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ARAPAHOE COUNTY  
COMBINED COURT, COLORADO

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<p><b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b> 7325 S. Potomac St. Centennial, Colorado 80112</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>PEOPLE OF THE STATE OF COLORADO</b>  v. <b>JAMES EAGAN HOLMES</b></p>	
<p>Name: Teresa D. Locke, # 26148 Diego G. Hunt, # 28682 Address: HOLLAND &amp; HART LLP 555 17th Street Suite 3200 Denver, CO 802011-8749 Telephone: 303-295-8000 Facsimile: 303-295-8261 E-Mail: tlocke@hollandhart.com dghunt@hollandhart.com</p>	<p>Case Nos.: <b>2012-CR-1522</b>  Ctrm.: <b>202</b></p>
<p><b>REQUEST FOR EXPANDED MEDIA COVERAGE</b></p>	

Television station KUSA-TV (hereinafter "Petitioner"), on behalf of itself and the Denver Media Group, pursuant to Rule 2, Chapter 38 of Colorado Supreme Court Rules relating to judicial supervision of expanded media coverage of court proceedings, (Colorado Supreme Court Rule Change 2010(14), adopted June 24, 2010, effective July 1, 2010),<sup>1</sup> requests that expanded media coverage ("EMC") be permitted for the trial in this case scheduled to commence on Monday, December 8, 2014 at 9:00 am before this Court. A copy of Rule 2 ("Rule 2") is attached hereto as Exhibit A.

The EMC request is for coverage by one television camera with a distribution point located outside the courtroom. As described in Section II below, Petitioner intends to comply with the conditions of Rule 2(a)(5) by taking specific measures and precautions in the courtroom.

**I. Legal Standards.**

Rule 2 provides that, in determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

<sup>1</sup> See [http://www.courts.state.co.us/Courts/Supreme\\_Court/Rule\\_Changes/2010.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes/2010.cfm).

(A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;

(B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and

(C) Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

Here, there is no reasonable likelihood that EMC would interfere with the rights of the parties to a fair trial. The single television camera will be set up in advance of courtroom proceedings and Petitioner's media representative will comply with all conditions of Rule 2. The presence of a television camera will not unduly detract from the solemnity, decorum or dignity of the proceedings, nor will it create adverse effects that would be greater than those caused by traditional media coverage. It is the petitioner's experience that a television camera which allows a live feed to be sent outside the courtroom actually *reduces* the number of media representatives in the courtroom.

One Colorado appellate decision has addressed the issue of allowing television cameras in the courtroom. In *People v. Wieghard*, 727 P.2d 383 (Colo. App. 1986), *cert. denied*, the court affirmed the defendant's conviction for first-degree murder and stated:

Wieghard next contends the trial court abused its discretion in allowing expanded media coverage of the trial. We do not agree. In 1983, our supreme court enacted Colorado Code of Judicial Conduct Temporary Canon 3A(8) [now Rule 2] which outlined guidelines for expanded media coverage of court proceedings. Prior to trial, the local newspaper and television station requested expanded media coverage under this rule. At a pretrial hearing, *the trial court held that the presumption was in favor of open coverage and that a party opposing such coverage would have the burden of proving adverse effects therefrom*. Defense counsel stated he could not spend his time developing an evidentiary record on the matter. The court then granted the request and outlined the parameters within which it expected the media to operate.

*We find no abuse of discretion by the trial court here. A hearing was conducted. Counsel were given an opportunity to present evidence. The mere presence of a camera in the courtroom does not in itself deny a defendant due process. Chandler v. Florida, 449 U.S. 560, 101 S. Ct. 802, 66 L. Ed. 2d 740 (1981).*

*Id.* at 386 (emphasis added). *And see* Anderson, *Time To Open The Electronic Eye*, ABA Jnl. At 8 (June 1999).

The Colorado Supreme Court has made it clear that it encourages expanded media coverage because of the importance of open courts and the educational benefits of allowing the public to see judicial proceedings. For example, Chief Justice Mullarkey entered an Order on October 10, 2002, that allowed trial courts to waive all restrictions of what is now Rule 2 and permitted a national television network to videotape and broadcast entire criminal proceedings, including trial preparation, pretrial motion hearings, jury voir dire and even jury deliberations. (See Order dated October 10, 2002, attached as Exh. B hereto.) Chief Justice Mullarkey was quoted as saying that she was “convinced that the benefits of opening up the courts outweighed the disadvantages.” “ABC to Eavesdrop on Colorado Trials,” *The Denver Post*, Dec. 12, 2002, p. A1. Also, then Justice Kourlis stated:

The Supreme Court’s support of this program reflects the high priority we place on public education and jury reform. We believe that we do have a responsibility to educate the public about what really goes on in the courts and criminal trials specifically, and this program serves that goal.

