Vaughn's first jury trial as a standalone clerk, and so she's asking that you have patience with her.

We have one motion in limine filed by the defense. Mr. Spicer?

MR. SPICER: Thank you, Your Honor. As stated in the pleadings, it is a motion in limine objection to the admission of breath test evidence in this case. And I don't have much to add to the pleading, so I would submit on the pleadings.

THE COURT: All right, sir. Thank you.

Mr. Pizzuti?

MR. PIZZUTI: Your Honor, it's kind of a similar motion to what was brought previously involving Title 17 which goes to weight rather than admissibility. If there's any evidence that showed what counsel alleged there, it could be argued to the jury. But as far as

exclusion of evidence, that would be improper. So.

THE COURT: All right. Well, I do think that the weight of authority in this arena is that to the extent that the jury makes a factual finding that some event happened during the 15-minute observation period required by Title 17, that that would go to the weight to be given to evidence and not to the admissibility of this. And the jury would be the finder of fact in making a determination whether any such event occurred that may have impacted the reliability of the test for purposes of the Title. And I'm sure that both chemists who are being called to testify will be able to address the impact, if any, of that.

So the motion will be denied. But depending on how the evidence shakes out, I'd certainly be receptive to a special instruction in that area if you wanted to maybe together work on one that would frame the issue.

MR. SPICER: Thank you, Your Honor.

THE COURT: Okay? All right.

(END OF THE PROCEEDINGS OUT OF THE PRESENCE OF THE JURY.)

---oOo---

(The clerk swears the panel as prospective jurors.)

---oOo---

(The Court excuses certain prospective jurors for hardship off the record.)

---oOo---

A. I'd asked him if he had been drinking tonight, and I confirmed that he had been consuming alcohol tonight.

Q. And what happened after that?

A. He didn't have registration or insurance for his vehicle. He had found an expired insurance card. He provided me with his driver's license.

I moved back to my -- where my motorcycle was parked and requested another officer respond. I've had contacts with Mr. Robben in the past, and at times he can be uncooperative to law enforcement, so I wanted another officer there before I furthered my investigation into his impairment.

Q. So where did you go at that point, if anyplace?

A. I was standing by my motorcycle when Deputy Perry from the Sheriff's Department, who was in my area, heard my request over the police scanner and responded to the scene.

Q. Okay. You mentioned past experiences with Mr. Robben. Without getting into specifics, how many times had you had a personal experience with Mr. Robben?

A. I, maybe once. Mostly from reading reports and from interaction with other officers who've had contacts with him.

Q. Okay. And based upon that concern, you waited for another officer?

A. I did.

Q. And who was that officer?

A. It was Deputy Perry from the El Dorado County

Sheriff's Department.

Q. Okay. Once that person arrived or that deputy arrived what, if anything, did you do?

A. I was talking to Deputy Perry explaining to him what I had at the time, that I had stopped Mr. Robben. Deputy Perry also expressed to me that he has had personal experience with Mr. Robben in the past outside of the Lake Tahoe basin.

While I was talking to him, Mr. Robben had stepped out of his vehicle. I had asked him several times to sit back down inside his vehicle, and he refused to do so.

Q. Okay. Approximately how much time passed in between the time that you originally pulled him over until you asked him to do that?

A. I'd say it was probably five minutes or so. I'm just estimating. I don't recall exactly how much time it was. I didn't -- I don't -- I didn't use my watch or anything when I stopped him.

Q. Okay. What happened next?

A. After Mr. Robben refused to get back in his car, he kept just stating that he was just trying to go get a pizza, and what's going on.

He was wearing a shirt that was covering his waistband and kind of baggy cargo-type shorts at the time. For my own safety, and since he was refusing to follow my commands and stay inside the vehicle, I did go ahead and conducted a search of his person. I had faced him towards the car and had him place his hands in the small of his back, and I

conducted a frisk of his person.

Q. Okay. Is it a procedure that if there is a potential for any type of a person for perhaps delaying your arrest, that you will take extra precautions?

A. Yes. Mr. Robben is a larger fellow than I am, and I wanted to make sure that he had no weapons on his person, and I wanted to get control of it.

And he -- while I was searching him, he still continued to try to turn around on me. I actually at one point had to push him against his car to keep him in a position where I can safely search his person.

I eventually placed him into handcuffs because, again, he wasn't following my commands, and he kept trying to pull his hands away from my hands that were holding behind his back.

Q. Okay. And what, if anything, happened next?

A. I kept talking to him. My total intention was to deescalate him and calm him down so I can do my investigation into his impairment.

I had him sit down on the curb behind his vehicle, and I spoke to him for several minutes until he actually had calmed down and we were able to talk and hold a conversation.

Q. Okay. But the point that you initially had contact with him, were you intending to perform any field sobriety tests?

A. I was.

Q. Okay. And so when you later had a chance to --

- **NHTSA DWI Detection and Standardized Field Sobriety Test (SFST) Participant Manual**

Source https://www.nhtsa.gov/standardized-field-sobriety-test-training-downloads

STANDARDIZED FIELD SOBRIETY TEST BATTERY

Standardized Field Sobriety Testing. **There are three SFSTs**, namely **Horizontal Gaze Nystagmus (HGN), Walk and Turn, and One Leg Stand.** Based on a series of controlled laboratory studies, scientifically validated clues of alcohol impairment have been identified for each of these three tests. They are the only Standardized Field Sobriety Tests for which validated clues have been identifyied.

In *Coffey v. Shiomoto, 345 P. 3d 896 - Cal: Supreme Court 2015*:

the National Highway Traffic Safety Administration (NHTSA) released the results of a study in 1998 that evaluated the accuracy of the standardized field sobriety test (SFST) battery at BACs below 0.10 percent. (Stuster & Burns, Final Rep. to NHTSA, Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent (1998).) **The NHTSA's study found that the battery of SFSTs, which includes three of the tests** 1213*1213 administered to plaintiff (the horizontal gaze nystagmus test, the "walk-and-turn test," and the "one-leg stand test"), when administered by a trained officer, are "*extremely accurate in discriminating between BACs above and below 0.08 percent.*" (*Id.,* at p. i, italics added.) The NHTSA's report expressly dispelled a common misapprehension "that field sobriety tests are designed to measure driving impairment." (*Id.,* at p. 28.) **According to the NHTSA, the SFST battery is instead designed specifically to "provide statistically valid and reliable indications of a driver's BAC, rather than indications of driving impairment."** (*Ibid.*)

(8) We are not here attempting to resolve the scientific debate over the use of SFSTs to predict BAC. As plaintiff acknowledges, the test for admissibility of evidence is not a strict one: **As a general matter, evidence may be admitted if relevant (Evid. Code, § 350),** and "`[r]elevant evidence' means evidence ... having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action" (*id.,* § 210). "`"The test of relevance is whether the evidence tends, `logically, naturally, and by reasonable inference' to establish material facts...."" (*People v. Wilson* (2006) 38 Cal.4th 1237, 1245 [45 Cal.Rptr.3d 73, 136 P.3d 864].) **"The trial court has broad discretion to determine the relevance of evidence [citation], and we will not disturb the court's exercise of that discretion unless it acted in an arbitrary, capricious or patently absurd manner...."** (*People v. Jones* (2013) 57 Cal.4th 899, 947 [161 Cal.Rptr.3d 295, 306 P.3d 1136].)

Evidence code Sec. 352 states **"The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."**

Trial counsel was IAC for not moving the court to exclude the perjured and false evidence above since it violates section 352 and confused the issues and mislead the jury that the battery of three FSTs were properly performed to NHTSH standards (which they were not) and the HSG test certainly was not as proven. The breath test was not performed properly pursuant to Title 17, the officer lied, the Petitioner regurgitated gas within 15 minutes prior to the test which cause a 0.09% BAC reading because of the stomach gas that was regurgitated prior to the test. Exactly why there are regulations.

"`Regurgitate' is defined as: `To expel the contents of the stomach in small amounts, short of vomiting.'" (*Manriquez, supra,* 105 Cal.App.4th at p. 1236, fn. 2.) **A burp or belch meets this definition.**" *Valverde v. White, (court may take judicial notice of an unpublished opinion[87]) Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 2016.F/N 6* ". **"When**

---

87 https://scholar.google.com/scholar_case?case=5257932904191829165&q=Valverde+v.+White&hl=en&as_sdt=4,5

Gilbert v. Master Washer & Stamping Co., 104 Cal. Rptr. 2d 461 - Cal: Court of Appeal, 2nd Appellate Dist., 7th Div. 2001 F/N 14 **"(Although the Court of Appeal opinion in Trope v. Katz is not published, we may take judicial notice thereof as a court record pursuant to Evidence Code section 452, subdivision (d)(1).)"**

"[w]e are aware of the legal rule barring citation to or reliance upon a depublished California case. (Cal. Rules of Court, rule 8.1115.) We nonetheless mention this recently depublished decision in order to accurately describe the current state of law with respect to the scope of [Corporations Code] section 2010." *Robinson v. SSW, Inc. (2012) 209 Cal. App. 4th 588, 596, n. 7, review granted, depublished by Robinson v. Ssw, Inc. (Cal., Dec. 12, 2012) S206347, 2012 Cal. LEXIS 11722.*

People v. Williams (2009) 176 Cal.App.4th 1521, 1529**: "We realize that depublished and unpublished decisions are now as readily available as published cases, thanks to the Internet and technologically savvy legal research programs."**

Although it is commonly believed that the no-citation rule in Rules of Court, Rule 8.1115(a) prohibits the citation to an unpublished opinion, this rule is inconsistent with the judicial notice statute allowing citation to the "[r]ecords of [] any court of this state . . . ." In this conflict, **California Constitution Article VI, § 6(d) provides that "[t]he rules [of court] adopted shall not be inconsistent with statute."** A recently published law review article concludes that **"[i]n this battle between the no-citation rule and judicial notice [under Evidence Code 452(d)(1)], the statute overrides the rule.** Inconsistency between the no-citation rule and the judicial notice statute is fatal to the former." Rafi Moghadam, Judge Nullification: A Perception of Unpublished Opinions, 62 Hastings L.J. 1397, 1400 (2011).

a person burps, alcohol could enter the mouth and skew breath test results. (Workman, *The Science Behind Breath Testing for Ethanol* (2012) 7 U. Mass. L.Rev. 110, 117, 125.) **The 15-minute observation period addresses this problem by providing sufficient time for any traces of mouth alcohol to completely dissipate.** (*Id.* at pp. 117, 125, 132; Taylor & Oberman, Drunk Driving Defense (8th ed. 2016) § 7.03; see *Guy v. State (Ind. 2005) 823 N.E.2d 274, 277* [waiting period "during which nothing is placed in a person's mouth allows sufficient time for any mouth alcohol to dissipate"].)" *Valverde v. White, supra* F/N 7.

> **The continuous observation requirement helps ensure breath test results are reliable** (*Taxara v. Gutierrez (2003) 114 Cal.App.4th 945, 948 (Taxara)*), **by ruling out the possibility that mouth alcohol or foreign matter in the mouth that could retain alcohol might skew breath test results** (*Manriquez, supra, 105 Cal.App.4th at p. 1236, fn. 3; Roze, supra, 141 Cal.App.4th at p. 1186*). **"[A]n officer observes a subject for 15 minutes prior to testing in order to ensure that the resulting sample of `end-expiratory' deep lung, alveolar breath is not contaminated by mouth alcohol or regurgitation."** (*Vangelder, supra, 58 Cal.4th at p. 33.*) **"[T]he presence of mouth alcohol requires the officer to stop the test and recommence a 15-minute observation of the driver."** (*Robertson, supra, 44 Cal.App.4th at p. 152.*)
>
> We agree that the record is vague as to when White burped, a fact of consequence as to whether mouth alcohol may have skewed the EPAS test results. At the administrative hearing, the DMV sought to establish

---

Petitiner may need to file a federal habeas corpus petitioner (28 U.S.C. 2254) and there the courts look at unpublished California cases:

In *Nunez v. Holder (9th Cir. 2010) 594 F.3d 1124, 1137, fn.* 10 **[unpublished state-court decisions are "pertinent to show how a statute has been applied in practice"].**

In *Cole v. DOE 1 THRU 2 OFFICERS OF CITY (N.D.Cal. 2005) 387 F.Supp.2d 1084, 1103, fn. 7*
"California Rule of Court 977(a) prohibits citation or reliance by a court of an unpublished California Court of Appeal decision. Howecer, Federal courts are not bound by California State law. see In re Temporomandibular Joint Implants Products, 113 F.3d 1484, 1493 n. 11 (8th Cir.1997) (noting that California Rules of Court 976(d) and 977(a), "which limit the citation of opinions superseded by a grant of review by the California Supreme Court[,] ... are not binding on this Court"), **and in any event is not cited as decisional law but rather for its persuasive reasoning.** See Ortiz-Sandoval v. Gomez, 81 F.3d 891, 895 (9th Cir.1996) (taking note of unpublished California state court opinion "[a]lthough pursuant to California Rule of Court 977(a) we do not cite this case as decisional law")."

Mullaney v. Wilbur (1975) 421 U.S. 684, 691 **[state courts are the ultimate expositors of state law, and federal courts "are bound by their constructions except in extreme circumstances"].)**

compliance with regulation 1219.3 to buttress the EPAS results, asking Officer Filer:

"Did you observe any prohibitive functions from Mr. White prior to the administration of the breath test that would have an adverse effect on the results that were obtained, and specifically, did he vomit, regurgitate, eat anything, smoke anything, chew gum or ingest any fluids prior to administration of the chemical test within 15 minutes?"

Officer Filer replied in the *affirmative*:

"I don't remember him regurgitating or anything like that. *I remember he had burped a little,* and I told him, I said, well now we have to start [the] 15-minute observation period over. And during that time he was almost hyperventilating. I asked him what he was doing, and he said — basically he said he was trying to get more oxygen into his system. I asked him if he was trying to alter the test, and he said — he said no. . . ." (Italics added.)

The DMV's counsel attempted to rehabilitate Officer Filer, asking:

"So with that, you're saying that he burped a little bit, and then you sat him through an entire additional 15-minute observation period before actually submitting him to the chemical evidentiary test that reflected the results that we have here on Page 1 of the DS 367?"

Officer Filer replied, "Yeah, that's correct."

On cross-examination, White's counsel asked Officer Filer if he remembered "exactly when [White] burped, like how close in time to when you administered the breath test that was?" Officer Filer replied, "No. I don't remember specifically." White's counsel then asked whether Officer Filer could be sure the burp happened "more than 15 minutes prior to the administration of the test." Officer Filer replied he was "very sure" and that he recalled telling White not to burp again, as they would need to restart the 15-minute observation period. It is not clear whether Officer Filer was referring to the PAS test or the EPAS tests in giving that answer. Officer Filer also testified on cross-examination that the burp happened when White was "almost hyperventilating," which, according to his BLM Investigation Report, happened around the time the EPAS tests were administered.

Viewed together, Officer Filer gave conflicting testimony, suggesting both that the burp happened within 15 minutes of the EPAS tests *and* more than 15 minutes before the EPAS tests. The only observation period referenced in the sworn BLM Investigation Report was from 8:21 p.m. to 8:48 p.m., before the PAS test. **Based on Officer Filer's**

testimony, it is possible that at some unknown point during this observation period, White burped. If so, it is unclear whether Officer Filer observed White for a full 15 minutes after the burp before administering the EPAS tests; there is no evidence as to precisely when that observation would have taken place. Alternately, it is also possible from the record that White burped around the time of the EPAS tests. If that occurred, Officer Filer plainly did not observe White for 15 minutes before the EPAS tests to ensure mouth alcohol did not contaminate the results.

The trial court reasonably concluded that White met his burden to show the test was not properly administered pursuant to regulation 1219.3. (*Robertson, supra,* 44 Cal.App.4th at p. 153; *Manriquez, supra,* 105 Cal.App.4th at p. 1233; Evid. Code, § 664.) The DMV points to Officer Filer's testimony on direct that he observed White for 15 minutes *after* the burp, but the trial court implicitly found this testimony not to be credible. The sole question before us is whether there is substantial evidence, contradicted or uncontradicted in the record, to support the court's factual determinations. (*Roze, supra,* 141 Cal.App.4th at p. 1187; *Lake, supra,* 16 Cal.4th at p. 457.) On the record before us, we are satisfied there is.

Once White showed noncompliance with regulation 1219.3, the burden shifted to the DMV to prove the EPAS tests were reliable despite the deviation. (*Manriquez, supra,* 105 Cal.App.4th at pp. 1232-1233; *Roze, supra,* 141 Cal.App.4th at p. 1183.) **"[I]f the test procedure does not comply with the regulations," the DMV must offer additional evidence to "qualify the personnel involved in the test, the accuracy of the equipment used and the reliability of the method followed before the results can be admitted." (*Adams, supra,* 59 Cal.App.3d at p. 567; see *Williams, supra,* 28 Cal.4th at p. 416 [absent regulatory compliance, results can be admitted only upon showing of *Adams* foundational requirements].) The DMV failed to meet its burden; it did not offer any evidence the test was nonetheless "properly administered" despite Officer Filer's failure to comply with regulation 1219.3. (*Adams,* at pp. 561, 567; *Manriquez,* at p. 1233; *Robertson, supra,* 44 Cal.App.4th at p. 153.)**[8]

The DMV is correct that regulatory noncompliance affects only the *weight* of breath test results, not their admissibility. (*Adams, supra,* 59 Cal.App.3d at p. 567; *Williams, supra,* 28 Cal.4th at p. 414.) **However, breath test results must have foundation to be admissible, and foundation may be established *either* through regulatory compliance *or* evidence of "properly functioning equipment, properly administered test, and qualified operator" under *Adams*. (*Adams,* at p. 567; *Williams,* at p. 416.) As the DMV offered no evidence indicating the**

test results were reliable despite Officer Filer's deviation from regulation 1219.3, the court did not abuse its discretion in excluding the EPAS test results. The court could reasonably conclude the EPAS test results may have been skewed by mouth alcohol on account of White's burp.[9] Absent the EPAS results, the court properly found insufficient admissible evidence to support a finding that White was driving a motor vehicle with a BAC of 0.08 percent. (See, e.g., ***Molenda, supra,* 172 Cal.App.4th at p. 1001** [breath test results properly excluded where manner of test administration demonstrated regulatory noncompliance *and* lack of alternate *Adams* foundation].)

Briefly, as to the DMV's contention the trial court erroneously interpreted regulation 1219.3 to require a *separate* 15-minute observation period after the intervening PAS test, we agree with White that the DMV misconstrues the court's ruling. The court was unable to find a *single* 15-minute observation period before the EPAS test, on account of White's burp at some unknown point in time. Officer Filer's failure to observe White for 15 minutes meant the EPAS tests did not comply with regulation 1219.3 *and* were not "properly administered" under *Adams, supra,* 59 Cal.App.3d at p. 567. That Officer Filer took a PAS test was irrelevant; the court impliedly found that Officer Filer's conduct called into question whether mouth alcohol skewed the EPAS results.[10] As discussed above, substantial evidence supports that finding.

DISPOSITION

The judgment is affirmed. White shall recover his costs on appeal.

Valverde v. White, supra

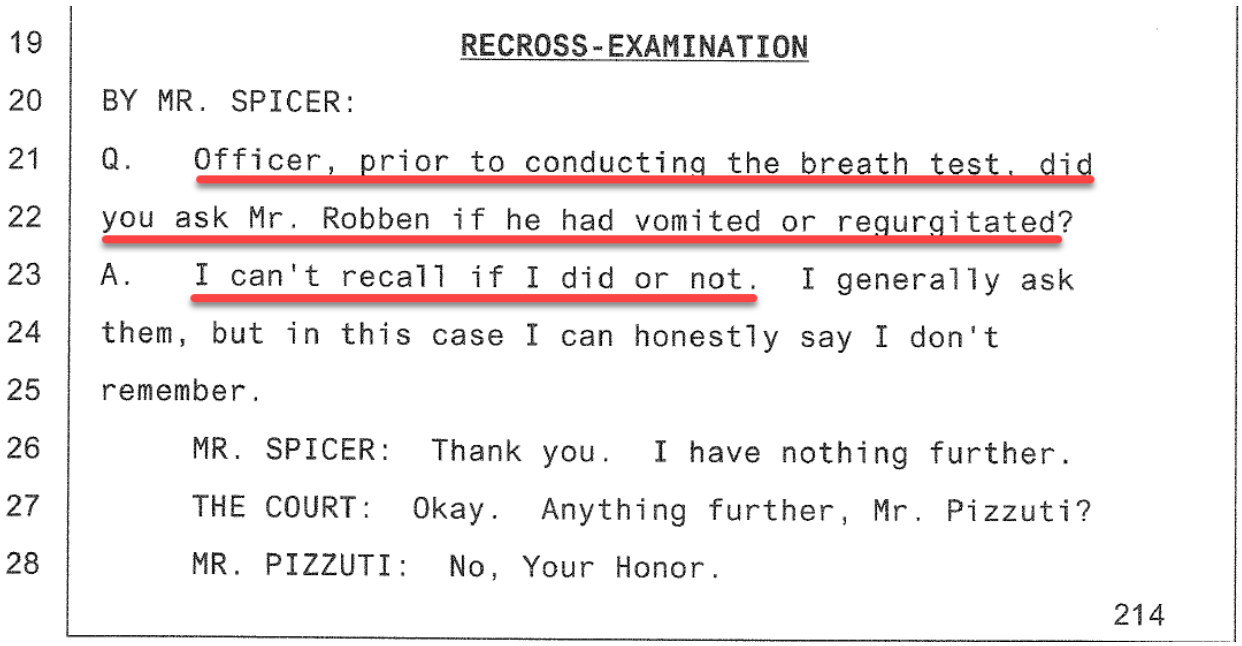
PAGE 183:

A. Yes.
Q. And basically, describe what it looks like and how you perform a test.
A. It's a yellow box. You open it and it has a series of questions. You scan the suspect's driver's license. If it's a California driver's license, it will upload all the information and you verify that. It will ask you if he was observed for 15 minutes, and then you put a mouthpiece on it. It will run through a series of tests to make sure it's calibrated. If it's not calibrated, it won't even work. It will tell you without calibration it

RT PAGE 78 TITLE 17:

THE COURT: All right. Well, I do think that the weight of authority in this arena is that to the extent that the jury makes a factual finding that some event happened during the 15-minute observation period required by Title 17, that that would go to the weight to be given to evidence and not to the admissibility of this. And the jury would be the finder of fact in making a determination whether any such event occurred that may have impacted the reliability of the test for purposes of the Title. And I'm sure that both chemists who are being called to testify will be able to address the impact, if any, of that.

RT PAGE 214:



RECROSS-EXAMINATION

BY MR. SPICER:

Q. Officer, prior to conducting the breath test, did you ask Mr. Robben if he had vomited or regurgitated?

A. I can't recall if I did or not. I generally ask them, but in this case I can honestly say I don't remember.

MR. SPICER: Thank you. I have nothing further.

THE COURT: Okay. Anything further, Mr. Pizzuti?

MR. PIZZUTI: No, Your Honor.

214

"the Adams requirements" (*People v. Adams (1976) 59 Cal.App.3d 559 [131 Cal.Rptr. 190*]) states **"In general, the foundational prerequisites for admissibility of testing results are that** (1) the particular apparatus utilized was in proper working order**,(2) the test used was properly administered**, and **(3) the operator was competent** and qualified"

In addition to not complying with California Code of Regulation Title 17 §§, Officer Cory Wilson did not comply with the Dräger operations manual[88] for the breathalyzer which requires a 15 minute waiting period, and Officer Wilson did not ask this Petitioner if he regurgitated or burbed.

The Dräger operations manual is written in German. The translation for “Aufstoßen” to English shows up as “kicking” or “Belching” depending on what translator is used.

Said breathalyzer manual slao states “must maintain a sufficient distance from antennas of mobel phones and transmission systems” and said breathalyzer was near police radios, cell phones and computers with WIFI antennas.

88 https://www.manualslib.com/manual/1318708/Dr-Ger-Alcotest-7510.html?page=1#manual

Dräger

Dräger Alcotest® 7510

de Atemalkohol-Messgerät
Gebrauchsanweisung, Seite 2 bis 34

en Breath Alcohol Monitor
Instructions for Use, page 36 to 68

Conditions

— A new mouthpiece must be used for each test person.

— Do not give high alcohol concentrations to the sensor, e.g. by rinsing the mouth with high-percentage alcohols just before the measurement. This reduces the the life span of the sensor.

— Maintain sufficient distance from antennas of mobile phones and transmission systems.

Requirements for the test person

— Waiting time of at least 15 minutes after the last alcohol intake by the mouth

Comply with!

Residual alcohol in the mouth can distort the measurement. Also for aromatic drinks (e.g. fruit juice), alcoholic oral sprays, medical juices and drops and after Kicking and vomiting can cause falsification. In these cases, too, there is a observe the waiting time of at least 15 minutes. A mouthwash with water or non-alcoholic beverages do not replace the waiting time!

— The device can detect residual oral alcohol when the breath sample is given, provided that the option is enabled. When the mouth residue alcohol is detected, the measurement is aborted and a corresponding message.

— The test person should breathe normally and calmly before sampling. Fast entry and Exhalation through the mouth should be avoided.

— The test person must be able to obtain the minimum required breathing volume (standard setting 1.2 L). The breathing current must be used for a predetermined minimum blow time (default 2 seconds).

The California Supreme Court in *People v. Williams, 49 P. 3d 203 - Cal: Supreme Court 2002* commenting on *People v. Williams, 107 Cal. Rptr. 2d 135 - Cal: Court of Appeal, 3rd Appellate Dist. 2001* stated **"Although we reject the Court of Appeal's legal conclusions, we share its concern that laxity in complying with the regulations may undermine the reliability of the test. The trial court said the challenged evidence "push[ed] the outside of the envelope on the admissibility of PAS tests." Compliance with the regulations, by contrast, guarantees the People quick and certain admission of evidence, eliminating laborious qualification, critical cross-examination, and the risk of**

exclusion. Furthermore, compliance will ensure 862*862 **that the tests retain their reliability, and thus their relevance and admissibility, in the future."**

In *People v. Williams*, *107 Cal. Rptr. 2d 135 - Cal: Court of Appeal, 3rd Appellate Dist. 2001:*

"An `official duty' is imposed upon law enforcement agencies and their officers and employees under section 436.52 of the Health and Safety Code and regulations promulgated thereunder to perform blood alcohol analyses by methods devised to assure reliability. Section 436.52 provides: `The testing of breath samples by or for law enforcement agencies for purposes of determining the concentration of ethyl alcohol in the blood of persons involved in traffic accidents or in traffic violations shall be performed in accordance with regulations adopted by the State Department of Health Services. [¶] The rules and regulations shall establish the procedures to be used by law enforcement agencies in administering breath tests for the purposes of determining the concentrations of ethyl alcohol in a person's blood....' **The 'shall' wording of the statutes makes clear that the procedures established by the rules are to be mandatory and that compliance constitutes a duty imposed upon the agencies and individual officers and civilian employees who administer, analyze, and report the tests.**

"Pursuant to Health and Safety Code section 436.52, supra, the Department of Health Services has promulgated [Title 17]. The rules set detailed standards for the licensing and operation of forensic alcohol laboratories, the training of personnel, the collection and analysis of samples in general, and the manner of expressing results. ([Tit. 17,] §§ 1215-1220.4.) Article 7 of the rules ([id.] §§ 1221-1221.5) comprises the requirements for breath alcohol analysis, including standards for procedures ([id.] §§ 1221.1, 1221.4), standards for instrument performance ([id.] § 1221.2), and approved instruments ([id.] § 1221.3). [¶] The foregoing regulations establish a standard for the competency of the results of blood-alcohol tests. (People v. Adams [1976] 59 Cal.App.3d [559,] 567 [131 Cal.Rptr. 190].) Compliance with the regulations establishes both a foundation for admission of test results into evidence in any proceeding and a basis for finding such results to be legally sufficient evidence to support the requisite findings in such proceeding. (Ibid.)" (Davenport v. Department of Motor Vehicles (1992) 6 Cal.App.4th 133, 141-142, 7 Cal.Rptr.2d 818, fn. omitted.)

Unlike in Adams, where the test was subject to only a single technical defect and the defendants did not challenge the adequacy of the foundation laid, defendant's test here was so riddled with violations he does challenge the adequacy of the foundation laid. We review briefly the regulatory violations as they

relate to the foundational points Adams requires be established if the regulations are not followed.

Title 17 requires a breath sample be collected only after the subject has been under continuous observation for at least 15 minutes prior to the test, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten or smoked. (Tit.17, § 1219.3.) The test on the subject must include two separate breath samples which result in determinations of blood alcohol concentrations which do not differ from each other by more than 0.02 grams per 100 milliliters. (Tit.17, § 1221.4, subd. (a)(1).) All results are to be expressed in terms of alcohol concentration in blood. (Tit.17, § 1220.4, subd. (a).)

Officer D'Arcy had used this particular device over 100 times, and it appeared to him to function properly when he used it on defendant. D'Arcy administered the test on defendant in the manner he had been trained. **Defendant did not burp, vomit, spit up, eat or drink anything while he was under observation prior to taking the test.**

However, Officer Scocca first contacted defendant at approximately 2:02 a.m. D'Arcy arrived at the scene at approximately 2:05 a.m. and, after administering the PAS test, arrested defendant at approximately 2:15 a.m. D'Arcy thus likely performed the PAS test less than 15 minutes after the officers began continuous 145*145 observation of defendant. D'Arcy also performed only one test instead of the required two.

Most significantly, there is no evidence in the record the result published by the device was expressed in terms of alcohol concentration in the blood. The officers testified they believed the number provided by the device was a measurement of blood alcohol level, but that testimony was insufficient to establish whether the breath device in fact measured alcohol content in blood. "Absent a controlling statute, the test results must be interpreted at the trial by an expert witness under the general requirements for expert testimony." (People v. Adams, supra, 59 Cal.App.3d at p. 561, 131 Cal.Rptr. 190, emphasis added, citations omitted.) The testifying officers were not qualified to interpret the results as a measurement of alcohol content in defendant's blood.

It is apparent from the above the California Highway Patrol has designed and implemented training and maintenance programs and procedures for the Alco Sensor IV which do not satisfy the requirements of Title 17. Not surprisingly, officers in the field are also using the device in a manner which does not satisfy the requirements of Title 17. **Yet the California Highway Patrol is under a mandatory duty to comply with Title 17. While Adams may authorize the admission of test results where substantial compliance with Title 17 is shown, it does not authorize the negation of a mandatory duty where, as here, substantial compliance is not**

shown. To hold otherwise would render Title 17 a nullity, and excuse a law enforcement agency from complying with the law.

Beginning in the 1960's, courts began a fruitless, short-lived search for perfection in the law. (See former Court of Appeal Justice Macklin Fleming's classic work, The Price of Perfect Justice, The Adverse Consequences of Current Legal Doctrine on the American Courtroom (1974).) In fairly short order, courts began to see that peace officers and their agencies are, like everyone else, imperfect. Before long, courts began to return to a more practical and balanced mode. (See, e.g., Illinois v. Gates (1983) 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 [whether probable cause to arrest exists is a practical, commonsense issue based on totality of the circumstances, not on application of rigid rules]; but see Judge Harold Rothwax, Guilty: The Collapse of Criminal Justice (1997).) In the aftermath of this still-continuing 146*146 judicial return to reason, peace officers and their agencies would be mistaken to assume they may seek haven in the good faith exception to the exclusionary rule, for example, and there find a license to be casual or, worse, careless.

The exclusionary rule is a judicially created remedy designed to deter just such conduct. "As with any remedial device, the rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served. [Citations.] Where `the exclusionary rule does not result in appreciable deterrence, then, clearly, its use ... is unwarranted.' [Citation.]" (Arizona v. Evans (1995) 514 U.S. 1, 10-11, 115 S.Ct. 1185, 1191, 131 L.Ed.2d 34, 44.)

