

MUNICIPAL COURT OF CALIFORNIA, COUNTY OF MARIN
CENTRAL JUDICIAL DISTRICT

HON. GARY W. THOMAS

DEPARTMENT 2

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MARK RICHARDS,

Defendant.

8362
NO. C 56137

FILED

AUG 31 1982

PETER MEYER
MARIN COUNTY CLERK

BY *[Signature]*
DEPUTY

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

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APPEARANCES:

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BY: EDWARD BERBERIAN,
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I N D E X

WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

HAROLD HILLIARD BRAZIL

2

7

13

13

ELLEN BALDWIN

15

DAN HULETT

19

25

RICHARD ARLO WALLER

30

42

35

VOIR DIRE BY MR. SHAPIRO

33

WILLIAM PETER ROBLES

43

47

THOMAS DAVIDSON MILLS

59

64

ANDREW CAMPBELL

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BERNARD HEALEY

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SAMUEL BAIN PAUL

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RAUL R. ARTIGA

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TUESDAY, AUGUST 24, 1982

THE COURT: We have the case of People vs. Mark Richards.

MR. SHAPIRO: Ready, your Honor.

THE COURT: Mark Richards, is that your true name?

THE DEFENDANT: Yes.

THE COURT: The record should reflect the defendant is personally present with counsel.

Are both sides ready to proceed?

MR. BERBERIAN: Yes, your Honor. People are ready.

MR. SHAPIRO: We are ready.

THE COURT: Do you wish to call your first witness!

MR. BERBERIAN: I call Dr. Harold Hilliard Brazil.

HAROLD HILLIARD BRAZIL,

called as a witness by the People, after being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

THE CLERK: Will you please state your full name and address, and spell your last name.

THE WITNESS: Harold Hilliard Brazil, B-r-a-z-i-l.

THE CLERK: And your address, please?

THE WITNESS: 555 Pierce Street, Albany, California.

THE CLERK: Thank you.

MR. SHAPIRO: For purposes of the preliminary hearing, I would stipulate to Dr. Brazil's qualifications as a pathologist.

MR. BERBERIAN: We are prepared to accept that stipulation, as a forensic pathologist.

MR. SHAPIRO: As a forensic pathologist.

DIRECT EXAMINATION

BY MR. BERBERIAN:

Q. Doctor, I would like to direct your attention back to on or about the 14th of July 1982. Did you have occasion to perform an autopsy at the mortuary?

A. Yes, I did.

Q. And, the name on the deceased what what?

A. Richard Alexander Baldwin.

Q. For purposes of the preliminary hearing, is there a stipulation that the body that was autopsied was that of Richard Alexander Baldwin?

MR. SHAPIRO: Yes.

MR. BERBERIAN: Q. Now, Doctor, what time did you commence your autopsy?

THE WITNESS: A. The autopsy commenced approximately 11:30.

Q. And at the completion of the autopsy, had you determined, based upon your findings, what the cause of death would have been?

A. Yes, I had.

Q. And what was the cause of death, based upon your findings?

A. The cause of death was stab wounds to the heart, multiple stab wounds to the heart, and in addition a fracture of the left side of the skull.

Q. Now, the body of the deceased, would you describe its condition when you first saw it?

A. The body was wrapped in plastic tarp, the tarp being tied around the neck and ankles, with a heavy rope, and

1 in addition, a grey-colored metal repair-tape crossed around
2 the neck and the ankles.

3 The body was fully clothed. The external aspects of
4 the body showed signs of considerable water emergence and
5 post-mortem putrefaction.

6 Q. Could you describe the clothing that the body had on at
7 this time?

8 A. My records show that there were pants on and a white
9 T-shirt. The pants were polyester, blue-colored, carrying
10 a bone pattern. It was a brown belt, brown socks and black
11 leather shoes.

12 Q. You indicated in your opinion that the cause of death
13 centered on wounds to the heart and also a fracture of the
14 skull; is that correct?

15 A. That is correct.

16 Q. I have a series of photographs I ask to be marked at this
17 time, your Honor.

18 THE COURT: Do you want to show those to Mr. Shapiro.

19 MR. SHAPIRO: I have seen those photographs, your Honor.

20 MR. BERBERIAN: There will be seven photographs I ask
21 to be marked.

22 THE CLERK: People's 1 through 7, all marked for
23 identification.

24 (People's Exhibits 1 through seven, photographs,
25 marked for identification.)

26 MR. BERBERIAN: Q. Doctor, I am going to show you what
27 has been marked as People's 1 and 2, two color photographs.
28 First I will show you People's 1.

1 Could you describe what that shows, please?

2 A. People's 1 shows the interior, the left interior aspect
3 of the head which includes a large stellate rough-edged
4 laceration. That is exposing the underlying bone and
5 skeletal muscle of the head, showing some hemorrhage on that
6 skeletal muscle.

7 It also shows considerable putrefaction of the head and
8 shoulder.

9 Q. What do you mean by putrefaction?

10 A. The decay process, the reddening of the skin, the
11 sloughiness of the skin, slippage that occurs after death.

12 Q. In addition, would you look at the photograph that is
13 marked People's 2 and tell us what that is.

14 A. This photograph shows the interior aspect of the skull,
15 the upper half of the skull, having been removed by myself.
16 This shows multiple fracture lines and a depressed skull
17 fracture on the left side, the temporal side of the skull.

18 Q. That would show the interior of the wounds that would
19 have been inflicted to the outside of the skull?

20 A. That is correct.

21 Q. Now, the two photographs that you have examined here in
22 Court, are those an accurate depiction of what you observed
23 when you performed your autopsy?

24 A. Yes, they are.

25 Q. I now show you photographs marked Numbers three through
26 seven and ask you to look at those, if you would, please.

27 A. This photograph, No. 3, shows the anterior, the front side
28 of the body from the right angle or the right front of the body.

1 showing two stab wounds, in the mid-chest area. These stab
2 wounds have probes which I placed in them. The probes are
3 directed upwards and posteriorly, that is towards the back
4 of the body, passing into --

5 MR. SHAPIRO: Would you go a little slower. I am trying
6 to make some notes.

7 THE WITNESS: Certainly.

8 A. This photograph, No. 3, shows the right front aspect of the
9 body. This aspect of the body shows two sharp-edged lacerations
10 which are in the lower mid-chest area, the lacerations and
11 stab wounds that have probes in them.

12 The probes I placed into these stab wounds, they show
13 a vector which extends into the body directed towards the heart.

14 MR. SHAPIRO: You said earlier the direction of the
15 probes.

16 THE WITNESS: The vector's direction; the vector, I am
17 using that.

18 MR. SHAPIRO: When you testified and I asked you to stop,
19 you said that the probes showed upwards.

20 THE WITNESS: Posteriorly towards the back.

21 MR. BERBERIAN: Q. Now, could you go on to photograph
22 marked People's 4 and describe what that shows.

23 A. Photograph No. 4 is a close-up of the same wounds. This
24 photograph also includes a ruler for the purpose of identifying
25 how large these wounds are.

26 Q. What are the sizes of the wounds that you observed?

27 A. The larger wound was two centimeters, two, three quarters
28 of an inch long by eight millimeters wide. That is about

1 a third of an inch. The smaller wound is approximately one
2 centimeter, one centimeter wide.

3 Q. Doctor, would you go on to the next photograph, please,
4 People's 5.

5 A. 5 is a picture of the chest wall, after the skin has
6 been removed. It is a picture of the lower half of the
7 chest wall. It shows stab wounds extending through the
8 chest wall. The chest wall is composed of skeletal muscle
9 and bone and cartilage of the chest cage proper. This
10 photograph also includes a ruler and probes which extend
11 through the stab wounds and the chest wall.

12 Q. What was the purpose of using probes?

13 A. The probes are to identify the tract that a weapon has
14 made in passage through the skin and into the interior of the
15 body.

16 Q. Would you go on to photograph No. 6, Doctor.

17 A. 6 is a photo of the body after the chest cage has
18 been removed, which then reveals the heart and lungs.
19 The heart has been flipped up, that is flipped up like this,
20 feeling the posterior back side of the heart, and this
21 photograph shows two stab wounds into the back side of the
22 heart.

23 Q. Doctor, based on those -- well, the photographs that
24 you just examined, People's 3 through 7, are they an accurate
25 depiction of what you were observing at the time you performed
26 the autopsy? A. Yes, it is.

27 Q. Now, based upon your findings at that autopsy, what type of
28 an instrument would it be consistent with inflicting those
wounds?

1 A. This would be a sharp-edged and sharp-type instrument,
2 long, relatively long as opposed to the width which would be
3 relatively narrow.

4 Q. Would it be consistent with such an item as a knife, or a
5 carpenter's chisel, something of this nature?

6 A. Yes, it would.

7 Q. Would it be consistent with a screw-driver?

8 A. A screw-driver also could cause that type of wounds.

9 Q. Now, with regard to the fracture to the skull, what
10 type of an instrument would have inflicted such a fracture?

11 A. This would be a blunt-surfaced, blunt-type instrument.

12 Q. Would a baseball bat be the type of an instrument; would
13 it be consistent with inflicting that type of a wound?

14 A. Yes, it would.

15 Q. Doctor, did you notice, during the time that you performed
16 the autopsy, the condition of the T-shirt that the deceased
17 was wearing?

A. Yes, I did.

18 Q. Could you describe it for us, its condition?

19 A. The T-shirt was wet, had some dirt on it. It also had
20 multiple tears on the front side of the T-shirt. I could not
21 identify any large tears on the back side.

22 MR. BERBERIAN: I have no additional questions at this
23 time.

24 CROSS EXAMINATION

25 BY MR. SHAPIRO:

26 Q. Doctor, how many fractures did you notice in the skull?

27 Let me withdraw that and say: Could you tell from your
28 observations how many times the skull had in fact been hit?

1 A. Well, the pattern of damage was consistent with one blow;
2 certainly, a subsequent blow into that same identical area.
3 I can not -- it was a comminuted skull fracture, causing a
4 depression of a larger, approximately five by five centimeters
5 which is about that size, pressed down into the surface of
6 the brain. That fragment of bone itself had multiple pieces,
7 almost as in a jigsaw pattern, and then the peripheral bone,
8 which is relatively intact, showed many, many fine lines
9 of fracturing going away from the major depressed area.

10 Q. Well, would that be sufficient to cause unconsciousness?

11 A. Yes.

12 Q. Would it generally cause unconsciousness?

13 A. Generally, it would.

14 Q. Were you able to tell from your observations of the blow
15 the position of that part of the head, or how it was actually
16 hit?

17 What I am trying to say, Doctor, was the blow on the left
18 side?

19 A. The blow was on the left side.

20 Q. And, was it in the center of the head or near the area?

21 A. Just posterior to the area approximately where my fingers
22 are at now; well, the opposite side.

23 Q. Was it on top of the head, or in the back?

24 A. Side.

25 Q. On the side? A. Yes.

26 Q. Now, I take it -- let me ask you this: Was there brain
27 damage that you observed as a result of this blow, or could
28 you tell?

1 A. The brain had considerable putrefaction. It was in a
2 semi-solid state. The dura mater, the membrane that cover
3 the brain was intact.

4 Q. Now, returning to the wounds that you observed, how
5 far apart were they?

6 A. One wound was centered in the body at a point, five
7 centimeters which is about two inches below the level
8 of the nipple, the nipple-line.

9 Q. The mid-line?

10 A. No, five centimeters below, inferior to the middle-line.
11 If you draw a line directly to the nipple, five centimeters
12 in the center of the body. The other wound was just to the
13 left of the mid-line, and it was 2.5 centimeters inferior
14 to the previously described wound.

15 Q. The probes, did they appear to go straight in, or did they
16 -- from the probes, were you able to tell the angle that the
17 weapon was inserted?

18 A. Yes, I was. Both probes were between sixty and seventy-
19 five degrees angled upwards, and at the same time they
20 had a deviation from the center of the body towards the body's
21 left side by approximately five to ten degrees.

22 Q. Could you, Doctor, draw us on the blackboard a sketch,
23 showing the body and the angles of the probes, to both the
24 frontal and side-views?

25 A. Sure. The frontal view, first, chin, shoulders, legs.
26 This is the umbilicus, nipple here, and here is the breast
27 bone, into the breast bone. The wound is approximately here.
28 Another is here. They are angled -- let's see, like so

1 and like so. This is the five to ten degree angle towards
2 the left.

3 If you look at the other side here, the body, and there
4 is the face here and neck, here is the nipples, the probes
5 are going in like so and like so.

6 Q. May I have that marked, your Honor, as an exhibit.

7 MR. BERBERIAN: I have no objection to that.

8 THE COURT: That may be marked as Defendant's A for
9 identification.

10 THE CLERK: Defendant's A for identification.

11 (Whereupon, Defendant's Exhibit A, a diagram, was
12 marked for identification.)

13 MR. SHAPIRO: Q. In the removal of the chest cage, did
14 you notice whether there were any fractured ribs?

15 THE WITNESS: A. One rib was partially cut by the
16 instrument going through, but fractured in the sense of a
17 blunt fracture, no.

18 Q. Did you observe any other apparent stab wounds which
19 did not reach the heart?

20 A. There were three actual cuts on the surface of the heart;
21 two actually entered into the chambers of the heart, one
22 actually going into the second chamber of the heart. There
23 was a third cut on the surface of the heart, which did not
24 completely penetrate the wall.

25 Q. That appeared to be a stab wound?

26 A. There were only two entrance wounds on the body.
27 Presumably, the instrument caused more than one point of
28 damage on its entry through the skin and ribcage..

1 Q. Did you notice any stab wounds in any other part of the
2 body besides the chest?

3 A. No; I could not determine that. The face showed
4 considerable post mortem change and there were areas where
5 the skin was falling apart, where there was a suspicion
6 of damage. This is on the area of the face, around the
7 eyes, but I could not document any definite traumatic
8 wounds, post mortem at the time, traumatic wounds.

9 Q. Were you in a position to tell how long before July 14th
10 at 11:30 the facial wound had been inflicted?

11 A. No, I couldn't. The body had shown a fair amount of
12 putrefaction, but, of course, as you realize, the degree of
13 putrefaction depends on the temperature of the water, which
14 I was not aware of where the body was initially found, or
15 initially dumped, and certainly the fact that the body was
16 encased in plastic tended to retard the degree of changes
17 that you might expect on the surface, the skin surface.

18 Q. Were you able to tell the body weight prior to death,
19 or, do you have any estimate as to that?

20 A. I estimated the body weight as between 165 and 180 pounds.

21 Q. And size, height?

22 A. Height was approximately 5 feet ten inches.

23 Q. Were there any tests made to see whether or not there
24 was any drug or alcohol in the bloodstream?

25 A. Tests for alcohol were done by the laboratory, employed
26 by the Solano coroner's office. They are part of the
27 autopsy report.

28 Q. Do you remember whether or not there was any alcohol found?

1 A. There was a low-level of alcohol. The part, as I recall
2 the laboratory was not entirely certain is if some of that
3 alcohol was resultant from post mortem bacterial growth.
4 Q. Have you retained your original notes taken at the time
5 of the autopsy as well as your report?
6 A. My notes were translated into the report very shortly
7 after the autopsy.
8 Q. My question was, have you retained the original notes.
9 A. No.
10 Q. And were the pictures you saw, 1 through 7, were they
11 taken at the time of the autopsy?
12 A. Yes, they were.
13 Q. Were you present when they were taken?
14 A. I was present when all of these photographs were taken.
15 Q. Were other pictures taken?
16 A. I took some photographs myself and also had a person
17 at the autopsy that took photographs for my own file.
18 Q. Would this show substantially the same things?
19 A. Almost identical.
20 Q. The photos which you took are in your possession?
21 A. Yes, they are.
22 Q. Doctor, at 555 Pierce Street, is that your office or your
23 home? A. That is my office.
24 Q. You have a private practice?
25 A. Private practice; that is correct.
26 Q. Is that in Vallejo?
27 A. Albany.
28 MR. SHAPIRO: I have no further questions.

REDIRECT EXAMINATION

BY MR. BERBERIAN:

Q. Doctor, did you take a blood sample of the deceased that you have preserved? A. Yes.

Q. Would you describe from where in the body you took it?

A. This was taken from the right, as I believe, chest cavity.

MR. BERBERIAN: Mr. Shapiro, for purposes of the preliminary hearing, I have an exhibit present. Do you wish to open it?

MR. SHAPIRO: Which exhibit?

MR. BERBERIAN: The blood sample that was taken. Do you stipulate he drew a sample?

MR. SHAPIRO: You drew a sample?

THE WITNESS: Yes, I did.

MR. SHAPIRO: And you delivered it to some law enforcement?

THE WITNESS: I delivered it to the county coroner for Solano County.

MR. SHAPIRO: I am satisfied.

MR. BERBERIAN: I have no additional questions.

RECROSS EXAMINATION

BY MR. SHAPIRO:

Q. You didn't run any tests on the blood yourself?

A. I did not run any tests myself personally; no, I did not.

Q. Did the lab?

A. The laboratory, employed by that county, performed all the chemical tests.

Q. Is there a report from the laboratory included?

A. It is attached to the official report of autopsy by the

1 county coroner.

2 MR. SHAPIRO: I have no further questions.

3 MR. BERBERIAN: No additional questions.

4 THE COURT: You may step down; you are excused.

5 MR. BERBERIAN: I ask that the photographs marked People's
6 1 through 7 be moved into evidence.

7 THE COURT: They may be so received.

8 THE CLERK: Exhibits 1 through 7 in evidence.

9 (Whereupon, People's Exhibits Nos. 1 through 7,

10 a group of photographs were admitted in evidence.)

11 MR. BERBERIAN: I call Ellen Baldwin.

12 MR. SHAPIRO: So there is no misunderstanding, can we
13 have an order excluding witnesses, if there are any present
14 in the courtroom.

15 THE COURT: Any witnesses summoned to testify in the
16 case of People vs. Richards, you are to remain outside
17 of the courtroom, subject to call.

18 MR. BERBERIAN: I ask, your Honor, that Mr. Lindquist
19 be allowed to remain as the investigating officer.

20 THE COURT: Any objection?

21 MR. SHAPIRO: No.

22 THE COURT: Then you may remain.

23 ELLEN BALDWIN,

24 called as a witness by the People, after being first duly
25 sworn to tell the truth, the whole truth and nothing but
26 the truth, testified as follows:

27 THE CLERK: Will you please state your full name and
28 address and spell your last name.

1 THE WITNESS: B-a-l-d-w-i-n, Ellen Baldwin, B-a-l-d-w-i-n.

2 My address is 60 Galleon Way, San Rafael 94903.

3 THE CLERK: Would you please spell the street.

4 THE WITNESS: G-a-l-l-e-o-n.

5 DIRECT EXAMINATION

6 BY MR. BERBERIAN:

7 Q. Mrs. Baldwin, what is your occupation?

8 A. I am a real estate broker.

9 Q. And, did you have a son by the name of Richard Baldwin?

10 A. Yes.

11 Q. Where did your son, Richard Baldwin, live?

12 A. At 18 Benicia Meadows in San Rafael.

13 Q. May I ask you to please speak up.

14 A. Sorry, 18 Benicia Meadows in San Rafael.

15 Q. At some point in July of 1982, did you have occasion to
16 contact the Marin County Sheriff's Department?

17 A. Yes, I did.

18 Q. When was that, if you can recall?

19 A. I have my calendar here. Let me look at the dates.

20 Q. You are producing something from your purse. What is that?

21 A. It is a calendar, a little calendar that I keep in my
22 purse, noticing different things on it. I believe it was
23 the 12th; could have been the 13th of July.

24 Q. Of 1982? A. Yes.

25 Q. Why did you contact the Sheriff's Department?

26 A. Well, because it was unusual for my son to be out of
27 contact with me for such a long period of time.

28 Q. When had you last contact with your son, Richard Baldwin

1 prior to the 12th or 13th of July?

2 A. To the best of my recollection, it was June 30th.

3 Q. And was that a personal meeting or a telephone conversation?

4 A. He came and had dinner with me at my home.

5 Q. Were there any times set, any plans to see your son the
6 day you called the Sheriff's Department?

7 A. There were no plans as such.

8 Q. Would it be unusual for your son to stay out of contact
9 with you for a period of time in excess of a day or two?

10 A. Totally unusual; yes.

11 Q. Would you describe the relationship that you had with
12 your son; was it a distant relationship or a close
13 relationship?

14 A. We had an extremely close relationship; always have had.

15 Q. Do you know an individual by the name of Tom Mills?

16 A. Yes, I do.

17 Q. Is he a friend of your son's, Richard Baldwin?

18 A. Yes.

19 Q. Do you know how long Mr. Mills and Mr. Baldwin had been
20 friends?

21 A. My guess is probably eight to nine years; I don't
22 specifically know that. They have been friends a long time.

23 Q. Did you at some point give permission to the Sheriff's
24 Department to enter your son's residence?

25 A. I requested them to do that.

26 Q. And when was that; do you remember?

27 A. I think that it was the morning of July 14th. It was the
28 night after I had reported him missing.

1 Q. Did your son have a business?

2 A. Yes, he did.

3 Q. What was the name of his business?

4 A. The Classic Car Shop.

5 Q. And, what was the location of that business?

6 A. 36 Front Street in San Rafael.

7 Q. Did you request that the police check that particular
8 location as well?

9 A. Yes, I did.

10 Q. Do you know when that occurred, or when you gave permission
11 for that to occur?

12 A. It would have been the same time that I asked them to
13 break into the house and search the house. I asked them
14 to do both things at the same time.

15 Q. At some point, you were informed that your son was
16 deceased; is that correct?

17 A. That is correct.

18 Q. Did you give permission to the police after that point
19 in time, to enter into and do whatever investigation may
20 be needed to do at either the Benicia address or the Front
21 Street address?

22 A. Yes, I did. I gave them that permission.

23 Q. In fact, did you give that permission to them in writing?

24 A. I did; yes.

25 MR. BERBERIAN: If I could have just a moment There is
26 a document which I want to look at.

27 I have a document marked to be marked as People's next in
28 order, and I show that to Mr. Shapiro.

1 MR. SHAPIRO: Yes.

2 MR. BERBERIAN: I have a Matthew's T.V. and Stereo City
3 credit application, and I ask it be marked as People's next
4 in order.

5 THE CLERK: People's Exhibit No. 8, marked for identifica-
6 tion. (Whereupon, People's Exhibit No. 8,

7 a credit application was marked for identification.)

8 MR. BERBERIAN: Q. I am going to show you an exhibit
9 marked People's No. 8 and at the bottom there appears to be
10 a signature of the name Richard Baldwin; do you see that
11 at the bottom of the application for credit?

12 THE WITNESS: A. Yes, I do.

13 Q. Do you recognize that signature to be your son's, Richard
14 Baldwin's signature?

15 A. That is not his signature.

16 Q. That would not be his handwriting?

17 A. No, that is not his handwriting.

18 MR. BERBERIAN: I have no additional questions.

19 MR. SHAPIRO: I have no questions.

20 THE COURT: You may step down; you are excused.

21 Call your next witness.

22 MR. BERBERIAN: I call Mr. Dan Hulett.

23 DAN HULETT,

24 called as a witness by the People, after being first duly
25 sworn to tell the truth, the whole truth and nothing but the
26 truth, testified as follows:

27 THE CLERK: Please state your full name, address and
28 spell your last name.)

1 THE WITNESS: Dan Hulett, H-u-l-e-t-t; I work for
2 the San Rafael Police Department.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. BERBERIAN:

6 Q. Mr. NHulett, what is your assignment with that agency?

7 A. I am a detective.

8 Q. And, I would like to direct your attention back to on
9 or about the 15th day of July 1982. What assignments were
10 you given?

11 A. To assist in the evidence collection of, or investigation
12 or search for evidence at the building at 36 Front Street
13 in San Rafael.

14 Q. And, what were you asked to do with regard to that
15 particular structure?

16 A. I was asked to look through the crime scene and pick
17 up various items of evidence that may be related to this
18 incident.

19 Q. And with regard to that particular scene, among the
20 items you were asked to check for indication of blood;
21 is that not correct?

22 A. That is correct.

23 Q. Did you see such indication in your examination?

24 A. Yes, I did.

25 Q. Could you describe what you saw with regard to potential
26 blood stains, or blood marks?

27 A. Well, the first obvious points of observation were behind
28 a Rolls Royce, the rear of the Rolls Royce, between their

1 vehicle and a red MG that was on the floor of the garage;
2 a large pool of what appeared to be blood, dried.

3 Q. Was there anything on top of that particular substance?

4 A. Yes, it was completely covered by saw dust, some sort
5 of wooden residue. It appeared to be wood chips, sort of
6 a mixture.

7 Q. Where else did you find an indication of blood stains or
8 blood marks?

9 A. There was another pool of blood ten feet away from this
10 location, near a maroon Porsche still on the floor.

11 Q Any other locations where you saw that?

12 A. Well, there was small blood smears or stains in numerous
13 parts of the garage.

14 Q. What about with regard to the bumpers of any of the
15 vehicles that were in the garage?

16 A. Yes; there was some blood stain on a bumper of the
17 Rolls Royce.

18 Q. And, any other rooms in the main work area that you
19 checked for blood marks?

20 A. There was a small bathroom in this large warehouse garage
21 that contained blood smears on the sink.

22 Q. What about the coverings of any other vehicles -- first of
23 all, were the vehicles in the garage covered in any fashion?

24 A. Yes. The Rolls Royce had a cover that completely enclosed
25 it.

26 Q. Any indication of blood on any of that item?

27 A. Yes. There was a stain; I believe it was the right rear
28 area of it.

1 Q. How many vehicles were in the garage, by the way, if you
2 can recall?

3 A. They were in various states of repair or construction.
4 It was at least five. Some of these vehicles were just
5 frames only and being built.

6 Q. With regard to the area that you referred to in your
7 testimony, where the bloodmarks and bloodstains, or what
8 appeared to be bloodstains were found, did you engage in some
9 type of collection in regard to physical evidence?

10 A. Yes, I did.

11 Q. Could you describe what you did, please?

12 A. I worked with Officer Ray Maynard of the Sheriff's
13 Department. We worked as a team. Essentially what happened
14 was, Officer Maynard would collect or pick up, do the actual
15 picking up of the evidence and I would package it and
16 prepare it for storage at our Police Department.

17 Q. Did you bring some of those items with you to Court today?

18 A. Yes, I did.

19 Q. I ask he be given permission to leave the witness stand
20 to retrieve those items.

21 THE COURT: Yes.

22 THE WITNESS: This should be the extent of the items.

23 MR. BERBERIAN: Q. Let me show those to Mr. Shapiro.

24 MR. SHAPIRO: That is all right.

25 MR. BERBERIAN: Q. There are three envelopes that I ask
26 to be marked as People's next in order. Pardon me, there
27 are four envelopes.

28 THE CLERK: 9, 10, 11 and 12 all marked for identification.

1 (Whereupon People's Nos. 9, 10, 11 and 12, four
2 envelopes, were marked for identification.)

3 MR. BERBERIAN: I am going to return those four exhibits
4 and ask you to look at one marked No. 9, and tell us what
5 that is.

6 THE WITNESS: A. Item No. 9 is an envelope which contains
7 several of the blood samples that I collected from the shop.

8 Q. Would you open that envelope, please, and describe the
9 contents.

10 A. I have seven paper bindles containing blood scrapings,
11 dried blood scrapings caught from inside, the interior
12 of the shop.

13 Q. Where from the interior of the shop would those particular
14 scrapings be found?

15 A. Each of the individual envelopes of bindles are marked
16 No. 3 through No. 6. There were four samples taken at
17 various points, random points in the blood pool to the rear
18 of the Rolls Royce. All of the samples that were taken
19 were taken from that pool.

20 Q. What are the numbers again?

21 A. 3 through 6.

22 Q. It would have been from the pool near the rear of the
23 Rolls Royce?

A. Correct.

24 Q. Are any of the samples in that particular evidence envelope
25 other than Exhibit 9 than those particular ones?

26 A. Yes. I believe Item No. 13 and Item No. 14. I will
27 take Item No. 13 first. It is a sample of dried blood found
28 on the concrete floor next to the maroon Porsche.

1 Q. When you are using No. 9 at this point, that is within
2 the Evidence Envelope 9; that is your own evidence number
3 that is on that envelope? A. Yes.

4 Q. Any other blood samples within the evidence envelope
5 marked People's 9?

6 A. Yes. Item No. 14; that is a blood sample of dried blood
7 taken from a smaller pool in the same area near the rear of
8 the maroon Porsche.

9 Q. Any other blood samples in the envelope marked People's 9?

10 A. Yes. There is a swabbing that was collected from the
11 sink in the bathroom.

12 Q. What is your number that is attached to that particular
13 swabbing?

14 A. That would be Item No. 15.

15 Q. Any other items in the envelope on People's 9?

16 A. No; that is it.

17 Q. Would you return those items to the envelope marked
18 People's 9, please.

19 People's 10, would you describe, please, what that
20 exhibit contains?

21 A. This is an envelope containing an item of evidence that
22 I marked No. 8, collected from the same building.

23 Q. What would that be?

24 A. That is a black and yellow screw-driver.

25 Q. Any indication of swab on that item?

26 A. What I believed to be blood.

27 Q. Anything else in that particular envelope, People's 10
28 other than that? A. No.

1 Q. Would you describe the contents of People's 11, please.

2 A. It is an open-end wrench with the brand name Bonny, and
3 it also appears to have a blood stain on it.

4 Q. Anything in that particular evidence envelope other than
5 the item you just described?

6 A. No.

7 Q. Would you then turn to Exhibit marked People's 12.

8 A. People's 12?

9 Q. Yes. Could you tell us what is in that envelope, please?

10 A. It says that it contains a blood sample from Mark Richards.

11 Q. Would you set that aside at this time.

12 Now, you have one large item remaining in front of you,
13 which we should have marked at this time as People's 13.

14 I show that to Mr. Shapiro.

15 MR. SHAPIRO: I have seen it.

16 THE CLERK: People's No. 13, marked for identification.

17 (Whereupon, People's Exhibit No. 13 was marked for
18 identification; cloth of cover.)

19 MR. BERBERIAN: Q. Looking at Exhibit marked No. 13,
20 could you tell us what is contained in that particular wrapping?

21 THE WITNESS: A. It is the cloth of a cover that was on
22 the Rolls Royce.

23 Q. Why was that particular item seized?

24 A. Because there was what appeared to be a blood stain on
25 the right rear corner on that, on the outside surface of the
26 cloth.

27 MR. BERBERIAN: I have no additional questions at this
28 time.

1 MR. SHAPIRO: I have no questions of Officer Hulett.

2 Excuse me, I have a question.

3 CROSS EXAMINATION

4 BY MR. SHAPIRO:

5 Q. Officer, you say you went into the 36 Front Street
6 building on what day?

7 A. 7/15 of '82.

8 Q. What time during that day?

9 A. When I first arrived it was 11:30 in the morning.

10 Q. Were there lights on? Did you have illumination inside
11 the business?

12 A. As I remember, the lights were off.

13 Q. Were they turned on in order to do this gathering of
14 blood samples?

15 A. That is correct.

16 MR. SHAPIRO: Excuse me one moment. May I ask counsel,
17 are you going to have a diagram?

18 MR. BERBERIAN: We have no plans to introduce a diagram.

19 MR. SHAPIRO: Officer Hulett, I wonder if you could,
20 would you give us a sketch of 36 Front Street.

21 THE WITNESS: Would you like me to label it?

22 MR. SHAPIRO: Could you give us general dimensions. I am
23 not asking for anything accurate, just approximate dimensions.

24 A. Well, it is approximately 50 feet by a hundred feet,
25 from memory.

26 Q. And the two rectangles that you put in, what are they
27 called?

28 A. Let me give you a little bit of background. 36 Front

1. Street is a building that is retained, a building that has
2. three separate areas and access can not be gained into these
3. areas except through these sidedoors. This area is directly
4. in the middle. 36 Front Street, where I conducted the
5. investigation is in the middle of this large building and
6. its only entrance way is a large baydoor that leads into a
7. parking area. So, concerning this rectangle in the center,
8. which is the Classic Car Shop, within that rectangle there
9. is a small square enclosure. It looks like a temporary
10. office. It was definitely not in a finished condition,
11. single-story high, whereas the interior of this car shop
12. was two stories high.

13. Q. Do you want to mark that, officer, for identification.
14. And what's above that?

15. A. Above is the office. Well, like I explained, it is a
16. single story office leaving a large area above it. It had
17. numerous items of mechanics, mechanics stored above. I did
18. not go through it.

19. Q. The other enclosed area, what is that?

20. A. A very small bathroom with a sink and a toilet, and
21. a bookshelf.

22. Q. Just mark that BR, bathroom, something like that.

23. Now, as you walked into that shop on the 15th of July
24. at 11:30, did you see cars parked there?

25. A. Yes.

26. Q. Where was the Rolls Royce?

27. A. The Rolls Royce was in this position here.

28. Q. And, can you put, show which way it is facing. Can you

1. mark the pool of blood that you noticed there?

2. Did you see that right away when you walked in, past the
3. Rolls Royce?

4. A. Well, I was not the first person in there. It was pointed
5. out to me.

6. Q. It was fairly visible, obvious?

7. A. That is correct.

8. Q. Now, the maroon Porsche.

9. A. The maroon Porsche?

10. Q. Was there a pool of blood near the maroon Porsche?

11. A. Yes, it was similar to this.

12. THE COURT: For the benefit of order of the transcript,
13. why don't we have that Rolls Royce marked R, and the Porsche
14. marked P. Have that circled with regard to the pool of blood.
15. That can be B1, the Rolls Royce, and B2, the Porsche.

16. MR. SHAPIRO: Q. Just to help put this thing in a
17. framework, could you give us an idea as to the seize of B1. Was
18. it the same width, or did it cover as much area of the width
19. as the Rolls Royce?

20. THE WITNESS: A. Approximately.

21. Q. B2 was somewhat smaller?

22. A. B2, the puddle that we found was, yes, considerably smaller.
23. It was half as large. However, there was a smear about a
24. foot and a half wide that traveled to the rear of the Porsche
25. in a winding pattern, but it was not a thick pool. It was
26. smearing on the pavement in that part of the pool.

27. Q. And the distance between B1 and B2, about twenty, thirty
28. feet?

1 A. I would not say that far. I would say it was closer to
2 fifteen.

3 Q. Fifteen? Now, the other places where you found blood; the
4 sink that was in the bathroom, I take it?

5 A. Correct.

6 Q. You picked up, did you pick up the black and yellow
7 screw-driver?

8 A. Like I said, we worked as a team through the whole
9 investigation, and Officer Maynard picked up the pieces and
10 I would package it.

11 Q. Do you know where he picked up the screw-driver?

12 A. Yes; it was within the puddle, right near the edge of
13 the pool of blood.

14 Q. And, the wrench?

15 A. In the same area, about a foot away.

16 MR. BERBERIAN: Your Honor, I think the record should
17 reflect he is referring to the pool marked B1.

18 MR. SHAPIRO: Yes.

19 Q. Now, the blood that was on the cover which is No. 13,
20 Exhibit No. 13, was that on the right rear of the cover?

21 A. It would be on the right rear corner of the Rolls Royce,
22 of the cover of the Rolls Royce in this area here.

23 Q. That is in the right rear of the Rolls Royce?

24 A. That is correct.

25 Q. Was the floor, except for those two puddles of blood,
26 fairly clean? Did it have grease all over the floor?
27 What was its condition?

28 A. I would describe it more as dirty with different

1 types of liquids on the floor.

2 Q. But B1 and B2 stood out?

3 A. Well, most of it, mostly because they were covered with
4 soil and you could see the outskirts of this soil, the
5 definite color.

6 MR. SHAPIRO: I have no further questions.

7 Could that also be marked for preservation as Defendant's
8 B?

9 THE CLERK: Defendant's Exhibit B, a diagram.

10 (Whereupon Defendant's Exhibit B was marked for
11 identification, a diagram.)

12 THE COURT: Any other questions?

13 MR. BERBERIAN: No, your Honor.

14 THE COURT: You may step down; you are excused.

15 MR. BERBERIAN: I call Richard Arlo Waller.

16 RICHARD ARLO WALLER,
17 called by the People, after being first duly sworn to tell
18 the truth, the whole truth and nothing but the truth,
19 testified as follows:

20 THE CLERK: Please state your full name and address
21 and spell your last name.

22 THE WITNESS: Richard Arlo Waller, 75075 Sonoma Highway,
23 Santa Rosa. The last name is W-a-l-l-e-r.

24 THE CLERK: And your middle name.

25 THE WITNESS: A-r-l-o.

26 THE CLERK: Thank you.

27 DIRECT EXAMINATION

28 BY MR. BERBERIAN:

1 Q. Mr. Waller, what is your occupation?

2 A. I am employed as a criminalist for the California
3 facility or the Justice Criminal Laboratory located in
4 Santa Rosa.

5 Q. And, for purposes of the preliminary hearing, is there
6 a stipulation as to this man's qualifications as a criminalist?

7 MR. SHAPIRO: I think I would like to go into his
8 qualifications in the various aspects of his profession.

9 MR. BERBERIAN: Q. Would you describe, please, Mr. Waller,
10 what a criminalist is.

11 THE WITNESS: A. A criminalist is a scientist who
12 performs various types of analysis on physical evidence as
13 that evidence relates to criminal matters.

14 Q. And with regard to that particular occupation, can you
15 describe your training, please, and qualifications.

16 A. I attended the University of California in Berkeley.
17 Then San Francisco State College, San Francisco from where
18 I received a bachelor's degree in chemistry, minor in
19 biology. I continued on at San Francisco State College
20 approximately two more years. I received teaching credentials
21 authorizing me to teach in the State of California.

22 I taught for approximately a year. Then I entered the
23 Military Service and was assigned to the United States Army
24 Criminal Investigation Laboratory located at Fort Gordon,
25 Georgia. At the laboratory, I underwent initial training
26 in various aspects of criminalistics, began working as a
27 criminalist in that laboratory until my duty was up with
28 the United States Military and I was reassigned to the

1. United States Army Criminal Investigation Laboratory in the
2. Far East located outside of Tokyo, Japan.

3. I worked at that laboratory and for a short period of
4. time then at the laboratory of Lang Bien, in Vietnam until
5. my duty was up in the U.S. Military and subsequent I was
6. hired by the California Department of Justice.

7. Q. How long have you worked for the Department of Justice,
8. State of California?

9. A. Approximately ten years.

10. Q. And, what have you been assigned during those particular
11. ten years to do?

12. A. Various aspects in the field of criminalistics.

13. Q. Specifically, I direct your attention to the analysis
14. of suspected blood samples or blood stains. What has been
15. your training with identifying those particular materials
16. as blood stains and also typing those particular materials?

17. A. My initial training was in the Military Service as far
18. as specifically analyzing or typing blood stains. Since
19. coming with the Department of Justice, I have taken
20. specialized courses in the characterization of physiological
21. fluids which include blood stain analysis. The course
22. included a course taught by Mr. Bryan Colford of the then
23. Scotland Yard Metropolitan Police Laboratory in England.
24. This took place at the University of California, Berkeley.
25. I have taken advanced blood grouping courses, one taken
26. in Riverside, California, and this was through the California
27. Department of Justice, and I believe through Stanislaus or
28. Sacramento State College.

1 I taught basic and advanced blood groupings to various
2 criminalists throughout the State in various courses.

3 Q. Is there a type of training you had as far as blood
4 grouping is concerned?

5 A. What training?

6 Q. What do you mean by that when you say blood grouping?
7 What are you referring to?

8 A. Well, different physiological fluids have different
9 genetic markers in them, and these genetic markers can be
10 designated as a particular type to indicate, or to distinguish
11 one person from another.

12 For example, in the ABO blood group system, which most
13 people are familiar with, there are four basic types.
14 Some people are type A; some type B; some type O; some type
15 AB. These are genetic markers within that person's blood
16 which can be used to distinguish one person from another
17 by analysis of a blood stain or blood.

18 Q. In addition to the ABO type system, are there other blood
19 type systems that you have been trained in?

20 A. Yes.

21 Q. Could you describe those, please.

22 A. There are a number of other ones including -- and I just
23 use shorthand instead of using the entire word, the entire
24 name of the system. I will just use the shorthand version.

25 One is known as PGM, which is an enzyme found in blood
26 stains; EAD is another enzyme; EAP another enzyme; these
27 are all blood grouping systems. ADA is another enzyme and
28 AK is another enzyme.

1 Q. Approximately how many samples of blood have you
2 analyzed to determine some type of blood typing system to
3 try to place some type of label on a specimen of blood?

4 A. Actual samples?

5 Q. Uh-huh.

6 A. Thousands; in the thousands.

7 Q. Any questions of voire dire?

8 VOIRE DIRE

9 BY MR. SHAPIRO:

10 Q. Does that include the thousands, excuse me, when
11 was the enzyme technique of blood analysis developed; to
12 your knowledge.

13 A. As far as forensic --

14 Q. Yes.

15 A. -- purposes are concerned, I first became acquainted
16 with them in the early seventies, 1972, 1973.

17 Q. And since that time, have you had training in this enzyme
18 analysis technique?

19 A. Yes, I have.

20 Q. Exactly, from the Scotland Yard man?

21 A. That is correct.

22 Q. How much analysis have you done with either PGM or ESD
23 or the other enzyme analysis?

24 A. Individually?

25 Q. Yes. I mean blood samples, how many have you analyzed
26 for the enzyme content?

27 A. In the thousands.

28 MR. SHAPIRO: I have no further questions.

1 THE COURT: Well, have you ever qualified in any of
2 the courts in this State as an expert with regard to your
3 analysis of blood stains involving these genetic markers
4 or the enzyme typing system?

5 A. Yes, I have, your Honor

6 Q. Where is that?

7 A. Marin County, this county, Sonoma, Napa County, Mendocino
8 County, Lake County, Sacramento and others.

9 Q. How many times would you say you so testified as an
10 expert?

11 A. I don't know the exact number, your Honor, but I really
12 don't know the exact number.

13 Q. Give us your best estimate.

14 A. Fifty or a hundred times.

15 Q. THE COURT: Any other questions with regard to that?

16 MR. BERBERIAN: Not to the qualifications.

17 MR. SHAPIRO: No.

18 THE COURT: Then I accept him as an expert with regard to
19 his testimony in that field.

20 MR. BERBERIAN: Thank you.

21 I have two additional items that I ask be marked at this
22 time; People's 12 has been previously marked, and that is
23 labeled a blood sample of Mark Richards and I believe for
24 purposes of the preliminary hearing, there is a stipulation
25 that it would be a blood sample of Mark Richards.

26 THE COURT: Mr. Shapiro: Do you so stipulate?

27 MR. SHAPIRO: I stipulate for this purpose.

28 MR. BERBERIAN: I ask to have a plastic bag containing

1 what appears to be a paper bag marked.

2 THE CLERK: People's Exhibit No. 14, for identification.

3 (Whereupon People's Exhibit No. 14 was marked for
4 identification, a plastic bag.)

5 MR. BERBERIAN: And then, a white envelope marked as
6 People's 15.

7 THE CLERK: Exhibit No. 15, marked for identification.

8 (Whereupon People's Exhibit No. 15 was marked for
9 identification, a white envelope.)

10 MR. BERBERIAN: For purposes of the preliminary hearing,
11 People's No. 14 contains a known blood sample taken from the
12 deceased, Mr. Baldwin.

13 MR. SHAPIRO: Yes.

14 MR. BERBERIAN: I believe there is a stipulation.

15 MR. SHAPIRO: For purposes of the preliminary hearing
16 and the testimony of Dr. Brazil that No. 14 represents
17 a blood sample taken from the deceased.

18 MR. BERBERIAN: People's No. 15 would be a known blood
19 sample from Crossan Hoover.

20 MR. SHAPIRO: I will stipulate to that.

21 CONTINUATION OF DIRECT EXAMINATION

22 BY MR. BERBERIAN:

23 Q. Mr. Waller, I am going to show you what has been marked
24 as People's Exhibit No. 15, No. 14 and No. 12. Do you
25 recognize those three items?

26 A. Yes, I do.

27 Q. What were you asked to do with regard to those three items?

28 A. To type the blood samples.

1. Q. And, did you, in fact, do that with each of those three
2 items?

3 A. Yes, I did.

4 Q. With regard to the Item No. 12, the sample of Mark
5 Richards, would you please describe the typing system that
6 you used and the results of your typing?

7 A. I typed this particular blood sample in all of the
8 systems that I mentioned earlier.

9 Q. What were the results of those typings?

10 A. The sample was found to be ABO group.

11 MR. SHAPIRO: I didn't hear you.

12 THE WITNESS: This sample was found to be ABO group,
13 type A; PGM type 1 plus one; EAP group, type A; ESD group,
14 type 1; ADA group, type 1 and AK group, type 1.

15 MR. BERBERIAN: Q. Exhibit No. 14, the sample of blood
16 from the deceased, Richard Baldwin, what type systems did
17 you use in typing that blood, and what were the results?

18 A. Again, the same series of systems that I used on the
19 previous sample, and this blood sample was found to be ABO
20 group, type B; PGM, 1 plus 1+; EAP type B; ESD, type 1 and I
21 also ran ADA and an AK and as of this point, the results
22 are inconclusive on those two systems.

23 Q. What do you mean by that?

24 A. I did not get a result that is readable so I could be
25 able to determine a particular type.

26 Q. What was the condition of that particular blood sample?

27 A. Poor.

28 Q. With regard to People's Exhibit No. 15, that is the known
blood sample of Crossan Hoover's blood. What were the type

1 systems that you used and the results in regard to typing
2 that sample of blood?

3 A. Again, I used the same systems that I had used on the
4 other two blood samples and this blood was found to be ABO
5 group, type O; PGM type, 1 plus 1 plus; EAP type, BA.

6 MR. SHAPIRO: B?

7 THE WITNESS: B as in boy; BA; ESD type, 1; ADA type, 1,
8 and AK type, 21.

9 MR. BERBERIAN: Q. Now, did you then engage in the
10 typing of samples of blood stains submitted to you by
11 the San Rafael Police Department with regard to the case
12 involving Mark Richards?

13 A. Yes, I did.

14 Q. And, specifically, let me direct your attention to the
15 items that are before you and we will begin with the envelope
16 marked People's 9. Do you recognize that particular item?

17 A. Yes, I do.

18 Q. How is it that you recognize it?

19 A. It has on it, as the other envelopes that you have showed
20 me, other laboratory case numbers, exhibit numbers, dates and
21 my initials.

22 Q. And, what did you do with regard to the contents of that
23 particular envelope?

24 A. I opened up each of the items and then proceeded to
25 No. 1, to determine if there was blood in the items; No. 2,
26 to determine the origin or species or origin of that blood,
27 and then to type the blood that was present.

28 Q. Would you then open the exhibit marked People's 9 and tell

1 us whether you recognize the contents.

2 A. Yes, I do.

3 Q. And, what did you do with regard to each of the items
4 that you removed from the envelope?

5 A. Just what I just said a few minutes ago.

6 Q. Would you take the first item that you have in front of
7 you and there should be a San Rafael number assigned to that
8 item; do you see that?

9 A. I see an item number; yes.

10 Q. What is that number that you look at?

11 A. Three.

12 Q. And, could you tell us your findings in regard to that
13 number?

14 A. I found this to contain blood of human origin of the
15 following type: ABO type; b; PGM type, 1 plus 1 plus;
16 EAP type; B; ESD type was inconclusive; ADA type; 1 and
17 AK type, 1.

18 Q. The next item that you examined from that exhibit?

19 MR. SHAPIRO: Mr. Waller, you are reading from your report?

20 THE WITNESS: Yes, I am.

21 Q. Can you tell me what page of your report you are looking
22 at?

23 A. I will have to show it to you. The pages are not yet
24 numbered.

25 THE COURT: Well, I am going to take a fifteen minute
26 recess and you can examine this report. Then we proceed.

27 (Recess until 11:25.)

28 THE COURT: People vs. Richards. We have the defendant

1 present with counsel; Mr. Berberian representing the People.

2 The witness has resumed the stand.

3 MR. BERBERIAN: May I proceed, your Honor?

4 THE COURT: Yes.

5 MR. BERBERIAN: Q. Mr. Waller, you just spoke about the
6 analysis of the Exhibit that was People's No. 9 that was
7 marked 3, using the San Rafael evidence number.

8 The next item that you come to, what is the San Rafael
9 number?

10 THE WITNESS: Four.

11 Q. And would you tell the results, please, of your analysis
12 on that item?

13 A. Again, human blood; ABO group, type B; PBM type, 1 plus
14 1 plus; EAP type, B; ESD type, 1; ADA type, 1; and AK type, 1.

15 Q. The next item, the San Rafael number is what?

16 A. The San Rafael number is 5.

17 Q. And your findings?

18 A. The same results as with item 4.

19 Q. The next item number, the San Rafael number?

20 A. The San Rafael number is 6, and the results are human
21 blood; ABO type, BB; PGM type, 1 plus 1 plus; EAP type, B;
22 ESD type, inconclusive; ADA type, 1 and AK type 1.

23 Q. The next item in that particular exhibit, the San Rafael
24 number?

25 A. The number is 13.

26 Q. Your findings?

27 A. Human blood; ABO type, B; PGM type, 1 plus 1 plus;

28 EAP type, B; EAS type, ESD type, 1; ADA type, 1 and AK type,

1 Q. The next item of that exhibit, San Rafael number?

2 A. San Rafael number 14, and the same results were obtained
3 as with 13.

4 Q. Any additional items of that envelope?

5 A. Yes, sir.

6 Q. What is the San Rafael number?

7 A. San Rafael number is 15.

8 Q. What is the result?

9 A. Negative; no result.

10 Q. Any additional items in that envelope?

11 A. No, sir.

12 Q. Would you return then all the individual exhibits into
13 that one envelope.

14 In addition to your examination of that item, I would like
15 to point to several other items that are in front of you
16 and ask if you examined those as well, and I will make
17 reference specifically to People's 10, 11 and 13.

18 With regard to People's 10, did you examine that item?

19 A. Yes, I did.

20 Q. What type of testing did you do with regard to that item?

21 A. I examined it for the presence of blood trace evidence.

22 Q. And what was the result of your examination?

23 A. Inconclusive; no reactions.

24 Q. And I believe it is Item No. 11?

25 A. Yes, sir.

26 Q. Did you examine that?

27 A. Yes, I did.

28 Q. And, the results of your examination?

1 A. I found human blood of ABO group, type B; PGM type,
2 1 plus 1 plus; EAP type, B; ESD inconclusive; ADA type, 1;
3 AK type, 1.
4 Q. The item marked People's 13, did you examine that?
5 A. Yes, I did.
6 Q. The results of your examination?
7 A. I found human blood; ABO group, type B; PGM type, 1 plus
8 1 plus; EAP type, B; ESD type, 1; ADA type, 1; and AK type, 1.
9 Q. As part of your training, have you been involved in the
10 training and study of the percentage of the population that
11 would possess blood types?
12 A. Yes, sir.
13 Q. Would you describe your training in that area, please.
14 A. This training would include examination of the publications
15 involved in population distribution for various blood group
16 types and also our own results as far as typing known blood
17 samples, blood samples from blood banks and correlating the
18 results obtained.
19 Q. With regard to the blood sample that you examined, that
20 is marked People's 14, that is the known blood sample of
21 Richard Baldwin. Would you have an opinion as to what
22 percentage of the population would possess that blood type,
23 not just the ABO type, but the ABO typing in conjunction
24 with all the enzyme typing that you did.
25 A. Yes; that combination of blood group systems or genetic
26 markers would be expected to be found in approximately one to
27 three percent of the population.
28 MR. BERBERIAN: I have no additional questions at this time.

