OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

MCLE AGENDA

WIC 707 Transfer Hearings for Juveniles

March 2, 2017

Hall of Justice, Room 308, 3rd Floor

Instructors: Stephen Slyker, Senior Deputy District Attorney
~~Jennie Thrift, Deputy District Attorney~~
Stacy Ratner, Supervising Attorney

3:00 – 4:40 (Slyker and Thrift)

- Prop 57 Background
- Fitness Criteria Changes for 2016
- Transfer Hearing Procedures
- Strategies
- Materials for Review

4:40 – 5:00 (Slyker and Thrift)

- Q and A session regarding new processes

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1. **People v. Browning, 45 Cal. App. 3d 125 (1975)**

Charges: Armed Robbery, Murder

Facts: On 12/22/72 Linn Searles was robbed and shot in his store, The Magic Wand, in Pasadena, CA. Searles was shot with a .22 caliber hand gun. Three juveniles were involved.

Summary: After reading the probation officer's report and the juvenile court file, the juvenile court found the minor was not fit for juvenile court. The trial court lamented that not everything was the minor's fault, though, because of the probation department's previous dealings with the minor which the court described as "grossly stupid" and "incomprehensible." On appeal, minor argued that the unfitness for juvenile court derived in significant part from errors in the probation department. Minor also argued that the People should be required to negate the possibility that treatment through the juvenile court system would be possible.

Ruling: The court responded that the unfitness contention was "untenable" because "the court recognizes no doctrine of contributory fault on the part of the authorities which would withdraw the charged crimes and their significance from judicial consideration." Regarding the second argument, the court stated that "the People would be required to demonstrate affirmatively that none of the various treatment options available through the juvenile court system and the Youth Authority would be adequate to serve the minor's needs and the best interests of society. We do not believe that the state is required to bear so heavy a burden before the juvenile court can determine that a minor is unfit to be treated as a juvenile."

Shepard: Overruled by People v. Williams, 16 Cal. 3d 663 (1976) only to the extent that *Browning* applied Cal. Evid. Code § 1235 to a witness's inconsistent statement made before the preliminary hearing. The overruled portion does not apply to any fitness or 707 issues discussed here and *Browning* remains good law on all other issues.

Evid. Code § 1235 says that evidence of a statement made by a witness is not made inadmissible by the hearsay rule if that statement differs from that witness's testimony at the hearing. Commission comments indicate this rule applies only to prior inconsistent statements of a trial witness, if that witness's testimony at the preliminary hearing was different than that at the trial. According to *Williams*, this rule does not apply when a witness's testimony in an interview with police is inconsistent with his testimony at the preliminary hearing, as was allowed in *Browning*.

2. **People v. Chi Ko Wong, 18 Cal. 3d 698 (1976)**

Charges: Robbery, Murder

Facts: With another minor, minor entered a restaurant in Los Angeles, CA with a stocking mask and gun, robbed the register, and fled. An employee was shot and killed when he ran after them.

Ruling: The 707 report stated that: the minor associated with a major youth gang in San Francisco and was employed by the gang as a hit man, minor was suspected of two other homicides, and the L.A.P.D. source stated that he was a suspect in another shooting and "had four handguns and three shotguns found at his house at the time of arrest".

Ruling: "It is clear that the very nature of the fitness hearing precludes imposition of strict evidentiary standards. As he issure therin is not whether the minor committed a specified act, but rather whether he is amenable to the care, treatment, and training program available through juvenile court facilities, it is manifest that a finding of fitness or unfitness is largely a subjective determination based on hearsay and opinion evidence. Indeed, the probation officer's report on behavioral patterns must consist mainly of statements based on the observations of others and is clearly hearsay whether handed to the judge in writing or delivered orally by the probation officer. (See National Council on Crime and Delinquency, Procedure and Evidence in Juvenile Court, p. 57.) Thus it has been said that "there appear to be no limitations upon the evidence that the court may consider at the remand or referral hearing, other than the basic test of relevancy and materiality to the issue presented. The requirement that the court must read and consider the probation officer's report on behavioral patterns introduces a wide assortment of hearsay, opinion evidence, evidence of prior offenses, school reports, and other miscellaneous information.