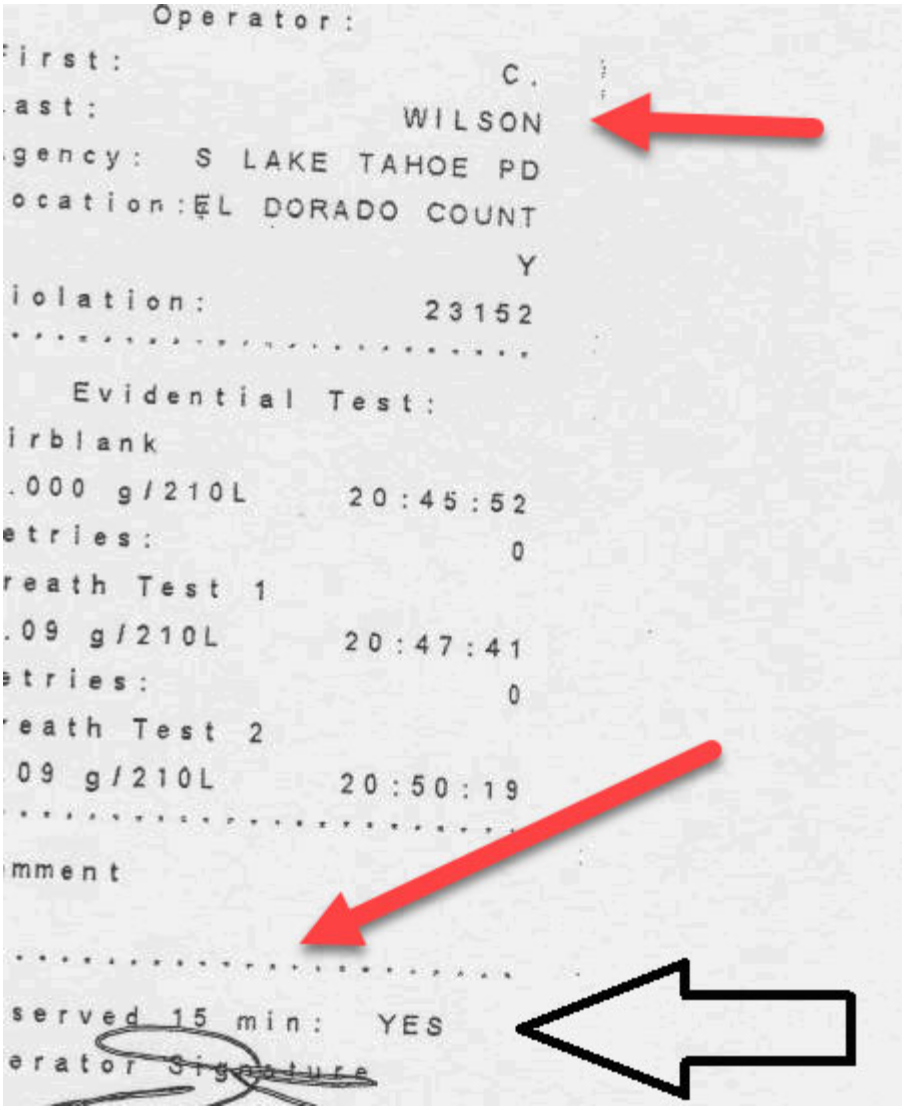
Exclusion of PAS test results in every drunk driving case involving an Alco Sensor IV will deter intentional reliance upon a flawed system that, despite the best intentions and sincere efforts of the vast majority of members of the Highway Patrol, will continue to deliver untrustworthy test results in every drunk driving case until it is appropriately corrected. **"[T]he validity of the test itself is to be determined in accordance with general scientific standards ...." (People v. Adams, supra, 59 Cal.App.3d at p. 567, 131 Cal.Rptr. 190 emphasis added.)** Those scientific standards are embodied in Title 17, and the Highway Patrol will be able to produce such scientifically valid evidence once it brings its training and maintenance program into compliance with Title 17.

Adams and its progeny were crafted to address anomalies or occasional errors and innocent lapses in law enforcement. They were not meant to provide a means for peace officers and their agencies to ignore clear, easy-to-apply statutory law and administrative rules, for any reason, including budget or personnel constraints.

Evidence of a PAS breath analysis is thus inadmissible unless sufficient foundational evidence demonstrates the test was performed in substantial compliance with Title 17. Because the Highway Patrol did not substantially

comply with Title 17 here, the trial court erred by admitting into evidence the results of defendant's PAS test.

In *People v. Vangelder, 197 Cal. App. 4th 1 - Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 2011* "Further, **it was not disputed that the PAS results were somewhat unreliable, because the officer did not wait the regulation amount of time before administering the tests (15 minutes), and there was therefore a possibility of mouth-alcohol contamination** (as the trial court expressly recognized, and as the prosecutor admitted in closing argument)."



The above exhibit shows Officer Wilson signed the breathalyzer test printout "Observed for 15 minutes"

Officer Cory Wilson prepared the Declaration and Determination (probable cause for warrantless arrest) – stating he observed a white Subaru driving at excessive speed… Not signed by any judge.

Q. (By Mr. Pizzuti) and the Drager 7510, was that your -- that was the number?
A. Yes, sir.
Q. Now, as one of your functions, one of the duties you're trained for is how to operate that instrument?
A. Yes.
Q. Okay. What is normally the procedure for doing that?
A. For the training?
Q. For the training and for what you're supposed to do.
A. I went to about a four-hour class put on by the DOJ that the consists of hands-on training of the instrument and a written test.
Q. Did you pass that?
A. What's that?
Q. Did you pass that test?
A. Yes.
Q. And basically, describe what it looks like and how you perform a test.
A. It's a yellow box. You open it and it has a series of questions. You scan the suspect's driver's license. If it's a California driver's license, it will upload all the information and you verify that. It will ask you if he was observed for 15 minutes, and then you put a mouthpiece on it. It will run through a series of tests to make sure it's calibrated. If it's not calibrated, it won't even work. It will tell you without calibration it won't work. If it does work, it will pop up and say

breath test one, and you perform two breaths that are two minutes apart.

Q. Okay. At least two minutes apart is that --

A. Yes.

Q. Okay. And is there any changing mouth devices or anything?

A. Not between the two tests; no.

Q. And so after you receive that training, and you had a chance as a patrol officer to use that device?

A. Yes.

Q. Approximately how many times have you used it?

A. Approximately 60 to 70 times in my career.

Q. And that may be for more than just a DUI arrest; right? Like a person who is drunk in public or something?

A. Correct.

Q. Potentially you could have used it for something else?

A. Correct. Sometimes we will bring people to jail that are arrested for public intoxication and the jail staff would like a ballpark figure of where they're at because they can't be released unless they're under .08.

Q. You mentioned the 15 minutes. Is that something where typically you sit them down and you stare at them for 15 minutes, or how do you normally do that?

A. Usually when I come in contact with a person, whether it's my own traffic stop or someone else's, I begin my observation period then.

breath test one, and you perform two breaths that are two minutes apart.

Q. Okay. At least two minutes apart is that --

A. Yes.

Q. Okay. And is there any changing mouth devices or anything?

A. Not between the two tests; no.

Q. And so after you receive that training, and you had a chance as a patrol officer to use that device?

A. Yes.

Q. Approximately how many times have you used it?

A. Approximately 60 to 70 times in my career.

Q. And that may be for more than just a DUI arrest; right? Like a person who is drunk in public or something?

A. Correct.

Q. Potentially you could have used it for something else?

A. Correct. Sometimes we will bring people to jail that are arrested for public intoxication and the jail staff would like a ballpark figure of where they're at because they can't be released unless they're under .08.

Q. You mentioned the 15 minutes. Is that something where typically you sit them down and you stare at them for 15 minutes, or how do you normally do that?

A. Usually when I come in contact with a person, whether it's my own traffic stop or someone else's, I begin my observation period then.

Q. Okay. And that can include when the person is at an arrest scene?
A. Yes.
Q. Perhaps even when a person is taking field sobriety tests if, for example, it's your own arrest?
A. Correct.
Q. And you mentioned before that the 15 minutes is to determine whether or not they do what?
A. Eat anything, drink anything, smoke, chew gum, put chewing tobacco in their mouth, vomit, or regurgitate.
Q. Okay. And those are the things you're trained to look for?
A. Yes.
Q. So on August 20th of last year, when you assisted Sergeant Laney in a DUI investigation, why don't you explain how you came onto the scene and what happened once you were on the scene.
A. I came upon the scene when he requested a cover unit. I arrived on scene at about 8:15. He was already doing his DUI investigation. I arrived as a cover officer. I let him complete his DUI investigation. My duties were to make sure he was safe from oncoming traffic, oncoming pedestrians coming up, anything like that. And again, just if he was to get in an altercation with the suspect, that's why I'm there.
Q. Okay. And so did you have much of a chance to observe Mr. Robben's demeanor or -- at the time when you were out at the scene?

A. When I arrived, Sergeant Laney explained to me he was initially kind of uncooperative. He had gotten out of his car, and he had actually had to put him in handcuffs for a little bit to get him to calm down. When I arrived, he appeared to be fairly cooperative with Sergeant Laney.
Q. And he was at least cooperative with you?
A. Yes.
Q. And during the time that you were with him, would you explain what you did as far as were you the person who handcuffed him, and did you bring him to your vehicle? Just kind of explain that.
A. Yes; I believe Sergeant Laney handcuffed him. I actually can't remember. He was placed in my vehicle, and I transported him to the jail.
Q. What did you do once you got to the jail?
A. Driving to the sally port the jail staff will take him out of the vehicle. They'll search him once he gets there, sit him down, and begin the booking process. And usually during the booking process is when I get his license, open the machine, make sure it's calibrated, and start the procedure for the breath test.
Q. Okay. Certain information taken down in a booking process?
A. Yes.
Q. Okay. I'll just ask you to take a look at what's been marked as People's Exhibit 4. Are you familiar with this document?

A. Yes; that's a booking sheet.
Q. And the booking sheet is something where you just take down general information on a person?
A. Yes; it's all their general information. Their height, weight, Social Security Number, driver's license number, address, and what charges they are there for.
Q. Okay. And now, you did not write an arrest report as part of this; correct?
A. No.
THE COURT: No, that's not correct, or no, you didn't write a report?
THE WITNESS: I'm sorry. No, I didn't write a report.
MR. SPICER: Can we just hold one second while I start the machine?
THE COURT: Oh, sure. The attorneys are sharing Mr. Spicer's projector and information that has been scanned and put in his computer for display on the screen.
MR. SPICER: I just can't listen to questions at the same time.
THE COURT: I understand. Technology is great, but it's not always seamless.
Q. (By Mr. Pizzuti) Okay. I'd ask you to -- let me start this up. I'm trying to get a number indicated of where we start. Oh, thank you.
On the lower right-hand portion of the screen, it says 8:44:57 p.m. I just ask you to take a look at this.

I'll play it for a second and then I'll stop it. (Video Played.)

Now, I'll ask you while we're waiting for this thing to get going, is there a camera system that's at the jail that you're aware of?

A. Yes.

Q. Okay. And you've seen the video for it before?

A. Yes.

Q. And on occasion you've seen --

THE COURT: It looks like the camera is under the influence.

MR. SPICER: Can we just take a short technical break here?

THE COURT: Sure. So if anybody needs to step out and use the restroom. We'll take a break about 10:00 o'clock, but if you want to stretch, you're admonished not to discuss the case or anything with anyone else during the short break. But if you need to get some more coffee or use the restroom, you're welcome to do that.

(Brief recess taken.)

THE COURT: Okay. We have success.

MR. PIZZUTI: All right. And again for the record, this is a portion contained in People's 2, but I believe it's incorporated into a hard disk.

THE COURT: Everyone can see okay? And you're okay with the lights being off over there? Okay.

MR. PIZZUTI: And so this is information that's

contained on the hard drive. It appears in People's 2, and I believe there has been a stipulation.

THE COURT: Okay. Thank you.

Q. (By Mr. Pizzuti) Okay. (Video played.) Looking at 8:45:12 in the lower right-hand corner, do you know that to be the exact time, or is it -- does that comport with your --

A. That seems about right. I believe in the report over the radio, I was at the jail approximately 8:40. So.

Q. So about that?

A. Pretty close.

Q. Okay. And looking at the -- what you see before you on the screen, are you familiar with that?

A. Yes.

Q. Could you describe what that is and what we're looking at?

A. That's the booking area --

THE COURT: And if you want to get out and physically point at what you're talking about, you can.

THE WITNESS: This is the booking area. We'll walk in through here from the sally port. The jail staff can come out through here. This is where they search people in that area.

Q. (By Mr. Pizzuti) Okay. And for the record, you're pointing to an area that's by a grated door; to the left of that?

A. Yeah; and these two computers here are used to fill

out the booking sheet, and the yellow box here is the Drager 7510.

Q. And the 7510 is the breath machine? The breath instrument that you --

A. Yes.

Q. -- that you are looking at?

A. Yes.

Q. All right. Thank you. I'm going to start this up. Okay. Right now we have five people in there. Do you recognize any of those individuals?

A. Yes.

Q. And who do you recognize, if anyone, in that picture?

A. I believe that's Deputy Yaz.

THE COURT: Why don't you -- you can go ahead and touch the screen.

THE WITNESS: Here; Deputy Yaz.

Q. (By Mr. Pizzuti) Now, that's from a different agency; correct?

A. That's El Dorado County Sheriff; yes.

Q. Okay. And they run the jail?

A. Yes.

Q. Okay. When you book people into the jail, that's done through the sheriff's office?

A. Yes.

Q. Okay. So Deputy Yaz is the female up front?

A. Yes; I can't recall who else is there.

Q. Okay. Who else do you see in -- depicted in the

picture?
A. Myself and Mr. Robben.
Q. Where are you?
A. Right here.
Q. Okay. And in the darker uniform, and then Mr. Robben?
A. Yes.
THE COURT: Point out Mr. Robben. Officer Wilson, point out where Mr. Robben is looking.
MR. PIZZUTI: Thank you.
Q. (By Mr. Pizzuti) And for the record, I guess Mr. Robben appears to be by that open door, and you appear to be at the upper right-hand portion of the screen at 8:45:21. I'll start it up again, and you can have a seat. (Video played.)
And can you tell us basically -- as this is playing, could you kind of narrate what is going on as you best recall it, looking at this if it refreshes your recollection.
A. So that's the spot where the jail staff will search Mr. Robben again. They'll unhandcuff him, and he'll come sit on the bench in front of the deputy on the bottom. And that's me opening up, starting the process of the breathalyzer, make sure it's calibrated, you know, inputting Mr. Robben's information.
Q. Okay. You have to type something in?
A. At the time, no. He had his driver's license, so if you swipe it, it will upload all the information in the

commuter.
Q. Is that the information on the booking sheet we just --
A. Yes.
Q. You have to put your own name in as well?
A. Yes. When you have an operator ID card, whenever you swipe it, it will put your name into it.
Q. Are you familiar with the booking process of what's being done with Mr. Robben?
A. Yes.
Q. Is that normally done by you or by jail staff?
A. Always by jail staff.
Q. Okay. And what are you doing? It looks like you put a tube or something?
A. I just put an actual mouthpiece tube on top of the instrument.
Q. Where did you get that tube from?
A. They are located in the bright yellow box inside of a plastic wrapper you have to open.
Q. So they're kind of medically sealed or something?
A. They're sealed; yes.
Q. And so every time you do that, do you take out a new mouthpiece?
A. Yes.
Q. And in this case, you did? You took out a new mouthpiece before you tested Mr. Robben; is that fair?
A. Yes.
Q. All right. I'm starting up again at 8:46:41. What

are you handing to that Deputy Yaz in the lower right-hand corner?
A. Mr. Robben's driver's license with all his information so she could fill out the booking sheet.
Q. Okay. This is a typical process for anyone who is being booked in the El Dorado County Sheriff's Office?
A. Yes.
Q. I mean the jail. Now, this time we're looking at here, you've also had the time in between going to -- from the scene of arrest and bringing Mr. Robben to the station; is that correct?
A. Yes.
Q. Okay. Is he alone with you or were there any other persons in the vehicle?
A. Just us two.
Q. Okay. And is he in a vehicle -- what type of vehicle was he in?
A. A Chevy Tahoe.
Q. How were those configured?
A. He sits in the backseat.
Q. Okay. Backseat. Separated from the front?
A. There is a partition cage.
Q. There's a cage? Is it a solid window or just a cage?
A. There's window on the sides; the cage is in the middle.
Q. So are you free to speak to a person in the back if you need to?

A. Yes.
Q. Okay. Can you hear what's going on in the back of the vehicle?
A. Yes.
Q. Now, I'm stopped at the 8:48:10, and ask you to look at the screen and see if you can recall what was going on. Do you recall at this point what was happening?
A. Yes; I believe I was preparing Mr. Robben for the first breath test.
Q. And do you have to explain what you're doing in the test prior to him taking it?
A. Yes; there are a set of instructions; take a deep breath and blow kind of a long, steady. There's a tone on the machine that if it's making a tone, it means you're blowing correctly. And when you're -- the machine has captured enough sample, it will beep and stop, and that's when you can stop.
Q. Okay. You've used this instrument before you said?
A. Yes.
Q. Have you had instances where people blow into it and you don't hear that sound?
A. Yes.
Q. What does that indicate to you?
A. They aren't blowing hard enough or too hard. If you blow too hard, it will have an error message.
Q. Okay. So in between that deep, long sample, blowing too hard and blowing not hard enough, are you able to tell from the instrument when that happens based on what

the instrument is telling you?
A. Yes.
Q. Now, in this case -- I'll start it again 8:48:10. (Video played.) Okay. Right here; this is at 8:48:23. It's hard to tell what's going on. Can you explain?
A. Looks like I put the machine up to his mouth and had him give his first breath sample.
Q. Okay. All right. So after you obtained that first sample, what was the -- was there a reading or was there a --
A. The screen will display a reading, which is .09.
Q. Does that happen right off, or does it take a little while to --
A. It takes approximately three to four seconds, then it pops up on the screen. Then it will have a hundred-and-twenty-second countdown before you can start the next breath test.
Q. Is that within the machine or is that something you're doing independently with --
A. It's on the machine. On the display itself it will say 120. It will actually count down to make sure you have two minutes in between samples.
Q. All right. So I'll keep it playing at this point. And again, you testified that there was a way of telling whether or not the breath sample was correctly taken?
A. It wouldn't register a .09 unless it was done correctly.
Q. This instrument that you're working with, is it

maintained by the jail?
A. Yes.
Q. Is it also maintained by the Department of Justice to your knowledge?
A. I don't know if they have to do periodic calibrations with the DOJ, but I know the jail staff is trained on it and calibrate it.
Q. As far as accuracy tests, are you familiar with that procedure?
A. It has to be done every ten days or hundred and fifty breath samples. If it's out of calibration, it won't work. When you open the lid and turn it on, if it's out of calibration you can't even use it.
Q. And that was not the case here?
A. Correct; yes.
Q. Okay. Did you hand something to Deputy Yaz again? Did you see?
A. It was probably notes from Sergeant Laney of what the arrest time was and the arrest location.
Q. Okay. And those are also input?
A. Yes.
So there, the one hundred twenty seconds had gone by, so this is -- I have him stand up and complete the second breath sample.
Q. Okay. All right. And that's done at 8:50:59 -- approximately 8:51; is that right? That's where we are; at least the lower right-hand portion of the screen is that --

A. Yes.

THE COURT: What's the number on the lower portion of the screen?

THE WITNESS: 8:50:59.

Q. (By Mr. Pizzuti) And again, you are not a hundred percent certain that that is exactly what is correct?

A. The clock on the machine -- the machine has its own clock. The cameras have their own clocks. It is may not be exactly matched up.

Q. Okay. The camera's clock -- is there a clock that is a part of the Drager 7510?

A. Yes.

Q. Okay. And that keeps time as well?

A. Yes.

Q. Okay. All right. So this is the second breath test?

A. Yes.

Q. All right. Again, did you get a sample that indicated to you that there was a deep lung breath sample was given to you?

A. Yes.

Q. And how do you know that?

A. Because the machine was making the tone and then it stopped, and then the second reading came up on the screen.

Q. Okay. The tone, is that like a beep or something?

A. It's a steady tone, and then it will beep once it's collected enough sample.

Q. Okay. So the tone -- is it a tone throughout and a beep at the end?
A. It's a tone throughout, and then it will beep at the end.
Q. All right. So I'm starting it up again. (Video played.)
And did you get a second reading?
A. Yes.
Q. And what was that reading?
A. .09.
Then once you have two good readings, you take the mouthpiece and throw it away. There's a cradle inside the box that you set in there. And once you set it in there, it will give you -- it will print out a receipt of all Mr. Robben's information, the readings of the two breath samples, and the times of the two breath samples.
THE COURT: When you're talking about setting "it" in, you're talking about that machine itself?
THE WITNESS: Yes; the handheld portion of the device.
THE COURT: All right. Thank you.
Q. (By Mr. Pizzuti) I'll ask you take a look at People's 5. Do you recognize that?
A. Yes.
Q. What is that?
A. That is the receipt that prints out from the machine once you place it in there; the handheld portion.
Q. And are the two readings that you stated before, are

those listed on there?
A. Yes.
Q. Okay. Is there any reading in between?
A. No.
Q. Did you sign off on any portion of that?
A. Yes; at the bottom.
Q. Okay. What was that?
A. That I was the operator of the device.
Q. Okay. And then is there another portion that talks 15 minutes?
A. There is a question on the device has he been observed for 15 minutes? You just click the button "yes" and it will print out on the bottom.
Q. And are you basing that 15-minute time just what's on the video, or this time plus the time that you previously --
A. My entire contact, or when I arrived on scene at 8:15.
Q. Okay. And did you actually take notes on the lower left-hand corner of this -- of People's 5?
A. I did; yes.
Q. And that's your handwriting?
A. Yes.
Q. And what did that indicate to you?
A. I just wanted to -- I notated that when I arrived on scene as a cover officer at 20:15, when I went en route to the jail at 20:36, and I arrived at the jail at 20:40.
Q. Okay. And this is about approximately 10 minutes

after that?
A. Yes.
Q. Okay. All right. So did you perform that test in conformity with your training?
A. Yes.
Q. And those results that you got, that's typical or standard that you're going to take two samples pursuant to your training?
A. Yes.
Q. And that included the 15-minute waiting period --
A. Yes.
Q. -- prior to first -- okay.
Apart from -- could you explain sometimes you'll have arrests that you do only and you're the only officer; correct?
A. Not likely unless the other units are busy. Usually if there is going to be an arrest, you have a cover officer with you.
Q. Okay. Sometimes you have written reports, though, where you have to determine whether or not a person was under the influence and why they are under the influence?
A. Yes.
Q. Okay. But that was not the case in this case; correct?
A. Yes.
Q. Okay. Do you remember much about this incident apart from reviewing the video and looking at reports? Is it familiar to you in your mind?

A. Yes.
Q. And do you remember Mr. Robben, just how he appeared to you at the time that you had him in the vehicle and then what you saw of him here?
A. Yes.
Q. What did you -- how would you describe him?
A. When I gave the test to Mr. Robben, he was cooperative and polite. He did have an odor of alcohol on his breath when I spoke to him, and by looking at his eyes they were bloodshot and watery, glassy.
Q. And are all those consistent with a person that you've previously been familiar with that were under the influence of alcohol?
A. Yes.
Q. Okay. All right.

MR. PIZZUTI: I have nothing further.

THE COURT: All right. Rather than cut into your cross-exam, we'll go ahead and take our 15-minute break now so we don't interrupt your cross-examination.

So we'll take about 15 minutes. During your break, you're admonished that it's your duty not to converse among yourselves or anyone else on any matter connected with the trial, or to form or express any opinion thereon until the matter is finally submitted to you. We'll see you at five or so after 10:00.

(Whereupon a recess was taken.)

THE COURT: Everybody has returned to their seats. Mr. Spicer, whenever you're ready.

MR. SPICER: Your Honor, we actually stipulated that Mr. Pizzuti could re-open just to show about a minute longer of the video.

THE COURT: Okay.

MR. PIZZUTI: So we'll start it up again at 8:51:09.

(Video played.)

Can I just re-open to fill up the time?

THE COURT: Sure.

BY MR. PIZZUTI:

Q. So you're sitting down now, and there's a sheet. Is that the booking form we looked at earlier?

A. Yes.

Q. And you also had the printout. That was the printout from the device; correct?

A. Yes.

Q. Now, you basically finished with Mr. Robben, and you don't have any additional contact to your knowledge?

A. Not that I can recall unless they bring him back out. He's getting a medical screening.

Q. Okay. And that's done in a separate area?

A. Yeah; there is a separate room.

Q. Okay. Nothing past this point?

A. I don't think so.

Q. Okay. So I'm going to stop it at 8:53 and 40 seconds.

THE COURT: And I take it, just for edification of the jury so that the attorneys can focus in their questions and stop and start the videos, they download

this information on a disk to a hard drive. And as I indicated, the attorneys are sharing Mr. Spicer's projector and hard drive today. When you go into the jury room to deliberate, you'll have the actual DVD, not Mr. Spicer's computer and projector. And then there's a DVD player and a TV monitor in there that you'll be able to play if you wish to. And as I understand it, counsel will be stipulating that the information that's displayed on the hard drive is consistent with what's on the actual disks.

MR. PIZZUTI: That's correct, Your Honor.

MR. SPICER: Your Honor, that would be the stipulation that the defense is prepared to enter into. The one catch is these are not DVD videos. They are computer files, so there will need to be something in the jury room for them to be able to play them.

THE COURT: So in other words, these recordings come through computers or cameras in the various places. You heard Sergeant Laney talk about the camera on his motorcycle. This is a recording device that's in the jail. It's ultimately downloaded from wherever it comes from onto a computer. It gets conveyed to the District Attorney's Office, and in the process of filing a case and preparing it, the copies of the videos are provided to the defendant and/or defense counsel.

Okay. You may proceed.

MR. SPICER: Thank you, Your Honor.

/ / / / /

CROSS-EXAMINATION

BY MR. SPICER:

Q. Good morning, Officer.

A. Good morning.

Q. So I heard you say when Mr. Pizzuti was asking you, that the jail calibrates the Drager 7510; is that correct?

A. Yes.

Q. And it has to be tested for accuracy, I believe, every two weeks; is that right?

A. Every ten days or a hundred and fifty uses.

Q. How is it tested?

A. I don't know.

Q. You -- you don't have anything to do with the test?

A. I've never done it; no.

Q. Thank you. You said you were driving a Chevy Tahoe on August 20, 2014?

A. Yes.

Q. Is that your standard patrol vehicle?

A. Yes; it's the one that I drive. It's the only one I fit in.

Q. Is that equipped with any type of video or audio recording?

A. Yes.

Q. Were you recording when you arrived at the scene of this traffic stop?

A. No.

Q. Any particular reason why not?

A. The recording comes on when you turn on your lights and -- code three lights -- it automatically comes on. When I arrived on scene, I didn't turn my lights on. I parked in a safe area and was there as the cover officer for Sergeant Laney.
Q. Were you parked on Montreal or did you turn right into the Van Sickle Park as well?
A. I believe I was on Van Sickle Park, but I can't remember exactly where I parked.
Q. Fair enough. You were the officer that was responsible for conducting the 15-minute observation period; right?
A. Yes.
MR. PIZZUTI: Objection; object as assumes facts not in evidence that there can only be one officer with that objective.
THE COURT: All right. Well, I'm not sure -- I'm not sure I understand the objection.
MR. PIZZUTI: The objection is that it's misleading under 352 that there is only one officer if you're going to say that only one officer is responsible. You can have a combination of officers.
THE COURT: Why don't you rephrase the question.
Q. (By Mr. Spicer) Did you conduct the 15-minute observation in this case?
A. Yes.
Q. Was it just your observation or were other officers involved in that observation?

A. Other officers were involved.
Q. And were those the sheriff's deputies that are in the video?
A. For part of it; yes.
Q. And what other officers were involved with the 15-minute observation period?
A. Sergeant Laney; I don't know if he had the full 15 minutes, but however long he was at the traffic stop for.
Q. Well, we saw on the video that the first test the time stamp in the video was 8:48 p.m.; correct?
A. Yes.
Q. And do you still have the breath test receipt up there?
A. I don't. But I believe the first one was at 8:47.
Q. Okay. So those two times are pretty close; right?
A. They are pretty close. They might not be exactly the matched up.
Q. Within a minute of each other though; right?
A. Correct.
Q. And let's take the earlier of the two times, 8:47. When was the 15 minutes prior to that?
A. The 8:33, I think. I'm not good with math.
THE COURT: 8:32.
MR. SPICER: I'm not good either.
THE WITNESS: Plus you're not put on the spot.
Q. (By Mr. Spicer) So do you know at that time, 8:32, if you are already en route to the jail?
A. I was not.

Q. You're not; you were still on scene?
A. Correct.
Q. So that's where Officer Laney was still part of the 15-minute observation period?
A. He was still on the scene; yes.
Q. And did you -- well, let me ask this. The period of observation is also called an observation deprivation period. Have you heard that term?
A. I've heard of the observation part, never the deprivation.
Q. You said during your testimony a moment ago that what you're -- what are you doing during the 15 minutes?
A. Of observation?
Q. Mm-hmm.
A. Make sure he doesn't eat, drink, smoke, vomit, regurgitate.
Q. So you're depriving him of certain things basically; food, drink, not smoke if he wants to smoke; correct?
A. I wouldn't use deprive, but yes.
Q. Okay. Did you discuss with Sergeant Laney whether he observed Mr. Robben eat, drink, smoke, vomit, or regurgitate?
A. I can't recall.
Q. Okay. Did you discuss with any of those deputies in the jail whether Mr. Robben ate, drank, smoke, regurgitated, or vomited?
A. No.
Q. Okay. So when you're in the jail then, although

they're a part of the 15-minute observation period, you don't really know what they've observed; correct?
A. The jail staff?
Q. That's correct.
A. Correct.
Q. Okay. So based on those facts, it was really you who was conducting the 15-minute observation; correct?
A. Yes.
Q. Okay. And a portion of this 15-minute observation was while you were driving to the jail; correct?
A. Yes.
Q. And as police officer, you have a lot of tasks to do when you're driving your patrol vehicle; correct?
A. Yes.
Q. You're monitoring your radio; right?
A. Yes.
Q. And do you have an in-car computer system?
A. Yes.
Q. And are you interacting with that computer during part of -- as part of your regular patrol duties?
A. At times; yes.
Q. Do you use that computer to alert the jail that you have an arrestee en route?
A. No.
Q. Do you use your radio?
A. Yes.
Q. Okay. And you watch the road while you're driving; right?

A. Of course.
Q. Okay. And Mr. Robben is sitting behind you; right?
A. Yes.
Q. Okay. Are you also, in that 15-minute observation period, noting whether an arrestee has belched or burped?
A. Yes.
Q. Okay. I just didn't hear you say those earlier, so I just wanted to be clear.
A. I said regurgitate.
MR. PIZZUTI: Regurgitate. Belch does not include -- may we approach?
THE COURT: Yes.
(Bench conference on the record.)
MR. PIZZUTI: He's misleading the officer. Belch and burp is not included in Title 17.
MR. SPICER: I just asked him --
MR. PIZZUTI: I don't want him to be misled, and see, he's asking about different things.
MR. SPICER: I'm not trying to -- I'll withdraw the question.
(Bench conference concluded.)
THE COURT: Okay. The question is withdrawn. The jury is directed to disregard the answer.
You can rephrase your question, Mr. Spicer.
MR. SPICER: Thank you, Your Honor.
Q. (By Mr. Spicer) Officer Wilson, that video we just watched, Mr. Robben entered the room on the time stamp there at 8:45; correct?

