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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF FRESNO
14

15 PEOPLE OF THE STATE OF CALIFORNIA,
16 Plaintiff,
17 vs.
18 DOUGLAS STANKEWITZ,
19 Defendant.

Case No. CF78227015

MOTION TO ENJOIN PRESIDING
JUDGE ARDAIZ FROM
DISCUSSING INFORMATION AND
OPINIONS RE PEOPLE V.
STANKEWITZ.

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21
22 COMES NOW Defendant DOUGLAS STANKEWITZ (hereinafter referred
23 to as "Chief"), through counsel, and hereby moves this Court for
24 an order enjoining former Presiding Judge James Ardaiz from
25 making any further out-of-court statements, public or private,
26 regarding the prosecution of Douglas Stankewitz.

1 This motion is brought in response to Mr. Ardaiz's recent
2 statement to the Fresno Bee defending the original conviction of
3 Chief, prior to the conviction being overturned, in response to
4 allegations of misconduct against former Presiding Judge Ardaiz.

5 The basis for this motion is that this Court has an
6 obligation to ensure Mr. Stankewitz receives a fair trial free
7 from excessively prejudicial media under Sheppard v. Maxwell.
8 Former Presiding Judge Ardaiz violated the logic and spirit of
9 California Code of Judicial Ethics as illustrated in Broadman v.
10 Commission on Judicial Performance.

11 Ardaiz poses an ongoing threat to Stankewitz's fair trial
12 rights. Ardaiz's conduct, if unrestrained, jeopardizes the
13 public's confidence in the judiciary; Ardaiz's conduct threatens
14 the autonomy of this Court; all of which are against fundamental
15 concepts of an accused's fair trial rights and due process in
16 violation of the California and United States Constitutions.

17
18 Dated: March 17, 2017.

19
20 Respectfully submitted,

21
22 /s/Curtis L. Briggs

23 J. Tony Serra
24 Curtis L. Briggs
25 Tyler R. Smith
26 Attorneys for Defendant
27 Douglas Stankewitz
28

1 **SUPPORTING MEMORANDUM**

2 INTRODUCTION

3 For this Court to understand the necessity of enjoining Hon.
4 James Ardaiz, Ret., future prejudicial statements must be
5 considered with regard to the historical context and procedural
6 history of this case. Much of the entire story, being untold
7 until now, will show that Chief, against-all-odds, has endured
8 nearly four decades as David against Goliath. His victories each
9 day marked only in the fact he lives to fight another day.

10 Nearly thirty-eight years after former Presiding Judge James
11 Ardaiz secured a conviction against Douglas "Chief" Stankewitz,
12 Ardaiz lobbied the press in defense of that conviction despite
13 the fact a federal court overturned the conviction.¹ Ardaiz
14 attempted to persuade the audience of the Fresno Bee, that the
15 only witness against Chief (Billie Brown) lied in his subsequent
16 recantation, putting at risk his grant of immunity for the same
17 charge. Ardaiz attempted to sway the Fresno audience that Chief
18 is guilty of premeditated and cold-blooded murder.² A man
19 dedicated to truth and justice and the role of American courts in
20 the machinery of justice, would never have made such a statement.

21 Instead of expressing any concern for whether he was misled
22 or not, thereby having taking a part in the wrongful conviction
23 of Chief, Ardaiz essentially told the readers of the Fresno Bee
24 that no matter what a witness says in this matter, and no matter
25

26 _____
27 ¹ See Exhibit A.

28 ² See Recantation of Billie Brown, Attached as Exhibit B.

