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8 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
9 IN THE COUNTY OF WASHINGTON

10 STATE OF OREGON, )  
11 PLAINTIFF, ) No: C 962556 CR  
12 vs. ) MOTION TO PROHIBIT DEATH  
13 BILLY LEE OATNEY, ) QUALIFICATION OF JURY  
14 DEFENDANT. )

15 COMES now the defendant, Billy Lee Oatney, by and through his attorneys, John  
16 Manning and William S. Brennan, and moves this court for an order prohibiting the state  
17 from asking prospective jurors whether their conscience, values, or religious beliefs  
18 would prevent them from imposing the death penalty and prohibiting the court from  
19 excluding for cause prospective jurors whose conscience, values or religious beliefs would  
20 prevent them from imposing the death penalty.

21 As a less acceptable alternative, defendant moves the court for an order prohibiting  
22 such "death qualification" of the jurors until the penalty phase, if any, of the trial,  
23 allowing the seating of a sufficient number of alternate jurors to allow the "death  
24 qualification" to occur at the penalty phase only if the trial reaches that phase.

25 As a second but less acceptable alternative, defendant moves the court for an order  
26 directing the state not to exercise challenges for the reason that a juror's conscience,  
values or religious beliefs would give the juror reservations, hesitations or uncertainties,

1 about imposing the death penalty.

2 A third alternative would be to have two juries seated, one for the guilt / innocence  
3 phase of the trial, and if the defendant is convicted, a second jury for the penalty phase,  
4 with only the second jury being "death qualified". The non death qualified jury would  
5 determine guilt or innocence then if a conviction results the second jury would hear the  
6 evidence on sentencing issues.

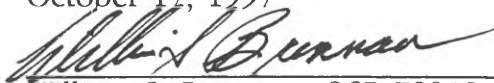
7 As another alternative without waiving his other motions, the defendant moves the  
8 court for a ruling to define the scope of voir dire with respect to questions about the  
9 death penalty, and to require the state to refrain from asking questions beyond the scope  
10 of said voir dire.

11 This motion is based upon the memorandum of law attached hereto and by this  
12 reference incorporated herein.

13 Moreover, defendant requests an evidentiary hearing and oral argument on this  
14 matter.

15 Respectfully Submitted

16 October 17, 1997

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18 William S. Brennan, OSB 79019  
Of Attorneys for Defendant, Oatney

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