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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_

PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No.
	)	
Plaintiff,	)	MOTION AND MEMORANDUM
	)	OF POINTS AND
vs.	)	AUTHORITIES IN SUPPORT
	)	OF MOTION TO SUPPRESS
,	)	INVOLUNTARY STATEMENT
	)	
Defendant.	)	Date:
	)	Time:
_____	)	Dept.

To: The District Attorney for the County of \_\_\_\_\_.

At the above date and time the Defendant, \_\_\_\_\_, by and through is attorney of record, \_\_\_\_\_, will move this court for an order suppressing the involuntary statements of the Defendant more particularly set out in the statement of facts. Said motion will be based upon the testimony of \_\_\_\_\_, the attached points and authorities, and all papers previously filed in this action.

Dated: \_\_\_\_\_  
Attorney for Defendant

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**STATEMENT OF FACTS**

The defendant, \_\_\_\_\_, is accused by the prosecution of

**NO ADMISSION/CONFESSION PRIOR TO THREATS**

THREATS

The treats consisted of:

"...

II

FEDERAL AND STATE CONSTITUTIONAL GROUNDS

This motion to suppress an involuntary confession or admission is based upon both the U.S. Constitution and the California Constitution.

"The use of confessions in a criminal prosecution obtained by force, fear, promise of immunity or reward constitutes a denial of due process of law both under the federal and state constitutions requiring a reversal of the conviction although other evidence may be consistent with guilt."

"Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency...Nothing would be more calculated to discredit law and thereby to brutalize the temper of society. (Rochin vs. California, 342 U.S. 165, 173-174 [72 S.Ct. 205, 96 L.Ed. 183, 25 A.L.R.2d 1396].)" People vs. Berve (1958) 51 C2d 286, 290.

III

MAGNITUDE OF THE RIGHT

(INCLUDES THE RIGHT AGAINST SELF-INCRIMINATION)

The right to not have an involuntary admission used against a defendant is based not only upon the Fourteenth Amendment of the U.S. Constitution due process clause, but also upon the right against self-incrimination in the Fifth Amendment of the U.S.

1 Constitution. It has been held to be a fundamental right reflecting  
2 our most noble aspirations for our society.

3 "The privilege against self-incrimination, which is  
4 guaranteed by both the federal and California  
5 Constitutions, protects an accused against use by the  
6 prosecution of his confession unless it is shown to be the  
7 product of a rational intellect and a free will.  
8 (Blackburn vs. Alabama (1960) 361 U.S. 199, 208 [4 L.Ed.2d  
9 242, 249, 80 S.Ct. 274].) It has been said that the  
10 privilege against self-incrimination is the 'essential  
11 mainstay' of our system of criminal justice (Malloy vs.  
12 Hogan (1964) 378 U.S. 1, 7 [12 L.Ed.2d 653, 659, 84 S.Ct.  
13 1489].), and reflects many of the fundamental values and  
14 most noble aspirations of our society, including: 'our  
15 willingness to subject those suspected of crime to the  
16 cruel trilemma of self-accusation, perjury or contempt;  
17 our preference for an accusatorial rather than an  
18 inquisitorial system of criminal justice; our fear that  
19 self-incriminatory statements will be elicited by inhumane  
20 treatment and abuses;...our respect for the inviolability  
21 of the human personality...; our distrust of self-  
22 deprecatory statements; and our realization that the  
23 privilege, while sometimes 'a shelter to the guilty' is  
24 often a 'protection to the innocent'. Quinn vs. United  
25 States 349 U.S. 52, 55 [12 L.Ed.2d 678, 681, 84 S.Ct.  
26 1594]." People vs. Jimenez (1978) 21 C3d 595, 606; 147  
27 Cal.Rptr. 172, 177.

#### 16 IV

#### 17 THREE GROUNDS FOR RATIONALE OF RULE

#### 18 (STATEMENTS ARE UNTRUSTWORTHY; UNFAIR; DETER PRESSURE)

19 The deterrence of police misconduct is not the only rationale  
20 of the rule to suppress involuntary confessions or admissions nor is  
21 the unfairness. One of the basic reasons is that the statements  
22 thus obtained are untrustworthy.

23 "And it is uniformly held that involuntary confessions are  
24 inadmissible as affirmative evidence not only because they  
25 are untrustworthy but also because it offends the  
26 community's sense of fair play and decency to convict a  
27 defendant by evidence extorted from him and because  
28 exclusion serves to discourage the use of physical  
brutality and other undue pressures in questioning those  
suspected of crime. (People vs. Berve, 51 Cal.2d 286,  
290, 293 [332 P.2d 97]; cf. People vs. Ditson, 57 Cal.2d

1 415, 437 et seq. [20 Cal.Rptr. 165, 369 P.2d 714].)..."