In short, the transfer hearing is not an adversary proceeding. Rather, the sole purpose of the transfer hearing … is to determine 'whether the best interest of the child and of society would be served by the retention of the juvenile court authority over him or whether the juvenile, under all the circumstances, should be transferred to be tried as an adult.' We believe that this purpose may best be effectuated by the sound exercise of the juvenile court judge's discretion at an informal hearing, limited of course by the general requirements of due process and fair treatment, but not governed by the strict rules of procedure and evidence applicable at either a criminal trial or at a juvenile court delinquency hearing.

Additionally, as we have held with respect to pre-sentence probation reports, fundamental fairness demands that such reports be founded on accurate and reliable information. Thus evidence of police contacts not leading to arrest or conviction many not be included in the report without supporting information."

3. **People v. Allgood, 54 Cal. App. 3d 434 (1976)**

Charges: Murder

Facts: Minor strangled his mother to death, drover her car to Denny's, then walked home.

Ruling: The amenability of a minor to any particular form of treatment is merely one factor to be considered and there is no presumption of fitness based upon the

accused's never having been subject to treatment previously ordered by the juvenile court.

4. **People v. Superior Court (Steven S.), 119 Cal. App. 3d 162 (1981)**

Charges: 664, 187, 245, 211 against multiple victims

Facts: The six victims were walking along the street when minor, along with several other juveniles, surround them. One minor punches a man; another minor pulls a knife and demands money. Two of the victims ran away. Steven S. then attacks with a knife, cutting a victim, and the victims run. Steven S. confronts a victim and demands money and then stabs the victim in the gut. When one of the victims hands over money, Steven S. stabs him in the back three times when he turns to leave.

Summary: At the 707 hearing the following occurred:

The 707 report was submitted.

The minor's P.O. testified based on her interview of the minor and his parents, a review of the history of the minor and his family, minor's behavior in and out of custody, minor's P.O. from Contra Costa County, the police reports, and conversations with all of the victims. The P.O. concluded the minor was unfit.

A defense psychiatrist testified based upon his review of the P.O.'s report, the police report, two Contra Costa County probation reports, conversations with minor's family, two hour interviews of the minor, and the results of a test conducted by a child psychiatrist. The psychiatrist concluded the minor was fit.

A CYA representative James Mchale testified that he did not know if CYA could help the minor but they could certainly "contain" him. He estimated that the minor would be at CYA for 15 months to two years.

Appellate court discussion:

a. The Degree of Criminal Sophistication exhibited by the Minor

The trial court found the minor's criminal sophistication was low because he kept a blood stained knife on his person without wiping off the blood.

The P.O. disagreed, noting a behavior pattern of street fighting and aggressive behavior, beginning at an early age with minor fights with peers, escalating to seeking out of victims, and ending with the most recent stabbing which almost resulted in the death of one of the victims. P.O. also noted when minor had been caught fighting he was in possession of a knife and returned home with physical wounds. The P.O. concluded that the circumstances of the crime indicate sophistication. The minor stabbed a victim one time, chased and stabbed another victim three more times, attempted to stab another victim two times, finally demanded and received money and then attempted to stab the third victim, ripping the victim's clothes on his back to shreds.

The psychiatrist testified that the minor had a "low degree of criminal sophistication" because he doesn't plan ahead and the stabbing was not

preplanned but rather was a reaction to the circumstances. The court indicated the circumstances in the report were to the contrary.

b. Whether the Minor Can be Rehabilitated Prior to the Expiration of the Juvenile Court's Jurisdiction

The court stated that the minor could be held until his 23rd birthday.

Psychiatrist testified that he thought the minor could be rehabilitated. He could not guarantee he would be rehabilitated but he felt there was a good chance that if the minor was put in a proper setting he could be rehabilitated in two years.

The 707 report stated that the minor had only spent brief periods of time in custody and that if the past weeks in juvenile hall were any indication of the type of progress to be made, it is highly questionable as to whether the minor could be rehabilitated.

The P.O. stated that the minor has never expressed remorse for his alleged actions in the incident. The minor has failed to realize the seriousness of his actions and of the position he is in. He seems concerned only for himself and his own well-being. He thinks very little of any injury that he may cause to another person and strikes out at others at the slightest provocation. The P.O. stated it would take a great deal of intensive treatment for the minor's rehabilitation.

