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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

HEMET BRANCH

DEPARTMENT H-1

BEFORE THE HONORABLE ROBERT WALLERSTEIN, PRESIDING

PEOPLE OF THE STATE OF CALIFORNIA, )  
PLAINTIFF, )  
-VS- )  
KEITH HENSON, )  
DEFENDANT. )

HEM014371

MOTIONS IN LIMINE

APRIL 09, 2001

APPEARANCES:

FOR THE PLAINTIFF: GROVER C. TRASK  
DISTRICT ATTORNEY  
BY: ROBERT SCHWARZ  
910 N. STATE ST.  
HEMET, CA 92543

FOR THE ATTORNEY GENERAL: BILL LOCKYER  
ATTORNEY GENERAL  
BY: MATTHEW C. MULFORD  
110 WEST A STREET, 1100  
SAN DIEGO, CA 92186-5266

FOR THE DEFENDANT: LAW OFFICES OF CRIPPS & HARR  
BY: JAMES J. HARR  
133 N. BUENA VISTA, SUITE 1  
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REPORTED BY: LINDA S. IVERS  
OFFICIAL REPORTER  
CSR NO. 10556

**ORIGINAL**

1 HEMET, CALIFORNIA; MONDAY, APRIL 9, 2001;

2 MORNING SESSION

3 -000-

4 THE COURT: The Court has read the file and  
5 various documents and is prepared to take up the issue of  
6 motion to disqualify the district attorney. Either side  
7 wish to say anything before we commence?

8 MR. SCHWARZ: Yes, Your Honor. Thank you. For  
9 the record, Robert Schwarz on behalf of the People.

10 THE COURT: Thank you.

11 MR. SCHWARZ: Your Honor, for the record, we  
12 had -- the Court can correct me if it wishes. We had a  
13 brief in-chambers conference, and we talked about this and  
14 agreed it would be on the record.

15 THE COURT: Yes.

16 MR. SCHWARZ: The Court made an indication,  
17 because the People had not filed a response, that the  
18 People were somehow waiving any type of -- were waiving  
19 its right to oppose the motions, Your Honor, and that was  
20 not the People's understanding. With all due respect of  
21 counsel, this was -- this would be the same as any type of  
22 402 hearing, Your Honor. It just so happens that it  
23 happens to be on this date, and it doesn't require --  
24 there's nothing in the criminal Evidence Code or in the  
25 Evidence Code or the criminal or the Penal Code, Your  
26 Honor, or any other code that would require the People to  
27 actually respond to a written motion.

28 If this happened on the day of trial, Your

1

1 Honor, we did a 402 motion, nothing would prevent the  
2 People from simply proposing it orally, and the People  
3 would not waive that right. Some of the motions that were  
4 written by counsel, the People chose not to respond to  
5 because they were spurious, Your Honor.

6 THE COURT: In the opinion -- ;

7 MR. SCHWARZ: In the opinion of the People. And  
8 therefore, Your Honor, the People would surely not be  
9 able, simply because of any type of -- simply because the  
10 People do not respond in kind before a particular date  
11 that was set by a judge, in this case Judge Wojcik, I  
12 don't think that should waive our right to be able to  
13 orally argue, Your Honor. And so anyway, we take up that  
14 motion first, Your Honor, or that position first. I  
15 appreciate it.

16 THE COURT: All right. Counsel, do you have  
17 anything?

18 MR. HARR: I'm not sure what he meant by, take  
19 this up now. Take up the issue of the motion or --

20 THE COURT: Take up the motion.

21 MR. HARR: Take up the motion. Thank you, Your  
22 Honor. Now, I'm clear on that.

23 THE COURT: What is it you want to say?

24 MR. SCHWARZ: With respect to the recusal, Your  
25 Honor?

26 THE COURT: Yes.

27 MR. SCHWARZ: The People would reserve any  
28 comments until after the deputy attorney general made its

1 argument, Your Honor.

2 THE COURT: All right. Counsel.

3 MR. MULFORD: Thank you. Deputy Attorney  
4 General, Matt Mulford, on behalf of the Attorney General.  
5 We believe Mr. Henson actually has the burden of proof  
6 here, but we're prepared to make our argument at this  
7 time. We believe that the motion on its face does not  
8 make a factual claim of any conflict of interest. Looking  
9 at Mr. Henson's declaration, in particular on page five,  
10 his allegations are that he's convinced that the DA's  
11 office, particularly Mr. Gage, conspired with people of  
12 Scientology. He said he is set up, page 9 of 12, he says  
13 given the amount of communication.

14 Nowhere in the motion itself or any of the  
15 declarations supporting it are there any facts justifying  
16 that Mr. Henson is attempting to tie the district attorney  
17 with Scientology. There's just simply no allegations of  
18 fact made, and they are completely unsubstantiated by  
19 anything there. Based on that, we believe there's no  
20 possible way he can prevail on the second prong of the  
21 1424 motion of showing any reasonable harm to his case.  
22 So we'd stop right there.