2 "As said in Spano vs. New York, 360 U.S. 315, 320-321 [79  
3 S.Ct. 1202, 3 L.Ed.2d 1265, 1270], 'the abhorrence of  
4 society to the use of involuntary confessions does not  
5 turn alone on their inherent untrustworthiness. It also  
6 turns on the deep-rooted feeling that the police must obey  
7 the law while enforcing the law; that in the end life and  
8 liberty can be as much endangered from illegal methods  
9 used to convict those thought to be criminals as from the  
10 actual criminals themselves.' These same principles have  
11 been held in this and a growing number of other  
12 jurisdictions to require the exclusion of an accused's  
13 involuntary admissions where they are sought to be used as  
14 affirmative evidence. (People vs. Atchley, 53 Cal.2d 160,  
15 169-170 [346 P.2d 764]; Ashcroft vs. State of Tennessee,  
16 327 U.S. 274, 278-279 [66 S.Ct. 544, 90 L.Ed. 667, 669-  
17 670]; 3 Wigmore, Evidence (3d ed. 1940) sec. 821 [1962  
18 Supp. pp. 87-88].)" People vs. Underwood (1964) 61 C3d  
19 113; 37 Cal.Rptr. 113.

11 V

12 COURT'S FUNCTION VS. JURY'S FUNCTION IN REGARD  
13 TO INVOLUNTARY CONFESSIONS

14 It is the function of the trial court to determine if a  
15 confession or admission is involuntary.

16 "In order to further guarantee that coerced confessions  
17 will not be used against the accused, before the jury is  
18 permitted to hear a confession, the trial court must first  
19 determine that a confession was in fact voluntarily  
20 rendered. (Evid. Code Section 405; Jackson vs. Denno,  
21 supra, 378 U.S. 368." People vs. Jimenez (1968) 21 C3d  
22 595, 607; 147 Cal.Rptr. 172, 178.

23 If the court rules the confession voluntary, evidence of  
24 coercive methods used to obtain it are allowed into evidence so the  
25 jury can determine what weight to give to the confession.

26 "Thus, although coercive methods do not necessarily  
27 produce a false confession, we have long recognized that  
28 they certainly may have that affect. (See People vs.  
Ditson (1962) 57 Cal.2d 415, 439 [20 Cal.Rptr. 165, 369  
P.2d 714] and cases cited therein.) For this reason,  
although the jury in California is not permitted to  
redetermine the issue of voluntariness, it may consider  
any evidence of coercion that may be presented by the

1 defendant in order to determine the weight that the  
2 confession should be given. (See People vs. Carroll  
3 (1970) 4 Cal.App.3d 52, 60 [84 Cal.Rptr. 60].)" People  
4 vs. Jimenez (1978) 21 C3d 595, 608; 147 Cal.Rptr. 172,  
5 179.

6 In People vs. Carroll (1979) 4 C.A.3d 52, 84 C.R. 60, the trial  
7 judge refused to instruct the jurors to disregard any admission or  
8 confession unless it was voluntarily made. Defendant contended that  
9 this ruling denied him his rights under the Sixth and Fourteenth  
10 Amendments. Held, conviction affirmed; in making his contentions,  
11 defendant misunderstood the import of Ev.C. 405 by failing to  
12 distinguish between questions of law and of fact.

13 (a) The sole issue on a voir dire hearing by the judge is the  
14 admissibility of evident. Since this question is one of law, the  
15 procedure does not deny a defendant either trial by jury or due  
16 process of law. (People vs. Carroll 4 C.A.3d 60.)

17 (b) The same evidence offered to prove voluntariness may also  
18 be relevant to the integrity of the confession. "Manifestly, to  
19 deny a defendant the right to produce evidence before the jury that  
20 bears upon the truth or falsity of his confession, that is, the  
21 weight to be given such evidence as contrasted with its  
22 admissibility, would constitute reversible error." (People vs.  
23 Carroll 4 C.A.3d 60.) The jury should therefore be allowed to take  
24 into account whether the confession is true, partially true of  
25 false, but may not treat the confession as "nonevidence" by  
26 disregarding it. (People vs. Carroll, 4 C.A.3d 60.)

27 (c) Even though the same evidence relates to admissibility as  
28 to integrity, the jury should not be informed of the judge's factual  
resolution in the voir dire hearing. In that way, the judge does

1 not impinge on the jury's fact-finding province as to guilt or  
2 innocence. (People vs. Carroll 4 C.A.3d 60.) (See also, People vs.  
3 Burton (1971) 6 C.3d 375, 389, 99 C.R. 1, 491 P.2d 793 ["The  
4 Legislature's finding that a defendant will be better protected by  
5 thrusting the full responsibility upon the trial judge is entirely  
6 reasonable"].