1 THE COURT: Mr. Shapiro.

2 CROSS EXAMINATION

3 BY MR. SHAPIRO:

4 Q. What is the mathematical likelihood that a person whose
5 blood tested was that of item 12, that is the test of Mr.
6 Richard's blood type ABO group, type B; PGM type, 1 plus 1 plus;
7 EAP, ADA etc. and AK type 1; is there any possibility that
8 any of that blood that you tested was this blood?

9 A. No, sir, not based upon the results.

10 Q. Now, the screw-driver that was Exhibit 10, Item 10
11 which is the screw-driver which bore the San Rafael No. 8,
12 you said the test was inconclusive with no reactions.

13 A. That is correct.

14 Q. Does that mean that there was no blood or that you just
15 weren't able to raise enough of it to identify it?

16 A. What that means is, I found only the -- at the end of
17 this particular screw-driver there was a small amount of
18 red material that gave a positive; presumptive test for
19 blood, microscopically it looked somewhat like blood.

20 The next step in the analysis would be to determine
21 whether or not it was human blood or not. Human blood or
22 what have you. All tests beyond what I just mentioned were
23 negative, so I could draw no conclusion.

24 Q. You made a fairly extensive report of all the testing
25 that you did and the steps you took; didn't you?

26 A. I have not as yet written a report which you have on my
27 notes.

28 Q. And, you brought those notes with you today for purposes

1 of testifying?

2 A. That is correct, sir.

3 MR. SHAPIRO: I have no further questions.

4 MR. BERBERIAN: No additional questions.

5 THE COURT: You may step down; you are excused.

6 THE WITNESS: Thank you, your Honor.

7 MR. SHAPIRO: Do you work out of the Santa Rosa lab?

8 THE WITNESS: Yes, I do.

9 MR. BERBERIAN: We call Willy Robles.

10 WILLIAM PETER ROBLES,

11 called as a witness by the People, after being first duly
12 sworn to tell the truth, the whole truth and nothing but the
13 truth, testified as follows:

14 THE CLERK: Please state your full name and address, and
15 spell your last name.

16 THE WITNESS: William Peter Robles, R-o-b-l-e-s,
17 94 Sequoia Glen, Novato 94947.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. BERBERIAN:

21 Q. Mr. Robles, you are now with the United States Navy; is
22 that correct?

23 A. Yes, sir.

24 Q. I would like to direct your attention back to the period
25 of May through July of 1982. Were you residing in Marin
26 County during that period of time?

27 A. Yes, sir.

28 Q. Do you know an individual by the name of Mark Richards?

1 A. Yes, sir.

2 Q. Do you see that individual in Court today?

3 A. Yes, sir.

4 Q. Would you point to the individual. Describe what he

5 is wearing in court today.

6 A. White shirt, light brown pants, mustache, long sideburns.

7 Q. How long have you known Mr. Richards?

8 A. About ten months.

9 Q. Have you at any time worked for Mr. Richards?

10 A. Yes, sir.

11 Q. What type of work have you done for Mr. Richards?

12 A. Construction.

13 Q. Do you recall when that would have been that you

14 would have worked for Mr. Richards in his construction business?

15 A. November of '81 to July or June of 1982.

16 Q. 1982? A. Yes, sir.

17 Q. What type of work did you do for him in his construction

18 business?

19 A. Laboring, picking up wood and hammering, hammering nails.

20 Q. Specifically, I will direct your attention back to

21 on or about June or the middle of June 1982.

22 Did you receive some type of pay from Mr. Richards for your

23 work?

24 A. Yes. I got paid; yes.

25 Q. How did he pay you? A. By check.

26 Q. Were you able to negotiate and cash that check?

27 A. No, sir.

28 Q. What happened to it?

1 A. It bounced. He told me it would be good on a certain day.
2 That was the 7th of June. It would be good and it wasn't.
3 So, when the check bounced, I gave it to the San Rafael Police
4 Department.
5 Q. Was that the 7th of June or 7th of July?
6 A. 7th of July.
7 Q. Now, how much was the check for; do you recall?
8 A. \$135 or -- \$85, excuse me, \$185.
9 Q. Now, do you know an individual by the name of Crossan
10 Hoover?
11 A. Yes.
12 Q. How long have you known that person?
13 A. A couple, two or three years, three, four years.
14 Q. With regard to when you were working for Mr. Richards,
15 did you have contact with Crossan Hoover in connection with
16 the job?
17 A. Yes. I got Crossan the job. Mark asked me, he needed
18 some more help. So, I got some of my friends.
19 Q. When you say Crossan, you refer to Crossan Hoover?
20 A. Yes.
21 Q. Do you know an individual by the name of Andrew Campbell?
22 A. Yes.
23 Q. Did this person at any time work for Mr. Richards; to your
24 knowledge?
25 A. Yes, Crossan Hoover got him to work with him when we needed
26 more help.
27 Q. The same type of general labor work; correct?
28 A. Yes.

1 Q. Did you know an individual by the name of Richard or
2 Dick Baldwin?

3 A. Yes.

4 Q. How is it that you knew him?

5 A. Me and Mark did a job at Dick's house, building a garage
6 in the backyard.

7 Q. Do you know when that was?

8 A. Around January, February of '82.

9 Q. Did you ever have a conversation with Mr. Richards in
10 regard to Dick Baldwin during May of 1982?

11 A. Yes.

12 Q. Approximately when in May of 1982?

13 A. I think it was the early part.

14 Q. And, do you recall the subject matter of that conversation?

15 A. The killing of Dick Baldwin.

16 Q. Specifically, what did Mark Richards say to you in
17 regard to the killing of Dick Baldwin?

18 A. He asked me if I would help him kill Dick for Dick
19 had a lot of stuff to sell and we would sell the stuff and
20 I was buying a car from Mark, a '76 white Porsche, and in
21 lieu of helping him kill him, he would just give me the car,
22 pay it off.

23 Q. Did he offer you anything other than a car?

24 A. No; just the car would be the pay-off.

25 Q. Did he indicate to you why he wanted to kill Richard
26 Baldwin?

27 A. That he is going broke and needed money fast, and that
28 was one of the easiest ways. He told me that Dick didn't

1 believe in banks and kept all his money with him at home
2 and that he had lots of cars in the backyard with lots of
3 money. He would sell all those and make money; the Rolls
4 Royce in the garage.

5 Q. Did you talk to Mr. Richards on more than one occasion
6 when he mentioned that he would like you to help him kill
7 Mr. Baldwin?

8 A. Yes; about in the latter part of May; yes, if I was
9 still interested at that point. I said, "I am still thinking
10 about it."

11 Q. Did he ask you specifically that second time that he
12 talked to you? Did he say anything more specific to you
13 than what you just testified?

14 A. No; just mainly the same thing.

15 Q. After this second conversation, did you have any additional
16 conversations with him about killing Mr. Baldwin?

17 A. No.

18 MR. BERBERIAN: I have no additional questions.

19 THE COURT: Mr. Shapiro.

20 CROSS EXAMINATION

21 BY MR. SHAPIRO:

22 Q. Mr. Robles, when did you sign up for the Navy?

23 A. The 27th of June. I went down and checked it out.

24 Q. And, did you actually enlist on that day, or is that
25 just the day --

26 A. That is the day I enlisted on the 29th of June.

27 Q. And, when did you quit working for Mr. Richards?

28 A. On the 27th of June.

1 Q. Had you been working full-time up to that time?
2 A. It was supposed to be full-time, but I never really got
3 forty hours a week.
4 Q. Now, was anyone else present when these conversations
5 you recited took place?
6 A. About the killing of Dick Baldwin?
7 Q. Yes.
8 A. Pete Neal.
9 Q. Pete Neal? A. Yes.
10 Q. And where did they take place?
11 A. Once at Mark's house and I believe the other time was
12 in the truck.
13 Q. Pete Neal was there both times?
14 A. Yes.
15 Q. Did Pete Neal work for Mark also?
16 A. On one occasion.
17 Q. I beg your pardon?
18 A. On one occasion he did.
19 Q. Was that the occasion you were all three in the truck
20 together? A. Yes.
21 Q. How did it happen that you were at Mark's house?
22 A. I was living there at the time.
23 Q. How long had you lived at Mark's house?
24 A. About the beginning of January of '82 until the end,
25 and then again around May for about two months, April and
26 May.
27 Q. This was while you were living there at Mark's house?
28 A. Yes.

1 Q. That he said this to you? A. Yes.

2 Q. Where was it in Mark's house; remember?

3 A. I think it was in the livingroom.

4 Q. Was his wife there?

5 A. She wasn't hearing it. I am not sure if she was there.

6 I can't remember.

7 Q. Were there any other people there?

8 A. Yes; Crossy was there, Crossan Hoover and John Stapp,

9 Tony Camarado, but they didn't hear the conversation

10 that went on.

11 Q. What were you doing at Mark's house with all those

12 people?

13 A. We were having a meeting.

14 Q. What kind of a meeting?

15 A. About the Pendragon stuff.

16 Q. What's all this about the Pendragon stuff?

17 A. It started out as a vigilante group like guardian angels

18 and then it went on a couple of steps further to where it

19 was going to be a take-over.

20 Q. A take-over? A. Yes.

21 Q. And, what did you do about the vigilante group? Did you

22 go out in a parade?

23 A. No. We just marked out strategic spots on maps, marked

24 out where food supplies were, gas station supplies, food

25 supplies, police stations being strategic points.

26 Q. Did you do this for a period of time, once a week,

27 once a month?

28 A. We had a schedule once or twice a week, but we only did it

1 about once a week.

2 Q. You got together, and all you did was mark maps; is that
3 true? A. Uh-huh.

4 Q. Did you ever go out and do any field work?

5 A. Yes.

6 Q. Marking or anything like that?

7 A. We went out and surveyed Angel Island. We went to San
8 Francisco. It was on base, I can't remember; U.S. Base,
9 they have all the maps there on the base. We went there
10 and checked the stuff out there.

11 Q. Where they have the maps? A. Uh-huh.

12 Q. Did you have books that you were looking at or plans?

13 A. Mark was putting together books of different sorts.

14 Q. Was there something you were actually going to do to
15 take over the country?

16 A. That is what it sounded like, just Marin County.

17 Q. Just Marin County? And when had you started these plans,
18 Mr. Robles?

19 A. About a month after I met Mark. He introduced me to it.

20 Q. So, that would be now just about a year ago?

21 A. No -- yeah, eight months, January, about eight months ago.

22 Q. For seven or eight months or so, maybe more, you and
23 these other people were all planning a revolution; right?

24 A. Take over Marin County; right; yes.

25 Q. And did you really believe it; didn't you, Mr. Robles?

26 A. Yes, sir.

27 Q. And tell me, during any of this time, did you ever go to
28 a policeman and say, "Hey, these guys are going to take over

1 the county and make a revolution."

2 A. No. The people that Mark was talking to, specifically,
3 he said if any information got leaked out they would be
4 taken care of too.

5 Q. So, when you say the people that Mark was talking to,
6 did he tell you that there were other people who would take
7 care of those who leaked out information?

8 A. Yes.

9 Q. Were you really frightened?

10 A. No.

11 Q. You didn't believe that, did you? A. No.

12 Q. So, that isn't why you didn't went to the police; is it?

13 A. No.

14 Q. Was there some reason why you didn't go to the police
15 when they threatened the security of our county?

16 A. I didn't see no reason to at that point.

17 Q. Did you think it was against the law to plan a revolution
18 and try to overthrow the government of Marin County?

19 A. I know it is against the law to do it.

20 Q. But, you didn't think it was against the law to plan it?

21 A. I really wasn't sure.

22 Q. Did you ever ask anybody whether it was against the law
23 to plan this kind of revolution? A. No.

24 Q. Did you have weapons that you were going to use to take
25 over the County?

26 A. Mark said there were weapons being surplussed out of
27 Fresno, but I never seen any.

28 Q. You never saw any weapons?

1 A. No; just the weapons he had himself.

2 Q. I beg your pardon?

3 A. Just the weapons he had himself.

4 Q. But, were there some new kind of weapons that you talked

5 about?

6 A. He simply said he had somebody that, somebody else that

7 was involved building lasers and he had plans for the machine

8 guns.

9 Q. He had plans for laser guns and plans for machine guns

10 that were cheap to build? Did he tell you, or did anybody

11 else tell you that Baldwin had to be killed because he

12 was leaking information?

13 A. No.

14 Q. Did you tell anybody that Baldwin had to be killed

15 because he was leaking information?

16 A. No.

17 Q. When you had these meetings every week, did everybody

18 talk and participate in making plans?

19 A. Yes; everybody.

20 Q. What were you to do, Mr. Robles?

21 A. Start Angel Island. I was going to be out there, taking

22 care of the island, making sure it didn't get burnt down,

23 get vandalized.

24 Q. What plans did you have to go in there and take over

25 Angel Island?

26 A. Never had that figured out.

27 Q. Never got that far?

28 A. No; I quit.

1 Q. There was some kind of books that you were reading to
2 show you how this was going to happen?

3 A. How it was going to happen?

4 Q. Was there a set of books or notebooks?

5 A. No. He had a set of books of uniforms people would wear,
6 what the different people in charge in different areas, what
7 their responsibility was.

8 Q. And, did you have a separate booklet for your responsibili-
9 ties; something or other of Angel Island?

10 A. Yes. That was kept at Mark's house.

11 Q. That was kept at Mark's house?

12 A. Yes.

13 Q. Every week, when you got together, you got that out
14 and that was your book?

15 A. Yes.

16 Q. Yes? A. Yes.

17 Q. Now, when Mark talked to you in early May about killing
18 Robles, I mean killing Baldwin, did you go to the police
19 and tell them that?

20 A. No.

21 Q. Did you think that if it were true it was against the
22 law to kill somebody?

23 A. I knew it was against the law to kill somebody.

24 Q. You never went to the police; did you?

25 A. No; I didn't think anybody would have the balls to kill
26 friends.

27 Q. Were they friends? A. Yes.

28 Q. So, you really didn't believe he was going to kill him?

1 A. I wasn't really sure.

2 Q. But you weren't sure enough to go to the police?

3 A. Right. I wasn't sure enough to go to the police.

4 Q. And, did you tell them that it was wrong to do that;

5 Mark?

6 A. No.

7 Q. You told them that you were still thinking about it when

8 he asked you the second time?

9 A. Right; right.

10 Q. Were you in the area on July 6th, around this area?

11 A. July 6th -- yes, I was there.

12 Q. When did you leave the area to go to active duty?

13 A. On the 27th.

14 Q. The 27th of July? A. July 27th.

15 Q. Did you see Mark at any time after you left his employment?

16 A. Yes; on the 2nd of July, when I was buying a car from him

17 and I gave him the car back and collected the check for the

18 car at Montecito Shopping Center in San Rafael.

19 Q. Had you made arrangements to meet him there on July the

20 2nd? A. Yes, by telephone.

21 Q. How much was the check he gave you?

22 A. \$500 and he wrote me a check for \$500. The \$185, my

23 paycheck and \$135 for my brother.

24 Q. Was your brother also working for him? A. Yes.

25 Q. You said that you knew Mr. Baldwin. Had you ever been

26 to his house?

27 A. Yes.

28 Q. Had you ever done any work for Mr. Baldwin other than

1 through Mark; ever worked for him independently on your own?

2 A. No. I have been left at his house to do the job on the
3 garage on my own.

4 Q. But you always had been paid by Mark; you weren't paid
5 by both?

6 A. I was supposed to get -- I was giving my services for
7 a four-wheel drive set up for another car that Dick was
8 going to give me. Instead of money he was going to give me
9 that car.

10 Q. Let me get this straight; the work that you did at the
11 garage, your labor was going to be traded by Baldwin for
12 a four-wheel drive set-up that he had?

A. Yes.

13 Q. A dune buggy?

14 A. No; it is a turtle anker he had.

15 Q. To use that ankerage?

16 A. The wheels, you know, drive shaft and stuff.

17 Q. Was that the January time when you were working for
18 Mr. Baldwin?

A. Yes.

19 Q. Did he give the landcruiser set up?

20 A. No. I sold the car and he said forget it. He said,
21 "Okay, I owe you a favor. If you ever need anything to
22 have done mechanically, I will do it." No, he did not come
23 up with anything.

24 Q. Were you also getting paid by Mark when you were out there
25 at Baldwin's house?

26 A. No, it was free services.

27 Q. Free services that Baldwin was going to pay? A. Yes.

28 Q. Did you ever go back to Mr. Baldwin and asked him for

1 either money or anything?

2 A. I went on to his house once and asked him about the car
3 that I was buying from Mark, if he could fix the passenger
4 seat and he said that I ought to bring it down some time.
5 I never got it home to him.

6 Q. How long had you known Hoover?

7 A. About four years, three, two, three years.

8 Q. Were you pretty close friends?

9 A. No; just acquaintances from other friends. We live in the
10 same area.

11 Q. I beg your pardon?

12 A. We live in the same area; Novato.

13 Q. How about Neal?

14 A. Yes; for six years.

15 Q. Are you close friends?

16 A. Yes.

17 Q. The second time, when Mr. Richards asked you, "Are you
18 still interested?" and you said you were still thinking
19 about it, that was in mid-May; is that right?

20 A. Yes.

21 Q. You were still working for him; right? A. Yes.

22 Q. Now, were you living with your parents at that time?

23 A. In May I lived with Mark.

24 Q. In May you were living with Mark and in May while you
25 were living with Mark, did you have any occasion to go to the
26 police and tell them about the second time?

27 A. No; I didn't.

28 Q. You didn't believe it?

1 A. I really wasn't sure; didn't know what to do.

2 Q. You didn't know what to do? Did you ask anybody what to do?

3 A. No.

4 Q. Had Mark ever injured anybody in your presence?

5 A. No.

6 Q. Did he ever hit anybody? Did you ever see him hit anybody?

7 A. He threw his wife once.

8 Q. What?

9 A. He threw his wife once when he was drunk, or his wife's
10 sister.

11 Q. His wife's sister?

12 A. He just threw her on the bed roughly.

13 Q. Other than that, you never saw him? A. No.

14 Q. Now, do you know something about buying and selling cars;
15 don't you? A. Yes.

16 Q. Did you question Mark as to how he was going to sell
17 those cars, Baldwin's cars?

18 A. He said that the Rolls Royce and the Mercedes was a nice
19 car, the cars in the garage. He was going to get to the
20 dealer and get what he could. It was in good condition and
21 the cars he had in the backyard were '32 through '34 engine B,
22 in nice shape, collector's cars that could be sold off cheap.

23 Q. Do you know to whom those cars were registered?

24 A. No.

25 Q. Did Mark talk to you about the registration of those cars?

26 A. Well, he said that Dick had all the pink slips to all the
27 cars. He would take those and forge the signature.

28 Q. Did you tell Dick? A. No.

1 Q. You knew where Dick lived; did you, all the time?

2 A. Yes.

3 Q. And all the time this is going on, that you worked for
4 Mark, Dick lived in the same house?

A. Yes.

5 Q. And he had his shop in the same location on 36 Front Street?

6 A. Yes.

7 Q. And you knew where that was?

8 A. Yes.

9 Q. And, did you go down and warn Dick about this threat having
10 been made?

A. No.

11 Q. Did you know any member of Dick's family? Did you know
12 his mother?

13 A. Never met anyone.

14 Q. Never met anyone? Did you know any of the people who
15 had shops around Dick, Chimney Sweep or any other people?

16 A. As you are looking out the store to the left, I brought
17 a door there to be fixed at one time in January, on January
18 5th I think it was. It was during the flood. I took a door
19 there to be straightened. I had a piece that was cracked
20 fixed.

21 MR. SHAPIRO: I have no other questions of this witness.

22 MR. BERBERIAN: No additional questions.

23 THE COURT: You may step down; you are excused.

24 We will recess for lunch until 1:30.

25 (Lunch recess from 12 to 1:30.)

26 THE COURT: The case of People vs. Richards. We have
27 the defendant present with counsel; Mr. Berberian representing
28 the people. Call your next witness.

1 MR. BERBERIAN: We call Tom Mills.

2 THOMAS DAVIDSON MILLS,

3 called as a witness by the People, after being first duly
4 sworn to tell the truth, the whole truth and nothing but
5 the truth, testified as follows:

6 THE CLERK: Please state your full name, your address
7 and spell your last name.

8 THE WITNESS: Thomas Davidson Mills, M-i-l-l-s. I live
9 at 78 Novato Street, Apartment No. 3 in San Rafael.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. BERBERIAN:

13 Q. Mr. Mills, do you know an individual, or did you know an
14 individual by the name of Richard Baldwin?

15 A. Yes; I did.

16 Q. How long had you known Mr. Baldwin?

17 A. Nine years.

18 Q. And, during that period of time, what residential address
19 did you know to be Mr. Baldwin's?

20 A. The first part of the time I knew him, in the beginning,
21 the first few years he lived at 120 Miramar in San Rafael,
22 and then he resided later at 13 Venetia Way in Santa Venetia.

23 Q. And directing your attention specifically back to on or
24 about the 6th of July, 1982, where did you know him to reside?

25 A. 13 Venetia Way in Santa Venetia, which is part of San
26 Rafael.

27 Q. On or about that date of July the 6th, did you have
28 occasion to meet with Mr. Baldwin? A. Yes, I did.

1 Q. Now, was this a personal meeting that you had with him?

2 A. No; it was business.

3 Q. And, was this a face-to-face encounter as opposed to
4 a conversation over the telephone?

5 A. Yes; it was a face-to-face encounter at his home.

6 Q. Now, how can you be sure as to the date of this meeting?

7 A. I keep a daily log of my activities in order to keep
8 track of what I have done and how much time I have spent
9 doing it in order to keep track of what I need to do the
10 next day.

11 Q. What time did you meet with Mr. Baldwin?

12 A. I arrived at his house at approximately 11 o'clock;
13 a little bit afterwards.

14 Q. This is at 13 Venetia Way, on Tuesday the 6th; and how
15 did you get there?

16 A. By my own transportation. I had a car.

17 Q. What type of car do you have?

18 A. I own a Volkswagen Sedan, but I was driving a green
19 Currier pick-up truck.

20 Q. And, when you got there, could you tell us what was
21 happening when you arrived?

22 A. Dick was at home and had probably been up for half an
23 hour or an hour; I'd say. He was just pottering around the
24 house, I don't know, taking care of some errand when I
25 walked in. He didn't have anything specific. We just did
26 what we had to discuss.

27 Q. How was he dressed on that particular occasion?

28 A. I don't remember exactly, but I believe he had on long

1 pants and they were dark. He had on black shoes, white socks
2 and maybe a white T-shirt, but I can't be absolutely sure.

3 Q. And, how long were you there before someone else arrived?

4 A. I was there for approximately half an hour to 45 minutes
5 before someone else arrived.

6 Q. And, did someone else arrive?

7 A. Yes. Someone else arrived.

8 Q. Who was that?

9 A. There was three males arrived, of which he had business
10 with, apparently.

11 Q. Do you see any of those individuals in Court today?

12 A. Yes, I do.

13 Q. Could you point to one of the individuals that you would
14 have seen on that occasion?

15 A. He was introduced to me as Mark Richards. He is sitting
16 over there.

17 Q. Can you describe what he is wearing in Court today?

18 A. He is wearing a white long-sleeved shirt, and I can't
19 really see his pants or shoes.

20 MR. BERBERIAN: The record should reflect he is referring
21 to the defendant in this proceeding.

22 THE COURT: Yes.

23 MR. BERBERIAN: Q. Now, did you have an appointment
24 at any time to see Mr. Baldwin after the 6th of July?

25 THE WITNESS: A. Yes, I did. I had an appointment to
26 see him on Wednesday morning, the 7th, the next day.

27 Q. And, where were you to talk to him, or were you to
28 actually meet him at some place?

1. A. I was to phone him in the morning at 9:30 to make sure
2. that he was awakened, up and around and starting his day
3. and to meet with him about 10 o'clock.
4. Q. And, did you, in fact, attempt to call him the following
5. morning at about 9:30?
6. A. I did call him at his house; actually earlier than that,
7. at 9 o'clock, and there was no answer at that time.
8. Q. Did you follow up on that particular telephone call to
9. try to reach Mr. Baldwin?
10. A. I did not call. I left my house at 9:30 and arrived at
11. his house at 10 o'clock.
12. Q. What did you do when you arrived at the house?
13. A. I knocked on his front door.
14. Q. Was there any response?
15. A. There was no response.
16. Q. What else did you do, if anything?
17. A. I didn't go into the backyard or anything. I figured
18. that he might not have heard the telephone, because he might
19. have been working outside in the back of his house and he
20. was doing some construction work there, and I believe his
21. own stationwagon was there, which I thought was unusual for
22. him not being home.
23. The security system, I also noticed, was not on.
24. Q. Could you describe this particular security system; if
25. you recall?
26. A. I am not familiar with the details of it. Inside, I
27. know it has a panel by his garage, which is visible from the
28. front of the house, that has four red buttons on it, and a

1 key log. When you activate it one of the lights comes on.
2 and none of the lights were on. So, I knew the system was
3 inactivated, and he was not home, which I thought was
4 unusual since it was usually his practice to always activate
5 the security system when he wasn't at home.

6 Q. Did you try to contact him on any additional occasions
7 on that day?

8 A. Yes. I called his shop also and drove by his shop, which
9 is on Front Street in San Rafael, and there was no sign of
10 him being there.

11 Q. Did you actually go out and get up to the shop door or
12 anything of that nature?

13 A. I didn't need to. There usually is a lock on it, or
14 I can tell if one of his vehicles he is driving is out front
15 and on that day the door to the shop was not open and none
16 of his vehicles that he usually drives, that he usually
17 was using for transportation were out front. So I just kept
18 going assuming he was not there.

19 Q. Now, other than Mark Richards, who you identified as
20 arriving 45 minutes or so after you did on the 6th of July,
21 did you know the other individuals that were with Mr. Richards?

22 A. No; I did not know them personally.

23 Q. Could you describe them?

24 A. Two young white males with dark hair. That is about all
25 I really remember of them.

26 Q. Approximately what age; as best you can recall?

27 A. They appeared to be around 16 or 17 and 18 to me.

28 MR. BERBERIAN: I have no additional questions at this
time.

CROSS EXAMINATION

BY MR. SHAPIRO:

Q. Mr. Mills, when you arrived at the house, did you go inside?

A. Yes.

Q. And, you were with somebody, were you?

A. Yes. I was in the company of a four-year old child.

Q. And you and your youngster went in the house and talked to Mr. Baldwin for a period of time?

A. Yes.

Q. Then, the three young men arrived. Can you tell us what happened after they arrived?

A. Well, we had -- Dick and I had gone out to the back of his house and he was showing me the parts of what looked to be like a foundation that he was laying to do some extension work on his garage and he was talking about that and discussing what his daily activities were going to be for that day, because we were trying to arrange another meeting for the next day, or later on in the afternoon of Tuesday, and when these gentlemen showed up he went back in the house and opened the front door for them. I can't remember whether they came through the house or through the sidegate.

Q. Did he indicate that they were also doing some work on his house?

A. Yes.

Q. The three young men that Mr. Baldwin had let in and the two males, were they all together for a period of time, all of you?

A. Yes.

Q. About how long?

1. A. I would say about 20 minutes.

2. Q. Would that make it pretty close to 12 o'clock or
3. thereabouts?

4. A. Yes. It was approaching 12 o'clock rapidly at that point.

5. Q. How did the session break up? Who left first?

6. A. I left first.

7. Q. When you left, what were Mr. Baldwin and the other
8. three doing?

9. A. At this time they were out in front of the house and
10. were looking at two automobiles that Mr. Baldwin had parked
11. in his driveway there.

12. Q. The following morning, you drove by the shop on Front
13. Street and what time was that?

14. A. I left the house after 9 o'clock, but before 9:30. So
15. it must have been maybe 10, a quarter after nine in the
16. morning, and I did not stop at his shop. You can see it
17. from the street, and it did not appear to me as though he
18. were there, and I wouldn't have expected him to be there that
19. early; so, I did not stop at the shop.

20. Q. You noticed that the door was down?

21. A. The door was down.

22. Q. The locks were on there?

23. A. It appeared as though the locks were there. I couldn't
24. see them clearly, but the big thing I always go by there,
25. if one of the cars he is driving isn't there, he was home.

26. Q. You couldn't tell if there were any lights on?

27. A. No.

28. Q. Now, earlier you had driven by his house; is that right?

1 A. I drove by his house after I drove by his shop, because
2 I live in the same neighborhood.

3 Q. And, when you drove by the house it was closed; the door
4 was closed; the front door?

5 A. Yes.

6 Q. Did you try to see if it was locked?

7 A. Yes, I did.

8 Q. And, it was locked?

9 A. It was locked.

10 Q. Any other time on that day that you drove by the shop?

11 A. I may have driven by there only because I would use
12 Front Street as a point to get from somewhere on Francisco
13 to my house, but not specifically to look for him.

14 Q. So, you didn't have any occasion to observe whether the
15 door was still locked?

16 A. No, not really.

17 Q. You are pretty sure you were driving the green pick-up,
18 not the yellow Volkswagen?

19 A. Which day?

20 Q. On Tuesday.

21 A. On Tuesday I was driving the green pick-up.

22 MR. SHAPIRO: I have no further questions.

23 MR. BERBERIAN: No additional questions.

24 THE COURT: You may step down; you are excused.

25 MR. BERBERIAN: We call Andrew Campbell.

26 ANDREW CAMPBELL,

27 called as a witness by the People, after being first duly
28 sworn to tell the truth, the whole truth and nothing else but

1 the truth, testified as follows:

2 THE CLERK: Please state your full name, your address
3 and spell your last name.

4 THE WITNESS: Andrew Campbell, C-a-m-p-b-e-l-l, 1090
5 Cambridge Street, Novato.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. BERBERIAN:

9 Q. Mr. Campbell, do you know an individual by the name of
10 Mark Richards? A. Yes, sir.

11 Q. Do you see that person in Court today?

12 A. Yes, sir.

13 Q. Could you point to that individual and describe what
14 he is wearing in Court today?

15 A. He is sitting right over there, wearing a white shirt.

16 MR. BERBERIAN: I would like the record to reflect he
17 is referring to Mr. Richards who is in Court today.

18 THE COURT: Yes.

19 MR. BERBERIAN: Q. Mr. Campbell, do you know an
20 individual by the name of Richard or Dick Baldwin?

21 THE WITNESS: Yes, I did.

22 Q. And did you at some point, now referring to Mr. Richards,
23 did you at some point work for Mr. Richards? A. Yes, sir.

24 Q. What type of work did you do for him?

25 A. Construction work in his business.

26 Q. And, specifically with regard to Mr. Richard Baldwin,
27 did you do any work or, pardon me, with Dick Baldwin; did you
28 do any work with Mr. Richards for that particular individual?

1 A. Yes, sir.

2 Q. And, what type of work did you do for Mr. Richards
3 when you were working for him?

4 A. In general, building. In terms of Mr. Baldwin, we were
5 adding on to his garage.

6 Q. And, I would like to direct your attention back to
7 July of this year.

8 MR. SHAPIRO: I would like to ask the Court to ask Mr.
9 Berberian not to mention any dates, because the witness'
10 recollection as to dates and times is exceedingly critical.

11 MR. BERBERIAN: Q. I think I can ask him questions.
12 If there is an objectionable question, I am sure counsel
13 will raise it.

14 THE COURT: Pose your next question.

15 MR. BERBERIAN: Q. I would like to direct your attention
16 back to on or about the period of time following the 4th of
17 July of this year, and specifically, I will direct your
18 attention back to a period of time when you were working for
19 Mr. Richards at Mr. Baldwin's residence.

20 Do you recall the day when there was an individual there
21 by the name of Tom?

22 THE WITNESS: A. Yes.

23 Q. Now, keeping that date in mind, had you had, prior to that
24 time, discussions with Mr. Richards in regard to killing
25 Mr. Baldwin? A. Yes, sir.

26 Q. How long before that particular time, the day that you were
27 working at Mr. Baldwin's house, the day that Tom was there,
28 had you had discussions with Mr. Richards about killing

1 Mr. Baldwin?

2 A. I can't give you an exact date. It is probably three weeks.

3 MR. SHAPIRO: I am sorry; I didn't hear you.

4 THE WITNESS: I assume three weeks.

5 MR. SHAPIRO: Three weeks?

6 THE WITNESS: Three weeks to a month when I first heard
7 about it.

8 MR. BERBERIAN: Q. In what manner did the discussion
9 of killing Mr. Baldwin come up?

10 MR. SHAPIRO: Could we have a time and place and who
11 was present?

12 THE COURT: Mr. Berberian.

13 MR. BERBERIAN: Well, your Honor, I will rephrase the
14 question.

15 Q. With regard to the first occasion that you can remember,
16 where a discussion came up in regard to killing Mr. Baldwin,
17 do you know where this took place?

18 THE WITNESS: A. I can't say exactly. I remember --
19 the best I can do, it was in Mark's house, Mr. Richard's house.

20 Q. Did this conversation come up, the subject come up
21 on more than one occasion?

22 A. Yes, sir.

23 Q. Do you know how many times the subject came up in your
24 conversations? A. Several, sir.

25 Q. Specifically, again using the date following the 4th of
26 July, the date that you were working at Mr. Baldwin's house
27 when Tom was present, was there an occasion when you were
28 with Mr. Richards where he spoke to you in detail about the

1. killing of Mr. Baldwin?

2. A. Yes, sir.

3. Q. How long before that particular date in July did that
4. occur?

5. A. I guess it would be like the 1st of July is when these
6. plans were starting to get pretty cemented.

7. Q. I am sorry, I didn't hear.

8. A. About the 1st of July is when he started to mention
9. they wanted to do it, and the times and the process and
10. everything.

11. Q. Well, around the 1st of July, where did this discussion
12. take place you just referred to in your testimony?

13. A. I couldn't tell you exactly. It is either in his house
14. or in the car going to and from work.

15. Q. On this first occasion, when he was getting rather
16. specific, as you said, about it, who was present?

17. A. Mark, Crossy Hoover and I.

18. Q. And by Mark you are referring to Mark Richards?

19. A. Yes, sir.

20. Q. What specifically on this first occasion, as best you
21. can recall, did Mr. Richards say about his plan to kill
22. Mr. Baldwin?

23. A. He just was referring to that Mr. Baldwin owed him
24. money and that he thought of trying it once before, killing
25. Mr. Baldwin, to receive money, and the plan from there --

26. MR. SHAPIRO: Could that answer be read back, your Honor?

27. THE COURT: How old are you?

28. THE WITNESS: Seventeen.

1 (Record read.)

2 MR. BERBERIAN: Q. Did Mr. Richards tell you his plan
3 how this killing would occur?

4 THE WITNESS: A. Yes, sir.

5 Q. What did he say about how it would occur?

6 A. The plan was that he wanted to get to Mr. Baldwin's
7 residence, to get Mr. Baldwin's residence and his shop both
8 unlocked and the alarm turned off and that none of us would
9 stay at the house to keep the house open, and the other two
10 would get down to the shop and talk to Mr. Baldwin, try to
11 lure him to the back of the shop, out of sight of anybody
12 looking in, and then pick up any heavy object they could find
13 and strike him.

14 Q. How many times did he tell you about this specific plan
15 which you just testify to?

16 A. Several. I couldn't give you an exact number.

17 Q. Who did he want to do the particular parts of that plan?

18 A. In the beginning he didn't really care. Then Crossy
19 turned out to be the more favorable one.

20 Q. Did you hear him tell Crossy at any time what he wanted
21 Crossy to do?

22 A. Yes, sir.

23 Q. What did he tell Crossy that he wanted him to do?

24 A. He said that there was plenty of tools, or whatever,
25 that they could use in the shop to strike Mr. Baldwin in
26 the head, and that Mark would be talking to Mr. Baldwin and
27 try to keep him from looking at Crossy while Crossy could
28 look around the shop and find something to strike Mr. Baldwin

1 with and hit him. He would scratch his head.

2 Q. What did Mr. Richards tell you that you would do in
3 regard to that?

4 A. I would stay at the house and keep working and keep
5 myself in sight of the neighbors, etc. and after a while,
6 if I wanted to save time, go into the house and look around
7 and see if I could find anything that would be of use
8 or of value to come back to sell at a later date.

9 Q. Now, the day that you were working at Mr. Baldwin's
10 residence, the day that Tom was there, the individual by
11 the name of Tom, how did you go to the Baldwin residence on
12 that day?

13 A. Mark drove us over there in the blue truck, Crossy and I.

14 Q. Do you know when you got there?

15 A. I am pretty sure it was between twenty to ten; it
16 was supposed to be ten and we arrived there fifteen, twenty
17 minutes early.

18 Q. Who was there when you arrived?

19 A. Tom was visiting Mr. Baldwin with his son, and Mr.
20 Baldwin, that was it.

21 Q. When you say his son, who are you referring to?

22 A. I assumed Tom's son was the younger boy there, five, six,
23 seven years old that was with Tom.

24 Q. Now, in discussing the method of how the killing was
25 going to occur, had Mr. Richards at any time indicated to you
26 whether you would be paid in any fashion for that?

27 A. He was going to give Crossy \$5000 for killing him and
28 I was to receive \$2000 for staying around the house and etc.,

1 and then we would split everything three ways; whatever
2 money he could get out of it.

3 Q. What type of things was Mr. Richards talking about when
4 he said he would split things?

5 A. He said Mr. Baldwin owned many cars. He could sell
6 those; that he had \$50,000 worth of machinery and tools and
7 stuff at the shop that he could sell and at one time he was
8 even thinking of trying to sell his house.

9 Q. Now, going back to after you arrived on that day when
10 Tom was present, what type of work were you to do that day
11 at the residence?

12 A. We were going to enlarge the garage. So Mr. Baldwin
13 would have more room to work, etc. at his house, laying a
14 foundation and building the frame of it.

15 Q. Did you at some point, after you arrived, leave the
16 residence of Mr. Baldwin?

17 A. Yes; we went to lunch at 12:30, about, and we left
18 when Tom was still at the house.

19 Q. Who did you leave with?

20 A. Mark, Crossy and I left together for lunch in the blue truck.

21 Q. Where did you have lunch on that day?

22 A. Dillers in San Rafael.

23 Q. And, were there, or was there a further discussion with
24 Mr. Richards during that lunch as to what was going to happen
25 that day?

26 A. Yes. He went over the general plan again and thought that
27 it was good and bad that Tom was there; that we could say
28 the last person we saw with Mr. Baldwin was Tom. It was also

1 a problem that Tom was also there and went to lunch also.

2 He said to hope by the time we got back Tom had left.

3 Q. Did you discuss what you would do if Tom was not there
4 when you got back?

5 A. Then he would talk to Mr. Baldwin and see if he had any
6 dates to be anywhere, like he is going to his parents' house
7 or bills or anything he could check up on to see if he would
8 be missed immediately, and he just talked to Mr. Baldwin.
9 He kept using the phrase "calming him down" to see if Mr.
10 Baldwin had a plan for the week.

11 Q. What was going to occur if Mr. Richards found that
12 Mr. Baldwin did not have any plans for the week?

13 A. That we would do some work, and that Mr. Richards would
14 talk to Mr. Baldwin while Crossy and I were to work outside,
15 and then after a while, he was going to bring up the point
16 that Mr. Baldwin had some of Mark's tools down at the shop
17 that he would like to get back and for Mark and Crossy to go
18 down and look at some of the cars Mr. Baldwin had in the
19 shop, because they were both interested in it.

20 Q. And, what would you be doing during this period of time?

21 A. Just stay at the house and work, to be visible to neighbors
22 and if I had time to go down and look around inside the house
23 for anything I could find.

24 Q. Now, specifically, did Mr. Richards discuss how Mr. Hoover
25 would kill Mr. Baldwin?

26 A. Yes; he just -- well, he said he didn't give a specific
27 weapon, but he said there was enough heavy instruments down
28 in Mr. Baldwin's shop, tires, etc. that Crossy could find

1 and pick up and strike Mr. Baldwin with, to kill him.

2 Q. Did he discuss with you, either on that occasion or during
3 lunch at one of the prior discussions why such a weapon should
4 be used as opposed to a gun or a knife?

5 A. He just said a gun made a lot of noise and had bullets
6 which were traceable, and a knife wouldn't kill him instantly
7 and that would be the easiest, quickest way to kill him.

8 Q. Was this individual by the name of Tom present when you
9 returned?

10 A. No, sir. As we were coming down the road, Tom was just
11 leaving

12 Q. When you got back to the residence, what did you do?

13 A. Crossy and I started working in the backyard, getting
14 ready to, or building a foundation so he could lay the
15 cement. I was laying the rebar crossways, building a frame
16 and Crossy was talking to Mr. Baldwin inside the house.

17 THE COURT: Miss Grove, are you representing this witness?

18 MISS GROVE: Yes, your Honor.

19 THE COURT: Then the record should reflect that Miss Grove
20 from the Public Defender's Office is here. Otherwise I
21 would have advised Mr. Mills with regards to certain rights
22 that he has, but I assume that will be the case. I think
23 the record should so reflect.

24 MISS GROVE: That is correct.

25 THE COURT: Do you want to proceed, Mr. Berberian.

26 MR. BERBERIAN: Now, your Honor, when you referred to
27 Mr. Mills, you were referring to Mr. Campbell in your remarks
28 just now, your Honor?

1 THE COURT: Excuse me; you are representing Mr. Campbell
2 who is here on the stand?

3 MISS GROVE: Yes, I am, your Honor.

4 THE COURT: Yes.

5 MR. BERBERIAN: Q. At some point, after you arrived
6 back from your lunch, did you notice anyone to leave the
7 Baldwin residence?

8 THE WITNESS: A. When we were coming down we saw Tom
9 leaving in his car.

10 Q. After you were back you said you were working at the
11 residence for a period of time. Did Mr. Richards leave?

12 A. No, sir.

13 Q. Did Mr. Baldwin leave?

A. No, sir.

14 Q. What happened then that afternoon?

15 A. Mark was in talking to Mr. Baldwin for a while. Crossy
16 and I were working and then, I guess, after about twenty
17 minutes, Crossy and I were working we came in the house
18 because it was hot and we started talking to Mr. Baldwin
19 and he showed us some of his cars he had around the house,
20 etc., and he made us some cookies and we sat down and talked
21 and had some drinks of water with the cookies, and then Mark
22 said he would like to go down to the shop and see Mr. Baldwin's
23 cars.

24 Q. By Mark you are referring to Mr. Richards again?

25 A. Yes, sir, and I would rather, I was supposed to say,
26 which I did, that I would rather stay around the house and
27 work and get the job done with, because I had no great
28 knowledge of cars, and Crossy was interested in them.

1 So they could go down to the shop with Mr. Baldwin.
2 Q. Who told you you should say that?
3 A. Mr. Richards.
4 Q. What happened then?
5 A. Mr. Richards and Crossy and Mr. Baldwin got in the blue
6 truck and went down to Mr. Baldwin's shop and I stayed at
7 the house and worked up on the roof.
8 Q. How long were Mr. Baldwin and Mr. Richards and Mr. Hoover
9 gone?
10 A. I can't give you an exact time. I estimate two hours.
11 Q. Did any of those individuals return to the Baldwin re-
12 sidence?
13 A. Yes, sir.
14 Q. Hoover returned? Who returned?
15 A. Mark, Mr. Richards and Crossy.
16 Q. What were you doing when Mr. Richards and Mr. Hoover
17 returned?
18 A. I just came out from the bathroom. I heard the truck
19 drive up. I walked out to the back window to the gate to
20 meet them.
21 MR. SHAPIRO: I didn't hear.
22 THE WITNESS: I just came out from the bathroom. I was
23 in his bathroom. I walked up to the back of the house to
24 meet them at the gate.
25 MR. BERBERIAN: Q. Did you speak to Mr. Richards at the
26 time? A. Yes, sir.
27 Q. What did you ask him?
28 A. I asked him if they committed the murder.

1 Q. What did he say to you?

2 A. He said yes. He didn't want to talk about it; that it
3 was bloody and gross and that he wanted to get as much of the
4 stuff out of the house that he could.

5 Q. What happened then?

6 A. He told Crossy and I to go up on the roof and keep
7 working for neighbor's sake or anybody watching. He was
8 going to look around the house to see if he could find
9 anything of value in the house and he asked me if I had
10 found anything. I pointed out all there is are clothes
11 and a gun in Mr. Baldwin's bedroom and I went by his bed.
12 Then I proceeded to go up on the roof and worked with Crossy.

13 Q. Where did Mr. Richards go, that you can tell?

14 A. He was just walking down the hallway towards the
15 bedrooms and the den and I walked outside.

16 Q. Did you at some point come back into the residence?

17 A. Yes. I was up there on the roof approximately ten,
18 fifteen minutes, and I wanted to see what Mark was doing.
19 So, I came back down and went into the house and at that
20 time he was in the library, I guess, of Mr. Baldwin's house
21 at a closet that was locked.

22 Q. What was Mr. Richards doing?

23 A. Seeing if there was any alarm system to the closet;
24 how you could open it up.

25 Q. Did he open it up? A. Yes, sir.

26 Q. How did he do that?

27 A. With a crow bar.

28 Q. What happened then?

1 A. He opened up the closet and I was still there at the time
2 and the closet was loaded with marijuana and guns and
3 ammunition.

4 Q. Anything else in the closet that you recall?

5 A. A large safe that was on the floor and a small metal box
6 that was on the shelf and a wooden box that didn't have a lock,
7 a small jar that was also on the shelf.

8 Q. Anything taken out of the closet?

9 A. Yes; everything, just about everything, the large safe,
10 all the ammunition, all the pot, the guns, the wooden box
11 and the small metal box.

12 Q. Any money in the closet?

13 A. Yes; \$2000.

14 Q. Where was that?

15 A. On the shelf in between the metal box and the wooden box.

16 Q. How was this money packaged, if it was, in any fashion?

17 A. It was rolled up in a roll surrounded by a rubber band.

18 Q. Who found the money?

19 A. I did.

20 Q. What did you do with it?

21 A. I grabbed it and put it in my pocket.

22 Q. At some point, did you give it to someone?

23 A. Yes; I gave it to Richards, Mark Richards.

24 Q. When was that?

25 A. When we were leaving the house and we were back to
26 San Rafael and we were talking about what was going on
27 I pulled out my pocket and gave it to Mr. Richards.

28 Q. Did you look at the type of bills that were there that

1 made up the \$2000?

2 A. Yes, sir. It was hundreds, fifties and twenties.

3 Q. Now, do you recall being present with Mr. Richards and
4 Mr. Hoover at the time that a boat of some fashion was
5 purchased? A. Yes.

6 Q. Do you recall the location where you went with these
7 individuals to purchase that boat?

8 A. I couldn't give you an exact address. I am pretty sure
9 it was in Strawberry.

10 Q. Now, was this in the day or in the nithgtime?

11 A. It was in the late evening, late evening.

12 Q. And, do you know who -- well, did one of the three of
13 you, either Mr. Hoover or Mr. Richards or yourself talk to
14 an individual at that location that you believe was in the
15 Strawberry area?

16 A. Yes; Mark did the talking to the person about the boat.

17 Q. Can you describe what happened when you arrived at this
18 residence place?

19 A. We got out of the truck. The man was already outside.
20 Mark introduced himself as the person who called on the
21 phone. He showed us the boat, talked about how it worked.
22 Mark was saying that we wanted to use it for fishing, etc.
23 during the summer, and he liked to purchase it, you know,
24 and check how it ran; stuff like that.

25 Q. What type of a boat was it, if you can recall?

26 A. I think it was a 14 foot light cabin cruiser. I guess
27 that's what you would call it.

28 Q. Did it have an inboard or outboard motor, or do you recall?

1 A. It had an outboard motor, I assume. It was on the
2 outside.

3 Q. Now, did you talk to this man that was selling the boat?

4 A. In casual conversation when he asked if we liked fishing
5 and if we would take good care of the boat.

6 Q. Did you see Mr. Richards pay for the boat in any fashion?

7 A. I didn't see him. He did that inside the house.

8 Q. What type of a vehicle did you arrive at the residence
9 outside?

10 A. In the blue truck.

11 Q. Were you towing anything at the time you arrived?

12 A. No, sir.

13 Q. How did you get to, how did you get the boat away
14 from the residence?

15 A. It came with a trailer.

16 Q. The boat that was purchased? A. Yes.

17 Q. How was it attached to the truck that you arrived in?

18 A. The man also gave us a knob, whatever you call it,
19 to connect it to the bumper of the truck.

20 Q. And, this knob that you are referring to, this came
21 from the person who sold the boat? A. Yes.

22 Q. Had Mr. Richards discussed with you at any time how the
23 body of Mr. Baldwin was going to be disposed of?

24 A. Yes. He wanted to put it in the ocean.

25 Q. After the boat was purchased, did you go to a location
26 where the body of Mr. Baldwin was?

27 A. After the boat was purchased, we took the boat down to
28 Loch Lomond and put it in the water, parked the trailer and

1 then went back to pick up the body.

2 Q. Before you got to Loch Lomond, did you have any problems
3 with the lights or the lighting on the boat or trailer?

4 A. Yes. We didn't have the wires to connect it up from
5 the truck, so we had to just turn on the ship's light
6 with the boat side.

7 Q. The trailer itself, you couldn't hook up the light to
8 the trailer?

9 A. We didn't have an electric system to wire to the truck
10 lights.

11 Q. When you were referring to Loch Lomond, are you referring
12 to a location in San Rafael, or do you know the exact location?

13 A. I can't tell you the exact location.

14 Q. When you first went there, after the boat was purchased,
15 who was with you.

16 A. First we went to the place where the boat was.

17 Q. Uh-huh.

18 A. Just Crossy, Mark and I.

19 Q. From the place where you bought the boat to Loch Lomond,
20 did the three of you go to that location in Loch Lomond?

21 A. Yes, sir.

22 Q. What happened when you arrived?

23 A. We got there. We were putting the boat in the water and
24 the security guard, whoever, came up and asked what we were
25 doing and Mark said we wanted to get out get an early start
26 fishing. So, we were going out at night to sleep out there.
27 We paid the launching fee, put the boat in the water, tied
28 it to the dock.

1 Q. How did you know this was a security guard?

2 A. He was in uniform.

3 Q. Who did he talk to, the security guard?

4 A. Mr. Richards.

5 Q. Do you recall him, referring to the security guard, doing
6 anything other than talking to Mr. Richards?

7 A. He wrote down the license of the truck and asked to check
8 the boat.

9 Q. What happened after he did that?

10 A. He made sure we paid the launching fee and said, "Have a
11 good time," and got back in his car and drove away.

12 MR. SHAPIRO: He came back?

13 THE WITNESS: He drove it back to the other side of the
14 snack bar, whatever it is, and parked.

15 MR. BERBERIAN: Q. What happened after he drove away
16 on that location?

17 A. We launched the boat, tied it to the dock, pulled the
18 trailer to the side, left it there and went back to San Rafael.

19 Q. Did you go back then to pick up the body at that point?

20 A. We were going to. That was the plan, and when we got
21 there Mr. Duncan's lights were on across from Mr. Baldwin's
22 shop and Mark didn't want to get the body. He thought Mr.
23 Duncan would recognize him. So we drove around the block
24 a couple times, waiting for Mr. Duncan to leave.

25 Q. At some point, did you stop at the shop?

26 A. We drove by in front of it. We didn't stop until we
27 actually went there and picked up the body.

28 Q. You proceeded then to pick up the body, or did you pick up

1 the body at a later point?

