

THE PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO. 3362

Plaintiff,

vs.

D.A. NO. 5555

NAME
ADDRESS
CITY, STATE
ZIP CODEBEE MARIN TRAVEL, INC.
250 Bel Marin Keys Blvd., Suite C-2
Novato, CA
94947

MARK RICHARDS

Defendant.

TO: THE HONORABLE JUDGE OF THE MUNICIPAL/SUPERIOR COURT:

The witness named above was a necessary witness for the People, was subpoenaed and attended Court, and payment of the witness fees is requested. The claimed fees are:

- (1) within the statutory maximum; or
- (2) for the services of expert witnesses and the compensation requested for such service is reasonable; and
- (3) witness appeared in response to officially served subpoena.

JERRY R. HERMAN, DISTRICT ATTORNEY

BY

FILED
MAR 27 1984
HOWARD HANSON
MARIN COUNTY CLERK
BY *J. Costabile*
DEPUTY

Dated: March 19, 1984

By

Deputy

Edwards S. Berberian

TO: THE AUDITOR OF THE COUNTY OF MARIN, STATE OF CALIFORNIA: ORDER TO PAY WITNESS FEES.

YOU ARE HEREBY DIRECTED to draw your warrant upon the Treasurer of the County of Marin, State of California, to the above named person, in the sum set forth, as for necessary expenses for attending as a witness on behalf of the plaintiff in the above-entitled action.

JUDGE OF THE MUNICIPAL/SUPERIOR COURT

E. WARREN McGUIRE

TRANS CODE	FOR VENDOR	ADDITIONAL DATA	P.O. ENC.	ORG NO.	SUB-OBJ NO.	AC	PC	AMOUNT
31				3130	2073			786 ⁰⁰

WITNESS FEE:

MILEAGE:

MISCELLANEOUS CHARGES:

AIRFARE: witness Joel Fischer
Chicago/SFO/Ord
3-3-84

\$786.00

DISTRIBUTION
WHITE — CLAIM
CANARY — DA COPY
PINK — MUNI/SUP
GOLDENROD — FILE COPY

Dated: March 19, 1984

Signature of Department Head or Authorized Deputy

FOR AUDITOR-CONTROLLER'S USE			
Deputy Auditor		Claims Desk	
Batch No.	KP	Ver	Check No.

cc auditor 3/27/84

INVOICE

NO.

9145

DATE 07 MAR 84

Bel Marin Travel, Inc.

250 Bel Marin Keys Blvd., Suite C-2 • Novato, CA 94947 • (415) 883-2456

Marin County District Attorney's OfficeMarin County Civic CenterSan Rafael, CA 94903TERMS: NET 10 DAYS. A LATE FEE OF
1½% PER MONTH WILL BE CHARGED ON
ALL LATE ACCOUNTS (18% PER ANNUM).

DATE	NAME	DESTINATION	D.A.#	C.R.#	CASE NAME	AMOUNT
3/8	Fischer/J	Chicago/Sfo/Ord	5555	8362	People vs. Mark Richards	\$786.00

AMOUNT NOW DUE

\$786.00

THANK YOU

RECEIVED

MAR 12 1984

**DISTRICT ATTORNEY
MARIN COUNTY**

PLEASE PAY FROM THIS INVOICE; NO STATEMENT SENT. THANK YOU.

THE PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO. 5362

Plaintiff,

vs.

D.A. NO. 5555

NAME

Brazil, Harold W, M.D. 333-38-5700

ADDRESS

P.O. Box 2367

CITY, STATE

Fairfield, CA

ZIP CODE

94533

MARK RICHARDS

Defendant.

TO: THE HONORABLE JUDGE OF THE MUNICIPAL/SUPERIOR COURT:

The witness named above was a necessary witness for the People, was subpoenaed and attended Court, and payment of the witnesses' fees is requested. The claimed fees are:

- (1) within the statutory maximum; or
- (2) for the services of expert witnesses and the compensation requested for such service is reasonable; and
- (3) witness appeared in response to officially served subpoena.

FILED

MAR 27 1984

HOWARD HANSON
MARIN COUNTY CLERK

DEPUTY

JERRY R. HERMAN, DISTRICT ATTORNEY

BY

Dated: March 19, 1984

By

Deputy

Edward S. Berberian

TO: THE AUDITOR OF THE COUNTY OF MARIN, STATE OF CALIFORNIA: ORDER TO PAY WITNESS FEES.

YOU ARE HEREBY DIRECTED to draw your warrant upon the Treasurer of the County of Marin, State of California, to the above named person, in the sum set forth, as for necessary expenses for attending as a witness on behalf of the plaintiff in the above-entitled action.

JUDGE OF THE MUNICIPAL/SUPERIOR COURT

E. WARREN McGUIRE

TRANS CODE	FOR VENDOR	ADDITIONAL DATA	P.O. ENC.	ORG NO.	SUB-OBJ NO.	AC	PC	AMOUNT
35				5510	2175			500.00
31								

WITNESS FEE:

MILEAGE:

MISCELLANEOUS CHARGES:

Expert witness fee
2-21-84

500.00

DISTRIBUTION

WHITE — CLAIM

CANARY — DA COPY

PINK — MUNI/SUP

GOLDENROD — FILE COPY

Dated: 3/27/84

Signature of Department Head or Authorized Deputy

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

Cauditor 3/27/84

HAROLD H. BRAZIL, M.D., INC.
PATHOLOGY CONSULTANT

P. O. Box 2867
Fairfield, California 94533

S.S. # 383-.38-3700

Jerry R. Herman
Marin County District Attorney
Hall of Justice
San Rafael, CA 94903

FOR PROFESSIONAL SERVICES RENDERED

Travel Time and Expert Witness Testimony
People vs Mark Richards (Case 8362=5555
February 21, 1984

\$500.00

RECEIVED
FEB 27 1984
DISTRICT ATTORNEY,
MARIN COUNTY,

TOTAL \$500.00

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1359

DATE: March 27, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire, JUDGE Stengys, DEPUTY CLERK
Lo Miller / L. Sottemyke REPORTER L. Kilipisk, BAILIFF

TITLE: <p align="center"><i>The People of the State</i> <i>vs</i> <i>Mark Richards</i></p>	COUNSEL: <p><i>Ed Berberian, Deputy D A</i> <i>Ted Lindquist, SR PD</i></p> <p><i>Carl Shapiro / Dennis Riordan</i> <i>Barabegal (mit permit)</i></p>
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NATURE OF PROCEEDINGS: 26th Day Criminal Jury Trial ACTION NO. 8362

Defendant is present with counsel (D. Riordan not present), The District Attorney is present; the jury present, subsequent to colloquy in Chambers between Court and counsel. Tape recording continued playing in Peoples opening argument to the jury, from 10:25 AM. Brief recess at 11 AM; reconvened at 11:05 AM; continued playing tape. At 12 PM, noon recess commenced. Reconvened at 1:40 PM, all present as in AM session. Continued playing of tape. Concluded at 3:20 PM, recess taken. Reconvened at 3:35 PM; Prosecutor resumed his opening argument to the jury. Concluded at 4 PM, the Court advised the jury that deliberation shall take place in the Courtroom, it being determined by Court and counsel that exhibits are too numerous and cumbersome to move to jury room. At 4:05 PM, jury admonished and Court recessed, to reconvene at 10 AM on March 29, 1984.

MINUTES

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: March 26, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire JUDGE S. Laasgi DEPUTY CLERK
L. Miller / L. Settlemyre REPORTER L. Filipiak BAILIFF

TITLE:

The People of the State
vs
Mark Richards

COUNSEL:

Ed Berberian, Deputy DA
Ed Lindquist SRP
Carl Shapiro / Dennis Riordan
(Paralegal)

NATURE OF PROCEEDINGS: 26th Day Criminal Trial (Jury Present) ACTION NO. 8362

Defendant and Mr. Shapiro present; (Mr. Riordan absent) Paralegal present as is the Prosecutor and the Jury at 11 AM. Subsequent to colloquy in Chambers from 10 AM in re admission of exhibits and People's Motion to re-open, argued and denied. The District Attorney commenced his opening argument; Def's V-1 denied (not marked) P's # 312; 313; 314; 314A; 311 F (includes A, B, C, D, E) all, in evidence. at 12 PM, noon recess taken; reconvened at 1:30 PM, all present as in AM session and Prosecution opening argument resumed. Recessed at 3 PM; reconvened at 3:15 PM, continued opening argument. Defendant's tape recording played for the jury from 3:30 PM until 4:30 PM when the jury was admonished and Court recessed, to reconvene at 10 AM, March 27, 1984.

MINUTES

THE PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO. 3362

Plaintiff,

vs.

D.A. NO. 5555

MARK RICHARDS

Defendant.

NAME
ADDRESS
CITY, STATE
ZIP CODECORTE MADERA INV
1315 Redwood Hwy
CorteMadera, CA
94025

TO: THE HONORABLE JUDGE OF THE MUNICIPAL/SUPERIOR COURT:

The witness named above was a necessary witness for the People, was subpoenaed and attended Court, and payment of the witnesses' fees is requested. The claimed fees are:

- (1) within the statutory maximum; or
- (2) for the services of expert witnesses and the compensation requested for such service is reasonable; and
- (3) witness appeared in response to officially served subpoena.

JERRY R. HERMAN, DISTRICT ATTORNEY

Dated: March 19, 1984By Edward S. Berberian

FILED
MAR 23 1984
HOWARD HANSON
Deputy MARIN COUNTY CLERK
BY Costa
DEPUTY

TO: THE AUDITOR OF THE COUNTY OF MARIN, STATE OF CALIFORNIA: ORDER TO PAY WITNESS FEES

YOU ARE HEREBY DIRECTED to draw your warrant upon the Treasurer of the County of Marin, State of California, to the above named person, in the sum set forth, as for necessary expenses for attending as a witness on behalf of the plaintiff in the above-entitled action.

JUDGE OF THE MUNICIPAL/SUPERIOR COURT

B. WARREN McGUIRE

TRANS CODE	FOR VENDOR	ADDITIONAL DATA	P.O. ENC.	ORG NO.	SUB-OBJ NO.	AC	PC	AMOUNT
31				3130	2073			52.92

WITNESS FEE:

MILEAGE:

MISCELLANEOUS CHARGES:

Room for witness John Carrington
Testimony 2-23-84

\$52.92

DISTRIBUTION
WHITE CLAIM
CANARY -- DA COPY
P.N.K. MUNI/SUP
GOLDENROD -- FILE COPY

Dated: 3-23-84

Howard Hanson
Signature of Department Head or Authorized Deputy

FOR AUDITOR-CONTROLLER'S USE			
Deputy Auditor		Claims Desk	
Batch No.	KP	Ver	Check No.

cc auditor 3/23/84

STATEMENT

**CORTE MADERA INN***Peppermill Restaurant & Cocktail Lounge*

1815 Redwood Highway

Corte Madera, California 94925

Telephone 415-924-1502

March 5, 1984

DATE

Office of the District Attorney
 Room 155
 Hall of Justice
 San Rafael, CA. 94903

Attn: Senior Legal Secretary

BW-19

TOTAL AMOUNT DUE AND PAYABLE UPON RECEIPT OF THIS STATEMENT

03917

J. Carrington (No Show) 2/27/84 \$52.92

Total Due: \$52.92

\$52.92

Mark Richards DA #555
 Court # 8362

Thank You.

RECEIVED
 MAR 06 1984
DISTRICT ATTORNEY
MARIN COUNTY

RESERVATION

039

	LICENSE NO	STATE	FROM TO
NAME (PLEASE PRINT) No - Show			NO. IN PARTY 1
			NO. OF DAYS 3

RES. ADDRESS			
CITY	STATE	ZIP	ROOM NO
FIRM			218
FIRM ADDRESS			
SIGNATURE Carrington			METHOD OF PAYMENT ARR 2-27 DEP 3-1

RATE CODE	RATE AMOUNT	TAXES	
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49-		CLEAK	3
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CORTE MADERA INN

Peppermill

Restaurant and Lounge

1815 Redwood Hwy.
Corte Madera, California 94925
(415) 924-1502

I AGREE THAT MY LIABILITY FOR THIS BILL IS NOT WAIVED AND AGREE TO BE HELD PERSONALLY LIABLE IN THE EVENT THAT THE INDICATED PERSON, COMPANY OR ASSOCIATION FAILS TO PAY FOR ANY PART OR THE FULL AMOUNT OF THESE CHARGES.

03917

THIS HOTEL KEEPS A FIREPROOF SAFE AND WILL NOT BE RESPONSIBLE FOR MONEY, JEWELRY, DOCUMENTS, FURS OR OTHER ARTICLES OF UNUSUAL VALUE AND SMALL COMPASS UNLESS PLACED THEREIN. WE ARE UNABLE TO BE RESPONSIBLE FOR CONTENTS LEFT IN ROOM OR AUTO

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: March 23, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire JUDGE Haenggi DEPUTY CLERK
Leo Miller REPORTER _____ BAILIFF _____

TITLE:

The People of the State
vs
Mark Richards

COUNSEL:

Ed Berberian, Deputy DA
Led Lindquist, SR PD
Carl Shapiro / Dennis Riordon
(Paralegal)

NATURE OF PROCEEDINGS: 24th Day Criminal Jury Trial ACTION NO. 8362
(Jury absent)

Defendant and all counsel present. The jury is absent. Objections to certain exhibits argued and Def's V (transcript) not admitted. Def's V-1 (Tape) argued (not id). District Attorney further argued motion and the Court deferred ruling at this time as to admission of Def's V-1. Colloquy in re Peo's #311 marked #311A; #311B; #311C (notice); Delations granted as stated on the record. #311D, all (newspaper articles) id. Peo's #311E (cup papers), id. #311F (excised clippings) id. Def's B1 (excised clippings) W-1 (newspaper clipping) both, id. at 11:20 AM, Court adjourned to Chambers in re Jury Instructions.

MINUTES

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: March 22, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire JUDGE Haenggi DEPUTY CLERK
L Miller / L Settemyere REPORTER L Filipiak BAILIFF

TITLE:

The People of the State
vs
Mark Richards

COUNSEL:

Ed Berherian, Deputy DA
Ed Lindquist, SRPD
Carl Shapiro / Dennis Riordon
(Paralegal)

NATURE OF PROCEEDINGS:

23rd Day Criminal Jury Trial

ACTION NO. 8362

Defendant and both counsel present; District Attorney and Paralegal present. The jury present. John D. Stapp was sworn and examined on direct; cross-examination from 10:20 AM. P's #307 (Transcript) id. At 10:45 AM, witness excused and Keith Andrews recalled on direct; P's #35A and #35B (Transcripts) id - adm. Defs L (by receipt); M (Env/Repair bills) id. adm; N (lock picks) id. David Johnson, SRPD sworn and examined on direct. Defs O (Bag/screw drivers); P (Bag/yibs); Q (Bag/T shirt) all, id - Def R (Bag/knives) S (Machete) T (Bag/stars); U (Scale), all, id - Cross-examination from 11:10 AM; P's 308 (Pass Book) id. At 11:10 AM, Court recessed. Reconvened at 11:30 AM, witness excused and Ed Lindquist, SRPD called on direct, excused and defense rests. P's #309, 310 and 311 (media articles) id. Jury excused upon being admonished at 11:40 AM; Court remained in session #309; #310 admitted. Recessed at 12:15 PM; reconvened at 1:35 PM, all present; Jury present, Rebuttal witness, James Cook, SRPD recalled on rebuttal direct examination; Cross and Defs V (Transcript) id. Witness excused and Mike Griffith, NPD, sworn and examined on direct; Cross. Excused at 1:46 PM and Phillip Coyle, NPD sworn and examined on direct; Cross. Excused at 1:50 PM. P's #312 (Traffic Ticket Notice); #313 (Citation) id. Witness excused and Ben Winton was sworn and examined. P's #314 (Notice); #314A (Citation) id. People rests. No sur rebuttal. Jury admonished and recessed, to reconvene at 10 AM, March 26, 1984. Court remained in session; colloquy between Court and Counsel and at 2:15 PM, recessed, to reconvene at 10 AM, March 23, 1984 at 10 AM, out of the presence of the Jury.

MINUTES

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1355

DATE: March 19, 1984

COURT MET AT 10 AM

DEPARTMENT NO. V

PRESENT: HON. E. Warren Mc Guire

JUDGE Spaengs

DEPUTY CLERK

Leo Miller / L. Lettenmyre

REPORTER L. Filipiak

BAILIFF

TITLE:

The People of the State
vs
Mark Richards

COUNSEL:

Ed Berberian, Deputy DA
Ed Lindquist, SRPD

Carl Shapiro / Dennis Riordan
(Paralegal)

NATURE OF PROCEEDINGS:

22nd Criminal Jury Trial

ACTION NO. 8362

Defendant and both counsel present; The District Attorney present; Paralegal present. Sister Collette Standart was sworn and testified to the jury, on direct examination from 10:27 AM; excused at 10:35 PM and John M. Taylor was sworn and examined on direct; cross from 10:38 AM. Re-direct from 10:47 AM. at 10:48 AM Gary Ables was sworn and examined on direct; excused at 10:56 AM; recessed. Reconvened at 11:15 AM and Devon Bird was sworn and examined on direct. Def's J (Ptmt) id. Def's K (Photo) id. Cross from 11:45 AM; excused, to return at 1:30 PM. Duncan W. MacKinnon was sworn and examined on direct. Cross from 11:55 AM. Excused at noon and recess taken. Colloquy in Chambers from 1:30 PM to 1:50 PM when Court reconvened; all present; out of the presence of the jury; Gary Ables recalled on re-direct and re-cross; excused and jury present at 1:57 PM; Devon Bird recalled on re-direct; excused at 1:58 PM and Duncan MacKinnon was recalled and cross-examination resumed; excused at 2:05 PM and Gary Ables recalled on re-direct; re-cross and at 2:10 PM, excused. Frank Cox, Deputy PD recalled on direct examination (Mr Riordan left Court); Cross from 2:35 PM; Recessed at 3 PM; reconvened and cross-examination commenced. Re-direct from 3:50 PM; witness excused; jury admonished and Court recessed at 4:30 PM; outside presence of jury, colloquy between Court and counsel in re testimony; request for witness from SRPD by defense and certain documentary evidence. To be worked out between counsel. Recessed at 4:35 PM, to reconvene at 10 AM, March 22, 1984.

Jury Instructions and
Special verdicts due.

MINUTES

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1353

DATE: March 16, 1984 COURT MET AT 10:16 A.M. DEPARTMENT NO. 5
 PRESENT: HON. E. Warren McGuire JUDGE B. Pasay DEPUTY CLERK
L. Miller / L. Settemyne REPORTER L. Filipiak BAILIFF

TITLE: People Of The State
VS
Mark Richards
 COUNSEL: Deputy District Attorney -
Ed Berberian
Ted Lundquist - S.R.P.D.
Carl Shapiro
Dennis Riordan - 11:06 A.M.

NATURE OF PROCEEDINGS: Criminal Jury Trial - 21st Day ACTION NO. 8362

Defendant, counsel as noted and all jurors present. Following exhibits marked:
 People's 293 (Blood - Campbell) Admitted
 People's 294 (Blood - Hoover & Crossman) Admitted
 People's 295 (Blood - Richards) Admitted
 People's 296 (Blood - Baldwin) Admitted
 People's 297 (Telephone Records) Identified & Admitted
 People's 298 (Telephone Records) Identified & Admitted
Ted Lundquist recalled to the stand for further examination. Following exhibits marked:
 People's 299 through 302 (Dealer's Record of Sale) Identified
 People's 303 (Envelope w/ Charm) Identified
 People's 304 (Envelope w/ gold anklet) Identified
 People's 305 (Tape) Identified & Admitted
 People's 306 (Certified Copy Minutes dtd 11/12/82) Admitted
 People's 299 through 304 Admitted
 At 10:56 A.M. Court recessed until 11:06 A.M.
 Defendant and counsel present. Court

MINUTES

SUPERIOR COURT OF THE STATE CALIFORNIA 1354
IN AND FOR THE
COUNTY OF MARIN

DATE March 16, 1984 AT _____ CONTINUED
ABBREVIATED TITLE People vs Mark Richards ACTION NO. 8362

convening outside the presence of the jury.
Statement by Mr. Barberian re copy of
Transcript and taking photo of witness,
Statement by the Court. People rest subject
to calling one witness.

At 11:10 A.M. the jury entered the Courtroom.
Duly sworn and examined: Robert Hudspeth
Following exhibits marked:

Def's ID (Photo) identified

Def's I-1 through I-4 (Photos) identified

Witness excused Subject to recall.

Def's I through I-4 Admitted.

Duly Sworn and examined: Richard
Viscarra. Witness excused.

Court admonished the jury and adjourned
until March 19, 1984 at 10 A.M.

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1350

DATE: March 15, 1984 COURT MET AT 10:10 A.M. DEPARTMENT NO. 5
PRESENT: HON. E. Warren McGuire, JUDGE B. Posey, DEPUTY CLERK
L. Miller / L. Sottemyre REPORTER L. Filippiak, BAILIFF

TITLE:

People Of The State
vs
Mark Richards

COUNSEL:

Deputy District Attorney -
Ed Berberian
Ted Lindquist - S.R.P.D.
Carl Shapiro

NATURE OF PROCEEDINGS:

Criminal Jury Trial - 20th DayACTION NO. 8362

Defendant, both counsel and all jurors present.
Sam Paul resumed the stand for continued direct examination. Cross examination. Following exhibit marked:

People's 281 (Photo Line Up) identified

Witness excused Subject to recall.

Duly sworn and examined: Joyce Seaton. Witness excused.

Duly sworn and examined: Lynn Marie Hagrath. Witness excused.

Duly sworn and examined: George Brown. Witness excused. At 11:05 A.M. Court recessed until 11:19 A.M.

Defendant, counsel and all jurors present.

Duly sworn and examined: John Rohrbacher. Witness excused.

Duly sworn and examined: Terrence H. Pascoe. Following exhibits marked:

People's 282 & 283 (Charts) identified

At 12 P.M. Court recessed until 1:40 P.M.
Defendant, counsel and all jurors present.

MINUTES

DATE March 15, 1984 AT _____ CONTINUED
ABBREVIATED TITLE People vs Mark Richards ACTION NO. 8362

Terrence H. Pascoe resumed the stand for continued examination. Witness excused.

Duly sworn and examined: Randy Wong.
Following exhibits marked:

People's 284 (Envelope) identified

People's 284A (File) identified

Witness excused.

Duly sworn and examined: Joseph Sypnicki.
Following exhibits marked:

People's 285 (Envelope) identified

People's 285A (Prints - Richards) identified

People's 285B (Prints - Cross & Hoover) identified

People's 285C (Prints - Campbell) identified

People's 286 (Prints - Robles) identified

People's 287 (Fingerprint Card - John Doe) identified

People's 288 (Fingerprint Card - Richard Baldwin) identified

At 2:26 P.M. Court recessed until 2:40 P.M. Defendant,
counsel and all jurors present.

Joseph Sypnicki resumed the stand for continued examination. Following exhibits marked:

People's 289 (5 Latent Lift Cards) identified

People's 290 (1 Latent Lift Card) identified

People's 291 (Latent Lift Card) identified

People's 292 (Diagram - Latent Prints) identified

Stipulation re People's 289 through 291 recited
into the record.

People's 148C (Note of Cancellation) identified

People's 148D (Receipt) identified

Witness excused. Court admonished the

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF MARIN

1352

DATE March 15, 1984 AT _____ CONTINUED
ABBREVIATED TITLE People v. Mark Richards ACTION NO. 8362

jury and adjourned until March 16, 1984 at 10 A.M.. Court remaining in session. Colloquy between Court and counsel re. People's exhibits not to be offered and objections by the defense as to admission of exhibits. All of the People's exhibits admitted except for the following:

People's 35
People's 35A
People's 35B
People's 35C
People's 171
People's 172
People's 173
People's 177
People's 209
People's 258

People's 279 - Not offered yet by D.A.

At 4:35 P.M. Court adjourned until March 16, 1984 at 10 A.M..

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: March 12, 1984 COURT MET AT 10am DEPARTMENT NO. 5
 PRESENT: HON. E. WARREN MC GUIRE JUDGE J.S. BLEECKER JR. DEPUTY CLERK
L. MILLER/L. SETTLEMYRE REPORTER L. FILIPIAK BAILIFF

TITLE:	COUNSEL:
PEOPLE OF THE STATE OF CALIFORNIA	E. Berberian Dep. D.A.
VS.	
MARK RICHARDS	C. Shapiro
NATURE OF PROCEEDINGS:	ACTION NO. 8362
CRIMINAL JURY TRIAL (19th day)	

Trial resumes from March 9, 1984, with all jurors, counsel and defendant present as before.

Dr. Robert Foehr resumes testifying for the People. People's exhibit 258 (Tape recording of Dr. Foehr) is marked for identification. Portions of 258 are played to the jury. People's exhibit 259 (Copy of check) is admitted in evidence.

Caryn Lea Cerruti is sworn and testifies for the People. People's exhibits 260 (Board with 3 photos) and 262 (Disaster loan documents) are marked for identification. People's exhibit 261 (Signatures as Caryn Richards) is admitted in evidence. Defendant's exhibit G (summary of interview) is marked for identification.

Craig Andrews is sworn and testifies for the People. People's exhibits 262 (Check, 4-26-82, and receipt), 264 (Money order receipt), 265 (Phone bills) and 266 (Record of sale) are marked for identification. Defendant's exhibit H (Money order receipt) is marked for identification.

Caryn Lea Cerruti resumes testifying for the People. Colleen Sullivan, Glen Sommer and Edgar Palmer, Jr., are sworn and testify for the People. People's exhibits 267 (Envelope), 267A (Receipt), 268 (Envelope), 268A (Check), and 268B (Invoice) are marked for identification.

Cora Carabini is sworn and testifies for the People. People's exhibits 269 (Envelope), 269A (Signature card) 269B (Bank account records) are marked for identification.

James Cook, previously sworn, resumes testifying for the People. People's exhibits 270, 271 and 272 (Each a photo line-up) are marked for identification.

Raul Artiga is sworn and testifies for the People. People's exhibits 273 (credit application), 274 (Miscellaneous voucher) and 275 (Envelope) are marked for identification.

MINUTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF MARIN

1349

DATE MARCH 12, 1984 AT _____ CONTINUED

ABBREVIATED TITLE PEO. V. RICHARDS ACTION NO. 8362

Ellen Baldwin, previously sworn, resumes testifying for the People. People's exhibits 276(Envelope and contents), 277(Bag with miscellaneous documents), 278(Auto repair sled) and 279(File box and contents) are marked for identification.

Sam Paul is sworn and testifies for the People. People's exhibit 280(Time record) is marked for identification.

The jury is admonished and trial is continued to March 13, 1984, at 10am.

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1346

DATE: March 9, 1984COURT MET AT 10 AMDEPARTMENT NO. IPRESENT: HON. E. Warren Mc GuireJUDGE Laenggi

DEPUTY CLERK

L. Miller / L. SetlemeyerREPORTER L. Filipiak

BAILIFF

TITLE:

The People of the StatevsMark Richards

COUNSEL:

Ed Berberian, Deputy DA
Lid Lindquist, SRPDCarl Shapiro / Dennis Riordan(Paralegal Present)NATURE OF PROCEEDINGS: 18th Day Civil Jury TrialACTION NO. 8362

Defendant and both counsel present; (D. Riordan absent) Paralegal present; the jury present. Peter Borg was sworn and examined on direct. Cross examination from 10:32 AM until 10:33. Witness excused and David Walker was sworn and examined on direct. Reo's #223A (check); #223B (check); id. Cross-examination and at 10:37 AM, excused and Gordon Card, MVPD sworn and examined on direct. Cross; at 10:42, excused and Thomas Amey, SRPD recalled on re-direct. Reo's #225 (Box) id - adm. Reo's #226 (Bag/contents) #226A (drugs); 226B (Drugs) C (Drugs); D (Drugs); E (Drugs); #227 (map of Marin), all id - adm. #228 (lg drug); #229 (smell drug); both, id - adm. #230 (box w/ files) id - adm. #231 (metal box) id - adm. #232 (file box) id - adm. #233 (Cone sword); 234 (Sword); 235 (Sword); 236 (Wood file); id - adm. #237 (cards); #238 (2 Knives); #239 (Photo); #240 (Book); #241 (5 magazines); #242 (Bender); #243 (Sketch), all id - admitted. at 11:11 AM, cross-examination. Witness excused at 11:25 AM and Pete Neal recalled on cross-examination; re-direct until 11:45 AM, excused; subject to recall. Jury admonished and Court recessed. Reconvened at 2 PM, all present or in AM session. David J. Johnson, SRPD was sworn and examined on direct. Reo's 244 (Bow & Arrow Case); 244A (Paper) #244B (Paper); #244C (Scrap paper) #245 (Pl. bag/marijuana); #246 (Shut wrap/marijuana) #247 (wrapped handgun); #248 (wrapped handgun), all id. #245 & #246 adm. Witness excused at 2:30 PM and Lawrence Waterman was sworn and examined on direct. Excused at 2:31 PM and Audrey Roemiguyre was sworn and examined on direct. Reo's #249 (Cash App.) id. Reo's 250 (Env); 250A (deposit ticket) id. #250B (Acct. Records) id. 251A (Register Tape) id. Reo's 252 (Env & contents); 252A (UPS Records); 252B (Comp. Print) id. - witness excused at 2:55 PM. Joe Kelly was sworn and examined on direct. Cross from 3:10 PM. Witness excused and Frank Gallardo, UPS, was sworn and examined on direct. Witness excused at 3:15 PM and Jerry Cradeur was sworn and examined on direct. Excused at 3:20 PM. Linda Torres sworn and examined. Reo's 253 & 254 (M.W. Sales Slip) id. 255 (Env); 255A (Sales Record); 255B (Shipping Slip); 255C (Application) id. L. Monis sworn; Joel Fischer sworn; at 3:45 PM,

MINUTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF MARIN

1347

DATE March 9, 1984 AT 10 AM (Dep 15) CONTINUED

ABBREVIATED TITLE People vs Mark Richards ACTION NO. 8362

witness excused and Robert Fochr DDS was sworn and
examined on direct. Prop's #256 (Emv); #256A (Cy Lease) id -
#256B (Cy Lease) id. #257 (Paget Appert Cook) id.
at 4:05 PM jury admonished and Court recessed, to
reconvene at 10 AM, March 12, 1984.

CARL SHAPIRO
DENNIS P. RIORDAN
Attorney at Law
523 Octavia Street
San Francisco, California 94102
Telephone (415) 431-3472

Attorneys for Defendant

FILED
March 8, 1984
MARIN COUNTY CLERK
BY *[Signature]*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,	)	NO. 8362
)	
vs.	)	MOTION FOR VOIR DIRE OF
	)	PSYCHIATRIC EXPERTS OUT-
MARK RICHARDS,	)	<u>SIDE PRESENCE OF JURY</u>
)	
Defendant.)	

Prior to trial, the prosecutor indicated his intention to call to the stand psychological experts retained by codefendant Crossan Hoover, as well as those appointed by this Court under Penal Code section 1027 following Hoover's entry of a plea of not guilty by reason of insanity. Defendant objected to any testimony by these witnesses on the ground that their opinion testimony would be based in part on statements of Hoover concerning defendant Richards. People v. Aranda (1965) 63 Cal.2d 518.

On March 23rd, this Court granted defendant's motion in part. It ruled that the experts could testify as to opinions

1 ". . . based upon such professional data as they believe to be
2 reliable, whether it is the mental personality of the minors,
3 their I.Q., their mental illness, et cetera, if any." (RT 712)
4 On the other hand, the experts may not render any opinion based on
5 "any statements by Hoover as to the defendant's involvement" in
6 the charged crime.

7 Defendant now moves to voir dire any such witness called
8 by the state outside of the presence of the jury before he or she
9 begins to testify. The focus of that voir dire will be twofold.
10 First, each expert must be questioned as to whether he or she can
11 offer an opinion concerning Hoover which is free of any taint of
12 the Aranda material. If the expert testifies that his or her
13 opinion necessarily would be affected by a familiarity with
14 Hoover's allegations concerning defendant's role in the charged
15 crime, that expert must be barred from testifying as to that
16 opinion. Evid. Code, §§ 801, 803.

17 A second focus of the voir dire will be as to privilege.
18 Defendant will raise, on Hoover's behalf, a claim under the
19 patient-psychiatrist privilege and the Fifth Amendment as to any
20 statements of Hoover made to a psychiatrist or psychologist. Evid.
21 Code, § 916. By pleading not guilty by reason of insanity, Hoover
22 obviously waived those privileges as to any proceeding in which
23 his innocence by reason of insanity is in issue. Neither his
24 sanity nor his guilt are at issue in defendant's trial, however.
25

26 1. Both the state and defendant Richards agree that Hoover
killed Richard Baldwin while sane.

DENNIS P. RIORDAN
Attorney at Law
523 Octavia Street
San Francisco, California 94102
Telephone (415) 431-3472

1 Hoover, of course, can waive his privileges and permit testimony
2 by the experts who have examined him, but he has not yet done so
3 in this proceeding.

4 If a witness establishes that his or her testimony meets
5 the strictures of this Court's limiting order and is not subject
6 to a claim of privilege, the witness may proceed to testify. At
7 that point defendant will ask that any such witness be instructed
8 not to mention, either on direct or cross-examination, statements
9 of Hoover concerning the alleged role of Richards in the charged
10 offense. Defense counsel intends to question such witnesses as
11 to various statements of Hoover concerning Hoover's own role in
12 the charged offense and needs to ensure that witnesses do not
13 respond by discussing inadmissible material.

14 DATED: March 6, 1984

15 Respectfully submitted,

16 CARL SHAPIRO
17 SHAPIRO & SHAPIRO

18 DENNIS P. RIORDAN
19 RIORDAN & ROSENTHAL

20 By Dennis P. Riordan
21 DENNIS P. RIORDAN

22 Attorneys for Defendant
23
24
25
26

DATE: March 8, 1984COURT MET AT 10AMDEPARTMENT NO. VPRESENT: HON. E Warren Mc GuireJUDGE Laenggi

DEPUTY CLERK

R Miller / L. SettlemyreREPORTER L. Liliak

BAILIFF

TITLE:

The People of the State
vsMark Richards

COUNSEL:

Ed Berberian, Deputy DA
Led Lindquist, SRPDCarl Shapiro / Dennis Reardon
(not present)
Paralegal presentNATURE OF PROCEEDINGS: 17th Day Criminal Jury TrialACTION NO. 8362

Defendant and both counsel present. (D. Reardon absent).
 The jury present. Richard Keaton, MCSO was recalled and
 played tape by Andrew Campbell. Reos #209 identified
 (Tapes). Completed at 10:20 AM, Frank Cox, Deputy PD was
 sworn (affirmed) and examined on direct. Reos #210
 (Tape) identified. Cross-examination from 10:40 AM until
 10:55 AM when witness was excused and Deputy P.D. Mary
Grove was sworn and examined on direct. Reos #211 (Decl. of
A.C.) id. Re-direct from 11:02 AM, re-cross. Witness excused at
 11:03 AM and Pete Neal was sworn and examined on direct;
 11:15 AM cross-examination; re-direct; re-cross; excused at
 11:28 AM and Don Mills was sworn and examined on direct.
Reos 212 (cy log) id. Cross-examination from 11:50 AM. At 12 PM,
 jury admonished and noon recess taken. Reconvened at
 1:30 PM, all present; re-direct examination commenced. Witness
 excused at 1:40 PM and Bernard Healy was sworn and ex-
 amined on direct. Reos #148A (Folder) #148B (Receipt), #213 (Trailer
Hitch) all identified. At 2:25 PM, cross-examination commenced;
 re-direct from 2:30 PM. Re-cross from 2:35 PM; witness excused;
Led Lindquist, SRPD was recalled on re-direct; excused at
 2:45 PM and Monty Baignon was sworn and examined on direct.
 Cross, witness excused at 2:55 PM and Court recessed. Reconvened and
James A. Cook, SRPD was sworn and examined on direct, Reos #14 (Revolver)
id. #215 (Revolver), #216 (Revolver), #217 (Revolver), #218 (Revolver), #219
(Receipt/Dealer Report) id. #219A (Slip) id.; all exhibits. Cross-examination
 from 3:17 PM. Witness excused at 2:18 PM and Robert A. Weaver was sworn
 and examined on direct. Reos #60A, #60B, C and D, (all, Revolvers) id. Reos
#61A (Revolver) id. Cross from 3:40 PM; re-direct. Witness excused at 3:45 PM.
Reos #221 (Photos) id. James W. Mueller sworn and examined on direct.
#222 (Dealer's Sale Record) id-adm. Witnesses excused at 4:05 PM. Jury excused
 at 4:10 PM. Colloquy en al voci dire motion re experts. Released
 at 4:15 PM.

MINUTES

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: March 6, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire JUDGE Slaenggi DEPUTY CLERK
L. Miller/L. Settemeyer REPORTER Larry Filipiak BAILIFF
 TITLE: COUNSEL:

The People of The State
 vs
 Mark Richards

Ed Berberian, Deputy DA
 Ted Lundquist, SRPD
 Carl Shapiro/Dennis Riordon
 Paralegal

NATURE OF PROCEEDINGS: 16th Day Criminal Jury Trial ACTION NO. 8362

Defendant and both Counsel present (D. Riordon absent - Paralegal present); the jury present. Witness Hillary Green returned to the stand on cross-examination. At 10:17 AM witness excused and Martha Gallagher was sworn and examined on direct. Cross-examination from 10:25 AM re-direct from 10:30 AM when witness was excused and Joan Teller. P's #189 (Loan Papers) id. P's #190 (Loan Papers) id. #191 (Loan Papers) id. Cross-examination from 11:00 AM at 11:05 AM witness excused and Court recessed. Reconvened at 11:18 AM when Patrick W. Rhodes was sworn and examined on direct. Cross from 11:25 AM. Re-direct; re-cross. Witness excused at 11:30 AM when Richard M. Waller, Crim. was recalled, on re-direct; cross from 11:40 AM. At 11:45 AM, Court recessed for noon break. Reconvened at 1:30 PM; all present as in AM session. Continued examination on re-direct. P's #81A (slide box) id. P's #158-158A-81-81A, admitted. At 2:10 PM, cross-examination commenced. Re-direct from 2:15 PM. Further exhibits testified to by witness admitted; re-cross; witness excused at 2:23 PM and Michael J. Fuller was sworn and examined on direct; Cross from 2:30 PM. Concluded at 2:32 PM, witness excused and Thomas Smiley was recalled on direct. P's #192 through #208 (misc evidence and weapons marked for id). (list attached). at 3 PM, recessed, to reconvene at 10 AM, March 8, 1984.

MINUTES

PLAINTIFFS

1343 EXHIBIT

			IDENTIFIED	ADMITTED	WITHDRAWN
1984					
3-5	183 C	Check Records: Bog Marin	✓		
	183 D	✓ - 7 pgs	✓		
	184	Inv - w/ Contents	✓		
	184 A	Acct records (debits)	✓		
	184 B	✓ Signature Card	✓		
	184 C	Deposit slips (Groups)	✓		
	184 D	Check assignments & deposits	✓		
	185	Cup of Checks	✓		
	186	Check Deposited	✓		
	187	8 checks	✓		
	188	6 pgs - slips & checks	✓		
3-6	189	Loan Documents on Porsche	✓		
	190	Loan Papers - 1974 Porsche	✓		
	191	Loan Papers - 1976 Porsche	✓		
	81A	Slide Box - Plastic	✓	✓	
	192	Evidence Envelopes & Contents	✓	✓	
	193	2 Photos	✓	✓	
	194	Large Photo	✓	✓	
	195	✓	✓	✓	
	196	✓	✓	✓	
	197	Rifle - 44 Magnum	✓		
	198	Rifle - 4/clip & ammo	✓		
	199	Stock of Rifle - Explorer ^{cartridge}	✓		
	200	Bad Colt 22C - Revolver ^{wholesale}	✓		

1344

EXH

584

ADMITTED

WITHDRAWN

2-6

201	Bra/Seninas	✓
-----	-------------	---

202	Photo	✓
-----	-------	---

203	Bag / Nishti No. Resolver ✓
-----	-----------------------------

204 *Barb. flava* Pital. *alpinus* G. K.

305 Bag/Empty/Unseen Parcel + clip ✓

205	Chippeweenaw Island	✓
206	Chippeweenaw Island	✓

206	Day 1 = F = 1	
207	Day 1 = F = 1	

201	Drug/weapon from truck	
208	Backpack from ^{highway 4000}	

200	Magnum Revolver -	
-----	-------------------	--

THE PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO. 0332

Plaintiff,

NAME Del Marin Travel, Inc.
 ADDRESS 250 Del Marin Keys Blvd, Suite C-2
 CITY, STATE Novato, CA
 ZIP CODE 94947

vs.

D.A. NO. 5555

MARK RICHARDS

Defendant.

TO: THE HONORABLE JUDGE OF THE MUNICIPAL/SUPERIOR COURT:

The witness named above was a necessary witness for the People, was subpoenaed and attended Court, and payment of the witnesses' fees is requested. The claimed fees are:

- (1) within the statutory maximum; or
- (2) for the services of expert witnesses and the compensation requested for such service is reasonable; and
- (3) witness appeared in response to officially served subpoena.

JERRY R. HERMAN, DISTRICT ATTORNEY

Dated: February 27, 1984

By: Edward S. Berberian Deputy

Edward S. Berberian

TO: THE AUDITOR OF THE COUNTY OF MARIN, STATE OF CALIFORNIA: ORDER TO PAY WITNESS FEES.

YOU ARE HEREBY DIRECTED to draw your warrant upon the Treasurer of the County of Marin, State of California, to the above named person, in the sum set forth, as for necessary expenses for attending as a witness on behalf of the plaintiff in the above-entitled action.

JUDGE OF THE MUNICIPAL/SUPERIOR COURT
 E. Warren McGuire

TRANS CODE	FOR VENDOR	ADDITIONAL DATA	P.O. ENC.	ORG NO.	SUB-OBJ NO.	AC	PC	AMOUNT
31				3120	2073			198.07

WITNESS FEE:

MILEAGE:

MISCELLANEOUS CHARGES:

Air transportation - William Robles
 Hawaii-SFO, 2-23-84

\$198.07

DISTRIBUTION

WHITE - CLAIM

CANARY - DA COPY

PINK - MUNI/SUP

GOLDENROD - FILE COPY

3120-50 (3/82)

Dated: 3/2/84

Signature of Department Head or Authorized Deputy

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

cc auditor

INVOICE

NO. 9056

DATE FEB 16 84

Bel Marin Travel, Inc.

250 Bel Marin Keys Blvd., Suite C-2 • Novato, CA 94947 • (415) 883-2456

Marin County District Attorneys OfficeMarin Civic Center
San Rafael, CA 94903TERMS: NET 10 DAYS. A LATE FEE OF
1½% PER MONTH WILL BE CHARGED ON
ALL LATE ACCOUNTS (18% PER ANNUM).

DATE	NAME	DESTINATION	D.A.#	C.R.#	CASE NAME	AMOUNT
2/23	Robles/W	Honolulu/Sfo	5555	8362	People vs. Mark Richards	\$198.07

AMOUNT NOW DUE \$198.07

THANK YOU

RECEIVED

FEB 21 1984

**DISTRICT ATTORNEY
MARIN COUNTY**

PLEASE PAY FROM THIS INVOICE; NO STATEMENT SENT. THANK YOU.



Bateman Eichler, Hill Richards

INCORPORATED

333 MARKET STREET, SUITE 1600 • SAN FRANCISCO, CA 94105 • (415) 989-1000

MAIN OFFICE: LOS ANGELES

RECEIVED MAR 01 1984

FILED

March 5, 1984

RECEIVED MAR 01 1984

MARIN COUNTY CLERK
BY *[Signature]*
DEPUTY

February 29, 1984

Carl Shapiro
404 San Anselmo Ave.
San Anselmo, CA. 94960

Dear Mr. Shapiro:

At the request of Mr. Marshall Dill, the 20M California General Obligation Municipal bonds with a 5.40 coupon, maturing November 1, 1993 trade at 77.85 bid as of today's date, with a \$15,570.00 market value.

Yours truly,

[Signature of David C. Sibbernsen]

David C. Sibbernsen
Account Executive

DCS:djn

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1341

DATE: March 5, 1984

COURT MET AT 10AM

DEPARTMENT NO. E

PRESENT: HON. E. Warren Mc Guire

JUDGE Maenggi

DEPUTY CLERK

Leo Miller / L. Settemybe

REPORTER J. Andrews

BAILIFF

TITLE:

The People of The State of California

vs

Mark Richards

COUNSEL:

Ed Berberian, Deputy DA
Ted Lindquist, SRPD

Carl Shapiro / Dennis Riordan
Paralegal

NATURE OF PROCEEDINGS:

15th Day Criminal Jury Trial

ACTION NO. 8362

Defendant and counsel present (D. Riordan absent); Paralegal present. Outside presence of the jury. Letter filed; People's motion in re Defendant's bail. Sgt Lindquist called to witness stand and testified. P's #171 (Bape) id. Played; (slip. not recorded). P's #172 (Tape) id. P's #173 (Firearm Records) id. Motion re bail argued; Lori Richards was sworn and examined; John Carrington recalled and examined. Motion argued. The Court made tentative ruling; recessed at 11:20 AM; reconvened at 11:30 AM; the jury present; William Rables returned to the witness stand and cross-examination resumed. Re-direct from 11:40 AM. P's #174 (military form); #175 (document 7/82); back, id. adm. witness excused, subject to recall, jury admonished and Court recessed. Reconvened at 1:30 PM; Defendant and Counsel present; out of the presence of the jury, witness, Linda Lips was sworn and examined. Recessed at 2:10 PM; reconvened at 2:20 PM; examination resumed. Witness excused at 2:28 PM when Mark Richards was sworn and examined by Counsel and Court. At 2:45 PM witness excused and Court reserved its ruling on bail. The jury present. Michael T. Kallen, SRPD, was sworn and examined on direct. P's #176 (Bag w/ contents); #176A (Record Album); #176B (Rush Album); #176 (shoe box); #176D (qq plastic bags), all identified. Cross-examination until 3 PM; re-direct and witness excused, subject to recall. Don Kline was sworn and examined on direct. P's #177 (Card); id. #178 (Agreement); #179 (Agreement) id. Cross-examination from 3:24 PM. Witness excused at 3:38 PM and Helen Garrett was sworn and examined on direct. P's #180 (check) id. #178 and #179. adm. at 3:47 PM witness excused and Tina Salzano, NPD, sworn and examined. P's #181 (Env); #181A (check) id. Cross-examination; Excused at 3:55 PM and Patricia Toller was sworn and examined. Thomas Odeley, FPD, sworn and examined. P's #182 (check) id. Hillary Green sworn; excused at 4:35 PM, jury admonished. **MINUTES** Court recessed, to reconvene at 10 AM March 6, 1984.

COUNTY CLERK M.O. #1

P's #183 - AB - C - D #184 - A thru D (Boj Marin Records) id. #185 (q/chucks) #186 (chuck) #187 (8 c/P's)

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: March 2, 1984 COURT MET AT 10 AM DEPARTMENT NO. I
 PRESENT: HON. E Warren Mc Guire JUDGE Shaenggi DEPUTY CLERK
L Miller / L Sealemyke REPORTER D Bartholomew BAILIFF

TITLE:

The People of The State of
 California
 vs
 Mark Richards

COUNSEL:

Ed Berberian, Deputy DA
 Ted Lundquist, SRPD
 Carl Shapiro / Dennis Riordan
 Paralegal

NATURE OF PROCEEDINGS: 14th Day Criminal Jury Trial ACTION NO. 8362

Defendant and counsel present; the jury present. (Paralegal present - D. Riordan absent); witness, Andrew F. Campbell returned to the witness stand and cross-examination resumed. At 10:25 AM, re-direct examination. At 10:32 AM, re-cross; at 10:42 AM, witness excused and Bernard Viles was sworn and examined on direct. Recessed; reconvened at 11:10 AM; Ples #125 (Evid Enr 4/tilts); #125A thru 125G (Pals slips) id. #126 (stereo); #127 (Stereo Speakers); #128 (Bag 4/discs); #128A thru G (discs) id. Continued direct examination. At 11:16 AM, Cross-examination commenced. At 11:25 AM witness excused and Thomas Smiley, SRPD, was sworn and examined on direct. Numerous Peoples exhibits identified (see attached list); at 12 PM, noon recess commenced. Reconvened at 2 PM; out of the presence of the jury, colloquy in re witness. At 2:08 PM, the jury present and direct examination continued. Peoples exhibits continued to be introduced. (see attached list). At 2:30 PM, cross-examination commenced. Witness excused at 2:45 PM and William P. Robles was sworn and examined on direct. At 3:25 PM cross-examination commenced. At 4 PM, jury admonished and Court recessed, to reconvene at 10 AM, March 5, 1984.

MINUTES

NO. 8362

1339

PLAINTIFFS

EXP

			IDENTIFIED	ADMITTED	NOT ADMITTED
4/84					
5/2	125C	Paleo slip	✓		
	125D	-	✓		
	125E	-	✓		
	125F	-	✓		
	125G	-	✓		
	126	stereo	✓		
	127	stereo speakers	✓		
	128	Bag/vids discs	✓		
	128A	-	✓		
	128B	-	✓		
	128C	-	✓		
	128D	-	✓		
	128E	-	✓		
	128F	-	✓		
	128G	-	✓		
	129	Blue Rug	✓		
	130	Vinyl Seat blue	✓		
	131	Bag/w Cable (coaxial)	✓		
	131A	Small Box w/ contents	✓		
	132	Bag/w roll coaxial Cable	✓		
	133	Seat Bench - wood	✓		
	134	Blue vinyl Seat on board	✓		
2/2	135	Bag/ 4 metal wheels	✓		
	1210	Bag w roll coaxial Cable	✓		

PLAINTIFFS

EXHIBIT

			IDENTIFIED	ADMITTED	WITHDRAWN
1984					
3-2	137	rolls of cells in Plastic bag	✓		
	138	✓ in Bag	✓		
	139	roll silver duck tape	✓		
	140	oar (paddle)	✓		
	141	Bag/w Keys	✓		
	142	Bag/w roll silver duck tape	✓		
	142A	Plastic box w contents	✓		
	143	Bag/w 2 drills	✓		
	144	Bag/w plastic plastic magazine	✓		
	145	Plastic bag w pl. tarp	✓		
	146	Plastic bag w Plastic	✓		
	147	Bag w drill	✓		
	148	Bag w folder w documents	✓		
	149	Bag w drill	✓		
	150	Bag w plastic	✓		
	150A	Boat log	✓		
	150B	date book	✓		
	150C	Envelope w BdA Charges	✓		
	150D	Letter 5/10/82 re Taxes	✓		
	150E	Pac Telephone bill 7/13/82	✓		
	150F	Env w checks	✓		
	150G	Env w 2 Cords	✓		
	150H	Env w	✓		
	150I	PGE Bill in Env	✓		

PLAINTIFFS

EXHIBIT

	IDENTIFIED	ADMITTED	WITHDRAWN
984			
1/2 150J group of 3x5 Cards	✓		
150K Ena. cert w/ ltr. Notice Foreclosure	✓		
150L 4 File Envelopes w/ names	✓		
150M Bookkeeping & Tax Book	✓		
151 Env w/ lease	✓		
152 Env w/ Byrdon Checks	✓		
153 Seat Cushion	✓		
154 Pkg/ cushion for boat	✓		
155 Pkg/ blue carpet - boat	✓		
156 Pkg/ blue vinyl boat cushion	✓		
157 Pkg/ white cloth cushion	✓		
158 rope & plastic containers	✓		
158A Plastic slide containers	✓		
159 blue carpeting / Pkg	✓		
160 Bag/ rope	✓		
161 bag/ rope	✓		
162 Bag/ section blue carpet	✓		
163 Pkg/ Pole	✓		
164 Pkg/ Oar - (Paddle)	✓		
165 Pkg/ Pole w/ hook	✓		
166 Bag/ License Plates	✓		
167 Bag/ knife. Invoices/ Bus Receipt	✓		
168 Pkg/ 2 pieces bamboo	✓		
169 Pind karr - leather tie	✓		

VS. 8362

1340

31TS

People's Exhibits

[illegible]

Page 5

CARL SHAPIRO
DENNIS P. RIORDAN

Attorney at Law
523 Octavia Street
San Francisco, California 94102
Telephone (415) 431-3472

Attorneys for Defendant

Filed
March 1, 1984
Howard Hanson, County Clerk
by [Signature]
Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MARK RICHARDS,)

Defendant.)

NO. 8362

MEMORANDUM IN SUPPORT OF
CROSS-EXAMINATION OF
ANDREW CAMPBELL CONCERNING
HIS CRIMINAL ACTIVITIES IN
1982

STATEMENT OF FACTS

On cross examination, defendant intends to question Andrew Campbell to his criminal activities at and around the time of the charged offense. Defendant has a good-faith basis for questions intended to establish that by 1982 Campbell was a sophisticated burglar and thief. Campbell owned a lock-pick set at the time of his arrest. He bragged to friends of his prowess as a burglar and described his techniques and the number of jobs he had pulled.

Campbell's criminal history in 1982 is plainly relevant

1 for two reasons. First, the defendant is entitled to establish
2 before the jury not only the formal immunity agreement under which
3 Campbell is testifying, but Campbell's own understanding of the
4 benefit of his bargain. Second, the prosecution intends to intro-
5 duce evidence that Crossan Hoover and Andrew Campbell were
6 impressionable young men led into this crime by the Fagan-like
7 manipulation of defendant. Evidence that either of the two was
8 a violent or sophisticated criminal at the time of the charged
9 offense is obviously relevant to counter this aspect of the state's
10 case.

11 ARGUMENT

12 I

13 DEFENDANT HAS A RIGHT TO CROSS-EXAMINE
14 CAMPBELL AS TO ALL CRIMES FOR WHICH HE
15 BELIEVES HE HAS BEEN AWARDED A GRANT OF
IMMUNITY, OR FOR WHICH HE FEARS PROSECU-
TION IF HE DOES NOT TESTIFY

16 Defendant has a constitutional right to establish on
17 cross-examination that Campbell has "ulterior motives" in testifying
18 against him. Davis v. Alaska (1974) 415 U.S. 308, 316. (Error
19 to refuse cross-examination on fact government witness was on
20 probation and possibly subject to revocation if uncooperative
21 with prosecution.) Obviously, such motives included obtaining
22 his freedom from prosecution in this case; equally obviously, the
23 fact that Campbell could wipe his criminal slate completely clean
24 by taking the stand is a proper subject of cross-examination.

25 If the jury believes that immunity from prosecution in
26 this case is all that Campbell will receive for his testimony

1 against Richards, they could be wrong; the deal he struck may be
2 much sweeter. He may have received immunity for a number of other
3 burglaries in which he participated, the sentence for which could
4 total a veritable lifetime. Obviously, the more benefits a
5 bargain brings, the more a party's self-interest in that deal
6 increases. The jury is entitled to know just how rich is the
7 reward Campbell received for testifying against Richards. People
8 v. Duran (1976) 16 Cal.3d 282, 294. See also Burr v. Sullivan
9 (9th Cir. 1980) 618 F.2d 583; United States v. Rodriguez (9th Cir.
10 1971) 439 F.2d 782 (per curiam).

11 People v. Allen (1978) 77 Cal.App.3d 924 is precisely on
12 point. In that case, a minor testified against the defendant.
13 On cross-examination, defense counsel was allowed to elicit the
14 information that the minor still faced charges in the case then
15 at bar, but was prohibited from establishing that the minor also
16 faced two unrelated robbery charges. The Allen court found this
17 restriction on cross-examination required reversal. Id., at 933.

18 The court rejected the state's argument that the evi-
19 dence excluded would have been cumulative:

20 "It is true that the jury knew that the
21 minor's juvenile case arising out of the
22 [charged] robbery had not yet been dis-
23 posed of, but the cross-examination concern-
24 ing the minor's participation in three
25 separate robberies was more than merely
26 cumulative. The minor could have reasonably
believed his punishment would have been
greater for the three charges than for the
one. Certainly the minor's mother, Mrs. O.,
had an expectation of leniency for her son
if both he and she identified another
assailant on August 13, 1976, and if both

1 he and she testified for the prosecution at
2 the trial. The appellant had the right to
3 show that both the minor and his mother were
4 possibly under greater prosecution pressure
because of three recent robbery charges than
only one. Id.

5 See also Alford v. United States (1931) 282 U.S. 687, 693 ("[I]f
6 the witness were charged with some other offenses by the prose-
7 cuting authorities, petitioner was entitled to show by cross-
8 examination that his testimony was affected by fear or favor
9 growing out of his detention").

10 The same is certainly true of the present case. The
11 jury in this case will know that Campbell has been immunized for
12 the Baldwin murder and crimes related to it. Yet receipt of
13 immunity from these charges may well have not been the dispositive
14 factor in his decision to testify, because he may well have
15 believed, probably correctly, that absent his own confession of
16 involvement, the state could not make a case against him on these
17 charges. It may well have been his vulnerability to prosecution
18 for numerous criminal offenses unrelated to the Baldwin murders
19 that led him to become a witness for the prosecution against
20 Richards, and arguably to perjure himself in so doing. As in
21 Allen, "this was a question of fact for the jury to consider . . .
22 after permitting appellant, by his lawyer, to cross-examine [him]
23 about [his] state of mind, [his] expectation of leniency . . ."
24 Id., at 933.
25

26 1. It is irrelevant whether a formal agreement immunizing
(fn. cont.)

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"When the Government's case turns on the credibility of a witness, then '[d]efense counsel . . . must be given a maximum opportunity to test the credibility of the witness.' United States v. Brady, 561 F.2d 1319, 1320 (9th Cir. 1977); see United States v. Harris, 501 F.2d 1 (9th Cir. 1974). Such wide latitude in cross-examination is especially appropriate when the key witness is an accomplice of the accused. Gordon v. United States, 344 U.S. 414, 73 S.Ct. 369, 97 L.Ed. 447 (1953); United States v. Bagsby, 489 F.2d 725, 727 (9th Cir. 1974) (per curiam); United States v. Rodriguez, 439 F.2d 782, 783 (9th Cir. 1971) (per curiam); Thurman v. United States, 316 F.2d 205, 206 (9th Cir. 1963)." Burr v. Sullivan, supra, 618 F.2d at 587.

The trial court cannot prohibit the proposed cross-examination of Campbell regarding his immunity for the uncharged burglaries on the ground that its probative value is outweighed by its prejudicial effect on the state's case. Just such findings of undue prejudice to the state or to the privacy interests of the witness being cross-examined were found erroneous in both Davis and Allen.

//

1. Cont.

Campbell from prosecution for his burglaries exists. The relevant issue is whether subjectively he expects immunity from possible prosecution if he testifies, or fears prosecution if he does not.

2. The Allen court found the state's ". . . argument that to permit the evidence of the other charges to be received would be prejudicial and contrary to section 787 of the Evidence Code [to be] without merit." Id., at 933.

II

EVIDENCE OF CAMPBELL'S CRIMINAL HISTORY
IS ADMISSIBLE TO COUNTER THE PROSECUTION'S
CONTENTION THAT CAMPBELL WAS AN IMPRES-
SIONABLE YOUNG PERSON LED INTO THE
COMMISSION OF THIS CRIME BY THE DEFENDANT

It is the prosecution's contention that defendant Richards was the mastermind behind a plot to kill Richard Baldwin, and that he solicited Andrew Campbell and Crossan Hoover to commit the crime. The defense contends that the two teenagers committed the crime themselves, and that if Hoover was manipulated by anyone, it was Campbell.

The defense consistently has argued that this case should be tried on the evidence directly concerning the charged offense. The prosecution may present its evidence of solicitation by Richards, and the defense may present contrary evidence of Campbell's central role in the commission of the crime. The prosecution has resisted this approach. In seeking admission of the "Pendragon" evidence, it has claimed the right to prove defendant's "position of leadership, vis-a-vis the other principals in the murder" by introducing admittedly "bizarre" evidence concerning science fiction fantasies plainly lacking any direct connection to the charged crime (Response To Defendant's Motion In Limine, at 5). The prosecution intends to demonstrate "that Richards had the ability, not only the desire to manipulate Crossan Hoover (then age 17) into a position to where he would kill Richard Baldwin" (Supplemental Points and Authorities Opposing Exclusion Of Evidence On "Pendragon" And Related Evidence,

1 at 2.) (emphasis in original) Again, the People have claimed
2 the right to prove the defendant had ". . . the ability to persuade
3 and induce two 17 year old young men to assist in the carrying out
4 of his plan." (Response To Defendant's Motion In Limine Filed
5 February 14, 1984.) In short, the prosecution intends to prove
6 the defendant is the "type" of person who could lead two teenagers
7 of a certain "type" to commit the charged offense.

8 The defense opposed the admission of what it perceived
9 to be evidence of character, both that of Richards and those of
10 Hoover and Campbell, rather than of the defendant's participation
11 in the charged crime. Accepting the prosecution's reliance on
12 People v. Manson (1978) 61 Cal.App.3d 102, 126-131 and Proposition
13 Eight, the court has held this character evidence admissible.

14 Under that ruling, whether Andrew Campbell and Crossan
15 Hoover were in 1982 the sort of impressionable kids who could be
16 led into a murder is now a fact in dispute in this action. Whether
17 Richards could have and did in fact lead Hoover to kill Baldwin
18 are facts in dispute. Under Evidence Code section 210, any
19 evidence "having any tendency in reason to . . . disprove" these
20 disputed facts is now relevant and thereby admissible under
21 Proposition Eight.

22 Evidence that Campbell was a sophisticated criminal at
23 the time of the charged offense tends to disprove the contention
24 that the conceded participation in a murder by this 17 year old
25 can only be explained by his manipulation by an adult. Furthermore,
26 such evidence would establish his ability to manipulate Hoover,

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1 tending to prove that he did so and Richards did not. If the
2 prosecution is entitled to contend that the role of Richards in a
3 plan to takeover Marin establishes his credentials as the leader
4 of a plot to kill Richard Baldwin, then Campbell's criminal acti-
5 vities have an equal tendency in reason to prove his role as the
6 mastermind of the murder.

7 The state has chosen to put the defendant's personality
8 and character in issue. It cannot expect to hide the unsavory
9 nature of the character of its own principal witness from the
10 jury's scrutiny, when that witness' criminal history is relevant
11 to issues the state itself has raised.

12 CONCLUSION

13 For the reasons stated above, the defendant will exercise
14 his constitutional right to cross-examine Andrew Campbell as to
15 his criminal history.

16 DATED: March 1, 1984

17 Respectfully submitted,

18 CARL SHAPIRO
19 DENNIS P. RIORDAN
20 Attorneys at Law

21 By *Dennis P. Riordan*
22 DENNIS P. RIORDAN

23 Attorneys for Defendant

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8362

See



File

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FILED

JUL 11 1984

HOWARD HANSON
 MARIN COUNTY CLERK

BY: *[Signature]*

RECEIVED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 8362
)	
Plaintiff,	)	PEOPLE'S RESPONSE TO
	)	NEW TRIAL MOTION --
v.	)	<u>GUILT PHASE</u>
)	
MARK RICHARDS,)	
)	
Defendant.)	

I.

PENDRAGON EVIDENCE

The legal arguments advanced for the admission of the Pendragon evidence are discussed in great detail in the People's brief filed January 12, 1984. That brief is attached and incorporated by reference as Exhibit A to this response.

It is the People's contention that the Pendragon evidence is not "wholly cumulative" on the issue of defendant Richards' association with Hoover and Campbell, his co-conspirators in the murder of Richard Baldwin. As the evidence at trial proved, the relationship of Richards to Hoover and

1 Campbell existed on various levels, and in activities apart from
2 the typical employer/employee relationship. The court balanced
3 the supposed prejudicial aspects of the Pendragon material against
4 its probative value in explaining the nature of the relationship
5 between Richards and particularly Hoover, and found that
6 probative value to outweigh any potential prejudicial effects.

7 The defense takes out of context and misrepresents how
8 the People described the necessity of showing all aspects of Mark
9 Richards' life, thus enabling the jury to understand how he could
10 convince others that murdering Richard Baldwin could be done
11 successfully and for profit. The Pendragon aspect of Mark
12 Richards' life was one of the factors Crossan Hoover was exposed
13 to in his dealings with Mark Richards. And as I suggested would
14 occur in my earlier briefs, the Pendragon aspect of this case
15 became a central figure in defendant Hoover's trial, with the
16 defense attempting to persuade the jury that Crossan Hoover was
17 almost, if not completely brain-washed by Mark Richards and his
18 schemes. The People maintained in both trials, that Pendragon
19 had to be examined, simply because it was an aspect of both Mark
20 Richards' and Crossan Hoover's lives; an aspect that helped to
21 understand their relationship and interactions.

22 Andrew Campbell talked about his involvement in the
23 murder, and his (Campbell's) impressions of Pendragon. It would
24 be a distortion of Campbell's testimony to paint Crossan Hoover's
25 involvement in Pendragon with the same brush.

26 Campbell, by the time of his arrest, had gotten quite a
27 bit of information about Pendragon. Information to which Hoover
28 was exposed. Campbell knew that Richards had talked about

1 weapons, and a plan to take over Marin County. Campbell had
2 learned of Richards' friend, named "John," who had access to
3 military hardware. (RT Richards p. 2297)

4 Campbell had been warned that if he, or Hoover told on
5 Richards, that Richards' "backers" (i.e. "John") would kill them.
6 (RT Richards p. 2306)

7 According to Campbell, within a week of the murder,
8 Richards took both Campbell and Hoover to the San Anselmo
9 Theological Seminary. Richards told them he would use these
10 buildings (in connection with Pendragon) because they were bomb-
11 proof. (RT Richards p. 2307)

12 Richards talked about his Marin plot and referred to a
13 John Stapp as his next-in-command. In addition, Richards advised
14 that the whole idea was to take over Marin militarily; keep the
15 blacks out; blow up bridges; isolate the County; use lasers on
16 Mt. Tamalpais; and blow up the Richmond oil refineries. (RT
17 Richards p. 2307)

18 Campbell stated that Richards asked him to join the
19 plan, but he never did; however Campbell stated that Hoover knew
20 much more about it than he did; and that Hoover had even gotten
21 written material from Richards on how to build a weapon. (RT
22 Richards p. 2308)

23 Campbell was present at one "meeting", where Richards
24 was talking about what various people were going to do in this
25 new government. Among the individuals whose roles were explained
26 was Hoover's. Richards stated that Hoover was going to be given
27 responsibility to care for the animals and nature in the new
28 society. (RT Richards p. 928)

1 Also, Mark Richards told Campbell that in addition to
2 getting out of debt, he wanted to use some of the money (from the
3 murder of Baldwin) to purchase weapons for the "Pendragon thing".
4 (RT Richards p. 926)

5 Campbell stated his opinion that Richards took the
6 subject of Pendragon seriously. (RT Richards p. 1079 and p.
7 1087) When Campbell was asked by Mr. Shapiro at trial, if others
8 (that is other than Campbell) took it seriously, Campbell's
9 response was: "I assume so. They showed up at the meeting....In
10 my opinion, yes, they did." (RT Richards p. 1089, lines 12-16)

11 So that no misapplication of the Pendragon evidence
12 would occur the court, using an instruction drafted by the
13 defense, properly limited its use, and cautioned the jury
14 accordingly. The relevance of Pendragon went to delineate and
15 define the relationship of Richards, and principally, Hoover.
16 The relationships between the principals in this criminal
17 conspiracy had to be fully examined, so that an understanding
18 could be had on how Mark Richards could manipulate Crossan Hoover
19 and Andrew Campbell into the position where a cold-blooded,
20 ruthless, murder for profit could be consummated.

21 As the court will see in reviewing the defendant's
22 motion for new trial, reference is often made to narrow or
23 selected portion of the case in order to fashion an argument.
24 However, when the court examines the whole record of the trial
25 and places any individually selected passage into context, no
26 undue prejudice was suffered by Mark Richards in the presentation
27 of any of the evidence introduced during the trial.

28 The defense in discussing Pendragon points to portions

1 of the testimony of Willy Robles, Pete Neal and John Stapp. The
2 defense argues that no witness testified about what Crossan
3 Hoover thought about Pendragon, therefore all Pendragon evidence
4 was irrelevant. Also the defense argues that none of the
5 Pendragon exhibits (none of which are specifically identified)
6 played a role in Richard Baldwin's death. However, as mentioned
7 above, the Court can not examine the record with blinders. The
8 Pendragon exhibits document the subject's existence, what others
9 attribute to Mark Richards, in regard to statements he made about
10 his plans for Marin, the plans and sketches of his ideas--all of
11 these materials, coupled with his talks at the meetings providing
12 input to Crossan Hoover. Input that Richards would exploit to
13 convince Hoover that a successful murder of Richard Baldwin could
14 be accomplished, with financial gain for all.

15 Mark Richards presents to both Campbell and Hoover the
16 offer of money and all that can provide to young men who have had
17 next to nothing in the way of material comforts; Mark Richards
18 presents particularly to Hoover an ugly deception of the victim,
19 in order to make the killing a more palatable experience; and the
20 glue which holds the plan and its execution together, is Mark
21 Richards ability to persuade Crossan Hoover that a cold-blooded
22 murder-for-hire can be accomplished, without a loss to society as
23 a result of the victim's death, and with a considerable financial
24 profit to the participants. Mark Richards' ability to make
25 believable the unbelievable--to make believable an absurd scheme
26 to gain wealth by means of murder, is what gives the Pendragon
27 evidence its relevance and its importance.

28 Richards brings into Pendragon not only Hoover, but

1 others. The trial showed that Willy Robles, Pete Neal, John
2 Stapp and Mike Fuller were involved. The testimony of these
3 witnesses, and all the exhibits on which their testimony touches,
4 corroborates Andrew Campbell, when he talked about how Hoover
5 knew much more about the Pendragon plan than he did; how those in
6 the group took Mark Richards and his plans seriously. The files
7 and records of Richards show that he generated written material,
8 some of this material was given to the participants at the
9 meetings--e.g. the tear-outs from the handbook on constructing
10 underground weapons, and a newsletter on Pendragon activities.

11 By looking at what Mark Richards did and said, vis a
12 viz, his relationship with Crossan Hoover, one can see how the
13 orchestration of the murder of Richard Baldwin came to pass.

14 The cases cited by the defense, People v. Albertson, 23
15 Cal. 2nd 550, People v. Jackson, 254 CA 2nd 655, and People v.
16 Schrader, 71 Cal. 2nd 761, are factually not similar to the
17 present case. Pendragon was a regular part of Richards life and
18 relationship with Hoover during the weeks surrounding the murder
19 and arrest. As was addressed by the court in People v. Manson,
20 61 CA 3rd 102, at 126-131, the total relationship and association
21 of Richards to Hoover is very important in understanding how the
22 conspiracy to kill Richard Baldwin could evolve.

23 II.

24 REJECTED OFFERS TO STIPULATE

25 This issue, just as the Pendragon issue discussed
26 above, was briefed at the time of the arguments on the motions in
27 limine. Attached and incorporated by reference as Exhibit B is
28

1 the brief filed by the People on January 12, 1984.

2 What the defense repeatedly discribes as "bad
3 character" or "bad act" evidence is evidence the People have
4 described as "motive" evidence. It is the defense that has
5 repeatedly referred to these materials as evidence designed to
6 show the defendant's "bad" character.

7 The People, during the trial were able to prove that
8 Mark Richards inept business practices resulted in ever-
9 increasing financial pressures. Compounding the business
10 failures were Mark Richards' actions of increasing his debts
11 amidst his business collapses. For example, Richards bought a
12 home and encumbered himself with two mortgages. By May 12, 1982,
13 one of the two mortgages had over \$4,000 in payments and
14 penalties owing. Richards falsified applications on disaster
15 loans and added at least \$5,000 to his debt obligations. Also
16 outstanding were automobile loans on three expensive cars--two
17 Porsches and a Jensen Interceptor. During the week of the
18 killing, Richards negotiated a commerical lease with Dr. Robert
19 Foehr, that added an additional \$6,000 annual debt obligation.
20 The defense for obvious tactical reasons wished to stipulate away
21 forceful and persuasive proof that financial demands contributed
22 in part to the motive of Mark Richards to murder Richard Baldwin.

23
24 III.

25 NEWLY DISCOVERED EVIDENCE

26 In order for a new trial to be granted under Section
27 1181(8) of the California Penal Code the Courts require that the
28 evidence be newly discovered; and that the evidence not be

1 cumulative; and the evidence, if admitted, be such as to render a
2 different result probable on retrial; and that the moving party
3 could not with reasonable diligence have discovered and produced
4 it at trial. [See, People v. Williams, 57 Cal.2d 263 (1962)]

5 Each of these requirements must be met before a motion for a new
6 trial based on newly discovered evidence can be granted. The
7 evidence which came to light in Officer Cook's notes was
8 information not explicitly set forth in other reports. This fact
9 alone should not lead one to the conclusion that the information
10 was newly discoverable, nor should it lead one to believe that
11 the evidence was material to the case. A full examination of the
12 full record of this case will show (1) that, if the evidence was
13 admitted in a subsequent trial, a new outcome would not be
14 likely, since the evidence was not material to the case itself;
15 and, (2) that the evidence could have easily been discovered with
16 reasonable diligence.

17 Nothing had been hidden or destroyed--the People had no
18 intent to keep information from the defense. During the course
19 of the investigation of this case, and the collection of
20 evidence, over 25,000 pages of discovery were given to the
21 defense team; over 50 tape recordings of statements were
22 provided; and the individual exhibits seized or held as evidence
23 exceeded 400 items.

24 Although repeated opportunities were expressly provided
25 to the defense, at no time, prior to trial had the attorneys
26 representing Mr. Richards, ask to view and examine all items
27 held, nor did either attorney representing Mr. Richards ask to
28 review the original notes retained by any of the investigators

1 who worked on the case.

2 With regard to defendant Richards, there was not a
3 discovery order in effect for any original notes of the
4 investigating officers. However, the People never took the
5 position that such a order would need to exist before such notes
6 would be provided the defense. During the early stages of
7 discovery original notes were included in the discovery
8 material. It was only during the subsequent trial of defendant
9 Hoover that it was discovered that not all the original police
10 officers' notes had been copied. But these additional notes were
11 never destroyed, and a detailed examination will reveal they
12 contain no new material information.

13 As stated above, these original notes were not
14 destroyed and had remained a part of the investigating officers
15 case files. The court should not blanketly reach the conclusion
16 that since these notes were not duplicated for discovery that the
17 defense's "present knowledge" constitutes "newly-discovered
18 evidence". The defense can not passively sit back and yell
19 "foul" for a honest mistake of the police, when a diligent effort
20 on their part would have yielded the information. The
21 information was never hidden--that can be seen by how the items
22 were discovered. For example, Jim Cook at his conditional
23 examination prior to the commencement of the Hoover trial,
24 brought his case file on the Baldwin homicide with him to
25 court. Mr. Cook opened his file to refresh his recollection and
26 the notes were preserved in that file. Looking at Sgt. Ted
27 Lindquist original notes, a portion of which were provided in the
28 early stages of the Richards discovery, revealed that he kept all

1 his original notes in a binder and that binder was with him
2 during his testimony in both the Richards and the Hoover jury
3 trials. Sgt. Lindquist, in both trials used his reports and
4 notes to refresh his recollection. These materials were not
5 hidden, and were thought to have been fully supplied in
6 discovery. When records are kept in this fashion, and the
7 officers, in good faith believe their records have been
8 duplicated, and it is only learned after trial that portions were
9 not turned over, does that automatically mean that whatever
10 material contained therein constitutes "newly-discovered
11 evidence?"

12 The answer to that question should be no. The defense
13 must show that even in an exercise of "due diligence" this
14 information could not have been found by the time of trial. In
15 deciding what constitutes "due diligence" (an element of the
16 argument the defense must establish) for purposes of a motion for
17 new trial, modern court decisions refer back to People v.
18 Goodwin, 202 Cal. 527, at 538-539. In Goodwin, the court stated
19 "due diligence" depended largely upon the particular
20 circumstances of each case. The Goodwin court found no lack of
21 diligence on the facts presented in that case, thus making the
22 application for new trial appropriate. In Goodwin the following
23 occurred:

24 "...at the time of trial Goodwin was without
25 funds and for some time was without an
26 attorney. He was forced to ask for several
27 continuances because the attorney he had
28 engaged had declined to act without the
payment of a fee and Goodwin had been
disappointed in securing the money for the
fee. When it became necessary to obtain new
counsel, the attorney who tried the case was

1 brought in from another county and arrived
2 the evening before the day when the trial was
3 to begin. He asked for a continuance of ten
4 days or two weeks, claiming that he was
5 unfamiliar with the case and had not even
6 examined the transcript of the evidence at
7 the preliminary examination. The record
8 shows that a continuance of but two days was
9 given and lack of preparation of counsel is
10 manifest throughout the trial. The record
11 discloses that this attorney was so nearly
12 blind that he was compelled to rely upon his
13 daughter to read not only the transcript of
14 the daily proceedings, but all the exhibits
15 and documents offered at the trial...."
16 (Goodwin, supra, at p. 538)

17 In contrast to Goodwin, are the facts of the present
18 case:

- 19 1. Mark Richards did not need to be
20 concerned about money to finance his
21 defense. The State paid for all his legal
22 and investigative fees;
- 23 2. From the day of his arrest Mark Richards
24 was represented by seasoned and able counsel,
25 who over the years, had earned a deservedly
26 high reputation in the legal community. In
27 addition, from the time his case reached the
28 Superior Court, a second attorney of equally
high abilities was appointed to assist in the
defense. This second attorney's expenses and
services were as well paid by the State.
3. The trial of Mark Richards did not
commence until 18 months after his arrest.
The two attorneys worked as a team for at
least one year prior to the commencement of
the trial preparing their case.
4. No physical infirmities of any nature
manifested itself during the trial.
5. In addition, aside from the two attorneys
representing Mr. Richards' interests, the
services of at least two private
investigators and a paralegal were obtained--
none of who's expenses had to be personally
borne by Mark Richards.
6. There appeared to be meticulous
organization of the reports, files and
exhibits. It appeared that all testimony and

1 statements had been summarized and cross-
2 referenced to other relevant materials;
3 exhibits were collected and cataloged; and in
4 general no indication of any unfamiliarity
5 with the details or facts of the case
6 appeared.

7 The defense, if they had chose to, had the ability,
8 access and resouces to have "discovered" this evidence.

9 In People v. Green, 130 CA 3d 1, the defense stated
10 that an agent working for the Drug Enforcement Agency (DEA) gave
11 testimony inconsistent with testimony he had given previously.
12 The defense argued this "newly discovered evidence" was now
13 available to impeach the credibility of a key prosecution witness
14 and justified the granting of a new trial. The court in Green,
15 found the information to be neither material, nor had the defense
16 shown "due diligence" in not developing this information at a
17 earlier date; however, arguendo, the court held that even if the
18 agent's credibility was in question, the "newly discovered
19 evidence" was not enough to cause a different result before a new
20 jury.

21 In Green, the court cited two reasons why a new trial
22 would not be in order. First, as a general rule, newly
23 discovered evidence which merely impeaches a witness is not
24 significant enough to make a different result probable. (See,
25 People v. Huskins, 245 CA 2d 859, at 862) In the present case
26 the defense argues that the "new evidence" casts some doubt on
27 the testimony of Willie Robles and Pete Neal. The information
28 could have been used to attack their credibility and to show bias
on their part for providing favorable prosecution testimony.
However, such a conclusion is highy speculative. There is no

1 indication that Officer Jim Cook or Sgt. Ted Lindquist, or anyone
2 else ever made promises to either of these individuals--no deals
3 were struck with Willy Robles or Pete Neal in regard to their
4 testimony. (See, affidavits of Officer Jim Cook and Sgt. Ted
5 Lindquist of the San Rafael Police Department attached and
6 incorporated by reference as Exhibit C and Exhibit D.)

7 In fact the subject of drug sales did surface in the
8 testimony of Pete Neal. During defense cross-examination Pete
9 Neal readily admitted that he had helped Crossan Hoover and
10 Andrew Campbell sell the marijuana brought to 32 Los Padres
11 shortly after the murder of Richard Baldwin. (RT Richards p.
12 1520)

13 Secondly, the Green court noted, in denying a new
14 trial, that a different outcome would not likely occur, since the
15 officer's testimony was not the sole evidence used to support the
16 verdict. The determination of Mark Richards guilt was not by any
17 means solely determined by the testimony of Willy Robles and Pete
18 Neal.

19 Andrew Campbell quite clearly presents evidence showing
20 that Mark Richards planned and executed the killing of Richard
21 Baldwin. Campbell's testimony was amply corroborated by a score
22 of witnesses, documents and exhibits. From information touching
23 on Pendragon, through the events surrounding the killing, to the
24 spending spree that followed, Andrew Campbell was corroborated in
25 literally hundreds of ways. Pete Neal and Willy Robles were not
26 crucial, nor central to that corroboration. It can not be said,
27 as the defense would like to argue, "but for" their testimony a
28 conviction would not have occurred. That is simply not the case.

1 In People v. Myers, 125 CA 3rd 735, a witness supplied
2 important, but not vital information at trial. It was later
3 discovered that this witness was a fugitive and had a criminal
4 background. The court stated that this newly discovered
5 information "would not have changed the picture one iota." (See,
6 Myers, Id., at p. 746)

7 Two witnesses, in People v. Cooper, 95 CA 3rd 844, were
8 discovered after the trial.

9 "The central question in the determination of
10 whether a new trial should be granted on the
11 ground of 'newly discovered evidence' is
12 whether that evidence would probably result
13 in a different verdict upon retrial.

14 [Citations omitted] That is a question which
15 normally can best be answered by the trial
16 judge, who has been witness to the
17 presentation of all the evidence at trial.
18 Consequently, the trial court's determination
19 that a new trial should not be granted may be
20 disturbed only where it is shown that there
21 had been an abuse of discretion--as, for
22 example, where the 'newly discovered
23 evidence' contradicts the strongest evidence
24 introduced against the defendant. [Citations
25 omitted] " (Cooper, at p. 852)

26 The three principle arguments advanced by the defense
27 as to why the new information warrants a new trial are: (1) A
28 need to fully examine the motives for Neal's and Robles'
29 testimony. There is no substance to this argument--its pure
30 speculation. Nothing was ever implicitly or explicitly promised
31 Neal or Robles. As discussed above, the fact Neal was willing,
32 and did in fact, deal drugs came out during the trial (RT
33 Richards p. 1520); (2) The real motive for killing Baldwin was
34 Hoover's needing money to buy drugs. Again, it is only through
35 speculation that such a conclusion could be reached; and (3) Pete
36 Neal using Mark Richards name to keep his "drug source" off his

1 back, shows a propensity to fabricate stories about Richards.
2 Again an argument founded in pure speculation. The court need
3 only look at the record of the Hoover trial to see that there may
4 have been drug dealing aspects to Richards' life as well. The
5 defense called, in Hoover's trial, Richards' former wife, Caryn
6 Cerrutti, who was questioned, by the defense about Mark Richards
7 contact with drugs. (RT Hoover p. 1729) It appears that
8 Richards may have been dealing drugs--cocaine and marijuana--in
9 the same time frame that his "friends", Pete Neal and Willy
10 Robles were contacting this La Donna English. Caryn Cerrutti is
11 told by Mark Richards, about one month before his arrest, that he
12 was going to be selling cocaine and marijuana. Attached and
13 incorporated by reference, as Exhibit E is a copy of a portion of
14 Caryn Cerrutti's testimony in the Hoover trial. If Pete Neal
15 told LaDonna English about Mark Richards, one might wonder what,
16 if anything, he was fabricating.

17
18 IV.

19 COURT SECURITY

20 The Court has discretion to initiate procedures to
21 minimize the likelihood of courtroom violence or other disruption
22 during a criminal trial. (See, People v. Duran, 16 Cal. 3d 282)

23 The court took a very measured and reasonable action,
24 after taking evidence in an open court proceeding, out of the
25 jury's presence. During the trial, as the record will show, the
26 People received reliable information that the defendant, while on
27 bail, was using an assumed name and was reported to have a
28 firearm on his person and/or in the vehicle he was driving. The

1 possession of a firearm by the defendant would constitute a
2 direction violation of one of the conditions of his bail.