7 VI

8 EVIDENCE

9 The procedure is controlled by Evidence Code Sec. 405 which  
10 states:

11 "Determination of foundational and other preliminary facts  
12 in other cases. With respect to preliminary fact  
determinations not governed by Section 403 or 404:

13 (a) When the existence of a preliminary fact is disputed,  
14 the court shall indicate which party has the burden of  
producing evidence and the burden of proof on the issue as  
15 implied by the rule of law under which the question  
arises. The court shall determine the existence or  
16 nonexistence of the preliminary fact and shall admit or  
exclude the proffered evidence as required by the rule of  
law under which the question arises.

17 (b) If a preliminary fact is also a fact in issue in the  
action:

18 (1) The jury shall not be informed of the court's  
determination as to existence or nonexistence of the  
preliminary fact.

19 (2) If the proffered evidence is admitted, the jury shall  
20 not be instructed to disregard the evidence if its  
determination of the fact differs from the court's  
determination of the preliminary fact."

21 VII

22 TRUTH OR FALSITY OF ADMISSION OR CONFESSION  
23 NOT RELEVANT TO ISSUE OF VOLUNTARINESS

24 The defendant has a "constitutional right at some stage in the  
25 proceedings to object to the use of the confession or admission and  
26 to have a fair hearing and a reliable determination on the issue of  
27 voluntariness, a determination **uninfluenced by the truth or falsity**

1 **of the confession."** (Jackson vs. Denno (1964) 378 U.S. 368, 84  
2 S.Ct. 1774, 1780, 12 L.Ed.2d 908, 915.) In this case, the Supreme  
3 Court rejected long approved state procedures and imposed a new  
4 requirement of determination of the issue by the judge.

5 VIII

6 BURDEN OF PROOF IS ON PROSECUTION TO SHOW VOLUNTARINESS

7 It has long been established that the burden to prove an  
8 admission is voluntary is on the prosecution and not on the defense.

9 "In exercising this function the court recognizes that the  
10 burden is on the prosecution to show that a confession was  
11 voluntarily given without previous inducement,  
12 intimidation or threat. (People vs. Rogers, 22 Cal.2d  
13 787, 804 [141 P.2d 722]; People vs. Jones, supra, 24  
14 Cal.2d at 608.)" People vs. Berve (1958) 51 C2d 286, 291.

15 "Before confessions or admissions may be used against a  
16 defendant, the prosecution has the burden of showing that  
17 they were voluntary and not the result of any form of  
18 compulsion or promise of reward,..." People vs. Haydel  
19 (1974) 12 C3d 198, 199; 115 Cal.Rptr. 394, 397.

20 IX

21 STANDARD OF PROOF  
22 PREPONDERANCE OF THE EVIDENCE

23 In People vs. Markham (1989) 49 C.3d 63, 260 C.R. 273, 775 P.2d  
24 1042, the court held that Jiminez rule requiring proof of  
25 voluntariness of a confession beyond reasonable doubt was abrogated  
26 by Proposition 8 (Cal.Const., Art. I, Sec 28(d)). The new standard  
27 was the Federal standard of preponderance of the evidence.

28 X

INDEPENDENT REVIEW OF VOLUNTARINESS BY APPELLATE  
COURTS ON UNCONTRADICTED FACTS

A reviewing court is required to make an independent review of

1 the voluntariness of a confession or admission if the facts are  
2 uncontradicted according to both U.S. and California cases.

3 "Before confessions or admissions may be used against a  
4 defendant the prosecution has the burden of showing that they  
5 were voluntary and not the result of any form of compulsion or  
6 promise of reward, and it is the duty of a reviewing court to  
7 examine independently whether the statements were voluntary.  
8 (People vs. Trout, 54 Cal.2d 576, 583 [6 Cal.Rptr. 759, 354  
9 P.2d 231, 90 A.L.R.2d 1418]; People vs. Berve, supra, 51 Cal.2d  
10 286, 290-291; see People vs. Atchley, supra, 53 Cal.2d 160,  
11 170; People vs. Nagle, 25 Cal.2d 216, 222-223 [153 P.2d 344].)"  
12 People vs. Underwood (1964) 61 C2d 113, 121, 37 Cal.Rptr. 313.

13 "Confessions obtained by coercive practices which overcome the  
14 will of the person confessing are tainted and both the  
15 confession and its products will be suppressed. (People vs.  
16 Anderson (1980) 101 Cal.App.3d 563, 571 [161 Cal.Rptr. 707].)  
17 The cases require a rigorous standard of review: this court  
18 must examine the uncontradicted facts to determine  
19 independently whether the trial court's conclusion of  
20 voluntariness was properly found.' (People vs. Jimenez (1978)  
21 21 Cal.3d 595, 609 [147 Cal.Rptr. 172, 580 P.2d 672]; see also  
22 People vs. Murtishaw (1981) 29 Cal.3d 733, 753 [175 Cal.Rptr.  
23 738, 631 P.2d 446].) Where the evidence is in conflict, this  
24 court must accept the trial court's resolution 'unless the  
25 evidence relied on by the trial court is so improbable as to be  
26 entirely unworthy of belief.' (People vs. Jimenez, supra, 21  
27 Cal.3d at p. 607; People vs. Davis (1981) 29 Cal.3d 814, 826  
28 [176 Cal.Rptr. 521, 633 P.2d 186].)" People vs. Adams (1983)  
143 CA 970, 984, 192 Cal.Rptr. 290.