*Id.* Although Petitioner does not request a waiver of the limitations of Rule 2 in this proceeding, it is clear that allowing court proceedings to be televised is favored and should be allowed.

Furthermore, television stations have had a long and successful experience in televising all or portions of criminal and civil trials in Colorado, both live and on videotape. The following trials were televised without incident and did not cause disruption in the courtroom or of the judicial proceedings. Moreover, a number of them were appealed and none were overturned on the basis that expanded media coverage was granted. Among the Colorado trials previously televised are:

- |                             |  |
|-----------------------------|--|
| <i>People v. Toll</i>       | Judge Maria Berkenkotter, taped, July 2010 (woman charged with aggravated animal cruelty for taping dog to refrigerator).  |
| <i>People v. Clark</i>      | Judge Christina M. Habas, taped, April 2010 (sentencing of gang member convicted in New Year’s Eve killing of Denver Bronco cornerback Darrent Williams)                             |
| <i>People v. Snyder</i>     | Judge Dave Williams, taped, March 2010 (chess master charged with violating probation and failing to register as sex offender after completing jail sentence and fleeing to Mexico). |
| <i>People v. Welch, Jr.</i> | Judge Terence A. Gilmore, taped, March 2010 (dismissal of weapons and marijuana charges arising out of no-knock search warrant raid).  |

- People v. Lounsbury* Judge John T. Bryan, taped, February 2010 (murder trial of woman charged with shooting father and stepmother).
- People v. Mayumi Heene* Judge Stephen J. Schapanski, taped, December 2009 (“Balloon Boy” case; mother charged with misdemeanor false reporting).
- People v. Richard Heene* Judge Stephen J. Schapanski, taped, December 2009 (“Ballon Boy” case; father charged with attempting to influence a public servant).
- People v. Taylor* Judge Christina M. Habas, taped, December 2009 (defendant plead guilty to sexually assaulting two children; suspected of killing and chemically cremating a third boy).
- People v. Harnish* Judge Russell H. Granger, taped, November 2009 (defendant linked to 1976 rape and murder of teenager through DNA).
- Churchill v. Univ. of Colorado* Judge Larry J. Naves, taped, March-April 2009 (civil suit by fired University of Colorado professor who compared victims of September 11<sup>th</sup> World Trade Center attacks to “little Eichmanns”).
- People v. Chavez* Judge Francis Wasserman, taped, February 2009 (defendant who beat a drunk driver to death after fatal collision pleads guilty to reckless manslaughter).
- People v. Roberts* Judge Marcelo Kopcow, taped, January 2009 (17-year old boy charged with child abuse, knowingly/recklessly causing death of a 7-year old girl by role playing the game Mortal Kombat).

In addition to the forgoing cases in which EMC was granted and used without problems, EMC has been widely accepted and used in Colorado trials and sentencings. A list of those cases is attached as Exhibit C, hereto.

Accordingly, Petitioner and the Denver Media Group respectfully request that EMC be granted for this sentencing.

## **II. Compliance Procedures.**

Petitioner intends to comply with the requirements of Rule 2 in the following manner,

Pooling Arrangements. A pooling arrangement has been entered into among television stations KWGN-TV (Channel 2), KCNC-TV (Channel 4), KMGH-TV (Channel 7), KUSA-TV (Channel 9), KDVR-TV (Channel 31), KCEC (Channel 50), Court TV, as well as with radio station KOA in Denver. Petitioner will designate a media representative should this Court grant

EMC, and will make arrangements with other members of the media pool. The representative shall arrange and be responsible for the EMC, and shall be responsible for arranging an open and impartial distribution system with a distribution point located outside of the courtroom. The distribution will be made available to the aforementioned television stations, to other television stations, to network television and to radio stations.

Video. Petitioner shall be the only television operator represented in the courtroom and shall utilize only one television camera at any time. The camera will remain in a single location throughout the court proceedings.

Audio. If the courtroom audio system is not technically feasible for use in EMC, all audio recording shall be done on one audio system installed by Petitioner at its expense. This shall be done at a time when installation will not interfere with any court proceedings. All microphones and related wiring shall be installed so that they are unobtrusive and so that they will not interfere with movement of those in the courtroom.