When discussing the psychiatrist's credentials the court noted that the examiner was not a CYA psychiatrist or clinical consultant with any intimate knowledge of the Youth Authority treatment and training programs, nor did he have an opportunity to observe the minor for 90 days (as in a 707.2 study). The psychiatrist was a private psychiatrist, hired by minor's counsel, and presumed to profess experience over the matter of whether the minor is a fit and proper subject to be dealt with under the juvenile court law based on a four hour interview and incomplete clinical testing. The psychiatrist did not speak to any of the victims, review the victim's medical records, interview the P.O. assigned to the minor's case, read the report written by the P.O., speak to the minor's counselors who had information regarding the minor's recent in custody contact, speak to the counselors described in the 707 report, speak to anyone connected o the schools that minor attended, or speak to the P.O. from another county who previously supervised the minor.

c. The Minor's Prior Delinquent History

Per the 707 report:

i. 06/11/79: Concord P.D., Possession of a BB Code.
ii. 01/05/80: Referral to Contra Costa Probation for 601 W&I.
iii. 02/08/80: Referral to Contra Costa Probation by Bart police for 148 and 13001 H&S throwing a flammable substance. The case was closed at intake.

iv. 05/06/80: Petition filed in San Mateo for 417 and 415. Minor was placed on probation with a $50 fine.

v. 08/08/80: Cited by S.F.P.D. for 594. Minor and companion broke the windows of a Doggie Diner restaurant because the cook was too slow making their order. Minor FTAed for citation and after several attempts by probation to get his mother and him to appear, the matter was closed at intake.

vi. 10/09/80: Minor and several companions cited for curfew. Closed at intake S.F.P.D..

vii. 10/20/80: Petition filed for 166.4 failure to attend school (he had been suspended for frequent truancy), 626.8(a) being on school ground without lawful business. Minor had been ordered to stay away from the high school after a fight with a student led to an altercation between white and Chicano students. Steven returned to school the next day and was involved in a fight. His probation was continued and since that time he has been in violation of all order that were set for his probation. The report cited three incidents of disruptive and violent behavior while in custody, including an incident where he lunged at and threatened to kill his counselor at juvenile hall.

The psychiatrist testified that although the probation officer testified that the minor was unceasingly in violation of his court orders, no inference could be drawn that the minor could not be reached by the juvenile process.

d. The Success of the Previous Attempts by the Juvenile Court to Rehabilitate the Minor

The P.O. ran down the previous attempts at counseling, prior probation supervision, placement at numerous schools, all which did not rehabilitate the minor. "Although he has never spent time at a boy's ranch or CYA, it appears that he has established a behavioral pattern that has been completely unaffected" by attempts to rehabilitate.

The psychiatrist stated that since juvenile court did not attempt adequately to rehabilitate the minor, its successes would have to be low and that rehabilitation could be successful if it were conducted under appropriate counseling, supervision, and psychiatric input.

e. The Circumstances and Gravity of the Offenses Alleged to Have Been Committed by the Minor

The attack was serious, causing a great deal of physical injury, in addition to the psychological damage to all six victims. Victim Bowman was in the hospital for a week and out of work for two months. Victim Anstadt was in the hospital for over a week and has an infection and pneumonia. Indeterminate when would return to work.

Psychiatrist said the offenses are no reason the minor cannot be handled in juvenile court and receive treatment in a juvenile facility.

Ruling:

a. The Degree of Criminal Sophistication exhibited by the Minor
The court stated that it does not need to set forth all the additional evidence. "It is sufficient to say that the minor has not established by a preponderance of the evidence that he is a fit and proper subject under this criterion."

b. Whether the Minor Can be Rehabilitated Prior to the Expiration of the Juvenile Court's Jurisdiction
The court balanced the "experts", the P.O. and psychiatrist, and found the minor did not overcome his burden.

c. The Minor's Prior Delinquent History
The court stated, "It is obvious that the evidence does not overcome the presumption of unfitness on this criterion."

d. The Success of the Previous Attempts by the Juvenile Court to Rehabilitate the Minor
"It goes without saying that the evidence is not sufficient to overcome the presumption on this criterion."

e. The Circumstances and Gravity of the Offenses Alleged to Have Been Committed by the Minor
The court stated, "The evidence clearly does not overcome the presumption of unfitness on this criterion".

