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September 10, 2003

BY FAX TO (213) 687-8525 WITH ORIGINAL BY FIRST CLASS MAIL

STEVE COOLEY, DISTRICT ATTORNEY
OF LOS ANGELES COUNTY
210 W. TEMPLE STREET, 18TH FLOOR
LOS ANGELES CA 90012

Re: People v Sham Bandhu Kapil
Los Angeles County (San Fernando) Superior Court Case No. PA 044 054

Dear Mr. Cooley:

I am Mr. Kapil's defense counsel in the above matter. I am writing to request your intervention in settlement negotiations which have come to a complete standstill, due I can only speculate, to the apparent personal anti-gun bias of one of your supervising attorneys which prevents that individual from viewing this case in an objective manner. I request your immediate assistance to avoid the further unnecessary expenditure of substantial time and resources by both sides as this matter is currently set, for tomorrow morning as day 10 of 10, for preliminary hearing and a complex PC 1538.5 "global" motion to suppress, traverse and/or quash four searches (an initial warrantless entry followed by three searches pursuant to two search warrants) at three locations. If you are unable to review my request yourself, I request the opportunity to discuss it with the supervising attorney in your office who advises you on firearms issues.

I will provide background information below then I will reference a supplemental police report by the investigating officer which recites that my client is not a terrorist or terrorist connection and that the LAPD's view of an appropriate settlement is much more in line with defense counsel views than the position taken by your office.

My client is currently charged with 19 counts alleging unlawful possession of machine gun conversion parts, unregistered assault weapons, high capacity ammunition magazines, destructive devices, and dangerous weapons. You may recall that this matter received some limited media attention when, on March 21-22, 2003, the LAPD Gun Unit seized the contents of four 40-foot and two 20-foot "Conex" type seagoing cargo containers in Northridge. In addition to the alleged contraband, the six cargo containers also contained military clothing and nylon web gear as well as other surplus material. Due to the large numbers of various items, it initially took LAPD approximately five days and nights to complete the search and inventory of the six cargo containers. It is undisputed that the large amount of

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material was due to my client's apparent plans to begin his own surplus business after working 15 years as an employee of others in the surplus business. With the possible exception of the alleged machine gun conversion parts, the other alleged contraband items are not prohibited by Federal law or by the laws of the vast majority of states other than California.

My client is a 41-year old United States Citizen and U.S. Army veteran (three years active duty plus one year reserve duty as a helicopter mechanic) with no prior criminal history. He is married with five children and has lived in Southern California since 1971 with the exception of the three years he was on active duty with the Army. Prior to his arrest this past March, he had worked for Northridge International for seven years as a sales representative at various gun and trade shows throughout the United States selling and taking orders for various gun parts and other military surplus items. During the previous eight years he worked for Sherwood International, predecessor to Northridge International. When this investigation began, my client was working as an exhibitor at an out-of-state gun show. He returned to California and, as requested, personally met with the investigating officer, LAPD Gun Unit Detective Steve Yadon. After meeting with Detective Yadon, I was retained as his attorney on March 26, 2003. During my initial meeting with my client at my San Bernardino office on March 26th, I spoke with Detective Yadon to inform him that I had been retained and I offered to immediately surrender my client for arraignment upon request. Two hours later when my client returned to Northridge he was arrested and he remains in custody due to his inability to make bail (initially set at \$1,740,000 and subsequently reduced to \$650,000 then the current amount of \$250,000). Also, at this time my client had a valid passport (which at my suggestion was voluntarily produced and surrendered at a bail hearing), yet, again, rather than flee, he chose to return to Southern California to meet with Detective Yadon and face the charges against him.

Although at first glance the charges against my client may appear quite serious, further examination reveals that there are substantial mitigating circumstances. First, the machine gun counts arise from the alleged presence of all the fire control components (i.e. hammer, selector, etc.) necessary to complete an M-2 selective fire version of the M-1 carbine. For decades, the custom and practice of firearms and surplus dealers throughout the United States has been to stock and offer for unrestricted sale all but one of the required M-2 parts; This has been done with the knowledge and approval of the Federal Bureau of Alcohol, Tobacco and Firearms ("BATF"). If my client was in possession of all the required parts, it was likely due to inadvertence as surplus dealers typically acquire their inventory by making bulk purchases, by the pound or pallet, at government auctions and sales or they make similar bulk purchases from other surplus dealers, liquidators or bankruptcy sales. Second, the destructive device charges arise from the alleged possession of grenade launchers which in this case consist only of a steel tube designed to be attached to the muzzle end of a rifle to facilitate the launching of a grenade by the firing of a special blank cartridge (please note that this type of system dates back to World War II and has been considered obsolete technology since at least the Viet Nam war era). My client was not found in possession of either the grenades or the necessary special blank launching cartridges (neither of which is readily available), therefore, these muzzle adapters have no use or value

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other than for sale to collectors who purchase them for the same reason they would purchase a bayonet or leather sling i.e. to complete and compliment their collection of vintage military rifles. Third, the lawful use and possession of high capacity ammunition magazines is "grandfathered" in California effective January 1, 2000. The charges against my client are that he kept high capacity magazines for sale and are apparently based on the alleged large number (approximately 9000) of such magazines and his alleged statements that he possessed the seized items in anticipation of his plans to establish his own surplus business in the future. There is no evidence that he ever planned to sell high capacity ammunition magazines within the State of California and, again, "grandfathered" high capacity magazines are not restricted by Federal law of the laws of vast majority of other states.