A. Yes.
Q. Exited the room at 8:52; correct?
A. Yes.
Q. And that was -- when he exited the room, that was subsequent to him completing the two breath tests; correct?
A. Yes.
Q. So another math question, we saw him in the room for a total of seven minutes in that video; correct?
A. Yes.
Q. Okay. And during that seven minutes, is it fair to say that you're not keeping visual contact on him?
A. I'm in the same room as him. As far as me staring at him the entire time, obviously probably not.
Q. Okay. Well, when he first came in, he's standing on the red line where he's searched; right?
A. Correct.
Q. And his back is facing toward the middle of the room?
A. Yes.
Q. And you're at the yellow box, the Drager 7510; right?
A. Yes.
Q. And you're facing that box with your back to the middle of the room?
A. Yes.
Q. So at this point, you guys have your back to each other; right?

A. Correct.
Q. And let's talk about what we saw with Mr. Robben in the video. Did you see him walk around?
A. Which video do you mean?
Q. The video we just watched here in court. I can see if I can back --
A. No. I got it.
Q. He has to walk from where he's searched over to the bench; right?
A. Yes.
Q. And he has to stand up and perform the breath test; right?
A. Yes.
Q. Does he look pretty steady on his feet to you there?
A. Yes.
MR. PIZZUTI: I'm going to object. The video speaks for itself. He can have an independent recollection that was maybe refreshed by the video, but --
THE COURT: Yeah; I mean, you can ask him about his independent recollection, but what's on the video does speak for itself. Sustained.
Q. (By Mr. Spicer) Sure. Officer, do you have an independent recollection of being in that jail booking room?
A. Yes.
Q. Do you recall if Mr. Robben was steady on his feet?
A. He was.
Q. Okay. And do you recall the jail staff asking him

to take off his shoes and socks?
A. Yes.
Q. And do you recall them providing some sort of footwear to him?
A. They usually give back his socks, I believe; I can't recall.
Q. I'm going to queue it up. Just one second here. All right. Just one moment. I'm going to queue it up here. (Video played.)
All right. Officer, I'm at 8:49 and 32 seconds, do you know this -- I'm using the mouse to point -- this deputy's name?
A. I don't recall his name.
Q. Okay. But it looks like there's a sheriff deputy interacting with Mr. Robben here?
A. Yes.
Q. What's Mr. Robben doing right now?
MR. PIZZUTI: Objection; the video speaks for itself. Also he has an --
THE COURT: If he has an independent recollection, he can testify to that, but the video speaks for itself.
Q. (By Mr. Spicer) Officer, do you recall this interaction between jail staff and Mr. Robben?
A. Just from what I see on the video.
Q. Okay. Thank you. I'll move on.
Officer, does your training tell you that you need to be in constant visual observation of a subject during the 15-minute observation period?

A. I believe Title 17 says constant observation; yes.
Q. Okay. And were you in constant visual observation of Mr. Robben?
A. No.
Q. Okay. And how long have you been using the Drager Alcotest 7510?
A. Since November 3rd, 2011.
Q. Okay. Are you aware of any way an operator could manipulate the results?
A. An operator?
Q. Yeah; operator of the breath machine?
A. No.
MR. SPICER: All right. Thank you, Officer. I have nothing further.
THE COURT: Just to be clear, we've referenced the sheriff personnel on the video who are in uniform there as sheriff's deputies. And just to be clear, sheriff's deputies are folks such as Deputy Klang. The folks who work in the jail are actually correctional officers. Basically just a different job classification.
Okay. Mr. Pizzuti?

REDIRECT EXAMINATION

BY MR. PIZZUTI:
Q. Did you ever at any time see Mr. Robben regurgitate anything?
A. No.
Q. See him burp anything?
A. No.

Q. Belch?
A. No.
Q. Okay. Do you know that -- I suppose that could have happened in the past in some of your prior arrests for driving under the influence?
A. Yes.
Q. So you are familiar with that -- what that would do and what that would alert in your mind?
A. Yes.
Q. And that did not happen in the this case?
A. Not to my observation.
MR. PIZZUTI: Thank you.
THE COURT: Nothing further?
MR. SPICER: Just --
THE COURT: No. I'm asking; nothing further?
MR. PIZZUTI: Nothing further.
THE COURT: Okay. Sorry. Mr. Spicer, go ahead.
MR. SPICER: Thank you.

RECROSS-EXAMINATION

BY MR. SPICER:
Q. Officer, prior to conducting the breath test, did you ask Mr. Robben if he had vomited or regurgitated?
A. I can't recall if I did or not. I generally ask them, but in this case I can honestly say I don't remember.
MR. SPICER: Thank you. I have nothing further.
THE COURT: Okay. Anything further, Mr. Pizzuti?
MR. PIZZUTI: No, Your Honor.

Testimony from Officer Cory Wilson shows no 15 minutes of continues observation pursuant to Title 17.

18 Q. And basically, describe what it looks like and how
19 you perform a test,
20 A. It s a yellow box. You open it and it has a series
21 of questions.You scan the suspect's driver's license.
22 If it's a California driver's license, it will upload all
23 the information and you verify that. **It will ask you if**
24 he was observed for 15 minutes, and then you put a
25 mouthpiece on it. It will run through a series of tests
26 to make sure it's calibrated. If it s not calibrated, it
27 won't even work, It will tell you without calibration it
28 won't work, If it does work, it will pop up and say

Page 183 VAN SSA HUESTIS, CSR NO. 13997

1 breath test one, and you perform two breaths that are two
2 minutes apart,
3 Q. Okay. At least two minutes apart is that --
4 A. Yes.
5 Q. Okay. And is there any changing mouth devices or

anything?

A. Not between the two tests; no,

Q. And so after you receive that training, and you had a chance as a patrol officer to use that device?

A. Yes.

Q. Approximately how many times have you used it?

A. Approximately 60 to 70 times in my career.

Q. And that may be for more than just a DUI arrest; right? Like a person who is drunk in public or something?

A. Correct.

Q, Potentially you could have used for something else?

A. Correct. Sometimes we will bring people to jail that are arrested for public intoxication and the jail staff would like a ballpark figure of where they're at because they can't be released unless they're under .08.

Q. You mentioned the 15 minutes. Is that something where typically you sit them down and you stare at them for 15 minutes, or how do you normally do that?

A. Usually when I come in contact with a person, whether it's my own traffic stop or someone else's, begin my observation period then.

Page 184 VANESSA HUESTIS, CSR NO. 13997

Q. Okay. And that can include when the person is at an arrest scene?

A. Yes.

Q. Perhaps even when a person is taking field sobriety tests if, for example, if it's your own arrest?

A. Correct.

Q. And you mentioned before that the 15 minutes is to determine whether or not they do what?

A. Eat anything, drink anything, smoke, chew gum, put chewing tobacco in their mouth, vomit, or regurgitate.

Q. Okay. And those are the things you're trained to look for?

A, Yes.

Q. So on August 20th of last year, when you assisted Sergeant Laney in a DUI investigation, why don't you explain how you came onto the scene and what happened

once you were on the scene.

I came upon the scene when he requested a cover unit. I arrived on scene at about 8:15. He was already doing his DUI investigation, I arrived as a cover officer. I let him complete his DUI investigation. My duties were to make sure he was safe from oncoming traffic, oncoming pedestrians coming up, anything like that. And again, just if he was to get in an altercation with the suspect, that's why I'm there.

Q, Okay, And so did you have much of a chance to observe Mr. Robben's demeanor or -- at the time when you were out at the scene?

Page 185 VANESSA HUESTIS, CSR O. 13997

A. When arrived, Sergeant Laney explained to me he was initially kind of uncooperative. He had gotten out of his car, and he had actually had to put him in handcuffs for a little bit to get him to calm down. **When I arrived, he appeared to be fairly cooperative with Sergeant Laney,**

Q. And he was at least cooperative with you?

A. Yes.

Q. And during the time that you were with him, would you explain what you did as far as were you the person who handcuffed him, and did you bring him to your vehicle? Just kind of explain that,

A. Yes; believe Sergeant Laney handcuffed him, actually can't remember. He was placed in my vehicle, and transported him to the jail.

Q. What did you do once you got to the jail?

A. Driving to the sally port the jail staff will take him out of the vehicle, They'll search him once he gets there, sit him down, and begin the booking process. And usually during the booking process is when I get his license, open the machine, make sure it's calibrated, and start the procedure for the breath test,

Q. Okay. Certain information taken down in a booking process?

A. Yes.

Q. Okay. I'll just ask you to take a look at what's been marked as People's Exhibit 4. Are you familiar with

28 this document?

1 A. Yes; that's a booking sheet.

2 Q. And the booking sheet is something where you just

3 take down general information on a person?

4 A. Yes; it s all their general information. Their

5 height, weight, Social Security Number, driver's license

6 number, address, and what charges they are there for.

7 Q. Okay. And now, you did not write an arrest report

8 as part of this; correct?

9 A. No.

10 THE COURT: No, that's not correct, or no, you

11 didn't write a report?

12 THE WITNESS: I'm sorry. No, I didn't write a

13 report.

14 MR. SPICER: Can we just hold one second while I

15 start the machine?

16 THE COURT: Oh, sure, The attorneys are sharing

17 Mr. Spicer's projector and information that has been

18 scanned and put in his computer for display on the

screen,

MR. SPICER: I just can't listen to questions at the same time.

THE COURT: I understand. Technology is great, but it s not always seamless

O. (By Mr. Pizzuti) Okay. I'd ask you to -- let me start this up. I'm trying to get a number indicated of where we start. Oh, thank you.

On the lower right-hand portion of the screen, it says 8:44:57 p.m. I just ask you to take a look at this.

Page 186 VANESSA HUESTIS, CSR NO, 13997

I'll play it for a second and then I'll stop it, (Video Played.)

Now, I'll ask you while we're waiting for this thing to get going, is there a camera system that's at the jail that you're aware of?

A. Yes,

0. Okay. And you've seen the video for it before?

A. Yes.

Q. And on occasion you've seen --

THE COURT: It looks like the camera is under the influence.

MR. SPICER: Can we just take a short technical break here?

THE COURT: Sure. So if anybody needs to step out and use the restroom. We'll take a break about 10:00 o'clock, but if you want to stretch, you're admonished not to discuss the case or anything with anyone else during the short break. But if you need to get some more coffee or use the restroom, you're welcome to do that.

(Brief recess taken.)

THE COURT: Okay. We have success.

MR. PIZZUTI: All right. And again for the record, this is a portion contained in People's 2, but I believe it's incorporated into a hard disk.

THE COURT: Everyone can see okay? And you're okay with the lights being off over there? Okay.

28 MR. PIZZUTI: And so this is information that's

1 contained on the hard drive. It appears in People's 2,

2 and I believe there has been a stipulation.

3 THE COURT: Okay. Thank you.

4 Q. (By Mr. Pizzuti) Okay. (Video played.) Looking at

5 8:45:12 in the lower right-hand corner, do you know that

6 to be the exact time, or is it -- does that comport with

7 your

8 A. That seems about right. I believe in the report

9 over the radio, was at the jail approximately 8:40.

10 So.

11 Q. So about that?

12 A. Pretty close.

13 0. Okay. And looking at the -- what you see before you

14 on the screen, are you familiar with that?

15 A. Yes.

16 O. Could you describe what that is and what we re

17 looking at?

18 A. That's the booking area

19 THE COURT: And if you want to get out and
20 physically point at what you're talking about, you can.
21 THE WITNESS: This is the booking area. We'll walk
22 in through here from the sally port. The jail staff can
23 come out through here. This is where they search people
24 in that area.
25 Q. (By Mr. Pizzuti) Okay. And for the record, you're
26 pointing to an area that's by a grated door; to the left
27 of that?
28 A. Yeah; and these two computers here are used to fill

Page 189 VANESSA HUESTIS, CSR O. 13997

1 out the booking sheet, and the yellow box here is the
2 Drager 7510.
3 Q. And the 7510 is the breath machine? The breath
4 instrument that you
5 A. Yes.
6 Q. that you are looking at?
7 A. Yes.
8 All right. Thank you. I'm going to start this up.
9 Okay. Right now we have five people in there. Do you

recognize any of those individuals?

A. Yes.

Q. And who do you recognize, f anyone, in that picture?

A. I believe that's Deputy Yaz.

THE COURT: Why don't you -- you can go ahead and touch the screen.

THE WITNESS: Here; Deputy Yaz,

Q. (By Mr. Pizzuti) Now, that's from a different agency; correct?

A, That's El Dorado County Sheriff; yes.

Q. Okay. And they run the jail?

A. Yes.

Q. Okay. When you book people into the jail, that's done through the sheriff's office?

A. Yes.

Q. Okay. So Deputy Yaz is the female up front?

A. Yes; I can't recall who else is there.

Okay. Who else do you see in -- depicted in the picture?

2 A. Myself and Mr. Robben.

3 Q. Where are you?

4 A. Right here.

5 Q. Okay. And in the darker uniform, and then

6 Mr. Robben?

7 A, Yes.

a THE COURT: Point out Mr. Robben. Officer Wilson,

9 point out where Mr. Robben is looking.

10 MR. PIZZUTI: Thank you.

11 Q. (By Mr. Pizzuti) And for the record, guess

12 Mr. Robben appears to be by that open door, and you

13 appear to be at the upper right-hand portion of the

14 screen at 8:45:21 I'll start it up again, and you can

15 have a seat, (Video played,)

16 And can you tell us basically -- as this is playing,

17 could you kind of narrate what is going on as you best

18 recall it, looking at this if it refreshes your

19 recollection.

20 A. So that's the spot where the jail staff will search

21 Mr. Robben again. They'll unhandcuff him, and he'll come

22 sit on the bench in front of the deputy on the bottom.
23 And that's me opening up, starting the process of the
24 breathalyzer, make sure s calibrated, you know,
25 inputting Mr. Robben's information.
26 Q. Okay. You have to type something in?
27 A. At the time, no. He had his driver's license, so if
28 you swipe it, it will upload all the information in the commuter.

Page 191 VAN SSA HUESTIS, CSR NO. 13997

Q. Is that the information on the booking sheet we
3 just --
4 A. Yes,
5 Q. You have to put your own name in as well?
6 A. Yes. When you have an operator ID card, whenever
7 you swipe it, it will put your name into it.
8 Q. Are you familiar with the booking process of what's
9 being done with Mr. Robben?
10 A. Yes.
11 0, Is that normally done by you or by jail staff?
12 A. Always by jail staff,
13 Q. Okay. And what are you doing? It looks like you

14 put a tube or something?
15 A. I just put an actual mouthpiece tube on top of the
16 instrument.
17 Q. Where did you get that tube from?
18 A. They are located in the bright yellow box inside of
19 a plastic wrapper you have to open.
20 Q. So they're kind of medically sealed or something?
21 A. They're sealed; yes.
22 Q. And so every time you do that do you take out a new
23 mouthpiece?
24 As Yes.
25 O. And in this case, you did? You took out a new
26 mouthpiece before you tested Mr. Robben; is that fair?
27 A. Yes.
28 Q. All right. I'm starting up again at 8:46:41 What

1 are you handing to that Deputy Yaz in the lower
2 right-hand corner?
3 A. Mr. Robben's driver's license with all his
4 information so she could fill out the booking sheet.

Q. Okay. This is a typical process for anyone who is being booked in the El Dorado County Sheriff's Office?

A. Yes,

Q. I mean the jail. Now, this time we're looking at here, you've also had the time in between going to from the scene of arrest and bringing Mr, Robben to the station; is that correct?

A. Yes,

Q. Okay. Is he alone with you or were there any other persons in the vehicle?

A, Just us two.

Q. Okay, And is he in a vehicle -- what type of vehicle was he in?

A. A Chevy Tahoe.

Q. How were those configured?

A. He sits in the backseat.

Q. Okay. Backseat. Separated from the front?

A. There is a partition cage.

Q. There's a cage? Is it a solid window or just a cage?

25 A. There's window on the sides; the cage is in the
26 middle.
27 0. So are you free to speak to a person in the back if
28 you need to?
Page 193 VANESSA HUESTIS, CSR NO. 13997
1 A. Yes.
2 Q. Okay. Can you hear what's going on in the back of
3 the vehicle?
4 A. Yes.
5 Q. Now, I'm stopped at the 8:48:10, and ask you to look
6 at the screen and see if you can recall what was going
7 on. Do you recall at this point what was happening?
8 A. Yes; I believe I was preparing Mir , Robben for the
9 first breath test.
10 Q. And do you have to explain what you're doing in the
11 test prior to him taking it?
12 A. Yes; there are a set of instructions; take a deep
13 breath and blow kind of a long, steady. There's a tone
14 on the machine that if it s making a tone, it means
15 you're blowing correctly. And when you're -- the machine

has captured enough sample, it will beep and stop, and that's when you can stop.

Q. Okay, You've used this instrument before you said?

A. Yes.

Q. Have you had instances where people blow into it and you don't hear that sound?

A. Yes.

Q. What does that indicate to you?

A. They aren't blowing hard enough or too hard. If you blow too hard, it will have an error message.

Q. Okay. So in between that deep, long sample, blowing too hard and blowing not hard enough, are you able to tell from the instrument when that happens based on what the instrument is telling you?

Page 194 VANESSA HUESTIS, CSR NO. 13997

A. Yes.

Q. Now, in this case-- I'll start it again 8:48:10.

(Video played.) Okay. Right here; this is at 8:48:23.

It's hard to tell what's going on. Can you explain?

A. Looks like I put the machine up to his mouth and had

him give his first breath sample.

Q. Okay. All right. So after you obtained that first sample, what was the -- was there a reading or was there a

A. The screen will display a reading, which is .09.

Q. Does that happen right off, or does it take a little while to --

A, It takes approximately three to four seconds, then it pops up on the screen. Then it will have a hundred-and-twenty-second countdown before you can staTt the next breath test.

Q. Is that within the machine or is that something you're doing independently with

A. It s on the machine. On the display itself it will say 120. It will actually count down to make sure you have two minutes in between samples.

Q, All right. So I'll keep it playing at this point. And again, you testified that there was a may of telling whether or not the breath sample was correctly taken?

A. It wouldn't register a .09 unless it was done

27 correctly.

28 O. This instrument that you're working with, is it

1 maintained by the jail?

2 A. Yes.

3 Q. Is it also maintained by the Department of Justice

4 to your knowledge?

5 A. I don't know if they have to do periodic

6 calibrations with the DOJ, but I know the jail staff is

7 trained on it and calibrate it.

8 Q. As far as accuracy tests, are you familiar with that

9 procedure?

10 A. It has to be done every ten days or hundred and

11 fifty breath samples. If it's out of calibration, it

12 won't work. When you open the lid and turn it on, if

13 it's out of calibration you can't even use it.

14 Q. And that was not the case here?

15 A. Correct; yes.

16 Q. Okay, Did you hand something to Deputy Yaz again?

17 Did you see?

18 A. It was probably notes from Sergeant Laney of what
19 the arrest time was and the arrest location.
20 Q. Okay. And those are also input?
21 A. Yes,
22 So there, the one hundred twenty seconds had gone
23 by, so this is -- I have him stand up and complete the
24 second breath sample.
25 Q. Okay. All right. And that's done at 8:50:59
26 approximately 8:51 ; is that right? That's where we are;
27 at least the lower right-hand portion of the screen is
28 that

1 A Yes,
2 THE COURT: What's the number on the lower portion
3 of the screen?
4 THE WITNESS: 8:50:59,
5 Q. (By Mr. Pizzuti) And again, you are not a hundred
6 percent certain that that is exactly what is correct?
7 A. The clock on the machine -- the machine has its own
8 clock. The cameras have their own clocks. It is may not

be exactly matched up.

Q. Okay. The camera's clock -- is there a clock that is a part of the Draper 7510?

A. Yes,

Q. Okay. And that keeps time as well?

A. Yes.

Q. Okay. All right, So this is the second breath test?

A. Yes.

Q. All right. Again, did you get a sample that indicated to you that there was a deep lung breath sample was given to you?

A. Yes.

Q. And how do you know that?

A. Because the machine was making the tone and then it stopped, and then the second reading came up on the screen.

Q. Okay. The tone, is that like a beep or something?

A. It s a steady tone, and then it will beep once it s collected enough sample.

0. Okay. So the tone -- is it a tone throughout and a beep at the end?

A. It's a tone throughout, and then it will beep at the end.

Q. All right. So I'm starting it up again. (Video played.)

And did you get a second reading?

A. Yes.

Q. And what was that reading?

A. .09.

Then once you have two good readings, you take the mouthpiece and throw it away. There's a cradle inside the box that you set in there. And once you set in there, it will give you -- it will print out a receipt of all Mr. Robben's information, the readings of the two breath samples, and the times of the two breath samples.

THE COURT: When you're talking about setting t" in, you're talking about that machine itself?

THE WITNESS: Yes; the handheld portion of the

20 device.

21 THE COURT: All right. Thank you.

22 Q. (By Mr. Pizzuti I'll ask you take a look at

23 People's 5, Do you recognize that?

24 A. Yes.

25 Q. What is that?

26 A. That is the receipt that prints out from the machine

27 once you place it in there; the handheld portion.

28 Q. And are the two readings that you stated before, are

I those listed on there?

2 A. Yes.

3 Q. Okay. Is there any reading in between?

4 A. No.

5 Q. Did you sign off on any portion of that?

6 A. Yes; at the bottom.

7 Q. Okay. What was that?

8 A. That I was the operator of the device.

9 Q. Okay. And then is there another portion that talks

10 15 minutes?

A. There is a question on the device has he been observed for 15 minutes? You just click the button "yes" and it will print out on the bottom.

And are you basing that 15-minute time just what's on the video, or this time plus the time that you previously --

A. My entire contact, or when I arrived on scene at 8:15.

Q. Okay. And did you actually take notes on the lower left-hand corner of this -- of People's 5?

A. I did; yes.

0. And that's your handwriting?

A. Yes.

Q. And what did that indicate to you?

A. I just wanted to -- I notated that when I arrived on scene as a cover officer at 20:15, when I went en route to the jail at 20:36, and I arrived at the jail at 20:40.

Q. Okay. And this is about approximately 10 minutes

Page 199 VANESSA HUESTIS, CSR NO. 13997

after that?

A. Yes.

Q. Okay. All right. So did you perform that test in conformity with your training?

A. Yes.

Q. And those results that you got, that's typical or standard that you're going to take two samples pursuant to your training?

A. Yes.

Q. And that included the 15-minute waiting period --

A. Yes.

Q. prior to first -- okay,

Apart from -- could you explain sometimes you'll have arrests that you do only and you're the only officer; correct?

A. Not likely unless the other units are busy. Usually if there is going to be an arrest, you have a cover officer with you.

Q. Okay. Sometimes you have written reports, though, where you have to determine whether or not a person was under the influence and why they are under the influence?

22 A. Yes.

23 G. Okay. But that was not the case in this case;

24 correct?

25 Yes.

26 Q. Okay. Do you remember much about this incident

27 apart from reviewing the video and looking at reports?

28 Is it familiar to you in your mind?

Page 200 VAN SSA HUESTIS, CSR NO. 13997

1 A. Yes.

2 Q. And do you remember Mr. Robben, just how he appeared

3 to you at the time that you had him in the vehicle and

4 then what you saw of him here?

5 A. Yes,

6 Q. What did you -- how would you describe him?

7 A. When I gave the test to Mr. Robben, he was

8 cooperative and polite. He did have an odor of alcohol

9 on his breath when I spoke to him, and by looking at his

10 eyes they were bloodshot and watery, glassy.

11 Q. And are all those consistent with a person that

12 you've previously been familiar with that were under the

influence of alcohol?

A. Yes.

Q. Okay. All right.

MR. PIZZUTI: I have nothing further.

Q. Fair enough, You were the officer that was responsible for conducting the 15-minute observation period; right?

A. Yes.

MR. PIZZUTI: Objection; object as assumes facts not in evidence that there can only be one officer with that Objective,

THE COURT: All right. Well, I'm not sure -- I'm not sure understand the objection.

MR. PIZZUTI: The objection is that it's misleading under 352 that there is only one officer if you're going to say that only one officer is responsible. You can have a combination of officers.

THE COURT: Why don't you rephrase the question.

O. (By Mr. Spicer) **Did you conduct the 15-minute**

25 observation in this case?

26 A. Yes.

27 Q. Was it just your observation or were other officers

28 involved in that observation?

Page 205 VANESSA HUESTIS, CSR NO. 13997

1 A. Other officers were involved,

2 Q. And were those the sheriff's deputies that are in

3 the video?

4 A. For part of , yes.

5 Q. And what other officers were involved with the

6 15-minute observation period?

7 A. Sergeant Laney; I don't know if he had the full 15

8 minutes, but however long he was at the traffic stop for.

9 Q. Well, we saw on the video that the first test the

10 time stamp in the video was8:48 p.m.; correct?

11 A. Yes.

12 Q. And do you still have the breath test receipt up

13 there?

14 A. I don't. But I believe the first one was at 8:47.

15 Q. Okay. So those two times are pretty close; right?

16 A, They are pretty close. They might not be exactly
17 the matched up.
18 Q. Within a minute of each other though; right?
19 A. Correct.
20 Q. And let's take the earlier of the two times, 8:47.
21 When was the 15 minutes prior to that?
22 A. The 8:33, I think. I'm not good with math,
23 THE COURT: 8:32.
24 MR. SPICER: I'm not good either.
25 THE WITNESS: Plus you're not put on the spot.
26 Q. (By Mr. Spicer) So do you know at that time, 8:32,
27 if you are already en route to the jail?
28 A. I was not.

Page 206 VAN SSA HUESTIS, CSR NO. 13997

1 O. You're not; you were still on scene?
2 Correct.
3 Q. So that's where Officer Laney was still part of the
4 15-minute observation period?
5 A, He was still on the scene; yes.
6 Q. And did you-- well, let me ask this. The period of

observation is also called an observation deprivation period. Have you heard that term?

A. I've heard of the observation part, never the deprivation.

Q. You said during your testimony a moment ago that what you're-- what are you doing during the 15 minutes?

A. Of observation?

Q. Mm-hmm.

A. Make sure he doesn't eat, drink, smoke, vomit, regurgitate.

Q. So you're depriving him of certain things basically; food, drink, not smoke if he wants to smoke; correct?

A. I wouldn't use deprive, but yes.

Q. Okay. Did you discuss with Sergeant Laney whether he observed Mr. Robben eat, drink, smoke, vomit, or regurgitate?

A. I can't recall

Q. Okay. Did you discuss with any of those deputies in the jail whether Mr. Robben ate, drank, smoke, regurgitated, or vomited?

A. No.

Q. Okay. So when you're in the jail then, although

they're a part of the 15-minute observation period, you don't really know what they've observed; correct?

A. The jail staff?

Q. That's correct.

A. Correct.

Q. Okay. So based on those facts, it was really you who was conducting the 15-minute observation; correct?

A. Yes.

Q. Okay. And a portion of this 15-minute observation was while you were driving to the jail; correct?

A. Yes.

Q. And as police officer, you have a lot 0f tasks to do when you're driving your patrol vehicle; correct?

A. Yes,

Q. You're monitoring your radio; right?

A. Yes.

Q. And do you have an in-car computer system?

A. Yes.

Q. And are you interacting with that computer during part of -- as part of your regular patrol duties?

A. At times; yes.

Q. Do you use that computer to alert the jail that you have an arrestee en route?

A. No.

Q. Do you use your radio?

A. Yes.

Q. Okay. And you watch the road while you're driving; right?

Page 208 VANESSA HUESTIS, CSR NO. 13997

A. Of course,

Q. Okay, And Mr, Robben is sitting behind you; right?

A. Yes.

Q. Okay. Are you also, in that 15 minute observation period, noting whether an arrestee has belched or burped?

A. Yes.

Q. Okay, I just didn't hear you say those earlier, so I just wanted to be clear.

A. I said regurgitate,

MR, PIZZUTI: Regurgitate. Belch does not include -- may we approach?

THE COURT: Yes.

(Bench conference on the record.)

MR. H M I': He's misleading the officer. Belch and burp is not included in Title 17.

MR. SPICER: I just asked him --

MR. PIZZUTI: I don't want him to be misled, and see, he's asking about different things.

MR. SPICER: I'm not trying to -- I'll withdraw the question.

(Bench conference concluded.)

THE COURT: Okay. The question is withdrawn. The jury is directed to disregard the answer.

You can rephrase your question, Mr. Spicer.

MR. SPICER: Thank you, Your Honor.

Q. (By Mr. Spicer) Officer Wilson, that video we just watched, Mr. Robben entered the room on the time stamp there at 8:45; correct?

A. Yes.

Q= Exited the room at 8:52; correct?

A= Yes.

Q. And that was -- when he exited the room, that was subsequent to him completing the two breath tests; correct?

A. Yes.

Q. So another math question, we saw him in the room for a total of seven minutes in that video; correct?

A. Yes,

Q. Okay. And during that seven minutes, is it fair to say that you're not keeping visual contact on him?

A. I'm in the same room as him. As far as me staring at him the entire time, obviously probably not.

Q. Okay. Well, when he first came in, he's standing on the red line where he's searched; right?

A. Correct.

Q. And his back is facing toward the middle of the room?

20 A. Yes.

21 Q. And you're at the yellow box, the Drager 7510;

22 right?

23 A. Yes.

24 Q. And you're facing that box with your back to the

25 middle of the room?

26 A. Yes.

27 Q. So at this point, you guys have your back to each

28 other; right?

Page 210 VANESSA HUESTIS, CSR NO. 13997

A. Correct.

2 O. And let's talk about what we saw with Mr. Robben in

3 the video. Did you see him walk around?

4 A. Which video do you mean?

5 Q. The video we just watched here in court. I can see

6 if I can back --

7 A. No. I got it.

8 Q. He has to walk from where he's searched over to the

9 bench; right?

10 A. Yes,

Q. And he has to stand up and perform the breath test; right?
A. Yes,
O. Does he look pretty steady on his feet to you there?
A. Yes.
MR, PIZZUTI: I'm going to object. The video speaks for itself. He can have an independent recollection that was maybe refreshed by the video, but --
THE COURT: Yeah; I mean, you can ask him about his independent recollection, but what's on the video does speak for itself. Sustained.
Q. (By Mr. Spicer) Sure. Officer, do you have an independent recollection of being in that jail booking room?
A. Yes,
Q. Do you recall if Mr. Robben was steady on his feet?
A. He was.
Q. Okay. And do you recall the jail staff asking him

to take off his shoes and socks?

A. Yes.

Q. And do you recall them providing some sort of footwear to him?

A. They usually give back his socks, I believe; I can't recall.

Q. I'm going to queue it up. Just one second here. All right. Just one moment. I'm going to queue it up here. (Video played.)

All right. Officer, I'm at 8:49 and 32 seconds, do you know this -- I'm using the mouse to point -- this deputy's name?

A. I don't recall his name.

Q. Okay. But it looks like there's a sheriff deputy interacting with Mr. Robben here?

A. Yes,

Q. What's Mr. Robben doing right now?

MR. PIZZUTI: Objection; the video speaks for itself. Also he has an

THE COURT: If he has an independent recollection, he can testify to that, but the video speaks for itself.

22 Q, (By Mr. Spicer) Officer, do you recall this

23 interaction between jail staff and Mr. Robben?

24 A. Just from what I see on the video.

25 (1, Okay. Thank you. I'll move on.

26 Officer, does your training tell you that you need

27 to be in constant visual observation of a subject during

28 the 15-minute observation period?

Page 212 VANESSA HUESTIS, CSR NO. 13997

1 A. I believe Title 17 says constant observation; yes.

2 Q. Okay. And were you in constant visual observation

3 of Mr. Robben?

4 A. No.

7 Q. Okay. And now, you did not write an arrest report

8 as part of this; correct?