17 "We are not bound, of course, by that determination for it is  
18 clear that 'As a reviewing court it is our duty to examine the  
19 uncontradicted facts to determine independently whether the  
20 trial court's conclusion of voluntariness was properly  
21 found...'" People vs. McClary (1977) 20 C3d 218, 227, 142  
22 Cal.Rptr. 163.

21 "...We are not necessarily bound by such determination. We have  
22 on numerous occasions made clear our responsibilities in such  
23 matters and the nature and scope of our review. These rest  
24 upon the fundamental principle that the 'use in a criminal  
25 prosecution of involuntary confessions constitutes a denial of  
26 due process of law under both the federal and state  
27 Constitutions'...We said in Berve: 'As a reviewing court it is  
28 our duty to examine the uncontradicted facts to determine  
independently whether the trial court's conclusion of  
voluntariness was properly found. In exercising this function  
the court recognizes that the burden is on the prosecution to  
show that a confession was voluntarily given without previous  
inducement, intimidation or threat.' Thus in making an

1 independent examination of the record to ascertain whether  
2 defendant's statements were voluntary we follow a practice of  
3 the United States Supreme Court which is both well established  
4 and currently adhered to. (See Greenwald vs. Wisconsin (1968)  
5 390 U.S. 519 [20 L.Ed.2d 77, 88 S.Ct. 1152]; Clewis vs. Texas  
6 (1967) 386 U.S. 707, 708 [18 L.Ed.2d , 425, 87 S.Ct. 1338];  
7 Davis vs. North Carolina (1966) 384 U.S. 737, 741-742 [16  
8 L.Ed.2d 895, 898-899, 86 S.Ct. 1761].)" People vs. Sanchez  
9 (1969) 70 C2d 562, 571-572, 75 Cal.Rptr. 642.

6 XI

7 STANDARD FOR REVERSAL ON APPEAL  
8 (HARMLESS BEYOND A REASONABLE DOUBT)

9 In People vs. Cahill (1993) 5 C.4th 478, 20 C.R.2d 582, 853  
10 P.2d 1037, Cal. Crim. Law, 2d, Supp., Sec. 3310, a capital homicide  
11 prosecution, the trial judge admitted defendant's confession, which  
12 had been elicited through an implied promise of benefit or leniency.  
13 Held, assuming that the confession was involuntary and thus should  
14 not have been admitted, such erroneous admission was not reversible  
15 per se. The prejudicial effect of the erroneous admission of a  
16 coerced confession must be determined for purposes of California Law  
17 under the reasonable-probability test of Cal. Const., Art. VI, Sec.  
18 13. Because that standard is less demanding than the harmless-  
19 beyond-a-reasonable-doubt standard mandated by applicable federal  
20 constitutional authorities, "whenever a confession admitted in a  
21 California trial has been obtained by means that render the  
22 confession inadmissible under the federal Constitution, the  
23 prejudicial effect of the confession must be determined under the  
24 federal standard." (People vs. Cahill 5 C.4th 509.)

25 The rationale of the Federal Decision was stated in Payne vs.  
26 Arkansas (1958) 356 U.S. 500, 78 S.Ct. 844, 850, 2 L.Ed.2d 975, 981,  
27 "[W]here , as here, a coerced confession constitutes a part of the

1 evidence before the jury and a general verdict is returned, no one  
2 can say what credit and weight the jury gave to the confession. And  
3 in these circumstances this Court has uniformly held that even  
4 though there may have been sufficient evidence, apart from the  
5 coerced confession, to support a judgment of conviction, the  
6 admission in evidence, over objection, of the coerced confession  
7 vitiates the judgment because it violates the Due Process Clause of  
8 the Fourteenth Amendment." (Payne vs. Arkansas (1958) 356 U.S. 560,  
9 78 S.Ct. 844, 850, 2 L.Ed.2d 975, 981.)

10 XII

11 RARE CASE EXCEPTION

12 In the case of People vs. Hinds (1984) the court discussed the  
13 "rare case" exception. The "rare case" exception is when a  
14 confession in violation of right to counsel under Escobedo vs.  
15 Illinois (1964) 378 U.S. 478 is wrongfully admitted but a second  
16 voluntary confession not in violation of right to counsel was  
17 properly admitted.

18 First of all, the "rare case" exception doesn't apply in this  
19 case because XXX made no second admission or confession that was not  
20 induced by an invalid admission or confession. In fact all  
21 statements in XXX's statement to the police that we are moving to  
22 suppress came from being directly confronted with the transcript of  
23 the pre-text phone call.