2 A After the boat was in the water that night, we went the
3 same night. We went to pick up the body.

4 Q. Where did you pick up the body from?

5 A. Underneath the car in Mr. Baldwin's shop.

6 Q. Do you remember which car it was underneath?

7 A. An old -- I think it was an old Rolls Royce; it was an
8 older style car.

9 Q. Did you go into the shop yourself at that point?

10 A. Yes, sir.

11 Q. What happened after you went in the shop?

12 A. We went in and Mark told Crossy and I to wrap the body
13 up in plastic and tape it, to seal it up and that he would
14 go, he was gathering weights that we could use to sink the
15 body in the ocean, and he went out and drove the truck to the
16 door and put the body back in the truck.

17 Q. What happened?

18 A. That is what happened.

19 Q. How did you get the body from where it was to the truck.

20 A. There was a creeper inside Mr. Baldwin's shop and we
21 layed the body on that and he rolled it down.

22 Q. What is a creeper?

23 A. A mechanic's sled, whatever you call it. You roll it,
24 and it is on the ground.

25 Q. What happened after you put the body of Mr. Baldwin
26 on that creeper?

27 A. We pushed it down to the side of the antique car. Mark
28 left, got in the truck, went back to the door, opened it up,

1 backed the bed of the truck and pulled the door down as low
2 it would go.

3 Then we put the body on the truck, wrapped it up in a
4 white car cover and plastic.

5 Q. What happened then?

6 A. We picked up the weights that Mark had assembled and
7 threw those in the back of the truck, got out, pulled the
8 truck out, and Mark got out and locked up the shop, and I
9 got in the back-bed of the truck and the other two in the cab
10 and we went back to Loch Lomond.

11 Q. When you got back to Loch Lomond, what happened at that
12 point?

13 A. We pulled up and we were backing the truck towards the
14 water, and the security guard came back again to see if we
15 had a key to the bathroom.

16 Q. Where was the body?

17 A. In the back of the truck.

18 Q. Did you have any weapons with you at that time?

19 A. Everybody had a gun.

20 Q. What part of the truck did the security guard approach?

21 A. As I can remember, he pulled to the front of the truck
22 and got out and was talking to Mark on the lefthand side
23 corner panel.

24 Q. What happened then?

25 A. Crossy and I were sitting, talking in the back of the
26 truck, real nervous. Mark was real polite to the man and
27 he just got back in his car and left. Mark told me to go
28 look and see if he was watching us. So I ran around the corner

1 to see what he was doing and he was just doing some paper
2 work in his car and Crossy and Mark wheeled the body. We
3 all pulled it out of the truck and Crossy and Mark wheeled it
4 down the ramp and put it in the boat, still on the creeper.

5 Q. Then what happened?

6 A. Crossy got in the truck and parked the truck and I grabbed
7 the weights out of the bed, put it in the boat. Crossy
8 parked the truck and came back, and when I got in the boat
9 and tried to start the engine, it took a couple of tries.
10 Then we started the engine and went up in the Bay.

11 Q. What happened after you left the dock area and went out
12 into the Bay?

13 A. We went out on San Pablo Bay, I believe it is. I am
14 guessing, and we got maybe two, three hundred yards away
15 from the eel channel where the boats come out, and the
16 engine died and Mark fixed it, and we went a little further
17 and then the engine died again, and Mark fixed it. We went
18 farther and we decided to dump the body out because we
19 couldn't trust the engine of the boat. So Mark picked up
20 the body and put it in the water and I put up the crate
21 with the weights that was tied to the body and threw him
22 over the side.

23 Q. What happened?

24 A. The cord snapped and the weights sunk to the bottom and
25 the body floated aside the boat.

26 Q. Then what occurred?

27 A. Everyone was really nervous, and worried and we had to
28 hold the body next to the boat so it wouldn't float out.

1 We were trying to think of a way to make the body sink and
2 as we were doing this, we got drifting with the tide. Then,
3 eventually Mark remembered we had another motor on the boat.
4 We picked up that motor and used the rope from the anchor
5 and retied it to the body and sunk the body.

6 MR. BERBERIAN: Your Honor, we have an outboard motor
7 that is here that I ask the Court to allow the witness to
8 leave the witness stand to examine.

9 Mr. Shapiro can come and examine it, if he wishes. It
10 can be marked at the recess.

11 THE COURT: Yes. Did you want to take a look at that?

12 MR. SHAPIRO: No.

13 MR. BERBERIAN: Maybe Officer Lindquist could take it
14 up.

15 THE COURT: That can stay on that crate there.

16 MR. BERBERIAN: Q. Mr. Campbell, do you want to take a
17 look at the motor, the cover? Mr. Campbell, could you examine
18 that from where you are sitting?

19 THE WITNESS: A. Yes, sir.

20 Q. Do you recognize that motor?

21 A. Yes.

22 Q. Is that the motor that was used to tie around the body
23 of Mr. Baldwin?

24 A. I never got a clear view of it, but I know that that
25 is the rope. It didn't look that big, because I cut that.
26 I know that is the rope, because I cut that.

27 Q. How was the motor that you used tied to the body?

28 A. With the rope from one of the anchors, the rope that Mark

1 was pulling the motor boat when Mark was pulling the
2 Trolling motor from the back of the boat across while
3 holding the body to the side of the boat so it wouldn't
4 float away, and I was untying the anker so we could use the
5 rope to tie around the body and the motor.

6 Q. What happened then?

7 A. We let it go, and the body sank.

8 Q. Then what happened?

9 A. Mark fixed the engine to our boat, got it to running
10 again, and then we turned and headed towards Loch Lomond
11 and stopped one or two more times before we got back to the
12 dock.

13 Q. A number of days after this particular incident, the
14 disposing of the body that you just talked about, did you
15 go with Mr. Richards to Matthew's T.V. and Stereo City in
16 Daly City?

A. Yes, sir.

17 Q. How is it that you happened to go with Mr. Richards to
18 that particular location?

19 A. We tried another T.V. store and they insisted on shipping
20 and setting up the equipment and Mark just remembered that
21 Matthews had easy financing, etc., so we headed up there.

22 Q. What were you intending to purchase; if anything, if
23 you went to Matthews T.V. and Stereo?

24 A. He wanted to buy almost everything he had; a large
25 screen projector, movie camera, car stereo, stereo for the
26 house, Fidelity cassette recorder, portable.

27 Q. What name was Mr. Richards going to use to purchase these
28 items?

A. He was using Mr. Baldwin's.

1 Q. How did you get to Matthew's T.V. and Stereo?

2 A. Mark drove me in his Ford Granada.

3 Q. Was Mr. Hoover with you? A. No, sir.

4 Q. What happened after you arrived at that store in Daly City?

5 A. We went in and Mark told them that everyone had been
6 harping on him to get the latest equipment, and he would
7 rather make it one big purchase and have one easy payment
8 a month, and there was some nice gentleman who showed him
9 around, showed him all the stuff he was going to finance.

10 Q. Did he do something towards purchasing these articles,
11 referring to Mr. Richards?

12 A. Yes. He filled out an application and whatever term
13 it is for financing.

14 Q. What name did he use with regard to attempting to
15 get this financing?

16 A. He was using Mr. Baldwin's name.

17 MR. BERBERIAN: I have no additional questions at this
18 time.

19 THE COURT: Mr. Shapiro.

20 CROSS EXAMINATION

21 BY MR. SHAPIRO:

22 Q. Mr. Campbell, you were offered complete immunity in return
23 for your testimony; isn't that true?

24 A. Yes, sir.

25 Q. You were promised that you would walk out free of any
26 charges if you testified against Mark; isn't that what they
27 told you? A. Yes, sir. Can I explain something?

28 Q. Didn't they tell you that?

1 A. Yes; but when they first offered it to me, he said that,
2 my lawyer, my attorney said that Mark was blaming the thing
3 on Crossy and I, and they would like me to testify and I
4 volunteered to testify then, and after I volunteered to
5 testify, he then told me that for me doing so I get immunity.

6 Q. In other words, you were told by whom that Mark was
7 blaming you and Crossy?

8 A. My parents told me that they had heard it on the news
9 or newspapers.

10 Q. Did the police tell you that?

11 A. No, sir.

12 Q. In any event, sooner or later they promised you to walk
13 out free if you testified?

14 A. Yes, sir.

15 Q. And that is when you gave the police the first statement?

16 A. On that day, yes.

17 Q. Now, you made a statement to a tape recorder; did you?

18 A. Yes, sir.

19 Q. Was that the first statement that you made, or had
20 you made a statement earlier?

21 MR. BERBERIAN: Objection; vague and ambiguous as to
22 whom.

23 MR. SHAPIRO: I am talking about the police.

24 THE WITNESS: A. That was the first statement I made.

25 Q. When the police asked you when this occurred, you told them
26 it was Monday, July 5th; didn't you?

27 A. No, sir. I wasn't sure on the date.

28 Q. Are you sure you didn't tell them it was July the 5th,

1 because you recognized that it was the day after the 4th when
2 you couldn't do it, because of the firecrackers?

3 A. I remember they tried to help me and I couldn't remember
4 if it was the 5th or the 6th.

5 Q. Do you remember, Mr. Campbell whether or not you told
6 them it was the 5th, Monday the 5th?

7 MR. BERBERIAN: Objection; asked and answered.

8 MR. SHAPIRO: Cross examination!

9 THE COURT: He can answer the question.

10 THE WITNESS: They tried -- they asked me --

11 THE COURT: Just answer the question. If you have to
12 explain it, you can. First answer the question.

13 MR. SHAPIRO: Do you remember the question?

14 THE WITNESS: No, sir.

15 Q. Did you tell the police at any time that it occurred
16 on Monday, July 5th?

17 A. No, sir.

18 Q. Did you ever read the transcript of your tape recording?

19 A. Yes, sir.

20 Q. Was it true and accurate?

21 A. As best I can recollect.

22 Q. All right; Page 394. Remember Mr. Lindquist talking to
23 you, this officer, Officer Lindquist; do you remember him?

24 A. Yes, sir.

25 Q. Mr. Zunino was there; remember that?

26 A. Yes, sir.

27 Q. They asked you what date it was, to the best of your
28 knowledge, Mr. Zunino on Line 25 and you said, "It is
Monday, I am pretty sure it was Monday, because he tried

1 to do it on the 4th and couldn't do it."

2 A. Yes, Sir.

3 Q. Mr. Zunino said, "The 4th was a Sunday." Excuse me,
4 just a moment. I will get to Page 394.

5 You said, "Right, he couldn't get in touch with him
6 on the 4th, so I am pretty sure, almost positive it was
7 Monday. That was when we went over there. That is right,
8 because he -- and there is something unclear -- Tuesday,
9 that is right." Mr. Zunino said, "You tell us." Mr. Campbell
10 said, "I know, I am thinking. I am pretty sure it was Monday.
11 It was following the 4th of July, and we went over there.
12 We got there at 10 o'clock and Mark kept using the phrase
13 that he talked to Dick and Campbell like a chicken, like
14 you put the chicken, you grab it by the neck and break it.
15 So he was talking to Dick and calmed him down."

16 Now, later on, Mr. Keaton was there. Remember Richard
17 Keaton. He said, "Did you work on that Monday, the 5th,
18 that was a holiday?" Mr. Campbell said, "Yes, I know, we
19 worked on the 5th, at least he said Gary and Pete to work
20 on the 5th -- something is unclear. Can't give the guys
21 definite Monday or Tuesday, I mean now. As far as I can
22 remember, I am pretty sure it was Monday, because he
23 wanted to do it on the 4th."

24 Now, you did tell them it was on Monday; didn't you?

25 A. You are asking me for specifics. I didn't know; I
26 didn't tell them specifically it was on Monday. I did not
27 know.

28 Q. Did you say the things I read to you?

1 A. Yes, sir.

2 Q. Did you work that Monday, the 5th of July?

3 A. Yes, sir.

4 Q. Where did you work?

5 A. We started off at the Church.

6 Q. And, did you work on Baldwin's house on the 5th of July,
7 Monday?

8 A. I don't remember; I can't give you a definite yes or no
9 that I know that the homicide took place, sir.

10 Q. You said that you arrived at Baldwin's house twenty
11 minutes before ten and you have a pretty clear recollection
12 of that; don't you?

13 A. Yes. I know it was a little after 9:30.

14 Q. And, was Tom and his child there?

15 A. When we first got there, we didn't -- we drove past the
16 house and went down the street where there is a bridge, and
17 we talked for a while. We got to Mr. Baldwin's house, I think,
18 just like five to ten, ten o'clock; that is when we actually
19 pulled up in front of the house.

20 Q. Was Tom there? A. Yes.

21 Q. What was he doing?

22 A. When we entered the house, he was sitting at the table,
23 talking to Mr. Baldwin in the kitchen.

24 Q. And, did Tom have a car there?

25 A. Yes, sir.

26 Q. What kind?

27 A. A yellow Volkswagen Bug.

28 Q. Are you sure? A. Yes.

1 Q. You are positive? A. Yes.

2 Q. It couldn't have been a green truck?

3 A. No, sir.

4 Q. You are sure you got there before Tom? Are you sure

5 that Tom was there when you got there?

6 A. Yes.

7 Q. You were there until some time around 12 o'clock or

8 12:30; something like that?

9 A. Something like that, sir.

10 Q. And, Tom was still there; right?

11 A. Yes.

12 Q. And his little youngster was there?

13 A. Yes.

14 Q. You are sure of that? A. Yes.

15 Q. Now, let's go back to the time when you said Mr. Richards

16 first proposed to you some action against Mr. Baldwin.

17 Tell me again when that was.

18 A. I can not give you a definite date.

19 Q. When did you start to work for Mark Richards?

20 A. Can't give you a definite date on that. It was approxima-

21 tely four and a half months ago from now.

22 Q. And, was it shortly after you started to work??

23 A. That this took place?

24 Q. Yes.

25 A. No, sir. I worked with Mark at the Klein job for weeks.

26 Q. And, nothing happened while you were on the Klein job

27 about Baldwin?

28 A. Not that I can recollect definitely.

1 Q. And when did you finish the Klein job, or when did you
2 stop work on the Klein job; do you know?
3 A. No, sir.
4 Q. Was it in the summer time?
5 A. It was in the summer time; yes.
6 Q. What job did you go to after the Klein job?
7 A. We did work on Mark's house and then there was work to
8 be done at the Church in San Rafael.
9 Q. Do you remember what month it was that you did work
10 on Mark's house?
11 A. August.
12 Q. Was anybody living there besides Mark and his wife
13 at that time?
14 A. No, sir.
15 Q. You are sure? A. Yes, sir.
16 Q. How long did you work on Mark's house; was that August
17 of this year? A. Yes, sir.
18 Q. Was that after the killing?
19 A. Was it after -- no, sir.
20 Q. When was the killing?
21 A. It was sometime in July, after the 4th.
22 Q. So, when did you work on Mark's house, in August of this
23 year after the killing?
24 A. I worked in Mark's house before the killing.
25 Q. August of 1981, a year ago?
26 A. I worked at Mrk's house the month before the killing.
27 Q. Do you know what month it is?
28 A. No, not offhand.

1 Q. Do you know what month last month was?
2 A. I couldn't tell you right now, sir.
3 Q. When is your birthday?
4 A. September the 4th, 1964; I was born.
5 Q. When is that in relation to now; how long away is that?
6 Is it a couple of months, a year?
7 A. Two weeks; two weeks, a week.
8 Q. Now, when this matter first came up, can you remember
9 on what job you were working, the matter of Richard Baldwin;
10 what job were you working?
11 A. When we first started getting the details, when we
12 were at Mark's house.
13 Q. When you were working at Mark's house?
14 A. Yes, sir.
15 Q. And, do you think that was in August?
16 A. I think so, yes.
17 Q. You think that was in August?
18 A. No, June.
19 Q. June? I beg your pardon? A. June.
20 Q. Did you want to say something?
21 A. That would be in June, the June before July.
22 Q. June of 1982?
23 A. June of this year.
24 Q. Of this year, and tell me, who was present when this
25 conversation, the first time you talked about it, the very
26 first time he talked to you?
27 A. The only time anyone was ever present was just Mark,
28 Crossy and I.

1 Q. The first time that he talked to you, did it make a
2 pretty big impression on you? Were you surprised?

3 A. I was surprised, but you couldn't call it an impression.
4 Crossy and I laughed.

5 Q. I beg your pardon?

6 A. I wouldn't call it a great impression; Crossy and I
7 laughed, we just laughed.

8 Q. And how long did the conversation take place; a matter
9 of just a minute; did he just say something in passing?

10 A. The first time I ever heard about it, it was just in
11 casual conversation; just one quick sentence and that was
12 the end of it. That was the first time we knew of it.

13 Q. The quick sentence; right? A. Yes, sir.

14 Q. You laughed and Crossy laughed?

15 A. We both laughed.

16 Q. Did you talk about it afterwards, you and Crossy?

17 A. No, sir.

18 Q. You and Crossy took the truck home every night; didn't you?

19 A. Most nights.

20 Q. And who drove it from Mark's house to Novato?

21 A. Crossy did all the driving.

22 Q. Crossy drove it? A. Yes, sir.

23 Q. And, you didn't talk about this quick sentence that you
24 just mentioned? A. No, sir.

25 Q. Never talked about it?

26 A. No, sir; not the quick sentence.

27 Q. Did you ever talk about it to anybody else?

28 A. Not at that point.

1 Q. Now, when is the next time, after this time; you think
2 it was in June when you had the quick sentence. What is the
3 next time?

4 A. As near I can get, I think it was after the Klein job;
5 two weeks after when he started bringing it up again.

6 Q. Two weeks after he mentioned it the first time?
7 This time you were working on the Klein job?

8 A. As best I can recollect. I can't say definitely.

9 Q. What can't you say definitely, Mr. Campbell?

10 A. That we were working on the Klein job.

11 Q. Did it happen, this next conversation, was it just
12 another quick sentence?

13 A. It was a quick sentence, but it brought in a little more
14 detail and he started talking about money and figures.

15 Q. And, did you and Crossy talk about that afterwards?

16 A. Yes, at that time we did.

17 Q. I beg your pardon?

18 A. Yes, sir.

19 Q. What did you and Crossy talk about; whether you wanted to
20 do it or not?

21 A. Crossy and I talked about the money, not whether it be
22 done or not, but just the amount of the money.

23 Q. Did you expect to get the money?

24 A. At that time?

25 Q. Yes, any time when you started to talk to Crossy about it
26 you were expecting to get money?

27 A. We were wondering what it would be like to have the money
28 and if we had it, what we were going to do.

1 Q. Did you expect to get the money without doing it?
2 A. No. We would be in trouble without doing it. We were
3 thinking about that.
4 Q. Did you think about getting into trouble?
5 A. Yes, sir.
6 Q. Did you talk about it with Crossy?
7 A. About getting in trouble?
8 Q. Yes.
9 A. Yes, sir.
10 Q. Now, did that make a pretty strong impression on you,
11 the second time you talked about money?
12 A. It made a strong impression on me that he was serious.
13 Q. And so, do you remember where you were when he told
14 you at the time it made the impression?
15 A. No, sir.
16 Q. Would it have been on the job some place?
17 A. All the times we ever talked we were in either Mr.
18 Richards' house or we were in a car going to and from a job;
19 not at the job site.
20 Q. On what occasion would you go inside Mr. Richards house?
21 Would you go in his house every day?
22 A. No. I went into Mr. Richards' house, we went in there
23 every day after work and in the morning.
24 Q. Every day? A. Yes.
25 Q. Now, you and Crossy talked about it after the second time
26 to see whether or not, you know, whether the money was there
27 and so forth. Did you talk it over with anybody else besides
28 Crossy? A No, sir.

1 Q. Did you go to the police? A. No.
2 Q. Didn't you think it was against the law to do this?
3 A. Yes, sir.
4 Q. And, did you think that you ought to do something so
5 it wouldn't happen; like going to the police?
6 A. I didn't know if he'd be able to carry it out. I mean,
7 he was telling us about it. How would we know he was really
8 totally serious at that time.
9 Q. So, you didn't know whether he was serious or not?
10 A. It sounded serious, but you couldn't be sure until it
11 was done.
12 Q. Did you talk to Crossy about possibly going to the police
13 anyway, just whether or not it was serious?
14 A. No, sir.
15 Q. So, the police was the farthest thing from your mind;
16 isn't that right?
17 A. They weren't the farthest thing from my mind, but
18 we weren't going to turn Mark in because he was talking about
19 killing somebody.
20 Q. Even after the second time you thought he was just talking
21 about it; isn't that right? A. Yes, sir.
22 Q. How well did you know Mr. Baldwin? Did you call him by
23 his first name; Dick?
24 A. He asked me to when we arrived at the house.
25 Q. That was not the July date, but some time before when
26 you first started to work there?
27 A. No, sir. The first time I met Mr. Baldwin is the day
28 of the homicide.

1 Q. Had you ever worked on his house before?
2 A. No, sir.
3 Q. Did Crossy know Mr. Baldwin?
4 A. As far as I know he didn't. He was with me most of the
5 time. He didn't know Mr. Baldwin to the day of the murder
6 either.
7 Q. How many times did you talk this over with Crossy after
8 the second time?
9 A. Shortly after we left Mr. Richards' house in the truck
10 and it was after that.
11 Q. Now, the next time that this conversation with Mr.
12 Richards took place, the next conversation, when was that?
13 A. I can't give you a date. It was just, it was getting
14 closer to the date of the murder, and he told us he would get
15 a little more specific, say how we could escape in case the
16 police would come after us, etc., etc.
17 Q. I take it then you couldn't tell us what month the third
18 time the matter was registered?
19 A. No, sir, not definitely.
20 Q. Was it before the 4th of July?
21 A. It was before the 4th of July; yes.
22 Q. And, at what point did you think he was serious?
23 A. I guess when we drove up to his house and we were still
24 talking about it. Then we knew for sure. I didn't know the
25 murder was to be committed until they came back and told me
26 it was done.
27 Q. You didn't have any idea they were going to do it on that
28 day?

1 A. I knew they were planning and doing it, but even Mark
2 and Crossy weren't sure they could get Mr. Baldwin away
3 from the front door, or that if Mr. Baldwin might know
4 something, was suspicious, or somebody would come in the
5 shop, etc. They didn't know if they would get the opportunity.

6 Q. So, when you went to work that day, you didn't know whether
7 it was going to be a murder or a day's work; is that right?

8 A. I knew he was planning on a murder, but I didn't know
9 what we were going to do.

10 Q. Didn't you have any idea as to whether it was going to
11 be; it was just going to be some time when it was convenient;
12 right?

13 A. Yes.

14 Q. And, you hadn't talked it over before as to whether it
15 would be?

16 A. We talked it over before. He said he wanted to do it
17 on that day, but again, he wasn't sure he could do it.

18 Q. On what ever day it was?

19 A. Yes, sir.

20 Q. Had you made plans to do it on some other day?

21 A. He wanted to do it on July the 4th, because the police
22 would be busy chasing people with fireworks, etc.

23 Q. That is the day it was planned? Now, did you and Crossy
24 after you had formulated some plan for this murder, you and
25 Crossy must have talked it over pretty frequently; didn't you?

26 A. Crossy and I didn't talk it over frequently until after it
27 happened.

28 Q. Never talked about it ahead of time, what you were going
to do?

1 A. I said Crossy and I didn't know. We didn't talk about it
2 frequently.

3 Q. Did you talk it over with Crossy, what you might do if
4 you got caught?

5 A. Crossy and I didn't talk that over. Mark said he knew
6 people up in Humboldt County that would hide us away.

7 Q. When you and Crossy were together and Mark wasn't there,
8 did you talk it over with Crossy what you would do if you
9 got caught?

10 A. No, sir.

11 Q. Did you think you might get caught?

12 A. There was a possibility.

13 Q. Now, on whatever date it was that it happened, you left
14 Mr. Baldwin's house and went to lunch at Diller's?

15 A. Yes, sir.

16 Q. Do you remember going to lunch at Diller's, or is that
17 just a place where you generally ate?

18 A. I remember going to lunch at Diller's.

19 Q. You couldn't have been any other place?

20 A. No, sir.

21 Q. You are sure of that?

A. Yes, sir.

22 Q. And, did you eat lunch inside of Diller's?

23 A. No, sir.

24 Q. Where did you eat?

25 A. We ate lunch in the truck as we went to check on the
26 other people at the Church and on the way back to Mr.
27 Baldwin's house.

28 Q. You say "the other people at the Church," what are you
talking about?

1 A. Keith and Gary.
2 Q. Keith Andrews?
3 A. I believe that's his last name.
4 Q. And Gary Abels? A. Yes, sir.
5 Q. And, they were working for Mr. Richards over at the
6 Church; is that correct? A. Yes, sir.
7 Q. And you and Crossy and Mr. Richards went over there
8 after lunch at Diller's?
9 A. Yes, sir, to see how they were doing.
10 Q. How was Mark dressed on that day; do you remember?
11 A. No, sir.
12 Q. How were you dressed?
13 A. I don't remember.
14 Q. How about Crossy?
15 A. I can't tell you how Crossy was dressed either.
16 Q. How about Tom?
17 A. I am not positive. All I can vaguely remember is that
18 he had a flowered buttoned shirt on.
19 Q. And, you went and Keith and Gary and when you say you
20 wanted to check on what they were doing, what were they doing?
21 A. Working.
22 Q. Do you remember what kind of work they were doing?
23 A. They were remodeling the kitchen.
24 Q. What were they specifically doing when you got there?
25 A. I can't tell you exactly.
26 Q. Did you have some talk with Keith and Gary?
27 A. We just walked in and asked them how they were doing;
28 if they needed any supplies.

1 THE COURT: People vs. Richards. We have the defendant
2 present with counsel; Mr. Berberian representing the People.

3 MR. SHAPIRO: Just before the recess, Mr. Campbell,
4 you told us Keith and Gary, Keith Andrews and Gary Abels
5 were at the house along with you and Crossy and Mr. Richards
6 and you then left; right, all of you, Crossy and Keith and
7 Gary all left about the same time; right?

8 A. Yes, sir.

9 Q. Do you think this is somewhere about an hour after you
10 got there?

11 A. I guess somewhere about a half an hour after we got there.

12 Q. And, you drove around the shopping center, I take it,
13 with Crossy?

14 A. Well, we left. There is a shopping center and Gary came
15 back.

16 Q. When you got back, you had a conversation with Mark
17 and he told you he had done enough for that day and he didn't
18 want to go back to the house.

19 A. Yes, sir.

20 Q. So you and Crossy got back in the truck and you went to
21 Novato and Crossy dropped you off at your friend's, Mark Ford?

22 A. Yes, sir.

23 Q. And, did you tell Mark about anything?

24 A. No.

25 Q. Was it dark by this time?

26 A. Yes.

27 Q. It was still light when you got to Mark Ford?

28 A. Yes.

1 Q. And, as far as you know, Crossy went home?

2 A. Yes.

3 Q. Where does Crossy live in relation to where Mark Ford
4 lives?

5 A. In terms of distance?

6 Q. I beg your pardon?

7 A. In terms of distance?

8 Q. Yes.

9 A. About a mile and a half.

10 Q. Did you stay with Mark Ford that night?

11 A. No, sir.

12 Q. Did you go home?

13 A. I went home to my house that evening.

14 Q. Later on? A. Yes, sir.

15 Q. And, did you have to walk?

16 A. No. Mark gave me a ride.

17 Q. In the morning Crossy would pick you up if he had the
18 truck? A. Yes, sir.

19 Q. I take it the next day, after this homicide, Crossy
20 picked you up?

21 A. Yes, sir.

22 Q. And, he, I take it the next day, after this homicide,
23 Crossy picked you up? A. Yes, sir.

24 Q. And he took you where?

25 A. To Mark's house.

26 Q. To whose house?

27 A. Mr. Richards.

28 Q. There is two Marks involved, Mark Ford and Mark Richards.
So we have to keep them separate.

1 Q. What time did you usually get to Richards' house?
2 A. Mr. Richards' house between 8 and 8:30.
3 Q. And, did you have breakfast or coffee or anything?
4 A. Where?
5 Q. At Mr. Richards' house.
6 A. No, sir.
7 Q. You would just get, the two of you together and get ready
8 to work?
9 A. Mark told us what he wanted everybody to do and we
10 dispatched to work.
11 Q. Did Keith and Gary arrive the following morning, the
12 morning after you had been to Mark Ford's house?
13 A. Yes.
14 Q. To your knowledge, did they go over to work in the Church?
15 A. Yes, sir.
16 Q. What did you do?
17 A. We went back. Mark wanted all of us to go back and make
18 an appearance at Mr. Baldwin's house, as we were to see if
19 Mr. Baldwin had disappeared. So we went back to the front
20 of the house. Mark knocked on his door and Crossy went to the
21 side, was looking at Mr. Baldwin's cars in the driveway and
22 I sat in the truck.
23 Q. How long were you there?
24 A. Five, ten minutes.
25 Q. Then where did you go?
26 A. Back to the Church.
27 Q. Were Keith and Gary with you in the Church?
28 A. Yes, sir.

1 Q. How long did they work at the Church?
2 A. I presume most of the day. Crossy and I worked there
3 until 12 or 1 o'clock. Then I went home.
4 Q. You went home Wednesday noon?
5 A. I believe so.
6 Q. Whatever day that was. A. Yes, sir.
7 Q. The day after you went to Mark's house, Mark Ford's
8 house, the night before?
9 A. The day after it happened we went home early from work.
10 Q. And, you left Keith and Gary at the Church?
11 A. Yes.
12 Q. When is the next time you saw Mark Richards?
13 A. The next day.
14 Q. When?
15 A. The next day.
16 Q. The next day? Now, did you ever go to meetings of this
17 Pendragon thing?
18 A. I never went to them. I was in the house when two of
19 them took place.
20 Q. Did you ever listen to them, what they were talking about?
21 A. Yes, sir.
22 Q. And, who else did you see there ever?
23 A. Besides the three of us involved, John Stapp and a guy
24 named, another Mark. I don't know his last name.
25 Q. And how many times did you see John at Mark's?
26 A. Two or three.
27 Q. How about Keith and Gary, did they ever come to the
28 meetings? A. No, sir.

1 Q. You never saw them there?

2 A. They would always leave before.

3 Q. I beg your pardon?

4 A. Mark would make sure they were gone before.

5 Q. Before the meeting?

6 A. Yes, sir.

7 Q. Who was in the Pendragon thing besides Mark; you were

8 there? You just didn't participate?

9 A. I was there and I didn't know, I guess, Mark long enough.

10 I knew a little bit about the facts, but I was never included

11 in anything.

12 Q. How about Crossy? Was he into it to some extent?

13 A. To some extent he knew about it.

14 Q. How about Willy Robles?

15 A. He knew about it.

16 Q. And John Stapp?

17 A. Yes.

18 Q. And Mark and Crossy?

19 A. To some extent, yes.

20 Q. What night would they usually meet?

21 A. Tuesdays at six o'clock.

22 Q. You had to stay around because Crossy was your transportation?

23 A. Yes.

24 Q. Right? A. Yes, sir.

25 Q. So, they met Tuesdays at six o'clock after work?

26 A. Yes. We would get to his house about five o'clock;

27 Gary, Keith, Crossy and I, and, you know, we always sat and

28 talked for half an hour about the next day. At 5:30 they

1 would leave and at six o'clock, John and the other Mark
2 would come over.

3 Q. Was it just about every Tuesday?

4 A. There were four or five of them.

5 Q. I beg your pardon?

6 A. I knew of four of them.

7 Q. Four of them? A. Yes, sir.

8 Q. I know you have problems with dates, Mr. Campbell,
9 but when you were doing this Church job, were you having
10 those meetings during that time?

11 Were some of them during the week of the homicide?

12 A. Yes. That was put off until Wednesday.

13 Q. You had to wait around on Wednesday night?

14 A. I waited around on Wednesday night, whenever it was;
15 the week when the homicide was, the meeting was put off until
16 Wednesday. It was put off.

17 Q. Do you remember it being on Wednesday?

18 A. I am pretty sure. I know it was put off one day.

19 Q. What would you be doing while the rest of them were having
20 this meeting? Would you be listening?

21 A. Yes.

22 Q. Can you remember what they were talking about, Mr. Campbell?

23 A. Mark, not Mark, John Stapp was supposed to have plans
24 of the territory mapped out. I don't know for what purpose.
25 The other Mark was supposed to do the same thing. Each
26 supposedly, they were getting everything together for the
27 conquer of Marin County.

28 Q. You didn't believe in any of that?

1 A. It was interesting listening to. I was always a smart
2 alec about it.

3 Q. Did the otherg guys do more than listen? Did they
4 participate in the discussion?

5 A. Yes, sir.

6 Q And, on the meeting, which had been postponed for one day,
7 do you have any recollection as to what they were talking
8 about at that time?

9 A. Not exactly.

10 Q. Any ideas? Do you have anything at all?

11 A. No. I guess it would be the same old thing of gathering
12 information about the territory, streets, etc.

13 Q. Would they be looking at maps?

14 A No, sir. I never saw a map.

15 Q. You never saw a map? Books?

16 A. No, sir.

17 Q. Diagrams?

18 A. No. Just, Mark would talk to them.

19 Q. After this thing happened, you and mark, you and Crossy
20 talked it over; did you, about what had happened?

21 A About the murder?

22 Q. Yes.

23 A. Yes, sir.

24 Q. And, at that point, after it happened, did you start to
25 talk about what you would do if you got caught?

26 A No, sir. Mark told us before we even committed the
27 homicide we would go to Humboldt County with him.

28 Q. Go to Humboldt County? A. Yes, sir.

1 Q. So, you didn't have any idea that you were going to
2 get caught, up to the time when you were arrested?

3 A. Well, Crossy and I had a feeling two or three days before.

4 Q. Did you tell Mark your feelings, that you might get caught?

5 A. No, sir. The Friday we were arrested, we went over there
6 in the morning. Crossy and I decided on the way over we
7 weren't telling him. It was the last day we were involved
8 with anything. If he wanted more money, he was on his own.

9 Q. Did you go that week, the week of the homicide, did you
10 spend any nights at Crossy's house?

11 A. No, sir.

12 Q. Did you spend the night at Mark's house?

13 A. The night that we got rid of the body?

14 Q. You spent that night at Mark's house?

15 A. We didn't get back until like 3:30, 4 in the morning.
16 We slept until 7:30, yes.

17 Q. Did you see Mr. Richards that night?

18 A. Yes, sir.

19 Q. And both you and Crossy stayed there that night?

20 A. Yes, sir.

21 Q. And, do you remember where the body was in the shop?

22 A. Underneath the car.

23 Q. Was there blood or anything like that?

24 A. Yes, sir.

25 Q. Did you get blood on you?

26 A. No, sir.

27 Q. Did Crossy get blood on him?

28 A. Not from that. He had blood on him from the murder.

1 Q. Mark had blood on him?

2 A. I don't believe so.

3 Q. Were you ever present when Crossy told anybody else what
4 happened?

5 A. No, sir. I just found out later that he did.

6 Q. What did you find out?

7 A. I found out, people around the streets, you know,
8 would come up and pop questions at me, and after we were
9 apprehended, when my former boss contacted my mom, I found
10 out that Crossy told her about the whole thing and she told
11 her mom and she found out we got caught.

12 Q. That was something that he told her before he was
13 apprehended?

A. Right.

14 MR. BERBERIAN: Objection; it calls for hearsay.

15 THE COURT: Well, that objection is sustained. The
16 answer is stricken.

17 MR. SHAPIRO: Q. Do you know what her name was?

18 THE WITNESS: Nicky Ronge.

19 Q. Pardon me? A. Nicky Ronge.

20 Q. Nicky Ronge? A. Yes.

21 Q. Any idea where she lives?

22 A. She used to, she was living close to where we were
23 arrested.

24 Q. How do you spell her last name?

25 A. I have no idea.

26 Q. Who else did Crossy talk it over with?

27 MR. BERBERIAN: Objection; calling for hearsay.

28 MR. SHAPIRO: It doesn't call for a statement, what Crossy

1 said, but just with whom he talked it over.

2 MR. BERBERIAN: He would have to relay that through
3 statements and that would be hearsay.

4 MR. SHAPIRO: It is not for the truth of Crossy's
5 statement.

6 THE COURT: Well, you can answer the question if you
7 saw Crossy Hoover talking to anyone.

8 THE WITNESS: I never saw Crossy talk about it to anyone.

9 MR. SHAPIRO: Q. Did Crossy tell you who he talked to,
10 with whom he talked it over?

11 A. No, sir. He said he didn't tell anybody. I knew he
12 had knowledge who had knowledge about it was Keith and he
13 didn't tell him. Keith just put it together on his own.

14 Q. The night, when you got home late and stayed at Richards'
15 house, could it have been as late as six o'clock in the morning?

16 A. When we arrived there?

17 Q. Yes.

18 A. No, sir, because I remember we slept for more than an
19 hour and a half.

20 Q. It wasn't light?

21 A. No, not when we arrived there.

22 Q. At which house, Richards?

23 A. No, sir.

24 Q. You are pretty sure of that?

25 A. Well, I know for a fact when we pulled up it was dark,
26 because his wife was out there to meet us.

27 Q. Now, let me go back to the time when you talked to the
28 security guard. When you talked to him in the truck or

1 outside of the truck --

2 A. I did not talk to him. The conversation took place when
3 I was out of the truck.

4 Q. You were out of the truck?

5 A. We were all out of the truck.

6 Q. You were in a position where you could hear him?

7 A. No, sir.

8 Q. You didn't hear the conversation?

9 A. No, sir.

10 Q. So, you don't know what was said?

11 A. No, sir.

12 Q. You don't know that he wanted to have you deposit money
13 under the door?

14 A. No, I didn't hear him say it; I know that because I
15 was the only one who had money on me and I had to pay it.

16 Q. You took care of that yourself?

17 A. I was the only one with money; yes.

18 Q. What did you do with the money?

19 A. I put a \$5 bill underneath the door.

20 Q. And, is that the door which he told you to put the
21 \$5 bill under?

22 A. He didn't tell me. It was the door -- it had a sign on
23 it with a \$3 launching fee.

24 Q. And, did you put a little slip with your driver's license
25 number on it?

26 A. We wrote the number on the body, on the \$5 bill.

27 Q. How many times did you talk, or was there a conversation
28 that you were aware of with the security guard, just once?

1 Q. Did they need any supplies?
2 A. Not that I can remember. We didn't go get any more
3 for them.
4 Q. Pardon me?
5 A. We didn't go get any more for them.
6 Q. All three of you got back in the truck?
7 A. Yes, sir.
8 Q. Are you sure of that? A. Yes, sir.
9 Q. Did you go any place before you went back to Mr. Baldwin's?
10 A. Not that I can remember, sir. After Diller's we went
11 to the Church. We drove back to Mr. Baldwin's.
12 Q. How long were you at the Church?
13 A. I estimate ten, fifteen minutes.
14 Q. What time did you think it was when you got back to
15 Mr. Baldwin's?
16 A. I assume about 1:30, 2 o'clock.
17 Q. And Tom was still there with his youngster and his yellow
18 Volkswagen?
19 A. No, sir. As we were pulling up the road, Tom was leaving
20 in his yellow Volkswagen with the youngster.
21 Q. That would be at 1:30, 2 o'clock?
22 A. Yes, sir.
23 Q. How long did you stay at Mr. Baldwin's house having
24 cookies?
25 A. We were there, I guess, about an hour, an hour and a half;
26 maybe.
27 Q. And that is 3 or 3:30, something like that?
28 A. I can't tell you definitely.

1 Q. Did you have any idea how long you were at Mr. Baldwin's
2 house? It was just a sheer guess?
3 A. Maybe.
4 Q. Could it be as much as three hours?
5 A. Could have been. I doubt it though.
6 Q. How about fifteen minutes? Could it have been fifteen
7 minutes?
8 A. No, that's too short.
9 Q. What kind of cookies were they?
10 A. Oatmeal raisin.
11 Q. And, did he make them while you were waiting?
12 A. Yes. He had the dough all ready. He just put them
13 on the cookey sheet in the oven.
14 Q. How long did it take to cook?
15 A. I believe it was twenty, twenty-five minutes.
16 Q. Did you have anything to drink?
17 A. I had a glass of water.
18 Q. Smoke a joint? A. No, sir.
19 Q. Did Mr. Baldwin ever offer you any marijuana?
20 A. No, sir.
21 Q. When you left, when the others left with Mr. Baldwin,
22 did they all get in the front seat of the truck?
23 A. Yes, sir.
24 Q. Did Mr. Baldwin leave you the key to the house?
25 A. No, sir.
26 Q. Did he tell you how to turn off the alarm?
27 A. No, sir.
28 Q. Did he effect the alarm before he left; do you know?

1 A. I didn't see it. I assumed it wasn't set.
2 Q. How did you know it wasn't set?
3 A. Because when we came back the next day, Mark said it
4 was off, and we were in the house, all the time we were in
5 the house it never went off. The doors were open. Mark
6 said before, all the doors had to be locked to set the alarm.
7 Q. Pardon me?
8 A. Mark said that all the doors had to be locked in the
9 house for security, for that alarm to be set.
10 Q. How long did you wait before you went through the house
11 to see what was there?
12 A. Fifteen, twenty minutes.
13 Q. Then, you just walked down to get a drink of water and
14 went back out and came in about ten minutes later and
15 ransacked the house; didn't you, Mr. Campbell?
16 A. No, sir.
17 Q. Isn't it true that is when you found the money, before
18 these other people came back?
19 A. No, sir.
20 Q. Did you look through the house before they came back?
21 A. I looked through the house.
22 Q. Did you look to see what you could steal?
23 A. No, sir.
24 Q. Just out of curiosity?
25 A. I looked through the house, because Mark asked me to
26 see if I could find anything that was valuable; that was it.
27 I didn't touch anything. All I did was look.
28 Q. When you started to look through the house, you didn't

1 have any idea whether Mr. Baldwin was coming back or not;
2 didn't you?

3 A. No, sir. That is why I didn't touch anything, except
4 I touched the heater in the bathroom.

5 Q. That was way back in one of the closets; that is the
6 one you touched?

7 A. The heater in the bathroom on the floor.

8 Q. You know you touched that because they told you your
9 fingerprints were there?

10 A. I told you I touched that because I remember doing it.

11 Q. Was it dark by the time people came back in?

12 A. No, sir, it was still light out.

13 Q. Still light? Do you think they were gone a couple of
14 hours?

15 A. Yes, sir.

16 Q. So, around 5:30 or so?

17 A. If you want me to guess, more like 5 o'clock.

18 Q. How long were you in the house after they came back
19 before you left?

20 A. My time accumulated. I was probably there only fifteen
21 minutes.

22 Q. About twenty minutes?

23 A. That is all the time I spent in there.

24 Q. Between the time they returned and the time that everybody
25 left the house, how much time elapsed?

26 A. I would say half an hour, 45 minutes.

27 Q. Half an hour, 45 minutes, something like that?

28 A. Yes, something like that.

1 Q. Did you have a watch?
2 A. Excuse me?
3 Q. Did you have a watch? A No, sir.
4 Q Was there a clock in the house?
5 A. No, sir, not that I saw.
6 Q. When you went back, where did you go after you left
7 Mr. Baldwin's house?
8 A. We had the stuff in the back of the truck. We went
9 to Mark's house.
10 Q. Did you go to Church first?
11 A. No, sir, not at that time.
12 Q. Did you go to Church?
13 A. We unloaded everything at Mark's house and went there
14 first.
15 Q. Was anybody in Mark's house when you got there?
16 A. No, sir.
17 Q. Between the time that you got back to Mark's house and
18 the time you left to go and buy the boat, what happened?
19 Did anybody show up?
20 A. They were not the same day.
21 Q. But, between the time you got back to Mark's house
22 and the time you went to see the man with the boat, did you
23 stay at Mark's house all that time?
24 A. No, sir.
25 Q. What did you do between the time that you got back to
26 Mark's house and the time you went to get the boat?
27 A. Crossy and I, when it was time to leave with Keith
28 and Gary, we went into the blue truck and got back into our
houses.

1 Q. Keith and Gary were at Mark's house when you got there?
2 A. No, sir. They were at the Church when we got there.
3 Q. How do you know they were at the Church if you weren't
4 there?
5 A. Because that's where they were supposed to be.
6 Q. They were at the Church?
7 A. We got to Mark's house. There was no-one there. We
8 unloaded everything out of the truck, put it in his closet,
9 went through everything, went back to the Church, got Keith
10 and Gary, went to his house. He gave them all beer and we
11 all sat and talked for a little bit, and then we left.
12 Q. How long did it take you to unload the things at Mark's
13 house?
14 A. Ten minutes.
15 Q. And how long does it take to drive from Mr. Baldwin's
16 house to Mark's house?
17 A. I couldn't tell you.
18 Q. Twenty minutes, fifteen minutes?
19 A. I don't know.
20 Q. You don't know?
21 A. Well, what I don't know --
22 Q. What time did you get back to the Church to pick up
23 Keith and Gary?
24 A. I couldn't give you an exact time.
25 Q. What is your best estimate; after six?
26 A. It was close to six.
27 Q. What?
28 A. It was close to six; that is my best estimate.

1 Q. What?

2 A. It is an estimate.

3 Q. What were they doing at the Church when you got there?

4 A. Cleaning up.

5 Q. Did you stop and get beer on the way back?

6 A. I don't believe so. I can't remember exactly.

7 Q. Did you get back to Mark's house with Keith and Gary?

8 A. Yes.

9 Q. All four of you? A. All five of us.

10 Q. All five of you! And, did you all go in the same truck?

11 A. No. I can't remember if Keith and Gary had both their

12 cars. They had to. So Keith left in his car, and Gary

13 left in his car, and we left in the blue truck.

14 Q. Keith and Gary got to the house. You all sat around

15 and had some beer; right?

16 A. All but me; I didn't drink beer.

17 Q. You didn't drink beer? Did you have anything to eat?

18 A. Not that I can remember.

19 Q. What did you do while you were there?

20 A. Just sat and talked.

21 Q. About what?

22 A. About jobs that we had done and what was left to do at

23 the Church; if there were more materials to be picked up in the

24 morning; what time we all would meet there in the morning,

25 the next day for work.

26 Q. Who was doing the talking?

27 A. Mark.

28 Q. Did you say anything?

1 A. Not at that time.

2 Q. Did Crossy say anything?

3 A. Not that I can remember.

4 Q. How about Keith?

5 A. We were all talking. I mean, there was no-one saying

6 anything specific.

7 Q. You and Keith and Gary and Crossy were talking and

8 drinking beer with Mark? Anybody else show up?

9 A. No, sir.

10 Q. Are you sure?

11 A. Yes. I don't think his wife got home that day.

12 Q. How about anybody else?

13 A. No, sir.

14 Q. Did you talk about the Pendragon?

15 A. No, sir.

16 Q. How late did Keith and Gary stay?

17 A. We all stayed approximately half an hour after we got there.

18 And then --

19 Q. And then what?

20 A. We all went home.

21 Q. You went home, and who drove you?

22 A. Crossy.

23 Q. How about Keith and Gary, did they go with you or did they

24 have their own transportation?

25 A. They had their own transportation.

26 THE COURT: Excuse me, Mr. Shapiro, I am going to take

27 a fifteen minute recess.

28 (Court recessed until 3:25.)

1 A. Twice.

2 Q. And, the first time, was that time about the money and

3 the launching fee? A. Yes, Sir.

4 Q. When was the second time?

5 A. He wanted to know if we had a bathroom key.

6 Q. How long in between the time did you talk?

7 A. I can estimate maybe an hour, two hours; maybe more

8 closer to two hours before we got back again.

9 Q. You had this conversation when you got back?

10 A. Which one?

11 Q. The one about the bathroom key?

12 A. Yes, sir.

13 Q. Did you tell that -- could you tell that he was in uniform?

14 A. He had a brown coat on.

15 Q. When you first docked the boat and then you left; right?

16 A. Yes.

17 Q. Did you leave the trailer there?

18 A. Yes, sir.

19 Q. But the boat was no longer on the trailer?

20 A. No; the boat was in the water.

21 Q. Were you there when they called up about the boat?

22 A. When he was making inquiries about the boat.

23 Q. Yes? A. I was.

24 Q. Who did the phoning? A. Mark.

25 Q. Are you sure it wasn't Crossy? A. Yes.

26 Q. Where was he getting the information, the telephone

27 number and things -- excuse me. Where was Mark getting

28 the telephone number from? A. The Gazette.

1 Q. Had you gone to go get the Gazette? Had you picked it
2 up some time ago or was it in the house?
3 A We picked it up, I believe the day after the murder, in
4 front of the Terra Linda or Fairfax Lumber, down in Fairfax.
5 There was a little stand up there.
6 Q. That was the day the Gazette comes out?
7 A. I am pretty sure.
8 Q. Did you pick it up or did somebody else?
9 A. Mark picked it up and showed it to us and sat it down.
10 I got out of the truck and --
11 Q. That was at the Fairfax Lumber?
12 A. Yes.
13 Q. They had a rack out in front? A. Yes.
14 Q. It was full?
15 A. I couldn't see that. I was just grabbing one. I wasn't
16 really looking.
17 Q. Was the rack pretty full on the first day it comes out?
18 A. I wasn't looking. I just ran out and grabbed one.
19 Q. Was this at the end of the day after work?
20 A. No, sir. It was in the morning.
21 Q. In the morning? Did Mark talk to the man about the boat
22 at all? I mean not Mark, Crossy?
23 A. Only when the guy, when the man asked us in casual
24 conversation what we were going to do. Then we both responded
25 we would both use it for fishing, going out to the Bay in
26 the summer.
27 Q. What did you do with the creeper. Did you take it with
28 you?

1 A. When we went out to the boat?
2 Q. Yes.
3 A. Yes; we brought it back. When we came back from Loch
4 Lomond we burnt it with some other stuff.
5 Q. You burnt the creeper?
6 A. Yes, sir.
7 Q. Did you stay there while the fire was on?
8 A. Yes; we were all present.
9 Q. Didn't it have metal wheels?
10 A. The creeper?
11 Q. Yes.
12 A. No. I believe they were plastic.
13 Q. I beg your pardon?
14 A. I believe they were plastic. They weren't thrown in the
15 fire, just the wood part.
16 Q. Did you say it -- you didn't burn the wheels?
17 A. Not to my knowledge. I never saw them going in.
18 Q. In your other statement you said you got back to Mark's
19 house between 3 and 3:30. Is that clear recollection in
20 your mind?
21 A. It is not absolutely positive. It is as close I can
22 get it.
23 Q. Did Mark tell you why you had the afternoon off the day
24 after the murder?
25 A. Crossy was real uptight and so was I. We were working
26 and he said we could go home.
27 Q. Can you tell me what you did on your afternoon off?
28 A. I went to Crossy's house, watched T.V., listened to music

1 lifted a little bit of weight, sat in the Peach Room; that
2 is about it. I sat around.

3 Q. Anybody there besides Crossy?

4 A. Keith.

5 Q. What did you have for dinner that night?

6 A. Dinner?

7 Q. Was it at your house? A. Yes.

8 Q. Where did you have dinner?

9 A. In my house.

10 Q. Who was home?

11 A. In my house?

12 Q. Yes.

13 A. My parents; my mother and stepfather.

14 Q. This is the day you had the half day off?

15 A. Yes.

16 Q. That was the day after the killing?

17 A. I couldn't tell you exactly.

18 Q. MR. SHAPIRO: I don't have any other questions of this
19 witness.

20 MR. BERBERIAN: No additional questions.

21 THE COURT: You may step down; you are excused.

22 MR. BERBERIAN: We will call Bernard Healey.

23 BERNARD HEALEY,

24 called as a witness by the People, after being first duly
25 sworn to tell the truth, the whole truth and nothing but the
26 truth, testified as follows:

27 THE CLERK: Please state your full name, your address
28 and spell your last name.

1 THE WITNESS: Bernard Healey, 324 Pine Hill Road,
2 Mill Valley, California. Last name is H-e-a-l-e-y.

3 DIRECT EXAMINATION

4 BY MR. BERBERIAN:

5 Q. What is your occupation, Mr. Healey?

6 A. I am a surveyor of a promotional photographic group
7 for the Bechtel Corporation.

8 Q. I have a document which I would like to have marked
9 as People's next in order.

10 THE CLERK: People's Exhibit No. 16, marked for
11 identification.

12 (Whereupon People's Exhibit No. 16, was marked for
13 identification, copy of receipt dated 7/6/82.)