23 THE COURT: Counsel?

24 MR. HARR: Thank you, Your Honor. In our brief  
25 on page four, point number two, we discussed the fact that  
26 District Attorney Trask received a couple of letters from  
27 fairly prominent attorneys that urged him, after this case  
28 had been going for a while, to take some additional action

1 on the case. These letters were written to him on a  
2 first-name basis, and we have been unable to get a copy of  
3 those. I've read them, but I think if the -- if you want  
4 some actual proof of that, we would have certainly have  
5 attached them to our motion had we been able to get a copy  
6 of those letters. But they do in fact exist, and they do  
7 show, in our view, certainly, favoritism here.

8           Additionally, in our motion, Mr. Henson has  
9 indicated that he has tried to have certain agents of  
10 Scientology prosecuted for trying to run over him and  
11 basically was told there was nothing that could be done.  
12 Those two facts alone that are set forth in the motion  
13 could certainly indicate that there's a conflict of  
14 interest and the favoritism being applied here from the  
15 top.

16           Additionally, what we think is outrageous is on  
17 the issue of the authentication of certain Internet  
18 postings. We had discussions with the district attorney's  
19 office on whether these could in fact be authenticated  
20 through law enforcement personnel. After those  
21 discussions took place, one of the attorneys for  
22 Scientology deposed Mr. Henson on those very Internet  
23 postings, trying to get him to admit, unbeknownst to his  
24 bankruptcy attorney, authenticating these very documents  
25 we had discussed a few days later. I have a transcript of  
26 that very same deposition showing these Internet postings  
27 they were trying to force my client to authenticate.

28           There's some double dealing here. Also, Deputy

1 Greer, God bless him, for whatever reason, told Mr. Henson  
2 that he wasn't going to tape a certain interview that was  
3 in fact taped. It's been transcribed, and we have a tape  
4 of that very interview. We know it was taped. So there's  
5 obviously some pressure being brought to bear here.

6 I read the Attorney General's response. It  
7 didn't even address my main points. It kind of -- to say  
8 there's no evidence of conflict of interest here really is  
9 missing the point, Your Honor. And secondly, these are  
10 egregious enough, if it's coming from the top, if you've  
11 got the district attorney being called by a first-name  
12 basis and pressure being brought to bear, certainly that  
13 is a basis for disqualifying the entire office.

14 We're not trying to besmirch Mr. Schwarz's  
15 character; that's not the point of the motion. I don't  
16 have anything to say about Mr. Schwarz. This comes from  
17 the top. Thank you, Your Honor.

18 MR. SCHWARZ: Your Honor, thank you. First of  
19 all, I think that the Deputy Attorney General Denault, who  
20 wrote the response, did a fairly accurate job in  
21 explaining the two-prong theory.

22 First of all, the affidavits, or whatever  
23 supporting documents, are so lacking to say that because  
24 Scientology has written a letter, the representatives,  
25 legal representatives, of the Church of Scientology has  
26 written letters to Mr. Trask, and by that, you have an  
27 innuendo that somehow there's some kind of malfeasance  
28 happening, Your Honor, is ludicrous.

1                   How often has there been where someone feels  
2 they've been victimized and written letters to the  
3 district attorney explaining: We want you to do  
4 something. We want you to do something. Pay attention to  
5 me. How often have we been victimized, we write our  
6 congressman? Does that mean he is all of a sudden in  
7 cahoots with that victim? No, it happens all the time,  
8 Your Honor.

9                   Simply by stating that, I don't -- the nature of  
10 their relationship, Your Honor -- I mean, I'm not  
11 Mr. Trask, but I know for a fact that, you know, Mr. Trask  
12 is simply responding because he is the head of our office,  
13 and that's why they were directed at him. If there --  
14 with respect to any type of meetings, or whatever the case  
15 may be, again, Your Honor, there is -- the district  
16 attorney often will meet, will respond to victims of  
17 crimes.

18                   It just so happens that the Church of  
19 Scientology happens to be a very sophisticated victim in  
20 this particular instance, Your Honor. It's not -- in the  
21 run of the mill case, you'll have domestic violence person  
22 or victim of 211 robbery, and they may, you know, come to  
23 our office and be beaten up and say: Why haven't you  
24 filed something? It doesn't somehow invalidate the fact  
25 or subject the district attorney's office because we met  
26 with the victim, you know, that somehow we're in cahoots  
27 with that victim. No, not at all.

28                   With respect to the -- I apologize, Your Honor.

1 I'm trying -- there are mentions of Thomas Gage, my boss.  
2 And although counsel somehow doesn't want to besmirch me,  
3 in fact, it is. That essentially what happened is our  
4 office in Hemet has been infiltrated by Scientology is  
5 ridiculous and ludicrous, Your Honor.