24 "However, prior California cases have recognized a limited  
25 exception to this rule in the 'rare case' in which,  
26 although one or more confessions were admitted  
27 erroneously, the jury also had before it other valid  
28 confessions by the defendant containing substantially the  
same details, the erroneously admitted confessions were  
not unduly emphasized at trial, and the legally obtained

1 confessions were lot induced by an invalid confession.  
2 (People vs. Quicke (1969) 71 Cal.2d 502, 516-518, 78  
3 Cal.Rptr. 683, 455 P.2d 787; People vs. Jacobson (1965) 63  
4 Cal.2d 319, 330-331, 46 Cal.Rptr. 515, 405 P.2d 555.)"  
5 People vs. Hinds (1984) 154 CA3d 222, 240, 201 Cal.Rptr.  
6 104, 115.

7 Secondly, the court noted that the California Supreme Court had  
8 expressly declined to rule on whether the "rare case" exception  
9 might apply where an involuntary confession was used. People vs.  
10 Hinds, supra, p. 241. However, the court did note that federal  
11 cases would not apply the "rare exception rule" but applied the "per  
12 se rule" even where other confessions by the defendant were properly  
13 admitted.

14 "[T]here are some constitutional rights to basic to a  
15 fair trial that their infraction can never be treated as  
16 harmless error,...'). The Supreme Court has applied the  
17 per se rule even where other confessions by the defendant  
18 were properly in evidence. (Haynes vs. Washington, supra,  
19 373 U.S. 503, 505-507, 518, 520-521, 83 S.Ct. 1336, 1338-  
20 39, 1345, 1346-47, 10 L.Ed.2d 513; Stroble vs. California  
21 (1952) 343 U.S. 181, 190, 72 S.Ct. 599, 603, 96 L.Ed.  
22 872; Malinski vs. New York (1945) 324 U.S. 401, 404, 407-  
23 410, 65 S.Ct. 781, 783, 784-86, 89 L.Ed. 1029)." People  
24 vs. Hinds (1984) 154 CA3d 222, 241, 201 Cal.Rptr. 104,  
25 116.

26 The court concluded:

27 "We conclude that the policies underlying the prohibition  
28 against use of involuntary confessions preclude  
application of the 'rare case' exception to automatic  
reversal to cases in which a coerced confession was  
introduced at trial." People vs. Hinds (1984) 154 CA3d  
222, 241-242, 201 Cal.Rptr. 104, 116.

Any court of review must make an independent review of whether  
the prosecution has proven that the statements were voluntary and  
the "rare case" exception would be both inapplicable and invalid  
law. Therefore, it is extremely important that no error be made in  
ruling on this motion.

TEST FOR VOLUNTARINESS-SLIGHTEST PRESSURE

In determining if a confession is involuntary the trial court must look at the totality of the circumstances and determine if the slightest pressure was used in obtaining the statement.

"The test for voluntariness of a confession is whether or not the accused exercised 'mental freedom' in confessing or whether the confession was the expression of free choice. 'The slightest pressure, whether by way of inducement to confess, or threat if confession is withheld, is sufficient to require the exclusion of the confession.' (Emphasis added; People vs. Siemen, supra, 153 Cal. at 394.) The prosecution must show that such coercive conditions as once existed, no longer prevailed at the time the confession was uttered." People vs. Berve (1958) 52 C2d 286, 291.

"If an individual's 'will was overborne' or if his confession was not 'the product of a rational intellect and a free will', his confession is inadmissible because coerced. These standards are applicable whether a confession is the product of physical intimidation or psychological pressure.... In determining whether the defendant's confession is the product of rational intellect and a free will, the totality of the circumstances surrounding the confession must be taken into account." People vs. Haydel (1974) 12 C3d 190, 198, 115 Cal.Rptr. 394.

"Another is the rule that requires the exclusion at trial of all coerced confessions, even those confessions that may be independently established as true, because the method used to extract them offend due process (Rogers vs. Richmond (1961) 365 U.S. 534 [5 L.Ed.2d 760, 81 S.Ct. 735].) Under this rationale it has been held that even '[T]he slightest pressure, whether by way of inducement to confess or threat if confession is withheld, is sufficient to require the exclusion of the confession...' People vs. Jimenez (1978) 21 Cal.3d 595, 606, 147 Cal.Rptr. 172.

"In order to be voluntary, a confession must be 'the produce of a rational intellect and a free will'...., a confession 'must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.' [Citations; italics added.]" People



1           The second improper pressure is threats, express or implied.  
2 See People vs. Hill (1967) 66 C2d 536, 549, 58 Cal.Rptr. 340; People  
3 vs. Flores (1983) 144 CA3d 249, 266; People vs. Hinds 154 CA3d 222,  
4 239, 201 Cal.Rptr. 104, 114.