5. **Edsel P. v. Superior Court, 165 Cal. App. 3d 763 (1985)**

Charges: 664/187 and 245(c)

Facts: On 05/01/1984 Contra Costa Sheriffs received a call at 1:00 A.M. from Lelinda Garcia that a prowler was outside. Deputy Nunes saw the minor who matched the description sitting in a Chevette. Nunes approached the vehicle, saw the minor fumble with an object, and asked him what he was doing. Nunes saw that the object was a shotgun, drew his weapon, and fired, grazing the minor in the head. Simultaneously, the minor fired a round from the shotgun.

After Miranda the minor stated he was having an affair with Garcia and her husband had found out and had threatened him. The minor took the shotgun to the house to kill the husband. Minor stated that he was going to kill the deputy but the deputy got off the first shot.

Summary:

05/04/1984: Minor charged and 707 allegations lodged
05/07/1987: Detention hearing held, only detention hearing documents presented
05/17/1987: Minor requests detention rehearing and PC hearing regarding the allegations under 707(b)

05/22/1984: Both requests were consolidated and the PC hearing was denied because no statutory grounds

Ruling: Due process requires that a prima facie case must be established prior to the presumption of unfitness attaching. The prima facie case is established by a Dennis H hearing. Put the reports relied on into evidence and have the preparer of the report available for cross examination. The court may consolidate the prima facie with the fitness hearing.

6. **In re Luis M, 180 Cal. App. 3d 1090 (1986)**

Charges: Robbery

Facts: 16 year old minor was arrested for robbery.

Summary: Arraignment held four days after arrest. Minor requested a contested detention hearing and the court ordered the district attorney to "have witnesses available" per Edsel P. No one from the district attorney's office was present.

At the Dennis H hearing, the report of the investigating police officer that interviewed the witnesses was offered into evidence. Minor objected as hearsay pursuant to Edsel P, contending that he has the right to confront and cross examine not the preparer of the report but the actual witness or victim. The court denied the objection and admitted the report into evidence.

Ruling: Only the preparer of the reports are necessary pursuant to Dennis H. Edsel P. confused the issue.

7. **People v. Superior Court (Robert L.), 213 Cal. App. 3d 54 (1989)**

Charges: 187, 664/187, 245, 186.22, etc.

Facts: 11 year old Jasmine, her 14 year old sister Melba and her aunt Blanca were walking on sidewalk in front of an apartment building. A shotgun blast from a passing vehicle was fired, striking Jasmine in the head and neck, killing her at the scene. Blanca was also struck. She was hospitalized and paralyzed, as result. The windows of the apartment were shattered but none of the five occupants were injured. Prior to the shooting, another vehicle had driven by and its occupants had yelled "Westside Burlington".

The minor, "Bullet", was a member of the Burlington Locos. He was contacted on unrelated charges and asked for information regarding the murder. He denied any involvement and was released. He was interviewed again a few days later and "admitted involvement in the murder…after planning and agreeing to commit the crime" with two co-conspirators.

Summary: A 707 Hearing was held. The 707 report and a report by the psychologist Ronald Fairbanks were submitted and the parties argued to the court. Fairbanks's report described the minor as a "very cooperative and sensitive young man" and noted that during the interview "on several occasions he became teary eyed and on one occasion

actually wept". Regarding the murder, the minor was quite specific that he drove the car, he was very nervous during the situation, and that apparently someone in the car did fire a gun at the individuals in the drive by and that an 11 year old girl was killed. The report stated that the examiner's impression was that the minor was admitting to the crime, experiencing remorse and regret regarding the crime, and was much more sensitive than one would expect of a young man involved in a gang. The report concluded "The minor needs the help of the juvenile system whereas this examiner feels it would be destructive for him to be placed in the adult system".

The court announced that the minor met all criteria for being found unfit and defense counsel suddenly remembered a petition by the parents and neighborhood showing their feelings about the minor. The court said it was a tough one. The judge said the case would never have been solved if the minor did not cooperate. The court doubted the incident would have happened if minor did not hook up with the co-conspirators. Also, the court found remorse and believed there was sufficient time to rehabilitate the minor.

The DDA asked for a record. The court said, as to the degree of criminal sophistication by the minor, "the minor's prior record consisted primarily of theft offenses involving automobiles and no crimes of violence. In this particular situation, the minor did not fire the weapon, the minor drove the vehicle. As indicated from his own statement, it is not certain the minor was aware of what was to transpire. The minor had never previously been in camp or any other type of custody. He had been home on probation. In that regard, the minor had not been completely rehabilitated by probation. There had not been strict structure of the minor and considering the circumstances of the offense, the court found the minor fit. The minor was not the person who fired the weapon.