9 A. No.

10 THE COURT: No, that's not correct, or no, you

11 didn't write a report?

12 THE WITNESS: I'm sorry. No, I didn't write a

13 report.

alcohol, and I never knew it had that. But like a really small amount, swish it in my mouth, blow into the instrument, and routinely I'll be somewhere in the .4, .5 BAC which is horribly high. Then our instrument --

Q. And that's .4 not .04?

A. Yes; and that will be 50 -- which is a lethal dose for 50 percent of population is a .5. So, the value I'm getting with a small amount of alcohol is up to in the lethal dose area. So our instruments have an automatic two-minute countdown between breath sample one and breath sample two. And what we're looking at is the dissipation of that alcohol or how it is leaving the oral cavity. So after two minutes, I will blow into the instrument again, and routinely I'm down in the .04, .03 range. So it drops quite rapidly. And it would be easy to see if somebody has a mouth-alcohol situation going on. So we tell them because we don't want that to affect the results that we get in the class. We want that to be more reflective of what's in their body than what's in their mouth.

Q. Is that one of the reasons that they have two tests, two breath tests that are taken as part of Title 17?

A. For evidential? That's part of it. You know, because you want to feel comfortable that the value that you're reporting is a good value. And if you just have one, well what does that tell you? It tells you you've got some alcohol there. If you have two, and they're both within the .02 specifications for that, then that

makes you feel more comfortable that that's what that value really is.
Q. So you said .02 specifications. Is that -- what is that pursuant to?
A. That's in Title 17. For an evidential breath sample to be good, first of all you have to have two breath samples and they have to agree within .02 with each other. If not, than a third breath sample is taken.
Q. Is that like if you have a .08, it could be down as low as an .06 and as high as a .01?
A. Correct.
Q. Okay. And that would still be valid under Title 17?
A. Yes, it would.
Q. Could you explain to the jury what Title 17 is?
A. Title 17 can be found in the California Code of Regulations, and that's essentially what it is; it's regulations governing alcohol analysis for blood, breath, and urine samples. It's not law. It's not these have to be followed strictly like this. They are guidelines, like I stated. And let's say someone doesn't follow all of them to the letter, it doesn't invalidate the results. Because the results are still good.
Q. Let me stop you right there. So is there a Title 17 requirement regarding a 15-minute waiting period?
A. Yes, there is.
Q. And what is that?
A. It's a 15-minute waiting period. It states that the officer must -- and it doesn't say who. It just says an

officer must observe this subject for 15 minutes. And again it's to ensure that we don't have a mouth-alcohol situation. You know, must not smoke, eat, drink, regurgitate, vomited. And a lot of these really have to do with the old school. Title 17 hasn't changed in years and years, and they're trying to update it. And it's more for like the Intoxilyzer 5000, where that instrument had issues with certain other chemicals. Our breath instrument is a fuel-cell instrument, and it only registers alcohol. And so it's less sensitive to issues like smoking cigarettes, or someone who has diabetes and they have elevated acetone, or something like that.

Q. Okay. What if -- so what if it's a situation where you only have a 14-minute waiting period or 13-minute waiting period; if you see results following a period like that, would that cause you any discomfort?

A. It wouldn't cause me any discomfort for a couple reasons. First of all, when did the subject last say they had a beverage? If it was hours ago, that 15 minutes isn't going to really mean anything, or that 14, 13. It goes to the weight of the evidence. In other words, you guys get to decide okay, it's 14 minutes. You know, it's not 15 so is that bad? Or 13, is that bad?

The amount of time for mouth-alcohol situation -- and I've already given you a two-minute time frame where how fast that dropped. Roughly within 8 to 10 minutes, any sort of mouth-alcohol situation is eliminated. And so the 15 minutes is really more than is necessary to

ensure that.
Q. Okay. So on the correlation studies, you had a chance to see people drink. You saw them take field sobriety tests. As far as the individual tests that they had to perform, did any of them -- these mental tests; what did they involve?
A. The mental tests would be more the flashing of a certain color and what was spelled underneath there.
Q. So for example, if you had, like you said, a yellow color, but it was written as "green" in letters?
A. Yeah; and you know, you have to -- you have them give one of the answers. And we want to see okay, they saw this. Are they going to give the correct answer, or are they having difficulty with that.
Q. So those tests, did you see any type of correlation between the amount that these people drank and their ability to function on those tests?
A. Most of the ones I saw were early on, so their blood alcohol level wasn't that high. And they were -- they were doing okay. It would take them a little while to give the answer, and that has to do more with a mental process. Where you're -- you're given some information, you're inquiring information, you're processing that, and then you're going to respond to that. So as far as the answer being correct or not correct -- and again, I was in the early stage of that, where the blood alcohol level was still sort of low. It was more of a time frame as opposed to getting the wrong answer.

The above transcripts show the expert witness testimony from Joseph John Palecek, for the prosecution which states Title 17 mandates a 15 minute observation. Mr. Palecek incorrectly deceives the the jury that the 15 minute observation period id “old school” and goes to the weight of the evidence and is up to the jury to decide if it matters. Petitioner asserts it is a matter of law and that the judge decides law, not the jury. IT was confirmed that Officer Wilson did not comply with the Title 17 regulation for the 15 minute observation. The D.A. did not correct the expert witness’s false assertion about the regulation and allowed fabricated evidence to be used to obtain his conviction. Mr. Palecek does state mouth alcohol is not counted for Blood Alcohol Content (BAC).

Q. So absolutely no different calibration is needed if this instrument is run at 6200 feet than if it's run at sea level?
A. Part of the validation that was done by the people at Department of Justice and with all of ours is they'll come up here and perform tests. And then they'll either be in Sac or they'll go somewhere else that's lower and do it, and it doesn't affect it.
Q. So is that a yes to my question then?
A. It doesn't affect -- altitude does not affect the results that we --
Q. So taking one machine, without changing any calibration or anything, I do a test here at 6200 feet today. I don't change anything on that instrument. I take it to Sacramento tomorrow. It's accurate?
A. Yup.
Q. And that's without running another dry gas accuracy test on it?
A. Yup.
Q. Okay. Mr. Palecek, would you agree with the statement that when you're dealing with individual uncertainties, they accumulate?
MR. PIZZUTI: Object as vague.
THE COURT: Why don't you rephrase your question.
Q. (By Mr. Spicer) I'm going to move on and talk about mouth alcohol for a minute. Is mouth alcohol in the bloodstream?
A. No. Mouth alcohol is not in the bloodstream.

Q. Okay. Does it have -- so it -- then it would have no effect whatsoever on impairment?
A. Mouth alcohol?
Q. Correct.
A. No.
Q. Okay. Now, the Title 17 15-minute observation period is essentially to prevent mouth alcohol; correct?
A. Yes.
Q. Does, if you're aware, does NHTSA have any protocols in place with regard to mouth alcohol?
A. I don't know.
Q. Okay. When you were discussing fine motor skills, I think you said in one of the studies you had people playing games? That game of Operation; is that correct?
A. We could give them tests like that; yes.
Q. I don't know if everyone knows that. Are you talking about the board game where you try to reach tweezers down and pull something?
A. And the nose turns red.
Q. It's been a long time since I've played.
So did those studies find that a person's fine motor skills are generally affected by alcohol prior to their gross motor skills?
A. Well, the fine motor skills will be affected earlier than like the physical impairment; yes.
Q. So the ability to take tweezers and grab something out of a hole would be affected by alcohol prior to your ability to walk a straight line; something like that?

275

VANESSA HUESTIS, CSR NO. 13997

Below the expert witness for the Petitioner explains that there is a 10 to 15 % uncertainty rate and that mouth alcohol (from a burp) would effect the results …and mouth alcohol is not counted for blood alcohol.

Now, it's probably not a huge effect, but it can be in extreme situations. If you were to -- so the goal is to get deep, long air which can be affected, but can only measure at the mouth because that's where the breath device goes. So this journey of the breath sample through the trachea, through the mouth to the throat can affect the breath test to some extent. There are other factors. Body temperature can affect the breath test.

MR. PIZZUTI: Objection. There's no question pending. It's a narrative at this point.

THE COURT: Okay. Sustained.

Q. (By Mr. Spicer) Are there any other factors that can affect the accuracy of the breath test?

A. Well, certainly the calibration of the device itself, and whether the device is functioning correctly can affect the breath test; I think that's pretty obvious.

Q. Any other independent variables?

A. Well, anything that could affect the calibration of the device or the administration of the test could affect the test, so I guess anything that could come into play there could be a factor.

Q. And a minute ago when you gave that uncertainty rate of 10 percent or 15 percent, were you accounting for those outside uncertainties?

A. I would -- with that -- with that precision, I'm assuming the test is given correctly and there's not an extraordinary circumstance, because in fact a 10 percent

uncertainty is a relatively small window surprisingly difficult to hit in chemistry. I have seen results that are clearly outside of that range. Usually there's an explanation like a very weak breath sample. That can affect the breath test because if you get a very weak sample, if you get a breath device in your mouth you kind of just do a very small breath sample, then in fact that breath sample is basically testing only the alcohol in the mouth, which can be affected in either direction, higher or lower, depending on the circumstances. You could potentially have a mouth/alcohol situation where there's alcohol in the mouth that is higher than in the lungs, or you could basically be testing a sample that's almost all outside air because you just have the air that comes in your mouth very briefly and you blow it out, and it's not at equilibrium with the alcohol in your lungs and you're basically testing outside air which is at a near zero alcohol level. So you could have a grossly low breath test if the breath sample is very weak.

So we want to, you know, appropriately accurate breath testing should ensure that we're getting a deep, long air sample and of course that the device is being calibrated and used correctly.

Q. A moment ago you were talking about impairment. You said something about fine motor skills. What effect does alcohol have on fine motor skills?

A. Alcohol is a depressant, and it can affect a person's ability to do fine motor tasks. So it's not an

Officer Laney signed a DMV form “under penalty of perjury” claiming he served notice of suspension when he did not (Vehicle Code section 13382, subdivision (a) requires the arresting officer, acting on behalf of DMV, to serve a "notice of order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person.") – then Officer Laney lied about the lie under oath claiming his signature transferred from one form to the next (yet there were three forms). Officer Laney claimed Petitioner was speeding according to his radar, yet no proof was ever produced such as a radar printout or dash cam video.

Officer Laney did honestly state that the Petitioner was not drunk at trial.

Officer Wilson falsely claimed he complied with the California Code of Regulations California Code of Regulations, Title 17, Section 1221.1(b) [Breath Collection]: (1) The breath sample shall be collected only after fifteen continuous minutes during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked. [The former regulation read: “The breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to collection of the breath sample, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked.” (1219.3)] “12.108 Breath Test 15 Minute Observation of Driver.

Officer first claimed he did comply with the 15 minute observation, then he was impeached because the total time in his custody was less than 15 minutes and he did not maintain a continuous observation when he drove, exited the vehicle and put his gun in the sally port locker and removed Petitioner from his car. Upon entering the booking area of the jail, Petitioner was booked by another deputy sheriff as Officer Wilson setup the breathalyzer in a different room.

Petitioner had regurgitated within the 15 minute period prior to the breath sample outside the presence of Officer Wilson as demonstrated on the record under oath.

"Title 17 establishes the procedures for determining `the concentration of ethyl alcohol in samples of blood, breath, urine, or tissue of persons involved in traffic accidents or traffic violations.'" (*Hernandez v. Gutierrez (2003) 114 Cal.App.4th 168, 172*, quoting Cal. Code Regs., tit. 17, § 1215.1, subd. (b).) "Among other things, the regulations include standards for licensing and operation of laboratories, procedures for breath-alcohol analysis, and performance of instruments used to analyze breath-alcohol levels. Section 1219.3 of title 17 states**: `The breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to collection of the breath sample, during which time the subject must not**

have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked.'" (*Roze, supra, 141 Cal.App.4th at p. 1181, fn. 1.*)

The Prosecutor knew there was false evidence and perjury and even wrote a letter stating there was insufficient evidence discussed below.

Prior to litigation, even the District Attorney William M. Clark acknowledged **"insufficient evidence.":**

VERN R. PIERSON
El Dorado County District Attorney
State Bar #152268
515 Main Street
Placerville, CA 95667

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

Todd Christian ROBBEN,

Defendant(s).

_____/

DKT #: S14CRM0465

DA #: 14-08-005373

PROSECUTOR'S STATEMENT IN SUPPORT OF SUBSTITUTION OF CHARGE

In this matter, the people agree to a plea of guilty of nolo contendere to a charge of a violation of Section 23103 under 23103.5 as a substitute for an original charge of a violation of Section 23152.

The facts which show consumption of drugs or alcohol are:

☒ Odor of alcohol

☐ _____ eyes/pupils

☐ _____ speech

☒ Unsteady balance

☒ Unsatisfactory performance on field sobriety tests

☐ PAS = _____

☐ Breath test = .09/.09

Based upon my review of the facts of this case, I believe that there is a reasonable chance that there is insufficient evidence to prove the people's case and that a reduction will not result in a substantial change in sentence.

Dated: August 22, 2014

WILLIAM M. CLARK
Deputy District Attorney

bc

At the pre-trial suppression hearing, a retired judge named Timothy S. Buckley presided over the hearing. No record of any assignment order exists from the Chief Justice of the California Supreme Court or Judicial Counsel. Judge Buckley did not disclose not did Petitioner consent to his hearing the motion. Judge Buckley was bias/prejudice as a retired judge (as explained above). Said violation is a U.S. 14th amendment due-process violation. Trial counsel should have known the judge was a visiting/traveling retired assigned judge and informed the Petitioner who was not aware of the judges on the El Dorado Co. bench at that time. Trial counsel should have knew there was no assignment order.

Trial counsel Adam Spicer was ineffective for not filing a pre-trial Pitchess motion (*Pitchess v. Superior Court, 11 Cal.3d 531 (1974)*) *See City of Santa Cruz v. Municipal Court, 776 P. 2d 222 - Cal: Supreme Court 1989"*

> *"*In 1978, the California Legislature codified the privileges and procedures surrounding what had come to be known as "Pitchess motions" (after our decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531 [113 Cal. Rptr. 897, 522 P.2d 305]) through the enactment of Penal Code sections 832.7 and 832.8[3] and Evidence Code sections 1043 through 1045.[4] The Penal Code 82*82 provisions define "personnel records" (Pen. Code, § 832.8) and provide that such records are "confidential" and subject to discovery only pursuant to the procedures set forth in the Evidence Code. (Pen. Code, § 832.7.) Evidence Code sections 1043 and 1045 set out the procedures for discovery in detail. As here pertinent, section 1043, subdivision (a) requires a written motion and notice to the governmental agency which has custody of the records sought, and subdivision (b) provides that such motion shall include, inter alia, "(2) A description of the type of records or information sought; and [¶] (3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that such governmental 83*83 agency identified has such records or information from such records."
>
> A finding of "good cause" under section 1043, subdivision (b) is only the first hurdle in the discovery process. Once good cause for discovery has been established, section 1045 provides that the court shall then examine the information "in chambers" in conformity with section 915 (i.e., out of the presence of all persons except the person authorized to claim the privilege and such other persons as he or she is willing to have present), and shall exclude from disclosure several enumerated categories of information, including: (1) complaints more than five years old, (2) the "conclusions of any officer investigating a complaint ..." and (3) facts which are "so remote as to make disclosure of little or no practical benefit." (§ 1045, subd. (b).)"

When trial counsel Adam Spicer was appointed he did promise to file the Pitchess motions on both Officer Laney and Wilson because he knew of wrongdoings with both of them.

It is apparent that from the amount of misconduct by SLTPD Officer Shannon Laney in just this case that reasonably other complaints have been made. Petitioner did make a Citizen Complaint with the SLTPD about Shannon Laney's perjury and he understands other people have too. Petitioner had amassed a litany of information as the webmaster of the http://SLTPDwatch.word.prss.com website and a protestor of the SLTPD – there have been past complaints against Officer Laney and the Citizen Complaint process is a sham. Petitioner requested information as a Public Records request and only received redacted information. Petitioner, in his activist role, was attempting to start a Citizen Review Board in El Dorado Co. and South Lake Tahoe and having the City mandate body cameras for all city police.

Trial counsel was IAC/CDC for the failure to file a pre-trial interlocutory appeal on the denial of the suppression hearing issues. Essentially, the traffic stop was an unlawful 4th amendment search & seizure (no proof of speeding) and there was reason to believe Officer Laney had made untrue statements under penalty of perjury on the DMV DS-367 form.

Trial counsel did not file a pre-trial Motion in Limine to exclude the HSG knowing that the test was not performed to NHTAS standards and trial counsel should have moved to exclude all three FSTs (and especially the HGN) and the breath test at the closing of the trial before it went to the jury. Appellate counsel was IAAC/CDC for failing to argue this on appeal which would have mandated reversal.

At the onset of the case, the Public Defender David Rogers was appointed as counsel. Petitioner did not waive his right to a speedy trial (he did not sign anything) despite the minute order claiming time waived… David Rogers delayed the case and did not filed any pre-trial suppression motion or motion to dismiss. Mr. Rogers had told the Petitioner to travel from Angels Camp in Calaveras County (where he was living) to South Lake Tahoe at least twice to appear in preson at court for trial. Petitioner traveled, obtained and paid for hotels only to be told said hearing or trial was continued. David Rogers never even attempted to contact two witnesses prior to trial.

David Rogers and his investigator conspired with D.D.A. Michael Pizzuti. The record below shows that secret/confidential witness statements by John Robben and evidence were

exchanged between the Public Defender and the D.D.A. Michael Pizzuti (shown below on cross examination).

mood. He's gone through a lot in recent history, and what was memorable about that day is he came in. He brought a 12-pack of beer. He was exited. He wanted to get us some dinner. He went to get a pizza. He never came back, and I had to go pick up his dog. That's something to remember.

Q. Did you remember that when you were contacted by an investigator -- do you recall being contacted from an investigator with the public defender?

A. I don't recall who called me. I just know that he was detained and he wanted me to pick up his dog to get his dog safe.

Q. Okay. If that investigator said that you said that you didn't have a clear recollection of events that took place on that day; would that be accurate?

A. My problem is I have such a good life. I don't remember a lot. I meet a lot of people. I'm in a public position, and so for me to be drilled on specific times, dates, forget it.

Q. Okay. All you can remember basically is that he had one beer?

A. I remember that we had a beer, and then before -- he didn't stay long enough to consume a lot, in my opinion. What I remember is that he was excited, he bought the beer, and he wanted to buy pizza. And so he went to go get the pizza, and he didn't come back.

Q. Okay.

MR. PIZZUTI: Thank you; I have nothing further.

VANESSA HUESTIS, CSR NO. 13997

Perhaps the most fundamental quality of the attorney-client relationship is the absolute and complete fidelity owed by the attorney to his or her client. A codified expression of this duty may be found in Business and Professions Code section 6068, subdivision (e), which provides in relevant part: **"It is the duty of an attorney.... To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client."** As the Supreme Court put it, "[T]he relationship between an attorney and client is a fiduciary relationship of the very highest character." (*Clancy v. State Bar (1969) 71 Cal.2d 140*.) It is that total loyalty to the interests of the client which makes possible and encourages the confidences essential to effective attorney-client communications and, as important, to the administration of justice. An early Court of Appeal said, **"[a]n attorney at law should be a paragon of candor, fairness, honor and fidelity in all his dealings with those who place their trust in his ability and integrity, and he will at all times and under all circumstances be held to the full measure of what he ought to be."** (*Sanquinetti v. Rossen (1906) 12 Cal.App. 623, 630.*)

"The attorney-client privilege is grounded in public policy considerations and "is in furtherance of the proper and orderly functioning of our judicial system, which necessarily depends on the confidential relationship between the attorney and the client." *People v. Gionis, 892 P. 2d 1199 - Cal: Supreme Court 1995.*

D.D.A. Michael Pizzuti's pattern of conduct is this case (including the know use of perjury and fabricated evidence) violated Petitioner 14th amendment due-process rights since his conduct was "so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process." (*People v. Harris (1989) 47 Cal.3d 1047, 1084 [255 Cal. Rptr. 352, 767 P.2d 619*], citing *Donnelly v. DeChristoforo (1974) 416 U.S. 637, 642-643 [40 L.Ed.2d 431, 436-437, 94 S.Ct. 1868*].) But conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves **"`the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.'"** *(People v. Haskett (1982) 30 Cal.3d 841, 866 [180 Cal. Rptr. 640, 640 P.2d 776*], quoting *People v. Strickland (1974) 11 Cal.3d 946, 955 [114 Cal. Rptr. 632, 523 P.2d 672]*.).

The Petitioner was prejudiced by the misconduct since it compromised the integrity of his witness and drinking pattern. Said prejudice effected to outcome of the trial since the jury

had to decide if the Petitioner had consumed enough alcohol to become under the influence and above 0.08% BAC. D.D.A. Michael Pizzuti persuaded the jury that Petitioner had consumed alcohol in a “college-style drinking… sucking them down. Popping the thing open. You’re going maximum, maximum”

talking about rising. If you're talking about putting something -- whether a person is absorbed or not. That's important. Because time to peak is what they're talking about. When do you get maximum absorption? Counsel talked about some things, but I think he forgot one thing which is this is the college-style drinking; right? You're going to be sucking them down, popping the thing open. You're going maximum, maximum. You've got all three in your system at that exact second, and then you go and drive; right? That's what we were asking the expert. So if you did that in 15 minutes, he's stopped what? 45 minutes after the fact? He's saying during that time here he was rising, rising, rising. No. That's no what happened. I mean, that's the part he forgets. Is that you didn't hear testimony that he did it like this. This was just like the worst-case scenario. You drink all three at once, and you suck it down in your system, you inject the beer into your veins. You get there immediately; right? That's not the way people drink. That's not how the defendant testified. What's the evidence of that? There's no evidence of the that. The evidence is best-case scenario for the defendant. I was there for a couple hours. We moved a Jacuzzi and started drinking. I had just one to three beers, two beers, in that range. By his own testimony, he's never going to get up there.

But realistically, what are you talking about? You're talking about a drinking pattern that gives

500

VANESSA HUESTIS, CSR NO. 13997

earlier, not just all shot the second he leaves. He doesn't pound them and run out the door. He's talking about drinks the first beer; right? It's a social thing. Well, like their expert said in a half an hour. Drinks two beers in a half an hour, something like that. You go a little bit, you know. So you're burning it off; right? Burning off, burning off, and you're never even getting to where we know he was.

If you went and said that the elimination rate is .018, .018, it's going to be the only realistic thing is at the time of the first test at 8:47, where is he when he's driving at 8:00 o'clock? And it's higher. It's higher because people burn off over time. People burn off a little less than .02. So the time he's up here, he's already been at his buddy's house or wherever.

He's drinking; he's burning off. He's burning off, if you're drinking for over an hour, you've already burned off one of your beers. You only have two left in your system. So two, what's two going to get us? We talked about that. You know, three? It's beer so .03; right? That's what it comes down to.

Who do you believe? Which side do you believe? The evidence is pretty clear based on the instructions who you should believe.

We talked about conflicting evidence. If you have conflicting evidence, how you are to deal with it in the instructions. Do you want to believe the People's validated .09, or do you believe the defendant's story.

You have two versions of events that are in complete contradiction. And when you look at one, what the instruction tells you is that you must decide. You have to make that call of who to believe. Do you believe the People's expert, or do you believe the defendant's story. We know the defendant was called by his own expert untruthful, so we know his story is untrue. Counsel, to his credit, did not argue hey, all right. Let's be real. My client had five or six beers. He lied, he lied, he lied. He didn't do that. Why didn't he do that? Because he's ethical. He didn't lie beyond the evidence. You have to consider the evidence.

What is your evidence? Your evidence is that it was an .09 and the People's expert that says in an hour, you're burning off .08, or a little bit higher. So what we're talking about in reality is the person is not like the defendant said. But you're talking about the defendant being .09 and higher. This is really what's going on. He's drinking. In an hour, two maybe. That's the time he says he's at the house; right? Drinking, drinking, drinking; not like he says. He's drinking a bunch. You've got to get to this point.

What did the defense expert say you have to drink to get to an .09? How many Coronas do you have to drink to get to an .09? Oh, about five. You have to drink five. If he's going to be doing five, what is it that he's burning off? Like our expert told you, if he's .09 at the test and he's up here after 45 minutes, he's probably

502

VANESSA HUESTIS, CSR NO. 13997

"A prosecutor's rude and intemperate behavior violates the federal Constitution when it comprises a pattern of conduct `so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.' (*People v. Harris (1989) 47 Cal.3d 1215*1215*

1047, 1084 [255 Cal. Rptr. 352, 767 P.2d 619], citing *Donnelly v. DeChristoforo (1974) 416 U.S. 637, 642-643 [40 L.Ed.2d 431, 436-437, 94 S.Ct. 1868*].)

Petitioner filed two Marsden motions and ultimately Mr. Rogers was removed by Judge Kingsbury and replaced with Adam Spicer.

Despite all the errors in case # S14CRM0465 Judge Suzanne Kingsbury claims it was a "run of the mill" case:

with the Defendant after this encounter when he was a prospective juror?
A I did.
Q And tell me about the next one.
A He had an arrest for a DUI in the City of South Lake Tahoe, and the case was assigned to me -- or it would be a normal -- I mean, I didn't assign the case to myself, but it would be the normal part of the caseload that would come into my department.
Q So the case naturally flowed to you?
A Correct.
Q And it was just a basic misdemeanor DUI?
A Yes.
Q And did you preside over that case from start to finish?
A I did.
Q And did that case go all the way through to a jury trial?
A It did.
Q And a verdict?
A It did.
Q And judgment and sentencing?
A Yes.
Q Anything about your interactions with the Defendant during the prosecution of his DUI case that impacted your ability or your perception of your ability to sit as a judge on any case for him in the future?
A No, I mean, it was -- he wasn't happy with the

outcome, but, I mean, it was a cordial trial, from my perspective.

Q Run-of-the-mill?

A A hundred percent run-of-the-mill.

Q Okay. And about when did that take place?

A Maybe 2014. I might be wrong about -- I -- I have -- in context, my mom was dying during this period of time. So I probably don't have the greatest grasp on the specific date, but it was around or after the homicide trial, which ended in January of 2014.

I don't know when the arrest happened but...

Q Generally about that time?

A Correct.

Q That's close enough.

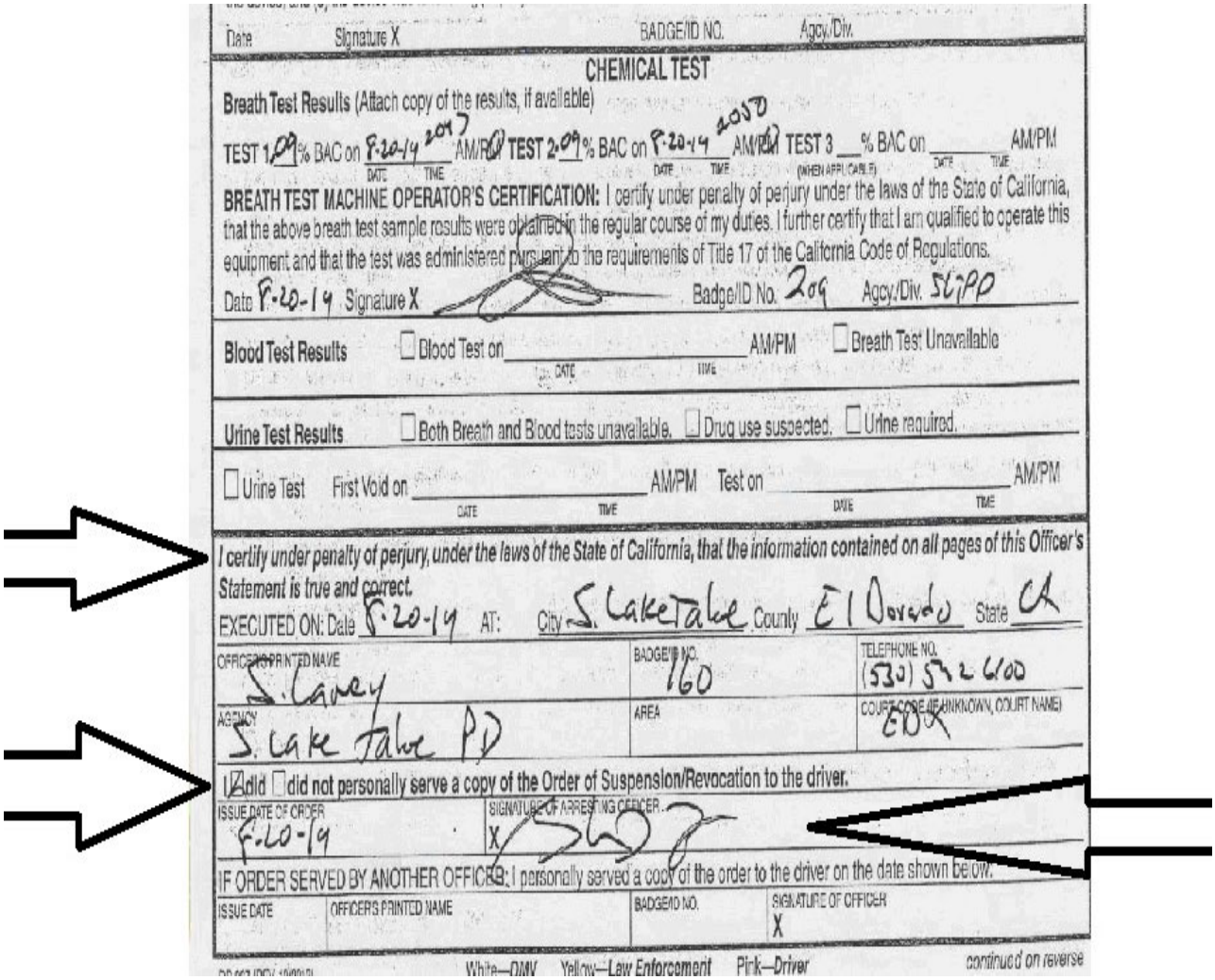
At the time you presided over the Defendant's run-of-the-mill DUI trial, did you have any knowledge or information about the Defendant and his other contacts with the criminal justice system outside the State of California, other than this bail bondsman thing?

A Only if it was in a paper or something. I mean, I wouldn't necessarily actively seek it out.

Q Well -- and that's what we're getting at, is what information did you have? What -- accurate or inaccurate -- we all know that our newspapers are not perfect, for lack of a better way to describe it, but what information around that time of the DUI trial did you have about Todd Christian Robben, at least that was in the public domain that you had received?

Petitioner's DUI conviction would have received a more favorable outcome had the errors listed above and demonstrated below had not occurred based on *People v. Watson, 299 P. 2d 243 - Cal: Supreme Court 1956* "A miscarriage of justice is demonstrated when there appears a reasonable probability that defendant would have achieved a more favorable result in the absence of the alleged error". Said errors are of a Constitutional magnitude, reversal is required pre se.

Petitioner was never legally served the first alleged suspension. **The DMV DS 367 Form was never served to Todd Robben** on 08/20/2014 by Sgt. Shannon Laney - signed by Sgt. Shannon Laney claiming to have personally served Todd Robben **"under the penalty of perjury"**



Date Signature X BADGE/ID NO. Agcy./Div.

CHEMICAL TEST

Breath Test Results (Attach copy of the results, if available)

TEST 1 .09 % BAC on 8-20-14 2017 AM/PM TEST 2 .09 % BAC on 8-20-14 2038 AM/PM TEST 3 __ % BAC on _____ AM/PM

DATE TIME DATE TIME (WHEN APPLICABLE) DATE TIME

BREATH TEST MACHINE OPERATOR'S CERTIFICATION: I certify under penalty of perjury under the laws of the State of California, that the above breath test sample results were obtained in the regular course of my duties. I further certify that I am qualified to operate this equipment and that the test was administered pursuant to the requirements of Title 17 of the California Code of Regulations.