6 The simple fact is there was a crime. You know,  
7 the Church of Scientology, perhaps they brought it to our  
8 attention. Nevertheless, under our procedures, Your  
9 Honor, we felt there was a crime, and we filed for it. We  
10 filed that. There is nothing wrong with that. To  
11 disqualify our entire office is an extreme measure, Your  
12 Honor, and only to be used in a most egregious matter.  
13 None of the filings that Mr. -- that counsel has put in  
14 his motion are all simply innuendo. There is no hard and  
15 fast facts that support that motion. So Your Honor, the  
16 People would submit on those comments.

17 THE COURT: Anything, counsel?

18 MR. MULFORD: Yes, Your Honor. We concur with  
19 the district attorney's position on this.

20 THE COURT: Remarkable that you would.

21 MR. MULFORD: Nothing in the declarations  
22 suggest that any member of the district attorney's office  
23 is of a Scientologist or affiliated with the Scientologist  
24 or financial stake with the Scientologist. Short of  
25 making those allegations, there's simply no way or  
26 question of fact regarding this motion. With that, we  
27 submit.

28 THE COURT: Anything else?

1 MR. HARR: It's just that I can't imagine out of  
2 a hundred people that might have the ability to write  
3 Mr. Trask, I don't believe any of them would call him  
4 Grover.

5 THE COURT: Okay. All right.

6 MR. HARR: Thank you, Your Honor.

7 THE DEFENDANT: Your Honor, could I briefly  
8 confer with my attorney?

9 THE COURT: Sir, please don't. Okay. There  
10 were eight factors mentioned in this motion to disqualify  
11 the district attorney. Let me enumerate them. The first  
12 one was regarding the Fair Game Doctrine that the district  
13 attorney is arguing against as a reason to recuse. This  
14 is a legal position. There is no showing that prejudices  
15 the defendant any more than any motion in limine to limit  
16 the evidence that comes in, assuming that the district  
17 attorney did not know the exact date that the alleged  
18 doctrine was discontinued, which counsel argued, if it was  
19 discontinued.

20 Unless there is some evidence that the district  
21 attorney was acting out of a sense of malice toward the  
22 defendant, there are insufficient grounds to disqualify  
23 the district attorney on that prong of the assertion. The  
24 relevance of the Fair Game Doctrine evidence will be taken  
25 up a little bit later.

26 The issue of whether the district attorney is  
27 known by his first name by the attorneys of Scientology,  
28 the Court believes, is totally irrelevant, absent a

1 showing that the sole reason for prosecution was the  
2 friendship of the parties in question. It is not  
3 unreasonable for attorneys in a community in a city the  
4 size of Riverside, in a city the size of Los Angeles to  
5 know each other and to perhaps be friends. That --  
6 therefore, there are insufficient grounds for a finding of  
7 a conflict of interest on that prong.

8 Counsel has demanded the tape of the  
9 proceedings, I believe, and he may have a right to that  
10 under -- but it is not a proper subject for a motion to  
11 disqualify the district attorney.

12 The possible authentication of the alleged  
13 Internet posting by the defendant and the collateral  
14 proceedings is likewise insufficient grounds to disqualify  
15 the district attorney. It may be grounds for something  
16 else. The Court is not suggesting that it is or that it  
17 is not, but it is certainly insufficient to disqualify the  
18 district attorney.

19 Fifth prong of the argument was that Judge  
20 Walker had recused himself, and that the district attorney  
21 required him to recuse himself. If a judge does not  
22 believe that he should be recused, or that it is in the  
23 best interest of the case to be recused, he generally  
24 refers the matter to another judge to make that  
25 determination. There is no evidence that the district  
26 attorney in any way forced Judge Walker to recuse himself,  
27 and he in fact did it himself without the cooperation or  
28 the adjudication by any other judge. And therefore, that

1 prong is insufficient to disqualify the district  
2 attorney.

3 It is irrelevant to the issue of  
4 disqualification of the district attorney that their  
5 office refused to investigate or follow or not follow any  
6 recommendation by any other source other than the district  
7 attorney. It may not be the best practice. It may be  
8 arguable that the district attorney is not listening to  
9 the police department, their investigation unit, but  
10 that's their prerogative, and therefore, that prong  
11 fails.

12 The fact that the defendant alleges that the  
13 district attorney would do nothing about an alleged  
14 attempt to run over the defendant is also insufficient to  
15 disqualify the district attorney.

16 Finally, if the defendant claims there was a  
17 defect in the notice from the district attorney, it is not  
18 sufficient to disqualify the district attorney. There are  
19 other things that are available to the defendant that he  
20 can do.

21 Therefore, based upon an analysis of each of the  
22 arguments set forth in defendant's motion, they are either  
23 irrelevant or insufficient facts upon which to grant the  
24 motion to disqualify the district attorney, and the motion  
25 is denied. You're excused, sir.

26 MR. MULFORD: Thank you, Your Honor.

27 THE COURT: I'd like to hear on the issue of the  
28 defendant's request to determine, outside the presence of