5           The third improper pressure is psychological in that a  
6 confession cannot be elicited by use of psychological coercion.

7           "A confession is involuntary whether coerced by physical  
8 intimidation or psychological pressure. [Citation.] Law  
9 enforcement conduct which renders a confession involuntary  
10 does not consist only of express threats so direct as to  
11 bludgeon a defendant into failure of the will. Subtle  
12 psychological coercion suffices as well, and at times more  
13 effectively, to overbear 'a rational intellect and a free  
14 will.' As the Supreme Court noted in Malloy, '[w]e have  
15 held inadmissible even a confession secured by so mild a  
16 whip as the refusal, under certain circumstances, to allow  
17 a suspect to call his wife until he confessed.'  
18 [Citations.] (United States vs. Tingle (1981) 658 F.2d  
19 1332, 1334-1335.)" People vs. Adams 143 CA3d 982, 985,  
20 192 Cal.Rptr. 290, 298.

21           "The actual physical and psychological effects of the  
22 beating...were painfully fresh when he confessed.  
23 Elements of despair, fatigue, craving for companionship,  
24 identifying one's interrogator as a friend and source of  
25 aid, and suggestions of guilt were all present in a crude,  
26 haphazard form in this case. They are the prime elements  
27 in the more devious and elaborate systems of menticide  
28 employed to obtain confession.... To day defendant's  
confession was freely and voluntarily given is to say that  
none of these elements...to his police interrogation."  
People vs. Berve (1958) 51 C2d 286.

XV

CIVILIAN INTERROGATORS VS. POLICE INTERROGATORS

GROUND NO. 1

29           The California Supreme Court has held that an involuntary  
30 confession is suppressed whether a civilian was the interrogator or  
31 the police. The law is not only designed to deter police misconduct

1 but also to insure a fair trial and prevent the use of unreliable  
2 statements.

3 "No valid grounds for distinction are to be found in the  
4 fact that the coercion in this case was inflicted by  
5 civilians, and not the police. Decisions holding that  
6 confessions are inadmissible because...were rendered...by  
7 civilians against an accused clearly imply such  
8 conclusion. The prohibition which bars the use of  
9 involuntary confessions is not only designed as a  
10 regulation of the conduct of police officers, but also to  
11 insure that an accused's right to a fair trial is  
12 protected. 116(Rochin vs. California, supra, 342 U.S. at  
13 173-174.) The absence of volition condemns an enforced  
14 confession. Due process requires that it be given  
15 voluntarily and without promises of immunity or reward.  
16 On the record before us the confession here must be  
17 excluded." People vs. Berve (1958) 51 C2d 286, 293.

11 "The foregoing reasoning in People vs. Berve, supra, 51  
12 C2d 286, 293, 332 P.2d 97, likewise appears applicable  
13 where the confession is not only coerced by, but also made  
14 to, civilians, and cases in a number of jurisdictions have  
15 concluded that an involuntary confession, whether made to  
16 law enforcement officers or private persons, is  
17 inadmissible. (People vs. Frank, 52 Misc.2d 266, 275  
18 N.Y.S.2d 570, 571-572; State vs. Ely (Or.) 237 Or. 329,  
19 390 P.2d 348, 349; Fisher vs. State (Tex.Cr.App.) 379  
20 S.W.2d 900, 901 et seq.; see State vs. Christopher, 10  
21 Ariz.App. 169, 457 P.2d 356, 358.) Thus whether or not  
22 the security guards here were private persons, the  
23 People's argument that there was no state action which  
24 would invoke the due process clause cannot be upheld."  
25 People vs. Haydel (1974) 12 C3d 190, 198-199, 115  
26 Cal.Rptr. 394, 397.

19 The law laid out in People vs. Haydel, supra, remains the law  
20 in California.

21 In People vs. Brown (1981) 119 Cal.App.3d 116, 128-129, 173  
22 Cal.Rptr. 877, the court stated:

23 "In People vs. Berve (1958) 51 Cal.2d 286 [332 P.2d 97],  
24 the defendant was severely beaten by the vengeful  
25 relatives of the victim and repeatedly told during the  
26 course of the beatings that he and his family would be  
27 killed if defendant did not confess. The police rescued  
28 defendant from his attackers, and defendant confessed to  
the police shortly thereafter. The court ruled that the  
confession was involuntary, stating that the coercive

1 effects of the recent beatings and threats affected the  
2 later confession. Thus, it is not necessarily  
3 determinative that the alleged coercive force was the  
4 product of a third person and not the police. All that is  
5 important is the question whether the confession was the  
6 product of a rational intellect and free will. (Blackburn  
7 vs. Alabama (1960) 361 U.S. 199, 208 [4 L.Ed.2d 242, 249,  
8 80 S.Ct. 274]; People vs. Haydel (1974) 12 Cal.3d 190, 197  
9 [115 Cal.Rptr. 394, 524 P.2d 866].)"