Lighting. There shall be no movie lights, flash attachments or sudden lighting changes during the proceedings.

Still Cameras. Petitioner will not use still cameras.

Operating Signal. No visible or audible light or signal shall be used on any equipment.

Conduct of Media Representative. The media representative shall conduct himself or herself in a manner consistent with the dignity and decorum of the courtroom. The following practices shall be observed in this regard:

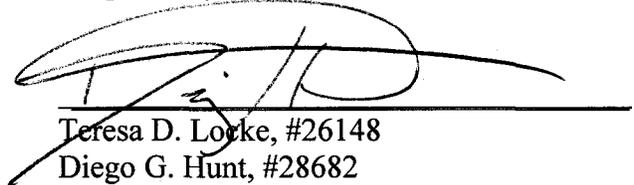
- All equipment employed to provide EMC shall be positioned and operated so as not to detract from the dignity and decorum of the judicial process and to minimize any distraction.
- The television camera that will be used is completely silent, and participants and spectators will not be able to determine whether it is operating at any particular time.
- Identifying marks, call letters, logos, symbols and legends shall be concealed on all equipment, and personnel shall not wear clothing bearing any insignia or identification of the individual or network involved.
- Equipment involved in EMC shall not be placed in, or removed from, the courtroom except prior to the commencement or after adjournment of proceedings each day, or during a recess. No film, videotape, or lenses will be changed in the courtroom while court is in session.

**III. Conclusion.**

For the foregoing reasons, Petitioner and the Denver Media Group respectfully request that EMC be granted for the sentencing in this case. If either party files an objection to this request, Petitioner requests leave to file a brief reply. As required by Rule 2(a)(6)(A), a copy of this request is being provided to each party in this case.

Dated: August 25, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Lorke", is written over a horizontal line. The signature is stylized and somewhat cursive.

Teresa D. Lorke, #26148

Diego G. Hunt, #28682

HOLLAND & HART LLP

**ATTORNEYS FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2014, a true and correct copy of the foregoing REQUEST FOR EXPANDED MEDIA COVERAGE was served via facsimile and U.S. Mail to:

George H. Brauchler  
District Attorney  
Jacob Edson  
Rich Orman  
Karen Pearson  
Lisa Teesch-Maguire  
18th Judicial District Attorney's Office  
6450 S. Revere Pkwy.  
Centennial, CO 80111  
Fax: 720-874-8501

Douglas K. Wilson  
Colorado State Public Defender  
Daniel King  
Tamara A. Brady  
Chief Trial Deputy State Public Defenders  
Colorado Public Defender's Office  
1300 Broadway, Ste. 400  
Denver, CO 80203  
Fax: 303-764-1478

*Patricia Sams*

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Patricia Sams

## EXHIBIT A

### RULE CHANGE 2010(14)

[Amended and adopted by the Court,  
En Banc, June 24, 2010, effective July 1, 2010.]

#### CHAPTER 38 [C.R.C.P.]

##### **Rule 2. Media Coverage of Court Proceedings**

**(a) Expanded Media Coverage: A judge may authorize expanded media coverage of court proceedings, subject to the guidelines set forth below.**

(1) **Definitions.** As used in this section, unless the context otherwise requires:

(A) “Proceeding” means any trial, hearing, or any other matter held in open court which the public is entitled to attend.

(B) “Photograph” and “photography” means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.

(C) “Expanded media coverage” means any photography or audio recording of proceedings.

(D) “Judge” means the justice, judge, magistrate, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.

(E) “Media” means any news gathering or reporting agency and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agency whose function it is to inform the public or some segment thereof.

(2) **Standards for Authorizing Coverage.** In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

(A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;

(B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and

(C) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.

## EXHIBIT A

(3) **Limitations on Expanded Media Coverage.** Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:

- (A) Expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments;
- (B) Expanded media coverage of jury voir dire;
- (C) Audio recording or “zoom” close-up photography of bench conferences;
- (D) Audio recording or close-up photography of communications between counsel and client or between co-counsel;
- (E) Expanded media coverage of in camera hearings;
- (F) Close-up photography of members of the jury.

(4) **Authority to Impose Restrictions on Expanded Media Coverage.** A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. A judge may terminate or suspend expanded media coverage at any time upon making findings of fact that: (1) rules established under this Rule or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced by such coverage if it is allowed to continue.