Although I view my client's suppression motion (based largely on the initial warrantless entry of the cargo containers using keys left with my client's 75-year old father for use in "emergencies" during my client's absence) as viable, I have from the outset considered the difficulty of the defense prevailing on such motions and I have continuously recommended to my client that he agree to any reasonable settlement offer, accept convicted felon status, leave the gun parts and surplus business, and get on with his life. He has agreed with me, however, to date, settlement negotiations have not been fruitful.

This case was assigned to Deputy District Attorney Brad Leibermann at your San Fernando Branch Office. Mr. Leibermann assisted me in providing discovery as I could not recommend a settlement to my client until I had evaluated his chances of prevailing on suppression motions. Due to the large volume of seized items (the total number of seized items including those items which are, without dispute, not contraband, has been estimated as being well excess of 100,000 items), this discovery process has taken several months. During this time, Mr. Leibermann told me that he believed he could obtain authority to extend an offer of one year in county jail and that he would seek approval if my client would accept such an offer. Once my client agreed to such a disposition, I informed Mr. Leibermann who told me he would seek approval from his supervisor. In late July, a meeting was held in your San Fernando office with those present including the undersigned, Mr. Leibermann, your Assistant Chief Deputy in San Fernando Stephanie Sparagna, and Detective Yadon. After hearing my presentation and discussion, Ms. Sparagna indicated that she viewed the case as appropriate for disposition with a sentence of low term state prison i.e. 16 months. Ms. Sparagna appeared to base her opinion primarily on the concern that a year in county jail sentence would require a grant of probation which although statutorily allowed, was inappropriate for this case. I conveyed this to my client who was understandably disappointed (let me emphasize again that Mr. Leibermann had always made it clear to me that he did not have but would seek authority for a year in county jail disposition if my client would accept it). This, of course, had the effect of temporarily stopping the settlement negotiations and Mr. Leibermann and I began moving forward towards preliminary hearing and the suppression motions. Approximately a week later, Mr. Leiberman called to inform me that their office would be filing an amended complaint dropping counts alleging employee embezzlement against his former employer, Northridge International (those premises were also searched revealing the presence of a quantity of grenade launchers and a machine gun receiver and apparently, the employer, Bernard Hartog is currently being investigated by the LAPD Gun Unit), and substituting charges of simple possession of a destructive device (i.e. PC 12303) for the original charges of aggravated possession of

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a destructive device (i.e. PC 12303.2). Mr. Leibermann also told me that their office would not make any settlement offer until after the preliminary hearing so that my client was left only with the option of "pleading to the sheet" with an exposure of approximately 24 years. This brought settlement discussions to a complete halt so I contacted Ms. Sparagna who would not tell me who in your office had made this decision. Then, late last week, Mr. Leibermann told me that his office would agree to a settlement with a sentence of eight years state prison.

Having provided the above summary background information, which I attempted to keep as short as possible, I will now address two additional key points in support of my position that a year in county jail is an appropriate sentence.

Investigating Officer, LAPD Detective Yadon, in his two-page July 21, 2003 supplemental report (copy attached for your convenience) stated, on Page Two, as follows:

"On July 16, 2003, Detective Joyce Banuelos, #30145, OIC of the LAPD Gun Unit, discussed the Sham Kapil case and possible plea agreement with Commander Harlan Ward, Assistant Commanding Officer, Detective Bureau. Detective Banuelos discussed the staggering amount of evidence, additional investigative work to be done in this case and the defendant's lack of a criminal history. **Commander Ward's position was that a felony plea with a county jail lid and destruction of all items in police custody would be in the best interest of the Los Angeles Police Department.**

On July 21, 2003, Detective Yadon spoke with Lieutenant Gary Lynch of the Criminal Conspiracy Section Anti-Terrorist Division, LAPD. **Lynch advised Detective Yadon that Kapil's background and activities had been thoroughly examined by both local and federal agencies and found no terrorist connections with Sham Kapil or the items he possessed.**(emphasis added)

Thus, both the investigating officer and a high-ranking LAPD commanding officer have agreed on record that my client is not a terrorist and he has no terrorist connection as well as that a county jail lid is an appropriate disposition. Again, based on the foregoing, as Sham Kapil's defense counsel I can only speculate that a supervising attorney in your office ranking somewhere between you and Stephanie Sparagna has a personal anti-gun bias that prevents them from viewing this case objectively. Therefore, I am requesting the opportunity to discuss this matter either with you or your designated subordinate. Unfortunately, we are set to begin the preliminary hearing is set to commence tomorrow morning so I am asking that this request be given priority in hopes that it will lead to a settlement which will eliminate the need for further expenditure of resources of the LAPD and your office and result in a just sentence for my client and provide him with the security of knowing that he can return to his family within a reasonably short time (my client informs me that if he has to spend much more time in custody, his wife and his five children will have to leave California to live with her parents).

My office telephone number is 909-862-3113 and my cellular phone number for after hours contact is 909-897-8977.

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Thank you for your consideration,

BRUCE COLODNY

BC:je

Cc: Brad Leibermann, Esq.

LA County District Attorney, San Fernando Branch