

## 1. Limit Conversations Near Jurors

TO THE COURT AND THE PROSECUTION, PLEASE TAKE NOTICE that Defendant moves the Court for an order prohibiting members of the prosecution team from having conversations within earshot of jurors.

Date:

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Attorney for Defendant

### POINTS, AUTHORITIES, AND ARGUMENT

By this motion in limine, the defense seeks an order prohibiting members of the prosecution team from having conversations within earshot of jurors or potential jurors.

The Prosecution is often granted the counsel table nearest to the jury, and the investigating officer often joins the prosecuting attorney at counsel table. Conversations between counsel and officer can easily rise to a level that can be heard by jurors. The close proximity to the jury box compared to the distance and elevation difference to the bench means that the Court is not in a position to hear conversations that may be overheard by the jury.

Further, the halls outside the courtroom are not well designed acoustically. The tile floors and smooth walls allow noises to echo down the halls with little dampening effect.

It is improper for the jury to receive any evidence outside of the normal court proceedings (*Penal Code §1181*).

As noted in *People v. Oliver* (1975) 46 Cal. App. 3<sup>rd</sup> 747, 751:

The duty of a trial court to afford every defendant in a criminal case a fair and impartial trial is of constitutional dimension. Where the procedure has fallen short of that standard, an accused has been denied due process...

The requested remedy is that the prosecutor and investigating officer not be allowed to speak with each other at counsel table while the jury is in the room. Should they need to communicate with the jury present, they can do so with notes.

As for conversations in the hall and about the courthouse, the prosecution should be barred from having such conversations. If the prosecution needs to speak with the investigating officer or any witness, they can do so away from the courthouse, in a conference room, or in the courtroom when the jury is absent.