(5) **Conditions for Coverage.** Expanded media coverage shall be conducted only under the following conditions:

- (A) **Equipment Limitations.**
  - (i) **Video.** Only one person at a time shall be permitted to operate a videotape, television, or motion picture camera. There shall be only one such camera at a time in the courtroom, except that, at the discretion of the judge, the camera operator may have a second camera. The camera operator may use a tripod, but shall not change location while court is in session.
  - (ii) **Audio.** The court’s audio system shall be used if technically suitable and, in that event, there must be no interference with the court’s use of its system. If the court’s system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.

## EXHIBIT A

(iii) Still Cameras. Only one person at a time shall be permitted to operate still cameras, which shall make as little noise as possible. The still photographer may use a tripod, but shall not change location while court is in session.

(iv) Lighting. No movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.

(v) Operating Signals. No visible or audible light or signal (tally light) shall be used on any equipment.

(B) Pooling Arrangements. The media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage listed in subsection (I) of this section, and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.

(C) Conduct of Media Representatives. Persons conducting expanded media coverage shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:

(i) Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction;

(ii) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;

(iii) Equipment used to provide expanded media coverage shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session.

(6) **Procedures**. The following procedures shall be followed in obtaining authorization for expanded media coverage:

(A) Request for Expanded Media Coverage. A written request shall be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the judge. Copies of the request shall be given to counsel for each party participating in the proceeding. The request shall include the following:

(i) The name, number, date and time of the proceeding;

## EXHIBIT A

(ii) The type (audio, video or still photography) of expanded media coverage requested and a description of the pooling arrangements required by section (e)(II), if any, including the identity of the designated representatives.

(B) Objections. Any party or witness may lodge with the judge a written objection to expanded media coverage of all or a portion of a proceeding.

(C) Judicial Authorization. The judge shall rule on a request or objection within a reasonable time prior to the proceeding or promptly after the request or objection if the proceeding has begun. The ruling shall be made on the record and the reasons therefore set forth briefly.

(D) The media or any witness may not appeal, or seek review by original proceeding, the granting or denial of expanded media coverage. A party to the case may seek review of a ruling by original proceeding, if otherwise appropriate, or by post-trial appeal.

**(b) Other use of Media.**

(1) A judge may authorize the use of electronic or photographic means for the perpetuation of a record, or for purposes of judicial administration.

(2) A judge may authorize the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

**Amended and adopted by the Court, En Banc, June 24, 2010, effective July 1, 2010.**

**By the Court:**

**Nancy E. Rice  
Justice, Colorado Supreme Court**

## **EXHIBIT B**

### **SUPREME COURT OFFICE OF CHIEF JUSTICE**

#### **ORDER PERMITTING ELECTRONIC AND PHOTOGRAPHIC ACCESS TO COURT PROCEEDINGS**

It is in the interest of justice that the public understand as fully as possible the operation of the justice system, including the courts. A national television network proposes to produce a program that promotes this interest and that requires extraordinary access to judicial proceedings in Colorado. The Colorado Code of Judicial Conduct Canon 3 (A) (7) - (8) permits electronic and photographic access to court proceedings subject to certain specified limitations and subject to the trial judge's approval of the proposed access.

IT IS ORDERED that any trial judge is hereby delegated authority to selectively waive provisions of the Code of Judicial Conduct, Canon 3 (A) (8) (c) to permit the filming of the proposed program if such waiver is necessary and reasonable and the defendant and all attorneys, witnesses and jurors involved in the trials selected for filming consent in advance.

IT IS FURTHER ORDERED that the trial judge in each proceeding selected for filming shall have discretion to regulate how filming is actually conducted on a day-to-day basis and discretion to rule upon any issues concerning the filming that arise during trial.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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Mary J. Mullarkey  
Chief Justice

