

SUPREME COURT COPY COPY

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SUPREME COURT
FILED

MAR 22 2010

Frederick K. Ohlrich Clerk

Deputy

Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff and Respondent,)

v.)

RANDY EUGENE GARCIA,)

Defendant and Appellant.)

No. S045696

L. A. Sup. Ct.

No. BA077888

MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant RANDY EUGENE GARCIA, through his attorney, the State Public Defender, hereby requests that this Court take judicial notice pursuant to Evidence Code sections 452, subdivision (h), and 459, subdivision (a), of the indisputable fact that the article entitled "County

DEATH PENALTY

Seeks Grand Jurors” resides on page three of the November 27, 1989, edition of the Los Angeles Daily Journal. A photocopy of this same newspaper article was admitted as an exhibit in the trial court regarding Los Angeles County’s efforts to recruit Hispanic grand jurors (see 15 SCT VII 3638, 3688; 2 RT 417-425),¹ but that photocopy does not show the page number on which the article resides (15 SCT VII 3688).

This particular article is relevant to the Court’s consideration of appellant’s Argument I concerning the underrepresentation of Hispanics on the Los Angeles County grand jury that indicted him, as it is the only evidence that was offered below concerning Los Angeles County’s use of the print media to recruit prospective grand jurors during the years at issue in appellant’s case. Judicial notice of the indisputable fact that this article was buried on page three of a small newspaper with limited circulation and readership is relevant to this Court’s consideration of the extent and seriousness of the County’s efforts to recruit Hispanic grand jurors during the years at issue in appellant’s case. (See discussion ARB 21-22 and fn. 20; see also RB 43 [distinguishing the extensive efforts undertaken by Orange County to recruit Asian-American grand jurors, as described by this Court in *People v. Burney* (2009) 47 Cal.4th 203, 227, with the almost non-existent efforts present in appellant’s case].)

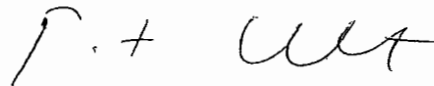
¹ The following abbreviations are used herein: “SCT” refers to the clerk’s supplemental transcript on appeal; “AOB” refers to appellant’s opening brief; “RB” refers to respondent’s brief; and “ARB” refers to appellant’s reply brief.

Appellant's request for judicial notice is based on the attached Memorandum of Points and Authorities and the files and records in this case.

Dated: March 22, 2010

Respectfully Submitted,

MICHAEL J. HERSEK
California State Public Defender

A handwritten signature in black ink, appearing to read "P. + Silten". The signature is written in a cursive, somewhat stylized font.

PETER R. SILTEN
Supervising Deputy State Public Defender

Attorneys for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

The November 27, 1989, Los Angeles Daily Journal article entitled “County Seeks Grand Jurors,” which appears on page three of that newspaper, and which is attached to this motion as Exhibit A, is a proper subject of judicial notice, as a photocopy of that very same article is already part of the appellate record in appellant’s case (see 15 SCT VII 3688 [Exhibit B]), and all appellant is requesting here is that this Court take judicial notice of the indisputable fact that this particular article resides on page three of the November 27, 1989, edition of the Los Angeles Daily Journal. (See Evid. Code, §§ 452, subd. (h), and 459, subd (a); cf. *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 171, fn. 3 [“We might determine [by judicial notice] that an article resides in the New York Times Index”].)²

Evidence Code section 459, subdivision (a), provides that “[t]he reviewing court shall take judicial notice of . . . each matter properly noticed by the trial court The reviewing court may take judicial notice of any matter specified in section 452.”

Evidence Code section 452, subdivision (h), provides that judicial

² In *Edelstein v. City and County of San Francisco*, *supra*, 29 Cal.4th 164, this Court was asked to take judicial notice of the contents of an article that appeared in the New York Times Index, which lists all of the articles that have appeared in the New York Times. This Court refused that request because it was questionable whether the contents of that particular article could satisfy the requirements of Evidence Code section 452, subdivision (h) – i.e., that the article’s contents were “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination to sources of reasonably indisputable accuracy.” (*Edelstein, supra*, 29 Cal.4th at p. 171, fn. 3.) Nevertheless, this Court intimated that it would be proper to take judicial notice of the undisputed fact that the article at issue in that case “resides in the New York Times Index.” (*Ibid.*)

notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination to sources of reasonably indisputable accuracy.”

Here, that the Daily Journal article which is the subject of the instant motion resides on page three of the Los Angeles Daily Journal’s November 27, 1989, edition is a fact that is “not reasonably subject to dispute and [is] capable of immediate and accurate determination to sources of reasonably indisputable accuracy.” Accordingly, appellant’s instant motion for judicial notice should be granted.³

³ Arguably, even if the November 27, 1989, Los Angeles Daily Journal newspaper article at issue here had not been before the trial court as a trial exhibit, the *contents* of that article, and not just its page number, would be a proper subject for judicial notice by this Court. (See *People v. Hardy* (1992) 2 Cal.4th 86, 174, fn. 24 [judicial notice taken of the contents of one newspaper article that was before the trial court and two on the same subject that were not]; *People v. Jurado* (1981) 115 Cal.App.3d 470, 482, [judicial notice taken of a newspaper article “not presented during argument before the lower court”]; cf. *Ramirez v. State Bar* (1980) 28 Cal.3d 402, 423-424 (dis. opn. by Newman, J.) [reference made to various newspaper articles, including the page number on which each article appeared].)