Date 8-20-14 Signature X Badge/ID No. 209 Agcy./Div. SLTPD

Blood Test Results ☐ Blood Test on _____ AM/PM ☐ Breath Test Unavailable

DATE TIME

Urine Test Results ☐ Both Breath and Blood tests unavailable. ☐ Drug use suspected. ☐ Urine required.

☐ Urine Test First Void on _____ AM/PM Test on _____ AM/PM

DATE TIME DATE TIME

I certify under penalty of perjury, under the laws of the State of California, that the information contained on all pages of this Officer's Statement is true and correct.

EXECUTED ON: Date 8-20-14 AT: City S. Lake Tahoe County El Dorado State CA

OFFICER'S PRINTED NAME	BADGE/ID NO.	TELEPHONE NO.
S. Laney	160	(530) 542-6100
AGENCY	AREA	COURT CODE (IF UNKNOWN, COURT NAME)
S. Lake Tahoe PD		EDX

I ☑ did ☐ did not personally serve a copy of the Order of Suspension/Revocation to the driver.

ISSUE DATE OF ORDER	SIGNATURE OF ARRESTING OFFICER
8-20-14	X

IF ORDER SERVED BY ANOTHER OFFICER: I personally served a copy of the order to the driver on the date shown below.

ISSUE DATE	OFFICER'S PRINTED NAME	BADGE/ID NO.	SIGNATURE OF OFFICER
			X

White—DMV Yellow—Law Enforcement Pink—Driver continued on reverse

that.
Q. But when he got out of the car you didn't have your hands on him; right?
A. Correct.
Q. And that's when you say he looked unsteady?
A. I saw him a little closer, up front, you know? On the video, I was curious to see if it was on there. And you can kind of see it little bit as he gets out of the car. He's not staggering. He wasn't completely -- he wasn't drunk; he was impaired. So it was a different level. He wasn't quite -- he wasn't that drunk.
Q. How about him standing up and sitting down? How did he look there?
A. I helped him, and he had handcuffs on.
Q. Do you think it's harder to do that with handcuffs on?
A. It's hard to do with handcuffs on; yes.
Q. So it's not a fair evaluation if he's wearing them?
A. That's why I was answering like that; correct.
Q. Officer, let me ask this. Did you fill out a DMV form in this case?
A. I did.
Q. And did you serve that form on Mr. Robben?
A. I did not.
Q. You did not. And --
MR. SPICER: Your Honor, may I approach the witness?
THE COURT: You may.
Q. (By Mr. Spicer) Sergeant, I'm showing you what's

marked Defense Exhibit 56; can you tell us what that is?
A. It's the DMV form; the Age 21 and Older Officer's Statement.
Q. How many pages is that form?
A. Three pages.
Q. Just a moment. I'm looking for my copy of it.
I want to direct you to page 1, almost near the bottom where it says -- do you see some -- a space for an officer to check right above the date?
A. Yes.
Q. And did you check anything in that sentence?
A. I did.
Q. And can you read us the sentence with the box checked?
A. It reads I did or did not, there are two check boxes, and I checked I did personally serve a copy of the orders of suspension revocation to the driver.
Q. And is there a date on this form?
A. 8/20 of '14.
Q. Is there a signature?
A. There is.
Q. Is that your signature?
A. That is my signature.
Q. Now, up above the signature and where it says executed on, is there a statement concerning the truthfulness of this document?
A. Yes.
Q. And could you read us that.

A. I certify under penalty of perjury under the laws of the State of California, that the information contained on all pages of this officer statement is true and correct.

Q. Okay. But it's not true and correct; right?

A. I -- yes; I checked the wrong box.

Q. Okay. And can I direct your attention to page 3?

A. Sure.

Q. Does page 3 have the same box where you can check the box did or did not?

A. Yes; it's a triplicate form, so it goes through all three pages.

Q. Like a carbon copy form?

A. Correct.

Q. So you did not check on page 1, did on page 1 and on page 3; it just went through the carbon?

A. Yes; that's how the form is.

Q. Okay.

MR. SPICER: Your Honor, at this time, I would move Defense 60, Defense 56, and Plaintiff's 1 into evidence.

MR. PIZZUTI: You're moving mine into evidence?

MR. SPICER: Yeah; I mean I've got it marked too.

MR. PIZZUTI: Do you have your own?

MR. SPICER: I can mark that a different number and move mine into evidence.

MR. PIZZUTI: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference on the record.)

The trial court transcripts:

marked Defense Exhibit56; can you tell us what that is?

A. It's the DMV form; the Age 21 and Older Officer's Statement.

Q. How many pages is that form?

A. Three pages.

Q. Just a moment, I'm looking for my copy of it, I want to direct you to page 1 , almost near the bottom where it says -- do you see some -- a space for an officer to check right above the date?

A. Yesr

Q. And did you check anything in that sentence?

A. I did,

Q. And can you read us the sentence with the box checked?

A. It reads I did or did not, there are two check boxes, and I checked I did personally serve a copy of the orders of suspension revocation to the driver.

Q, And is there a date on this form?

19 A. 8/20 of '14,

20 Q. Is there a signature?

21 A. There is.

22 Q. Is that your signature?

23 A. That is my signature.

24 Q. Now, up above the signature and where it says

25 executed on, is there a statement concerning the

26 truthfulness of this document?

27 A. Yes,

28 Q. And could you read us that.

Page 166 VANESSA HUESTIS, CSR NO, 13997

5 Q. And that's when you say he looked unsteady?

6 A. I saw him a little closer, up front, you know? On

7 the video, I was curious to see if it was on there. And

8 you can kind of see it little bit as he gets out of the

9 car, **He's not staggering, He wasn't completely -- he**

10 **wasn't drunk; he was impaired.** So it was a different

11 level. He wasn't quite -- **he wasn't that drunk,**

12 Q. How about him standing up and sitting down? How did

13 he look there?

A. I helped him, and he had handcuffs on.

Q. Do you think it's harder to do that with handcuffs on?

A. It's hard to do with handcuffs on; yes.

Q. So it's not a fair evaluation if he's wearing them?

A. That's why I was answering like that; correct.

Q. Officer, let me ask this. Did you fill out a DMV form in this case?

A, I did.

Q. And did you serve that form on Mr. Robben?

A. I did not.

Q. You did not. And

MR. SPICER: Your Honor, may I approach the witness?

THE COURT: You may.

Q. (By Mr. Spicer) Sergeant, I'm showing you what's

marked Defense Exhibit56; can you tell us what that is?

A. It's the DMV form; the Age 21 and Older Officer's Statement.

Q. How many pages is that form?

A. Three pages.

Q. Just a moment, I'm looking for my copy of it, I want to direct you to page 1 , almost near the bottom where it says -- do you see some -- a space for an officer to check right above the date?

A. Yes

Q. And did you check anything in that sentence?

A. I did,

Q. And can you read us the sentence with the box checked?

A. It reads I did or did not, there are two check boxes, and I checked I did personally serve a copy of the orders of suspension revocation to the driver.

Q, And is there a date on this form?

A. 8/20 of '14,

Q. Is there a signature?

A. There is.

Q. Is that your signature?

A. That is my signature.

Q. Now, up above the signature and where it says

25 executed on, is there a statement concerning the

26 truthfulness of this document?

27 A. Yes,

28 Q. And could you read us that.

Page 166

VANESSA HUESTIS, CSR NO, 13997

1 A. **I certify under penalty of perjury under the laws of**

2 the State of California, that the information contained

3 on all pages of this officer statement is true and

4 correct.

5 Q. Okay. But it's not true and correct; right?

6 A. I -- yes; I checked the wrong box.

7 Q. Okay. And can I direct your attention to page 3?

8 A. Sure.

9 Q. Does page 3 have the same box where you can check

10 the box did or did not?

11 A. Yes; it's a triplicate form, so it goes through all

12 three pages,

13 Q. Like a carbon copy form?

A. Correct.

Q. So you did not check on page 1 , did on page 1 and on page 3; it just went through the carbon?

A. Yes; that's how the form is.

Q. Okay.

Q. You testified a minute ago that aside from the error concerning a personal service on Mr. Robben, you checked all the other boxes correctly on this form?

A. I did,

Q. Do you want to take a minute to review the form, and tell me if that's still your testimony?

A. I didn't check the box about the chemical test results being .08 or more.

Q. Shouldn't that be checked before it's submitted to DMV?

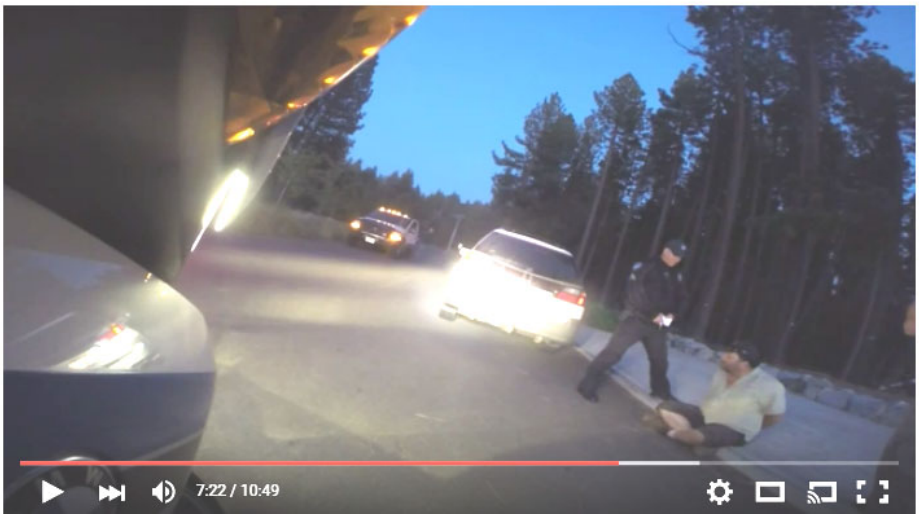
A. It should. But when I filled out the form, I didn't have the results back from Officer Wilson who filled in the box about the test results.

Q. Did you get those results before you submitted the

5 form to the DMV?

6 A. Yes.

7 Q. Okay.



VIDEO OF ARREST SHOWS ROBBEN NOT STUMBLING

https://youtu.be/9--pmIVwBe4

Sgt. Laney lied on the stand under oath about a material fact. The DS-367 forms below show **2 totally different signatures** and other noticeable writing discrepancies and both show **no check box checked for .08% or more BAC**.

The two signatures and other markings indicate Officer Laney's perjured[89] statement at trial explaining the carbon copy check box transfer was a lie on top of a lie.

"The elements of perjury are a willful statement, made under oath, of any material matter which the declarant knows to be false" *People v. Trotter, 83 Cal. Rptr. 2d 753 - Cal: Court of Appeal, 1st Appellate Dist., 5th Div. 1999*

[89] California Perjury Laws | Penal Code 118 Penal Code 118 PC is the California statute that defines the **act and crime of perjury**. A person commits this offense by deliberately giving false information while under oath (penalty of perjury). A conviction a felony that carries a penalty of up to 4 years in jail or prison

officer shall make findings and render a decision.

OFFICER'S PRINTED NAME	BADGE/ID NO.	TELEPHONE NO.
S. Carey	160	(530) 542 6100
AGENCY	**AREA**	**COURT CODE (IF UNKNOWN, COURT NAME)**
S. Lake Tahoe PD		

I ☑ did ☐ did not personally serve a copy of the Order of Suspension/Revocation to the driver.

ISSUE DATE OF ORDER	SIGNATURE OF ARRESTING OFFICER
5-20-14	X

IF ORDER SERVED BY ANOTHER OFFICER: I personally served a copy of the order to the driver on the date shown below:

ISSUE DATE	OFFICER'S PRINTED NAME	BADGE/ID NO.	SIGNATURE OF OFFICER
			X

DS 367 (REV. 10/2012) White—**DMV** Yellow—**Law Enforcement** Pink—**Driver** *continued on reverse*

DATE	TIME	DATE	TIME

I certify under penalty of perjury, under the laws of the State of California, that the information contained on all pages of this Officer's Statement is true and correct.

EXECUTED ON: Date 5-20-14 AT: City S. Lake Tahoe County El Dorado State CA

OFFICER'S PRINTED NAME	BADGE/ID NO.	TELEPHONE NO.
S. Carey	160	(530) 542 6100
AGENCY	**AREA**	**COURT CODE (IF UNKNOWN, COURT NAME)**
S. Lake Tahoe PD		EDX

I ☑ did ☐ did not personally serve a copy of the Order of Suspension/Revocation to the driver.

ISSUE DATE OF ORDER	SIGNATURE OF ARRESTING OFFICER
5-20-14	X

IF ORDER SERVED BY ANOTHER OFFICER: I personally served a copy of the order to the driver on the date shown below:

ISSUE DATE	OFFICER'S PRINTED NAME	BADGE/ID NO.	SIGNATURE OF OFFICER
			X

DS 367 (REV. 10/2012) White—**DMV** Yellow—**Law Enforcement** Pink—**Driver** *continued on reverse*

A. I certify under penalty of perjury under the laws of the State of California, that the information contained on all pages of this officer statement is true and correct.

Q. Okay. But it's not true and correct; right?

A. I -- yes; I checked the wrong box.

Q. Okay. And can I direct your attention to page 3?

A. Sure.

Q. Does page 3 have the same box where you can check the box did or did not?

A. Yes; it's a triplicate form, so it goes through all three pages.

Q. Like a carbon copy form?

A. Correct.

Q. So you did not check on page 1, did on page 1 and on page 3; it just went through the carbon?

A. Yes; that's how the form is.

Q. Okay.

MR. SPICER: Your Honor, at this time, I would move Defense 60, Defense 56, and Plaintiff's 1 into evidence.

MR. PIZZUTI: You're moving mine into evidence?

MR. SPICER: Yeah; I mean I've got it marked too.

MR. PIZZUTI: Do you have your own?

MR. SPICER: I can mark that a different number and move mine into evidence.

MR. PIZZUTI: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference on the record.)

DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

SECTIONS 13353, 13353.1, 13353.2 & 13389 CALIFORNIA VEHICLE CODE (CVC)

FORWARD THIS FORM WITHIN 5 BUSINESS DAYS TO YOUR LOCAL DRIVER SAFETY OFFICE, LISTED ON THE BACK OF PAGE 2

COMPLETE IN BLACK INK

LAW ENFORCEMENT AGENCY CASE NO.	DETENTION/ARREST DATE	FOR DMV USE ONLY
1408-1766	8/20/14	AUG 25 2014 A3

DRIVER'S NAME (LAST, FIRST, M.I.)	DRIVER LICENSE NO. / STATE	COMMERCIAL?	STATE	THUMB PRINT (Right thumb or specify)
Robben, Todd C	C5334283 / CA	☐ Yes ☒ No	CA	

MAILING ADDRESS: 23501 Old Meuli TL, Twain Hart, CA 95383

DOB: 4-16-69 Sex: M Hair: Bro Eyes: Bl Ht.: 600 Wt.: 180

3P8

Driver License: ☐ Suspended/Revoked ☒ Surrendered (Attached) ☐ Not in Possession ☐ Unlicensed

- ☐ 0.01% or more BAC DUI Probation
- ☐ 0.04% or more BAC/COMM VEH
- ☐ 0.08% or more BAC Chemical Tests Results
- ☐ PAS or other Chemical Test Refusal – (DUI Probation) (Complete reverse)
- ☐ Chemical Test Refusal (Complete reverse)
- ☐ Forced Blood Test (Complete reverse)

DEPARTMENT OF MOTOR VEHICLES Dept. # License Class Date: 8/15/14 Identification ☐ Evidence ☐ No Objection ☐ Objection

Vehicle Lic. No. or VIN 7BVB557

☐ **COMMERCIAL VEHICLE:** Vehicle operation requires a **commercial** driver license (Section 15210 CVC).

☐ **HAZARDOUS MATERIALS:** (transporting materials requiring placards/markings per Section 27903 CVC).

On 8-20-14 at 2003 AM/PM in (City and County) S. Lake Tahoe CA, the above named driver was:

☐ Driving: ☒ observed by this officer or ☐ the observer shown in the shaded area on the second page, ☒ admitted to driving.

☐ Contacted per Section 40300.5 CVC. (Describe details in probable cause section on second page.)

☐ Involved in a collision. Attach collision report. In the probable cause section on the second page, describe how time of collision was established.

I had reasonable cause to believe the driver was driving a motor vehicle with alcohol and/or drugs present in the blood or while under the influence. The driver was lawfully arrested, or lawfully detained while on DUI probation, by this officer, or by the person shown in the shaded area on the second page on 8-20-14 (Month/Day/Year) at 2029 AM/PM for violation of Section 23152 or 23153, 23154 CVC.

PROBABLE CAUSE. Describe in detail the facts and circumstances that led to the stop or contact. If driving was observed by someone other than the arresting officer, what did the observer say? State details on second page of this form hereby incorporated by reference.

OBJECTIVE SYMPTOMS OF INTOXICATION: ☐ Bloodshot/watery eyes ☐ Odor of alcoholic beverage ☒ Unsteady gait ☐ Slurred speech ☐ Other: _____ Observed by: S. Lacey at 2004 AM/PM

PRELIMINARY ALCOHOL SCREENING TEST 0.01% OR MORE BLOOD ALCOHOL CONCENTRATION (BAC) DUI PROBATION

Driver submitted to and completed a Preliminary Alcohol Screening (PAS) test with the results of:

TEST 1 _____% BAC on _____ (DATE) at _____ (TIME) AM/PM **TEST 2** (Optional) _____% BAC on _____ (DATE) at _____ (TIME) AM/PM

OFFICER'S CERTIFICATION: I certify under penalty of perjury under the laws of the State of California that (1) I obtained the above PAS test results in the regular course of my duties, (2) I used PAS Model (Name/Number) _____, Serial# _____, Manufactured by _____, (3) I administered this PAS test properly in accordance with the manufacturer's guidelines and instructions, (4) I have received training on the proper operation of this device and administration of the PAS test and am competent and qualified to operate the device, and (5) the device was functioning properly at the time of the test. ☐ PAS Test Unavailable

Date _____ Signature X _____ BADGE/ID NO. _____ Agcy./Div. _____

CHEMICAL TEST

Breath Test Results (Attach copy of the results, if available)

TEST 1 .09 % BAC on 8-20-14 (DATE) 2017 (TIME) AM/PM **TEST 2** .09 % BAC on 8-20-14 (DATE) 2050 (TIME) AM/PM **TEST 3** ___ % BAC on _____ (DATE) _____ (TIME) AM/PM (WHEN APPLICABLE)

BREATH TEST MACHINE OPERATOR'S CERTIFICATION: I certify under penalty of perjury under the laws of the State of California, that the above breath test sample results were obtained in the regular course of my duties. I further certify that I am qualified to operate this equipment and that the test was administered pursuant to the requirements of Title 17 of the California Code of Regulations.

Date 8-20-14 Signature X _____ Badge/ID No. 209 Agcy./Div. SLTPD

Blood Test Results ☐ Blood Test on _____ (DATE) _____ (TIME) AM/PM ☐ Breath Test Unavailable

Urine Test Results ☐ Both Breath and Blood tests unavailable. ☐ Drug use suspected. ☐ Urine required.

☐ Urine Test First Void on _____ (DATE) _____ (TIME) AM/PM Test on _____ (DATE) _____ (TIME) AM/PM

I certify under penalty of perjury, under the laws of the State of California, that the information contained on all pages of this Officer's Statement is true and correct.

EXECUTED ON: Date 8-20-14 AT: City S. Lake Tahoe County El Dorado State CA

OFFICER'S PRINTED NAME	BADGE/ID NO.	TELEPHONE NO.
S. Lacey	160	(530) 542 6100
AGENCY	**AREA**	**COURT CODE (IF UNKNOWN, COURT NAME)**
S. Lake Tahoe PD		EDX

I ☒ did ☐ did not personally serve a copy of the Order of Suspension/Revocation to the driver.

ISSUE DATE OF ORDER	SIGNATURE OF ARRESTING OFFICER
8-20-14	X

IF ORDER SERVED BY ANOTHER OFFICER: I personally served a copy of the order to the driver on the date shown below:

ISSUE DATE	OFFICER'S PRINTED NAME	BADGE/ID NO.	SIGNATURE OF OFFICER
			X

DS 367 (REV. 10/2012) White—*DMV* Yellow—*Law Enforcement* Pink—*Driver* *continued on reverse*

A Public Service Agency

COMPLETE IN BLACK INK

SUSPENSION/REVOCATION ORDER AND TEMPORARY DRIVER LICENSE

DRIVER MUST BE GIVEN A COPY OF THIS ORDER WHEN COMPLETED BY THE OFFICER
DMV Telephone Number (916) 657-0214

LAW ENFORCEMENT AGENCY CASE NO.	DETENTION/ARREST DATE	FOR DMV USE ONLY
1408-1766	8/20/14	

DRIVER'S NAME (LAST, FIRST, M.I.)	DRIVER LICENSE NO.	COMMERCIAL?	STATE	THUMB PRINT (Right thumb or specify)
Robben, Todd C	C5937083	☐ Yes ☑ No	CA	

MAILING ADDRESS	STATE	ZIP CODE
23501 Old Meul TL Twain Hart	CA	95383

DOB: 4-16-69 Sex: M Hair: Brn Eyes: Blu Ht.: 600 Wt.: 180

Driver License: ☐ Suspended/Revoked ☑ Surrendered (Attached) ☐ Not in Possession ☐ Unlicensed

- ☐ 0.01% or more BAC DUI Probation
- ☐ 0.04% or more BAC/COMM VEH
- ☐ 0.08% or more BAC Chemical Tests Results
- ☐ PAS or other Chemical Test Refusal – (DUI Probation)
- ☐ Chemical Test Refusal
- ☐ Forced Blood Test

You are hereby notified that your privilege to operate a motor vehicle will be suspended or revoked effective 30 days from the issue date of this order as shown below, and until you pay a $125 reissue fee and file proof of financial responsibility as shown on the reverse.

TEMPORARY DRIVER LICENSE

This document must be carried with you and shall serve as your temporary California driver license. It is subject to the same class(es) and all restrictions as your permanent driver license. **This temporary driver license does not provide you with any driving privileges if you do not have a California driver license or your license is expired, suspended, revoked, canceled or denied.** It expires at midnight 30 days from the issue date of this order shown below.

This action is taken under authority of Section 13353, 13353.1, 13353.2 and 13389 of the California Vehicle Code (CVC) because you were arrested or detained for driving under the influence of alcohol and/or drugs and:

BAC 0.01% PAS, Breath, Blood or Urine Test DUI Probation	You completed a PAS, breath, blood, or urine test and the officer believes the results will show 0.01% BAC or more. If the laboratory results show your BAC was less than 0.01%, this suspension will be set aside. Your driver license will be reissued to you if you do not have another suspension or revocation in effect.
BAC 0.08% Breath, Blood, or Urine Test	You completed a breath test with 0.08% BAC or more, or you completed a blood or urine test and the officer believes the results will show 0.08% BAC or more. If the laboratory results show that your BAC is less than 0.08%, this suspension or revocation will be set aside. Your driver license will be reissued to you if you do not have another suspension or revocation in effect.
BAC 0.04 % Breath, Blood or Urine Test while driving a Commercial Vehicle	You completed a breath test with 0.04% BAC or more, or you completed a blood or urine test and the officer believes the results will show 0.04% BAC or more. If the laboratory results show that your BAC is less than 0.04%, this suspension or revocation will be set aside. Your driver license will be reissued to you if you do not have another suspension or revocation in effect.
Chemical Test Refusal	You refused to submit to, or failed to complete, a chemical test of the alcohol and/or drug content of your blood.

COMMERCIAL DISQUALIFICATION

A commercial disqualification action will be taken due to any of the following: if you refused a chemical test, if you had a 0.04% BAC or more while operating a commercial motor vehicle as defined in Section 15210 VC or while transporting hazardous materials, or held a commercial driver license and were driving any vehicle when you had a 0.08% BAC or more.

HEARING INFORMATION

YOU HAVE **10 DAYS** FROM RECEIPT OF THIS NOTICE TO REQUEST A HEARING TO SHOW THAT THE SUSPENSION OR REVOCATION IS NOT JUSTIFIED. ***The suspension or revocation will not be stayed (delayed) unless you request a hearing within 10 days from the issue date of this order and DMV cannot provide a hearing before the effective date of the suspension or revocation and make a determination.*** Hearings are conducted only to determine questions of fact as described on the reverse. Your need for a license cannot be considered at a hearing. If you want a hearing or have questions regarding this matter, contact the DMV at the telephone number shown above. A telephone hearing will be conducted unless you request an in-person hearing. Before the hearing you may see or obtain copies of the department's evidence. ***You must request copies of the department's evidence at least 10 days prior to the date set for commencement of the hearing in order to receive them prior to the hearing date.*** If you want the information released to someone else, give them signed permission. ***You have the right to have a sign or language interpreter present at your hearing. If you require the service of an interpreter immediately notify DMV of the need for such service. During the hearing*** you may present oral testimony and/or other evidence. Testimony is taken under oath or affirmation, and the hearing is recorded. You may be represented by legal counsel, or you may represent yourself. The arresting officer(s) may be subpoenaed in this matter, if it is determined that his or her testimony is needed. If you wish to question the arresting officer(s), you have the right to have subpoenas issued on your behalf. You may subpoena any other witness(es) you feel may help your case, and you have the right to cross-examine any opposing witness(es). Blank subpoenas may be obtained on the internet at the following address ***http://www.dmv.ca.gov/forms/formsds.htm*** or provided to you by the hearing officer upon request prior to the hearing. You are responsible for service of your subpoena(s) and any witness fee required by law. **After the hearing** the hearing officer shall make findings and render a decision.

OFFICER'S PRINTED NAME	BADGE/ID NO.	TELEPHONE NO.
S. Cave	160	(530) 562-6700
AGENCY	**AREA**	**COURT CODE (IF UNKNOWN, COURT NAME)**
S. Lake Tahoe PD		

I ☑ did ☐ did not personally serve a copy of the Order of Suspension/Revocation to the driver.

ISSUE DATE OF ORDER	SIGNATURE OF ARRESTING OFFICER
8-20-14	X

IF ORDER SERVED BY ANOTHER OFFICER: I personally served a copy of the order to the driver on the date shown below:

ISSUE DATE	OFFICER'S PRINTED NAME	BADGE/ID NO.	SIGNATURE OF OFFICER
			X

DS 367 (REV. 10/2012) White—*DMV* Yellow—*Law Enforcement* Pink—*Driver* *continued on reverse*

A Public Service Agency

SECTIONS 13353, 13353.1, 13353.2 AND 13389 CVC

COMPLETE IN BLACK INK

LAW ENFORCEMENT AGENCY CASE NO.	DETENTION/ARREST DATE	FOR DMV USE ONLY
1408-1766	8/20/14	

DRIVER'S NAME (LAST, FIRST, M.I.): Robben, Todd C.

DRIVER LICENSE NO.: 45334283 | COMMERCIAL? ☐ Yes ☑ No | STATE: CA | THUMB PRINT (Right thumb or specify)

MAILING ADDRESS: 23501 Old Meul TL | STATE: Twain Hart | ZIP CODE: CA 95383

DOB: 4-16-69 | Sex: M | Hair: Blo | Eyes: BLU | Ht.: 6.00 | Wt.: 180

3P8?

Driver License: ☐ Suspended/Revoked ☑ Surrendered (Attached) ☐ Not in Possession ☐ Unlicensed

- ☐ 0.01% or more BAC DUI Probation
- ☐ 0.04% or more BAC/COMM VEH
- ☐ 0.08% or more BAC Chemical Tests Results
- ☐ PAS or other Chemical Test Refusal – (DUI Probation)
- ☐ Chemical Test Refusal
- ☐ Forced Blood Test

Complete shaded area only if driving/collision observed by someone other than arresting officer or arrest done by another officer.

☐ Driving observed ☐ Driver arrested ☐ Collision witnessed By ☐ Another Officer ☐ Citizen	☐ Driving observed ☐ Driver arrested ☐ Collision witnessed By ☐ Another Officer ☐ Citizen
NAME (PLEASE PRINT)	NAME (PLEASE PRINT)
ADDRESS	ADDRESS
TELEPHONE NO. ( ) OFFICER'S BADGE/ID NO. OFFICER'S AGENCY	TELEPHONE NO. ( ) OFFICER'S BADGE/ID NO. OFFICER'S AGENCY

PROBABLE CAUSE *(DESCRIBE IN DETAIL THE FACTS AND CIRCUMSTANCES THAT LED TO THE STOP OR CONTACT.)*
THE NARRATIVE MUST BE AN ORIGINAL. PRINT OR WRITE DIRECTLY ON THIS PAGE. (A SYNOPSIS OF THE SUPPLEMENTAL REPORT MAY BE CUT AND PASTED BELOW AND MUST BE DATED AND CONTAIN AN ORIGINAL SIGNATURE.) (FOR DUI PROBATION VIOLATIONS) CLEARLY INDICATE BELOW HOW YOU DETERMINED THE DRIVER WAS ON DUI PROBATION.

On 8/20/14, I was working routine patrol on a marked black and white police motorcycle and in full police uniform. At the start of my shift and at the end of my shift, I tested my motorcycle mounted traffic radar using the tuning fork and internal test method.

At approximately 2000 hours, I observed a white Subaru station wagon traveling E/B on Montreal Ave. Montreal Ave is a posted 25 MPH speed zone. I visually estimated the Subaru's speed at 35 MPH and accelerating. I activated my traffic radar which showed a speed of 36 and increased to 38 MPH till the Subaru passed me. I conducted a U-Turn maneuver and activated my emergency lights. I caught up to the Subaru as it stopped for a posted stop sign at the intersection with Heavenly Valley Rd. The Subaru yielded by pulling into the driveway of Van Sickle Park. I contacted the driver, Todd Robben, whom I identified from his California DL. I immediately could detect a strong odor of alcohol emitting from Robben's breath. I asked Robben if he had been drinking alcohol tonight and he stated that he had. I asked Robben for his registration and insurance. Robben stated that he didn't have either. I asked if he had anything for the car. Robben looked through the glove box and found an insurance card that expired in 2012. Robben's movements were slow and deliberate while he was collecting his paper work and obtaining his license from his wallet. I also noticed that Robben's eyes were bloodshot and watery and his speech was slightly slurred.

8/21/14

DS 367 (REV. 10/2012) White—*DMV* Yellow—*Law Enforcement* Pink—*Driver*

Arrest [x]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Narrative Report

CASE # 1408-1766

OFFENSE(S)	OFFENSE(S) cont'd.
23152 (B) VC; Dui Alcohol/0.08 Percent - Misd; Misd. 23152 (A) VC; Dui Alcohol Only - Misd; Misd.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
08/20/14 20:02 Wednesday	08/20/14 20:02

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
Montreal Rd, Heavenly Village Way				

NARRATIVE

On 8/20/14, I was working routine patrol on a marked black and white police motorcycle and in full police uniform. At the start of my shift and at the end of my shift, I tested my motorcycle mounted traffic radar using the tuning fork and internal test method.

At approximately 2000 hours, I observed a white Subaru station wagon traveling E/B on Montreal Ave. Montreal Ave is a posted 25 MPH speed zone. I visually estimated the Subaru's speed at 35 MPH and accelerating. I activated my traffic radar which showed a speed of 36 and increased to 38 MPH till the Subaru passed me. I conducted a U-Turn maneuver and activated my emergency lights. I caught up to the Subaru as it stopped for a posted stop sign at the intersection with Heavenly Valley Rd. The Subaru yielded by pulling into the driveway of Van Sickle Park. I contacted the driver, Todd Robben, whom I identified from his California DL. I immediately could detect a strong odor of alcohol emitting from Robben's breath. I asked Robben if he had been drinking alcohol tonight and he stated that he had. I asked Robben for his registration and insurance. Robben stated that he didn't have either. I asked if he had anything for the car. Robben looked through the glove box and found an insurance card that expired in 2012. Robben's movements were slow and deliberate while he was collecting his paper work and obtaining his license from his wallet. I also noticed that Robben's eyes were bloodshot and watery and his speech was slightly slurred.