The appellate court responded that the trial court's comment that "the minor's prior record consists primarily of theft offenses involving the heft of automobiles and not actually crimes of any type of violence" did not relate to the degree of criminal sophistication in the offense. It belonged in prior delinquent history. Similarly, the circumstance that the minor drove the vehicle rather than fire the weapon was not determinative of the degree of criminal sophistication exhibited. For example, a minor who plans a drive by shooting, directs his co-conspirators in its commission, and drives the vehicle displays far greater criminal sophistication than a minor who simply fires a weapon in the direction of another.

The appellate court also said that the trial court's ruling that said "as indicated from his own statement, it is not certain the minor was aware of what was to transpire" contradicted the 707 report which indicated the minor admitted to planning and agreeing to the crime. The sophistication included stealing a car to commit the crime, having the weapons in the stolen car, and returning to the scene to pretend to have no knowledge of the crime "as an innocent bystander".

Ruling: The appellate court reversed and remanded the case to the adult court.

8. **People v. Superior Court (Ronald H), 219 Cal. App. 3d 1475 (1990)**

Charges: Murder

Facts: Ronald was a member of the Rascals Diamond Street Gang. At a party, several Rascals got into an altercation with a rival gang. The victim fled and was chased by Ronald and five to six other Rascals. The victim is knocked to the ground and shot by Ronald.

Summary: Minor moved for a percipient witness to be produced at the detention/prima facie hearing, which the court granted. The People petitioned for a writ of mandate.

Ruling: Dennis H is the correct statement of law, Edsel P confused it, and Luis M sets it straight. Written probation and police reports are to be used for detention/Edsel P hearings and the preparer of the report must be made available for cross examination. There is no right to percipient witnesses.

9. **People v. Superior Court (Zaharias M.), 21 Cal. App. 4th 302 (1993)**

Charges: Robbery

Facts: On 04/22/1993 minor and three fellow gang members planned to rob a bank. Minor obtained a .38 caliber handgun from an adult and the four of them also gathered masks, gloves, and a pillowcase. They drove to the bank where three individuals, including the minor, entered the bank wearing masks. The minor held the gun and announced "Get down, I'll blow your fucking head off". Some people went down and others left the bank screaming. The companions jumped the teller counter and placed money in the pillowcase. They all ran from the building as a bank security guard fired at them. They then got in the car and a high speed chase ensued. They threw the money, masks, and gun from the car.

Summary: At the 707 hearing the People introduced the 707 report that stated the minor's school attendance and performance was poor. The report also stated that the minor admitted to the probation officer that he had been a gang member for approximately three months at the time of the robbery. The report recited a prior petition for battery and assault, resulting in home probation. The report recommended a finding of unfit under the categories of criminal sophistication, previous delinquent history, and circumstances and gravity of the offense.

The minor presented no evidence but his attorney argued that he was a follower and not a leader. The trial court found the bank robbery was sophisticated and the circumstances and gravity of the crime were serious. The court essentially said that the question was amenability; could the minor be rehabilitated? In making this decision, the court looked to the totality of the situation.

Ruling: The appellate court held that the minor does not need to prove his innocence to be found fit. The minor may make a showing of extenuating or mitigating circumstances through information contained in the police reports and probation report prepared for the fitness hearing. The minor can use that information to argue that his participation was not as grave or serious as the charge would lead a court to conclude initially.

The appellate court also held that the court cannot make an overall finding of amenability. The court does not use a "gestalt" standard but rather must find the minor fit under each and every one of the five criteria.

10. People v. Superior Court (Rodrigo O.), 22 Cal. App. 4th 1297 (1994)

Charges: 245+, 12022.5, 246, 246.3

Facts: On 08/07/1993 three girls asked minor and his friend Mercado for a ride home. A Toyota drove away from the party with minor as the front passenger and the girls in the back. At an intersection, a Camaro pulled up next to the Toyota and words and hand signals were exchanged between the occupants of the two cars. Minor began shooting at the Camaro. The Camaro chased the Toyota, gunshots were exchanged, and the Toyota eventually crashed. Minor and Mercado ran away. One girl was shot through the hand.