10 In In re Deborah C. (1981) 30 Cal.3d 125, 635 P.2d 446; 177  
11 Cal.Rptr. 852, the court stated:

12 "Thus it appears that shoplifting convictions routinely  
13 may depend more on eyewitness testimony and physical  
14 evidence than on the suspect's inculpatory statements.  
15 Store Detectives' incentive to extract confessions is  
16 diminished even when the basic intent is to prosecute.  
17 Should psychological or physical abuse produce a  
18 confession, the exclusionary remedy is of course  
19 available. (Haydel, supra, 12 Cal.3d at p. 197.)"

20 In In re Deborah C. (1981) 30 Cal.3d 125, 635 P.2d 446; 177  
21 Cal.Rptr. 852, the court stated:

22 "Zelinski's 'color of law' analysis responded to arguments  
23 that illegal searches by private guards are not state  
24 action and thus are unaffected by the Fourth Amendment and  
25 article I, section 13 of the California Constitution. (Pp.  
26 366-367.) But the mere asking of questions is not  
27 illegal. And guarantees against self-incrimination do not  
28 turn solely on whether interrogators are state agents.  
Rather, they prevent the state from using involuntary  
answers as evidence (see Jackson vs. Denno (1964) 378 U.S.  
368, 385-386 [12 L.Ed.2d 908, 920-921, 84 S.Ct. 1774, 1  
A.L.R.3d 1205]; People vs. Varnum (1967) 66 Cal.2d 808,  
812-813 [59 Cal.Rptr. 108, 427 P.2d 772], app. disp. and  
cert. den. (1968) 3980 U.S. 529 [20 L.ed.2d 86, 88 S.Ct.  
1208]) whether obtained by government or private conduct  
(People vs. Haydel (1974) 12 Cal.3d 190, 197 [115  
Cal.Rptr. 394, 524 P.2d 866]). Statements obtained  
without manifest physical or psychological coercion  
usually are deemed voluntary, though defendant never knew  
or waived his rights to silence and counsel."

29 In People vs. Whitt (1984) 36 Cal.3d 724, Fn 16, 685 P.2d 1161;  
30 205 Cal.Rptr. 810, the court stated:

31 "FOOTNOTE 16. Had deLoach in some way coerced these  
32 statements, they would of course be inadmissible

1 regardless of deLoach's status as a private citizen.  
2 (People vs. Haydel (1974) 12 Cal.3d 190 [115 Cal.Rptr.  
3 394, 524 P.2d 866]); see also In re Deborah C., supra, 30  
4 Cal.3d at p. 132.) There is no suggestion in the record  
5 that he did so."

6 XVI

7 POLICE AGENT

8 GROUND NO. 2

9 Det. XXX was a "police agent".

10 There is a line of cases that "police agents" must comply with  
11 the Sixth Amendment to the U.S. Constitution regarding involuntary  
12 confessions and admissions. The particular aspect of the cases  
13 deals with the "police agent" failing to give a Miranda Warning,  
14 thus making the statement involuntary. An involuntary statement  
15 caused by threats and offers of benefits receives more protection  
16 than an involuntary statement caused by a failure to give Miranda  
17 Warning since the former cannot even be used for impeachment.

18 In United States vs. Henry (1980) 447 U.S. 264, 65 L.Ed.2d 115,  
19 100 S.Ct. 2183, the police had a paid informant in the defendant's  
20 cell. The informant was told not to question the defendant.  
21 However, the informant on his own "stimulated" the conversation.  
22 (See pp. 271, fn 9, 273 [65 L.Ed.2d at pp. 122-124]. The court held  
23 that he was a police agent and found that there was a failure to  
24 give Miranda warnings under Massick vs. United States (1964) 377  
25 U.S. 201, 12 L.Ed.2d 246, 84 S.Ct. 1199. See also Maine vs. Moulton  
26 (1985) 474 U.S. 159, 88 L.Ed.2d 481, 1065 S.Ct. 477.

27 In People vs. Walker (1972) 28 CA3d 1042, 105 Cal.Rptr. 672,  
28 the court found that a psychiatrist hired to interview the  
defendant was a "agent" of the government.

1 (Facts of this case.....) XXX's conduct as a "police agent" in  
2 deliberately attempting to elicit incriminating statements is  
3 attributable to the state. XXX's acts of using threats and benefits  
4 to obtain an involuntary admission are attributable to the state.

5 XVII

6 USE OF INVOLUNTARY STATEMENT FOR IMPEACHMENT

7 The law in California is well established that an involuntary  
8 confession or admission cannot be used to impeach a defendant that  
9 testifies.