3 During the hearing a number of witnesses testified
4 about their contacts with Mark Richards. Among the witnesses who
5 testified were Lois Richards, the defendant's mother, and Mark
6 Richards. The court listened to the testimony, and observed the
7 demeanor and conduct of the witnesses. The court learned that a
8 number of small handguns were registered to Lois Richards and
9 were kept in her residence, and at times were carried by her
10 outside of the residence. The court learned that while on bail
11 the defendant at times at been staying at the family residence
12 and would have access to these firearms. The court heard the
13 defendant state rather emphatically that he viewed his arrest and
14 trial as a political one, orchestrated by the principal San
15 Rafael Police investigator and the Deputy District Attorney
16 assigned to the case. (RT Richards p. 1226 et seq. and p. 1278
17 et seq.)

18 After hearing all the testimony the court took very
19 reasonable precautions to protect the security of the courtroom
20 and the personnel involved. A single metal detector was placed
21 outside the courtroom for all who entered to pass. The defendant
22 was not individually picked out for special restraints, and was
23 at no time restrained in the courtroom.

24 The court when the jury was again brought back to the
25 courtroom, instructed the jury that a metal detector had been
26 installed, and they would probably see it at some point when they
27 made there way to the jury assembly room, and they were cautioned
28 against drawing any inferences against the defendant. (RT

1 Richards p. 1289-1290)

2 Absent a clear showing of any real prejudicial effect
3 on the jurors in the Richards case, a new trial should not be
4 granted. Counsel for the defense argues that the metal detection
5 search, which all persons entering the courtroom submitted to,
6 forced the jurors to somehow view the defendant as one who could
7 cause trouble in the courtroom. The metal detector was for all
8 to pass, not just the defendant. Since everyone who wished to
9 enter the courtroom was subject to the same treatment, no
10 prejudicial effect could have occurred. The search was for the
11 safety of everyone in the courtroom, including the defendant.
12 Whether or not the defendant "conducted himself with composure
13 and dignity throughout all of his court appearances" had little
14 to do with the reasons for the security measures. The security
15 measures were not initiated as a personal vendetta against the
16 defendant, rather, the Court felt that some limited, and
17 constrained action, should be taken for the safety of all
18 concerned.

19 The fact that jury members asked about the new security
20 precautions does not indicate any prejudicial affect towards the
21 defendant. It is one's human nature to be inquisitive. Some
22 members of the jury asked about the metal detector, the judge's
23 cautionary instruction addressed that issue.

24 Finally, the defense claims that the imposition of the
25 security measures in mid-trial made it impossible for him to
26 discover any bias which the jurors might have. What the defense
27 forgets is that it was the actions of Mark Richards, and no one
28 else that necessitated the actions taken by the court. The court

1 quite reasonably took measures, based on the evidence presented,
2 that would protect the courtroom and its personnel, while at the
3 same time taking actions that would least prejudice the rights of
4 the defendant. The defense can not point to one piece of
5 evidence that shows that the metal detector created bias against
6 the defendant.

7
8 V.

9 JURY INSTRUCTIONS

10 The reading of CALJIC 4.71, plus the reading of the
11 instruction requested by the defense, was not reversible error.
12 The reading of both instructions did not confuse the jury, but
13 provided a clarification of the more general 4.71 CALJIC
14 instruction.

15 The instruction requested by the defense is similar to
16 CALJIC 4.71.5 which states that, "In order to find the defendant
17 guilty it is necessary for the prosecution to prove beyond a
18 reasonable doubt the commission of a specific constituting said
19 crime within the period alleged." Defense claims that the two
20 instructions are "flatly contradictory." This, however, is not
21 the case. Using the language "on or about" the sixth would seem
22 to include the 5th and 7th. CALJIC 4.71.5 even used the same "on
23 or about" language in CALJIC 4.71. It states that the crime must
24 have been shown to occur "on or about" a period of time between
25 the "5th and 7th." It appears that the judge gave two separate
26 instructions that could have been combined into one, rather than
27 saying the jury must find the crime occurred on or about the 6th,
28 ie., the 5th and 7th, and then saying the jury must find the

1 crime occurred on 5th, 6th, or 7th specifically. The judge could
2 have done the same thing by using CALJIC 4.71.5 which states the
3 jury must find the crime occurred "on or about a period of time
4 between the 5th and 7th." Both the reading of the two
5 instructions or the reading of 4.71.5 would have accomplished the
6 same thing. One instruction did not contradict the other. The
7 second instruction merely clarified the first instruction.

8 Counsel for the defendant used the case of People v.
9 Jones, 9 Cal.3d 546 (1973) as authority for support of his motion
10 for a new trial. The Court in Jones, id, was clear in stating
11 that CALJIC 4.71 is an improper jury instruction when a specific
12 date and time for the crime has been fixed by the evidence, and
13 when the defendant has an alibi for that specific date and time.

14 The evidence in this case is not at all susceptible to
15 the precision envisioned in Jones. The court, in the present
16 case, can recall the testimony of Andrew Campbell, Thomas Mills
17 and Dr. Robert Foehr, to name just a few. These, as well as
18 other witnesses, did not fix with any particularity the exact
19 time of the events surrounding the murder of Richard Baldwin.
20 Clearly the evidence shows that the outside parameters for the
21 killing of Richard Baldwin was July 5, 1982 and July 7, 1982,
22 with the afternoon of July 6, 1982, being the most likely time.
23 But to argue that the time of the killing was fixed with such
24 particularity as to prohibit the reading of the modified CALJIC
25 4.71 instruction is unreasonable.

26 The "alibi" the defense offers is a supposed meeting
27 between Dr. Robert Foehr and Mark Richards on the afternoon of
28 July 6, 1982. However, under the most beneficial defense reading

1 of the testimony on this subject, it was established that the
2 contact, when the corrected check was given Dr. Foehr, was of
3 very short duration. This occurred at Dr. Foehr's office, in the
4 early afternoon. Dr. Foehr's office is one or two minutes from
5 the Belli-Delli delicatessen, where Mark Richards, Crossan Hoover
6 and Andrew Campbell had lunch the day of the murder. That office
7 would also be no more than five to ten minutes from either the
8 victim's shop or residence. Further examination of Dr. Foehr's
9 testimony, and other evidence that touches on that testimony,
10 weakens the supposed "alibi" even further. Dr. Foehr was
11 interviewed on tape within a couple of weeks of his contact with
12 Mark Richards in July of 1982. At that time Dr. Foehr told Sgt.
13 Lindquist that the most likely date for the meeting was July 7,
14 1982--not July 6.

15 The San Rafael Police Department seized numerous
16 records from the Mark Richards residence. However, at the time
17 of those seizures, which included some cancelled checks, Dr.
18 Foehr's name had not yet surfaced in the investigation, therefore
19 no attempt was made to search for specific records between
20 Richards and Foehr. It was only during the months after Richards
21 arrest, as the investigation continued, that Dr. Foehr's contacts
22 became important. The defense never produced the cancelled check
23 between the parties; the People obtained Mark Richards' bank
24 records, and found a photostatic record of the Richards/Foehr
25 transaction. The date on that check was July 7, 1982.

26 Simply stated, the evidence in the Richards' trial
27 clearly called for the instructions given, and the Jones
28 specificity argued by the defense simply did not exist.

1 Even if the court were to view the instructions as
2 contradictory, which the People do not believe the record
3 supports, no reversible error occurred. In Soda v. Marriott, 118
4 Cal.App. 635, the Court held that contradictory "instructions
5 which were given must be construed as a whole in determining
6 whether they contained reversible error." Soda v. Marriott, 118
7 Cal.App. at 642-643. It is impossible to look to an
8 inappropriate instruction by itself when determining if there has
9 been reversible error. The defense desires the Court to do just
10 that. By looking at both instructions together, it can be seen
11 that the instruction setting the specific dates cured any
12 imagined problem of generality in the modified CALJIC 4.71
13 instruction.

14 In People v. Nota, 73 Cal.App.2d 439 (1946), the Court
15 held that an instruction which stated that it was "immaterial on
16 what day or night the offense charged in the information was
17 committed," was not prejudicial error in every case where an
18 alibi defense was raised for a specific date during the time in
19 question. Speaking of the above-quoted instruction, the Court
20 said, "Standing alone manifestly it would be misleading, but
21 considered in connection with other instructions there can be no
22 confusion." People v. Notz, 73 Cal.App.2d at 440. (See also,
23 People v. Velarde, 163 CA 2d 669)

24 The Court in Wells v. Lloyd, 21 Cal.2d 452 (1942)
25 claimed that it was not always true that conflicting instructions
26 will mislead a jury; reversal is not always warranted. The Court
27 explained when that situation could occur. When an abstract and
28 general statement in an instruction is given, and then a clear

1 and explicit statement in another instruction is given, "It is
2 unlikely that the jury followed the general language of the
3 abstract instruction rather than the explicit and emphatic charge
4 applying the law to the facts of the particular situation."

5 Wells v. Lloyd, 21 Cal.2d at 459. This guideline is very helpful
6 in looking at the instructions given in the Richards case. The
7 first instruction read to the jury is the general "on or about"
8 language. The second instruction stated specifically what dates
9 the jury should be concerned with, the 5th, 6th and 7th of
10 July. The jury most likely took on or about to mean one day on
11 either side of the 6th. The second instruction made clear to the
12 jurors what dates they were to be concerned with. The alibi
13 information, or evidence for the three days in question, was
14 given as much weight as was warranted. The jury still found
15 beyond a reasonable doubt that the defendant was guilty.

16 Another valuable guideline used in determining whether
17 two seemly contradictory instructions would constitute reversible
18 error was set down in Sebrell v. Los Angeles Ry Company, 31
19 Cal.2d 813 (Whether or not the instructions in the Richards case
20 were contradictory is still contested by the People) In Sebrell,
21 the Court gave contradictory jury instructions concerning a
22 negligence case. On review the Court explained that, "In
23 determining whether there is such a conflict, the decisive
24 question is whether the instructions, read a whole and in the
25 light of circumstances of the case in which they were given, are
26 apt to confuse a person of ordinary intelligence." Instructions
27 given to the jury in the Richards case could not have confused a
28 person of ordinary intelligence. One instruction qualified the

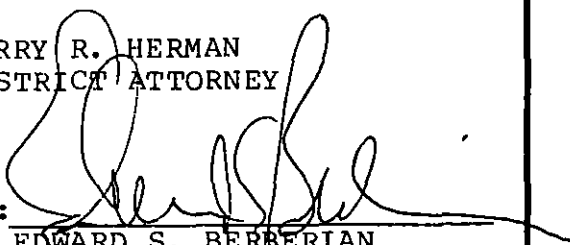
1 other. The jurors were not forced to make a choice in their
2 minds between two conflicting instructions. The jurors had the
3 correct concept of the law after both instructions were read and
4 they were able to render a verdict accordingly. (See People v.
5 Chapman, 207 Cal.App.2d 557 (1962))

6 In People v. Hunnicutt, 29 Cal.2d 52 (1946), counsel
7 established beyond a reasonable doubt that the defendant charged
8 with committing the crime did in fact commit the crime. The
9 judge then gave two conflicting jury instructions concerning how
10 the jury should determine the element of premeditation. The
11 Court held that in order for a new trial to be granted on the
12 basis of conflicting or erroneous instructions, the defendant's
13 rights must have been substantially affected by the
14 instructions. The Court considered the given instructions
15 together along with the evidence which proved the defendant
16 committed the crime, and concluded that the jury could not have
17 been misled and that the verdict, based on the evidence of the
18 case and the magnitude of the conflicting instructions, was not
19 decided on a misconception of the law. In the Richards case, the
20 same would hold true. The reading of both instructions did not
21 in any way substantially affect the rights the defendant. The
22 jury, weighing all of the evidence, decided beyond a reasonable
23 doubt that the prosecution proved each element of its case. They
24 knew what the defendant claimed as a defense for the three days
25 in question--the jury simply was not persuaded.

26
27
28 Dated this 9th day of July 1984.

Respectfully submitted,

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARY

PEOPLE OF THE STATE OF CALIFORNIA,	)	DE. 1307
)	
Plaintiff,	)	SUPPLEMENTAL POINTS AND
	)	AUTHORITIES OPPOSING
v.	)	EXCLUSION OF EVIDENCE ON
	)	"PENDING" AND RELATED...
MARK RICHARDS,	)	MATERIAL
)	
Defendant.)	

On January 11, 1984, at the commencement of oral argument, counsel for the defendant Richards filed a written response to the People's opposition to motions in limine. Relying on Evidence Code section 352 and the case of People v. Cardenas, 31 Cal.3d 897, the defendant Richards claims evidence surrounding his activities with "Pendergon", "Imperial Marin" and the related materials is highly prejudicial and thus should be excluded.

As a prelude to the comments that follow, the court must be cautioned to read and reflect upon the information. The guilt of Mark Richards must be shown by his actions demonstrating how he aided and abetted, induced, solicited, commanded and assisted in the killing of Richard Baldwin. This killing

— EXHIBIT A —

resulted from a conspiracy involving Mark Richards, Crossan Hoover and Andrew Campbell. The facts and factors that led to the creation of the criminal conspiracy must be examined carefully and fully. In regard to Mark Richards and Crossan Hoover, the development, details and extent of their relationship is crucial in understanding how Richards manipulated Hoover into the position where he would kill Richard Baldwin.

In Cardenas, evidence of "gang membership" was first introduced during the prosecutor's cross-examination of two defense alibi witnesses in which the witnesses' common membership with the defendant was in a "youth gang or group" known as "El Monte Flores." In finding that the evidence should have been excluded, the Court noted that "the evidence was offered to establish possible bias of the defense witnesses in favor of the [defendant]." (Id., at 994.) That was the limited and narrow justification for offering the gang affiliation. The court observed that other evidence clearly established that fact and that therefore the "gang" membership evidence was cumulative and its probative value therefore "minimal."

The Cardenas situation is distinctly and clearly distinguishable from the present case. There are issues other than simply common membership in an identifiable group that exist in this case. The People believe that as part of its proof it must be demonstrated that Richards had the ability, not only the desire to manipulate Crossan Hoover (then age 17) into a position to where he would kill Richard Baldwin. In that regard Richards developed a detailed plan on how the killing should occur, i.e. Baldwin would be decoyed to his shop, where acting upon a signal

from Richards, after Baldwin's attention is diverted, Hoover is to deliver the death blow. Hoover must not only agree in principle to the idea, but must be prepared upon the expressed signal of Richards to act. It is critical then to be able to demonstrate how Richards could exert that type of control over Hoover. The evidence which touches in part on "Pendragon-related materials" thus does not become cumulative, but is unique in its ability to show Richards leadership and influence over Hoover.

Not cited by the defense is the case of People v. Contreras, 144 CA3d 749 (1983) (Hearing denied by the California Supreme Court on October 20, 1983). In that case the court allowed introduction of "gang affiliation" distinguishing People v. Cardenas, supra. As in Contreras, Hoover's association with Richards in the "Pendragon" activities is relevant to show much more than the fact they physically met on a number of occasions. During the six months prior to the killing Hoover, a young unskilled worker, with limited educational skills, regularly meets with Richards. Richards takes Hoover into this group, which is called the "Warlords". Richards puts himself in the role of leader--of teacher. In the group are a number of young men quite similar in background to Hoover. It is from that group Richards approaches at least three individuals (including Hoover) and attempts to solicit aid in killing Richard Baldwin.

In the "Warlord" group Richards discussed his plan to establish a different form of government, here in Marin. He had plans for how it would run, and who would be in charge of what activities. Richards took the boys in the group to places in the county to show them how his plans would work. Mark Richards had

and displayed numerous diagrams and maps depicting various aspects of his plans. Whether it was a workable plan, whether it was a plan he even intended to execute is irrelevant. Richards would at times discuss his ideas about the troubles with today's society. He would describe impending upheavals he saw in the social fabric and how he planned to defend these threats. Of course these pronouncements sound bizarre, and might bring a smile to one's lips, or a glance of disbelief. But the important fact is Richards took Hoover into the group and from a position of leadership, exposed him to his plans and goals.

Mark Richards lures Hoover into the killing with promises of money and cars, while at the same time conditions Hoover for the killing by portraying Baldwin as a person who is victimizing Richards by not paying for jobs done by Richards, and by engaging in character assassination. It is because of Hoover's emotional make-up and Richards growing influence as a role model that enables Richards to manipulate. For example, Richards knows that Hoover has an extremely troubled family life; Hoover wants to provide for his mother and sisters and wants to be financially able to provide for them. Knowing these factors, Richards will tell Hoover the money from Baldwin can help him bring his family back to Marin County--in fact they will be able to add to his own residence and provide a place for Hoover and his family. The evidence will show that it was someone other than a mere employer that created the environment for Crossan Hoover to act and take the life of Richard Baldwin.

In addition from time to time Richards would allow Hoover to stay at his home and as discussed above, even promised

Hoover a permanent place to stay after the murder. It will be shown that Hoover was a young man easily preconditioned by someone putting forth a strong male leadership model. Mark Richards assumed that role not only in the work environment but in the social context of his relationship with Crossan Hoover.

If the court should foreclose the people from developing that portion of its case that touches upon "Pendragon" the people would not be able to show how "Pendragon" contributed to Richards' ability to mold Hoover's actions. The court would be dismissing the people's position that the total relationship between Richards and Hoover needs examination in order to understand how Richards was able to orchestrate the killing. An interesting question is then posed, for in the trial that is to follow this one, that is the trial of defendant Hoover, would the court upon the people's motion in limine prohibit counsel for defendant Hoover from presenting any and all "Pendragon" materials? I have strong doubts the court would grant that motion.

Based upon the evidence and argument made on behalf of defendant Hoover during the fitness hearing that resulted in his certification to the adult court for trial, the people can expect defendant Hoover is going to claim that he was, in effect, brainwashed by defendant Richards. The "Pendragon" and "Imperial Marin" material, superimposed upon the fact defendant Richards became a substitute father figure, made Crossan Hoover "ripe-pickings". That phrase was used by Dr. Roman Rodriguez, a psychiatrist who examined defendant Hoover and prepared a lengthy report on his evaluation. That evaluation was presented by the defense to the Juvenile Court during the fitness hearing.

Attached as Exhibit A to this response is a copy of that report. It appears the People may find itself in an interesting position. On one hand we are going to be told that the "Pendragon" information is too collateral, too remote, too cumulative to be offered in evidence; but when we switch defendants and switch defense theories on why defendant Hoover did what he did, the people are going to be confronted at every evidentiary turn with the bizarre accounts of Mark Richards conscripting young men to help him overthrow the government of Marin County. The People believe the only just and proper answer to be to allow the introduction in both trials of the materials touching upon "Pendragon". It simply was a part of not only Mark Richards' life; but of Crossan Hoover's life. The import of what "Pendragon" meant and how it affected the actions of Mark Richards and Crossan Hoover should be left for the jury to determine and weigh. Richard Baldwin was only murdered once. A complex set of factors motivated the principals to the killing-- it would not be proper to take the limited and diminished proof approach urged by the defendant Richards.

The instant case and the People's intent to offer evidence surrounding the "Pendragon" issue have close parallels in the cases of People v. Manson, 61 CA3d 102, 126-131 and People v. Randolph, 4 CA3d 655. As in Manson, the People in this case must show that someone else inflicted the death blow; but only as a result of a plan conceived and put into play by Mark Richards. As in Manson, defendant Richards did not do the actual killing, but had another do the act itself. In Manson, the prosecution sought to introduce evidence of Charles Manson's "Helter-Skelter" theory:

"...To the Family, Helter Skelter meant the occurrence of a revolution started by blacks to gain control of the world to subdue the conventional establishment of the college educated, wealthy white community and power structure....Manson frequently discussed this revolution with members of the commune, describing in detail how whites would be atrociously murdered by blacks. The killings would be marked by the symbolic ritual of writing with the blood of the victims....A further facet of this fantasy included Manson's pronounced interest in death....He finally proclaimed he would have to cause the revolution. There is specific evidence that Manson declared the belief that he would have to show the 'nigger' how to do it...." (Manson, at p. 129).

Also, in Manson, the prosecution sought to show his influence over the family by introducing evidence of sexual crimes, not transactionally related to any of the murders, in which Manson participated and directed others to participate. The defense raised objections under Evidence Code sections 352 and 1101. The trial court allowed both the "Helter-Skelter" theory and the evidence of sexual displays into evidence--the appellate court found no error, and the California Supreme Court declined to grant a hearing.

"....such evidence may be properly admissible if it is offered to prove a fact material to the charge crime and meets the general tests of relevancy as to such fact. '[T]he general test of admissibility of evidence in a criminal case is whether it tends logically, naturally, and by reasonable inference, to establish any fact material for the people or to overcome any material matter sought to be proved by the defense.' (Citations omitted) Although the evidence concerning these events was indeed dramatic, it nevertheless reasonably tended to show Manson's leadership of the Family, the inference being that if Manson could induce bizarre sexual activities, he could induce homicidal conduct. While the evidence is less than flattering, its prejudicial character is

outweighed by its evidentiary value showing
Manson's involvement in the murders.
(Emphasis added) (Citations omitted).
(Manson, at pp. 130-131).

None of the material connected to "Pendragon" or "Imperial Marin" will be as potentially inflammatory as the subject matter allowed to show Manson's leadership. However, Mark Richards did manipulate Crosson Hoover into acting and only by looking at their complete relationship and associations can that ability to mold be seen.

In People v. Randolph, 4 CA3d 655 at 661, the court rejected the defense contention that the trial court should not have allowed the prosecution to prove the defendant was a "pimp" (no crime of pandering had been charged in the murder information) and the actual triggerman was defendant Randolph's "henchman".

"....The testimony concerning defendant's relationship to White, which indicated that White acted as defendant's agent, was highly relevant and clearly admissible to show that White was acting under orders from defendant when he pulled the trigger. The additional testimony that White was acting as defendant's agent in the illegal activity of pimping, was also relevant evidence. It may reasonably be inferred that, if White was defendant's agent in that illegal business, he would be more inclined to follow defendants orders to commit other illegal acts--to wit, robbery and murder...."
(Randolph, at p.661).

In addition the court should be guided by the principals and intent of Proposition 8. People v. Smith, 34 Cal.3d 251 (1983), denied retroactivity to the provisions of Proposition 8, stating it should only be applied to cases occurring on and after June 9, 1982. The murder in this case

occurred on July 6, 1982, and therefore comes within the provisions of that enactment.

Proposition 8 enacted Article I, Section 28 (d) of the California Constitution. Portions of that section state "...relevant evidence shall not be excluded in any criminal proceeding...." It is true that Evidence Code section 352 remains as part of the law, however for the reasons and under the authority discussed above, that provision of the law should not be invoked to bar the introduction of the evidence at issue in this motion.

Dated this 12 day of January 1983.

Respectfully submitted,

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 8362
)	
plaintiff,	)	OPPOSITION TO THE
	)	DEFENSE REQUEST TO
v.	)	REQUIRE STIPULATIONS
)	
MARK RICHARDS,)	
Defendant.)	

In urging the court to require the People to accept stipulations on the fact Mark Richards wrote insufficient funds checks, the defense cites as controlling authority, Jefferson's California Evidence, (2d Edition 1982). What is not mentioned in the defense argument is that even Jefferson's text notes exceptions to the rule requiring the acceptance of a stipulation by an adverse party. The people believe that the strongest and most persuasive evidence we have to offer deals with the financial pressures bearing on Mark Richards. In addition, the proof on these issues is the clearest and most convincing. Obviously the defense sees this and the way to diminish its impact is to stipulate to what can not be explained away in a rational fashion.

There is a long line of cases that note this specific defense strategy, and allow the proponent of the evidence to

—EXHIBIT-1-B—

reject such a stipulation. It has been repeatedly held that a party can not stipulate away the opponent's case, thus taking away it's forcefulness and persuasiveness. (See, People v. Szeto, 29 Cal.3d 20, at page 29; People v. Robles, 2 Cal.3d 205, at 213 People v. McClellan, 71 Cal.2d 793 and Fuentes v. Tucker, 31 Cal.2d 1, at page 7.)

Also Proposition 8 reinforces this argument. Specifically, Section 28 (f), has been added to Article I of the California Constitution. This provision was specifically enacted to repeal the authority of People v. Hall, 28 Cal.3d 143, that required the people to accept the stipulation in a 12021 P.C. prosecution that the defendant had been convicted of a prior felony offense, when that is an element of the charge. Until the enactment of Proposition 8 the Hall case often provided the defense with a springboard for the argument that stipulations to any elements must be accepted. Therefore reading both Section 28 (d) and Section 28 (f) of Article I of the California Constitution, the court can now clearly see the intent of the law. All relevant evidence should be admitted--clearly Mark Richards financial background is relevant, and to enable the People to convincingly present its case, should not be stipulated away.

Dated this 12th day of January 1984.

Respectfully submitted,

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4 Attorneys for Plaintiff

5
6
7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIN

10
11 PEOPLE OF THE STATE OF CALIFORNIA,) NO. 8362
12)
Plaintiff,)
13)
v.)
14)
MARK RICHARDS,)
15)
Defendant.)

16 Your affiant is a sworn peace officer with the San
17 Rafael Police Department assigned certain investigative
18 responsibilities in the above-captioned matter.

19 Your affiant has at no time during the investigation of
20 the murder of Richard Baldwin had occasion to be a party to, or
21 have knowledge of, any promise of leniency being extended to Pete
22 Neal or Willy Robles. To my knowledge no such offer or promise
23 has ever been made.

24 I certify under penalty of perjury that the foregoing
25 is true and correct, and was executed in San Rafael, California,
26 on July 9, 1984.

27 
28 JAMES COOK

Officer, San Rafael Police Department

- EXHIBIT C -

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 8362
)	
Plaintiff,	)	AFFIDAVIT OF
	)	<u>TED LINDQUIST</u>
v.)	
)	
MARK RICHARDS,)	
)	
Defendant.)	

Your affiant is a sworn peace officer with the San Rafael Police Department who headed the investigation in the above-caption matter.

Your affiant has at no time during the investigation of the murder of Richard Baldwin had occasion to be a party to, or have knowledge of, any promise of leniency being extended to Pete Neal or Willy Robles. To my knowledge no such offer or promise has ever been made.

I certify under penalty of perjury that the foregoing is true and correct, and was executed in San Rafael, California, on July 9, 1984.

Ted Lindquist

TED LINDQUIST
 Sergeant, San Rafael Police Department

- EXHIBIT D -

7-1

1 Q DID YOU IN FACT FIX MEALS FOR HIM ON OCCASIONS?

2 A I THINK SO. NOT HIM AS MUCH AS, LIKE, WILLY,
3 OR SOME OF THE OTHER BOYS. A COUPLE OF TIMES, I WOULD SAY,
4 YES.

5 Q YOU RECALL A COUPLE TIMES AT THIS POINT IN TIME?

6 A YES.

7 Q DID MARK EVER TALK TO YOU ABOUT CROSSY HOOVER
8 AS FAR AS HIS WORKING FOR MARK RICHARDS?

9 A YES.

10 Q AND WHAT WAS SAID IN THAT REGARD?

11 A THAT HE'S A VERY, VERY GOOD WORKER, AND HE'S
12 GOING TO GO FAR, AND HE WORKED A LOT HARDER THAN SOME OF
13 THE OTHER BOYS AND HE -- NICE -- VERY NICE THINGS.

14 Q WAS -- DURING THE PERIOD OF JANUARY OF 1982 UNTIL
15 MARK'S ARREST, WERE YOU AWARE OF WHETHER OR NOT MARK WAS
16 USING ANY KIND OF DRUGS?

17 A HIMSELF PERSONALLY?

18 Q YES.

19 A AS FAR AS I KNOW, HE WAS NOT EVER ON DRUGS.

20 Q AT SOME POINT IN TIME, DID YOU BECOME AWARE OF
21 THE FACT THAT MARK WAS GOING TO BE DEALING DRUGS?

22 A YES.

23 Q AND WHEN DID YOU BECOME AWARE OF THAT?

24 A HE TOLD ME, I WOULD SAY, OH, ABOUT A MONTH BEFORE
25 HE WAS ARRESTED THAT HE WAS GOING TO SELL -- I DON'T KNOW
26 WHATEVER -- TO GET THE STUFF FROM SOMEBODY -- COCAINE AND
27 MARIJUANA, AND THAT I WAS VERY MUCH AGAINST IT, BUT I SAID,
28 "OKAY. DO -- JUST LEAVE ME OUT OF IT -- WHATEVER. IF YOU --"

- EXHIBIT E -

1 BECAUSE WE NEEDED SOME EXTRA MONEY.

2 Q SPEAKING OF MONEY, WERE YOU WORKING DURING THE
3 PERIOD OF -- OH, WHEN YOU MOVED INTO 366 BUTTERFIELD UNTIL
4 THE TIME THAT MARK WAS ARRESTED?

5 A I WAS WORKING AT MARIN CONVALESCENT HOSPITAL,
6 UH-HUH.

7 Q AND HOW LONG DID YOU WORK THERE?

8 A SEVEN YEARS.

9 Q AND WHAT WAS -- WHAT WAS YOUR RATE OF PAY WHILE
10 YOU WERE WORKING THERE?

11 A AT THAT TIME? BEFORE MARK GOT -- I THINK I WAS
12 MAKING ABOUT \$800 A MONTH -- CLEARING AROUND \$800, I THINK
13 MAYBE AROUND THERE.

14 Q WHEN YOU SAY "CLEARING THAT," DO YOU MEAN YOUR
15 NET PAY?

16 A YEAH.

17 Q WHEN YOU GOT YOUR PAYCHECK, WHAT WOULD YOU DO
18 WITH IT?

19 A WHEN WE MOVED INTO OUR HOME, I GAVE IT TO MARK.
20 AND HE GAVE ME, LIKE, 40 OR \$50 A WEEK FOR, LIKE, ALLOWANCE
21 TO FOOL AROUND WITH AND TO PAY FOR GAS, BECAUSE WE WERE ON
22 A STRICT BUDGET.

23 Q AND MARK WOULD HANDLE THE BUDGET?

24 A YES, I NEVER TOUCHED IT.

25 Q DID YOU -- DID YOU BECOME AWARE OF A RELATIONSHIP
26 THAT MARK HAD WITH A CHARLES COSTELLI (PHONETIC)?

27 A UH-HUH.

28 Q AND WHAT WERE YOU AWARE OF THAT PARTICULAR

1 STATE OF CALIFORNIA)
2) ss. PROOF OF SERVICE
3 COUNTY OF MARIN)

4 I am a citizen of the United States and a resident of
5 the county aforesaid; I am over the age of eighteen years and not
6 a party to the within action; my business address is Room 181
7 Hall of Justice, San Rafael, CA 94903.

8 On July 11, 1984, I served the within -
9 PEOPLE'S RESPONSE TO NEW TRIAL MOTION -- SPECIAL CIRCUMSTANCE
10 PHASE and PEOPLE'S RESPONSE TO NEW TRIAL MOTION -- GUILT PHASE on
11 the Defendant's attorneys in said action by placing a true copy
12 enclosed in a sealed envelope with postage thereon fully prepaid,
13 in the United States post office mail box at San Rafael,
14 California, addressed as follows:

15 Carl B. Shapiro, Esquire
16 404 San Anselmo Avenue
17 San Anselmo, CA 94960

18 Dennis P. Riordan, Esquire
19 523 Octavia Street
20 San Francisco, CA 94102

21 I certify under penalty of perjury that the foregoing
22 is true and correct.

23 Dated: July 11, 1984

24 Mary E. Maritz
25
26
27
28

June 8, 1984

1624

Honorable Judge McGuire:

8362

This relates to a recent case, over which you presided, involving Mark Richards. We feel sure you would welcome any input as to the character and background of this young man.

We have lived in Marin for 35 years and have been in business in San Anselmo for 20 years. We are well known and respected in the county. We have known Mark's mother, a creative and talented artist for several years. Her husband was a dedicated member of the military service. Today he is severely handicapped as a result of that service. We know several of the Richards' neighbors and have mutual acquaintances. All would agree they are a respected and stable family.

We have met Mark several times and always felt he reflected the fine qualities of his parents. Mark made a lasting impression on us during the flood of 1982. Our business and all others on the street were devastated. We were feeling pretty helpless. Mark came in, manned a shovel, and spent the day digging us out. He was adamant in refusing any compensation. On another day we saw him down the street helping another merchant.

We did not follow this case in the news and are not informed about the testimony so we surely would not presume to argue any part of it.

We are aware that we have in our society many truly incorrigible criminals who must be kept behind bars. We just can't believe Mark Richards fits in this category.

Please accept this plea in the spirit in which it is intended. The plea is for you to consider all factors involved including those favorable to Mark.

We know your task is complex and difficult and we wish you well in your final deliberations.

Respectfully yours,

Paul Patrick
Paul Patrick

Jon Patrick
Jon Patrick

Co-partners,
PATRICK BROS. ART SUPPLIES
500 San Anselmo Avenue
San Anselmo, Ca. 94960

FILED
June 12, 1984
HOWARD NELSON
MARIN COUNTY CLERK
BY St. Angelo
DEPUTY

cc: PO: DA: C Shapiro:

SUPERIOR COURT OF CALIFORNIA, MARIPOSA COUNTY

DATE: June 6, 1984 COURT MET AT 9am DEPARTMENT NO. 1
 PRESENT: HON. DAVID MENARY JR JUDGE J. Blucher Jr DEPUTY CLERK
P Gaudos REPORTER A Brown BAILIFF

TITLE:

PEOPLE OF THE STATE OF CALIFORNIA

vs

MARK RICHARDS

Defendant

COUNSEL:

Deputy D. A. E Berberian

Deputy Prob. Off. _____

Deputy Pub Def. _____

Defense Counsel D Riordan

NATURE OF PROCEEDINGS:

ACTION NO. 8362Defendant is in custody and is / ~~is not~~ present in court with counsel.() _____ motion(s) is/are set for hearing on
Master Calendar/Criminal Calendar of _____ at _____.

() 1538.5 PC / 995 PC / _____ motion called for hearing.

() Counsel stipulate that the 1538.5 PC Motion may be submitted on the transcript of the preliminary hearing.

() The Court states it has read and considered the transcript of the preliminary hearing.

() The matter is argued and submitted.

() _____

(X) THE COURT ORDERS: On the People's motion, the defendant having no objection, the motion for New Trial and sentencing is continued to July 17, 1984 at 1:30 pm in Department 5.

() On _____ Motion, trial date of _____ is advanced / continued to the Master Calendar of _____. Trial confirmation date of _____ is advanced / continued to _____ at 9:00 a.m.

(X) Defendant personally waives time for ~~new~~ sentencing

() Motion to set aside forfeiture is granted conditionally:
 Upon the payment of \$ _____ costs on or before _____, the order of _____ forfeiting bail will be set aside and vacated, and bond will be exonerated.

MINUTES

cc: Master Calendar; Clerk D-5
 COUNTY CLERK M.O. #1

THE PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO. 0362

Plaintiff.

NAME
ADDRESS
CITY, STATE
ZIP CODEROBLES, WILLIAM
Melantibusron Eiche
FPO
San Francisco, CA 94001

D.A. NO. 5575

MARK RICHARDS

vs.

Defendant.

TO: THE HONORABLE JUDGE OF THE MUNICIPAL/SUPERIOR COURT:

The witness named above was a necessary witness for the People, was subpoenaed and attended Court, and payment of the witnesses' fees is requested. The claimed fees are:

- (1) within the statutory maximum; or
- (2) for the services of expert witnesses and the compensation requested for such service is reasonable; and
- (3) witness appeared in response to officially served subpoena.

JERRY R. HERMAN, DISTRICT ATTORNEY

BY

Dated: 5/21/84

By

EDWARD S. BERBERIAN

Deputy

TO: THE AUDITOR OF THE COUNTY OF MARIN, STATE OF CALIFORNIA: ORDER TO PAY WITNESS FEES.

YOU ARE HEREBY DIRECTED to draw your warrant upon the Treasurer of the County of Marin, State of California, to the above named person, in the sum set forth, as for necessary expenses for attending as a witness on behalf of the plaintiff in the above-entitled action.

JUDGE OF THE MUNICIPAL/SUPERIOR COURT
F. WARREN MC GUIRE

TRANS CODE	FOR VENDOR	ADDITIONAL DATA	P.O. ENC.	ORG NO.	SUB-OBJ NO.	AC	PC	AMOUNT
31				3130	2073			457.75

WITNESS FEE:
Testimony 3/2/84-\$12.00
3/5/84-\$12.00
\$24.00

MILEAGE:

Mileage to San Diego Naval Base
(driving to new assignment)
560 mil. @ .20/mi. = \$112.00

MISCELLANEOUS CHARGES:

Lodging 2/28/84-3/28/84=\$300.00
Meals-\$21.70

DISTRIBUTION

WHITE -- CLAIM

CANARY -- DA COPY

PINK -- MUNISLP

GOLDENROD -- FILE COPY

Dated: 6-4-84

Signature of Department Head or Authorized Deputy

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

3-25-84

Board & lodging for
William Robles 2/24/84
 thru 3/24/84, \$300⁰⁰

Juliana Perez

TAXIFARE RECEIPT

Date 2-20-84

Time _____

From _____

To _____

FARE \$ _____

LUGGAGE _____

TIP _____

TOTAL \$ 7.00

Driver Loy J. Pugh

2 20 4
3@ 3.00
9.00 01
1@ 2.50 01
11.50 IL
11.50 OCA
14 2162

FILED

MAY 29 1984

HOWARD HANSON

MARIN COUNTY CLERK

BY P. MALLORY
DEPUTY

DENNIS P. RIORDAN

RIORDAN & ROSENTHAL

ATTORNEYS AT LAW

523 OCTAVIA STREET

SAN FRANCISCO, CALIFORNIA 94102

TELEPHONE (415) 431-3472

CARL B. SHAPIRO, ESQ.
404 San Anselmo Avenue
San Anselmo, CA 94960
(415) 453-7611

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MARK RICHARDS,)

Defendant.)

NO. 8362

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR
A NEW TRIAL

I. INTRODUCTION.

By this motion, defendant does not raise every issue which he believes would subject his conviction to reversal. For example, he contends that the denial of his motion to suppress his statement to the police at the time of his arrest was error and merits a new trial. He recognizes, however, that issue was fully briefed and argued prior to trial, and that he has no additional authorities to present concerning it. He limits this motion to matters which arose in the midst of trial or issues upon which events at trial cast a new light.

1 II. THE ERRONEOUS ADMISSION AT TRIAL OF
2 "PENDRAGON" EVIDENCE REQUIRES A NEW
3 TRIAL.

4 A. Statement of Facts.

5 On December 19, 1983, defendant Richards moved in limine to
6 exclude from evidence "...any testimony dealing with written matter
7 commonly called "Pendragon", which may also be identified as a writing
8 entitled 'Imperial Marin' or any discussions concerning this subject."

9 On January 4, 1984, the prosecution opposed the motion in limine
10 concerning Pendragon on the following grounds:

11 "Defendant Richards planned, solicited
12 the principals, and orchestrated the
13 killing of Richard Baldwin. His position
14 of leadership, vis-a-vis the other prin-
15 cipals in the murder, is directly related
16 and is demonstrated by his conducting reg-
17 ular "Warlord" meetings during the months
18 immediately preceeding [sic] the murder.
19 Although these topics and the subject matter
20 that is an offshoot has aspects of the
21 bizarre, it is of critical importance in
22 showing defendant Richards [sic] link to
23 the killing and his relationship to the
24 other principals in the killing."

25 On January 11, 1984, defendant Richards replied that:

26 "[T]he 'Pendragon' evidence is wholly cumula-
27 tive on the issue of association, because
28 such association will be fully proven by
29 evidence that Hoover, Campbell, and Robles
30 worked for Richards and saw him every day.
31 Richards does not dispute that fact, and
32 would stipulate to it. Once the daily con-
33 tact among these parties is conceded or
34 proven by less inflammatory evidence, the
35 'Pendragon' evidence loses its probative
36 value on this issue.

On the other hand, the 'Pendragon' evidence
is highly prejudicial. The prosecution con-
cedes it is bizarre. It suggests defendant
was planning a criminal takeover of the very

1 county from which the jurors are to be
2 drawn. More inflammatory evidence would
be hard to imagine."^{1/}

3 Defendant moved to exclude the "Pendragon" evidence under
4 Evidence Code §352 and People v. Cardenas (1982) 31 Cal.3d 897,
5 904-905.

6 On January 12, 1984, the prosecution filed a supplemental memo
7 opposing exclusion of the "Pendragon" evidence. In it, the state
8 made, inter alia, the following assertions:

9 "The evidence which touches, in part, on
10 'Pendragon-related materials' thus does
not become cumulative, but is unique in
11 its ability to show Richards [sic] leader-
ship and influence over Hoover."

12 "[T]he important fact is Richards took Hoover
13 into the group and from a position of leader-
ship, exposed him to his plans and goals."

14 "It is because of Hoover's emotional make-up
15 and Richards [sic] growing influence as a
role-model that enables Richards to manipu-
16 late....The evidence will show that it was
someone other than a mere employer that created
17 the environment for Crossan Hoover to act and
take the life of Richard Baldwin."

18 "If the court should foreclose the People from
19 developing that position of its case that
touches upon 'Pendragon' the People would not
20 be able to show how 'Pendragon' contributes to
Richards [sic] ability to mold Hoover's actions."

21 "The 'Pendragon' and 'Imperial Marin' material
22 superimposed upon the fact defendant Richards
became a substitute father figure, made Crossan
23 Hoover 'ripe pickings'."

24 ^{1/} In his motion of January 11, 1984, defendant made an offer of
25 proof that a telephone survey conducted in Marin County revealed
that people who remember reading press accounts of the "Pendragon"
26 aspect of this case were more than twice as likely to hold a precon-
ceived opinion of defendant's guilty than those who did not remember
that aspect of the case.

1 In opposing defendant's motion in limine, the prosecution argued
2 in open court that, absent the "Pendragon" evidence, the jury might
3 believe the defendant was "ordinary", and that the evidence was nec-
4 essary to show that, to the contrary, he was "bizarre" or "weird."
5 The defense argued that it was precisely because the "Pendragon"
6 evidence was being offered to prove bad character on the defendant's
7 part that it was inadmissible.

8 This court denied defendant's motion in limine, on January 13,
9 1984. In light of that ruling, defendant Richards moved to exclude
10 from evidence any "Pendragon" material not directly related to the
11 relationship between Hoover and Richards. See Motion In Limine of
12 February 14, 1984.

13 At trial, Andrew Campbell testified concerning the alleged
14 discussions between himself, Hoover, and defendant Richards that
15 preceded Baldwin's murder. Campbell stated that both he and Hoover
16 were to receive large sums of money for participating in the murder,
17 \$2,000 and \$5,000 respectively. (R.T. 850-854.) Campbell never
18 testified that "Pendragon" played any role in motivating either him
19 or Hoover to participate in the charged offenses. To the contrary,
20 Campbell did not take the Pendragon seriously, never read any of the
21 books Richards was writing about "Pendragon", and had nothing to
22 do with "Pendragon." (R.T. 1075-1077.)

23 Testimony was offered that Crossan Hoover attended "Pendragon"
24 meetings along with John Stapp, Willie Robles, Pete Neal and others.
25 Robles and Neal, both active in Pendragon, purportedly refused invi-
26 tations to help kill Baldwin. No testimony was offered that Hoover

1 was more affected by these meetings than anyone else who attended
2 them, such as Neal and Robles. No testimony was offered that atten-
3 dance at these meetings played any role in Hoover's decision to par-
4 ticipate in the charged crimes, or that Crossan Hoover became parti-
5 cularly susceptible to defendant Richards' leadership because of the
6 meetings. Campbell never testified that Hoover, with whom he dis-
7 cussed the crime often, mentioned "Pendragon" as a motive for his
8 role in Baldwin's death. Hoover boasted to Gary Ables of beating
9 Baldwin to death and dumping him in the Bay, but did not mention
10 Pendragon as a motive for his having done so. Ables described Hoover
11 as having a "volatile and violent personality when outside the presence
12 or influence of Richards.

13 In sum, the "Pendragon" evidence shed no additional light on
14 why Campbell and Hoover participated in Baldwin's murder. Rather,
15 according to Campbell, they did it for money. Hoover also took
16 Baldwin's marijuana and sold it for a profit. (R.T. 1042-1043.)

17 If the "Pendragon" evidence cast little light on the subject
18 on which it was offered, it produced a great deal of inflammatory and
19 irrelevant heat. For example, Craig Andrews testified that he and
20 Richards had driven to the top of Mount Tamalpais in the Fall of 1981.
21 Richards suggested they blow up the Golden Gate, Richmond-San Rafael,
22 and Petaluma Bridges, and eliminate the Richmond oil refineries,
23 thereby isolating Marin. He also suggested that they rename Phoenix
24 Lake, Sherwood Forest. (R.T. 1852-53.) Andrews did not take Richards
25 seriously at the time, and offered no testimony concerning Crossan
26 Hoover, much less any evidence concerning the role of "Pendragon" in

1 prompting Hoover to kill Baldwin.

2 Andrew Campbell, who offered no testimony on the effect of
3 "Pendragon" on Hoover, did testify that one objective of the plot
4 was to keep blacks out of Marin County, and that laser beams would be
5 placed on Mount Tamalpais. (R.T. 2307.)

6 Pete Neal offered no testimony concerning any particular im-
7 pact "Pendragon" had on Crossan Hoover. He did say, however, that
8 the group had plans to construct .45 caliber automatic machine guns
9 (R.T. 1681), and said he, Neal, was to be in charge of the military
10 on Angel Island (R.T. 1513-1514).

11 Willie Robles testified that Richards had discussed plans to
12 hit all government installations, blow up police stations, and "move
13 in" (R.T. 1169). Robles testified that Hoover was at "Pendragon"
14 meetings, along with John Stapp, Pete Neal, Todd Ardwin, and Greg
15 Robles (R.T. 1203). Robles offered no testimony that Hoover was more
16 affected by the meetings than any of the others present. Neither
17 did John Stapp, who did testify that he had been promised Mount
18 Tamalpais in return for his participation in the group.

19 The prosecution introduced dozens of "Pendragon" exhibits, such
20 as battlefield sketchbooks, aerial maps, drawings of castles, fencing
21 foils, daggers, pictures of George Lucas, war magazines, large
22 swords, bow and arrow cases, etc., ^{2/} none of which played any role
23 whatsoever in the death of Richard Baldwin or concerned Crossan
24 Hoover.

25
26 2/ See, e.g., Exhibits 104, 113-118, 150-G, and 225-244.

1 B. Argument.

2 At trial, the prosecution had a more than fair opportunity to
3 make its case against the defendant on the basis of relevant evidence.
4 Andrew Campbell testified that he had been solicited by the defendant
5 to kill Richard Baldwin; he discussed the planning of the crime, its
6 alleged execution, and the disposal of the body. The State called
7 two witnesses, Pete Neal and Willie Robles, to testify about purported
8 attempts by defendant to solicit them to kill Baldwin. Physical
9 evidence was admitted showing defendant's use of the victim's pro-
10 perty and identification after his death.

11 Had the prosecution limited its case to the evidence even
12 remotely related to the charged offense, defendant Richards would
13 have received a fair trial on the charges against him. He did not
14 receive such a trial because of a flood of evidence concerning the
15 so-called "Pendragon" plot.

16 Defendant argued before trial that the "Pendragon" evidence
17 had nothing to do with this case. The prosecution argued it would
18 illuminate what motivated Crossan Hoover to kill Richard Baldwin.
19 That assertion of relevance proved to be wholly unsubstantiated. No
20 witness who discussed "Pendragon" revealed anything noteworthy con-
21 cerning Hoover, his thinking or the impact of "Pendragon" upon
22 him. What they did do was blacken the character of Mark Richards,
23 painting him as a racist, a violent revolutionary, and/or a deluded
24 maniac.

25 Mark Richards may or may not be a racist. If he is, that fact
26 would have nothing to do with the charges against him. He may or

1 may not have ever entered into any criminal conspiracy directed at
2 the overthrow of the Marin County government. If he did, he should
3 be tried on appropriate charges. He may or may not suffer from
4 delusions of grandeur. Again, that fact is irrelevant to the charges
5 he faced.

6 The prosecutor charged Richards with killing Richard Baldwin
7 for financial gain. Andrew Campbell testified that he and Crossan
8 Hoover joined a plot to kill Baldwin for money. Yet much of defen-
9 dants' trial was spent discussing statements he allegedly made about
10 "warlords", blowing up bridges, laser beams, and medieval knights.
11 The jury deliberated in a courtroom filled with swords, daggers,
12 sketches of castles, and aerial maps of Marin County. The purported
13 basis of admission of these articles was the light they would shed
14 on the mind of Crossan Hoover. They demonstrated nothing about
15 Crossan Hoover; they only tarred the image of the defendant in a way
16 that would make it impossible for any reasonable jury to remember
17 what this case was supposed to be about.

18 In its motions in limine, the defendant called the court's
19 attention to the legal rules governing the admission of prejudicial
20 "other offense" or "bad character" evidence.

21 "The general rule, universally recognized,
22 is that in criminal prosecutions the defen-
23 dant can be tried for no other offense than
24 that which he is charged in the indictment
or information; evidence of collateral inde-
pendent crimes is not admissible." People v.
Albertson (1944) 23 Cal.2d 550, 576.

25 The purpose of a criminal trial is to ascertain whether a
26 particular defendant committed a specific crime. "Other offense"

1 evidence increases the possibility that a conviction will be based
2 not on a finding beyond a reasonable doubt that a defendant committed
3 the specific offense charged, but rather on the jury's conclusion
4 that the defendant is generally a "bad character," or the jury's
5 desire to punish a defendant for conduct other than that for which
6 he or she is on trial. People v. Albertson, supra, 23 Cal.2d at 577.
7 Any such result subverts society's interest in accurate fact-finding
8 in the adjudicatory process.

9 It is simply unfair, and thus a violation of due process of law,
10 to force a defendant to defend his or her entire life history, rather
11 than a specific, stated act or course of conduct. People v. Jackson,
12 (1967) 254 Cal.App.2d 655, 659, citing 1 Wigmore on Evidence,
13 p. 464 (3d Ed.).

14 "Other evidence" material threatens a defendant's constitu-
15 tional right to be convicted only upon proof "beyond a reasonable
16 doubt" by increasing the probability of ". . . convictions based upon
17 nothing more than the cumulative suspicion of a number of crimes."
18 People v. Schrader (1969) 71 Cal.2d 761, 772.

19 Because "other offenses" or "bad character" evidence is so
20 highly prejudicial, "it should be received with extreme 'caution',
21 and if its connection with the crime charged is not clearly perceived,
22 the doubt should be received in favor of the accused." Albertson,
23 supra, 23 Cal.2d at 578-581.

24 "The prosecution has no right to present
25 cumulative evidence which creates a sub-
26 stantial danger of undue prejudice to the
defendant' (People v. De La Plane (1979)
88 Cal.App.3d 223, 242 [151 Cal.Rptr. 843].)"
People v. Cardenas, supra, 31 Cal.3d at 905.

1 In this case, the prosecution placed in evidence a welter of
2 highly prejudicial evidence that, it is now clear, had little or no
3 tendency to prove any element of the charged crime. Having thus
4 been deprived of a fair trial, defendant Richards is now entitled to
5 a new one.

6
7 III. THE ADMISSION OF PREJUDICIAL AND-
8 IRRELEVANT EVIDENCE CONCERNING THE
9 BUSINESS DEALINGS OF DEFENDANT
10 RICHARDS REQUIRES A NEW TRIAL.

11 A. Statement of Facts.

12 Prior to trial, on December 19, 1983, the defense offered to
13 stipulate to any checks the defendant may have written without suffi-
14 cient funds and then, based on that proposed stipulation, moved to
15 exclude the testimony of witnesses concerning those checks.

16 On January 4, 1984, the People opposed that offer on the follow-
17 ing basis:

18 "The People reject any offers to stipulate
19 to checks written by Mark Richards. The
20 People intend to show a financial motive
21 had a large part in the killing of Richard
22 Baldwin. Therefore the financial condition
23 of Mark Richards is extremely relevant.
24 The People have the right to determine its
25 method of proof and are not required to
26 accept any stipulations in that regard."

On January 11, 1984, the defense responded, in part, as follows:

"The People have alleged murder for financial
gain as a special circumstance in aggravation
of the charged crime. They therefore are ob-
ligated to prove that allegation, and defendant
agrees evidence of financial need or difficulty
is relevant to it. Defendant, however, does not

1 dispute the evidence of financial diffi-
2 culties received from the prosecution in
3 discovery, and will stipulate to it at
4 trial."

5 "The prosecution may intend, for example,
6 to call a store owner to testify that he
7 received a check for lumber from defendant
8 in May of 1982; that he deposited the check;
9 and that it was returned for insufficient
10 funds. If this is the case, defendant will
11 stipulate that he gave the store owner a
12 check in a given amount on a given date,
13 and that it was returned for insufficient
14 funds. The store owner's testimony will
15 then be unnecessary.

16 The prosecution asserts that it will refuse
17 to accept the defense's stipulation. Such
18 a refusal cannot render the oral testimony
19 admissible for two reasons. First, the oral
20 testimony will concern facts which are demon-
21 strably undisputed. 'Evidence that is offered
22 to prove a fact that is not disputed is irre-
23 levant evidence and, as such, is inadmissible'
24 Jefferson, California Evidence, §21.2, at
25 493-494 (2d Ed. 1982). See Evid. Code §§210,
26 350."

On January 13, 1984, defendant's in limine motion was denied.

Finally, on February 13, 1984, the defense filed yet another
in limine motion, stating in part that:

"Defendant does not know all of the types of
'bad character' or 'bad acts' evidence the
prosecutor may seek to introduce, and will
continue to object to it as he becomes aware
of it. He now raises a general objection
under Evidence Code §352 to any of the follow-
ing:

(1) Evidence of poor workmanship in his
business;

(2) Evidence of any illegal practices of
any kind in his business. (Defendant notes
again that he does not object and will stipu-
late to the financial straits in which he and
his business found themselves in 1982)."

1 During trial, the prosecution called to the stand Caryn Cerruti
2 Richards, the defendant's former wife. She testified in part that
3 the signature "Caryn Richards" on a lease for a piece of business
4 property was not hers, nor was a similar signature on an application
5 for a disaster loan from the Small Business Administration for flood
6 damage to the Richards' residence. The clear impact of the testimony
7 elicited by the prosecution concerning the loan was that the "disaster"
8 upon which defendant sought the loan was spurious.

9 During closing argument, defense counsel pointed out that a
10 formal appraisal of the damage to the Richards' home accompanied the
11 application for the S.B.A. loan. The prosecution argued in its
12 closing statement that the jury did not know the qualifications of
13 the appraiser and that the loan application could well have been
14 fraudulent.

15
16 B. Argument.

17 Prior to trial, the defense acknowledged that the prosecution
18 had a right to establish that defendant Richards was deeply in debt
19 at the time of the charged offense and thus had a financial motive
20 to kill Richard Baldwin. The defense offered to stipulate to
21 Richards' financial condition, which was relevant to the charged
22 crime, because it feared the prosecution would use that issue to
23 shoehorn into the case irrelevant and prejudicial evidence.

24 Defendant's debts were relevant to his financial condition;
25 why he had debts or how he tried to deal with them was not. If
26 defendant was ten thousand dollars in debt, it would be irrelevant

1 to this case if he suffered that debt due to wild gambling or due to
2 overly generous gifts to a home for orphans.

3 Defendants' motion in limine having been denied, the prosecution
4 proceeded to do exactly what the defense predicted it would do if
5 its offer to stipulate were not honored. The prosecution was entitled
6 to prove that the defendant had applied for an S.B.A. loan; the
7 defense would have stipulated to that fact. The prosecution plainly
8 was not entitled to prove or to argue the loan application was
9 fraudulent, however, as it attempted to do through the testimony of
10 the defendant's ex-wife. Such evidence had absolutely no probative
11 value on any relevant issue, but merely was an attempt to smear the
12 defendant's character with inflammatory and inadmissible "other
13 offense" evidence. The admission of this evidence, when considered
14 along with the erroneous admission of the "Pendragon" evidence,
15 requires a new trial.

16 IV. THE SUPPRESSION BY THE PROSECUTION OF
17 CRITICAL EVIDENCE WHICH WOULD HAVE
18 IMPEACHED THE CREDIBILITY OF WILLIE
ROBLES AND PETE NEAL REQUIRES A NEW TRIAL

19 A. Statement of Facts.

20 Willic Robles and Pete Neal were critical witnesses for
21 the prosecution. They testified that they had been solicited by
22 defendant Richards to kill Richard Baldwin. They thus corroborated
23 the allegations of Andrew Campbell as to Richards' solicitation
24 of him for the same purpose. The prosecution was able to argue
25 that Robles and Neal, unlike Campbell, were disinterested witnesses,
26 with no motivation to cooperate with the prosecution other than

1 a desire that the truth be told.

2 Following defendant's conviction, prior to the trial
3 of his co-defendant Crossan Hoover, a deposition of Detective
4 J. Cook of the San Rafael Police Department was taken since Cook
5 would be unavailable during Hoover's trial. As a result of that
6 hearing, Edward Turico, Hoover's counsel, received discovery of
7 Cook's investigative notes and police reports concerning this case.
8 The typed police reports received by Turico had been provided to
9 counsel for Richards during discovery proceedings. Some of Cook's
10 raw notes had not, however. (See Exhibit A.)

11 Among those notes are references to a "La Donna," "coke
12 sales," and "Willie Robles -- \$500 -- front-split." (See Exhibit
13 B.) Another page of notes refers to La Donna Diane English, and
14 states that "W.R. fronted \$500 worth of coke" and "W.R. needed \$ --
15 . . . asked if he could be fronted coke." (Id.) The notes further
16 indicate that La Donna English "met Crossy thru Pete Neal also
17 W. Robles" (Id.). La Donna believed "they" used the cocaine them-
18 selves. She was "ripped" off by Robles for the coke she had
19 advanced him, which consisted of a quarter ounce of cocaine. La
20 Donna was told by "Neal" not to pursue the money from "W.R." because
21 he might tell his roommate "M.R." who is. . . ." The remainder
22 of the sentence is illegible. The notes also include a copy of
23 the driver's license of La Donna Diane English, 16 Meadow Drive,
24 San Rafael, CA 94903.

25 B. Argument.

26 The prosecution in this case was required as a matter

1 of law to corroborate the suspect testimony of Andrew Campbell,
2 a conceded accomplice in the commission of the charged offenses.
3 The testimony of Willie Robles and Pete Neal in this regard was
4 of central importance, because they were offered as independent
5 and disinterested witnesses who could corroborate Andrew Campbell's
6 allegation that defendant Richards had solicited people to assist
7 in killing Richard Baldwin.

8 The information possessed by Detective Cook would have
9 cast a very different light on this case. First, it indicated
10 Willie Robles and Pete Neal had been involved in drug dealing with
11 La Donna English, and that the police were aware of that fact.
12 Thus Robles and Neal had a strong motive to carry favor with the
13 authorities by offering helpful testimony against Richards in order
14 to avoid prosecution for their own crimes. Defendant was entitled
15 to cross-examine them as to this "ulterior motive" for testifying
16 against him. Davis v. Alaska (1974) 415 U.S. 308, 316 (Error to
17 refuse cross-examination on fact government witness was on probation
18 and possibly subject to revocation if uncooperative with prosecution).
19 Defendant was unable to conduct such cross-examination because
20 the information which would have made it possible and to which
21 he was entitled was not provided to him on discovery.

22 Secondly, the information Cook possessed indicated that
23 Crossy Hoover was involved in drug dealings with La Donna English
24 as well. Had it had such information, the defense could have
25 pursued whether Hoover's real motive for killing Baldwin was to
26 obtain money for drugs. Depriving the defense of this opportunity

1 to prove Hoover's motive was particularly unfair when one considers
2 the flood of irrelevant "Pendragon" evidence supposedly concerning
3 Hoover's motivation that the prosecution succeeded in placing in
4 evidence (see Section II, supra).

5 Finally, Cook's notes indicate that "Neal" tried to prevent
6 English from pursuing the debt of Robles by telling her some story
7 involving defendant Richards. This would indicate a propensity
8 of Neal to "lay off" evil deeds or intentions on Richards, a tendency
9 which might render suspect his testimony at trial concerning Richards.

10 The failure of the prosecution to provide defendant Richards
11 with the Cook notes deprived defendant of his opportunity to cross-
12 examine Robles and Neal effectively and requires a new trial. Davis
13 v. Alaska, supra.

14 V. THE IMPOSITION OF SECURITY MEASURES
15 IN MIDTRIAL PREJUDICED THE JURY AND
16 DEPRIVED DEFENDANT OF A FAIR TRIAL

16 In mid-trial, the prosecution moved to revoke defendant's
17 bail. It presented a witness who had dated the defendant, who
18 testified that she thought she had seen a gun in the glove compart-
19 ment of his car. On cross-examination, she stated it could have
20 been a starter's pistol.

21 The court denied the motion to revoke bail, but ordered
22 a metal detector placed outside the courtroom. For the remainder
23 of the trial, the entrance to the courtroom was roped off and people
24 wishing to attend the trial were subject to examination by metal
25 detector or a pat-down search. On the day these measures were
26 imposed, members of the jury approached the court clerk to inquire

1 as to what had prompted the court to impose these security require-
2 ments.

3 The security measures were unjustified and prejudicial.
4 The defendant conducted himself with composure and dignity through-
5 out all of his court appearances. He never gave the court any
6 reason whatsoever to suspect he would engage in disruptive behavior
7 in court, and he never did engage in any such behavior.

8 Plainly the measures had their effect on the jury. Jury
9 members approached the clerk to ask why they had been imposed.
10 Such measures are obviously frightening, suggesting that the court
11 has reason to suspect that, absent security measures, violence
12 might erupt in the courtroom. Furthermore, since the measures
13 were not imposed until mid-trial, the defense was unable to discuss
14 them with jurors during voir dire and thereby to ensure that no
15 person who would be unduly affected by the measures would be seated
16 as a juror. The unjustified imposition of security measures thus
17 requires a new trial.

18 VI. THE GIVING OF CONTRADICTORY AND
19 CONFUSING INSTRUCTIONS CONCERNING
20 THE DATE OF THE CRIME REQUIRES
21 REVERSAL

22 Following the close of evidence of the guilt phase of
23 defendant's trial, the prosecution requested that the court instruct
24 the jury in accordance with CALJIC 4.71, which reads as follows:

25 "When, as in this case, it is alleged
26 that the crime charged was committed 'on or
 about' a certain date, if the jury finds
 that the crime was committed it is not
 necessary that the proof show that it was

1 committed on that precise date; it is
2 sufficient if the proof shows that the
3 crime was committed on or about that
4 date."

5 The defense proposed an instruction that the charged
6 offenses were alleged to have occurred on July 6, 1982, and that
7 the jury should acquit if the prosecution did not prove that the
8 crimes had been committed on that date, relying on People v. Jones
9 (1973) 9 Cal.3d 546. (CALJIC 4.71 is improper if the People's
10 evidence fixes the commission of the offense at a particular time
11 to the exclusion of any other time and the defendant has presented
12 evidence of an alibi as to that particular time.) When the prosecu-
13 tion pointed out that its evidence allowed a finding that Baldwin's
14 death occurred on the 5th or 7th of July, 1982, as well as the
15 6th, the defense amended its requested instruction to encompass
16 all three of those dates. The court then agreed to give the requested
17 defense instruction as amended.

18 When the court read the instructions to the jury, however,
19 it gave both CALJIC 4.71 and the requested defense instruction.
20 The two are flatly contradictory: CALJIC 4.71 says that the date
21 of the charged offense need not be proven exactly, while the defense
22 instruction said it must be proved to be either the 5th, 6th, or
23 7th of July, 1982. The entire defense argument was directed at
24 demonstrating the defense had an alibi for the three dates in ques-
25 tion or that Baldwin was still alive on those dates, yet CALJIC
26 4.71 informed the jury they could speculate that the crime occurred
on another date entirely. The use of CALJIC 4.71 was improper

1 in this case. People v. Jones, supra. The fact that a correct
2 instruction was also given cannot redeem that error. "Inconsistent
3 instructions have frequently been held to constitute reversible
4 error where it was impossible to tell which of the conflicting
5 rules was followed by the jury." People v. Dail (1943) 22 Cal.2d
6 642. A new trial is required.

7 CONCLUSION

8 For the reasons stated above, defendant's new trial should
9 be granted.

10 DATED: May 29, 1984.

11 Respectfully submitted,

12 CARL B. SHAPIRO
13 SHAPIRO & SHAPIRO

14 DENNIS P. RIORDAN
15 RIORDAN & ROSENTHAL

16 By Dennis P. Riordan
17 DENNIS P. RIORDAN

18 Attorneys for Defendant
19
20
21
22
23
24
25
26

EXHIBIT "A"

DENNIS P. RIORDAN
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TELEPHONE (415) 431-3472

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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,	)	NO. 8362
)	
vs.	)	DECLARATION OF DENNIS P.
	)	RIORDAN IN SUPPORT OF
MARK RICHARDS,	)	MOTIONS FOR A NEW TRIAL
	)	AND TO STRIKE THE SPECIAL
Defendant.	)	<u>CIRCUMSTANCE FINDINGS</u>

I, DENNIS P. RIORDAN, declare under penalty of perjury
that:

I am court-appointed co-counsel for Mark Richards,
the defendant in this case;

I received from Edward Turico, counsel for Crossan
Hoover, copies of notes of Detective J. Cook that he in turn
received from the prosecution during a pre-trial hearing;

I have examined the pages of Cook's notes attached
as Exhibit B. I never have seen them before. I have discussed
them with both Carl Shapiro, chief counsel in this case, and

1 Joy Viveros, the paralegal who summarized and catalogued all
2 of the discovery provided the defense in this case. Both are
3 certain they never were provided this material;

4 I have read both of the accompanying motions and believe
5 the other factual assertions contained in both to be true.

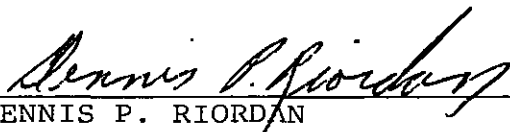
6 Executed this 29th day of May, 1984 in San Francisco,
7 California.

8 Respectfully submitted,

9 CARL B. SHAPIRO
10 SHAPIRO & SHAPIRO

11 DENNIS P. RIORDAN
12 RIORDAN & ROSENTHAL

13 By


14 DENNIS P. RIORDAN

15 Attorneys for Defendant
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EXHIBIT "B"

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25626

TE 090910 TIME 1401

FROM: SAC, SAN FRANCISCO

TO: SAC, LOS ANGELES (100-1203) CITY: LANESWOOD

RE: MURDER OF A YR: 68 MM: VLSN

FROM: SAC, LOS ANGELES (100-1244) CITY: SACRAMENTO

RE: MURDER OF A YR: 78 MM: FORD

FROM: SAC, LOS ANGELES (100-1140) CITY: BALDWIN PARK

RE: MURDER OF A YR: 77 MM: DODGE

END

100-1203, OPERATOR, DATE 09SEP82, PAGE 02

100-1244

100-1140

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100-1203, OPERATOR, DATE 09SEP82, PAGE 02

100-1244, OPERATOR, DATE 09SEP82, PAGE 02

100-1140, OPERATOR, DATE 09SEP82, PAGE 02

100-1203, OPERATOR, DATE 09SEP82, PAGE 02

100-1244

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100-1203, OPERATOR, DATE 09SEP82, PAGE 02

100-1244, OPERATOR, DATE 09SEP82, PAGE 02

100-1140, OPERATOR, DATE 09SEP82, PAGE 02

100-1203, OPERATOR, DATE 09SEP82, PAGE 02

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TE 090910 TIME 1405

FROM: SAC, SAN FRANCISCO (100-1203) CITY: LANESWOOD

RE: MURDER OF A YR: 68 MM: VLSN

FROM: SAC, LOS ANGELES (100-1244) CITY: SACRAMENTO

RE: MURDER OF A YR: 78 MM: FORD

FROM: SAC, LOS ANGELES (100-1140) CITY: BALDWIN PARK

RE: MURDER OF A YR: 77 MM: DODGE

END

25627

La Donna - yellow SUBA - ru -

COKE sales

Willie Rodes - \$500 - front - split

John Geiff's

479-5742

25628

Dominic
LADONNA Englund

AKA BUREAU

11/1/97

16 Mexico SR 479 5742

Dr Tom Jarvis D.D.S.
920 W. Gate 479-1840

T. Jarvis is Peter West's Step Father
Kim West - dental Assist - is Peter's sister

W.R. - Knew this about.
W.R. & P.N. Have done your work.

MR - No.

CAGE: → W.R. → ^{Reported} \$500 worth of Coke
Made now
Not a dealer
Had access to it at that time
No Receipt.

W.R. needs \$. He Approaches me
Asked if he could be treated there I
Said would check.
Ex-Hussain Bul Englund. - source -

25629

(2)

of child payments. They would give it to W.B. who would sell it and I could turn that into cash.

Went to school with Baldwin but did not know him well. Do not know where he lives.

Met ~~Harry~~ Thurfate Neal
Also W. Hobbs

Spent only once. In May.
He tipped me. I think they used it then.

The work was to be deducted. That
Sat cutting weeds. I found - worth \$100-

Still owe \$425.00

Spent W.B. & Quire on worth \$50

Ken Neal told me not to purchase the \$
Because W.B. may tell his associates M.R. who is
on the \$500 M.

FILED

MAY 29 1984

HOWARD HANSON

MARIN COUNTY CLERK

BY

DEPUTY

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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MARK RICHARDS,)

Defendant.)

NO. 8362

MOTION TO DISMISS FINDINGS
 OF SPECIAL CIRCUMSTANCES
 OR, IN THE ALTERNATIVE, FOR
 A NEW TRIAL ON THE SPECIAL
CIRCUMSTANCE ALLEGATIONS

I INTRODUCTION

On April 9, 1984, defendant Mark Richards was convicted of murder in the first degree and two counts of burglary. On April 24th, after two days of deliberations, the jury in this case found to be true three allegations of special circumstances: murder for financial gain; and murder during the course of two burglaries, one of the victim Richard Baldwin's shop, and one of his home.

This motion assumes, arguendo, that the defendant's motion for a new trial on the substantive charges against him

1 has been denied. Defendant now moves to dismiss the findings
2 of special circumstances or, in the alternative, for a new trial
3 on some or all of those allegations. He raises three claims
4 in support of his motion: a) the special circumstance findings
5 should be dismissed by this Court under Penal Code section 1385;
6 b) the jury's deliberations on the special circumstance allega-
7 tions were tainted by juror misconduct and prejudicial publicity; and c) this Court
8 erred in its supplemental instructions concerning the two burglary
9 special circumstances.

10 II THIS COURT SHOULD EXERCISE ITS POWER
11 UNDER PENAL CODE SECTION 1385 TO
12 DISMISS THE THREE SPECIAL CIRCUMSTANCE
13 FINDINGS

14 Defendant having suffered a first degree murder convic-
15 tion, his life has been placed in the hands of the State of
16 California. Under either of the sentencing options available
17 to this Court, the State of California will have the power to
18 confine Mark Richards until he dies within the walls of a penal
19 institution. The question now before the Court is whether, after
20 Mark Richards has served a term of twenty-five years, the State
21 of California should be empowered to release him, if it were
22 to decide that it was in the interest of its citizenry to do
23 so.

24 Left undisturbed, the special circumstance findings
25 in this case carry a sentence of life without the possibility
26 of parole. Pen. Code § 190.2. If the findings are struck,
Mr. Richards is subject to a penalty of a term of twenty-five

1 years to life in state prison. Pen. Code § 190.1. There is
2 no question that this Court has the power under Penal Code section
3 1385 to strike the special circumstance findings "in furtherance
4 of justice". People v. Williams (1981) 30 Cal.3d 470. In up-
5 holding a trial court's power to do so, the California Supreme
6 Court stated well the manner in, and purpose for which the power
7 to strike was to be exercised:

8 "Trial courts will exercise this power
9 in a careful and thoughtful manner. The
10 wise use of this power will promote the
11 administration of justice by ensuring that
12 persons are sentenced based on the particular
13 facts of the offense and all the circum-
14 stances. It enables the punishment to fit
15 the crime as well as the perpetrator." Id.,
16 at 489.

17 There are a number of very good reasons why this Court
18 "will promote the administration of justice" by exercising its
19 power under Penal Code section 1385 to strike the special cir-
20 cumstance findings in this case.

21 A. It Is In Society's Interest That The
22 Board Of Prison Terms Be Empowered To
23 Decide Whether Parole Should Be Granted
24 To Defendant Richards After He Has Served
25 A Minimum Term Of Twenty-Five Years

26 As noted above, by striking the special circumstance
findings, this Court would not weaken the power of the State
to confine Mark Richards for the remainder of his natural life.
Rather he would be required to serve a minimum term of twenty-
five years before becoming eligible for parole. If the defendant
qualifies for good time, that eligibility date could be reduced
to seventeen and two-third years. Pen. Code § 2931. At that

1 point, the defendant would be granted a parole date only if the
2 Board of Prison Terms found him suitable for parole: i.e., he
3 was found to no longer pose any threat to society.

4 If the Board found him so suitable, he would then not
5 be entitled to immediate release, but only to a parole date com-
6 mensurate with the nature of his crime. That release date could
7 be years subsequent to the hearing at which suitability is
8 determined. Any psychiatric deterioration or misconduct on
9 defendant's part prior to the arrival of his release date would
10 result in its rescission and indefinite postponement. Admin.
11 Code § 2451.

12 Accordingly, if Mark Richards is not fit to be released
13 from prison twenty-five years from now, he will not be released.
14 If he is fit to be released, it is very much in the interest
15 of California's citizens that the Board of Prison Terms have
16 at least the power to grant him parole.

17 California's prisons presently contain forty thousand
18 inmates in a system designed to hold only twenty-five thousand.
19 Prison officials are desperately attempting to build more facil-
20 ities while searching for ways to release selected inmates
21 presently incarcerated. Only a few months after taking office,
22 Governor Deukmejian, long an advocate of stiff sentencing, pro-
23 posed legislation authorizing the early release of inmates
24 convicted of non-violent felonies.

25 The problem of prison overcrowding may well be with
26 us twenty years from now, as it was twenty years ago. The

1 Board of Prison Terms in the 21st century may determine that
2 society would be far safer if the cell occupied by an elderly
3 and fully rehabilitated Mr. Richards, were occupied by a person
4 thirty years his junior and thus in the midst of what has been
5 established demographically to be the peak years of criminal
6 activity. This Court now should strike the special circumstance
7 findings in order that the Board of Prison Terms can parole Mr.
8 Richards if, in the far distant future, it finds it in California's
9 interest to do so.

10 B. Since Mr. Richards Is A First Time
11 Offender, A Sentence Of Twenty-Five
12 Years To Life Is More Than Adequate
13 To Serve Society's Interest In Punish-
14 ment, Deterrence, And Rehabilitation.

15 The crimes of which Mr. Richards has been convicted
16 are indeed heinous. A sentence that ranges from twenty-five
17 years to eventual death behind prison walls is indeed severe.
18 The significant difference between such a sentence and that of
19 life without the possibility of parole is hope, hope that good
20 conduct in prison over many, many years will earn the defendant
21 the opportunity to pass the last years of his life outside a
22 state institution.

23 There are good reasons why it is not unfair to allow
24 the defendant that hope. He has no criminal record, much less
25 one involving violent crime. As the character witnesses at the
26 special circumstances phase of his trial demonstrated, to much
of the world that knew him for the last fifteen years he has
conducted himself as a considerate, non-violent person.

1 According to the State's own testimony, he was under
2 tremendous financial pressure at the time of these offenses.
3 While the state's evidence suggested extensive attempts by defen-
4 dant Richards to "cover up" the crime, it also established wildly
5 incriminating and illogical activity on his part after the
6 offenses: openly using the victim's credit cards, writing checks
7 on Mr. Baldwin's accounts; personally applying for credit in
8 the victim's name. When juxtaposed with the normal and inoffensive
9 manner in which the defendant had conducted himself during his
10 adult life prior to 1982, his acts in July of 1982 were that
11 of a man who had suffered not simply a moral collapse, but a
12 mental breakdown.

13 None of these facts detract from the seriousness of
14 the crimes of which Mr. Richards has been convicted. They do,
15 however, tend to demonstrate that the commission of those crimes
16 was prompted by situation rather than an irremediable criminal
17 disposition, and that the long prison term Mr. Richards will
18 serve will be more than adequate to ensure that he is punished
19 for his misdeeds and that he is fully rehabilitated before the
20 issue of his release is even considered.

21 C. Given The Disposition Of The Charges
22 Against Mr. Richards Co-Defendants,
23 A Sentence Of Twenty-Five Years To
 Life Is A Fair One.

24 According to the state's evidence, three people were
25 guilty of the charged crimes of murder and burglary: defendant
26 Richards, Crossan Hoover, who beat and stabbed to death Mr. Baldwin,

1 and Andrew Campbell. Mr. Hoover will receive no more than a life
2 sentence. Mr. Campbell will not be punished at all for his crimes.
3 In light of this disposition of the cases of Mr. Richards' co-
4 defendants, a sentence of twenty-five years to life for Mr. Richards
5 is equitable.

6 It will be argued that Mr. Richards should be punished
7 more harshly for the crime because he was its mastermind, lead-
8 ing two impressionable young men into criminality. The evidence
9 at trial plainly refutes this argument. Andrew Campbell was
10 proven by the state's own witnesses, such as Gary Ables, to be
11 not only a thief, but a perjurer. Rather than being less
12 sophisticated than Richards in the ways of the world, Campbell
13 proved himself far more so, remaining mute after arrest and
14 negotiating an eminently successful resolution of his case while
15 defendant Richards gave a highly incriminating statement to the
16 police.

17 Both Campbell and Hoover committed the charged crimes
18 for financial gain.^{1/} They sold the marijuana they stole from
19 Mr. Baldwin for a handsome profit. Hoover, the actual killer,
20 had a prior history of assaultive behavior. Both he and Campbell
21 are fully qualified to share equal moral culpability for the
22 charged offenses. Given the fact that Hoover will receive
23 a sentence with the possibility of parole, and Campbell will
24 be punished not at all, a sentence of twenty-five years to life
25

26 1. In confessing his role, Hoover stated he did it because
he wanted "megabucks".

1 for Mr. Richards is a fair one.

2 D. A Sentence Of Life Without the Possibility
3 Of Parole Would Be Disproportionate To
4 Those Generally Given In Murder Cases In
5 This County.

6 Based on available data, it appears that no defendant
7 in Marin County has ever received a sentence of life without
8 the possibility of parole for the commission of a single murder.
9 A year ago defendant Richards filed a declaration detailing cases
10 in which special circumstances allegations were supported by the
11 evidence, but were not charged or were dropped in return for
12 a plea bargain. (A copy of that declaration is attached to defen-
13 dant's motion as Exhibit A.) Given the general charging and
14 sentencing practices in this county, a sentence of twenty-five
15 years to life would be reasonably proportionate to the penalties
16 uniformly imposed in first degree murder cases in Marin. A
17 sentence of life without the possibility of parole would
18 be uniquely harsh in a single murder case, and thus inequitable.

18 III THE SPECIAL CIRCUMSTANCES PHASE
19 OF THE TRIAL WAS TAINTED BY JUROR
20 MISCONDUCT AND PREJUDICIAL PUBLICITY

21 A. Statement Of Facts.

22 Pursuant to this Court's order of January 13, 1984,
23 defendant's trial was bifurcated: in the first phase, the jury
24 determined the defendant's guilt or innocence of the substantive
25 crimes charged, while in the second it passed on the truth of
26 the special circumstance allegations. Since the jury was
instructed on the felony murder rule during the first phase

1 of the trial, they were not required to find Richard Baldwin's
2 murder was intentional in order to find Richards guilty of first-
3 degree murder. Nor was the jury required during the first phase
4 to determine whether Baldwin's murder was committed for financial
5 gain or whether it was committed during a burglary.^{2/}

6 On April 9th, defendant Richards was found guilty
7 of murder in the first degree and two counts of burglary. In
8 exonerating his bail and remanding Mr. Richards into custody,
9 this Court, in addition to finding defendant a flight risk because
10 of the sentence he faced, stated its opinion that: "Under the
11 verdict that was returned, obviously the jury had agreed that
12 this was planned, deliberate, carried out, ruthless, and done
13 for personal gain, money, and now he faces a horrendous disposition
14 as a result of it, particularly if they find special circum-
15 stances . . ." (RT 3056). The Court later stated: "[T]his
16 is not a typical homicide. It was deliberate and planned, and
17 the jury so found that to be the case." (RT 3057.)

18 The following day, the Independent Journal, Marin
19 County's chief newspaper, carried a two-column headline stating:
20 "Pendragon Trial -- Guilty Verdict; Judge Calls It Ruthless
21 Killing." The article went on to state that the trial judge
22 had stated in open court that the charged offense was ". . . a
23 'ruthless killing' linked to a bizarre fantasy called Pendragon,"
24

25 2. The instructions on felony murder given during the
26 guilt phase of the trial required not that the death of the
victim occur during a burglary, but only as a result of one.

1 and had further stated: ". . . in revoking bail. 'It was a
2 planned, deliberate ruthless killing . . . for financial gain.'"
3 (See Exhibit A, attached to the government's response, filed
4 April 11, 1984, to defense motions.) The trial court's remarks
5 were also carried in a number of other press and television
6 reports.

7 The same Independent Journal article carried a report
8 that the defendant's mother, upset at the verdict, after leaving
9 the courtroom, had shook her finger at a reporter and told him
10 she would "get" him. It also stated that the defendant had
11 become sick after the verdict, was taken to the hospital, and
12 had had his stomach pumped after saying he had taken pills.

13 Because these media reports could have caused signi-
14 ficant prejudice to the defendant during the jury's deliberations
15 on the special circumstance allegations, the defense asked that
16 a voir dire of the jury concerning media coverage of the pro-
17 ceedings of April 9th be held. That voir dire extended over
18 two days, April 12th and 17th. That voir dire revealed the
19 following:

20 Juror Katherine Kash stated that after the verdict
21 someone at work had mentioned to her that ". . . the defendant's
22 mother made a comment to somebody in the press." (RT 3126.)
23 According to Ms. Kash, she always told people that "the case
24 was not over and she could not discuss it." (RT 3125.) What
25 Ms. Kash did not reveal at the time of her initial questioning
26 was that she herself had discussed the media coverage with fellow

1 juror Dolores Hemingway (RT 3144). Kash had told Hemingway
2 that Mark Richards had become ill after the verdict and was
3 taken to the Marin General Hospital and that the mother of the
4 defendant had threatened a reporter on the Independent Journal
5 (RT 3144). Juror Violet Hughes also stated that she had heard
6 a juror discussing in the jury room that the defendant had been
7 taken to the hospital after falling ill from taking medication
8 (RT 3150).

9 When subsequently questioned about her comments to
10 other jurors, Ms. Kash was reluctant to admit them, admitting
11 only that she spoke to "Maybe some of the jurors. I can't really
12 even recall." (RT 3193.) Mrs. Hemingway, however, reaffirmed
13 that Kash had made the comments in the jury room about the defen-
14 dant's illness and his mother's "threatening" a reporter (RT
15 3196). Mrs. Hughes also reaffirmed that a "couple of the ladies"
16 had been discussing in the jury room that the defendant ". . . was
17 put in jail, that he had at some point taken some pills, became
18 ill, and had to go to the hospital." (RT 3199.)^{3/}

19 Juror Travers had seen the headline in the Independent
20 Journal concerning Pendragon in which the judge said the killing
21 was ruthless; Travers specifically remembered the words "judge
22 and ruthless" from the headline (RT 3138). Juror Cherie
23 Alton had been told by her husband that the defendant had been
24 remanded into custody after the verdict (RT 3152). Juror Phillips
25

26 3. Juror Wentworth was also told by a co-worker that the
defendant had taken some pills (RT 3131).