14 MR. BERBERIAN: Q. Mr. Healey, I ask you to look at a
15 document marked People's No. 16. Do you recognize that,
16 what is shown on that document?

17 THE WITNESS: A. Yes, I do.

18 Q. What is it, sir?

19 A. It is a receipt I gave Mark Richards in return for
20 partial payment on a motor boat I had for sale in July.

21 Q. And, what type of a boat did you have for sale?

22 A. It was an outboard cabin cruiser.

23 Q. Could you describe it, please.

24 A. It is 16 feet long, Dorset make. It had a cabin
25 and an 80 horse power motor outside. It was on a trailer
26 and that is about all.

27 Q. Was there any other motor that was included in the sale
28 of that boat?

A. Oh yes.

1 Q. What kind of motor?

2 A. A trolling motor, a nine horse-power trolling motor.

3 Q. The date that you sold that boat to a gentleman who

4 identified himself as Mark Richards was when?

5 A. On July 6th.

6 Q. About what time would that have been?

7 A. It was about, I would say, 8:30 or 9 o'clock.

8 Q. In the morning or in the evening?

9 A. In the evening.

10 Q. And, did you meet with Mr. Richards prior to the sale?

11 A. No.

12 Q. Did you meet him that night at about 8:30 or 9 o'clock?

13 A. Yes; for the sale of the boat; yes.

14 Q. Where did that take place?

15 A. At my home.

16 Q. Had you advertised in some fashion the boat for sale?

17 A. Yes, I did. It was in the local advertise-type paper

18 called the Gazette.

19 Q. Now, how many individuals were with Mr. Richards the

20 night that you sold him the boat?

21 A. Two young men, young boys.

22 Q. Do you see the individual that you met that night by the

23 name of Mark Richards in Court today?

24 A. I can't say unless it is that gentleman there.

25 Q. Had you ever met the individual by the name of Mark

26 Richards prior to that one evening? A. No.

27 Q. Could you describe the individual, please, that used

28 the name Mark Richards.

1 A. About 38 to 40 -- no, no. He was about 29 to 30. That's
2 what I meant to say; about 5 feet 8; sandy hair, and that's about
3 it.

4 Q. You had not seen this individual before this particular
5 evening? A. No.

6 Q. Could you describe the two individuals with him?

7 A. It was only an impression I got, but they seemed to be
8 about sixteen or seventeen years of age and one of them had
9 black hair, and I can't be positive about the other. One
10 of them was slim.

11 Q. Have you seen either of the two younger men that were
12 with Mr. Richards?

13 A. No.

14 Q. -- prior to that particular evening?

15 A. No, not prior.

16 Q. Now, could you describe what happened once Mr. Richards
17 came to your house?

18 A. He drove up in a truck with two boys and parked the
19 truck, got out and came over to me and said that he was the
20 man that called about the boat. Since he had called a half
21 hour before, then I showed him the boat and offered to start
22 the motor for him, which I did.

23 I got a garden hose and attached it to the motor so
24 that I could demonstrate the motor.

25 Q. You are talking about the 80 horse-power motor?

26 A. That is correct, since the other motor was underneath
27 the back-stern portion of the boat and not immediately
28 visible. He then said that he would take the boat, that he

1 would like to have the boat and asked, mentioned there was
2 a problem with the payment, and offered to pay me \$1000
3 down right then, and \$1000 in August and another \$1000 in
4 September. That would make the total of \$3000 that I
5 was asking for the sale of the boat.

6 Q. In fact, the terms of that sale that you have just
7 described, are they shown by the document that is in front
8 of you?

9 A. Exactly; yes.

10 Q. Go ahead. What happened next that you recall?

11 A. We went in the house and in the hallway and encountered
12 my stepson and I introduced Mark Richards to my stepson.
13 Since Mark had told me that he was a contractor and my
14 stepson was also a contractor, they shook hands, and we went
15 upstairs. It is a two-story home, and we went upstairs where
16 I got the registration papers for the boat.

17 Q. And then, what occurred?

18 A. We sat down and I wrote out this note, this receipt and
19 he gave me \$1000 in cash.

20 Q. Can you describe, or do you recall the denominations
21 of the money that he gave you?

22 A. Well, I believe it was ten -- no, nine one hundred
23 dollar bills and two fifties. That is my recollection.

24 Q. Then what occurred?

25 A. We got back downstairs. The boat had been hooked up
26 and it was getting dark and it occurred to me that he had
27 no trailer lights. So he turned on the lights on the boat
28 and drove the boat away on the trailer with the two boys

1 in the truck.

2 Q. Now, was there some problem with hooking the trailer
3 up to the truck itself?

4 A. Yes, there was. Before we went upstairs, he said,
5 "Well, I will take the boat," and I noticed he didn't have
6 a trailer ball, so he said, "Darn, I don't have a trailer
7 ball." So I had an extra one in the back of one of my
8 cars. So I told him he could have that one and we put the
9 trailer ball on the boat.

10 Q. Now, with regard to the lights, you indicated that you
11 noticed there were no trailer lights on the boat; is that
12 correct?

13 A. No; there were trailer lights on the boat, but there
14 was no hook-up for the truck.

15 Q. Did you make a suggestion to Mr. Richards at that time
16 in regard to delaying the delivery of the boat?

17 A. A suggestion -- I said, well, I suggested that he turn
18 on the lights on the boat and it might be adequate, you
19 know, for him to get home since it was dusk and it wasn't
20 quite dark yet.

21 Q. Did you at any point in time recommend that he pick up
22 the boat the next day when he was having trouble with the --

23 MR. SHAPIRO: That is a leading and suggestive question.

24 THE COURT: That objection is sustained.

25 MR. BERBERIAN: Q. Do you recall telling Detective
26 Lindquist on or about the 26th of July, 1982, that you
27 recommended to Mr. Richards that he delay picking up the
28 boat until the next day when it was light?

1 THE WITNESS: I might have suggested that. I said,
2 "Well, there is no lights. You can pick it up tomorrow;"
3 words to that effect.

4 Q. Do you recall whether Mr. Richards seemed to want the
5 boat that particular evening?

6 A. He seemed quite anxious to have it as did the boys,
7 the two youngsters. He said, he told me he wanted to do some
8 night fishing, that he liked to go night fishing and go
9 fishing out of San Rafael with his boys, and at that time
10 I assumed, I made an assumption they were his sons.

11 Q. Did he ever introduce them to you as his sons?

12 A. No; he did not.

13 Q. Now, Mr. Healey, there is an object besides you, an
14 outboard motor and it will be assigned, or a photograph
15 of it, will be assigned an exhibit number at the conclusion
16 of these proceedings.

17 I ask you to examine what appears to be a Wards Sea King
18 outboard motor.

19 A. Yes, I recognize that as my motor.

20 Q. How is it you recognize that specific item?

21 A. Well, there are a couple of things. There is an
22 attachment on the side that enabled the trolling motor to
23 be hooked up to the main motor and work from the steering
24 mechanism in unison and I moved that, since I didn't want to
25 keep it on the back of the boat. I wanted to stow it below
26 since I didn't do much fishing, and I just wanted to keep
27 it as an auxiliary and I removed some of the gear, some of the
28 nuts and bolts were frozen and I just left them on there

1 and you can see those on the side of the gear shift.

2 Also, there is a throttle that had snapped off since it
3 was frozen when I got the boat, and I tried to operate it
4 and it snapped off. So, I made a make-shift handle out of
5 an aluminum handle, what we call an exacta knife, and I
6 rigged that on so it could manually twist the rod so as
7 to activate the trolling.

8 Q. And, do you see that handle of an exacta knife on the
9 motor?

10 A. Yes, it is right here.

11 MR. BERBERIAN: I have no additional questions.

12 CROSS EXAMINATION

13 BY MR. SHAPIRO:

14 Q. Did you have any conversations with the young boys at all?

15 A. Just observing them. No, I didn't address them.

16 Q. Did you show any of the three how to operate the boat
17 or how to operate the motor?

18 A. Yes.

19 Q. Which one was it that you showed it?

20 A. Mark Richards.

21 Q. Where were the others when that happened?

22 A. They were nearby, but not observing.

23 Q. When you came downstairs and, correct me if I am wrong,
24 Mr. Healey, it is my impression that the boat was already
25 hooked up and had been hooked up while you and Mark were
26 upstairs?

A. That is right.

27 Q. Approximately what time was it when they left?

28 A. I would say as near I can guess 9 o'clock.

1 Q. You have given us the address. Was it Sunny Side?

2 A. Pine Hill Road.

3 Q. That is up above the Highschool?

4 A. No; it is not. It is on Shoreline Highway.

5 Q. On Shoreline?

6 MR. SHAPIRO: I have no further questions.

7 MR. BERBERIAN: No additional questions.

8 THE COURT: The person who gave his name as Mark
9 Richards, did he give you any other information as to where
10 he might be contacted in the future regarding payments?

11 A. He suggested, he showed me his driver's license and
12 suggested that I -- no, I guess it was my suggestion that,
13 you know, if he showed me some identification, and on his
14 license I noticed it had an address other than Marin County
15 and he said, "Well, that was my former address, and I now
16 live at such and such street in San Anselmo." That is
17 about all.

18 THE COURT: Mr. Berberian?

19 MR. BERBERIAN: No additional questions.

20 THE COURT: Mr. Shapiro?

21 MR. SHAPIRO: No additional questions.

22 THE COURT: You may step down. You are excused.

23 MR. BERBERIAN: I call Mr. Sam Paul.

24 SAMUEL BAIN PAUL,

25 called as a witness by the People, after being first duly
26 sworn to tell the truth, the whole truth and nothing but the
27 truth, testified as follows:

28 THE CLERK: Please state your full name, address and

1 spell your last name.

2 THE WITNESS: Samuel Bain Paul. Last name is P-a-u-l.

3 THE CLERK: And your address?

4 THE WITNESS: 127 Sunnyside Avenue, San Anselmo.

5 THE CLERK: How do you spell your middle name?

6 THE WITNESS: B-a-i-n.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. BERBERIAN:

10 Q. Mr. Paul, I would like to direct your attention back
11 to the night of July the 6th and the morning hours of
12 July the 7th, 1982. Where were you working at that time?

13 A. Loch Lomond Marina.

14 Q. Who were you employed by?

15 A. FBJ Security.

16 Q. And, what was your job assignment, or function, on that
17 particular night and morning?

18 A. I was a security guard and I was just supposed to check
19 the piers. I had a detex clock. I would go out on each
20 pier about every half hour and punch the detex clock.

21 Q. What time did you start that shift?

22 A. 9:45.

23 Q. And, did you have occasion, after you started the shift
24 to contact any individuals around 10, 10:30 in the evening?

25 A. Yes. I made contact with three individuals.

26 Q. Where were you when you saw these three individuals?

27 A. Well, I had been at the very end of the Marina and I
28 drove all the way back to where, you know, the main parts

1 were. They have a bar there and a club house, whatever it
2 is, and I saw them, kind of looking around like they were
3 looking for somebody.

4 Q. Are you familiar with where the boat launching facility
5 would be at the Marina? A. Yes.

6 Q. Where were they in respect to that?

7 A. When I first seen them, they were just to the left of
8 there, towards the boat launching facility, you know, where
9 they have the Yacht Club House there, and then when I started
10 talking to them, we kind of moved back towards the ramp.

11 Q. And, you did then make contact with these individuals?

12 A. Yes.

13 Q. Why did you do that?

14 A. Well, they looked like they were looking for somebody
15 to see if there was anybody around, which there wasn't, and I
16 just asked them, you know, if they needed help, you know.

17 Q. Can you describe the individuals that you saw?

18 A. There was one, well, there was one older guy. I thought
19 he was, you know, 30, 35, something like that, and then two
20 teenagers, you know, Highschool age.

21 Q. Were they with a car of any type?

22 A. They had a pick-up truck, an old pick-up truck.
23 I wasn't really sure on the color, you know, or, I thought
24 it was either green or red.

25 Q. Are there artificial lights that illuminate the area
26 right in that facility?

27 A. I think there are. I am not positive. I am pretty
28 sure there must be.

1 Q. In addition to the pick-up, was there any type of
2 boat or a trailer?

3 A. Yes; they had a pick-up with the boat and trailer in
4 back of them. They had it right down on the ramp, ready
5 to go in the water.

6 Q. What did you do when you contacted them?

7 A. I just said, you know, I asked them, you know, if they
8 needed help. They said they wanted to, you know, launch
9 their boat there.

10 Q. With whom were you talking?

11 A. The older guy.

12 Q. And, did this person identify himself? A. No.

13 Q. Did you ask him for his identification?

14 A. No. I didn't ask him for his identity.

15 Q. What happened after you asked him, "What are you doing
16 here?"

17 A. Well, they just said they wanted to take the boat out
18 and I don't regularly work there. I am not really up to date
19 on rules, you know, and all that, you know. I wasn't sure
20 whether there was night launching or not. I looked around
21 for a sign there, you know, and I didn't see any signs.
22 So I just said okay.

23 Q. Did you start to do anything as far as recording names
24 or license numbers?

25 A. I said, you know, "They charge \$3 to launch a boat,"
26 generally, regularly, and so I said, "Just take -- they
27 have a little shack right next to the ramp where the guy
28 in the daytime usually takes money from people who are

1 launching a boat, and I said, "Just slip three bucks under-
2 neath the door there," and they said, "We will put \$5 under-
3 neath," and I said -- well, one of the younger boys was
4 over by the right, next to the shack, you know, and he said,
5 "I will do it, I will put it underneath," and I said, "Well,
6 you can get your license plate number and put it down, too
7 and put it under there," and I said I was going to do that
8 myself, but he just started writing it down. He said,
9 "I will do it." So it looked like he slipped it under there.
10 I was about ten or fifteen feet away from him, you know,
11 at the time. So, I just let him go ahead and put it under
12 it. I didn't check it out, you know.

13 Q. What happened next that you recall?

14 A. Then, I talked to them just a little bit there. I can't
15 remember exactly what I said, but at some point I asked them,
16 "What are you going out there for. Are you going out there
17 and fish or something," and they didn't really answer,
18 and then I had to use the restroom all of a sudden. So,
19 I went back to the restroom and I locked the detex clock in the
20 restroom after I got through.

21 Q. Did you lock anything else in there other than the clock?

22 A. Yes; the keys to all the buildings and stuff.

23 Q. Did you see these people leave at any time?

24 A. I didn't see them leave. Well, after I locked the
25 detex clock and I came back to where they were, I thought they
26 might have a key to the restroom, you know, and they said no,
27 they didn't have one. So I talked to them for a few more
28 minutes over there and then after that I just went back over,

1 you know, to the other side of where the restrooms are and
2 I was just, you know, looking around for the next hour.
3 I just looked around for somebody else that I thought might
4 have the keys; one of the people, somebody was living on
5 one of the other boats or something, you know, and then
6 I didn't find a key. So, then about an hour later I
7 came back where the ramp was and the boat was docked up
8 there, but they were gone. Their truck was gone.

9 Q. Did you see them again, or the truck again?

10 A. Yes.

11 Q. Then, after that, what did you do?

12 A. I went back to my car which was over by the restroom
13 and I went to sleep over there, and they came back in about
14 maybe an hour, an hour and a half and drove by my car, and
15 the truck, you know, it just woke me up. They said something
16 to me, and they said that they were going to be over --
17 they were back and they were going to be over there, taking
18 off or something, and they just wanted to let me know it
19 was them, you know, it was over there. So I just said okay.
20 I just went back to sleep again. So, I didn't see them
21 anymore after that.

22 MR. BERBERIAN: I have no additional questions.

23 THE COURT: Mr. Shapiro?

24 CROSS EXAMINATION

25 BY MR. SHAPIRO:

26 Q. What time did you get off duty?

27 A. Off duty -- 5:45.

28 Q. When you went off duty, Mr. Paul, isn't it true that the

1 truck was still there?

2 A. Well, when I woke up, when the sun was starting to
3 come up, that was maybe 5 or 4:30, somewhere around there,
4 and yes, the truck was still there, you know.

5 Q. And at 5:45, when you left, this truck was still there,
6 wasn't it?

7 A. I can't say that for sure; if it was still there when I
8 left, but I don't -- I didn't see them come back or anything.

9 Q. You gave a statement, didn't you, to one of the police
10 officers. They tape recorded it?

11 A. Yes.

12 Q. Isn't it true that on that statement you told them it
13 was 5:45 when you left and the truck was still there?

14 A. Yes, I said that, yes, but you know -- I am not sure
15 when I left. Yes, I made a mistake on that, because I am
16 not, you know, when I left, I am not sure when I left. I am
17 not sure whether it was really there or not, but I know it
18 was there when the sun was just starting to come up.

19 Q. 4:35 o'clock? A. Yes.

20 Q. You just don't know whether it was still there when
21 you left?

22 A. No; I really don't know whether it was still there.

23 Q. Your first contact with them near the launching pad, that
24 is where you had that contact when they got out of the truck?

25 A. Yes.

26 Q. Were there three of them out of the truck?

27 A. Uh-huh.

28 Q. And, then, ten or fifteen minutes later you went back

1 and asked them whether they had a key to the bathroom;
2 is that right?
3 A. Well, something like that, ten minutes.
4 Q. Were they still out of the truck?
5 A. Yes; they were out of the truck. Well, at one point, no.
6 Before I went back there, before I went back to the restroom
7 the older guy was in the truck then, right when I was leaving;
8 he was in the truck.
9 Q. And the other two?
10 A. One of them was messing around, trying to tie the boat
11 up or trying to figure out where they were going to tie it
12 up or something.
13 Q. Then, when you went back to ask them about the key to the
14 bathroom, was that when the older guy was in the truck and
15 the other two were messing around?
16 A. No; no.
17 Q. Where were they when you went back asking for the key
18 of the bathroom?
19 A. They were just standing up, around right near the ramp
20 there.
21 Q. And, isn't it true that one of the younger men told you
22 that an owner, or the manager of the Marina lived some place
23 around there? A. Yes, uh-huh.
24 Q. You didn't see them again until somebody woke you up
25 some time later and said, "Just wanted to let you know we
26 are here," something like that?
27 A. Yes.
28 Q. You were in the car? A. I was in my car.

1 Q. And, they were in the truck?

2 A. Uh-huh.

3 MR. SHAPIRO: I don't have any other questions of
4 Mr. Paul.

5 THE COURT: Mr. Berberian?

6 REDIRECT EXAMINATION

7 BY MR. BERBERIAN:

8 Q. Do you see any of the three individuals in Court
9 that were there that night?

10 A. Well, this guy, this gentleman here looks, you know,
11 he looks quite a bit like him.

12 Q. You are referring to whom in the courtroom?

13 A. The gentleman right here.

14 Q. Describe what he is wearing in Court today.

15 A. What he is wearing in Court today? White long-sleeved
16 shirt, sandals.

17 MR. BERBERIAN: He is referring to Mark Richards.

18 THE COURT: Yes.

19 MR. BERBERIAN: I have no other questions.

20 THE COURT: Mr. Shapiro?

21 RECROSS EXAMINATION

22 BY MR. SHAPIRO:

23 Q. While you were out in the hall, did you see anybody
24 else that looked like the defendant?

25 A. I didn't look out in the hallway.

26 MR. SHAPIRO: I have no further questions.

27 FURTHER DIRECT EXAMINATION

28 BY MR. BERBERIAN:

1 Q. You were not outside in the hall, outside the courtroom
2 before coming in?

3 A. No, uh-uh.

4 THE COURT: Any other questions?

5 MR. BERBERIAN: No other questions.

6 THE COURT: Q. What were you wearing the night all this
7 took place.

8 THE WITNESS: My uniform.

9 Q. What does that look like?

10 A. It is dark brown pants and a light, sort of a tan shirt
11 that has blue patches on each sleeve, you know, and you
12 know, that's it, a tie. I don't know, I might not have had
13 a tie on.

14 THE COURT: Any other questions?

15 MR. SHAPIRO: No other questions.

16 MR. BERBERIAN: No other questions.

17 THE COURT: You may step down; you are excused.

18 MR. BERBERIAN: I call Mr. Raul Artiga.

19 RAUL R. ARTIGA,

20 called as a witness by the People, after being first duly
21 sworn to tell the truth, the whole truth and nothing but
22 the truth, testified as follows:

23 THE CLERK: Please state your full name, address and
24 spell your last name.

25 THE WITNESS: Raul R. Artiga, R-a-u-l, R. A-r-t-i-g-a.

26 THE CLERK: Your address?

27 THE WITNESS: 2331 Santiago Street, San Francisco,
28 California.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BERBERIAN:

4 Q. Mr. Artiga, I would like to direct your attention back
5 to on or about the 13th of July, 1982.

6 Were you working at that time?

7 A. At my present employer, Matthew's T.V. and Stereo.

8 Q. And, where is that business located?

9 A. 6400 on Mission Street in Daly City.

10 Q. There has been an exhibit previously marked as People's
11 No. 8 and I would like to show that to you at this time and
12 ask you to examine that particular document.

13 Do you recognize that document?

14 A. Yes, I do.

15 Q. Could you tell us what it is, please?

16 A. It is a credit application for -- credit for financing
17 in the place that I work at.

18 Q. And, do you recall the details surrounding that
19 particular application as far as the customer is involved?

20 A. Yes, I do.

21 Q. Could you tell us, please, what was the name of the
22 individual, or the name that was used by the individual who
23 completed that credit application?

24 A. Richard Baldwin.

25 Q. And, could you describe, please, what this individual
26 looked like that you saw that gave the name of Richard Baldwin?

27 A. He was a white male, caucasian, approximately 28 to 35
28 years old, light hair, about 5'7" to 5'10", about 150 pounds.

1 Q. Was this individual with anybody else?

2 A. Yes, he was.

3 Q. Would you describe the individual that he was with?

4 A. He was between the age of 18 to 22, white male,
5 caucasian, no facial hair, dark brown hair. He was about
6 six feet tall, 160 to 175 pounds.

7 Q. What were you doing at Matthew's that particular day?
8 Were you working as a salesman?

9 A. Yes; I was working as a salesman.

10 Q. And, the individual that used the name Richard Baldwin,
11 could you tell us, please what happened in regard to your
12 serving that customer?

13 A. Well, the customer had telephoned earlier in the morning,
14 asking about what type of financing was available, and we do
15 offer financing services to the customers and I explained
16 a little bit about it over the phone, and he later came in
17 to fill out an application.

18 Q. Do you recall when it was that you received the telephone
19 call from an individual?

20 A. I don't know the exact time, but it was in the a.m. hours.

21 Q. What time did you come to work that day?

22 A. 9:30.

23 Q. Was it before noon?

24 A. Yes.

25 Q. And, did the person that you spoke to on the telephone,
26 did he use a name?

27 A. I don't remember.

28 Q. The individual who used the name of Richard Baldwin,

1 when did that individual arrive at the store?

2 A. Later on that afternoon.

3 Q. Do you know what time?

4 A. Some time between 12 and 4 o'clock, 3 or 4 o'clock.

5 Q. What happened when this person came into the store?

6 A. He identified himself as the individual who had called
7 earlier, and that is how I recognized him, just over the
8 telephone, and he came in and said that he was interested
9 in financing some T.V. and stereo equipment from the store,
10 and that he was interested in purchasing it that day.

11 Q. And, what did you do then? What happened?

12 A. Well, the standard procedure at Matthew's is to explain
13 to the customer the outline of our financing policy and
14 once the customer has understood what that financing policy
15 is, we proceed to show them around the showroom, and, you
16 know, ask the customer what exactly he is interested in
17 purchasing.

18 Q. Is that the procedure you used with this individual?

19 A. Yes.

20 Q. What, after you explained the financing that your store
21 offers, what happened?

22 A. Well, I went around with him and together he pointed
23 out the equipment he was interested in purchasing.

24 Q. Could you describe, please, the equipment that he was
25 interested to purchase?

26 A. I don't remember exactly what it was, but I remember
27 it was a large screen T.V.

28 Q. To the best of your recollection, as best you can recall

1 the specific items he purchased.

2 A. It was, I remember the person specifying that he
3 wanted the best equipment, because he wanted to get it all
4 at once, and did not want to worry about it. That way he
5 could just make easy monthly payments and he specified that
6 he wanted the best stereo equipment, and I proceeded to
7 show him that.

8 One of the best car stereo equipments, I proceeded to
9 show him that. The T.V. video recorder, and then, that
10 is the best I can remember.

11 Q. I have a document that I ask be marked as People's next
12 in order.

13 THE CLERK: People's Exhibit No. 17 marked for identifica-
14 tion.

15 (Whereupon, People's Exhibit No. 17 was marked for
16 identification, Matthew's T.V. and Stereo voucher.)

17 MR. BERBERIAN: Q. This document that has been marked
18 has the name Matthew's T.V. and Stereo, 6400 Mission Street,
19 Daly City. It says miscellaneous voucher. I am going to
20 show that to you.

21 Do you recognize that?

22 THE WITNESS: A. Yes, I do.

23 Q. Would you tell us what that is, please?

24 A. That is a voucher that is admitted only with the
25 financing application and so it is all the merchandise that
26 he selected to be financed, and along with the financing
27 application and the miscellaneous voucher, so the finance
28 company can see how much, if any, the finance company is

1 willing to finance. So each one of these copies is admitted
2 with every finance application

3 Q. Now, the items shown on that last document, were those
4 the items that the man, using the name Richard Baldwin,
5 selected to purchase?

6 A. Yes, it is.

7 Q. What is the total amount of the purchase?

8 A. It says here \$10,035.50.

9 Q. What is the date that is shown on that miscellaneous
10 voucher report?

11 A. July 13, 1982.

12 Q. What happened after the merchandise was selected?

13 A. Well, since I was new at the store at the time, I
14 wasn't quite aware of the finance procedure, and the
15 different guidelines that the finance company had. I showed
16 it to him and explained it would take at least three or four
17 days before the finance company processes its application
18 and that we would be in contact with him, and that if I
19 were to find out earlier I would contact him personally.

20 Q. Now, with regard to the document that is marked
21 People's 8, that is the financing application?

22 A. Right.

23 Q. When was that document filled out?

24 A. The same day; 7/13/82.

25 Q. Was that filled out at least in part in your presence?

26 A. Yes.

27 Q. And, the individual who used the name Richard Baldwin,
28 did he fill out that form? A. Yes.

1 Q. Do you see that person in Court today?

2 A. Yes, I do.

3 Q. Would you point to the individual and describe what
4 that individual is wearing in Court?

5 A. The person to the left of Mr. Shapiro, that gentleman
6 right there in the white shirt, tan corduroy jeans.

7 MR. BERBERIAN: I ask that the record reflect he is
8 referring to Mark Richards.

9 THE COURT: Yes.

10 MR. BERBERIAN: I have no additional questions.

11 CROSS EXAMINATION

12 BY MR. SHAPIRO:

13 Q. How did you know my name was Shapiro?

14 A. I read it outside.

15 MR. SHAPIRO: I have no other questions.

16 THE COURT: You may step down; you are excused.

17 MR. BERBERIAN: I believe there will be two stipulations
18 that will relieve the necessity of calling additional
19 witnesses.

20 One would be that the motor, which has yet to be numbered,
21 was the outboard motor that was attached to the body of
22 Richard Baldwin and, secondly, there will be a stipulation
23 that at the time that we are concerned about in this incident,
24 the period of July 6th 1982, the residential address for
25 March Richards was 366 Butterfield Road in San Anselmo.

26 MR. SHAPIRO: The stipulations are for the purpose of
27 the preliminary hearing only.

28 MR. BERBERIAN: With that I would be moving the items

1 not previously moved into evidence into evidence at this
2 time.

3 THE COURT: Yes. Any objection?

4 MR. SHAPIRO: I am not prepared to stipulate to any
5 of the items going into evidence.

6 THE COURT: Well, the items that have been marked
7 People's exhibits may be so received.

8 (Whereupon all exhibits were moved in evidence.)

9 MR. BERBERIAN: Your Honor, I ask that in lieu of
10 the motor, which has yet to receive a number, that there be
11 a photograph taken of it and substituted in the evidence
12 locker.

13 MR. SHAPIRO: I have no objection to that.

14 THE COURT: Yes.

15 The photograph may be received as People's next
16 in order.

17 MR. BERBERIAN: I have no additional witnesses to call.

18 THE COURT: Mr. Shapiro, are you offering Defendant's
19 A and B?

20 MR. SHAPIRO: I am.

21 THE COURT: Any objection?

22 MR. BERBERIAN: No objection to those.

23 THE COURT: They may be so received and the photograph
24 taken of the motor may be substituted in its place and stead.

25 Any witnesses you wish to call, Mr. Shapiro?

26 MR. SHAPIRO: I am not prepared, your Honor, to go
27 ahead. I would like the matter continued until tomorrow
28 morning, and I assure the Court if I have witnesses at that

1 time it will not take over half a day.

2 THE COURT: Any objection to that?

3 MR. BERBERIAN: No objection to that procedure.

4 THE COURT: We recess with regard to this matter
5 until 9:30 tomorrow morning.

6 (Court recessed.)
7

8 WEDNESDAY, AUGUST 25, 1982, 9:30 A.M.

9 THE COURT: We have People vs. Mark Richards. We
10 have the defendant present with counsel, Mr. Berberian
11 representing the People.

12 Are both sides ready to proceed?

13 MR. SHAPIRO: Yes, your Honor.

14 At this point the defendant will rest. We are not
15 going to introduce any testimony.

16 THE COURT: Do you wish to argue the matter?

17 MR. BERBERIAN: We are prepared to submit it, your Honor.

18 THE COURT: Mr. Shapiro?

19 MR. SHAPIRO: I submit the matter.

20 THE COURT: Mr. Berberian, anything you want to say
21 with regard to Count 2 of the Complaint, the amended complaint
22 about the crime of robbery?

23 MR. BERBERIAN: Your Honor, in regard to that count,
24 I believe that if the Court goes back to 19.2, there is a
25 discussion, the language of sub-section 17, where the murder
26 was committed while the defendant was engaged in, or was
27 an accomplice of the commission or attempted commission of --
28 that wording applies in our fact situation, even though there

1 may not be direct evidence that was before the Court to
2 show there was actually something taken from the body
3 at the moment of the murder, that under the facts the
4 Court has heard, there has been evidence to show that
5 preplanning was involved, the intent was to rob, before
6 they got to the point where the blow was actually struck,
7 the fact that they may not have found a piece of property
8 or that there was any property taken from the body, I don't
9 believe is necessary to establish the fact that at least
10 an attempt to rob existed in the mind of Mr. Richards, and
11 Mr. Hoover at the time that the killing occurred, and I
12 believe that will be sufficient for the Court to make a
13 holding.

14 THE COURT: Mr. Shapiro.

15 MR. SHAPIRO: Your Honor, as I understand the holding on
16 either the subsidiary counts, the 211 or the 459 must stand
17 on their own feet. The holding must stand on its own feet
18 and that is treated as if it were a separate and independent,
19 different crime. It must be shown to the magistrate in
20 legal quantity of proof and quality of proof, and there is
21 no proof whatsoever to support a charge of robbery such
22 as to hold the defendant to answer independently of any
23 other crime of the crime of robbery. That is the sense
24 of the most recent enunciation of the Supreme Court on the
25 special circumstance case, namely, that in order to have
26 a special circumstance of robbery, you must be able to show
27 the existence of the crime; the crime must be established
28 like any other crime and there is no evidence which will

1 support it. Certainly, one more thing that is, that
2 whatever evidence there is, whatever there is it is
3 clearly the uncorroborated and incredible evidence of a
4 co-conspirator, an accomplice who has been given immunity
5 in order to encourage him to testify.

6 MR. BERBERIAN: Your Honor, I believe the case Mr.
7 Shapiro is referring to is probably the Green case which
8 discusses special circumstances of robbery. In that case
9 there was no evidence that the Court could find that showed
10 preplanning aspects as to whether that taking from the body
11 of the deceased was an after thought, as opposed to something
12 that was going to occur before the killing.

13 Again, I point out that the Court, or the holding is
14 justified if the evidence and a reasonable interpretation
15 thereof points to that type of preplanning, that type of
16 thought, and he may have only an attempted robbery, but that
17 is still sufficient and I believe the Court should make a
18 holding on that count.

19 THE COURT: Anything you want to say with regard to the
20 allegations about lying in wait?

21 MR. BERBERIAN: Lying in wait, your Honor, deals with
22 the fact that you put a person in a position where you can
23 take them either by surprise or you are waiting for the
24 opportunity to take them by surprise to commit the murder.

25 In this case, they, over a period of time were, I
26 believe the interpretation of the evidence is, they were
27 trying to gain the trust and confidence of Mr. Baldwin.
28 They went to his house purportedly to be working on a job

1 in his house under the pretext of wanting to go back and
2 looking at certain cars, or things that may be at 36 Front
3 Street, at the shop.

4 They took him there to a place where they would be
5 able to have access to the blunt instrument that was used
6 to inflict death in the case, and by a signal that was to
7 be arranged, according to the statement of Mr. Richards,
8 as to the preplanning aspect. That element of surprise
9 is there. The opportunity is there, waiting for just the
10 right time, and take him by surprise to commit the murder.
11 I believe that is sufficient for a holding on that allegation
12 as well.

13 MR. SHAPIRO: I am somewhat at a loss as to know exactly
14 what lying in wait means. As I understand the cases which
15 have interpreted it, it means that you have waited in some
16 place of secrecy and from that place of secrecy or hiding
17 you have perpetrated a murder; not anything consistent with
18 the testimony of Mr. Campbell, that whatever the testimony
19 was, infers no evidence whatsoever that anything was
20 in secrecy, or that anybody was hiding from the position
21 in hiding, from where the assault took place. It must be
22 quite to the contrary from the doctor's testimony, that
23 it was a face-to-face action. He realized that the stabbing
24 which caused death, stabbing which caused death was done
25 face-to-face. That was the purpose of the examination
26 concerning the stab wounds. So, it couldn't be lying in
27 wait for the situation.

28 MR. BERBERIAN: The Court can also recall the testimony

1 as to the infliction of the blunt instrument. The damage,
2 I think it would be consistent with the lying in wait
3 theory, that it is behind, above and behind the left ear
4 of the deceased and it would be consistent to infer that he
5 was struck while perhaps his attention was directed
6 towards something else from that position to his rear.

7 The Court can also look at the diagram which Mr. Shapiro
8 marked. It shows where the major pools of blood were in
9 the shop and it would be consistent with the preplanning
10 aspect, diverting his attention, perhaps discussing cars
11 or something of that nature that would put him at ease
12 so that Mr. Hoover could inflict the blow with a blunt
13 instrument.

14 THE COURT: Well, it appears, the term lying in
15 wait has been defined as waiting and watching for an
16 opportunity and time to act together with a concealment
17 by ambush or other secret design to take the other person
18 by surprise, and need not continue for any particular
19 period of time if there is a state of mind to premeditation
20 and deliberation.

21 We have the special circumstance involving the allegation
22 that the murder was intended to be carried out for financial
23 gain.

24 Mr. Richards, would you please stand up.

25 It does appear to the Court that on or about the
26 6th of July of 1982, here in the County of Marin, was
27 committed a crime of murder, violation of 187 of the
28 Penal Code, which is a felony, unlawful killing of a human

1 being with malice aforethought; in this case Mr. Richard
2 Baldwin.

3 There is sufficient cause to find you committed that
4 offense. I hold you to answer to the same.

5 I believe that you are guilty of that offense.

6 Now, with regard to the allegations, I find those
7 further allegations have been shown. There is sufficient
8 cause to believe that you induced, solicited, requested,
9 assisted with regard to the murder of Richard Baldwin for
10 financial gain according to the meaning of the Penal Code
11 and that Richard Baldwin was killed while lying in wait
12 within the meaning of the Penal Code, and at the time of
13 such killing you were engaged in the commission of the crime
14 of robbery within the meaning of the Penal Code, and engaged
15 in the commission of the crime of burglary within the
16 meaning of the Penal Code.

17 I further find that Counts 2 and 3 of the complaint
18 with regard to the times of robbery, violation of 211
19 of the Penal Code and 459 of the Penal Code, burglary as
20 set forth in the amended complaint, have been shown.

21 There is sufficient cause to believe that you are
22 guilty of those offenses. I hold you to answer to the
23 same.

24 You must appear in the Superior Court on September 8th
25 at 9 a.m. and answer to these charges.

26 You are committed to the custody of the Sheriff.

27 MR. BERBERIAN: I would like to address the issue of
28 bail. Bail has been set in the sum of \$500,000. I ask this

1 Court fix no bail in light of the recent amendment to
2 Section 12 of the California Constitution, which allows
3 that, it states a person shall be released on bail by
4 sufficient sureties except for a capital crime when the
5 facts or evidence of the presumptions are great.

6 MR. SHAPIRO: This has never been declared to be a
7 capital crime. If the District Attorney so declares it,
8 he may very well ask that no bail be charged, but I think
9 he has to first declare that this represents a capital
10 crime. If it is a capital crime, then the rights of the
11 defendant have also changed materially.

12 MR. BERBERIAN: Your Honor, the allegations of the
13 complaint, I think, set forth sufficient notice that that
14 potential is there.

15 MR. SHAPIRO: It is not the potential. It is not the
16 potential. It has to be a capital crime. The law is very
17 clear that it has to be a crime in which the death penalty
18 is requested.

19 THE COURT: Are you making such a request? Are you
20 going to make such a request?

21 MR. BERBERIAN: We are reserving that judgment. We
22 have not made a decision as to whether we are going to
23 request the death penalty at the time of trial, but that
24 is within the charging statutes. At this point, I think
25 the Court can also justify on the basis of the second portion
26 of that amendment to the California Constitution, where
27 a felony offense involves an act of violence on another
28 person, when the facts are under the presumption great and

1 the Court finds upon clear and convincing evidence there
2 is a substantial likelihood that the person's release will
3 result in great bodily harm to others, the Court can justify
4 that holding on that as well.

5 I think by the nature of the commission of this crime,
6 the evidence the Court has heard that type of potential
7 exists. I think the Court not only under sub-section a that
8 I referred to, but also under b would be justified and
9 should in fact remove the bail fixed and set no bail at this
10 time.

11 THE COURT: Anything you want to say, Mr. Shapiro?

12 MR. SHAPIRO: Yes. Insofar as the latter appeal is
13 concerned, there is no evidence whatsoever which would
14 support a conclusion, and I am satisfied that there must
15 be some independent evidence to take away a constitutional
16 right other than the evidence of the crime itself. There
17 must be some evidence of propensity to commit the crime
18 against other people or a history of violence or something
19 like that.

20 None of those exist. So, that in order to deprive
21 a person of a constitutional right, the standards of proof
22 are considerably higher than that announced by the District
23 Attorney; a possibility of an inference, an inference.

24 THE COURT: Mr. Berberian?

25 MR. BERBERIAN: I don't have anything further to say in
26 response.

27 THE COURT: Well, you have declared your position with
28 regard to seeking the death penalty or not, as to whether

1 or not you wish there to be such a capital crime.

2 With regard to sub-section b, this involves, I believe,
3 Proposition 4.

4 MR. BERBERIAN: That is correct, your Honor.

5 MR. SHAPIRO: That's right.

6 THE COURT: There has to be evidence presented by
7 both sides that if the person were to be released, there
8 would be great bodily harm to others. There hasn't been
9 any evidence with regard to that.

10 Bail is \$500,000.

11 (End of preliminary hearing.)

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1 STATE OF CALIFORNIA

2 COUNTY OF MARIN

} ss

3 I, Astrid R. Carter certify:

4 That I am a certified court reporter pro tempore of the
5 Municipal Court of the County of Marin, State of California,
6 and in such capacity reported the preliminary hearing in the
7 case of the People of the State of California vs. Mark Richards,
8 heard on August 24 and August 25, 1982, and that the foregoing
9 160 pages represent a full, true and correct transcript thereof.

10 DATED: August 31, 1982.

11 Astrid R. Carter
12 Astrid R. Carter, C.S.R.
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Court of Appeal - First Dist.
LOGGED

APR 10 1983

CLIFFORD C. PORTER, Clerk

By [Signature] Deputy

FILED

APR 19 1983

Court of Appeal - First Dist.
CLIFFORD C. PORTER, Clerk

By [Signature] Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

BEFORE THE HONORABLE WARREN E. MC GUIRE, JUDGE

DEPARTMENT 5

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MARK RICHARDS,

Defendant.

A022029

NOS. 8362
(8401)

FRIDAY, APRIL 8, 1983

2:00 P.M. O'CLOCK

APPEARANCES:

CARL SHAPIRO, Esq.

DENNIS RIORDAN, Esq.

EDWARD TORRICO, Esq.

EDWARD BERBERIAN, Esq.

1 FRIDAY, APRIL 8, 1983

2:00 O'CLOCK P.M.

2 ---oOo---

3 THE COURT: All right. We're back in the matter
4 of People vs. Richards. 8362 and People vs. Hoover. 8401.

5 All counsel are personally present. This comes
6 on for hearing and discussion on the series of motions,
7 mostly about offense by the defendants and some by the
8 People.

9 I haven't got to all of them, gentlemen, but we
10 have got some of them that we can discuss. Maybe a dozen
11 or so.

12 The first one I'm prepared to discuss and have you
13 take up is the first motion. I think we listed the other
14 day, which is the Defendant Richards' motion for dismissal
15 on the basis of the abuse of the Prosecutors discretion in
16 regard to the death penalty and, of course, that now I
17 guess relates only to Special Circumstances, to the extent
18 they are...involve Life without Possibility of Parole.

19 I gather that to be the case?

20 MR. RIORDAN: That's correct, your Honor..

21 THE COURT: What would you like to comment...you
22 don't have to go through all the material, because I have
23 seen most of it. But, you might respond to matters that --

24 MR. RIORDAN: All right.

25 Your Honor, we have submitted in reply to the People's
26 contention that there was not a factual -- adequate factual
27 basis made to this motion and an affidavit which, to our
28 knowledge details a good deal of the history of charging.

1 of Special Circumstances in Marin County since the Briggs
2 Initiative of 1978.

3 That declaration, which is in the back of my
4 supplementary memorandum of points and authorities in
5 supporting declaration, concerning the unconstitutional
6 charging of Special Circumstances and defendant's request
7 for related discovery, which was filed April 7th, goes
8 through a number of cases in Marin.

9 It establishes, to the best of our knowledge -- and,
10 if there is more information to that, it's exactly that
11 we're attempting to receive, through discovery. --
12 that there has been only one case where Special Circum-
13 stances have actually been tried in Marin since '78, which
14 was that of Mark McDermond, which was a multiple murder.

15 There is another case pending in the Municipal
16 Court, People vs. Carpenter, which was... your Honor may
17 be aware, involves five murders and is the Trailside Slayer.

18 Was called the "Trailside Slayer" case. The only
19 other case, which has proceeded to trial... which this
20 one has is this one, that is, People vs. Richards, which is not
21 a multiple murder case and in terms of a single murder
22 alleged, there are any number of other cases which are
23 extremely similar to it.

24 I describe People vs. Shriver. People vs. Sutton.
25 People vs. Page and then three cases involving one.
26 People vs. Becker. People vs. Bunney and People vs. Wicker-
27 sham.

28 Basically, our contention is that either there is no

1 meaningful distinction between those six cases and the
2 Richards' case in which case, the charging here appears
3 to be wholly arbitrary, or there are two distinctions, which
4 could be drawn, both of which are constitutionally offensive.

5 The first is that Marin County does not charge
6 Special Circumstances in cases involving women even if in all
7 other respects the cases are comparable to a man who is
8 charged with Special Circumstances, or alternatively, in
9 the Sutton, Schriv and Page case it appears that Special
10 Circumstances were not charged because the defendant quickly
11 agreed to plea or in the Page and Schriv case were not
12 pursued because after being charged, the Special Circum-
13 stances were charged, the defendants re-plea and if the
14 explanation for the difference between this case and those
15 cases is that the defendant has insisted on his right to
16 trial, that's not a valid distinction and Special Circum-
17 stances should not be pursued in this case at trial.

18 We think we have made that factual showing. The
19 District Attorney's position on the law is that there is
20 no law which would allow you to find abuse of discretion
21 in the charging of Special Circumstances, and he relies
22 in fact, on the same cases that we do: Gregg and Keenan.

23 And, I think, if you look at our briefing of those,
24 you will see that in those, the Gregg case and the Keenan
25 case, in Federal law Special allegations, which is indicated
26 in our brief, the Courts say there will be a presumption
27 that the District Attorney does not act in an arbitrary
28 fashion.

1 And, we concede that until we make a factual showing
2 to the contrary, the simple fact that a prosecutor can
3 exercise discretion is not something that renders the
4 selection process a Special Circumstances case unconstitu-
5 tional.

6 However, it seems clear, when they say: "In the ab-
7 sence of such proof..." that the Courts are saying, "when a
8 factual showing is made that there appears either to be
9 no meaningful distinction between cases where Special Cir-
10 cumstances are charged and those where they are not, or
11 alternatively, where the distinction that would appear to
12 explain the selection process is one that is constitutionally
13 offensive..." as we allege it is in this case, "both in terms
14 of gender or in terms of exerting pressure to attempt
15 to have defendants sacrifice their right to a trial, then
16 a showing has been made of arbitrariness or unconstitu-
17 tional discrimination in the charge of the Special Circum-
18 stances and in the minimum, the burden shifts to the
19 prosecutor to explain in each of these cases..." which the
20 constitutional acceptable distinction was that allowed --
21 that led to Special Circumstances either not being charged
22 or being dropped as opposed to this case, where they're
23 being pursued.

24 THE COURT: Mr. Berberian?

25 MR. BERBERIAN: Your Honor, I think most of the
26 argument counsel has just made have been covered by the
27 briefs. I would indicate to the Court, the Court should
28 note that the initial pleadings filed in December the 13th,

1 were very, very brief, very sketchy in regard to what
2 justification they were going to set forth for their
3 position in this area.

4 As I filed a memorandum to their April 7th memoran-
5 dum this morning and they received copies at the beginning
6 of this proceeding, I emphasize that fact and in fact, I
7 do not believe...and, when the Court has had an opportunity
8 to fully review the pleadings that were filed on the 13th
9 of December, the initial defense pleadings, our response
10 to that, which was filed on March the 14th, 1983, and then
11 their supplemental response, basically that was filed on
12 the 7th, and again, looking at our response, the Court will
13 still find the declarations are insufficient.

14 THE COURT: All right. Excuse me. I'm sorry.

15 MR. BERBERIAN: There may be a basis and there
16 is a basis in law for some sort of redress, if there is
17 invidious discrimination that is shown; but our position is
18 that the affidavit is, even those that are lately filed
19 one day before the hearings by the defense, which are
20 supposed to be their more specific allegations, are not
21 really specific or factual in nature.

22 Again, when the Court looks at them, they cite a
23 case. They give you a citation to a Marin County Superior
24 Court.

25 Now, that may correspond to that case. And, then
26 they very nicely gloss over what they say the facts in the
27 case are and our response that we filed today, highlights
28 that and emphasizes what the Court should require.

✓ 1 And, you go back and look at the Muria case,
2 and the other cases that discuss the cases, the law and
3 California cases that discuss it, you'll see that those
4 affidavits that they claim are not factual affidavits are
5 not that.

6 And, they have within their possession the infor-
7 mation to research this, if they wish to do that, in the
8 degree that it should be done.

9 I think that when they, in good faith, go through
10 and research as they should, document it, as they should
11 by going to the covered records that they will not find
12 or can bring before the Court a plausible justification for
13 the position they're taking.

14 I'll submit on our pleadings.

15 THE COURT: Any further, Mr. Riordan?

16 MR. RIORDAN: Just that if the Court looks at the affi-
17 davits, as granted the description of each of these cases
18 are relatively brief, but they're brief in, I think, in
19 the sense that they're succinct -- I'm intimately familiar
20 with the records in People vs. Bunney. In People vs.
21 Wickersham.

✓ 22 Mr. Shapiro is intimately familiar with the record
23 in People vs. Becker and I have talked to the attorneys at
24 length, who handled the other cases and I think, what
25 we acknowledge there is that for meaningful purposes,
26 in terms of the other felonies that were involved in those
27 cases, the brutality of the crimes, so forth, and on, and
28 on, there aren't meaningful distinctions between those

1 cases and the one we have before the Court today.

2 THE COURT: All right. That motion will be denied.

3 + + +

4 2:20 O'CLOCK P.M.

5 THE COURT: All right. The next motion is
6 defendant Richards' motion to compel election by the People
7 of only one of the multiple Special Circumstances that
8 have been alleged.

9 MR. BERBERIAN: I'm sorry, your Honor, which one?

10 THE COURT: This is the one, the next in order,
11 which was to compel election by the People of only a
12 single Special Circumstance allegation.

13 MR. BERBERIAN: Okay.

14 MR. RIORDAN: In this regard, your Honor, might I
15 make the suggestion? I think that the motions, which all
16 other motions...which deal with the Special Circumstances,
17 that is, the 995 challenge, the Special Challenge to
18 Special Circumstances 1, 2, 3 and 4 and motions for an
19 election, really constitute one argument and the authority
20 is inter-related.

21 I think, probably, I could just make a presentation
22 that deals with all of the remaining challenges to the
23 Special Circumstances.

24 THE COURT: I found some problems within were all
25 common, if that's your position, fine. You make your argu-
26 ment. I'll be easy.

27 MR. RIORDAN: Well, the alternative suggestion I
28 would have is that we make do the motions for election after

1 we have discussed them individually.

2 THE COURT: All right. So then, we'll skip down
3 to the next one...the motion in order...that's your motion
4 to sever the Robbery, Count 3 -- the Burglary, from the
5 Count One, the Murder charge, based upon 954.

6 I have reviewed the material on that. Do you
7 wish to make any further response? I'll be glad to hear
8 it?

9 MR. RIORDON: Just give us one second.

10 (brief pause:)

11 THE COURT: These were the order in which they
12 were filed. We discussed the other day. That's the only
13 way I know how to approach it.

14 (brief pause).

15 MR. SHAPIRO: We're prepared to submit that one,
16 your Honor on the --

17 MR. RIORDAN: On the pleading.

18 MR. SHAPIRO: Which were submitted.

19 THE COURT: Well, yours is basically...it's
20 pursuant to the 954? 954 discretionary sever. State your
21 position, Mr. Berberian?

22 MR. BERBERIAN: I am prepared to submit it on the
23 pleadings, your Honor.

24 THE COURT: All right. Being submitted. That motion
25 to sever Count Two and Three from the Murder Count, Count
26 One will be denied.

27 The next one was your Special Circumstances Vindictive
28 Application. You say that's all part of it? The next one

1 was a dismissal of Count Two, the substantive charge,
2 the Robbery, 995 and you got dismissal Special Circumstances,
3 Burglary, dismissal for violation of Constitutional Rights,
4 dismissal No. 2, Special Circumstances, Lying-in-Wait.

5 And, then the same dismissal of No. 3, Special
6 Circumstances, the Robbery. And, dismissal of Special
7 Circumstances, one of Financial Gain.

8 Those all seem to be in order. Do you want to
9 take up...leave the Election one to the end? Is that what
10 you want to do?