I requested a second officer to respond to assist. Dep Perry from EDSO was the first to arrive. While I was speaking with Dep Perry, Robben got out of his car. I gave him several verbal commands to get back into his car and he refused to follow them. I conducted a pat search of Robben, during which he kept attempting to pull his hands away from me. Robben repeatedly kept asking what was going on and that he was "just going to get a pizza". Based on Robben's uncooperative behavior and his large size I placed him into handcuffs. I had Robben sit on the curb while I spoke with him and he calmed down.

I advised Robben that he was not under arrest and just being detained while I investigate his intoxication level. Robben stated that he understood.

I asked Robben a series of investigative questions and Robben provided the following answers:

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Laney 160	08/21/2014 21:26	Shannon Laney 160	08/21/14
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

Arrest [x]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Narrative Report

CASE # 1408-1766

OFFENSE(S)	OFFENSE(S) cont'd.
23152 (B) VC; Dui Alcohol/0.08 Percent - Misd; Misd. 23152 (A) VC; Dui Alcohol Only - Misd; Misd.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
08/20/14 20:02 Wednesday	08/20/14 20:02

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
Montreal Rd, Heavenly Village Way				

NARRATIVE

1. Robben was driving from a US Bank to Blue Dog Pizza when I stopped him
2. Robben is not a diabetic or epileptic
3. Robben consumed two Corona beers about 2 hours ago
4. Robben ate a burrito at 5pm and a breakfast burrito at about 10 am
5. Robben was on no medications and has no physical defects

Ofc Wilson arrived to assist.
Robben stated that he would submit to a series of pre-demonstrated field sobriety tests (FST's). I assisted Robben to his feet and removed the handcuffs. The area where Robben stopped his car was on an incline. With the exception of the HGN test, all other tests were performed on the level concrete paved sidewalk along Montreal Ave. Robben preformed as follows:

HORIZONTAL GAZE NYSTAGMUS (HGN):
Robben failed to hold his head still as instructed for most of the test. Robben exhibited a lack of smooth pursuit. Nystagmus was present at maximum deviation and nystagmus onset was prior to 45 degrees.

ONE LEG STAND:
Robben was wearing ankle height leather boots for this test. He raised his right foot and failed to lock out his knees and he raised both hands for this test. Robben stopped after 20 seconds and failed to raise his foot back up as instructed.

LINE WALK:
Robben failed to stand in the instruction position which is with his right foot in front of his left foot with his heel touching his toe. Robben complained that his feet fell asleep because he had been doing yard work all week. Robben never answered me why his feet fell asleep. Robben started the test before I was complete with the instruction. He strolled in a line and stopped and asked if he was done. Robben refused to comply with my instructions for the remainder of this test.

PAS TEST:
Robben refused to submit to a PAS breath test.

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Laney 160	08/21/2014 21:26	Shannon Laney 160	08/21/14
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

Arrest [X] Crime [ ] Non-Criminal [ ]	**SOUTH LAKE TAHOE POLICE DEPARTMENT** 1352 Johnson Blvd, South Lake Tahoe, CA 96150 CA0090200 **Narrative Report**	CASE # 1408-1766 Page 3 of 3

OFFENSE(S)	OFFENSE(S) cont'd.
23152 (B) VC; Dui Alcohol/0.08 Percent - Misd; Misd. 23152 (A) VC; Dui Alcohol Only - Misd; Misd.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
08/20/14 20:02 Wednesday	08/20/14 20:02

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
Montreal Rd, Heavenly Village Way				

NARRATIVE

Based on my observations of Robben, I formed the opinion that he was operating a motor vehicle while under the influence of alcohol and with a BAC greater than .08%. I arrested Robben for DUI. I placed him into handcuffs, checked the cuffs for proper fit and double locked the cuffs.

I advised Robben of implied consent and he chose the breath test. Ofc Wilson transported Robben to EDSO jail an completed the EPAS breath test. The results were .09/.09% BAC at 2047/2050 hours. Robben was booked without incident.

Robben had a shepherd dog in his vehicle. At Robben's request, I contacted Robben's friend, John (530)318-3500, and had him respond to the scene to collect the shepherd. Robben's vehicle registration was suspended and he had no insurance at the time of the stop. I impounded Robben's vehicle under 22651(h) CVC.

I recorded the traffic stop to the time when I removed the handcuffs just prior to the field sobriety tests with my department issued GoPro camera that was mounted on my motorcycle. For an unknown reason, it stopped recording. I currently have a trouble request into the manufacturer. The field sobriety tests were completed outside of the camera view due to the road incline. I downloaded and booked a copy of the video I do have with this case.

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Laney 160	08/21/2014 21:26	Shannon Laney 160	08/21/14
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

A. No.
Q. The portion that counsel brought up to you about the 367 form, is that something that was significant to you when you were filling out all those forms?
A. No.
Q. When you sign something under penalty of perjury, do you take it seriously?
A. I do.
Q. And in this case, was the checking off of that box an intentional misleading?
A. No. I had actually intended to go over to the jail and drop it off, but I never actually did.
Q. Okay. That just goes to show whether the person was served or not?
A. Yes.
Q. You have a number of other boxes to fill out and check off?
A. Yes.
Q. Those were done correctly?
A. Yes.
Q. Now, counsel mentioned various field sobriety tests, and he started with the horizontal gaze nystagmus test. He talked about how certain stimulus had to be put before a person, and he talked about the different types. Was there anything in that sequence that caused you to re-evaluate your initial opinion that Mr. Robben was under the influence?
A. There was not.

moving my finger back and forth in front of his face. I could see his eyes not really tracking, but to do that part of the test, he's supposed to hold his face straight ahead to do it.

Q. So Officer, is it your testimony here today that the reason -- well, strike that.

How long did you hold the stimulus at maximum deviation?

A. It was only a few seconds, but it wasn't all the way out to four.

Q. Why is four seconds important?

A. Because that's what NHTSA tells me to do.

Q. And is it your testimony here today that the only reason you weren't able to hold the stimulus for four seconds is because Mr. Robben was moving his head?

A. Right.

Q. Officer, do you remember testifying here in a hearing we had?

A. Yes.

Q. And were you sworn in as a witness in that case?

A. Yes.

Q. So you took the oath to tell the truth?

A. Yes.

Q. And isn't it true that you told us that Mr. -- the reason you didn't hold your stimulus for four seconds at maximum deviation is to prevent fatigue nystagmus?

A. No. That's only if you get towards 30 seconds. I tried -- I held it for a few seconds, but I don't recall

moving my finger back and forth in front of his face. I could see his eyes not really tracking, but to do that part of the test, he's supposed to hold his face straight ahead to do it.

Q. So Officer, is it your testimony here today that the reason -- well, strike that.

How long did you hold the stimulus at maximum deviation?

A. It was only a few seconds, but it wasn't all the way out to four.

Q. Why is four seconds important?

A. Because that's what NHTSA tells me to do.

Q. And is it your testimony here today that the only reason you weren't able to hold the stimulus for four seconds is because Mr. Robben was moving his head?

A. Right.

Q. Officer, do you remember testifying here in a hearing we had?

A. Yes.

Q. And were you sworn in as a witness in that case?

A. Yes.

Q. So you took the oath to tell the truth?

A. Yes.

Q. And isn't it true that you told us that Mr. -- the reason you didn't hold your stimulus for four seconds at maximum deviation is to prevent fatigue nystagmus?

A. No. That's only if you get towards 30 seconds. I tried -- I held it for a few seconds, but I don't recall

saying it was a measured amount of time. Fatigue nystagmus will come in as you get later on if you hold it too long.

Q. Didn't you tell me that day that two or three seconds of holding a stimulus could lead to fatigue nystagmus?

MR. PIZZUTI: If counsel is going to cross-examine him with prior testimony, he should let him read it. And I don't know if he's taking it out of context or --

MR. SPICER: Your Honor, may I approach the witness?

THE COURT: You may.

Q. (By Mr. Spicer) Sir, I'm showing you what's been marked Defense Exhibit 62; can you tell us what that is?

A. It says Reporter's Transcript of Proceedings pursuant to 1538.5 PC motion.

Q. And what was the date?

A. It was on April 10, 2015.

Q. And do you recall testifying in that hearing?

A. I did.

Q. Officer, I'm going to direct your attention to page 28, and starting at line 7, going all the way to line 18.

THE COURT: Do you want him to read it to himself?

MR. SPICER: Go ahead and read it to yourself first.

THE WITNESS: Okay.

Okay. Would you like me to --

Q. (By Mr. Spicer) So my previous question that was objected to, I think was isn't it true that on April 10th you testified that the reason you didn't hold the

stimulus at maximum deviation for four seconds was to prevent fatigue nystagmus?

A. Yes.

Q. And isn't it further true that you told us fatigue nystagmus could be developed after just 2 or 3 seconds of holding a stimulus?

A. Yes, thereabouts. I mean, it's not exact wording, but yes.

Q. And that was April 10th. So now do you believe that to be untrue?

A. Yeah; I reviewed the SFST manual and I'm supposed to hold it for four seconds. I was incorrect in what I said. It's supposed to be for four seconds.

Q. Okay. In reviewing the Field Sobriety Training Manual, which one did you review?

A. The same one online that I looked up, and then I actually called one of the instructors and asked them another question too from my course.

Q. And did NHTSA -- do you know if NHTSA publishes manuals annually?

A. I don't know if it's annually or not. The last one I looked at said 2013.

Q. Okay. So if I told you that that chapter up there was from a chapter in the 2013 manual, you would be familiar with it then?

MR. PIZZUTI: Objection; assumes facts not in evidence. I don't think there's any foundation.

THE COURT: Sustained.

Sgt. Shannon Laney continued lie and commit perjury:

How long did you hold the Stimulus at maximum deviation?

A. It was only a few seconds, but it wasn't all the way out to four.

Q. Why is four seconds important?

A. Because that's what NHTSA tells me to do,

Q. And is it your testimony here today that the only reason you weren't able to hold the stimulus for four seconds is because Mr. Robben was moving his head?

A. Right,

Q. Officer, do you remember testifying here in a hearing we had?

A. Yes.

And were you sworn in as a witness in that case?

A. Yes.

Q. So you took the oath to tell the truth?

A. Yes.

Q. And isn't it true that you told us that Mr. the

reason you didn't hold your Stimulus for four seconds at maximum deviation is to prevent fatigue nystagmus?

A. No. That's only if you get towards 30 seconds. I tried -- held it for a few seconds, but don't recall

Page 145 VANESSA HUESTIS, CSR NO. 13997

saying it was a measured amount of time. Fatigue nystagmus will come in as you get later on if you hold it too long.

Didn't you tell me that day that two or three seconds of holding a stimulus could lead to fatigue nystagmus?

MR. PIZZUTI: If counsel is going to cross-examine him with prior testimony, he should let him read it, And I don't know if he's taking it out of context or --

MR, SPICER: Your Honor, may I approach the witness?

THE COURT: You may,

(By Mr. Spicer) Sir, I'm showing you what's been marked Defense Exhibit62; can you tell us what that is?

A. It says

pursuant to 1538.5 PC motion.

16 Q. And what was the date?

17 A. It was on April 10, 2015,

18 0. And do you recall testifying in that hearing?

19 A. I did,

20 Q. Officer, I'm going to direct your attention to page

21 28, and starting at line 7, going all the way to line 18.

22 THE COURT: Do you want him to read it to himself?

23 MR. SPICER: Go ahead and read it to yourself first.

24 THE WITNESS: Okay.

25 Okay. Would you like me to

26 Q. (By Mr. Spicer) So my previous question that was

27 objected to, I think was isn't it true that on April 10th

28 you testified that the reason you didn't hold the

Page 146 VANESSA HUESTIS, CSR NO. 13997

1 stimulus at maximum deviation for four seconds was to

2 prevent fatigue nystagmus?

3 A. Yes.

4 Q. And isn' t further true that you told us fatigue

5 nystagmus could be developed after just 2 or 3 seconds of

6 holding a stimulus?

A. Yes, thereabouts. I mean, it's not exact wording, but yes.

Q. And that was April 10th. So now do you believe that to be untrue?

A, Yeah; I reviewed the SFST manual and I'm supposed to hold it for four seconds. I was incorrect in what I said. It's supposed to be for four seconds.

Q. Okay. In reviewing the Field Sobriety Training Manual , which one did you review?

A. The same one online that I looked up, and then I actually called one of the instructors and asked them another question too from my course.

Q. And did NHTSA -- do you know if NHTSA publishes manuals annually?

A, I don't know if it's annually or not. The last one I looked at said 2013,

Q. Okay. So if I told you that that chapter up there was from a chapter in the 2013 manual, you would be familiar with it then?

MR. PIZZUTI: Objection; assumes facts not in

evidence. I don't think there's any foundation.

THE COURT: Sustained.

POLICE MISCONDUCT IN DUI CASES

admin
April 24, 2020

https://www.duiblog.com/2020/04/24/police-misconduct-in-dui-cases/

Cops, like all employees, can be good, bad, or somewhere in the middle. However, it would be difficult to argue that there are many employment positions out there that require the same degree of care, competency and honesty as law enforcement. Sometimes an arresting officer is just a good person who made a bad judgment call. Other times, the officer abused their position. There are serious consequences when a police officer's misconduct affects a DUI case. Police misconduct in DUI cases is very much real and happens more often than enforcement departments admit or that the public is aware of. In early 2019, amidst public call for police accountability, California enacted a transparency law, which essentially makes police misconduct records available to the public.

After the law was enacted, the Modesto Bee dove into newly released records and found numerous accounts of police misconduct. The documents detailed a lot of dishonesty. Of the records that the outlet uncovered, what it found as probably the most egregious misconduct, was that of an officer who had previously received commendations and public praise for his DUI enforcement efforts. Unfortunately, his elevated DUI numbers were the product of misconduct.

Footage did not match his written reports, which included that he observed signs of intoxication when none were present on the footage and relying on an "odor of alcohol" when the suspect's BAC turned out to 0.00 percent. The officer "stopped drivers without reasonable suspicion, based on nothing more than the fact they were leaving the parking lot of a bar. He mocked the drivers he pulled over, … recorded evidence of impairment that did not objectively exist and arrested them without probable cause." Additionally, an internal affairs review of his record concluded that the officer's conduct was "often rude, belittling, abrupt and arrogant."

All too often, this type of misconduct is chalked up to as an overzealous pursuit of justice on the officers' part. Sometimes misconduct isn't so egregious as what the Modesto Bee's uncovered but can just be incompetently handling cases. The Modesto Bee's efforts are only a small glimpse into misconduct in DUI Cases. Unfortunately, misconduct is not an anomaly and virtually every department struggles to address police misconduct within. Because of transparency laws like those in California and other states, law enforcement is coming to grips with the fact that they can't keep turning a blind eye to bad policing.

Some examples of police misconduct, include:

- Invalid Investigatory Stop: A police officer must have reasonable suspicion that a crime occurred to stop your vehicle. This means that the officer must be able to show he or she had a supported reason for stopping you other than mere suspicion. Generally speaking, traffic violations and equipment failures (i.e., a blown-out taillight), are examples of proper reasons for a stop. However, it is misconduct for an officer to stop without any reason, or, since many officers know this, to fabricate the reason for the stop in their police report.
- Invalid Arrest: Likewise, a police officer must have probable cause that a driver was DUI before they can be arrested. Probable cause means that the officer has reasonable and trustworthy facts that the driver is DUI. It is misconduct for an officer to arrest without probable cause, or, since many officers also know this, to fabricate the reasons for the arrest.
- Out-Of-Uniform, Unmarked Vehicle Stop: In some states, off-duty police officers who are neither in uniform nor in a marked vehicle cannot conduct traffic stops. In those states that prohibit out-of-uniform, unmarked police vehicle stops, doing so is misconduct and evidence obtained from such a stop can be suppressed.
- Improper Administration and Recording of Field Sobriety Tests: There are several standardized field sobriety tests that an arresting officer can use to determine the sobriety of a driver. That officer must understand and properly administer the test, as well as, properly evaluate the results in order for his conclusion regarding intoxication or impairment to be supported. Improper administration of the field sobriety test may invalidate the test and cast reasonable doubt. It should go without saying that intentional or negligent misrepresentation of the driver's performance is also misconduct.
- Improper Administration of Breathalyzers and Blood Test: Most states require that an officer strictly follow an approved method of administering breathalyzers and blood tests. Whether a driver is submitting to the optional pre-arrest breathalyzer test, or the required post-arrest chemical tests (that can be either a breath test or a blood test), intentional deviations or mistakes made during this process are considered misconduct and can result in suppression of the results.
- Hostile Attitude: Though certainly not always the case, some officers struggle to be civil to suspects, defendants and attorneys. Often, video footage, like those required in the type of transparency laws that California has enacted, expose the hostile attitude often taken by officers against drivers suspected of drunk driving. Often the hostile attitude is the result of the officer's preconceived notion that the driver is drunk even though the officer has nothing to base their opinion on.

- Failure to Document: Speaking of transparency laws, there is absolutely no excuse for the lack of a video footage or other documentation of police interactions with drivers in those departments who employ it. Logic would dictate that documentation and video footage would only assist and corroborate an officer's observation. So why is it that the footage is often left out? Sometimes, video footage that is supposed to be available isn't because it has gone missing, exists as a corrupted digital file, or the equipment wasn't working. Would it have corroborated what the officer wrote in his or her report, or would it have shown something else, perhaps misconduct?

  Fighting for your rights does not, in and of itself, mean that you are fighting against the officer. However, if an officer fails to follow normal department protocols, whether intentionally or not, your attorney should expose the misconduct and possibly get the a DUI dismissed or at the least to persuade the prosecutor to reduce the charges or penalties.

The D.D.A. Michael Pizzuit committed prosecutorial misconduct by allowing the perjury and false evidence into the trial and then in his closing arguments to deceive the jury and subject the Petitioner to a constitutionally unfair trial pursuant to U.S. 14th amendment (due-process) and state law. "A prosecutor's misconduct violates the Fourteenth Amendment to the United States Constitution when it `infects the trial with such unfairness as to make the conviction a denial of due process.' (*People v. Morales (2001) 25 Cal.4th 34, 44; accord, Darden v. Wainwright (1986) 477 U.S. 168, 181; Donnelly v. DeChristoforo (1974) 416 U.S. 637, 643.)* In other words, the misconduct must be `of sufficient significance to result in the denial of the defendant's right to a fair trial.' (*United States v. Agurs (1976) 427 U.S. 97, 108.*) A prosecutor's misconduct that does not render a trial fundamentally unfair nevertheless violates California law if it involves `the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.' (*People v. Strickland (1974) 11 Cal.3d 946, 955; accord, People v. Farnam (2002) 28 Cal.4th 107, 167.*) "When the issue `focuses on comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion.' (*People v. Berryman (1993) 6 Cal.4th 1048, 1072, overruled on another point in People v. Hill [(1998)] 17 Cal.4th 800, 822-823; accord, People v. Clair (1992) 2 Cal.4th 629, 663.*) Moreover, prosecutors `have wide latitude to discuss and draw inferences from the evidence at trial,' and whether `the inferences the prosecutor draws are reasonable is for the jury to decide.' (*People v. Dennis [(1998)] 17 Cal.4th 468, 522.*).

Trial counsel Adam Spicer was IAC for not objecting to the D.D.A Michael Pizzule using deceptive statements to the jury in his closing arguments shown below. Appellate counsel was

IAAC for not including this in the appeal. The mere fact the false evidence and perjury was used in the trial and not excluded with a motion in limine or 1385.5 would have meant a positive outcome for this Petitioner, the case would have been dismissed with prejudice or Petitioner would have been acquitted since there was no evidence (no FSTs – certainly no HGN & no breath test). The cumulative errors of trial counsel and appellate counsel prejudiced this Petitioner because if the court concludes no single issue rendered an unfair trial and a miscarriage-of-justice, certainly the totality of all errors constitute a miscarriage-of-justice and mandate reversal.

alcohol. An alcoholic beverage includes beer.

In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of Health Services.

If the defendant was under the influence of an alcoholic beverage, then it is not a defense that something else also impaired his ability to drive.

Now, the last instruction I'm going to read after the attorneys give their arguments so it's fresh in your mind. So that's all the instructions for now. As I indicated to you at the beginning of the trial, because the People have the burden to prove, Mr. Pizzuti will go first with his closing argument, followed by Mr. Spicer, and then Mr. Pizzuti will have an opportunity to make a brief rebuttal if he chooses.

So go ahead Mr. Pizzuti. Whenever you're ready.

MR. PIZZUTI: Thank you.

Good afternoon. First I want to thank you for your service. I know a lot of people have taken out time from their lives, businesses, jobs. So you don't have to do this too often in your life thankfully. But when you do, we appreciate that you give your time and effort. It's an important process.

The judge just read to you the law, and in the most -- the closest in time instructions she read to you had do with two charges that we have. I guess the bad

thing is you had sit through all the scientific testimony. That's the bad part of driving under the influence cases. But the good part is there's only two elements for both defenses. And you have Count One which is driving the vehicle. And two is while driving the vehicle, the person has a .08 or greater at the time of the driving. Straight forward elements. That's Vehicle Code Section 23152(b).

Could Two is Vehicle Code Section 23152(a), it's one, driving, and two, the person while they're driving, they're under the influence of alcohol; driving under the influence of alcohol. There's not going to be any issue of driving. So really you're only limited to at the time of the driving, was the defendant over a .08, and was he driving under the influence.

Driving under the influence is separately defined in the instructions. And the instructions read a person is under the influence if as a result of drinking an alcoholic beverage, his or her mental or physical abilities are so impaired that he is no longer able to drive the vehicle with the caution of a sober person using ordinary care under similar circumstances. So that goes to the second count. That's the definition of DUI that was just read to you.

So you'll see, when you're talking about DUI -- and this is something that we discussed during voir dire and with the witnesses -- you're not talking about gross physical impairment. You're talking about not driving to

the standard that's described in the law. That's a little bit different than maybe you might be expecting to see. You might be expecting to see the guy stumbling and swaying. Certain things are not required under the law. You don't have to have those gross manifestations of alcohol. What you do need is to not be able to drive with the caution and care of a sober person.

And, importantly, you also have a second charge that doesn't really get into that definition. It really just looks to the percentage of the person when they're driving. So say you don't have the objective symptoms, and -- or maybe you have some and you perform the physical tests, field sobriety tests, real well. You know we talked Olga the drunken Russian dancer or whatever who can do perfect FSTs and can knock them dead because she has great physical attributes. She can do that. You know, maybe you don't find that to find that.

We have a separate charge that deals just with the blood alcohol level. So when you think about the evidence, you can think about those and how they work together and how they are separately charged.

Okay. So what is the evidence of intoxication? Objective symptoms. Objective because we see them, everybody sees them. When you're drunk or when a person is impaired you can see it. Whether it's in your work or you can see it in people you know, your family, social settings. If you're a kid who's coming home and you don't want your dad to see it, you might be trying to run

up the stairs or try to go maybe out of his room so he can't look at those objective symptoms and see those objective symptoms. And the other one is the odor of alcohol. Have a couple beers. Go home kiss the wife on the cheek not on the mouth because she's going to get it; she's going to sense your odor of alcohol.

When it's the point when you have a person who can pick it up in a vehicle, that's a little more pronounced. That's not just the fact that there was any alcohol, but there's a little more than just a little alcohol or a small amount of alcohol. So the odor of an alcoholic beverage, you heard Sergeant Laney testify that when he came over and was citing, getting ready to cite Mr. Robben for speeding, and when he asked him for the identification -- the documents, license and registration, insurance -- right off he's like uh-oh. He gets in there and he's getting the odor of alcohol.

Something he noticed too was when he looked at Mr. Robben, he had red, watery eyes, also something consistent with higher levels of alcohol in a person's system. And there were additional things too.

When Mr. Robben went to get his documents from his vehicle, he had his slow manner, slow and deliberate manner. So those things taken together kind of got the whole investigation started. Now we're not talking about speeding or the lack of insurance or registration. Now he's a little more tipped off that we need to look into it more.

And so right off the bat, these are all things that are consistent with a person who is under the influence of alcohol to varying degrees that needs to be tested out later.

And so then we had Officer Laney do the standardized field sobriety tests. And remember, these are all validated. There are a lot of tests you can do. In the old days, you didn't have any tests. Talking to an old cop, he'd say well, have him pick up some change off the top of the automobile. I'd say officer put down a whole bunch of change on there, and he said give 89 cents. A person who is drunk is trying to do that. The officers at that time, maybe they didn't have the appropriate tools to determine whether a person is impaired.

And science since then has gotten to the point where you get an expert up here and say hey, there are studies out there; we have Colorado, we have Florida, we got San Diego. For the three tests that are standardized, they are all supported by science. And what were they? The HGN, the horizontal gaze nystagmus. The eyes are the window to the soul. They tell you everything.

And you know, I get the feeling too, if you were here or you were at the scene, if you had a person that was under the influence, right off the bat even without looking at the specific tests, you're going to see a lot of information from the eyes. You're going to see things that you can tell. You just kind of tell. Unfortunately, there's no way to bring that to you.

471

VANESSA HUESTIS, CSR NO. 13997

You have a couple videos of seeing Mr. Robben from a distance, but you don't have the person in front of you. So you have go through the officer and have him communicate as best he can to. So the eyes, apart from just be there and showing something and being red and watery, do something very distinct if a person is under the influence and especially if the person is over .08. And that's they bounce, they don't track.

So you have the officers doing these specific tests, with a pen or finger, and they move it across and do certain tests. And if you can show that lack of smooth pursuit -- you heard our expert talking about a marble rolling over and bouncing on sand or something he mentioned. There's going to be that difficulty of the eye because of the effects of alcohol on a person's brain in following a stimulus such as a pencil or a pen. That's the first thing you're looking for is a lack of smooth pursuit. That was verified by Sergeant Laney.

The second one is whether there was nystagmus prior to 45 degrees. And so again, he's looking for the angle of onset. So if you're looking at the eyes, if you move your eyes to one side or the other, when you get the nystagmus is important to determining how much alcohol a person has or how under the influence that person is.

And lastly, you have nystagmus at extremes. And you heard me maybe getting into it a little bit with the defense attorney. At the extremes, how long do you hold it. That's what you heard from the testimony. If your

eyes are out here and distinct and sustained, whether that's indicative of driving of a person who's greater than an .08 or a person who is under the influence.

And so the issue we brought up with the defense attorney was hey, is this still validated? Is this supported by the studies, this horizontal gaze nystagmus test, if you don't have that last one? Which he might take an issue with, which was four seconds. Well, let's take that out. Say it wasn't. You have two eyes. You have clues in each eye; lack of smooth pursuit and nystagmus prior to 45 degrees. So assuming we have that information, you would have four of six clues that indicate that a person is under the influence.

And you get some really great things which I brought up with the defense expert. They had a fantastic study. They had the San Diego study. They have a person, just 300 people you're talking about, and they displayed four out of the six clues. Then what alone -- that alone may give you some information there. Well, the science supports it, even if it was three out of the six.

We're not conceding that there wasn't nystagmus at the extremes. We're just saying -- and there was, and it was testified to. That was evidence put before you by Sergeant Laney. We're just saying even if he didn't have that, you would have the necessary four out of six clues to validate that test, which is the best field sobriety test. And it's something that alone can tell you that if you have four out of the six clues, you have a real high

degree of probability that that person is under the influence.

Well, we don't just have nystagmus. A person is not arrested just based upon that. But this alone, the San Diego study, and the officers guessing .11, .12. The defense attorney says that's outrageous. You couldn't say that. Well, that's exactly what the study said. He agreed with the numbers. But those officers and those 397 people who were testing them, checked them out, gave them a field sobriety test, and then looked and guessed their blood alcohol level and came out with a reading that almost exact -- .12, .10; almost perfect. Which kind of defies what you would think too. Would you think it would be that good?

And maybe not knowing going in and saying I don't think an officer can tell looking at someone's eyes how far under the influence they are. But they can, and it's validated by science. And it's something he didn't dispute. He didn't like it, but it's something he could not dispute.

So you have a horizontal gaze nystagmus. You have the one-leg-stand, and another standardized test. And you recall the testimony of the officers, I think you had a walk-and-turn field sobriety test. There was some dispute in the testimony as to the one-leg-stand. The defendant said it was unfair because it was done at an angle in the street. Sergeant Laney said no, no, no. I did all the field sobriety tests, these last two, down on

Montreal where it was a flattened area, according to Sergeant Laney. That would be different from how it was characterized by the defense.

But you had basically two separate tests that were looking to determine whether a person could one, use divided attention. You heard about the divided attention test, and can you follow directions and can you do certain things. These are things that are testing different abilities of the defendant to determine whether he's mentally impaired and physical impaired.

And you heard that he was mentally impaired; that mental impairment preceded physical impairment. That even before you have something where you have physical things, you're going to be mentally impaired, which kind of goes a little bit to the timing issue.

The defense is contending that the defendant was not under the influence at the time of the driving, this all would have come after this showing of physical impairment, would have come after what already would have had in his mind been mental impairment. So the defendant would have been mentally impaired before he even got to the point of doing these standardized field sobriety tests.

So you recall the testimony of the officer -- excuse me, the sergeant. First of all, he failed to hold his head still for the nystagmus, but he got that information. For the one-leg-stand, he raised his hands -- raised his arms -- during the test. And also

he's told to count to 30, he dropped after 20. He's instructed to put the foot back up, and he just didn't; didn't start again. So you had -- this was at 20, did not raise his foot back up again contrary to instructions. And you heard this divided attention tests are impacted.

We had our expert, Joe Palecek, tell you that he's done personal types of things. We talked about the colors -- the green, the yellow, those things where you're getting different messages -- and those divided attention tasks, your brain just starts to kind of fade out. It does not allow you to do what you're doing when you are not a sober person. So this impairment you have, at the levels we're talking about, puts your brain in a much worse position to handle those divided attention tests. Which is supposed to be easier than driving according to the experts.

And what do we see in the video when we see the defendant. We see him driving, he's driving fast. Suddenly now he's got his hands on the wheel, accelerator, the brake, he's signaling left, and he's got something in his rearview mirror where he's getting lit up. And he's got, what does he got on his left? A man standing in a crosswalk. That's the type of thing that the law is looking at. You have a driving situation where you have 50 things going on at once. Luckily in this situation, that guy on the corner next to the crosswalk is going the other way. If you don't have that.

situation, he's coming in, now we've got a lot of stuff. Guy is under the influence, he's got 15 things to think about to do at the same time, all these divided-attention tasks, and he's got a problem. This is just another indication that that was happening.

As far as the line walk, failed to stand as instructed with the one foot over the other, and then not completed. And kind of the same reasons that it wasn't completed in the first one, he kind of went off and strolled, that was the description of it. And I won't bore you with that because you guys recall the testimony with how he went off the line, just kind of went off allowing him to drop back to the start. The sergeant in response to one of the questions described that. It wasn't because he was going too fast. Wasn't the officer saying that was somehow a violation of the test. He just quit. He started basically walking off on his own. He was like okay, that's it.

So you had the three validated standardized field sobriety tests. And this information validates the fact that the defendant was under the influence even before you get to the point of the chemical tests. The time of driving was at 8:00. The time of the tests are in between 8:00 and the time of the chemical tests which are 8:45, 8:47. Make that approximately 8:00 o'clock for the stop, and then 8:47 and 8:50 I believe were the times for the chemical tests. The chemical tests go to the .08 to show you that he was over .08 at the time of driving, and

they were actually .09 percent. That information that the officer was given that two hours prior the defendant was drinking and had stopped drinking. That was the information he gave to the officers; his statement to Sergeant Laney. .09, .09; validated, accurate, and precise.