Summary: A 707 hearing was held for the minor. The 707 report contained information that minor was an admitted Imperial gang member for three years, had gang tattoos, and had the moniker "Rascal". The report also stated that the minor was on home study through Chula Vista Summit School, was almost in the 11th grade, and had used alcohol and marijuana since he was 13 years old.

Sophistication included minor's gang affiliation, escalating crimes, and a commitment to criminal lifestyle. Minor's knowledge and ability to use a firearm around innocent bystanders showed disregard for society.

Prior delinquent history was substantial, beginning when minor was 14 years old, and included various traffic and property offenses and an assault that got him sent to Camp. Minor had been arrested seven times since March 1990, left court ordered placements without permission, FTAed for hearings, violated curfew, and was found in possession of alcohol.

The circumstances and gravity of the offense were high, noting that the crime was against another person, inflicted physical and emotional harm to the victims, and resulted in property damage. The minor was on probation at the time of the offense, had armed himself with a concealed weapon, endangered innocent bystanders in an unprovoked attack, and played the main role in the offense.

The court was not successful in previous attempts to rehabilitate the minor as he showed "moderate compliance" with court orders, continued to re-offend, and continued his criminality, despite participating in counseling and education programs provided

through probation. The minor was about to turn 18 years old and based upon his history and failures to be rehabilitated the court did not think he could be rehabilitated by the age of 25.

The minor, over the People's objection, presented an alibi defense. The court found there was a substantial issue whether the minor was there and ruled that since there was a viable defense the burden was overcome.

Ruling: The appellate court held that once the presumption is shown, the alibi defense is not relevant in a 707 hearing.

11. Clinton K. v. Superior Court, 37 Cal. App. 4th 1244 (1995)

Charges: Murder, Attempted Murder, Various enhancements and allegations under 707

Summary: Prosecution moved for discovery seeking the items listed in Evid. Code §1054.3. Minor opposed the motion. After the hearing, the court ordered the minor to provide names and addresses of witnesses, reports of experts to be called, physical and mental examinations to be used, and any other real evidence to be used at the 707 hearing. The court denied the request for written and recorded statements of witnesses and authorized the minor's attorney to excise from the experts' reports statements protected by privilege or the work product doctrine. Minor appealed and the court stayed the discovery order but not the 707 hearing.

The court has inherent power to authorize pre 707 hearing discovery. The court should not exercise this authority unless discovery appears reasonably necessary and will not unduly delay or prolong the proceeding.

The court requested the showing of reasonable necessity and the prosecutor indicated the five items were those in the Evid. Code and that they were there to promote the ascertainment of truth and save the court time. Those goals are pertinent to a 707 and the electorate has determined that such disclosure usually furthers those goals.

Ruling: The court holds that the court may order those items without any additional showing of necessity. It is not mandatory but there should not have to be a reinvention of the wheel for each request.

12. People v. Superior Court (Jones), 18 Cal. 4th 667 (1998)

Charges: Murder (two 15 year olds were charged)

Facts: Melvin Ray Jones and Marcus Jones were both 15 years old, attended Inglewood High School, earned acceptable grades, and participated in school and church activities. Neither of them had a history of criminal activity or gang affiliation.

On 05/23/1996 Melvin and Marcus left school to "eat lunch and get high". They shared two quart bottles of fortified wine and several marijuana cigarettes with two other classmates and then returned to school. After school, Melvin got a gun that "John" had given him then went with Marcus to John's where they consumed additional alcohol and

marijuana. Between 6 and 7 P.M., the minors discussed robbing someone to get money for prom. They planned to go to a local store, take down whoever was there, rush the register, and take what was there. They headed to the store, stopping once or twice to vomit. They brought masks, obtained from the school lost and found, and one pair of gloves.

The minors waited outside the store where several people recognized them and put on a mask and one glove each. Melvin took out the gun and entered the store with the gun cocked. The gun fired and hit the clerk behind the register in the face, killing him. The minors took money from the register, dropping most of it, and ran from the store. They fled to Melvin's apartment, discarding the masks, gloves, and gun. The police caught them outside the apartment. They were placed in the back of a patrol car and a conversation was taped. They essentially said that it was an accident that the clerk was shot and they were under the influence. They both expressed fear and regret at the likelihood of imprisonment and the pain it would cause their parents.