11 MR. RIORDAN: Right.

12 THE COURT: The next one would be your motion to
13 dismiss all Special Circumstances based upon their vindic-
14 tive application by the People.

15 MR. RIORDAN: I think that argument has essentially,
16 been made already on the Constitutional one, your Honor.

17 That was based on the notion of charging due to the
18 Prosecutor's desire to coerce the plea bargain and I have
19 explained our reasoning on that and I think the Court has
20 effectively denied it.

21 THE COURT: Submit it, Mr. Berberian?

22 MR. BERBERIAN: Yes.

23 THE COURT: All right. That matter will be --
24 that motion will be denied. Just so the record is complete,
25 that's the Defendant's Richards motion, dismiss all
26 Special Circumstances for their vindictive application by
27 the People.

28 MR. BERBERIAN: I would augment, just the record,

1 to an extent that I believe your Honor, there has been no
2 showing of whatsoever that there has been any attempt by
3 our office to even negotiate a plea with the defendants in
4 this case.

5 And, there was...I don't even believe there's an
6 affidavit submitted in support of their motion setting forth
7 any sufficient behavior by our office..

8 With that, for that additional reason, I believe
9 it's unsupported.

10 THE COURT: Your next one, I guess we ought to take
11 up is your series of -- I guess the next one before we got
12 to Special Circumstances, what I call your seventh one, which
13 is asking be dismissed -- information be dismissed for
14 violation of the constitutional rights and this is based
15 upon the argument of the 14th Amendment, entitled to a
16 Grand Jury review prior to the filing of the complaint and
17 follow-up information, I gather.

18 MR. SHAPIRO: Submit that one.

19 THE COURT: That to be submitted?

20 MR. SHAPIRO: Yes.

21 THE COURT: Mr. Berberian?

22 MR. BERBERIAN: I believe it is. Let me just
23 check. (brief pause.)

24 THE COURT: You're relying on the Hawkins case as
25 authority?

26 MR. BERBERIAN: Yes. I located my brief.

27 THE COURT: Okay.

28 MR. BERBERIAN: Yes. We'll submit that, your Honor.

1 THE COURT: Matter being submitted. That motion
2 will be denied.

3 I think we might as well get into the various
4 Special Circumstances. I'll just tell you, basically,
5 having reviewed all the material forgetting that election
6 motion that you have, I am prepared to rule, unless you
7 want to argue further the request to dismiss the first
8 Circumstance, namely, the Murder For Financial Gain?

9 You want to argue that one further? Your position
10 is not a typical Murder-for-Hire type of case?

11 MR. RIORDAN: Right. Well, that's the one Special
12 Circumstance that we'll submit without argument.

13 THE COURT: Mr. Berberian?

14 MR. BERBERIAN: We'll submit that matter, your
15 Honor.

16 THE COURT: All right. Then on that matter...

17 MR. SHAPIRO: Excuse me. I don't want it to be
18 felt that in any way we are deprecating our position.

19 This does not. First that the statute really
20 doesn't state what is meant by "for Gain..."

21 And, secondly, that this in any way fits into
22 any possible constitutional application of the phrase, "for
23 gain."

24 THE COURT: I'm only ruling on the motion that's
25 before me.

26 MR. SHAPIRO: The motion includes those concepts.

27 THE COURT: That motion to dismiss circumstance.
28 No. 1, namely: Murder For Financial Gain will be denied.

1 Now, why don't we go to more interesting problems:
2 As I see it from the time I've had to observe the motion,
3 to read some of the cases, how about your Richards' motion
4 to dismiss Circumstances Number 3 and namely, the Murder,
5 Robbery, Robbery for Murder...I guess, you call it.

6 MR. RIORDAN: All right. Well, I think, your Honor,
7 if you look at the -- at least the amended complaint that's
8 been filed, one contention --

9 THE COURT: Excuse me. Maybe we better clarify
10 the record. Maybe you want to get into the Amendment first
11 or do you want to work on the pleadings that's before us
12 now?

13 I don't think it's going to make a heck of a lot of
14 difference except from the Burglary position.

15 MR. RIORDAN: Right. Well I'll work with the
16 complaint that we're now --

17 THE COURT: All right.

18 MR. RIORDAN: -- information now pled. I mean, the
19 theory of the Prosecution is that that this is a Robbery,
20 because Richard Baldwin was killed and was murdered and
21 there is no question that there is information in the
22 Preliminary Hearing which would support the corpus delicti
23 of murder.

24 So, it was a murder and secondly, it was committed
25 in order to obtain illegally, Mr. Baldwin's money.

26 And, that an attempt to turn those two facts into
27 a Robbery simply denies the statutory language and the
28 statutory definition of what a Robbery is.

1 A Robbery is a taking of personal property from
2 the person or immediate presence of the victim by force
3 of threat of force.

4 And, one can go through the entire Preliminary
5 Hearing transcript and find nothing that was taken from
6 Mr. Baldwin's presence or person while this murder was
7 allegedly being committed.

8 THE COURT: I have read your memorandum. I
9 ought to push it over to the D.A.'s side without belaboring
10 more.

11 I think, here, in reading the briefs, in the
12 Green case, because as I understand it, from reading the
13 materials submitted, it's pretty well conceded that the
14 discussions of the plan of murder and how it can be
15 accomplished, all well documented in the Preliminary
16 Hearing transcript, and I also would gather, from the material
17 that the -- the item of property that we're talking about
18 is what I would call a "dolly".

19 You call it a "mechanic creeper" that the mechanic^s
20 work under cars with, which they loaded the body on a couple
21 of hours later when they returned to the garage, and the
22 murder scene.

23 That, as I gather from your standpoint, Mr.
24 Berberian, the property that was "taken"?

25 MR. BERBERIAN: Yes.

26 THE COURT: From the victim?

27 MR. BERBERIAN: As shown by the Preliminary
✓ 28 Hearing record. Yes, your Honor, I would agree with that

1 No. 1, I would ask the Court to remember at this
2 point, that these are motions made under 995 of the Penal
3 Code, and as such, the reasonable inferences of the Magistrate
4 do not -- the Court, at this point, is not to substitute
5 its' -- you're not conducting a hearing De Novo into the
6 weight of the evidence per se, but looking at that record
7 to determine whether it is sufficient to support the
8 Information...not looking at whether there is enough to
9 prove, perhaps, that circumstance or the Count itself, beyond
10 a reasonable doubt.

11 The position that we took, both at the Preliminary
12 Hearing, before the Magistrate there, as well as the
13 position we take here before the Court, we believe that
14 there is enough evidence to show that the Robbery, in
15 fact, occurred.

16 We most assuredly believe there's enough evidence
17 to show Attempted Robbery occurred and under the provisions
18 of the Special Circumstance Statute, either a Robbery or
19 Attempted Robbery can be alleged.

20 So, we believe that if the Court finds that the
21 taking...in this case...of "A", the Creeper or the Mechanic's
22 dolly, is insufficient to show a taking at the time of the
23 killing, supports a Robbery count, then most assuredly,
24 the fact that "you're there" shows that a planning was well
25 set before they arrived at the Front Street address.

26 The plan, as set out in the record of the Preliminary
27 Hearing...they had taken substantial steps by all means
28 toward the completion of that plan by, in fact, murdering

1 Richard Baldwin.

2 The elements of that attempt are currently in the
3 record and the Court should at the minimum, find that to
4 exist.

5 We have cited in our points and authorities the
6 fact that items taken can be diminution almost in value;
7 an empty wallet, for instance, has been found to be --

8 THE COURT: I don't find any problem with the value
9 of the Creeper, the dolly, whatever you want to call it.

10 It's property, I think, on that point, just seems
11 to me, as I read the pleadings, motions and references
12 to the transcript, "property that has been taken..." which
13 you are relying on, is property taken long after the murder
14 took place.

15 And, when they came back and decide to put the
16 body on a dolly, take it out to the boat and dump it...
17 that seems to me to have Special Circumstance.
18 And, you have to tie in the murder in connection or
19 contemporaneously with the person being robbed and murdered.

20 And, I don't think you have here, as you read that
21 Green case, I don't think we have anything in the record
22 that even under 995, to support.

23 MR. BERBERIAN: Well, the Green case and some
24 of the cases along that line cited by the defense really
25 deal with a situation where the intent...the principal
26 intent in the crime was the murder itself.

27 And, that's the reverse situation that they have
28 here. The intent in this -- the principal intent of the

1 MR. RIORDAN: As I understand it, the District
2 Attorney's position is that if they were attempting at
3 some time in the future to get Mr. Baldwin's property,
4 after he was murdered, then it's a Robbery and that
5 completely obscures the obvious statutory distinction
6 between a Murder for Financial Gain and a Robbery.

7 I will concede that everything that he's saying
8 in that regard is probative on the question of a Murder For
9 Financial Gain.

10 But, a Robbery is a taking from the immediate
11 presence of the person. Under his theory, if you kill
12 someone in order to obtain insurance policies or kill
13 someone in order to inherit their property, it would be a
14 Robbery, because you had a financial motive and every
15 financial gain transaction would become a Robbery.

16 And, I think Green says quite clearly that these
17 have to be interpreted very strictly to be completed
18 during the Robbery.

19 And, of course, Green deals with the "creeper"
20 problem, because Green says that it can't be the taking
21 of something which is taken simply to cover up the
22 murder.

23 And, I don't think the District Attorney is
24 maintaining that Richard Baldwin was murdered so that his
25 Creeper could be taken out of the garage.

26 So, for those reasons we submit it.

27 THE COURT: Well --

28 MR. BERBERIAN: One --

1 THE COURT_ You're saying it doesn't make any
2 difference if he's talking about a Robbery or Attempted
3 Robbery?

4 I agree with -- from what, as best as I can analyze
5 it. I don't have that much time, as best I analyze it;
6 you're right on the Robbery.

7 He is now asserting that he could have a Special
8 Circumstance even if he loses the Robbery as Attempted
9 Robbery.

10 MR. RIORDAN: Where the attempt has to be attempt
11 to commit a Robbery. It can't be to kill him and then
12 later on take his property.

13 It has to be Attempt to take from him at the moment
14 they're killing him. Property? Where is the attempt?

15 What were they attempting to take from the presence
16 of Mr. Baldwin at the time this murder occurs? Nothing.

17 There's no evidence there was anything.

18 MR. BERBERIAN: Another point being, I don't
19 believe the Green case was the case that dealt with the
20 995 issue.

21 It was an issue raised on appeal as a result of
22 conviction by a jury. I think we start in a different
23 position here.

24 Again, we're judging whether the Magistrate made
25 reasonable inferences based upon the evidence that he
26 heard at the Preliminary Hearing, whether you can infer
27 that they had, at least, the intent to attempt to rob the
28 victim and I believe that the facts in the Preliminary

1 Hearing transcript would support that.

2 They have the detailed plan that was going to be
3 carried out. They knew there was property at his house.

4 There was property in the shop and as a result of
5 that, the fact that they...if the Court finds they didn't
6 clearly walk away with something off of his body based
7 on the Preliminary Hearing record, I think the elements
8 are there to make a reasonable inference that the
9 attempt was to do that.

10 And, we'll submit it.

11 MR. RIORDAN: One final comment. The standards
12 this Court applies on the 995 motion is precisely the same
13 standards that is applied on appeal when reviewing factual
14 findings and;

15 Secondly, what attempt was frustrated? What were
16 they trying to do that wasn't completed? There is no
17 evidence in here that they weren't there for any purpose
18 other than to commit the murder or that they took anything
19 out of the presence. Or, intended to other than the
20 Creeper, which was an after-the-fact thing, done precisely
21 to obscure the murder, which is the murder, which is the
22 classic Green situation.

23 MR. SHAPIRO: Excuse me. Could I just say one thing?

24 I think there is one thing that wasn't covered.
25 That is that we're not talking about...he's mistaken,
26 Mr. Berberian is mistaken.

27 Attempt with an Intent. Attempt is a specific
28 factual situation in which a crime is commenced and steps

1 are taken to commit the crime and then there is a frustra-
2 tion or interruption because of external circumstances.

3 THE COURT: I understand.

4 MR. SHAPIRO: I know, but that is one of the
5 factors which would affect this Special Circumstances.

6 THE COURT: All right. The matter will be deemed
7 submitted.

8 The motion of defendant Richards to dismiss the
9 No. 3, Special Circumstance, i.e., Robbery, is granted.

10 MR. BERBERIAN: Is the Court making a finding
11 in regard to our argument that there be at least a finding
12 of Attempt as well?

13 THE COURT: Correct.

14 MR. BERBERIAN: Both are denied?

15 THE COURT: Correct.

16 MR. RIORDAN: Your Honor I would then --

17 THE COURT: Go to the next one in order, otherwise
18 be lost in the shuffle.

19 All right. Insofar as you want to add to your
20 motion to dismiss No. 2, Special Circumstance, namely --

21 MR. SHAPIRO: Lying-in-Wait is No. 2.

22 MR. RIORDAN: We would --

23 THE COURT: Let's take...since we've gone -- just
24 gone into the Robbery, let's talk about the next item,
25 which is...you're tied into your last motion, namely, your
26 motion to dismiss Count 2, the Robbery count.

27 MR. RIORDAN: There is no evidence of a Robbery
28 occurring for the purposes of a Special Circumstance.

1 There is no evidence of a Robbery occurring for the
2 purposes of a Robbery itself. So, in fact, the statutes
3 of California require that if something is going to be
4 charged as a Special Circumstance, it has to be charged
5 as an independent crime.

6 It cannot be charged as a Special Circumstance.
7 It cannot be charged as a separate crime.

8 Count 2 has to go. There is another situation;
9 with some of the Burglaries that we'll get to, where you
10 could argue that a Burglary was committed even though it
11 was not a Burglary for the purposes of a Special Circum-
12 stance, but for the Robbery.

13 There just is not evidence of a Robbery itself
14 for the Special or for the substantive crime.

15 So, Count 2 has to be dismissed, as well.

16 THE COURT: Wasn't it the Green case that indicated
17 that they uphold the Robbery conviction and reversed on
18 the Green case...reversed on the Special Circumstances,
19 Murder, in connection with the Robbery?

20 Isn't that the Green case? Or --

21 MR. RIORDAN: Yes, it is, your Honor.

22 THE COURT: So, that would be somewhat contrary
23 to what you have just said, that couldn't be one without
24 the other; isn't it?

25 MR. RIORDAN: The Green case in that situation --
26 I misspoke. The Green case does say that, your Honor.

27 That was the first of the two arguments raised
28 by the appellant there, but the Green case involved the

1 situation where the articles were taken from the body as
2 the Robbery was committed. And, that is not the case here.

3 The only item that we talked about was the Creeper
4 itself, occurred hours later.

5 There was no force and violence involved in the
6 taking of that.

7 The Green case says that:

8 "Unless the Larceny intent
9 exists at the time that
10 the force is used, it's
11 not a Robbery..."

12
13 It may be a Murder and subsequent theft and in
14 this case, while a larcenist' intent either existed as to
15 Mr. Baldwin's property in general, it certainly did not
16 exist as to this Creeper.

17 The intention to take the Creeper came into
18 existence only at the time that his body was taken away.

19 So, while we concede that a Petty Theft could
20 be charged as to the Creeper, a Robbery cannot. There
21 was no mental state as to the Creeper at the time of the
22 -- force was used. It was taken 7 hours later.

23 THE COURT: That Green case seems to me they went
24 off, if I read it right. they went off from the fact
25 that the murderer took the clothing off of his wife before
26 the murder.

27 MR. RIORDAN: That's right.

28 THE COURT: And, that's really where they barely

1 hung onto a 4-to-3 decision on that point, if I read it
2 right.

3 How about your thoughts, Mr. Berberian?

4 MR. BERBERIAN: Your Honor, the case is similar to
5 Green, the ones that deal with whether s Special Circum-
6 stance, when you're dealing with this felony, basically
7 a felony murder type situation exists, usually center on
8 whether there is a period of an interruption somehow in the
9 flow of when the killing occurs.

10 And, perhaps the taking or the crimes have occurred
11 and then the killing.

12 If the Court's reasons for denying the Special Cir-
13 cumstance allegation were based upon this time interval,
14 I believe that there would be justification at least, to
15 hold for the principal crime itself, the Attempted Robbery,
16 again, the Information -- the Count itself...the 2nd Count
17 of the Information.

18 The clear intent and acts done toward the actual
19 filing of that intent are shown by the record. They
20 clearly had the intent to rob.

21 The fact that nothing was taken does not defeat
22 a finding by the Court that, at least, Attempted Robbery
23 had occurred, and the Court is correct, there is a distinc-
24 tion between what Green said and the Special Circumstance
25 provision, and the principal crime.

26 And, I believe the distinction deals with that
27 issue of the interval between when the killing occurs and
28 the taking occurs and the taking occurs, and then the

1 killing occurs.

2 THE COURT: Well, I could see your stained to find
3 the reasoning behind Green because they had both property
4 that was taken after the killing, the reasoning and things
5 like that, but they also seems to me, they weren't off
6 from the concept that he in effect, by force, robbed the
7 other of clothing before he took out to the woods.

8 That's what they attempt to hang on there, to keep
9 the robbery as a substantive special enhancement.

10 MR. BERBERIAN: I'm saying the substantive charge,
11 clearly, the intent and the acts they did were to rob this
12 man.

13 The fact they neither found no property or the
14 record shows they took no property at the moment that the
15 killing occurred would not defeat, I believe, a reasonable
16 inference that they had the intent to rob and they took
17 a direct step toward that, the commission of that offense.

18 And, I believe they took more than one direct
19 step. You have a whole series of things, the planning, and
20 then, the carrying out of that plan by leaving the co-accom-
21 plice, Campbell, at the residence of Baldwin, the decoying
22 of the victim to the place where the murder occurred.

23 All of these were steps taken toward the fulfillment
24 of that intent to rob and the fact that they did not or
25 the record, you feel, was deficient to show that they actually
26 took something, I don't think that should defeat, at least
27 attempted Robbery, holding by the Court.

28 //

1 THE COURT: I must say, there is more merit to that
2 and the earlier discussions --

3 MR. RIORDAN: Let me just emphasize one point, your
4 Honor.

5 The thing that the District Attorney seems to
6 continually be glossing over is the fact that a Robbery
7 involved taking property from immediate presence or person.

8 So, if --

9 THE COURT: I'm satisfied of the Robbery. Let's get
10 to the attempt. His argument...they planned, they carried
11 out, put one person over here, take cash from the house,
12 decoyed in that area, the shop.

13 Now, we can go ahead.

14 MR. RIORDAN: Let me respond to that. He would have
15 to argue that that was attempt to take something from
16 Baldwin's property at the time that they were killing him.

17 If they went off to the woods to kill him so that
18 they would leave his car or his house alone, it might be
19 a murder for Financial Gain; and the District Attorney has
20 that Special Circumstance.

21 But, he seems to be greedy in looking
22 for another one or in looking for a Robbery here, because
23 if they completed that murder to take something later, it
24 certainly is a crime.

25 But, it's not a Robbery. So, he has to say they
26 either took or attempted to take and were interrupted...
27 something from Baldwin at the time that he was killed.

28 And, the only article that he can come up with in

1 that way, the only article that can possibly be the object
2 of either a Robbery or Attempted Robbery is the Creeper.

3 And, Green says, quote:

4 "We conclude that like the non-violent
5 taking in larceny, the active force
6 or integration way the taking is
7 accomplished in Robbery must be moti
8 vated by the attempt to steal in order
9 to satisfy requirement of Section 20 if
10 the Larceny purpose does not arrive
11 until after the force is used by the
12 victim. There is no joint operation of
13 act and intent necessary to constitute
14 Robbery..."

15
16 Now, as you pointed out in Green he took something
17 from the body at the time he killed her, actually before-
18 hand.

19 The only article that possibly fits the immediate
20 presence thing for either a Robbery or Attempted Robbery
21 is the Creeper and I don't think anyone is going to argue
22 that the larcen intent as to the Creeper existed until
23 hours after the killing was committed.

24 So, in that sense, the difference between this and
25 Green, no object was taken from that presence until the
26 murder was over.

27 So, there's no Robbery.

28 MR. BERBERIAN: For that very same reasoning, there

1 was definitely, from a reasonable inference, that the
2 Magistrate could draw, that they had the intent to Attempt
3 to rob him.

4 That was the whole purpose of the killing, was to rob
5 and to take this man's property.

6 The fact that the record does not show, directly,
7 as the Court is interpreting it, does not show directly,
8 that something was taken to meet the definition of Robbery,
9 does not mean that the record cannot be reasonably inferred
10 to show that they did, in fact, have the intent to attempt
11 to rob.

12 THE COURT: Well, I read the Green case, to say
13 the least. But, I did read it, tried to focus on those
14 areas and there is language...you're both quoting, that is
15 accurate and supports both arguments.

16 It just seems to me that the major difficulty
17 then that I can make a major distinction between Green and
18 this case on the record that is before the Court, just
19 seems to me that the same logical conclusions should be
20 drawn on this motion as was drawn on the Special Circum-
21 stance motion.

22 And, that will be the order of the Court. I will
23 grant that motion.

24 2:55 O'CLOCK P.M.

25 + + +

26 THE COURT: Now, we have the -- I guess, the motion
27 of Richards' to dismiss Special Circumstances No. 4, 995
28 to -- directed toward the Burglary.

1 MR. RIORDAN: Your Honor, I suggest that there is
2 no sense in hiding the ball. We have got an amended
3 complaint in here, which makes the thing specific.

✓ 4 So, I might as well address myself to it at this
5 time.

6 THE COURT: All right.

7 MR. RIORDAN: I don't think we can dwell very long
8 on the Special Circumstance allegation involving the
9 house on Benecia Street. If there is one thing that's
10 clear, it's Special Circumstance allegation that are
✓ 11 interpreted very strictly in the Ghent case, which,
12 admittedly, involves "Lying-in-Wait".

13 We'll get to that later...said, "wait". The term
14 "while" means "while" exactly. Means while. It doesn't
15 mean anything else and if you were to wound somebody while
16 "lying-in-wait", leave them there and come back hours
17 later it wouldn't be murder committed during "lying-in-wait".

18 If you killed him then that would seem to be a
19 distinction without a difference. But, those distinctions
20 without a difference are absolutely critical when you deal
21 with Special Circumstances and the consequence that it
22 bears.

23 That there could be no possible argument that
24 Richard Baldwin was murdered while anybody was burglarizing
25 his house on Benecia Street, because it's the Prosecution's
26 position that he was murdered in his garage, which brings
27 us to the garage and we're back to the same thing that we
28 were all along.

1. The only way that you can define the crime that
2 occurred in the garage as a Burglary is to say that it was
3 a crime committed indoors, and it was a felony, i.e., a
4 Murder.

5 But, then you run into the classic Ireland problem.
6 There is a merger there. It cannot be a -- you need an
7 independent felonious intent to have a Special Circumstance.

8 The whole point of Special Circumstances is that
9 you distinguish First Degree Murders from Murders which
10 are in some other way more heinous, more criminal and so,
11 you cannot allow a Murder to be bootstrapped into something
12 beyond that.

13 And, in this case, the only felonious intent that's
14 been demonstrated for the reason, same reason we were
15 talking about, the Robbery before, that was present in the
16 garage, was an intent to Murder, assuming that that's
17 supported by the record here.

18 Now, I'm sure that the District Attorney will go
19 back to the classic argument, he will...that he's been
20 making before.

21 He'll say, "well, wait a minute. They went into
22 kill him so they could commit larceny at some other place..."

23 But, that does not make the entry into the garage
24 a Burglary for the purposes of Special Circumstance. It
25 could make it a Burglary for the purpose of an ordinary
26 substantive crime. But, for a Special Circumstance you
27 have to have a larcenist's intent other than Murder.

28 //

1 So, it cannot -- there cannot be a specialist on
2 Benecia Street. No murder occurred during that Burglary

3 There cannot be a specialist as to the garage,
4 because no Burglary occurred other than a Burglary to
5 commit a Murder, which was not independent of the Murder
6 and therefore cannot aggravate it.

7 And, I think, once again, what all this comes down
8 to is the District Attorney has a good argument that, as
9 evidence of this record of larceny and Financial Gain, but
10 he's been given Special Circumstance on that, he's not
11 allowed to bootstrap it into other Specials that fit the
12 evidence.

13 THE COURT: Could we talk in terms, also, we're
14 addressing the People's motion to amend since that's what
15 you sort of indicate, because we know you're now seeking
16 to amend, set forth specific house and a specific shop.

17 MR. BERBERIAN: That's correct, your Honor. Lar-
18 sonies.

19 THE COURT: That will be your argument to both
20 of those motions? Your motion to dismiss that Special
21 Circumstance and now found that the proposed amendment,
22 that Mr. Berberian's motion to amend his Information.

23 Okay.

24 MR. BERBERIAN: Okay. Your Hono, I guess I
25 disagree strongly with counsel, the crime of Murder and
26 the crime of Burglary and the Special Intent of Burglary
27 is that at the time of an entry, you're dealing with an
28 entry of a structure and at the time of that entry that

1 you possess a certain intent and the intent at the time
2 both structures were entered in this case was to take the
3 property of Richard Baldwin and to murder Richard Baldwin.

4 He possessed those...they possessed those felonious
5 intents at the entry point in both situations.

6 Looking at the Preliminary Hearing record, there
7 was no cognizable interruption from the moment that Tom
8 Miles reaches the house, back on Benecia Street at Venetia
9 Meadows.

10 The plan is going forward. Andrew Campbell is
11 left at the Venetia Meadows. They decoy Richard Baldwin
12 to Front Street.

13 They have entered and remain and in fact, Andrew
14 Campbell remains at the residence in Venetia Meadows as
15 part of the plan to keep the alarm system from activating.

16 He's looking over the residence in order to see if
17 there is property to be taken. They go and they enter
18 the second structure, the one on Front Street.

19 Again, the intent is to take this man's property,
20 to commit larceny, to murder the man. Those are the under-
21 lying felonies that support that Special Circumstance.

22 And, there is no interruption from when that plan
23 is put into action until the man is killed.

24 It is something that is moving continuously along,
25 and at the entry into each structure, the intent existed.

26 THE COURT: I see a big difference frankly, along
27 with the D.A. between our Robbery problem and the Burglary
28 problem, and that's basically because the intent has to be

1 developed or existing, should say, at the time of the entry.

2 He's relying on the intent as being obviously
3 expressed in all the pre-entry planning and discussions,
4 which are evident in the transcript and what bothers me,
5 supposed to be plans to take the property of the victim.

6 And, he had a half a dozen different locations...
7 you can have a half a dozen different Burglaries as it
8 went from town to town to Tahoe Cabin, going to go up
9 there and take his ski boots.

10 That's what bothers me.

11 MR. BERBERIAN: There could be a point where
12 the Court could draw a distinction and then you get into
13 all sorts of plaened together, because you have your
14 "lying-in-wait" situation where they talk about cognizable
15 interruptions.

16 You look and you'll see that these are the
17 inferences that are made in the direct commission of the
18 murder itself, the intents have already been expressed
19 in the pre-planning and these are the entries that
20 result right at the time the murder is taking place.

21 There is no interruption. Now, if they had -- the
22 Court puts in an example of five or six other structures and
23 five or six different counties.

24 For instance, after the murder is committed they
25 -- I mean, we're speculating...they could come back. Other
26 things could happen. They can spend the night in their
27 residences; go to these other places at their leisure to
28 take property.

1 I don't think there... I think you have attendant
2 arguable facts. All situations in those cases, it could be
3 argued, that you have some interruptions for felony murder
4 purposes, as a Special Circumstance.

5 But, not when it's right at the moment when you're
6 engaged in the act of the killing. And, that's what
7 we're looking at here.

8 THE COURT: So, you're obviously saying, in other
9 words, you can have -- you don't have to have a single
10 locality or single building, namely, where the murder
11 takes place.

12 That's not the only one to be the subject of a
13 Burglary?

14 MR. BERBERIAN: Not under the facts of this case,
15 because the whole plan was sdwrun in order to murder
16 him.

17 You were going to have to move him from this
18 structure to this other location to put the plan into
19 effect and it is something that was -- it's just tied
20 together so closely with the plan... closely with the plan and
21 the killing itself that you do in fact -- don't -- you don't
22 have the interruption and you have the Burglaries of both
23 residence and shop.

24 MR. RIORDAN: Your Honor, let me make our position
25 clear.

26 We would agree that if the evidence showed that
27 the defendant went into the Venetia Avenue house, Mr. Baldwin
28 was there, they killed him and took things around and run

1 off with them:

2 That evidence would show a murder committed during
3 a Burglary.

4 Now, apparently, it's Mr. Berberian's position that
5 if you walked down the street in broad daylight, okay?
6 Broad daylight, and shot someone dead and then went to
7 their house to take things out of it, that was a Murder
8 committed during a Burglary, even though the murder was
9 committed in no structure whatsoever, and no legal defini-
10 tion would make a murder on the street a Burglary.

11 And, he's saying, it's a Murder during a Burglary,
12 because it's a Murder committed so that you can later go
13 commit a Burglary. And, the problem with that whole thing
14 is that he has charged as the statute requires, that the
15 Murder was committed while a Burglary was taking place.

16 So, there is no way you can possibly argue that
17 you commit a Murder on the street and then go commit a
18 Burglary...that you have committed a Murder during a
19 Burglary...

20 You have committed a Murder and a Burglary, but
21 you have not committed a Murder during a Burglary and
22 the importance of the word "while" is shown by the Gant
23 case so that rules out Venetia Street.

24 You cannot possibly say that somebody was committed
25 Murder during a Burglary when they were murdered miles
26 away from the structure where the murder allegedly occurs.

27 THE COURT: Even though the plan is to murder him,
28 take him from one structure, divert him to another, murder

1 him. You're saying, the only place you can have the Murder
2 while in the commission of a Burglary is where the actual
3 Murder takes place, a single locality type of situation?

4 MR. RIORDAN: Absolutely, and the thing...if the
5 statute says that so and so was murdered, Special Circum-
6 stances..."so and so was murdered for the purpose of
7 committing Burglary..." then Mr. Berberian would have a
8 good argument.

9 But, the statute says: "someone murdered during
10 a Burglary..." and the Ghent case, with the "lying-in-wait"
11 thing pointed out -- again, I'm going back to the example
12 what they say, if you ly in wait and wound somebody, go
13 off for ahile, come back, still wounded, you apply the
14 croux d'graix, it is not a Murder committed while k "lying-
15 in-wait."

16 And, they said: "While that distinction may not be
17 apparent to the general public, but Special Circumstances
18 on precisely things like that..." So, I will admit that
19 Mr. Berberian has a good argument, that the record shows
20 a Murder committed for the purpose of committing a
21 Burglary.

22 But, it does not show a Murder committed while a ?
23 Burglary was being -- taking place, except if you were to
24 argue that that occurred in the garage, and then this problem
25 that you have there, that is, there's no larcenist intent
26 involved in that Burglary, in the sense that there's no
27 intent to take something from the garage evidenced by this
28 record.

1 And, the thing that he seems to be rebelling at is
2 the notion that you would allow somebody to commit a murder
3 for larcenist intent and not have it fit in one of these
4 Special Circumstances.

5 And, I say, I think he's being a little greedy
6 the the State giving him the Special Circumstances to
7 apply to the situation that he's talking about...if you
8 have a Murder committed for the purpose of a Burglary, it
9 could be a Murder for Financial Gain.

10 That's where there is a Murder for Financial Gain
11 Special Circumstances, and you cannot sort of reduplicate
12 these in legal categories that they don't fit in, otherwise
13 we abolish the difference between Robbery and Extortion.

14 If you go up to somebody with a gun and say, "You
15 mail me a check next week or you'll suffer for it..."

16 And, they mail you a check. You haven't committed
17 that Robbery. I have committed Extortion.

18 You take the check from them, it's a robbery. Now,
19 that may not seem to be an important difference, but it's
20 the difference between two crimes and that's the difference
21 between a Financial Gain Special Circumstance and the
22 Burglary Special Circumstance.

23 MR. BERBERIAN: I disagree with counsel's argument
24 about Financial Gain.

25 For one thing, I believe Financial Gain, is a term
26 that is, in all practical effects, going to be interpreted
27 by the Court to mean a Murder for hire situation.

28 And, it is that type of a situation that that

1 allegation is directed to, both by the record and our argu-
2 ments.

3 Mr. Hoover was the individual who actually did the
4 murder. He was to be paid for that. That is the Murder-
5 For-Hire allegation as it would apply to him if he was an
6 adult.

7 Mr. Richards, the person who hired Mr. Hoover
8 under 190.2(b)..it is under that interpretation of that
9 section that he fits within that Special Circumstance.
10 Not only did he contract a, basically, murder-for-
11 hire situation with Mr. Hoover and Mr. Campbell...you have
12 other crimes that have been committed -- the other crimes
13 being committed--our argument, are both toward Robbery
14 and Burglary.

15 But, at this point, toward Burglary...they had
16 the clear intent to take his property. That's just replete
17 in the record to show what their intent was and the property
18 set out on page 70 to 79 of the transcript where Mr. Campbell's
19 testimony shows that the property that was to be liquidated
20 would be found both in the shop and in the residence.

21 So that the intent to take property was there prior
22 to their entries into the structures and this was all together,
23 tied together. It's one count, one transaction and the
24 fact that you have two different localities does not defeat
25 that position at all.

26 And, I believe that the Court should hold along the
27 lines of the amended Information that there are two counts
28 of Burglary and two allegations of Special Circumstances

1 involving Burglary.

2 THE COURT: Just decide this at the trial. No
3 use spinning gears. I can do all the statutes forever and
4 forever. Just shoot it here as best we can. All right.

5 Directing your attention to both the motions
6 as Mr. Riordan says, and I say, on the People's motion
7 to amend, we will -- the Court will grant the motion to
8 amend in its entirety.

9 I will dismiss your -- deny the motion of
10 Mr. Richards to dismiss the Special Circumstance allegation,
11 which are now...are connected with both the Burglary
12 substantive charges of the residence and of the shop.

13 MR. RIORDAN: Your Honor, for the purposes of
14 clarification so there are now two Burglary Special Cir-
15 cumstance allegations?

16 THE COURT: Two Burglaries...Count 3 and 4;
17 correct, in the amended Information.

18 MR. BERBERIAN: I believe lodged with the Court's
19 copy of the motion to amend, copy of the proposed amended
20 Information.

21 THE COURT: That will be ordered filed at this
22 time.

23 MR. BERBERIAN: I will point out to the Court, it
24 contains an allegation of Robbery. If the Court wishes,
25 I will prepare an amended Information; not being reflected.

26 I will do that.

27 THE COURT: Forgot that knocked out your
28 Robbery. So, that will have to go along with the amended --

1 along with the enhancement; the Robbery.

2 MR. BERBERIAN: I will have that amended
3 Information in conformity with the Court holding at this
4 point.

5 THE COURT: Stipulate need not be arraigned
6 and the same pleas will be deemed entered to the amended
7 Information as it was to the original Information?

8 Will you, Counsel?

9 MR. SHAPIRO: Yes, your Honor.

10 MR. RIORDAN: Yes.

11 THE COURT: Mr. Torrico?

12 MR. TORRICO: I don't believe the Information
13 charges Mr. Hoover with anything, Your Honor.

14 THE COURT: All right. Next, we have --

15 MR. TORRICO: I haven't seen it.

16 THE COURT: -- defendant Richards' 995 to
17 dismiss Special Circumstance No. 2, "Lying-in-Wait".

18 Okay. Mr. Riordan?

19 MR. RIORDAN: Yes. This doesn't involve -- I don't
20 think complicated legal questions at this point, because
21 the Special Circumstance of Lying-in-Wait has been
22 clarified by the Ghent case, and the one thing it says is
23 that you have to have evidence that it was committed not
24 after Lying-in-Wait; not before Lying-in-wait; not because
25 of Lying-in-Wait, but during Lying-in-Wait.

26 And, there is nothing in this record that
27 describes how Mr. Baldwin was murdered. Nothing whatsoever.

28 There is no eye-witness description. There is no

1 description by either of the alleged defendants, which
2 were then passed onto anyone else as to how this occurred.

3 It is absolutely true that you could speculate
4 that it occurred by both of the defendants crawling off
5 along the floor and leaping up on Mr. Baldwin.

6 You can speculate as to anything, but there
7 just isn't any evidence that would support the finding that
8 it was committed while Lying-in-Wait.

9 MR. BERBERIAN: Your Honor, what Mr. Riordan
10 calls "speculation" is what I believe the Magistrate
11 properly found is reasonable inferences from the evidence.

12 The Ghent case merely, again, talks about this
13 concept of the congruity of the killing and the design in
14 our case, the secret design to take the victim by surprise
15 and conceal, is ignoring that language which is in the
16 BENJAMIN case, which is cited in the People's response,
17 that a concealment aspect of Lying-in-Wait encompasses
18 the traditional "ambush" situation.

19 But, it also includes the situation where some
20 other secret design is used to take the victim by surprise
21 and I disagree strongly with Mr. Riordan's analysis of the
22 Preliminary Hearing record.

23 It very clearly and very strongly shows that
24 the entire plan was put into act and it was to decoy Mr.
25 Baldwin to that shop and it was because that plan was
26 successful from their standpoint, Mr. Baldwin was killed.

27 I'll submit it on our --

28 THE COURT: Well, I think in light of considering

1 this under the 995 that I will deny the motion.

2 All right. We also...before we get...do you
3 wish to discuss the Election. -- Richards' motion to compel
4 Election?

5 MR. RIORDAN: I do, your Honor. I think, now
6 that we have a sense of what the Special Circumstances
7 are, I think the motion for Election now applies with a
8 good deal of force to the two Burglary allegations that
9 are in the complaint.

10 I mean, the District Attorney has, essentially
11 said, he's presented evidence of where the crime occurred
12 and now wants to go to the jury and sort of throw it up
13 in the air whether he was killed within this structure.
14 If you find that that's a Burglary you can go with that.

15 If you don't, why don't you go up the road a
16 couple of miles... and take a look at another house up
17 there.

18 I think that it is a double charging, a Burglary.
19 I think one thing we also agree is that a Murder cannot
20 occur during two burglaries which are committed miles away
21 from one another.

22 It's got to happen in one place or the other and I
23 think they should elect what their theory is at this point.

24 MR. BERBERIAN: I don't believe there is anything
25 new that counsel stated that isn't stated; basically in
26 the motions.

27 I believe that he has stated no authority for
28 what he's arguing before the Court right now.

1 If it's a "654" type of argument, which I believe
2 is more what he's addressing himself to, that's something
3 that may have relevance at the time we get to the sentencing
4 phase of the case.

5 But, there is nothing that prevents the People
6 from trying to show to this jury each and every Special
7 Circumstance that we believe justifies the increased
8 punishment that we're seeking in this case.

9 And, I'll submit it on our arguments.

10 THE COURT: Well, it does seem to me that we're
11 really a little premature. This is probably a possible
12 conviction-type of problem we're faced with here...with
13 this conviction.

14 All right. That motion will be denied.

15 All right. There's a motion of the defense
16 re Discovery of People's discussions with the co-defendant.

17 Hoover's attorney re plea-bargain, et cetera.

18 I have read --

19 MR. BERBERIAN: I don't know if counsel --

20 THE COURT: The response that you just delivered
21 today, that was just filed, I think the other day, a
22 motion...and I think the authority cited by Mr. Riordan
23 are correct, that if you -- if there are any discussions
24 they may have to be disclosed, if he's going to be a witness,
25 Mr. Hoover.

26 But, absent that, in light of your reply, there
27 is nothing to be added at this time. I can make an order
28 that if there are discussions, either proposals by

1 Mr. Hoover's client through Mr. Hoover's attorney or the
2 reverse to the Prosecution to Mr. Hoover's attorney, that
3 I think those would have to be disclosed under the Ruther-
4 ford case and the Ferguson case...trying to understand the
5 People's response to that, that there has been none. They
6 might invite something.

7 MR. TORRICO: That would have a chilling effect
8 on any possible settlement of the tougher case.

9 THE COURT: Everything has a chilling effect
10 in the field of criminal law. I'm afraid my only point
11 is there's nothing to be ordered or disclosed at this
12 time from the response.

13 But, if there is, I think -- do you have any
14 quarrel with those Ferguson or Rutherford --

15 MR. BERBERIAN: If there had been a discussion
16 along those line, counsel would have been advised. I
17 think our response is directly to the point.

18 Mr. Hoover's only option...and, it's been the
19 same from the beginning of this case, is that he has to
20 plea this as charged...have to withdraw his Insanity
21 plea and plea as charged.

22 We have never made any offers to Mr. Hoover. We
23 don't intend to make any offers to Mr. Hoover.

24 THE COURT: I guess the order -- so we don't have
25 to have another motion or something would be sort of a
26 conditional offer, if there are any proposals, negotiations,
27 or offers, those will have to be disclosed.

28 And, I would gather they would only, basically,

1. be disclosed if I read Rutherford, if Mr. Hoover were to
2 be a witness, so it could be a challenge to his credibility.

3 Do you want to run that through once, Mr.
4 Riordan? See if you're in agreement?

5 MR. RIORDAN: I think that's correct.

6 THE COURT: That will be the order; sort of a
7 conditional granting of your discovery, if there is any
8 discovery, I guess we'll call it.

9 3:20 O'CLOCK P.M.

10 + + + +

11 THE COURT: All right. How about a motion of
12 the People that was filed March 4th to require production
13 of the -- referred to the gold bracelet or ankle?

14 Seems to me that's produceable.

15 MR. SHAPIRO: They're entitled to a picture.

16 THE COURT: Why are they entitled to a picture?

17 MR. SHAPIRO: Same thing we get when we ask for
18 the production which is to be gleaned in the ordinary
19 preparation of the defense.

20 MR. BERBERIAN: Our position is that that's not
21 the state of the law and I think the Meredith case and the
22 other cases we cite shows that counsel has had that item
23 based on the information we have had for a number of
24 months.

25 He has had ample opportunity to do whatever he
26 needs to do in regard to that. He has no right to retain
27 evidence of the commission of a crime.

28 THE COURT: The law seems to be relatively clear

1 on that. People's motion directed through the defendant
2 Richards' and back to his counsel to produce that evidence,
3 gold bracelet or ankle will be granted.

4 MR. BERBERIAN: I'd like a compliance date with
5 that order, your Honor.

6 THE COURT: We'll be doing this for a couple of
7 days, I guess. Today is Friday. How about Tuesday?

8 You don't have to go to Bangkok to get it.

9 MR. SHAPIRO: I'm not committing myself,
10 your Honor.

11 THE COURT: All right. By Tuesday.

12 The other two matters, as I see it are the
13 Venue and the Consolidation motions. It is now 3:30.
14 I have another contested hearing at 3:30, other matters
15 starting at 4:00, Counsel, so I think what we'll have to
16 do is recess at this time and I know there's a lot
17 of material on the Venue and Consolidation motions.

18 I have a settlement conference all day Monday, so
19 I think we better give you Tuesday to review those
20 motions. Tuesday morning and pick up the hearing on those.

21 And, I gather there may be evidentiary hearings...
22 that I have a note in my record, here.

23 So, next reconvene on Tuesday at 1:30 for
24 those two motions. Does anybody of any estimate of the time
25 if there is going to be an evidentiary hearing?

26 MR. RIORDAN: Your Honor, one clarification? We
27 are meeting Tuesday at 1:30? Not in the morning, on the
28 motion?

1 THE COURT: No, because I have to use the morning
2 -- I have Law and Motion.

3 MR. RIORDAN: Fine. I had a conflict in the morn-
4 ing. I am supposed to be Judge Menary's court. That's not
5 a problem.

6 MR. SHAPIRO: I have appellate matters before the
7 appellate department and my records show that it is Tues-
8 day, also, though I thought the appellate was Wednesday.

9 THE COURT: I can't remember.

10 MR. SHAPIRO: We can do the whole thing at once.

11 THE COURT: Okay.

12 MR. BERBERIAN: Next Tuesday?

13 THE COURT: 1:30. The motion to Consolidate and
14 the Change of Venue motion and the only reason I'm asking
15 you gentlemen to give me some guidance on the time is
16 that I know the Jury Commissioner will want to know when
17 the panel for this case ought to be available.

18 MR. BERBERIAN: Your Honor, the motion in regard
19 to the exclusion of the statements has to be heard as well.

20 THE COURT: Oh, yes. I haven't done that either.
21 That is the third one.

22 MR. SHAPIRO: I would suppose that we also have
23 a continuance motion that we have pending. We would like
24 to discuss.

25 THE COURT: All right. With all these other
26 matters, how much time are we talking about, so I can tell
27 the Jury Commissioner?

28 Are you going to bring in the jury panels on

1 Thursday? Are you going to get through all these matters
2 before the end of the week or --

3 MR. SHAPIRO: I would assume the following
4 week would be more effective on the 18th?

5 MR. TORRICO: Your Honor, the Court informed us
6 yesterday that it has been appointed as trial judge in
7 this matter, apparently.

8 However, I would note that we do have a Master
9 Trial Calendar for Monday morning.

10 Are we to appear on Monday morning for Master
11 Trial Calendar or what is the Court's pleasure?

12 THE COURT: There is no need to appear. We
13 expect motions have been assigned to the trial judge. We
14 have to clear the motions before we start up the trial.

15 So, there is no real need to appear.

16 MR. TORRICO: I just want the record to be
17 clear, because I occasionally...the Master Calendar judges
18 get very upset.

19 MR. SHAPIRO: He'll be the Master Calendar Judge.

20 THE COURT: If I get upset remind me what I just
21 told you. Okay. It's agreeable, neither counsel nor their
22 clients need appear on Monday, just finish off the motion
23 before we go to trial.

24 MR. BERBERIAN: I do not oppose the motion.. that
25 we start the jury selection on the 18th, if counsel are all
26 in agreement?

27 THE COURT: Figure out the 18th, and I guess the
28 following Tuesday, is -- I'll have settlement conferences

1 each Monday.

2 MR. SHAPIRO: I'm not going to stipulate to the
3 19th.

4 THE COURT: Figure out for all our conveniences.
5 What do you think the time to produce whatever evidentiary
6 matters to be produced, to the motions to exclude the
7 statement and the venue, plus the continuance motion and
8 the consolidation motion?

9 MR. TORRICO: I should make the record clear in
10 one thing at this point in time. Inasmuch as the motions
11 that were submitted on Mr. Hoover's behalf did not include
12 a motion to exclude his statement and inasmuch as...to my
13 mind, that is a matter of -- for the trial judge to decide.

14 Now, the motion to dismiss pursuant to 995,
15 which was heard by Judge Menary was based largely upon the
16 exclusion of the statements that were made by Mr. Hoover.

17 However, it would be my intent, either at the
18 trial or whenever deemed appropriate to make an appropriate
19 motion to exclude statements.

20 MR. BERBERIAN: Well, your Honor, the Court has
21 indicated you are the trial judge. Mr. Torrico, at this
22 point knows that you are the trial judge.

23 If it's his intent to move to exclude those
24 statements, I think that we should have that handled at the
25 same time.

26 MR. SHAPIRO: Aren't we assuming that a consolidation
27 motion has been granted?

28 THE COURT: I wouldn't assume that. I haven't really

1 looked...

2 MR. SHAPIRO: I understand you're the trial judge
3 in the first of the cases.

4 THE COURT: Do you have a separate motion or
5 you're going to file if they are --

6 MR. TORRICO: Well, I certainly don't think it
7 will be any surprise to Mr. Berberian that we would intend
8 to object to the introduction of any statements made by
9 Mr. Hoover against him and I would certainly be able to
10 file appropriate written motions, if the Court desires.

11 However, I think it's more of an evidentiary
12 matter as opposed to a motion matter.

13 THE COURT: Why don't you file a motion just so
14 we'll have something on the record, keep this thing rolling?

15 MR. BERBERIAN: My question is: Does the Court
16 want witnesses present on the motion to exclude? If
17 we're going to get into that motion, I have to have certain
18 witnesses for each of the two defendants present.

19 THE COURT: I haven't looked at the motions,
20 but I got a hunch it will involve an evidentiary hearing.

21 MR. BERBERIAN: Is that going to be, then, on
22 Tuesday?

23 THE COURT: That's what I hoped it would be. What
24 else have we got? The Consolidation --

25 MR. RIORDAN: One suggesting -- not suggestion,
26 point of information.

27 The Consolidation motion, your Honor, I think is
28 going to take an extremely long period of time. By

1 extremely long period of time, I mean, several hours. We're
2 talking about going line-by-line through 300 pages of
3 statements in order to demonstrate why Mr. Berberian's
4 arandization of these things is wholly inadequate.

5 So, I don't think we're going to get past the
6 Consolidation motion on Tuesday afternoon.

7 Also, involved is an In-Camera hearing with
8 yourself and ourselves, which the District Attorney is
9 not present at because of an In-Camera declaration.

10 THE COURT: Maybe you won't --

11 MR. BERBERIAN: That would be more convenient if
12 I know that now.

13 THE COURT: If we figure that on Thursday, seems
14 to me that whoever is suggesting the following week will
15 really be the beginning of the panel, is probably right.

16 MR. SHAPIRO: First time in thirty years. First
17 time in 30 years I was right.

18 THE COURT: Let's plan it then, unless there is
19 some objection, we'll tell the Jury Commissioner that we'll
20 hopefully, get to the panel on the 19th and have you
21 gentlemen have a chance to discuss the suggested Court
22 approach, rather than take on 90 percent of the panel
23 one by one for hardship excuses.

24 I've done that several times and the attorneys
25 agree.

26 MR. SHAPIRO: I can't help but feel, Judge, we're
27 very premature in talking about jury panels and trial
28 judges and things like that until we have decided the

1 issue of Consolidation.

2 THE COURT: We're going to have to still pick --

3 MR. SHAPIRO: Not if the cases are not consoli-
4 dated, unless you're going to try them simultaneously.

5 THE COURT: Isn't it going to be a lengthy trial?

6 MR. SHAPIRO: One of the defendants will have a
7 lengthy trial.

8 MR. BERBERIAN: Mr. Shapiro, seems to me, knows
9 how I am going to conduct my case better than I, I guess.

10 But, I think both defendants are going to have
11 a substantial trial.

12 MR. SHAPIRO: I'm saying, next week, assuming we
13 go, one of the defendants will have a lengthy trial, if there
14 is no consolidation.

15 THE COURT: What I'm saying, is any time you have
16 a lengthy trial you announce: "It's going to be three
17 weeks..." "six or eight weeks, whatever, it's going to be, and
18 ask for those who have hardship excuses. This is the
19 whole Court setup.

20 MR. SHAPIRO: I have no problems with that. What
21 I have suggested as we have done in the past, we could
22 maybe, take the reverse and we'll just ask those who can
23 remain for three or six, whatever number of weeks of trial,
24 "please remain" whether it's a Consolidated trial or single
25 defendant trial.

26 MR. SHAPIRO: Let me ask one question: Is
27 there -- assuming there's no consolidation, which case will
28 go next? That's the thing that I'm trying to find out?

1 Richards or Hoover?

2 MR. BERBERIAN: I think we're at a point where
3 we're speculating at this point as to what is going to
4 happen.

5 I think we should reserve the motions on consoli-
6 dation and the other motions that are set for next Tues-
7 day and we can take these things up.

8 THE COURT: Well, my initial reaction, frankly,
9 would be the one who's charged with Special Circumstances
10 would go first, but I don't know. I suspect that will be
11 the lengthier trial if it's not consolidated.

12 If it is consolidated, not going to make any
13 difference.

14 Well, all right. I'll just give the Jury
15 Commissioner my best guess and go from there.

16 MR. SHAPIRO: Eight to ten weeks...I think
17 we figured.

18 THE COURT: On the consolidation or non-con-
19 solidation basis, seems to me it may not make that much
20 difference from the main case, which is the Richards
21 case, I mean, from a time standpoint. Your estimate --
22 all right. I'll do the best I can with whatever I have
23 got. Okay.