1 had read a headline stating that the defense had moved to dis-
2 qualify the trial judge from the special circumstances phase
3 of the trial (RT 3212-3213).^{4/}

4 B. The Misconduct of Juror Kash During the
5 Special Circumstances Phase of the Trial
6 Requires a Dismissal of the Special Circum-
7 stance Findings, or a New Trial on Them.

8 On April 9th, 1984, following the return of the jury's
9 verdicts on the substantive charges, this court instructed the jury
10 to return on April 12th to begin proceedings on the special circum-
11 stance allegations. The court also instructed the jury as follows:

12 "Do not discuss the case, do not receive
13 any information about it. We particularly
14 would caution you not to read, listen to --
15 read any newspapers or articles, or listen to
16 any media coverage of the results of the deliberations to date, so that you'll not be influenced by anything in connection with the second phase..." (RT 3050).

17 This admonition was required by Penal Code §1122.

18 Between April 9th and 12th, juror Catherine Kash over-
19 heard unflattering news reports concerning the defendant and his
20 mother. The receipt of those reports in itself may have been
21 inadvertent, and defendant does not assign it as misconduct.
22 Kash's discussion of the reports with juror Hemingway in the jury
23 room, where their discussion was overheard by juror Hughes, was
24 plainly misconduct, however. Kash's continued presence on the

25 4. This motion, made on the grounds that the court had by its
26 comments on April 9th prejudged the very matters at issue in the
special circumstances phase of the trial, was denied on April 17,
1984.

1 jury during the special circumstances phase of the trial tainted
2 the jury deliberations and require dismissal of the special circum-
3 stance findings, or a new trial on those allegations.

4 C. The Dissemination of Prejudicial News Reports
5 Among the Jurors During the Special Circum-
6 stances Phase of the Trial Requires Dismissal
7 of the Special Circumstance Findings.

8 The voir dices conducted on April 12th and April 17th
9 clearly established that many irrelevant and prejudicial news
10 reports had reached the jury, among them: a report that the defen-
11 dant had taken pills after his conviction and had to be hospitalized
12 (Kash, Wentworth, Hemingway and Hughes); the report that the
13 defendant's mother had threatened a reporter (Kash and Hemingway);
14 a report that the trial judge had called the killing ruthless
15 (Travers); a report that the defendant had been remanded into
16 custody following his conviction (Alton); and a report that the
17 defense had moved to recuse the trial judge from the special
18 circumstances phase of the trial on the ground of bias (Phillips).

19 Obviously, all of these reports were both irrelevant
20 to the defendant's guilt of the special circumstances allegations
21 and were highly prejudicial. It would be hard to imagine a news
22 report more prejudicial to a defendant awaiting a hearing on the
23 question of whether a killing was intentional than a story that
24 the trial judge sitting on the case had declared the killing
25 "ruthless." Yet Juror Travers was exposed to just such a report.

26 The Fifth Circuit Court of Appeals has reversed a defen-
dant's conviction where jurors were exposed to media reports

1 revealing that the defendant had been convicted of the same crime
2 at an earlier trial. United States v. Williams, 568 F.2d 464
3 (5th Cir. 1978). The court stated:

4 "[W]e are hard-pressed to think of anything
5 more damning to an accused than information
6 that a jury had previously convicted him for
7 the crime charged. Accordingly, we hold that
8 the exposure of the two jurors to information
9 regarding defendant's conviction at the first
10 trial resulted in an unfair second trial.

11 The fact that the two jurors said that they
12 could disregard the newscast and decide the
13 case solely on the evidence adduced in court
14 is not controlling." Id. at 471. (Emphasis
15 added.)

16 See also, Marshall v. United States (1959) 360 U.S. 310,
17 311 (jurors' exposure to news reports of defendant's prior convic-
18 tions required a new trial); United States v. Herring (5th Cir.
19 1978) 568 F.2d 1099 (news reports of threats to prosecution
20 witness which reached jurors during trial constitute grounds for
21 reversal).

22 Similarly, the prejudicial reports that circulated
23 among the jurors during the special circumstances phase of the
24 trial require a new trial on the special circumstance allegations.
25
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1 IV THE TRIAL COURT ERRED IN ITS SUPPLEMENTAL
2 INSTRUCTIONS CONCERNING THE SPECIAL CIR-
3 CUMSTANCE ALLEGATIONS OF BURGLARY

4 On April 19th, at the close of testimony during the
5 special circumstances phase of the trial, the court instructed
6 the jury concerning the special circumstance allegations of burglary
7 as follows:

8 "To find that the special circumstance
9 referred to in these instructions as murder
10 in the commission of a burglary is true it
11 must be proved, one, that the murder was
12 committed while the Defendant Mark Richards
13 was engaged in or was an accomplice in the
14 commission of a burglary of the structure
15 at 36 Front Street, San Rafael, and/or 18
16 Venetia Meadows, San Rafael;

17 "2. that the defendant shared the
18 intent to kill Baldwin;

19 "3. that the purpose of the murder was
20 to advance the commission of a felony
21 independent of the murder, namely, the theft
22 of property from the structure burglarized
23 at the time of the murder.

24 "In other words, the special circumstance
25 referred to in these instructions is not
26 established that the burglary was merely
incidental to the commission of the murder.

"In order to find that either burglary
special-circumstance allegation is true, you
must find not merely that Richard Baldwin was
killed as a result of the commission or
attempted commission of a burglary at Venetia
Meadows or Front Street, but that he was
intentionally killed while either burglary
was in progress, and while the burglary --
while the defendant was engaged or an accomplice
in that burglary.

"If you have a reasonable doubt whether
either the Front Street burglary or the
Venetia Meadows burglary was in progress at
the time of Baldwin's murder, you must find

1 that the burglary special circumstance as
2 to which you have that doubt to be untrue.

3 "While an accidental or unintentional
4 killing resulting from a burglary or an
5 attempted burglary may constitute murder in
6 the first degree, it may not constitute a
7 murder with special circumstances.

8 "In order to convict the defendant of
9 either burglary special circumstance you
10 must find that the defendant intended to
11 kill Baldwin in order to advance the commis-
12 sion of the burglary in question. If you
13 have a reasonable doubt as to whether Baldwin
14 was killed intentionally in order to advance
15 the commission of either burglary, or whether
16 Mr. Richards shared that intention, you must
17 find the burglary special circumstance as to
18 which you have that doubt untrue." (RT 3530.)

19 On April 23rd, in response to questions from the jury
20 and over defense objection, the court instructed the jury as
21 follows:

22 "One, if a person enters a structure intend-
23 ing to steal from that structure at a later
24 date, is it burglary?

25 "The answer to that question is yes.

26 "The second question:

"If a person enters a structure intending
to murder and intends to steal property
from that structure at a later date, do
special circumstances apply to burglary?

"Answer, yes, provided that both the intent
to murder and the intent to steal existed
at the time of the entry, even though the
intended taking is to be at a later time --
period." (RT 3549-3550.)

The court later re-read these same questions and answers to the
jury (RT 3552).

1 The court gave the following response to yet another
2 jury question on the 23rd:

3 "If a person commits a murder and then at
4 sometime later he or his accomplices enter
5 a different structure intending to steal
6 from that structure, then do special cir-
7 cumstances apply to that burglary?

8 "Answer, no." (RT 3553.)

9 Finally, on April 23rd, over defense objection, the
10 court responded to questions from the jury as follows:

11 "For the burglary of Venetia Meadows to
12 be special circumstances, is it necessary
13 that one of the accomplices be physically
14 inside the structure, namely, Venetia
15 Meadows, at the time of the murder?

16 "The answer is:

17 "Entry of the residence with the intent
18 to steal must be during the time while the
19 killing at the shop on Front Street was
20 underway in order to be a special circum-
21 stance.

22 "That's the best we can do for you on
23 that one.

24 "Two:

25 "If one enters a residence with the intent
26 of burglarizing this residence, and the
plan of killing the owner in a separate
location to accomplish the burglary, and
then proceeds to a separate location to
effect the murder, and, lastly, returns
to the first residence and accomplishes
the burglary, does this constitute special
circumstances?

 "The Court's answer to that is:

 "Yes." (RT 3559.)

 Soon after these last supplemental instructions, the

1 jury returned a finding that the burglary special circumstance
2 allegations were true (RT 3560-62).

3 ARGUMENT

4 Under the felony murder doctrine, a killing which occurs
5 as a result of the commission or attempted commission of a burglary
6 becomes a murder in the first degree. Sec, e.g., CALJIC 8.21.
7 Thus a killing could occur before or after the actual commission
8 of a burglary, yet still fall within the reach of the felony-
9 murder doctrine, if the death was a result of the effort to commit
10 that burglary. In short, temporal coincidence between a killing
11 and a felony such as burglary is not required to invoke the felony
12 murder rule.

13 The special circumstance of murder during a burglary
14 is a different matter. Penal Code section 190.2(a)(17)(vii)
15 requires a temporal coincidence between the murder and the commis-
16 sion of a burglary. Richards v. Superior Court (1983) 146 Cal.App.
17 3d 306, 317.

18 "Given the basic legislative design that
19 each special circumstance have some
20 rational basis differentiating which
21 murderers should be executed, the critical
22 determination whether the murder was
23 committed during the commission of the
24 specified burglary is not merely "a matter
25 of semantics or simply chronology" (People
26 v. Thompson (1980) 27 Cal.3d 303, 322 [165
Cal.Rptr. 289, 611 P.2d 883]) and must be
factually demonstrated in terms of temporal
--if not spatial--propinquity." Id., 146
Cal.App.3d 319 (Racanelli, concurring).

Thus a killing committed before or after a burglary

1 to facilitate that burglary's commission may result from the
2 commission of the burglary, and thus fall within the ambit of
3 the felony-murder rule, but it does not meet the temporal coinci-
4 dence requirement of Penal Code section 190.2(a)(17)(vii).

5 On April 23rd, this Court instructed the jury that
6 a murder committed in a structure in order to facilitate a later
7 taking from that structure meets the requirements of the special
8 circumstance statute (RT 3549-3552). This ruling was erroneous.
9 The initial entry for the purpose of committing the murder is
10 not a burglary under the special circumstance statute because
11 the criminal intent upon entry is not independent from the intent
12 to murder. The entry of the same structure at a later time for
13 the purpose of stealing during that entry would qualify as a
14 burglary under section 190.2(a)(17)(vii), but only if a murder
15 occurs during the larcenous entry. Therefore, the temporal coinci-
16 dence between a murder and a larcenous burglary required by the
17 special circumstance statute was obscured by the supplemental
18 instruction of the court.

19 The court's ruling would have been correct only if
20 an entry into a structure with the intention to steal from it
21 not during that entry but rather during a later one would constitute
22 a burglary. The law of burglary requires, however, that the
23 intention to commit the target crime and the projected consummation
24 "constitute a single and practically continuous transaction."
25 People v. Wright (1962) 206 Cal.App.2d 184, 191. Defendant has
26 located no case where an entry made with an intention to commit

1 a felony not during or immediately after that entry, but on some
2 later date, was held sufficient to constitute a burglary.

3 Similarly, the court instructed the jury that a party
4 who goes from Point A to Point B and commits a murder in order
5 to facilitate a later burglary back at point A is guilty of murder
6 with special circumstances (RT 3559). Again the court's instruc-
7 tion allowed a murder committed before a burglary to be subject
8 to a special circumstance finding because it facilitated that
9 later burglary. But, as Justice Racanelli said in Richards,
10 supra:

11 "In order to sustain the enhancement allega-
12 tion against petitioner concerning the
13 alleged burglary of the Venicia Meadows
14 residence, proof must be adduced that a
15 temporal relationship existed between the
16 murder and such burglary; namely, that,
17 the murder was committed during the com-
18 mission of the underlying residential
19 burglary (People v. Green (1980) 27 Cal.3d
20 1, 59 [164 Cal.Rptr. 1, 609 P.2d 468]; cf.
21 Ario v. Superior Court (1981) 124 Cal.App.
22 3d 285, 288-289 [177 Cal.Rptr. 265]) in which
23 petitioner intentionally aided and abetted.
24 (Pen. Code, § 190.2, subd. (b).)" Id., at
25 146 Cal.App.3d 319 (emphasis in original).

19 Because both of these supplemental instructions
20 eviscerated the "temporal coincidence" requirement of the special
21 circumstance statutes, they were erroneous. The findings based
22 on them must be struck.

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DATED: May 29, 1984

Respectfully submitted,

CARL B. SHAPIRO
SHAPIRO & SHAPIRO

DENNIS P. RIORDAN
RIORDAN & ROSENTHAL

BY Dennis P. Riordan
DENNIS P. RIORDAN

Attorneys for Defendant

EXHIBIT "A"

FILED**APR -7 1983****HOWARD HANSON**
MARIN COUNTY CLERKBY **E. ELISBERRY**
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MARK RICHARDS,

Defendant.

No. 8362

DECLARATION OF DENNIS P.
RIORDAN

I, DENNIS P. RIORDAN, declare as follows:

I am an attorney duly licensed to practice law in the State of California, and am the associate attorney appointed to represent Mark Richards, defendant in the above-entitled matter.

(1) Richards is charged in this case with murder, robbery, and one count of burglary. Richards also faces allegations of four special circumstances that potentially carry the death penalty. (Pen. Code, §§ 190.2(a)-190.2(b)(2).) The special circumstances alleged are: (1) the commission of a murder for financial gain; (2) murder committed while lying in wait; (3) murder committed durin

1 a robbery and (4) murder committed during a burglary.

2 (2) Richards has no previous criminal record or history
3 of violence.

4 (3) I am informed and believe through my personal review
5 and research of Marin County Court files and discussions with
6 criminal attorneys practicing in Marin County, and through my own
7 practice in Marin County since the Briggs Amendment in 1978, that
8 murder cases have been prosecuted in Marin County in which special
9 circumstances were not alleged where the facts would have supported
10 such an allegation. Furthermore, there have been cases in which
11 allegations of special circumstances were withdrawn after the
12 defendant pled guilty to the charges against him. The cases of which
13 I am personally aware are set forth as follows:

14 (a) In People v. Marsha Bunney, Superior Court No. 8001,
15 the defendant was charged with the murder of her ex-boyfriend. No
16 allegations of special circumstances were charged by the Marin
17 County District Attorney's Office, despite the fact that such
18 allegations could have clearly been alleged pursuant to Penal Code
19 190.2(a)(15) -- "lying in wait." The defendant was charged with
20 carefully setting a trap for the victim in that she planned the
21 killing, purchased a gun, lured the victim to her home, and waited
22 there for the opportunity to kill him.

23 (b) In People v. Wickersham, Superior Court No. 7297,
24 (1981) 124 Cal.App.3d 835, the defendant was charged with the
25 murder of her husband. There was evidence that defendant had
26 planned the murder of her husband in order to gain insurance proceeds

1 and the victim's pension. Although the evidence permitted the
2 District Attorney to allege special circumstances pursuant to
3 Penal Code 190.2(a)(1), no such circumstances were alleged.

4 (c) In People v. Becker (No. 7456), the defendant was
5 convicted of masterminding a murder during a drug deal in the
6 victim's residence, a fact which elevated the murder to one com-
7 mitted during a burglary. No special circumstance was charged under
8 Penal Code section 190.2(a)(17)(vii).

9 In People v. Sutton, Superior Court No. 7676, the defendant
10 was charged with murder. There was evidence that defendant had
11 taken 85 items from the victim's house during the murder. The defen-
12 dant pled guilty to the murder. Special circumstance allegations
13 could have been added to defendant's charges pursuant to Penal Code
14 190.2(a)(17)(i) and 190.2(a)(17)(vii), but were not.

15 In People v. Shriver, Superior Court No. 7721, the defen-
16 dant was charged with murder and allegations of special circum-
17 stances pursuant to Penal Code 190.2(a)(10) and 190.2(a)(17), on
18 the theory the defendant raped and murdered his victim because she
19 was Filipino. After the defendant pled guilty to the murder, the
20 District Attorney withdrew the allegations of special circumstances.

21 I am informed and believe that the only cases other than
22 this one in which the Marin District Attorney has seriously pursued
23 allegations of special circumstances are in two Marin County cases
24 involving multiple murders pursuant to Penal Code 190.2(a)(3).
25 These cases are People v. David Carpenter, Municipal Court No.
26 C-44348, involving five counts of murder, and People v. Mark

1 McDermand, Superior Court No. 7722, involving two counts of
2 murder.

3 I declare under penalty of perjury that the foregoing is
4 true and correct, except as to those matters stated upon informa-
5 tion and belief, and as to those matters I believe them to be true.

6 Executed this 6th day of April, 1983 at San Francisco,
7 California.

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10 DENNIS P. RIORDAN
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FILED

MAY 29 1984

HOWARD HANSON
MARIN COUNTY CLERK

BY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MARK RICHARDS,

Defendant.

NO. 8362

NOTICE OF MOTION FOR NEW
TRIAL AND TO STRIKE SPECIAL
CIRCUMSTANCE FINDINGS

TO: THE PEOPLE OF THE STATE OF CALIFORNIA AND TO THE
DISTRICT ATTORNEY OF THE COUNTY OF MARIN:

PLEASE TAKE NOTICE that on Wednesday, June 13, 1984
at the hour of 1:30 p.m., or as soon thereafter as the matter
may be heard, in the above-entitled court, defendant Mark Richards
will move under Penal Code sections 1181 and 1385 for a new trial
on the substantive charges of burglary and murder in this case,
of which he was convicted on April 9, 1984, and for a new trial
on the special circumstance allegations, or dismissal of the
special circumstance findings returned on April 24, 1982.

C.M.C.

1 This motion is based on this pleading, the records
2 and transcripts in this case, the accompanying memoranda, and
3 the evidence and argument that will be presented during the hear-
4 ing on these motions.

5 DATED: May 29, 1984

6 Respectfully submitted,

7 CARL B. SHAPIRO
8 SHAPIRO & SHAPIRO

9 DENNIS P. RIORDAN
10 RIORDAN & ROSENTHAL

11 By *Dennis P. Riordan*
12 DENNIS P. RIORDAN

13 Attorneys for Defendant
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JERRY R. HERMAN, District Attorney
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Attorneys for plaintiff

FILED

MAY 16 1984

HOWARD HANSON
 MARIN COUNTY CLERK

BY [Signature]
 DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 8362
)	
Plaintiff,	)	RESPONSE TO MOTION
	)	FOR CONTINUANCE OF
v.	)	<u>SENTENCING</u>
)	
MARK RICHARDS,)	
)	
Defendant.)	

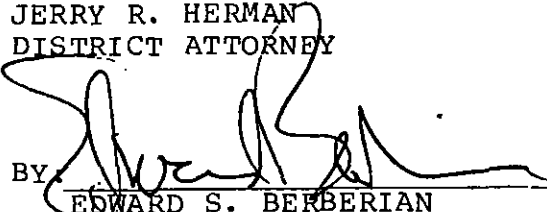
It is the People's position that there is neither a legal requirement or necessity for the continued appointment of two court appointed attorneys on Mark Richards behalf. Initially, the defense obtained the appointment of a second attorney under the authority of Keenan v. Superior Court, 31 Cal. 3rd 424, which authorized a second attorney at public expense for an indigent defendant facing charges that could result in the imposition of the death penalty. However, since April 1983 the People stated the death penalty was not being sought. Therefore, the requirements of Keenan no longer apply (See, Sand v. Superior Court, 34 Cal. 3rd 567).

1 Based upon a lack of necessity for a second attorney in
2 Mark Richards behalf, the people believe the motion to continue
3 the hearing on any post-verdict motions and sentencing should be
4 denied.

5 Dated this 15th day of May, 1984.

6
7 Respectfully submitted,

8 JERRY R. HERMAN
9 DISTRICT ATTORNEY

10 BY 
11 EDWARD S. BERBERIAN
12 Deputy District Attorney
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LAW OFFICES
 SHAPIRO & SHAPIRO
 404 SAN ANSELMO AVENUE
 SAN ANSELMO, CALIFORNIA 94960
 (415) 453-7611

FILED

May 16, 1984

Attorneys for Defendant.

MARIN COUNTY CLERK
 BY [Signature]
 DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

NO: 8 3 6 2

Plaintiff,)

-VS-)

MARK RICHARDS,)

Defendant.)

DECLARATION IN SUPPORT OF
REQUEST FOR RESCHEDULING
OF FILING OF MOTIONS AND
REQUEST TO RESCHEDULE

I, CARL B. SHAPIRO, declare:

1. That I am an attorney at law licensed to practice before the courts of the state of California, and am the attorney for defendant MARK RICHARDS in the above-entitled matter.

2. That pursuant to appropriate court order Dennis Riordan has been selected and appointed as co-counsel in this matter and it has been my responsibility primarily to conduct the trial of the action, and Mr. Riordan has been doing legal research, motions, instructions, and other work of a similar nature which is consistent with his extensive experience as an appellate as well as trial lawyer. It is consistent with our division of responsibilities that Mr. Riordan would prepare all the necessary post-conviction motions in this matter.

3. The division of labor was arrived at so as to minimize the legal costs, namely that I would not have to familiarize myself with all the legal problems arising throughout the trial, and he would not have to follow closely the factual developments.

4. On Friday, May 4, 1984, Mr. Riordan's wife was taken to the hospital in San Francisco for the purpose of a Caesarean

cc - RA
 CS Shapiro

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping. It states that all transactions must be recorded in a timely and accurate manner, and that the records must be maintained for a minimum of five years.

3. The third part of the document discusses the role of the auditor in verifying the accuracy of the records. It states that the auditor must perform a thorough review of the records and must report any discrepancies to the appropriate authorities.

4. The fourth part of the document discusses the consequences of failing to maintain accurate records. It states that individuals or organizations that fail to comply with the requirements may be subject to fines and penalties.

5. The fifth part of the document discusses the importance of training and education in maintaining accurate records. It states that individuals involved in the financial system must receive appropriate training and education to ensure that they are able to perform their duties accurately.

6. The sixth part of the document discusses the importance of internal controls in maintaining accurate records. It states that organizations must implement effective internal controls to ensure that all transactions are properly recorded and that the records are accurate.

7. The seventh part of the document discusses the importance of transparency in the financial system. It states that all transactions must be transparent and that the records must be accessible to the appropriate authorities.

8. The eighth part of the document discusses the importance of the financial system in the economy. It states that the financial system is essential for the growth and development of the economy and that it must be maintained in a state of integrity and accuracy.

9. The ninth part of the document discusses the importance of the financial system in the lives of individuals. It states that the financial system is essential for the well-being of individuals and that it must be maintained in a state of integrity and accuracy.

10. The tenth part of the document discusses the importance of the financial system in the future. It states that the financial system must be maintained in a state of integrity and accuracy to ensure that it is able to support the needs of the future.

1 procedure to deliver their first child. That child was born on
2 that day.

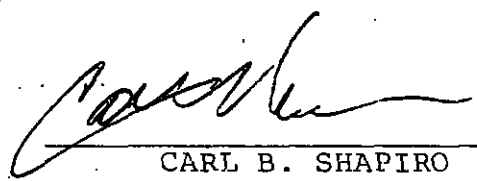
3 5. It is estimated that Mrs. Riordan will stay in the
4 hospital for one week from the date of admission, and during this
5 period of time Mr. Riordan will be under the responsibility of being
6 with her as much as possible.

7 6. In view of this interruption in his preparation, it will
8 be necessary for the defense to have an additional period of ten
9 days to two weeks in order to prepare and file all of the necessary
10 pleadings in this matter. If this extension is not granted and
11 Mr. Riordan turns over this responsibility to me it will be necessary
12 for me to request an extension of time in order to review all of the
13 legal problems that were illustrated by the various motions and
14 instructions that were filed:

15 7. It is therefore requested that this court schedule
16 a new and different timing pattern for the motions, based on our
17 inability to comply with the original time limits.

18 I declare under penalty of perjury that the foregoing is
19 true and correct.

20 EXECUTED this 9th day of May, 1984, in San Anselmo,
21 California.

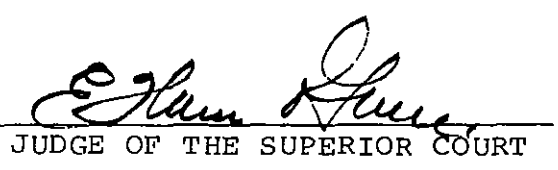
22
23
24 
CARL B. SHAPIRO


25
26 ORDER

27 Upon the reading and filing of the declaration of Carl B.
28 Shapiro for an extension of time for filing of motions, and good cause
29 appearing therefor, the following time schedule is hereby adopted:

30 IT IS HEREBY ORDERED that the motions shall be due on or
31 before 5/29, 1984, that the responses thereto shall be filed
32 on or before 6/5, 1984, and that a hearing to set the
33 hearing on motions be scheduled for 1:30 P.M. on the 12th day of
34 June, 1984, in Department 5 of the above-
35 entitled court.

36 DATED: 5/16, 1984.


JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: May 16, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire, JUDGE Laenggi, DEPUTY CLERK
Leo Miller, REPORTER -, BAILIFF

TITLE:

The People of the State
vs
Mark Richards

COUNSEL:

Ed Berberian,
Deputy DA
Carl Shapiro
Dennis Riordan - present

NATURE OF PROCEEDINGS:

Motion to Continue Hearing

ACTION NO. 8362

Defendant and both counsel present in
re above; appearance on file by Prosecutor;
argued, and the Court having made its
findings, defendant and his counsel waived time.

It Was By The Court Ordered: motion granted.
Defense until May 29, 1984 for filing motions;
People's response in by June 5, 1984 and
sentencing to June 12, 1984 at 1:30 Pm.

cc: MC: Jail: Sheriff.

THE PEOPLE OF THE STATE

Plaintiff (s)

vs.

MARK RICHARDS

Defendant (s)

No. 8362

Dept. No. DEPT FIVE

Date Submitted

MINUTE ORDER

Motion for Continuance re hearing on post verdict proceedings
is set at 10:00AM, May 16, 1984 in Dept 5.

cc:Counsel:DA:MC:Sheriff:Jail

Dated MAY 14, 1984

E. WARREN MC GUIRE
Judge of the Superior Court

sh

MINUTE ORDER-SUBMITTED

3110-83-251

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

FILED

IT IS ORDERED that warrants be drawn by the County Auditor in favor of the persons hereinafter named for fees and mileage as jurors in the above-entitled court, as follows:

CASE NO. 8362 ~~San Quentin~~ ~~Not San Quentin~~ APR 27 1984 FIVE CLERK S HAENGGI

PLAINTIFF PEOPLE OF THE STATE HOWARD HANSON DEFENDANT MARK RICHARDS
JURY: March 15, 16, 19, 22, 26, 27, 29, APR 2, 3, 4, 5, 6, 9, 12, 17, 19, 20, 23, 24
TRIAL DATES ALTS: March 16, 19, 22, 26, 27, 29, APR 2, 3, 4, 5, 6, 9, 12, 17, 19, 20, 23, 24

NAME ADDRESS	NO. DAYS	MILES	PER DIEM	MILEAGE	TOTAL
PARKHURST HERSCHEL R 819 DIABLO AVE NOVATO CA 94947	19	418	\$ 190.00	\$ 104.50	\$ 294.50
KASH CATHERINE ANN 155 GREENFIELD AVE SAN RAFAEL CA 94901	19	190	190.00	47.50	237.50
ELLIOTT DONNA L 732 TAMARACK DR SAN RAFAEL CA 94903	19	95	190.00	23.75	213.75
WENTWORTH PAMELA JUNE 39 LAKESIDE DR CORTE MADERA CA 94925	19	266	190.00	66.50	256.50
PHILLIPS CANDYCE CAROL 262 CALLE DE LA SELVA NOVATO CA 94947	19	266	190.00	66.50	256.50
TRAVERS ELIZABETH HALL 60 CORTE PLACIDA GREENBRAE CA 94904	19	209	190.00	52.25	242.25
SICZEWICZ PETER JOHN 200 ESCALLONIA DR NOVATO CA 94947	19	399	190.00	99.75	289.75
HEMINGWAY DOLORES M 235 MOUNTAIN VIEW AVE MILL VALLEY CA 94941	19	570	190.00	142.50	332.50
GJERDE EDITH N 14 GRASS CT NOVATO CA 94947	19	266	190.00	66.50	256.50
HUGHES VIOLET BACHMAN 240 LINDEN LN SAN RAFAEL CA 94901	19	114	190.00	28.50	218.50
ALION CHERIE E 842 REICHERT #4 NOVATO CA 94947	19	304	190.00	76.00	266.00
ENDICOTT HOWARD W 78 LA COSTA CT NOVATO CA 94947	18	486	180.00	121.50	301.50
KELLY RUDOLPH ERNEST 70 CYPRESS AVE MILL VALLEY CA 94941	18	468	180.00	117.00	297.00
BAKER JAMES H 669 PEACH ST NOVATO CA 94947	18	342	180.00	85.50	265.50
BUTCHER BEVERLY 135 MANOR RD FAIRFAX CA 94930	18	270	180.00	67.50	247.50

DATED: 4/27/84

CLERK/JUDGE OF THE SUPERIOR COURT

I HEREBY CERTIFY that the foregoing is a true and correct copy of an order made by the Judge/Clerk of the Superior Court of Marin County, State of California, on APR 27 1984, and entered in the minutes of said Court.

Date APR 27 1984, 19

HOWARD HANSON
County Clerk
By S. Haenggi Deputy

3110-80-241

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1554

DATE: April 24, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire JUDGE St. Haenggi DEPUTY CLERK
L. Miller REPORTER L. Filipiak BAILIFF

TITLE:	COUNSEL:
The People of the State vs Mark Richards	Ed Berberian, Deputy DA Carl Shapiro / Dennis Riordan

NATURE OF PROCEEDINGS: 2nd Phase Criminal Jury Trial ACTION NO. 8362
(Deliberation)

Jury present at 10 AM and deliberations resumed. At 11:25 AM, Court convened in re question by Jury; Defendant and counsel present; the Court answered question and recessed at 11:30 AM. At 11:55 AM, the Jury having reached a verdict, Court reconvened. After perusal by the Court, verdict read (see attached verdict). The Court thanked and excused the Jury, Court remained in session. Defendant requested referral to Probation Dept for report and waived time herein. Defense stated intention to file post verdict motions with the Court and

It was By The Court Ordered:

Matter referred to Probation Dept. for report and defense has to May 15, 1984 to file post verdict motions; People to respond by May 29, 1984 and date set for hearing said motions set June 5, 1984 at 1:30 PM, for consideration by the Court and for pronouncement of judgment. Defendant remanded back into custody of Marin County Sheriff. Admitted at 12:10 PM.

cc: MC: PO: Jail: Sheriff.

MINUTES

DANT WAS ENGAGED IN THE COMMISSION
OF THE CRIME OF BURGLARY OF
36 FRONT STREET, SAN RAFAEL,
CALIFORNIA, IN VIOLATION OF
PENAL CODE SECTION 459, WITHIN
THE MEANING OF PENAL CODE
SECTIONS 190.2(a)(17)(vii) AND
190.2(b).

TRUE ☒NOT TRUE ☐

3) THE MURDER OF RICHARD BALDWIN
WAS AIDED AND ABETTED, COUNSELED,
COMMANDED, INDUCED, SOLICITED,
REQUESTED OR ASSISTED BY THE
DEFENDANT, MARK RICHARDS, WITH
THE INTENT TO KILL, WHILE THE
DEFENDANT WAS ENGAGED IN THE
COMMISSION OF THE CRIME OF BURGLARY
OF 18 VENETIA MEADOWS, SAN RAFAEL,
CALIFORNIA, IN VIOLATION OF PENAL
CODE SECTION 459, WITHIN THE
MEANING OF PENAL CODE SECTIONS
190.2(a)(17)(vii) AND 190.2(b).

TRUE ☒NOT TRUE ☐

DATED: April 24, 1984.

*Filed
April 24, 1984
Hanson, County Clerk
by Haenggi, deputy*

[Signature]
FOREPERSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

VS)

MARK RICHARDS,)

DEFENDANT.)

VERDICT

NO. 8362

SPECIAL CIRCUMSTANCES

WE, THE JURY, HAVING PREVIOUSLY FOUND THE DEFENDANT,
MARK RICHARDS, GUILTY OF MURDER IN THE FIRST DEGREE, WE
FURTHER FIND AS FOLLOWS:

- 1) THE MURDER OF RICHARD BALDWIN
WAS INTENTIONAL, AND WAS AIDED
AND ABETTED, COMMANDED, COUN-
SELED, INDUCED, SOLICITED, RE-
QUESTED AND ASSISTED BY THE
DEFENDANT, MARK RICHARDS, FOR
FINANCIAL GAIN WITHIN THE
MEANING OF PENAL CODE SECTIONS
190.2(a)(1) and 190.2(b).

TRUE (☒)

NOT TRUE (☐)

- 2) THE MURDER OF RICHARD BALDWIN
WAS AIDED AND ABETTED, COUNSELED,
COMMANDED, INDUCED, SOLICITED,
REQUESTED OR ASSISTED BY THE DE-
FENDANT, MARK RICHARDS, WITH THE
INTENT TO KILL, WHILE THE DEFEN-

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

VS)

MARK RICHARDS,)

DEFENDANT.)

VERDICT

NO. 8362

SPECIAL CIRCUMSTANCES

WE, THE JURY, HAVING PREVIOUSLY FOUND THE DEFENDANT,
MARK RICHARDS, GUILTY OF MURDER IN THE FIRST DEGREE, WE
FURTHER FIND AS FOLLOWS:

- 1) THE MURDER OF RICHARD BALDWIN
WAS INTENTIONAL, AND WAS AIDED
AND ABETTED, COMMANDED, COUN-
SELED, INDUCED, SOLICITED, RE-
QUESTED AND ASSISTED BY THE
DEFENDANT, MARK RICHARDS, FOR
FINANCIAL GAIN WITHIN THE
MEANING OF PENAL CODE SECTIONS
190.2(a)(1) and 190.2(b).

TRUE (☒)

NOT TRUE (☐)

- 2) THE MURDER OF RICHARD BALDWIN
WAS AIDED AND ABETTED, COUNSELED,
COMMANDED, INDUCED, SOLICITED,
REQUESTED OR ASSISTED BY THE DE-
FENDANT, MARK RICHARDS, WITH THE
INTENT TO KILL, WHILE THE DEFEN-

DANT WAS ENGAGED IN THE COMMISSION
OF THE CRIME OF BURGLARY OF
36 FRONT STREET, SAN RAFAEL,
CALIFORNIA, IN VIOLATION OF
PENAL CODE SECTION 459, WITHIN
THE MEANING OF PENAL CODE
SECTIONS 190.2(a)(17)(vii) AND
190.2(b).

TRUE ☒NOT TRUE ☐

3) THE MURDER OF RICHARD BALDWIN
WAS AIDED AND ABETTED, COUNSELED,
COMMANDED, INDUCED, SOLICITED,
REQUESTED OR ASSISTED BY THE
DEFENDANT, MARK RICHARDS, WITH
THE INTENT TO KILL, WHILE THE
DEFENDANT WAS ENGAGED IN THE
COMMISSION OF THE CRIME OF BURGLARY
OF 18 VENETIA MEADOWS, SAN RAFAEL,
CALIFORNIA, IN VIOLATION OF PENAL
CODE SECTION 459, WITHIN THE
MEANING OF PENAL CODE SECTIONS
190.2(a)(17)(vii) AND 190.2(b).

TRUE ☒NOT TRUE ☐

DATED: April 24, 1984.

*Filed
April 24, 1984
Hanson, County Clerk
by Haenggi, deputy*

[Signature]
FOREPERSON

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1553

DATE: April 23, 1984

COURT MET AT 10 AM

DEPARTMENT NO. V

PRESENT: HON. E Warren Inc. Greer, JUDGE St. Angelo, DEPUTY CLERK

L Miller / L. Sittlermyre, REPORTER J. Filipiak, BAILIFF

TITLE:

The People of The State
vs
Mark Richards

COUNSEL:

Ed Bersherian, Deputy DA
Carl Shapiro / Dennis Kordan

NATURE OF PROCEEDINGS: 2nd Phase Criminal Jury Trial ACTION NO. 8362
(Deliberation)

Jury in deliberation from 10 AM.
at 3:30 PM; at request of jury, questions put
to the Court responded to. At 4:20 PM; at
request of jury, question put to the Court was
responded to.

At 5:15 PM, jury recessed, to return at
10 AM, April 24, 1984 for resumption of
deliberation.

MINUTES

FILED

APR 20 1984

HOWARD HANSON
MARIN COUNTY CLERK

By E. Lufrano, Deputy

[Signature]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

No. 8362

MARK RICHARDS,)

Defendant.)

RECEIPT

Receipt is hereby acknowledged of the following items received in lieu of bail in the above-captioned action:

1. Grant Deed from Ellis L. Richards and Lois I. Richards to the County of Marin for the property commonly referred to as 15 Sturdevant, San Anselmo, CA.
2. Six (6) United States of America Bearer Bonds in the amount of \$10,000 each, bearing the serial numbers 12029, 12028, 12024, 12025, 12026 and 12027.
3. One (1) United States of America Bearer Bond in the amount of \$5,000 bearing the serial number 894.
4. Four (4) State of California Water Bonds under the California Water Resources Development Bond Act in the amount of \$5,000 each bearing the serial numbers G17885, G17886, G17887 and G17888.
5. Four (4) State of California State Beach, Park, Recreational, and Historical Facilities Bond in the amount of \$5,000 each bearing the serial numbers K3526, K3527, K3528 and K3529.

Date

4/20/84

[Signature]

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SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: April 20, 1984 COURT MET AT 10am DEPARTMENT NO. 5
 PRESENT: HON. E. WARREN MC GUIRE, JUDGE J.S. BLEECKER JR., DEPUTY CLERK
L. MILLER/L. SETTLEMYRE, REPORTER L. FILIPIAK, BAILIFF

TITLE:

PEOPLE OF THE STATE OF CALIFORNIA

vs.

MARK RICHARDS

COUNSEL:

E. Berberian Dep. D.A.

C. Shapiro
D. Riordan

NATURE OF PROCEEDINGS: CRIMINAL JURY TRIAL (36th day) ACTION NO. 8362

Trial resumes from April 19, 1984, with defendant, counsel and all jurors present as before.

The Court instructs the jury. The Sheriff is sworn to take charge of the jury. At 10:40 am, the jury retires to deliberate.

At 12 noon, the jury is admonished and trial is continued to April 23, 1984, at 10:00 am.

MINUTES

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1529

DATE: April 19, 1984 COURT MET AT 10am DEPARTMENT NO. 5
 PRESENT: HON. E. WARREN MC GUIRE, JUDGE J.S. BLEECKER JR., DEPUTY CLERK
L. MILLER/L. SETTLEMYRE, REPORTER L. FILIPIAK, BAILIFF

TITLE:	COUNSEL:
PEOPLE OF THE STATE OF CALIFORNIA	E. Berberian Dep. D.A.
vs.	
MARK RICHARDS	C. Shapiro D. Riordan

NATURE OF PROCEEDINGS: CRIMINAL JURY TRIAL (35th day) ACTION NO. 8362

Trial resumes from April 17, 1984, with defendant, counsel and all jurors present as before.

Frank Hubinsky resumes testifying for the People. Ted Lindquist is recalled and further testifies for the People. People's exhibit 315(2 page property report) is marked for identification.

People rest.

James Cook is sworn and testifies for the defendant. Ted Lindquist is recalled and testifies for the defendant. Carrie Myers is sworn and testifies for the defendant. Dennis Riordan, counsel for defendant, is sworn and testifies.

Defendant's exhibits V, previously marked for identification only, is admitted in evidence.

Defendant rests. Both sides rest.

The matter is argued.

The jury is admonished and trial is continued to April 20, 1984, at 10am.

MINUTES

THE PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO.

Plaintiff,

NAME

ADDRESS

CITY, STATE

ZIP CODE

PASCOE, Terrence W. 561-52-0615
 3103 Leatha Way
 Sacramento, CA
 95821

vs.

D.A. NO. 5555

MARK RICHARDS

Defendant.

TO: THE HONORABLE JUDGE OF THE MUNICIPAL/SUPERIOR COURT:

The witness named above was a necessary witness for the People, was subpoenaed and attended Court, and payment of the witnesses fees is requested. The claimed fees are:

- (1) within the statutory maximum; or
- (2) for the services of expert witnesses and the compensation requested for such service is reasonable; and
- (3) witness appeared in response to officially served subpoena.

JERRY R. HERMAN, DISTRICT ATTORNEY

Dated: April 12, 1984

By Edward S. Verberian Deputy

TO: THE AUDITOR OF THE COUNTY OF MARIN, STATE OF CALIFORNIA: ORDER TO PAY WITNESS FEES.

YOU ARE HEREBY DIRECTED to draw your warrant upon the Treasurer of the County of Marin, State of California, to the above named person, in the sum set forth, as for necessary expenses for attending as a witness on behalf of the plaintiff in the above-entitled action.

JUDGE OF THE MUNICIPAL/SUPERIOR COURT

E. WARREN McGUIRE

TRANS CODE	FOR VENDOR	ADDITIONAL DATA	P.O. ENC.	ORG NO.	SUB-OBJ NO.	AC	PC	AMOUNT
3				33	1.13			6.00

WITNESS FEE:

MILEAGE:

MISCELLANEOUS CHARGES:

Expert witness fees

3415-34 3 hrs. 3 \$75.00 - \$600.00

DISTRIBUTION

WHITE — CLAIM

CANARY — DA COPY

PINK — MUNI/SUP

GOLDENROD — FILE COPY

Dated: _____

Signature of Department Head or Authorized Deputy

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

3120-50 (3/82)

auditor 4/18/84

FILED
 APR 18 1984
 HOWARD HANSON
 MARIN COUNTY CLERK
 BY [Signature] DEPUTY

Certified: American Board of
Forensic Document Examiners

Terrence H. Pascoe

EXAMINER OF
QUESTIONED DOCUMENTS

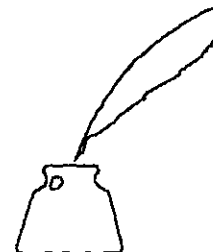
PHONE 489-6947

3108 LEATHA WAY

SACRAMENTO, CALIFORNIA 95821

Member: Northwest Association of
Forensic Scientists

March 16, 1984



Deputy D. A. Edward S. Berberian
Marin Co. District Attorney's Office
Room 181, Hall of Justice
Civic Center
San Rafael, California 94902

Statement

Re: People vs. Mark Richards
Your File No. 8362/5555

The following is a statement for professional services in
regard to the above matter:

(2-1-84 Pre-Trial Conference, 6 hrs.at \$75 . . . \$	450.00)	To be pd by D.A.
3-15-84 Appearance & Testimony, Superior Court, 8 hrs.at \$75.	600.00	

Balance		\$1,050.00

Respectfully submitted,

Terrence H. Pascoe

TERRENCE H. PASCOE

JERRY R. HERMAN, District Attorney
EDWARD S. BERBERIAN, Deputy District Attorney
Room 155, Hall of Justice
San Rafael, California 94903
Telephone: 499-6450

Attorneys for plaintiff

FILED

APR 1 5 1984

HOWARD HANSON
MARIN COUNTY CLERK
NY *W. H. H.*
LEBET

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,) NO. 8362
)
)
 Plaintiff,)
)
 v.) SUPPLEMENTAL POINTS AND
) AUTHORITIES ON THE
) DEFENDANT'S MOTION UNDER
) CODE OF CIVIL PROCEDURE
 MARK RICHARDS,)
) SECTION 170(5)
)
 Defendant.)

The People believe under the present statutory and case authority the motion presently filed by the defense to disqualify Judge E. Warren McGuire pursuant to Code of Civil procedure section 170(5) must be heard and decided under the provisions of Code of Civil procedure sections 170 (c), (d) and (e). Those provisions have applicability since Judge McGuire refused to consent to the disqualification in the court proceedings of April 11, 1984.

However, the mere filing of such a disqualification does not need to delay the continuation of the present jury trial. As anticipated in the People's memorandum on this issue filed April 11, 1984, the declaration setting forth the basis for the relief is founded not on the actual record of the proceeding

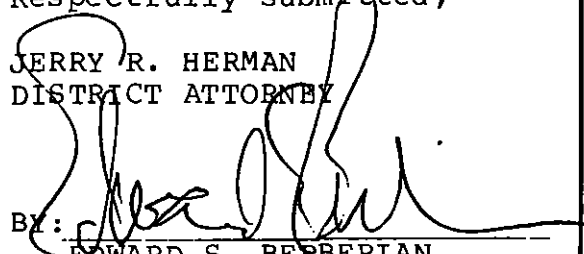
1 held on April 9, 1984, but on newspaper articles that were
2 sensationalized and inaccurate recordations of the proceedings.
3 The defense never argues or attempts to set forth the actual
4 record of the hearing to justify its position.

5 Therefore, the court may, and should, under the
6 authority of Code of Civil Procedure sections 170 (d) (4) and (5)
7 proceed with the case. The reasons for going forward are: 1)
8 the factual basis for the challenge is weak and frivolous; 2) the
9 jury would be needlessly exposed to additional risks of
10 contamination due to a delay without precise limits; 3) a judge
11 appointed by the Judicial Council could review the factual
12 material while witnesses are testifying during the several court
13 days the defense has stated would be needed to present their
14 additional factual material; and 4) absolutely no showing of good
15 cause, which is required, has been made justifying a continuance
16 and disruption of a trial already in progress.

17 Dated this 12th day of April 1984.

18 Respectfully submitted,

19 JERRY R. HERMAN
20 DISTRICT ATTORNEY

21 
22 BY: EDWARD S. BERBERIAN
23 Deputy District Attorney
24
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26
27
28

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: April 18, 1984 COURT MET AT _____ DEPARTMENT NO. 5
PRESENT: HON. E. WARREN MC GUIRE, JUDGE J.S. BLEECKER JR., DEPUTY CLERK
_____, REPORTER _____, BAILIFF

TITLE:
PEOPLE OF THE STATE OF CALIFORNIA
vs.
MARK RICHARDS

COUNSEL:

EX PARTE

NATURE OF PROCEEDINGS: RETURN OF PROPERTY POSTED IN LIEU OF BOND ACTION NO. 8362

Pursuant to the orders of 4-9-84 and 4-11-84 exonerating bail in this case

The County of Marin is to reconvey to Ellis L. Richards and Lois I. Richards the property commonly referred to as 15 Sturdevant, San Anselmo, California.

The County Clerk's office is to return to Carl Shapiro the following:


Six (6) United States of America Bearer Bonds, \$10,000.00 each, bearing the serial numbers 12024, 12025, 12026, 12027, 12028 and 12029.

One (1) United States of America Bearer Bond, \$5000.00, bearing serial number 894.

Four (4) State of California Water Bonds, \$5000.00 each, bearing serial numbers G17885, G17886, G17887 and G17888.

Four (4) California General Obligation Muni Bonds, bearing numbers K3526, K3527, K3528 and K3529.

DATED: 4/18/84


E. WARREN MC GUIRE
JUDGE OF THE SUPERIOR COURT.

cc: Acct. Clerk, C. Shapiro

MINUTES

COUNTY CLERK M.O. #1

248

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: April 17, 1984 COURT MET AT 10am DEPARTMENT NO. 5
 PRESENT: HON. E. WARREN MC GUIRE, JUDGE J.S. BLEECKER JR., DEPUTY CLERK
L. MILLER/ L. SETTLEMYRE, REPORTER L. FILIPIAK, BAILIFF

TITLE: PEOPLE OF THE STATE OF CALIFORNIA vs. MARK RICHARDS	COUNSEL: E. Berberian Dep. D.A. C. Shapiro D. Riordan
NATURE OF PROCEEDINGS: CRIMINAL JURY TRIAL (34th day) ACTION NO. 8362	

Trial resumes from April 12, 1984, with defendant, counsel and all jurors present.

OUT OF THE PRESENCE OF THE JURY:
 Defendant moves for a new jury panel.

The jury is voir dired individually and collectively.

The matter is argued. The Court finds that the jury has not been tainted and the motion is denied.

IN THE PRESENCE OF THE JURY:
 The Special Circumstance phase of the case is called for trial.

The defendant shall proceed first and last.
 The Court reads the special circumstance allegations of the information to the jury.

Both sides waive opening statements.

Roger Mulholland, Delores Leon, Winnie McLelland, Thomas Groody, Lois Carlsen and Robert Hudspith are sworn and testify for the Defendant.

Defendant rests.

Ted Lindquist, Douglas McLaughlen and Frank Hubinsky are sworn and testify for the People.

At 4:30 pm, the jury is admonished and trial is continued to April 19, 1984, at 10:00 am.

MINUTES

1 RIORDAN & ROSENTHAL
2 ATTORNEYS AT LAW
3 523 OCTAVIA STREET
4 SAN FRANCISCO, CALIFORNIA 94102
5 TELEPHONE (415) 431-3472
6
7

FILED

April 17, 1984

MARIN COUNTY CLERK
BY *[Signature]*
DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIN

11 PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,
13 vs.
14 MARK RICHARDS,
15 Defendant,

NO. 8362

MEMORANDUM IN SUPPORT
OF MOTION TO IMPANEL
SECOND JURY FOR SPECIAL
CIRCUMSTANCE PHASE

17 STATEMENT OF FACTS

18 On April 12th, a preliminary voir dire of the jury re-
19 vealed the following:

20 A juror had committed an act of misconduct in that she discuss-
21 ed in the jury room the contents of a newspaper article con-
22 cerning this case. (See the voir dire of juror Hemingway con-
23 cerning the remarks of juror Kash.) The remarks of juror Kash
24 were prejudicial, as they concerned matters not in evidence
25 which are inflammatory--an alleged suicide attempt by the
26 defendant and a purported threat made by his mother to a
reporter. At least two jurors, Hemingway and Hughes, were ex-
posed to Kash's remarks.

One juror is aware that the Court has publicly character-

124 728-733

1 ized the charged murder as ruthless, although the jury has not
2 yet been called upon to conclusively decide whether it was in-
3 tentional. (See the voir dire of juror Travers). Another juror
4 is aware the court made comments about the defendant that her
5 friend liked very much. (See the voir dire of juror Wentworth). The
6 defense contends that further voir dire will reveal that juror
7 Wentworth was told the nature of the Court's comments by her
8 friend.

9 Since April 12th, an article has appeared in the Independent
10 Journal which reiterates the Court's comments of April 9th to
11 the effect that the killing was "planned, ruthless, and for fin-
12 ancial gain." The defense contends that the voir dire of April
13 12th establishes a high probability that some jurors have learned of
14 this latter news article, which is attached as Exhibit A.

15 ARGUMENT

16 A large number of the jurors in this case has been exposed
17 to prejudicial press reports concerning matters wholly inadmiss-
18 ible at trial. Some have been exposed to reports which flatly
19 state that this court has found the defendant guilty of the very
20 acts that the jury has to decide in the special circumstances phase
21 of this trial. The fact that those press reports quote the court
22 out of context makes them no less prejudicial. Courts have consist-
23 ently held that a defendant is entitled, either through a new trial
24 or a change of venue, to a jury untainted by such press reports.
25 Marshall v. United States (1959) 360 U.S. 310; United States v.
26 Williams (5th Cir. 1978) 568 F.2d. 464; United States ex rel. Doggett
 v. Yeager (3rd Cir. 1973) 472 F.2d 229 United States v. Engleman
 (E.D. Mo. 1980) 489 F. Supp. 48, 50. See also United States v.
 Herring (5th Cir. 1978) 568 F.2d 1099.

 The defendant is constitutionally entitled to a jury untainted
 by prejudicial press reports. He can have one if this court exer-
 cises its statutory authority to impanel a new jury for the
 special circumstances phase of this trial. See Penal Code Section
 190.4 (c).

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Respectfully submitted,

Dennis P. Richards

DENNIS P. RIORDAN
Attorney for Defendant
Mark Richards

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"It's mostly a bunch of younger
guys," said Jenks.

The Boulevard is jammed and noisy
by 9:30 p.m.

Five of last year's grads from
Petaluma High School are standing in

country
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Traffic seems to be at a peak
meaning virtually no movement

about 11 p.m. Two young girls in a
rented black limousine waited patient

of the 7-11 Sta
prime area for young
and watch the slow-moving p.

This past Friday was a slow
Uniformed officers made one drunk
driving arrest but issued no loitering
citations. However, plain-clothed offi

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Pendragon defense wants judge disqualified

By Erik Ingram

Of the TJ staff

Defense attorneys for a San Anselmo
man convicted of murder in the so-called
Pendragon case have moved to disqualify
Superior Court Judge E. Warren Mc-
Guire from presiding over the "penalty
phase" of the trial.

Attorneys Carl B. Shapiro and Dennis
Riordan, who represent defendant Mark
Richards, assert that the judge showed
bias in comments made after the jury
returned its first-degree murder convic-
tion on Monday.

McGuire rejected their motion Thurs-
day but postponed further proceedings
until next week. The state
Judicial Council
to decide w

step down from the penalty phase of the
case.

Shapiro attacked McGuire's com-
ments that the murder of Richard
Baldwin in July 1982 was planned,
ruthless and done for financial gain.

Shapiro said those issues are to be
decided during the penalty phase, which
will determine if Richards should have
the possibility of parole when he is
sentenced to life in prison.

Deputy District Attorney Edward
Berberian, who prosecuted the case,
responded that the defense attorneys'
challenge was factually weak and
frivolous.

Berberian noted that the judge's
comments were his summary of the
evidence as it related to the jury's guilty
verdict.

They were made in response to the

prosecution's request that Richards be
remanded to jail and held without bail.

Berberian added:
State law requires that a judge give
such specific reasons when revoking bail,
he noted.

"What the court did on April 9 was to
articulate, with specificity, its reasoning
justifying the remanding of Mark Rich-
ards into custody after his conviction.

"The defense cannot by twisted logic
turn the requirements of one body of law
against the court, to fashion a totally
unsupported argument that the court was
biased and prejudiced justifying (disqual-
ification of the judge)."

Evidence in the case showed that
Baldwin, a 36-year-old auto restoration
shop owner and friend of the defendant,
was clubbed and stabbed to death on July
6, 1982.

His body was found floating in San
Pablo Bay a week later.

Testimony and records indicated
Richards had a fantasy, about turning
Marin into a kingdom.

The fantasy was contained in about 12
volumes of manuscripts called Pendra-
gon.

Evidence in the case indicated that
Richards, 31, held weekly meetings at his
home in San Anselmo to discuss the
armed takeover of the county.

The Pendragon aspect of the case was
used by Berberian to show how Richards
manipulated two 17-year-old employees
of his contracting firm into taking part in
the murder.

The penalty phase of the trial is
expected to begin next Tuesday or
Thursday.

Exhibit A

FILED

APR 12 1984

HOWARD HANSON
MARIN COUNTY CLERK
by L. Losselberg, Deputy

L. Losselberg

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

MARK RICHARDS,
Defendant.

No. 8362

AFFIDAVIT IN OPPOSITION
TO SECTION 170(5) CCP
CHALLENGE

I, E. WARREN MC GUIRE, declare as follows:

1. That as a Judge of the Superior Court in the County of Marin I was assigned as the trial judge in this case in March 1983, and commencing March 14, 1983 undertook hearing on numerous pretrial motions filed by the People and the defendant.

2. That following various rulings on said motions and prior to commencement of trial, the same were stayed by the District Court of Appeals on April 15, 1983, following the defendant's petition for writ of prohibition/mandate.

3. Following the ruling on said petition, and on January 11, 1984 I resumed the trial of said action by hearing

[illegible]

1. The first group of people who are not allowed to enter the country are those who are on the "no-fly" list. This list is maintained by the Department of Homeland Security and includes individuals who are suspected of being involved in terrorism or other activities that could threaten national security.

Journal of Management Studies, 19(1), 67-80.

[illegible]

^a The number of subjects who were included in each group was 10.

1. *Journal of the American Medical Association*, 2000; 283: 2686-2692.

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

[illegible]

3. *How do you feel about the way the police handled the situation?*

1 of further pretrial motions of the People and the defendant,
2 including that of the defendant to bifurcate the guilt phase
3 of the trial from the special circumstance phase, based on a
4 declaration of defendant's counsel filed under seal. On
5 January 13, 1984 the Court granted said bifurcation order and
6 ordered that the same jury hear the guilt phase first and there-
7 after, if necessary, to ~~have~~ ^{HEAR} the special circumstances phase.

8 4. On January 17, 1984 jury selection started in the
9 case, and thereafter said case was in trial on the guilt phase
10 until April 9, 1984, when the jury returned verdicts of guilty
11 against the defendant on Count One (First Degree Murder),
12 Count Two (Burglary of the Decedent's Car Shop With the Intent
13 to Commit Murder) and Count Three (Burglary of the Decedent's
14 Residence With the Intent to Commit Murder).

15 5. There is incorporated herein the transcript of the
16 proceedings of April 9, 1984, a copy of which is to be submitted
17 to the judge assigned to hear said disqualification challenge.
18 There is also incorporated herein copies of the transcript of
19 April 11 and 12, 1984, involving chamber conferences among the
20 undersigned and counsel for the parties and the voir dire I
21 conducted of the jurors on April 12, 1984, as agreed to by
22 counsel, and relating to any exposure of the jurors to radio,
23 TV and newspaper reports as to the verdicts and the proceedings
24 on April 9, 1984.

25 6. That I am not biased or prejudiced against the
26 defendant. That defendant can and will receive a fair and im-
27 partial trial before me on the remaining issues to be decided
28 by the jury re special circumstances. As such I have not

[illegible]

1 voluntarily recused myself as orally requested by the defendant
2 on April 10, 1984, do not consent to defendant's Section 170(5)
3 CCP challenge filed April 11, 1984, and oppose the same.

4 7. That the statements alleged by defendant in support
5 of his Section 170(5) CCP challenge as reported in the official
6 transcript of April 9, 1984, as distinguished from the news media
7 reports, were not made by way of any bias or prejudice against
8 the defendant. My statements on April 9, 1984 were made in
9 response to the statements/arguments by counsel for the defen-
10 dant and the People following the People's motion for the
11 defendant's remand to custody following the recording of the
12 guilty verdicts.

13 It was and is my understanding under the case of In re
14 Podesto, 15 C(3) 921, that in ruling on a motion to remand to
15 custody following conviction, I must not only consider the
16 various factors noted in said case, but must make a meaningful
17 record of the facts and reasons for the remand ruling and not
18 to merely state conclusions. All of the statements made by
19 me as well as counsel after the recording of the verdicts on
20 April 9, 1984 were intended to and did direct themselves to the
21 remand motion and the In re Podesto factors and requirements.
22 It was in this vein that in considering the factor of whether
23 or not the defendant was a danger to the community, I made the
24 statements complained of, i.e., why the evidence and the verdicts
25 in this case brought me to the conclusion (as stated) that the
26 defendant was a danger to the community. Said statements were
27 made so that the ruling by the Court on the remand issue could
28 be the subject of adequate review by a higher court, and not by

[illegible][illegible][illegible]

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.2 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 200 million to 350 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

Journal of Management Inquiry, Vol. 17 No. 4, December 2008
DOI: 10.1177/1056492608325411
© The Author(s) 2008

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains. The concentration of the *Agrobacterium* suspension was 10⁶ cells/ml (A), 10⁷ cells/ml (B), 10⁸ cells/ml (C), and 10⁹ cells/ml (D). The concentration of the *Agrobacterium* suspension was 10⁶ cells/ml (A), 10⁷ cells/ml (B), 10⁸ cells/ml (C), and 10⁹ cells/ml (D). The concentration of the *Agrobacterium* suspension was 10⁶ cells/ml (A), 10⁷ cells/ml (B), 10⁸ cells/ml (C), and 10⁹ cells/ml (D).

[illegible]

1 reason of any bias or prejudice against the defendant.

2 This declaration is executed under penalty of perjury
3 in San Rafael, California, on April 12, 1984.
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6 E. WARREN MC GUIRE

7 Judge of the Superior Court
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1. The first part of the report is a general
introduction to the subject.

2. The second part is a description of the

method used in the investigation.

3. The third part is a description of the

results of the investigation.

4. The fourth part is a discussion of the

conclusions of the investigation.

5. The fifth part is a summary of the

work done in the investigation.

6. The sixth part is a list of the

references used in the investigation.

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: April 12, 1984 COURT MET AT 10 AM DEPARTMENT NO. V
 PRESENT: HON. E. Warren Mc Guire, JUDGE Stlaengzi, DEPUTY CLERK
L Miller / L Littlemyre, REPORTER L Filipiak, BAILIFF

TITLE:	COUNSEL:
The People of The State vs Mark Richards	Ed Bersheian, Deputy DA Carl Shapiro (not present) Dennis Riordan

NATURE OF PROCEEDINGS: 2nd Phase of Criminal Jury Trial ACTION NO. 8362
(33rd Day of Trial)

Colloquy in Chambers between Court and Counsel until 10:50 AM when Defendant, his Counsel and The District Attorney present. Juror #1 entered and examined on voir dire and each Juror so examined and admonished; completed at 11:47 AM, Court recessed, To reconvene at 10 AM, April 17, 1984.

The Court admonished and excused The Jury, on The record at 11:50 AM.

MINUTES

No. 1 Civ. _____
(~~Marin County~~ Superior Court
No. 8362)

place in file

8362

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
MARK RICHARDS,)
)
Defendant.)
-----)
PEOPLE OF THE STATE OF CALIFORNIA,)
)
Real Party in Interest.)
_____)

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION
WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES
AND REQUEST FOR STAY OF PROCEEDINGS AFTER DENIAL
OF MOTION TO STRIKE SPECIAL CIRCUMSTANCE ALLEGATIONS

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Attorneys for Defendant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 1 Civ. _____
)	
Plaintiff,	)	(Marin County Superior Court
	)	No. 8362)
vs.)	
)	
MARK RICHARDS,)	
)	
Defendant.)	
-----)	
PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Real Party in Interest.)	
-----)	

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION
WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES
AND REQUEST FOR STAY OF PROCEEDINGS AFTER DENIAL
OF MOTION TO STRIKE SPECIAL CIRCUMSTANCE ALLEGATIONS

TO THE HONORABLE JUSTICES OF THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA, FIRST APPELLATE DISTRICT:

Petitioner, MARK RICHARDS, seeks a Writ of Mandate compelling Respondent Superior Court of the County of Marin to strike three special circumstance allegations from the information filed against him in the above-cited action, a prosecution for murder. Alternatively, petitioner seeks a Writ of Prohibition barring said court from proceeding with defendant's trial until these allegations of special circumstances are struck. Petitioner further requests that an order issue forthwith restraining any

further proceedings in the underlying matter pending this Court's determination of the instant petition.

This petition raises several important questions of law concerning California's statutory scheme of special circumstances, the charging of which renders a defendant liable to the extraordinary penalties of death or life without the possibility of parole. These questions are:

(1) Can Penal Code section 190.2(a)(17)(vii), the special circumstance of a murder committed during a burglary, which plainly requires that a murder occur while the defendant is engaged in a burglary, apply to situation where the burglary alleged as the special circumstance occurred hours after, and miles away from, the site of the alleged murder? The holding of the respondent trial court that spatial and temporal congruity is not required between a murder and a 190.2(a)(17) special circumstance is without precedent, appears to contradict the holding of this Court in Domino v. Superior Court (1982) 129 Cal.App.3d 1000, and could have sweeping consequences on the application of the death penalty in California.

(2) Can the entry of a building with the sole felonious purpose of committing a murder constitute a burglary for the purposes of Penal Code sections 190.2(a)(17)(vii), thus allowing every first degree murder committed indoors to be treated as a capital case?

(3) Can a special circumstance of murder committed

by lying in wait, 190.2(a)(15), be charged where there was no evidence presented at the preliminary hearing that any lying in wait actually occurred prior to, or during the alleged murder?

Petitioner is presently confined in the Marin County Jail. He has waived his right to a speedy trial. If Respondent Court is not stayed, petitioner's trial will commence on Monday, April 18, 1983.

This petition is based upon the following facts and prior proceedings.

I

On or about September 7, 1982 an information was filed in Respondent court charging Mark Richards with murder, robbery and burglary. The information contained four allegations of special circumstances: 1) murder for financial gain, 2) murder while lying in wait, 3) murder during the commission of a robbery and 4) murder during the commission of a burglary. (19012(a)-190.2(b)(2).)

II

On December 13, 1982 the defendant filed motions in the nature of a Motion under Penal Code section 995 to strike the four allegations of special circumstances with which he was charged on the ground they were unsupported by the evidence offered at the preliminary hearing held in Marin County Municipal Court.^{1/} That evidence was as follows.

1. Those motions are included in the Appendix which accompanies the petition as Exhibit A.

On July 14, 1982, Doctor Brazil performed an autopsy on Richard Baldwin who had been found dead in San Francisco Bay wrapped in a plastic tarp which had been tied around his neck and ankles with heavy rope (RT 2)^{2/}. The cause of death was determined to be a skull fracture caused by a blunt instrument and two stab wounds to the heart (RT 2, 7). The stab wounds could have been caused by a knife, chisel, or screwdriver (RT 7).

Andrew Campbell testified that he worked for the defendant in his construction business (RT 67). Approximately three weeks prior to the murder of Baldwin, the defendant discussed with Campbell the possibility of killing Baldwin because Baldwin owed Richards money. These plans got specific around July 1, 1982 (RT 70). Hoover was present at this discussion. The plan was to get both Baldwin's house and shop unlocked and the alarm turned off. One person would stay at Baldwin's house and the other two were to go to Baldwin's shop with him and kill him with a tool at the shop while he was talking to Mark. Mark was to give Hoover a signal when Hoover was supposed to kill Baldwin (RT 71). Campbell testified that he was to get \$2,000 and Hoover \$5,000 for helping Richards. The three of them were going to split Baldwin's property three ways (RT 72).

On Tuesday, July 6th, Campbell worked at Baldwin's

2. RT refers to the Reporter's Transcript of the preliminary hearing, which is included in the Appendix as Exhibit E.

house, while the defendant and Hoover went with Baldwin to his shop. They were gone two hours (RT 76, 77). Upon their return, without Baldwin, the defendant told Campbell they had killed Baldwin and that it was bloody. He proceeded to look through Baldwin's house where he found marijuana, guns, a safe, and small metal box (RT 79). Campbell found \$2,000 cash in the closet and gave it to defendant (RT 79).

Campbell further stated that Richards bought a boat in order to dispose Baldwin's body in the ocean (RT 81).

Campbell continued that Richards, Hoover and he put the boat in the water at Loch Lomond and then proceeded to get the body which was under the Rolls Royce in Baldwin's shop (RT 84).

Under Richards' direction, Campbell and Hoover then proceeded to wrap Baldwin's body in plastic and rolled it out of the garage on a wooden "creeper" (RT 84). They put the body in Richards' truck, put it in the boat, and dumped it in the ocean (RT 88).

The record contains no direct evidence of what transpired at the garage during the period when Baldwin was allegedly killed.

III

On March 14, 1983, the prosecutor filed responses in opposition to the aforementioned motions to strike.

An proposed amended information also was filed on March 14, 1983 adding another substantive count of burglary

and a second allegation of the special circumstances of murder during the commission of a burglary.^{3/} The effect of these amendments was to charge both the entry of Baldwin's house at 18 Venicia Meadows and the entry of his shop at 36 Front Street as burglaries which were both substantive crimes and special circumstances.

IV

Petitioner filed a brief in reply to the state's response and proposed amended information. (See Appendix, Exhibit C.)

V

On April 8, 1983, at a hearing before the Honorable Warren McGuire, Respondent granted Petitioner's motion to strike the alleged special circumstance of robbery, as well as Count II, the substantive charge of robbery. The court did so on the ground that the evidence established there was no taking of property from Baldwin at the time he was allegedly murdered in his Front Street workshop. Respondent then denied Petitioner's motion to dismiss the first alleged special circumstance of financial gain, a ruling Petitioner does not challenge herein.

Respondent also granted the state's motions to amend the complaint. It denied petitioner's motions to strike the burglary special concerning the entry of the house at

3. These documents are included in the attached appendix as Exhibit B.

Venicia Meadows, although the charged murder plainly did not occur during that entry; denied the motion to strike the burglary special concerning the Front Street garage, although there was no evidence of any felonious intent for the entry other than that of murder; and denied the motion to strike the lying in wait special, although there was no evidence in the record concerning how the murder occurred. It is these three rulings petitioner now challenges.^{4/}

VI

Petitioner has no plain, speedy, or adequate remedy other than by this petition. There is no direct appeal from Respondent Court's order denying Petitioner's motion to dismiss allegations of special circumstances. As a result thereof, he will suffer irreparable injury in that he will be compelled to stand trial on allegations of special circumstances which under California law carry an automatic penalty of death or life without the possibility of parole.

VII

If Respondent Court is not stayed, Petitioner's trial will commence Monday, April 18, 1983.

VIII

Petitioner is the real party in interest and the parties who will be affected by this proceeding are the

4. The minute order of the court denying these motions is included in the Appendix as Exhibit D. A transcript of the hearing has been ordered and has been promised for Friday, April 15th.

Respondent Court, and the People of the State of California represented by the District Attorney in and for the County of Marin and the State Attorney General.

IX

WHEREFORE, Petitioner prays:

1. That this Court issue an alternative Writ of Mandate/Prohibition commanding respondent Superior Court either to enter its order dismissing the special circumstance allegations at issue; or to show cause before this Court at a time and place then or thereafter specified by court order why it should not be compelled to take such action; and
2. That this Court issue an immediate stay restraining further proceedings in the above-entitled matter in Respondent Superior Court pending the granting or denial of this Writ of Mandate/Prohibition; and
3. For such other permanent writ, order, process or relief as to the Court may seem just and proper under the circumstances.

DATED: April 11, 1983.

Respectfully submitted,


DENNIS P. RIORDAN

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I

THE BURGLARY SPECIAL CIRCUMSTANCE ALLEGATION CONCERNING THE ENTRY OF BALDWIN'S HOME MUST BE STRUCK BECAUSE THE CHARGED MURDER CONCEDELY DID NOT OCCUR WHILE PETITIONER WAS ENGAGED IN THAT BURGLARY

The amended information contains two burglary special circumstance allegations and two parallel substantive counts of burglary, one for the Front Street garage and one for ~~the~~ Venicia Meadows address.

Under Penal Code section 190.2(a)(17)(vii), a burglary special circumstance requires that a murder occur while the defendant is engaged in the commission or attempted commission of a burglary, which is in turn defined in relevant part by Penal Code section 459 as follows:

"Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, trailer coach . . . with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter 'inhabited' means currently being used for dwelling purposes, whether occupied or not.

These sections reveal the double burglary special circumstance allegation to be utterly non-sensical. The term "while" as used in Penal Code section 190.2(a) has been judicially defined by this Court to mean "during the the time that." Domino v. Superior Court (1982) 129 Cal.

5/
App.3d 1000. Since a burglary special requires that a victim be killed "during the time that" a defendant is entering, or attempting to enter, a closed structure with felonious intent (Domino, supra), there is only one possible locus at which a burglary special can arise in a single victim murder: the place where the victim is killed. A double burglary special circumstance allegation in a single victim case is a legal impossibility.

The prosecution has offered evidence which would support the substantive charge of burglary of Baldwin's Venicia Meadows home alleged in Count IV of the proposed amended information. For example, Campbell testified that after Baldwin was killed, Richards and Hoover returned and the three went through Baldwin's house seeking and removing money and other items of value. But while Count IV may contain a valid substantive burglary charge, it cannot possibly serve as the predicate for a valid special circumstance allegation, since Baldwin obviously was not killed while the defendant was engaged in the commission of that burglary of the Venicia Meadows home, as required by Penal Code section 190.2(a)(17)(vii). Accordingly, any special circumstance allegation concerning the Venicia Meadows address must be struck.

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5. Domino specifically dealt with the meaning of the term "while" as used in Penal Code section 190.2(a)(15), "while" lying in wait.

II

THE FRONT STREET BURGLARY SPECIAL CIRCUMSTANCE ALLEGATION MUST BE DISMISSED, BECAUSE THERE IS ABSOLUTELY NO EVIDENCE IN THE RECORD THAT RICHARDS ENTERED THE GARAGE ON FRONT STREET, WHERE THE MURDER IS ALLEGED TO HAVE OCCURRED, WITH ANY FELONIOUS INTENT OTHER THAN TO COMMIT THE CRIME OF MURDER

Turning to the Front Street burglary allegation, it is clear that there is evidence to support the allegation that the defendant entered the Front Street property with the intention of killing Baldwin. Thus there is evidence to support the substantive count of burglary in the third count of the amended information.

However, a burglary perpetrated for the sole purpose of committing an assault or homicide cannot be used to aggravate the degree of any homicide that results from that burglary. This principle has been firmly established in the context of the felony murder rule.

In People v. Wilson (1970) 1 Cal.3d 431, where the defendant burst into the home of his wife, killed her with a gun, and was charged with felony murder because he made a felonious entry into the house with the intent to commit an assault. Because the intent to commit the assault, which underlay the entry, had the very purpose of the conduct which resulted in death and therefore lacked an independent felonious purpose, the felony murder rule did not apply.

Thus a burglary cannot elevate a second degree murder or a manslaughter to a first degree murder unless it had a purpose other than assaultive or homicidal conduct.

Any other rule would make "indoor" homicides all of the first degree simply because they occur indoors.

A parallel bar applies to the use of a burglary committed to facilitate a murder as a special circumstance in aggravation of that murder. As People v. Green, supra, made clear in the context of a robbery special circumstance allegation, a crime listed in Penal Code section 190.2 cannot serve as a special circumstance if that crime was committed "to facilitate or conceal the primary crime" of murder. 27 Cal.3d at 61. Thus the Front Street burglary during which Baldwin was allegedly killed must have involved a felonious purpose other than Baldwin's murder to constitute a special circumstance in aggravation of that murder.

There is no evidence in this record that Richards or Hoover entered the Front Street garage with any felonious purpose for that entry other than that of killing Baldwin. As Respondent court ruled in striking the robbery special, no property was taken from the garage during the time that the murder was committed nor is there any evidence that Richards or Hoover intended to take anything from the garage "during the time that" Baldwin was killed. Thus Baldwin was not killed while Richards was engaged in a burglary the purpose of which was a felony other than the murder of Baldwin.

Under the state's theory, every murder which takes place indoors would be a murder committed during a burglary and thus within the ambit of California's death penalty law.

Such a theory is subject to the precise objection which led the California Supreme Court to set aside the robbery special circumstance in Green:

"To permit a jury to choose who will live and who will die on the basis of whether in the course of committing a first degree murder the defendant happens to engage in ancillary conduct that technically constitutes robbery or one of the other listed felonies would be to revive 'the risk of wholly arbitrary and capricious action' condemned by the high court plurality in Gregg. (428 U.S. at p. 189 [49 L.Ed.2d at p. 883].)" 27 Cal.3d at 62-63.

The state argued in the Respondent Court that the independent felonious purpose involved here was the intent to later burglarize and steal from the Venicia Street house. But, as demonstrated above, the Baldwin murder was not committed during the Venicia Street burglary as the statute would require. That theory requires rewriting the death penalty statute so as to read that the section 190.(a)(17) specials apply if a defendant commits a murder for the purpose of later committing a rape, robbery, burglary, etc. Yet the plain language of the statute requires that the murder be committed while the defendant is engaged in a crime listed in sub-section (a)(17). This Court has already held, for good reason, that the term "while" in Penal Code section 190.2 must be strictly construed in favor of a capital defendant.^{6/} The radical re-writing of subsection (a)(17) proposed by the state and accepted by the Respondent

6. "[T]o ignore or minimize the importance of the word 'while' would violate the policy of construing penal statutes in favor of the accused . . ." Dominio, supra, 129 Cal.App.3d at 1011.

court is highly improper. Since the record establishes no purpose for the entry into the Front Street garage other than murder, that entry cannot constitute a burglary for the purpose of Penal Code section 190.2(a)(17)(vii).^{7/}

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7. Accepting petitioner's argument will create no "gap" in the state's death penalty law in the sense that a person who murders during a burglary can face the death penalty while one who murders in order to facilitate the commission of a subsequent burglary cannot. In the latter case, the defendant can be charged with the special circumstance of murder for financial gain, as Richards has been, an allegation he does not challenge herein. A favorable ruling for petitioner simply will avoid the blatant overcharging of special circumstances allegations which has occurred in this case.

IV

THE EVIDENCE IS INSUFFICIENT TO SUPPORT A "LYING IN WAIT" SPECIAL CIRCUMSTANCE

The People's response to defendant's motion to dismiss the second charged special circumstance, lying in wait (Pen. Code, § 19012(a)(15)), impliedly concedes a critical fact: there is no direct evidence in the record concerning the manner and means by which Baldwin received his fatal wounds. According to Campbell, Richards said "we did it" when he returned from Baldwin's garage with Hoover. Assuming the truth of this admission, there is no evidence in the record as to whether both Richards and Hoover struck Baldwin, whether he died in a face to face battle with the two, whether Baldwin was told by either Hoover and Richards that he was to die before he was assaulted, etc.

As Justice Traynor stated in People v. Thomas (1953) 41 Cal.2d 470, 480: "Lying in wait requires the elements of waiting, watching, and concealment for the purpose of taking a victim unawares." Additionally, for the purpose of Penal Code section 190.2(a)(15), the murder must occur

"... during the period of concealment and watchful waiting or the lethal acts must begin at and flow continuously from the moment the concealment and watchful waiting ends. If a cognizable interruption separates the period of lying in wait from the period during which the killing takes place, the circumstances calling for the ultimate penalty do not exist." Domino, supra, at 129 Cal.App. 3d 1011 (emphasis added).

It could be that the fatal blow to Baldwin was struck from a concealed position; it could be that it came long after the "lying in wait" ended, if any such "concealment" occurred at all. We do not know because there is no evidence in the record that establishes the manner and the circumstances under which the fatal blows were struck. Without such evidence, the special circumstance allegation of "lying in wait" must be dismissed.

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CONCLUSION

For the reasons stated above, the writ requested should be granted and an immediate stay imposed.

DATED: April 11, 1983.

Respectfully submitted,



DENNIS P. RIORDAN

DPR:mdd

THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,)
)
vs.)
)
JIMMIE RAY WILLIAMS,)
)
Defendant and Appellant.)

CRIM. NO. 21477

**BRIEF OF AMICUS CURIAE
NATIONAL JURY PROJECT
IN SUPPORT OF APPELLANT

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**As amended to include more complete statistics

C. The Customary Courtroom Conditions During Voir Dire Inhibit Jurors from Giving Frank and Open Responses to Questions

Voir dire is essentially an interview situation with all the problems and benefits inherent in obtaining information within that format. Jurors answer questions which are designed to help the Court and the attorneys decide which prospective jurors should become trial jurors and which prospective jurors should be excused. As with any interview situation, the quality of the information obtained is controlled by the conditions under which the interview is conducted, the type of information sought, and the interview subject's perceptions of the end result of the interview. During voir dire, prospective jurors know that they will be included or excluded from the jury based on their answers.

The courtroom is an intimidating place for most prospective jurors. In addition, most people, and therefore most prospective jurors, are uncomfortable speaking in front of large groups which they are asked to do during voir dire in a criminal trial. Moreover, in many voir dire situations, prospective jurors are asked to give opinions on both personal and highly controversial subjects, such as their experience with psychiatric problems in a case involving a psychiatric defense, their experience with violent crime, or their attitudes toward racial minorities.

Extensive empirical research in social psychology has documented the degree to which attitudes and behavior are shaped and influenced by situational conditions.^{8/} That is, the setting in which

8. Eg., Mischel, W. Personality and Assessment (1968); Sarbin, T. Contextualism: A world view for modern psychology. In J. Cole (Ed.) Nebraska Symposium on Motivation. (1976)

one finds oneself determines behavior significantly more than does the individual personality of any person.

In a typical voir dire, jurors answer questions in front of a group of strangers, which include other jurors, attorneys, the judge, courtroom personnel, and spectators. Since the immediate environment is such a powerful influence over what people say and do, this voir dire setting makes jurors highly sensitive to the consequences which they expect their words and actions will bring,^{9/} and perforce inhibits even the most conscientious jurors from responding frankly and openly.

D. Juror Responses during Voir Dire Are Significantly Influenced by What They Believe Courtroom Authority Figures Expect and Wish to Hear

During voir dire, some questions are asked of the prospective jurors by the trial judge. This is significant since psychological studies indicate that respondents avoid contradicting an interviewer or displeasing him or her when the interviewer is perceived as having higher status than the subject. The greater the distance between the social status of the interviewer and that of the respondent, the greater is the probability of obtaining biased answers. In the courtroom, the judge is the most highly respected authority figure and has a far higher status than the potential jurors. Research has established that jurors are acutely aware of subtle cues or indications from judges in the courtroom, and they base a number of important

9. Eg., Collins, B., and Hoyt, M. Personal responsibility for consequences; An integration of the forced compliance literature. 8 Journal Experimental Social Psychology 558-593 (1972)

inferences upon them.^{10/}

This behavior pattern becomes particularly important when the trial judge begins the voir dire process. If the trial judge begins, as is customary, by telling the jury panel that the Court is seeking a "fair and impartial" jury, then the prospective jurors are clued in to the idea that their responses "should" reflect that they are fair and impartial jurors. By contrast, if the judge indicates that the Court seeks open and honest responses, then the prospective jurors will be more likely to respond frankly to questions regardless of whether their responses display impartiality. The same kind of messages can also be transmitted by an attorney to a prospective juror during voir dire.^{11/}

Similarly, problems can arise if, during the voir dire, prospective jurors become aware of specific qualities which the Court is looking for in a juror. If, for example, the Court indicates its desire to empanel jurors who are not prejudiced against minorities, prospective jurors may place an inordinate importance on appearing non-racist. This is because the prospective juror experiences what social psychologists have termed "evaluation apprehension," which is a heightened concern for what respected authority figures think of them.^{12/}

10. Eg., "Judges' Non-verbal Behavior in Jury Trials: A Threat to Judicial Impartiality." 6 Va. L. Rev. 1226 (1975).

11. Eg., O'Mara, J. "The courts, standard jury charges -- Findings of a pilot project." 120 Pennsylvania Bar Journal, 166-175 (1972); O'Barr, W., and Conley, J. "When a juror watches a lawyer." 3 Barrister, 8-11, (1976).

12. Eg., Rosenberg, M. "When dissonance fails: On eliminating evaluation apprehension from attitude measurement," 1 Journal of Personality and Social Psychology 28 (1965).

E. Juror Responses during Voir Dire Are Highly Influenced by the Responses which They Hear Given by Other Prospective Jurors

The expressed attitudes of prospective jurors are greatly affected, and can be modified, by what they learn about the beliefs of other prospective jurors.^{13/} It is not uncommon for jurors to adopt what is called a "social desirability response set."^{14/} That is, jurors will attempt to respond during voir dire in a socially appropriate manner instead of simply being truthful. These behavior patterns encourage prospective jurors to modify their own answers to conform with those which they have heard expressed earlier by other jurors. For example, if eleven prospective jurors state that they have no prejudice against Black people, it is likely that the twelfth juror will give the same response even if it is not true.

The voir dire process is an unfamiliar and uncertain situation for jurors. The courtroom is a highly formal situation in which most people feel uncomfortable. Under conditions of uncertainty and unfamiliarity, people are highly susceptible to "social comparison information" -- indications from other persons about the appropriateness of their behavior, attitudes and feelings.^{15/}

13. Haney, C. "Consensus information and attitude change: Modifying the effects of counter-attitudinal behavior with information about the behavior of others," Journal of Personality and Social Psychology, in press.

14. Marlowe, D., and Crowne, D. "Social desirability and response to perceived situational demands," 25 Journal of Consulting Psychology 109 (1968).

15. Eg., Festinger, L. "A theory of social comparison processes," 7 Human Relations 117 (1954); Schachter, S. The psychology of affiliation (1959).

During voir dire, a potential juror's ability to openly reveal feelings or facts which may greatly influence the decision-making process is seriously inhibited by the prospective juror's need to appear to be as good or as acceptable as other potential jurors. For example, some potential jurors will knowingly cover up their feelings when questioned in a group voir dire situation. Others will unconsciously try to conform as closely as possible to other members of the group, especially with members who appear to be the most "respectable" members of the group.

Socially acceptable responses to voir dire questions are established early in the voir dire process. These responses appear continuously throughout the examination so that less and less useful information and honest information is elicited from the jurors. As the United States Supreme Court has observed:

No doubt each juror was sincere when he said that he would be fair and impartial... but the psychological impact requiring such a declaration before one's fellows is often its father.