Neither minor had a prior record and the offending behavior was out of character. They both behaved satisfactorily at home, in the community, and at church.

Summary: The 707 report recommended they were unfit because of the sophistication of the offense: it was pre-planned, they attempted to conceal their identities, and they used a handgun. The report also recommended they were unfit on the grounds of the circumstance and gravity of the offense: they armed themselves with a handgun and robbed and killed the victim.

The psychiatric report concluded they were fit despite the gravity of the crime, pointing in particular to: their lack of previous criminal conduct, their intoxication, and their lack of intent to kill.

The minors submitted letters of support from friends, teachers, and members of the church. Detention reports indicated their good behavior in juvenile hall.

On 01/10/97 a fitness hearing was held. The People conceded fir under three criteria but unfit as to sophistication and circumstances and gravity.

The trial court found, "There is a degree of criminal sophistication, but neither of the minors is at the point where they are criminally sophisticated sufficiently to be unamenable". The court observed that the term "criminal sophistication applies to a minor who, through the commission of offenses over a period of time has developed a character of being highly complicated, mature in criminal activity, and knowledgeable in those ways of plotting, planning, and carrying out intricate criminal acts". The court further explained "We are talking degree of criminal sophistication to which the minor has developed..." The court concluded that use of the handgun in and of itself does not show criminal sophistication. It found no developing pattern of criminality or sophistication that could be attributed to these minors.

In evaluating gravity and circumstances, the court stated they were not restricted to finding extenuating or mitigating circumstances but could consider other statutory

factors and rehabilitative potential. The court considered the ill-conceived nature of the crime, intoxication, lack of intent to kill, out of character behavior, and the psychiatrist's testimony that the minors were "accepting of the rehabilitative process" and "conducted themselves in an acceptable manner while detained".

Ruling: The court of appeals ruled that the trial court abused its discretion and that although the minor's "may not have committed themselves to a criminal lifestyle" they were unfit because the crime was "carefully formulated". As to the gravity and circumstances, the appellate court found no extenuating or mitigating circumstances and further stated that this was a "senseless crime committed for the most petty of objectives. They bragged about jacking somebody for money showing an attitude that robbery was an acceptable means of getting what they did not have and had the opportunity to abandon the crime several times but failed to do so."

The statute referring to degree of criminal sophistication requires a juvenile court evaluating this factor to consider the whole picture, all the evidence that might bear on the minor's criminal sophistication, including any sophistication in the present crime. The court implied that the past criminality and gang involvement is a factor in sophistication so is the behavior in the current offense. The factors included planning, obtaining instrumentality (gun, mask, and gloves), target selection, fulfilling the plan, disposing of evidence to avoid detection, and the highly dangerous manner in which the crime was carried out.

The court found that there was no evidence of extenuating or mitigating evidence. The alcohol and drug use did not impair them to the extent that they could not plan the robbery. The offense was not induced by the alcohol but "the minors appear to have used alcohol, at least in part, for the purpose of fortifying themselves to carry out the plan".

The court stated that the subsequent remorse and good behavior are relevant to whether they can be rehabilitated but do not constitute extenuating or mitigating evidence.

13. Rene C. v. Superior Court, 138 Cal. App. 4th 1 (2006)

Charges: 187, 664/187, 245, 12022.53, 12022.5, 12022.7

Facts: 187 victim Alex and his brother George the 664/187 victim were members of a tagging crew. George drove Alex, Daniel and Rudolfo and two others to a market to get something to drink. Alex and Daniel went inside. When they walked out 12-13 rival tagging crew members advanced on them. George got out of the truck, ran and punched one of the taggers as hard as he could, knocking him to the ground to protect Alex. George kicked the individual repeatedly with all his might. After kick four or five George was shot. The person on the ground got up and ran away. George went to his truck and saw that Alex had been shot.

Daniel told the detective he saw a large group of rival taggers walking toward him and Alex. He ran away but saw George fighting on the ground, heard a gunshot, and then

saw the person on the ground get up and run away while holding something near his pants pocket. Daniel identified Rene as the person fighting with George. He also identified Andrew S. as the person who shot Alex. Rudolfo told police that he saw a large group of rival taggers advancing on Alex and Daniel. Rudolfo said he heard gunshots and eventually identified Andrew S. as the person that shot Alex and Rene as the person that shot George. At the hearing, George testified that the person he fought with was not Rene.