1 how the evidence unfolds under the adversarial test, Chief should
2 remain on Death Row *because Ardaiz said so.*

3 The recantation is public knowledge but never raised to any
4 court to this date.³ Chief, a man so bound by principle that he
5 was in solitary confinement for nearly 13 years, for failing to
6 cut his hair—homage to his Monache Indian ancestry⁴, has
7 maintained that he is innocent of this senseless killing—even as
8 Chief and his co-defendants were offered plea bargains which
9 would have resulted in less than six years in state prison.⁵

10 Ardaiz voluntarily and personally delivered and escorted
11 Chief on the more than three-hour drive to San Quentin's Death
12 Row in 1978.⁶ As a judge, Ardaiz personally attended the
13 execution of Clarence Ray Allen—a person previously prosecuted
14 and convicted by Ardaiz.⁷ Ardaiz, in describing himself and two
15 of the lead investigators on the Allen case (who were also on the
16 Stankewitz prosecution team) Ardaiz explained “. . . [O]ur job
17 was like that of hunters, but our prey walked asphalt and
18 concrete . . .”⁸

19 It is unlikely that Ardaiz is less professional than he was
20 when he prosecuted Chief; Ardaiz is not less ethical than when he
21 prosecuted Chief; Ardaiz is not less restrained than he was when
22 he prosecuted Chief. If, after a long prestigious career immersed
23 in the beauty and tradition of American law, Ardaiz did feel it

24

25 ³ See Declaration of Curtis L. Briggs.

26 ⁴ See Declaration of Curtis L. Briggs.

27 ⁵ See Declaration of Curtis L. Briggs.

28 ⁶ See Declaration of Curtis L. Briggs

⁷ James Ardaiz, *Hands Through Stone*.

⁸ James Ardaiz, *Hands Through Stone*, page 38.

1 appropriate to refrain from commenting publicly, then he likely
2 would have exercised even less restraint as a prosecutor.
3 Therefore, this statement to the press illustrates a critical
4 component of the answer to the question of why an innocent man
5 spent nearly four decades on Death Row: a prosecutor so submerged
6 in his personal convictions that he refuses to admit a wrongful
7 conviction.

8 Chief, unlike Ardaiz, struggles to have any voice at all. He
9 is nearly four hours from Fresno. He needs permission to use the
10 phone or to receive visitors, and he is tucked deep behind the
11 walls of San Quentin, with hundreds of gates and thousands of
12 guards, and no access to the public.⁹ A reporter cannot call
13 Chief for a statement. It is tough for him to get his message to
14 the press. Chief's visitors are heavily screened, searched,
15 required to book visits weeks in advance and for specific time
16 periods.¹⁰ In contrast, Ardaiz is easily accessible and can speak
17 to the press with ease.

18 Life without a possibility of parole will in no way lighten
19 our consciences; in this case, this man has been wrongfully
20 convicted. The system failed. The prosecution and defense cannot
21 rest. The truth must be told by truth tellers and anyone with
22 massive influence in the community, yet whom dangerously
23 circumvent justice, must be enjoined.

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27 ⁹ See Declaration of Curtis L. Briggs.

28 ¹⁰ See Declaration of Curtis L. Briggs.

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STATEMENT OF RELEVANT FACTS

In 1978, Chief sat in the defendant's chair at trial and made multiple unsuccessful attempts to fire his public defender, Sal Sciandra.¹¹ As Chief watched and listened to a psychiatrist, Dr. Misset, perjure himself and testified that Chief had admitted to the crime—a crime which Chief did not commit, nor did he ever admit that he did.¹² Chief's skin surged with heat and sweat, a flush of panic and helplessness overcame him, and the crushing weight of the entire justice system across his chest; Chief had attempted to fire Sciandra many times, but his request for help fell on deaf ears by the trial court.¹³ Chief, with his jaw clenched and felt the deep betrayal of American 'justice', lodged an objection for the record the only way he could: he struck Sciandra in the face in court.¹⁴ The California Supreme Court overturned the conviction.¹⁵

Over thirty years later, a prosecutor in a criminal case would report Dr. Misset to the medical board for forging a defendant's answers on a psychological examination involving the issue of whether the defendant formed the intent to commit premeditated murder.¹⁶ In the face of a formal complaint by the Attorney General, Dr. Misset formally forfeited his license.¹⁷

¹¹ People v. Stankewitz, 184 Cal.Rptr.611 (1982).