24
25 (Whereupon, these proceedings were concluded.)

26 ---oOo---

1. STATE OF CALIFORNIA)

ss.


2. COUNTY OF MARIN.)

3.
4.
5. I, CLAUDINE WOEBER, do hereby certify that I
6. am a Certified Shorthand Reporter and as such I am an
7. Official Reporter for the Superior Court, State of
8. California, County of Marin and was present at the above
9. proceedings on FRIDAY, APRIL 8, 1983, before the Honorable
10. Warren McGuire, Judge of the Superior Court and that as
11. such:

12. I took down in shorthand writing all of the
13. proceedings in the aforementioned court and cause, THE
14. PEOPLE OF THE STATE OF CALIFORNIA VS. MARK RICHARDS, et al.,
15. and thereafter transcribed in the following, enclosed pages in
16. typewritten form, and;

17. the following pages constitute a true, accurate
18. and complete transcription of said proceedings.

19. DATED: April 14 1983.

20. 

21. CLAUDINE WOEBER, CSR #4094

PROOF OF SERVICE BY MAIL -- 1013(a), 2015.5 C.C.P.

I am a citizen of the United States; my business address is 396 Hayes Street, San Francisco 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States

Post Office mail box at San Francisco, California, addressed as follows:

Jersey R. Herman, District Attorney
Edward S. Berberian, Deputy District Attorney
Room 155, Hall of Justice
San Rafael, California, 94903

John K. Van de Kamp
Attorney General
of California
6000 State Building
350 McAllister
San Francisco, Ca.

Howard Hansen - Superior Ct.
County Clerk's Office Rm. 151
Hall of Justice
San Rafael, California
94903

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 1983

at San Francisco, California.

Ilene L. Husfield

Signature

COPY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

HON. E. WARREN MC GUIRE, JUDGE

DEPARTMENT NO. FIVE

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

-VS-)

MARK RICHARDS,)

DEFENDANT.)

NO. 8362

REPORTERS' TRANSCRIPT OF PROCEEDINGS

VOLUME XXIV

MONDAY, APRIL 9, 1984
WEDNESDAY, APRIL 11, 1984
THURSDAY, APRIL 12, 1984

A P P E A R A N C E S:

HON. JERRY R. HERMAN
DISTRICT ATTORNEY, COUNTY OF MARIN, BY
EDWARD S. BERBERIAN, ESQ., DEPUTY DISTRICT ATTORNEY
HALL OF JUSTICE
SAN RAFAEL, CALIFORNIA 94903

FOR THE PEOPLE

SHAPIRO & SHAPIRO, BY
CARL SHAPIRO, ESQ.
404 SAN ANSELMO AVENUE
SAN ANSELMO, CALIFORNIA 94960

AND

DENNIS P. RIORDAN, ESQ.
396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102

FOR THE DEFENDANT

REPORTED BY: LEO E. MILLER, C.S.R.
LINDA SETTLEMYRE, C.S.R.

1 MONDAY, APRIL 9th, 1984 -- 3:15 O'CLOCK P.M.

2 ---oOo---

3 THE COURT: All right. We are back in session in
4 the matter of the People versus Mark Richards. All members of
5 the jury are present, also the defendant and counsel; our
6 alternates are present.

7 It is my understanding, Mrs. Hemingway, the jury has
8 reached a verdict in the case?

9 THE FORELADY: Yes, we have, your Honor.

10 THE COURT: I'll ask the bailiff to receive those
11 from you at this time. (Forelady hands the documents to the
12 bailiff, who in turn presents to the Court.)

13 THE COURT: All right, I'll read the verdict form.

14 It is entitled: "The People of the State of California
15 versus Mark Richards, number 8362.

16 Count One: We, the jury in the above-entitled case,
17 find the Defendant Mark Richards guilty of a felony, to wit,
18 murder, violation of Section 187 of the Penal Code of the
19 State of California.

20 We, the jury, fix the degree at First.

21 Dated April 9, 1984, signed, "Mrs. Hemingway," as
22 Forewoman.

23 The Second Count:

24 "The People of the State of California versus Mark:
25 Richards.

26 We, the jury in the above-entitled cause find the
27 Defendant Mark Richards guilty of a felony, to wit, burglary,
28 violation of Section 459 of the Penal Code of the State of

1 California, in that said defendant in the County of Marin,
2 State of California, on or about the 6th day of July, 1982
3 did willfully and unlawfully enter the shop, to wit, 36
4 Front Street, San Rafael, California, occupied by the Classic
5 Car Shop, with the intent to commit larceny and murder.

6 Dated April 9, 1984", again signed by Mrs. Hemingway as
7 Forewoman.

8 Third Count and third verdict.

9 "The People of the State of California versus Mark
10 Richards, Defendant.

11 We, the jury in the above entitled cause find the
12 Defendant Mark Richards guilty of a felony, to wit, burglary,
13 violation of Section 459 of the Penal Code of the State of
14 California, in that said defendant in the County of Marin,
15 State of California, on or about July 6th of 1982 did will-
16 fully and unlawfully enter the residence, to wit, 18 Venetia
17 Meadows, San Rafael, California, occupied by Richard Baldwin,
18 with the intent to commit larceny and murder.

19 Dated April 9, 1984", signed by Mrs. Hemingway as the
20 Forewoman of the Jury.

21 Does either side wish the jury to be polled?

22 MR. SHAPIRO: Yes, on each count.

23 THE COURT: Right.

24 All right, ladies and gentlemen, it is customary for
25 counsel to request that the jurors be polled on each verdict
26 that is rendered, whether it is either a civil or a criminal
27 case. To ascertain whether or not the necessary number of
28 jurors have voted for the verdict that has to be polled and

1 recorded.

2 So, the first verdict that we'll poll you on will be
3 Count One, where you found the defendant guilty of First
4 Degree Murder.

5 Do you want them polled individually on the degree, or
6 just the first degree murder as a verdict?

7 MR. SHAPIRO: First degree murder.

8 THE COURT: The verdict that you have delivered to
9 the Court is "Guilty of first degree murder."

10 The Clerk will now call off each of your names, and ask
11 you whether or not that verdict of guilty is or is not your
12 verdict. Please answer accordingly. If it is obviously,
13 say, "Yes". If it wasn't, say "No." All right.

14 THE CLERK: Herschel Parkhurst --

15 JUROR PARKHURST: Yes.

16 THE CLERK: -- is this your verdict?

17 JUROR PARKHURST: Yes.

18 THE CLERK: Catherine Kash, is this your verdict?

19 JUROR KASH: Yes.

20 THE CLERK: Donna Elliott, is this your verdict?

21 JUROR ELLIOTT: Yes.

22 THE CLERK: Pamela Wentworth, is this your verdict?

23 JUROR WENTWORTH: Yes.

24 THE CLERK: Candyce Phillips, is this your verdict?

25 JUROR PHILLIPS: Yes.

26 THE CLERK: Elizabeth Travers, is this your verdict?

27 JUROR TRAVERS: Yes.

28 THE CLERK: Peter Siccewicz, is this your verdict?

1 JUROR SICCEWICZ: Yes.

2 THE CLERK: Dolores Hemingway, is this your verdict?

3 THE FOREWOMAN: Yes.

4 THE CLERK: Edith Gjerde, is this your verdict?

5 JUROR GJERDE: Yes.

6 THE CLERK: Rudolph Kelly, is this your verdict?

7 JUROR KELLY: Yes.

8 THE CLERK: Violet Hughes, is this your verdict?

9 JUROR HUGHES: Yes.

10 THE CLERK: Alion Cherie, is this your verdict?

11 JUROR CHERIE: Yes.

12 THE COURT: All right, all 12 jurors have been

13 polled as having voted for the verdict of guilty of first

14 degree murder. That verdict will be ordered recorded by the

15 clerk.

16 THE CLERK: So recorded.

17 THE COURT: The second verdict that we'll poll you

18 on is the one in which you found him, on Count Two, guilty of

19 the crime of burglary in connection with the Classic Car Shop.

20 All right, we'll ask the Clerk to poll each of you on

21 that one.

22 THE CLERK: Herschel Parkhurst, is this your

23 verdict?

24 JUROR PARKHURST: Yes.

25 THE CLERK: Catherine Kash, is this your verdict?

26 JUROR KASH: Yes.

27 THE CLERK: Donna Elliott, is this your verdict?

28 JUROR ELLIOTT: Yes.

1 THE CLERK: Pamela Wentworth, is this your verdict?
2 JUROR WENTWORTH: Yes.
3 THE CLERK: Candyce Phillips, is this your verdict?
4 JUROR PHILLIPS: Yes.
5 THE CLERK: Elizabeth Travers, is this your verdict?
6 JUROR TRAVERS: Yes.
7 THE CLERK: Peter Siccewicz, is this your verdict?
8 JUROR SICCEWICZ: Yes.
9 THE CLERK: Dolores Hemingway, is this your verdict?
10 THE FOREWOMAN: Yes.
11 THE CLERK: Edith Gjerde, is this your verdict?
12 JUROR GJERDE: Yes.
13 THE CLERK: Violet Hughes -- Rudolph Kelly, is this
14 your verdict?
15 JUROR KELLY: Yes.
16 THE CLERK: Violet Hughes, is this your verdict?
17 JUROR HUGHES: Yes.
18 THE CLERK: Alion Cherie, is this your verdict?
19 JUROR CHERIE: Yes.
20 THE COURT: All right, all 12 jurors having voted
21 to that verdict of guilty, that will be recorded.
22 THE CLERK: So recorded.
23 THE COURT: The next verdict that you are to be
24 polled on on the third Count, in which you found him guilty
25 of burglary in connection with the residence at 18 Venetia
26 Meadows, San Rafael, California.
27 We'll poll you on that one, ladies and gentlemen.
28 THE CLERK: Herschel Parkhurst, is this your

1 verdict?

2 JUROR PARKHURST: Yes.

3 THE CLERK: Catherine Kash, is this your verdict?

4 JUROR KASH: Yes.

5 THE CLERK: Donna Elliott, is this your verdict?

6 JUROR ELLIOTT: Yes.

7 THE CLERK: Pamela Wentworth, is this your verdict?

8 JUROR WENTWORTH: Yes.

9 THE CLERK: Candyce Phillips, is this your verdict?

10 JUROR PHILLIPS: Yes.

11 THE CLERK: Elizabeth Travers, is this your verdict?

12 JUROR TRAVERS: Yes.

13 THE CLERK: Peter Siccewicz, is this your verdict?

14 JUROR SICCEWICZ: Yes.

15 THE CLERK: Dolores Hemingway, is this your verdict?

16 THE FOREWOMAN: Yes.

17 THE CLERK: Edith Gjerde, is this your verdict?

18 JUROR GJERDE: Yes.

19 THE CLERK: Rudolph Kelly, is this your verdict?

20 JUROR KELLY: Yes.

21 THE CLERK: Violet Hughes, is this your verdict?

22 JUROR HUGHES: Yes.

23 THE CLERK: Cherie Alion (sic), is this your verdict?

24 JUROR CHERIE: Yes.

25 THE COURT: All right, all 12 jurors having voted
26 for that verdict, that will be ordered recorded at this time.

27 THE CLERK: So recorded.

28 THE COURT: Now, ladies and gentlemen, that normally

1 would be the conclusion of the proceedings insofar as the
2 jury is concerned, but the nature of this particular case
3 was such that we had to sever or bifurcate an additional
4 issue that will have to be tried and resolved by you, and
5 that is the issue that is frequently referred to as special
6 circumstances.

7 In connection with the murder there were certain special
8 allegations made, and we did not have you vote or deliberate
9 on that particular area for reasons of a prior Court Order
10 that was made, after a hearing, on whether or not the
11 entire case should be heard at once, or should be severed,
12 and the special circumstance issue or issues tried thereafter,
13 and the Court Order was that they would be severed, that we
14 would keep the same jury, and in talking with the attorneys
15 it seems that it will take maybe a day, maybe a day-and-a-
16 half at the most to present that.

17 Most of the material is already in Evidence, and you have
18 heard it in connection with the -- what we call the main part
19 of the case. The attorneys have indicated that it will take
20 them a day or so to get organized, and get the logistics and
21 scheduling of the ^{WITNESSES} jurors, so that normally we would start on
22 Wednesday, but Wednesday is all-day juvenile court for me,
23 so we'll start up the special circumstances part of the case
24 on April the 12th.

25 It will not be a lengthy presentation, as I indicated.
26 We did not tell you this before, because we did not want you
27 to be influenced in your deliberations on the issues, the
28 other issues, by the fact that there would be an additional

1 issue or two that you have to resolve.

2 So, we'll start up again, including all 3 alternates,
3 on April the 12th, at 10:00 o'clock. We'll run all day on
4 April the 12th. We'll run a half-day on April the 13th, and
5 if the attorneys' estimates are correct, we'll probably
6 deliver the case for your further deliberation on the follow-
7 ing Monday I suspect. That's basically how it will run, so
8 it should be a relatively short proceeding, but it is
9 necessary to complete the entire case under the order of
10 severance, so we want to particularly admonish you --
11 obviously the case is not fully completed. Do not discuss the
12 case, do not receive any information about it. We particular-
13 ly would caution you not to read, listen to -- read any
14 newspapers or articles, or listen to any media coverage of
15 the results of the deliberations to date, so that you'll not
16 be influenced by anything in connection with the second
17 phase, other than the information that you have already
18 received in Evidence, and what additional evidence will be
19 presented to you in the next day and a half or so, so we'll
20 be back in session again on April the 12th, that's Thursday,
21 at 10:00 o'clock.

22 We'll still have good ole C-74 as your meeting room.
23 All 3 alternates are to be present, and we'll go through,
24 basically the same procedures inso far as presentation of
25 evidence. The only difference will be that the People have
26 basically presented their evidence on these following
27 additional issues already in the case. There will be
28 evidence, and the defendant will go forward first, as

1 indicated, by Mr. Shapiro, and then the People will have
2 the right to respond, if there is anything that they wish to
3 add into the record, and then any further response by the
4 defendant, and then we'll have some limited instructions, and
5 then it will be in your hands.

6 We want to assure you it is not going to be another
7 couple of months. It will be a few more days of imposing
8 upon you.

9 We certainly thank you for your services to date, and
10 wish you a pleasant couple of days off, and we'll see you at
11 10:00 o'clock on Thursday, April the 12th. Thank you very
12 much.

13 Incidentally, if you want, we'll just keep your note
14 books, because you'll probably be using them, and they'll
15 be -- you may have need to refer to them anyway in your
16 deliberations, because you'll encompass in your deliberations
17 all of the evidence that you have already heard, so we'll just
18 adopt the same procedures. Leave your notebooks, and
19 Stella will pick them up, lock them up. On Thursday they'll
20 be on your seats waiting for you, and we'll impose on you
21 for a few more days.

22 Thank you very much. Remember, do not discuss the case
23 with anybody. Thank you.

24 (Jurors and alternates recessed to Thursday, April 12,
25 1984, commencing at the hour 10:00 o'clock a.m. thereon.)

26 MR. BERBERIAN: Can we remain in session?

27 THE COURT: Certainly.

28 (Whereupon, the following proceedings were had in open

1 Court, out of the presence of the jurors and alternates.)

2 THE COURT: All right. The record should reflect
3 we are proceeding outside the presence of the jury. Counsel
4 and the Court have already discussed the general procedure
5 for the special circumstance trial aspect of the trial, and
6 the People have presented, basically, their case, as I
7 understand it, and you'll follow it Mr. Shapiro?

8 MR. SHAPIRO: I think Mr. Riordan will probably do
9 it.

10 THE COURT: Mr. Riordan will probably do it?

11 MR. SHAPIRO: He has a problem that I was alerted
12 to this noon, involving a family health problem with his
13 wife, who is in the hospital at this time, but may be
14 released this afternoon. I'll keep you informed tomorrow
15 as to what is happening.

16 THE COURT: I think since the basic -- you should
17 be prepared in case there is some problem, obviously, and
18 then you estimate, I think, as I recall --

19 MR. SHAPIRO: 2 days, a day and-a-half.

20 THE COURT: A day and-a-half, something like that,
21 and the People weren't sure, but they thought there might be
22 some response, so we are probably talking about, maybe 2 days
23 of trial. We should get together, how about tomorrow, to
24 discuss the concept of instructions, verdict forms, et
25 cetera?

26 MR. SHAPIRO: I would rather wait until Dennis
27 is available.

28 THE COURT: OK. Wednesday -- Tuesday, then --

1 Wednesday is Juvenile Court.

2 MR. SHAPIRO: All day, or --

3 THE COURT: Well, I have to review the files in the
4 morning. Maybe we could meet around 10:00 o'clock, just to
5 firm up our schedule in the matters of verdict forms and
6 instructions. You might give that some thought. We'll meet
7 at 10:00 o'clock, at attorneys' conference on Wednesday.
8 Ok.

9 MR. BERBERIAN: OK, your Honor. I have a motion to
10 make at this time, and my motion would be that the bail in
11 this case be at this point exonerated, the defendant be
12 remanded into custody.

13 He now stands convicted of first degree murder.
14 Regardless of the outcome of the second phase of these
15 proceedings, his minimum likely sentence is 25 years to life.

16 The situation he finds himself in now has materially
17 changed from what it was prior to the verdict that has now
18 been returned by the jury.

19 The cases, of course, that discuss this issue are People
20 v Podesta, 15 Cal third, 921; In re pipinos, 33 Cal third
21 189.

22 In conformance with the principles set forth in those
23 opinions, I believe the Court does have the basis to
24 revoke the defendant's bail at this point, and to remand him
25 into custody.

26 Both of those cases were not murder cases, that
27 enumerated the procedures to be followed by the Court post-
28 conviction, but there are some important points in there that

1 should be pointed out in regard to the defendant.

2 He is not married at this time. He has no children.
3 He is not and does not have what I would call business or
4 professional ties to this community. His mother and his
5 father are long-time residents of this community. The only
6 tie that he would have to this community would in fact be
7 his parents.

8 The defendant is an individual who, over -- during the
9 time of the commission of this crime, impersonated another
10 individual who was supposedly his friend, who was the victim
11 of this murder.

12 We know that during the trial itself impersonating
13 another individual is something he was willing and ready to
14 do, and in fact did do on one occasion. That was the
15 subject of a hearing that we had during the course of this
16 trial, where he did impersonate the person of a foreign
17 consular official.

18 I think that he does stand as an individual who is a
19 danger in the sense of a flight risk. I believe he is also
20 a danger to society at this point.

21 The Court has heard the evidence in this case. The facts
22 and circumstances of this murder were, to say the least,
23 a cold-blooded, planned killing, killing not of a stranger
24 but of a friend.

25 I can point to the transcript, on page 2309, where at
26 one point during the interview with Mr. Cox, I think it
27 was on July 16th, Mr. Campbell made the statement that Mr.
28 Richards felt that it was easy to get money in regard to this

1 type of a homicide, and that he might continue that type of
2 an action, so I think that under those facts and circumstances
3 it is in the interest of society that this man be remanded
4 into custody at this time, and that would be our motion.

5 MR. SHAPIRO: I think there is one thing or two
6 things that should be pointed out.

7 One is that the defendant has faithfully reported to
8 Court every single day during this trial; that he has had
9 no prior felony convictions; that he has no prior felony
10 -- he has one prior arrest which resulted in an acquittal;
11 has a clean record; that he has family in this community,
12 and has almost all of his life lived in this community, and
13 that's as I say -- you cannot ignore the fact that he has
14 come faithfully to this Court every single day, on time,
15 without ever showing any indication of flight.

16 THE COURT: Well, I think the basic difference now,
17 frankly, is, that he is no longer presumed to be innocent.
18 He now stands convicted of a -- what can we say, but a first
19 degree murder, and faces at least 25 years to life, maybe
20 life without possibility of parole.

21 His only real ties, I think, to the community are his
22 family, who have been so supportive, and who have assisted
23 him throughout the trial, bail and otherwise. He has no
24 other -- he is not married, doesn't have a family, doesn't
25 have homes. He has no assets, basically, you know. His
26 ties, I think, are marginal, as Mr. Berberian points out, and
27 if you want to talk in terms, as Podesta does, of whether he
28 is a threat to the community, I think anyone who sat through

1 this trial, and with the verdict of guilty having been
2 rendered, he obviously constitutes a threat to the safety of
3 people in this community, whether they are people who have
4 testified or otherwise. Under the verdict that was returned,
5 obviously the jury agreed that this was planned, deliberate,
6 carried out, ruthless, and done for personal gain, money
7 and now he faces a horrendous disposition as a result of
8 it, particularly if they find special circumstances, but
9 even if not, he faces a substantial portion of his active
10 life behind bars at this time. It is a long, long sentence
11 that he is facing, that he wasn't at the time bail was
12 permitted.

13 MR. SHAPIRO: I think you should look at this
14 thing with one other light, and that is this: That, as you
15 undoubtedly know, the defendant's father is seriously
16 handicapped at this point; that he could not -- if he were
17 to flee, he would wipe out not only his own future, but his
18 parents' and their lives, and he knows that. They have
19 posted their property and their home as his security to be
20 on bail, and, certainly, that is as secure as bail can be
21 under the circumstances of their situation and his situation.

22 THE COURT: I understand what you're telling me,
23 that we would say, normally, nobody would jeopardize their
24 family, particularly their home and probably their life
25 earnings, I suspect, basically, that no one would suggest
26 before this happened, and before a verdict was returned, that
27 Mark Richards would do what he did. I'm sure his parents
28 would say he would never do what he was convicted of. I'm

1 sure his close friends and family would say, "This isn't
2 Mark Richards. It is somebody else", but it is Mark
3 Richards who is now convicted of having committed this
4 horrendous deed and homicide. It is not ordinary homicide,
5 it is what you would call a -- if it was what I would call
6 an ordinary homicide, I think I could buy your thoughts, but
7 this is not a typical homicide. It was deliberate and
8 planned, and the jury so found that to be the case.

9 I think under the Podesta factors he loses on every one
10 of the basic factors that they tell us to consider, and the
11 only thing he has going for him, which is good but not
12 sufficient, is the fact that his parents are supporting him.

13 I'm sure they can't believe he stands convicted of
14 this crime. Twelve jurors heard it for two months. They
15 analyzed it for several days. They were certainly
16 conscientious in going over the case, and they come up with
17 the unanimous verdicts that they did, and in the matter
18 asserted by the prosecution, I think the findings in Podesta
19 are more than accurate and I'll grant the People's motion,
20 and Mr. Richards will be remanded into custody.

21 All right, we will meet at 10:00 o'clock on Wednesday,
22 April the 11th, briefly, and then we'll go on to the trial.

23 (Whereupon, a recess was taken to Thursday, April 12,
24 1984 commencing at the hour of 10:00 o'clock a.m. thereon.)

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WEDNESDAY, APRIL 11, 1984 -- 10:10 O'CLOCK A.M.

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(Whereupon, the following proceedings were had in chambers, there being present the Court, Mr. Berbarian, Mr. Shapiro, Mr. Riordan, and the Reporter:)

THE COURT: We are here in the matter of the People versus Mark Richards, 8362. All counsel are present in chambers, and we are here for purposes of setting up initially the procedure, and discussion of instructions, et cetera, for the second phase.

MR. SHAPIRO: And a matter which has come up recently, which may affect some of these procedural questions.

Last night's Independent Journal, and the New York Times for yesterday --

MR. RIORDAN: The Examiner.

MR. SHAPIRO: The Examiner, I'm sorry, each contained re-prints of remarks which were made by your Honor, and it appears from those remarks that the very issues which are before the jury in the second phase of this case are matters in which you have expressed a clear and very strong and overt opinion as to these issues.

It therefore becomes a necessity, on behalf of Mr. Richards, for Dennis and myself to insist that you recuse yourself from this case in view of those remarks which were made, and which are now part of the public knowledge.

If you are not --

THE COURT: This is a remark on the bail, why I

1 would not --

2 MR. SHAPIRO: This is a remark on your finding this
3 to be a deliberate, planned killing for money.

4 THE COURT: OK.

5 MR. SHAPIRO: If you are not prepared to recuse
6 yourself from this, we'll have to initiate proceedings under
7 the Code of Civil Procedure 170 (5), and I will by this
8 afternoon have prepared the necessary papers to enforce the
9 recusal.

10 THE COURT: OK.

11 MR. SHAPIRO: Do you want to put those -- make
12 these part of the record?

13 (Exhibiting documents to the Court.)

14 THE COURT: Sure. I remember what I said in
15 general, why I wouldn't continue him out on bail.

16 Ok. For the record, I guess the record already has the
17 discussion, when the district attorney made the motion for
18 remand, "He obviously poses a threat to society. It was a
19 planned, deliberate, ruthless killing for financial gains."

20 MR. SHAPIRO: Those are the issues which the jury
21 is going to determine.

22 THE COURT: OK.

23 MR. BERBERIAN: Well, I have not seen counsel
24 citing anything as authority for what he is arguing to the
25 Court at this point, only a general allusion to Section 170.5
26 of the Code of Civil Procedure.

27 The Court, as I recall its statements in Court, and
28 which would be reflected by the actual record -- those would

1 not be statements that would be either inappropriate or
2 put the Court in a position where it could not sit on these
3 proceedings.

4 I think there are some inaccuracies in the remarks that
5 were attributed to the Court, that appear in the media,
6 although the Court did -- it had to, I think, articulate
7 certain facts and circumstances under the authority dealing
8 with bail, and exonerating bail, and remanding, as the
9 Court did. I think the Court had to make specific findings
10 and reasons for its decisions, but I don't think that puts
11 the Court in any position that it could not sit as a trial
12 judge for the remainder of this case.

13 The jury is the one that is going to decide special
14 circumstance portions of this case, as to whether or not facts
15 will establish those special circumstances, and there are
16 even provisions in the law where the Court can, under certain
17 circumstances, comment directly to a jury on a state of the
18 evidence, and I don't think the Court has ever done that or
19 even come close to doing that in this case, and I just don't
20 think that there is a basis in fact for the request now being
21 made by the defense.

22 MR. SHAPIRO: It is not a request.

23 THE COURT: Let me say for the record, as I recall,
24 we were discussing, and I think my comment was in connection
25 with Podesta, as to whether or not he constituted a threat, or
26 -- I forget how I put it -- in the community. That was one
27 of 4 or 5 factors I had to consider. I think that's when
28 I made the remark, and made the finding as to why. I think

1 I was talking about he has no assets, his only tie was, or
2 support was, really, his family. He has no property. I
3 think I was talking along those lines, making what I felt
4 was the Podesta findings.

5 So, that's all I can say for the record. Now --

6 MR. SHAPIRO: I don't think it is an appropriate
7 thing to take a position for the record at this time. If
8 we initiate the proceedings under 170 (5), the record then
9 becomes complete with the affidavits of the parties together
10 with the appointment of an out-of-county judge to hear the
11 matter.

12 The alternative is for you to recuse yourself now, so
13 that we don't have to initiate those proceedings, because the
14 proceedings under 170 (5) are not proceedings to cast any
15 aspersions on the Judge. They are proceedings to force the
16 Judge to recuse himself in his -- when he has been offered
17 an opportunity and has failed. These are -- whatever the
18 reasons were, assuming the record reflects these statements
19 that have been made, this reflects a very classic case of
20 making a public statement, showing a position and conviction
21 in your mind as to the issues which have not yet been tried.

22 MR. BERBERIAN: I disagree strongly with what Mr.
23 Shapiro is alleging at this point. The Court -- what 170.5
24 is envisioned to encompass is a situation prior to the
25 commencement of a trial, when a potential judge may have
26 certain biases or --

27 MR. SHAPIRO: That is 170.6.

28 MR. BERBERIAN: 170.5 is also another procedure.

1 MR. SHAPIRO: It can be initiated at any time.

2 THE COURT: I think Mr. Shapiro is right. 170 --

3 MR. SHAPIRO: I have been in these cases --

4 THE COURT: 170.5 --

5 MR. SHAPIRO: It can be initiated before a motion
6 for a new trial is made, if at some time it turns out that
7 the judge has indicated an expression of opinion on the
8 issues which have not yet been tried. Isn't that right,
9 to your knowledge?

10 MR. RIORDAN: Yes.

11 THE COURT: That's my understanding --

12 MR. RIORDAN: Yes.

13 THE COURT: -- frankly.

14 MR. BERBERIAN: Well, I just think factually that
15 that is not the posture that the Court is in. I do not think
16 the Court at this point is in a position where it must feel
17 that it has to recuse itself, and I have not had an opportunity
18 at all to look at any of the sections that discuss-- or I
19 should say the cases that discuss 170.5 and its application
20 to our case at this point, and I don't think the Court should
21 just automatically jump into a position where it feels it
22 has to recuse itself. I don't think you have made such a
23 public statement.

24 THE COURT: Well, why don't we do two things?

25 One, we'll meet here at 4:30, after my juvenile court
26 calendar is concluded; two, we'll have the reporter, if we
27 can get another one right up -- see if the reporter can
28 type up the portion of the proceedings the other day where

1 the remand was made, and all of our discussion on it, which,
2 I believe, is where this comment and finding came out, and
3 then we'll discuss the issue of whether I will, quote
4 voluntarily recuse myself, or whether you have to go 170.5.

5 MR. SHAPIRO: OK.

6 THE COURT: And if you have to go 170.5, that
7 means that we'll just have to, as a practical matter --
8 we'll just have to indefinitely sort of postpone and delay
9 the second proceedings, and so advise the jury tomorrow
10 morning at 10:00, and keep them on call, and the only thing
11 I envision out of that as a practical matter would be that
12 the -- regardless of the outcome, if we go the 170.5
13 procedure we'd lose one juror, probably, that one who has
14 that committment.

15 MR. SHAPIRO: We are still in the trial.

16 THE COURT: Well, we have alternates and everything
17 else. It is no problem. I mean, that's the only major
18 thing that I can think of that we have all known in advance,
19 that one juror will be lost at the end of the last week of
20 April, or something.

21 So, why don't we meet back at 4:30?

22 MR. SHAPIRO: All right.

23 THE COURT: We'll discuss it.

24 MR. SHAPIRO: All right.

25 THE COURT: A couple of things since we are still on
26 the record. Is there any -- anything other than just your
27 statements that you're making to the Court in citing the
28 authority, other than this section?

1 MR. SHAPIRO: I'll have a motion -- I'll have a
2 170 (5) challenge ready by the this afternoon.

3 MR. BERBERIAN: But you have nothing to file at
4 this time?

5 MR. SHAPIRO: Nothing to file at this time.

6 THE COURT: That will be fine when we meet.

7 MR. SHAPIRO: Sure. I'll have it ready.

8 MR. BERBERIAN: The other matter, while we are
9 on the record, has to do with -- I'll bring that up when and
10 if we get to that point, then.

11 MR. SHAPIRO: OK.

12 THE COURT: Then we'll ask the reporter to contact
13 the administrative office and see if we can get another
14 reporter out at Juvenile Hall.

15 (Whereupon, a recess was taken to 4:30 o'clock p.m.
16 this same date.)

17 ---OoO---

1 (Whereupon, and commencing at 4:35
2 o'clock p.m., the following proceedings were had in
3 chambers, there being present the Court, Mr. Berberian,
4 Mr. Shapiro, Mr. Riordan and the reporter:)

5 THE COURT: We'll go back on the record.

6 We are in a chambers conference, with
7 all counsel, following this morning's session, when
8 we met to discuss our next step in the special-
9 circumstance end of the trial.

10 And the defense requested the Court to
11 voluntarily recuse itself on the basis of remarks
12 made and referred to, I guess, in the two -- the two --
13 yes, the two newspaper articles, one in the I-J and
14 one in the San Francisco Chronicle, both, I guess,
15 of April 10th, claiming that the Court was biased,
16 under the provisions of 170(5) CCP.

17 We recessed the matter so that we could
18 get a transcript, and the court reporter has prepared
19 and given to all three of us, or four of us, I guess,
20 a copy of the transcript.

21 And I have reviewed it, and the only
22 thing I can say is, basically, that it is what it
23 says, and it was what I thought it said, as I mentioned
24 in this morning's comment: that it was the Court's
25 discussions with both attorneys on the remand to
26 custody, and the Podesta principles, and the record
27 would be established.

28 And that is the light in which the Court

1 was discussing and making comments during the
2 proceedings.

3 The Court is satisfied that not only the
4 record, but I, really have no bias, and I'll not
5 voluntarily recuse myself.

6 So the ball is now in the defense's --

7 MR. SHAPIRO: Well, we have thrown it
8 back. We have filed a challenge.

9 THE COURT: You have filed a challenge?

10 MR. SHAPIRO: Basically the challenge
11 procedure in which the affidavit and statement is
12 filed together with a memorandum of points and
13 authorities.

14 THE COURT: I see it now. You filed April
15 11th, today?

16 MR. SHAPIRO: Yes.

17 THE COURT: A declaration of bias under --
18 Let me see. Presumably it is under 170(5)
19 CCP?

20 MR. SHAPIRO: Yes.

21 THE COURT: Okay. All right.

22 You have also filed the two articles, I
23 gather, or one article, the San Francisco Chronicle --

24 MR. SHAPIRO: Also the I-J article, too.

25 THE COURT: Oh, yes, I'm sorry.

26 Both articles are attached?

27 MR. SHAPIRO: Yes.
28

1 THE COURT: Okay.

2 Then you have a memorandum of points and
3 authorities.

4 And I have also got a copy before me of
5 a memorandum of the People's, filed, I guess, this
6 afternoon.

7 So where we are now -- and I'm free to
8 listen to both of your comments -- I think, that as I
9 indicated this morning, I would agree with Mr.
10 Shapiro that a 170(5) CCP challenge for, quote, actual
11 bias can be raised at any time.

12 Do you still have some challenge to that
13 legal principle?

14 MR. BERBERIAN: To that legal principle, I
15 do not.

16 I believe it is basically a discovery
17 rule, that when such basis is discovered, if it is
18 brought within the appropriate period of time, it can
19 be made.

20 THE COURT: Well, so we all agree, it is
21 obviously timely, and there is no challenge there.

22 Okay.

23 The next question is, I think, procedural.

24 As I understand it, in the most recent
25 cases, last year or so, I think, or even later, this
26 Court itself cannot act on the challenge, whether it
27 is timely, valid, invalid or not.
28

1 But the procedures are that I either have
2 to either then recuse myself or respond. And if I
3 do, then the challenge has to be passed on, as I
4 understand the law, by a third-party judge, which could
5 be a local judge, if consented to by the People, or
6 it has to be an appointed judge from the Judicial
7 Council.

8 MR. SHAPIRO: From the Judicial Council,
9 right.

10 THE COURT: If a local judge other than
11 the trial judge being challenged is not acceptable.

12 MR. SHAPIRO: Right.

13 MR. BERBERIAN: Okay.

14 THE COURT: Now, why don't we discuss
15 that?

16 MR. BERBERIAN: I would like to see the case
17 that the Court is considering as the most recent
18 one, that sets up that procedure.

19 I would cite the Court -- and my points
20 and authorities don't have the citation above the
21 quotation, but it should be in re the marriage of
22 Leyman; 13 Cal. App. 3d., 769, which is the quotation
23 starting on pages 10 and 11 of my points and
24 authorities.

25 THE COURT: Would you give us that
26 again?

27 MR. BERBERIAN: It is in re the marriage of
28

1 Leman, L-e-m-a-n, 113 Cal. App. 3d., 769.

2 There are --

3 MR. RIORDAN: The case that you're thinking
4 of, your Honor, which shows that Leman has been
5 overruled statutorily is Penthouse International,
6 137 Cal. App.

7 THE COURT: That is the one I just had
8 a quick recollection on.

9 MR. RIORDAN: Penthouse International
10 versus Superior Court, 137 Cal. App., 3d., 975.

11 THE COURT: Right.

12 MR. RIORDAN: That discusses Leman at
13 980, 981.

14 THE COURT: Let me find it first.

15 Well, basically what that was, the trial
16 judge, just looking at the headnotes, and that's what
17 I had in mind, who was being challenged struck it
18 as being insufficient and untimely and continued --
19 and then granted the new trial, and the defendants
20 petitioned the District Court of Appeal, and they
21 issued a mandatory writ striking the order of the
22 trial judge that the motion was -- striking the order
23 striking the motion for disqualification, and ordered
24 it to be heard by a new judge.

25 MR. RIORDAN: The important thing in the
26 discussion, Judge, is that they point out that there
27 was a specific statutory enactment in 1981 which
28

1 overruled Leman.

2 THE COURT: I don't find it, but this is
3 my recollection of it, yes.

4 So you can look at it, Mr. Berberian
5 (exhibiting to counsel).

6 MR. BERBERIAN: Yes.

7 I just received their points and authorities
8 with the citation, Judge.

9 THE COURT: So then I think at this
10 stage, unless Mr. Berberian has some other thoughts
11 after reading the Penthouse case, since I have not
12 voluntarily recused myself, you have filed your
13 170(5) CCP, and now it is my responsibility to
14 respond to it, and/or do you wish a local or an out-
15 of-county judge to pass on the challenge?

16 MR. SHAPIRO: Myself -- and I would like
17 to talk to Mr. Riordan about it -- my own intuition is
18 to say it wouldn't be fair to a local judge, and I
19 would not want to pass on this issue.

20 THE COURT: You are the attorney --

21 MR. BERBERIAN: I would ask the Court to
22 reserve its final ruling on that until tomorrow
23 morning, until I have an opportunity one, to look at
24 this case, and, also if it does in fact overrule
25 Leman, as represented, to just look into the procedures
26 myself.

27 THE COURT: Sure.
28

1 MR. BERBERIAN: I don't feel I'm prepared
2 to comment on that at this point, just on the lack of
3 notice.

4 THE COURT: We don't get into these
5 often, but that is my understanding of the law.

6 I have no objection. Let's get on the
7 record what we are doing, if that is the way it turns
8 out to be:

9 The defense is not -- does not acquiesce
10 in a local judge, and wishes the Judicial Council to
11 appoint and out-of-county judge?

12 MR. SHAPIRO: That would be our position.

13 THE COURT: Okay.

14 I guess we could meet again at a quarter
15 of 9:00 tomorrow morning.

16 MR. BERBERIAN: Fine.

17 THE COURT: Then if we are all in agreement
18 on the procedures, as I believe them to be, we'll
19 follow those procedures, and ask for an appointment
20 through the Judicial Council, and I'll have to draft
21 my response to your declaration.

22 And then what we'll have to do, since the
23 jury is coming in at 10:00 o'clock tomorrow -- let's
24 assume the procedures that the defense and the Court
25 thinks are to be followed end up being the decision
26 and we follow them, I would think --

27 What is tomorrow, Thursday?
28

1 By the time that a judge gets appointed,
2 comes down, or the papers are shipped to the judge,
3 and he acts on them, we are talking of several days,
4 I would think, as a practical matter.

5 And I would think then that the jury
6 ought to be admonished to -- be given their regular
7 admonishment that we do, about reading and all
8 that, papers, et cetera, and then just ask them to
9 come back, say, maybe next Tuesday?

10 I'm just thinking ahead. It is going
11 to take a couple of days to get a judge, get the
12 papers, and I have to draft a response.

13 MR. SHAIRO: Ordinarily a judge comes
14 down.

15 THE COURT: I have seen it happen that
16 way. It depends upon who is appointed.

17 MR. BERBERIAN: As expeditiously as
18 possible. That's fine with me. It can be the next
19 day, as far as I'm concerned.

20 THE COURT: It takes time to get to the
21 Judicial Council; it takes time for them to find a
22 judge. Everybody is busy and working.

23 Do you think we would be more realistic
24 having them come back Thursday? Because Wednesday is
25 all day Juvenile for me.

26 What do you think? We don't want to keep
27 yo-yoing the jurors back and forth.
28

1 If we came back --

2 Let's take a look at the calendars. Let's
3 see what they look like.

4 This is April 11th. So if we notify the
5 Judicial Council tomorrow morning, they could
6 probably get hold of somebody who would take it on
7 either Thursday or Friday.

8 I can probably have my papers ready by
9 Friday or Monday, my response.

10 I see I have a support hearing in Wolfe
11 versus Wolfe. Maybe what we'll do is continue that.

12 I have a hunch, between Juvenile Court
13 on Wednesday, that we ought to shoot for Thursday. It
14 will be more realistic than the preceding Tuesday
15 or the 17th.

16 MR. BERBERIAN: If the Court must, under
17 this decision, go ahead with the procedures that it
18 is discussing --

19 And the reason for my concern, of course,
20 is that if this jury is exposed for any longer period
21 than is absolutely necessary, the increased likelihood
22 of some taint hitting the jury occurs.

23 And I think that can be expressed to the
24 Judicial Council as well, if we have to go that
25 route, and no later than next Thursday.

26 THE COURT: I'm willing to shoot for Tuesday,
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28

1 and we could start it up Tuesday, if we could get a
2 decision.

3 Shall we do that? You know what we are
4 running into.

5 MR. SHAPIRO: Let's set it down for
6 Tuesday, Tuesday the 17th.

7 THE COURT: The 17th, and if we get a
8 judge in here by Monday who can make the ruling, or
9 get the papers to him or her, whatever it might be,
10 maybe we could start up Tuesday.

11 Okay?

12 Then it is agreed that we'll direct the
13 jurors, if this is what we do, which I think we are
14 going to do, unless Mr. Berberian comes up with some
15 other theory of the law and procedures.

16 We'll just tell the jurors -- admonish
17 them, as we normally do, and tell them to come back
18 on Tuesday, and again emphasize, "No reading, listening,"
19 et cetera. And we'll start up on April 17th, whether
20 it is Judge McGuire or some other judge, I
21 guess.

22 MR. SHAPIRO: Okay.

23 So you want to see us tomorrow morning at --

24 THE COURT: I'll see you at a quarter of
25 9:00.

26 MR. SHAPIRO: A quarter of 9:00, 8:45.

27 THE COURT: That will give everybody a chance
28

1 to look over everything and see if Ed has any other
2 theories.

3 But I think that's the lay of the land.

4 All right, gentlemen, see you later.

5 MR. SHAPIRO: Okay.

6 (Whereupon, a recess was taken to Thursday,
7 April 12, 1984, commencing at the hour of 8:45 o'clock
8 a.m. thereon.)
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1 THURSDAY, APRIL 12, 1984

8:45 O'CLOCK A.M.

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5 (Whereupon, the following proceedings were
6 had in chambers, there being present the Court, Mr.
7 Berberian, Mr. Shapiro, Mr. Riordan and the
8 reporter.)

9 THE COURT: All right.

10 We are back in a chambers conference
11 with counsel on People versus Richards, because we
12 continued last night's late conference to today, so
13 the District Attorney could take a look at the latest
14 case authorities, et cetera.

15 And also, late last night the Court
16 looked at 170 CCP and the latest amendments, and I
17 think all the procedure we have already discussed
18 basically is intact, except for the fact that it
19 doesn't automatically continue the trial, as I read
20 it.

21 MR. BERBERIAN: That's exactly what I have
22 got in my papers.

23 MR. SHAPIRO: That's true. That's clear,
24 that there is a saving grace in the statute.

25 However, it is our position that what
26 that saving grace does, if it is exercised, it creates
27 a serious problem throughout the whole case.
28

1 I might point out that whoever is -- becomes
2 the trial judge must first of all face a question
3 which would be raised as soon as we have a judge with
4 jurisdiction, as to the effect of these statements
5 on the jury, the headlines which we have attached,
6 and the possibility of juror poisoning, and that --

7
8 It is obvious that the very purpose of
9 the statute which would recuse the judge automatically
10 would be applicable to that situation.

11 It would be certainly unfair to Richards
12 to have you make a determination as to the effect
13 of your own statement on the jury, and whether a new
14 jury should be called, whether they should be
15 voir dired individually, so --

16 And if --

17 The other thing is that if it should turn
18 out that the cases which we have cited, certainly
19 the Methodist Church case, where Judge Tharp said
20 somewhat similar things to the parties in connection
21 with a settlement proceeding --

22 So anyway, if it should turn out, then,
23 the proceedings of -- you might have to -- we might
24 have to go back to "go."

25 So I think that the better part of
26 valor, since it is clearly a discretionary thing -- the
27 better part of valor is to put the thing over until
28 Tuesday; don't take a chance on it.

1 Because you know that this case is
2 automatic -- virtually automatically up in the
3 appeal courts.

4 And to go ahead in the face of a
5 challenge relying on that -- this statute was written
6 to counteract the effect of the case which we
7 read yesterday, which said that the judge can't pass
8 on his own questions, as far as --

9 THE COURT: We have already agreed on
10 that.

11 MR. SHAPIRO: Yes. You can't.

12 So this statute said that where --
13 somebody said to the legislature, "Look, any time a
14 man wants to stop a trial, all he has to do is file
15 this thing."

16 This isn't a frivolous thing. There is
17 considerable case law which deals with a judge's
18 statements which are on the public record, and affect
19 or concern the very issues that have not been tried.

20 So so I would say that it would be a
21 serious mistake to take a chance, when what we are
22 talking about is waiting until Tuesday of next
23 week.

24 I think the thing can be arranged. If
25 there is another judge, we'd have to set up ball-game
26 rules.

27 THE COURT: I'll tell you the way I have
28

1 analyzed the position.

2 I hve already committed myself to not
3 having you go forward today, so even though the jury
4 is here, I'm not going to say, "Produce your first
5 witness," because it just came to light this
6 morning, or later lat night, after the conference.

7 And I have already --

8 For the record, last night after you
9 left, I went down to the calendar department and
10 told Reva Littman that the challenge had been filed
11 by the defense, and I would try and have my response
12 on today, or certainly by noon tomorrow; to contact
13 the Judicial Council and to see if we could get
14 somebody here by Monday, who could look at the
15 documents and make a ruling.

16 So the real question, I think, boils
17 down to this:

18 If we stick to what we discussed last
19 night, before I knew, and I suspect the D.A. knew,
20 and I would assume you knew before any of us knew
21 about this lack of an automatic continuance pending
22 the disposition, because that has been the law since
23 I have been around, I just hadn't had a chance to
24 look at the statute until late last night.

25 I don't know how you feel, Ed.

26 MR. BERBERIAN: I feel that the defense
27 probably did know about that provision of the statute
28

1 before yesterday's proceeding. They did not advise
2 either the Court or us in their papers or argument
3 about the provisions.

4 When we had an opportunity late last
5 night to review the statute, look at their points
6 and authorities, it became clear that the Court
7 did have, still, discretion to continue.

8 I think the Court can continue, and I
9 think it should continue tomorrow morning with the
10 jury trial.

11 I think that the matter as to the verdict,
12 as to first-degree murder, is a matter that has been
13 resolved at this point, subject to any motions that
14 would normally be made prior to judgment.

15 And the verdict has been recorded, and
16 at this point the Court can go back to this jury,
17 you can do that today, and ask whether any of them
18 have been exposed, and have read any newspaper
19 articles printed since the 9th of April, which
20 specifically would address the Court's comments, without
21 going into what they read, saw or made any decisions
22 about at this point.

23 And I think you are going to find, if
24 they followed your admonition, that there has been
25 no exposure, there has been no taint of the jurors,
26 and that can be easily accomplished today.

27 I think that the jury -- from the very
28

1 beginning, the Court has listened carefully to both
2 sides in this case, and was willing, over our
3 objection, to sit in camera and listen to arguments
4 as to why this proceeding should be bifurcated,
5 when there was no statutory or case authority setting
6 up this procedure.

7
8 The Court went forward at the defense's
9 urging, and based upon whatever was filed in camera,
10 and made a decision to bifurcate, and made a
11 decision to bifurcate.

12 So they have set the stage for what today
13 we are facing.

14 And I think the Court, without concern
15 of error, can go forward. I think the motion is
16 frivolous.

17 I don't think there is a substantial
18 basis in the record for this motion.

19 I think that the case authority, when we
20 look at the cases that deal with bias and prejudice,
21 speak to the fact that a judge has the absolute
22 right to make decisions on legal issues that he has
23 faced during the trial, base decisions on what he
24 has heard and render these decisions.

25 That's the whole purpose of the Court
26 having to sit and listen to issues of law.

27 He did nothing improper; did what Podesta
28 and Pipinos require the Court to do on a remand

1 situation.

2 And I don't think the jurors should be
3 subjected to delay or the risk of contamination, and
4 that we should go forward.

5 THE COURT: Well, let me just say what
6 I'm going to propose, and I think what we'll do,
7 now that this has come to my attention, we'll use
8 today --

9 I'll continue, because under the statute
10 it seems to me that there is no automatic continuance,
11 and it seems to me that today we should use to voir
12 dire the jury in connection with these newspaper
13 articles.

14 MR. SHAPIRO: We would serious object
15 to proceeding with you participating in the voir dire
16 of the jury, because of the fact that we feel that
17 the question as to voir diring the jury is closely
18 related to the whole issue of the bias and prejudice.

19 And "bias and prejudice" has a specific
20 meaning in this statute, so that until the basic
21 question is resolved, it is certainly, I think,
22 inconsistent with the thrust of our whole challenge
23 to go ahead on this aspect of the case, namely,
24 question the jurors in this regard.

25 Because if it is error, it is already --
26 it poisons the whole proceedings in the future.

27 And I don't think it is worthwhile, again
28

1 subjecting everybody to some kind of a real problem
2 that will come out if you proceed, even, in that
3 area.

4 Again, if it were something which was a
5 neutral area, but you are dealing with something
6 that you yourself have done, whether --

7 I'm not critical, I'm just saying it
8 happened, and at happens to us all the time, that we
9 say things or do things, and they come back to
10 roost.

11 But if you try to ignore the fact that
12 our position, if sustained, would invalidate any
13 steps that you take, and poison all future proceedings,
14 to go ahead today is just as much as going ahead
15 with the trial. There is just as much danger.

16 THE COURT: Won't your argument really
17 be the same, once a ruling comes down?

18 Suppose a ruling comes down that it is
19 an obvious -- as I felt when I first met on this,
20 and the transcript reflects it -- the entire discussion
21 that you are complaining about is related to the
22 requirements of Podesta, and that it what we were
23 discussing.

24 And that is what my comments were all
25 about, trying to ascertain, listening to you, listening
26 to Mr. Berberian, as to whether or not to remand
27 and how Podesta would be applied.
28

1 And the whole discussion came up as to
2 the question of whether or not he -- one of the factors
3 was the question of a threat, a danger to the
4 community.
5

6 And that's what the whole discussion was
7 all about, ala Podesta, that we are supposed to
8 discuss it, tell them why, and conclude something,
9 and explain why.

10 So that is really where we are, and
11 I don't see -- no matter what happens, you're going
12 to wish to voir dire the jury, it seems to
13 me.

14 MR. SHAPIRO: Oh, absolutely, or --

15 Yes, or request a new jury, one or the
16 other.

17 But we don't think that you should voir
18 dire the jury until you have been given -- please
19 excuse the language -- a clean bill of health.

20 Because if you did -- should do so, and
21 then it turns out that a judge who comes in agrees
22 with us as to the meaning and effect of the law, that
23 error poisons the proceedings.

24 It seems to me that you are gambling your
25 time and the whole future of this case on an effort
26 to save a couple of days.

27 THE COURT: No, I'm not making an effort
28 to save a couple of days.

1 It has come to my attention late last
2 night neither the D.A. nor the Court had any inkling
3 of what was happening until we discussed it in the
4 morning, and I went to Juvenile.