You have some evidence that you can look at that's going to be before you, and this is going to show you that when the test was taken, and the actual printout that you saw from the video is going to show you the results and is going to show you the times that are in there. There's also a 15-minute waiting period. Remember that that's true; that's one of those Title 17 things. Title 17, you heard Mr. Palecek talk about Title 17 are the health regulations. You can look at those to determine whether or not they were following within the state regulations. There's no testimony that you have to be watching the person, that you're looking at them directly, and put them in a seat in front of you.

Oftentimes people will be brought in, just from common knowledge, from stations -- I mean from locations of arrest into stations. You have time that they're being looked at by Sergeant -- that Mr. Robben is being looked at by Officer Laney, time that the defendant was looked at by Officer Wilson, and then ultimately when the test is given, he is coming up .09. Valid, accurate, precise results.

Recall that the distinction, the difference that's

allowed under Title 17 is a .02. That's what's allowed for that. And then Title 17 also talks about -- that's for whether it was precision or precise, or one follows the other -- and then whether they're accurate is .01 percent, and as we were shown through the defense expert, that both of those were well within the limits.

So that's the information that has been given to you. I'd ask you to think critically about the information that the officer gave you, that the sergeant gave you, versus the other testimony you heard in court which consists of the defendant, his experts, and two witness that were there. So it's for you to consider. The People believe there is ample evidence to find the defendant guilty of both counts, and I will be able to address the defense arguments after he speaks to you in a few moments. Thank you.

THE COURT: All right. Thank you. And did you get verdict forms?

MR. PIZZUTI: Yeah.

THE COURT: Okay.

Mr. Spicer, whenever you are ready.

MR. SPICER: Ladies and gentlemen, good afternoon. Like Mr. Pizzuti, I too want to thank everyone for their service over the last few days. I'm sure there's other places you would rather be, and I thank you for being here.

I would like to start again just by saying that at the beginning of this case, I made a statement. I said

to you in my opening that impairment due to alcohol intoxication, in this case wouldn't be able to be proved beyond a reasonable doubt. And I would say that nothing we've heard over the last few days would make me want to change that statement. The nice thing, like the judge instructed us about our system of justice here, is that criminal defendants don't have to prove anything; it's the State that has the burden if they want to convict someone of a crime. And it's a high burden. You must all be convinced beyond a reasonable doubt that Mr. Robben was impaired, or that he was at or above a .08 percent blood alcohol content when he drove his vehicle an August 20th of 2014. Based on the testimony we've heard, that just can't be proved.

Now, I'm glad Mr. Pizzuti put some of the evidence up there, because I want to spend some time talking about the evidence that you've heard in this case. You heard a lot of evidence to -- about -- well, just about the day, about August 20, 2014. We heard what Mr. Robben was doing. We heard not only from him, but we heard from his friends about some of the events of the day. Mr. Robben was working, kind of packing stuff up, moving stuff around town. He described having a trailer earlier in the day that he was using to haul some stuff. And that's going on for most of the day, and then he has to run some errands. And it could be hard to remember approximately nine months ago, but these errands are something pretty significant that would stand out in his mind.

He remembered he had to go to a title company. He had sold some property, which had to do with why he was moving stuff. And at that title company he got a pretty substantial check. I know that is something I would remember nine months ago. And he remembers, after going to the title company, he had to go to the bank. The bank is very important because it helps us establish a time line for the day. Mr. Robben testified he was in hurry to get to the bank by the time they closed at 5:00 o'clock. So when we're talking about the time line here, knowing that Mr. Robben had to get to the bank by 5:00 o'clock is a pretty important fact.

Now, he gets there, he deposits that check, and sounds pretty happy about it. He leaves the bank; goes over to 7-Eleven; picks up a 12-pack of his favorite beer, Corona Extra; gets some limes; goes over to his buddy John Huls's house. So we heard from John Huls, we heard from John Robben, and we heard from Todd, and they told us that the three of them were over at the house. They're kind of hanging out, looking at the hot tub that was brought over, deciding where they are going to put it, kind of moving around some of the stuff that Todd had brought over. And while they are doing this, they cracked some beers. They're hanging out, they're talking. No one can give us really a for certain description of what exactly is going on when, but again, it's nine months ago.

At some point, they get a little hungry, and there's

some discussion of are they going to barbecue or get some pizza. Mr. Robben says, let's get a pizza; calls up Blue Dog right down the street. Blue Dog says hey, we've got this deal. You go on the Internet, and you get this discount if you order on the Internet. So Mr. Robben goes over to the computer at Mr. Huls's house, goes online to order this pizza. And while he's doing that, he sets down his beer he's working on. Was it his second or third beer? I don't think he can remember conclusively. But it was his last beer. He finishes it, and he goes to get the pizza.

Now, he testified that he waited approximately 20 to 30 minutes after getting this pizza -- or excuse me, after ordering this pizza to go get the pizza. So again, between the stop at 8:00 o'clock -- Mr. Pizzuti wrote it right up there. That again helps us establish a time line in this case. Mr. Robben is leaving the bank at 5:00 o'clock, he got over and stopped at 7-Eleven, he got over to Mr. Huls's house at approximately 5:30, maybe as late as 5:45; 5:30, 5:45. If the stop is at 8:00 o'clock, and he orders that pizza 20 to 30 minutes prior, we know that he was still working on his last beer at least 20 to 30 minutes before 8:00 o'clock. Okay. So those are a few facts; bank at 5:00 o'clock, stop at 8:00 o'clock. Those help us establish this time line here.

Now, there's conflicting evidence. Sergeant Laney did come in and he said Mr. Robben told me he consumed his alcohol two hours ago. Mr. Robben said what he told

Sergeant Laney was within the last two hours. Those are very close. I could see how that could be misinterpreted, misunderstood, or even misrecorded. But the truth is Sergeant Laney did say that he uses his police report that he makes to refresh him -- refresh facts for him to come in and testify in court. What did we hear about his police report? Well, I think he said that was contained in his police report. We know he may have started his police report that evening, that's what he testified. The time on the police report, as his computer system put in, was approximately 25 hours after he had this alleged conversation with Mr. Robben.

We also know that Sergeant Laney told us that there's a lot of documents, a lot of forms that he has to fill out for DUI cases. And we know in this case, not all those documents, not all those forms were correct. We saw the form DS-367, the DMV form, where there were multiple mistakes. And that form was one in which Sergeant Laney had to sign under the penalty of perjury. And you know, initially he said no, no, no; there's no more mistakes on there. So I gave him the document and said can you find any more mistakes? And within 30 seconds, he found more mistakes. He didn't have to spend that long looking at it to realize that his documents in this case definitely have mistakes.

So when we're trying to decide here did Mr. Robben finish drinking two hours ago, or was he drinking within the last two hours, that statement might not be the most

credible evidence.

Now, I want to turn to some of this evidence of impairment here. We've heard a lot about evidence of impairment. We heard first about field sobriety testing. And Sergeant Laney, and both experts, I think agreed that these tests are validated and standardized by the National Highway Traffic Administration, and the science behind them -- the validation -- is only true or only the statistics -- we can only gather -- we can only take those statistics that the studies tell us if the tests are conducted as standardized. Mr. Smith said not only the tests are standardized, but the instructions are standardized.

So no matter where an officer goes to learn about standardized field sobriety testing, they should all receive the same instruction. Not just hey, this is how you do the test and it's different people giving different instruction on how the test should be done, not only should the test be standardized, the instruction should be standardized.

Let's talk first about the horizontal gaze nystagmus. I apologize as I mispronounce that word from saying it over and over again. Sergeant Laney as well as both of the experts explain that one of the clues you're looking for is distinct and sustained nystagmus at -- excuse me, at maximum deviation. We learn that sustained means for at least four seconds. And we heard that Sergeant Laney may have given conflicting statements about

that. We heard that he testified before in this case, and he testified that he did not observe sustained nystagmus for four seconds. He said that he would not hold a stimulus for more than 2 to 3 seconds because any longer than that and a subject could develop what's called fatigue nystagmus.

Now, when he was testifying here this time, he changed his testimony and he said he didn't hold the stimulus for four seconds because my client, Mr. Robben, wouldn't hold his head still; he continued to move his head. So when I asked him why he changed his testimony, I found the answer very powerful. He said he changed his testimony because after I questioned him on it last time, he went and reviewed the 2013 NHTSA manual and found out that in fact he is supposed to hold the stimulus for four seconds.

So I know Mr. Pizzuti doesn't want to concede this one, but I would say this one both experts would agree was not conducted correctly.

Now, with regard to the other two clues of intoxication and the horizontal gaze nystagmus test, the speed at which the stimulus moves is very important. Sergeant Laney said he conducted this test in that it would take two to three seconds to get the stimulus from one side at maximum deviation all the way out here to the other side at maximum deviation. Now we heard different evidence about that. Mr. Palecek said it should take four seconds, and I believe in the way Mr. Smith

-- the standardized, validated results -- are only valid if the test is conducted as NHTSA tells us the test is to be conducted.

Sergeant Laney talked a little bit more about his review of the NHTSA manual, his recent review of the 2013 NHTSA manual, and he said he learned that some people may have trouble with this test -- or NHTSA says some people may have trouble with this test -- and that could include people who are at least 50 pounds overweight. That would also include people who have physical ailments especially in their legs or in their back.

Now, Mr. Robben testified about his physical ailments. He testified about a reconstructed knee due to a blown ACL. He talked about having flat feet. And he talked about being just generally fatigued and sore from manual labor that he was doing not only that day, but in the recent history we heard he had been out in Sonora working on a trail for some time. And then the day this happened, August 20th, he's actually moving a hot tub. So that's kind of a heavy object that three guys are moving around, and that goes to his fatigue.

Now, Sergeant Laney did say there were other tests available. These are the three standardized tests. But if someone might have trouble with either of these tests, there are tests that can be conducted that don't involve the use of the legs. He mentioned two very quickly. He mentioned touching your finger to your nose, and he mentioned what's called a finger count. He didn't really

describe those, he just mentioned that those are possible tests.

Lastly, the location of the one-leg-stand is disputed. Sergeant Laney says he remembers that before doing the one-leg-stand that they walked from the incline where Mr. Robben was stopped down to the flat area on Montreal. Mr. Robben says that move did not occur until after the one-leg-stand but prior to the walk-and-turn. So that will be for you guys to decide.

Now, with the walk-and-turn, what happened with the walk-and-turn? I don't think it's very easy to discern based on the testimony we've heard. However, Sergeant Laney did agree that he didn't complete instructing the test, and he didn't complete demonstrating the test. And he further agreed that a full instruction and full demonstration is required in order to begin the test. So I would argue that without the full instruction and demonstration phase complete, a subject cannot be asked to begin the test.

Now, according to Sergeant Laney, this is where Mr. Robben starts making statements about his feet falling asleep, kind of complaining about the general unfairness in the test. This is when Sergeant Laney is asking Mr. Robben to stand in what he called the start position. And he says Mr. Robben during his conversation, this back and forth that's going on, is stepping off line; won't stand in the start position. Mr. Robben said that the longer this went on, the harder

it became to stand in the start position.

You know, I asked Sergeant Laney if he thought standing in the start position was hard to do and he said no, not really. You guys got to see him come down here and do some demonstrations. He was standing right where I am standing. And when he came down here and did that, you know, I don't want to call it a full stumble, but I thought I saw his feet shuffle a little bit. I don't know if any of you saw that, but that will be, again, for you to decide. And this, if you did see that, is an officer who has demonstrated this test hundreds and hundreds and hundreds of times.

So yes, these tests are standardized and validated, and there are a lot of statistics about what these tests can tell us, but both experts would agree that we can only rely on those statistics if those tests were conducted correctly. And I would argue to you that the way the tests were conducted really don't tell us that much because they were not conducted correctly.

What other evidence of impairment do we have? Well, right there Mr. Pizzuti drew the chemical test. In this case, we have a breath test. What does the breath test tell us? What did the experts say? It's a measured value of a blood alcohol content at time of the test. Now, they went on to tell us that you can take that value -- it's a measured value, it's probably not the actual value. The actual value is going to be based on margin or error, or at least what I called a margin of

error. I think both scientists corrected me and said a range or uncertainty. Sorry if I get some of these scientific terms mixed up as I continue here.

Now, Mr. Palecek said there's a range of uncertainty plus or minus 5 percent, just beginning, with this machine; the office has 7510. Mr. Smith felt it was a little bit higher. Today his testimony was plus or minus 10 to 15 percent. So this was range of uncertainty, 10 to 15 percent from .09 is what an actual blood alcohol content would have been. But again, that would have only been at the time of the test, not at the time of driving.

What else do we know about the breath test? Well, I'm glad Mr. Pizzuti brought up Title 17. I think Officer Wilson's testimony pretty much speaks for itself. I think it's pretty clear that Title 17 was not followed here, and the impact of that is for you to decide.

The most important part in considering this breath test evidence is to think about the time gap here; the time between driving and the time of the test, and the effect the unabsorbed alcohol could have on a person's blood alcohol content. Both experts agree that if there is unabsorbed alcohol there would be an effect -- there would be an effect on the test. When I -- the example I asked Mr. Palecek was an elimination rate of .08 percent -- which was within the range that Mr. Smith agreed was a reasonable range -- a male, at 220 pounds, with one standard unabsorbed drink in his stomach at the time of driving, may have been below .08 percent at the

time of driving if there was a breath test of .09 percent 50 minutes later; .05. Again, Mr. Palecek said yes, he may have been below a .08 percent. And he followed that up by saying he can't actually say a hundred percent.

Now, what Mr. Smith did was the same example. And Mr. Smith even included that uncertainty range. So Mr. Palecek's example assumes that the .09 is a hundred percent accurate. Mr. Smith put a range in there, and said let's take plus or minus 15 percent, and then see what effect unabsorbed alcohol can have.

And when I changed the hypothetical a little bit for Mr. Smith, I wanted him to say how much unabsorbed alcohol was necessary if we give Mr. Robben the benefit of that uncertainty. We also changed the facts a little bit because the original hypotheticals were based on the facts in the police report. So the hypothetical that I gave Mr. Smith to end with was instead of drinking two hours ago two beers, it was two to three beers over the last two hours and finishing the last beer within 15 minutes of driving. He did some math up there and he told us that a person would have to have six to seven ounces in their stomach, unabsorbed of a standard beer.

I want to be totally fair to Mr. Pizzuti here because he pointed out earlier that Corona is not a standard beer. The calculation was done with a standard beer, 5 percent alcohol by volume; Corona is 4.6 alcohol by volume, and when we asked Mr. Smith if that would change the calculation a lot, he said no, it wouldn't

change it a lot and it wouldn't change his ultimate opinion in this case.

So when you think of those hypotheticals that were posed to both experts, when you think of the time line in this case, and you compare the two, I think you would see that Mr. Robben must have been rising at the time he was driving.

Now, let's talk about when you're going to reach peak alcohol level. Mr. Palecek said well, it could be before finishing your last drink, could be within 2 minutes of finishing your last drink, but 15 minutes was a number he was pretty comfortable with.

Now, let's think about the drive, the timing, and where he was going -- where Mr. Robben was going. The map that you're going to see, the map that I showed Mr. Huls, showed that the drive from Mr. Huls's house to Blue Dog Pizza was six-tenths of a mile, and the estimate was a two-minute drive. Mr. Robben didn't even get to finish that two-minute drive. That's how quick in time that did happen after he finished drinking and left the house.

Now, Mr. Smith gave a different opinion on peak alcohol. He said it could be before someone finishes their last drink, it could be within two minutes in certain cases, it could be an hour and a half in certain cases. But he said a range he was pretty comfortable with was a range of 15 to 45 minutes after finishing your last drink is when you're going to get peak alcohol. And

that 45 minutes is actually pretty important in this case because -- although the stop was at 8:00 and the first breath test was at 8:47 or 8:48 depending if you believe the clock on the jail video or the clock on the breath machine; 47 or 48 minutes, approximately 45 minutes. That's pretty important because if that were the case, we would have peak alcohol level here right about the time he's taking the test -- the breath test.

What other evidence of impairment do we have? Well, one thing Mr. Pizzuti left off his chart up here is driving. Driving can be evidence of impairment. However, in this case, driving is evidence that tends to show Mr. Robben was not impaired. The stop in this case was for speeding. Sergeant Laney agreed that speeding is not itself a sign of intoxication. Now, he testified -- Sergeant Laney testified that he couldn't follow Mr. Robben long enough to see the potential signs, to see any more potential signs that you could observe when he's watching a driver to look for clues of impairment.

However, you'll see in the video Mr. Robben is driving straight, he's driving parallel to the double-yellow lines. We can see him stop at the stop sign. We can see him make a full stop. We can see him signal to the left, and in response to the officer coming up behind him, he signals to the right.

Now, I disagree with what Mr. Pizzuti saw in the video with respect to the pedestrian crossing the crosswalk. And I think Sergeant Laney did too when he

testified. I think Mr. Pizzuti asked Sergeant Laney if that gentlemen was in the crosswalk, and Sergeant Laney said no, he was on the sidewalk, and I think he was going the other way. But I encourage you to watch the video and see what you see there.

Now, Mr. Robben, in describing his driving when he testified, he sounded like a very alert driver. He was able to describe his driving. He was able to describe what he saw. He saw Sergeant Laney coming at him and going the other way on Montreal Avenue. And not only was he able to describe Sergeant Laney coming at him -- he noticed that visually -- he heard the motorcycle. Mr. Robben was able to describe the sound of the shifting in the motorcycle. And he watches the motorcycle go by, and then he watches the motorcycle make a U-turn.

Now, when is all this happening? That's happening when he's driving straight, approaching the stop sign, with no signs of intoxication. What's he doing right there? He's dividing his attention. He's accomplishing multiple tasks. He's not only driving the car and driving the car well, he's paying attention to the officer both with his sight and his hearing.

We then heard in the driving about what's called the stopping sequence. The stopping sequence is a very important time in the driving. The stopping sequence is from when, as counsel says here, he was lit up until the time of the stop. The time from when Sergeant Laney activated his emergency lights until the time when

Mr. Robben pulled over and fully stopped his vehicle. In this case, that was a short time. It wasn't too long. He was already at the stop sign. He just had to change his turn signal from left to right, make a nice appropriate turn, stop parallel to the curb without hitting the curb or anything like that.

So even though it was a short time, Sergeant Laney agreed that this is important time during a DUI investigation because it's a complex time for drivers. It requires drivers to divide their attention. There's a lot going on. They are already driving. Now they've got oh, no, the cops are behind. Their red and blue lights are on. What should I do? Where should I pull over? There's a lot of mental decisions that have to go on during the stopping sequence. And that's why officers are specifically trained to look for specific signs of impairment during the stopping sequence. And Sergeant Laney's testimony is that he didn't see any. He agreed that during this complex driving phase, Mr. Robben operated his vehicle as an unimpaired driver would.

Going down the list here and evidence of intoxication or impairment, the last thing I want to talk about is fine motor skills. Fine motor skills we've heard from both experts should be affected prior to gross motor skills; Mr. Palecek agreed with that and Mr. Smith agreed with that. And Mr. Palecek actually made a pretty relatable example when he described a study he performed with the game of operation where you have to use the

tweezers and grab the appropriate organs, and they would watch as people consume more and more alcohol that they would lose their fine motor skills.

What evidence do we have here of fine motor skills? We heard that Mr. Robben had to open his glove box. Sergeant Laney was standing. He kind of described being a tall guy. He had his motorcycle helmet on so he had to bend down a little bit to use the flashlight and kind of, you know, look at the glove box. He wants to make sure Mr. Robben is not pulling any weapons or anything like that out of the glove box, so he's watching this pretty carefully. And he says -- and Mr. Robben agreed when he testified -- that there was some clutter in there. As Mr. Robben is going through the documents, he's able to find documents, and he's able to grab those documents. He's able to hand those documents to Sergeant Laney.

About 45 minutes later, Mr. Robben has to complete some other fine motor skills tasks in the jail. He has to sit there and he has to take off his shoes and socks. There might be -- I don't think there was any shoe tying involved, but he did take off his socks and grab another pair of socks with his hands and puts them right back on. Pay attention to his hands and look at his fine motor skills. I would argue to you that the evidence we have before us right now shows us that his fine motor skills were not affected by alcohol.

So I want to wrap this up here, ladies and gentlemen. August 20th of last year, was Mr. Robben

doing everything he should have been doing? No. He was driving with expired registration -- or improper registration and the expired insurance. Certainly broke some rules there. At the time of the stop, he got out of the car. And that's something that's little bit unusual. I don't think most people would do that. However, he wasn't threatening anyone, he's not trying to cause these police officers harm. He's not really trying to make this any harder than it has to be.

And in discussing Mr. Robben's general demeanor, I think we hear some pretty conflicting testimony from Sergeant Laney and Officer Wilson. Officer Wilson did describe that when he got there, he was pretty much just a cover officer. He wasn't paying superclose attention. But he's standing there and sees what's going on. And to the best of his recollection, Mr. Robben was actually being fairly cooperative with Sergeant Laney. And when I asked him a little further about that, Officer Wilson said that in his interactions with Mr. Robben, Mr. Robben was being cooperative and in fact polite.

Ladies and gentlemen, I said it before at the beginning of this case, I said it at the start of this argument right now, but again there's just not enough evidence here to rise to the level needed for a criminal convection. What the evidence we have shows is that Mr. Robben was driving well on August 20th of 2014. He was driving as someone who was not impaired by alcohol on August 20th of 2014. And I would argue to you that the

best evidence of his impairment at the time of his driving is his driving. That's how you know whether or not he was impaired at the time he was driving. This breath test 50 minutes later is just not enough to tip the scales the other way. There's too much doubt in the science there. There is too much doubt with how the field sobriety tests were conducted to tip the scale the other way. Neither the field sobriety tests nor the breath test can prove that Mr. Robben was impaired while he was driving. Neither can prove that he was at or above .08 percent while he was driving. And ladies and gentlemen, that's why I ask you to return a verdict of not guilty for both charges. Thank you.

THE COURT: All right. Thank you Mr. Spicer.

Mr. Pizzuti?

MR. PIZZUTI: Thank you, Your Honor.

Just a few minutes here. But I think we start with the driving. I never wrote it up here because the driving is not proof of impairment. You know, that's what we were trying to say. If there was a taillight that was out, you're going to be in the same situation when the officer pulls you over, and we described it the same way. Certainly, I don't think -- I mean, this is for the jury. You look at that video. Does that show good driving or bad driving? I mean, that to me is not going to be conclusive. You see his car for a while. You don't get a chance to look at the person's driving. The light was on him, which you can see from the video.

He was pulled over, and that was it. So that's why you can't consider driving. It's not one of the elements. It's not something we have to prove that there was bad driving; that's what we talked about in the voir dire.

So we talked about objective symptoms, the HGN, and the level that Mr. Robben registered which was an .09. And this is really what you know. This is how you know he couldn't drive or was impaired under the law and unable to drive safely like a normal person. That's what the law is, not bad driving. Are you impaired under the definition of the law? Unable to drive like a sober person with the caution of a sober person, and that we know is an .09. And we are saying okay, what are we talking about? I'm talking about a little time issue here; right? We are talking about how experts say -- I don't recall what the defense expert said, but the People's expert said than an .08, an .08 at the time of driving, everyone is impaired. Absolutely science, dead on, tells you every person is impaired for the purposes of driving at a .08. So let's say, okay. If everyone is impaired at an .08, they're certainly impaired at .09. Counsel says no, no. He's on the rise, he's rising.

Well, I've got to give him credit. He never argued outside of the evidence. And, do you recall what the evidence said? That's the max that their expert got; according to their statements, the defendant's statements; an .06. That's the max according to his statement with three beers fully absorbed. And we're

talking about rising. If you're talking about putting something -- whether a person is absorbed or not. That's important. Because time to peak is what they're talking about. When do you get maximum absorption? Counsel talked about some things, but I think he forgot one thing which is this is the college-style drinking; right? You're going to be sucking them down, popping the thing open. You're going maximum, maximum. You've got all three in your system at that exact second, and then you go and drive; right? That's what we were asking the expert. So if you did that in 15 minutes, he's stopped what? 45 minutes after the fact? He's saying during that time here he was rising, rising, rising. No. That's no what happened. I mean, that's the part he forgets. Is that you didn't hear testimony that he did it like this. This was just like the worst-case scenario. You drink all three at once, and you suck it down in your system, you inject the beer into your veins. You get there immediately; right? That's not the way people drink. That's not how the defendant testified. What's the evidence of that? There's no evidence of the that. The evidence is best-case scenario for the defendant. I was there for a couple hours. We moved a Jacuzzi and started drinking. I had just one to three beers, two beers, in that range. By his own testimony, he's never going to get up there.

But realistically, what are you talking about? You're talking about a drinking pattern that gives

earlier, not just all shot the second he leaves. He doesn't pound them and run out the door. He's talking about drinks the first beer; right? It's a social thing. Well, like their expert said in a half an hour. Drinks two beers in a half an hour, something like that. You go a little bit, you know. So you're burning it off; right? Burning off, burning off, and you're never even getting to where we know he was.

If you went and said that the elimination rate is .018, .018, it's going to be the only realistic thing is at the time of the first test at 8:47, where is he when he's driving at 8:00 o'clock? And it's higher. It's higher because people burn off over time. People burn off a little less than .02. So the time he's up here, he's already been at his buddy's house or wherever.

He's drinking; he's burning off. He's burning off, if you're drinking for over an hour, you've already burned off one of your beers. You only have two left in your system. So two, what's two going to get us? We talked about that. You know, three? It's beer so .03; right? That's what it comes down to.

Who do you believe? Which side do you believe? The evidence is pretty clear based on the instructions who you should believe.

We talked about conflicting evidence. If you have conflicting evidence, how you are to deal with it in the instructions. Do you want to believe the People's validated .09, or do you believe the defendant's story.

You have two versions of events that are in complete contradiction. And when you look at one, what the instruction tells you is that you must decide. You have to make that call of who to believe. Do you believe the People's expert, or do you believe the defendant's story. We know the defendant was called by his own expert untruthful, so we know his story is untrue. Counsel, to his credit, did not argue hey, all right. Let's be real. My client had five or six beers. He lied, he lied, he lied. He didn't do that. Why didn't he do that? Because he's ethical. He didn't lie beyond the evidence. You have to consider the evidence.

What is your evidence? Your evidence is that it was an .09 and the People's expert that says in an hour, you're burning off .08, or a little bit higher. So what we're talking about in reality is the person is not like the defendant said. But you're talking about the defendant being .09 and higher. This is really what's going on. He's drinking. In an hour, two maybe. That's the time he says he's at the house; right? Drinking, drinking, drinking; not like he says. He's drinking a bunch. You've got to get to this point.

What did the defense expert say you have to drink to get to an .09? How many Coronas do you have to drink to get to an .09? Oh, about five. You have to drink five. If he's going to be doing five, what is it that he's burning off? Like our expert told you, if he's .09 at the test and he's up here after 45 minutes, he's probably

nearly an .02 higher; right? Let's say conservatively. He's an .01 higher. He's really -- this is where he's at. This is what's going on. He's at a .10. Now certainly, if all people are impaired at .08, then you're definitely impaired at .09.

We know this because absorption is what? Absorption to peak time is, according to experts, Joe Palecek says two minutes; two minutes. That's what one of the studies said; right? Say it's more. You're talking about a study of 17 to 20 minutes when your maximum absorption is following your last drink. So if he's absorbing here, and eliminating and absorbing, eliminating and absorbing, eliminating, that's what you're talking about. You're not talking about pounding. You're talking about this type of thing; right? At the time of driving, he's coming down. He's clearly coming down, because at the time of his last drink -- which he talked about, says it's right before he goes -- he's absorbed. That's time you get to your maximum peak; that's right about the time that you had your last drink.

The part that counsel forgot to tell you about is we got all of this elimination going off because he's drinking over an hour, two hours; whatever he was drinking. And he's drinking probably six, seven. We know he's got five in his system; drinking six or seven, burned off a couple, and that's where he's really at. There is the number of beers that we had down here when he's tested. We have more here, he's burned off some

others. That's what's going on. That's what it tells you.

So that goes to the (a) count, which is the .08 at time of driving. The (b) count of whether he's under the influence or not and the studies, I'll leave that to you for -- you've heard plenty of testimony on that.

The part I want to leave you at is that this is up to you. We look to you as reasonable, smart people, not gullible people; not people that are looking at some defense expert and just nodding your heads up and down. You guys will be critical thinkers. And I feel fully confident that you -- that you and any intelligent jurors would come back guilty on both counts. Thank you.

THE COURT: All right. Thank you, Mr. Pizzuti.

Okay. As I indicated, I'll read the last instructions, and then I'll have the clerk swear the bailiff to take charge of you after I give you just a couple quick tips.

When you go to jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried out in an organized way, and that everyone has a fair chance to be heard. It is your duty to talk with one another and to deliberate in the jury room. You should try to agree on a verdict if you can.

Each of you must decide the case for yourself, but only after you have discussed the evidence with the other jurors. Do not hesitate to change your mind if you

become convinced that you are wrong. But do not change your mind just because other jurors disagree with you.

Keep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. Please treat one another courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other.

As I told you at the beginning of the trial, do not talk about the case or about any of the people or any subject involved in it with anyone including but not limited to your spouse or other family or friends, spiritual leaders or advisors or therapist. You must discuss the case only in the jury room, and only when all jurors are present. Do not discuss your deliberations with anyone. Do not communicate using cell phones, Facebook, Twitter, et cetera during your deliberations.

It is very important that you not use the internet, a dictionary, or any other relevant source of information in any way in connection with this case during your deliberations.

During the trial, several items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. These exhibits will be sent into the jury room with you when you begin to deliberate.

If you wish to communicate with me while you are

deliberating, send a note through the bailiff signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you not communicate with me except by a written note. If you have questions, I will talk with the attorneys before I answer, so it may take some time. You should continue your deliberations while you wait for my answer. I will answer any questions in writing or orally here in open court.

Do not reveal to me or anyone else how the vote stands on the question of guilt issues in this case unless I ask you to do so.

Your verdict on each count must be unanimous. This means that to return a verdict, all of you must agree to it. Do not reach a decision by the flip of a coin or by any similar acts.

It is not my role to tell you what your verdict should be. Do not take anything I said or did during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

You must reach your verdict without any consideration of punishment.

You will be given verdict forms. As soon as all jurors have agreed on a verdict, the foreperson must date and sign the appropriate verdict forms and notify the bailiff. If you are able to reach a unanimous decision on only one of the charges, fill in that verdict form only, and notify the bailiff. Return any unsigned

verdict forms.

So when you go into the jury room, you're going to have two packets of verdict forms. One is Count One -- and I put little stickies on them -- the not guilty is on top, the guilty is on the bottom. And then the other is Count Two -- is the 23152(b), the .08 or higher, is Count One, if you recall. The 23152(a) is Count Two.

Now, once you go into the jury room, if somebody leaves, even if it's just to go quickly use the restroom, all deliberations need to stop, and they can't continue until all of the jurors are personally present. I encourage you to take frequent breaks. You need to let the bailiff, Deputy Klang, know when you are taking a break because we keep a record of that.

Once you reach a verdict, you can notify -- if you have questions, obviously you can send them out as you have them. I'll respond. We need to keep those notes, so don't throw them away. They become a permanent part of the record of the trial. Once you've arrived at a verdict, if you do so, you can let the bailiff know by note and we'll bring you back into the courtroom. And as I said, do continue to deliberate.

There were many items which were marked as exhibits and referred to during the trial. Only certain ones were admitted into evidence. All of the exhibits which were admitted will be sent in to you shortly. There is a DVD player and a flat screen in there which you've seen. I presume it operates in a normal way. If you have

difficulty, I'm sure Deputy Klang would be happy to assist you.