¹² See Declaration of Curtis L. Briggs.

¹³ People v. Stankewitz, 184 Cal.Rptr.611 (1982).

¹⁴ See Declaratoin of Curtis L. Briggs.

¹⁵ People v. Stankewitz, 184 Cal.Rptr.611 (1982).

¹⁶ See Attorney General Complaint and Stipulation, Attached as

1 In 1983, Chief's counsel at the nes trial was Hugh Goodwin.¹⁸
2 Goodwin rested the defense without putting on any evidence or
3 calling any witnesses whatsoever in the guilt phase. The 9th
4 Circuit described Goodwin's penalty phase performance in the
5 following manner:

6 Two witnesses primarily offered generic testimony about
7 the "power of God" to help persons change their lives,
8 and the parties stipulated that a third witness would
9 have testified regarding his admiration of the work of
10 prison chaplains. This testimony apparently was
11 intended to elicit mercy from the jury. But the plan
12 had little hope of succeeding, and indeed seemed
13 predestined to fail: The prison chaplain, Davis,
14 acknowledged that although he had counseled Stankewitz,
15 he had no reason to believe that Stankewitz had
16 undergone any spiritual conversion. The other
17 testifying witness, assistant district attorney Penner,
18 testified about his religious conviction that God can
19 change lives, but did not have anything to say about
20 Stankewitz, and affirmed his general support for the
21 death penalty. The third witness, whose testimony was
22 admitted by stipulation, was the county sheriff.
23 Goodwin acknowledged that he "knew it was likely that
24 on cross-examination [Davis and Penner] would state
25 that there was no evidence that Mr. Stankewitz would
26 let God into his life," but "believed that by
27 presenting this testimony, God's will would be done,
28 and accordingly [he] did so."¹⁹

19 In 1981, two years before Goodwin tried Chief's case, Goodwin
20 'defended' Troy Jones for murder. The conviction was reversed for
21 ineffective assistance of counsel at all stages. Goodwin failed
22 to obtain exculpatory evidence, failed to object to prejudicial
23 evidence, and failed to hire a defense investigator.²⁰
24

25 Exhibits E and F.

26 ¹⁷ Id.

27 ¹⁸ Stankewitz v. Woodford, 365 F.3d 706 (2004).

28 ¹⁹ Stankewitz v. Woodford, 365 F.3d 706 at 716 (2004).

²⁰ See Declaration of Hugh Goodwin attached as Exhibit H.

1 Chief's appellate counsel missed the deadline to hear
2 Chief's appeal of the second trial.²¹ The Court subsequently
3 determined that Goodwin was somehow effective at the guilt phase,
4 where he followed a nearly identical strategy as in the Jones
5 case.²² No court was made aware of Brown's recantation.

6 As a backdrop to Chief's volleying back and forth from trial
7 courts to appellate courts and back to trial courts was Ardaiz's
8 upward trajectory from prosecutor to Presiding Judge. There is an
9 abundance of media which demonstrates that he still yields
10 incredible influence with the public, especially regarding the
11 death penalty.²³

12 Moreover, Ardaiz's words reveal that he is keenly aware of
13 his role in the press and the eyes of the public. In his book,
14 Hands Through Stone, he writes about being one of the few, if
15 any, judges, to witness an execution on California's Death Row.
16 The execution was of Clarence Ray Allen, a man that had been
17 convicted by Ardaiz several years after Chief was convicted.²⁴

18 Ardaiz writes that he was aware of the attention he received
19 and he was aware that the victim's family, the public, and the
20 press, all wanted to hear from him.²⁵ He describes his hesitation
21 in addressing the family and fellow witnesses of the execution,
22 but more importantly, he refused to give a statement to the press
23
24

25 ²¹ See Declaration of Curtis L. Briggs.