5 And after we left, it came to my
6 attention -- I don't know if you gentlemen checked
7 it --

8 MR. SHAPIRO: I checked it last night,
9 too.

10 THE COURT: Were you people aware --

11 MR. SHAPIRO: I checked it last night.

12 THE COURT: Did you learn about this
13 amendment that says there is no automatic continu-
14 ance? That it may be continued, or the Court may
15 just continue to process the case while the challenge
16 is being processed?

17 MR. RIORDAN: Was I aware of that?

18 THE COURT: Yes.

19 MR. RIORDAN: I read that yesterday.

20 THE COURT: Before we had the discussions?

21 MR. RIORDAN: Yes.

22 THE COURT: Well, why, as an officer of
23 the Court, you didn't alert me --

24 We were trying to have an intelligent
25 discussion as professionals here about, you know --
26 we are talking as though it was an automatic
27
28

1
2 continuance, which for years it has been, and none
3 of us were aware that we even had anything to
4 discuss about scheduling and all of these
5 things.

6 That's why we were talking about Friday,
7 Monday, maybe going forward on Tuesday.

8 MR. RIORDAN: This is the good-cause
9 section, your Honor?

10 THE COURT: Yes, the good-cause section
11 has been amended.

12 MR. BERBERIAN: Subsections 4 and 5.
13 5 is the good-cause section; 4 is the section that
14 says the Court can go forward, has the discretion
15 to go forward.

16 THE COURT: Yes.

17 But it is Subsection --

18 MR. BERBERIAN: Of "d."

19 THE COURT: Of 6(d), right.

20 Mr. Shapiro said he wasn't; Mr. Berberian
21 said he wasn't until we got into the books last
22 night.

23 MR. SHAPIRO: It is clear it wouldn't
24 be applicable to our situation, anyway, because --
25 it is applicable to a situation where there is no
26 ground whatsoever, and it is obviously an attempt to
27 try and just stall the case.

28 We are not -- we don't have any benefit in

1 stalling the case.

2 THE COURT: Nobody is saying you are
3 stalling the case.

4 MR. SHAPIRO: No, but that is what this
5 statute is provided for.

6 THE COURT: Well --

7 MR. RIORDAN: The problem that I see,
8 your Honor, is this:

9 That this case is going to be over in,
10 you know --

11 THE COURT: Three or four days, five
12 days?

13 MR. RIORDAN: No, it is going to be over
14 in a day.

15 THE COURT: You have to argue it; you are
16 going to re-argue your evidence.

17 MR. RIORDAN: It is still, I believe, going
18 to be over in a day.

19 THE COURT: All right.

20 MR. RIORDAN: I do.

21 And at this point, the jury is going to be
22 discharged, you know, the case is going to be over
23 one way or another.

24 If we go ahead with the penalty phase,
25 the decision is made. If they come back with the
26 specials, they are discharged, and we are in a situation --

27 I know that the Court's opinion must be --
28

1 obviously be that he believes it will be sustained
2 on the question of the challenge.
3

4 But it is a very limited challenge. No
5 one would even suggest that there has been any
6 bias displayed by the Court through this penalty
7 phase in any way whatsoever.

8 The challenge that is raised here, and
9 it is as much on the public -- on the public
10 perception part of Pacific Methodist, is that it
11 appears certainly that the Court had judged the same
12 issues which are in the special-circumstances
13 phase.

14 If that position were to be sustained
15 after the jury's discharged, the entire would have
16 to be retried before a new jury for the special
17 circumstances phase; all of the evidence would have to
18 be put in.

19 We are talking about, basically taking
20 what I understand will be two days, three days, at
21 which point we do the penalty phase, and against the
22 risk of doing the penalty phase, everything over --
23 and should our position be sustained, we are talking
24 about having to retry the entire case before a new
25 jury, because they can't come in for one day, then,
26 because they haven't heard the eight-week trial.

27 THE COURT: I would agree, if ultimately
28 a new jury came in, we are all aware that Mr. Berberian

1 would have to put on the whole case all over
2 again. We are aware of that. Or, you know, he could
3 elect not to go forward on the second phase of the
4 trial.

5 That would be the alternative.

6 If, years from now, or whenever it
7 happens -- as you say, there is always an automatic
8 appeal in a murder conviction, and he has been
9 convicted.

10 So it will go up. And if it came back
11 three years from now, and said, "Well, the penalty
12 phase was defective" for the reasons you're
13 discussing, then he would be in the position to have
14 to elect if he wanted to retry the case on that
15 phase or leave it stand on the conviction.

16 MR. SHAPIRO: I think we were right last
17 night, regardless of the statute -- I think we were
18 right last night to put a moratorium on the case
19 right now.

20 I don't believe you should --

21 As I say, I don't believe you should
22 even voir dire that jury right now on that issue.

23 I know that we can expedite this
24 procedure. It doesn't call for any evidence. I
25 think that the judge may want to have the papers, moving
26 papers a day ahead of time.

27 And whoever comes in -- there is no
28

1 trouble getting a judge in here, I'm sure. There are
2 so many retired judges now who are available.

3 THE COURT: I'm sure we'll get a judge
4 in here. It takes a day or two, by the time they
5 find somebody who is willing.

6 I think the schedule can be accomplished,
7 no question, as proposed. Now that we know of the
8 new provision, shall we stick by the schedule, or
9 roll through it?

10 MR. BERBERIAN: I still recommend that
11 we voir dire the jury today.

12 I think the record should reflect whether
13 or not any of them have seen any of the newspaper
14 accounts since April the 9th.

15 And I think that we should begin the
16 proceedings tomorrow morning.

17 THE COURT: What happens if the challenge
18 is sustained at the trial level in your analysis?

19 Suppose come Monday -- I'll have the
20 response on today or tomorrow. And suppose the
21 judge is appointed today or tomorrow, gets the
22 papers tomorrow or Monday, reviews them, makes a
23 decision?

24 MR. BERBERIAN: Well it is a risk. I
25 can't tell the Court it's not a risk.

26 But I feel very confident in what the
27 Court has said and done on the record, and what the
28

1 findings of this judge will be when he reviews the
2 documents and the law.

3 THE COURT: I already told you I feel
4 very confident in this thing.

5 Having read the entire transcript, it
6 reconvinced what I thought was going on at the time
7 the statement was made. And I thought I was doing
8 what Podesta said.

9 Whether I was or wasn't, what the effect
10 of it is on somebody else is going to have to be
11 determined.

12 It won't, obviously, be determined, anyway,
13 at the trial level if the judge disqualifies me or
14 confirms me.

15 MR. SHAPIRO: If he disqualifies you, and
16 you have continued with the case, then it is really
17 in trouble; everything is in trouble, because you
18 have gone ahead and take advantage of your discretion,
19 and --

20 THE COURT: I'm not taking advantage.
21 I'm trying to say, "Shall I exercise it or not?"

22 MR. SHAPIRO: That's Russian roulette.
23 "Shall I pull the trigger? The chances are six to
24 one that I don't have a bullet in there."

25 THE COURT: I don't think it really is,
26 but I see, really, no problem in what we have
27 described.
28

1 And I don't know whether or not we should
2 wait until Tuesday. So when we get a decision on
3 Monday, to do the voir dire or not.

4 Maybe I should just go in there and tell
5 them there has been a delay, we have some legal
6 proceedings to go through, give them the standard
7 admonition that they have heard 150 times, and tell
8 them to come back on Tuesday.

9 MR. BERBERIAN: If you're going to delay
10 at all, I think it is imperative to find out whether
11 there has been any taint on the jury.

12 It doesn't have to be exhaustive; doesn't
13 have to go into making a decision as to whatever they
14 have been exposed to would in fact taint them.

15 At least the record should reflect whether
16 there are any of the 12 jurors or the alternates who
17 have read or heard anything about any news accounts
18 or anything since the 9th of April, when they returned
19 their verdicts.

20 THE COURT: And not go into, if they
21 have read it, the effect of it on them?

22 MR. BERBERIAN: That's correct. That's
23 correct.

24 You can reserve that. If the Court is
25 going to delay, anyway, I would ask that it at
26 least go that far.

27 And I think the jury has a right to know
28

1 there have been legal proceedings, as you said, that
2 are delaying this matter until next week.

3 THE COURT: That sounds like a good
4 point.

5 At that time I'm not exercising any
6 judgment. We are just asking them, "Did you read
7 the I-J," or something, "the San Francisco Examiner?"

8 And if they say yes, I don't ask what
9 impact it has. And I'm not making the judgment,
10 "Should they stay on or go out?"

11 Isn't that a good approach?

12 MR. RIORDAN: The only feeling I have,
13 your Honor, is that I feel very strongly that it
14 would be wholly ineffective to do anything like that
15 with them as a group.

16 THE COURT: I think we could do it
17 individually.

18 MR. RIORDAN: Because we are talking about
19 someone having to swallow hard and say, "Well, your
20 Honor, I know the admonition, but," and it is in
21 a group context.

22 It is just much too easy to duck behind
23 the next fellow.

24 THE COURT: I had the same thing happen
25 on another homicide a year ago.

26 We had to take a lady off a jury, or a
27 fellow, so it does happen, and it is a sensitive area.
28

1 But I think jurors -- my experience has
2 been that they will respond as to whether they did
3 or did not read an article, and we won't go any
4 further.

5 So why don't, at 10:00 o'clock, and by
6 that time -- I'll go back to my domestic calendar,
7 which is now 10 minutes behind.

8 But at 10:00 o'clock we'll meet, and by
9 that time maybe I can see what has happened at the
10 Judicial Council, from Reva.

11 And we'll just take the individual
12 jurors one at a time, including the alternates,
13 and poll them to see if they read either of those two
14 articles.

15 And we'll go on and continue it to
16 Tuesday, and then I'll work on my response, and
17 hopefully sometime on Monday some judge will have
18 reviewed it.

19 MR. BERBERIAN: Okay.

20 MR. SHAPIRO: All right.

21 THE COURT: That seems to me to be the
22 proper approach.

23 MR. SHAPIRO: I won't be here. Dennis
24 will be here.

25 THE COURT: Dennis will be here?

26 MR. SHAPIRO: I'm going to poison the minds
27 of the students at Katherine Branson School this
28

1 morning.

2 THE COURT: Is your client here, or will
3 you waive his presence?

4 MR. SHAPIRO: I think he should be here,
5 now that he is in custody.

6 My guess is that it would be a basic
7 mistake not to --

8 MR. BERBERIAN: I think he should be
9 there. I think he should be dressed out, as well.

10 MR. SHAPIRO: He always has to be dressed
11 out.

12 MR. RIORDAN: From everybody's point of
13 view, let's -- I mean, why make a mistake?

14 The problem is, I don't know if he has
15 any clothes.

16 MR. SHAPIRO: He has the clothes he was
17 wearing before he was remanded. He has the same
18 clothes.

19 MR. RIORDAN: Those are the ones that went
20 to the hospital and got ripped up with him, so I
21 don't know if he has --

22 MR. SHAPIRO: I see.

23 THE COURT: You have got time to go get
24 a new suit of clothes.

25 MR. SHAPIRO: Call my office and have
26 Sandy call her.

27 MR. BERBERIAN: Before we adjourn, there is
28

1 one other matter I would like to put on the
2 record.

3 Whether it is done today or at some
4 other proceeding, I think that there should be an
5 admonition to Mrs. Richards given by this Court out
6 of the presence of this jury as to her conduct in
7 and about the courtroom.

8 She has -- I realize she is the mother
9 of a defendant who has just been convicted of
10 murder, but she has to control her behavior within
11 reasonable bounds.

12 And I do not think it is reasonable
13 to issue threats to members in the gallery, regard-
14 less of who they are, or direct comments toward the
15 Court or toward the attorneys in this
16 proceeding.

17 THE COURT: Let me just say that I
18 wasn't aware of this.

19 MR. SHAPIRO: Why don't we just leave it
20 lie?

21 You know, to poison this situation even
22 further --

23 THE COURT: It is not poisoning.

24 MR. BERBERIAN: At is not poisoning.

25 MR. SHAPIRO: You don't understand the
26 emotion. I mean, I can understand the emotion that
27 is involved, because I have dealt with mothers and
28

1 fathers for many, many years, and I know that it
2 is not fair to hold them accountable for the same
3 kind of impartiality that you might show if a
4 defendant is found guilty, or found innocent.

5 This is something which is close to
6 her heart. She is running a risk of never seeing her
7 son again, except behind bars.

8 THE COURT: Let me just say this:

9 Other than from what was said in the
10 paper, I was not exposed to anything that went on
11 in the courtroom.

12 We adjourned, and there is nothing in
13 the record, so I know nothing other than the comment
14 in the paper.

15 My observation is that she has, under
16 the circumstances, acted reasonably in the court-
17 room. She has been here day after day.

18 I haven't seen any verbal or physical
19 gestures or anything of that nature, that would,
20 I think, have any impact on the jury, the Court or a
21 witness, frankly.

22 And I'm sort of reluctant to, quote,
23 jump on her in the form of an admonition. And I
24 think Mr. Shapiro should just try and tell her to
25 refrain from any outburst as best she can.

26 It is not unusual, as he points out, for
27 a mother or a wife or a husband to have a traumatic
28

1 response to a verdict coming in like that.

2 MR. BERBERIAN: I have to disagree with
3 the Court.

4 I believe she has been making comments
5 and gestures throughout these proceedings. The
6 Court may not have noticed these, but they have
7 occurred.

8 And I think the Court's own bailiff staff
9 can advise along those lines as well.

10 I think she goes beyond the bounds of
11 proper behavior when she has either directly implied
12 or threatened the life of someone else, or potentially
13 that threat.

14 And I think that that type of behavior
15 should not be allowed to continue in the court-
16 room, and it can be seen by a juror or jurors, I
17 believe, if she gets out of hand.

18 THE COURT: Okay. We'll do two
19 things.

20 I'll ask the individual juror the voir
21 dire question that we have already discussed.
22 We'll do it in the courtroom, because the defendant
23 will be present.

24 And I'll leave it up to Mr. Shapiro to
25 convey the comments of the District Attorney to the
26 mother of their client.

27 How is that?
28

1 MR. SHAPIRO: Okay.

2 THE COURT: Let me go on to my 9:00 o'clock
3 calendar.

4 (Whereupon, a recess was taken to 10:00
5 o'clock a.m. this date.)
6

7 - - -
8

9 (Whereupon, and commencing at 10:00
10 o'clock a.m., in chambers, there being present the
11 Court, Mr. Berberian, Mr. Riordan and the reporter,
12 the following proceedings were had:)
13

14 THE COURT: Okay.

15 We are in a chambers conference with
16 counsel, in People versus Richards, again on the
17 disqualification, 170(5) CCP.

18 We have had word back from the Judicial
19 Council as to what must be done to secure an out-of-
20 county judge, as requested by the defense.

21 The Court will have to write a letter
22 to the Chief Justice, care of the Judicial Council.

23 Once that letter is in the mail and
24 my response has been filed, then I have to -- they
25 will be notified, and will seek an out-of-town
26 judge.

27 They may get one by Friday; they may get
28 him on Monday, but once we have been advised of the

1 out-of-town judge, it is my understanding that it
2 is the Court's responsibility to get the papers
3 for him to review and rule on up to that out-of-
4 town judge.

5 And, as I understand, it has been
6 agreed that the papers will include, or the papers
7 to be sent will be the defendant's motion to
8 bifurcate the special circumstances from the other
9 portion of the trial, which we have already
10 conducted; my order of bifurcation, which is
11 included among several orders, pretrial orders; the
12 defendant's motion to disqualify, and declarations;
13 the People's opposition; the Court's response, since
14 I have indicated I will not recuse myself voluntarily,
15 and will deny the disqualification challenge.

16 And then, I gather, you filed something
17 additional, did you, Mr. Riordan, this morning?

18 MR. BERBERIAN: No, he filed points and
19 authorities yesterday evening.

20 THE COURT: All right.

21 Those will be included, and any response
22 that you have.

23 We'll have all that package ready on
24 Monday to get delivered to whomever has been
25 assigned.

26 MR. BERBERIAN: I'm sorry, did we
27 include the transcript of the actual remarks?
28

1 THE COURT: Oh, yes. We'll have that --
2 that, I figure, ought to be attached, or, if you're
3 willing, I'll just refer to it in my declaration.
4

5 MR. BERBERIAN: It is attached to
6 one of the motions that I --

7 THE COURT: But not the whole transcript.

8 MR. BERBERIAN: No, just the
9 colloquy.

10 THE COURT: Remand colloquy?

11 MR. BERBERIAN: Yes.

12 THE COURT: Could we stipulate that
13 we'll just send up the entire Monday, April 9,
14 transcript?

15 MR. BERBERIAN: I have no objection.

16 THE COURT: When the verdicts came in,
17 and the remand colloquy and the Court's
18 orders?

19 MR. RIORDAN: And is it useful to send
20 up a transcript of yesterday's discussion?

21 MR. BERBERIAN: I think all the
22 transcripts since the 9th should go up, that had
23 any bearing on this issue.

24 THE COURT: Is that agreeable?

25 MR. BERBERIAN: Yes.

26 MR. RIORDAN: Yes.

27 THE COURT: It is agreed that will be
28 the submission. There will be no further material.

1 MR. RIORDAN: Right.

2 THE COURT: Other than all our
3 transcripts, including the limited voir dire that we
4 are going to do today about whether anybody on
5 the jury, or the alternates, have read either of
6 these two articles which are --

7 MR. BERBERIAN: Oral argument not being
8 requested or expected?

9 THE COURT: Right.

10 MR. RIORDAN: Right.

11 THE COURT: Submitted on that basis?
12 That is the record.

13 Give me a few minutes, and we'll take
14 the jurors one at a time.

15 MR. RIORDAN: Why don't we just talk
16 about that for a minute?

17 MR. BERBERIAN: Yes.

18 MR. RIORDAN: I was anticipating that
19 we would try and begin preliminarily with the
20 broadest question of whether, you know, anyone has
21 spoken to them, or they have happened to see any
22 kind of coverage concerning the sentencing or
23 the -- of the verdict on Monday.

24 Because --

25 THE COURT: You told me you didn't want
26 me to really get into it.

27 MR. RIORDAN: Right.
28

1 THE COURT: Because I'm going to be
2 evaluating things.

3 MR. RIORDAN: Right.

4 THE COURT: I think you may be right.
5 We shouldn't get into too much.

6 MR. RIORDAN: Right.

7 THE COURT: Whether they have read about
8 the two articles, which is the basis of your
9 motion.

10 MR. RIORDAN: No.

11 Well, the motion to disqualify -- we
12 submitted the two articles, that's correct, your
13 Honor.

14 Our concern with the jury is a very
15 different one. I mean, your Honor could have never
16 said anything at all.

17 I mean, this publicity thing could have
18 been made of whole cloth, and we would have a
19 separate issue with the jurors about whether they
20 saw something prejudicial.

21 Now, the comments of your Honor were
22 covered on all -- I saw them on two separate
23 television stations, so that, I think, is a separate
24 issue.

25 And I agree that we don't want to get
26 into this a great deal, but I think we just want to
27 identify at what point there may be a juror that we
28

1 would have to --

2 THE COURT: Voir dire?

3 MR. RIORDAN: -- make a decision on.

4 THE COURT: All right.

5 Were those television -- the remand
6 and the verdicts came in on April the 9th?

7 MR. RIORDAN: Right.

8 THE COURT: Okay. And the two
9 newspaper articles are the I-J of April 10th and
10 the San Francisco Examiner of April 10th?

11 MR. RIORDAN: Right.

12 THE COURT: And then are you saying
13 there was TV coverage on the 9th?

14 MR. RIORDAN: On the evening of April 9th,
15 right.

16 MR. BERBERIAN: And also the evening
17 of the 10th, there was on television program that I
18 saw.

19 THE COURT: All right, then.

20 We'll just ask them four simple
21 questions, basically:

22 Did they read the I-J article the day
23 after the verdict came in --

24 MR. RIORDAN: Or see the headlines.

25 THE COURT: Did they see, and then did
26 they read?

27 MR. RIORDAN: Right; that's fine.
28

1 THE COURT: Did they see, did they
2 read, and did they hear any coverage on television
3 of the 9th or the 10th?

4 That will be the four or six questions,
5 just like polling them: yes, no, yes, no. Is that
6 agreed?

7 MR. BERBERIAN: And you are not going
8 to mention "remand" in that, I assume?

9 THE COURT: No.

10 MR. BERBERIAN: Fine. I wanted to make
11 sure you weren't using the term "remand" in your
12 request.

13 THE COURT: Now, we have all agreed,
14 then, those are the limited questions, and we'll
15 just get a yes or no from all 15 jurors.

16 MR. RIORDAN: Right.

17 THE COURT: And we'll send them home.

18 And let's assume we get the name of the
19 judge by Friday, and we can get the material up to
20 that judge either Friday or Monday, wherever he or
21 she may be.

22 Are we realistic on saying Tuesday,
23 or should we go over to Thursday -- Wednesday is
24 Juvenile Court -- insofar as when we tell these
25 jurors to come back?

26 MR. BERBERIAN: Well, on the basis
27 of the Court's decision that they are not going to
28

1 proceed at this time, I would say to go over until
2 Thursday, just simply from what I heard from the
3 Judicial Council.
4

5 MR. RIORDAN: I would, for other
6 reasons, Judge, very much appreciate it if it
7 went over to Thursday.

8 THE COURT: All right.

9 We are going to automatically, then,
10 tell these ladies and gentlemen of our jury, after
11 we get through with them individually -- and I'll
12 send them each back -- that we'll commence again
13 4/19/84 at 10:00 o'clock, and give them the
14 standard good old admonition, okay?

15 That means -- I'll reschedule --

16 Remind me, Mr. Reporter, we'll have to
17 reschedule Wolfe versus Wolfe. That is April
18 19th.

19 Good Friday is the 20th, and it could
20 be in their hands on Good Friday, or Monday, April
21 23rd, depending upon how long --

22 We have to still go over instructions,
23 verdict forms, and I'm sure there will be argument.

24 MR. RIORDAN: Right.

25 THE COURT: Even though the evidence
26 may be limited, as you represented today, okay?
27 And probably --

28 MR. RIORDAN: I have a copy of those

1 instructions (indicating).

2 MR. BERBERIAN: I gave him the
3 instructions yesterday.

4 MR. RIORDAN: I don't know if we gave
5 instructions.

6 THE COURT: Let me ask you what happens
7 if some of the jurors indicate they want to attend
8 Good Friday services?

9 MR. BERBERIAN: Does this need to be on
10 the record at this point, the discussion?

11 THE COURT: Off the record.

12 (Discussion off the record.)

13 THE COURT: On the record.

14 All right. It has been agreed that in
15 addition to the newspaper and TV coverage questions
16 that I'm to ask each individual juror separately,
17 that I will also ask them their preference re
18 recess on Friday, the 20th, Good Friday, the
19 20th; if they plan to attend any services.

20 And then after we see what these
21 responses are, we'll evaluate the situation, and
22 we'll get the expression of preferences.

23 MR. BERBERIAN: All right.

24 THE COURT: I'll just go in and tell
25 them, if you agree, that we are having a delay, and
26 that we are going to briefly talk to each -- examine
27
28

1 each juror individually.

2 And I'll tell them that they are not
3 to discuss amongst each other what we are
4 discussing with the individual jurors.

5 MR. BERBERIAN: I would ask that
6 whatever the Court is going to tell them about the
7 delay, that that be on the record.

8 THE COURT: All right.

9 MR. BERBERIAN: Just whether it is
10 handled as you individually call them in, or as a
11 group, and send them out and bring them back in
12 individually, however you wish to do that, I have
13 no real concern.

14 But I would like whatever communication
15 to them to be on the record.

16 THE COURT: Why don't I just take Leo
17 in to record my initial remarks to them, and
18 we'll have the bailiff bring in one juror at a
19 time.

20 Why don't we put them in their -- do
21 you want to put them in the witness stand or the first
22 juror seat?

23 MR. BERBERIAN: The first chair.

24 MR. RIORDAN: The first chair.

25 I guess I would have one other request,
26 your Honor, on the six questions.

27 I would request that the Court ask whether
28

1 they or anyone else on the jury that they know of
2 might have seen newspaper articles.

3 Because I have read cases in which
4 it turns out that the information about it comes from
5 someone else, that Juror One says, "Well, you know,
6 Juror Two did tell me about that."

7 And Juror Two in that situation then
8 says, "Well, yes, I did read the article."

9 THE COURT: I'm not clear. What is the
10 additional question you want me to ask?

11 MR. RIORDAN: "Mrs. Smith, did you see
12 the Chronicle article, or has anyone else on the
13 jury mentioned seeing the Chronicle article to
14 you?"

15 THE COURT: Okay.

16 And that would be with the I-J and
17 Examiner?

18 MR. RIORDAN: Right.

19 THE COURT: Okay.

20 Don't you think, then, I should also
21 ask the same question, "Have any of the other
22 jurors mentioned to you seeing the television
23 coverage?"

24 MR. RIORDAN: Yes. I meant in terms of
25 all of those questions, your Honor.

26 THE COURT: All right, gentlemen. I'll go
27 in with the court reporter, prepare the jurors for their
28

1 examination.

2 (Whereupon, a short recess was taken.)

3 (Whereupon, after a short recess, the
4 following proceedings were had in chambers, there
5 being present the Court, Mr. Berberian, Mr.
6 Riordan and the reporter:)

7 THE COURT: We are back in chambers
8 session on the jury, and the Court's voir dire of
9 them.

10 It just dawns on me -- remember?

11 We have one juror whose name I do not
12 recall right now, who indicated is going to be
13 in Hawaii in late April, long-committed.

14 That's Mrs. Travers.

15 MR. BERBERIAN: Which juror number is that,
16 your Honor?

17 THE COURT: The sixth juror.

18 I have a note, "Hawaii, late April," and
19 I have in parentheses, "22," with a question mark.

20 That juror would obviously -- 22 would
21 be that weekend, if we start Thursday, April 19th,
22 get a full day in, and get in a half a day, or a
23 full day on Friday.

24 MR. BERBERIAN: I think she can be asked
25 that when she is questioned in there.

26 THE COURT: What do you think, Mr.
27 Riordan?

28 MR. RIORDAN: Is the question whether I think

1 we'll get in under the wire?

2 THE COURT: No. What do you think?
3 Should we inquire about her vacation plans
4 individually, to see how that -- this new schedule
5 is going to affect her?

6 MR. RIORDAN: Yes, I would think so; I
7 would think so.

8 THE COURT: And as we all committed
9 ourselves to her that we would excuse her, that we
10 would be long gone by then, that means if she is
11 excused, we'll have to -- if we don't complete the
12 proceedings, we would have to then draw another
13 juror, and then we'd have to give them that standard
14 admonition, they'd have to start all over again,
15 their deliberations.

16 MR. BERBERIAN: With regard to the
17 matters now under submission.

18 They have completed their deliberations
19 as to the verdicts.

20 THE COURT: Yes, but when they consider
21 the special circumstances, which all the jurors
22 heard, you are going to have to encompass their
23 recollection of the evidence in the first phase, which
24 is incorporated in the second phase.

25 Agreed?

26 MR. RIORDAN: Yes.

27 My understanding -- I wasn't here for that --
28

1 is that actually there was some agreement among
2 counsel about this particular juror, right? During
3 the trial it came up?

4 THE COURT: Yes.

5 MR. RIORDAN: There was some agreement
6 or stipulation on it?

7 THE COURT: Yes, we agreed that we would
8 probably be through, but if we weren't, we would
9 let her go.

10 MR. RIORDAN: Right.

11 THE COURT: The only reason I brought
12 you back to it is because I'm looking at the schedule,
13 whether we go back on what we were planning, namely,
14 Tuesday, April 17th, not knowing whether we are
15 going to have a disqualification minute order back
16 one way or another by that time.

17 MR. BERBERIAN: The only other way I
18 could think to approach it would be to set it for
19 the Tuesday date, telling the jurors this time it
20 may be jumped to Thursday, depending on scheduling,
21 and that they'll be notified by phone on Monday as
22 to that, whether it is Tuesday or Thursday.

23 That's the only other way I can see
24 them approaching it.

25 All along, my first preference is to
26 get this over with as quickly as possible.

27 THE COURT: I think we all would prefer
28

1 that. But we have to be delicate.

2 MR. BERBERIAN: Yes.

3 MR. RIORDAN: I have my own ideas on the
4 quickest way to do that, but I don't think --

5 THE COURT: That sounds like a good idea.
6 Why don't we then agree that we'll tell them that
7 we are tentatively going to resume on the
8 17th, but depending upon other matters that they
9 are not to be concerned with, we may not resume
10 until Thursday.

11 Is that okay?

12 MR. BERBERIAN: That's fine.

13 MR. RIORDAN: Yes.

14 THE COURT: Okay.

15 We'll change that program.

16 All right. Thank you.

17 (Chambers hearing concluded.)
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1 (Whereupon, the following proceedings
2 were had in the jury room, there being present the
3 Court, the 12 jurors and three alternates and the
4 reporter:).

5 THE COURT: The record should reflect
6 the Court is meeting with the jurors and our
7 three alternates in the jury room pursuant to the
8 agreement of the attorneys.

9 The court reporter is present to record
10 our discussions here.

11 First of all, we want you to know that
12 we are going to have some delay in the proceedings.
13 We are going to initially have to talk to each
14 one of you separately in the courtroom about any
15 exposure to certain news media following the
16 verdicts.

17 And then it appears that we'll not at
18 this time be able to go forward immediately with
19 the secondary phase, the special-circumstances phase,
20 until possibly Tuesday, the 17th.

21 Or, if we don't get off on the 17th, we
22 expect to get off on Thursday, the 19th.

23 The attorneys indicate that the
24 proceedings in the second phase should be relatively
25 brief; it would take maybe a day or two or so.

26 So we would expect that the case would
27 be in your hands, presumably, on Monday, perhaps, April
28

1 23rd.

2 We are going to talk to Mrs. Travers
3 about her Hawaii vacation. We weren't sure whether
4 that was the weekend.

5 JUROR TRAVERS: It is the 27th.

6 THE COURT: That's fine. That eliminates
7 another problem. I had "22" in my notes with a
8 question mark after it.

9 It is the 27th.

10 We want to make sure that when we are
11 discussing this case individually with each juror,
12 and we have to do it in public, and it will only
13 be eight or ten questions, with yes or no answers.

14 Basically we want to make sure that
15 when you come back into this jury room, that you
16 don't discuss amongst yourselves about what was
17 asked and what was answered, et cetera.

18 You have to be like the three monkeys.

19 And that's what we are going to be doing
20 at this time.

21 So once we get through examining each
22 one of you individually and briefly, then we'll
23 recess the proceedings until Tuesday at 10:00
24 o'clock.

25 And if it turns out we are not going to
26 be able to get off on Tuesday for reasons that need
27 not concern you, and certainly you should not
28

1 speculate as to why, we expect to get off on
2 Thursday, which would be the 19th.

3 And then when it is all over with, we'll
4 have a meeting, or a party, and discuss all these
5 things.

6 But meanwhile, be sure, as we told you,
7 you don't discuss any of these matters relating to
8 the case or verdicts, or anything, amongst your-
9 selves, or with anybody, or receive any information
10 about it.

11 JUROR KASH: When the questions are
12 asked per each juror, will the defendant be sitting
13 there as well?

14 THE COURT: Oh, yes, he has to be present
15 at all times, with his counsel. It has to be done
16 publicly.

17 It is not done to embarrass you. It
18 is just something that we have to ask questions
19 about for obvious reasons, because we told you, I
20 guess a hundred times during the trial, you can't
21 read papers, or listen to TV or radio about the
22 case, or articles, et cetera.

23 With that in mind, we should be
24 through with our little discussions with each of you
25 in a very brief period of time, and you will be free
26 to go home.

27 THE FOREWOMAN: Do we leave after each of us
28

1 -- leave in a group, or how?

2 THE COURT: I think it might be better
3 for you to stay, because not knowing what may
4 happen, if you all just come back here until we get
5 through polling each of you individually -- that
6 would be best.

7 And then I'll come in and tell you, or
8 confirm what we are going to do, or schedule
9 Tuesday versus Thursday.

10 Tentatively we are scheduled to come
11 back on Tuesday. If not, we'll get word to you to
12 come back on Thursday.

13 JUROR PARKHURST: Tuesday, if possible.

14 THE COURT: Tuesday the 17th is what we
15 are shooting for. If we don't get off the 17th,
16 we expect to get off on Thursday, the 19th.

17 And the attorneys say it will just be
18 a couple of days for the whole matter, so you should
19 be very safe.

20 JUROR KELLY: I have Palm Springs on the
21 24th, for five days. Is it possible?

22 THE COURT: Oh, yes, I think, with what
23 the attorneys say -- they feel the presentation will
24 be somewhat limited.

25 JUROR CHERIE: Do we know today whether
26 it will be Tuesday or Thursday?

27 THE COURT: No. Be prepared to come back
28

1 on Tuesday, but we'll let you know sometime Monday,
2 if it looks like we are going to have to go over
3 to Thursday.

4 THE FOREWOMAN: And after all this is
5 over, we'll understand?

6 THE COURT: After all is over. It takes
7 a while for "all."

8 JUROR KELLY: Is today going to be a
9 full day?

10 THE COURT: No. We expect to have you out
11 of here hopefully by noon.

12 JUROR KELLY: No free lunch?

13 THE COURT: I didn't even have such an
14 evil thought in my mind.

15 Okay. We'll just have the bailiff come
16 in and he'll just ask -- Mr. Parkhurst will be
17 first, and he'll just escort you to the court-
18 room.

19 Take the first blue chair as you come to
20 the jury box. You don't have to find your own
21 seat, because we'll only be using one seat at a
22 time.

23 (Jury room proceedings closed.)
24

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26 --oOo--
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1 (Whereupon, the following proceedings
2 were held out of the presence of the jury:)

3 THE COURT: All right.

4 We are back in session outside the
5 presence of the jury, and the defendant and counsel
6 are present.

7 And as has been previously indicated, we
8 are going to voir dire the individual jurors very
9 briefly.

10 And then the matter will be in recess
11 until Tuesday, the 17th at 10:00 o'clock.

12 And if not on that date -- we may not
13 get started -- if we don't get started on that date
14 on the penalty special-circumstances stage, we will
15 get into it the following Thursday at 10:00 on the
16 19th.

17 All right.

18 The first juror will be Mr. Parkhurst.

19 If the clerk will contact Mr. Parkhurst
20 and bring him in from the jury room.

21 Why don't you just take any seat that
22 is comfortable there.

23 MR. PARKHURST: Okay, sir.

24 THE COURT: All right.

25 Mr. Parkhurst, we want to remind you
26 that the jury verdict was brought in on Monday,
27 April 9th. And the questions that we are going to
28 ask you relate to certain media coverage following

1 that evening, I guess, and also the following day,
2 on the 10th.

3 First of all, did you see any of the
4 news -- any of the television coverage on the day
5 that the verdict was brought in, on Monday?

6 MR. PARKHURST: No, sir.

7 THE COURT: No TV on Monday. All right.

8 There evidently was an article in the
9 Independent Journal the following day on the -- on
10 Tuesday, the 10th.

11 Did you --

12 MR. PARKHURST: I quit the I-J the 1st of
13 February. I don't read it any more.

14 THE COURT: Okay.

15 MR. PARKHURST: A get sick and tired of
16 it.

17 THE COURT: Okay.

18 So you had no exposure to any article that
19 was in the paper that day?

20 MR. PARKHURST: No, sir.

21 THE COURT: All right.

22 There evidently was an article in the
23 San Francisco Examiner on Tuesday, the 10th. Did you
24 read --

25 MR. PARKHURST: I don't take the
26 Examiner, nor read it.

27 THE COURT: Okay.

28

1 MR. PARKHURST: I believe there must have
2 been an article in the Chronicle, because my wife
3 cut a hole in the paper before I got it.

4 THE COURT: Okay.

5 Well, we don't know about that. Nobody
6 has brought that to our attention.

7 But you saw no article in the Chronicle --

8 MR. PARKHURST: No, sir.

9 THE COURT: -- following the verdict?

10 Okay.

11 As we discussed with the jurors when I
12 sort of oriented you as to what was going on in
13 our tentative schedule, we are looking downstream
14 to when we may get started, which will either be
15 Tuesday the 17th or Thursday the 19th.

16 The 20th of April is Good Friday. Do
17 you have any preference as to whether or not you
18 would prefer to recess at noon on the 20th -- Good
19 Friday -- or not?

20 MR. PARKHURST: No, sir.

21 THE COURT: No preference.

22 Okay.

23 Since the day of the verdict, has any
24 of your jurors talked to you about any articles that
25 they read following the verdict, or of any TV
26 coverage that they might have seen --

27 MR. PARKHURST: No, sir.
28

1 THE COURT: -- since the verdict?

2 All right. I believe that concludes the
3 examination of Mr. Parkhurst.

4 MR. FERBERIAN: Your Honor, the
5 admonition.

6 THE COURT: Yes.

7 I have already admonished them in the
8 jury room.

9 They are not to discuss individually or
10 among themselves what we have discussed with them
11 individually -- either the questions or the answers.

12 Do you understand that, Mr. Parkhurst?

13 MR. PARKHURST: Yes, I do.

14 THE COURT: Okay.

15 Thank you very much.

16 MR. BERBERIAN: And also the admonition
17 was given as to not reading or observing the news
18 or media coverage.

19 THE COURT: All right.

20 I again admonished that to him, and I
21 will admonish that to him again at the end of this
22 proceeding when we go back and release them to the
23 couple-days' recess.

24 Okay.

25 Mr. Parkhurst, thank you very much. You
26 will go back to the jury room.

27 Just take any seat that is convenient
28

1 there to you, Mrs. Kash.

2 All right. We are going to ask you
3 some couple of questions about media coverage
4 following the verdict that was delivered on Monday
5 by the jury.

6 First of all, the verdict was delivered
7 on Monday, and we want to ask you:

8 Did you see any TV coverage connected
9 with the verdict that night?

10 MS. KASH: No.

11 THE COURT: No TV.

12 Okay. How about -- there was evidently an
13 article in the San Francisco Examiner the following
14 day -- the 10th.

15 Did you read that or see that article?

16 MS. KASH: No.

17 THE COURT: No.

18 And there was evidently also some tele-
19 vision coverage of the verdict on the 10th -- the
20 following day.

21 Did you see any TV coverage on that?

22 MS. KASH: No.

23 THE COURT: No?

24 MS. KASH: No.

25 THE COURT: Okay.

26 I am sorry.

27 All right. Has anyone on the jury talked
28

1 to you about seeing any television coverage or reading
2 any newspaper article connected with the case
3 following your delivery of the verdicts on Monday?
4

5 MS. KASH: No.

6 I would interject, though: People in the
7 office assumed I was off, and interjected certain
8 things, and I said, "I can't read or discuss or
9 talk."

10 THE COURT: Okay.

11 MS. KASH: "But just inform me, like, what
12 may go on?"

13 And I said, "I have no idea. The judge
14 said he would explain it today."

15 THE COURT: Okay.

16 Okay. As we told you, we want to get
17 back in the trial on Tuesday, the 17th. It may be
18 delayed until Thursday the 19th.

19 And it is possible that we will be
20 involved in the case on Friday, the 20th, which is
21 Good Friday.

22 Do you have any preference as to recessing
23 at noon, if you wish to attend services or not on
24 Good Friday?

25 Do you have any preference?

26 MS. KASH: No preference. Whatever the
27 majority --

28 THE COURT: No preference. Okay.

1 I think that is all we need.

2 Agreed, gentlemen?

3 MR. RIORDAN: Your Honor, I would just
4 ask whether anyone in the office happened to mention
5 the nature of the coverage to Mrs. Cash when they
6 did interject these.

7 MS. KASH: Someone commented, sir, that
8 the defendant's mother made a comment to somebody
9 in the press.

10 Other people simply commented to me, "You
11 are going back for sentencing," and that, "I didn't
12 understand."

13 So I said, "I'll find out Thursday."

14 THE COURT: Okay.

15 Okay. And again, I want to remind you
16 you are not to discuss what we have discussed with
17 you, or your answers, with any jurors.

18 MS. KASH: Yes.

19 THE COURT: Okay. Thank you.

20 If you will just step out, we will have
21 the next juror, Mrs. Elliott.

22 Please just take the first seat that is
23 available to you, Mrs. Elliott.

24 As we explained in the jury room, we
25 just want to ask you a few questions about basically
26 media coverage following the return of the verdict
27 which was delivered by the jury on Monday, the 9th of
28

1 April.

2 There was evidently TV coverage that
3 evening. Did you see any TV coverage of the
4 verdict?

5 MS. ELLIOTT: No, I didn't.

6 THE COURT: There was evidently an
7 article in the San Francisco Examiner the following
8 morning, the 10th.

9 Did you read or have any exposure to
10 that article?

11 MS. ELLIOTT: No.

12 THE COURT: And there evidently was -- may
13 have been an article in the San Francisco Chronicle
14 on the following morning, the 10th.

15 Did you have any -- did you read it or
16 have any exposure to it?

17 MS. ELLIOTT: No.

18 THE COURT: All right.

19 And evidently there was TV coverage on
20 that same day, the 10th, which would be Tuesday, the
21 day after the verdict.

22 Did you see anything on television relating
23 to the case?

24 MS. ELLIOTT: No.

25 THE COURT: All right.

26 Has anyone on the jury talked to you about
27 any newspaper articles they read or any TV coverage
28

1 that they saw following the verdict -- any of the
2 jurors talked to you about reading --

3 MS. ELLIOTT: No.

4 THE COURT: All right.

5 Under our schedule, which I -- or
6 tentative schedule, which I discussed in the jury
7 room with all of you as a whole a few moments ago,
8 we may either get off on Tuesday, the 17th or
9 Thursday the 19th.

10 We are planning for Tuesday. It may go
11 over to Thursday, the 19th. And if it does, it
12 means that it would run into Friday, the 20th.

13 And it was noted that Friday the 20th
14 is Good Friday. And we wanted to ask if you had
15 any preference as to recessing on Good Friday or
16 not in regard to attending any religious services.

17 Do you have any preference if you are
18 in session, that the case will be referred to
19 recess at noon?

20 MS. ELLIOTT: Yes, I would.

21 THE COURT: Okay.

22 Okay. And as I told you before in the
23 jury room, don't discuss with the other jurors, now,
24 any of the things that we have discussed with you.

25 MR. BERBERIAN: Your Honor, the I-J was
26 not mentioned, I believe.

27 THE COURT: I am sorry.
28

1 The I-J had an article on the day
2 following the verdict, Tuesday the 10th.

3 Did you read anything in the I-J?

4 MS. ELLIOTT: I just saw "Pendragon,"
5 and then my husband took it away.

6 I mean, I didn't even see it. I just
7 saw that much.

8 THE COURT: All you saw was the word
9 "Pendragon"?

10 MS. ELLIOTT: I didn't even see what was
11 after it.

12 THE COURT: Okay.

13 We will ask you to go back --

14 MR. RIORDAN: Your Honor, based on the
15 response of another juror, could we ask Mrs. Elliott
16 and the remainder of the jurors whether someone --
17 anyone mentioned to them coverage?

18 THE COURT: Other than members of the jury,
19 has anybody among your friends or acquaintances
20 talked to you about either newspaper coverage or
21 television coverage following the verdict?

22 MS. ELLIOTT: No. I had a migraine after
23 that, and I didn't talk to anybody. I just got over
24 it last night.

25 THE COURT: Okay.

26 Thank you. Very good. We will ask you to
27 go back to the jury room, and we will have the next
28

1 juror, who is Mrs. Wentworth.

2 Please just take a seat that is comfortable
3 for you.

4 All right.

5 Ms. Wentworth, I just want to ask you a
6 few questions about media coverage, basically,
7 following the verdict that the jury returned on Monday,
8 the 9th.

9 First of all, on Monday the 9th there
10 was evidently some TV coverage that evening about the
11 verdict.

12 Did you see any TV coverage connected
13 with that?

14 MS. WENTWORTH: No, I didn't.

15 THE COURT: There was also evidently, the
16 following day, an article in the Independent Journal --
17 that would be on Tuesday the 10th.

18 Did you see or get exposed to that
19 article?

20 MS. WENTWORTH: I did not see it. I was
21 told there was an article.

22 THE COURT: Were you told anything about
23 the contents or information in that article?

24 MS. WENTWORTH: I was told that we had
25 reached a verdict, which I knew.

26 THE COURT: Okay.

27 MS. WENTWORTH: And I had -- I was told
28

1
2 that the person who read it had liked the judge's
3 statement.

4 And at that point, I said, "I can't know
5 any more about it."

6 THE COURT: All right.

7 There evidently was also an article in
8 the San Francisco Examiner on the following day -- the
9 10th.

10 Did you read that article or have any
11 exposure to it?

12 MS. WENTWORTH: I did not read it.

13 When I got to work, everybody told me it
14 was in the paper.

15 THE COURT: Did anybody discuss with you
16 any of the contents of what they said was in the
17 paper?

18 MS. WENTWORTH: They started to, and I
19 stopped them. And I'm not sure I can repeat to you
20 what they said to me.

21 THE COURT: Okay.

22 Do you remember any statement that was made
23 by any of your co-employees about what they saw in
24 the newspaper?

25 MO. WENTWORTH: Only something about the
26 defendant taking some pills.

27 THE COURT: Okay.

28 Did anybody speak to you among your

1 co-employees about any television coverage which they
2 might have seen?

3 MS. WENTWORTH: Yes. They told me that
4 the jury showed up on Jane Polly show, I believe
5 it was, yesterday morning. But that's all that was
6 said.

7 THE COURT: Did they tell you of any
8 commentary that went along with it?

9 MS. WENTWORTH: No, I didn't let them.

10 THE COURT: All right.

11 Evidently there was also -- evidently there
12 was also an article in the Independent Journal -- was
13 there one on the 10th? I think on the 10th.

14 Did you see anything on the 10th?

15 MS. WENTWORTH: No. I haven't been
16 getting my Independent Journal.

17 THE COURT: How about the San Francisco
18 Chronicle? There may have been an article in that on
19 the following day, the 10th.

20 Did you read anything, first of
21 all?

22 MS. WENTWORTH: I didn't read it. I did
23 see the headline, but I did not read it.

24 THE COURT: You saw the headlines relating
25 to the case?

26 MS. WENTWORTH: Yes. I think I flipped a
27 page, and I saw something, and I kept flipping the
28

1
2 page.

3 THE COURT: Did you actually read it, or
4 how did you recognize it related to the case?

5 MS. WENTWORTH: I think it had "Pendragon"
6 in it.

7 THE COURT: Now, other than what you
8 have related, has anyone, whether they are co-employees,
9 friends, acquaintances, discussed with you any
10 news media commentary aspects, other than what you
11 have told us?

12 MS. WENTWORTH: No. When people start
13 to, I have told them that I cannot discuss it, and I
14 do not wish to discuss it.

15 THE COURT: Okay.

16 It appears from our schedule that we may
17 get off on Tuesday the 17th or Thursday the 19th,
18 as I have discussed with the jurors.

19 That means that we may run into Good
20 Friday, which is the 20th.

21 Now, do you have any preference as to
22 whether or not you would prefer to recess at noon
23 on Good Friday, or go through the full day?

24 MS. WENTWORTH: I have no preference.

25 THE COURT: No preference.

26 Okay. I think that is all, Mrs.
27 Wentworth. Thank you very much.

28 MS. WENTWORTH: Thank you.

1 THE COURT: Remember, don't discuss what
2 we have discussed with you with anybody in the
3 jury room or elsewhere.

4 MS. WENTWORTH: Thank you.

5 THE COURT: Okay.

6 Mrs. Phillips, we have discussed with
7 you previously our schedule, what we are going to do
8 here today.

9 All we want to do is remind you that
10 the jury verdict was Monday, April 9th.

11 There was evidently some TV and news
12 articles following that.

13 We are going to ask you some questions
14 about what exposure, if any, that you had to those
15 matters.

16 Following the verdict on the afternoon
17 of Monday the 9th, there was evidently TV coverage
18 that evening on the 9th.

19 Did you see any of it?

20 MS. PHILLIPS: I don't think so. I might
21 have seen -- seen but not heard Mark Richards' face,
22 but that's when the verdict was read.

23 I think that would be the only thing that I
24 saw.

25 THE COURT: Did you listen to any
26 commentary in connection with the TV coverage for that
27 evening?
28

MS. PHILLIPS: No.

THE COURT: No, following that, on the following day, Tuesday the 10th, there was evidently an article in the Independent Journal.

Did you read that article or see it?

MS. PHILLIPS: No.

THE COURT: There was also an article, evidently, in the San Francisco Examiner that following day.

Did you see that?

MS. PHILLIPS: No.

THE COURT: And we think there might have been an article in the San Francisco Chronicle the following day, the 10th.

Did you read or see that?

MS. PHILLIPS: No.

THE COURT: Now, has anybody, whether they are co-employees, friends or relatives, et cetera, talked to you about any media coverage -- newspapers, TV -- following the verdict?

MS. PHILLIPS: Other than they said they saw that it had been on the news, but it was not discussed with me.

THE COURT: Okay.

Have you had any -- has any member of the jury talked to you about anything that they read or heard or viewed on television following the verdict?

1 MS. PHILLIPS: No.

2 THE COURT: All right.

3 Considering the schedule that we have
4 discussed, namely, we may go forward on the 17th;
5 we are hoping to. If not, it will be Thursday the
6 19th.

7 We may run into Good Friday, which is
8 the 20th.

9 We want to ask you if you have any
10 preference as to, if we are in session on the 20th,
11 whether you would prefer to recess at noon or not
12 on the 20th for any services --

13 MS. PHILLIPS: It doesn't matter.

14 THE COURT: -- as a matter of preference?

15 No preference?

16 MS. PHILLIPS: Doesn't matter.

17 THE COURT: All right.

18 All right. Other than that, remember,
19 don't talk to any of the other jurors about what you
20 have talked to us about, or any of your answers.
21 Okay?

22 MS. PHILLIPS: Okay.

23 THE COURT: Just take the first seat
24 that is there, Ms. Travers.

25 I have already relayed the good news that
26 your vacation is not as early as we thought. So there
27 won't be any problem as far as we can see in connection.
28

with that.

We are going to discuss with you a few questions about exposure to either television or newspaper or radio coverage about the case following the verdict, which you know the verdict came in on the -- Monday the 10th -- 9th -- excuse me.

And there was evidently TV coverage that evening of the 9th.

Did you see anything?

MS. TRAVERS: No, I fell asleep.

THE COURT: We understand there was also some newspaper coverage in the I-J the following day, the 10th.

How about any exposure to that?

MS. TRAVERS: I saw the article, but I did not read it. It was on the -- I picked up the paper, and it was on the front page, and I did not read it.

THE COURT: You saw a headline or something?

MS. TRAVERS: Yes, I saw the headline.

THE COURT: Did you read the headline, or did you just see that it pertained to the case, or what?

MS. TRAVERS: I read the headline.

THE COURT: Okay. Do you recall what the headline said?