So Madam Clerk, if you will swear in the bailiff to take a charge of the jury.

THE CLERK: Do you solemnly state that you will take charge of the jury and keep them together; that you will not speak to them yourself, nor allow anyone else to speak to them upon matters connected with this case except by order of the Court; that you will take charge of the alternate jurors and keep them apart from the jury while they are deliberating; and then when the jury has agreed upon a verdict, you will return them to the court?

THE BAILIFF: I do.

THE COURT: Okay. Here are the verdict forms. The evidence will come in shortly. So you can go ahead and go with Deputy Klang into the jury room. You can bring all your notes and other items with you.

(Jury begins deliberation.)

(Whereupon a recess was taken.)

THE COURT: Okay. The jurors have all returned to the courtroom. We apologize for the delay, but we but have a smallish pool of attorneys up here, and they wear various hats. And Mr. Spicer was being hotly anticipated down in Department 12 and was in the middle of a proceeding, and as soon as he was done he wrapped up and came up here. But forgive us for that.

All right. I have received through the bailiff some verdict forms. I'll give those to you, Madam Clerk. You

need only to read the signed verdict forms. Yes; you have to read the whole thing.

THE CLERK: Superior Court of the State of California, in and for the County of El Dorado, the People of the State of California, plaintiff versus Todd Christian Robben, defendant. We the jury, impaneled in the above-entitled action, find the defendant, Todd Christian Robben, guilty of the crime of driving while having a .08 percent or higher blood alcohol in violation of Section 23152(b) of the Vehicle Code as charged in Count One of the criminal Complaint.

THE COURT: And it's signed by the foreperson?

THE CLERK: Signed by the jury foreperson.

THE COURT: All right thank you. Next verdict, please.

THE CLERK: Superior Court of the State of California, in and for the County of El Dorado, the People of the State of California, plaintiff versus Todd Christian Robben, defendant. We the jury, impaneled in the above-entitled action, find the defendant, Todd Christian Robben, guilty of the crime of driving under the influence of alcohol drug in violation of Section 23152(a) of the Vehicle Code as charged in Count Two of the criminal Complaint. Signed by the jury foreperson.

THE COURT: All right. Thank you. It's a little harder to do than it seems?

THE CLERK: I tried.

INJUNCTION REQUIRED

The Petitioner has filed claims with the City of So. Lake Tahoe and voiced his objections to the City Manager against hiring So. Lake Tahoe police officer Shannon Laney as the new police chief since Officer Laney had fabricated the DUI charge and committed perjury at trial and on other paperwork. In fact, Officer Laney should be removed from the police force and all cases he was ever involved with are subject to reversal since they are suspect of fraud and misconduct.

On May 20, 2020 agents from the El Dorado Co. D.A. office and SLTPD police department arrived in Bakersfield to return Petitioners laptop computer and cell phone which were unlawfully seized in case # P17CRF0114. Both agents (detectives) threatened the Petitioner that he was "harassing" Officer Shannon Laney by using his first amendment rights to communicate with the City Manager. The claims were also address as potential harassment. Both agents performed a search of Petitioner's property at the Westcare facility and took Petitioners other laptop computer and hard drives (thumb drives) and performed a search by copying the data for later review.

This Petitioner has current litigation against the El Dorado D.A. Office and SLTPD and others. The El Dorado D.A. and SLTPD police are obtaining confidential information (Petitioner's work product) and seeking Petitioner's contact lists that provided information into wrongdoing against the El Dorado D.A. and SLTPD Police. There is a conflict of interest with the El Dorado D.A. and SLTPD police as well as the El Dorado Sheriff. Petitioner is on parole. A parole agent can conduct any search if needed.

Petitioner requests a stay away order to keep the El Dorado Co. D.A., SLTPD police and other El Dorado law enforcement away from him. Petitioner is in Kern Co. Petitioner does not have a drug/alcohol problem or conviction. Despite this Petitioner is still in a "program" called Turning Point and reports to the Daily Reporting Center (DRC) where he is enrolled in job training and family relations… Said program provides funding for Petitioner housing as he transitions and resolves this set of legal issues which will reverse all the false convictions. Upon completing this task, the Petitioner is entitled to reimbursement for his time in jail/prison in addition to damages well above $10,000.00. The State also is required to pay for future

housing costs as Petitioner is free to live where he desires as he will not be a convicted felon …instead he is a crime victim and the crime victim fund pays for said money.

PETITIONER ENTITLED TO SB 269 & AB 701 RELIEF

See Senate Bill No. 269 and AB 701.

Senate Bill No. 269 CHAPTER 473

An act to amend Sections 1485.55, 4901, and 4903 of the Penal Code, relating to criminal procedure.

[Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 269, Bradford. Wrongful convictions.

Existing law authorizes a person who has been convicted of a felony, imprisoned or incarcerated, and granted a pardon because either the crime was not committed or the person was innocent of the crime to present a claim against the state to the board for the pecuniary injury sustained by the person through the erroneous conviction and imprisonment or incarceration. Under existing law, if a court grants a writ of habeas corpus but does not find the person factually innocent or if the court vacates a judgment due to new evidence of innocence, the person may move for a finding of factual innocence by a preponderance of the evidence. Existing law requires the board, under any of those circumstances, if the court makes a finding that the petitioner has proven their factual innocence, upon application by the person, and without a hearing, to recommend to the Legislature that an appropriation be made and the claim paid, as specified.

This bill would make those provisions applicable to cases in which newly discovered evidence of actual innocence exists that requires vacation of a conviction.

Existing law requires the claim for compensation for wrongful convictions to be presented to the board within 2 years after the judgment of acquittal, pardon granted, or release from custody.

This bill would instead require the claim for compensation to be presented to the board within a period of 10 years after judgment of acquittal, dismissal of charges, pardon granted, or release from custody, whichever is later.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1485.55 of the Penal Code is amended to read:

1485.55. (a) In a contested proceeding, if the court has granted a writ of habeas corpus or when, pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that the person is factually innocent, that finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904.

(b) In a contested or uncontested proceeding, if the court has granted a writ of habeas corpus or vacated a judgment pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, the person may move for a finding of factual innocence by a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner.

(c) If the court makes a finding that the petitioner has proven their factual innocence by a preponderance of the evidence pursuant to subdivision (b), the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904.

(d) A presumption does not exist in any other proceeding for failure to make a motion or obtain a favorable ruling pursuant to subdivision (b).

(e) If a federal court, after granting a writ of habeas corpus, pursuant to a nonstatutory motion or request, finds a petitioner factually innocent by no less than a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904.

SEC. 2. Section 4901 of the Penal Code is amended to read:

4901. (a) A claim under Section 4900, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, is required to be presented by the claimant to the California Victim Compensation Board within a period of 10 years after judgment of acquittal, dismissal of charges, pardon granted, or release from custody, whichever is later.

(b) For purposes of subdivision (a), “release from custody” means release from imprisonment from state prison or from incarceration in county jail when there is no subsequent parole jurisdiction exercised by the Department of Corrections and Rehabilitation or postrelease jurisdiction under a community corrections program, or when there is a parole period or postrelease period subject to jurisdiction of a community corrections program, when that period ends.

(c) A person may not file a claim under Section 4900 until 60 days have passed since the date of reversal of conviction or granting of the writ, or while the case is pending upon an initial refiling, or until a complaint or information has been dismissed a single time.

SEC. 3. Section 4903 of the Penal Code is amended to read:

4903. (a) Except as provided in Sections 851.865 and 1485.55, the board shall fix a time and place for the hearing of the claim. At the hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in

opposition thereto. The claimant shall prove the facts set forth in the statement constituting the claim, including the fact that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant, and the injury sustained by them through their erroneous conviction and incarceration.

(b) In a hearing before the board, the factual findings and credibility determinations establishing the court's basis for granting a writ of habeas corpus, a motion for new trial pursuant to Section 1473.6, or an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and the board.

(c) The board shall deny payment of any claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

4904. **If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant has sustained injury through his or her erroneous conviction and imprisonment, the California Victim Compensation Board shall report the facts of the case and its conclusions to the next Legislature,** with a recommendation that the Legislature make an appropriation for the purpose of indemnifying the claimant for the injury. **The amount of the appropriation recommended shall be a sum equivalent to one hundred forty dollars ($140) per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration**. That appropriation shall not be treated as gross income to the recipient under the Revenue and Taxation Code.

(Amended by Stats. 2016, Ch. 31, Sec. 253. (SB 836) Effective June 27, 2016.)

California is First State in Country to Provide Housing for Exonerated Individuals

Wednesday, October 2, 2019

Governor signs CACJ Co-Sponsored Legislation:

California is first state in country to provide housing for exonerated individuals.

Today, on National Wrongful Conviction Awareness Day, Governor Gavin Newsom signed AB 701 which is Co-Sponsored by CACJ and Exonerated Nation. **When a wrongfully convicted individual is exonerated and released from prison, the bill requires the State of California to cover the cost of the exonoree's housing for up to 4 years.** California becomes the first state in the country with this requirement.

“There is nothing more tragic than when our criminal justice system breaks down and wrongfully convicts someone of a crime they did not commit. The least the State of California should do is help exonorees transition to a place to live after spending years or decades in prison. CACJ is proud to co-sponsor this legislation and is grateful for Governor Newsom’s commitment to helping exonorees”

Jacqueline Goodman, President CACJ.

CACJ has had great success with legislation in the last few years. There have been several bills which address or provide redress for wrongful convictions. **CACJ also sponsored legislation to require the court to report prosecutors to the State Bar of California for Brady violations. (Penal Code §1424.5.) California also has the only felony offense in the nation to punish prosecutors guilty of intentionally withholding exculpatory evidence, thanks to our efforts. (Penal Code §141(c))**

Assembly Bill No. 701
CHAPTER 435

An act to amend Section 3007.05 of the Penal Code, relating to exonerated prisoners.

[Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 701, Weber. Prisoners: exoneration: housing costs.
Existing law requires the Department of Corrections and Rehabilitation to assist a person who is exonerated as to a conviction for which the person is serving a state prison sentence in accessing specified public services, including enrollment in the CalFresh and Medi-Cal programs. Existing law requires a person who is exonerated to be paid the sum of $1,000 upon release from funds to be made available upon appropriation by the Legislature for this purpose.
This bill would additionally require the payment of $5,000 to a person who is exonerated, upon release, to be used to pay for housing and would entitle the exonerated person to receive direct payment or reimbursement for reasonable housing costs, including, among others, rent and hotel costs, not to exceed specified limits, for a period of not more than 4 years. The bill would require the department to approve these payments and reimbursements from funds to be made available upon appropriation by the Legislature for this purpose.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3007.05 of the Penal Code is amended to read:

3007.05. (a) The Department of Corrections and Rehabilitation and the Department of Motor Vehicles shall ensure that all eligible inmates released from state prisons have valid identification cards, issued pursuant to Article 5 (commencing with Section 13000) of Chapter 1 of Division 6 of the Vehicle Code.
(b) For purposes of this section, “eligible inmate” means an inmate who meets all of the following requirements:
(1) The inmate has previously held a California driver’s license or identification card.
(2) The inmate has a usable photo on file with the Department of Motor Vehicles that is not more than 10 years old.
(3) The inmate has no outstanding fees due for a prior California identification card.
(4) The inmate has provided, and the Department of Motor Vehicles has verified, all of the following information:
(A) The inmate’s true full name.
(B) The inmate’s date of birth.
(C) The inmate’s social security number.
(D) The inmate’s legal presence in the United States.
(c) The Department of Corrections and Rehabilitation shall assist a person who is exonerated as to a conviction for which the person is serving a state prison sentence at the time of exoneration with all of the following:
(1) Transitional services, including housing assistance, job training, and mental health services, as applicable. The services shall be offered within the first week of an individual’s exoneration and again within the first 30 days of exoneration. Services shall be provided for a period of not less than six months and not more than one year from the date of release unless the exonerated person qualifies for services beyond one year under existing law.
(2) Enrollment in the Medi-Cal program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.
(3) (A) Enrollment in the CalFresh program established pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.
(B) Exonerated persons who are ineligible for CalFresh benefits pursuant to the federal Supplemental Nutrition Assistance Program limitation specified in Section 2015(o) of Title 7 of the United States Code shall be given priority for receipt of the 15-percent exemption specified in Section 2015(o)(6) of Title 7 of the United States Code. The State Department of Social Services shall issue guidance to counties regarding that requirement.
(4) Referral to the Employment Development Department and applicable regional planning units for workforce services.
(5) Enrollment in the federal supplemental security income benefits program pursuant to Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) and state supplemental program pursuant to Title XVI of the federal Social Security Act and Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.
(d) (1) In addition to any other payment to which the person is entitled to by law, a person who is exonerated shall be paid the sum of one thousand dollars ($1,000) upon release, from funds to be made available upon appropriation by the Legislature for this purpose.

(2) In addition to any other payment to which the person is entitled to by law, a person who is exonerated shall be paid the sum of five thousand dollars ($5,000) upon release, to be used for housing, including, but not limited to, hotel costs, mortgage expenses, a down payment, security deposit, or any payment necessary to secure and maintain rental housing or other housing accommodations. The exonerated person shall also be entitled to receive direct payment or reimbursement for reasonable housing costs for a period of not more than four years following release from custody. The Department of Corrections and Rehabilitation shall disburse payments or reimbursements pursuant to this paragraph from funds to be made available upon appropriation by the Legislature for this purpose.

(3) As used in paragraph (2), the term "reasonable housing costs" means all the following:

(A) For hotel costs, the cost of lodging, not to exceed 25 percent above the federal General Services Administration's per diem lodging reimbursement rate.

(B) For payments necessary to secure and maintain rental housing, both of the following:

(i) The actual cost of any security deposits necessary to secure a rental housing unit.

(ii) The cost of rent, not to exceed 25 percent above the fair market value as defined by the United States Department of Housing and Urban Development.

(C) For mortgage expenses, the cost of mortgage payments, not to exceed 25 percent above the Federal Housing Administration's area loan limits.

(e) For the purposes of this section, "exonerated" means the person has been convicted and subsequently one of the following occurred:

(1) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person's conviction was reversed on appeal on the basis of insufficient evidence.

(2) A writ of habeas corpus concerning the person was granted pursuant to Section 1473, either resulting in dismissal of the criminal charges for which the person was incarcerated or following a determination that the person is entitled to release on the person's own recognizance, or to bail, pending retrial or pending appeal.

(3) The person was given an absolute pardon by the Governor on the basis that the person was innocent.

\

\

\

\

\

PETITIONER NOT REQUIRED TO PAY ANY FINES, FEES, OR RESTITUTION - NO HEARING WAS CONDUCTED TO DETERMINE INDIGENT ABILITY TO PAY

In all three cases (P17CRF0114, S16CRM0096 & S14CRM0465) there was no hearing to determine the ability of the Petitioner to pay any fines, fees or restitution in violation of U.S. 8th & 14th amendments and California Constitution Art.1, Sec. 17. All fines, fees and restitutions from all cases listed are related to court fees, etc. There is no victim restitution (there was never any damage done to any alleged victim).

This Petitioner is indigent and will not be paying any fines, fees or restitution and just requests an order from the court to confirm this. This is really moot since the three convictions must be reversed anyway. The courts claim this Petitioner owes the following:

1. Case # P17CRf0114 is approximately $2,529.00 for court fees.
2. Case # S16CRM0096 is $650.00
3. Case # S14CRM0465 is $2,184.00

In *People v. Dueñas, 30 Cal. App. 5th 1157 - Cal: Court of Appeal, 2nd Appellate Dist., 7th Div. 2019* held that due process "requires the trial court to conduct an ability to pay hearing and ascertain a defendant's present ability to pay before it imposes court facilities and court operations assessments under Penal Code section 1465.8 and Government Code section 70373.

In *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal.4th 707, 731* [after examining the relevant considerations, a reviewing court can decide for itself whether a fine or penalty is unconstitutionally excessive].

The determination of whether a fine is excessive for purposes of the Eighth Amendment is based on the factors set forth in *United States v. Bajakajian (1998) 524 U.S. 321 [141 L.Ed.2d 314*] (Bajakajian). (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co., supra*, *37 Cal.4th at pp. 728-729* [applying Eighth Amendment analysis to both defendant's federal and state excessive fines claims].)

"The California Supreme Court has summarized the factors in Bajakajian to determine if a fine is excessive in violation of the Eighth Amendment: `(1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay. [Citations.]' (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co., supra, 37 Cal.4th at p. 728*; see *People v. Gutierrez (2019) 35 Cal.App.5th at p. 1027* (conc. opn. of Benke, J.).)" We review the excessiveness of a fine challenged under the Eighth Amendment de novo. *(People v. Aviles (2019) 39 Cal.App.5th 1072*).

Petitioner requests the court to issue an order for the return of any and all money paid for any fine, fee, cost, and restitution in any of the three cases. Money was taken out from Petitioner's prison trust fund and inmate work pay. Petitioner paid an estimated $200.00 that must be returned plus 10% interest. Additionally all other restrictions such as the claim "defendant will never own a firearm" are null/void as well… Petitioner requests declaratory relief that Petitioner rights – including his U.S. Second Amendment rights have been restored (they are anyway since the order was null/void)… "The right to bear arms shall not be infringed."

Case P17CRF0114, P16CRM0096 & S14CRM0465 fines/fees:

THE COURT: I have considered all of the counts as potentially concurrent.

MR. MILLER: Thank you very much, Your Honor.

THE COURT: And I reject that.

The Court does want to make a clear record here, that this is a case where the Court has a wide sweep of discretion: Making it a misdemeanor, making it felony probation, making it some combination of misdemeanor and felony, imposing -- a prison term is imposed, one count where everything else is concurrent and every combination above. For the reasons I have indicated, I think a very substantial sentence is warranted in this case.

The Defendant will:

Submit to DNA archiving.

Will pay a restitution in an amount to be determined.

Will pay a restitution fine in the amount of $2,000.

That same amount will be imposed and stayed pending his successful completion of parole.

There will be $109.50 probation report fee.

A court operations fee of $40. And I will impose that as to five of the counts, for $200 total.

A $240 critical needs assessment fee at $30 per count.

The Defendant will never possess or own a gun or firearm.

Jury admonished and excused.
Court recesses at 12:00 p.m.; reconvenes at 1:30 p.m.
All present as before.
Jury present in place.

The Court instructs the Jury.

Closing arguments by the People.

Closing arguments by Defense Counsel.

Bailiff is sworn to take charge of the jury and alternate(s).
(S. Klang)

Jury begins deliberating at 3:02.
Court is in recess pending notification
from the jury.

At 4:00 p.m. Court in session
All present as before.
Jury present in place.

The Court reviews the signed verdict forms.

The clerk reads the verdicts into the record:
Jury finds the defendant GUILTY as to Count(s) 1 2
Dated 05/07/2015, and signed by Jury Foreperson.

Final instruction read to the jury.

The jury is thanked and excused.

No legal cause why judgment should not now be pronounced.

Defendant requests immediate sentence.

SENTENCE
For the Count(s): 1 2
Summary Probation granted for a period of 48 months under the
following terms and conditions:
01) Obey all Laws.
02) Defendant committed to the custody of the County Sheriff for a
--- period of 2 days.
Credit for time served of 2 days.
03) Defendant ordered to attend 3 months Trac 1
04) Follow all orders of the Court and report as directed.
05) Notify Court immediately of any change in residence address.
06) Do not knowingly operate a motor vehicle without a valid
--- driver's license and insurance.
07) Not to operate a motor vehicle with any measurable amount of

Case Number : S14CRM0465 People vs. TODD ROBBEN

--- alcohol.
08) Submit to a chemical test of blood, breath, or urine upon
--- request of any peace officer.
09) Submit to alcohol and field sobriety tests.
---
10) Administrative Fee in the amount of $60.00 purs to PC 1205
11) Pay fine in the amount of $1974.00 which includes penalty
--- assessments. Payable to the Clerk of the Court.
Number of convicted counts 002 court operations assessment fee
of $20.00 included in total fine.
12) Misdemeanor Restitution Fee ordered in the amount of $150.00
--- pursuant to 1202.4 PC as a term and condition of probation.
13) Pay probation revocation restitution fine in the amount of
--- $150.00 pursuant to 1202.44 PC. Fine stayed pending successful
--- completion of probation.
14) Fine/fee is payable at the rate of $50.00 per month
--- Payments to commence 08/15/2015.
15) It is your responsibility to make monthly payments, no billing
--- statements will be provided.

CUSTODY STATUS
Released on Probation
Defendant furnished copy of conditions.

CC: A. Spicer

==========MINUTE ORDER END==========

Dispo

Case Number : S16CRM0096 People vs. TODD ROBBEN

Counts 2 stayed pursuant to 654 PC.

For the Count(s): 1
Serve 180 days in the County Jail.

For the Count(s): 3
Serve 180 days in the County Jail.

Sentence in Count 3 to run CONSECUTIVE to Count 1.

Straight time only.

Credit for Time Served of 30 actual days, plus 30 4019 PC days, total credit 60 days.

FINE PAYMENT TERMS:
Misdemeanor Restitution Fee ordered in the amount of $150.00 pursuant to 1202.4 PC.
Impose Critical Needs Assessment for Misdemeanor\Felony convictions of $60.00 purs to GC 70373
Pay Court Operations Assessment Fee of $80.00 purs to PC 1465.8
Pay $300.00 for Probation Report **NOT A CONDITION OF PROBATION** purs to PC1203.1
Administrative Fee of $60.00 ordered. (Time Payments) purs to PC1205.

Fine is payable at the rate of $25.00 per month.
Time payments to commence 07/01/2017.
It is the responsibility of the defendant to make monthly payments. Payments are due the same due date each month. No billing statements are provided.

Defendant advised of appeal rights.
Defendant waives breakdown of fines/fees.

CUSTODY STATUS
Defendant remains remanded to the custody of the Sheriff.
Upon completion of jail sentence
No further appearance is required. Defendant is released.

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG RR ACCT
==========MINUTE ORDER END==========

Dispo

☒ **TOTAL FINE DUE:** 630

****Fine/Fee is not a term of Probation**

PAYMENT TERMS (Payable to the Superior Court)

☐ Forthwith ☐ In full by _____ or appear in co

☒ Payable at $ 25 per month beginning 7/1

to the court and the same date every month thereaf

☐ Payable to court as directed by Probation Departme

☐ Defendant waives the breakdown of fines/fees

☐ Court orders all fines/fees stayed upon successful completion of Probation

☐ Return original signed probation orders by _____

☐ Other: _____

\
\
\
\
\
\
\
\
\
\
\

SUMMARY & CONCLUSION

The issues presented in this petition require the reversal of each conviction in each case with prejudice. The Petitioner must be exonerated of each charge/conviction in each case. Each issue raised on its own in addition to IAC/CDC of trial counsel and IAAC/CDC of appellate counsel and the cumulative effect of each issue and combined with IAC/CDC/IAAC.

There is sufficient evidence, facts and case law to support reversal of each conviction in each case. Petitioner's constitutional rights were violated in each case which amounts to a miscarriage of justice.

The Petitioner is actually/factually innocent in each case on each conviction as demonstrated in this petitioner. The Petitioner is actually a victim of crime by the South Lake Tahoe police, El Dorado Co. D.A. office, the courts & judges along with the appointed lawyers.

Indeed, this is one of the most corrupt cases ever to exist when taken in the totality of each case. Rampant fraud-upon-the-court, prosecutorial misconduct, judicial misconduct and lawyer misconduct …and police misconduct – all on the record in the case.

This Petitioner has previously given notice to the State, County, City and individuals of his intent to sue, and his daily billing rates at over $1,000,000.00 per day plus 10% interest and then the increase to 1,000,000,000.00 per day after the bill reached $1 billion dollars which was some time ago. The bill exceeds well over $100 billion dollars to which the respondents have 30 days to pay or liens will be filed against their assets. They had the opportunity to resolve the issue years ago and less cost, they made a conscious decision to falsely imprison this Petitioner knowing they were being billed. Said billing does not included "damages" – the billing is for "time and appearance" in jail/prison. The City of South Lake Tahoe still owes the Petitioner $50,000.00 plus 10% interest for his automobile that was unlawfully impounded.

The penal codes 71, 140 & 422 violate the U.S. 1st amendment since they punish true speech and they are vague and overbreadth.

The criminal grand jury must be abolished in California since it is unconstitutional. California constitution Art 6, Sec 6(e) which allows for the assignment of retired judges

without disclosure and consent is unconstitutional pursuant to the U.S Constitution 14th amendment. The use of retired judges without disclosure and consent in unconstitutional. Article 6, Section 6(e) is unconstitutional and has been since the inception. Any and all judgments/order/decision/appeals by said assigned retired judges are null/void.

Criminal defendants have a 6th & 14th amendment vicinage right to a grand jury and jury trial in the city and county where the alleged crime occurred by a jury pool from that city and county.

A drivers license, registration and insurance is only for hired drivers and not for "not for hire" travelers in their private automobiles as argued.

Petitioner respectfully requests an expedited decision on this matter within 30 days of filing since he is expecting to complete the program in Bakersfield and return to northern California. The Petitioner's driver's license is still affected by the 2014 false DUI conviction – the drivers license must be reinstated and the Petitioner requests an order from the court to DMV reinstate said drivers license with no fines or fees.

Any and all money must be returned to the Petitioner that was paid to fines, fee and restitution any interest or related collection fees/costs must be set aside. Petitioner requests an order to vacate and expunge all related arrest records from any and all databases. The court records in each case may remain public records showing a disposition of reversal/exoneration. All Petitioner's DNA and fingerprints and an and all personal information/data must be removed from any and all databases, records, etc.

Any order/judgment by judge Steve White is null & void and Petitioner does not recognize and said orders or judgments… This Petitioner does not take orders from the pedophile[90] judge Steve White who totally lacked jurisdiction over him and the subject matter…

---

[90] Incidently, the Petitioner currently in Bakersfiled was made aware of "The Lords of Bakersfield" - The investigation led to revelations that residents of Kern County basically already knew; the Lords of Bakersfield was a group of wealthy, influential Bakersfieldians who used their connections to get away with the rape of teenage boys, and to cover up the murders sometimes committed by those teenage boys. See **https://www.bakersfield.com/entertainment/lords-of-bakersfield-inspires-timely-thriller/article_f7956d30-4d14-11ea-94b6-e792ac952921.html**

The Petitioner will notify the press with a copy of this petition to get his side of the story out. Petitioner will also file a provisionary petition (this petition) in the California Supreme Court to exhaust and another in the federal court to stay/abey exhaustion in the state court since it appears the only thing the state has done is avoid filing or addressing the actual merits in this Petitioner's habeas corpus filings.

This Petitioner actually served over three years in prison since 18 months credit was never applied when he prevailed in case # P16CRM0096 and CDCR had classified him as level 2 rather than level 1 (non-violent inmate with less than 19 points) which denied 2-for-1 credits and forced 1-for-1 (one day rather than two days). The false imprisonment caused irreparable damage to the Petitioner and his lawsuits against Nevada & Carson City. Damage also included not being able to see his mother and step father before their death and not see his now 12 year old son. The Nevada courts unlawfully ordered the Petitioner's ex-wife full custody of his son as a result of the unlawful prison conviction (with no hearing) claiming the Petitioner failed to file a "filing fee" when he was the respondent. The perpetrators must be (and will be) accountable for their actions and they will pay for the damages and time.

There is no way D.A Vern Pierson, D.D.A. Dale Gomes, Russell Miller and David Cramer cannot remain lawyers – they must be disbarred for their roles in the obvious conspiracy. The records show a very clear pattern and proof including Russell Miller's false billing statements. D.D.A. Michael P. Pizzuti must be disbarred for suborning perjury. Officer Shannon Laney must be fired from the South Lake Tahoe police department and charged with perjury, obstruction and 18 USC 241 and 242. D.A. Vern Pierson and D.D.A. Dale Gomes also must be charged with 18 USC 241 and 242 with Dale Gomes also being charged with suborning perjury. Judge Steve White cannot remain a judge and must be sanctioned (removed from the bench) by the CJP and charged with conspiracy for his role and 18 USC 241 and 242. The other judges and retired judges should also be sanctioned by the CJP and/or Judicial Council (removed and prevented from ever being a judges or assigned judge) for their roles in the conspiracy and obstruction of justice and 18 USC 241 and 242. The other appointed lawyers must be reported to the state bar for their roles in the conspiracy and IAC/CDC/IAAC… The court clerks involved in the forged documents and failure to file Petitioner's filings must be disciplined, removed from their jobs and

reported to the proper authorities for criminal prosecution along with all others involved including any D.A. employee, attorney and judge.

There is no way around the false/forged alleged orders from the Chief Justice of the California Supreme Court being used to unlawfully assign retired judges. David Cramer committed perjury as described in these pleading alleging this Petitioner was going to put a bullet in his head. These idiots must end their harassment and false claims this Petitioner or someone associated with him is going to kill everyone involved (and their families) and blow-up government buildings/courthouses with Ammonium Nitrate/Fuel Oil ("ANFO"). This Petitioner has addressed the issues in a non-violent manner using this petition to reverse the convictions and he has presented his bill for his time and damages.

The city, county, state and its employees have used violence on this Petitioner how has remained calm and has not retaliated with violence.

Petitioner requests an injunction for a stay away order by the El Dorado D.A. and South Lake Tahoe police department (and El Dorado Sheriff) as discussed above.

Any judge reading this petitioner has a duty to report all lawyers and judges to the state bar and CJP for ethics violations addressed in this petitioner, failure to do so would in itself be a violate of the judicial code of conduct.

Canon 3:

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority. (See Commentary following Canon 3D(2).)

(2) Whenever a judge has personal knowledge,* or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.

ADVISORY COMMITTEE COMMENTARY
Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action, such as a

confidential referral to a judicial or lawyer assistance program, or a report of the violation to the presiding judge, appropriate authority, or other agency or body.

Judges should note that in addition to the action required by Canon 3D(2), California law imposes mandatory additional reporting requirements on judges regarding lawyer misconduct. See Business and Professions Code section 6086.7. “Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

(3) A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment, with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.

If the judge is a retired judge serving in the Assigned Judges Program, he or she shall promptly report such information in writing to the Chief Justice rather than to the Commission on Judicial Performance. If the judge is a subordinate judicial officer,* he or she shall promptly report such information in writing to both the presiding judge of the court in which the subordinate judicial officer* sits and the Commission on Judicial Performance.

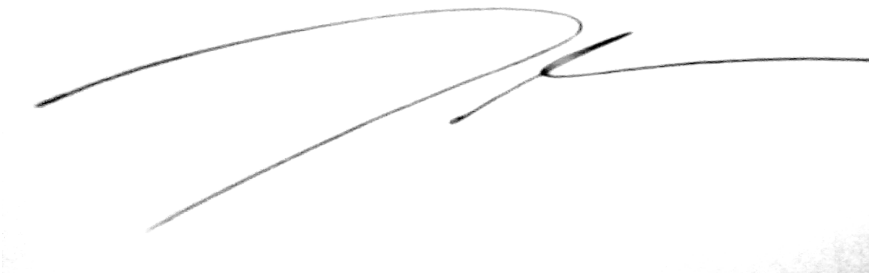
(4) A judge shall cooperate with judicial and lawyer disciplinary agencies.

ADVISORY COMMITTEE COMMENTARY
See Government Code section 68725, which requires judges to cooperate with and give reasonable assistance and information to the Commission on Judicial Performance, and rule 104 of the Rules of the Commission on Judicial Performance, which requires a respondent judge to cooperate with the commission in all proceedings in accordance with section 68725.

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee, 106 US 196 - Supreme Court 1882*

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." *Olmstead v. United States, 277 US 438 - Supreme Court 1928 JUSTICE BRANDEIS, dissenting.*

Respectfully, signed under penalty of perjury,



/s/ Todd Robben

11/02/2020