26 ²³ See Google results page, sample selection of articles, attached
as Exhibit G.

27 ²⁴ James Ardaiz, Hands through Stone, Page 38.

28 ²⁵ Id.

1 regarding the events, avoiding the media altogether as he exited
2 San Quentin.²⁶

3 Recently in Chief's case, Ardaiz failed to follow the same
4 protocol regarding statements to the public. On October 17,
5 2016, the Fresno Bee ran an article titled "Legendary lawyer
6 Serra will defend death row inmate Stankewitz."²⁷ The Fresno Bee
7 included the following published statements in response to an
8 account by a primary witness, Billie Brown, that Ardaiz, as the
9 original prosecutor, suborned perjury:

10 On Monday, Presiding Judge Ardaiz, who retired as
11 Presiding Judge of the 5th District Court of Appeal,
12 said Brown's declaration is untruthful and "simply
13 ridiculous."

14 ...

15 Nearly four decades after Stankewitz was first
16 convicted, Presiding Judge Ardaiz said he has no doubt
17 that Stankewitz killed Graybeal: "Doug Stankewitz did
18 what I convicted him of doing - a cold-blooded,
19 premeditated murder."²⁸

20 Ardaiz's resume primarily spotlights his role as a trial
21 court judge, appellate judge, and presiding judge, of thirty
22 years. One publicly-accessible, biography to market Ardaiz as an
23 arbitrator and mediator, depicts Ardaiz as a judge, and makes
24 only one reference to him as a prosecutor:

25 With over 30 years of service to California as both a
26 trial and appellate court judge, Presiding Justice
27 Ardaiz of the Fifth District Court of Appeal has joined
28 Baker Manock & Jensen as Special Counsel. Justice
Presiding Judge Ardaiz served as the Administrative
Presiding Justice of Court of Appeal, headquartered in
Fresno, since August 1994.

26 Id.

27 See Exhibit B.

28 See Exhibit A.

1 Justice Presiding Judge Ardaiz served as Administrative
2 Presiding Justice, Fifth District Court of Appeal
3 (1994-2010); Associate Justice, Fifth District Court of
4 Appeal (1988-1994); Superior Court, County of Fresno
5 (1985-1988); Municipal Court, County of Fresno (1981-
6 1988); Chief Deputy District Attorney, Homicide, County
7 of Fresno (1997-1981).

8 California Jurist of the Year (1999-2000); Chair
9 Executive Committee Judicial Council; Chair Task Force
10 on Trial Court Employees (creating new personnel system
11 for 20,000 employees in 58 counties with separate
12 systems, negotiating all labor issues); Co-Author,
13 California Evidence; National lecturer and state
14 lecturer in evidence, trial practice, judicial decision
15 making; Distinguished American Award (2008); Japanese
16 American Citizen's League Hastings Alumnus of the Year
17 (Fresno Chapter); four-time recipient of the Ralph Klepp
18 Award for judicial management in California.²⁹

19 A website for appellate consultation services, depicts Ardaiz
20 as one of several members of a team available for consultation.³⁰
21 After touting a "70% success rate" in appellate courts, the
22 caption reads: "We are former appellate Justices and law clerks
23 who have worked inside appellate courts. Get in touch with us!"
24 In the "Team" section of the website, the caption reads "Our team
25 is uniquely qualified to evaluate and handle appeals and writs.³¹
26 We're former Appellate Justices and Law Clerks with years of
27 experience working inside appellate courts."³² Below a photo of
28 the director are nine photos of other members of the team.³³ The
top center photo is a photo of Ardaiz wearing a judge's robe.³⁴