Irvin v. Dowd, 366 U.S. 717, 728 (1961). See also Coppedge v. United States, 272 F. 2d 504 (D.C. Cir. 1959).

F. The Subject Matter of Voir Dire Is Often of a Sensitive Nature so as to Preclude or Discourage Open and Honest Answers from Prospective Jurors

In voir dire, prospective jurors are being questioned about delicate personal information, as well as deeply-held attitudes. They are questioned about emotionally loaded and complex legal issues. Many times, jurors are asked their opinions about subjects which they have never examined or even thought about before.

The psychological influences discussed above (Sections D and E., supra) operate in standard group voir dire to mask or distort juror responses on precisely those issues which are of primary importance, such as racial attitudes and the presumption of innocence. Prospective jurors who are concerned about how they will be evaluated by others in the courtroom, or who are answering in a socially desirable fashion in order to obtain the Court's approval, are unlikely to admit to or express racial prejudice or disagreement or lack of understanding of the basic tenets of American justice.

In certain cases, the sensitive nature of the subject matter of voir dire is particularly problematic. For example, in a case involving a psychiatric defense, it may be relevant to inquire about a juror's experiences, if any, with psychiatrists in order to identify those jurors who hold prejudice against the psychiatric profession. The defendant will also have to overcome an overwhelming prejudice on the part of prospective jurors against psychiatric defenses. In one survey, a full 71 percent of prospective jurors polled agreed with the statement, "The plea of insanity is a loophole allowing too many guilty men to go free."^{16/}

16. Bronson, E., "On the Conviction Proneness and Representativeness of the Death Qualified Jury - An Empirical Study of Colorado Veniremen," 42 University of Colorado Law Review 1 (1970). Similarly, a survey of 445 Sonoma County residents eligible for jury service was completed in August of 1980 by the Institute for Applied Policy Research of the Sonoma State University at the request of the National Jury Project. An astonishing 86.3 percent of the respondents answered that they agreed with the statement, "The plea of insanity is a loophole allowing too many guilty people to go free."

Similarly, in a case involving a Black defendant and white witnesses, prospective jurors may be reluctant to reveal their attitudes toward minorities during voir dire. Recent research indicates that there are at least twelve different dimensions according to which whites express their racism.^{17/} One of the most widely accepted ways of measuring racial prejudice, which took ten years to develop, uses 120 different questions to measure racial prejudice.^{18/} The reason the authors found it necessary to use so many questions is that people differ in the way that they verbally express their prejudice. This means, for example, that whites who are against passing laws to assure Black rights are not the same people who say they would not want to socialize with Blacks. Both sets of people may be equally prejudiced but they express it in different ways. This makes it hard to identify racial prejudice in a single question.

Questions, therefore, that allow for the emergence of a pattern of racial beliefs and feelings are necessary to identify race attitudes. A series of questions which range from those to which everyone knows the "right" answer, on to those of more personal meaning, will give a clearer picture of the degree to which a juror can fairly assess the facts presented in a case involving Black and white people.

17. Brigham, Woodmansee & Cook, Dimensions of Verbal Racial Attitudes; Interracial Marriage and Approaches to Equality. Journal of Social Issues, 1976, pp 9-21. Vol. 32, No 2

18. Id. at pp. 9-11.

In any case where prospective jurors must be questioned about personal subjects such as racism or psychiatry and psychiatric defenses, a certain amount of reticence in revealing views and experiences can be expected, particularly if questions are posed in point-blank fashion. Only broad-scoped voir dire will encourage candid, thoughtful responses which will provide a basis for intelligently exercised peremptory and cause challenges.

G. Voir Dire Questions which Are "Leading" or Closed Ended Are Not an Effective Tool for Locating Bias or Prejudice in a Prospective Juror

Voir dire is usually conducted with fixed responses or leading questions. A fixed response question is one in which the answer is limited to a single response, such as yes, no, agree, or disagree. In social science research, such fixed response questions are often asked while eliciting factual information about a particular respondent.

Although leading questions can be useful to obtain factual information about a juror's residence, age or occupation, such questions will not be useful to elicit more substantial attitudes of a prospective juror. Every lawyer and judge knows that leading questions are designed to suggest or control the content of the response elicited. Therefore, leading voir dire questions such as, "Do you know of any racial prejudice which you have toward Palestinian people?" or, "Is there anything about the race or background of the defendants which would prevent you from being fair and impartial?" will inform the prospective juror that the "correct" answer is "no."

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
CLIFFORD C. PORTER, CLERK

DATE: January 2, 1995

Superior Court Administrator
Hanson, Howard Jr.
P O Box E
San Rafael, CA. 94913

RE: PEOPLE OF THE STATE OF CALIF.

vs.

RICHARDS, MARK
A029291 Old No. A022029
Marin County No. 8362

Dear Counsel:

The record on appeal in this case was filed today. The opening brief is due in 30 days (rule 16(a), California Rules of Court). In referring to this appeal, please use the case number shown above.

Very truly yours,

CLIFFORD C. PORTER, Clerk

Deputy Clerk

cc: Respondent's Attorney

350 McAllister Street
State Building, Room 4154
San Francisco, CA 94102
Phone: (415) 557-1695

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

MARK RICHARDS,)	
)	
Petitioner,)	
)	
vs.	)	Marin County
	)	Sup. Ct. No. 8362
)	
THE SUPERIOR COURT OF THE STATE)	
OF CALIFORNIA, IN AND FOR THE)	
COUNTY OF MARIN,)	
)	
Respondent.)	
<hr/>		
THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Real Party in Interest.)	
<hr/>		

OPPOSITION TO PETITION FOR
WRIT OF PROHIBITION/MANDATE

PRELIMINARY STATEMENT

Mark Richards, petitioner, seeks a writ of prohibition/mandate following a hearing on his motions to dismiss pursuant to Penal Code section 995 in Marin County Superior Court.

On August 24 and 25, 1982, a preliminary hearing was held in Marin County Municipal Court and petitioner was held to answer for violations of Penal Code sections 187, 211 and 459 and four special circumstances - killing for financial gain, robbery, burglary, and killing while lying in wait (Petition Exhibit E).

On or about September 7, 1982, an information was filed in Marin County Superior Court. The information, as later amended, charged petitioner with violations of Penal Code sections 187, 211 and 459 (two counts). The information alleged five special circumstances in Count I (murder): (1) murder for financial gain, (2) murder while lying in wait, (3) murder during commission of robbery, (4) murder during commission of burglary and (5) murder during commission of a separate burglary (Petition Exhibit B).

On April 8, 1983, the trial court heard petitioner's motions to dismiss pursuant to Penal Code section 995. The motions were denied except for the robbery count and the special circumstance that the murder was committed during the commission of robbery (Petition Exhibit D).^{1/}

On April 12, 1983, petitioner filed the instant petition, alleging that the trial court improperly denied his motion to dismiss two counts of burglary and the special circumstances that the murder was committed while lying in wait and while committing burglary.

On April 15, 1983, this Court issued its order staying the proceedings in the trial court and requested that real party in interest file points and authorities in opposition to the petition.

1. Real party in interest is informed that the prosecutor has stated in open court that this is not a capital case.

STATEMENT OF FACTS

William Robles worked as a laborer for petitioner in his construction business in Marin County during late 1981 and early 1982 (RT 44-45). On Robles' recommendation petitioner also hired Crossan Hoover and Andrew Campbell (RT 45, 67). During early 1982, petitioner did some construction work for Richard Baldwin which included building a garage in the back yard of Baldwin's residence at 18 Benicia Meadows in San Rafael (RT 15, 46, 68).

During May, 1982, petitioner approached Robles with a plan to kill Baldwin and sell Baldwin's personal property (RT 46-47). Robles told petitioner that he would think about it (RT 47). Robles had purchased a Porsche from petitioner and petitioner offered to pay Robles by forgiving the outstanding debt on the Porsche for killing Baldwin (RT 46). Robles enlisted in the U.S Navy on June 29, 1982 (RT 47). A paycheck from petitioner to Robles bounced on July 7, 1982 (RT 45).

During June, 1982, petitioner discussed the killing of Baldwin with Hoover and Campbell (RT 69-70). These plans got specific around July 1 (RT 70). Petitioner promised Hoover \$5000.00 to assist in the actual killing of Baldwin and \$2000.00 to Campbell to stay around Baldwin's residence while the killing was in progress (RT 72). Campbell was to assure that the burglar alarm was inactive and to look over Baldwin's residence for property to take (RT 71-72). The plan called for petitioner and Hoover to lure Baldwin to

Baldwin's shop, catch him unaware and bludgeon him with a heavy tool available in the shop (RT 71-72). The three men would split the proceeds from the sale of Baldwin's property (RT 73).

On the morning of July 6, 1982, Thomas Mills visited Baldwin at his residence (RT 60). Petitioner, Hoover and Campbell arrived at Baldwin's residence about one-half hour after Mills (RT 61, 72). Hoover and Campbell were to continue work on Baldwin's garage that day (RT 73).

Petitioner, Hoover and Campbell took a lunch break at about 12:30 p.m. (RT 73). The trio discussed the murder of Baldwin again during lunch (RT 73-74). As the three men returned to Baldwin's residence from lunch, Mills was departing (RT 75).

Hoover and Campbell returned to their work while petitioner conversed with Baldwin (RT 76). Baldwin showed the three men some of his cars and shared cookies with them (RT 76). Campbell told Baldwin that Hoover had a special interest in cars and would like to see the cars at Baldwin's shop (RT 76). Campbell also said he would rather stay and work on the garage than look at the cars (RT 76).

Petitioner, Hoover and Baldwin left in petitioner's truck while Campbell remained to work on Baldwin's roof (RT 77). While alone at the house, Campbell looked through Baldwin's belongings (RT 78). Petitioner and Hoover returned in about two hours, without Baldwin (RT 77). Petitioner told Campbell that he didn't want to discuss the murder, that it

was bloody and gross and that he wanted to get as much stuff out of the house as quickly as possible (RT 78). Petitioner sent Hoover and Campbell back to work while he looked over Baldwin's belongings (RT 78). The three men eventually loaded a large safe, a small metal box, a quantity of marijuana, guns and ammunition, a wooden box, and \$2000.00 in cash into petitioner's truck (RT 79).

Later in the evening of July 6, 1982, petitioner, Hoover and Campbell purchased a boat from Bernard Healey (RT 80, 129). The three men towed the boat to Loch Lomond Marina and put it into the water that evening (RT 81, 137).

The trio then returned to Baldwin's shop where Baldwin's bloody body lay inside under an old Rolls Royce (RT 84). Petitioner told Hoover and Campbell to wrap the body in plastic while he gathered weights to sink it in the bay (RT 84). The men used a mechanic's creeper to move the body to petitioner's truck (RT 84). The three men took the body and weights to the Marina and placed the cargo in the boat (RT 85-86, 140). The men took the body in the boat out into the bay and dumped it overboard (RT 86). The cord holding the weights snapped so the men used an extra outboard motor from the boat to sink the body (RT 86-87). The three men then returned to the Marina (RT 88).

On July 14, 1982, Doctor Harold Brazil performed an autopsy on Baldwin's body which had been found floating in San Francisco Bay (RT 2). The cause of death was a fractured skull caused by a blow from a heavy instrument to the

left rear side of the head and two stab wounds to the heart from a knife, chisel or large screwdriver (RT 2, 7).

ARGUMENT

THE TRIAL COURT PROPERLY DENIED PETITIONER'S
MOTIONS TO DISMISS THE SPECIAL CIRCUMSTANCES.

An amended information alleged the robbery of Baldwin and the burglaries of Baldwin's residence at 18 Venicia Meadows and Baldwin's car shop at 36 Front Street in separate counts. The information further alleged the murder of Baldwin and five special circumstances: (1) murder for financial gain within the meaning of Penal Code sections 190.2(a)(1) and 190.2(b), (2) intentional murder while lying in wait within the meaning of Penal Code sections 190.2(a)(15) and 190.2(b), (3) murder during the commission of robbery^{2/} and (4) and (5) murder while committing the two burglaries within the meaning of Penal Code sections 190.2(a)(17)(vii) and 190.2(b). Petitioner contends that the trial court erred by refusing to dismiss special circumstances two, four, and five. For the reasons stated in the district attorney's responses to petitioner's motion and in the remainder of this opposition, we submit that the contentions fail.

In determining petitioner's motion under Penal Code section 995, the superior court was acting as a reviewing

2. The trial court granted petitioner's motion to dismiss the robbery special circumstance and the substantive robbery count at the 995 hearing held on April 8, 1982.

court, and in this petition for writ of mandate/prohibition, this Court is also reviewing the action of the magistrate in holding petitioner to answer. People v. Heard (1968) 266 Cal.App.2d 747, 749-750. This Court must accept all evidence, including all reasonable inferences therefrom, supportive of the magistrate's finding of reasonable cause. People v. Martinez (1970) 3 Cal.App.3d 886, 889. The standard which is applied in weighing the sufficiency of evidence is not whether guilt was proved beyond a reasonable doubt but whether there is substantial evidence in support of the findings of the trier of fact. People v. Redmond (1969) 71 Cal.2d 745, 755; People v. Martin (1973) 9 Cal.3d 687, 695.

The questions on the merits are whether the evidence received by the magistrate is sufficient to support the allegations of special circumstances - murder committed during burglary and murder committed while lying in wait.

A. The Burglaries.

Penal Code section 190.2(17) defines as a special circumstance a murder committed while the defendant was engaged in or was an accomplice in the commission of . . . burglary in the first or second degree in violation of Penal Code section 460. Petitioner does not attack the substantive burglary counts, but argues that the murder of Baldwin did not occur while either charged burglary was in progress. The record belies the claim.

In Domino v. Superior Court (1982) 129 Cal.App.3d 1000, Division Three of this Court analyzed the differences

between the felony-murder statute, Penal Code section 189, and the special circumstances statute. The Domino court held that death or life without possibility of parole may be imposed only if the appropriate temporal relationship exists between the killing and the alleged special circumstance in this case, burglary. Id., at 1011. Expectedly, the interpretation placed upon the Domino reasoning by real party in interest differs significantly from petitioner's. Petitioner argues that the killing must occur during the time that a defendant is entering or attempting to enter a closed structure and the killing must be in that same closed structure. Real party in interest suggests that temporal coincidence is required, but not the strict reading urged by petitioner.

Petitioner's contention is merely that the evidence is insufficient to establish either burglary as a special circumstance because each burglary was completed when entry was made with the necessary intent and the evidence does not show that the killing occurred during the entry at either Baldwin's residence or his shop. It is settled that the entry need not constitute a trespass to support a burglary conviction. People v. Pendleton (1979) 25 Cal.3d 371, 382. To establish commission of a burglary the prosecution need only prove that one entered the premises with the intent to commit theft or a felony, and the crime is complete for that purpose. But this does not dictate the conclusion that the crime is complete for all purposes precluding consideration

of the acts and conduct of the intruder after entry as part of the commission of the crime, or that the crime ends upon entry and cannot continue while he is unlawfully on the premises. People v. Walls (1978) 85 Cal.App.3d 447, 453. In People v. Caudillo (1978) 21 Cal.3d 562, a rape was committed after entry to the apartment. The assumption that the sexual assault had been committed in the course of the commission of a burglary was clear. Viewing the evidence in a light most favorable to sustain the holding of the magistrate, this Court should conclude that petitioner and his confederates entered Baldwin's residence with the intent to commit theft and to kill Baldwin. The intent to kill does not negative the contemporaneous intent to steal. That a person might entertain at the same time both an intent to steal and an intent to kill would appear to be self-evident. People v. Reed (1966) 241 Cal.App.2d 102, 105; People v. Walls, supra, 452.

Petitioner, Hoover and Campbell went to Baldwin's residence, 18 Venicia Meadows, with the dual intent to steal and to kill. The three men then executed a ruse to lure Baldwin to his shop at 36 Front Street. Campbell remained at 18 Venicia Meadows while petitioner and Hoover went with Baldwin to the Front Street location and killed him.

The burglary at 18 Venicia Meadows was in progress while the killing was underway on Front Street. Campbell, one of petitioner's accomplices, inventoried the premises and gave a report to petitioner about the location of

valuable property that he had discovered. The burglary at Venicia Meadows was still in progress so long as Campbell remained there pursuing the intent to steal. The burglary at 18 Venicia Meadows is properly alleged as a special circumstance and the trial court properly denied the motion to dismiss.

Petitioner contends that he had only the intent to kill when he entered the Front Street property so that burglary may not be alleged as a special circumstance. Real party in interest suggests that petitioner's argument fails.

At the time that petitioner and Hoover went to Baldwin's shop the overall plan to kill him and steal his property was in full force. The intent to commit larceny or any felony is not confined to an intent to commit the crime in the building which is entered if the intent at the time entry is to commit the offense in the immediate vicinity of the place entered by defendant; if the entry is made as a means of facilitating the commission of the theft or felony; and if the two places are so closely connected that intent and consummation of the crime would constitute a single and practically continuous transaction. People v. Wright (1962) 206 Cal.App.2d 184, 191; People v. Nance (1972) 25 Cal.App.3d 925, 932.

At the time that petitioner, Hoover and Baldwin entered the Front Street shop, clearly petitioner and Hoover were pursuing the dual intent to kill and to steal. There is no legal requirement that the object of the theft be

located only at Front Street. A murder is not committed during a [robbery or] burglary within the meaning of Penal Code section 190.2(a)(17) unless the accused kills in cold blood in order to advance an independent felonious purpose. People v. Green (1980) 27 Cal.3d 1, 61; People v. Thompson (1980) 27 Cal.3d 303, 322. In the instant case, Baldwin was killed at the Front Street shop, after being lured from his Venicia Meadows residence, in pursuit of the independent felonious intent to steal his property. It is the intent which exists in the mind of the perpetrator at the moment of entry which defines burglary. People v. Hill (1967) 67 Cal.2d 105, 119; People v. Markus (1978) 82 Cal.App.3d 477, 481.

However, the Front Street burglary was committed to facilitate the theft at 18 Venicia Meadows and the two places are sufficiently closely connected that the intent to steal pervaded petitioner's conduct at both the Front Street and Venicia Meadows premises. The two killers proceeded directly back to Venicia Meadows and collected Baldwin's personal property as soon as he was dead. Petitioner's argument that his only intent was to kill when he committed the Front Street burglary is unconvincing in light of the foregoing facts.

Further, the evidence supports the inference that the only reason that nothing was taken from Front Street was that petitioner and Hoover saw nothing of value that was sufficiently portable. The pair was in the shop with

Baldwin long enough to find and use murder weapons and secrete his body. There was also evidence that they intended to search the Front Street premises for property to steal (RT 73). The magistrate properly found burglary as a special circumstance and the trial court properly denied the motion to dismiss.

B. Lying In Wait.

Petitioner contends that there is no direct evidence to support a lying in wait special circumstance. The contention is without merit.

The elements necessary to constitute lying in wait are watching, waiting and concealment from the person killed with the intention of inflicting bodily injury upon such person or of killing such person. People v. Atchley (1959) 53 Cal.2d 160, 175. The killing must take place during the period of concealment and watchful waiting or the lethal acts must begin at and flow continuously from the moment the concealment and watchful waiting ends. Domino v. Superior Court (1982) 129 Cal.App.3d 1000, 1011. Concealment, a necessary element, is only concealment which puts the accused in a position of advantage from which the fact finder can infer that lying in wait was part of the accused's plan to take the victim by surprise. People v. Ward (1972) 27 Cal.App.3d 218, 230-231. Elements may be established by circumstantial evidence and any reasonable inferences drawn from such evidence. People v. Schroeder (1968) 264 Cal.App.2d 217, 226; Russell v. Superior Court

(1970) 12 Cal.App.3d 1114, 1117. It is of no consequences that the evidence inferentially might support facts contrary to those drawn by the magistrate, as the choice between conflicting factual inferences is a matter for resolution by the magistrate and a reviewing court should not disturb the holding if there is competent evidence to support the determination. Russel v. Superior Court, supra, 1118; People v. Crosby (1962) 58 Cal.2d 713, 730.

Real party in interest has extensively set out facts showing that the encounter on July 6, 1982, between Baldwin, petitioner, Hoover and Campbell started off as friendly and by design progressed to a situation of lethal consequences for Baldwin. Petitioner and his accomplices lured Baldwin to his shop without arousing Baldwin's suspicion of their sinister plan. Three men entered Baldwin's shop and only two exited. The fatal injuries to Baldwin included a blow from behind with sufficient force to fracture his skull and two very accurate stab wounds which penetrated his heart. There is sufficient evidence to support the inference that the victim was unaware that he was about to suffer mortal injury. Whether petitioner or Hoover inflicted either or all of the wounds is of no consequence. There is substantial evidence to support the special circumstance that Baldwin was killed while petitioner was lying in wait within the meaning of Penal Code section 190.2(a)(15).


CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for writ of prohibition/mandate be denied and the order staying proceedings in the trial court be dissolved.

DATED: April 27, 1983

JOHN K. VAN DE KAMP, Attorney General
of the State of California

THOMAS A. BRADY
Deputy Attorney General


CHARLES J. JAMES
Deputy Attorney General

Attorneys for Real Party in Interest

CJJ:ht
SF83MW0047
(073259)

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803
(916) 323-7405



December 18, 1984

S. Haenggi
Clerk of the Superior Court
County of Marin
Hall of Justice-Civic Center
San Rafael, CA 94903

RE: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: July 20, 1984

Dear Sir/Madam:

A review of the documents delivered with the above-named inmate indicates the Abstract of Judgment may be in error, or incomplete, for the following reasons:

1. Pursuant to Rules of Court, Section 451, Indeterminate and Determinate Sentences are to be sentenced independently of each other. Therefore, Count 1 should be submitted on the Indeterminate Abstract with a term of Life W/O Parole.
2. Item 1 of the Abstract of Judgment does not indicate the Degree of Burglary (six years corresponds with the upper base term of First Degree Burglary.)
3. The time imposed has been omitted from the Abstract for Count 3.
4. There is a discrepancy between the Abstract of Judgment and Minute Order. The Abstract reflects Life + 6 years. The Minute Order indicates the sentence on Counts 2 and 3 are to be served concurrent.

We request that you review your file to determine if a correction is required. We would appreciate it if you would provide a certified copy of any Minute Order or modified Abstract of Judgment to this Department

*Certified
copy of M.O.
& 2 Abstracts
sent 12/24/84
sh*

S. Haenggi

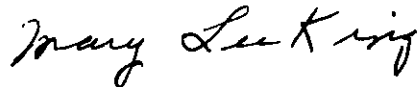
(2)

December 18, 1984

so that our records may reflect the order of the Court. May we also request the attached copy of this letter be returned with your response.

Sincerely,

Marilyn Ouye
Correctional Case Records Manager

A handwritten signature in cursive script that reads "Mary Lee King".

By: Mary Lee King
Correctional Case Records Specialist

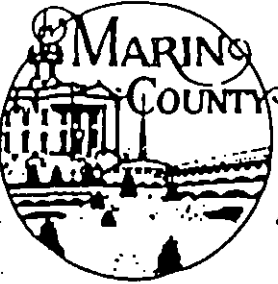
Attachment

cc: C-File

MO/MLK/caw

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P O BOX E

TO: CLERK, DISTRICT COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

ATTORNEY GENERAL'S OFFICE
JOHN VAN DE KAMP
6000 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

DATE: December 20, 1984

RE: PEOPLE OF THE STATE
VS
MARK RICHARDS

#8362

ENCLOSED PLEASE FIND:

- ☐ The Clerk's Transcript on Appeal.
- ☒ The Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of the Clerk's Transcript on Appeal.
- ☐ Your copies of Clerk's and Reporter's Transcripts on Appeal.
- ☐ Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.
- ☐ The Clerk's and Reporter's Transcripts on Appeal are on file in this office for inspection.
- ☐ Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

Very truly yours;

HOWARD HANSON, Marin County Clerk

CC: Copy of Transmittal Letter Only
C. Shapiro, State Public Defender, DA

MAILED 22 VOLUMES

By: *L. P. Shapiro* Deputy

COUNTY CLERK
Telephone
(415) 499 6407

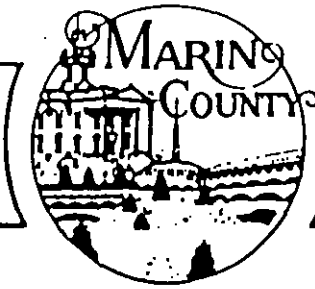
SUPERIOR COURT
Telephone
(415) 499 6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

JURY COMMISSIONER
Telephone
(415) 499 6063

REGISTRAR
Telephone
(415) 499 6436

HOWARD HANSON
COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE
CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P.O. BOX E

TO: STATE PUBLIC DEFENDER
1390 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94102

DATE: NOVEMBER 26, 1984

RE: PEO. vs RICHARDS #8362

JERRY HERMAN, DISTRICT ATTORNEY
HALL OF JUSTICE, ROOM 155
SAN RAFAEL, CALIFORNIA 94903

ENCLOSED PLEASE FIND:



L. SETTLEMYRE'S REPORTER'S TRANSCRIPTS OF 4/12, 4/13, & 4/14, 1983
The Clerk's Transcript on Appeal.



The Clerk's and Reporter's Transcript on Appeal.



Your copy of the Clerk's Transcript on Appeal.



Your copies of Clerk's and Reporter's Transcripts on Appeal.



Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.



The Clerk's and Reporter's Transcripts on Appeal are on file in this office for inspection.



Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

Very truly yours;

HOWARD HANSON, Marin County Clerk

By *J. Pfeiffer*

Deputy

COUNTY CLERK
Telephone
(415) 499-6407

SUPERIOR COURT
Telephone
(415) 499-6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

JURY COMMISSIONER
Telephone
(415) 499-6063

REGISTRAR
Telephone
(415) 499-6456

In the Superior Court of the State of California
in and for the County of _____

Abstract of Judgment

Commitment to State Prison

Dept. No. _____ Case No. _____
The People of the State of California

Present:

Hon. _____
Judge of the Superior Court

Prosecuting Attorney

Counsel for Defendant

vs.

Defendant

This certifies that on the _____ day of _____, 19 _____, judgment of conviction of the above-named defendant was entered as follows:

(1) In Case No. _____ Court No. _____ he was convicted by _____; on his plea of _____
(court or jury)

(guilty, not guilty, former conviction or acquittal, once in jeopardy, not guilty by reason of insanity)

of the crime of _____

(designation of crime and degree if any, including fact that it constitutes a second subsequent conviction of same offense if that affects the sentence.)

in violation of _____

(reference to Code or Statute, including Section and Subsection thereof, if any violated)

with prior felony convictions as follows:

DATE	COUNTY AND STATE	CRIME	DISPOSITION

Defendant has been held in jail custody for _____ days as a result of the same criminal act or acts for which he has been convicted.

Defendant _____ armed with a deadly weapon at the time of his commission of the offense or a concealed deadly weapon at the time of his arrest within the meaning of Sections 969c and 3024 of the Penal Code.
(was or was not)

Defendant _____ armed with a deadly weapon at the time of his commission of the offense within the meaning of Sections 969c and 12022 of the Penal Code.
(was or was not)

Defendant _____ a firearm in his commission of the offense within the meaning of Sections 969d and 12022.5 of the Penal Code.
(used or did not use)

(Repeat foregoing with respect to each count of which defendant was convicted.)

ABSTRACT OF JUDGMENT

(2) Defendant _____ adjudged a habitual criminal within the meaning of Subdivision _____ of Section 644 of the Penal Code; and the defendant _____ a habitual criminal in accordance with Subdivision (c) of that Section.
(was or was not) (is or is not)

(3) IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said defendant be punished by imprisonment in the State Prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the County of _____ and by him delivered to the Director of Corrections of the State of California at _____

It is ordered that sentences shall be served in respect to one another as follows (concurrently or consecutively as to each count):

and in respect to any prior incompleter sentence(s) as follows (concurrently or consecutively as to all incomplete sentences from other jurisdictions):

(4) To the Sheriff of the County of _____ and to the Director of Corrections at the _____

pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director of Corrections at _____ California, at your earliest convenience.

Witness my hand and seal of said court

this _____ day of _____

Clerk,

by _____ Deputy

State of California,

County of _____ } ss.

SEAL

I do hereby certify the foregoing to be a true and correct abstract of judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1213.

Attest my hand and seal of the said Superior Court this _____ day of _____, 19____

County Clerk and Ex-Officio Clerk of the Superior Court of California in and for the County of _____

The Honorable _____

Judge of the Superior Court of the State of California, in and for the County of _____

NOTE: If probation was granted in any sentence of which abstract of judgment is certified, attach a minute order reciting the fact and imposing sentence or ordering a suspended sentence into effect.

PREJUDGMENT CUSTODY RECORD

NAME: Mark Richards CASE NO. 8362OFFENSE: 187 PC DATE OF OFFENSE: 1982

STATE PRISON SENTENCE: _____ COUNTY JAIL SENTENCE: _____

SENTENCE DATE: 7-20-84 - 2 PM JUDGE: Mc GuireTIME SERVED/CREDITS

DATE-IN	DATE-OUT	CREDIT TIME SERVED	GOOD TIME	WORK TIME	ACC. TIME
7-16-82	12-2-83	504	126	126	756
4-9-84	7-20-84	102	25	25	152
		606	151	151	908

REMARKS: J.O. + 1041 7-20-84

B

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
CLIFFORD C. PORTER, CLERK

DATE: September 27, 1984

Office of the County Clerk
Marin County
Hall of Justice Rm. 151
San Rafael, CA. 94903

RE: PEOPLE OF THE STATE OF CALIF.

vs.

RICHARDS, MARK

-A028291 - Old No. A022029

Marin County No. 8362

Dear Clerk:

Notice of appeal was filed in this case on July 20, 1984 and transcripts were required to be filed within 20 days (rule 35(b), California Rules of Court).

This court has authority to extend time for only 60 additional days (Id., Subdivision (d).) This total period of 80 days will expire on October 9, 1984. Thus unless the transcripts are filed by the close of that day, this court will issue an order requiring you to show cause why you should not be declared not competent to act as an official reporter pursuant to the provisions of Government Code section 69944.

Very truly yours,

CLIFFORD C. PORTER, Clerk

Rita Klunson
Deputy Clerk

cc: ~~Smith~~
McGuire/5

350 McAllister Street
State Building, Room 4154
San Francisco, CA 94102
Phone: (415) 557-1896

10/11/84

I HAVE SPOKEN WITH THE LEAD REPORTER ON THE ABOVE-ENTITLED CASE, LEO MILLER, DEPT. 5, AND WAS TOLD THAT HE WILL BE BRINGING IT TO ME FOR FILING IN ABOUT A WEEK.

Cooper, Appeals

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX E

September 12, 1984

Freeman W. Andrews
30 Prospect Avenue
San Anselmo, Ca. 94960

8362

Dear Mr. Andrews:

Regarding your inquiry for the return of a handgun, the case is on appeal and all evidence must be retained until judgment is final.

Sincerely,

HOWARD HANSON
Marin County Clerk

By:

J. Wilkinson
Deputy J. Wilkinson

30 Prospect Ave.
San Anselmo, Ca. 94960
September 5, 1984

Judge E. Warren McGuire
Dept. 5
Superior Court of Marin
Civic Center Drive
San Rafael, California

Dear Sir:

Please find attached a copy of my letter of April 5, 1984,
to which no answer has been received.

Under the assumption that this letter may never have
been delivered through postal misdirection, I am resub-
mitting my request for the return of my property.

Sincerely yours,



FREEMAN W. ANDREWS

1950

1950

1950

1950

1950

7

30 Prospect Ave.
San Anselmo, Ca. 94960
April 5, 1984

Judge E. Warren McGuire

Dept. 5

Superior Court of Marin

Civic Center Drive

San Rafael, California

Dear Sir:

The San Rafael Police Department has advised me that during their collection of evidence in the "Pendragon Case", currently being tried in your court, that they uncovered a handgun, specifically a Colt 357 Python, registered to me.

This weapon was in the possession of Mr. Mark Richards as a down payment for an automobile to be purchased by my eldest son, Craig Andrews, a transaction that was never consummated, nor was the weapon ever returned. At the discretion of the court, I hereby request the return of this weapon as soon as possible.

Sincerely yours,

Freeman W. Andrews

FILED

JUL 20 1984

HOWARD HANSON
MARIN COUNTY CLERK
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MARK RICHARDS,)

Defendant.)

NO. 8362

NOTICE OF APPEAL AND
REQUEST FOR APPOINTMENT
OF COUNSEL

Defendant MARK RICHARDS hereby appeals from the judgment of conviction and sentence entered in the above-cited case on July 20, 1984.

Defendant Richards is an indigent and requests appointment of counsel on appeal. Because this case involves a trial of great length and complexity, he further requests that the Office of the State Public Defender be appointed to represent him on appeal.

DATED: 7/20/84

cc: Howard Hanson
D.A.

MARK RICHARDS
In Propria Persona

8362

501 Marina Boulevard
San Francisco, Calif. 94123
June 16, 1984.

Dear Judge McGuire:

As you no doubt know, I have been a good friend of Mark Richards for nearly ten years and still am so. I imagine that you know that he stayed at my home during about half of the time that he was free on bail. This has kept me from writing to you before now since you might feel that I am too close to Mark and his family to have an unprejudiced opinion. However now things have reached such a pass that I cannot keep from addressing you in behalf of some mitigation of his sentence.

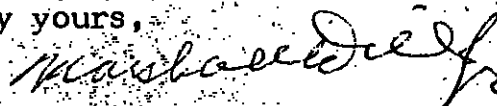
For about eight years Mark, at first alone, and later with his wife, looked after my home while I was away on fairly extended summer vacation trips. That in itself argues a degree of confidence not easily reposed in a much younger stranger. In all those years nothing was missing and indeed Mark effected improvements, such as, for example, insulation, for which he took no money except for the actual materials he used.

Earlier in our friendship, I advanced some money to him to help him in one of his efforts to assure himself a suitable livelihood. I knew he could not repay me right away, but after a time he started to make regular partial repayments. Not long after, he was engaged to be married, and I forgave him the rest of the debt as an engagement and wedding gift. These are only two examples of his constant behavior towards me.

This, then, is the Mark I have known: kindly, friendly, helpful, honest, far from the malignant criminal that he was portrayed during his trial.

I shall hope and keep praying that you will find it possible in some way to mitigate his sentence.

Sincerely yours,



Marshall Dill Jr.
Professor of history, Emeritus
Dominican College
San Rafael, California.

The following information was obtained from the records of the [redacted] Department of the Interior, Bureau of Land Management, regarding the [redacted] land grant.

[The remainder of the page contains extremely faint, illegible text.]

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem and then determine the scope of the study. The next step is to design the study. This involves determining the methods to be used and the data to be collected. The third step is to collect the data. This is done by the investigator who is responsible for the study. The fourth step is to analyze the data. This is done by the investigator who is responsible for the study. The fifth step is to interpret the results. This is done by the investigator who is responsible for the study. The sixth step is to write the report. This is done by the investigator who is responsible for the study. The seventh step is to present the results. This is done by the investigator who is responsible for the study. The eighth step is to discuss the results. This is done by the investigator who is responsible for the study. The ninth step is to conclude the study. This is done by the investigator who is responsible for the study. The tenth step is to publish the results. This is done by the investigator who is responsible for the study.

5/31/84

DENNIS P. RIORDAN
RIORDAN & ROSENTHAL
ATTORNEYS AT LAW
523 OCTAVIA STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 431-3472

CARL B. SHAPIRO, ESQ.
404 San Anselmo Avenue
San Anselmo, CA 94960
(415) 453-7611

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,	)	NO. 8362
)	
vs.	)	NOTICE OF MOTION FOR NEW
	)	<u>TRIAL, AND TO STRIKE SPECIAL</u>
MARK RICHARDS,	)	<u>CIRCUMSTANCE FINDINGS</u>
)	
Defendant.)	

TO: THE PEOPLE OF THE STATE OF CALIFORNIA AND TO THE
DISTRICT ATTORNEY OF THE COUNTY OF MARIN:

PLEASE TAKE NOTICE that on Wednesday, June 13, 1984
at the hour of 1:30 p.m., or as soon thereafter as the matter
may be heard, in the above-entitled court, defendant Mark Richards
will move under Penal Code sections 1181 and 1385 for a new trial
on the substantive charges of burglary and murder in this case,
of which he was convicted on April 9, 1984, and for a new trial
on the special circumstance allegations, or dismissal of the
special circumstance findings returned on April 24, 1982.

523 OCTAVIA STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 431-3472

1 This motion is based on this pleading, the records
2 and transcripts in this case, the accompanying memoranda, and
3 the evidence and argument that will be presented during the hear-
4 ing on these motions.

5 DATED: May 29, 1984

6 Respectfully submitted,

7 CARL B. SHAPIRO
8 SHAPIRO & SHAPIRO

9 DENNIS P. RIORDAN
10 RIORDAN & ROSENTHAL

11 By Dennis P. Riordan
12 DENNIS P. RIORDAN

13 Attorneys for Defendant
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

The People of the State of California,

Plaintiff,

vs

Mark E. Linder

Defendant.

Charge

d1 187PC
III 459K 1.10

Case No.

8362

ORDER REGARDING THE CUSTODY OF PRISONER

TO THE SHERIFF OF MARIN COUNTY:

Unless being held on other charges or other process of law, this is to
command you to ~~release~~ ~~from~~ ~~custody~~ ~~confine~~ the above named defendant
in the above cause as hereinafter directed:

Take Prisoner into custody and hold him
until he is
(removed to the state prison.)

Dated 7-20-84

Judge of the Superior Court

ORIG. REC'D ON

7-20-84
By Bill P. [Signature]
Sheriff's Office

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

7/23/84

THE PEOPLE OF THE STATE OF CALIFORNIA

vs

No. 8362

MARK RICHARDS

I, Director of Corrections of the CALIFORNIA STATE MEDICAL
FACILITY, VACAVILLE, CALIFORNIA, hereby acknowledge receipt of the
following certified documents in the above entitled matter;

ABSTRACT OF JUDGMENT
INFORMATION
PRE-SENTENCE REPORT
MO. OF 7/20/84

Dated: _____

Director of Corrections

I certify that I delivered _____ into the custody
of the Reception Guidance Center, California State Medical Facility,
Vacaville, Ca.

Dated: _____

Deputy Sheriff
County of Marin

TO TRANS
Delivered 7-23-84

Superior Court of California



E. WARREN MCGUIRE
JUDGE

DEPARTMENT NO. 5

MARIN COUNTY HALL OF JUSTICE
SAN RAFAEL, CALIFORNIA 94903
TELEPHONE 479-1100

April 13, 1984

Hon. Robert A. O'Farrell
Judge of the Superior Court
240 Church Street
Salinas, California

Re: PEOPLE vs MARK RICHARDS
Superior Court (Marin County)
No. 8362

Dear Judge

It is my understanding that you have been assigned to hear the 170(5) CCP challenge filed in this case. Counsel have agreed that there will be no oral arguments, and that copies of the following documents be forwarded to you in considering said challenge:

1. Amended information filed January 12, 1982;
2. Defendant's motion to bifurcate the special circumstance phase of the trial from the guilt phase, which was granted as noted in paragraph 3 of my affidavit;
3. Defendant's declaration under seal re bifurcation motion;
4. Affidavit and memorandum on behalf of defendant's Section 170(5) CCP challenge, filed April 11, 1984;
5. People's memorandum in opposition to challenge, which memorandum was filed on April 11, 1984;
6. People's supplemental memorandum filed April 12, 1984 re Section 170(5) CCP challenge;
7. My affidavit filed April 12, 1984 in opposition to the Section 170(5) CCP challenge;
8. Transcript covering proceedings on April 9, 11 and 12, 1984 re conferences in chambers in regard to the challenge, and voir dire of the

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Hon.

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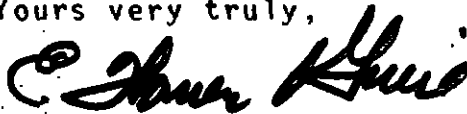
jury.

I am aware of the recent amendment to Section 170(5) CCP allowing trial to continue pending resolution of the challenge, but as a matter of precaution have recessed the jury until April 17, 1984 with hope that an early resolution of the challenge will be accomplished.

We are hand delivering these documents to you to expedite the matter. If the ruling has not been made by 10:00 o'clock a.m. on April 17, 1984, we will recess again until 10:00 o'clock a.m. on April 19, 1984. I would appreciate it if you could notify our Court Administrator -- County Clerk (Howard Hanson or his assistant, Lynn Coleman, (415) 499-6416 or 6413) by phone of your ruling so we will not have to wait receipt in the mail of the order.

We truly appreciate your assistance and courtesy in this matter.

Yours very truly,



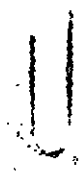
E. WARREN MC GUIRE

Judge of the Superior Court

cc: Edward Berberian, Esq. (Attorney for the People)
Carl Shapiro, Esq. (Attorney for Defendant)
Hon. Howard Hanson (County Clerk)
Reva Littman (Calendar Clerk)

encls.

EWM:lem



[The text in this section is extremely faint and illegible due to heavy noise and low contrast. It appears to be several lines of a letter or document.]

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX 1

TO: State Public Defender
1390 Market Street, Suite 425
San Francisco, California 94102

DATE: November 15, 1984

RE: Peo. vs Richards #8362

Jerry Herman, District Attorney
Room 155, Hall of Justice
San Rafael, California 94903

RECEIVED this _____ day

of 11/16/84

[Signature]

ENCLOSED PLEASE FIND:

- ☐ The Clerk's Transcript on Appeal.
- ☒ The Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of the Clerk's Transcript on Appeal.
- ☐ Your copies of Clerk's and Reporter's Transcripts on Appeal.
- ☐ Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.
- ☐ The Clerk's and Reporter's Transcripts on Appeal are on file in this office for inspection.
- ☒ Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

Very truly yours;

HOWARD HANSON, Marin County Clerk

CC: Copy of Transmittal Letter only
C. Shapiro

By

[Signature]

Deputy

MAILED 21 VOLUMES

COUNTY CLERK
Telephone
(415) 499-6407

SUPERIOR COURT
Telephone
(415) 499-6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

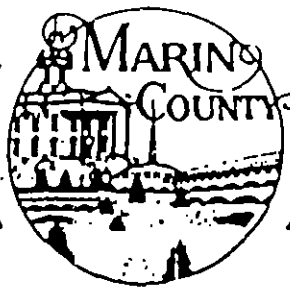
JURY COMMISSIONER
Telephone
(415) 499-6063

REGISTRAR
Telephone
(415) 499-6456

sent u PS 11/16/84

HOWARD HANSON

COUNTY CLERK - REGISTRAR OF VOTERS
COURT ADMINISTRATOR - JURY COMMISSIONER



HALL OF JUSTICE

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HOWARD HANSON, Marin County Clerk

CC: Copy of Transmittal Letter only
C. Shapiro

By *L. Pfeiffer* Deputy

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

FILED

JUL 27 1984

HOWARD HANSON
MARIN COUNTY CLERK

BY J. Castaneda
DEPUTY

7/23/84

THE PEOPLE OF THE STATE OF CALIFORNIA

VS

MARK RICHARDS

No. 8362

I, Director of Corrections of the CALIFORNIA STATE MEDICAL FACILITY, VACAVILLE, CALIFORNIA, hereby acknowledge receipt of the following certified documents in the above entitled matter:

ABSTRACT OF JUDGMENT
INFORMATION
PRE-SENTENCE REPORT
MO. OF 7/20/84

CALIF. MEDICAL FACILITY
VACAVILLE, CA. 95696/2000
JUL 24 A 10:40

Dated: 7-24-84

Director of Corrections

I certify that I delivered Mark Richards into the custody of the Reception Guidance Center, California State Medical Facility,

Vacaville, Ca.

Dated: 7-24-84

For Sheriff
Deputy Sheriff
County of Marin

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIN
10 BEFORE THE HONORABLE WARREN E. MC GUIRE, JUDGE
11 DEPARTMENT 5
12

13
14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 MARK RICHARDS,

19 Defendant.
20

NOS. 8362
(8401)

21
22 FRIDAY, APRIL 8, 1983
23 2:00 P.M. O'CLOCK
24

25 APPEARANCES:

26 CARL SHAPIRO, Esq.

27 DENNIS RIORDAN, Esq.

28 EDWARD TORRICO, Esq.

EDWARD BEEBERIAN, Esq.

1 FRIDAY, APRIL 8, 1983

2:00 O'CLOCK P.M.

2 ---o0o---

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, granted the discription 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 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.

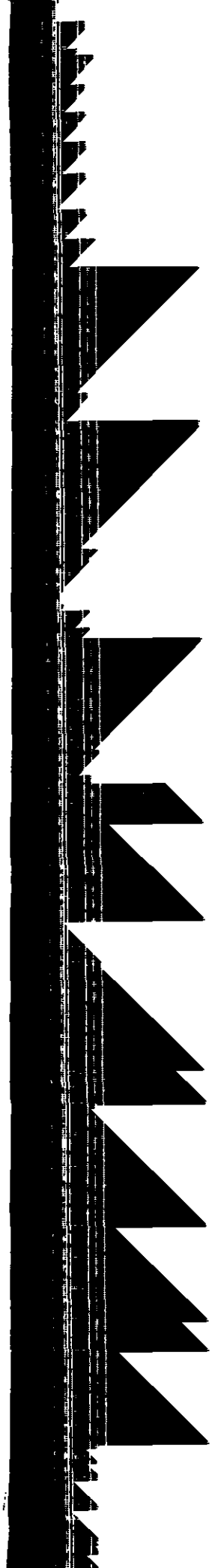
19 This does not. First that the statute really
20 doesn't state what is meant by "for Gain..."

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 parties in this transaction was to take the property and
2 possessions of Richard Baldwin and these were plans that
3 had been formed before the murder.

4 The murder was going to be the means that this was
5 going to be accomplished in their view, and with the
6 least difficulty.

7 In one of the cases, I think even the Green case,
8 they cite a hypothetical about a situation where you have
9 a cold-blooded killing for the purpose of robbery and
10 that type of a thing...and that's exactly what we have here.

11 The question I see is: whether or not the item
12 viewed that was taken was in the immediate presence of the
13 victim.

14 I believe that it was. I believe it was in the
15 transaction of the murder itself. I don't believe there
16 was a sufficient disruption in that transaction to say
17 that it was not taken from his immediate presence.

18 But, I think the record shows that this item,
19 this Creeper, this dolly, was in the garage itself. In
20 the garage itself. In the workshop.

21 And, it was taken from there where the body was
22 located. It wasn't stocks that they removed from another
23 location, another address. It was taken there. Right
24 there.

25 What I believe is the immediate presence of the
26 deceased.

27 THE COURT: Mr. Riordan. You want to address the
28 matter of the Attempted Robbery?

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 thknk 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 they
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 a 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 desmiss 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?

Richards or Hoover?

MR. BERBERIAN: I think we're at a point where we're speculating at this point as to what is going to happen.

I think we should reserve the motions on consolidation and the other motions that are set for next Tuesday and we can take these things up.

THE COURT: Well, my initial reaction, frankly, would be the one who's charged with Special Circumstances would go first, but I don't know. I suspect that will be the lengthier trial if it's not consolidated.

If it is consolidated, not going to make any difference.

Well, all right. I'll just give the Jury Commissioner my best guess and go from there.

MR. SHAPIRO: Eight to ten weeks...I think we figured.

THE COURT: On the consolidation or non-consolidation basis, seems to me it may not make that much difference from the main case, which is the Richards case, I mean, from a time standpoint. Your estimate -- all right. I'll do the best I can with whatever I have got. Okay.

(Whereupon, these proceedings were concluded.)

---oOo---

1 STATE OF CALIFORNIA)
2 COUNTY OF MARIN)

ss.

3
4 I, CLAUDINE WOEBER, do hereby certify that I
5 am a Certified Shorthand Reporter and as such I am an
6 Official Reporter for the Superior Court, State of
7 California, County of Marin and was present at the above
8 proceedings on FRIDAY, APRIL 8, 1983, before the Honorable
9 Warren McGuire, Judge of the Superior Court and that as
10 such:

11 I took down in shorthand writing all of the
12 proceedings in the aforementioned court and cause, THE
13 PEOPLE OF THE STATE OF CALIFORNIA VS. MARK RICHARDS, et al.,
14 and thereafter transcribed in the following, enclosed pages in
15 typewritten form, and;

16 the following pages constitute a true, accurate
17 and complete transcription of said proceedings.

18 DATED: April 14 1983.

19
20
21 *Claudine Woerber*

CLAUDINE WOEBER, CSR #4094

jc

D. PROCEEDINGS SUSPENDED	DATE	<input type="radio"/> BW <input type="radio"/> APPEAL <input type="radio"/> 1000 PC	<input type="radio"/> CRC 3050 WIC <input type="radio"/> CRC 3051 WIC <input type="radio"/> NON-STAT DIVERSION	<input type="radio"/> 1203.03 PC <input type="radio"/> MISTRIAL <input type="radio"/> OTHER	<input type="radio"/> 1370 PC <input type="radio"/> 1026 PC <input type="radio"/> MDSO	<input type="radio"/> ST. HOSP. <input type="radio"/> CO. MENTAL	
	E. REOPEN OR RETRIAL AFTER	DATE	<input type="radio"/> BW <input type="radio"/> APPEAL <input type="radio"/> 1000 PC	<input type="radio"/> CRC <input type="radio"/> 1170 PC <input type="radio"/> NON-STAT DIVERSION	<input type="radio"/> 1203.03 PC <input type="radio"/> MISTRIAL <input type="radio"/> HUNG JURY	<input type="radio"/> 1370 PC <input type="radio"/> 1026 PC <input type="radio"/> MDSO	<input type="radio"/> CYA <input type="radio"/> JUV CRT <input type="radio"/> LOWER CRT <input type="radio"/> OTHER
		F. SUBSEQUENT ACTION	DATE	PROBATION	<input type="radio"/> VIOLATED <input type="radio"/> 1203.9 PC MODIFIED TO: _____ MOS. _____ DS JAIL _____ FINE	<input type="radio"/> REVOKED <input type="radio"/> 1203.3 PC	<input type="radio"/> REINSTATED <input type="radio"/> EXPIRED
DATE	CONVICTION SET ASIDE/REDUCED/DISMISSED		<input type="radio"/> 1203.4 PC <input type="radio"/> 3200 WIC	<input type="radio"/> 1203.4a PC <input type="radio"/> REDUCED 17 PC	<input type="radio"/> 1772 WIC <input type="radio"/> OTHER		
DATE	RECORD SEALED		<input type="radio"/> 851.7 PC <input type="radio"/> 389 WIC	<input type="radio"/> 851.8 PC <input type="radio"/> 781 WIC	<input type="radio"/> 1203.45 PC <input type="radio"/> OTHER		

PTE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 3

FILED

MAY 13 1988

Court of Appeal - First App. Dist.
RON D. BARROW

By _____ DEPUTY

PEOPLE OF THE STATE OF CALIF.
vs.
RICHARDS, MARK
A028291 Old No. A022029
Marin County No. 8362

BY THE COURT:

The request for publication of the opinion filed
is denied.

Dated: _____

MAY 13 1988

WHITE, P. J.

P. J.

COUNTY CLERK

P1/F

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

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WHITE, P. J. P. J.

**NOT TO BE PUBLISHED
IN OFFICIAL REPORTS**

PIF

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COUNTY CLERK

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

FILED

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

MARK RICHARDS,

Defendant and Appellant.

APR 28 1988

Court of Appeal - First App. Dist.
JOHN D. BARNOW

By _____
AO28291 DEPUTY

(Super. Ct. No.
8362, Marin
County)

Appellant Mark Richards was convicted of first degree murder and two counts of burglary. The jury also found true one special circumstance allegation of murder for financial gain (Pen. Code, §§ 190.2, subd. (a)(1); 190.2, subd. (b)) and two special circumstance allegations of murder in the commission of burglary (§§ 190.2, subd. (a)(17)(vii); 190.2, subd. (b).) Appellant was sentenced to life in prison without the possibility of parole. We affirm the judgment.

Appellant operated an apparently unsuccessful contracting business. One of his creditors was the victim, Baldwin. Appellant enlisted two youths, Campbell and Hoover, to help him kill Baldwin. Appellant and Hoover killed Baldwin on July 6, 1982. They entered the victim's garage and Hoover hit Baldwin on the head with a baseball bat. Appellant, Hoover and Campbell purchased a boat with money stolen from the victim's house, and dumped the body in the San Pablo Bay. The body was discovered six days later, and appellant was arrested

shortly thereafter. Campbell provided details of the plan in his testimony at trial, given under a grant of immunity.

I. Pendragon Evidence

Appellant first contends he was prejudiced by references to his association with "Pendragon" and "Imperial Marin." This testimony established that appellant held regular meetings to discuss the takeover of Marin County. Hoover and other young men attended these meetings. The plan involved destroying incoming bridges into the county, using guns and laser beams to take control of the county, seceding from the United States, and giving the participants control of portions of the county. (See People v. Hoover (1986) 187 Cal.App.3d 1074, 1077-1078.)

The evidence was admitted to show how appellant "manipulated Hoover into the position where he would kill Richard Baldwin", that Hoover was "a young man easily preconditioned by someone putting forth a strong male leadership model", why Hoover was willing to participate in the crime and appellant's ability to manipulate and control Hoover's behavior.

The jury was instructed to consider the evidence "solely to the extent that it tends to establish the nature of the relationship between the defendant on the one hand and Andrew Campbell and Crossin Hoover on the other. [¶] You are not called upon to decide whether any aspect of the Pendragon

activity was illegal, or should you assume that it was.

[¶] The defendant is not accused of plotting the overthrow of Marin County, but of the crimes of murder and burglary."

Appellant first contends that the evidence failed to establish a connection between appellant and Hoover; therefore, introducing the evidence violated Evidence Code section 403, subdivision (a)(1). This section provides that where the relevance of the proffered evidence (the Pendragon evidence) depends on the existence of the preliminary fact (appellant and Hoover's relationship), the proffered evidence is inadmissible unless the court finds sufficient evidence to show the existence of the preliminary fact. Since the preliminary fact was not established, the evidence showed only appellant's bad character.

Appellant's contention was not preserved for appeal because no motion to exclude the evidence was made on this ground. (Evid. Code, § 353; People v. Rogers (1978) 21 Cal.3d 542, 548.) This failure deprived the court of the opportunity to strike the testimony if it determined the preliminary fact was not established.

Appellant did, however, move to exclude the evidence on the ground it was cumulative and prejudicial. He renewed the contention of prejudice in his motion for a new trial. He argued in these motions that the nature of the evidence was prejudicial and shed no additional light on why Campbell and Hoover participated in Baldwin's murder. He was willing to stipulate that he had an association with Hoover as Hoover's

employer. Both motions were denied. We therefore analyze appellant's contention as a renewal of this contention.

The Pendragon evidence essentially constituted evidence of an uncharged crime, namely, conspiracy to overthrow Marin County. The admission of evidence of uncharged crimes lies within the sound discretion of the trial court. (People v. Yu (1983) 143 Cal.App.3d 358, 376 [evidence that defendant ordered killing admissible to show leadership in gang and planning of charged killing].) We find no abuse of discretion here.

Evidence Code section 1101, subdivision (b), permits admission of evidence that a person committed a crime when relevant to prove some fact such as preparation and planning. Here the evidence was relevant to show that appellant had the ability to and did persuade Hoover to kill Baldwin. The evidence that appellant was the leader of the Pendragon plan and that Hoover attended Pendragon meetings was relevant because it tended to show that appellant was a man of ideas, willing to take bold action to correct perceived problems, and that Hoover was a follower rather than a leader. It showed that appellant intended to use people as instruments of his own designs, and that therefore Hoover killed Baldwin at appellant's command. It also showed that appellant was a persuasive person, as attested by Campbell's testimony that people took appellant's plan seriously and by the evidence that those who attended the meetings continued to attend.

In addition, the evidence tended to show that if appellant tried to convince people, apparently successfully, that Marin county could be taken over and its would-be conquerors rewarded with power, he could successfully convince Hoover to believe that killing Baldwin would help appellant solve his financial problems and that Hoover could benefit financially as well.

As the trial court remarked in ruling on appellant's motion for a new trial: "[The Pendragon evidence] was extremely relevant to show the how and extent of Mr. Richard's powers and ability to manipulate and to control, and even direct the minors and the young adults no matter how bizarre this scheme may be, whether the scheme is to take over Marin by laser beam or to kill a close friend for money."

We agree with appellant that some of the Pendragon evidence went beyond the purpose for which it was admitted, such as the reference attributed to appellant about excluding blacks in the new form of government and statements alluding to appellant's delusions of grandeur. We believe, however, that appellant overestimates the extent of prejudice caused by these references. In view of the tangential nature of this evidence, the limiting instruction, and the strong evidence of guilt, any error in admitting the evidence did not result in a miscarriage of justice. (Evid. Code, § 353, subd. (b); People v. Watson (1956) 46 Cal.2d 818, 836.)

Appellant also correctly notes that the limiting instruction stated that the Pendragon evidence could be used to

show a relationship between appellant and Campbell even though Campbell testified he did not discuss Pendragon with appellant until after the murder. However, this error was cured by the instruction which told the jury to disregard instructions which applied to facts that did not exist.

II. Change of Venue

Appellant contests the court's denial of his change of venue motion. He argues there was no reasonable likelihood he could get a fair trial in Marin County given 1) the pretrial publicity, 2) Marin County residents were the targets of the Pendragon plot, and 3) appellant was charged with a capital offense.

The pretrial publicity consisted mainly of articles in the Independent Journal, a local Marin County newspaper.^{1/} The record contains about fifteen such articles, two of them main stories with headlines that read "Bizarre Plot for Marin Coup" and "Visions of a Kingdom?" These articles, appearing about the time of appellant's arrest, implied that appellant had committed the murder. They discussed details of the crime and speculated on its possible motive. There was also a lengthy article about appellant and Pendragon in the California Magazine in January 1983 and a half column piece in Newsweek magazine dated August 2, 1982.

^{1/} Appellant stated this newspaper's circulation was around 50,000 and that there were 5 readers for every subscriber; however, there was no documentation to this effect.

In ruling against the motion, the court decided that any prejudice owing to the publicity could be determined during voir dire. Questionnaires were distributed to the jury panel members to test for exposure to the publicity about Pendragon and the charges. Most of the jurors and alternates selected said they were not questioned about Pendragon; of the three that had some recollection, none was able to recall and details about Pendragon or the crime.

A change of venue motion should be granted when, because potentially prejudicial material has been disseminated, "'there is a reasonable likelihood that in the absence of such relief, a fair trial cannot be had.'" (Maine v. Superior Court (1968) 68 Cal.2d 375, 383-384.) If the defendant seeks post-trial review of a change of venue motion, "he cannot complain if inferences of possible prejudice have been refuted by the 'actualities of voir dire and of trial.'" (People v. Jacula (1978) 77 Cal.App.3d 878, 887.) Defendant bears the burden to show he did not receive a fair trial. (Ibid.)

In this case, the voir dire established that the publicity had not been so extensive or its impact long-lasting such that fair and impartial jurors could not be selected. This case is similar to People v. Preston (1973) 9 Cal.3d 308, where the court stated: "The jurors that were seated stated that they had either never heard of [the publicity], had heard of it but formed no opinion, or they had formed an opinion which they no longer held. . . . Each juror affirmed that he knew of no reason why he could not be fair and impartial. Such

statements must be presumed to be true. [Citation.]" (Id., at pp. 312-313, fn. omitted.) Further, appellant's exercise of only 9 of his 26 peremptory challenges indicates the jurors selected could be fair. (See People v. Balderas (1985) 41 Cal.3d 144, 181.)

In addition, the factors relevant to a change of venue motion -- the nature and gravity of the offense, the nature and extent of the news coverage, the size of the community and defendant's and the victim's status in the community (Martinez v. Superior Court (1981) 29 Cal.3d 574, 578) -- indicate no change of venue was required. The nature of the news coverage was not particularly inflammatory or sensational. The number of articles was not large and most of them were confined to the period coinciding with appellant's arrest. Additionally, Marin County is not a small town, where publicity is "likely to be embedded in the public consciousness with greater effect and for a longer time." (Id., at p. 581.) Even in 1968, "Marin County was not a small rural community. . . . [It then ranked] 18th of California's 58 counties in population, and adjoins a large metropolitan area." (People v. Sommerhalder (1973) 9 Cal.3d 290, 304.) Furthermore, neither appellant nor the victim were particularly well-known in the community.

Appellant's argument that a venue change was required because Marin county residents were the potential victims of Pendragon rests on the faulty assumption that such residents actually felt threatened by the plan. Even by appellant's estimate, a takeover of the county was not imminent. The cases

cited by appellant are distinguishable. In Fain v. Superior Court (1970) 2 Cal.3d 46, 53, defendant's escape weighed in favor of a change of venue since the county was small and many jurors "would have been personally subjected to the fear and other emotions aroused by this very escape." Here, there was no evidence that Marin county residents actually feared any takeover. In Young v. Superior Court (1981) 126 Cal.App.3d 167, the court ordered a change of venue from San Luis Obispo county where San Luis Obispo police officers were charged with soliciting other officers to commit crimes. The court stated that jurors could feel peer pressure to purge corruption from a local police department to which they must look for protection against crime. (Id., at p. 170.) Here, there was no such pressure on Marin county residents; the Pendragon plan ended once appellant was arrested and it was unlikely jurors would feel that if appellant were acquitted the plan would resume.

Under these circumstances, we find that appellant was not deprived of his right to a fair trial by having his trial in Marin County.

III. Failure to Provide Evidence to Defense

In ruling on appellant's motion for a new trial, the trial court found that the prosecution should have given to appellant a police officer's notes which indicated that Neal and Robles were involved in cocaine transactions. Neal and Robles had testified that appellant solicited them to kill someone. The court ruled that the error was harmless in light

of the overwhelming evidence of guilt; it therefore denied the new trial motion.

The prosecutor has a duty to disclose substantial material evidence favorable to the accused; the failure to do so requires reversal of the judgment unless the failure was harmless beyond a reasonable doubt. (People v. Shaparnis (1983) 147 Cal.App.3d 190, 193.) Here the court made the finding that the evidence should have been disclosed. We agree with the court that the failure to do so was harmless; because the error was harmless, the court did not abuse its discretion in denying the new trial motion. (People v. McDaniel (1976) 16 Cal.3d 156, 179.)

Appellant contends the evidence was required because it would have impeached Neal and Robles' credibility by suggesting that they had a motive to cooperate with the prosecution to avoid being prosecuted for narcotics offenses. He claims Neal and Robles' testimony was particularly harmful because it corroborated Campbell's testimony that appellant solicited him to kill Baldwin.

Three points lead us to conclude that the error was harmless. First, the evidence would not have directly impeached the witnesses' testimony that appellant solicited them to kill someone. Second, Neal's credibility was already impaired by evidence that he was selling marijuana. Third, the officers who had the evidence signed declarations swearing that Neal or Robles were never offered any promise of leniency.

We now address the issues raised by appellant's supplemental brief.

IV. Financial Gain Special Circumstance

A. Sufficiency of Evidence

Appellant contends that there was insufficient evidence to support the financial gain special circumstance finding. He relies on People v. Bigelow (1984) 37 Cal.3d 731, where the Supreme Court acknowledged that the financial gain special circumstance potentially overlaps with the special circumstance based on felony murder. The court therefore adopted "a limiting construction under which the financial gain special circumstance applies only when the victim's death is the consideration for, or an essential prerequisite to, the financial gain sought by the defendant." (Id., at p. 751.)

There was sufficient evidence at trial to warrant the jury's finding on the special circumstance. There was evidence that appellant was in debt to Baldwin. Campbell testified that appellant wanted to "dispose" of Baldwin so he could cancel his debts and make money by selling Baldwin's machinery and cars. Robles also testified that appellant planned to sell Baldwin's property for money. Under these circumstances, the victim's death was an "essential prerequisite" to the financial gain sought by appellant. These facts are distinguishable from Bigelow, supra, 37 Cal.3d at page 751 and Newberry v. Superior Court (1985) 167 Cal.App.3d 238, 242, where the theft of the victim's car was not found to constitute sufficient evidence on

which a murder for financial gain special circumstance could be based.

We also note the recent case of People v. Freeman (1987) 193 Cal.App.3d 337, 339-340, which held that a person who pays another to kill commits a murder for financial gain as an intentional aider and abetter. (See also Newberry v. Superior Court, supra, 167 Cal.App.3d at p. 242 ["presumably the [financial gain] circumstance would also apply to a murder-for-hire wherein the victim's death is the consideration for payment on a contract to kill."]) Campbell testified that appellant offered him and Hoover money to assist in killing Baldwin.

B. Overlapping Special Circumstances

Appellant contends that because the murder for financial gain special circumstance was based on the same facts as the burglary special circumstances, the former should not have been submitted to the jury.

The problem of overlapping special circumstances was discussed in People v. Harris (1984) 36 Cal.3d 36. The court held that the prosecutor may charge overlapping special circumstances and the jury may make findings as to each. At the penalty phase, however, the doctrine of merger operates so that the jury should be instructed to regard the several overlapping special circumstances as one. (Id., at p. 66.) This rule limits the danger that the jury will choose death merely because of the number of special circumstance findings. (Id., at pp. 66-67.)

In this case, the prosecutor did not seek the death penalty and, accordingly, no penalty phase trial was held. Therefore, the concern expressed in Harris did not arise. Harris makes plain that the prosecution may charge, and the jury may make findings on, special circumstances based on the same facts. Further, Harris was limited by People v. Melton (1988) 44 Cal.3d 713, 766-767, which said that overlapping special circumstances may be considered as distinct aggravating factors at the penalty phase. Appellant's contention lacks merit.

Appellant contends that the Supreme Court departed from Harris in Bigelow. Bigelow evinces no such intention. The Bigelow court merely stated, after defining the financial gain special circumstance in a limited manner, that "[s]ince the present case does not fall within the special circumstance as so limited, the trial court erred in submitting that special circumstance to the jury." (People v. Bigelow, supra, 37 Cal.3d at p. 751.) Here, as we explain, the facts supported both a financial gain and a burglary special circumstance, and therefore both were properly brought before the jury.

V. Trial Court's Answers to Jury's Questions

Appellant was charged with two special circumstances of murder committed in the commission of burglary. One allegation involved the burglary of Baldwin's house and the other Baldwin's garage, located at a different address. These allegations were predicated on the evidence that, at appellant's command, Campbell entered Baldwin's house to

expedite the planned theft by making an inventory, while appellant and Hoover convinced Baldwin to go to Baldwin's garage where they killed him. (Richards v. Superior Court (1983) 146 Cal.App.3d 306, 317-318.) Appellant and Hoover later returned to Baldwin's house and took property.

The jury sent the judge a note which asked, first, "if a person enters a structure intending to steal from that structure at a later date, is it burglary?," and second, "if a person enters a structure intending to murder and intends to steal property from that structure at a later time, do special circumstances apply to burglary?" After discussion with counsel, but over defense counsel's objection, the court answered "yes" to both questions, adding the proviso to the second answer that "both the intent to murder and the intent to steal existed at the time of the entry, even though the intended taking is to be at a later time -- period." Pursuant to the jury's wishes, the court later twice read back the first question and answer thereto and thrice read back the second question and answer thereto.

Appellant contends the trial court's answers were legally wrong. Appellant posits that no burglary occurs upon an initial entry when the defendant intends to re-enter the residence at a later time to commit a theft.

The crime of burglary is complete upon entry of the structure with the intent to commit a felony or petit larceny therein. "It is the intent which exists in the mind of the perpetrator at the moment of entry which defines burglary."

(People v. Markus (1978) 82 Cal.App.3d 477, 481.)

We find no error in the court's answers. We note initially that as to Campbell's entry into Baldwin's house, to which the first question apparently related, there was evidence that Campbell intended to steal at the time of the entry. Similarly, there was evidence that appellant intended to steal upon entering Baldwin's garage. While the parties have not referred us to cases discussing the precise point raised by the jury's questions, we find no persuasive reason to hold that the intent to steal was somehow vitiated because the felony was to be accomplished at a later time. Regardless of when he intended to steal, appellant certainly did intend to steal, and since that intent was contemporaneous with the entries, the crime of burglary was complete once the entries occurred.

VI. Intent to Steal From Garage

Appellant lastly contends there was insufficient evidence that he intended to steal from Baldwin's garage. Unless the killing was to further a felonious intent independent of the intent to kill, there could be no burglary special circumstance arising from the killing. (See Richards v. Superior Court, supra, 146 Cal.App.3d at p. 317.)

There was sufficient evidence of an intent to steal to support the jury's finding. There was evidence appellant intended to take and sell Baldwin's tools and equipment. As the Court of Appeal noted in affirming the denial of appellant's motion to dismiss the burglary special circumstances, "the evidence clearly supports the reasonable

inference that petitioner, when he entered the garage, harbored both the intent to kill Baldwin and the intent to feloniously remove property from the garage. According to such evidence, it was indeed petitioner's plan at the outset, from his earliest conversations with Robles and with Campbell and Hoover, to kill Baldwin in order to obtain the latter's allegedly considerable property -- from his home and from his garage." (Richards, supra, at p. 317.)

VII. Conclusion

The People astutely note that the abstract of judgment states that the murder and robbery sentences are to be served consecutively whereas the court ordered them to run concurrently. We remand so that the abstract of judgment is accordingly corrected. As corrected, the judgment is affirmed.

White, P. J.

We concur:

Barry-Deal, J.

Merrill, J.

P15

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 3

Superior Court Administrator
Hanson, Howard Jr.
P O Box 1
San Rafael, CA. 94913

PEOPLE OF THE STATE OF CALIF.
vs.
RICHARDS, MARK
A028291 Old No. A022029
Marin County No. 8362

BY THE COURT:

Oral argument having been requested, the cause herein is
ordered calendared to be heard before Division Three of the
Court on Tuesday, March 22, 1988 at 9:30 a.m.

MAR - 4 1988

Dated: _____

WHITE, P.J.

P.J.

PIF

COUNTY CLERK

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED

FEB 17 1988

Court of Appeal - First App. Dist.
RON D. DARROW

People of the State of California,)
Plaintiff and Respondent,)

1/A028291

By DEPUTY

vs.)

Mark Richards,)
Defendant and Appellant.)

Marin County
Superior Court No. 8362

BY THE COURT:

Appellant's request to continue oral argument is granted.
The above entitled cause is hereby continued to the March
calendar. A day, date and time will be advised.

FEB 17 1988

Dated _____

WHITE, P.J.

P. J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED

NOV 20 1987

Court of Appeal - First App. Dist.

RON D. BARROW

People of the State of California,)
Plaintiff and Respondent,)

1/A028291

By

~~DEPUTY~~

vs.)

Mark Richards,)
Defendant and Appellant.)

Marin County
Superior Court No. 8362

BY THE COURT:

Defendant and appellant's request for permission to file a supplemental brief is granted. The supplemental brief shall be filed thirty days from the date of this order.

Dated

NOV 20 1987

WHITE, P.J.

P. J.

COUNTY CLERK

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED

NOV 20 1987

Court of Appeal - First App. Dist.

RON D. BARROW

People of the State of California,)
Plaintiff and Respondent,)

1/A028291

By

DEPUTY

vs.)

Mark Richards,)
Defendant and Appellant.)

Marin County
Superior Court No. 8362

BY THE COURT:

Defendant and appellant's request for permission to file a supplemental brief is granted. The supplemental brief shall be filed thirty days from the date of this order.

NOV 20 1987

Dated _____

WHITE, P.J.

P. J.

LAW OFFICES
HARRIS B. TABACK
370 GRAND AVENUE
OAKLAND, CALIFORNIA 94610
(415) 465-6363

Handwritten: 8/17/87

August 3, 1987

Handwritten: #8362

Clerk of The Court
Court of Appeal of the State of California
First Appellate District, Division Three
455 Golden Gate Ave., Room 4154
San Francisco, CA 94102

RE: People v. Mark Richards, A028291

Dear Court Clerk:

This letter will formally serve to inform the court that my office is no longer involved with the appeal or habeas petition that will -- I am told -- be filed by late September (see correspondence to court dated July 15, 1987) in the above-entitled matter.

As a brief explanation, my initial involvement in this case was as associate counsel to Mr. Richard's attorney Stephen J. Heiser. I left Mr. Heiser's employ in December, 1986. In April, 1987, Mr. Heiser retained my services to help prepare a very specific task for the habeas petition that did not include any responsibility for filing or drafting the petition. I have since terminated this relationship with Mr. Heiser's office as of August 3, 1987.

At no time was I ever lead counsel for Mr. Richards nor was I ever retained by him to provide any such services. Mr. Heiser has always been counsel of record in this case from the day his office was retained and the Public Defenders Office substituted out of the case.

Should there be any problems or need for any further attention to this matter please contact me immediately. Thank you for your consideration.

1 PROOF OF SERVICE BY MAIL - §1013a(a)(1) CCP

2 I, Lupe Higueros declare that:

3 I am, and was at the time of the service hereinafter
4 mentioned, at least eighteen years of age and not a party to the
5 above-entitled action. My business address is 370 Grand Avenue,
6 Oakland, California; I am a citizen of the United States and
7 employed in the County of Alameda, California.

8 I served the foregoing

9 Letter - People v. Mark Richards, A028291

10
11 on the 4 day of August, 1987, by depositing a copy
12 thereof in the United States mail in _____, California,
13 enclosed in a sealed envelope, with postage fully prepaid,
14 addressed to:

15 Landra E. Rosenthal
16 Office of the Attorney General
17 6000 State Building
18 San Francisco, CA 94102

17 Marin County District Attorney's Office
18 Civic Center
19 San Rafael, CA 94903

20 Chambers of the Honorable Warren McGuire
21 Superior Court of Marin County
22 San Rafael, CA 94903

22 who are the attorneys of record for the parties in the above-
23 entitled action.

24 Executed this 4 day of August, 1987, at
25 Oakland, California. I declare under penalty of perjury that the
26 foregoing is true and correct.

27
28 
Lupe Higueros



AMWEST SURETY INSURANCE COMPANY
6301 OWENSMOUTH # 304
WOODLAND HILLS, CA 91367
(213) 704-0144

CERTIFICATE OF
DISCHARGE

Power No. R00- 102845

PRINCIPAL:

EAST

FIRST

INITIAL

DATE EXECUTED:

12-1-83

BOND AMOUNT:

40000.00

PREMIUM \$

4000

COURT:

CASE #

I CERTIFY THAT THE COURT'S RECORDS ON THE ABOVE BOND HAVE BEEN EXAMINED AND THE CORRESPONDING BOND-POWER NUMBER HAS BEEN DISCHARGED OF RECORD.

DATE OF DISCHARGE:

1-3-84

CLERK OR COURT SEAL:

AGENCY:

8362 219 249 Bar. Bonds
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San Rafael, Ca 94903

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3)					3)	Set P.O. with meter
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1 DENNIS P. RIORDAN

Attorney at Law

2 396 Hayes Street

San Francisco, California 94102

3 Telephone (415) 431-3472

4 Carl B. Shapiro

Attorney at Law

5 404 San Anselmo Avenue

San Anselmo, California 94960

6 Telephone: (415) 453-7611

7 Attorneys for Defendant

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF MARIN

10
11 PEOPLE OF THE STATE OF CALIFORNIA,)

12 Plaintiff,)

13 vs.)

14 MARK RICHARDS,)

15 Defendant.)

No. 8362

DECLARATION IN SUPPORT
OF MOTION FOR DISCOVERY
OF PARTICULAR EVIDENCE TO
BE OFFERED AT PENALTY PHASE

17 I, DENNIS P. RIORDAN, declare under penalty of perjury
18 that:

- 19 1. I am court appointed associate counsel in this case.
- 20 2. On March 28, I filed a motion under Penal Code sec-
- 21 tion 190.3 asking for notice of the specific evidence -- names of
- 22 witnesses, descriptions of their testimony, documentary evidence,
- 23 etc. -- to be offered at the penalty phase in this case.
- 24 3. On April 1, 1983, the District Attorney filed the
- 25 response attached to this declaration as Exhibit A. That response
- 26 simply states that in the penalty phase the People will rely on

1 evidence located somewhere in the discovery provided in the guilt
2 phase.

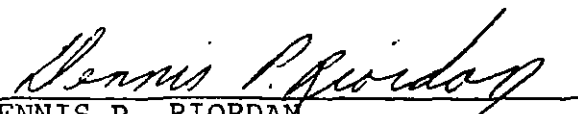
3 4. I have examined the court records in Keenan v. Superior
4 Court (County of San Francisco) 126 Cal.App.3d 576. Kennan's "notice"
5 of penalty phase evidence was identical to that provided in the case
6 of People v. Osias, et al., (No. 107709, San Francisco Superior Court
7 a copy of which is attached as Exhibit B. Both of these notices are
8 functionally identical to that provided in this case (Exhibit A).
9 They do not detail the evidence to be offered in the penalty phase,
10 but simply say it is contained somewhere in the guilt phase dis-
11 covery.

12 5. The notice given in Keenan was ruled inadequate by
13 the Court of Appeal, the Court ordering notice of the "particular"
14 evidence to be offered. Following that decision, the San Francisco
15 District Attorney conceded that the notice of the same type pro-
16 vided in Osias was inadequate under Kennan, and agreed to provide a
17 list of witnesses, addresses, physical evidence, and witness state-
18 ments for the evidence to be offered at the Osias penalty phase.
19 (See Exhibit C, an excerpt from a pre-trial discovery hearing in
20 Osias).

21 6. Under Keenan, the notice of penalty phase evidence here
22 provided on April 1, 1983 is patently inadequate. Defendant is
23 entitled to a list of all witnesses to be called, a designation of
24 the events to which they will testify, and a designation of any
25 physical or documentary evidence they will offer. Furthermore, he
26 is statutorily entitled to receive this notice "a reasonable period

1 of time . . . prior to trial." A continuance will thus be required
2 in this case.

3 Executed this 5th day of April, 1983 at San Francisco,
4 California.

5
6 
7 DENNIS P. RIORDAN

8 DPR:mdd
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Attorney at Law
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 431-3472

EXHIBIT "A"

JERRY R. HERMAN, District Attorney
EDWARD S. BERDERIAN, Deputy District Attorney
Room 155, Hall of Justice
San Rafael, California 94903
Telephone: 499-6450

FILED

APR -1 1983

HOWARD HANSON
MARIN COUNTY CLERK

BY P. ELLSBERRY
DEPUTY

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)

NO. 8362

Plaintiff,)

RESPONSE TO DEFENDANT'S

MOTION FOR DISCOVERY OF

PARTICULAR EVIDENCE TO

BE OFFERED AT PENALTY

PHASE

MARK RICHARDS)

Defendant.)

If these proceedings reach the penalty phase, the
People, in their case-in-chief, will be relying on the discovery
provided in the guilt phase.

Dated this 1st day of April, 1983.

Respectfully submitted,

JERRY R. HERMAN
DISTRICT ATTORNEY

BY 15
EDWARD S. BERDERIAN
Deputy District Attorney

EXHIBIT "B"

DECLARATION OF SERVICE BY MAIL

JUL 21 REC'D

ARLO SMITH
District Attorney
880 Bryant Street
San Francisco, California 94103
Telephone: (415) 553-1752

FILED

San Francisco County Superior Court

JUN 14 1982

CAREY J. GILLESPIE, C.S.
BY DOLORES FINKE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

NO. 107709

vs.

JONATHAN OSIAS, SANTO SYQUILA
and DAVID TRINIDAD,

NOTICE

Defendants.

TO THE DEFENDANTS AND THEIR COUNSEL OF RECORD, V. ROY LEFCOURT,
JAMES LARSON AND M. GERALD SCHWARTZBACH:

Notice is given to each of the above-named counsel on
behalf of each defendant in this case, and particularly to
defendant Jonathan Osias, pursuant to Penal Code Section 190.3,
that the incidents and/or subject matter covered by any discovery
materials you have received or will receive must be considered
by yourself as potential evidence in all phases of this case,
including, but not limited to, guilt, circumstance and penalty.

Dated: June 14, 1982

Respectfully submitted,

ARLO SMITH, District Attorney

By JAMES M. GOODMAN

JAMES M. GOODMAN

Assistant District Attorney

EXHIBIT "C"

1 I have suggested informally to Mr. Lurie that we
2 make that date about two weeks from today's date, and I was
3 of the understanding that that would be all right with him;
4 is that correct?

5 MR. LURIE: Well, as far as the date, I would like
6 to have it today, if possible, since we do have a trial date
7 of February 22nd, but obviously, I know that is not going to
8 happen.

9 Counsel has suggested that day to the Court. If
10 that is the day the Court sets, I will have to live with that.
11 I would state, Judge, we did talk earlier, and in response to
12 the motion itself, each item that will be used at the penalty
13 phase by the People we would consider as almost a new case,
14 and we would be asking for full discovery on each incident
15 or item that the People intend to introduce at the penalty
16 phase, physical evidence, statements, what-have-you.

17 Whatever it is in the particular incident, we would
18 treat it as a new crime, case which must be proved beyond a
19 reasonable doubt. So as long as the order encompasses all
20 that, I have no problem with it.

21 MR. CARBONE: I would be glad to stipulate, Your
22 Honor, that we will provide Mr. Lurie with all of the reports
23 and statements, either written or tape recorded, as well as
24 the opportunity to review all of the physical evidence.

25 THE COURT: This is the motion for discovery of
26 particular evidence to be offered at the penalty phase. That
27 is how it is more or less titled.

28 You concede that the defendant is entitled to such

1 discovery?

2 MR. CARBONE: I do indeed, Your Honor. I think that
3 the code section and the case law is clear.

4 THE COURT: Would you concede that the notice that
5 is one file, dated June 14, 1982, does not satisfy the
6 requirement?

7 MR. CARBONE: It is my understanding that was
8 litigated in the Keenan case, was found--

9 THE COURT: I am not, I don't want to go into the
10 history of it. Do you concede for the purposes of this
11 proceeding--

12 MR. CARBONE: I will.

13 THE COURT: --that that does not satisfy the require-
14 ment of Penal Code Section 190.3?

15 MR. CARBONE: I will concede that for purposes of
16 the motion.

17 THE COURT: All right. Then it is the order of the
18 Court that you are to comply with the requirements and the
19 spirit of Penal Code Section 190.3 and the case discussions
20 relative to what has to be told or made known to the defendant
21 in conformity with that section, and there is a trial date on
22 this case, which is what?

23 MR. CARBONE: 22nd of February.

24 THE COURT: 22nd of February?

25 MR. LURIE: Your Honor, may I request that the Court
26 order the People to comply with the standard order of the
27 Superior Court on discovery?

28 THE COURT: Let's just take care of this written

1 notice before me first, all right? That will be complied
2 with by-- What date do you suggest?

3 MR. CARBONE: I would suggest approximately two weeks
4 from today. I indicated to Mr. Lurie I think I can have all
5 the materials. That would still give him approximately a
6 month before the trial date.

7 THE COURT: Do you have any objection to that?

8 MR. LURIE: Your Honor, as I stated, I would like it
9 as early as possible. I don't know what I am going to get.

10 THE COURT: That will be complied with by not later
11 than 5:00 p.m. on Monday, January the 24th, 1983. Does any--

12 MR. LEFCOURT: May I request this, Judge--

13 THE COURT: Wait. If there is any dispute for failure
14 as to the compliance, it will be on my calendar, then, for
15 Tuesday morning, January the 25th at 9:00 o'clock.

16 MR. LEFCOURT: That is fine.

17 THE COURT: Does that take care of that motion?

18 MR. LURIE: Judge, pretty much, other than my request
19 that this getting specific things on discovery, so there is
20 no ambiguity, I would suggest that the Court order the People
21 to comply with the standing order of the Superior Court.

22 THE COURT: Now, that is a separate motion before the
23 Court that is being made, and I want it listed in that regard,
24 and there should be no objection to that. The standard order
25 of the Court will be complied with by the same time.

26 MR. CARBONE: Is that what Mr. Lurie meant to the--

27 MR. LURIE: As to the penalty phase, information that
28 we--so he has some guideline, and I know what I can expect,

1 that he is just to comply with the standard order of the
2 Superior Court in listing witnesses, address, physical evidence,
3 what-have-you for each particular incident that he wants to
4 use in the penalty phase.