Summary: There was a 707(b)(1)(12)(13) filed. There was an Edsel P hearing followed by a fitness hearing.

Defense counsel argued that Rene was acting in self-defense. The court rejected that stating, "There's no testimony that George ever touched (Rene). The only testimony that I have before me, and I mean this with all sincerity, is that he was identified by a witness to take a gun and shoot (George)."

Defense counsel submitted on the report of Dr. Edward Fisher. Rene lived at home with both of his parents and his detention as result of the incident was his first time away from home. He was a special education student his entire life. He related in a "childish, simple minded, immature manner". He cried during his interview. Rene suffered from congenital organic brain dysfunction. His measured intelligence and achievement scores were consistent with a diagnosis of mild mental retardation and it appeared that he was a developmentally disabled person under the W&I Code.

Rene was fit under all five factors. With regard to the serious and gravity of the offense, Fisher made the observations that, " While the allegations against the minor are quite serious, his role was passive, without a personal motive, and the result of his association with the minor who placed the gun in his hand and told him to show it to his enemies". Dr. Fisher noted that "minors who suffer from mental retardation are frequently assigned the role of driving the car or holding the gun in crimes that they would otherwise lack the ability or inclination to plan or execute".

Rene's responsibility was diminished by the fact of his mental retardation and immaturity. Although 14 years old, Rene experienced life in the credulous manner of an 8 year old. He was punched and then kicked by a 25 year old adult that he believed assaulted him years earlier. He was unable to show his attacker the gun to scare him away and was certain he would be soundly beaten and seriously injured. He was unable to appreciate any other course of action. He remained fit for rehabilitation in the juvenile system because of his immaturity and developmental disability. An appropriate disposition would have been a referral to the regional center for suitable placement. It was possible that with appropriate supervision the minor could never offend again.

The trial court found fit under 1 and 2 with no comment, fit under 3 stating that he had no prior record, fit under 4 stating there were no previous attempts, and unfit under 5 because the minor fired a gun to cause harm and possibly death to victims. The minor's motivation was gang related and he played a primary role in the commission of the crime.

Minor chose to engage in delinquent behavior and posed a serious threat to the safety not only to the people injured but also other people in the community.

Ruling: Regarding defense's contention of self-defense, the appellate court found the trial court was mistaken and the defense counsel never brought that to the court's attention. The appellate court found a prima facia case.

The appellate court also found that the trial court misstated facts and overlooked critical evidence.

The probation officer's report was not part of the record. They found that the minor rebutted the presumption. They quoted extensively from Dr. Fisher's report. They found that someone else shot and killed Alex, the minor used a gun to ward off his attacker, and, in light of his organic brain dysfunction, mental retardation, and immaturity, his participation in the event was less grave or less serious than the crimes would lead a court to believe.

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the MCLE Provider

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: WIC 707 Transfer Hearings for Juveniles

Date(s) of Activity: March 2, 2017

Time of Activity: 3:00 - 5:00 pm

Location of Activity (City, State): HOJ: Room 308 Ventura, CA

Total California MCLE Credit Hours for the above activity are 2.00, including the following sub-field credits:

- Legal Ethics _____
- Elimination of Bias in the Legal Profession _____
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 2.00, including the following sub-field credits

Legal Ethics _____

Elimination of Bias in the Legal Profession _____

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence _____

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name _____

Your California State Bar Number _____

Signature _____

* partial participation hours must be pro-rated

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print)

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

Title of Activity: WIC 707 Transfer Hearings for Juveniles

Date(s) of Activity: March 2, 2017

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Please indicate your evaluation of this course by completing the table below

Question	Yes	No	Comments
Did this program meet your educational objectives?	☐	☐	
Were you provided with substantive written materials?	☐	☐	
Did the course update or keep you informed of your legal responsibilities?	☐	☐	
Did the activity contain significant professional content?	☐	☐	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	☐	☐	

Please rate the instructor(s) of the course below

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Stephen Slyker, Sr. DDA	Overall Teaching Effectiveness	___
	Knowledge of Subject Matter	___

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Stacy Ratner, Juvenile Unit Supervising Attorney	Overall Teaching Effectiveness	___
	Knowledge of Subject Matter	___

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	___
	Knowledge of Subject Matter	___