29 See Exhibit C.

30 <http://moskovitzappellateteam.com/team/justice-james-ardaiz>

31 See Exhibit D.

32 See Exhibit D.

33 See Exhibit D.

34 See Exhibit D.

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PRAYER FOR RELIEF

If left unrestrained, Presiding Judge Presiding Judge Ardaiz's influence with the public, combined with his willingness to address questions of law and fact for the court and jury in the public realm, will cause further devastation to Chief's hope for a fair trial. Ardaiz's statements not only influence the public, thereby influencing the jury pool, but, given his prowess as a long-time esteemed member of the bench, undoubtedly creates the danger that his influence could extend beyond the public, to the trial and appellate courts. To ensure that Chief finally gets a fair trial on the merits, Ardaiz must be enjoined from any further public comments that could impact Chief's opportunity for a fair trial. It is prayed, that Ardaiz is prohibited by this court's order from:

- 1) Making any direct or indirect comments to the public regarding Douglass Stankewitz;
- 2) Making any direct or indirect comments to the public regarding the death penalty;
- 3) Commenting on any pending litigation pending in Fresno County.

Dated: March 17, 2017

Respectfully submitted,

/s/Curtis L. Briggs
J. Tony Serra
Curtis L. Briggs
Tyler R. Smith
Attorneys for Defendant
Douglas Stankewitz

1 ARGUMENT

2 This Court has a duty to ensure a fair trial. Honorable James
3 Ardaiz, Ret., as the former prosecutor of this case, has embraced
4 a public identity as a presiding appellate court judge, and his
5 present conduct is intended to unfairly influence the outcome of
6 future proceedings in this pending matter. Any further comments
7 detract from public confidence in future proceedings, and this
8 Court has a duty to prevent further prejudice to Mr. Stankewitz
9 by enjoining Ardaiz from comments directed at the merits of this
10 case, and otherwise. Mr. Stankewitz and counsel must remain
11 unencumbered in their ability to counteract prejudicial publicity
12 to ensure that Chief receives a fair trial.

13
14 I.

15 ARDAIZ IS A LAWYER, WITNESS, AND COURT
16 OFFICIAL, AND THE COURT MUST EXERCISE ITS
17 JURISDICTION TO PREVENT THE BALANCE OF
 PRETRIAL PUBLICITY FROM SHIFTING AGAINST
 CHIEF.

18 Courts have an obligation to ensure a fair trial to the
19 accused, and accordingly, have jurisdiction against lawyers,
20 parties, and witnesses to criminal cases.³⁵

21 "Due process requires that the accused receive a trial by an
22 impartial jury free from outside influences. Given the
23 pervasiveness of modern communications and the difficulty of
24 effacing prejudicial publicity from the minds of the jurors, the

25
26 ³⁵ Sheppard v. Maxwell, 384 U.S. 333, 362, 86 S.Ct. 1507 1522, 16
27 L.Ed.2d 600; see also Groppi v. Wisconsin, 400 U.S. 505, 508, [7
28 Cal.3d 731] 91 S.Ct. 490, 27 L.Ed.2d 571; Maine v. Superior Court,
68 Cal.2d 375.

1 trial courts must take strong measures to ensure that the balance
2 is never weighed against the accused. And appellate tribunals
3 have the duty to make an independent evaluation of the
4 circumstances."³⁶

5 Ardaiz is arguably still a prosecutor on this case and he
6 has made prejudicial statements in the press. In light of defense
7 allegations of prosecutorial misconduct in this case, Ardaiz is a
8 witness as well. Ardaiz's propensity to publicly address the
9 merits of this case, even after the 9th Circuit Court of Appeals
10 reversed the conviction, highlights his disregard for the legal
11 system and underscores the importance of enjoining his conduct to
12 ensure Chief receives a fair trial.

13 **A. Ardaiz as Attorney on This Case**

14 Ardaiz was the original prosecutor on this case.³⁷ He was
15 involved in all aspects of this case during the first trial and
16 leading up to the second trial.³⁸ If Ardaiz seeks to advocate
17 publicly for a conviction against Chief, then he is still an
18 attorney who is associated with the prosecution team. Therefore,
19 he is a lawyer in this action and this Court has jurisdiction
20 over him.

