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SUPREME COURT
FILED

JAN - 6 2010

Frederick K. Ohrich Clerk

S090602

Deputy

IN THE CALIFORNIA SUPREME COURT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff and Respondent,)

vs.)

LOUIS JAMES PEOPLES,)
Defendant and Appellant.)

(Alameda County No. 135280;
San Joaquin County No. SP062397A.
Cal. Rules of Court, Rule 8.252(a).)

MOTION FOR JUDICIAL NOTICE IN AUTOMATIC APPEAL.

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

Appellant, *Louis James Peoples*, by and through his appointed counsel, Phillip H. Cherney, hereby moves that this Court take judicial notice of the public disciplinary records of the trial judge, Michael E. Platt, and trial prosecutor, George H. Dunlap, Jr., in the form of decisions of the *Commission on Judicial Performance* removing Judge Platt from judicial office, and suspension decisions of the *State Bar Court of California* as to both attorneys, files maintained by this Court.

Appellant argues various grounds for reversal of his convictions and sentence based upon judicial and prosecutorial misconduct in his opening brief filed at or about the same date as this motion, including motions to recuse Judge Platt before and during trial, numerous motions for mistrial and new trial. (See, *Appellant's Opening Brief*, p. 2; *Arguments I-V*.)

Grounds under Rule 8.252(a) and Evidence Code 459, for this motion are as follows:

- 1) The orders of this Court affirming the decisions of the *Commission on Judicial Performance* and *State Bar Court* with respect to Michael E. Platt, and as to George H.

DEATH PENALTY

- Dunlap, Jr., as a court of this state, subject to judicial notice by this Court under Evidence Code section 452, subdivision (d)(1);¹
- 2) The public records of discipline and removal by the *Commission on Judicial Performance* and records of discipline and suspension by the *State Bar Court*, are in courts in this state whose records and proceedings are subject to judicial notice under Evidence Code section 452, subdivision (d)(1) (California Rules of Court, *Judicial Council, Commission on Judicial Performance*, Rules 118, 120, 134-36; *In re Visciotti* (1996) 14 Cal.4th 325, 349-50; *Brosterhaus v. State Bar* (1995) 12 Cal.4th 315, 324-325; *Emslie v. State Bar* (1974) 11 Cal.3d 210, 224; *Whittaker v. Superior Court* (1968) 68 Cal.2d 357, 362-63);
 - 3) Appellant seeks judicial notice of these records in order to allow this Court to fully consider his claims of pervasive judicial and prosecutorial misconduct committed during trial that denied his constitutional rights as enumerated in *Arguments I-V*, as acts of gross misconduct in the disciplinary proceedings were committed during the same time period (1998-2000) in which appellant was complaining of violations of his constitutional and statutory rights at trial;
 - 4) Appellant's trial counsel's allegations of prosecutorial misconduct at trial were ruled on by a judicial officer who was prejudiced, and who failed and refused to take action to protect appellant, and repeated objections and motions regarding violations of law and ethics were met with contempt by both the prosecutor and the trial court;
 - 5) Appellant's trial counsel moved to videotape the retrial of the penalty phase after allegations of abusive conduct by the trial judge, and public disciplinary proceedings are relevant to the question of whether the trial judge's misconduct at trial occurred

¹ This Court's State Bar records relative to Michael Platt (#77779) are 03-V-03141-PEM (suspension records), and as to George Dunlap (#138896) are 02-O-14001 and 09-N-14492 (suspension records). The *Commission on Judicial Performance Decision* records are No. 162.

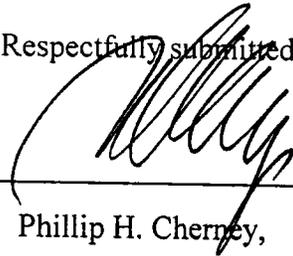
as alleged by trial counsel and denied by the trial judge;

6) Appellant contends on appeal that the pervasive judicial and prosecutorial misconduct deeply impacted his capital murder trial, and in the absence of such misconduct, especially at the retrial of the penalty phase, results would have been different, and, if there are any doubts as to his claims after review of the trial record, the disciplinary proceedings would resolve them in his favor.