5 MR. CARBONE: That is what I understood him to be
6 saying. I have no problem with that, Your Honor.

7 THE COURT: All right. You asked for about two weeks.
8 I gave you two weeks.

9 MR. CARBONE: I appreciate that, Your Honor. Thank you.

10 THE COURT: Don't forget, now, 5:00 o'clock. You
11 ought to do it before that. Do you think that is proper, to
12 have it on my calendar Tuesday morning, the next morning?

13 MR. LEFCOURT: Yes, sir.

14 THE COURT: Next morning, then.

15 MR. CARBONE: That, as I understand, is if there is a
16 dispute. Otherwise--

17 THE COURT: No, put it on my calendar. Then I will
18 have you in here, and you can tell me if there is an argument,
19 all right?

20 MR. CARBONE: Very well, your Honor.

21 THE COURT: That is what I want to avoid. I say this
22 for the record. What I want to avoid is when this case gets
23 into trial, is what I have noted, is an atmosphere of bickering
24 and, "I have just found out about this, or found out about
25 that," and I want none of that, and when I am talking about
26 making discovery, I am talking about the District Attorney
27 making discovery, not only out of their own records, but out
28 of the records of the investigating authorities.

DENNIS P. RIORDAN
Attorney at Law
396 Hayes Street
San Francisco, California 94102
Telephone (415) 431-3472

place in file

May 6, 1983

*Mark Richards
8362*

Honorable Clifford C. Porter
Clerk of the Court of Appeal
First Appellate District
4154 State Building
San Francisco, California 94102

Re: Richards vs. Marin County Superior Court
A022029, Division One

Dear Mr. Porter:

Petitioner will present oral argument in the above-
cited case on Thursday, May 26, 1983 at 9 a.m.

Sincerely,

Dennis P. Riordan
DENNIS P. RIORDAN

DPR:mdd

PROOF OF SERVICE BY MAIL -- 1013(a), 2015.5 C.C.P.

Richards v. Marin County Superior Court, A022029

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

LETTER TO HONORABLE CLIFFORD C. PORTER

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:

JOHN VAN de KAMP
Attorney General of the
State of California
6000 State Building
San Francisco, CA 94102

Hon. Howard Hanson, Jr.
County Clerk
County of Marin
Hall of Justice, Rm. 151
San Rafael, CA 94903

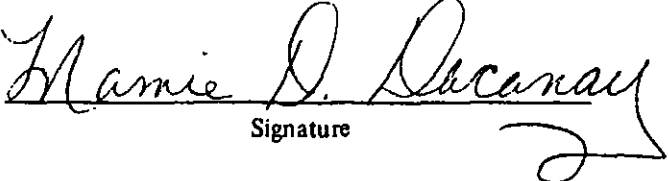
Jerry R. Herman
District Attorney
Marin County
Civic Center
San Rafael, CA 94903

Attn: Edward S. Berberian
Deputy District Attorney

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 1983.

at San Francisco, California.


Signature

place in bill
COPY
Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

Division ONE

MAY 2 1983

Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk

Deputy

Mark Richards,
Petitioner,

vs.

Superior Court, County of Marin,
Respondent,

People of the State of California,
Real Party in Interest.

No. A022029

Marin
Superior Court No. 8362

BY THE COURT:

Let an alternative writ of mandate issue as prayed for to be heard before Division One of this court on May 26, 1983 at 9:00 a.m. The writ is to be issued, served and filed on or before May 6, 1983. The written return to the writ is to be served and filed on or before May 24, 1983.

Dated MAY 2 - 1983

RACANELLI, P. J.

P.J.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

The People of the State of California,

Plaintiff,

Charge 187

vs
MARK RICHARDS

Case No. 8362

Defendant.

ORDER REGARDING THE CUSTODY OF PRISONER

TO THE SHERIFF OF MARIN COUNTY:

Unless being held on other charges or other process of law, this is to
command you to release from custody/confine the above named defendant
in the above cause as hereinafter directed:

BAIL REDUCED TO \$250,000.⁰⁰ on
conditions (1) the Defendant shall deliver
his passport to P.O. (2) report
any money to P.O.

Dated 6/27/83

[Signature]
Judge of the Superior Court

ORIG. REC'D ON 6-27-83
By J. O. Fitzgerald
Sheriff's Office

LAW OFFICES
SHAPIRO & SHAPIRO
404 SAN ANSELMO AVENUE
SAN ANSELMO, CALIFORNIA 94960
(415) 453-7611

May 6, 1983

Clerk of the Court of Appeal
First Appellate District
Division One
State Building
San Francisco, California 94102

Re: Mark Richards v. Superior Court of County of Marin;
People of the State of California
Case No. AO22029
Marin Superior Court No. 8362

Dear Clerk:

This is to advise you that pursuant to the calendar notice dated May 5, 1983, Mark Richards requests oral argument as scheduled on May 26, 1983, at 9:00 a.m.

Very sincerely yours,

SHAPIRO AND SHAPIRO

CARL B. SHAPIRO

CBS:sm

cc: (with proof of service)

Attorney General, 6000 State Building, San Francisco, CA 94102
District Attorney, Hall of Justice, Civic Center, San Rafael, CA 94903
The Honorable E. Warren McGuire, Hall of Justice, San Rafael, CA 94903
Deanis Riordan, Esquire, 396 Hayes Street, San Francisco, CA 94102

SHAPIRO & SHAPIRO
ATTORNEYS AT LAW
100 WALL STREET
NEW YORK, N.Y. 10038
(212) 691-1234

PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

I declare that I am employed in the County of Marin, California.
I am over the age of eighteen years and not a party to the within
entitled cause; my business address is 404 San Anselmo Avenue,
San Anselmo, California. On May 6, 1983,
I served the attached LETTER REQUEST FOR ORAL ARGUMENT

_____ on the parties entitled to notice in this action, by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Anselmo, California, addressed as follows:

Attorney General, 6000 State Building, San Francisco, CA 94102
District Attorney, Hall of Justice, Civic Center, San Rafael, CA 94903
The Honorable E. Warren McGuire, Hall of Justice, San Rafael, CA 94903
Dennis Riordan, Esquire, 396 Hayes Street, San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 6, 1983 , at San Anselmo, California.

SUSAN C. MOSHER

() Juvenile

NOTICE OF REFERRAL

() Adult

NAME: _____ CR# _____ DA # _____ Due _____

ADDRESS _____ Court _____ Muni/Sup _____

REFERRAL DATE _____ Clerk _____ Judge _____ Def. Atty. _____

REASON FOR REFERRAL:

CONVICTED BY:

CUSTODY STATUS:

() Written P.S. Report

() Plea

() Jail

() Oral Report

() Court

() Bail

() OR

() Jury

() OR

() Court School

() Nolo Contendere

() Other

Violation of Section (s) _____

_____ () Prior charged

Special Instructions _____

☐ Juvenile

NOTICE OF REFERRAL

☐ Adult

NAME: _____ CR# _____ DA # _____ Due _____

ADDRESS _____ Court _____ Date/Time _____
Mini/Sup _____

REFERRAL DATE _____ Clerk _____ Judge _____ Def. Atty. _____

REASON FOR REFERRAL:

CONVICTED BY:

CUSTODY STATUS:

☐ Written P.S. Report

☐ Plea

☐ Jail

☐ Oral Report

☐ Court

☐ Bail

☐ OR

☐ Jury

☐ OR

☐ Court School

☐ Nolo Contendere

☐ Other

Violation of Section (s) _____

Special Instructions _____

☐ Juvenile

NOTICE OF REFERRAL

☐ Adult

NAME: _____ CR# _____ DA # _____ Due _____

ADDRESS _____ Court _____ Date/Time _____
Muni/Sup _____

REFERRAL DATE _____ Clerk _____ Judge _____ Def. Atty. _____

REASON FOR REFERRAL:

CONVICTED BY:

CUSTODY STATUS:

- ☒ Written P.S. Report
- ☐ Oral Report
- ☐ OR
- ☐ Court School
- ☐ Other

- ☐ Plea
- ☐ Court
- ☐ Jury
- ☐ Nolo Contendere

- ☐ Jail
- ☐ Bail
- ☐ OR

Violation of Section (s) _____

_____ ☐ Prior charged

Special Instructions _____

PROB 101

REJUDGMENT CUSTODY RECORD

Muni Ct. #C56137

NAME: MARK RICHARDS

CASE NO. 8362

OFFENSE: 187 PC

DATE OF OFFENSE: 7/6/82

STATE PRISON SENTENCE: _____

COUNTY JAIL SENTENCE: _____

SENTENCE DATE: _____

JUDGE: _____

TIME SERVED/CREDITS

DATE-IN	DATE-OUT	CREDIT TIME SERVED	GOOD TIME	WORK TIME	ACC. TIME

REMARKS: _____

OFFICE OF THE MARIN COUNTY CLERK

CRIMINAL POST-TRIAL CHECKLIST

Title of Case

8362
Case No.

VERDICT/GUILTY PLEA _____

STIP & ORDER RE EXHIBITS _____

SENTENCING DATE _____

REFERRAL TO PROB OFF _____

CUSTODY CARD TO SHERIFF _____

JURY INSTRUCTIONS _____
(Unused Verdict Form)

EXHIBITS _____

JURY PAYMENT _____

JUDGMENT and/or ABSTRACT
OF JUDGMENT _____

BAIL EXONERATION _____

FORM CR 291
(Judicial Council Form) _____

DMV ABSTRACT _____

ARREST DISPOSITION REPORT _____

Clerk

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

	Plaintiff(s)	}	No. <u>8362</u>
vs.			
	Defendant(s)	}	

ORDER FOR DISPOSITION OF EVIDENCE

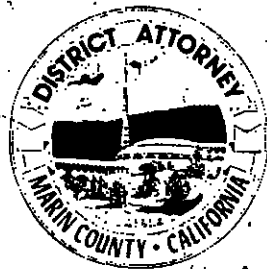
- () All exhibits shall be disposed of in the within action in accordance with Sections 1417 through 1419 of the California Penal Code as they may be from time to time amended.

- () All exhibits shall be disposed of in the within action in accordance with Section 1952 of the California Code of Civil Procedure as it may be from time to time amended.

Dated: _____

JUDGE OF THE SUPERIOR COURT

ORDER FOR DISPOSITION OF EVIDENCE - UNCONTESTED ONLY



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

JERRY R. HERMAN

District Attorney

March 11, 1983

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRENCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

Mr. Carl S. Shapiro
404 San Anselmo Avenue
San Anselmo, Ca. 94960

Dear Mr. Shapiro:

Re: Mark Richards
S.C. No. 8362/DA 5155

Among the reports I have received are five copies of transcripts from callers who telephoned Detective Sgt. Rich Keaton in regard to Mark Richards. None of these callers identified themselves; all requested and were told their identities would be kept confidential.

I have reviewed these documents and noted that none were percipient witnesses to any of the events surrounding the death of Richard Baldwin.

It appears the individuals who called knew Mark Richards at one time or another. That information they have would speak to your client's personality and character. None of the comments can reasonably be viewed as complimentary.

Although the individuals do not identify themselves, I believe it quite possible if the transcripts and copies of the tapes were furnished your client, identifications would be made. These individuals expressed concerns for their safety if Mr. Richards knew they had spoken to the police.

I believe the information communicated to Sgt. Keaton was made in compliance with Evidence Code Sections 1040 and 1041. I intend to honor their request for anonymity.

I do not believe there is substantial material evidence favorable to Mark Richards in the materials. However, I am prepared to present the materials in camera to the Court for its review.

CONSUMER PROTECTION

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

CRIMINAL DIVISION

Room 155—Hall of Justice
San Rafael, California 94903
(415) 499-6450

FAMILY SUPPORT

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6501

VICTIM/WITNESS ASSISTANCE

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482



FERRY R. HERMAN
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Department of Justice

WASHINGTON, D.C.
20530
Telephone: 202-696-6000
Fax: 202-696-6001
Internet: www.dca.dc.gov

If such a review is desired, I recommend you file a motion to that effect.

Yours very truly,

JERRY HERMAN
DISTRICT ATTORNEY

EDWARD S. DERBERIAN
Deputy District Attorney

cc - Sgt. Richard Keaton, MCSO
Clark, Superior Court, Case 83362

ESB:CH

Law Offices  SHAPIRO and SHAPIRO
404 San Anselmo Avenue, San Anselmo, California 94960 415-453-7611

Carl B. Shapiro
Helen Shapiro
Mark W. Plank

March 7, 1983

Marin Superior Court
Hall of Justice, Civic Center
San Rafael, CA 94903

Re: People vs. Richards, No. 8362

Dear Friends:

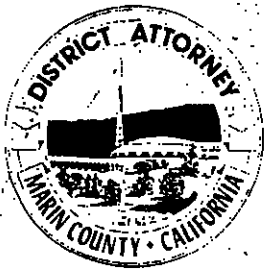
This is to confirm that the hearing scheduled for March 8, 1983 at 1:30 p.m. has been removed from calendar.

Thank you for your cooperation..

Very sincerely yours,

SHAPIRO AND SHAPIRO

Sandra G. Campodonico
Sandra G. Campodonico
for CARL B. SHAPIRO



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

February 16, 1983

JERRY R. HERMAN
District Attorney

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRENCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

Mike Waller
Department of Justice
Crime Laboratory
7505 Sonoma Highway
Santa Rosa, CA. 95405

RE: People v. Mark Richards/Crossan Hoover (QA5535/569C)

Dear Mike:

This will confirm my telephone call of Monday, February 14, 1983, when I told you the court has ordered the laboratory reports relative to the duct tape and wire be completed before March 11, 1983.

If problems develop which make compliance with that date not possible, please notify me so that this matter can be brought to the court's attention.

Very truly yours,

JERRY R. HERMAN
DISTRICT ATTORNEY

EDWARD S. BERBERIAN
Deputy District Attorney

EB/g

cc: Superior Court Clerk (Case #8362)
Carl Shapiro, Esq.
Ed Torrico, Esq.

CONSUMER PROTECTION

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

CRIMINAL DIVISION

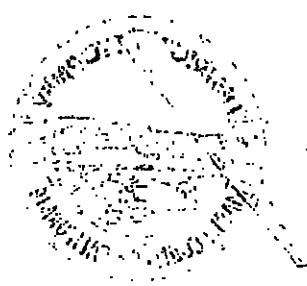
Room 155—Hall of Justice
San Rafael, California 94903
(415) 499-6450

FAMILY SUPPORT

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6501

VICTIM/WITNESS ASSISTANCE

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482



THOMAS K. HENKMAN
Deputy Attorney General

MINNESOTA TO STATEMENT NO. 100000

CONFIDENTIAL

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10/1/00 BY 60322
EXCEPT WHERE SHOWN
OTHERWISE

STATEMENT

STATEMENT OF [Name] [Address] [City] [State] [Zip]

[Faint, mostly illegible text body of the document]

INTER-OFFICE MEMORANDUM

OFFICE OF THE COUNTY COUNSEL

Placed in file

TO: JUDGE E. WARREN MCGUIRE
Presiding Judge, Superior Court

DATE February 4, 1983

Re: People v. Richards

FROM: DOUGLAS J. MALONEY
County Counsel

JD

We have been served with the attached motion for reconsideration of order fixing attorneys fees.

It appears that this is a matter between the attorney and the court, and there is no necessity for representation by this office.

If, however, you would like us to appear to provide any services in this matter, we will be pleased to do so upon request.

DJM:sl

[Signature]

*2/11/83 I phoned Co. Counsel
16:00 & left message
Doug Maloney - K - has 16:00
n D A s M by name 16:00
for 15:00 in 16:00*

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. Two dark circular marks are visible at the top center.]

LAW OFFICES
SHAPIRO & SHAPIRO
404 SAN ANSELMO AVENUE
SAN ANSELMO, CALIFORNIA 94960
(415) 453-7811

Attorneys for Defendant

FILED
FEB - 4 1983
HOWARD HANSON
MARIN COUNTY CLERK
BY E. ELLSBERRY
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-VS-

MARK RICHARDS,

Defendants.

NO: 8 3 6 2

NOTICE OF MOTION FOR RECON-
SIDERATION OF ORDER FIXING
ATTORNEY'S FEES

2-11-83 9am
to set for hearing

Carl B. Shapiro, appointed counsel for defendant MARK RICHARDS, moves this court for an appropriate order fixing reasonable attorney's fees pursuant to the mandate of law. Said motion, when heard, will be an evidentiary motion, so that the court may have before it sworn testimony as to each of the elements the law requires to be considered in fixing attorney's fees.

Said motion will be based on the order heretofore made fixing attorney's fees at a rate slightly less than \$40.00 per hour, the declaration of Carl B. Shapiro, the memorandum of points and authorities, and the evidence adduced at the time and place of the hearing.

DATED: This 1st day of February, 1983.

SHAPIRO AND SHAPIRO

BY: 

CARL B. SHAPIRO
Attorneys for Defendant
MARK RICHARDS

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 (1) Penal Code Section 987.3 specifically mandates the court,
3 under the present circumstances, to consider the following elements
4 in fixing fees:

- 5 1. Ordinary fees charged by privately retained counsel
6 in similar cases.
7 2. The time and labor required.
8 3. The difficulty of the defense.
9 4. The novelty of the issues.
10 5. The professional skill called for.
11 6. The professional standing of the attorney.

12 (2) Nothing in the law says that the judges may fix the fee
13 based upon the county's financial position, or that fixing an
14 appropriate fee will in any way effect other cases or other attorneys.

15 (3) The attached article, which is made a part hereof by
16 reference, has significance because it was authorized for publication
17 by the State Bar Board of Governors in the State Bar Journal. A
18 committee of the State Bar pointed out that inadequate compensation
19 deprives the defendant of adequate representation when it affects
20 the attorney's ability to devote time and energy to the cause.

21 (4) That nothing in the law requires an attorney to subsidize
22 the County of Marin by working at less than the ordinary fee schedule.

23 DATED: This 1st day of February, 1983.

24 Respectfully submitted:

25 SHAPIRO AND SHAPIRO

26
27 BY: 

28 CARL B. SHAPIRO
29 Attorneys for Defendant
30 MARK RICHARDS
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DECLARATION OF CARL B. SHAPIRO

CARL B. SHAPIRO declares:

1. That I have been a lawyer, specializing in criminal practice for over thirty years.

2. That I have been duly appointed to represent defendant MARK RICHARDS in the above-entitled case.

3. That this is a death penalty case and it is presently the most serious case pending in the County of Marin. MARK RICHARDS has been duly acknowledged to be indigent.

4. That in this case the issues are exceedingly complicated and the novelty of the charges and of the defenses exceeds that of almost any case that I have heard about. In addition to the fact that there are now some twenty-five thousand pages of discovery matter, and over a thousand pages of police reports, there is psychiatric testimony about another person charged with this crime which amounts to a thousand pages. That the legal questions are extensive and the factual questions will call for extensive investigative work which must be correlated by the attorney in charge of the defense of the case.

5. That I, myself, have been an attorney for thirty-three years, and with the exception of a short period of time have practiced exclusively in the County of Marin. I maintain a general practice of law, but was for a period of years qualified as a specialist in the practice of criminal law. I chose to resign from this specialist category because I came to a philosophical difference with the specialist program and therefore did not renew my credential.

6. That at the hearing I will produce evidence as to the abilities and experience which I have.

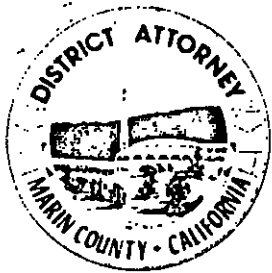
7. That I maintain an office in downtown San Anselmo where I have been practicing for approximately sixteen years. At the present time my overhead is estimated to be \$70.00 per hour of office operation time, and I am advised that this is not inconsistent with the experience of other lawyers who maintain a general practice of law requiring adequate space, secretarial service, library facilities, and all of the other items which go into the operation of a law office.

1 8. That if the attorney's fees are not consistent with
2 the guidelines provided by the law, MARK RICHARD's attorney is unable
3 to function without suffering great economic hardship.

4 I declare under penalty of perjury that the foregoing
5 is true and correct.

6 EXECUTED this 1st day of February, 1983, at San Anselmo,
7 California.

8
9
10 
11 _____
12 CARL B. SHAPIRO
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OFFICE OF THE DISTRICT ATTORNEY

County of Marin

JERRY R. HERMAN
District Attorney

November 22, 1982

MICHAEL A. GRIDLEY
Chief Assistant District Attorney
TERRENCE R. BOREN
Assistant District Attorney-Criminal
MILTON M. HYAMS
Assistant District Attorney-Services

Mr. Edward Torrico
8 Commercial Boulevard
Novato, Ca. 94947

Mr. Carl Shapiro
404 San Anselmo Avenue
San Anselmo, Ca. 94960

Gentlemen:

Re: Mark Richards
S.Ct. 8362/DA 5555;
Crossan/ Hoover
S.Ct. 8401/DA 5690

On Wednesday, November 23, 1982, at 10:00 a.m., at the San Rafael Police Department, the items ordered released by the Court on November 19, 1982, can be examined, with a majority of the items available to be released upon Mr. Torrico signing the consent for release.

Please contact Detective Ted Lindquist upon your arrival.

Yours very truly,

JERRY HERMAN
DISTRICT ATTORNEY

EDWARD S. BERBERIAN
Deputy District Attorney

cc - Det. T. Lindquist, SRPD
Sup.Ct. Case No. 8362
Sup.Ct. Case No. 8401 ✓

ESB:CH



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

November 18, 1982

JERRY R. HERMAN
District Attorney

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRENCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

Mr. Carl Shapiro, Esquire
Attorney at Law
404 San Anselmo Avenue
San Anselmo, CA 94960

Re: Mark Richards, DA 5555/Sup.Ct. 8362

Dear Mr. Shapiro:

On October 14, 1982, Detective Ted Lindquist of the San Rafael Police Department wrote you in regard to the surrendering of evidence he has reason to believe is presently in your possession relative to the above-captioned case.

Detective Lindquist has been informed that you have been given a jewelry item and that you are presently holding that item. That item is a gold chain bracelet or anklet given to Caryn Richards by Mark Richards. The police have reason to believe this item was fraudulently purchased by Mark Richards using Richard Baldwin's name and credit account at Montgomery Wards (Baly City) on July 12, 1982 (see discovery report pages 541-542, 565 and Detective Lindquist's letter of October 14, 1982).

It is of concern that you have not responded to Detective Lindquist's request for the surrendering of that evidence. In People v. Lee, 3 Cal.App.3d 514, 526, the court stated: "The attorney should not be a depository for criminal evidence...the attorney, after a reasonable period, should, as an officer of the court, on his own motion turn the same over to the prosecution." The reasoning of Lee, supra, has been reaffirmed by the California Supreme Court in People v. Meredith, 29 Cal.3d 682, 692, where the court states: "...the defense counsel, after examining the physical evidence, should deliver it to the prosecution..." You have had this item for at least one to two months. It is past time that this evidence should have been delivered to the San Rafael police.

Therefore, on behalf of the San Rafael police, the People again request that you turn over the evidence discussed above. If that evidence is not turned over to either the District Attorney's Office or the San Rafael police by noon, November 30, 1982, we will pursue other available remedies.

Very truly yours,

JERRY R. HERMAN
DISTRICT ATTORNEY

EDWARD S. BEFERIAN
Deputy District Attorney

ESH/kd
Attachment

cc: Detective Ted Lindquist, San Rafael Police
Marin Superior Court, File No. 8362

CONSUMER PROTECTION

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

CRIMINAL DIVISION

Room 155—Hall of Justice
San Rafael, California 94903
(415) 499-6450

FAMILY SUPPORT

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6501

VICTIM/WITNESS ASSISTANCE

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482



OFFICE OF THE DISTRICT ATTORNEY

County of Middlesex

JOHN J. CONNELLEY
District Attorney
100 State Street
Boston, Massachusetts 02109
Telephone: 523-1234

JERRY R. HERRMAN
District Attorney
100 State Street
Boston, Massachusetts 02109
Telephone: 523-1234

[The body of the document contains several paragraphs of text that are extremely faint and largely illegible due to the quality of the scan. The text appears to be a formal legal document, possibly a complaint or a motion, given the header information.]



1400 FIFTH AVENUE, P.O. BOX 60, SAN RAFAEL
CALIFORNIA 94915-0060 PHONE (415) 456-1112

MAYOR
LAWRENCE E. MURRYAN

COUNCIL MEMBERS
DOMINICK J. BILNER
CARYN R. FRUGOLI
FRID JENSEN
JOHN A. MISKIMEN

October 14, 1982

Mr. Carl Shapiro
404 San Anselmo Avenue
San Anselmo, Calif.

Dear Mr. Shapiro:

In connection with the investigation of the homicide of Richard Baldwin, I had an occasion to contact and interview Caryn Richards on July 18, 1982.. The interview was conducted at her parents' residence and in the presence of Mr. & Mrs. Cerrutti.

During the course of the interview with Mrs. Richards, she acknowledged to me that she had recently been given some gold jewelry by her husband, defendant Mark Richards. She also informed me that although she was not sure where her husband had purchased the jewelry, she believed that it had been purchased at a jewelry store in Novato.

Due to the fact that I was developing reliable information that defendant Mark Richards had been engaging in spending sprees subsequent to the homicide of Richard Baldwin and that those purchase transactions were being accomplished under fraudulent circumstances, I informed Mrs. Richards that the jewelry given to her by defendant Mark Richards was stolen or obtained by fraudulent means.

I requested that she identify and turn over to me the items given to her by defendant Mark Richards and she then gave to me a small gold "Teddy bear" which she was wearing on a chain around her neck. She further informed me that another gold chained bracelet or anklet had been given to her by defendant Mark Richards and that she would turn that item over to me at a later date. I provided Mrs. Richards with a receipt for the item.

Since that time, I have requested directly of Caryn and through her immediate family that she turn over the remaining item of jewelry to me. To date, the return of the jewelry has not been made.

I am now informed that you have taken possession of the previously mentioned item of jewelry and are holding it in your custody.

CONTROLLED
DOCUMENT
NOT TO BE
DUPLICATED
TO: _____
BY: _____
DATE: _____

469

October 14, 1982

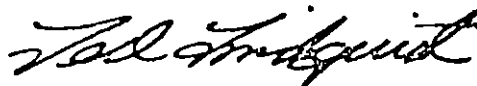
Based upon the fact that I have reasonable cause to believe that this item of jewelry was purchased fraudulently by Mark Richards using the stolen Wards credit card of Richard Baldwin at the Daly City Wards store on July 12, 1982, I am requesting that you turn over this item of jewelry to me forthwith since it is now considered stolen property and links Mark Richards to the homicide of Richard Baldwin.

If I do not hear from you in the near future, it shall be necessary for me to secure a court order through the District Attorney's office for the return of the property.

Sincerely,

HENRY W. INGWERSEN
Chief of Police

by



TED LINDQUIST, Detective
Investigations Division
San Rafael Police Department

HWI/TL/cl

cc to District Attorney

**CONTROLLED
DOCUMENT
NOT TO BE
DUPLICATED**

TO: _____

BY: _____

DATE: _____

470

Law Offices  SHAPIRO and SHAPIRO
404 San Anselmo Avenue, San Anselmo, California 94960 415-453-7611

Carl B. Shapiro
Helen Shapiro

November 4, 1982

*Noted 11/9/82
Place in file
for*

Mr. Jerry Hermann
District Attorney, County of Marin
Hall of Justice
San Rafael, CA 94903

Re: People v. Richards

Attention: Ed Berberian, Esq.

Dear Ed:

In September there was signed and served an order for the duplication of certain exhibits or evidence which was in the custody of the Sheriff or the San Rafael Police Department and which is necessary for a proper presentation of the defense of Mr. Richards.

The compliance date was October 1st and it is now November 4th without any effort being made to comply with the discovery order except a phone call from Officer Lindquist that there is some difficulty in copying these items and would I please come in to him and indicate what items I want copied.

I believe the order is clear and I expect that your office will not relinquish its responsibility to comply with the discovery order to a policeman or to any other person.

If you have any doubts about your responsibilities in this matter, please put the matter in court on a noticed motion and I in turn will move for appropriate sanctions for failure to comply with the court order.

As you realize, this case is a death penalty case and has a very strong likelihood of being up on appeal if there is any adverse decision affecting my client. Under these circumstances, I believe it would be to the best advantage to all parties if all communications in this matter were in writing so as to avoid any misapprehension as to the nature of the communication.

Regards,

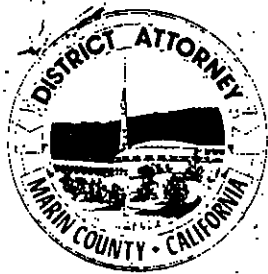
Carl

DISTRICT ATTORNEY
MARIN COUNTY

NOV 5 - 1982

RECEIVED

CBS/k



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

JERRY R. HERMAN
District Attorney

November 8, 1982

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRENCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

Carl Shapiro, Esq.
404 San Anselmo Avenue
San Anselmo, CA. 94960

RE: People v. Mark Richards (Sup.Ct8362/DA5555)

Dear Mr. Shapiro:

By memo of October 11, 1982, Detective Lindquist of the San Rafael Police Department was advised of your requests. The materials you requested are awaiting review by you or your investigator. Any copies of materials desired will be provided upon payment of duplicating expenses.

During normal business hours, Monday through Friday, the San Rafael Police stand, and have stood, ready to provide you with access to all materials held as evidence.

Since the commencement of this case you have been provided discovery in a timely and thorough fashion. No discovery material is being withheld from you.

This matter will be on Marin Superior Court Calendar on Friday, November 12, 1982, at 9:00 a.m. to clarify any discovery problems you imagine exist.

Very truly yours,

JERRY R. HERMAN
DISTRICT ATTORNEY

EDWARD S. BERBERIAN
Deputy District Attorney

ESB/g

cc: The Honorable Joseph Wilson, Judge of the Superior Court
Ted Lindquist, San Rafael Police Department.

CONSUMER PROTECTION •
Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

CRIMINAL DIVISION •
Room 155—Hall of Justice
San Rafael, California 94903
(415) 499-6450

FAMILY SUPPORT •
Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6501

VICTIM/WITNESS ASSISTANCE •
Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

ATTACHMENT TO VENDOR



JERRY E. HERRMAN
 District Attorney

[illegible]

DATE: 10/10/2014

1959

1. The subject of this report is the "The Role of the State in the Development of the Economy of the Soviet Union".

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem that is being studied. This is done by the investigator who is responsible for the study. The investigator must first identify the problem that is being studied.

1. The first step is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

[illegible]

3. *U. luteo* (L.) = *U. luteo* (L.)

... ..

...and the fact that the ...

... ..

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

Room 11 - Hill of Jellies
The Royal College
(416) 989-7441

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
OF GREAT BRITAIN AND IRELAND
VOLUME LXXII PART 1 2002

10-21-67 10:47 AM
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 10-21-67 10:47 AM
 10-21-67 10:47 AM

251 West 42nd Street, New York 36, N.Y.
 (212) 462-1212
 212 West 42nd Street, New York 36, N.Y.
 (212) 462-1212

MUNICIPAL COURT FOR THE CENTRAL JUDICIAL DISTRICT
COUNTY OF MARIN STATE OF CALIFORNIA

8362

People vs. Richard

NO. C 56137

PLAINTIFFS

EXHIBITS

DEFENDANTS

| Ex | No. | | IDENTIFIED | ADMITTED | WITHDRAWN | Date | No. | | IDENTIFIED | ADMITTED | WITHDRAWN |
|----|-----|---------------------------|------------|----------|-----------|---------|-----|-----------------|------------|----------|-----------|
| | | | | | | | | | | | |
| 21 | 1 | photograph | ✓ | ✓ | | 5-20-82 | A | diagram on | ✓ | ✓ | |
| | 2 | " | ✓ | ✓ | | | | blackboard | | | |
| | 3 | " | ✓ | ✓ | | | | (photograph of) | | | |
| | 4 | " | ✓ | ✓ | | | | | | | |
| | 5 | " | ✓ | ✓ | | | | | | | |
| | 6 | " | ✓ | ✓ | | | B | diagram on | ✓ | ✓ | |
| | 7 | " | ✓ | ✓ | | | | blackboard | | | |
| | | | | | | | | (photograph of) | | | |
| 22 | 8 | credit application | ✓ | ✓ | | | | | | | |
| 23 | 9 | interference | ✓ | ✓ | | | | | | | |
| | | envelope | ✓ | ✓ | | | | | | | |
| | 10 | " | ✓ | ✓ | | | | | | | |
| | 11 | " | ✓ | ✓ | | | | | | | |
| | 12 | " | ✓ | ✓ | | | | | | | |
| | | (all with contents) | | | | | | | | | |
| | | 9. black package | | | | | | | | | |
| | | 10. screwdriver | | | | | | | | | |
| | | 11. pencil | | | | | | | | | |
| | | 12. black paper | | | | | | | | | |
| 24 | 13 | large white sack | ✓ | ✓ | | | | | | | |
| | | containing a black driver | | | | | | | | | |

only if defendant held to answer to
(Superior Court)

I hereby acknowledge receipt of all of
the foregoing exhibits on

19
TER MEYER, COUNTY CLERK
Deputy

(use for acknowledgment of release of exhibits per Court order)

EXHIBITS RETURNED TO PLAINTIFF

I hereby acknowledge receipt of plaintiff's
exhibit nos.

1-2-3-4-5-6-7

on Oct 5 1982
E. Ben
Attorney for Plaintiff

EXHIBITS RETURNED TO DEFENDANT

I hereby acknowledge receipt of defend-
ant's exhibit nos.

on
Attorney for Defendant



**MUNICIPAL COURT FOR THE CENTRAL JUDICIAL DISTRICT
COUNTY OF MARIN STATE OF CALIFORNIA**

People vs. Rehlander

NO. C56137

Page 2

PLAINTIFFS

EXHIBITS

DEFENDANTS

| Exhibit No. | Description | IDENTIFIED | ADMITTED | WITHDRAWN | Date | No. | IDENTIFIED | ADMITTED | WITHDRAWN |
|-------------|--|------------|----------|-----------|------|-----|------------|----------|-----------|
| | | | | | | | | | |
| 14 | plastic bag containing 10 brown pack | x | x | | | | | | |
| 15 | white envelope contents (blood sample) | x | x | | | | | | |
| 16 | copy of receipt dated 7-6-82 | x | x | | | | | | |
| 17 | copy of subpoena dated 7-13-82 | x | x | | | | | | |
| 18 | photograph of back of head | x | | | | | | | |

(use only if defendant held to answer to prior Court)

(use for acknowledgment of release of exhibits per Court order)

I hereby acknowledge receipt of all of the foregoing exhibits on

EXHIBITS RETURNED TO PLAINTIFF

I hereby acknowledge receipt of plaintiff's exhibit nos.

EXHIBITS RETURNED TO DEFENDANT

I hereby acknowledge receipt of defendant's exhibit nos.

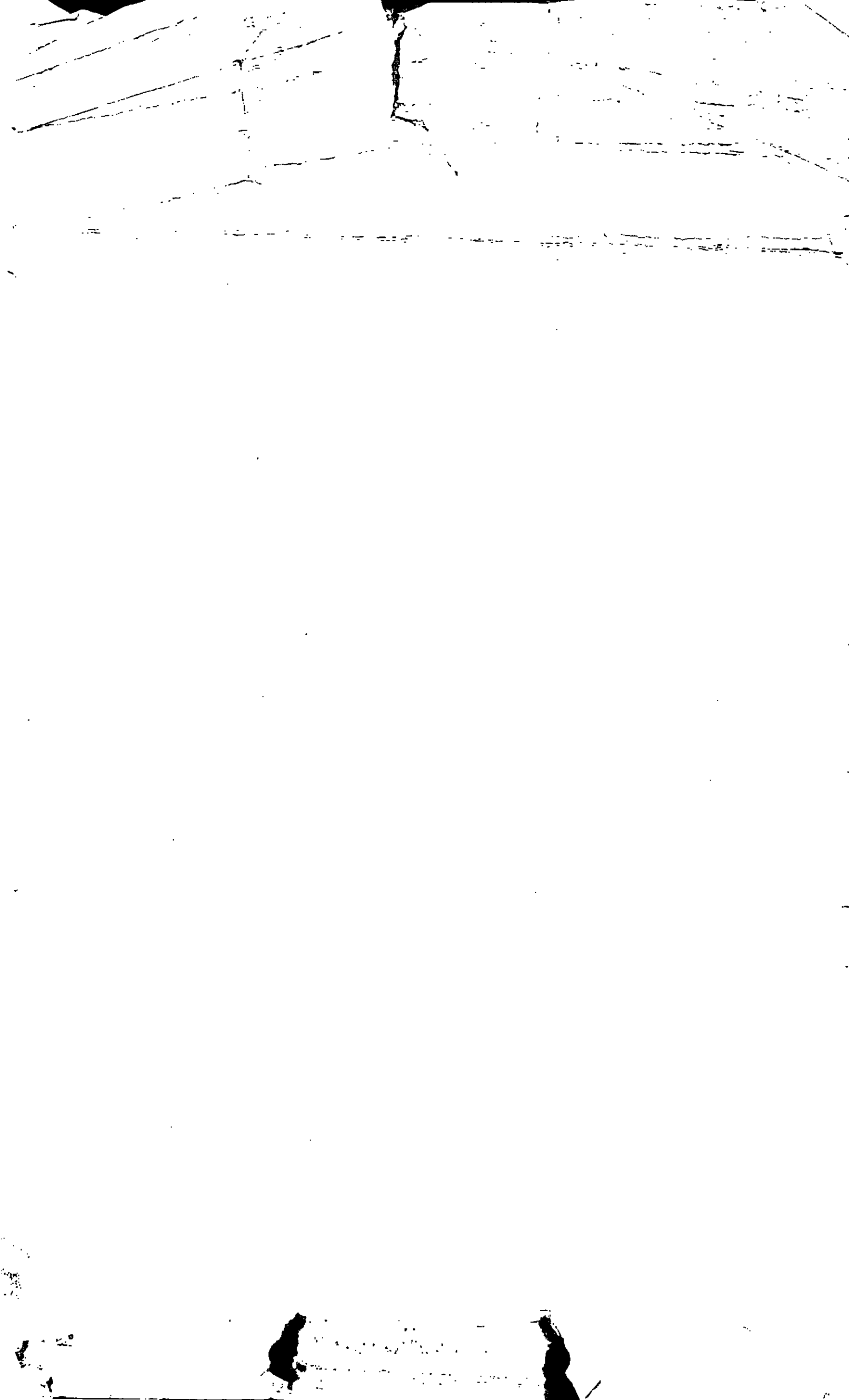
August 30, 1982

PETER MEYER, COUNTY CLERK
N. SMITH, Deputy

on _____, 19____
Attorney for Plaintiff

on _____, 19____
Attorney for Defendant

KENNETH C. FINN, Clerk of the Municipal Court



COPY

97

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 3

FILED

OCT - 3 1985
Court of Appeal - First Dist.
By RON D. BARROW, Clerk
DEPUTY

PEOPLE OF THE STATE OF CALIF.
VS.
RICHARDS, MARK
A028291 Old No. A022029
Marin County No. 8362

BY THE COURT:

L. Miller, Official Reporter (or Official Reporter Pro Tempore) of the Superior Court, County of Marin, is ordered to show cause before Division 3 of this court on Wednesday, November 19, 1985, at 9:30 A.M., why he/she should not be declared not competent to act as an official reporter in any court pursuant to the provisions of Government Code section 69944, because of his/her failure to prepare an augmentation of the record on appeal in the above-mentioned case, in accordance with the provisions of our order dated February 28, 1985, a copy of which is attached hereto. (See Rule 46.5, California Rules of Court).

Dated: OCT - 3 1985

WHITE, P. J.

P. J.

Q7113

2001-01-01
1000-0000
1000-0000

1000-0000

OFFICE OF THE COUNTY CLERK

Howard Hanson, County Clerk

INTER-OFFICE MEMORANDUM

TO: DIVISION 3, DISTRICT COURT OF APPEALS

DATE SEPTEMBER 25, 1985

FROM: JOANN CORNEL, APPEALS CLERK

TIME _____

SUBJECT: PEOPLE OF THE STATE vs MARK RICHARDS
Marin Case #9362
Your A028291

THIS IS TO LET YOU KNOW THAT ALL OF THE EXHIBITS WHICH WERE AUGMENTED IN THE AFOREMENTIONED CASE IS ENCLOSED, INCLUDING THE FIRST PAGE OF THE MEMO. OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXCLUDE STATEMENT.

THE CERTIFIED COPY OF THE RULING ON CCP 170(a)(5) WHICH WAS FILED IN MONTEREY COUNTY ON APRIL 17, 1984 WILL BE SENT TO YOU AS SOON AS I RECEIVE IT. I SENT A LETTER TODAY REQUESTING THIS MATERIAL.

PART OF THE EXHIBITS HEREIN ENCLOSED BELONG WITH THE HOOVER CASE. THIS I THOUGHT YOU SHOULD BE AWARE OF, JUST IN CASE AN APPEAL SHOULD ARISE AND THAT THESE EXHIBITS BE AGAIN REQUESTED.

THANKS,



JOANN CORNEL

1 APPELLATE DEPARTMENT
2 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 IN AND FOR THE COUNTY OF MARIN

4
5 THE PEOPLE OF THE STATE OF CALIFORNIA
6 Plaintiff/Respondents

7 vs

8 MARK RICHARDS,

9 Defendant/Appellant.
10
11

Superior Court No: 9362

Appellate Court No. A028291

12
13
14 R E C E I P T
15

16 I, RON D. BARROW, Clerk of the District Court of Appeals, First
17 Appellate District, in and for the State of California, do hereby
18 acknowledge receipt this date of the following documents and/or exhibits
19 in their original state in the above--entitled action.

20 PEOPLES' EXHIBITS: 19 & 19A
21 35A, 35B, & 35C
109A, 109B, 109C, 109D, 109E, & 109F

22 Page 1 of the MEMORANDUM OF POINTS AND AUTHORITIES
23 IN SUPPORT OF MOTION TO EXCLUDE STATEMENT.
24
25

26
27
28
SEAL

DATED: _____

RON D. BARROW, Clerk

By _____ Deputy

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

- ☒ Show to whom, date and address of delivery.
- ☐ Restricted Delivery.

3. Article Addressed to:
**CLERK, COURT OF APPEAL
 FIRST APPELLATE DISTRICT
 4154 STATE BUILDING
 SAN FRANCISCO, CA 94102**

4. Type of Service: Article Number
P 716 660 182

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X *RE Richards*

6. Signature - Agent
X

7. Date of Delivery
9/26/83

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

P 716 660 182

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to
**CLERK, COURT OF APPEAL
 FIRST APPELLATE DISTRICT
 4154 STATE BUILDING
 SAN FRANCISCO, CA 94102**

Star and No.

Postage \$

Certified Fee

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing to whom and Date Delivered

Return receipt showing to whom, Date, and Address of Delivery

TOTAL Postage and Fees \$

Postmark or Date
**Exhibits Richards
 # 8362**

* U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 3

Superior Court Administrator
Hanson, Howard Jr.
P O Box E
San Rafael, CA. 94913

PEOPLE OF THE STATE OF CALIF.
vs.
RICHARDS, MARK
AO28291 Old No. AO22029
Marin County No. 8362

BY THE COURT:

Oral argument having been requested, the cause herein is
ordered calendared to be heard before Division Three of the
Court on Tuesday, January 19, 1988 at 9:30 a.m.

Dated: DEC 23 1987

WHITE, P.J.

P.J.

P 249 972 344

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

| | |
|--|----|
| Sent to Mr. Harris Tabach | |
| Street and No. Steven J. Heiser | |
| City and State and Zip Code San Francisco, CA 94103 | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | |
| Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date
#8362 Mark Richards
L. Miller's Augmented Transcripts and item #7 on Augmentation. (2) | |

P 249 972 341

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

| | |
|---|----|
| Sent to CLERK, COURT OF APPEAL | |
| Street and No. FIRST APPELLATE DISTRICT | |
| City and State and Zip Code 4154 STATE BUILDING | |
| City and State and Zip Code SAN FRANCISCO, CA 94102 | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | |
| Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date
#8362 Richards
(2) | |

P 249 972 343

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

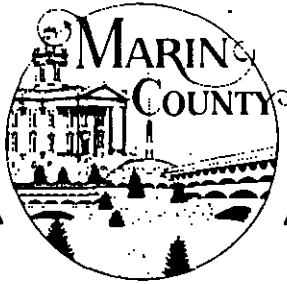
U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

| | |
|---|----|
| Sent to ATTORNEY GENERAL | |
| Street and No. 6000 State Building | |
| City and State and Zip Code San Francisco, Ca 94102 | |
| City and State and Zip Code San Francisco, Ca 94102 | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | |
| Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date
#8362 - Richards
(2) | |

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX E

Harris Tabach
TO: Steven J. Heiser
Spear Street Tower, 19th Floor
One Market Plaza
San Francisco, CA 94103

DATE: October 24, 1985

RE: People of the State
vs

Mark Richards AO #28291

Clerk, Court of Appeal
First Appellate District
4154 State Building
San Francisco, CA 94902

Attorney General
6000 State Building
San Francisco, CA 94102

#8362

ENCLOSED PLEASE FIND: ☒

Reporter L. Miller's Augmented Transcript on Appeal
and cover page as augmented on item #7.

- ☐ The Clerk's Transcript on Appeal.
- ☐ The Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of the Clerk's Transcript on Appeal
- ☐ Your copies of the Clerk's and Reporter's Transcript. on Appeal.
- ☐ Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.
- ☐ The Clerk's and Reporter's Transcript on Appeal are on file in this office for inspection
- ☐ Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

Very Truly Yours;

HOWARD HANSON, Marin County Clerk

By *L. Coleman* Deputy

COUNTY CLERK
Telephone:
(415) 499-6407

SUPERIOR COURT
Telephone:
(415) 499-6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

JURY COMMISSIONER
Telephone:
(415) 499-6063

REGISTRAR
Telephone
(415) 499-6456

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:
Mr. Harris Tabach
Law Office of Steven J. Heiser
Spear Street Tower, 19th Floor
One Market Plaza
San Francisco, CA 94103

4. Type of Service: Article Number
☐ Registered ☐ Insured
☒ Certified ☐ COD
☒ Express Mail P249 972 344

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X

6. Signature - Agent *[Signature]*

7. Date of Delivery *[Stamp: SAN FRANCISCO, CA OCT 28 1983]*

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:
ATTORNEY GENERAL
6000 State Building
San Francisco, Ca 94102

4. Type of Service: Article Number
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail P249 972 343

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee *[Signature]*

6. Signature - Agent *[Signature]*

7. Date of Delivery *[Stamp: SAN FRANCISCO, CA OCT 28 1983]*

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. **COURT OF APPEAL**
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CA 94102

4. Type of Service: Article Number
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail P249 972 341

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee *[Signature]*

6. Signature - Agent *[Signature]*

7. Date of Delivery *[Stamp: SAN FRANCISCO, CA OCT 28 1983]*

8. Addressee's Address (ONLY if requested and fee paid)

TILLD

OCT 17 1985

Court of Appeal - First App. Dist.
RON D. BARROW

RON D. BARROW

1/Criminal A028291

Marin County
Superior Court No. 8362

Claudine Weber, Official Reporter, having now submitted the reporter's transcript on appeal to the Marin Superior Court for filing, it is directed the the order to show cause heretofore issued on October 3, 1985 be discharged.

Dated: OCT 17 1985

WHITE, P. J. P. J.

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX E

CLERK, COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 STATE BUILDING

TO: SAN FRANCISCO, CA 94102

ATTORNEY GENERAL
6000 State Building
San Francisco, Ca 94102

STEVEN J. HEISER
SPEAR STREET TOWER, 19th FLOOR
ONE MARKET PLAZA
SAN FRANCISCO, CA 94103

DATE: OCTOBER 14, 1985

RE: PEOPLE OF THE STATE vs
MARK RICHARDS

CASE #8362
APPELLATE #A0 28291

ENCLOSED PLEASE FIND: ✓ CLERK'S TRANSCRIPT. (AUGMENTED)

- ☐ The Clerk's Transcript on Appeal.
- ☐ The Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of the Clerk's Transcript on Appeal
- ☐ Your copies of the Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.
- ☐ The Clerk's and Reporter's Transcript on Appeal are on file in this office for inspection
- ☐ Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

*C. Woobers
RT of
2/24/83*

Very Truly Yours;

HOWARD HANSON, Marin County Clerk

By Lynn Coleman Deputy

COUNTY CLERK
Telephone:
(415) 499-6407

SUPERIOR COURT
Telephone:
(415) 499-6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

JURY COMMISSIONER
Telephone:
(415) 499-6063

REGISTRAR
Telephone
(415) 499-6456

P 716 660 195

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

* U.S.G.P.O. 1983-403-517

| | | | |
|--|----|--------------------------|--|
| Sent to | | CLERK, COURT OF APPEAL | |
| ATTN: | | FIRST APPELLATE DISTRICT | |
| Street and No. | | 4154 STATE BUILDING | |
| P.O. State and ZIP Code | | SAN FRANCISCO, CA 94102 | |
| Postage | \$ | | |
| Certified Fee | | | |
| Special Delivery Fee | | | |
| Restricted Delivery Fee | | | |
| Return Receipt Showing to whom and Date Delivered | | | |
| Return receipt showing to whom, Date, and Address of Delivery | | | |
| TOTAL Postage and Fees | \$ | | |
| Postmark or Date <i>8362</i>
<i>Peo v Richards</i>
<i>C. Woebert RT of</i>
<i>2/24/83</i> | | | |

P 716 660 208

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

* U.S.G.P.O. 1983-403-517

| | | | |
|--|----|---|--|
| Sent to | | STEVEN J. HETSER | |
| ATTN: | | HARRIS TABACH | |
| Street and No. | | ONE ASPEAR ST. TOWER, 19th FL. | |
| P.O. State and ZIP Code | | ONE MARKET PLAZA
SAN FRANCISCO, CA 94103 | |
| Postage | \$ | | |
| Certified Fee | | | |
| Special Delivery Fee | | | |
| Restricted Delivery Fee | | | |
| Return Receipt Showing to whom and Date Delivered | | | |
| Return receipt showing to whom, Date, and Address of Delivery | | | |
| TOTAL Postage and Fees | \$ | | |
| Postmark or Date <i>#8362</i>
<i>PEO VS RICHARDS</i>
<i>C. WOEBER'S RT FOR</i>
<i>2/24/83</i> | | | |

P 716 660 206

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

* U.S.G.P.O. 1983-403-517

| | | | |
|---|----|-------------------------|--|
| Sent to | | ATTORNEY GENERAL | |
| Street and No. | | 600 N State Building | |
| P.O. State and ZIP Code | | San Francisco, Ca 94102 | |
| Postage | \$ | | |
| Certified Fee | | | |
| Special Delivery Fee | | | |
| Restricted Delivery Fee | | | |
| Return Receipt Showing to whom and Date Delivered | | | |
| Return receipt showing to whom, Date, and Address of Delivery | | | |
| TOTAL Postage and Fees | \$ | | |

Postmark or Date *#8362*
Peo. v Richards
(1) C. Woebert's of 2/24/83
Transcript

October 9, 1985

JOANNE - APPEALS DESK
COUNTY OF MARIN

RE: PEOPLE VS. MARK RICHARDS
AQ28291- OLD AO22029
MARIN NO. 8362

Dear Joanne:

Enclosed is transcript on Appeal in the above proceedings.

Please notify the Court of Appeal, Division 3, by telephone, of the filing of this transcript (reference their October 3rd Appearance Notice for November 19, 1985, signed by Justice White).

Thank you.

Claudine Woeber
CLAUDINE WOEBER

140 Greenwood Avenue
San Rafael, CA 94901
459-4154
499-6063

cc: Division 3 - Court of Appeal
4104 State Building SF CA 94102

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:

ATTORNEY GENERAL
6000 State Building
San Francisco, Ca 94102

4. Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

P 716 660 206

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

10/17/85

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT



PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:

CLERK, COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CA 94102

4. Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

P 716 660 195

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

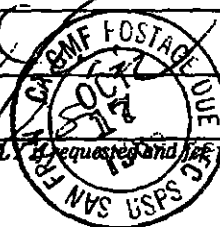
X

7. Date of Delivery

10/17/85

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT



October 9, 1985

JOANNE - APPEALS DESK
COUNTY OF MARIN

RE: PEOPLE VS. MARK RICHARDS
AO28291- OLD AO22029
MARIN NO. 8362

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Thank you.

CLAUDINE WOEBER

140 Greenwood Avenue
San Rafael, CA 94901
459-4154
499-6063

cc: Division 3 - Court of Appeal
4154 State Building SF CA *File 1*

P 249 972 405

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1984-446-014

| | |
|--|----|
| Sent to
CLERK, COURT OF APPEAL | |
| Street and No.
FIRST APPELLATE DISTRICT | |
| P.O., State and ZIP Code
4154 STATE BUILDING | |
| SAN FRANCISCO, CA 94102 | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing
to whom and Date Delivered | |
| Return receipt showing to whom,
Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date
#8362
People vs Richards | |

P 249 972 402

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1984-446-014

| | |
|--|----|
| Sent to
ATTORNEY GENERAL | |
| Street and No.
6000 State Building | |
| P.O., State and ZIP Code
San Francisco, Ca 94102 | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing
to whom and Date Delivered | |
| Return receipt showing to whom,
Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date
#8362
People vs Richards | |

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P.O. BOX E

TO: CLERK, COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 State Building
San Francisco, CA 94102

ATTORNEY GENERAL
6000 State Building
San Francisco, CA 94102

DATE: November 19, 1985

RE: People vs Mark Richards
Case #8362
AO 28291

STEVEN J. HEISER
Spear Street Tower, 19th Floor
One Market Plaza
San Francisco, CA 94103

ENCLOSED PLEASE FIND: REPORTER'S TRANSCRIPT ON APPEAL - AUGMENTATION OF RECORD

- ☐ The Clerk's Transcript on Appeal.
- ☐ The Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of the Clerk's Transcript on Appeal
- ☐ Your copies of the Clerk's and Reporter's Transcript on Appeal.
- ☐ Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.
- ☐ The Clerk's and Reporter's Transcript on Appeal are on file in this office for inspection
- ☐ Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

Very Truly Yours;

HOWARD HANSON, Marin County Clerk

By *A. Bermejo* Deputy

COUNTY CLERK
Telephone:
(415) 499-6407

SUPERIOR COURT
Telephone:
(415) 499-6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

JURY COMMISSIONER
Telephone:
(415) 499-6063

REGISTRAR
Telephone
(415) 499-6456

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☐ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:

ATTORNEY GENERAL
6000 State Building
San Francisco, Ca 94102

4. Type of Service: Article Number

☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail

P 249 972 402

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X

6. Signature - Agent
X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:

CLERK, COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CA 94102

4. Type of Service: Article Number

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

P 249 972 405

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X

6. Signature - Agent
X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

P 249 972 405

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---|---------------------------|
| Sent to | Steven J. Heiser |
| Street and No. | Spear St. Tower, 19th Fl. |
| Post Office | San Francisco, CA 94103 |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | |
| Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date | #8362 |
| People vs Richards | |

* U.S.G.P.O. 1984-448-014

PS Form 3800, Feb. 1982

Judge Mc Guire

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

21

FILED

DEC 15 1986

Court of Appeal - First App. Dist.
RON D. BARROW

By _____
DEPUTY

People of the State of California,
Plaintiff and Respondent,
vs.

1/A028291

Mark Richards,
Defendant and Appellant.

Marin County
Superior Court No. 8362

BY THE COURT:

Appellant's opening brief filed November 13, 1986 is ordered stricken and replaced with the opening brief received in this court November 20, 1986.

Time for filing respondent's brief is extended to 30 days from the date of this order.

Dated DEC 15 1986

SCOTT, J. ACTING P.J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED

MAR 22 1988

Court of Appeal - First App. Dist.
RON D. BARROW

By

DEPUTY

People of the State of California,)
Plaintiff and Respondent,)

1/A028291

vs.)

Mark Richards,)
Defendant and Appellant.)

Marin County
Superior Court No. 8362

BY THE COURT:

Appellant's motion to continue oral argument is denied.

MAR 22 1988

Dated _____

WHITE, P. J.

P. J.

*M - Val.
4 pm*

LAW OFFICES
HARRIS B. TABACK
370 GRAND AVENUE
OAKLAND, CALIFORNIA 94610
(415) 465-3363

July 15, 1987

Clerks Office
California Court of Appeals
First Appellate District, Division Three
455 Golden Gate Avenue Room 4154
San Francisco, CA 94102

*for fill
#8362*

RE: People v. Mark Richards, AO28291

Dear Court Clerk,

This letter will confirm my conversation earlier today with a member of your office concerning the filing of a simultaneous habeas petition in this matter and specifically my last correspondence to your office. Today I informed your office that Mr. Richards' lead counsel, Stephen J. Heiser, has been waiting to receive several essential affidavits that will be the basis for the serious issues to be raised in the petition. Perhaps the most important affidavit we are still waiting for is from appellate Mark Richards. Mr. Richards tells me that he has sent out several lengthy versions to my office from Folsom Prison that never arrived. Moreover, he informs me that several correspondences from my office to him concerning the affidavit never reached him.

I have personally visited Mr. Richards on at least three occasions since April, 1987, and he has begun redoing his affidavit in sections. I have received the first two parts a few days ago. I have recently written Mr. Richards and inquired as to when it will be completed. Upon receipt of said affidavit and a few orders from friends of the family who witnessed certain events concerning Mr. Richards' trial attorneys behavior, Mr. Heiser can finish preparing the petition. We would respectfully request permission to file the petition no later than the end of September and that oral argument in the appeal and the habeas be calendared at the earliest possible date after said petition is filed.

Clerks Office
July 15, 1987
Page Two

One final point, on several occasions after my last correspondence to the court, I phoned the clerks office to inquire if that letter had been considered by the court. I was told that it had not and that we would receive a notice to request or waive oral argument for the appeal. I was further told that at that time we should inform the court of the simultaneous habeas petition to be filed and request that oral argument be calendered at a date to provide ample time to file and consolidate the petition.

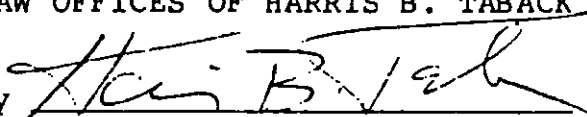
It was not until I received the call this morning that I learned that not only was this not the procedure, but, that the court had been patiently waiting for the petition before it calendered oral argument. I must apologize for this misunderstanding and I would never have allowed so much time to pass without an explanation for the delay. I meant no disrespect to the court.

Thank you for your time and consideration to this matter. Please contact me immediately should there be any problem.

Sincerely,

LAW OFFICES OF HARRIS B. TABACK

By


Harris B. Taback

HBT:lh

1 PROOF OF SERVICE BY MAIL - §1013a(a)(1) CCP

2 I, Lupe Higueros declare that:

3 I am, and was at the time of the service hereinafter
4 mentioned, at least eighteen years of age and not a party to the
5 above-entitled action. My business address is 370 Grand Avenue,
6 Oakland, California; I am a citizen of the United States and
7 employed in the County of Alameda, California.

8 I served the foregoing
9 People v. Mark Richards - A028291

10
11 on the 22 day of July, 1987, by depositing a copy
12 thereof in the United States mail in Oakland, California,
13 enclosed in a sealed envelope, with postage fully prepaid,

14 addressed to:
15 Landra E. Rosenthal
16 Office of the Attorney General
6000 State Building
San Francisco, CA 94102

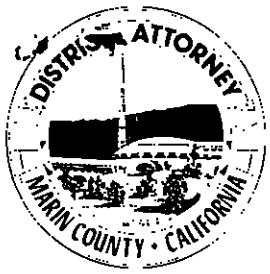
17 Marin County District Attorney's Office
18 Civic Center
San Rafael, CA 94903

19 The Chambers of the Honorable Judge McGuire
20 Civic Center
San Rafael, CA 94903

21
22 who are the attorneys of record for the parties in the above-
23 entitled action.

24 Executed this 22 day of July, 1987, at
25 Oakland, California. I declare under penalty of perjury that the
26 foregoing is true and correct.

27
28 Lupe Higueros
Lupe Higueros



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

May 12, 1988

JERRY R. HERMAN
District Attorney

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRENCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

[Handwritten signature]

Landra E. Rosenthal
Deputy Attorney General
350 McAllister Street, Room 6000
San Francisco, CA 94102

Re: People v. Mark Richards
A028291 (Marin Superior Court #8362/DA #5555)

Dear Ms. Rosenthal:

I have recently received the Opinion of the First District Court of Appeals dated April 28, 1988, which affirmed the conviction and judgment in the above-captioned case. On the last page of the Opinion the Court however remands the case for the purpose of amending the Abstract of Judgment. I am enclosing a certified copy of an Amended Abstract of Judgment signed by the Honorable E. Warren McGuire, Judge of the Marin Superior Court on July 8, 1985. I believe that the Amended Abstract of Judgment which addresses this precise issue noted in the decision of the Court of Appeals makes that remand moot.

If you have any questions in regard to this matter or if my office can be of any additional assistance, please do not hesitate to ask.

Very truly yours,

JERRY R. HERMAN
District Attorney

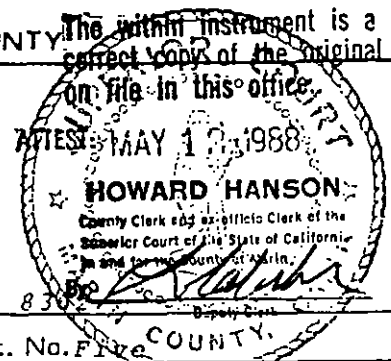
EDWARD S. BERBERIAN
Deputy District Attorney

ESB/m

cc: The Honorable E. Warren McGuire, Judge of the Superior Court ✓
Richard B. Mazer, Esquire
David A. Nickerson, Esquire

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

FILED



THE PEOPLE OF THE STATE OF

CALIFORNIA

Plaintiff (s)

vs.

MARK RICHARDS

Defendant (s)

HOWARD HANSON
MARIN COUNTY CLERK
By D. Downey Deputy

No. 8302

Dept. No. Five

Date Submitted

MINUTE ORDER

AMENDED MINUTE ORDER RE SENTENCING

Defendant having been convicted in Count 1 of Felony First Degree Murder with Special Circumstance in violation of California Penal Code Section 187; 190.2(a)(1) and 190.2(b) (Special Circumstance Financial Gain); and two allegations of 190.2(a)(17)(vii) and 190.2(b) (Special Circumstances Burglary); in Count 2 of Felony Second Degree Commercial Burglary in violation of California Penal Code Section 459; and in Count 3 of Felony Second Degree Residential Burglary in violation of California Penal Code Section 459 by reason of jury verdicts on April 9 and April 24, 1984, and the Court being fully advised in this matter, now therefore:

STATE PRISON SENTENCE

IT IS ORDERED, ADJUDGED AND DECREED: Defendant MARK RICHARDS is sentenced to State Prison for the term of life without the possibility of parole for violation of Count 1, Murder in the First Degree with the finding of three special circumstances, Murder for Financial Gain, Murder While Engaged in the Commission of Burglary, and Murder While Engaged in the Commission of Burglary; as to Count 2 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years, Commercial Second Degree Felony Burglary; and as to Count 3 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years for Residential Second Degree Felony Burglary. It is the Order of this Court that the sentence in Count 2 and Count 3 shall run concurrent with each other, and both Counts 2 and 3 shall run concurrent to the sentence imposed in Count 1.

The Abstract of Judgment heretofore issued is amended to conform to this Order.

Dated

7/8/85

E. Thomas Glavin
Judge of the Superior Court

MINUTE ORDER-SUBMITTED

CC: Dept of Corrections (with copy of settle.)
DA C Shapiro

3110-83-254

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

FILED

THE PEOPLE OF THE STATE OF

CALIFORNIA

JUL 8 1985

Plaintiff (s)

HOWARD HANSON
MARIN COUNTY CLERK

vs.

MARK RICHARDS

By D. Downey Deputy, No. 8362

Dept. No. Five

Date Submitted

Defendant (s)

MINUTE ORDER

AMENDED MINUTE ORDER RE SENTENCING

Defendant having been convicted in Count 1 of Felony First Degree Murder with Special Circumstance in violation of California Penal Code Section 187; 190.2(a)(1) and 190.2(b) (Special Circumstance Financial Gain); and two allegations of 190.2(a)(17)(vii) and 190.2(b) (Special Circumstances Burglary); in Count 2 of Felony Second Degree Commercial Burglary in violation of California Penal Code Section 459; and in Count 3 of Felony Second Degree Residential Burglary in violation of California Penal Code Section 459 by reason of jury verdicts on April 9 and April 24, 1984, and the Court being fully advised in this matter, now therefore:

STATE PRISON SENTENCE

IT IS ORDERED, ADJUDGED AND DECREED: Defendant MARK RICHARDS is sentenced to State Prison for the term of life without the possibility of parole for violation of Count 1, Murder in the First Degree with the finding of three special circumstances, Murder for Financial Gain, Murder While Engaged in the Commission of Burglary, and Murder While Engaged in the Commission of Burglary; as to Count 2 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years, Commercial Second Degree Felony Burglary; and as to Count 3 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years for Residential Second Degree Felony Burglary. It is the Order of this Court that the sentence in Count 2 and Count 3 shall run concurrent with each other, and both Counts 2 and 3 shall run concurrent to the sentence imposed in Count 1.

The Abstract of Judgment heretofore issued is amended to conform to this Order.

Dated

7/8/85

E. Henry Jones
Judge of the Superior Court

MINUTE ORDER-SUBMITTED

CC: Dept of Corrections (with copy of letter.)
Da C Shapiro

3110-83-254

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803
(916)323-7405



FILED

JUL 8 1985

HOWARD HANSON
MARIN COUNTY CLERK

By D. Downey Deputy

April 30, 1985

Honorable E. Warren McGuire
Judge of the Superior Court
County of Marin
Hall of Justice - Civic Center
San Rafael, CA 94903

SECOND REQUEST

Re: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: July 20, 1984

Dear Judge McGuire:

Please refer to the copy of attached letter dated February 1, 1985 requesting clarification regarding above-mentioned case.

In order to process the legal documents on Subject's commitment in a timely manner, we would appreciate a response by the Court as early as possible.

Sincerely,

MARILYN OUYE
Correctional Case Records Manager

By: MARY LEE KING
Correctional Case Records Specialist

Attachment

cc: C-File
District Attorney
Defense Counsel

MO:MLK:jlb

See Attached 11/0

DEPARTMENT OF CORRECTIONS

P.O. Box 714

Sacramento, CA 95803

(916) 323-7405



February 1, 1985

Honorable E. Warren McGuire
Judge of the Superior Court
County of Marin
Hall of Justice-Civic Center
San Rafael, CA 94903

Re: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: 07-20-84

Dear Judge McGuire:

Thank you for the Amended Abstract of Judgment dated November 26, 1984 but it still appears to be in error. The Abstract of Judgment does not indicate the Degree of Burglary for Counts 2 and 3 (six years corresponds with the upper base term of First Degree Burglary).

1. The Abstract does not indicate as to how Counts 2 and 3 are to be served in relation to each other.
2. There is a discrepancy between the Minute Order and Abstract. The Abstract reflects Life + 12 year. The Minute Order reflects Life W/O Parole for Count 1 and with Counts 2 and 3 to be served concurrent. Therefore, the Determinate Abstract should reflect the time imposed for Count 3 of 6 years in brackets and the total term as 6 years.
3. The Abstract reflects Count 2 as PC 459 Burglary. The Information indicates Subject was charged with Robbery 211 PC, perhaps there is an Amended Information.
4. The ISL Abstract does not specify the Special Allegation Penal Code.

We request that you review your file to determine if a correction is required. We would appreciate it if you would provide a certified copy of any Minute Order or modified Abstract of Judgment to this Department so that our records

may reflect the order of the Court. May we also request the attached copy of this letter be returned with your response.

Sincerely,

MARILYN OUYE
Correctional Case Records Manager

Mary Lee King

By: MARY LEE KING
Correctional Case Records Specialist

Attachment

cc: C-File
District Attorney

MO:MLK:mar

REPORT-INDETERMINATE SENTENCE, OTHER SENTENCE CHOICE

FORM CR 291

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN
COURT I.D. 2111 BRANCH

FILED

NOV 30 1984

HOWARD HANSON
MARIN COUNTY CLERK

PEOPLE OF THE STATE OF CALIFORNIA
DEFENDANT: MARK RICHARDS

VERSUS ☒ PRESENT
☐ NOT PRESENT

CASE NUMBER(S)
8352 -A
-B
-C
-D
-E

REPORT TO JUDICIAL COUNCIL OF: ☐ INDETERMINATE SENTENCE
TO STATE PRISON ☒ SENTENCE CHOICE OTHER THAN STATE PRISON

DATE OF HEARING (MO) (DAY) (YR) 7 20 84 DEPT. NO. FIVE JUDGE E. WARREN MC GUIRE CLERK S. MAENGGI
REPORTER MILLER/PERRY COUNSEL FOR PEOPLE BERBERIAN COUNSEL FOR DEFENDANT RIORDAN/SHABIRO PROBATION NO. OR PROBATION OFFICER CARRAHER

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

A. ☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

| COUNT | CODE | SECTION NUMBER | CRIME | YEAR CRIME COMMITTED | DATE OF CONVICTION | | | CONVICTION BY | | ENHANCEMENTS (CHARGED AND FOUND) | | | | | | | |
|-------|------|----------------|----------|----------------------|--------------------|-----|------|---------------|-------------|----------------------------------|----------|----------|----------|------------|------------|---------|------------|
| | | | | | MO | DAY | YEAR | JURY TRIAL | COURT TRIAL | PLEA | 924 STAY | 12022(a) | 12022(b) | 12022-3(a) | 12022-3(b) | 12022-5 | 12022-6(a) |
| 1 | PC | 187 | MURDER | 82 | 4 | 24 | 84 | X | | | | | | | | | |
| 2 | PC | 459 | BURGLARY | 82 | 4 | 24 | 84 | X | | | | | | | | | |
| 3 | PC | 459 | BURGLARY | 82 | 4 | 24 | 84 | X | | | | | | | | | |

2. A. Number of prior prison terms charged and found

| SECTION | NUMBER |
|----------|--------|
| 667.5(a) | |
| 667.5(b) | |
| 667.6(b) | |

B. Number of prior felony convictions

| SECTION | NUMBER |
|----------|--------|
| 667.6(a) | |

3. ☐ Defendant was sentenced to death on counts

4. ☒ Defendant was sentenced to State Prison:

A. For life, or a term such as 15 or 25 years to life, with possibility of parole, on counts

B. ☒ For life without the possibility of parole on counts 1

C. ☒ For other term prescribed by law on counts 2, 3

5. ☐ Counts were deemed misdemeanors.

A. ☐ Defendant sentenced to days in county jail for all counts.

B. ☐ Defendant fined in sum of \$

6. ☐ For counts, the defendant was placed on probation.

A. (1) ☐ Sentence pronounced and execution of sentence was suspended; or

(2) ☐ Imposition of sentence was suspended.

B. Conditions of probation included ☐ Jail Time days ☐ Fine

7. Other dispositions

A. ☐ Defendant was committed to California Youth Authority.

B. ☐ Proceedings suspended, and defendant was committed to California Rehabilitation Center.

C. ☐ Proceedings suspended, and defendant was committed as a Mentally Disordered Sex Offender.

D. ☐ Proceedings suspended, and defendant was committed as mentally incompetent.

E. ☐ Other (Specify)

NOTE: PURSUANT TO ARTICLE VI, SECTION 6 OF THE CALIFORNIA CONSTITUTION AND SECTION 68505 OF THE GOVERNMENT CODE, THE CHIEF JUSTICE REQUIRES THAT EACH SUPERIOR COURT SHALL COMPLETE THIS FORM FOR EACH INDETERMINATE SENTENCE TO STATE PRISON OR SENTENCE CHOICE OTHER THAN STATE PRISON. THE REPORTS IMPLEMENT SECTION 1170.4 OF THE PENAL CODE AND SHALL BE MAILED TO: ADMINISTRATIVE OFFICE OF THE COURTS, 350 McALLISTER, 3200 STATE BUILDING, SAN FRANCISCO, CALIFORNIA 94102

DATE Nov 26, 1984

SIGNATURE OF CLERK S. Maenggi

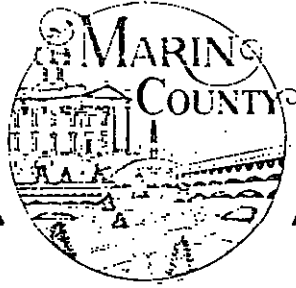
REPORT-INDETERMINATE SENTENCE,
OTHER SENTENCE CHOICE

Const., Art. VI, § 6
Pen C 1170.4, 1170.6

WHITE COPY TO

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94903
P.O. BOX 1

December 9, 1983

Dennis P. Riordan
396 Hayes Street
San Francisco, Ca 94102

RE: #8362 PEO v RICHARDS

Dear Dennis:

The Judges reviewed your application for fees for the Appellate work performed in this case. Their decision was to hold the application and consider it with the final application for fees in the case.

Very truly yours,

HOWARD HANSON
COUNTY CLERK/REGISTRAR

DENNIS P. RIORDAN
Attorney at Law
396 Hayes Street
San Francisco, California 94102
Telephone (415) 431-3472

November 22, 1983

Howard C. Hanson
County Clerk
Marin County
Hall of Justice, P. O. Box E
San Rafael, California 94913

Re: Richards v. Superior Court
Sup. Ct. No. 8362

Dear Howard:

Enclosed is an order of the District Court of Appeal denying my request for appointment and compensation in the Richards writ matter. I was told by a court clerk such a denial was likely because the Court of Appeal compensates counsel for matters heard in Superior Court on its order, and thus considers writ petitions brought by counsel appointed in Superior Court the responsibility of the lower court. //

As you know, the petition was not frivolous, as it resulted in a published opinion granting petitioner part of the relief requested. I therefore am again requesting that the Superior Court compensate me for the work involved. I enclose the detailed statement of hours and expenses that I submitted to the Court of Appeal.

Sincerely,



DENNIS P. RIORDAN

DPR:mdd
Enclosures

COPY

Court of Appeal of the State of California **FILED**

IN AND FOR THE

First Appellate District

NOV 13 1983

Court of Appeal - First Dist.
CLIFFORD C. PORTER, Clerk

By _____
DEPUTY

Division ONE

Mark Richards,
Petitioner,

vs.

Superior Court, County of Marin,
Respondent,

People of the State of California,
Real Party in Interest.

No. A022029

Marin
Superior Court No. 8362

BY THE COURT:

The motion for appointment and compensation of counsel is
denied.

Dated NOV 13 1983

RACANELLI, P. J.

P.J.

PEOPLE v. RICHARDS

| <u>DATE</u> | <u>ACTIVITY</u> | <u>HOURS</u> |
|-------------|--|--------------|
| 4/8 | Writing writ on specials | 5 |
| 4/9 | Writing writ on specials | 5.5 |
| 4/10 | Writing writ on specials | 4.5 |
| 4/11 | Preparation of writ | 1.5 |
| 4/11 | Picked up minute order re writ | 3.5 |
| 4/11 | Writ | 2 |
| 4/13 | Writ, response to court request
for doc. | 1 |
| 4/13 | Court venue | 2 |
| 5/11 | Prep. for oral arg. on writ | .5 |
| 5/24 | Prep. for oral arg. on writ | .25 |
| 5/25 | Prep. for oral arg. on writ | 1.5 |
| 5/26 | Prep. for oral arg. on writ | 1.5 |
| 5/26 | Writ argument | 2.5 |
| 8/24 | Review of Opinion and conf.
with co-counsel | .5 |
| 9/3 | Rehearing petition | 4 |
| 9/6 | Petition for Rehearing | 1 |
| 9/30 | Petition for Hearing | 3.5 |
| 10/1 | Petition for Hearing | 1 |
| 10/3 | Petition for Hearing | <u>1</u> |
| | TOTAL OF HOURS | 42.25 |

PEOPLE v. RICHARDS (Cont.)

Expenses

| | |
|---|----------------|
| Xeroxing of Petition for Hearing
(see enclosed bill) | \$70.72 |
| Xeroxing of Petition for Rehearing
(see enclosed bill) | \$16.40 |
| Inter-office xeroxing (100 copies x \$.10) | <u>\$10.00</u> |
| TOTAL EXPENSES | \$97.12 |

29 Grove Street
San Francisco, CA 94102
(415) 552-6326

San Francisco, CA 9-

(415) 552-6326

Date _____

10.3. 1983

Dennis P. Richardson

| Quantity | | Description: | UNIT
COST | Amount | |
|----------|-------|------------------|--------------|--------|----|
| XEROX | MISC. | | | | |
| 740 | | 37 X 20 | 0.05 | 37 | 00 |
| 21 | | enclosed checks | | 3 | 15 |
| 21 | | Bank credit book | | 1 | 05 |
| 21 | | Vols Building | 1.20 | 25 | 20 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | Sub-Total | 66 | 40 |
| | | | Tax/Rental | 4 | 32 |
| | | | Total | 70 | 72 |

12.10.2017

309

Richard J. ...

29 Grove Street
San Francisco, CA 94102
(415) 552-5326

*Paid for
Publishing*

၁၃၃၁

Q. L. 983

| Quantity | | Description | UNIT
COST | Amount |
|------------|-------|-------------|--------------|--------|
| XEROX | MISC. | | | |
| 11 | | Copies on | | 1 1/25 |
| | | Card Stock. | | |
| 11 | | Printings | 1.25 | 13 75 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Paid Cash. | | | Sub-Total | 15 40 |
| | | | Tax/Resale | 1 00 |
| | | | Total | 16 40 |

Howard Hanson, Marin County Clerk, hereby receipts for

1 Cashiers Check for \$12,000.00

Grant Deed from Ellis L. Richards and Lois I. Richards to the County of Marin for the property commonly referred to as 15 Sturdevant, San Anselmo, California

Amwest Surety Insurance Co. appearance bond in the amount of \$40,000.00

Six (6) United States of America Bearer Bonds in the amount of \$10,000.00 each, bearing the serial numbers

12029

12024

12025

12026

12027

12028

Each of the Series B-1984, dated August 15, 1977, due August 15, 1984

One (1) United States of America Bearer Bond in the amount of \$5,000.00, bearing serial number 894, Series B-1984, dated August 15, 1977, due August 15, 1984

Four (4) State of California Water Bonds under the California Water Resources Development Bond Act in the amount of \$5,000.00 each bearing the serial numbers

G17885

G17886

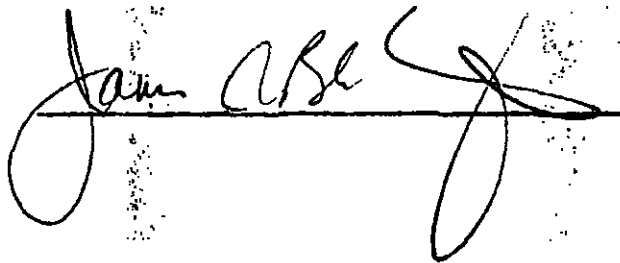
G17887

G17888

with a declaration from Carl Shapiro that their total present value is \$9,725.00

receipt of which is hereby acknowledged this 1st day of December, 1983

Howard Hanson, County Clerk
by James S. Bleecker jr, deputy

A handwritten signature in dark ink, appearing to read "James S. Bleecker jr", is written over a horizontal line. The signature is stylized with large, sweeping loops.

RECEIPT # 784

12/01/83 BAIL 12063.00

MARIN COUNTY CLERK TRANSACTION SLIP

CASE NO. 8362 CASE NAME PEOPLE

☐ REC'D BALANCE DUE \$ _____ VS MARK RICHARDS

☐ JURY FEES \$ _____ BY _____

☐ ADDN'L JURY FEES \$ _____ BY LOIS I. RICHARDS

☐ SUBPOENA \$ _____ FOR IS STURDEVANT

☐ COURT DEP. \$ _____ BY SAN ANSELMO, CA

☒ BAIL * \$ 12,000.00 BY SHAPIRO FOR MARK RICHARDS

☐ FINE \$ _____ BY _____ FOR _____

☐ REP. TRANS. \$ _____ BY _____ FOR _____

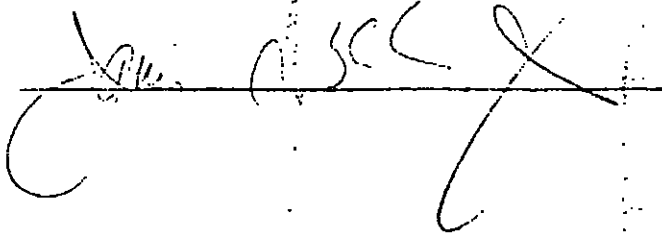
☐ OTHER _____

DATE DEC -1 1983 BY D. HAGLER DEPUTY

*IN ADDITION TO SECURITIES HELD IN PERSONNEL SAFE

In lieu of the Grant Deed receipted for December 1, 1983 and returned December 2, 1983, a Deed of Trust from Ellis L. Richards and Lois I. Richards to the County of Marin as beneficiary with Howard Hanson, Marin County Clerk as trustee is hereby receipted for.

Howard Hanson, County Clerk
by James S. Bleecker Jr., deputy

A handwritten signature, likely of James S. Bleecker Jr., is written over a horizontal line. The signature is stylized and appears to contain the letters 'JSC'.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

The People of the State of California,

Plaintiff,

Charge 187

vs

Mark Richards

Case No. 8362

Defendant.

ORDER REGARDING THE CUSTODY OF PRISONER

TO THE SHERIFF OF MARIN COUNTY:

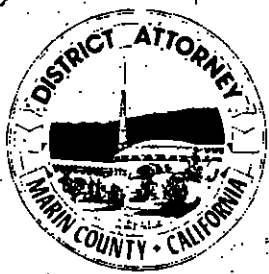
Unless being held on other charges or other process of law, this is to
command you to release from custody/~~confine~~ the above named defendant
in the above cause as hereinafter directed:

Bail posted.
release forthwith

Dated 12/2/83

[Signature]
Judge of the Superior Court

ORIG. REC'D ON 12-2-83
By [Signature]
Sheriff's Office



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

JERRY R. HERMAN
District Attorney

December 5, 1983

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRENCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

Carl Shapiro, Esquire
404 San Anselmo Avenue
San Anselmo, CA 94960

Re: People v. Mark Richards
DA 5555/Sup. Ct. 8362

Dear Mr. Shapiro:

I noted in the newspapers you are quoted as saying you intend to seek a further delay in the case. If that is an accurate quote, then you and your client should be advised that I will strongly oppose any continuance.

Our office strongly believes your client to be a danger to this community and further believes the present bail is too low in light of the nature and seriousness of the offense. Initially, we opposed any bail in this case, however, bail was set and later reduced to its present level.

It has now been one and one-half years since the murder of Richard Baldwin. The needs of the victim's family and the many witnesses should be paramount. More delay at this point does not serve justice, but merely the self-serving interests of your client. You have been the attorney since the inception of this case. The State has supported your client's defense not only by your services, but by providing for the past year at least two investigators and a second attorney. I am confident you are able and prepared to commence trial without further delay.

Very truly yours,

JERRY R. HERMAN
DISTRICT ATTORNEY

EDWARD S. BERBERIAN
Deputy District Attorney

ESB:mem

cc: The Honorable David Menary, Jr.
The Honorable E. Warren McGuire

CONSUMER PROTECTION

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

CRIMINAL DIVISION

Room 155—Hall of Justice
San Rafael, California 94903
(415) 499-6450

FAMILY SUPPORT

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6501

VICTIM/WITNESS ASSISTANCE

Room 181—Hall of Justice
San Rafael, California 94903
(415) 499-6482

YERGENITA PLINTERIE HAST ED MCINTEO

STRAK R. JENCO



YERGENITA PLINTERIE HAST ED MCINTEO

STRAK R. JENCO

YERGENITA PLINTERIE HAST ED MCINTEO

STRAK R. JENCO

[The main body of the document contains several paragraphs of text that are extremely faint and illegible due to the quality of the scan. The text appears to be a formal document, possibly a letter or a report, but the specific content cannot be discerned.]