10 "It is also established in California and many other  
11 jurisdictions that involuntary confessions may not be used  
12 for purposes of impeaching the testimony of an accused.  
(People vs. Byrd, 42 Cal.2d 200, 210 [266 P.2d 505];  
13 People vs. Rodriguez, 58 Cal.App.2d 415, 418 et seq. [136  
14 P.2d 9]; 89 A.L.R.2d 478, 479-480.)"

15 "We believe a similar rule should operate to exclude  
16 involuntary admissions when they are offered for that  
17 purpose, and it has been so held in a number of  
18 jurisdictions. (People vs. Hiller, 2 Ill.2d 323 [118  
19 N.E.2d 11, 13]; State vs. Palmer, 232 La.468 [94 So.2d  
20 439, 444-445]; State vs. Burnett, 357 Mo. 106 [206 S.W.2d  
21 345, 347-348]; see 89 A.L.R.2d 478, 489.) The credibility  
22 of an accused who takes the stand may be of critical  
23 importance to the trier of fact in determining whether or  
24 not a defense has been established, and we should not  
25 permit an accused's credibility to be attacked by use of  
26 an involuntary statement which would be inadmissible as  
27 affirmative evidence under the rule of People vs. Atchley,  
28 supra, 53 Cal.2d 160, 170." People vs. Underwood (1964)  
61 C2d 113, 120-121, 37 Cal.Rptr. 313.

29 The U.S. Supreme Court made a limited exception to this rule.  
30 In Harris vs. New York (1971) 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d  
31 1, the Supreme Court held that statements which were inadmissible as  
32 affirmative evidence because of a failure to comply with Miranda  
33 could nevertheless be used for impeachment purposes to attack the  
34 credibility of a defendant's trial testimony, as long as the

1 statements were not involuntary statements. The Harris standard  
2 does not apply to XXX. The ground for suppression is that the  
3 statement is involuntary and not that Miranda was violated.

4 In People vs. May (1988) 44 C3d 309, 243 Cal.Rptr. 369, the  
5 California Supreme Court allowed the use of statement taken in  
6 violation of Miranda to be used for impeachment but it excluded the  
7 rule (as it must under the Federal Constitution) the use of  
8 involuntary statements for impeachment.

9 The prosecution cannot ask about the conversation and they try  
10 to use the content of the conversation for impeachment.

11 A confession cannot be introduced, without such preliminary  
12 proof of voluntariness, in the guise of impeachment. (People vs.  
13 Rodriguez (1943) 58 C.A.2d 415, 419, 136 P.2d 626 defendant on stand  
14 was asked by prosecutor if he had made any statement to arresting  
15 officer, and denied it; in rebuttal, prosecution called officer who  
16 testified to confession; held error; see also People vs. Speaks  
17 (1957) 156 C.A.2d 25, 35, 319 P.2d 709; 1954 A.S. 800.)

18 XVIII

19 FRUITS OF THE POISONOUS TREE

20 In People vs. Ditson (1962) 57 C.2d, 20 C.R. 165, 369 P.2d 714,  
21 codefendant gave a confession. The trial judge found it  
22 involuntary, but admitted evidence obtained by the use of it. On  
23 appeal, the Supreme Court held that the confession was involuntary,  
24 and further that the evidence was not its product but a mere lead,  
25 and that no proper objection had been made. (People vs. Ditson 57  
26 C.2d 433, 442, 443.) Accordingly, the conviction was affirmed; but,  
27 in view of the importance of the question, the court assumed the

1 correctness of the trial judge's theory of coerced confession in  
2 order to lay down the rule that evidence secured by means of an  
3 involuntary confession is inadmissible. The common law theory of  
4 exclusion of a confession was its presumed trustworthiness; physical  
5 facts discovered by use of it were not untrustworthy and were  
6 admissible. The present view, that the use of an involuntary  
7 confession is a denial of due process makes this approach untenable:  
8 If it offends the sense of fair play to convict by use of an  
9 involuntary confession, it must also offend that sense to convict on  
10 evidence discovered by extorting it:

11 "It follows also that the reason for the common-law rule  
12 permitting the introduction of real evidence discovered by  
13 means of an involuntary confession--that such evidence  
14 tends to prove the `trustworthiness' of the confession--  
15 must now be deemed constitutionally indefensible, and  
16 hence that the rule itself must be abandoned. The inquiry  
17 should instead be directed to the issue of whether the  
18 introduction of the challenged evidence--the confession  
19 itself or its asserted product--in a criminal prosecution  
20 which culminated in a conviction denied the defendant, in  
21 the particular circumstances of that case, any essential  
22 element of a fair trial or due process of law." (People  
23 vs. Ditson 57 C.2d 439.) (See 50 Cal.L.Rev. 723; 56  
24 Cal.L.Rev. 611; 1962 A.S. 364.)

25  
26  
27  
28  
CONCLUSION

Dated:

Respectfully submitted,

\_\_\_\_\_  
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