1 MS. TRAVERS: "Judge says 'Ruthless' "-- I
2 just remember the word "ruthless," and "judge."
3 I don't remember specifically --
4
5 THE COURT: Okay.
6 MS. TRAVERS: -- how it read.
7
8 THE COURT: All right.
9
10 There evidently was an article in the
11 San Francisco Examiner that same day, the 10th.
12
13 Did you have any exposure to that?
14
15 MS. TRAVERS: No.
16
17 THE COURT: And we think there was
18 coverage in the San Francisco Examiner that same day,
19 the 10th.
20
21 Did you have any exposure to that
22 article?
23
24 MS. TRAVERS: No.
25
26 THE COURT: All right.
27
28 There may have been coverage on the 10th,
also, by the television media.
Did you have any exposure to the television
media on the 10th in that case?
MS. TRAVERS: No, I have not.
THE COURT: Has any friend, co-employee,
neighbor, et cetera, talked to you about news
coverage, media, articles, television, et cetera,
following the verdict?
MS. TRAVERS: My neighbor told me that she

1 SAW THE TELEVISION COVERAGE, AND THAT WAS THE EXTENT
2 OF THE CONVERSATION.

3 THE COURT: DID SHE TELL YOU OF ANY
4 COMMENTARY?

5 MS. TRAVERS: NO, NO. WE DIDN'T DISCUSS
6 IT. I SAID, "DON'T TALK TO ME ABOUT IT."

7 THE COURT: OKAY. SO THAT WAS THE ONLY
8 CONTACT, I GATHER, BY ANYONE IN CONNECTION WITH THE
9 VERDICT TO YOU?

10 MS. TRAVERS: UH-HUH.

11 THE COURT: ALL RIGHT. UNDER OUR TENTATIVE
12 SCHEDULE, IT IS POSSIBLE THAT WE WILL BE IN SESSION ON
13 GOOD FRIDAY, WHICH IS THE 20TH, DEPENDING UPON WHETHER
14 WE GET OFF ON THE 17TH OR THE 19TH.

15 DO YOU HAVE ANY PREFERENCE AS TO RECESSING
16 AT NOON ON GOOD FRIDAY FOR SERVICES?

17 MS. TRAVERS: NO.

18 THE COURT: OKAY. ALL RIGHT. I THINK THAT
19 IS ALL. WE JUST AGAIN WANT TO REMIND YOU, CERTAINLY,
20 DO NOT DISCUSS WHAT WE HAVE DISCUSSED WITH ANYBODY INT
21 HE JURY, AND WE WILL BE BACK TO YOU SHORTLY.

22 MS. TRAVERS: OKAY.

23 THE COURT: OKAY. OKAY.

24 MR. SICZEWICZ, WE EXPLAINED BRIEFLY WE ARE
25 GOING TO DISCUSS WITH YOU THE QUESTION OF EXPOSURE TO
26 NEWS MEDIA -- WHETHER TELEVISION OR NEWSPAPER ARTICLES --
27 FOLLOWING THE VERDICT. AS YOU MIGHT REMEMBER, THE VERDICT
28 CAME IN ON MONDAY, THE 9TH. AND WE UNDERSTAND THAT THERE

1 WAS TELEVISION COVERAGE THAT EVENING ABOUT THE CASE AND
2 THE VERDICT.

3 DID YOU SEE ANYTHING ABOUT THAT?

4 MR. SICZEWICZ: NO, NO TV.

5 THE COURT: WE ALSO UNDERSTAND THERE WAS
6 NEWSPAPER ARTICLES, BOTH IN THE I-J, THE SAN FRANCISCO
7 CHRONICLE, AND THE SAN FRANCISCO EXAMINER THE FOLLOWING
8 DAY, THE 10TH ON TUESDAY.

9 DID YOU READ ANY OF THOSE ARTICLES?

10 MR. SICZEWICZ: I DIDN'T READ THEM. I SAW
11 THE HEADLINE -- PART OF THE HEADLINE IN THE CHRONICLE.

12 THE COURT: HOW DID YOU RECOGNIZE THAT PART
13 OF THE HEADLINE AS RELATING TO --

14 MR. SICZEWICZ: I SAW THE WORD "PENDRAGON,"
15 AND THEN I FLIPPED IT.

16 THE COURT: AND THAT IS THE ONLY EXPOSURE
17 POST-VERDICT THAT YOU HAD ON ANY OF THOSE THREE PAPERS?

18 MR. SICZEWICZ: YES.

19 THE COURT: OKAY. THERE MAY HAVE BEEN TELE-
20 VISION COVERAGE ALSO, WE UNDERSTAND, ON THE 10TH, THE
21 FOLLOWING DAY AFTER THE VERDICT.

22 DID YOU SEE ANYTHING ABOUT THAT --

23 MR. SICZEWICZ: NO, I DIDN'T.

24 THE COURT: -- CASE?

25 ALL RIGHT. HAS -- FIRST OF ALL, HAS ANYBODY,
26 INCLUDING JURORS TALKED TO YOU ABOUT MEDIA COVERAGE,
27 NEWSPAPERS, RADIO, TELEVISION -- FOLLOWING THE VERDICT?

28 MR. SICZEWICZ: PEOPLE AT WORK TOLD ME THAT

1 THEY HAD READ ABOUT IT -- THAT THEY KNEW THAT THE VERDICT
2 WAS IN. SOMEONE MENTIONED THERE WAS A RADIO. THEY HEARD
3 ON THE RADIO THAT THE VERDICT WAS IN, BUT THAT IS ALL.

4 THE COURT: OTHER THAN TELLING YOU THAT THEY
5 WERE AWARE THAT THE VERDICT HAD BEEN REACHED, SO TO SPEAK,
6 DID THEY DISCUSS ANY OF THE RADIO OR COMMENTARY -- WHAT
7 WAS SAID?

8 MR. SICZEWICZ: NO COMMENTARY. I WAS TOLD
9 THAT NO ONE KNEW WHY WE HAD TO COME BACK. THEY SAID
10 THERE WASN'T ANY EXPLANATION IN THE I-J ON WHY WE HAD
11 TO COME BACK.

12 THE COURT: ALL RIGHT.. AND THAT WAS TOLD
13 TO YOU BY SOMEBODY AT WORK?

14 MR. SICZEWICZ: YES, IT WAS.

15 THE COURT: DID YOU EXPRESS ANY COMMENT ABOUT
16 WHY YOU WERE COMING BACK, OR --

17 MR. SICZEWICZ: I DIDN'T WANT TO TELL -- I
18 THINK I MENTIONED TO SOME PEOPLE THAT IT WAS SPECIAL
19 CIRCUMSTANCES, BUT I DIDN'T TELL THEM AT WORK, BECAUSE
20 IN CASE SOMEONE KNEW WHAT THAT MEANT. I DON'T KNOW WHAT
21 THAT MEANS.

22 THE COURT: OKAY. OKAY. SO THAT IS THE
23 ONLY EXPOSURE YOU HAVE FROM ANY OUTSIDE SOURCE --
24 PEOPLE --

25 MR. SICZEWICZ: YES.

26 THE COURT: -- ABOUT POST-VERDICT MEDIA
27 COVERAGE?

28 MR. SICZEWICZ: YES. NO ONE TOLD ME ANYTHING.

1 I JUST TOLD PEOPLE THAT I KNEW THE VERDICT WAS IN.

2 THE COURT: ALL RIGHT. UNDER OUR TENTATIVE
3 SCHEDULE, WE MAY GET OFF ON TUESDAY THE 17TH OR THURSDAY
4 THE 19TH. WE NOTE THAT THERE IS GOOD FRIDAY ON THE 20TH.
5 WE WANT TO INQUIRE OF THE JURORS IF THEY HAVE ANY
6 PREFERENCE AS TO RECESSING AT NOON ON GOOD FRIDAY, IF
7 YOU ARE -- IF WE ARE IN SESSION.

8 DO YOU HAVE ANY PREFERENCE ONE WAY OR THE
9 OTHER?

10 MR. SICZEWICZ: NO PREFERENCE.

11 THE COURT: OKAY.

12 MR. RIORDAN: JUDGE, I DON'T KNOW IF WE
13 COVERED THE OTHER JUROR'S QUESTION.

14 THE COURT: WELL, I MEANT TO INCLUDE THAT
15 BY "ANYONE."

16 WHEN I SAY "HAS ANYONE TALKED TO YOU ABOUT
17 POST-VERDICT MEDIA COVERAGE," I MEAN TO INCLUDE ANY OF
18 YOUR -- OTHER THAN JURORS, HAS ANYONE TOLD YOU THEY HAD
19 SEEN -- TV, RADIO, READ NEWSPAPER ARTICLES --

20 MR. SICZEWICZ: NO, NOT THAT I CAN -- NO.

21 THE COURT: OKAY. OKAY. THANK YOU. AND
22 WE WILL BE BACK WITH YOU SHORTLY.

23 PLEASE DON'T DISCUSS WHAT WE HAVE DISCUSSED
24 WITH YOU WITH ANY OF THE JURORS.

25 MR. SICZEWICZ: OKAY.

26 THE COURT: OKAY. PLEASE JUST TAKE THE SEAT,
27 MRS. HEMINGWAY. AS I BRIEFLY MENTIONED THIS MORNING
28 TO THE JURORS BEFORE WE STARTED TO TALK TO YOU

1 INDIVIDUALLY, WE WANT TO ASK A FEW SPECIFIC QUESTIONS
2 ABOUT ANY EXPOSURE THAT YOU HAVE HAD BY WAY OF TELEVISION,
3 NEWSPAPERS, OR COMMENTS BY OTHER JURORS, OR FRIENDS,
4 EMPLOYEES, ET CETERA. ABOUT --

5 MRS. HEMINGWAY: RIGHT.

6 THE COURT: -- THE VERDICT, OR MATTERS AFTER
7 THE VERDICT.

8 OKAY. THE VERDICT WAS RENDERED ON MONDAY,
9 THE 9TH.

10 WE UNDERSTAND THAT THERE WAS TV COVERAGE
11 THAT NIGHT ON THE 9TH AND ALSO TV COVERAGE ON THE 10TH.

12 DID YOU HAVE ANY EXPOSURE TO ANY OF THOSE
13 NEWS COVERAGE?

14 MRS. HEMINGWAY: NO, I DID NOT.

15 THE COURT: WE ALSO UNDERSTAND THAT THERE
16 WAS NEWSPAPER COVLRAGE BOTH ON THE 10TH, EVIDENTLY, THE
17 FOLLOWING DAY IN THE CHRONICLE, THE SAN FRANCISCO
18 EXAMINER, AND THE I-J.

19 DID YOU HAVE ANY EXPOSURE TO ANY OF THOSE
20 ARTICLES?

21 MRS. HEMINGWAY: THE CHRONICLE -- I DO TAKE
22 THAT PAPER, AND I SAW AN ARTICLE ON THE SECOND PAGE AND
23 SAW MARK RICHARS' PICTURE AND DID NOT READ IT.

24 THE COURT: YOU SAW A PICTURE?

25 MRS. HEMINGWAY: SAW HIS PICTURE.

26 THE COURT: OKAY. WOULD I GATHER FROM THAT,
27 THEN, YOU HAD NO EXPOSURE TO ANY ARTICLES THAT MIGHT
28 HAVE BEEN IN THE INDEPENDENT JOURNAL OR THE EXAMINER?

1 MRS. HEMINGWAY: NO, I DON'T TAKE THOSE.

2 THE COURT: ALL RIGHT. HAVE YOU HAD ANY --
3 FIRST OF ALL, HAVE ANY OF THE OTHER JURORS TALKED TO
4 YOU ABOUT ANY OF THE MEDIA COVERAGE THAT FOLLOWED THE
5 VERDICT?

6 MRS. HEMINGWAY: YES.

7 THE COURT: OKAY. WHAT HAVE YOU ASCERTAINED
8 AND FROM WHOM?

9 MRS. HEMINGWAY: I HAVE HEARD FROM CATHY
10 KASH REGARDING MARK RICHARDS BECOMING ILL.

11 THE COURT: CAN YOU TELL US --

12 MRS. HEMINGWAY: -- AND TAKEN TO THE
13 HOSPITAL -- MARIN GENERAL.

14 THE COURT: IS THAT THE EXTENT OF THE CONVER-
15 SATION?

16 MRS. HEMINGWAY: AND ALSO THERE WAS SOME
17 DISCUSSION ABOUT HIS MOTHER THREATENING A REPORTER IN
18 THE I-J.

19 THE COURT: AND WAS THIS WITH MRS. KASH?

20 MRS. HEMINGWAY: YES.

21 THE COURT: ANY OTHER CONVERSATION WITH ANY
22 OTHER JUROR?

23 MRS. HEMINGWAY: NO.

24 THE COURT: ALL RIGHT. HOW ABOUT FROM ANY
25 FRIENDS, NEIGHBORS, CO-EMPLOYEES -- HAVE YOU HAD ANY
26 CONTACT OR COMMENT BY ANY OF THEM REGARDING WHAT THEY
27 MAY HAVE READ IN THE NEWSPAPER, TELEVISION, ET CETERA?

28 MRS. HEMINGWAY: NO, NOT REALLY, OTHER THAN

1 WE REACHED A VERDICT.

2 THE COURT: PARDON? THAT YOU REACHED A
3 VERDICT?

4 MRS. HEMINGWAY: THAT'S ALL, RIGHT.

5 THE COURT: DID ANYONE DISCUSS WITH YOU
6 ANYTHING OTHER THAN THE FACT THAT THEY HAD READ OR HEARD
7 THAT YOU HAD REACHED A VERDICT?

8 MRS. HEMINGWAY: NO.

9 THE COURT: ALL RIGHT. IT APPEARS THAT AS
10 WE TOLD YOU, WE MAY BE IN SESSION ON THE 17TH, HOPEFULLY.
11 IF NOT, WE HOPE TO BE ON THE 19TH. THE CASE COULD RUN
12 INTO THE 20TH, WHICH IS GOOD FRIDAY.

13 DO YOU HAVE ANY PREFERENCE IF IT DOES RUN
14 INTO GOOD FRIDAY AS TO WHETHER OR NOT YOU WOULD LIKE
15 TO RECESS AT NOON OR GO TO A REGULAR DAY?

16 MRS. HEMINGWAY: I HAVE NO PREFERENCE.

17 THE COURT: NO PREFERENCE.

18 ALL RIGHT. I THINK THAT IS ALL WE HAVE TO
19 ASK YOU. THANK YOU, MRS. HEMINGWAY.

20 OBVIOUSLY, DON'T DISCUSS WHAT WE HAVE
21 DISCUSSED WITH YOU TO ANYONE ELSE.

22 MRS. HEMINGWAY: YES, I UNDERSTAND.

23 THE COURT: PLEASE JUST BE SEATED, MRS.
24 GJERDE.

25 AS WE MENTIONED, WE WANT TO DISCUSS JUST
26 A FEW QUESTIONS WITH YOU ABOUT MEDIA COVERAGE FOLLOWING
27 THE VERDICT ON MONDAY, WHICH WAS THE 9TH.

28 WE UNDERSTAND THERE WAS SOME TV COVERAGE.

1 WE UNDERSTAND THERE WAS SOME NEWSPAPER COVERAGE OF THE
2 VERDICT AND ARTICLES AND COMMENTS CONNECTED THEREWITH.

3 FIRST OF ALL, THERE WAS EVIDENTLY NEWS --
4 EXCUSE ME TV COVERAGE ON THE NIGHT OF THE VERDICT --
5 THE 9TH, AND ALSO THE FOLLOWING DAY, THE 10TH.

6 DID YOU SEE ANY OF THE TV COVERAGE IN EITHER
7 OF THOSE DAYS?

8 MRS. GJERDE: NO.

9 THE COURT: WE HAVE BEEN ADVISED THAT THERE
10 WERE ARTICLES IN THE SAN FRANCISCO EXAMINER, THE SAN
11 FRANCISCO CHRONICLE, AND ALSO THE INDEPENDENT JOURNAL
12 ON THE FOLLOWING DAY, OR DAYS.

13 HAVE YOU READ ANY OF THOSE ARTICLES?

14 MRS. GJERDE: NO.

15 THE COURT: ALL RIGHT. HAS ANY OF THE JURORS
16 TALKED TO YOU ABOUT ANY -- EITHER NEWSPAPER COVERAGE
17 OR ANY TELEVISION COVERAGE FOLLOWING THE VERDICT -- WHAT
18 THEY MAY HAVE HEARD OR READ?

19 MRS. GJERDE: NO.

20 THE COURT: HOW ABOUT ANYONE ELSE, SUCH AS
21 FRIENDS, NEIGHBORS, CO-EMPLOYEES OR ANYTHING LIKE THAT?

22 MRS. GJERDE: NO.

23 THE COURT: ALL RIGHT. WE MAY -- THE CASE,
24 AS TENTATIVELY SCHEDULED, WHICH IS THE 17TH ON TUESDAY,
25 OR STARTING ON THURSDAY THE 19TH, MEANS THAT WE ARE LIKELY
26 TO RUN INTO FRIDAY THE 20TH, WHICH IS GOOD FRIDAY.

27 DO YOU HAVE ANY PREFERENCE INSOFAR AS WHETHER
28 YOU RECESSED AT NOON ON GOOD FRIDAY OR HAVE A REGULAR

1 DAY?

2 MRS. GJERDE: NO.

3 THE COURT: OKAY. MRS. GJERDE, I THINK THAT
4 IS ALL WE NEED. IF YOU WILL JUST RETURN TO THE JURY
5 ROOM.

6 OBVIOUSLY, DON'T DISCUSS ANYTHING THAT WE
7 HAVE DISCUSSED WITH THE OTHER JURORS.

8 MRS. GJERDE: OKAY.

9 THE COURT: OKAY. MR. KELLY, IF YOU WILL
10 JUST TAKE THAT FIRST SEAT -- WHATEVER ONE IS COMFORTABLE
11 FOR YOU.

12 MR. KELLY: THIS IS.

13 THE COURT: THAT IS THE ROCKER. THAT IS
14 COMFORTABLE FOR YOU. WE ARE GOING TO TALK TO YOU BRIEFLY
15 ABOUT THE NEWSPAPER COVERAGE AND THE TELEVISION COVERAGE
16 FOLLOWING THE VERDICT, WHICH WAS RENDERED ON MONDAY THE
17 9TH.

18 WE UNDERSTAND THERE WAS TELEVISION COVERAGE
19 MONDAY THE 9TH AND ON THE FOLLOWING DAY ON TUESDAY.

20 DID YOU SEE ANY OF THAT COVERAGE?

21 MR. KELLY: NO.

22 THE COURT: WE ALSO UNDERSTAND THAT THERE
23 WERE ARTICLES THE FOLLOWING DAY, AND/OR DAYS, IN BOTH
24 THE I-J -- INDEPENDENT JOURNAL -- THE SAN FRANCISCO
25 CHRONICLE, AND THE SAN FRANCISCO EXAMINER.

26 DID YOU READ OR HAVE ANY EXPOSURE TO ANY
27 OF THOSE?

28 MR. KELLY: NO. IN FACT THE -- I TAKE THE

1 INDEPENDENT JOURNAL AND IT DIDN'T COME THAT -- THE NIGHT
2 BEFORE --

3 THE COURT: OKAY.

4 MR. KELLY: -- YOU ARE TALKING ABOUT.

5 THE COURT: ALL RIGHT. HAS ANY MEMBER OF
6 THE JURY TALKED TO YOU ABOUT ANYTHING THAT THEY HEARD
7 ON THE RADIO, TELEVISION, OR READ ANY NEWSPAPER FOLLOWING
8 THE VERDICT?

9 MR. KELLY: NO.

10 THE COURT: HOW ABOUT ANYONE ELSE -- FRIENDS,
11 NEIGHBORS, ACQUAINTANCES, EMPLOYEES, CO-EMPLOYEES,
12 ANYTHING?

13 MR. KELLY: NO.

14 THE COURT: ALL RIGHT. WE TOLD YOU THE
15 TENTATIVE PLAN IS TO START THE CASE UP AGAIN ON TUESDAY,
16 THE 17TH, OR POSSIBLY THE FOLLOWING THURSDAY, THE 19TH.

17 THAT MEANS WE WILL BE RUNNING INTO HEARINGS --
18 TRIALS ON THE 20TH. THE 20TH OF APRIL IS GOOD FRIDAY.

19 DO YOU HAVE ANY PREFERENCE AS TO WHETHER
20 YOU WOULD PREFER TO RECESS AT NOON ON GOOD FRIDAY OR
21 GO THROUGH THE DAY?

22 MR. KELLY: I WOULD LIKE TO RECESS AT NOON.

23 THE COURT: YOU HAVE A PREFERENCE TO RECESS.

24 MR. KELLY: PREFERENCE.

25 THE COURT: OKAY. ALL RIGHT. THAT IS ALL.

26 WE JUST AGAIN WOULD REMIND YOU DON'T DISCUSS
27 WHAT WE HAVE DISCUSSED HERE WITH ANY OF THE OTHER JURORS.

28 MR. KELLY: OKAY.

1 THE COURT: WE WILL BE BACK WITH YOU SHORTLY..
2 PLEASE TAKE THAT FIRST SEAT THAT IS AVAILABLE
3 THERE FOR YOU, MRS. HUGHES.

4 WE WANT TO BRIEFLY TALK TO YOU -- PLEASE
5 RELAX -- ABOUT THE NEWS MEDIA COVERAGE FOLLOWING THE
6 VERDICT ON MONDAY THE 9TH. WE UNDERSTAND THAT THERE
7 WAS SOME TELEVISION COVERAGE THAT EVENING THE 9TH AND
8 ALSO THE FOLLOWING DAY.

9 DID YOU SEE ANY OF THE TELEVISION COVERAGE?

10 MRS. HUGHES: NO, I DIDN'T.

11 THE COURT: WE ALSO UNDERSTAND THAT THERE
12 WERE ARTICLES THE FOLLOWING DAY, OR DAYS, IN THE
13 INDEPENDENT JOURNAL, SAN FRANCISCO EXAMINER, AND SAN
14 FRANCISCO CHRONICLE.

15 DID YOU HAVE ANY -- DID YOU READ OR HAVE
16 ANY EXPOSURE TO ANY OF THOSE ARTICLES?

17 MRS. HUGHES: NO. THE ONLY PAPER I TAKE
18 IF THE CHRONICLE, AND I DIDN'T READ THAT.

19 THE COURT: DID YOU SEE ANY ARTICLE THAT
20 HAD ANYTHING THAT FLASHED ON, SUCH AS "PENDRAGON," OR
21 SOMETHING, "VERDICT REACHED," OR SOMETHING LIKE THAT?

22 MRS. HUGHES: NO, I DIDN'T WATCH TELEVISION.

23 THE COURT: OKAY. HOW ABOUT YOUR CHRONICLE,
24 WHICH IS THE ONLY ONE YOU TAKE?

25 MRS. HUGHES: THE CHRONICLE. I DIDN'T READ
26 IT THAT DAY.

27 THE COURT: YOU DIDN'T READ IT THAT DAY?
28 OKAY. HAS ANY MEMBER OF THE JURY TALKED TO YOU ABOUT

1 ANYTHING THAT THEY HEARD OR READ FOLLOWING THE VERDICT?

2 MRS. HUGHES: I HEARD THAT THERE WAS AN
3 ILLNESS, AND THAT MARK RICHARDS WENT TO THE HOSPITAL.
4 AND I -- THEY SAID THEY DIDN'T KNOW WHETHER HE TOOK SOME
5 MEDICATION TO CALM HIMSELF OR WHAT THE REASON WAS. AND
6 THAT IS AS MUCH AS I HEARD.

7 THE COURT: OKAY. AND WHO ADVISED YOU OF
8 THAT?

9 MRS. HUGHES: I DON'T EVEN REMEMBER NOW.
10 I JUST HEARD SOME MUMBLINGS ABOUT IT.

11 THE COURT: BUT SOME JUROR MENTIONED THAT,
12 IS THAT WHAT YOU ARE TELLING US?

13 MRS. HUGHES: I HEARD IN THE JURY ROOM
14 SOMEBODY SAY THAT THEY THOUGHT HE BECAME ILL AND THAT
15 THEY THOUGHT THAT THERE WAS MAYBE SOME MEDICATION.

16 THE COURT: ALL RIGHT. AND WAS THERE ANY
17 OTHER COMMENT BY ANY MEMBER OF THE JURY ABOUT WHAT THEY
18 HEARD OR READ?

19 MRS. HUGHES: NO. THAT IS ALL THAT I HEARD.

20 THE COURT: OKAY. HAVE YOU HEARD FROM ANY
21 OTHER SOURCE -- FRIENDS, NEIGHBORS, CO-EMPLOYEES, MEMBERS
22 OF THE FAMILY, ET CETERA -- ANYTHING ABOUT WHAT THEY SAW
23 ON TELEVISION OR READ IN THE PAPERS?

24 MRS. HUGHES: NO, I HAVEN'T.

25 THE COURT: OKAY. WE KNOW THAT UNDER OUR
26 TENTATIVE SCHEDULE WE WILL PROBABLY BE IN SESSION APRIL
27 20TH, WHICH IS FRIDAY. AND IT IS ALSO GOOD FRIDAY.

28 DO YOU HAVE ANY PREFERENCE AS TO WHETHER

1 YOU WOULD PREFER TO RECESS AT NOON ON GOOD FRIDAY OR
2 GO RIGHT THROUGH THE DAY?

3 MRS. HUGHES: I HAVE NO PREFERENCE. I WOULD
4 BE WILLING TO GO THROUGH THE DAY, BUT I HAVE NO
5 PREFERENCE.

6 THE COURT: OKAY. ALL RIGHT. WE WILL ASK
7 YOU TO RETURN TO THE JURY ROOM.

8 PLEASE DON'T DISCUSS WHAT WE HAVE DISCUSSED
9 HERE --

10 MRS. HUGHES: OKAY.

11 THE COURT: -- AMONG ANY OF THE JURORS.
12 THANK YOU.

13 MRS. CHERIE, JUST TAKE THAT FIRST SEAT THAT
14 IS AVAILABLE TO YOU.

15 WE ARE GOING TO TALK BRIEFLY TO YOU AS WE
16 HAVE WITH THE OTHER JURORS ABOUT ANY EXPOSURE YOU MAY
17 HAVE BY REASON OF MEDIA COVERAGE BY NEWSPAPERS,
18 TELEVISION, OR ANY OTHER SOURCES ABOUT THE VERDICT, AND
19 THINGS THAT MIGHT HAVE BEEN CONNECTED WITH THAT -- THE
20 VERDICT.

21 THE VERDICT WAS RETURNED ON MONDAY THE 9TH.
22 WE UNDERSTAND THAT THERE WAS TELEVISION BOTH THAT EVENING
23 AND THE FOLLOWING DAY.

24 DID YOU SEE ANY OF THE TELEVISION COVERAGE?

25 MRS. CHERIE: NO, I DID NOT.

26 THE COURT: WE ALSO UNDERSTAND THAT THERE
27 WERE ARTICLES IN THE INDEPENDENT JOURNAL, THE SAN
28 FRANCISCO CHRONICLE, AND SAN FRANCISCO EXAMINER THE

1 FOLLOWING DAY, AND/OR DAYS.

2 DID YOU READ OR HAVE ANY EXPOSURE TO ANY
3 OF THOSE?

4 MRS. CHERIE: NO, I DID NOT.

5 THE COURT: HAS ANY MEMBER OF THE JURY
6 MENTIONED ANYTHING TO YOU FOLLOWING THE VERDICT RELATING
7 TO WHAT MIGHT HAVE BEEN SEEN ON TELEVISION OR READ IN
8 A PAPER?

9 MRS. CHERIE: NO.

10 THE COURT: DIDN'T HEAR ANY COMMENTS --

11 MRS. CHERIE: NO.

12 THE COURT: -- FOLLOWING, BY ANY JUROR?

13 ALL RIGHT. HOW ABOUT ANYONE ELSE --
14 CO-EMPLOYEES, FRIENDS, FAMILY, NEIGHBORS -- HAS ANYBODY
15 TALKED TO YOU ABOUT WHAT THEY READ OR HEARD FOLLOWING
16 THE VERDICT IN THE MEDIA?

17 MRS. CHERIE: MY HUSBAND READ AN ARTICLE
18 IN THE I-J, AND ALL HE TOLD ME WAS THAT MARK HAD BEEN,
19 I GUESS, PUT IN JAIL, AND THAT IS ALL HE TOLD ME.

20 HE DID NOT RELATE ANY OTHER THING TO ME.

21 THE COURT: OKAY. SO THAT IS THE ONLY CONTACT
22 BY ANYBODY WHO MENTIONED ANYTHING THAT READ ABOUT OR
23 HEARD ABOUT?

24 MRS. CHERIE: THAT'S ALL I KNOW.

25 THE COURT: OR SAW THE TV?

26 MRS. CHERIE: YES, THAT IS ALL I KNOW.

27 THE COURT: OKAY. NOW, IF WE GET BACK INTO
28 SESSION ON THE 17TH ON TUESDAY, OR THURSDAY. THE 19TH,

1 IT WOULD APPEAR THAT WE ARE GOING TO BE IN SESSION THEN
2 ON THE 20TH, WHICH IS FRIDAY. AND IT TURNS OUT TO BE
3 GOOD FRIDAY.

4 DO YOU HAVE ANY PREFERENCE AS TO WHETHER
5 YOU PREFER TO RECESS ON NOON ON GOOD FRIDAY OR GO THROUGH
6 THE DAY?

7 MRS. CHERIE: I HAVE NO PREFERENCE.

8 THE COURT: NO PREFERENCE.

9 OKAY. THAT IS ALL WE HAVE TO ASK OF YOU,
10 MRS. CHERIE.

11 IF YOU WILL RETURN TO THE JURY ROOM -- AND
12 PLEASE DISCUSS ANYTHING THAT WE HAVE DISCUSSED WITH YOU
13 WITH ANY JURORS. THANK YOU VERY MUCH.

14 ALL RIGHT, MR. ENDICOTT, IF YOU WILL JUST
15 TAKE THAT FIRST CHAIR IN THE JURY BOX THERE.

16 WE ARE GOING TO TALK TO YOU AS WE HAVE WITH
17 THE OTHER JURORS ABOUT WHAT EXPOSURE YOU MAY HAVE HAD
18 TO MEDIA COVERAGE FOLLOWING THE VERDICT THAT THE JURY
19 RETURNED ON MONDAY THE 9TH.

20 WE UNDERSTAND THAT THERE WAS TELEVISION
21 COVERAGE RELATING TO THE VERDICT AND THE CASE ON THE
22 9TH OF APRIL, THAT EVENING, AND ALSO ON THE 10TH.

23 DID YOU SEE ANY OF IT?

24 MR. ENDICOTT: NO, I DID NOT.

25 THE COURT: WE ALSO UNDERSTAND THAT THERE
26 ARTICLES THE FOLLOWING DAY, OR DAYS, IN BOTH THE
27 INDEPENDENT JOURNAL, SAN FRANCISCO CHRONICLE, AND SAN
28 FRANCISCO EXAMINER.

1 DID YOU READ OR SEE ANYTHING --

2 MR. ENDICOTT: NO, I DID NOT.

3 THE COURT: -- IN CONNECTION WITH THOSE?

4 ALL RIGHT.

5 HAVE YOU HEARD ANY COMMENT BY ANY MEMBER
6 OF THE JURY OF ANYTHING THAT THEY EITHER READ IN A
7 NEWSPAPER, OR SAW ON TELEVISION, OR HEARD ON A RADIO
8 ABOUT THE VERDICT, OR ANYTHING THAT FOLLOWED AFTER THE
9 VERDICT?

10 MR. ENDICOTT: NO.

11 THE COURT: HOW ABOUT ANY FRIENDS, FAMILY,
12 CO-EMPLOYEES, ACQUAINTANCES, NEIGHBORS -- HAVE ANY OF
13 THEM SPOKEN TO YOU ABOUT WHAT THEY MAY HAVE HEARD ON
14 RADIO, READ IN THE NEWSPAPER, OR SAW ON TELEVISION
15 FOLLOWING THE VERDICT?

16 MR. ENDICOTT: ONLY ONCE RIGHT BACK AT THE
17 BEGINNING OF THE TRIAL.

18 THE COURT: THIS IS JUST TO START WITH --
19 JUST FOLLOWING THE VERDICT COMING IN.

20 MR. ENDICOTT: OH, NO.

21 THE COURT: ALL RIGHT. YOU EVIDENTLY HAD
22 SOME CONTACT BY SOMEBODY EARLIER IN THE TRIAL ABOUT THE
23 CASE.

24 MR. ENDICOTT: AT -- RIGHT AT THE BEGINNING
25 WHEN THEY HAD TV COVERAGE, SOMEONE -- A FRIEND OF OURS
26 CALLED THE HOUSE AND TALKED TO MY WIFE -- SAID SHE HAD
27 SEEN ME ON TV. THAT IS ALL.

28 THE COURT: OKAY. ALL RIGHT. BY REASON

1 OF OUR SCHEDULING, WE WILL START UP HOPEFULLY ON TUESDAY
2 THE 17TH, OR HOPEFULLY AT THE LATEST THE 19TH ON THURSDAY.

3 THAT MEANS THAT WE WILL PROBABLY RUN INTO
4 FRIDAY THE 20TH, WHICH TURNS OUT TO BE GOOD FRIDAY.

5 DO YOU HAVE ANY PREFERENCE AS TO RECESSING
6 ON GOOD FRIDAY AT NOON, OR GO THROUGH THE DAY?

7 MR. ENDICOTT: I HAVE NO PREFERENCE.

8 THE COURT: NO PREFERENCE.

9 OKAY. WE WOULD ASK YOU TO RETURN TO THE
10 JURY ROOM.

11 DON'T DISCUSS WHAT WE HAVE DISCUSSED WITH
12 YOU WITH ANYONE ELSE, INCLUDING JURORS.

13 MR. ENDICOTT: OKAY.

14 THE COURT: OKAY. OKAY. MR. BAKER, JUST
15 TAKE ONE OF THE SEATS THAT IS AVAILABLE THERE TO YOU.

16 WE ARE GOING TO ASK YOU A FEW QUESTIONS IN
17 CONNECTION WITH MEDIA COVERAGE, RADIO, TELEVISION,
18 NEWSPAPER ARTICLES -- FOLLOWING THE VERDICT THAT WAS
19 RETURNED ON MONDAY, THE 9TH.

20 FIRST OF ALL, WE UNDERSTAND THAT THERE WAS
21 SOME COVERAGE FROM THE TELEVISION MEDIA ON BOTH THAT
22 EVENING AND THE FOLLOWING DAY.

23 DID YOU SEE ANY OF THE TELEVISION COVERAGE?

24 MR. BAKER: NO, SIR.

25 THE COURT: IT IS ALSO OUR UNDERSTANDING
26 THAT THERE WERE NEWSPAPER ARTICLES THE FOLLOWING DAY
27 AND MAYBE SUBSEQUENT THERETO IN THE INDEPENDENT JOURNAL,
28 THE SAN FRANCISCO CHRONICLE, AND THE SAN FRANCISCO

1 EXAMINER.

2 DID YOU READ OR HAVE ANY EXPOSURE TO ANY
3 OF THOSE ARTICLES?

4 MR. BAKER: NO.

5 THE COURT: OKAY. HAVE YOU HEARD FROM ANY
6 MEMBER OF THE JURY ANYTHING ABOUT WHAT THEY MAY HAVE
7 SEEN ON TELEVISION, HEARD ON THE RADIO, OR READ IN THE
8 NEWSPAPER FOLLOWING THE VERDICT?

9 MR. BAKER: NOTHING, SIR.

10 THE COURT: UNDER OUR TENTATIVE SCHEDULE,
11 IT LOOKS LIKE WE WILL BE IN SESSION ON FRIDAY, APRIL
12 20TH. THAT MEANS THAT THAT TURNS OUT TO BE GOOD FRIDAY.

13 DO YOU HAVE ANY PREFERENCE AS TO WHETHER
14 OR NOT YOU WOULD LIKE TO RECESS AT NOON ON GOOD FRIDAY
15 OR GO RIGHT -- NO PREFERENCE.

16 MR. BAKER: NO.

17 THE COURT: OKAY. HAVE YOU HAD ANY EXPOSURE
18 BY ANY PERSON OTHER THAN, SAY, JURORS, SUCH AS YOUR
19 FAMILY, NEIGHBORS, FRIENDS, CO-EMPLOYEES -- ABOUT WHAT
20 THEY MAY HAVE HEARD ON THE RADIO, SEEN ON TELEVISION,
21 OR READ IN THE NEWSPAPERS ABOUT THE VERDICT, OR ANYTHING
22 THAT FOLLOWED?

23 MR. BAKER: NO, SIR.

24 THE COURT: ALL RIGHT. MR. BAKER, WE WILL
25 EXCUSE YOU. THANK YOU.

26 PLEASE DON'T DISCUSS WHAT WE HAVE DISCUSSED
27 WITH THE OTHER JURORS.

28 MR. BAKER: ALL RIGHT.

1 THE COURT: ALL RIGHT, MRS. BUTCHER, WE JUST
2 WANT TO ASK YOU A FEW QUESTIONS ABOUT NEWSPAPER COVERAGE
3 AND TV COVERAGE, ET CETERA, FOLLOWING THE VERDICT.

4 THE VERDICT WAS RETURNED ON MONDAY THE 9TH.
5 THAT EVENING, WE UNDERSTAND -- AND THE FOLLOWING DAY --
6 THERE WAS SOME TV COVERAGE RELATING TO THE VERDICT, AND
7 THINGS THAT FOLLOWED.

8 DID YOU HAVE ANY EXPOSURE TO ANY OF THAT
9 TV COVERAGE?

10 MRS. BUTCHER: NO.

11 THE COURT: IT IS ALSO OUR UNDERSTANDING
12 THAT THERE WAS SOME ARTICLES IN THE INDEPENDENT JOURNAL
13 THE FOLLOWING DAY -- IN THE SAN FRANCISCO CHRONICLE,
14 THE SAN FRANCISCO EXAMINER -- AND PERHAPS SOME DAYS AFTER
15 THAT.

16 DID YOU HAVE ANY EXPOSURE TO ANY OF THOSE
17 ARTICLES?

18 MRS. BUTCHER: THE ONLY EXPOSURE I HAD WAS
19 I DID SEE THE PICTURE IN THE INDEPENDENT JOURNAL AS I
20 CARRIED THE PAPER IN THE HOUSE.

21 THE COURT: AND THAT WAS THE PICTURE OF MR.
22 RICHARDS?

23 MRS. BUTCHER: MR. RICHARDS, YES.

24 THE COURT: AND YOU, I GATHER, THEN READ
25 NOTHING OR SAW NOTHING --

26 MRS. BUTCHER: NO.

27 THE COURT: -- ABOUT ANY ARTICLES IN THAT
28 PAPER?

1 NOW, HAS ANY MEMBER OF THE JURY COMMENTED
2 TO YOU -- OR DID YOU OVERHEAR ANY COMMENT ABOUT ANYTHING
3 THAT ANY MEMBER MAY HAVE SEEN IN THE NEWSPAPER, HEARD
4 OR READ ON TELEVISION, OR RADIOS?

5 MRS. BUTCHER: NO, SIR.

6 THE COURT: OKAY. HAS ANYONE ELSE -- A
7 FRIEND, NEIGHBOR, CO-EMPLOYEE, MEMBER OF YOUR FAMILY --
8 ANYBODY TALKED TO YOU ABOUT ANYTHING THEY MAY HAVE READ
9 IN THE NEWSPAPER, SAW ON TELEVISION, OR HEARD ON RADIO
10 ABOUT THE VERDICT OR THINGS THAT OCCURRED FOLLOWING THE
11 VERDICT?

12 MRS. BUTCHER: NO. THE ONLY THING THAT WAS
13 SAID WAS SOMEBODY SAID -- THOUGHT I WAS BACK AT WORK
14 FULL-TIME BECAUSE THEY SAID THAT THEY HAD SEEN A VERDICT
15 HAD BEEN REACHED. THAT IS THE ONLY COMMENT THAT WAS
16 MADE.

17 THE COURT: THIS IS A COMMENT THAT WAS MADE
18 BY SOMEONE?

19 MRS. BUTCHER: SOMEONE OF MY FELLOW WORKERS
20 SAID, "HOW DOES IT FEEL TO BE BACK IN THE OFFICE FULL-
21 TIME?"

22 AND I SAID, "I'M NOT."

23 AND HE SAID -- WELL, JUST THE COMMENT THAT
24 HE HAD SEEN ON THE NEWS THAT A VERDICT HAD BEEN REACHED.

25 THE COURT: DID YOU MAKE ANY EXPLANATION
26 OTHER THAN, "I AM NOT BACK TO WORK"?

27 MRS. BUTCHER: NO, I SAID, "WE HAVE ANOTHER
28 PHASE TO GO THROUGH," WHICH IS AS MUCH AS I KNEW.

1 THE COURT: OKAY. WE HAVE BEEN GOING OVER
2 OUR SCHEDULE, AND IT APPEARS THAT WE WILL PROBABLY BE
3 IN SESSION FRIDAY APRIL 20TH, WHICH TURNS OUT TO BE GOOD
4 FRIDAY.

5 DO YOU HAVE ANY PREFERENCE AS TO WHETHER
6 OR NOT YOU WOULD PREFER TO RECESS AT NOON ON GOOD FRIDAY
7 OR GO THE FULL DAY? ANY PREFERENCE?

8 MRS. BUTCHER: IT DOESN'T MAKE ANY DIFFERENCE
9 TO ME.

10 THE COURT: NO PREFERENCE.

11 OKAY. WE WILL ASK YOU, THEN, JUST TO RETURN
12 TO THE JURY ROOM.

13 DON'T DISCUSS WITH THE OTHER JURORS WHAT
14 WE HAVE DISCUSSED HERE.

15 MRS. BUTCHER: THANK YOU.

16 THE COURT: OKAY. ALL RIGHT, GENTLEMEN,
17 I BELIEVE THAT CONCLUDES THE VOIR DIRE THAT WE AGREED
18 WE WOULD GO OVER WITH THE JURORS.

19 AND AS WE INDICATED, I SHOULD NOW GO BACK
20 AND TELL THEM THAT THEY ARE EXCUSED UNTIL THE 17TH OF
21 APRIL. HOPEFULLY WE WILL RESUME THEN. IF NOT, WE WILL
22 RESUME HOPEFULLY ON THE 19TH FOR SCHEDULING, AND WE WILL
23 TRY TO ADVISE THEM ON THE 16TH IF WE ARE NOT GETTING
24 OFF ON THE 17TH.

25 AND WE WILL PUT THAT ALL ON THE RECORD AS
26 PREVIOUSLY AGREED -- SO EVERYTHING ELSE IS ON THE RECORD.

27 WE WILL SEE YOU ALL PERHAPS ON THE 17TH.
28 THAT IS WHAT YOU SHOULD BE PREPARED FOR ACCORDING TO

1 OUR DISCUSSIONS, AND YOU WILL ALSO BE ADVISED IF THERE
2 IS ANY DELAY ON THE 17TH THAT WOULD REQUIRE US TO GO
3 OVER TO THE 19TH.

4 MR. BERBERIAN: AND YOUR ADMONITION TO THE
5 JURY WILL BE ON THE RECORD THAT YOU ARE GOING TO BE HERE?

6 THE COURT: THAT IS WHAT WE WILL DO NOW.
7 IT WILL BE THE 120TH TIME I HAVE CHECKED THOSE
8 ADMONITIONS, RIGHT.

9 OKAY. THANK YOU. COURT IS IN RECESS.

10 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD
11 IN THE JURY ROOM, THERE BEING PRESENT THE COURT, THE
12 JURORS AND THREE ALTERNATES AND THE REPORTER:)

13 THE COURT: ALL RIGHT. THE RECORD SHOULD
14 REFLECT THAT WE ARE BACK IN THE JURY ROOM. I AM
15 ADDRESSING THE 12 JURORS AND OUR THREE ALTERNATES.

16 WE HAVE NOW COMPLETED TODAY'S PROCEEDINGS.

17 WE ARE GOING TO BE IN RECESS UNTIL THE 17TH,
18 WHICH IS TUESDAY. IF IT TURNS OUT THAT WE ARE GOING
19 TO HAVE FURTHER DELAY, WE HOPE TO GET OFF THEN ON THE
20 19TH. BUT LET'S PLAN TUESDAY, UNLESS WE ADVISE YOU TO
21 THE CONTRARY.

22 AND WE WILL TRY AND GET WORD OUT TO YOU ON
23 MONDAY THE 16TH, IF WE FIND WE ARE NOT GOING TO GET OFF
24 THE BLOCKS ON THE 17TH.

25 YOU SHOULD PLAN TO BE HERE AT 10:00 O'CLOCK
26 ON THE 17TH, UNLESS WE ADVISE YOU TO THE CONTRARY.

27 PLEASE REMEMBER, DON'T READ ANYTHING. DON'T
28 LISTEN TO ANYBODY. DON'T SEE ANYTHING ON THE TELEVISION

1 OR LISTEN TO IT ON THE RADIO, FRIENDS, FAMILY,
2 ACQUAINTANCES, ET CETERA. AND DON'T SPECULATE AS TO
3 WHY THE PROCEEDINGS ARE DELAYED OR WHAT WE HAVE DONE
4 THIS MORNING.

5 YOU MAY BE CURIOUS, BUT DON'T SPECULATE OR
6 DISCUSS IT OR SEEK ANY INFORMATION ABOUT IT. HAVE A
7 NICE DAY.

8 A JUROR: SO WE COME BACK WHEN?

9 THE COURT: TUESDAY THE 17TH AT 10:00 O'CLOCK,
10 UNLESS WE NOTIFY YOU OTHERWISE.

11 WE WILL TRY AND DO THAT MONDAY AFTERNOON,
12 IF WE FIND WE ARE NOT GOING. SOMETIMES WE DON'T KNOW
13 EITHER, SO YOU SHOULD PLAN TO BE HERE AT 10:00 O'CLOCK
14 ON THE 17TH.

15 THE JUROR: I WAS JUST WONDERING -- I HAVE
16 PLANS FOR THE 24TH, AND IF I LEFT LIKE THAT EVENING,
17 DO YOU THINK WE MIGHT BE DONE BY THEN?

18 THE COURT: THE BEST PREDICTIONS OF COUNSEL
19 ARE, YES, BUT IT IS HARD FOR US TO SAY.

20 THE PRESENTATION WILL BE -- FROM WHAT THEY
21 HAVE TOLD ME, WILL BE OF LIMITED DURATION ON THE SECOND
22 PHASE HERE.

23 AND WE HAVE NOT DETERMINED YET WHETHER WE
24 WOULD RECESS ON THE 20TH, WHICH IS GOOD FRIDAY.

25 WE POOLED EVERYBODY TO SEE THEIR PREFERENCES.
26 IT SEEMS THAT THERE IS REALLY NO STRONG PREFERENCE TO
27 RECESS EARLY IN NUMBERS, AND SO IT WOULD APPEAR THAT
28 WE PROBABLY -- BUT WE WILL LET YOU KNOW -- BE IN SESSION

1 ON THE 20TH.

2 AND OF COURSE, IF WE GOT OFF ON THE 17TH
3 AND WE GET THE 19TH AND THE 20TH IN, WE WOULD EXPECT
4 THAT WE HAVE THREE DAYS THAT IT WOULD BE IN YOUR HANDS --
5 PROBABLY BY THAT TIME -- AND OF COURSE WE CANNOT TELL
6 HOW LONG YOU MIGHT BE IN DELIBERATIONS. IT MIGHT BE
7 SHORT -- IT MIGHT BE OTHER THAN THAT -- NOBODY KNOWS.

8 SO THE 24TH LOOKS LIKE A PRETTY DAY TO SHOOT
9 FOR TO BE OUT, BUT WE CAN'T GUARANTEE IT.

10 OKAY. THAT IS THE BEST I CAN DO. THANK
11 YOU. HAVE A GOOD WEEKEND.

12 A JUROR: HOW LATE DOES THE COURT ADVISE
13 YOU ON MONDAY?

14 THE COURT: WE DON'T KNOW. WE WILL TRY AND
15 GET TO YOU -- MAYBE WHAT WE COULD DO IS SET UP A --
16 BECAUSE SOME OF YOU MAY NOT BE HOME WHEN WE TRY TO GET
17 THE CLERK TO REACH YOU, WE MIGHT BE ABLE TO SET UP AN
18 ARRANGEMENT WHERE YOU CAN CALL IN AND WE COULD HAVE A
19 RECORDING DEVICE.

20 BUT THE ONLY PROBLEM WITH THAT, MONDAY IS
21 A BIG DAY WHEN WE ARE BRINGING IN A COUPLE HUNDRED JURORS,
22 AND WE HAVE ALL SORTS OF PROBLEMS, BECAUSE IF YOU ARE
23 NO. 14 TO 30, YOU DON'T COME IN; IF YOU ARE NO. 60 AND
24 90, YOU GO TO THE MUNI COURT, AND ALL THAT.

25 BUT MAYBE WE CAN PUT ON A DEVICE AND JUST
26 IDENTIFY IT AS THE RICHARDS' JURY, AND YOU CAN MAYBE
27 CALL IN. THAT MIGHT BE PREFERABLE.

28 LET ME TALK TO THE CLERK FOR A MOMENT, AND

1 I THINK WE CAN PROBABLY ARRANGE THAT. AND I COULD
2 PROBABLY FIND OUT WHATEVER THAT MAGIC NUMBER IS THAT
3 YOU CAN CALL IN.

4 A JUROR: IF YOU CALL LATE ENOUGH -- 5:00
5 O'CLOCK OR 4:30 -- OR 5:00 -- OTHERWISE I'M OUT IN THE
6 YARD, AND MY WIFE IS NOT HOME.

7 THE COURT: SEE, THERE IS NO WAY I CAN EXPLAIN
8 ANYTHING TO YOU AT THIS TIME. BUT I MAY NOT KNOW UNTIL
9 10:00 O'CLOCK ON TUESDAY, AND YET WE MAY KNOW BEFORE
10 THEN IF WE ARE STARTING UP ON THE 17TH OR 19TH.

11 THERE IS JUST NO WAY I CAN TELL YOU AT TH
12 IS TIME. WHY DON'T I SEE IF WE CAN ARRANGE THIS TO CALL
13 IN?

14 (WHEREUPON, THERE WAS A SHORT BREAK.)

15 THE COURT: IN DISCUSSING THE TECHNOLOGICAL
16 ADVANCE THAT WE MADE IN THE 20TH CENTURY, AROUND HERE,
17 WE FIND THAT THE TAPE THAT THEY USE THIS FOR IS TOO SHORT
18 TO HAVE TWO MESSAGES -- THAT WE HAVE A LONG MESSAGE ABOUT
19 ALL THE JURORS THAT ARE ON HERE ON MONDAY. WE CAN'T
20 GET OUR MESSAGE ON THE -- QUOTE -- TAPE, BUT IF YOU CALL
21 499-6063 -- 499-6063 BETWEEN 4:00 AND 5:00 P.M. -- THAT
22 IS THE MAIN CALENDAR OFFICE FOR THE COURT -- THEY
23 HOPEFULLY WILL BE ABLE TO ANSWER WHETHER YOU COME IN
24 ON THE 17TH OR THE 19TH.

25 A JUROR: WHAT DAY?

26 THE COURT: THAT WILL BE MONDAY. THEY WON'T
27 KNOW TOMORROW OR ANYTHING -- ON THE 16TH, MONDAY, BETWEEN
28 4:00 AND 5:00, CHECK IN AT THAT NUMBER AND HOPEFULLY

1 WE WILL HAVE AN ANSWER FOR YOU THAT WILL TELL YOU WHEN.

2 A JUROR: IT IS YOUR CASE?

3 THE COURT: JUST SAY YOU ARE A JUROR IN:
4 VERSUS RICHARDS, JUDGE MC GUIRE'S CASE. "DO WE COME
5 IN ON THE 17TH OR THE 19TH?"

6 THEY WILL HAVE A MESSAGE FOR YOU.

7 PLEASE REMEMBER THE ADMONITION.

8 HOPEFULLY IT WILL BE TUESDAY ON THE 17TH
9 AND NOT ON THE 19TH.

10 (WHEREUPON, A RECESS WAS TAKEN TO TUESDAY, APRIL 17,
11 1984, COMMENCING AT THE HOUR OF 8:45 O'CLOCK A.M. THEREON.)

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