YERGENITA PLINTERIE HAST ED MCINTEO
STRAK R. JENCO

YERGENITA PLINTERIE HAST ED MCINTEO
STRAK R. JENCO

YERGENITA PLINTERIE HAST ED MCINTEO
STRAK R. JENCO

YERGENITA PLINTERIE HAST ED MCINTEO
STRAK R. JENCO

Howard Hanson, Marin County Clerk, hereby receipts for

1 Cashiers Check for \$12,000.00

- Auditors

Grant Deed from Ellis L. Richards and Lois I. Richards to the County of Marin for the property commonly referred to as 15 Sturdevant, San Anselmo, California

Filed to C. Shapiro
Recorder
(Not returned)

Amwest Surety Insurance Co. appearance bond in the amount of \$40,000.00

- Filed

Six (6) United States of America Bearer Bonds in the amount of \$10,000.00 each, bearing the serial numbers

RRK 12029
12024
12025
12026
12027
12028

Personal
Page

Each of the Series B-1984, dated August 15, 1977, due August 15, 1984

One (1) United States of America Bearer Bond in the amount of \$5,000.00, bearing serial number 894, Series B-1984, dated August 15, 1977, due August 15, 1984

Personal
Page

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G17885
G17886
G17887
G17888

Personal
Page

with a declaration from Carl Shapiro that their total present value is \$9,725.00

Personal
Page

receipt of which is hereby acknowledged this 1st day of December, 1983

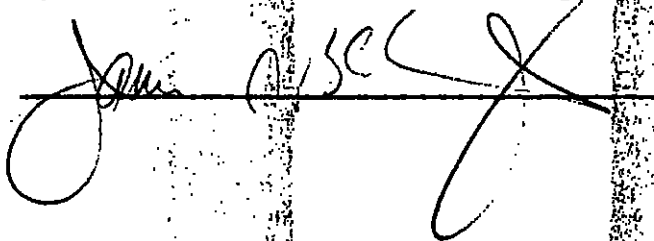
Howard Hanson, County Clerk
by James S. Bleecker jr, deputy

James S. Bleecker jr

Orig to C. Shapiro, City

In lieu of the Grant Deed receipted for December 1, 1983 and returned December 2, 1983, a Deed of Trust from Ellis L. Richards and Lois I. Richards to the County of Marin as beneficiary with Howard Hanson, Marin County Clerk as trustee is hereby receipted for

Howard Hanson, County Clerk
by James S. Bleecker Jr., deputy



*Jordan's
(to be
returned
to us.)*

1
2
3 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
4 FIRST APPELLATE DISTRICT
5
6

7 THE PEOPLE OF THE STATE OF CALIFORNIA

8 Plaintiff/Respondent

9
10 vs

11 MARK RICHARDS

12 Defendant/Appellant
13
14

15
16 CLERK'S TRANSCRIPT ON APPEAL FROM
17 A JUDGMENT MADE AND ENTERED IN THE SUPERIOR
18 COURT OF THE STATE OF CALIFORNIA IN AND FOR
19 THE COUNTY OF MARIN

20 For the Plaintiff/Respondent

21 John Van de Kamp
22 6000 State Building
23 San Francisco, California 94102

24 For the Defendant/Appellant

25 California State Public Defender
26 1390 Market Street, Suite 425
27 San Francisco, California 94102

28 VOLUME THREE OF FIVE
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HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX E

September 25, 1985

Monterey County Clerk
240 Church Street
P. O. Box 1819
Salinas, CA 93902

Re: PEOPLE OF THE STATE OF CALIFORNIA vs MARK RICHARDS
MARIN COUNTY SUPERIOR CASE #8362

Dear Sir:

Enclosed, please find a copy of your Ruling On Challenge Under
C.C.P. 170(a)(5) in the aforementioned matter.

I am requesting a certified copy of this document to send to
The District Court of Appeal along with other augmented materials.

As these materials are vitally needed for the pending appeal,
I would appreciate your prompt attention in this matter.

Please call me, should you have any questions as to this matter.
(415) 499-6423

Sincerely yours,

HOWARD HANSON
County Clerk

Joann Cornel
Appeals Clerk

Enclosures (1)
jqc

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.
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MONTEREY COUNTY CLERK OFFICE
240 Church Street
P. O. Box 1819
Salinas, CA 93902

4. Type of Service: Article Number
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☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X *E. McFarland*

6. Signature - Agent
X

7. Date of Delivery
10-3-83

8. Addressee's Address (ONLY if requested and fee paid)

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SALINAS, CA 93701

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P 716 660 181

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
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| * U.S.G.P.O. 1983-403-517
PS Form 3800, Feb. 1982 | Sent to
MONTEREY COUNTY CLERK OFFICE | |
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| | P. O. Box 1819 | |
| | Salinas, CA 93902 | |
| | Postage | \$ |
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| TOTAL Postage and Fees | | \$ |
| Postmark or Date #8362 RICHARDS
LETTER REQUESTING CERT. COPY
OF RULING CCP 170(a)(5) | | |

OFFICE OF THE COUNTY CLERK

Howard Hanson, County Clerk

INTER-OFFICE MEMORANDUM

TO: L. LINQUIST, L. MILLER, C. WOEBER, T. SAIKI

DATE MARCH 5, 1985

FROM: L. PFEIFER, APPEALS, CLERK

ATTACHED I HAVE AN AUGMENT TO THE RECORD ON APPEAL OF MARK RICHARDS #8362. I HAVE PUT YOUR NAME NEXT TO THE DATE TRANSCRIPTS ARE REQUESTED FROM YOU.

THANKS,



42685-
ALF

FILED

FEB 28 1985

Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk
By [Signature] Deputy

Results

VS.

A028291 Old No. A022029

Marin County No. 8362

Upon motion of counsel for Appellant and good cause appearing, the record on appeal in Marin County Superior Court Action No. 8362 is ordered augmented to include a supplemental clerk's and/or reporter's transcript consisting of the proceedings and/or documents as requested in the motion to augment, a copy of which is attached hereto.

The trial court is directed to forward the original or a certified copy of the foregoing material to this court within 30 days. It is further ordered that copies of said material be mailed to:

State Public Defender's Office
1390 Market Street
Suite 425
San Francisco, Ca 94102

Time for filing Appellant's opening brief is extended to 30 days after filing of the augmentation of the record in this court.

Dated: FEB 28 1985

White P. J.

FRANK O. BELL, JR., State Public Defender
JOEL KIRSHENBAUM
Deputy State Public Defender
1390 Market Street, Suite 425
San Francisco, California 94102
Telephone: (415) 557-1925

Attorneys for Appellant

3 ORIGINAL
FILED

Feb 1 1983

Court of Appeal - First Dist.
CLIFFORD C. PORTER, Clerk
By *[Signature]*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

| | | |
|------------------------------------|---|------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | |
| |) | |
| Plaintiff and Respondent, |) | Court of Appeal |
| |) | No. A028291 |
| v. |) | |
| |) | |
| MARK RICHARDS, |) | [Marin County Superior |
| |) | Court No. 8362] |
| Defendant and Appellant. |) | |

APPLICATION TO AUGMENT THE RECORD ON APPEAL
AND FOR EXTENSION OF TIME WITHIN WHICH
TO FILE APPELLANT'S OPENING BRIEF

TO: THE CLERK OF THE COURT OF APPEAL:

Appellant, MARK RICHARDS, applies through his counsel, pursuant to Rules 12(a), 33(b) and 43 of the California Rules of Court, to augment the record on appeal as specified herein, and to extend the time within which to file his opening brief to thirty (30) days from receipt of the materials herein sought. No previous application to extend time has been made.

I

APPLICATION TO AUGMENT
THE RECORD ON APPEAL

Appellant requests that the record on appeal be augmented by the inclusion of the following:

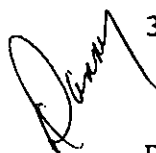
- Leo Miller*
1. Reporter's Transcript of Entire Jury Selection Proceedings, January 17 to February 8, 1984.

Prior to trial, appellant moved for a change of venue based on extensive and prejudicial publicity regarding his case in Marin County (CT 636-686); that motion was denied (CT 1150). The transcript of the jury selection proceedings is essential to determine the actual influence of such publicity on the prospective jurors and thus whether the venue motion was improperly denied.

- J. Miller
H. Anderson*
2. Reporter's Transcript of Entire Proceedings of February 14, 1984, Including Opening Statements of Counsel.

On February 14, 1984, jury trial commenced with reading of the information, advisement to the jury regarding procedures, admonishment of the jurors regarding presence of media in the courtroom, and opening statements of both counsel. These proceedings lasted from 10:45 a.m. to 3:00 p.m. The present Reporter's Transcript on Appeal commences at 3:15 p.m. with the testimony of the first witness. (CT 1323.) The opening statements of counsel are necessary for this appeal because certain items of evidence were admitted, over objection, at trial due

to evidentiary assertions by counsel during the opening statements. The other proceedings of February 14 are requested because they involve statements and instructions by the court to the jury at an especially critical stage of the trial.

 3. People's Exhibits (at trial) 19 and 19-A,
35-A, 35-B, 35-C, and 109-A through 109-F.

People's 19 is an evidence envelope containing a cassette tape recording from the victim's answering machine, played for the jury but not transcribed in the record; People's 19-A is a transcript of that tape which was used by the jury to assist in listening to the tape (RT 54-55). People's 35-A is a transcript of appellant's interrogation by the police, in which the portions objected to by appellant are underlined; People's 35-B is the transcript actually given to the jury to assist in listening to the tape-recorded interrogation; People's 35-C is an instruction proposed by defense counsel, and modified by the court, to be read to the jury in connection with the playing of the tapes (RT 553-555). People's 109-A through 109-F are six cassette tapes of that interrogation, which were played for the jury in their entirety (RT 610-612).

Ready access to all of these exhibits will be needed by the undersigned during the preparation of appellant's opening brief. Because of the 40-mile round trip between the undersigned's office and the Marin County Clerk's Office, resort to rule 10(d) to obtain these exhibits would be inadequate. It is therefore requested that, as part of the augmented record, the seven

original cassette tapes be transmitted to the Court of Appeal and copies of the requested written documents be sent to both the Court and appellate counsel.

4. "Ruling on Challenge Under C.C.P. 170(a)(5),"
Filed April 17, 1984 in Monterey County Superior
Court.

Following the guilt phase of trial, appellant moved to disqualify the trial judge from presiding at the special circumstance phase, pursuant to Code of Civil Procedure section 170(5) (CT 1486-1495). No ruling on this motion appears in the present appellate record, although the same judge did indeed preside at the special circumstance phase. In examining the court file in the Marin County Clerk's Office, the undersigned discovered a copy of the written order of Monterey County Superior Court Judge Robert O'Farrell, filed on April 17, 1984, denying the motion (see court file "D"). This potential appellate issue obviously cannot properly be raised or decided without a copy of the court's written decision.

5. Reporter's Transcript of November 3 and 4,
1983 Hearings.

7. *Dispute*
In reviewing the court file, the undersigned discovered clerk's minutes (omitted from the Clerk's Transcript on Appeal) reflecting the two above-cited hearings, the subject of which was the apparent destruction of certain of appellant's legal materials by Marin County Jail personnel (see court file "B"). Transcripts of those two hearings are needed in order to

determine whether a potential appellate issue is presented by the destruction of the defendant's legal materials.

6. Reporter's Transcript of August 24, 1982
Hearing.

*C. W. after
Judge Smith*

In reviewing the court file, the undersigned has also discovered clerk's minutes of a hearing (omitted from the Clerk's Transcript on Appeal) on the above date involving the prosecution's "Motion to Compel Witness to Answer Questions," apparently under a grant of immunity pursuant to Penal Code section 1324 (see original court file). The transcript of this hearing is needed to determine what, if any, conditions were attached to the prosecution witness's grant of immunity (see People v. Medina (1974) 41 Cal.App.3d 438).

7. ✓ Page 1 (Caption Page) of Memorandum of Points
and Authorities in Support of Motion to Exclude
Statement, Filed December 23, 1982.

The Clerk's Transcript on Appeal contains pages 2 through 67 of the above-entitled motion (CT 326-B - CT 390), but omits the first or caption page (CT 326-A). That page is needed in order to have the entire motion before this Court.

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/

/

II

APPLICATION TO EXTEND TIME

Since the record on appeal requires augmentation, appellant requests that he be allowed thirty (30) days from receipt of the additional record herein sought in which to file his opening brief.

DATED: February 1, 1985

Respectfully submitted,

FRANK O. BELL, JR.
State Public Defender



JOEL KIRSHENBAUM
Deputy State Public Defender

Attorneys for Appellant

JK:a

4-85-0018

OFFICE OF THE COUNTY CLERK

Howard Hanson, County Clerk

INTER-OFFICE MEMORANDUM

TO: MONTEREY COUNTY CLERK

DATE MARCH 4, 1985

FROM: L. PFEIFER, APPEALS CLERK

ATTACHED PLEASE FIND A COPY OF AN AUGMENT TO ONE OF OUR RECORDS ON APPEAL. THE COURT APPEALS IN SAN FRANCISCO HAS REQUESTED A CERTIFIED COPY OF A RULING FROM YOUR COURT. I HAVE ATTACHED A COPY OF THAT RULING TO BE CERTIFIED. THANK YOU FOR YOUR ASSISTANCE IN THIS MATTER.

SINCERELY,



L. PFEIFER
APPEALS CLERK

COPY

FILED

OCT - 3 1985
Court of Appeal - First Dist.
By RON D. BARROW, Clerk
DEPUTY

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 3

PEOPLE OF THE STATE OF CALIF.
VS.
RICHARDS, MARK
A028291 Old No. A022029
Marin County No. 8362

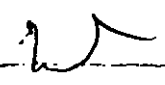
BY THE COURT:

T. Saiki, Official Reporter (or Official Reporter Pro Tempore) of the Superior Court, County of Marin, is ordered to show cause before Division 3 of this court on Wednesday, November 19, 1985, at 9:30 A.M, why he/she should not be declared not competent to act as an official reporter in any court pursuant to the provisions of Government Code section 69944, because of his/her failure to prepare an augmentation of the record on appeal in the above-mentioned case, in accordance with the provisions of our order dated February 28, 1985, a copy of which is attached hereto. (See Rule 46.5, California Rules of Court).

Dated: OCT - 3 1985

WHITE, P. J.

-----P. J.



COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION THREE

COPY

FILED

SEP 26 1985
Court of Appeal - First Dist.
By RON D. BARROW, Clerk
DEPUTY

People of the State of California,)
Plaintiff and Respondent,)

1/A028291

vs.)

Mark Richards,)
Defendant and Appellant.)

Marin County
Superior Court No. 8362

place in file

BY THE COURT:

Good cause appearing, the appointment of the State Public Defender as counsel for appellant is hereby vacated, and Stephen J. Heiser, Attorney at law, One Market Plaza, Spear Street Tower, Nineteenth Floor, San Francisco, CA 94105, is appointed to represent the appellant on this appeal.

The State Public Defender is hereby directed to forward the defendant's copy of the record on appeal to Mr. Heiser, immediately.

Appellant's opening brief shall be filed within thirty-five days from the date of this order.

Dated SEP 26 1985

WHITE, P. J.

P. J.

*Rec'd
9/27/85
Jornel*

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX E

TO: CLERK, COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CA 94102

DATE: SEPTEMBER 19, 1985

RE: PEO. vs MARK RICHARDS
MARIN SUPERIOR CASE #8362
APPEALS COURT CASE #A028291

ATTORNEY GENERAL
6000 STATE BUILDING
SAN FRANCISCO, CA 94102

STATE PUBLIC DEFENDER
1390 MARKET STREET, SUITE 425
SAN FRANCISCO, CA 94102

ENCLOSED PLEASE FIND:

REPORTER'S



The ~~XXXXXX~~ Transcript on Appeal.



The Clerk's and Reporter's Transcript on Appeal.



Your copy of the Clerk's Transcript on Appeal



Your copies of the Clerk's and Reporter's Transcript. on Appeal.



Your copy of Clerk's Transcript on Appeal. If you have not received a copy of Reporter's Transcript on Appeal, be advised that the original is on file in this office for inspection.



The Clerk's and Reporter's Transcript on Appeal are on file in this office for inspection



Please advise this office within ten days if there are any corrections to be made. If we do not hear from you within that time, we will consider the transcript(s) to be correct, and we will forward the original(s) to the Clerk, Court of Appeal. Rule 8(a), California Rules of Court.

Very Truly Yours;

HOWARD HANSON, Marin County Clerk

By

Lynn Coleman Deputy

COUNTY CLERK
Telephone:
(415) 499-6407

SUPERIOR COURT
Telephone:
(415) 499-6063

LYNN COLEMAN
Asst. County Clerk/
Registrar

JURY COMMISSIONER
Telephone:
(415) 499-6063

REGISTRAR
Telephone
(415) 499-6456

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1 ☒ Show to whom, date and address of delivery.2. ☐ Restricted Delivery.

3. Article Addressed to:

ATTORNEY GENERAL
6000 State Building
San Francisco, Ca 94102

4. Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

P 716 660 178

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

8. Addressee's Address (ONLY if restricted delivery paid)



DOMESTIC RETURN RECEIPT

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1 ☒ Show to whom, date and address of delivery.2. ☐ Restricted Delivery.

3. Article Addressed to:

CLERK, COURT OF APPEAL
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CA 94102

4. Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

P 716 660 176

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

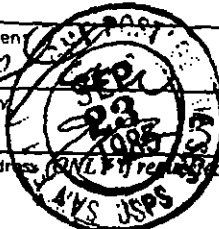
X

6. Signature - Agent

X

7. Date of Delivery

8. Addressee's Address (ONLY if restricted delivery paid)



DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1 ☒ Show to whom, date and address of delivery.2. ☐ Restricted Delivery.

3. Article Addressed to:

STATE PUBLIC DEFENDER
1390 MARKET STREET, SUITE 425
SAN FRANCISCO, CA 94102

4. Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

P 716 660 177

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

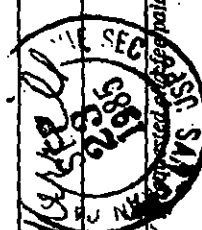
X

6. Signature - Agent

X

7. Date of Delivery

8. Addressee's Address (ONLY if restricted delivery paid)



PS Form 3811, July 1983

DOMESTIC RETURN RECEIPT

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
RON D. BARROW, CLERK

DIVISION: 3 DATE: May 29, 1985

FILED

MAY 30 1985

HOWARD HANSON
MARIN COUNTY CLERK
BY J. Rush
DEPUTY

Office of the County Clerk
Marin County
Hall of Justice Rm. 151
San Rafael, Ca. 94903

RE: PEOPLE OF THE STATE OF CALIF.
vs.
RICHARDS, MARK
A028291 Old No. A022029
Marin County No. 8362

Dear Appeals Clerk:

This court on February 28, 1985 issued an order augmenting the record on appeal and directing the trial court to cause such augmentation to be prepared within 20 days. The requested supplemental transcripts have not been received by this court for filing.

Please advise the undersigned who is responsible for the delay in the preparation of this augmentation. If a court reporter is responsible for the delay, it is further requested that he or she be advised that an order will issue compelling them to show cause why he or she should not be declared not competent to act as an official reporter in any court pursuant to the provision of Government Code section 69944 because of his or her failure to prepare the record unless:

- (1) Notice is received from your office that the reporter's transcripts will be submitted for filing within 10 days, or;
- (2) a request for an extension of time to prepare the record is received by this court within 10 days from the date of inquiry.

cc: L. Miller, ~~L. Anderson~~
T. Saiki & C. Woelke

P 716 660 176

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | | |
|---|---|----|
| * U.S.G.P.O. 1983-403-517
PS Form 3800, Feb. 1982 | Sent to
CLERK, COURT OF APPEAL | |
| | Street and No.
FIRST APPELLATE DISTRICT | |
| | P.O., State and ZIP Code
4154 STATE BUILDING | |
| | SAN FRANCISCO, CA 94102 | |
| | Postage | \$ |
| | Certified Fee | |
| | Special Delivery Fee | |
| | Restricted Delivery Fee | |
| | Return Receipt Showing to whom and Date Delivered | |
| | Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | | \$ |
| Postmark or Date
APPEALS #8362
PEO VS RICHARDS (1)
REPORTER'S TRANSCRIPTS FROM
T.SAIKI FOR 3/14/83 & 8/4/83 | | |

P 716 660 176

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | | | |
|---|---|--|----|
| * U.S.G.P.O. 1983-403-517
PS Form 3800, Feb. 1982 | Sent to
ATTORNEY GENERAL | | |
| | Street and No.
6000 State Building | | |
| | P.O., State and ZIP Code
San Francisco, Ca 94102 | | |
| | Postage | | \$ |
| | Certified Fee | | |
| | Special Delivery Fee | | |
| | Restricted Delivery Fee | | |
| | Return Receipt Showing to whom and Date Delivered | | |
| | Return receipt showing to whom, Date, and Address of Delivery | | |
| | TOTAL Postage and Fees | | \$ |
| Postmark or Date
APPEALS #8362
PEO VS RICHARDS (1)
REPORTER'S TRANSCRIPT
OF T. SAIKI FOR 3/14/83 & 8/4/83 | | | |

P 716 660 177

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | | |
|---|---|----|
| * U.S.G.P.O. 1983-403-517
PS Form 3800, Feb. 1982 | Sent to
STATE PUBLIC DEFENDER | |
| | Street and No.
3139 MARKET STREET, SUITE 425 | |
| | P.O., State and ZIP Code
SAN FRANCISCO, CA 94102 | |
| | Postage | \$ |
| | Certified Fee | |
| | Special Delivery Fee | |
| | Restricted Delivery Fee | |
| | Return Receipt Showing to whom and Date Delivered | |
| | Return receipt showing to whom, Date, and Address of Delivery | |
| | TOTAL Postage and Fees | |
| Postmark or Date
APPEALS #8362
PEO. VS RICHARDS (1)
REPTR'S TRANSCRIPT OF
T. SAIKI 3/14/83 & 8/4/83 | | |

HOWARD HANSON

COUNTY CLERK • REGISTRAR OF VOTERS
COURT ADMINISTRATOR • JURY COMMISSIONER



HALL OF JUSTICE

CIVIC CENTER • SAN RAFAEL, CALIFORNIA 94913
P. O. BOX E

January 16, 1985

Carl Shapiro, Esq.
Shapiro & Shapiro
400 San Anselmo
San Anselmo, Ca 94960

re: Peo v RICHARDS #8362 - Second Request

Dear Carl:

I still have not received a response to my December 13, 1984 letter regarding a final accounting of the \$27,150 expended by you pursuant to Penal Code §987.9 in the Richards case.

It would be appreciated if you would expedite this accounting since the State continues to withhold their reimbursement until your accounting is submitted.

Thank you.

Very truly yours,

HOWARD HANSON
COUNTY CLERK

OFFICE OF THE COUNTY CLERK

Howard Hanson, County Clerk

INTER-OFFICE MEMORANDUM

TO: L. MILLER, L. SETTLEMYRE, B. PERRY, T. SAIKI,
K. LILLARD, L. MITCHELL, D. BARTUNEK,
FROM: M. TAKASCH & C. WOEBER

DATE JULY 25, 1984

~~TIME~~ PEO. v. RICHARDS, 8362

ALMA COOPER, APPEALS

ATTACHED, I HAVE YOUR COPY OF NOTICE OF APPEAL. THE DAYS REQUIRED TO BE TRANSCRIBED ARE LISTED BELOW.

| | | |
|--|----------------|---------------------------|
| 11/12/82 LAW & MOTION, 9:30 | JUDGE WILSON | D. BARTUNEK |
| 3/17/83 | | |
| 3/10/83 DISCOVERY MOTION, 1:47 | JUDGE SMITH | L. MITCHELL |
| 3/14/83 LAW & MOTION, 10:00 | JUDGE MENARY | T. SAIKI |
| 4/7/83 MOTIONS, 10:00 | JUDGE MC GUIRE | K. LILLARD |
| 4/8/83 MOTIONS, 2:00 (have) | JUDGE MC GUIRE | C. WOEBER |
| 4/11/83 LAW & MOTION, 10:00 | JUDGE MENARY | M. TAKASCH |
| 4/12/83 MOTIONS, 1:30 | JUDGE MC GUIRE | L. SETTLEMYRE |
| 4/13/83 MOTIONS, 10:00 | " | " |
| 4/14/83 MOTIONS, 10:00 - (change of venue, have) | " | " |
| 8/4/83 LAW & MOTION, 9:00 | JUDGE MENARY | T. SAIKI |
| 1/11/84 MOTIONS, 10:00 | JUDGE MC GUIRE | L. MILLER |
| 1/12/84 MOTIONS, 10:00 | JUDGE MC GUIRE | L. MILLER |
| 2/14/84 7th DAY CRIMINAL JURY TRIAL | JUDGE MC GUIRE | L. MILLER & L. SETTLEMYRE |
| 2/16/84 8th DAY | " | " |
| 2/17/84 9th DAY | " | " |
| 2/21/84 10th DAY | " | " |
| 2/23/84 11th DAY | " | " |
| 2/28/84 12th DAY | " | " |
| 3/1/84 13th DAY | " | " |
| 3/2/84 14th DAY | " | " |
| 3/5/84 15th DAY | " | " |
| 3/6/84 16th DAY | " | " |
| 3/8/84 17th DAY | " | " |
| 3/9/84 18th DAY | " | " |
| 3/12/84 19th DAY | " | " |
| 3/15/84 20th DAY | " | " |
| 3/16/84 21st DAY | " | " |

(CONTINUED TO PAGE 2)

Howard Hanson, County Clerk

INTER-OFFICE MEMORANDUM

TO:

DATE JULY 25, 1984

FROM:

~~TYPE~~ PEO. v. RICHARDS, 8362

| | | | |
|---------|--|----------------|---------------------------|
| 3/19/84 | 22nd DAY CRIMINAL JURY TRIAL | JUDGE MC GUIRE | L. MILLER & L. SETTLEMYRE |
| 3/22/84 | 23rd DAY | " | " |
| 3/23/84 | 24th DAY | " | " |
| 3/26/84 | 25th DAY | " | " |
| 3/27/84 | 26th DAY | " | " |
| 3/29/84 | 27th DAY | " | " |
| 4/ 2/84 | 28th DAY | " | " |
| 4/ 3/84 | 29th DAY | " | " |
| 4/ 4/84 | 30th DAY | " | " |
| 4/ 5/84 | 31st DAY | " | " |
| 4/ 6/84 | DELIBERATION OF JURY | " | " |
| 4/ 9/84 | 32nd DAY | " | " |
| 4/12/84 | 33rd DAY | " | " |
| 4/17/84 | 34th DAY | " | " |
| 4/19/84 | 35th DAY | " | " |
| 4/20/84 | 36th DAY | " | " |
| 4/23/84 | 37th DAY (2nd PHASE DELIBERATION) | " | " |
| 4/24/84 | 38th DAY (2nd PHASE DELIBERATION) | " | " |
| 7/20/84 | POST TRIAL MOTIONS & REPORT AND JUDGMENT | " | B. PERRY |

THANKS FOR YOUR HELP, LET ME KNOW IF I CAN BE OF ASSISTANCE.

Aema

People of the State

VS Mark Richards

PLAINTIFF

DEFENDANT

| RECALLED | RECALLED | CALLED UNDER 776 E.C. | CALLED FOR PLAINTIFF | COUNSEL: | COUNSEL: | CALLED FOR DEFENDANT | CALLED UNDER 776 E.C. | RECALLED | RECALLED |
|--------------------|---------------------|-----------------------|----------------------|---|---------------------------------|----------------------|-----------------------|---------------------|-----------|
| DATE TIME | DATE TIME | DATE TIME | DATE TIME | Ed Berkenian, DA
Ted Lindquist, SRPD | Carl Shapiro/
Dennis Riordan | DATE TIME | DATE TIME | DATE TIME | DATE TIME |
| | | | 2-14-84
2:35 PM | Ellen Baldwin | | | | | |
| | | | 3-14-84
9:47 PM | Ken Canziani MCSD | | | | | |
| | 2-17-84
10:47 AM | | 2-16-84
10:10 AM | Don Dullett SRPD | | | | | |
| | 2-21-84
3:20 PM | | 2-16-84
10:16 AM | Ted Lindquist, SRPD | | | | | |
| | | | 2-16-84
10:55 AM | David Miller, MCSD | | | | | |
| | | | 2-16-84
11:21 AM | Raymond Maynard MCSD | | | | | |
| | | | 2-16-84
2:23 PM | Margo Dullett, SRPD | | | | | |
| | | | 2-16-84
2:29 PM | Richard M. Weiss | | | | | |
| | | | 2-16-84
2:43 PM | Clarence Rice USCG | | | | | |
| 3-8-84
10:10 AM | 2-17-84
10:10 AM | | 2-16-84
3:35 PM | Richard A. Keston MCSD | | | | | |
| | | | 2-17-84
2:10 PM | Ken Ready | | | | | |
| | 3-6-84
11:30 AM | | 2-17-84
2:35 PM | Richard Mike Waller, Crim. | | | | | |
| | | | 2-17-84
3:30 PM | William C. Baker SPD | | | | | |
| | | | 2-21-84
10:10 AM | Harold H. Brazil | | | | | |
| | | | 2-21-84
10:45 AM | Duncan Mac Kenison | | | | | |
| | | | 2-21-84
1:46 PM | Gary Ailes, Jr. | | 3-19-84
10:48 AM | | | |
| | | | 2-23-84
10:25 AM | Keith Andrews | | | | 3-22-84
10:45 AM | |
| | 2-28-84
1:45 PM | | 2-23-84
1:45 PM | Ted Lindquist resumes | | | | | |
| 3-5-84
11:05 AM | 3-1-84
10:25 AM | | 2-28-84
1:50 PM | John Carrington, Student | | | | | |
| 3-2-84
10 AM | 3-1-84
10:37 AM | | 2-28-84
3:10 PM | Andrew Francisco Campbell | | | | | |
| | | | 3-2-84
10:42 AM | Rambrant Vyas, M. Ward Employee | | | | | |
| 3-4-84
10:43 AM | 3-6-84
2:40 PM | | 3-2-84
4:25 AM | Thomas Smiley, SRPD | | | | | |
| | | | 3-2-83
2:45 PM | William P. Robles | | | | | |
| | | | 3-5-84
10:55 AM | Lois Richards | | | | | |
| | | | 3-5-84
1:34 PM | Linda Lipes | | | | | |
| | | | 3-5-84
2:28 PM | Mark Richards | | | | | |
| | | | 3-5-84
2:47 PM | Michael T. Keller, SRPD | | | | | |

People of the State

VS Mark Richards

PLAINTIFF

DEFENDANT

| RECALLED | RECALLED | CALLER UNDER 776 E.C. | CALLER FOR PLAINTIFF | COUNSEL: | COUNSEL: | CALLER FOR DEFENDANT | CALLER UNDER 776 E.C. | RECALLED | RECALLED |
|-----------|-----------|-----------------------|----------------------|--|---|----------------------|-----------------------|-----------|-----------|
| DATE TIME | DATE TIME | DATE TIME | DATE TIME | WITNESS' NAME | WITNESS' NAME | DATE TIME | DATE TIME | DATE TIME | DATE TIME |
| | | | 3-5-84 | Don Kline | Carl Shapiro / Dennis Riordan (Paralegal) | | | | |
| | | | 3:05 PM | Helen Garrett | | | | | |
| | | | 3-5-84 | Tino Salzano, Novato PD | | | | | |
| | | | 3:38 PM | Patricia Ann Tobler | | | | | |
| | | | 3-5-84 | Thomas A. Odetto, PD | | | | | |
| | | | 3:45 PM | Hillary Green (Bank of Marin Emp) | | | | | |
| 3-6-84 | | | 3-5-84 | Maichee Gallagher (Sales Fairfax Lumber) | | | | | |
| 10:10 AM | | | 3:55 PM | Joan Siller (Bank of Marin Emp) | | | | | |
| | | | 4:00 PM | Patrick W Rhodes (Bank of Marin Emp) | | | | | |
| | | | 3-5-84 | Michael J. Fuller | | | | | |
| | | | 4:05 PM | Frank Cox, Deputy PD | | 3-19-84 | | | |
| | | | 3-6-84 | Mary Grove, Deputy PD | | 2:10 PM | | | |
| | | | 10:20 AM | Pete Neal | | | | | |
| | | | 3-6-84 | Tom Mills | | | | | |
| | | | 10:32 AM | Bernard Healey - Bachtel Emp | | | | | |
| | | | 3-6-84 | Monty Deignan | | | | | |
| | | | 11:18 AM | James A. Cook, SRPD | | | | | |
| 3-9-84 | | | 3-6-84 | Robert A Weaver | | | | | |
| 11:25 AM | | | 2:25 PM | James W. Mueller | | | | | |
| | | | 3-8-84 | Peter Borg | | | | | |
| | | | 11:28 AM | David Walker | | | | | |
| | | | 3-8-84 | Gordon Card, MUPD | | | | | |
| | | | 1:40 PM | David Timothy Johnson, SRPD | | | | | |
| | | | 3-8-84 | Lawrence Waterman (Fairfax Lumber) | | | | | |
| | | | 2:45 PM | Audrey Laramie | | | | | |
| 3-22-84 | | | 3-8-84 | Joe Kelly UPS | | | | | |
| 1:35 PM | | | 3:08 PM | Frank Gallardo UPS | | | | | |
| | | | 3-8-84 | | | | | | |
| | | | 3:22 PM | | | | | | |
| | | | 3-8-84 | | | | | | |
| | | | 3:50 PM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 10:30 AM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 10:33 AM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 10:40 AM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 2:10 PM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 2:30 PM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 2:35 PM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 3:55 PM | | | | | | |
| | | | 3-9-84 | | | | | | |
| | | | 3:12 PM | | | | | | |

People

VS

Mark Richards

PLAINTIFF

DEFENDANT

| RECALLED | RECALLED | CALLED UNDER 776 E.C. | CALLED FOR PLAINTIFF | COUNSEL: | COUNSEL: | CALLED FOR DEFENDANT | CALLED UNDER 776 E.C. | RECALLED | RECALLED |
|-----------|-----------|-----------------------|----------------------|--------------------------------|----------|----------------------|-----------------------|-----------|-----------|
| DATE TIME | DATE TIME | DATE TIME | DATE TIME | WITNESS' NAME | | DATE TIME | DATE TIME | DATE TIME | DATE TIME |
| | | | 3-9-84 | Jerry Cradecor (Safeway Store) | | | | | |
| | | | 3:16 PM | | | | | | |
| | | | 3-9-84 | Linda Jean Jones MW Empl. | | | | | |
| | | | 3:20 PM | | | | | | |
| | | | 3-9-84 | Leo Morris, MU Empl. | | | | | |
| | | | 3:30 PM | | | | | | |
| | | | 3-9-84 | Joel R. Fischer | | | | | |
| | | | 3:40 PM | | | | | | |
| | | | 3-9-84 | Robert Foehr DDS | | | | | |
| | | | 3:45 PM | | | | | | |
| | | | 3-11-84 | " " resumes | | | | | |
| | | | 10:15 A | | | | | | |
| | | | 3-12-84 | Caryn Lee Cerruti | | | | | |
| | | | 11:11 A | | | | | | |
| | | | 3-12-84 | Craig Edward Andrews | | | | | |
| | | | 1:30 PM | | | | | | |
| | | | 3-12-84 | Colleen Sullivan | | | | | |
| | | | 2:30 PM | | | | | | |
| | | | 3-12 | Glen Sommer | | | | | |
| | | | 2:40 | | | | | | |
| | | | 3-12 | Edgar Palmer, Jr | | | | | |
| | | | 3:15 | | | | | | |
| | | | 3-12 | A Cora Carabini | | | | | |
| | | | 3:30 | | | | | | |
| 3-12 | | | | James Cook | | | | | |
| 3:40 | | | | | | | | | |
| | | | 3-12 | Raul Artiga | | | | | |
| | | | 3:50 | | | | | | |
| 3-12 | | | | Ellen Baldwin | | | | | |
| 4:15 | | | | | | | | | |
| | | | 3-12 | Sam Paul | | | | | |
| | | | 4:25 | | | | | | |
| | | | 3/15/84 | Sam Paul | | | | | |
| | | | 10:10 | | | | | | |
| | | | 10:56 | Judy Seaton | | | | | |
| | | | 11:00 | Lynn Marie Hogarth | | | | | |
| | | | 11:05 | George Brown | | | | | |
| | | | 11:19 | John Rohrbacker - S.R.P.D. | | | | | |
| | | | 11:30 | Terrence H. Pascoe | | | | | |
| | | | 2:03 | Randy Wong | | | | | |
| | | | 2:15 | Joseph Sydnicki | | | | | |
| 3/16/84 | | | | Ted Lundquist | | | | | |
| 10:25 | | | | Robert Hudspeth | | 3/16/84 | | | |
| | | | 3/16/84 | Richard Viscarra | | 11:11 | | | |
| | | | 12:00 | | | | | | |

Heoper

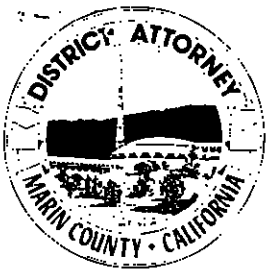
VS

Mark Richards

PLAINTIFF

DEFENDANT

| RECALLED | RECALLED | CALLER
UNDER
776 E.C. | CALLER
FOR
PLAINTIFF | COUNSEL:
Ed Berkevin, DA | COUNSEL:
Carl Shapiro,
Dennis Riordan | CALLER
FOR
DEFENDANT | CALLER
UNDER
776 E.C. | RECALLED | RECALLED |
|--------------------|--------------|-----------------------------|----------------------------|---------------------------------|---|----------------------------|-----------------------------|-------------------|--------------|
| DATE
TIME | DATE
TIME | DATE
TIME | DATE
TIME | WITNESS' NAME | | DATE
TIME | DATE
TIME | DATE
TIME | DATE
TIME |
| | | | | Sister Collette Standerdt (nun) | | 3-19-84
10:27AM | | | |
| | | | | John Mack Taylor | | 3-19-84
10:35AM | | | |
| | | | | Deon Bird | | 3-19-84
11:15AM | 3-19-84
1:57PM | | |
| | | | | Duncan W. MacKinnon | | 3-19-84
11:45AM | 3-19-84
1:58PM | | |
| | | | | Gary Ables | | 3-19-84
10:48AM | 3-19-84
1:20PM | 3-19-84
2:05PM | |
| | | | | John E. Stapp | | 3-22-84
10:15AM | | | |
| | | | | David Johnson, SRPD | | 3-22-84
10:50AM | | | |
| | | 3-22-84
1:45PM | | Mike Griffith, NPD | | | | | |
| | | 3-22-84
1:47PM | | Phillips Cough, NPD | | | | | |
| | | 3-22-84
1:53PM | | Ben Ziverton | | | | | |
| | | | | PHASE II - special ircs | | | | | |
| | | | | Roger Mulholland | | 4-17-84
11:25 A | | | |
| | | | | Delores Leon | | 4-17-84
11:45 A | | | |
| | | | | Winnie McLelland | | 4-17-84
1:35 P | | | |
| | | | | Thomas Groody | | 4-17-84
1:50 P | | | |
| | | | | Lois Carlsen | | 4-17-84
2:05 P | | | |
| | | | | Robert Hudspeth | | 4-17-84
2:20 P | | | |
| | | 4-17-84
2:45 A | | Ted Lindquist | | | | | |
| | | 4-17-84
2:55 A | | Douglas McLaughlen | | | | | |
| | | 4-17-84
3:05 A | | Frank Hubinsky | | | | | |
| | | 4-19-84
10:35 A | | Frank Hubinsky resumes | | | | | |
| 4-19-84
10:55 A | | | | Ted Lindquist | | | | | |
| | | | | James Cook | | 4-19-84
11:15 AM | | | |
| | | | | Ted Lindquist | | 4-19-84
11:25 A | | | |
| | | | | Carrie Myers | | 4-19-84
11:30 A | | | |
| | | | | Dennis Riordan | | 4-19-84
1:30 P | | | |



OFFICE OF THE DISTRICT ATTORNEY

County of Marin

JERRY R. HERMAN
District Attorney

June 5, 1985

MICHAEL A. GRIDLEY
Chief Assistant District Attorney

TERRANCE R. BOREN
Assistant District Attorney-Criminal

MILTON M. HYAMS
Assistant District Attorney-Services

The Honorable E. Warren McGuire
Judge of the Superior Court
Hall of Justice
San Rafael, CA 94903

Re: Mark Richards
Marin Superior Court Case Number 8362

Dear Judge McGuire:

In reviewing the letter from the Department of Corrections sent to you regarding the Abstract of Judgment on the sentencing of Mark Richards, I note certain errors that I believe can be corrected by Minute Order and an Amended Abstract of Judgment.

1. Count Two of the Second Amended Information (filed January 12, 1984) was a second degree "commercial" burglary. Under 1982 statutes the maximum aggravated term would be three years. Count Three of the Second Amended Information was a "residential" burglary, committed during the daytime. Under 1982 statutes since it was committed during the daytime it had to be second degree burglary as a matter of law. Again, the maximum aggravated term would be three years.

2. Attached is a copy of the sentencing transcript. It is clear that the court sentenced Mark Richards to life without the possibility of parole on Count 1 (Murder with Special Circumstances) and that Counts 2 and 3 (the burglary findings) were to run concurrent with each other, and with both Counts 2 and 3 running concurrent with Count 1. The court fixed the base term on Count 2 and 3 at the aggravated term.

The correct aggravated terms for Counts 2 and 3 should be three, not six, years.

3. The "indeterminate" sentence imposed was life without the possibility of parole (Count 1); the "determinate" sentence imposed should be three years (Counts 2 and 3).

4. The Department of Corrections apparently does not have the last Amended Information. At the time of the jury trial, the Information filed January 12, 1984, reflected the charges given to the jury for decision. Attached is a copy of that Information.

The Honorable E. Warren McGuire
June 5, 1985
Page -2-

5. The Department of Corrections noted the "ISL Abstract does not specify the Special Allegation (sic) penal Code." I believe if the Minute Order and Amended Abstract specifically identify the Penal Code sections, including the Special Circumstance sections in Count 1, that the jury found to be true, this would answer that question. For example, the Minute Order could read:

"... Defendant having been convicted in Count 1 of Felony First Degree Murder with Special Circumstance in violation of California Penal Code Section 187; 190.2(a)(1) and 190.2(b) (Special Circumstance Financial Gain); and two allegations of 190.2(a)(17)(vii) and 190.2(b) (Special Circumstances Burglary); in Count 2 of felony Second Degree Commercial Burglary in violation of California Penal Code Section 459; and in Count 3 of Felony Second Degree Residential Burglary in violation of California Penal Code Section 459 by reason of jury verdicts on April 9 and April 24, 1984, and the Court being fully advised in this matter, now therefor

STATE PRISON SENTENCE

IT IS ORDERED, ADJUDGED AND DECREED: Defendant MARK RICHARDS is sentenced to State Prison for the term of life without the possibility of parole for violation of Count 1, Murder in the First Degree with the finding of three special circumstances, Murder for Financial Gain, Murder While Engaged in the Commission of Burglary, and Murder While Engaged in the Commission of Burglary; as to Count 2 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years, Commercial Second Degree Felony Burglary; and as to Count 3 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years for Residential Second Degree Felony Burglary. It is the order of this court that the sentence in Count 2 and Count 3 shall run concurrent with each other, and both Counts 2 and 3 shall run concurrent to the sentence imposed in Count 1...."

Very truly yours,

JERRY R. HERMAN
District Attorney

EDWARD S. BERBERIAN
Deputy District Attorney

ESB/mem
cc: Carl Shapiro, Esquire

1 The Court is prepared to sentence the defendant as
2 provided for by law. That is the Court's comments on those
3 particular motions at this time.

4 We have the report of the probation officer and I
5 think everyone has it. The probation officer recommends
6 obviously as indicated in the report the State prescribed
7 punishment for the murder with special circumstances.

8 He also recommends that for the other crimes which
9 obviously were all part of the single course of action: the
10 burglary of the two properties, the shop and residence, he
11 also orders or recommends the aggravated sentence for the
12 reasons noted.

13 All sentence is obviously to be run concurrent and
14 would also be merged into the life sentence that is to be
15 imposed upon Mr. Richards.

16 So at this time other than the matters that have
17 been raised in your motions, or previously raised in the course
18 of the trial, is there any legal reason why judgment should
19 not be pronounced in this case?

20 MR. RIORDAN: There is not, your Honor.

21 THE COURT: Would you waive arraignment for judgment
22 then and stipulate that he may be duly arraigned?

23 MR. RIORDAN: So stipulated.

24 THE COURT: Mr. Richards, if you will stand the
25 Court will pronounce judgment in this case.

26 It will be the judgment of this Court that Mark Richards
27 is in violation of Section 187 of the Penal Code, and a
28 finding of special circumstances by the jury that you be

1 sentenced to the State prison for the term of life and
2 without the possibility of parole.

3 Insofar as Count II is concerned, and Count III are
4 concerned, the burglaries of the shop and residence of the
5 victim, the Court for the reasons indicated in the probation
6 report will pick the aggravated term of six, there being
7 three terms, two or four or six years for the same, and as for
8 the reasons noted that the aggravation factors as provided
9 for by the law exceed and overwhelm the mitigation factors.

10 You were the one that influenced the two minors to
11 participate in the burglaries. You planned the crime,
12 carried it out, used minors and took advantage of a position
13 of trust and confidence in the commission of those offenses.
14 That basically is the reason why these sentences will be on
15 the aggravated basis. It is sort of meaningless because
16 of your life sentence, obviously.

17 The Court will direct those two sentences to run
18 concurrent and concurrent with the main sentence on Count I
19 for the reasons that it was all part of a single planned
20 course of action, somewhat of a single transaction.

21 Those are the judgments of the Court at this time.

22 The Court at this time will advise you of your right
23 of appeal.

24 If you wish to appeal I am sure your counsel will
25 elaborate on it for you. You must file a notice of appeal
26 within 60 days. That notice is to be filed with the clerk
27 of this court.

28 If you do appeal and you do not have an attorney

1 that you can afford to retain, you should direct your request
2 to the appellate court in San Francisco and ask them to
3 appoint counsel for you if you are indigent and can't afford
4 personal counsel.

5 If the appeal is filed, you have the right at public
6 expense to have a transcript of the entire trial prepared,
7 the reporter's transcript, and also that of all the clerk's
8 files.

9 Once those transcripts are on file with the appellate
10 court, then you must have your opening briefs on file within
11 30 days thereafter unless otherwise extended by the court.

12 Those are your appeal rights and counsel will further
13 advise you.

14 You are remanded back to the custody of the Sheriff
15 for delivery back to the Department of Corrections.

16 That is the judgment of the Court in the case of
17 the People versus Richards.

18 [Whereupon, the proceedings were concluded.]
19
20
21

22 § § §
23
24
25
26
27
28

FILED

1-12-84

HOWARD HANSON
MARIN COUNTY CLERK

BY

DEPUTY

Recd to
Jury
2/14/84

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

| | | |
|--|---|---------------------|
| THE PEOPLE OF THE STATE OF CALIFORNIA, |) | NO. 8362 |
| |) | |
| Plaintiff, |) | INFORMATION FOR |
| |) | VIOLATION OF |
| vs. |) | SECTIONS 187/459 PC |
| |) | |
| MARK RICHARDS, |) | <u>AMENDED</u> |
| |) | |
| Defendant |) | |

The District Attorney of the County of Marin, State of California, hereby accuses MARK RICHARDS of a Felony, to wit: MURDER, in violation of Section 187 of the Penal Code, in that on or about the 6th day of July, 1982, in the County of Marin, State of California, the said defendant did willfully, unlawfully, and with malice aforethought murder Richard Baldwin, a human being.

It is further alleged that the murder of Richard Baldwin was intentional and was aided and abetted, counseled, commanded, induced, solicited, requested and assisted by the defendant, Mark Richards, for financial gain, within the meaning of Penal Code Sections 190.2(a)(1) and 190.2(b).

It is further alleged that the murder of Richard Baldwin was aided and abetted, counseled, commanded, induced, solicited, requested and assisted by the defendant, Mark Richards, with the intent to kill, while the defendant was engaged in the commission of the crime of burglary, to wit: 36 Front Street, San Rafael, California, in violation of Penal Code Section 459, within the meaning of Penal Code Sections 190.2(a)(17)(vii) and 190.2(b).

It is further alleged that the murder of Richard Baldwin was aided and abetted, counseled, commanded, induced, solicited, requested and assisted by the defendant, Mark Richards, with the intent to kill, while the defendant was engaged in the commission of the crime of burglary, to wit: 18 Venicia Meadows, San Rafael, California, in violation of Penal Code Section 459, within the meaning of Penal Code Sections 190.2(a)(17)(vii) and 190.2(b).

SECOND COUNT: And the said MARK RICHARDS is further accused by the District Attorney of the County of Marin, State of California, by this Second Count of this Information of a Felony, to wit: BURGLARY, in violation of Section 459 of the Penal Code, in that the said defendant, in the County of Marin, State of California, on or about the 6th day of July, 1992, did willfully and unlawfully enter the shop, to wit: 36 Front Street, San Rafael, California, occupied by the Classic Car Shop, with the intent to commit larceny and murder.

THIRD COUNT: And the said MARK RICHARDS is further accused by the District Attorney of the County of Marin, State of California, by this Third Count of this Information of a Felony, to wit: BURGLARY, in violation of Section 459 of the Penal Code, in that the said defendant, in the County of Marin, State of California, on or about the 6th day of July, 1992, did willfully and unlawfully enter the residence, to wit: 18 Venicia Meadows, San Rafael, California, occupied by Richard Baldwin, with the intent to commit larceny and murder.

Counts 1 through 3 are connected in their commission.

All of which is contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the People of the State of California.

DISTRICT ATTORNEY FOR THE COUNTY OF MARIN
State of California

By _____

District Attorney

Law Offices  SHAPIRO and SHAPIRO
404 San Anselmo Avenue, San Anselmo, California 94960 415-453-7611

Carl B. Shapiro
Helen Shapiro
Mark W. Plank

May 14, 1985

*Done Pull
file*

The Honorable E. Warren McGuire
Judge of the Superior Court
Hall of Justice, Civic Center
San Rafael, California 94903

Re: People v. Mark Richards - Case No. 8362

Dear Judge McGuire:

This is in response to your Minute Order of May 7, 1985, concerning the sentencing and abstract involving Mark Richards.

It is my recollection that insofar as question 1 is concerned, that is whether counts 2 and 3 are to be served concurrent or consecutive to each other, that you did not make any statement, and therefore they would be concurrent.

Insofar as question 2 is concerned, namely the Minute Order and abstract discrepancy, I do not believe that the attorney is in a position to correct court records if such is needed. I would like to point out that since Mr. Richards has been sentenced to life without possibility of parole for the balance of his natural life, it would be probably beyond the jurisdiction of the court to expose him to custody following the expiration of the L.W.O.P. sentence.

Insofar as question 3, namely whether count 2 is burglary or robbery, I believe that the 459 is correct since the 211 was dismissed on a 995.

Insofar as question 4, namely the special allegations specifications, I believe it would be not inconsistent with the facts to point out that a jury found to be true the special allegation that the crime was committed while in the commission of a burglary of the house, while in the commission of a burglary of the shop, and as a murder for hire.

I trust that this will answer the questions to the best of my ability.

Very sincerely yours,

SHAPIRO AND SHAPIRO


CARL B. SHAPIRO

CBS:sm

cc: Ed Berberian, Deputy District Attorney

The Permanente Medical Group, Inc.

99 MONTECILLO ROAD
SAN RAFAEL, CALIFORNIA 94903-3398 • (415) 499-2000

ANTIOCH
HAYWARD
FREMONT
MARTINEZ
MILPITAS
NAPA
OAKLAND
PLEASANTON
REDWOOD CITY
RICHMOND
ROSEVILLE

SACRAMENTO
SAN FRANCISCO
SAN RAFAEL
SANTA CLARA
SANTA ROSA
SANTA TERESA
S. SAN FRANCISCO
SUNNYVALE
VALLEJO
WALNUT CREEK

RICHARD E. GEIST, MD, FACS
Physician-in-Chief

PAUL F. ALPERT, MD
Assistant Physician-in-Chief

December 13, 1983

The Honorable Judge David Menary
Superior Court
Marin County Hall of Justice
San Rafael, California 94903

Re: Shapiro, Carl
MR# 018 65 83

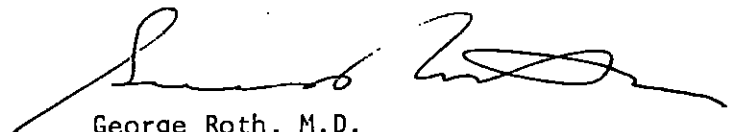
Dear Judge Menary:

Carl Shapiro has been a patient of mine here at Kaiser San Rafael for some time. On December 8, 1983, he consulted me concerning shortness of breath and chest pain which he had experienced in the course of his work as an attorney. My studies show no evidence of cardiovascular disease; however, it is my clinical impression that this hard driving, endlessly busy gentleman is suffering from a great deal of exhaustion, which gives rise to his alarming symptoms.

Mr. Shapiro has asked that I buttress a request which he plans to make for a continuance in a case being heard before you. My understanding is that he will ask that the case be continued through the month of February into March. It is my impression that this would be extremely advantageous to Mr. Shapiro's general health, and that this time could well be used by him for recuperation from a very significant sense of fatigue.

If there are further questions, I would be happy to talk with you. Please feel free to contact my office to that purpose.

Cordially,



George Roth, M.D.
Department of General Medicine

GR:rmk

MEMORANDUM FROM OFFICE OF COUNTY CLERK
MONTEREY COUNTY

Date: March 12, 1985

To: L. Pfeifer, Appeals Clerk
Office of Marin County Clerk
Hall of Justice
Civic Center
San Rafael, CA 94913

Re: People vs Richards
Your Case No. 8362

We are returning the Ruling on Challenge Under C.C.P. 170(a)(5) uncertified. All original documents have been returned to the Clerk of the Marin County Superior Court in accordance with the order of Judge O'Farrell (see line 27, page 1 of the Ruling.) Therefore, we no longer have the original document in order to certify a copy. It would appear that your Court would have to do the certification as it is now your court document.

ERNEST A. MAGGINI, Clerk

By Carol M. Schmeh
Carol M. Schmeh Deputy

Reply to:

- ☒ P.O. Box 1819, Salinas, California 93901 (408) 424-0417
☐ 1200 Aguajito Rd., Monterey, California 93940

Marin County
OFFICE OF THE COUNTY CLERK
Howard Hanson, County Clerk
INTER-OFFICE MEMORANDUM

TO: MONTEREY COUNTY CLERK

DATE MARCH 4, 1985

FROM: L. PFEIFER, APPEALS CLERK

ATTACHED PLEASE FIND A COPY OF AN AUGMENT TO ONE OF OUR RECORDS ON APPEAL. THE COURT APPEALS IN SAN FRANCISCO HAS REQUESTED A CERTIFIED COPY OF A RULING FROM YOUR COURT. I HAVE ATTACHED A COPY OF THAT RULING TO BE CERTIFIED. THANK YOU FOR YOUR ASSISTANCE IN THIS MATTER.

SINCERELY,

L. Pfeifer

L. PFEIFER
APPEALS CLERK

close
Togg we file
if we already
have
4/16

LAW OFFICES
SHAPIRO & SHAPIRO
404 SAN ANSELMO AVENUE
SAN ANSELMO, CALIFORNIA 94960
(415) 453-7811

April 14, 1984

The Honorable Robert O'Farrell
Judge of the Superior Court
County of Monterey
240 Church Street
Salinas, California 93901

Re: Peoplo v. Mark Richards
Marin Superior Court No. 8362

Dear Judge O'Farrell:

In connection with your appointment as the arbitrator of our Code of Civil Procedure Section 170(5) challenge to the Honorable E. Warren McGuire, there seems to be a difference of opinion as to the appropriate procedure. From the tenor of Judge's McGuire's letter, he does not envisage a factual hearing in this matter, but merely a review of the papers on file. I differ.

From a reading of a recent case, namely Penthouse v. Superior Court, 137 Cal.App.3d 975, 187 Cal.Rptr. 535, it appears that the author of the bill which revised Code of Civil Procedure Section 170 in 1981 addressed a letter to the Governor describing the author's concept as to the procedures involved under the legislation. This letter was considered to be significant by the appellate court in deciding Pacific, etc. v. Superior Court, and I quote briefly from this letter as it is set forth in 137 Cal.App.3d at page 982, 187 Cal.Rptr. 539:

"The proposed amendment eliminates the anomaly and requires that all issues concerning disqualification for cause be determined by another judge. . . . Only if such impartial judge deems the statement of disqualification to be legally sufficient need he proceed to the factual hearing. . . ."

In view of the complexity the matter, since the remarks of the judge received wide publicity, some of which has percolated to the jury according to a brief voir dire examination, it seems a hearing would be most appropriate. Our availability, that is of Mr. Dennis Riordan and myself, is unlimited.

SHAPIRO & SHAPIRO
401 SAN ANTONIO AVENUE
SAN ANTONIO, CALIFORNIA 78209
TELEPHONE 547-7011

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TELEPHONE 547-7011

SHAPIRO & SHAPIRO
401 SAN ANTONIO AVENUE
SAN ANTONIO, CALIFORNIA 78209
TELEPHONE 547-7011

The Honorable Robert O'Farrell
Judge of the Superior Court
April 14, 1984
Page Two

All parties are naturally being advised by copy of this
letter, of our position concerning the hearing.

Very sincerely yours,

SHAPIRO AND SHAPIRO

CBS:sm

cc: The Honorable E. Warren McGuire
Judge of the Marin County Superior Court

Jerry Herman, District Attorney
Attention: Edward Berberian, Esquire

Howard Hanson, Marin County Clerk

Dennis Riordan, Esquire

1941 - 1942

1943 - 1944

1945 - 1946

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4/24/84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

C-74

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--------------------------------------|-------|----------------------------|
| | Roast Beef Sandwich | | |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| X | Coffee 1 Reg 1 DeCAF CES | | |
| | Tea | | |
| | Milk | | |
| | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |

(Staple tape here)
(White Copy only)

1-LARGE O.J.
4-HARD boiled eggs

| | |
|-----------------------|-----------|
| Superior Court Case # | 8362 |
| Bailiff | W. WRIGHT |
| Dept. # | 5 |

| | |
|------------------------|--|
| Municipal Court Case # | |
| Bailiff | |
| Dept. # | |

13-ASSORTED DANISH TOTAL \$ 14.95

JURORS SERVED _____ ALTERNATES-SERVED _____ BAILIFFS SERVED _____

2-Hot Cross

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3/20 | 2071 | | | | | | 14.95 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-
Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

| | | | |
|----------------|----|-------------|-----------|
| Deputy Auditor | | Claims Desk | |
| Batch No. | KP | Ver | Check No. |

Date: _____

4-20-84

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

(Staple tape here)
(White Copy only)

14- DANISH
2- HOT CROSS BUNS
1- POT REG. COFFEE
1- POT DECAFF COFFEE
CREAM & SUGAR
1- ORANGE JUICE
JURORS SERVED 12 ALTER

Municipal Court Case # _____
Bailiff _____
Dept. # _____

JURORS SERVED 15 ALTERNATES SERVED 3 BAILIFFS SERVED —

DISTRIBUTION: WHITE - Auditor-
 Controller
 YELLOW - Court File
 PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

| FOR AUDITOR-CONTROLLER'S USE | | | |
|------------------------------|----|-------------|-----------|
| Deputy Auditor | | Claims Desk | |
| Batch No. | KP | Ver | Check No. |

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-23-84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
 ROOM 252, HALL OF JUSTICE
 SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE |
|----|--|-------|
| 3 | Roast Beef Sandwich <i>2 white / 1 wheat - no mayo</i> | |
| 3 | Turkey Sandwich <i>1 Rye / 1 white</i> | |
| 1 | Ham Sandwich <i>white</i> | |
| | Pastrami Sandwich | |
| | Hamburger Sandwich | |
| | Cheeseburger | |
| 1 | Tuna Sandwich <i>white, mayo, pickle, onion</i> | |
| 1 | Coffee <i>2 1/2 decaffe / 1 reg</i> | |
| | Tea | |
| | Milk | |
| | Coke | |
| | Potato Salad - side order | |
| | Macaroni Salad - side order | |
| | Cottage Cheese & Fruit Salad - (lge) | |
| | Cottage Cheese & Fruit Salad - (sml) | |

CASH REGISTER RECEIPT HERE

1 seafood Bowl 1 Thousand
2 asparagus soup
1 Bean soup
2 large fruit salads
(Staple tape here)
(White Copy only)
1 apple
1 lemon
1 iced tea
4 milk
2 TUP
2 TABS
2 diet cokes
3 cokes
1 orange juice

Superior Court Case # 8362
 Bailiff File
 Dept. # 5

Municipal Court Case # _____
 Bailiff _____
 Dept. # _____

3 filet sole
2 seafood (1-large, 1-small) / 1000 dressing
1 Roll
 TOTAL \$ 17.53

JURORS SERVED 2 ALTERNATES SERVED 3 BAILIFFS SERVED _____

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 31-20 | 2 | 11 | | | | | 17.53 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-Controller
 YELLOW - Court File
 PINK - Vendor

Signature of Department Head or
 Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

| | | | | | |
|----------------|----|-----|-------------|--|--|
| Deputy Auditor | | | Claims Desk | | |
| Batch No. | KP | Ver | Check No. | | |

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-27-84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
 ROOM 252, HALL OF JUSTICE
 SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--------------------------------------|--------------|--|
| | Roast Beef Sandwich | | 1 Lane CJ
4 Hard Boiled eggs
(Staple tape here)
(White Copy only)

C-74 |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| | Coffee | | |
| | Tea | | |
| | Milk | | |
| | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sm) | | |
| | TOTAL \$ | 17.60 | |

Superior Court Case # 8862
 Bailiff F. L. ...
 Dept. # 5

Municipal Court Case # _____
 Bailiff _____
 Dept. # _____

JURORS SERVED 1 ALTERNATES SERVED 3 BAILIFFS SERVED _____

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 1 | | | | | | | |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-Controller
 YELLOW - Court File
 PINK - Vendor

Signature of Department Head or
 Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

ARMS-50K
 REV 7-75

| FOR AUDITOR-CONTROLLER'S USE | | | |
|------------------------------|----|-------------|-----------|
| Deputy Auditor | | Claims Desk | |
| Batch No. | KP | Ver | Check No. |

TO: AUDITOR-CONTROLLER

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-9-84

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

Picket of ICE

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--------------------------------------|-------|----------------------------|
| | Roast Beef Sandwich | | 7 Popecon |
| | Turkey Sandwich | | 1 Double Cheese |
| | Ham Sandwich | | 2 TABS |
| | Pastrami Sandwich | | 2 7up |
| | Hamburger Sandwich | | 2 orange juice |
| | Cheeseburger | | |
| 3 | Tuna Sandwich | | |
| | Coffee | | |
| | Tea | | |
| 4 | Milk | | |
| | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |
| | White rice | | |
| | TOTAL \$ | 68.32 | |

Superior Court Case #
Bailiff
Dept. #

Municipal Court Case #
Bailiff
Dept. #

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3131 | 2017 | | | | | | 68.32 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

ARMS-50K
REV 7-75

| FOR AUDITOR-CONTROLLER'S USE | | | |
|------------------------------|----|-------------|-----------|
| Deputy Auditor | | Claims Desk | |
| Batch No. | KP | Ver | Check No. |

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-9-84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--|-------|----------------------------|
| | Roast Beef Sandwich | | |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| 2 | Coffee pois 1 De CAF 1 Reg cream sugar | | |
| | Tea | | |
| | Milk | | |
| | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |

(Staple tape here)
(White Copy only)

C-74

Per vs Richards
Superior Court Case # 8362
Bailiff Filipino
Dept. # 5

Municipal Court Case # _____
Bailiff _____
Dept. # _____

10 assorted DANISH
5 Hand boiled eggs
TOTAL \$ 12.08

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED _____

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3130 | 2017 | | | | | | 12.08 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-
Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

TO: AUDITOR-CONTROLLER

Date: 4-5-8,

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--------------------------------------|-------|----------------------------|
| | Roast Beef Sandwich | | |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| | Colfee | | |
| | Tea | | |
| | Milk | | |
| | Coke Diet | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |
| | TOTAL \$ | 5.31 | |

Bucket of ICE
(Staple tape here)
(White Copy only)

Superior Court Case #
Bailiff
Dept. # 8362

Municipal Court Case #
Bailiff
Dept. #

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED 3

| TRANS CODE | APPROVENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|-------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3130 | 2017 | | | | | | 5.31 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-
Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

| | | | | |
|----------------|----|-----|-------------|--|
| Deputy Auditor | | | Claims Desk | |
| Batch No. | KP | Ver | Check No. | |

Date: 4/5/18

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

CIVIC CENTER CAFETERIA
ROOM 252^{1/2} HALL OF JUSTICE
SAN RAFAEL, CA. 94903

Bucket of ICE

CASH-REGISTER RECEIPT HERE

1 Double Cheese ~~Special~~ on
w/ Hall 4.95 / Calmest

10 wheat

(Staple tape here)
(White Copy only)

3 bowls of asparagus soup

2 stuffed Zucchini w potatoes

1 salami sandwich/w/ pickle
on white.

2 sea bass w rice

1 potato chips

1 orange juice

1 Tab

Super
Bail
Dept

Muni
Bail
Dept

Superior Court Case # 8362
Bailiff 11/12/13 15242
Dept. # 5

Municipal Court Case # _____
Bailiff _____
Dept. # _____

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED

| TRANS
CODE | FOR VENDOR | ADDITIONAL DATA | P.O.
ENC. | ORG
NO | SUB-OBJ
NO. | TASK | OPTION | ACTIVITY/
WORK AUTH | A
C | P
C | AMOUNT |
|---------------|------------|-----------------|--------------|-----------|----------------|------|--------|------------------------|--------|--------|--------|
| 31 | | | | 3130 | 2017 | | | | | | 60.26 |
| 31 | | | | C | | | | | | | |

Approved for Payment:

Judge Municipal Court

| FOR AUDITOR-CONTROLLER'S USE | | | |
|------------------------------|----|-------------|-----------|
| Deputy Auditor | | Claims Desk | |
| Batch No. | KP | Ver | Check No. |
| | | | |

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-6-84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--------------------------------------|-------|---|
| | Roast Beef Sandwich | | <div>(Staple tape here)
(White Copy only)</div> <div>C-74</div> |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| 81 | Coffee <i>per Dec 2nd</i> | | |
| | Tea | | |
| | Milk | | |
| | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |

Per vs Richards
Superior Court Case # 8362
Bailiff Filipiak
Dept. # 5

Municipal Court Case # _____
Bailiff _____
Dept. # _____

TOTAL \$ 11.55

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED _____

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3130 | 2017 | | | | | | 11.55 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-
Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

Bucket of Ice

| NO | DESCRIPTION | PRICE |
|--|--|-------|
| 1 | Roast Beef Sandwich | |
| 2 | Turkey Sandwich 1 EYE | |
| 3 | Ham Sandwich 2 on EYE Toasted / 1 on Hard Roll | |
| | Pastrami Sandwich | |
| | Hamburger Sandwich | |
| 2 | Cheeseburger | |
| 2 | Tuna Sandwich 1 on Hard roll 1 on Lett. Tom. | |
| 1 | Coffee POT DECAF | |
| 1 | Tea iced | |
| 3 | Milk 3 non FAT Large 2 nap | |
| 4 | Coke 2 Diet / Lemon | |
| 2 | Potato Salad - side order | |
| | Macaroni Salad - side order | |
| | Cottage Cheese & Fruit Salad - (lge) | |
| | Cottage Cheese & Fruit Salad - (sml) | |
| 1 Swiss Chesse/white mayo + Pickles TOTAL \$ | | 62.57 |
| 34 - wheat toast / 2 Tabs | | 63.87 |
| 6 of chips | | |

CASH REGISTER RECEIPT HERE
1 cup of OT
7 bags of popcorn

(Staple tape here)
(White Copy only)

Superior Court Case # 8362
Bailiff Filipek 15249
Dept. # 5

Municipal Court Case #
Bailiff
Dept. #

3 Filet Sole Special
2 Pork Chaw main special
3 Large clam chowders

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3130 | 2071 | | | | | | 63.87 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

| | | | | | |
|----------------|----|-----|-------------|--|--|
| Deputy Auditor | | | Claims Desk | | |
| Batch No. | KP | Ver | Check No. | | |

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-5-84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE |
|--------------------|--------------------------------------|---------------|
| | Roast Beef Sandwich | |
| | Turkey Sandwich | |
| | Ham Sandwich | |
| | Pastrami Sandwich | |
| | Hamburger Sandwich | |
| | Cheeseburger | |
| | Tuna Sandwich | |
| X | Coffee (put cream sugar (DECAF)) | |
| | Tea | |
| | Milk | |
| | Coke | |
| | Potato Salad - side order | |
| | Macaroni Salad - side order | |
| | Cottage Cheese & Fruit Salad - (lge) | |
| | Cottage Cheese & Fruit Salad - (sml) | |
| 10 Assorted Danish | | TOTAL \$ 9.01 |

CASH REGISTER RECEIPT HERE

(Staple tape here)
(White Copy only)

C-74

Superior Court Case # 8362
Bailiff Filipiak 15249
Dept. # 5

Municipal Court Case # _____
Bailiff _____
Dept. # _____

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED _____

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3130 | 2071 | | | | | | 9.01 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-
Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

KP

Ver

Check No.

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-4-82

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
 ROOM 252, HALL OF JUSTICE
 SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|---------------------------------------|-------|------------------------------|
| | Roast Beef Sandwich | | 1 Salami/white bread |
| 1 | Turkey Sandwich on wheat | | 1 bag of chips |
| 1 | Ham Sandwich on wheat | | 1 Calisto (Staple tape here) |
| 1 | Pastrami Sandwich (Hot) on Roll | | (White Copy only) |
| 1 | Hamburger Sandwich | | 1 Fried Chicken Special |
| | Cheeseburger | | taken |
| | Tuna Sandwich 2 on wheat / 1 on white | | |
| | Coffee | | |
| | Tea | | |
| | Milk | | |
| 2 | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| 2 | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED _____

Per us Richards
 Superior Court Case # 8362
 Bailiff Filipak 249
 Dept. # 2

Municipal Court Case # _____
 Bailiff _____
 Dept. # _____

Scarf Salad Howard TOTAL \$ 57.61
 on 4-4-82
 Twp 2-1-65

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|--------|-------------|------|--------|---------------------|-----|-----|--------|
| 31 | | | | 3130 | 2071 | | | | | | 57.61 |
| 31 | | | | | | | | | | | |

DISTRIBUTION: WHITE - Auditor-Controller
 YELLOW - Court File
 PINK - Vendor

Signature of Department Head or
 Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

ARMS-50K
 REV 7-75

| FOR AUDITOR-CONTROLLER'S USE | | | |
|------------------------------|----|-------------|-----------|
| Deputy Auditor | | Claims Desk | |
| Batch No. | KP | Ver | Check No. |

COUNTY OF MARIN
San Rafael, California 94903

Date: 4-4-84

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----|--------------------------------------|-------|---|
| | Roast Beef Sandwich | | (Staple tape here)
(White Copy only) |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| | Coffee | | |
| | Tea | | |
| | Milk | | |
| | Coke | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |
| | TOTAL \$ | 9.54 | |

Superior Court Case # 9862
Bailiff FILIPAK 15249
Dept. # 5

Municipal Court Case # _____
Bailiff _____
Dept. # _____

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED

[illegible]

DISTRIBUTION: WHITE - Auditor-
Controller
YELLOW - Court File
PINK - Vendor

Signature of Department Head or
Authorized Deputy - Superior Court

Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

Deputy Auditor

Claims Desk

Batch No.

— KP

Ver

Check No.

COUNTY OF MARIN
San Rafael, California 94903
DEMAND ON THE TREASURY

Date: 4-4-64

TO: AUDITOR-CONTROLLER

I HEREBY CERTIFY THAT MEALS HAVE BEEN RECEIVED AS SUMMARIZED BELOW. I FURTHER CERTIFY THAT THIS INVOICE HAS NOT PREVIOUSLY BEEN PAID AND THAT PAYMENT IS THEREFORE IN ORDER.

VENDOR

CIVIC CENTER CAFETERIA
ROOM 252, HALL OF JUSTICE
SAN RAFAEL, CA. 94903

| NO | DESCRIPTION | PRICE | CASH REGISTER RECEIPT HERE |
|----------|--------------------------------------|-------|--|
| | Roast Beef Sandwich | | <i>Packet of ICE</i>
(Staple tape here)
(White Copy only)

<i>C-74</i> |
| | Turkey Sandwich | | |
| | Ham Sandwich | | |
| | Pastrami Sandwich | | |
| | Hamburger Sandwich | | |
| | Cheeseburger | | |
| | Tuna Sandwich | | |
| <i>Y</i> | Coffee <i>De-Caf</i> | | |
| | Tea | | |
| | Milk | | |
| <i>5</i> | Coke <i>3 each 2 Diet</i> | | |
| | Potato Salad - side order | | |
| | Macaroni Salad - side order | | |
| | Cottage Cheese & Fruit Salad - (lge) | | |
| | Cottage Cheese & Fruit Salad - (sml) | | |

TOTAL \$ 5.83

Per vs Richards
Superior Court Case # 8362
Bailiff Filip AK 1525
Dept. # 5

Municipal Court Case # _____
Bailiff _____
Dept. # _____

JURORS SERVED 12 ALTERNATES SERVED 3 BAILIFFS SERVED _____

| TRANS CODE | FOR VENDOR | ADDITIONAL DATA | P.O. ENC. | ORG NO | SUB-OBJ NO. | TASK | OPTION | ACTIVITY/ WORK AUTH | A C | P C | AMOUNT |
|------------|------------|-----------------|-----------|-------------|-------------|------|--------|---------------------|-----|-----|-----------------|
| 31 | | | | <i>3130</i> | <i>2071</i> | | | | | | 5.83 |
| 31 | | | | | | | | | | | <i>5.83</i> |

DISTRIBUTION: WHITE - Auditor-Controller
YELLOW - Court File
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E W McGUIRE
Signature of Department Head or
Authorized Deputy - Superior Court
by Stella Hengzi Deputy
Approved for Payment:

Judge Municipal Court

FOR AUDITOR-CONTROLLER'S USE

| | | | | |
|----------------|----|-----|-------------|--|
| Deputy Auditor | | | Claims Desk | |
| Batch No. | KP | Ver | Check No. | |

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

The People of the State of California,

Plaintiff,

Charge 459-187-

vs

Mark Richards

Case No. 8362

Defendant.

ORDER REGARDING THE CUSTODY OF PRISONER

TO THE SHERIFF OF MARIN COUNTY:

Unless being held on other charges or other process of law, this is to
command you to ~~release from custody~~/confine the above named defendant
in the above cause as hereinafter directed:

Guilty of murder in 1st degree,
committed to Marin County Jail.

(Formal order will follow -)

Dated April 9, 1984

Judge of the Superior Court

ORIG. REC'D ON

April 9, 1984

By

Harmon W. Wragg
Sheriff's Office



Bateman Eichler, Hill Richards

INCORPORATED

333 MARKET STREET, SUITE 1600 • SAN FRANCISCO, CA 94105 • (415) 989-1000
MAIN OFFICE: LOS ANGELES

RECEIVED APR 3 1984

April 2, 1984

#8362

Carl Shapiro, Esq.
404 San Anselmo Ave.
San Anselmo, CA. 94960

Dear Mr. Shapiro:

At the request of Mr. Marshall Dill, the 20M California General Obligation Municipal bonds 5.40% due 11-1-93, held by your office are trading at 79.19 worth \$15,838.00.

Yours truly,

David C. Sibbersen
Account Executive

DCS:djn

cc: Marshall Dill

FILED

APR 6 1984

HOWARD HANSON
ALBANY COUNTY CLERK
By E. Woodward Deputy

PETER MEYER
COUNTY CLERK
INTER-OFFICE MEMORANDUM

TO:

DATE

FROM:

TIME

8362

Re: Mark Richards
documents filed under seal

All attorney & investigation fees are
to be under seal,

~~See [unclear] file 'B'~~

JERRY R. HERMAN, District Attorney
TERRENCE R. BOREN, Assistant District Attorney
Room 183, Hall of Justice
San Rafael, California 94903-4177
Telephone: 499-6450

Attorneys for Plaintiff

FILED

DEC 27 1990

HOWARD HANSON
MARIN COUNTY CLERK
By P. Lufkin, Deputy
P. Lufkin

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

| | | |
|------------------------------------|---|-------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | NO. 8362 |
| |) | |
| Plaintiff, |) | DECLARATION AND REQUEST |
| |) | FOR RELEASE OF EVIDENCE |
| v. |) | FROM AND RETURN TO |
| |) | SUPERIOR COURT CLERK |
| MARK RICHARDS, |) | <u>AND ORDER</u> |
| |) | |
| Defendant. |) | |

I, TERRENCE R. BOREN, am presently employed as an Assistant District Attorney for the County of Marin. I make this declaration in that capacity. I declare the following to be true.

There is currently held by the Clerk of the Superior Court, in the above action, drawings, sketches and maps, introduced as Plaintiff's Evidence Numbers 226A, 226B, 226C, 226D, 226E, 227, 228 and 229 which were introduced as evidence during the trial in this case.

Walt Kosta, a Lieutenant with the San Rafael Police Department, has requested that he be allowed to obtain and make copies of the drawings for purposes of training Basic Police

//


1 Academy recruits in homicide investigations, as the drawings were
2 used to demonstrate motive in the above case.

3 Lt. Kosta states that the copying of the drawings,
4 sketches and maps will not alter them in any fashion and that
5 they will be returned to the Court in their original condition.

6 Therefore, I am requesting an order of the Court
7 authorizing release of those drawings, sketches and maps to Lt.
8 Kosta of the San Rafael Police Department for the purpose of
9 copying them and that they then be returned to the Clerk of the
10 Court on the completion of making the copies.

11 I declare under penalty of perjury that the foregoing
12 is true and correct, and as to those matters stated upon
13 information and belief, I believe them to be true.

14 Executed this 27th day of December, 1990, at San
15 Rafael, California.

16
17
18 
19 TERRENCE R. BOREN
20 Assistant District Attorney

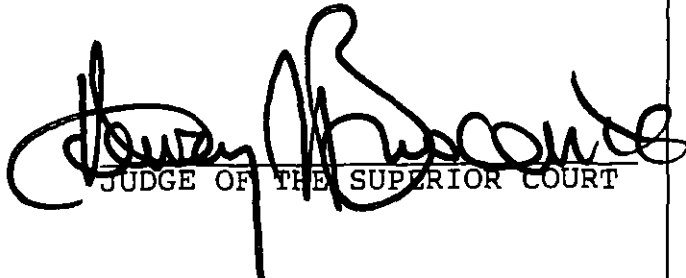
21 ORDER

22 Upon applicaiton of the People and good cause appearing
23 therefore,

24 IT IS HEREBY ORDERED that the drawings, sketches and
25 maps identified as Plaintiff's 226A, 226B, 226C, 226D, 226E, 227,
26 228 and 229 be released to the Marin County District Attorney's
27 Office for the purposes of transportation to Lt. Walt Kosta so
28 that he may make copies. Once the copies are made by Lt. Kosta,

1 the drawings are to be returned to the possession of the Clerk of
2 the Superior Court.

3 Dated: 12/27/90

4
5 
6 JUDGE OF THE SUPERIOR COURT

7 RECEIVED

8 ✓ 226 A, B, D, E,

9 ✓ 227

10 ✓ 228

11 ✓ 229

12 Jul. Submitt 12/28/90

13
14 Received back to Exhibit desk

15 226 A, B, D, E

16 227

17 228

18 229

19 J. Benassini
20 1-2-91

OFFICE OF THE COUNTY CLERK

Howard Hanson, County Clerk

INTER-OFFICE MEMORANDUM

TO:

DATE _____

FROM:

Re: Remittitur

Refer to 'Place In File' documents, letter
of May 12, 1988 & Attachments.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE FIRST APPELLATE DISTRICT
DIVISION: 3

Office of the County Clerk
Marin County
Hall of Justice Rm. 151
San Rafael, CA. 94903

[Handwritten signature]

FILED

AUG 18 1988

HOWARD HANSON
MARIN COUNTY CLERK

BY *[Signature]*
DEPUTY

PEOPLE OF THE STATE OF CALIF.
vs.
RICHARDS, MARK
AO28291 Old No. AO22029
Marin County No. 8362

* * REMITTITUR * *

I, RON D. BARROW, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on April 28, 1988 and that this opinion or decision has now become final.

☐ Appellant ☐ Respondent to recover costs
☐ Each party to bear own costs
☒ Costs are not awarded in this proceeding
☐ See decision for costs determination

Witness my hand and the seal of the Court affixed at
my office this

AUG 12 1988



RON D. BARROW, Clerk

By:

C. TURNER

[Handwritten signature: C. Turner]

Deputy

Receipt of the original remittitur in the above case is hereby
acknowledged.

Dated: AUG 18 1988

[Handwritten signature]
County Clerk

By: *[Handwritten signature]*

Deputy

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

FILED

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.

MARK RICHARDS,
Defendant and Appellant.

APR 28 1988

Court of Appeal - First App. Dist.
RON D. BARROW

By _____

AO28291

(Super. Ct. No.
8362, Marin
County)

Appellant Mark Richards was convicted of first degree murder and two counts of burglary. The jury also found true one special circumstance allegation of murder for financial gain (Pen. Code, §§ 190.2, subd. (a)(1); 190.2, subd. (b)) and two special circumstance allegations of murder in the commission of burglary (§§ 190.2, subd. (a)(17)(vii); 190.2, subd. (b).) Appellant was sentenced to life in prison without the possibility of parole. We affirm the judgment.

Appellant operated an apparently unsuccessful contracting business. One of his creditors was the victim, Baldwin. Appellant enlisted two youths, Campbell and Hoover, to help him kill Baldwin. Appellant and Hoover killed Baldwin on July 6, 1982. They entered the victim's garage and Hoover hit Baldwin on the head with a baseball bat. Appellant, Hoover and Campbell purchased a boat with money stolen from the victim's house, and dumped the body in the San Pablo Bay. The body was discovered six days later, and appellant was arrested

shortly thereafter. Campbell provided details of the plan in his testimony at trial, given under a grant of immunity.

I. Pendragon Evidence

Appellant first contends he was prejudiced by references to his association with "Pendragon" and "Imperial Marin." This testimony established that appellant held regular meetings to discuss the takeover of Marin County. Hoover and other young men attended these meetings. The plan involved destroying incoming bridges into the county, using guns and laser beams to take control of the county, seceding from the United States, and giving the participants control of portions of the county. (See People v. Hoover (1986) 187 Cal.App.3d 1074, 1077-1078.)

The evidence was admitted to show how appellant "manipulated Hoover into the position where he would kill Richard Baldwin", that Hoover was "a young man easily preconditioned by someone putting forth a strong male leadership model", why Hoover was willing to participate in the crime and appellant's ability to manipulate and control Hoover's behavior.

The jury was instructed to consider the evidence "solely to the extent that it tends to establish the nature of the relationship between the defendant on the one hand and Andrew Campbell and Crossin Hoover on the other. [¶] You are not called upon to decide whether any aspect of the Pendragon

activity was illegal, or should you assume that it was.

[¶] The defendant is not accused of plotting the overthrow of Marin County, but of the crimes of murder and burglary."

Appellant first contends that the evidence failed to establish a connection between appellant and Hoover; therefore, introducing the evidence violated Evidence Code section 403, subdivision (a)(1). This section provides that where the relevance of the proffered evidence (the Pendragon evidence) depends on the existence of the preliminary fact (appellant and Hoover's relationship), the proffered evidence is inadmissible unless the court finds sufficient evidence to show the existence of the preliminary fact. Since the preliminary fact was not established, the evidence showed only appellant's bad character.

Appellant's contention was not preserved for appeal because no motion to exclude the evidence was made on this ground. (Evid. Code, § 353; People v. Rogers (1978) 21 Cal.3d 542, 548.) This failure deprived the court of the opportunity to strike the testimony if it determined the preliminary fact was not established.

