

I Object!

– James Eckert, Esq.

Huntley Hearings - Unnoticed Statements

Once a *Huntley* hearing has been ordered, the prosecutor will often attempt to elicit statements which were not noticed on the 710.30 served on you. It is important to object to the introduction of unnoticed statements during the *Huntley* hearing so that we are not held to have moved against those statements and thus waived preclusion. It might be worthwhile to start the hearing by placing on the record the specific statements you have moved to suppress, and claiming that all other statements are not relevant or even part of the proceeding.

There are generally only two ways that statements which trigger 710.30 can become admissible. Either the DA serves a proper 710.30 notice, or the defense, despite the lack of notice, moves to suppress the statement. Public Defender's Office motion papers have been carefully drafted to avoid the latter. However, the tendency is for the hearing court to treat all statements disclosed at the *Huntley* hearing to have been included in our motion (*People v Neal*, 262 AD2d 1002 [4th Dept 1999]).

Un-noticed statements are only admissible if we move to suppress them. We control the contents of our motion, not the ADA or even the court, and neither the ADA nor the court can add to what we moved to suppress. We need to make it clear we have not moved to suppress any statements which are not part of the 710.30 notice. The best way to do that, I think, is by objecting to any testimony about any statement other than those in the 710.30 notice.

If the court rules otherwise, I would argue that this would render 710.30 unconstitutional as applied. If it is true, as the *Neal* court said, that "Defendant's suppression motion renders any alleged deficiency in the CPL 710.30 notice irrelevant", then moving to suppress one statement means you give up preclusion as to all others. If this is so, then the defendant's constitutional right to a pre-trial ruling on the voluntariness of noticed statements is unduly burdened by forcing him to give up his state statutory right to preclusion of un-noticed statements.

Optional Obscure Addendum - technically, additional, un-noticed, statements are relevant at *Huntley* because they can be used to demonstrate the circumstances surrounding the taking of the noticed statements, or for other legitimate purposes. However, we need to object to their admission to avoid *Neal*.