CONCLUSION

For each of the reasons set forth herein, this Court should grant appellant's motion for judicial notice.

Dated: March 22, 2010

Respectfully submitted,

MICHAEL J. HERSEK
State Public Defender

A handwritten signature in black ink, appearing to read "P. R. Silten". The signature is written in a cursive, somewhat stylized font.

PETER R. SILTEN
Supervising Deputy State Public Defender

Attorneys for Appellant

EXHIBIT A

SOUTHERN CALIFORNIA

Embattled Judge Gets Vote of Confidence

By MICHAEL HARRIS
SAN ANTONIO, TEXAS (UPI) — A judge who has been embattled for months over his handling of a case involving a woman who was accused of murdering her husband, has received a vote of confidence from the state's highest court.

The state supreme court on Monday affirmed the ruling of the state appeals court that Judge Robert H. Hines should remain on the bench.

Hines, 52, was appointed to the bench in 1982. He was re-elected in 1986 and 1990. He was appointed to the appeals court in 1992.

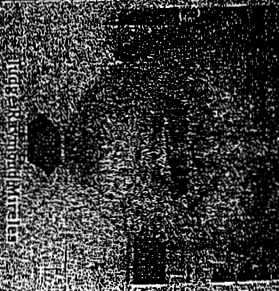
The case involved the murder of a woman who was accused of murdering her husband. The case was highly publicized and drew national attention.

Hines was accused of bias and prejudice in his handling of the case. He was accused of favoring the prosecution and of making improper comments about the defendant.

The state supreme court ruled that Hines had acted fairly and impartially. It found no evidence of bias or prejudice.

The ruling was a significant victory for Hines. He had been under a great deal of pressure to resign. He had received numerous threats and had been subjected to a campaign of harassment.

Hines said he was pleased with the ruling. He said he would continue to serve the state with integrity and impartiality.



Judge Robert H. Hines, who has been embattled for months over his handling of a case involving a woman who was accused of murdering her husband, has received a vote of confidence from the state's highest court.

County's First DNA Ruling Expected in Van Nuys Case

By MICHAEL HARRIS
SAN ANTONIO, TEXAS (UPI) — A county judge is expected to issue the first ruling on the use of DNA evidence in a criminal case in Van Nuys County.

The case involves the murder of a woman who was accused of murdering her husband. The case was highly publicized and drew national attention.

The judge is expected to rule on whether DNA evidence can be used to identify the defendant. This is a first for the county.

The case is being heard in the Van Nuys County Courthouse. The judge is expected to issue his ruling in the next few weeks.

The case is being watched closely by the legal community. It is expected to set a precedent for the use of DNA evidence in criminal cases.

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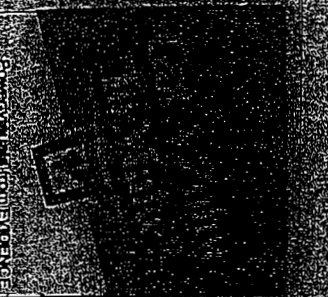
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- MEDICAL
- INVESTIGATION
- INTERVIEW
- DOCUMENTS
- EVIDENCE
- IMAGES



San Antonio, Texas
78701

EXHIBIT B

003688

Monday, November 27, 1989

BRIEFS

County Seeks Grand Jurors

Superior Court Presiding Judge Richard P. Byrne is inviting qualified residents to apply for positions on the Los Angeles County Grand Jury for the one-year term beginning July 2. Applications must be submitted by Friday, Dec. 1.

Twenty-three English-speaking citizens who have resided in the county for at least a year and who are at least 18 will be chosen. Members of governmental boards or commissions are not eligible.

Byrne called for an end to the "historical under-representation" of minorities on the Los Angeles County Grand Jury.

"The pool of nominees from which the Grand Jury is chosen should reflect the diverse makeup of our county. . . and I especially encourage citizens who are black, Hispanic or Asian to volunteer," Byrne said.

The primary role of the Grand Jury is its civil watchdog function of investigating governmental operations. Occasionally, criminal cases are presented for possible indictments.

Grand jurors generally are expected to work four full days each week. Pay is \$25 per day of service, auto mileage to and from home and free parking near the Criminal Courts Building in the Civic Center.

Applications and information are available from the Grand Jury coordinator at (213) 974-5333.

DECLARATION OF SERVICE

Re: *People v. Randy Eugene Garcia*

No. S045696

I, Glenice Fuller, declare that I am over 18 years of age, and not a party to the within cause; that my business address is 221 Main Street, 10th Floor, San Francisco, California 94105; that I served a true copy of:

MOTION FOR JUDICIAL NOTICE

on each of the following, by placing same in an envelope addressed, respectively, as follows:

Office of the Attorney General
Attn: Russell Lehman
300 South Spring Street
Los Angeles, CA 90013-1230

Office of the District Attorney
Attn: Sally Thomas
201 North Figueroa St., Rm. 1525
Los Angeles, CA 90012

Office of the Alternate Public Defender
Attn: Mark Zavidow
320 W. Temple St., # 35
Los Angeles, CA 90012-3208

Los Angeles Co. Superior Court
Attn: Hon. Jacqueline Conner
1725 Main Street, Dept. R
Santa Monica, CA 90401

Randy E. Garcia
(Appellant)

Each said envelope was then, on March 22, 2010, sealed and deposited in the United States mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on March 22, 2010, at San Francisco, California.


DECLARANT