Appellant did, however, move to exclude the evidence on the ground it was cumulative and prejudicial. He renewed the contention of prejudice in his motion for a new trial. He argued in these motions that the nature of the evidence was prejudicial and shed no additional light on why Campbell and Hoover participated in Baldwin's murder. He was willing to stipulate that he had an association with Hoover as Hoover's

employer. Both motions were denied. We therefore analyze appellant's contention as a renewal of this contention.

The Pendragon evidence essentially constituted evidence of an uncharged crime, namely, conspiracy to overthrow Marin County. The admission of evidence of uncharged crimes lies within the sound discretion of the trial court. (People v. Yu (1983) 143 Cal.App.3d 358, 376 [evidence that defendant ordered killing admissible to show leadership in gang and planning of charged killing].) We find no abuse of discretion here.

Evidence Code section 1101, subdivision (b), permits admission of evidence that a person committed a crime when relevant to prove some fact such as preparation and planning. Here the evidence was relevant to show that appellant had the ability to and did persuade Hoover to kill Baldwin. The evidence that appellant was the leader of the Pendragon plan and that Hoover attended Pendragon meetings was relevant because it tended to show that appellant was a man of ideas, willing to take bold action to correct perceived problems, and that Hoover was a follower rather than a leader. It showed that appellant intended to use people as instruments of his own designs, and that therefore Hoover killed Baldwin at appellant's command. It also showed that appellant was a persuasive person, as attested by Campbell's testimony that people took appellant's plan seriously and by the evidence that those who attended the meetings continued to attend.

In addition, the evidence tended to show that if appellant tried to convince people, apparently successfully, that Marin county could be taken over and its would-be conquerors rewarded with power, he could successfully convince Hoover to believe that killing Baldwin would help appellant solve his financial problems and that Hoover could benefit financially as well.

As the trial court remarked in ruling on appellant's motion for a new trial: "[The Pendragon evidence] was extremely relevant to show the how and extent of Mr. Richard's powers and ability to manipulate and to control, and even direct the minors and the young adults no matter how bizarre this scheme may be, whether the scheme is to take over Marin by laser beam or to kill a close friend for money."

We agree with appellant that some of the Pendragon evidence went beyond the purpose for which it was admitted, such as the reference attributed to appellant about excluding blacks in the new form of government and statements alluding to appellant's delusions of grandeur. We believe, however, that appellant overestimates the extent of prejudice caused by these references. In view of the tangential nature of this evidence, the limiting instruction, and the strong evidence of guilt, any error in admitting the evidence did not result in a miscarriage of justice. (Evid. Code, § 353, subd. (b); People v. Watson (1956) 46 Cal.2d 818, 836.)

Appellant also correctly notes that the limiting instruction stated that the Pendragon evidence could be used to

show a relationship between appellant and Campbell even though Campbell testified he did not discuss Pendragon with appellant until after the murder. However, this error was cured by the instruction which told the jury to disregard instructions which applied to facts that did not exist.

II. Change of Venue

Appellant contests the court's denial of his change of venue motion. He argues there was no reasonable likelihood he could get a fair trial in Marin County given 1) the pretrial publicity, 2) Marin County residents were the targets of the Pendragon plot, and 3) appellant was charged with a capital offense.

The pretrial publicity consisted mainly of articles in the Independent Journal, a local Marin County newspaper.^{1/} The record contains about fifteen such articles, two of them main stories with headlines that read "Bizarre Plot for Marin Coup" and "Visions of a Kingdom?" These articles, appearing about the time of appellant's arrest, implied that appellant had committed the murder. They discussed details of the crime and speculated on its possible motive. There was also a lengthy article about appellant and Pendragon in the California Magazine in January 1983 and a half column piece in Newsweek magazine dated August 2, 1982.

^{1/} Appellant stated this newspaper's circulation was around 50,000 and that there were 5 readers for every subscriber; however, there was no documentation to this effect.

In ruling against the motion, the court decided that any prejudice owing to the publicity could be determined during voir dire. Questionnaires were distributed to the jury panel members to test for exposure to the publicity about Pendragon and the charges. Most of the jurors and alternates selected said they were not questioned about Pendragon; of the three that had some recollection, none was able to recall and details about Pendragon or the crime.

A change of venue motion should be granted when, because potentially prejudicial material has been disseminated, "'there is a reasonable likelihood that in the absence of such relief, a fair trial cannot be had.'" (Maine v. Superior Court (1968) 68 Cal.2d 375, 383-384.) If the defendant seeks post-trial review of a change of venue motion, "he cannot complain if inferences of possible prejudice have been refuted by the 'actualities of voir dire and of trial.'" (People v. Jacla (1978) 77 Cal.App.3d 878, 887.) Defendant bears the burden to show he did not receive a fair trial. (Ibid.)

In this case, the voir dire established that the publicity had not been so extensive or its impact long-lasting such that fair and impartial jurors could not be selected. This case is similar to People v. Preston (1973) 9 Cal.3d 308, where the court stated: "The jurors that were seated stated that they had either never heard of [the publicity], had heard of it but formed no opinion, or they had formed an opinion which they no longer held. . . . Each juror affirmed that he knew of no reason why he could not be fair and impartial. Such

statements must be presumed to be true. [Citation.]" (Id., at pp. 312-313, fn. omitted.) Further, appellant's exercise of only 9 of his 26 peremptory challenges indicates the jurors selected could be fair. (See People v. Balderas (1985) 41 Cal.3d 144, 181.)

In addition, the factors relevant to a change of venue motion -- the nature and gravity of the offense, the nature and extent of the news coverage, the size of the community and defendant's and the victim's status in the community (Martinez v. Superior Court (1981) 29 Cal.3d 574, 578) -- indicate no change of venue was required. The nature of the news coverage was not particularly inflammatory or sensational. The number of articles was not large and most of them were confined to the period coinciding with appellant's arrest. Additionally, Marin County is not a small town, where publicity is "likely to be embedded in the public consciousness with greater effect and for a longer time." (Id., at p. 581.) Even in 1968, "Marin County was not a small rural community. . . . [It then ranked] 18th of California's 58 counties in population, and adjoins a large metropolitan area." (People v. Sommerhalder (1973) 9 Cal.3d 290, 304.) Furthermore, neither appellant nor the victim were particularly well-known in the community.

Appellant's argument that a venue change was required because Marin county residents were the potential victims of Pendragon rests on the faulty assumption that such residents actually felt threatened by the plan. Even by appellant's estimate, a takeover of the county was not imminent. The cases

cited by appellant are distinguishable. In Fain v. Superior Court (1970) 2 Cal.3d 46, 53, defendant's escape weighed in favor of a change of venue since the county was small and many jurors "would have been personally subjected to the fear and other emotions aroused by this very escape." Here, there was no evidence that Marin county residents actually feared any takeover. In Young v. Superior Court (1981) 126 Cal.App.3d 167, the court ordered a change of venue from San Luis Obispo county where San Luis Obispo police officers were charged with soliciting other officers to commit crimes. The court stated that jurors could feel peer pressure to purge corruption from a local police department to which they must look for protection against crime. (Id., at p. 170.) Here, there was no such pressure on Marin county residents; the Pendragon plan ended once appellant was arrested and it was unlikely jurors would feel that if appellant were acquitted the plan would resume.

Under these circumstances, we find that appellant was not deprived of his right to a fair trial by having his trial in Marin County.

III. Failure to Provide Evidence to Defense

In ruling on appellant's motion for a new trial, the trial court found that the prosecution should have given to appellant a police officer's notes which indicated that Neal and Robles were involved in cocaine transactions. Neal and Robles had testified that appellant solicited them to kill someone. The court ruled that the error was harmless in light

of the overwhelming evidence of guilt; it therefore denied the new trial motion.

The prosecutor has a duty to disclose substantial material evidence favorable to the accused; the failure to do so requires reversal of the judgment unless the failure was harmless beyond a reasonable doubt. (People v. Shaparnis (1983) 147 Cal.App.3d 190, 193.) Here the court made the finding that the evidence should have been disclosed. We agree with the court that the failure to do so was harmless; because the error was harmless, the court did not abuse its discretion in denying the new trial motion. (People v. McDaniel (1976) 16 Cal.3d 156, 179.)

Appellant contends the evidence was required because it would have impeached Neal and Robles' credibility by suggesting that they had a motive to cooperate with the prosecution to avoid being prosecuted for narcotics offenses. He claims Neal and Robles' testimony was particularly harmful because it corroborated Campbell's testimony that appellant solicited him to kill Baldwin.

Three points lead us to conclude that the error was harmless. First, the evidence would not have directly impeached the witnesses' testimony that appellant solicited them to kill someone. Second, Neal's credibility was already impaired by evidence that he was selling marijuana. Third, the officers who had the evidence signed declarations swearing that Neal or Robles were never offered any promise of leniency.

We now address the issues raised by appellant's supplemental brief.

IV. Financial Gain Special Circumstance

A. Sufficiency of Evidence

Appellant contends that there was insufficient evidence to support the financial gain special circumstance finding. He relies on People v. Bigelow (1984) 37 Cal.3d 731, where the Supreme Court acknowledged that the financial gain special circumstance potentially overlaps with the special circumstance based on felony murder. The court therefore adopted "a limiting construction under which the financial gain special circumstance applies only when the victim's death is the consideration for, or an essential prerequisite to, the financial gain sought by the defendant." (Id., at p. 751.)

There was sufficient evidence at trial to warrant the jury's finding on the special circumstance. There was evidence that appellant was in debt to Baldwin. Campbell testified that appellant wanted to "dispose" of Baldwin so he could cancel his debts and make money by selling Baldwin's machinery and cars. Robles also testified that appellant planned to sell Baldwin's property for money. Under these circumstances, the victim's death was an "essential prerequisite" to the financial gain sought by appellant. These facts are distinguishable from Bigelow, supra, 37 Cal.3d at page 751 and Newberry v. Superior Court (1985) 167 Cal.App.3d 238, 242, where the theft of the victim's car was not found to constitute sufficient evidence on

which a murder for financial gain special circumstance could be based.

We also note the recent case of People v. Freeman (1987) 193 Cal.App.3d 337, 339-340, which held that a person who pays another to kill commits a murder for financial gain as an intentional aider and abetter. (See also Newberry v. Superior Court, supra, 167 Cal.App.3d at p. 242 ["presumably the [financial gain] circumstance would also apply to a murder-for-hire wherein the victim's death is the consideration for payment on a contract to kill."]) Campbell testified that appellant offered him and Hoover money to assist in killing Baldwin.

B. Overlapping Special Circumstances

Appellant contends that because the murder for financial gain special circumstance was based on the same facts as the burglary special circumstances, the former should not have been submitted to the jury.

The problem of overlapping special circumstances was discussed in People v. Harris (1984) 36 Cal.3d 36. The court held that the prosecutor may charge overlapping special circumstances and the jury may make findings as to each. At the penalty phase, however, the doctrine of merger operates so that the jury should be instructed to regard the several overlapping special circumstances as one. (Id., at p. 66.) This rule limits the danger that the jury will choose death merely because of the number of special circumstance findings. (Id., at pp. 66-67.)

In this case, the prosecutor did not seek the death penalty and, accordingly, no penalty phase trial was held. Therefore, the concern expressed in Harris did not arise. Harris makes plain that the prosecution may charge, and the jury may make findings on, special circumstances based on the same facts. Further, Harris was limited by People v. Melton (1988) 44 Cal.3d 713, 766-767, which said that overlapping special circumstances may be considered as distinct aggravating factors at the penalty phase. Appellant's contention lacks merit.

Appellant contends that the Supreme Court departed from Harris in Bigelow. Bigelow evinces no such intention. The Bigelow court merely stated, after defining the financial gain special circumstance in a limited manner, that "[s]ince the present case does not fall within the special circumstance as so limited, the trial court erred in submitting that special circumstance to the jury." (People v. Bigelow, supra, 37 Cal.3d at p. 751.) Here, as we explain, the facts supported both a financial gain and a burglary special circumstance, and therefore both were properly brought before the jury.

V. Trial Court's Answers to Jury's Questions

Appellant was charged with two special circumstances of murder committed in the commission of burglary. One allegation involved the burglary of Baldwin's house and the other Baldwin's garage, located at a different address. These allegations were predicated on the evidence that, at appellant's command, Campbell entered Baldwin's house to

expedite the planned theft by making an inventory, while appellant and Hoover convinced Baldwin to go to Baldwin's garage where they killed him. (Richards v. Superior Court (1983) 146 Cal.App.3d 306, 317-318.) Appellant and Hoover later returned to Baldwin's house and took property.

The jury sent the judge a note which asked, first, "if a person enters a structure intending to steal from that structure at a later date, is it burglary?," and second, "if a person enters a structure intending to murder and intends to steal property from that structure at a later time, do special circumstances apply to burglary?" After discussion with counsel, but over defense counsel's objection, the court answered "yes" to both questions, adding the proviso to the second answer that "both the intent to murder and the intent to steal existed at the time of the entry, even though the intended taking is to be at a later time -- period." Pursuant to the jury's wishes, the court later twice read back the first question and answer thereto and thrice read back the second question and answer thereto.

Appellant contends the trial court's answers were legally wrong. Appellant posits that no burglary occurs upon an initial entry when the defendant intends to re-enter the residence at a later time to commit a theft.

The crime of burglary is complete upon entry of the structure with the intent to commit a felony or petit larceny therein. "It is the intent which exists in the mind of the perpetrator at the moment of entry which defines burglary."

(People v. Markus (1978) 82 Cal.App.3d 477, 481.)

We find no error in the court's answers. We note initially that as to Campbell's entry into Baldwin's house, to which the first question apparently related, there was evidence that Campbell intended to steal at the time of the entry. Similarly, there was evidence that appellant intended to steal upon entering Baldwin's garage. While the parties have not referred us to cases discussing the precise point raised by the jury's questions, we find no persuasive reason to hold that the intent to steal was somehow vitiated because the felony was to be accomplished at a later time. Regardless of when he intended to steal, appellant certainly did intend to steal, and since that intent was contemporaneous with the entries, the crime of burglary was complete once the entries occurred.

VI. Intent to Steal From Garage

Appellant lastly contends there was insufficient evidence that he intended to steal from Baldwin's garage. Unless the killing was to further a felonious intent independent of the intent to kill, there could be no burglary special circumstance arising from the killing. (See Richards v. Superior Court, supra, 146 Cal.App.3d at p. 317.)

There was sufficient evidence of an intent to steal to support the jury's finding. There was evidence appellant intended to take and sell Baldwin's tools and equipment. As the Court of Appeal noted in affirming the denial of appellant's motion to dismiss the burglary special circumstances, "the evidence clearly supports the reasonable

inference that petitioner, when he entered the garage, harbored both the intent to kill Baldwin and the intent to feloniously remove property from the garage. According to such evidence, it was indeed petitioner's plan at the outset, from his earliest conversations with Robles and with Campbell and Hoover, to kill Baldwin in order to obtain the latter's allegedly considerable property -- from his home and from his garage." (Richards, supra, at p. 317.)

VII. Conclusion

The People astutely note that the abstract of judgment states that the murder and robbery sentences are to be served consecutively whereas the court ordered them to run concurrently. We remand so that the abstract of judgment is accordingly corrected. As corrected, the judgment is affirmed.

White, P. J.

We concur:

Barry-Deal, J.

Merrill, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION THREE

FILED

JAN - 7 1988
Court of Appeal - First App. Dist.
RON D. DARROW

By _____ **DEPUTY**

People of the State of California,)
Plaintiff and Respondent,)

1/028291

vs.)

Mark Richards,)
Defendant and Appellant.)

Marin County
Superior Court No. 8362

BY THE COURT:

The above entitled cause is hereby continued to the February
calendar. A day, date and Time will be advised.

JAN - 7 1988

Dated _____

WHITE, P.J.

P. J.

P. J.

COURT

Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

Division THREE

FILED

NOV 6 1986

Court of Appeal - First App. Dist.
RON D. BARROW

People of the State of California,
Plaintiff and Respondent,

vs.

Mark Richards,

Defendant and Appellant.

No. A028291

Marin/8362

BY THE COURT:

Appellant's sealed emergency motion for reconsideration of his request for extension of time to file opening brief is denied.

NOV 6 1986

Dated _____

BARRY-DEAL, ACTING

P.J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION THREE

FILED

OCT 31 1985
Court of Appeal - First App. Dist.
RON D. BARROW
By _____
CLERK

People of the State of California,
Plaintiff and Respondent,
vs.

1/Criminal A028291

Mark Richards
Defendant and Appellant

Marin County
Superior Court No. 8362

FILED

NOV 5 1985

HOWARD HANSON
MARIN COUNTY CLERK
BY _____
DEPUTY

BY THE COURT:

L. Miller, Official Reporter, having now submitted the reporter's transcript on appeal to the Marin Superior Court for filing, it is directed that the order to show cause heretofore issued on October 3, 1985, be discharged.

OCT 31 1985

Dated: _____

P.J.

P.J.

APPELLATE DEPARTMENT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

FILED

SEP 27 1985

HOWARD HANSON
MARIN COUNTY CLERK

BY

DEPUTY

8362

Superior Court No: *8362*

Appellate Court No. *A028291*

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff/Respondents

vs

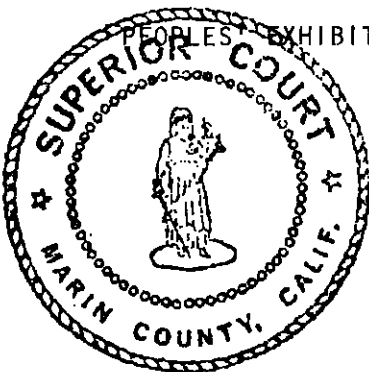
MARK RICHARDS,

Defendant/Appellant.

RECEIPT

*Received
9/27/85
Hanson*

I, RON D. BARROW, Clerk of the District Court of Appeals, First Appellate District, in and for the State of California, do hereby acknowledge receipt this date of the following documents and/or exhibits in their original state in the above--entitled action.



PEOPLES EXHIBITS: 19 & 19A.
35A, 35B, & 35C
109A, 109B, 109C, 109D, 109E, & 109F

Page 1 of the MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO EXCLUDE STATEMENT.

DATED: *9/26/85*

RON D. BARROW, Clerk

By *C. Baine*

Deputy

*Thanks for
your prompt action
C. Baine*

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

FILED

THE PEOPLE OF THE STATE OF

CALIFORNIA

Plaintiff (s)

vs.

MARK RICHARDS

Defendant (s)

JUL 8 1985

HOWARD HANSON
MARIN COUNTY CLERK

By D. Downey, Deputy, No. 8362

Dept. No. Five

Date Submitted

MINUTE ORDER

AMENDED MINUTE ORDER RE SENTENCING

Defendant having been convicted in Count 1 of Felony First Degree Murder with Special Circumstance in violation of California Penal Code Section 187; 190.2(a)(1) and 190.2(b) (Special Circumstance Financial Gain); and two allegations of 190.2(a)(17)(vii) and 190.2(b) (Special Circumstances Burglary); in Count 2 of Felony Second Degree Commercial Burglary in violation of California Penal Code Section 459; and in Count 3 of Felony Second Degree Residential Burglary in violation of California Penal Code Section 459 by reason of jury verdicts on April 9 and April 24, 1984, and the Court being fully advised in this matter, now therefore:

STATE PRISON SENTENCE

IT IS ORDERED, ADJUDGED AND DECREED: Defendant MARK RICHARDS is sentenced to State Prison for the term of life without the possibility of parole for violation of Count 1, Murder in the First Degree with the finding of three special circumstances, Murder for Financial Gain, Murder While Engaged in the Commission of Burglary, and Murder While Engaged in the Commission of Burglary; as to Count 2 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years, Commercial Second Degree Felony Burglary; and as to Count 3 said defendant MARK RICHARDS is sentenced to State Prison for the aggravated term of three (3) years for Residential Second Degree Felony Burglary. It is the Order of this Court that the sentence in Count 2 and Count 3 shall run concurrent with each other, and both Counts 2 and 3 shall run concurrent to the sentence imposed in Count 1.

The Abstract of Judgment heretofore issued is amended to conform to this Order.

Dated

7/8/85

E. Thomas
Judge of the Superior Court

MINUTE ORDER-SUBMITTED

CC: Dept of Corrections (with copy of letter)
DA C. Shapiro

3110-83-254

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803
(916)323-7405



FILED

JUL 8 1985

HOWARD HANSON
MARIN COUNTY CLERK
By D. Downey Deputy

April 30, 1985

Honorable E. Warren McGuire
Judge of the Superior Court
County of Marin
Hall of Justice - Civic Center
San Rafael, CA 94903

SECOND REQUEST

Re: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: July 20, 1984

Dear Judge McGuire:

Please refer to the copy of attached letter dated February 1, 1985 requesting clarification regarding above-mentioned case.

In order to process the legal documents on Subject's commitment in a timely manner, we would appreciate a response by the Court as early as possible.

Sincerely,

MARILYN OUYE
Correctional Case Records Manager

By: MARY LEE KING
Correctional Case Records Specialist

Attachment

cc: C-File
District Attorney
Defense Counsel

MO:MLK:jlb

See Attached 11/0

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803
(916) 323-7405



February 1, 1985

Honorable E. Warren McGuire
Judge of the Superior Court
County of Marin
Hall of Justice-Civic Center
San Rafael, CA 94903

Re: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: 07-20-84

Dear Judge McGuire:

Thank you for the Amended Abstract of Judgment dated November 26, 1984 but it still appears to be in error. The Abstract of Judgment does not indicate the Degree of Burglary for Counts 2 and 3 (six years corresponds with the upper base term of First Degree Burglary).

1. The Abstract does not indicate as to how Counts 2 and 3 are to be served in relation to each other.
2. There is a discrepancy between the Minute Order and Abstract. The Abstract reflects Life + 12 year. The Minute Order reflects Life W/O Parole for Count 1 and with Counts 2 and 3 to be served concurrent. Therefore, the Determinate Abstract should reflect the time imposed for Count 3 of 6 years in brackets and the total term as 6 years.
3. The Abstract reflects Count 2 as PC 459 Burglary. The Information indicates Subject was charged with Robbery 211 PC, perhaps there is an Amended Information.
4. The ISL Abstract does not specify the Special Allegation Penal Code.

We request that you review your file to determine if a correction is required. We would appreciate it if you would provide a certified copy of any Minute Order or modified Abstract of Judgment to this Department so that our records

Honorable E. Warren McGuire

-2-

2/1/85

may reflect the order of the Court. May we also request the attached copy of this letter be returned with your response.

Sincerely,

MARILYN OUYE
Correctional Case Records Manager

Mary Lee King

By: MARY LEE KING
Correctional Case Records Specialist

Attachment

cc: C-File
District Attorney

MO:MLK:mar

LAW OFFICES
SHAPIRO & SHAPIRO
404 SAN ANSELMO AVENUE
SAN ANSELMO, CALIFORNIA 94960
(415) 453-7811

Attorneys for Defendant
MARK RICHARDS

FILED

MAY 23 1985

HOWARD HANSON
MARIN COUNTY CLERK

DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

MARK RICHARDS,

Defendants..

NO: 8 3 6 2

DECLARATION OF COUNSEL
FOR PAYMENT FOR SERVICES
RENDERED BY NATIONAL
JURY PROJECT

I, CARL B. SHAPIRO, declare:

1. That I was the attorney of record for the defendant MARK RICHARDS throughout all the proceedings in the above-entitled matter. When I finally finished the trial, and prior to the motion for a new trial, the court authorized the sum of \$500.00 for the payment to National Jury Project for interviews conducted with the jurors to determine whether any irregularity had existed which could be the basis for a motion for a new trial.

2. When the case was concluded and the new trial denied I inadvertently neglected to ask the court for the payment of this sum, and I have only recently been reminded by the National Jury Project that its work was done and has not been paid for.

3. I therefore respectfully request that the enclosed statement be honored in the amount of \$460.00, payable to the National Jury Project and chargeable to People v. Richards.

Executed under penalty of perjury this 14th day of May, 1985, at San Anselmo, California.

CARL B. SHAPIRO

CC Act
1-5-73

THE BOARD OF DIRECTORS
OF THE CHRYSLER CREDIT CORPORATION

CHRYSLER CREDIT CORPORATION
NEW YORK, N. Y.

TO CHRYSLER BANK, N. Y.

FOR THE PURPOSE OF THE CHRYSLER CREDIT CORPORATION

CHRYSLER CREDIT CORPORATION
CHRYSLER BANK, N. Y.

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CHRYSLER BANK, N. Y.

National Jury Project

Western Regional Office • 1419 Broadway, Suite 530, Oakland, CA 94612 • 415/832-2583

People v. Mark Richards

Final Billing, Feb. 28, 1984

Preparation of materials and consultation on jury selection
and voir dire.

| | |
|--|-----------------|
| 10 hours at \$45/hour | \$450.00 |
| Expenses (including telephone and copying) | 10.00 |
| TOTAL FEES AND EXPENSES | <u>\$460.00</u> |

*Approved for payment
Judge E. W. Dunn
5/16/85*

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

THE PEOPLE OF THE STATE OF

CALIFORNIA

Plaintiff (s)

FILED

vs.

MAY 7 1985

No. 8362

MARK RICHARDS

HOWARD HANSON
MARIN COUNTY CLERK

Dept. No. 8362

Defendant (s)

By: D. Downey Deputy.

Downey

MINUTE ORDER

District Attorney and Defendant's Attorney,
Carl B. Shapiro, to advise Court in writing
within 10 days of their position/response
to letter of February 1, 1985 from the
Department of Corrections.

Dated

cc:

5/7/85

DA - C. Shapiro -

w/ copy of letter

5/2/85 DD

MINUTE ORDER

John Russo
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

THE PEOPLE OF THE STATE

OF CALIFORNIA

Plaintiff (s)

vs.

MARK RICHARDS

Defendant (s)

No. 8362

Dept. No. Five

Date Submitted

FILED

MINUTE ORDER

FEB 8 1985

HOWARD HANSON
MARIN COUNTY CLERK

By D. Downey Deputy

Downey

The District Attorney and Counsel for
Defendant are to advise the Court re:
request of the Department of Corrections
to amend abstract.

Dated

2/8/85

cc: DA; Counsel

*w/ep4 of letter
2/11/85 DD.*

MINUTE ORDER-SUBMITTED

E. James & Sons
Judge of the Superior Court

3110-83-254

End copy of file to Carl Shapiro
out for

Honorable E. Warren McGuire
Judge of the Superior Court
499-6873

M.O.

D. A. and counsel
for defendant to advise
court re request of
Dept of Corrections to
admind abstract.

2/7

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803
(916) 323-7405



February 1, 1985

Honorable E. Warren McGuire
Judge of the Superior Court
County of Marin
Hall of Justice-Civic Center
San Rafael, CA 94903

Re: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: 07-20-84

Dear Judge McGuire:

Thank you for the Amended Abstract of Judgment dated November 26, 1984 but it still appears to be in error. The Abstract of Judgment does not indicate the Degree of Burglary for Counts 2 and 3 (six years corresponds with the upper base term of First Degree Burglary).

1. The Abstract does not indicate as to how Counts 2 and 3 are to be served in relation to each other.
2. There is a discrepancy between the Minute Order and Abstract. The Abstract reflects Life + 12 year. The Minute Order reflects Life W/O Parole for Count 1 and with Counts 2 and 3 to be served concurrent. Therefore, the Determinate Abstract should reflect the time imposed for Count 3 of 6 years in brackets and the total term as 6 years.
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4. The ISL Abstract does not specify the Special Allegation Penal Code.

We request that you review your file to determine if a correction is required. We would appreciate it if you would provide a certified copy of any Minute Order or modified Abstract of Judgment to this Department so that our records

may reflect the order of the Court. May we also request the attached copy of this letter be returned with your response.

Sincerely,

MARILYN OUYE
Correctional Case Records Manager

Mary Lee King

By: MARY LEE KING
Correctional Case Records Specialist

Attachment

cc: C-File
District Attorney

MO:MLK:mar

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803
(916) 323-7405



February 1, 1985

Honorable E. Warren McGuire
Judge of the Superior Court
County of Marin
Hall of Justice-Civic Center--
San Rafael, CA 94903

Re: RICHARDS, Mark
CDC No.: C-89732
Case No.: 8362
Date of Sentence: 07-20-84

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Honorable E. Warren McGuire

-2-

2/1/85

may reflect the order of the Court. May we also request the attached copy of this letter be returned with your response.

Sincerely,

MARILYN OUYE
Correctional Case Records Manager

Mary Lee King

By: MARY LEE KING
Correctional Case Records Specialist

Attachment

cc: C-File
District Attorney

MO:MLK:mar

REPORT-INDETERMINATE SENTENCE, OTHER SENTENCE CHOICE

FORM CR 291

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

MARIN

BRANCH

COURT I.D.

21 11 11

CASE NUMBER(S)

8362 - A

- B

- C

- D

- E

PEOPLE OF THE STATE OF CALIFORNIA

VERSUS

☒

PRESENT

DEFENDANT:

MARK RICHARDS

☐

NOT PRESENT

AKA:

REPORT TO JUDICIAL COUNCIL OF: ☐ INDETERMINATE SENTENCE

TO STATE PRISON ☒ SENTENCE CHOICE OTHER THAN STATE PRISON

DATE OF HEARING
(MO) (DAY) (YR)

DEPT. NO.

JUDGE

CLERK

7 120 84

FIVE

E. WARREN MC GUIRE

S. HAENGGI

REPORTER

COUNSEL FOR PEOPLE

COUNSEL FOR DEFENDANT

PROBATION NO. OR PROBATION OFFICER

MILLER/PERRY

BERBERIAN

RIORDAN/SHADIRO

CARRAHER

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

A. ☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

| COUNT | CODE | SECTION NUMBER | CRIME | YEAR CRIME COMMITTED | DATE OF CONVICTION | | | CONVICTION BY | | | ENHANCEMENTS (CHARGED AND FOUND) | | | | | | | |
|-------|------|----------------|----------|----------------------|--------------------|-----|------|---------------|-------------|------|----------------------------------|----------|----------|------------|------------|---------|------------|------------|
| | | | | | MO | DAY | YEAR | JURY TRIAL | COURT TRIAL | PLEA | 634 STAY | 12022(a) | 12022(b) | 12022-3(a) | 12022-3(b) | 12022-5 | 12022-6(a) | 12022-6(b) |
| 1 | PC | 187 | MURDER | 82 | 4 | 24 | 84 | X | | | | | | | | | | |
| 2 | PC | 459 | BURGLARY | 82 | 4 | 24 | 84 | X | | | | | | | | | | |
| 3 | PC | 459 | BURGLARY | 82 | 4 | 24 | 84 | X | | | | | | | | | | |

2. A. Number of prior prison terms charged and found

| SECTION | NUMBER |
|----------|--------|
| 667.5(a) | |
| 667.5(b) | |
| 667.6(b) | |

B. Number of prior felony convictions

| SECTION | NUMBER |
|----------|--------|
| 667.6(a) | |

3. ☐ Defendant was sentenced to death on counts

4. ☒ Defendant was sentenced to State Prison:

A. For life, or a term such as 15 or 25 years to life, with possibility of parole, on counts

B. ☒ For life without the possibility of parole on counts 1

C. ☒ For other term prescribed by law on counts 2 3

5. ☐ Counts were deemed misdemeanors.

A. ☐ Defendant sentenced to days in county jail for all counts.

B. ☐ Defendant fined in sum of \$

6. ☐ For counts, the defendant was placed on probation.

A. (1) ☐ Sentence pronounced and execution of sentence was suspended; or

(2) ☐ Imposition of sentence was suspended.

B. Conditions of probation included ☐ Jail Time days ☐ Fine

7. Other dispositions

A. ☐ Defendant was committed to California Youth Authority.

B. ☐ Proceedings suspended, and defendant was committed to California Rehabilitation Center.

C. ☐ Proceedings suspended, and defendant was committed as a Mentally Disordered Sex Offender.

D. ☐ Proceedings suspended, and defendant was committed as mentally incompetent.

E. ☐ Other (Specify)

NOTE: PURSUANT TO ARTICLE VI, SECTION 6 OF THE CALIFORNIA CONSTITUTION AND SECTION 68505 OF THE GOVERNMENT CODE, THE CHIEF JUSTICE REQUIRES THAT EACH SUPERIOR COURT SHALL COMPLETE THIS FORM FOR EACH INDETERMINATE SENTENCE TO STATE PRISON OR SENTENCE CHOICE OTHER THAN STATE PRISON. THE REPORTS IMPLEMENT SECTION 1170.4 OF THE PENAL CODE AND SHALL BE MAILED TO: ADMINISTRATIVE OFFICE OF THE COURTS, 350 McALLISTER, 3200 STATE BUILDING, SAN FRANCISCO, CALIFORNIA 94102

DATE

SIGNATURE OF CLERK

Nov 26, 1984

S. Haenggi

REPORT-INDETERMINATE SENTENCE,
OTHER SENTENCE CHOICE

Const., Art. VI, § 6
Pen C. 1170.4, 1170.6

WHITE COPY TO
ADMINISTRATIVE OFFICE OF THE COURTS

FORM CR 291 (10/1/81)

CRC © M

3
COPY
Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

FILED

AUG 30 1984

Court of Appeal - First Dist.
CLIFFORD C. PORTER, Clerk

By _____ DEPUTY

People of the State of California,
Plaintiff and Respondent,

vs.

Mark Richards,

Defendant and Appellant.

No. A028291

Marin

Superior Court No. 8362

BY THE COURT:

The order of this court filed August 15, 1984,
appointing the State Public Defender to represent
appellant Richards is modified to reflect the following:

The sentence "The defendant is hereby directed
promptly to forward his copy of the record on appeal to
the attorney named in this order" is stricken and replaced
with the following:

The County Clerk is hereby directed to forward a
copy of the record on appeal to the attorney named in this
order immediately upon preparation.

Appellant's opening brief shall be filed within
thirty days from the date of the filing of the record on
appeal in this court.

FILED

AUG 30 1984

Dated _____

AUG 31 1984

SMITH, J. ACTING P.J.

HOWARD HANSON
BY MARIN COUNTY CLERK
BY *[Signature]*
DEPUTY

ORIGINAL

Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

FILED

AUG 15 1984

Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk

DEPUTY

People of the State of California,

Plaintiff and Respondent,

vs.

Mark Richards,

Defendant and Appellant.

No. A028291

Marin

Superior Court No. 8362
8632

BY THE COURT:

State Public Defender
1390 Market Street
Suite 425
San Francisco, CA 94102

is hereby appointed to represent the appellant on appeal. THE DEFENDANT IS HEREBY DIRECTED PROMPTLY TO FORWARD HIS COPY OF THE RECORD ON APPEAL TO THE ATTORNEY NAMED IN THIS ORDER.

Dated AUG 15 1984

 A. P.J.

COPY

Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

FILED

AUG 15 1984

Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk

DEPUTY

People of the State of California
Plaintiff and Respondent,

VS.

Mark Richards,
Defendant and Appellant.

No. A028291

Marin
Superior Court No.

8652 8362

FILED

8/20/84

HOWARD HANSON
MARIN COUNTY CLERK

BY

DEPUTY

BY THE COURT:

State Public Defender
1390 Market Street
Suite 425
San Francisco, CA 94102

is hereby appointed to represent the appellant on appeal. THE DEFENDANT IS HEREBY DIRECTED PROMPTLY TO FORWARD HIS COPY OF THE RECORD ON APPEAL TO THE ATTORNEY NAMED IN THIS ORDER.

Dated AUG 15 1984

[Signature] A. P.J.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

FILED

JUL 25 1984

PEOPLE OF THE STATE OF CALIFORNIA)
Plaintiff/Respondent)

vs)

MARK RICHARDS)
Defendant/Appellant)

HOWARD HANSON
MARIN COUNTY CLERK
BY A. Cooper
DEPUTY

No. 8362

CLERK'S NOTICE OF FILING NOTICE OF APPEAL

TO: JERRY R. HERMAN, DISTRICT ATTORNEY, ROOM 155, HALL OF JUSTICE,
SAN RAFAEL, CA 94903

PLEASE TAKE NOTICE THAT ON JULY 20, 1984, a notice of appeal
from the judgment/order entered herein on JULY JULY 20, 1984, in the
Judgment Book, was filed with this court by _____
MARK RICHARDS, IN PRO PER (WITH REQUEST FOR COUNSEL)

Dated: JULY 25, 1984

HOWARD HANSON, County Clerk

By A. Cooper, Deputy

INFORMATION TO CLERK, COURT OF APPEAL, FIRST APPELLATE DISTRICT
FROM THE COUNTY CLERK, MARIN COUNTY

PEO. vs. RICHARDS
#8362

1. IF THE APPELLANT IS REPRESENTED BY COUNSEL ON APPEAL, HIS OR HER NAME & ADDRESS:

N/A

2. NATURE OF THE CONVICTION FROM WHICH THE APPEAL TAKEN (i.e., robbery, burglary, murder, etc.)

3. DISPOSITION:

MURDER

SENTENCE:

XX Found Guilty

 Guilty Plea

XX State Prison

XX Jury

 Violation Probation

 County Jail

 COURT

 Probation

BAIL ON APPEAL:

 C.Y.A.

\$

Posted

 O.R. Stay

4. LAST KNOWN ADDRESS OF APPELLANT IF ON PROBATION OR MOTION FOR BAIL PENDING APPEAL GRANTED: N/A

5. THE NAME OF ANY CO-DEFENDANT WHO HAS FILED A NOTICE OF APPEAL: N/A

ONE RECORD?

TWO RECORDS

6. DATE APPEAL FILED JULY 20, 1984 XX JUDGMENT RULE 31-d

7. THE NAMES OF THE REPORTERS WHO WILL BE RESPONSIBLE FOR THE PREPARATION OF THE

TRANSCRIPTS ON APPEAL: L. MILLER, L. SETTLEMYRE, B. PERRY, D. BARTUNEK, T. SAIKI,

L. MITCHELL, M. TAKASCH, C. WOEBER & K. LILLARD

8. THE HOME ADDRESS OF PRO TEM REPORTERS, IF ANY, RESPONSIBLE FOR ALL OR PART OF THE TRANSCRIPTS ON APPEAL: B. PERRY, 3000 SIR FRANCIS DRAKE BLVD., FAIRFAX, CA 94930

94901

L. SETTLEMYRE, 598 OASIS, SANTA ROSA, CA 95407, M. TAKASCH, 123 AUBURN ST., SAN RAFAEL, CA

L. MITCHELL, 940 MEADOWSWEET DR., #1002, CORTE MADERA, CA 94925

K. LILLARD, 441 SAN MARIN DRIVE, NOVATO, CA 94947

9. THE NAME & DEPARTMENT NUMBER OF THE TRIAL JUDGE TO WHOM THE RESPONSIBLE REPORTERS ARE CURRENTLY ASSIGNED:

E. WARREN MC GUIRE, SUPERIOR COURT JUDGE, DEPARTMENT FIVE (L. MILLER)

BEVERLY B. SAVITT, SUPERIOR COURT JUDGE, DEPARTMENT TWO (D. BARTUNEK)

DAVID MENARY JR., SUPERIOR COURT JUDGE, DEPARTMENT ONE (T. SAIKI)

PETER ALLEN SMITH, SUPERIOR COURT JUDGE, DEPARTMENT FOUR (C. WOEBER)

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

PEOPLE vs. RICHARDS
ACTION No. 8362

(PROOF OF SERVICE BY MAIL - 1013A, 2015.5 C.C.P.)

I AM A CITIZEN OF THE UNITED STATES AND A RESIDENT OF THE COUNTY AFORESAID; I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE WITHIN ABOVE ENTITLED ACTION; MY ~~RESIDENCE~~ BUSINESS ADDRESS IS:

HOWARD HANSON, COUNTY CLERK, P. O. BOX E, SAN RAFAEL, CA 94913

ON JULY 20, 19 84, I SERVED THE WITHIN

COPY OF CLERK'S NOTICE OF FILING NOTICE OF APPEAL

ON THE PARTIES BELOW IN SAID ACTION, 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 RAFAEL, CA 94913, ADDRESSED AS FOLLOWS:

CLERK, COURT OF APPEAL (WITH CERTIFIED COPY OF NOTICE OF APPEAL & INFORMATION SHEET)
FIRST APPELLATE DISTRICT
4154 STATE BUILDING
SAN FRANCISCO, CA 94102

JERRY R. HERMAN, DISTRICT ATTORNEY
ROOM 155, HALL OF JUSTICE
SAN RAFAEL, CA 94903

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY *
THAT THE FOREGOING IS TRUE AND CORRECT.

DATE 7/25/84

* NOTARIZATION NOT REQUIRED

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

1700

DATE: JULY 20, 1984

COURT MET AT 1:30PM

DEPARTMENT NO. FIVE

PRESENT: HON. E. WARREN MC GUIRE

JUDGE S HAENGGI

DEPUTY CLERK

LEO MILLER/B. PERRY

REPORTER B FRYE: W. WRIGHT

BAILIFF

TITLE:

FILED

COUNSEL:

THE PEOPLE OF THE STATE OF
CALIFORNIA

JUL 23 1984
E. BERBERIAN, DEPUTY DA

VS

HOWARD HANSON
MARIN COUNTY CLERK

MARK RICHARDS

BY

J. Castille
DEPUTY

D. RIORDAN: C. SHAPIRO
MR CARRAHER, DEPUTY PO

NATURE OF PROCEEDINGS: POST TRIAL MOTIONS: REPORT AND JUDGMENT ACTION NO. 8362

Defendant is in custody and present with his counsel; the District Attorney and Probation Officer present. Defense Motion for New Trial argued; Def's C id. (Note). Motion re special circumstances argued and submitted on briefs. Court recessed at 11AM to reconvene at 2PM. Reconvened at 2PM when the Court denied the Motion for New Trial and Motion to Strike and stated its reasons therefor. The Court fixed this as the time and place for pronouncement of judgment and the Defendant and his counsel waived formal arraignment for pronouncement of judgment and further stated there is no legal cause why judgment cannot be pronounced at this time. (other than Motion for New Trial

Defendant having been convicted of Felony Counts I, in violation of Section 187 of the Penal Code; Count II, in violation of Section 459 of the Penal Code and Count III, in violation of Section 459 of the Penal Code of the State of California by reason of a jury verdict on April 24, 1984 and the Court being fully advised in this matter, now therefor

STATE PRISON SENTENCE

IT IS ORDERED, ADJUDGED AND DECREED: Defendant MARK RICHARDS is sentenced to State Prison for the term of Life without parole for violation of Count I and for the aggravated term, Defendant is sentenced to six (6) years in re Counts II and III, sentence to run concurrent with Count I. Defendant advised of his rights to appeal and remanded back into the custody of the Marin County Sheriff for transportation to Director of Corrections, Vacaville, California.

DONE IN OPEN COURT THIS 20TH DAY OF JULY 1984 AND SIGNED THIS DAY OF JULY 1984.

E. Warren McGuire

E. WARREN MC GUIRE
JUDGE OF THE SUPERIOR COURT

cc: DA: D. RIORDAN: C. SHAPIRO: PO: SHERIFF:
JAIL: M. CARD: DIR CORR *jud BK*

FILED

JUL 20 1984

HOWARD HANSON
 BY MARIN COUNTY CLERK
 DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF MARIN

| | | |
|------------------------------------|---|-------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | |
| |) | |
| Plaintiff, |) | NO. 8362 |
| |) | |
| vs. |) | NOTICE OF APPEAL AND |
| |) | REQUEST FOR APPOINTMENT |
| MARK RICHARDS, |) | OF COUNSEL |
| |) | |
| Defendant. |) | |

Defendant MARK RICHARDS hereby appeals from the judgment of conviction and sentence entered in the above-cited case on July 20, 1984.

Defendant Richards is an indigent and requests appointment of counsel on appeal. Because this case involves a trial of greath length and complexity, he further requests that the Office of the State Public Defender be appointed to represent him on appeal.

DATED: 7/20/84

cc: Howard Hanson
 D.A.

MARK RICHARDS
 In Propria Persona

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

168A

DATE: July 16, 1984

COURT MET AT _____

DEPARTMENT NO. 401

PRESENT: HON. E Warren Mc Guire

JUDGE Salaenggi

DEPUTY CLERK _____

REPORTER _____

BAILIFF _____

TITLE:

*The People of The State
vs
Mark Richards*

COUNSEL:

Ex Parte Order

NATURE OF PROCEEDINGS:

Continuance of Hearing

ACTION NO.

8362

Pursuant to Court Conflict in Calendar,

It Is By The Court Ordered:

*Pre-sentence motions and sentencing is
continued from July 17, 1984 at 1:30 PM until
Friday, July 20, 1984 at 10 AM.*

*cc: Master Cal: Sheriff: Jail: DA, Ed Berberian;
defense Counsel: Carl Shapiro, Ms. Riardon*

JERRY R. HERMAN, District Attorney
 EDWARD S. BERBERIAN, Deputy District Attorney
 Room 155, Hall of Justice
 San Rafael, California 94903
 Telephone: 499-6450

Attorneys for Plaintiff

FILED

JUL 11 1984

HOWARD HANSON
 MARIN COUNTY CLERK

BY *[Signature]*

REPLY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

| | | |
|------------------------------------|---|----------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | NO. 8362 |
| |) | |
| Plaintiff, |) | PEOPLE'S RESPONSE TO |
| |) | NEW TRIAL MOTION -- |
| v. |) | SPECIAL CIRCUMSTANCE |
| |) | <u>PHASE</u> |
| MARK RICHARDS, |) | |
| |) | |
| Defendant. |) | |

I.

PENAL CODE SECTION 1385 DISMISSAL OF SPECIAL CIRCUMSTANCE

FINDINGS

A. Standing to Raise Issue

While it is true that the court has the jurisdiction to strike special circumstance findings, under the authority of Penal Code Section 1385, (See, People v. Williams, 30 Cal. 3rd 470) the defense does not have the authority to make such a motion. (See, People v. Sanders, 145 CA 3rd 218, at 225)

Penal Code Section 1385, specifically holds that the only parties who can make the motion are the court and the prosecution. Therefore, the defense motion under Penal Code

1 Section 1385 should be stricken.

2 B. Substantive Argument

3 The People believe this aspect of the defendant's
4 motion must fall on the standing issue alone; however, arguendo,
5 the discussion brought by the defense as a substantive argument
6 is equally without merit.

7 The defense seems to imply that society's best
8 interests would only be served by a Board of Prison Terms
9 evaluation of all sentenced inmates. This body, it is argued, is
10 best capable of determining what is in society's best interests.

11 Such an argument should be rejected. There is no
12 direct access to that body by the electorate. If one is
13 concerned about society's best interests then one should look to
14 those governmental bodies where direct electorate input occurs.

15 In addition, in California, the electorate can directly
16 enact the laws of this state by either the referendum or
17 initiative process. Once again this direct voice of the people
18 would be the best guage of society's values and standards.

19 It is these direct access mechanisms that either
20 approved or enacted the provisions of the Penal Code which
21 provide for a penalty of life without parole as a sanction for
22 certain specified unlawful killings. The facts of the Richards'
23 case clearly show it to be the appropriate sanction.

24 Although not mentioned by the defense, there exists the
25 ability of a prisoner serving a life without parole sentence to
26 petition for clemency; if prison performance and other factors so
27 justify. I am quite confident this defendant either has been or
28 will be fully advised of these legal tools. (See, Cal. Const.,

1 art V, § 8; Penal Code § 4801; Cal. Admin. Code, title 15, § 2815
2 et. seq.) But, for the present time, Mark Richards' actions
3 speak quite eloquently of the need for the immediate imposition
4 of the life without parole sentence.

5 The defense argues that equity demands that Mark
6 Richards receive no greater punishment than Crossan Hoover--the
7 juvenile that actually did the killing. The defense attempts to
8 minimize Mark Richards involvement; and disputes his role as the
9 planner of the killing.

10 From a factual standpoint, the jury by its verdicts
11 found that Mark Richards did plan and execute the killing of
12 Richard Baldwin, and in so doing used two juveniles to advance
13 his plan to kill.

14 The defense argues how much more sophisticated Andrew
15 Campbell was, because he gave no statement and has been granted
16 immunity. Well, Andrew Campbell did not plan the killing and was
17 not the actual person who killed the victim. The culpability of
18 Mark Richards far exceeds that of Andrew Campbell and the
19 sanction to be imposed on Richards should so reflect that status.

20 Remember that the evidence demonstrates that Mark
21 Richards, with his over-inflated ego, believed he could lie his
22 way out of this jam, just as he had been successful in doing over
23 the years. As it turned out he calculated incorrectly, and
24 perhaps for the first time his life Mark Richards was unable to
25 talk himself out of trouble. In measuring sophistication, should
26 one look to see whose family can first obtain a lawyer to
27 intercede; or should one analyze who conceived, planned,
28 recruited the participants, executed the plan and proceeded to

1 reap the profits of the scheme?

2 Mark Richards, Crossan Hoover and Andrew Campbell
3 entered into the conspiracy to murder Richard Baldwin for
4 financial profit. Crossan Hoover and Andrew Campbell sold a
5 quantity of marijuana taken from the victim's residence--and they
6 had two or three handguns of the victim's. But who bought the
7 boat, who kept the balance of the "good" guns; who sold the
8 "older" guns; who sold the coins taken from Richard Baldwin; who
9 purchased the stereo; who purchased the video disk player; who
10 bought his wife jewelry; who used the victim's checking accounts
11 for food, boat supplies and building materials; and who attempted
12 to obtain a \$10,000 line of credit using the victim's identity?
13 So if we want to talk about moral culpability and down right
14 greed, Mark Richards has to top the list.

15 The defense moves into a "proportionality" argument to
16 justify its demand that the court strike the special
17 circumstances. However, "comparative proportionality review" has
18 been recently addressed in the United States Supreme Court case
19 of R. Pulley, Warden v. Robert Alton Harris, ___ U.S. ___, 79 L.Ed.
20 2nd 29, 104 S. Ct. ___ (Decided January 23, 1984). This case
21 arose in California, and the U.S Supreme Court held that the
22 Eighth Amendment, applicable to the states through the Fourteenth
23 Amendment to the U.S. Constitution, does not invariably require
24 in every case a state appellate court, before affirming a death
25 sentence to compare the sentence in the case before it with the
26 penalties imposed in similar cases. Logic tells one, that for a
27 sanction less onerous than death, a similar holding would occur.

28 Based on Harris, the Court in this case need not

1 conduct "comparative proportionality review"; however, even if
2 such a review was in fact mandated, the imposition of life
3 without parole would be appropriate. Looking at the details of
4 the defense analysis of "similar" cases, one will find an
5 oversimplified and oft-times misleading argument. None of the
6 Marin cases cited by the defense had evidence as clear and
7 convincing on the issues of premeditation and deliberation as
8 this case. None of the "similar" cases had the evidence of a
9 criminal conspiracy of such long duration, where the details of
10 the killing were planned, outlined in depth and subsequently
11 carried out. None of these "similar" cases had a supposedly
12 mature adult recruiting juveniles to execute the cold-blooded
13 murder.

14 Let's look at the defense analysis:

15 (1) People v. Bunney, Marin Superior Court
16 Case # 8001. The murder grew out of a
17 disintegrating love affair. The emotional
18 undercurrents of that case can not compare to
19 the cold-blooded, methodical murder for
20 profit that earmarked the Richards case. The
21 defense talks about the lying-in-wait aspects
22 of the Bunney case. It would be interesting
23 to note whether the defense is using the same
24 definitional guideposts in Bunney for lying-
25 in-wait as they argued before the Court of
26 Appeals in this case. (See, Richards v.
27 Superior Court, 146 CA 3rd 306) The Richards
28 court found that to sustain a lying-in-wait
theory, there must have been evidence of
"some period of physical concealment" which
preceded the murder. True, in Bunney, the
defendant premeditated the killing, and I'm
sure she took the victim "unawares"--however,
the definition this defense team sought to
establish and did establish in Richards did
not exist in Bunney. The victim was killed
by a shotgun blast in his back, as he was
walking out of the defendant's bedroom.

(2) People v. Wickersham, Marin Superior
Court Case # 7297. The initial first degree

1 murder conviction was reversed. Upon
2 retrial, the defendant was acquitted,
3 claiming the shooting was an accidental
4 death. An examination of the trial record
5 during the second trial will reveal the court
6 restricted the prosecution's evidence on the
7 issue of financial motive. The defense
theory, which the second jury accepted, was
that the death of the victim (who was the
husband of the accused) was an accident. Any
factual comparisons between Wickersham and
Richards is meaningless.

8 (3) People v. Becker, Marin Superior Court
Case # 7456. The Becker/Cerny murder trial,
again factually, is not close to Richards.
9 Absent was the involved and intricate
plotting and planning. Absent were the weeks
10 of organizing the scheme and recruiting other
participants. The overtones of the
11 Becker/Cerny case showed drug usage and drug
dealing with a desire to get back money and
12 drugs from the victim, which the defendants
thought were due and owing. The degree of
13 cold-blooded calculation found in Richards
was absent. In fact, the trial court even
14 refused the prosecution's request for felony-
murder instructions.

15 (4) People v. Sutton, Marin Superior Court
16 Case # 7676. This was a homosexual killing,
where if the case had to go to trial a
17 problem existed in proving just when the
intent to steal or commit any felony arose.
18 Guilt was established by a plea. The
defendant agreed to plead to first degree
19 murder before the Preliminary Hearing, if the
People agreed not to file a complaint
20 alleging special circumstances. Based on the
state of the evidence, the People agreed and
21 a plea was obtained. No lack of certainty or
clarity about the special circumstance
22 evidence existed in the Richards' case.

23 (5) People v. Shriver, Marin Superior Court
Case # 7721. Again the quality of the
24 evidence available to form the basis of the
special circumstance allegations did not
25 match the certainty of the Richards'
evidence. Shriver was 18 years of age and
26 was seeing a married woman (the victim),
whose husband at the time was in the military
27 overseas. There was evidence of recent
intercourse in the autopsy findings, however,
28 proving a charge of rape was in doubt. The

1 victim was an individual who often frequented
2 bars in her husband's absence, and consensual
3 sexual intercourse was a viable defense
4 argument. Also, the possibility of the
5 intent to have intercourse and the actual
6 consummation of the intercourse could have
7 occurred after the victim's death. These
8 evidentiary problems, coupled with the
9 defendant's age, lead to an agreement where
10 the defendant pled to first degree murder,
11 with CYA removed from any sentence option, in
12 exchange for the People striking the special
13 circumstance allegations.

14 By examining in detail the factual underpinnings of the
15 defendant's "comparative proportionality" argument, the Court
16 will see Mark Richards clearly committed a ruthless, cold-
17 blooded, calculated killing, that on its own merits justifies the
18 imposition of a life without parole sentence. Society gave Mark
19 Richards all the compassion and sympathy his actions merit by not
20 asking the jury to return a death sentence--that's a
21 demonstration of more humanity and consideration than he gave
22 Richard Baldwin, his "friend."

23 II.

24 Juror Misconduct

25 Initially the Court should examine how the defense
26 orchestrated the setting where a claim of misconduct could even
27 arise.

28 The People have long maintained that there has never
been a legal necessity, or right, to have special circumstance
findings bifurcated from the verdicts on the substantive charges.

That position becomes even clearer when one analyzes
the "additional evidence" presented by the defense in the special
circumstance phase of this trial. The defense had long
maintained that it had an inconsistent theory of defense, that

1 necessitated the bifurcated proceedings. Again--look to the
2 evidence presented during the "second phase". There was not one
3 piece of evidence presented that could not, and should have, been
4 placed before the jury initially. If the normally established
5 procedures had been followed, none of the events that the defense
6 now claims as misconduct would have occurred.

7 The approach urged upon on the court, by the defense
8 over the People's persistent objection, was a tactical one,
9 designed purely to give the defense, if unfavorable verdicts were
10 returned, a second opportunity to face the jury. Two chances are
11 better than one, the thinking goes. Also, by stretching out a
12 trial, disrupting the flow of the proceedings, an increased
13 likelihood of juror contamination becomes a possibility.

14 Without legal necessity, or right, let's set a stage
15 most conducive to invite error--invite mistakes. That again, the
16 People maintain was the real reason for the requested
17 bifurcation.

18 The defense next refers to events that transpired
19 between the two phases of this trial. The defense comments on
20 the court's actions and published news accounts surrounding the
21 remanding to custody without bail of Richards after the verdicts
22 were returned.

23 Let's put the court's action into proper context.
24 After the defendant was convicted of First Degree Murder, the
25 People again argued that Mark Richards was an inappropriate
26 individual to be free upon bail. The court, as required by state
27 law, articulated the basis for revoking Mark Richards' bail and
28 remanding him into custody. (See, In re Podesto, 15 Cal. 3rd 921

1 and In re Pipinos, 33 Cal. 3rd 189) The court can not under the
2 decisions cited above merely remand a defendant without a
3 sufficient record and analysis of reasons that can be reviewed
4 upon appeal. Any summary commitment would have resulted in a
5 higher court ordering a more detailed analysis.

6
7 Juror Kash and Juror Hemingway

8 The defense implies that Juror Kash attempted to hide
9 information and was not being candid. This is pure
10 speculation. In the first questioning she was never asked if she
11 talked to anyone about what she had been told.

12 The defense then argues that in the examination on the
13 following day, Juror Kash was reluctant to admit information
14 about her comments. That statement is a total distortion of her
15 examination. Juror Kash at no time refused to answer any
16 questions asked, nor was she evasive in any answers. When asked
17 during the second examination, if she told anyone about what she
18 had heard, Juror Kash stated she probably repeated to at least
19 one juror what she was told. She stated she did not really
20 recall who she told--it could have her roommates, instead of
21 jurors. (RT Richards p. 3193-3194)

22 Juror Hemingway recalls Juror Kash mentioning the fact
23 Mark Richards was reported to be ill, and that Mrs. Richards
24 threatened a news reporter. Juror Hemingway does not recall
25 anyone else being present at the time these comments were made.
26 (RT Richards p. 3196)

27 Neither Jurors Kash nor Hemingway were exposed to any
28 of the details of what the defense highlighted as the inflammatory

language dealing with Richards remand into custody. Nor did either juror receive any information on the factual details, legal theories or legal instructions relevant to the case.

Both jurors without hesitation stated whatever they had heard could be set aside, and they could be fair and impartial in exercising their duties. In fact, Juror Hemingway empathically stated "...I feel what I heard is irrelevant...." (RT Richards p. 3198)

One interesting comment made by Juror Kash, which the defense did not mention, occurred when Juror Kash discussed with Mr. Riordan, the information she received from the bus passenger, i.e. Mrs. Richards' statement:

"MRS. KASH: ...Mrs. Richards just made a snap remark to a newspaper person. I'm very tired over it, so I really turn a lot of people off, sir. I just let them talk. Those are the only things I can recall.

MR. RIORDAN: Didn't that remark make an impact and stay in your mind?

MRS. KASH: To be quite honest, it did not surprise me at all.

MR. RIORDAN: Okay, What do you mean by that?

MRS. KASH: Well, I've been sitting up here for two months, and looking at the judge and looking at the audience, and when Mr. Berberian is talking, you ought to see Mrs. Richards give facials. It doesn't surprise me that she would make a comment. I mean, it is her son. I'm sure I would make the same comment...." (RT Richards p. 3192)

Juror Hughes

Juror Hughes overheard nothing more than what Jurors

1 Kash and Hemingway mentioned. In fact, the only part that she
2 heard dealt with Mark Richards taking pills. Juror Hughes when
3 asked by the defense, stated she didn't infer anything from the
4 comment. (RT Richards p. 3200)

5 Again none of the contents of the highlighted news
6 article on Mark Richards came to her attention. She was not
7 exposed to any factual material, legal theories or legal
8 instructions involving the case. Juror Hughes stated she could
9 be fair and impartial, regardless of the matters she overheard.
10

11 Juror Travers

12 Juror Travers picked up her paper, immediately saw a
13 headline that pertained to the case and set the paper aside. She
14 did not read the article and only recalls two words from the
15 headline. When the defense asked her whether the portion of the
16 headline she recalled suggested that the Judge had said something
17 about the case, she replied "...I don't think I really thought
18 about it in that sense. I think I just thought, 'What is it
19 doing on the front page?'" (RT Richards p. 3208)

20 Juror Travers was not exposed to the details of the
21 article, nor did she receive any other information about the
22 case.
23

24 Juror Alton

25 The only information she had been exposed to was a
26 comment by her husband that Richards had been remanded after the
27 verdict. No facts or details of the highlighted news article
28 were given to her. Juror Alton had no exposure to factual

1 material, legal theories or legal instructions outside the court
2 proceedings. In fact her husband would read the newspaper
3 first, and cut out any article that touched on the case.
4

5 Juror Phillips

6 Juror Phillips had no exposure to any material except
7 for the headline of an article about a defense motion to
8 disqualify the trial judge. She did not read the article and
9 formed no opinions based on the headline. In fact, Juror
10 Phillips stated "...No, I don't put any weight in what I read in
11 the paper at all."

12 In discussing the law on jury misconduct, the defense
13 cites several federal circuit court of appeal decisions. These
14 decisions have no controlling authority upon this court. There
15 are other circuit courts that have spoken about the fact that
16 jurors do not live in a vacuum, and it would be totally
17 unrealistic to expect a completely sterile environment to envelop
18 them during a trial. (See, Ferrari v. United States, 244 F. 2nd
19 132 and United States v. Goliday, 468 F. 2nd 170)

20 Going back to 1910, Justice Holms, in Holt v. United
21 States, 218 U.S. 245, at 251, said:

22 "The counsel for the prisoner filed his own
23 affidavit that members of the jury had stated
24 to him that they had read the Seattle daily
25 papers with articles on the case, while the
26 trial was going on. He set forth articles
27 contained in those papers, and moved for a
28 new trial. the court refused to receive
counter affidavits, but, assuming in favor of
the prisoner that the jurors had read the
articles, he denied the motion....If the mere
opportunity for prejudice or corruption is to
raise a presumption that they exist, it will
be hard to maintain a jury trial under the

1 conditions of the present day."

2 The United States Supreme Court case cited by the
3 defense (Marshall v. United States, 360 U.S. 310) dealt with a
4 case where the news articles were very pervasive, and went into
5 the details of a number of items of excluded evidence, as well as
6 the defendant's previous criminal background. It was these
7 articles that a number of the jurors read. Under that factual
8 setting the Court ordered a new trial. However, the Marshall
9 court emphasized that the trial judge has wide discretion and
10 each case must turn on its facts. It is for that precise reason
11 the People went into great detail as to exactly what the jurors
12 in Richards were exposed. Nothing of the nature of the Marshall
13 facts existed.

14 The California courts adopt a similar case by case
15 analysis. Cited to the court at the time the examination of the
16 trial jurors, was People v. Sirhan, 7 Cal. 3rd 710, at 728-733.
17 The potential prejudicial information to which those jurors were
18 exposed far exceeded the type of information revealed in the
19 examination of the Richards jury. Just as in Sirhan each juror
20 was asked and responded affirmatively that they could be fair and
21 impartial. (See also, People v. McIntyre, 115 CA 3rd 899, at
22 905-906)

23
24 III.

25 BURGLARY SPECIAL CIRCUMSTANCE JURY INSTRUCTIONS

26 What the defense attempts to urge upon the court is
27 that for a burglary to occur, when the felony is the intent to
28 steal, the taking must occur at the same time. The People

1 maintain that the mental state of the intent to steal and the
2 physical act of actually taking property from a structure do not
3 have to occur at the same time. Practically speaking, in order
4 to prove that intangible mental state one would like to point to
5 the fact of either: (1) Statements which address the intent, or
6 (2) the fact physical items were removed and ideally recovered in
7 the suspect's possession. However, the crime of burglary
8 punishes the mental state alone, and does not depend on the
9 accomplishment of the normally occurring contemporaneous physical
10 taking.

11 All that need be proved is that the necessary intent
12 existed at the time of entry. Failure to accomplish the intended
13 theft is irrelevant--neither (in the words of Witkin, California
14 Crimes, § 458, page 420) "...impossibility of achievement of the
15 intended purpose, nor abandonment of that purpose, is a
16 defense." (See, People v. Shaber, 32 Cal. 36, at 38; People v.
17 Novo, 12 CA 2nd 525, at 528; and People v. Clifton, 148 CA 2nd
18 276, at 279)

19 A burglary special circumstance felony-murder
20 instruction requires an intention to kill as well as the intent
21 to commit theft upon entry. It must be remembered it is the
22 mental state that is being punished--it does not require proof
23 that a physical taking of any property followed the entry. To so
24 require would redefine the long established elements of a
25 burglary.

26 The defense argues the court improperly instructed the
27 jury "that a murder committed in a structure in order to
28 facilitate a later taking (emp. added) from that structure meets

1 the requirements of the special circumstance statute." There are
2 a couple of errors in the defense reasoning. One, a distinction
3 is being over-looked between the mental state of intent to steal
4 while entry is being made, and the act of a physical taking
5 having to occur contemporaneously; and two, the entire body of
6 evidence proven during the Richards' trial that showed for weeks
7 prior to the killing Mark Richards and the other conspirators
8 discussed the plan to make money by stealing Baldwin's property
9 from his shop and residence, with access to the property being
10 assured by murdering the victim. Once both structures were
11 opened, without their security systems being activated, property
12 could be taken at will. The entire plan centered on the idea
13 that the conspirators wanted to steal Richard Baldwin's property--
14 --the murder was the means of getting the scheme underway. Based
15 on the extensive evidence of this preplanning, it is
16 inconceivable that one can argue, the only mental state that
17 existed when 36 Front St (the shop) was entered, was the intent
18 to kill. Of course the intent to kill was there, but the entire
19 foundation of the scheme was to steal the victim's property--
20 those dual intents were present.

21 The court's instruction correctly focused the jury's
22 attention to not only the necessary elements of special
23 circumstance burglary felony-murder (post Carlos), but
24 articulated the "temporal coincidence" required by Domino v.
25 Superior Court, 129 CA 3rd 1000. (See also, Richards v. Superior
26 Court, supra.)

27 During deliberations on the special circumstance
28 allegations, the court was asked the following: "If a person

1 enters a structure intending to murder and intends to steal
2 property from that structure at a later date, do special
3 circumstances apply to burglary?" The court responded: "Answer,
4 yes, provided that both (emph. added) the intent to murder and
5 the intent to steal existed at the time of the entry, even though
6 the intended taking is to be at a later time--period" (RT
7 Richards p. 3552)

8 The court went on and answered another question at the
9 same time, which the defense does not mention, that when the two
10 instructions are read together, re-enforces the temporal
11 coincidence the law requires. The second question was: "If a
12 person commits a murder and then at sometime later (emph. added)
13 he or his accomplices enter a different structure intending to
14 steal from that structure, then do special circumstances apply to
15 that burglary?" The court responded: "Answer, no." (RT
16 Richards p. 3553)

17 This series of instructions required the jury to
18 analyze the entrys of both structures (18 Venetia Meadows and 36
19 Front St) and decide whether the evidence showed entries with the
20 required intents and with the required temporal coincidence. The
21 jury was not misled by these instructions.

22 The defense also assigns as error the answers to two
23 additional questions possessed by the jury. The jury asked:
24 "For the burglary of Venetia Meadows to be special circumstances,
25 is it necessary that one of the accomplices be physically inside
26 the structure, namely, Venetia Meadows, at the time of the
27 murder?" The court answered: "Entry of the residence with the
28 intent to steal must be during the time while the killing at the

1 shop on Front Street was underway in order to be a special
2 circumstance."

3 The jury at the same time asked a second question: "If
4 one enters a residence with the intent of burglarizing this
5 residence, and the plan of killing the owner in a separate
6 location to accomplish the burglary, and then proceeds to a
7 separate location to effect the murder, and, lastly, returns to
8 the first residence and accomplishes the burglary, does this
9 constitute special circumstances?" The answered "Yes".

10 Where the earlier questions seemed to be focusing on
11 the shop entry, these last two seemed to be focusing on the
12 entries by various principals of the residence.

13 Again, the plan was to steal from both locations, with
14 the shop selected as the situs for the killing. Andrew Campbell
15 was to be left at the residence, so the alarm systems would not
16 be activated. Andrew Campbell was also to enter the residence,
17 to "check it out", during the time that Richards and Hoover were
18 with Baldwin at his shop accomplishing the murder. The jury
19 reasonably found, based on the evidence, that Campbell made such
20 an entry, while the murder was occurring at the shop.

21 The first of these last two questions, focused on
22 Campbell's actions at the residence. The first answer gave the
23 jury a correct statement of the law, the jury then made its
24 factual determinations.

25 There is more than one theory that holds Mark Richards
26 accountable for the special circumstance burglary of the
27 residence. One theory is the aider and abettor approach
28 discussed above. Campbell being a principal entered the

1 residence pursuant to the plan and while the killing was
2 occurring. Mark Richards as an aider and abettor to Campbell's
3 entry, did not need to be present, to be liable for that entry
4 with Campbell and Hoover. The second of these last questions
5 approached Mark Richards' liability on a separate and distinct
6 theory. Under Domino, supra, at 1011, (Domino was a lying-in-
7 wait case) the court stated: "...the lethal acts must begin at
8 and flow continuously from the moment the concealment and
9 watchful waiting ends." In a burglary situation one must look to
10 the entry with the intent to steal, and decide whether the lethal
11 acts begin and flow continuously from that moment of entry? In
12 the present case the answer is yes.

13 Mark Richards' plan was to lure Richard Baldwin from
14 his home to his shop on the pretext of seeing Baldwin's cars.
15 The conspirators, the evidence showed entered Baldwin's house in
16 the late morning/early afternoon of the day of the murder, had
17 cookies and a drink with the victim, engaged the victim in small
18 talk, lured him into a sense of false security and convinced the
19 victim that Hoover wanted to go to his shop to see his cars.
20 Hoover, Richards and Baldwin went to the shop, and it was opened,
21 and the killing occurred. The evidence clearly showed what
22 Richards intent was on the day of the murder. When Mark Richards
23 entered the victim's residence on the day of the murder his
24 intent was to kill and to steal; and from the entry, to having
25 cookies, to talking Baldwin into going to his shop, there flowed
26 without interruption, a continuous chain of events--the plan was
27 put in action, Richard Baldwin was murdered so his property could
28 be stolen. Perhaps the court's final response was not the most

1 artful, but in light of all instructions given, and the evidence
2 introduced in the trial, was proper.

3 Dated this 9th day of July 1984.

4
5 Respectfully submitted,

6 JERRY R. HERMAN
7 DISTRICT ATTORNEY

8
9 BY: 

EDWARD S. BERBERIAN
Deputy District Attorney

9/21/87

IN THE CALIFORNIA COURT OF APPEAL
FIRST DISTRICT, DIVISION THREE

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|------------------------------------|---|-------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. A028291 |
| |) | |
| vs. |) | |
| |) | |
| MARK RICHARDS, |) | |
| |) | |
| Defendant-Appellant. |) | |

APPELLANT'S CLOSING BRIEF

Appeal from the Judgment of the Superior Court
for the State of California for the
County of Marin

Honorable Warren E. McGuire, Judge

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IN THE CALIFORNIA COURT OF APPEAL
FIRST DISTRICT, DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff-Respondent,
vs.
MARK RICHARDS,
Defendant-Appellant.

NO. AD28291

APPELLANT'S CLOSING BRIEF

A. This short reply is made necessary by the fact that Respondent's Brief substantially distorts the facts below, and also misrepresents the case law applicable to the issues on appeal. Even allowing for the differing views incumbent in an adversary, certain factual statements and legal arguments cannot be allowed to remain uncorrected. Because Respondent's mis-statements pertain primarily to the "Pendragon" and "Discovery" Issues (See Appellant's Opening Brief ["A.O.B."] Sections II and IV), we will deal with these issues in order below, and then address the venue change error (See A.O.B., Section III) in conclusion.

B. 1. The central issue on appeal here is the inflammatory, highly prejudicial, and, in our view, totally inadmissible "Pendragon" evidence; although substantial viva voce testimony was adduced on this subject by the prosecutor, the most egregious problem was the massive documentary evidence admitted over objection and provided for the jury's use throughout the five days of their deliberations. (Indeed, as noted in our

⑦ psychiatrists etc can opine
as to susceptibility of Hoover -
Campbell to influence, domination
etc based on intelligence,
^{mentale} personality, ^{mentale} disorders - diseases
of soul mirror

BUT NO STATEMENTS BY
HOOVER of A's

D
STATEMENTS OF HOOVER AS TO
A ENVOYMENT IN CRIME - mental &
psychiatric - exclude 352 to 400
and point a motion in law.

2) Testing of Hoover to psychiatric
re Pennington meetings / discussions
of a ^{at meeting etc} ~~(substantive Hoover presentation not)~~
will be admissible (1) relationship
of a to Hoover, Campbell and other
persons (2) influence of a over
persons - (3) susceptibility of Hoover/
Campbell - NOT FOR TRUTH
OF STATEMENTS / DISCUSSIONS ETC AT
SUCH MEETINGS

Honorable E. Warren McGuire
Judge of the Superior Court
499-6073

171 CA(2) 302 f Δ

29 A(3) 949, 971 - 973 - by Peo

Statement of Home to psychiatrist
re Δ - ^{involunt} susceptibility to influence
of Δ

1 Opening Brief, this evidence was so voluminous that the normal
2 jury deliberation rooms at the Marin County Hall of Justice
3 were too small to hold the evidence and the jury too --- so the
4 trial courtroom was converted into the jury room!). Reduced to
5 its bare essentials, "Pendragon" described an elaborate,
6 bizarre, and (if true) terrifying plan to seize control of
7 Marin County by use of laser beam and other Star Wars-type
8 weapons, in the process severing all roads and bridges,
9 assassinating all enemies, and enslaving the remaining
10 population. To this end (according to the prosecution in pre-
11 trial proceedings) MR. RICHARDS "almost...fanatical[ly]
12 desire[d]" to recruit and control young, impressionable, and
13 "easily preconditioned young men." (RT: In Limine: 34-35;
14 CT: 1287).

15 Having proved this level of control, so the prosecution's
16 pre-trial theory goes, it was but a short step to manipulating
17 two of his "followers," Hoover and Campbell, to kill someone
18 whose money he wanted and needed --- not, however, for anything
19 related to "Pendragon," but for the most common, garden-variety
20 reason imaginable: RICHARDS, according to the prosecutor, was
21 in financial trouble.

22 In the event, as is discussed at length in our Opening
23 Brief (A.O.B.: 9-19), the prosecutor failed utterly to prove
24 the premise for the Pendragon evidence: Campbell never knew
25 anything about Pendragon until over a week after Baldwin's
26 death; Hoover was never, ever showed to be "easily
27 preconditioned" (CT: 1287), nor was one shred or scintilla ---
28 or even a syllable --- of evidence adduced to show RICHARDS'

control over him. In the final analysis the relevant evidence shows nothing beyond a straight-forward murder-for-profit case. "Pendragon" was garbage, albeit garbage which buried both Mr. RICHARDS and any semblance of fairness at this trial.

2. At the outset one red herring needs to be disposed of quickly: we argued earlier (A.O.B.: n. 3 at p. 10) that the prosecutor's failure to establish the preliminary facts establishing the relevance of the Pendragon evidence made that evidence inadmissible under Evidence Code Sections 402 and 403 --- thus rendering unnecessary the calculus of Evidence Code Section 352. Respondent appears to suggest that this argument (a) waives the 352 issue and (b) is unavailable here because 402/403 was not raised below. In our view, this is somewhat akin to a confidence man praying to be allowed to retain his profits even after his fraud is discovered. If our contention is correct (that the prosecutor, failing to prove his predicate, silently shifted from a valid but unproved theory of relevance to an invalid theory), then the failure of the court to catch the change surely is plain error¹⁾.

3. Perhaps unwittingly, one sentence in Respondent's Brief provides the key to fallacy which fatally flaws the

1) Similarly, Respondent would have it that Appellant "concedes the evidence was sufficient to convict him." (ROB 13). Respondent could have been more candid. We concede only that if a jury had convicted Mr. RICHARDS at a trial from which the Pendragon evidence had been excluded, that verdict would be immune from challenge under Jackson v Virginia (1979) 443 U.S. 307, and People v Johnson (1980) 26 Cal. 3d 557. Lest there be any mistake in Respondent's counsel's mind, we'll make it more clear: The Jackson or Johnson inquiry is irrelevant and impossible here, precisely because "Pendragon" was improperly admitted.

conviction here:

"If the prosecutor were going to prove that there was a cause and effect connection between appellant and Hoover with respect to Baldwin's death, then the prosecutor had to establish the relationship between appellant and Hoover." (RB: 15).

That is, notwithstanding Respondent's claim that the Pendragon materials were "limited" and "somewhat peripheral" to the only theory supported by valid evidence here --- murder-for-money --- the People themselves recognize that the admissibility of Pendragon evidence stands or falls on a very, very specific point: Pendragon in all its lurid details is relevant and admissible if, and only if, the government can indeed show "how appellant was powerful enough to persuade two young men . . . that appellant was a clever, charming and persuasive man, capable of tapping into the imaginations and fantasies of his circle of young associates." (RB: 15-16).

The cases the People rely on show just how specific this theory is, and how far from the mark the facts here fall. People v Yu (1983) 143 Cal. App. 3d 358, 375-376, was one of the many "gang evidence" cases with which our courts are so familiar. There is no question that showing the boss/footsoldier relationship of gang members is relevant where the crime (murder) was alleged to have been committed precisely to further the gang's goals. Had the People sought to prove that RICHARDS, as the boss, caused Hoover (the soldier) to kill Baldwin to advance a Pendragon plot, then Yu would apply. But no such evidence was ever adduced --- indeed, the prosecution

1 established nothing more in this case than that Hoover may have
2 been "exposed" to discussions of Pendragon ideas.

3 Even weaker is Respondent's reliance on People v Hole
4 (1983) 139 Cal. App. 3d 431. There this court rejected the
5 defendant's misguided effort to exclude third party motive
6 evidence under the authority of People v Green (1980) 27 Cal.
7 3d 1. (Green and its progeny preclude a defendant from
8 introducing evidence of an uncharged third person's possible
9 motive for committing the crime charged against him; Hole holds
10 merely that this rule does not apply where the prosecution
11 seeks to show that the defendant and the third party shared a
12 common motive). In the case at bar, Hole has the same effect
13 as Yu: where the government can prove the foundational fact
14 (motive in Hole; power in Yu), otherwise collateral evidence
15 becomes highly probative, thus relevant, thus admissible.

16 4. To fulfill its pre-trial proffer, and sustain its
17 burden to establish Pendragon's relevance, the prosecution in
18 this case was required to show why or how Pendragon "caused"
19 the "effect" of Hoover's (and Campbell's) acceptance of
20 RICHARDS' alleged solicitation to murder Baldwin. In the
21 event, no such proof was made. The sole fact established by
22 all the Pendragon testimony and documents was best described by
23 the deputy district attorney at the pre-trial hearing:

24 "Mr. Richards is not that stereotype of a typical Marinite

25 . . . Mr. Richards is strange." (RT: In Limine: 34, 38).

26 It seems to us that this is nothing less than character
27 evidence, designed to show that Mr. RICHARDS is very bad and
28 very dangerous. As such, of course, it is absolutely

inadmissible (See Cal. Ev. Code Sections 1101-1102).

1 C. The lengthy jury deliberations show that even with the
2 voluminous and inflammatory Pendragon evidence, this was a
3 difficult and troubling verdict, and it is in this context that
4 the significance of the prosecution's failure to disclose the
5 evidence impeaching Robles and Neal must be analyzed.

6 Had this case been tried properly on a murder-for-hire
7 basis, the crucial nature of evidence showing (directly) a
8 powerful motive to cooperate and (collaterally) illegal
9 activities frequently leading to violence could not be more
10 clear. To state, as does Respondent (RB: 31), that the
11 testimony of Robles and Neal "Clearly . . . was important to
12 the prosecution's case" surely is the mildest possible
13 characterization of their evidence. With "Pendragon" excluded,
14 and Robles and Neal exposed as drug dealers with a great deal
15 to benefit from helpful testimony, it is highly likely that a
16 different result would have obtained²⁾.

17 Forced to concede that suppression of the evidence was
18 error, Respondent takes refuge in an utterly erroneous and
19 misleading legal argument: Where the prosecution or its agents
20 suppresses evidence, the trial court's later ruling is not
21 insulated within the "clear abuse of discretion" standard
22 applicable to "newly discovered evidence." (See RB: 32-33).

23
24 2) We confess that we are baffled by Respondent's
25 mischaracterization of our position (See RB: 34: 1-4); we do
26 not claim that the impeaching evidence would have excluded the
27 witnesses' testimony --- merely that it would have damaged that
28 evidence greatly.

1 Failure to disclose evidence impeaching a material witness is
2 an error of constitutional proportions. See Davis v Alaska
3 (1974) 415 U.S. 308, 316; People v Ruthford (1975) 14 Cal. 3d
4 399, 405-406. Moreover, no prejudice from this error need be
5 shown, and the judgment must be reversed unless the prosecution
6 establishes that the failure to disclose was harmless beyond a
7 reasonable doubt. Ruthford, Supra, at 408-409.

8 There is simply no comparison between a trial where Andrew
9 Campbell's solicitation testimony is corroborated by two
10 unimpeached witnesses, versus a different trial where the
11 "corroborators" are shown to be coke dealers with state prison
12 sentences to fear. In the first case, even experienced and
13 highly skilled counsel would conclude that a conviction was
14 highly likely; in the second, most criminal lawyers would say
15 that the prosecution faces the more difficult task. In any
16 event, it cannot be said that in a trial without Pendragon, the
17 suppression of this evidence was harmless beyond a reasonable
18 doubt. Accordingly, this judgment must be set aside and a new
19 trial granted.

20 C. We have only one small quarrel with Respondent's argument
21 on the change of venue issue: it misses the main point.
22 Appellant contended below that the combined effect of the
23 substantial and lurid pre-trial publicity together with the
24 nature of the evidence to be adduced required a different
25 venue. It was entirely possible that jurors reading and
26 hearing about a plot to take over their own county would decide
27 that whether or not RICHARDS asked Campbell to kill anyone, he
28 was entirely too dangerous to be left loose to implement his

different result on retrial is a substantial likelihood.

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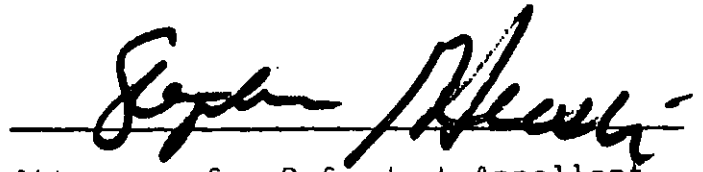
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A handwritten signature in cursive script, appearing to read "Stephen Heiser", is written over a horizontal line.

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No. A028291

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff/Respondent,

v.

MARK RICHARDS,

Defendant/Appellant.

8362
McGuire

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

PEOPLE OF THE STATE OF
CALIFORNIA,

NO. A028291

Plaintiff/Respondent,

v.

MARK RICHARDS,

Defendant/Appellant.

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

I

THE TRIAL COURT ERRED BY SUBMITTING OVERLAPPING
SPECIAL CIRCUMSTANCE ALLEGATIONS TO THE JURY

Respondent argues that the financial gain special circumstance was properly charged and submitted to the jury in this case. In so doing, Respondent makes a number of different contentions. However, what Respondent never addresses is the central point made by Appellant. In his Supplemental Brief, Appellant clearly argued that "the financial gain special circumstance and the burglary special circumstance findings are based on the same conduct." (ASOB, p.3.) Nowhere does Respondent dispute this contention. Indeed, in support of this

contention Appellant cited the charging papers filed by the prosecution, the evidence introduced by the prosecution and the closing argument of prosecutor at trial. Given that it was the prosecution's theory at trial that both the financial gain and burglary special circumstances could be proved by the same conduct, Respondent cannot, and did not, argue on appeal that the jury's special circumstance findings were not based on the same alleged conduct. Respondent's contentions, therefore, are directed entirely at seeking to avoid the ramifications of this fact.