## EXHIBIT C

### Other cases in which EMC was granted and used.

- People v. Nelson* Judge Roger Klein, February-March 2008 (murder trial of police dispatcher for killing her police officer/lover's wife).
- People v. Cozad* Judge Marcelo Kopcow, taped, July 2007 (attempted murder charge against UNC football player for stabbing fellow punter).
- People v. Chambers* Presiding Disciplinary Judge William Lucero, taped, October 2006 (disciplinary case involving allegations that District Attorney had lied and threatened prosecution to gain advantage in civil case).
- People v. Gomez-Garcia* Judge Naves, live, September 2006 (murder of one police officer and serious wounding of another police officer; defendant fled to Mexico).
- State v. Martinez* Judge Don Marshall, June 2005 (preliminary injunction hearing on Colorado Consumer Protection Act for alleged fraud by contractor).
- People v. Blagg* Judge David Bottger, March 2004 (husband accused of murdering his wife and children and disposing of their bodies in a Grand Junction landfill).
- People v. Garrison* Judge Terry Ruckriegle, March 2002 (case involving alleged ax murder of wife by husband who buried her in backyard in Breckenridge).
- People v. Cain* Judge Jane Tidball, taped, February 2002 (vehicular assault case involving validity of car's "black box" record of last five seconds before crash).
- People v. Hall* Judge David Lass, taped, November 2000 (case involving alleged reckless skier who collided with and killed another skier).
- People v. Ybanez* Judge Scott Lawrence, taped, October 1999 (murder trial of 17-year-old boy charged with killing his mother).
- People v. Geddes* Judge John McMullen, granted permission to tape the trial in February 1999 (murder trial of husband who claimed intruder killed his wife while she was upstairs and he was downstairs – ala "The Fugitive"), but the case was dismissed shortly before trial.
- People v. Pfeifer* Judge Scott Lawrence, taped, August 1998 (retrial of vehicular homicide case of defendant who had a history of prior accidents).
- People v. Auman* Judge Nancy Rice, July 1998 (extended shooting rampage and police chase through Denver ending in murder of police officer).

## EXHIBIT C

- People v. Webb* Judge Warren Martin, taped, November 1997 (vehicular homicide trial of driver of car that hit and killed new police officer).
- People v. Kriho* Judge Henry Nieto, taped, June 1997 (contempt of court proceeding against juror who did not disclose her opinions on drug laws during jury selection).
- People v. Tombs* Judge Warren Martin, taped, May 1997 (murder resulting from refusal to allow babysitter to invite friends over for a party).
- Lewis and Mathews v. Colorado Rockies* Judge Herbert Stem, III, taped, April 1996 (suit against Colorado Rockies for right to distribute team programs on sidewalk in front of Coors Field).
- Roberts v. Scheriff* Judge Edward Simons, taped, July 1995 (defamation and invasion of privacy case brought by manager of Denver Athletic Club).
- People v. Harlan* Judge Philip Roan, June 1995 (defendant kidnapped and killed casino waitress and paralyzed Good Samaritan).
- People v. Coit* Judge Richard Doucette, August 1994 (Steamboat Springs "Black Widow" murder against woman whose prior husbands had also died under suspicious circumstances).
- People v. Davis* Judge Paul Markson, live, May 1994 (trial for murder of Tom Hollar and attempted rape of his wife).
- People v. Saiz* Judge Harlan Bockman, taped, November 1993 (murder trial raising defense of battered wife syndrome).
- People v. Fernandez* Judge Terry Ruckriegle, August 1993 (murder trial for teenager charged with killing a state patrolman).
- People v. Clouatre* Judge Richard Spriggs, taped, July 1993 (trial for murder of son of U. S. District Court Judge).
- People v. Genrich* Judge Nicholas Massaro, Jr., January 1993 (Grand Junction pipe bombing murder).
- Romer v. Evans* Judge Jeffrey Bayless, live, January 1993 (constitutionality of Amendment 2, which repealed existing gay rights laws in Colorado).
- People v. King* Judge Richard Spriggs, live, May 1992 (defendant accused of murder of four bank guards in United Bank of Denver).

## EXHIBIT C

- People v. Reilly* Judge Stephen Phillips, taped, January 1992 (nurse shut off oxygen ending the life of a terminally ill cancer patient).
- People v. Hood* Judge Joseph Weatherby, taped, December 1991 (defendant's lover killed defendant's spouse and claimed he "programmed" her to do it).
- People v. Ciccarelli* Judge Richard Spriggs, taped, August 1991 (ethnic intimidation criminal charge).
- People v. Bergen* Judge Christopher Munch, live, July 1991 (television reporter accused of staging pit bull fights).
- People v. Wortham* Judge Lynn Hufnagel, April 1988 (Capitol Hill rapist).
- People v. Davis* Judge Harlan Bockman, July 1987 (capitol case involving brutal murder following abduction and rape of victim by husband and wife).
- People v. Rodriguez* Judge Connie Peterson, December 1986 (vicious murder, rape and kidnapping of woman who pleaded for her life).
- People v. Wieghard* Judge Murray Richtel, 1985 (murder and aggravated robbery trial of defendant who asked jail mate to kill eyewitness).
- People v. Arevalo* Judge Murray Richtel, October 1984 (murder of baby by mother's boyfriend where baby found buried in empty lot after months of searching and mother's refusal to admit baby's death).