For all of the foregoing reasons, and based upon the *Declaration of Phillip H. Cherney* attached, appellant moves this Court to take judicial notice the public disciplinary records within its own file.

Dated: January 4, 2010

Respectfully submitted,



Phillip H. Cherney,
Attorney for Appellant.
Louis James Peoples.

**DECLARATION OF PHILLIP H. CHERNEY IN SUPPORT OF APPLICATION
FOR PERMISSION TO FILE OVERLENGTH APPELLANT'S OPENING BRIEF.**

I, PHILLIP H. CHERNEY, HEREBY DECLARE:

1. I am an attorney licensed to practice law in the State of California since 1977 (76053), and I am in good standing in all courts to which I am admitted. On March 15, 2006, I accepted appointment to represent appellant, Louis James Peoples, in his automatic appeal and related habeas/executive clemency proceedings in case number *S090602*, Alameda County Superior Court No. 135280 (San Joaquin County Superior Court No. SP062397A) from judgment of death imposed on August 4, 2000.

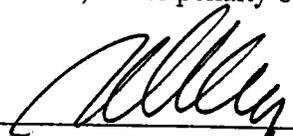
2. On March 30, 2006, I received a copy of the reporter's and clerk's transcripts, and upon completion of review of the trial record in September, 2007, I am informed and believe the record is over 38,000, and includes 61 volumes of clerk's transcripts and 97 volumes of reporter's transcripts. On January 17, 2008, the clerk of the lower court certified the record in this Court, and after further corrections, the clerk of this Court filed the record on June 27, 2008.

3. I have prepared *Appellant's Opening Brief*, and submitted it for filing on this date. The first five arguments (200 pp.) presented on appeal as grounds for reversal are related specifically to judicial and prosecutorial misconduct, and numerous other contentions on appeal are interrelated to those claims.

4. Michael E. Platt was the judicial officer who presided over appellant's capital murder trial, and George H. Dunlap, Jr., was the trial prosecutor, in the above-referenced action. I have reviewed public documents related to this Court's State Bar records on Michael Platt (#77779) are 03-V-03141-PEM (suspension records), and George Dunlap (#138896) in 02-O-14001 and 09-N-14492 (suspension records), and the *Commission on Judicial Performance Decision* record No. 162, removing Michael Platt from judicial office.

5. The above-referenced records were not available during trial, and I am informed and believe the referenced records are germane to the issues raised on appeal, and that they are records this Court may take judicial notice of and should do so because it is in the interests of justice to consider them in this automatic appeal.

I declare the foregoing is true and correct, except as to matters declared on information and belief, which I am informed and believe to be true and correct, under penalty of perjury this 4th day of January, 2010, at Visalia, California.



PHILLIP H. CHERNEY

Attorney for *Louis James Peoples*.

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DECLARATION OF SERVICE BY MAIL
RE: PEOPLE V. LOUIS JAMES PEOPLES, S090602
(Alameda County Superior Court No.135280;
San Joaquin County Superior Court No.SP062397A)

I, Phillip H. Cherney, declare that I am an attorney licensed to practice law in the State of California, State Bar No. 76053, and my business address is 214 South Johnson Street, Visalia, California, 93291.

On January 4, 2010, I served the following persons at the addresses listed, with a true copy of *Motion for Judicial Notice in Automatic Appeal*, enclosing the same in a sealed envelope, postage fully paid, and placing it in the United States mail at Visalia, California:

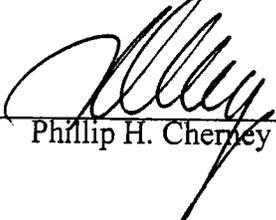
Office of the Attorney General
State of California
Glenn R. Pruden
Supervising Deputy Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

Louis James Peoples
P.O. Box P-88028 5EB 86
San Quentin, CA 94974

CAP Docketing Clerk
101 Second Street, Suite 600
San Francisco, CA 94105

Superior Court for Alameda County
Marie Mayupao, Death Penalty Appeals Clerk
1225 Fallon Street, Room G-4
Courthouse Basement
Oakland, CA 09

I declare under penalty of perjury that the foregoing is true and correct this 4th ay of January, 2010, at Visalia, California.



Phillip H. Cherney