Citing People v. Bigelow (1984) 37 Cal.3d 731, 752, Respondent claims that "[a]lthough the Bigelow court discussed the charging of multiple or overlapping special circumstances, in the final analysis the financial gain special was stricken, not because it was duplicative, but because it was unsupported by the evidence." (RSB, p.3.) Respondent appears to be arguing that the Bigelow Court's discussion of overlapping special circumstances was just gratuitous and that the Court really didn't mean what it said. Any clear reading of the Bigelow opinion refutes this contention.

First the Bigelow Court quoted the Supreme Court of Nebraska to the effect: "We think it is not reasonable to construe the definitions (of special circumstances) in such a manner as to make them overlap and make the same identical facts constitute two aggravating circumstances. Id., at 751 quoting State v. Rust (1977) 250 N.W. 867, 874. Then the Bigelow Court stated: "In

this context, we believe the court should construe special circumstance provisions to minimize those cases in which multiple circumstances 'will apply to the same conduct...' Id.

It seems an obvious point of logic that if the definition of one special circumstance is to be construed so that it does not overlap with the definition of another special circumstance, a particular set of facts will fall with the definition of one special circumstance or the other, but not both. Further, as will be discussed below, if a construction of the special circumstances involved cannot avoid multiple special findings based on the same conduct, such multiple special circumstance findings must, once they are returned by the jury, be corrected by striking the overlapping findings. See e.g. Newberry v. Superior Court (1985) 167 Cal.App.3d 238, 242. That is precisely the remedy sought by Appellant here.

Citing People v. Harris (1984) 36 Cal.3d 36, Respondent makes the general contention that the harm created by overlapping special circumstances is that they may lead to the arbitrary and capricious infliction of the death penalty. Since Appellant here was not exposed to the possibility of the death penalty, Respondent contends the multiple special circumstance findings based on the same conduct resulted in no error.

The flaw in Respondent's analysis is the claim that "the finding of a special circumstance does not by itself impose punishment." (RSB, p.4.) Certainly that is not true. In Appellant's case for instance, the trial was divided into two

separate phases; a guilt phase and a separate trial of the special circumstance allegations. The sole purpose of the special circumstance phase of trial, once Appellant had been found guilty of first degree murder, was to determine whether the sentence of life without possibility of parole would be imposed. At that phase of trial a single special circumstance finding by the jury would result in the imposition of such a sentence. Thus, in this case, the finding of a single special circumstance did in fact result in the imposition of a specific sentence. By charging overlapping special circumstance allegations, the prosecution increased the likelihood that the jury would find at least one of the charged special circumstances true.

Respondent's reliance on Harris is misplaced for a second reason. As Respondent noted, the Bigelow opinion followed Harris by some nine months. Yet in discussing the specific problem at issue here, overlapping financial gain and burglary special circumstances, the Bigelow opinion never mentions or cites to Harris opinion. Certainly, if the Supreme Court had wanted to it could have simply adopted the Harris analysis to this issue. Under Harris where overlapping special circumstance findings are returned by the jury the doctrine of merger and the prohibition against multiple punishment would operate to reduce the overlapping special circumstance findings to a single finding. People v. Harris, supra, 36 Cal.3d at 66-67.

For whatever reason, the Bigelow Court choose not to adopt this procedure. Instead, addressing the particular special

II

THE FINANCIAL GAIN SPECIAL CIRCUMSTANCE DOES NOT APPLY TO APPELLANT'S CASE

In response to Appellant's contention that the financial gain special circumstance does not apply to this case, Respondent advances a curious argument concerning the sufficiency of the prosecution's evidence. Whether or not the prosecution's evidence was sufficient to prove the prosecutor's theory concerning the financial gain special circumstance is certainly irrelevant to the issue raised by Appellant. Appellant's contention was simple: The facts and theory presented by the prosecution at trial concerning the financial gain special circumstance do not fall within the limited construction of that special circumstance as adopted by the Supreme Court in People v. Bigelow, supra, 37 Cal.3d at 750-751. In other words, the evidence produced by the prosecution may have been "sufficient" to establish the special circumstance under the theory advanced by the prosecution, but the prosecution's theory of what constituted a financial gain special circumstance fall outside the parameters established by Bigelow.

Respondent seems to concede this when, citing Newberry v. Superior Court (1985) 167 Cal.App.3d 238, 242, Respondent states: "As Newberry notes, the special circumstance would not, under Bigelow, apply to cases where the theft of the victim's property 'may have motivated the homicide or been committed in its wake,

but in which the death was not consideration or an essential prerequisite for financial gain.'" (RSB, p. 6; emphasis in original.) Despite this concession, Respondent attempts to avoid the dictates of Bigelow and Newberry in two ways.

First, Respondent makes repeated contentions to the effect that the victim's death was a essential prerequisite for Appellant's financial gain in this case. (See RSB, p. 2, 3, 10 fn. 5.) In particular, Respondent relies on the contention that it is inconceivable that Appellant could acquire the victim's house without killing him. (RSB, p. 10 fn. 5, 11.) However, the record is clear that any plan to acquire and sell the victim's house did not arise until after the alleged killing. (RT 850.) Respondent simply ignores this fact.

Respondent argues that it is inconceivable that Appellant could acquire the victim's "business assets", such as classic automobiles owned by the victim, without killing the victim. However, the acquisition of automobiles was the motivation for the killings in both Bigelow and Newberry. In neither case did the appellate court find that the killing was necessary in order to acquire the automobile. Indeed, in both Bigelow and Newberry the victims were in their automobiles at the time of the theft, thus making it arguably "necessary" to kill the victim in order to perfect the theft. Here, on the other hand, Respondent ignores the fact that Campbell could have easily stole the pink slips to the automobiles from the victim's residence and Appellant could have returned to the garage later to steal the

automobiles.

Additionally, even if Respondent were correct and the victim's death was somehow "necessary" for Appellant's financial gain, the problem of overlapping special circumstances discussed above would still exist. Expanding or contracting the definition of the special circumstance does not necessarily alter the fact that both the financial gain special circumstance and the burglary special circumstances were based on the same conduct.

Secondly, Respondent argues that if Bigelow forecloses the financial gain special circumstance on the theory that the theft of the victim's property was the motivation for the killing, but not a necessary prerequisite, People v. Freeman (1987) 193 Cal.App.3d 337 provides another independent avenue for establishing the financial gain special circumstance. Essentially, Freeman holds that a person who hires a killer is subject to the financial gain special circumstance under an aiding and abetting theory. In short, the hirer aids and abets the killer who commits the act for his own financial gain. Freeman notes that this theory of liability is applicable "even if the hirer is not himself shown to be financially motivated." Id., at 339.

There are two interrelated reasons why the Freeman theory of liability cannot be applied to this case. First, the jury was never instructed on this theory of liability. Secondly, because the trial court did not distinguish between the Bigelow-Newberry theory of liability and the Freeman theory of liability for the

financial gain special circumstance it is impossible to determine which of the two theories the jury may have adopted.

Despite Respondent's artificial analysis to the contrary, the instructions given at the special circumstance phase of trial did not make clear to the jury that they could find Appellant liable for the financial gain special circumstance only under the Freeman theory of liability. The trial court's instructions on the financial gain special circumstance in their entirety read:

To find that the special circumstance referred to in these instructions as murder for financial gain is true, each of the following facts must be proved:

- 1., that the murder of Richard Baldwin was intentional;
- 2., that it was carried out for financial gain; and,
- 3., that the defendant shared the intent to kill Richard Baldwin.

If, based on the evidence, you have a reasonable doubt as to whether the killing of Richard Baldwin was intentional, or as to whether the principal purpose for his murder was financial gain, or as to whether the defendant shared the intent to kill Baldwin for financial gain, you must give him the benefit of that doubt and find the special circumstance of murder for financial gain not true. (RT 3529-3530.)

Under the Freeman theory of liability, the jury should have been instructed that they could find the financial gain special circumstance true only if they find: (1) that Appellant aided and abetted the actual killer; (2) that the killing was

intentional and that Appellant shared the killer's intent; (3) that the killer committed the act on the condition that he would receive financial compensation from Appellant. Clearly, the instructions given to the jury never conveyed the third requirement.

Secondly, even if the jury had been properly instructed on the Freeman theory of liability, it cannot be determined in this case whether they adopted that theory of liability or found the special circumstance true under the theory that Appellant was motivated by his own financial gain. The prosecutor certainly argued that the jury could find the special circumstance true under either theory. Specifically, the prosecutor argued:

And I think you'll find that the evidence does establish what is required for the findings on special circumstances.

When we talk about murder for financial gain, what are we talking about?

Well, we have to prove to you that the murder of Baldwin was an intentional killing.

We have to prove that it was carried out for financial gain, and we have to prove that Mark Richards shared the intent to kill Richard Baldwin.

Okay.

When you look at the evidence, you can look at this concept of financial gain as it relates to Mark Richards in two ways:

One, he had the direct intent to have this killing take place through the use of the people that he hired, so that he could gain financially from it, so that he could use the

proceeds of that murder for his own purposes.

Whether or not he was the actual killer again does not matter. He is alleged, and the information contains allegations which bring him within this special circumstance, whether he was the actual killer or the individual who, basically, aided and abetted the killing as that concept will be defined for you.

Also, the financial gain special circumstance can be shown under an interpretation of the evidence where you find that Mark Richards' primary intent was the intent to kill Richard Baldwin out of a motive of dislike, out of a motive of hatred, out of a motive of revenge, something of this nature, and he hired someone to do it.

It more typically could be called a murder-for-hire situation.

Crossin Hoover did the killing. Richards was going to pay him, or offered to pay him, or extended an offer to pay \$5,000, plus proceeds from the property of Richard Baldwin.

He hired him. He is the hirer in that situation. The financial gain focuses directly there primarily on Crossin Hoover and Andrew Campbell, who was going to assist in the crime. But he would be, again, under the aiding and abetting theory that has been presented to you, a principal and responsible for that type of murder for financial gain.

Now, things usually aren't black and white on these types of issues. And I think that the motives and the reasons for Mark Richards participating in this killing were not pocketed into either one of these exclusively.

I think he had a strong financial motive, and I think the evidence shows that he had a strong financial motive for that killing.

There are also indications in the evidence that he evidence, at least to the individuals surrounding the act, some dislike or disdain

for him. (RT 3450-3452; emphasis added.)

Clearly the prosecutor told the jury that it could find the financial gain special circumstance true under two different theories. On such theory was that Appellant had the "killing take place ... so that he could gain financially from it." Under this theory, the prosecution argued, it did not matter whether Appellant was the "actual killer".

This theory essentially held that the financial gain special circumstance was true if Appellant had the killing take place for his own financial gain. Nothing the prosecution said or the trial court instructed informed the jury of the limiting construction of Bigelow-Newberry. It cannot be determined from the jury's verdict whether they adopted this impermissible theory of liability in finding the special circumstance true.

Under such circumstances, reversal is required. In People v. Green (1980) 27 Cal.3d 1, 69, the Court plainly stated:

In these circumstances the governing rule on appeal is both settled and clear: when the prosecution presents its case to the jury on alternate theories, some of which are legally correct and others legally incorrect, and the reviewing court cannot determine from the record on which theory the ensuing general verdict of guilt rested, the conviction cannot stand.

See also People v. Omedo (1985) 167 Cal.App.3d 1085, 1094. Here, it cannot be determined from the jury's "check-the-box" form

verdict what theory they adopted in finding the special circumstance true. Because, pursuant to the prosecutor's argument and the clear import of the prosecution's evidence, the jury may have adopted a theory of liability which violated the Bigelow-Newberry limiting construction, the financial gain special circumstance must be reversed.

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III

THE TRIAL COURT'S ANSWERS TO THE JURY'S SPECIAL CIRCUMSTANCE PHASE QUESTIONS WERE ERRONEOUS

Appellant agrees with Respondent that the questions raised by the jury during its deliberations at the special circumstance phase of trial indicated a concern over the timing and location of the alleged murder and burglaries. However, Respondent never directly confronts the questions asked by the jury. For instance, Respondent's claim that "there could never be a felony murder based upon burglary unless the defendant entered with guns blazing" is wholly irrelevant in the context of the issue raised. Appellant is not arguing for some novel limitation of the felony murder rule. Appellant is not arguing that the burglary was complete the moment that Appellant, Hoover and Campbell entered the victim's residence and that, therefore, any subsequent killing did not occur "while the defendant was engaged in ... (a) burglary". Penal Code section 190.2(a)(17)(vii); see also Richard v. Superior Court (1983) 146 Cal.App.3d 306, 317. The question raised by the jury was whether any burglary had taken place "if a person enters a structure intending to steal from that structure at a later date." (RT 3541.) Obviously, if no burglary had taken place, no burglary special circumstance can be found true. (See ASB, pp. 12-13.)

Respondent cites People v. Piscitella (1928) 90 Cal.App. 528 as supporting the trial court's affirmative answer to the jury's

question. Piscitella hardly supports the trial court's answer. In Piscitella, two men, including the defendant, entered a locked store at night intending to remove a safe. Only after entering the store did the men realize that they were unable to remove the safe because of its weight. The men left the store and procured the assistance of two more men. The four men, including the defendant, returned to the store and successfully removed the safe.

The Court of Appeal rejected Piscitella's contentions on appeal concerning the testimony of an accomplice and remarks made by the trial court to the jury during deliberations. The court never addressed anything remotely similar to the issue being raised here.

The Court of Appeal did note that the "crime of burglary was complete upon the first entrance into the building with the intent to remove the safe". Id., at 531. This conclusion is correct, of course, because Piscitella entered the store the first time intending to remove the safe at that time. Only after Piscitella was in the building did he realize that the safe was too heavy to remove at that time. However, the Court of Appeal plainly held that the original entry was made with the intent to take the safe immediately. Thus, crime of burglary was complete at the time of the first entry.

Here, however, the jury's question concerned an entry with the intent, not to commit a theft at that time, but to return to the structure "at a later date" to commit the theft. Appellant

contends that such an entry is not a burglary and thus no burglary special circumstance could rely upon that entry as a factual predicate.

Respondent makes the alternate argument that the burglary special circumstance allegation concerning the victim's residence at 18 Venetia Meadows need not rest on Appellant's entry into that residence. Essentially, Respondent contends that once Appellant, Hoover and the victim left the residence to go to the garage, Campbell re-entered the residence. Thus, Respondent argues, Campbell committed a burglary and Appellant aided and abetted that burglary. (RSB, p. 16.)

There are several obvious problems with Respondent's argument. First, such a theory of accomplice liability for the special circumstance allegation was never presented to the jury by way of the trial court's instructions. Respondent, with all the hindsight of appellate review, may be able to create such a theory of liability, but there is no reason to think that the jurors, who are not appellate lawyers, ever considered such a theory of liability.

Secondly, Respondent's own statement of the facts indicate that Campbell did not enter the house at that time intending to steal anything. Campbell testified that he was outside the residence when Appellant, Hoover and the victim left to go to the victim's garage. Campbell remained outside the house for quite some time, eventually going up onto the roof. At some point, Campbell entered the house in order to use the bathroom, then

"went room to room and looked in" each room for valuables. Campbell took nothing. He claimed he was acting pursuant to Appellant's instructions that if Campbell went into the residence "to walk through the house" and see if he could see anything valuable. (RT 864.) Campbell was in the backyard when Hoover and Appellant returned. (RT 865.)

It seems clear that Campbell committed no burglary as a result of this entry. On the other hand, these facts might establish a burglary if the trial court's affirmative answer to the jury's original question was correct. That is, if a burglary is committed when a person enters a building intending to re-enter the building and commit a theft at a later date, then it might be said that Campbell's lone entry constituted a burglary. However, Respondent's resort to this theory of liability only begs the original question posed by the jury.

Finally, as was the case with the financial gain special circumstance, it cannot be determined which of the two possible theories of liability the jury adopted. The verdict form used by the jury certainly does not suggest that the jury found that Appellant was an accomplice to the burglary at 18 Venetia Meadows. On the contrary, the verdict more reasonably implies that the jury relied on the theory that Appellant himself committed the burglary.¹ While the verdict indicates that

¹ The verdict, at CT 1558, read:

The murder of Richard Baldwin was
aided and abetted, counseled,

Appellant may have aided and abetted the killing, it clearly states that the killing occurred "while the defendant was engaged in the commission of the crime of burglary of 18 Venetia Meadows". The verdict does not say that the killing occurred while the defendant was an accomplice to the burglary being committed by Campbell.

In short, Respondent's reliance on an alternate theory of liability is misplaced. This Court simply cannot avoid deciding the issue raised by the jury's question. No caselaw cited by Appellant or Respondent is on point. This Court must address the issue as one of first impression. For the reasons discussed in Appellant's Supplemental Brief, pp. 11-12, the answer to the jury's question that was provided by the trial court would lead to absurd results.

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commanded, induced, solicited, requested or assisted by the defendant Mark Richards, with the intent to kill, while the defendant was engaged in the commission of the crime of burglary of 18 Venetia Meadows, San Rafael, California, in violation of Penal Code section 459, within the meaning of Penal Code sections 190.2(a)(17)(vii) and 190.2(b).

IV

THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH
THAT THE INTENT OF THE FRONT STREET BURGLARY
WAS TO STEAL

Respondent submits that sufficient evidence was introduced at trial to establish that Appellant intended to kill and steal at the time he entered the garage. (RSB, p. 19.) A point by point review of the evidence cited by Respondent shows that it utterly fails to establish that Appellant harbored the independent intent to steal at the time he entered the garage.

First, Respondent planned to find the pink slips to the victim's automobiles so that he could sell them. (RSB, p. 19; RT 850.) There is no evidence that the pink slips were in the garage or that Appellant thought the pink slips were in the garage. There is no evidence that Appellant entered the garage in order to find or take the pink slips.²

Next, Respondent claims that Appellant planned to sell the victim's tools and equipment. (RSB, p. 19; RT 850.) Again, however, there is no evidence that Appellant intended to take any of the tools and equipment pursuant to this entry. Campbell's testimony clearly indicates that Appellant's intent, if any, was to come back at a later date to get the tools and equipment, then "take it and go from shop to shop and just try to sell it". (RT

² Campbell was expressly asked where the pink slips were found but he never answered the question. However, the answer he did give indicates that he was present when the pink slips were found and thus the inference is strong that they were found in the house not in the garage. (RT 937.)

850.) Of course, this begs the question asked by jury and discussed above: is it a burglary if the person enters a building intending only to re-enter and commit a theft at a later date.

Next, Respondent claims that Appellant's later use of the victim's driver's license, credit cards and checkbook supports the inference that Appellant entered the garage intending to steal these items. (RSB, p. 19.) Campbell testified that he first saw the victim's driver's license and charge cards more than a week after the alleged killing.³ (RT 938-939.) Thus, there is no evidence to establish that these items were taken from the garage or the house. Nor is there any evidence to establish whether these items were taken the day of the killing or at some later time. Clearly, Campbell's testimony implies that the plan was to kill the victim first, then return to the garage at a later time to get things of value. There simply was no evidence that Appellant harbored the intent to take any of these items at the time he entered the garage.

Finally, Respondent claims that Appellant took the victim's keys. (RSB, p. 19.) Campbell's testimony on this point was that at the time Appellant, Hoover and Campbell left the victim's house at the end of the day Appellant had the victim's keys. (RT 877-878.) Campbell obviously did not know how, when or where Appellant acquired the keys. Nor does Campbell's testimony shed

³ The portion of the record cited by Respondent makes no mention of a checkbook.

any light on whether Appellant harbored the intent to take the keys at the time of his entry into the garage. It may very well be that if Appellant did indeed take the keys from the victim, he did not form the intent to do so until after the killing had taken place. Under such circumstances, Appellant did not have the intent to steal the keys at the time he entered the garage.

In the final analysis, Respondent's entire argument rests on the testimony of Campbell. That testimony clearly indicates that the alleged "plan" was to kill the victim first, then return at a later time to take things of value. Under these circumstances, it cannot be said that at the time Appellant entered the garage he had the intent to take anything of value.

DATED: January 29, 1988

Respectfully submitted,

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BY 
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PROOF OF SERVICE BY MAIL

I declare that I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2120 Greenwich Street, San Francisco, California 94123. On January 29, 1988, I served the attached:

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid thereon in the United States mail at San Francisco, California, addressed as follows:

LANDRA E. ROSENTHAL
Deputy Attorney General
6000 State Building
San Francisco, CA 94102

JERRY R. HERMAN
District Attorney
County of Marin
Civic Center, Rm. 155
San Rafael, CA 94903

HOWARD HANSON
County Clerk
County of Marin
P. O. Box E
San Rafael, CA 94913
(For delivery to:

MARK RICHARDS
C-89732, 4-A3-15
Represa, CA 95671

THE HONORABLE E. WARREN MCGUIRE)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 29, 1988, at San Francisco, California.


MAMIE D. DACANAY

PIF

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

NO. A028291

8362

v.

MARK RICHARDS,
Defendant and Appellant.

PETITION FOR REHEARING

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA, NO. A028291
Plaintiff and Respondent,
v.
MARK RICHARDS,
Defendant and Appellant.

PETITION FOR REHEARING

I

STATEMENT OF FACTS

In the first page of the Court's opinion is a brief discussion of the facts of this case. After concluding that Appellant "operated an apparently unsuccessful contracting business" the Court stated that one of Appellant's "creditors was the victim, Baldwin." (Opinion p. 1.) This is simply incorrect. Baldwin was not one of Appellant's creditors, but in fact owed Appellant money for work Appellant had done in the past. (RT 848.) Respondent's brief even recognized this fact. (RB, p. 5.)

Correcting this mistake of fact is important because it colors the Court's analysis of the financial gain special circumstance. The Court concluded that the evidence presented at

trial was sufficient to uphold that special circumstance finding because it established that Appellant "wanted to 'dispose' of Baldwin so he could cancel his (Appellant's) debts ..."

(Opinion, p. 11.) Apparently, the Court concluded that the cancelation of a debt constituted financial gain for purposes of the special circumstance finding. In light of the fact that Appellant had no such debt, the Court must reexamine this conclusion.

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II

THE PENDRAGON EVIDENCE

In its Opinion the Court concluded that the Pendragon evidence was admissible pursuant to Evidence Code section 1101 (b) because it was relevant "to show that Appellant had the ability to and did persuade Hoover to kill Baldwin." The Court cited as the "facts" in support of this theory of admissibility the following:

The evidence that appellant was the leader of the Pendragon plan and that Hoover attended Pendragon meeting was relevant because it tended to show that appellant was a man of ideas, willing to take bold action to correct perceived problems, and that Hoover was a follower rather than a leader. It showed that appellant intended to use people as instruments of his own designs, and that therefore Hoover killed Baldwin at appellant's command. It also showed that appellant was a persuasive person, as attested by Campbell's testimony that people took appellant's plan seriously and by the evidence that those who attended the meetings continued to attend.

In addition, the evidence tended to show that if appellant tried to convince people, apparently successfully, that Marin County could be taken over and its would-be conquerors rewarded with power, he could successfully convince Hoover to believe that killing Baldwin would help appellant solve his financial problems and that Hoover could benefit financially as well.

While this may be a proper theory for admissibility under section 1101(b), any fair review of the trial record will certainly indicate that no such facts were ever adduced at trial.

The Court's opinion reflects that it read the prosecutor's opening argument at trial but nothing else.

For instance, the Court claims that Campbell's testimony established that people took Pendragon seriously and that Appellant "successfully" convinced people that Marin County could be taken over and its would-be conquerors rewarded with power. The record clearly shows that Campbell never attended a Pendragon meeting until after the alleged killing (RT 1203, 927), and that the one discussion he had with Appellant about Pendragon consisted of a joke. (RT 928.) At another point Campbell expressly stated that he didn't take Pendragon "seriously" (RT 1075), and that he "laughed" when Appellant told him about the take over plot. (RT 1089.) As Campbell himself said, he simply did not believe in Pendragon. (RT 1089.) Robles, the other source of testimony concerning Pendragon, testified that any plot to take over Marin was not going to take place for another ten to fifteen years. (RT 1207.)

Given this evidence, which comes from the prosecution's main witnesses, how can this Court possibly conclude that the Pendragon evidence established that Appellant had the ability to and did persuade Hoover to kill Baldwin? Only by ignoring the record could this Court reach such a preposterous conclusion.

The Court also choose to ignore the record in the latter prosecution of Hoover despite the fact that Appellant had cited to this record in his Opening Brief. (AOB, p. 18.) Hoover's trial followed Appellant's. At Hoover's trial the same

prosecutor who had prosecuted Appellant sought to keep out all of the Pendragon evidence by arguing that Hoover had committed the killings for solely for financial gain, not as a result of anything to do with Pendragon. It may be, as the court in People v. Hoover (1986) 187 Cal.App.3d 1074, 1083 concluded, that the two ways in which the prosecutor used the Pendragon evidence were not logically inconsistent. However, the prosecutor's abrupt change of face, arguing in this case that Pendragon was the means by which Appellant "convinced" Hoover to kill Baldwin while arguing in Hoover's case that it established no such thing, certainly indicates a bad faith manipulation of the "facts" in an attempt to win this case at any cost, and by injecting a highly inflammatory and irrelevant issue into the case. This becomes even more painfully obvious when, as pointed out above, the facts introduced at trial simply did not support the theory advanced in Appellant's case.

The Court goes on to hold that "some of the Pendragon evidence" went beyond the limited purpose for which such evidence was admitted. (Opinion, p. 5.) The Court then cites a statement made by Appellant about excluding blacks from the "new form of government" and Appellant's "delusions of grandeur".

Out of all of the Pendragon evidence why does the Court cite only these two extremely minor examples when nearly all of the Pendragon evidence went "beyond the purpose for which it was admitted"? Has the Court inspected each of the thousands of pages of documents and hundreds of pages of testimony which was

admitted as "Pendragon evidence" to determine whether each of these documents and each page of testimony was relevant to the limited purpose for which the evidence was supposedly admitted? Apparently not. If the Court had read each page of the record and inspected each page of the thousands of pages of Pendragon evidence which was admitted into evidence at trial, it would have undoubtably found that 99% of this evidence was totally irrelevant to the limited purpose of admission. Instead, the Court picks out one or two harmless references and proclaims that no prejudice occurred. Such a charade, in the disguise of justice, makes a mockery of appellate review.

This Court must re-examine the record in this case and take an honest look at the Pendragon evidence. Only when the Court has fully reviewed all of the evidence can it determine what was and was not properly admitted for the "limited purpose". Then, it would be more than obvious that the admission of the irrelevant Pendragon evidence was far from harmless.

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III

CHANGE OF VENUE

In its opinion, the Court stated that a review of a number of the factors relevant to a change of venue motion indicated that Appellant was not deprived of his right to a fair trial by having the trial conducted in Marin County. (Opinion, pp. 8-9.) In many respects, the Court's discussion of these factors is biased, self-serving and simply wrong.

First, the Court states that the nature of the news coverage was "not particularly inflammatory or sensational". (Opinion, p. 8.) Among the front page headlines which appeared in the Independent Journal, Marin County's leading newspaper, were such bold headlines as: "Bizarre Plot for Marin Coup? Secret Organization Probed", (CT 661); "Visions of a Kingdom, Suspect's Wife Shocked", (CT 663). Other headlines included: "Teen Testifies Under Immunity: Pendragon Killing 'Planned'", (CT 670); "Programmed to Murder, Witness Says", (CT 672); "Inside a Pendragon Meeting", (CT 684). For this Court to label such headlines as "not particularly" sensational defies reality. The headlines were not only sensational, they were intentionally so.

Secondly, the Court's conclusion that the number of articles was "not large" and that most of the articles were confined to the period coinciding with Appellant's arrest is simply misleading. Appellant's case was the leading front page headline in the Independent-Journal for the four day period between July

22, 1982 and July 25, 1982. In the following month, at least seventeen articles appeared in the Independent Journal about the case. (CT 665-684.) How many sensational articles must appear before this Court will conclude that a "large" number of articles are involved?

Finally, the Court engages in "double-speak" in addressing the claim that the jurors were inherently biased because they were the "potential victims" of the Pendragon plan. The Court claims such an argument rests on the "faulty assumption that such residents actually felt threatened by the plan". (Opinion, p. 8.) The Court noted that Appellant had continuously argued that the "takeover of the county was not imminent".

If the evidence was so clear, as Appellant did indeed argue, that no one took the Pendragon plan seriously, and that in any event the "takeover" was not scheduled for another ten to fifteen years, how was such evidence admissible under section 1101(b) to establish that Appellant exercised control over people? Either the plan was a science fiction fantasy or it was not. This Court, like the prosecutor at Appellant's trial and Hoover's trial, has twisted the Pendragon evidence until it fills whatever evidentiary gap is apparent. Appellant has consistently argued that Pendragon was a fantasy, a story, that had nothing to do with the alleged killing of Baldwin. This Court has gone out of its way to misconstrue that evidence, as the prosecutor did at trial, to reach the result intended. Neither logic nor justice is served by such double-talk.

IV

OVERLAPPING SPECIAL

In his Supplemental Brief, Appellant argued that the financial gain special circumstance and the burglary special circumstances overlapped, thus requiring the trial court to submit one or the other to the jury, but not both. (Supplemental Brief, pp. 1-5.) This Court rejected that argument without ever actually addressing it. (Opinion, pp. 12-13.)

First the Court discussed People v. Harris (1984) 36 Cal.3d 36. The Court stated that the "problem" of overlapping special circumstances was "discussed" in Harris and that a remedy, the doctrine of merger, was developed to cure the concerns raised by the "problem". However, the Court noted, Appellant's case here does not involve the death penalty as was the case in Harris. Thus, the "concerns" which gave rise to the "remedy" developed in Harris do not arise. As a result, no remedy is applicable in Appellant's case.

The Court's logic is obviously flawed. If, as the Court recognizes, the "concern(s) expressed in Harris" do not arise in Appellant's case, then certainly the remedy, and the analysis which supported the adoption of that remedy, which was adopted in Harris is not applicable to Appellant's case. Simply put, Harris has nothing to do with the circumstances of Appellant's case.

Harris held that the prosecutor may charge overlapping special circumstances, but that all such special circumstances

must be "merged" at the penalty phase and "considered as one". People v. Harris, supra, 36 Cal.3d at 66. Put another way, Harris was concerned with the effect overlapping special circumstances may have at the penalty phase of a capital trial. People v. Bigelow (1984) 37 Cal.3d 731, on the other hand, was concerned with defining special circumstances in such a way as to avoid "overlapping". Stated another way, Harris was concerned with what remedy should be employed at the penalty phase of capital case when two special circumstances findings made by the jury do overlap, while Bigelow was concerned with defining special circumstance findings in such a way as to prevent overlap from ever occurring. One case is concerned with preventing overlap, the other with a remedy when overlap cannot be prevented. By the Court's own admission, the death penalty concerns of Harris do not apply here. Only the Bigelow half of the distinction has any meaningful application to Appellant's case.

The Court apparently found, since it did address Harris in the context of "the problem of overlapping special circumstances", that the financial gain and burglary special circumstances at issue here did, in fact, overlap. Under the applicable Bigelow analysis, where overlapping special circumstances can be avoided by adopting a limiting definition of the financial gain special circumstance, the remedy on appeal is to void the special circumstance which was not correctly limited. That remedy should have been adopted here.

Finally in People v. Howard (1988) ___ Cal.3d ___, the Court concluded:

We conclude, therefore, that Bigelow's formulation should be applied when it is important to serve the purposes underlying that decision, but that it is not intended to restrict construction of "for financial gain" when overlap is not a concern.

Since, as this Court has concluded that the concerns of Harris are not present here, yet overlap did occur, the "Bigelow formulation" must apply.¹

This Court cannot simply ignore that formulation by assigning Appellant's case to a legal category, where the Harris remedy applies but the Harris concerns are not present, which does not exist.

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¹ Howard was cited to the Court by Respondent in a letter brief filed the day before oral argument. Because Appellant had no notice of oral argument and was denied time to prepare for oral argument, this is Appellant's first opportunity to bring Howard to the Court's attention.

THE TRIAL COURT'S ANSWERS TO THE JURY'S
QUESTIONS ABOUT THE BURGLARIES

The Court's analysis of the issues arising from the jury's questions about the alleged burglary special circumstances is also logically inconsistent. (Opinion, pp. 13-15.) The first burglary special circumstance allegation concerned Baldwin's residence at 18 Venetia Meadows. However, it was never made clear, either at trial or in Respondent's briefs on appeal, what factual premise supported this allegation. On the one hand, it could be argued, as the jury's first question implied, that the burglary occurred when Appellant first entered Baldwin's residence with the intent to trick Baldwin into going to the garage where he would be killed so that Appellant could later return to the residence to steal various items. Or, on the other hand, the burglary could have been premised on Campbell's entry into the residence while Appellant, Hoover and Baldwin were at the garage. Appellant's liability under this theory would depend on his status as an aider and abettor.

The Court has apparently concluded that the burglary of the residence occurred when Campbell entered the residence while Appellant, Hoover and Baldwin were gone and that Appellant was thus liable for this burglary, and the burglary special circumstance, as an aider and abettor. The Court stated that the burglary allegation was predicated on the evidence that "Campbell entered Baldwin's house to expedite the planned theft by making

an inventory ..." (Opinion, pp. 13-14.)

However, there are three logical errors generated by this conclusion which the Court, if it was aware of these errors at all, attempts to brush off by a single conclusionary sentence.

First, the conclusion that the burglary allegation was predicated on Campbell's entry into the residence negates the clear import of the jury's first question. The jury's first question was: "[I]f a person enters a structure intending to steal from that structure at a later date, is it a burglary". (RT 3541.) That question literally makes no sense, and would not have been asked, if the burglary of the residence was predicated upon Campbell's entry. Clearly, the jury was asking if Appellant's entry into the residence, with the intent to return later to the residence to steal after the killing in the garage was complete, constituted a burglary.

Secondly, the facts clearly show that Campbell did not enter the residence with the intent to steal anything. The Court's opinion even acknowledges that Campbell entered the residence in order to conduct an "inventory". Appellant's instructions to Campbell in this regard was to "walk though the house" and see if anything of value was inside. (RT 864.) To the extent Appellant aided and abetted this activity, no burglary was committed.²

² In concluding that a burglary did occur when Campbell entered the residence, the Court's opinion simply tracks the language and analysis made in Richards v. Superior Court (1983) 146 Cal.App.3d 306, 318. It plainly appears that the Court did not consider the evidence as presented at trial, but merely relied upon an analysis of evidence presented at the preliminary

Finally, even if Campbell committed a burglary, and Appellant aided and abetted that burglary, it is not at all clear that the jury relied upon those facts in finding the burglary special circumstance true. The jury was given an alternate method for finding the special circumstance true which did not depend in any way on Campbell. The jury asked the following question to which the trial court, over Appellant's objection, gave an affirmative answer:

If one enters a residence with the intent of burglarizing this residence, and the plan of killing the owner in a separate location to accomplish the burglary, and then proceeds to a separate location to effect the murder, and, lastly, returns to the first residence and accomplishes the burglary, does this constitute special circumstances?

The Court's answer to that is: Yes.

(RT 3559.)

It is important to note that immediately after this question was answered the jury returned its verdicts.

Clearly this last question from the jury indicates that in finding the burglary special circumstance alleged in regard to the residence, the jury did not rely upon Campbell's entry. If that is the case, then it follows that no temporal relationship exists between the killing and the "burglary".

This Court's opinion repeatedly emphasized that the "crime

hearing. Even Respondent notes that the trial evidence on this point "went into considerably more detail" than the Preliminary Hearing evidence. (Respondent's Supplemental Brief, p. 15, fn. 7.)

of burglary is complete upon entry of the structure" with the necessary intent. (Opinion, pp. 14, 15.) The Court found it irrelevant that the intent was to return at a later time to steal. (Opinion, p. 15.) If this is the case, then Appellant committed two burglaries of the residence. The first burglary occurred prior to killing when Appellant, Campbell and Hoover first arrived at Baldwin's residence and Appellant harbored the intent to return later to steal items from the residence. That burglary was complete when Appellant left the residence. The second burglary occurred after the killing when Appellant returned to the residence and actually took several items. However, during neither of the complete and discrete burglaries did the killing of Baldwin occur. The temporal relationship between the burglary and the killing necessary to establish a burglary special circumstance did not exist. See People v. Green (1980) 27 Cal.3d 1, 59; Richards v. Superior Court, supra, 146 Cal.App.3d at 318. The Court's concluding sentence, that regardless of when Appellant intended to steal he "certainly did intend to steal" (Opinion, p. 15), simply ignores the temporality requirement of Green and Richards. Under the Court's analysis a burglary may have been proved but a burglary special circumstance was not.

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CONCLUSION

For the foregoing reasons rehearing should be granted.

DATED: May 12, 1988

Respectfully submitted,

RICHARD B. MAZER
DAVID A. NICKERSON
LAW OFFICES OF RICHARD B. MAZER

BY 

RICHARD B. MAZER

Attorneys for Appellant
MARK RICHARDS

PROOF OF SERVICE BY HAND-DELIVERY

I declare that I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2120 Greenwich Street, San Francisco, California 94123. On May 13, 1988, I hand-delivered the attached:

PETITION FOR REHEARING

in said cause, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

LANDRA E. ROSENTHAL
Deputy Attorney General
6000 State Building
San Francisco, CA 94102

HOWARD HANSON
County Clerk
County of Marin
P. O. Box E
San Rafael, CA 94913-3904

Jerry R. Herman
District Attorney
County of Marin
Hall of Justice, Room 161
San Rafael, CA 94903

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 13, 1988, at San Francisco, California.


MAMIE D. DACANAY

COPY

A028291

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,)
)
v.)
)
MARK RICHARDS,)
)
Defendant and Appellant.)

RESPONDENT'S BRIEF

Appeal from the Judgment of the Superior Court
of the State of California for the
County of Marin
Superior Court Number 8362

HONORABLE E. WARREN MCGUIRE, JUDGE

JOHN K. VAN DE KAMP, Attorney General
of the State of California

STEVE WHITE, Chief Assistant
Attorney General

DANE R. GILLETTE, Supervising
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,)
)
v.)
)
MARK RICHARDS,)
)
Defendant and Appellant.)
_____)

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

Appellant was charged by Information filed in Marin County Superior Court on September 7, 1982 with violation of Penal Code sections 187, 211 and 459 (murder, robbery and burglary) (CT 167-168).^{1/} Special circumstances of murder for financial gain and murder committed upon lying in wait, robbery and burglary were alleged under Penal Code section 190.2(a) and (b). Following appellant's challenge to the special circumstances (see Richards v. Superior Court (1983) 146 Cal.App.3d 306) an amended Information was filed on January 12, 1984 which deleted the allegations of lying in wait and robbery but added a second allegation of murder committed in the course

1. The following abbreviations will be used throughout: CT - Clerk's Transcript; RT - Reporter's Transcript; ART - Augmented Reporter's Transcript; AOB - Appellant's Opening Brief; P.C. - Penal Code.

of a burglary (CT 1308-1309). In addition the separate robbery count was dismissed and a second burglary count was added.

Appellant's discovery motion was in large measure granted and a voluminous quantity of discovery material was made available to the defense (CT 179, 181, 183-199, 237-270). Appellant's motion for change of venue, based on allegations of prejudicial pre-trial publicity, was denied (CT 1150; see also CT 638-686, 1053-1060, 1103-1113). The trial court also denied appellant's motion to exclude evidence pertaining to the so-called "Pendragon" materials and to his financial difficulties (CT 1311-1314; see also CT 1275-1306).

The trial court granted appellant's motion to bifurcate the trial on the question of the special circumstances (CT 1221-1227, 1268-1274, 1314) and jury trial began on February 14, 1984 (CT 1323). On April 9, 1984, after five days of jury deliberation, appellant was convicted of first-degree murder and two counts of burglary (CT 1479-1485). Following a separate trial on the special circumstances the jury, on April 24, 1984, found all the specials were true (CT 1554-1558).

Appellant's motion for new trial, which again raised the question of the admissibility of the Pendragon materials and denial of change of venue, as well as suppression of discoverable evidence, was denied (CT 1593-16,, 1700). The court also denied appellant's motion to strike the special circumstances.

Appellant was sentenced, on the murder with special circumstances, to a term in state prison of life without possibility of parole. The trial court imposed the upper term of

six years for each of the burglary counts and ordered that they be served concurrently to the term imposed in count I (CT 1700).2/

STATEMENT OF FACTS

BACKGROUND

Sometime ago -- apparently around 1975 -- appellant Mark Richards, began to create a fantasy which he called "Pendragon" (RT 819-820, 831). According to appellant's friend, John Carrington, the fantasy was merely a science fiction book, projecting life in Marin county in the year 2000 (RT 819). Carrington thought there might be a motion picture project planned on the same subject as well (RT 832, 900). However, so far as Carrington was aware, appellant made no effort to turn the fantasy into reality. For example, Carrington was unaware of meetings conducted by appellant, where he discussed with a group of young men, a plan to isolate and take over Marin county through such actions as blowing up the Golden Gate and San Rafael bridges and placing laser beam weapons on top of Mt. Tamalpais (RT 820-821).

Appellant periodically held meetings in his home which were attended by young men, several of whom were employed by appellant as laborers in his contracting business (RT 1203, 1168-

2. The abstract of judgment, which suggests that the terms in counts II and III were ordered to run consecutively to that imposed in Count I, is incorrect. The reporter's transcript, as well as the minute order of the sentencing hearing in the clerk's transcript, show that the terms were imposed to run concurrently (RT 7/20/84 at 41; CT 1700). Accordingly, the abstract of judgment should be amended to correct what appears to be a clerical error.

1169, 1513, 2363). At these meetings appellant brought out charts and maps of Marin county and sparked the imaginations of his young friends with his stories of recreating Marin county as a modern-day "Camelot" (RT 1208, 1676-1677). Appellant accumulated an enormous amount of material for his Pendragon project (RT 1152-1154, 1296) and was apparently serious about it, whether or not it was intended to become a reality (RT 1087, 1207, 1514). He told a number of people that there were wealthy backers for the project, including film maker George Lucas (RT 1171-1172, 1515, 2364). Appellant's ideas were met with varying degrees of skepticism by his youthful followers (RT 928, 1075, 1088, 1204-1205, 2297, 2373). Nevertheless, they were sufficiently enthralled by appellant's presentation that they continued to attend his weekly meetings.

While appellant's rich and detailed fantasy apparently succeeded in attracting some degree of interest, his financial situation did not fare so well. Appellant was in debt, falling behind on mortgage and car payments and unable to meet his payroll or pay his creditors (RT 416-418, 563-564, 571, 588, 841, 926, 1165, 1175-1177, 1325-1326, 1337, 1371, 1386-1389, 1405-1409, 1812). As his financial difficulties increased appellant began to believe that an answer to his problem lay in the death of his friend, Richard Baldwin, who owned and operated a business restoring classic automobiles (RT 848, 926, 1166, 1179-1180, 1516-1517). He approached two of his employees, Willie Robles and Pete Neal, and asked them to help him kill a man who owed him some money (RT 116, 1179-1180, 1516-1517). He offered Neal and

Robles money and automobiles in exchange for their help (RT 1181, 1518). Although Robles initially said he would participate, he changed his mind and, early in July 1982, left to join the Navy (RT 1182, 1189-1191, 1193).

Appellant turned next to Andrew Campbell and Crossan Hoover. Through Hoover, Campbell met appellant in the spring of 1982 (RT 838). He soon learned that appellant had financial problems and that some of appellant's dissatisfied customers might be planning to sue him (RT 841, 844). Sometime in June or early July Campbell first heard appellant discuss killing Baldwin (RT 846-847). Appellant said Baldwin owed him money and believed that if Baldwin were killed, he (appellant) could dispose of his property. He believed he could obtain as much as \$50,000 by selling Baldwin's personal property (RT 848, 850). Appellant also mentioned selling Baldwin's house and wanted to find the pink slips to Baldwin's antique and classic cars so that they could be sold as well (RT 850). He said he had a friend in Fresno who would sell the cars for him (RT 850).^{3/}

Appellant offered \$2,000 to Campbell and \$5,000 to Hoover, as well as a share to each of the proceeds from selling Baldwin's belongings (RT 850, 854). He described in detail the plan he devised to carry out the murder (RT 854-856). He originally planned to carry it out on July 4, because police would be busy that night dealing with all the fireworks (RT 856).

3. This may have been a reference to John Carrington, who lived near Fresno at the time and who sold cars in that area (RT 798, 815).

However, appellant was not able to reach Baldwin on July 4 and the plan had to be postponed (RT 857).

The Events of July 6, 1982

On the morning of July 6 appellant's employees, as usual, met first at appellant's home (RT 857). Appellant sent Keith Andrews and Gary Ables to a church they were remodelling in San Rafael (RT 857). He, Campbell and Hoover then drove to Baldwin's house (RT 857). They first drove past it and noticed a yellow VW parked out in front (RT 859). Appellant drove to the end of the street, parked and once again went over the plan with Campbell and Hoover (RT 850). When appellant was assured they understood the plan, he drove back to Baldwin's house where they saw Baldwin talking outside with his friend Tom Mills (RT 860-861, 1533, 1536).

After working a while appellant, Campbell and Hoover left for lunch (RT 862). Baldwin's friend, Tom, left just as they returned (RT 863). Appellant was pleased at this, reasoning that if anyone noticed Baldwin was missing, they could say he was last seen with Tom (RT 863). Appellant also told Campbell and Hoover he wanted to calm Baldwin down, the way one would calm a chicken before snapping its neck (RT 863).

Around mid-afternoon appellant, Hoover and Baldwin left for Baldwin's shop. Campbell, as planned, stayed behind and went through Baldwin's house searching for valuables (RT 855, 864). Appellant and Hoover returned about two hours later. Hoover's trousers were stained with blood. Appellant said it was over and that it had been "gross". He did not want to talk about it but

was interested in going through the house looking for valuables (RT 865). Hoover appeared to be shaken and did not want to talk (RT 865). Appellant went through Baldwin's things while Hoover and Campbell worked outside (RT 866). Hoover told Campbell that the plan had "worked" (RT 867, 872, 874). Hoover then described the murder.

The three men had gone to Baldwin's shop. Appellant engaged Baldwin in conversation while Hoover searched for something heavy to use as a weapon (RT 875). The plan was for appellant to distract Baldwin. On a pre-arranged signal, Hoover would hit him on the head with a heavy object (RT 875). Hoover told Campbell that that was how it had worked (RT 875).4/

When Hoover and appellant returned to Baldwin's house they went through his belongings and took away, among other things, a small safe, a number of guns and \$2,000 in cash. The cash was found by Campbell in a closet which appellant pried open with a crowbar (RT 875-876). They loaded the items onto appellant's truck and covered them over with some bamboo blinds they found in Baldwin's yard (RT 877). Before leaving, appellant unlocked a bathroom window so he could return and enter later without breaking in (RT 877).

4. Although Campbell's testimony does not go into great detail respecting the murder itself, he did give a more detailed description to his attorney. The lawyer, Frank Cox, testified, upon Campbell's waiver of his attorney-client privilege and recounted Campbell's discussion with Hoover (RT 2273, 2277). Hoover told Campbell that upon a signal from appellant he (Hoover) hit appellant over the head with a baseball bat (RT 2317). Hoover then stabbed Baldwin in the temple and the chest (RT 2317).

Appellant planned to dispose of Baldwin's body in a shipping channel, deep enough so the low tide would not bring the body up (RT 878). With Campbell and Hoover, appellant returned to his house, where they began looking in the want-ads to buy a boat (RT 879).^{5/} They located a boat for sale in the Gazette and, just before dusk, left to look at it (RT 883).

Bernard Healy showed his boat to appellant and two young men around 7:30 p.m. on July 6 (RT 1559, 1564-1565). Appellant, who introduced himself as a contractor, did not counteroffer Mr. Healy's asking price of \$3,000 (RT 1566). He paid Healy a \$1,000 cash down payment, using the money taken from Baldwin's house, and promised two additional payments (RT 1566, 1569). Because the trailer hitch had no lights, Healy suggested they pick the boat up the following day, but appellant wanted to take it away that night (RT 1570-1571). They left Healy's house between 8:00 and 8:30 p.m. (RT 1585).

Campbell recalled leaving Mr. Healy's house around 8:00 (RT 907). They took the boat to the Loch Lomond marina and paid a \$5.00 launching fee to a security guard on duty (RT 907-908, 1958, 1960). Appellant told the guard they wanted to go out fishing early in the morning (RT 908).

5. There is some discrepancy in the testimony respecting the day on which the boat was purchased. Most of the evidence suggests Baldwin was killed on July 6. As will be shown, a boat was purchased on July 6. Nevertheless, Campbell's testimony suggests the murder occurred on one day and the boat was purchased the next day (RT 880-881). However, Campbell's testimony is at odds with Mr. Healy, who sold the boat to appellant (RT 1559).

They stopped briefly at appellant's house, then drove to Baldwin's auto shop on Front Street in San Rafael (RT 909), which they entered using Baldwin's keys (RT 911). Appellant loaded some weights into a blue milk crate. His plan was to use them to sink the body (RT 911). Campbell noticed Baldwin's body, covered with a sheet of plastic, sticking out from under a car (RT 911). When they pulled the body out and loaded it onto a mechanic's sled, Campbell saw a large pool of blood on the floor (RT 912). The body had been wrapped in plastic, secured with duct tape (RT 913). They loaded the body onto appellant's truck, covered it with the bamboo blinds and returned with it to the marina (RT 913). After speaking briefly with the security guard they put the body on the boat and left around 11:00 p.m., heading toward the Sisters Islands (RT 917-916, 1963).

The body was put overboard with the weighted milk crate secured to it with some cable. However, the cable snapped and the body floated to the surface (RT 917). Appellant found a small auxiliary motor on the boat, which he had Hoover tie to the body with rope. This time Baldwin's body sank (RT 918-919). Before they returned to the marina they threw overboard a chisel and screwdriver Hoover had used to attack Baldwin (RT 920). They left the marina and arrived at appellant's house around 2:00 a.m. (RT 919).

Events Subsequent to July 6

Campbell and Hoover spent the night at appellant's house, where they burned a number of items including Hoover's bloody trousers, a baseball bat which was cracked in half and covered

with blood, and the mechanic's sled from Baldwin's shop (RT 921, 923).

The next day they moved Baldwin's Subaru -- first to Greenbrae and then to a bus or train station parking lot in the East Bay (RT 924-925).

Over the course of the next 10 days appellant, accompanied by Hoover, Campbell or both of them, disposed of some of Baldwin's property and used his checks and credit cards to make various purchases. Some of Baldwin's guns were sold to a gun shop in El Cerrito (RT 932-934, 1612-1614). An assortment of Baldwin's coins were sold on July 7 to a dealer in San Rafael (RT 936, 1362, 1907).^{6/} Baldwin's checks and driver's license were used to purchase goods at supermarkets (RT 939-940, 942, 1731-1733, 1995). Appellant also used Baldwin's checks and credit card to make purchases at a marine supply store, a video store, lumber company and boat shop (RT 946, 952, 1378, 1699-1700, 1988, 1991-1992, 2075-2077). Finally, using Baldwin's Montgomery Ward credit card, appellant purchased some clothing, stereo and video equipment, and a gold bracelet for his wife (RT 954-955, 957, 1099-1101, 1105-1106, 1734-1735, 1743-1747, 1751, 1814). On July 13 appellant applied for credit at a Matthew's TV and Stereo store, using the name of Richard Baldwin (RT 1927, 1936, 2070).

6. The coin dealer's invoice was dated July 7 (RT 1907). Tom Mills saw Baldwin alive on the morning of July 6 (RT 1533). The boat was purchased on the evening of July 6 (RT 1559). Thus, Campbell's testimony that the body was left in the shop for 24 hours (RT 878, 880, 1032) appears to be inaccurate.

Richard Baldwin was reported missing by his mother on July 13, 1982 (RT 8, 34). Officer Canziani of the Marin County Sheriff's Department checked Baldwin's house, entering through an unlocked window (RT 35). On the same day Richard Weiss, a tugboat operator, found a body in the bay and notified the Coast Guard (RT 126, 132). The body was wrapped in plastic and was floating near the Sisters Islands (RT 129). Weiss towed the body to shore, where it was retrieved by the Coast Guard and turned over to the Solano County Sheriff's Department (RT 130, 135, 151, 289-290). Deputy Baker noted that the body had a bamboo blind attached to it with electrical wire and that an outboard motor was tied to the body with some rope (RT 290). In addition, at the autopsy he saw that a towel had been stuffed into the victim's mouth (RT 307-308). The medical examiner found that the victim (i.e., Baldwin) had died after being stabbed in the chest and skull and sustaining a "severe large fracture of the left portion of the skull" (RT 334-337, 346). Early on the morning of July 15 Baldwin's body was identified and his mother notified of his death (RT 12, 79-80).

On July 14, after the body was found but before it was identified, Sergeant Keaton of the Marin County Sheriff's Department learned about an anonymous phone call received earlier by Sergeant Johnson (RT 153-154, 560). The caller had information about a homicide and the misuse of stolen credit cards and had promised to call back later (RT 154). The caller (subsequently identified as Keith Andrews (RT 173)) told police that one of his co-workers bragged about killing a man by

crushing his skull with a baseball bat (RT 155). The body had been dumped into the bay and the victim's home had been burglarized (RT 155). Andrews identified the killers as appellant, Hoover and Campbell (RT 155-156). He said they had gone on a spending spree with the victim's credit cards and checks (RT 157, 563). Andrews told the police that Gary Ables knew about the murder as well (RT 171, 562). Ables subsequently corroborated Andrews' story (RT 425, 562).

A police investigation turned up fingerprints of Hoover and Campbell at Baldwin's auto shop (RT 107, 2065, 2066). In addition, appellant's prints were identified on the credit application at Matthew's TV and Stereo store and on several checks which were signed with the name of Richard Baldwin (RT 2075-2077).

Appellant, Hoover and Campbell were arrested leaving appellant's house, on the morning of July 16 (RT 481).

APPELLANT'S CONTENTIONS

1. The failure of the prosecution to prove the premise of the inflammatory and highly prejudicial Pendragon evidence renders its admission illegal and requires a new trial.

2. The failure of the trial court to change the venue of the trial requires that appellant's convictions be reversed.

3. The failure of the prosecution to provide appellant with critical evidence at his trial which would have impeached the credibility of two prosecution witnesses requires this court to grant a new trial.

SUMMARY OF RESPONDENT'S ARGUMENTS

I. Appellant was not prejudiced by the prosecutor's limited use of the "Pendragon" materials.

II. The trial court correctly denied appellant's motion for change of venue.

III. The erroneous suppression of discoverable evidence relevant to the credibility of prosecution witnesses was harmless beyond a reasonable doubt.

ARGUMENT

I

APPELLANT WAS NOT PREJUDICED BY THE PROSECUTOR'S LIMITED USE OF THE "PENDRAGON" MATERIALS

Appellant claims he was prejudiced by introduction of allegedly prejudicial evidence pertaining to the so-called "Pendragon" materials which, he argues, was wholly unnecessary to proof of the charges against him. He concedes the evidence was sufficient to convict him in any case (AOB 7, 18) but argues, nevertheless, that introduction of this disputed material was unnecessary, irrelevant and prejudicial (AOB 8-19). Although appellant's challenge to this evidence would appear to fall squarely under Evidence Code section 352 (CT 1277-1280; RT 1/11/84 at 29) appellant claims that the challenge is based upon Evidence Code sections 402 and 403 (AOB 10 at fn. 3).

The admissibility of the Pendragon materials was challenged prior to trial (CT 1277-1280; RT 1/11/84 at 29-46). There the prosecutor made clear his position respecting the relevancy of this evidence. He argued that the evidence would

assist in explaining the relationship between appellant and Hoover and would help answer the important question of how appellant was able to persuade Hoover to participate in a murder (CT 1288-1289; RT 1/11/84 at 35). The prosecution's position on the use of the Pendragon materials was consistent throughout the proceedings. (See, for example, ART 577-578; RT 964, 2550-2551, 2874-2875, 2883, 2893). In addition the jury was informed by the prosecutor and instructed by the court that the Pendragon materials were being offered for a limited purpose (See CT 1481; ART 577-578; RT 2550-2551, 2857, 2874-2875, 2883, 2893, 3041/10-11). The Pendragon materials played a somewhat peripheral part in the proceedings and were mentioned by the prosecutor in his closing argument only to point out the limited use to which they might be put. Defense counsel spoke of Pendragon in his final argument (RT 2595-2601) and inaccurately accused the prosecutor of emphasizing the disputed materials. The prosecutor once again refuted the defense accusation (RT 2857, 2863:2-7, 2874:17-2875:26, 2888:18-24, 2893:7-28). Finally, as noted, the trial court instructed the jury that evidence pertaining to Pendragon was admissible only for the limited purpose of demonstrating the nature of appellant's relationship with Hoover and Campbell (CT 1418; RT 3041/10-11).

We do not agree with appellant's assertion that the use of the Pendragon materials amounted to character assassination (See AOB 8, 15, 18). In addition, we observe that appellant concedes the evidence he now challenges was admitted "under a narrow but valid theory." (AOB 18:12-13). Nevertheless, he

claims the prosecution failed to prove its theory (AOB 17) and concludes that the jury therefore must have improperly used the evidence (AOB 18) (this despite the prosecutor's argument and the trial court's limiting instruction).

At trial there was no objection to the Pendragon materials pursuant to Evidence Code sections 402 and 403. As noted, the objection was based on section 352 (CT 1277) and focussed on the claimed inflammatory nature of the evidence. Thus, to the extent that appellant now seeks to raise an objection under sections 402 and 403, that objection was waived when it was not raised below. (Evidence Code section 353; People v. Harris (1981) 28 Cal.3d 935, 962; People v. Dorsey (1974) 43 Cal.App.3d 953, 960; People v. Rogers (1978) 21 Cal.3d 542, 547-548.) In any event, the evidence at issue was clearly relevant to the prosecution's case.

If the prosecutor were going to prove that there was a cause and effect connection between appellant and Hoover with respect to Baldwin's death, then the prosecutor had to establish the relationship between appellant and Hoover. The Pendragon materials provided that connection. Moreover, in view of the care with which the jury was informed of its limited purpose, it is unlikely in the extreme that the jury was misled into utilizing the evidence for an improper purpose. The prosecutor was faced here with a situation where the initiator of the murder scheme was not the actual perpetrator. Thus, it was essential for him to prove not only why appellant would plot to kill Richard Baldwin, but also how appellant was powerful enough to

persuade two young men -- and Hoover in particular -- to assist him in doing so. The Pendragon materials and testimony answered that question. It proved that appellant was a clever, charming and persuasive man, capable of tapping into the imaginations and the fantasies of his circle of young associates. Contrary to appellant's suggestion, the prosecution did not seek to prove that appellant "brainwashed" such young men as Hoover, Campbell, Robles, Neal and Andrews. (See AOB 13:9-10, 14:6-9). Rather, it demonstrated how persuasive a person he was, since despite the skepticism with which the young men viewed the Pendragon plan (See RT 928, 1075, 1087-1088, 1184, 1203-1208, 1513-1515, 1675-1683, 1853, 2363-2367, 2373) they nevertheless continued to attend appellant's meetings and recruited others to attend as well. Thus, as evidence which explained the relationship between appellant and Hoover, the Pendragon evidence was clearly relevant (Evid. Code § 210; People v. Cordova (1979) 97 Cal.App.3d 665, 669). It was this relevance, in fact, which prompted the trial court to base its ruling, in part, upon California Constitution, Article I, section 28(d), the so-called "truth in evidence" section (CT 1312:27-1313:2).^{7/}

7. California Constitution, Article I, section 28(d) provides:

Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or

One point raised by appellant requires clarification. Appellant charges the evidence at issue was irrelevant because, among other things, the record establishes Andrew Campbell did not learn of Pendragon until after the murder of Richard Baldwin (AOB 13-15). Appellant is correct with respect to the timing of Campbell's knowledge of Pendragon. However, it was Hoover who actually committed the murder and the Pendragon evidence, of which Hoover was aware prior to the murder, was obviously relevant to connect him to appellant.

This case is analogous to People v. Yu (1983) 143 Cal.App.3d 358, 375-376. There, too, the defendant did not commit the actual murder. Rather, the prosecutor wanted to establish that defendant was able to persuade someone else to do so. The Court of Appeal held it was permissible to establish that fact by proof that the accused held a position of leadership in a youth gang and had previously ordered a different, uncharged murder to be committed. The evidence was found to be relevant, under Evidence Code section 210, to prove facts other than disposition to commit crimes. (Id., at 376.) In addition, the court found no abuse of discretion in the trial court's conclusion that the evidence was more probative than prejudicial. On the question of the defendant's objection pursuant to Evidence Code section 352 the Court of Appeal stated:

Evidence Code, sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

"As for defendant's argument that the evidence was substantially more prejudicial than probative, all evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is 'prejudicial.' The 'prejudice' referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against defendant as an individual and which has very little effect on the issues. In applying section 352, 'prejudicial' is not synonymous with 'damaging.'

'This balancing test [under Evid. Code § 352] is necessarily particularistic, depending not upon mechanically automatic rules, but upon the trial court's consideration of the unique facts and issues of each case' (People v. Scott (1980) 113 Cal.App.3d 190, 198 [169 Cal.Rptr. 669], quoting People v. Schader (1969) 71 Cal.2d 761, 773-774 [80 Cal.Rptr. 1, 457 P.2d 841].)

'If, as defendant contends here, there was no basis on which the jury could connect the defendant with the murder of Louie, then the evidence of Louie's murder could neither prejudice nor damage the defendant.

On the other hand, the evidence, tending as it did to prove that defendant ordered the death of Louie, was relevant and thus damaging to defendant on the issue of whether defendant ordered the death of other rival gang members at the Golden Dragon. To hold that the evidence was excludable as 'prejudicial' would be to hold that

evidence may be barred because it is too relevant." (Id., at 377; emphasis in original.)

In this case, if the Pendragon evidence established only that appellant entertained some grandiose and utterly unrealistic notions of establishing his own kingdom then he was not damaged by introduction of it. Contrary to appellant's assertion (AOB 17:4-6, see also AOB 23:23-24:8, 30:15-31:3) no citizen of Marin County could possibly take seriously the preposterous idea that a small band of unsophisticated teenagers might usurp control of the County, destroy its existing transportation system and government and secede from the union to form an independent nation. On the other hand, as in People v. Yu, supra, 143 Cal.App.3d at 376-377, because the evidence tended to establish how appellant was able to persuade Hoover to kill Richard Baldwin, the evidence, though damaging, was undoubtedly relevant, probative and admissible.

In People v. Hole (1983) 139 Cal.App.3d 431, 436, where the crime with which appellants were charged was instigated by a third person, the court of appeal observed that evidence of the instigator's motive plus evidence connecting the perpetrators to the third party "had a tendency in reason to prove appellants shared this motive and that they burned the market at Goodrich's request." Here, on somewhat analogous facts, the evidence established appellant's motive (i.e., his financial difficulties) and the Pendragon evidence connected him to the perpetrators. As in Hole, the disputed evidence has a tendency in reason to prove

that Hoover was susceptible to appellant's influence and killed Baldwin at appellant's request.

As shown, the evidence at issue was relevant. To the extent it was damaging to appellant, the trial court found its probative value outweighed its potential prejudicial impact. The ruling was not an abuse of discretion. The evidence was never challenged under Evidence Code sections 402 and 403. Thus any error on that basis was waived. Nevertheless, even if the issue were properly before this Court, there was no error under sections 402 and 403, since the preliminary fact (i.e., appellant used the Pendragon fantasy to enthrall and influence his young associates) was unquestionably established by the testimony, referred to above, which suggests that the young men, fascinated by appellant's fantasy, continued to attend his meetings, study his maps, and listen to his plans, however farfetched, for the establishment of a new order in Marin County. The evidence was not unduly emphasized by the prosecutor in his closing argument and its impact was further modified by the trial court's instruction to the jury respecting the limited use to which it might be put. Accordingly, the trial court did not err by permitting the use of the Pendragon materials.

II

THE TRIAL COURT CORRECTLY DENIED APPELLANT'S MOTION FOR CHANGE OF VENUE

Appellant claims he was prejudiced by the trial court's denial of his motion for change of venue (AOB 19-32). He argues the motion should have been granted because of the quantity of prejudicial publicity in Marin County. In addition he contends that testimony respecting the Pendragon materials was so potentially threatening to the jury -- all of whom would, of course, be Marin County residents -- that it was impossible for him to have a fair trial there.

On April 1, 1983 appellant filed a motion for change of venue (P.C. § 1033; CT 636). The prosecutor's response was filed on April 7 and appellant's reply on April 8 (CT 1053, 1101). The parties argued the matter on April 14 (RT 4/12/83 at 144-161). There, defense counsel stated that the case had generated a great deal of publicity, including articles in Newsweek, California Magazine, the Chronicle and the Examiner. However, he agreed that most of the publicity was in the local paper, the Independent Journal (RT 4/12/83 at 145-146). He argued that the publicity would lead citizens of Marin, all potential members of the jury panel, to feel threatened by the Pendragon plan described in the media (RT 4/12/83 at 147-148). Defense counsel suggested there were three ways for the court to deal with the publicity issue. The trial court could: grant a change of venue; authorize a public attitude survey; or permit sequestered, individual voir dire (RT 4/12/83 at 148-149). However, counsel

stated that the latter alternative was not acceptable to the defense (RT 4/12/83 at 149). Defense counsel cited Maine v. Superior Court (1968) 68 Cal.2d 375, and observed that Maine authorized the filing of a pre-trial writ where the trial court denied a motion for change of venue (RT 4/12/83 at 150). In response to questioning by the court, defense counsel repeated his position that individual voir dire was not an adequate substitute for a change of venue (RT 4/12/83 at 154-155). However, he conceded that sequestered voir dire and the use of a jury panel questionnaire were good ideas and would result in a "more enlightened voir dire" (RT 4/12/83 at 156). The prosecutor argued that appellant had generated some of the publicity of which he then complained (RT 4/12/83 at 158). Defense counsel did not deny the charge and responded that efforts to seal off information from the press can have the effect of alienating the media and generating more publicity (RT 4/12/83 at 160-161). The matter was submitted and, on June 17, 1983, the trial court denied the motion for change of venue (CT 1150). Upon denial of the motion, defense counsel did not file a petition for writ of mandate at the Court of Appeal (ART 7).

Jury selection commenced with the elimination from the panel of members claiming exemptions on the basis of hardship, followed by distribution of a questionnaire to the remaining members of the jury panel, designed to reveal "exposure to publicity relating to this case" (CT 1150; ART 3). Challenges for cause were exercised (ART 48-162) and, after exercising only nine of his 26 peremptory challenges (P.C. § 1070(a)), appellant

accepted the jury (ART 456). He did not, at that time, renew his motion for change of venue.

Appellant is entitled to appellate review of the denial of his motion for change of venue. Although he could have filed a writ when the motion was denied, he was not required to do so. (People v. Sommerhalder (1973) 9 Cal.3d 290, 301.) Nor was he required to renew his motion at the close of voir dire although, again, he was entitled to do so. (People v. Mabrier (1917) 33 Cal.App. 598, 600.601.)^{8/}

Where, on appeal, the accused claims prejudice from denial of his change of venue motion, the appellate court must conduct an independent evaluation of the record to determine whether or not appellant received a fair trial. (People v. Sommerhalder, supra, 9 Cal.3d at 301; People v. Harris (1981) 28 Cal.3d 935, 949; People v. Martinez (1978) 82 Cal.App.3d 1, 13.) "If a defendant elects the pretrial mandate alternative, he may well be in a position to urge that doubts be resolved in his favor. But if he elects to await trial and conviction before he seeks appellate review, he cannot complain if inferences of possible prejudice, available on a semi-silent record, have been refuted by the actualities of voir dire and of trial." People v. Quinlan (1970) 8 Cal.App.3d 1063, 1070.) This Court must now

8. We note that this case differs from People v. Hoover (1986) 187 Cal.App.3d 1074, 1085 with respect to the venue issue. There, the trial court deferred ruling on the change of venue motion until the close of voir dire. Hoover specifically declined to renew his motion at that time and the Court of Appeal found that by declining to renew the motion Hoover waived it as an issue on appeal.

consider the fact and nature of pretrial publicity and the other factors identified in Martinez v. Superior Court (1981) 29 Cal.3d 574, as considerations relevant to a change of venue. Moreover, because this challenge is post-conviction, this Court must also consider the voir dire of potential and actual jurors as well as the fact that appellant exercised only nine of his 26 peremptory challenges. (People v. Harris, supra, 28 Cal.3d at 949; People v. Balderas (1985) 41 Cal.3d 144, 181; People v. Welch (1972) 8 Cal.3d 106, 114; People v. Mata (1955) 131 Cal.App.2d 205, 206.)

In People v. Balderas, supra, 41 Cal.3d at 181, the Supreme Court noted that none of the final jurors or alternates had been challenged for cause and that the defendant "had used only 13 of his 26 peremptory challenges . . . when he accepted the jury. These facts are strong indicators that the jurors were fair, and that the defense itself so concluded." (Id., emphasis in original.) In this case, none of the final jurors or alternates were challenged for cause^{9/} and appellant used only nine of his 26 peremptory challenges. Only seven of the 16 jurors and alternates were questioned on the record about pre-trial publicity or familiarity with this case. Three jurors (Cherie, Parkhurst and Travers) had only vague recollections but recalled no details concerning the so-called "Pendragon" case (ART 261, 437, 455). One juror (Siczewicz) thought Pendragon was

9. The jurors were passed for cause as follows: Elliott - ART 219; Wentworth - ART 223; Cherie - ART 262; Hughes - ART 277; Olivencia - ART 309; Siczewicz - ART 315; Phillips - ART 331; Gjerde - ART 340; Hemmingway - ART 373; Kash - ART 425; Parkhurst - ART 438; Travers - ART 456; Butcher - ART 489; Baker - ART 513; Kelly - ART 517; Endicott - ART 521.

some kind of game (ART 312-313) and three (Wentworth, Hughes and Phillips) had no recollection whatever respecting the case (ART 222, 276-277, 330). The remaining jurors and alternates were not questioned respecting pretrial publicity.^{10/} The failure to use peremptory challenges, failure to renew the change of venue motion and failure to question extensively respecting exposure to publicity leads to the strong conclusion that defense counsel was satisfied with the jury and that his concerns respecting exposure to prejudicial publicity were mollified by the juror questionnaires and by the actual responses on voir dire.

In addition to the foregoing considerations, this Court is required to assess the case in light of the factors identified by the Supreme Court in Martinez v. Superior Court, supra, 29 Cal.3d 574 as "indicators of potential prejudice in pretrial publicity." (Id., at 578.) Those factors are (1) the nature and extent of news coverage, (2) the size of the community, (3) the nature and gravity of the offense, (4) the community status of the victim, and (5) the status of the accused. (Id., at 578.)

From the news reports offered in support of the venue motion it would appear that the bulk of the news coverage was confined to the Independent Journal, a local Marin County newspaper (RT 4/12/83 at 145-146; CT 649-685). The record does not reveal how many of the potential jurors read the Independent

10. Presumably, they were all questioned in detail in the written questionnaire referred to several times in the record. However, the questionnaires have not been made a part of the appellate record and respondent is therefore unfamiliar with the specifics therein.

Journal. However, appellant offers no reason to conclude the story was treated as headline news by the San Francisco Chronicle or Examiner, the newspapers likely to have the widest circulation in Marin County. To show that Marin was not the sort of small, insular community in which venue might arguably be improper, the prosecutor quoted the Supreme Court in Sommerhalder: "We take judicial notice of the fact that Marin County was not a small rural community. In 1968 it had 204,800 population, ranking 18th of California's 58 counties in population, and adjoins a large metropolitan area." (People v. Sommerhalder, supra, 9 Cal.3d at 304; CT 1054). If, as the record suggests, the publicity in this ex-urban community was largely confined to local rather than metropolitan media, there is no reason to suspect that, contrary to the juror's own statements, the jury pool was contaminated by prejudicial pretrial publicity. "'[P]retrial publicity -- even pervasive, adverse publicity -- does not invariably lead to an unfair trial.'" (People v. Mendonsa (1982) 137 Cal.App.3d 888, 895 quoting from Nebraska Press Association v. Stuart (1976) 427 U.S. 539, 554; see also People v. Clay (1984) 153 Cal.App.3d 433, 448.) Juror exposure to news accounts about a crime does not, without more, deprive the accused of due process (People v. Harris, supra, 28 Cal.3d at 949; see also Murphy v. Florida (1975) 421 U.S. 794, 799.) Moreover, "'[i]t is not required . . . that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity,

and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion of the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.'" (People v. Harris, supra, 28 Cal.3d at 949-950 quoting from Irvin v. Dowd (1961) 366 U.S. 717, 722-723; see also People v. Mendonsa, supra, 137 Cal.App.3d at 895; People v. Clay, supra, 153 Cal.App.3d at 448; People v. Manson (1976) 61 Cal.App.3d 102, 184-185, 187.) The opinion of a juror, based upon pre-trial publicity, does not disqualify the juror if "it appears to the court that he will act freely and impartially." (People v. Dick (1962) 200 Cal.App.2d 424, 428-429; see also Penal Code § 1076.) The juror's impartiality is a question of fact for the trial court to determine. (Id.) Moreover, the statement of a potential juror that he can be fair and impartial is presumed to be true. (People v. Preston (1973) 9 Cal.3d 308, 313.)

In view of the fact that the publicity in this case was largely confined to local (i.e., Marin County) media and appears to have reached the jury panel in only the most negligible fashion, appellant has not shown that the nature and extent of the news coverage (or the size of the community) entitle him to a reversal because of the denial of his motion for change of venue.

Although the crime at issue was murder with special circumstances, that fact by itself is not enough to compel a change of venue. (See, for example, People v. Harris, supra, 28 Cal.3d 935 [capital case; change of venue properly denied]; People v. Manson, supra, 61 Cal.App.3d 102 [multiple murder; change of venue not required]; People v. Sommerhalder, supra, 9 Cal.3d 290 and People v. Preston, supra, 9 Cal.3d 308 [companion cases where victims (husband and wife) were killed. Husband was bound and gagged, then shot four times. Wife was shot, stabbed, strangled and raped; denial of venue motions affirmed in both capital cases].)

The remaining Martinez factors likewise militate against a change of venue. The victim Richard Baldwin, was a relatively unknown businessman with a small, specialized clientele. Appellant was a longtime Marin County resident and not the kind of "stranger in the community" whose trial would be expected to engender hostility. (Odle v. Superior Court (1982) 32 Cal.3d 932, 940.)

The record does not support a conclusion under Martinez that the motion for change of venue was wrongly decided. Moreover, because the record strongly suggests that defense counsel's failure to renew his venue motion at the close of voir dire was the result of his conclusion that the jury would be fair

and impartial, it is clear that the trial court correctly denied the motion for change of venue.^{11/}

III

THE ERRONEOUS SUPPRESSION OF DISCOVERABLE EVIDENCE RELEVANT TO THE CREDIBILITY OF PROSECUTION WITNESSES WAS HARMLESS BEYOND A REASONABLE DOUBT

Appellant contends the trial court erred in denying his motion for new trial (AOB 32-38). The motion was based in part upon an allegation that the prosecution withheld critical evidence relevant to the credibility of two important prosecution witnesses, Willie Robles and Pete Neal. Appellant argues it was critical to impeach Robles and Neal because each testified he was solicited by appellant in the spring of 1982 to kill Richard Baldwin and because their testimony provided the only corroboration of Andrew Campbell's allegation that appellant solicited him (Campbell) and Hoover to kill Baldwin in July 1982 (AOB 33:20-23, 36:1-20).

In his motion for new trial appellant argued that notes made by officer Cook respecting drug dealing by Willie Robles and Pete Neal impeached their credibility and would have shown the jury that Robles and Neal had a motive to cooperate with police (i.e. in order to avoid prosecution for drug transactions) (ST 19-20). The trial court agreed with defense counsel that the

11. We believe appellant's claim that the bizarre nature of the Pendragon evidence was so threatening to potential jurors as to compel a change of venue, is answered by the fact that none of the jurors was disturbed enough by the original publicity to recall any details whatsoever about the case. In all likelihood they would conclude, as we have, that appellant's plan to take over Marin was unrealistic and utterly preposterous.

police officer's notes were discoverable (ST 32:18-20) and should have been provided to the defense. The court agreed the evidence was relevant to the credibility of Robles and Neal (ST 32:20-22) and stated it was error when the prosecution failed to disclose the notes (ST 32:22-23). Nevertheless, the trial court found the error was harmless. The court observed that there were seven pages of notes at issue and that the prosecution had turned over to the defense nearly 25,000 pages of discovery (ST 32:16-17). However, because the evidence of appellant's guilt was "overwhelming" the court concluded it was "totally unreasonable" to believe that the notes would have had any effect on the verdict (ST 32:24-33:1). The Court denied the motion for new trial " . . . in light of what I consider overwhelming evidence of guilt." (ST 34:14-15).

We agree that the notes were discoverable and that the prosecutor erroneously failed to provide the notes to appellant. However, we also agree with the trial court's ruling that the newly discovered evidence did not compel a new trial. In view of the evidence of guilt and the nature of the withheld evidence, the error was undoubtedly harmless.

Robles testified that in April 1982 appellant asked him and Pete Neal to kill Baldwin (RT 1179-1180). Robles testified appellant promised to forgive a debt Robles owed him and promised money and a car to Neal (RT 1181). They expressed interest in the plan and periodically appellant asked if they were still interested (RT 1182). Neal also testified that appellant asked him to kill someone and offered him money and a car for his help

(RT 1516-1518). Neal's credibility was impeached by evidence that he sold marijuana (RT 1520).

After appellant was convicted he learned that officer Cook had some notes based upon his investigation which suggested that both Robles and Neal were involved in the sale of cocaine (CT 1620-1622). The notes refer to a \$500.00 transaction, with money being "fronted" either to or by Robles (CT 1620-1621). Officer Cook also made reference to a woman named La Donna English (CT 1616-1621) and defense counsel suggested, in his motion for new trial, that Ms. English may have been "ripped off" by Robles in a transaction involving cocaine (CT 1606). He argued that the information respecting drug dealing by Robles and Neal was critical to assessing their credibility since the information suggested a motive for the testimony given by Robles and Neal (CT 1607). He concluded that he was deprived of a meaningful opportunity to cross-examine Robles and Neal (Ct 1608). He now argues that he is entitled to a new trial because the testimony of Robles and Neal was critical to the prosecution's case (AOB 35).

Clearly, the testimony of Robles and Neal was important to the prosecution's case. Appellant correctly observes that it lends credence to the testimony of Andrew Campbell (AOB 35-36). Nevertheless, the point on which Robles and Neal might have been impeached does not directly contradict their testimony respecting appellant's April solicitation of help in the murder of Richard Baldwin. The information at issue was relevant to the weight, not to the admissibility, of their testimony. Thus, contrary to

appellant's suggestion (AOB 33:14-19, 35:22-36:20), the evidence respecting the April solicitation would have come to the jury's attention in any case, and Andrew Campbell's testimony would still have been corroborated. In addition, Campbell's testimony was corroborated by the testimony of Thomas Mills, who was with Baldwin on the morning of July 6 when appellant arrived at Baldwin's house with Campbell and Hoover. Mills was introduced to appellant and the two young men (RT 1533, 1536). This evidence places appellant with Baldwin prior to the murder and corroborates Campbell's testimony with respect to when they went to Baldwin's house and what they did when they arrived.

To the extent that appellant's claim of error rests on the trial court's denial of his new trial motion under Penal Code section 1181, he has failed to establish that the trial court's ruling was an abuse of discretion. Where a new trial is sought on the basis of newly discovered evidence, the decision to grant or deny rests within the discretion of the trial court "and an appellate court will not interfere with that decision unless a clear abuse of discretion is shown." (People v. Green (1982) 130 Cal.App.3d 1, 12; People v. McDaniel (1976) 16 Cal.3d 156, 179; People v. Beyea (1974) 38 Cal.App.3d 176, 202.) "[N]ewly discovered evidence which would merely impeach or discredit a witness does not compel the granting of a new trial . . . the granting of a new trial upon the discovery of highly material impeaching evidence will not be held to constitute an abuse of discretion . . . when the trial court denies such a motion, the reviewing court should not ordinarily interfere." (People v.

Moten (1962) 207 Cal.App.2d 692, 698; citations omitted.) In addition, the party seeking a new trial must prove that the new evidence is such "as to render a different result probable on a retrial of the cause" (People v. Huskins (1966) 245 Cal.App.2d 859, 862 quoting People v. Sutton (1887) 73 Cal. 243, 247-248; see also In re Wright (1978) 78 Cal.App.3d 788, 802 [to warrant a new trial, upon a petition for writ of habeas corpus, defendant must demonstrate that the new evidence undermines the entire structure of the prosecution case, points unerringly and conclusively to the defendant's innocence and does not merely present "a more difficult question for the trier of fact.']; accord People v. Martinez (1984) 36 Cal.3d 816, 822-823.) Since the evidence at issue here merely impeaches Robles and Neal on matters collateral to the question of whether or not appellant solicited their participation in the murder of Richard Baldwin, the evidence does not meet the standard required for the granting of a new trial.

Appellant relies upon cases where new trials were granted after it was learned that the prosecutor withheld substantial, material evidence, favorable to the accused. (AOB 35 citing In re Ferguson (1971) 5 Cal.3d 525; People v. Ruthford (1975) 14 Cal.3d 399; and People v. Shaparnis (1983) 147 Cal.App.3d 190.) However, as appellant notes (AOB 35:10-15) even upon a showing of substantial materiality, reversal is not required where the error is shown to be harmless beyond a reasonable doubt. (See also In re Pratt (1980) 112 Cal.App.3d 795, 865, citing People v. Ruthford, supra, 14 Cal.3d at 409.)

In this case appellant argues that the evidence withheld would have enabled him to impeach Robles and Neal by showing they had personal motives for testifying (AOB 36-37). Moreover, he discounts the existence of proof to the contrary (AOB 37 at n. 12). However, we believe that the declarations of officers Cook and Lindquist (CT 1660-1661) are extremely important. They establish the fact that any claim suggesting Robles and Neal received a quid pro quo for testifying is pure speculation and would not have provided a basis for effective cross-examination and impeachment. In a similar case, the Court of Appeal found harmless beyond a reasonable doubt the erroneous suppression of the fact that a prosecution witness had a theft charge pending against him (People v. Partlow (1978) 84 Cal.App.3d 540, 556.) The Court there noted that the record offered no support for the defendant's suggestion that the witness received consideration in exchange for his testimony.^{12/}

Appellant correctly observes that he was entitled to cross-examine Robles and Neal about ulterior motives for testifying (AOB 37). There was nothing to prevent defense counsel from doing so in any case. The prosecutor's failure to disclose officer Cook's notes did not prevent defense counsel from exploring the existence of such ulterior motives. However, because the record shows that appellant would not have been able

12. In Partlow, supra, 84 Cal.App.3d at 556, the defendant learned, and was able to inform the jury, that the charges pending against the witness had been dismissed on the prosecutor's motion. (Id.) Nevertheless, the Court of Appeal held the erroneous suppression of evidence respecting the charges against the witness was harmless beyond a reasonable doubt.

question demonstrated ulterior motives for the testimony of the witnesses involved. Accordingly, appellant's conviction should be affirmed.

DATED: March 5, 1987

Respectfully submitted,

JOHN K. VAN DE KAMP, Attorney General
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STEVE WHITE, Chief Assistant
Attorney General

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A handwritten signature in black ink, reading "Landra E. Rosenthal". The signature is written in a cursive, flowing style with a large initial 'L'.

LANDRA E. ROSENTHAL
Deputy Attorney General

Attorneys for Respondent

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DECLARATION OF SERVICE BY MAIL

Case Name: People v. Mark Richards **No.:** A028291

I declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 6000 State Building, San Francisco, California 94102.

On March 6, 1987, **I served the attached**
(Date)

Respondent's Brief

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Jerry R. Herman, DISTRICT ATTORNEY
Marin County District Attorney's Off.
Civic Center, Room 155
San Rafael, CA 94903

Howard Hanson, CLERK
County of Marin
P. O. Box "E"
San Rafael, CA 94913

Stepher J. Heiser, Esq.
819 Eddy Street
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on March 6, 1987.
(Date)

CARMENCITA O. MALBOG
(Typed Name)

Carmencita O. Malbog
(Signature)