21 **B. Ardaiz as a Witness**

22 Ardaiz is a witness because, according to the defense
23 perspective, he is the primary government actor responsible for
24

25 ³⁶ Sheppard v. Maxwell, 384 U.S. 333, 362, 86 S.Ct. 1507 1522, 16
26 L.Ed.2d 600; see also Groppi v. Wisconsin, 400 U.S. 505, 508, [7
27 Cal.3d 731] 91 S.Ct. 490, 27 L.Ed.2d 571; Maine v. Superior Court,
68 Cal.2d 375.

27 ³⁷ See Declaration of Curtis L. Briggs.

28 ³⁸ Id.

1 the unconstitutional prosecution of Chief. Since many of the
2 issues raised relate to prosecutorial misconduct of which Ardaiz
3 is both suspect and is a witness.

4 **C. This Court Must Enjoin Ardaiz to Prevent Future Imbalance of**
5 **Prejudicial Publicity.**

6 Courts are required to administrate a fair trial. In
7 Sheppard v. Maxwell, a defendant's due process was found to have
8 been violated by extensive pretrial publicity. While Sheppard
9 was a more extreme example that focused on pervasive prejudicial
10 media reporting against the defendant, the court's discussion is
11 useful to understanding how and why this Court should exercise
12 jurisdiction restrain Ardaiz:

13 ... the trial court might well have proscribed
14 extrajudicial statements by any lawyer, party, witness,
15 or court official which divulged prejudicial matters, .
16 . . any belief in guilt or innocence; or like
17 statements concerning the merits of the case. See State
18 v. Van Dyne, 43 N.J., 369, 389, 204 A.2d 841, 852
(1964), in which the court interpreted Canon 20 of the
19 American Bar Association's Canons of Professional
20 Ethics to prohibit such statements.³⁹

21 . . .

22 Being advised of the great public interest in the case,
23 the mass coverage of the press, and the potential
24 prejudicial impact of publicity, the court could also
25 have requested the appropriate city and county
26 officials to promulgate a regulation with respect to
27 dissemination of information about the case by their
28 employees."⁴⁰

29 ³⁹Sheppard v. Maxwell, 384 U.S. 333, 362-363, 86 S.Ct. 1507,
30 16 L.Ed.2d 600 (1966).

31 ⁴⁰Ibid.

1 Here, Chief is set for jury trial. The issue to be decided
2 is whether the issue was premeditated and in cold-blood. These
3 are the exact words Ardaiz is quoted as saying in the Fresno Bee.
4 Ardaiz's words were designed to reach an audience because they
5 were made to the press. Specifically, they were designed to
6 reach the local population of Fresno because the *Fresno Bee* is a
7 local publication.

8 Therefore, Ardaiz's future actions are predictable: he will
9 take actions which jeopardize Chief's chance for a fair trial,
10 and he must be enjoined from doing so.

11
12 II.

13 PRESIDING JUDGE ARDAIZ RELIES ON HIS STATUS
14 AS RETIRED PRESIDING JUDGE TO MAKE COMMENTS
15 THAT ARE INTENDED TO INFLUENCE FUTURE
PROCEEDINGS.

16 Former Presiding Judge Ardaiz is not a dormant fixture in
17 California jurisprudence. He does not rest in the shadows,
18 speaking only as necessary. Instead, former Presiding Judge
19 Ardaiz puts his judicial pedigree in the forefront of his public
20 persona, and presumably he benefits professionally and
21 financially from doing so. He combines his efforts to market
22 himself by way of his judicial pedigree to the public, and
23 simultaneously interjected his opinion on the merits of Chief's
24 retrial., Ardaiz has invited the abridgement of his First
25 Amendment Rights:

26 "An independent, impartial, and honorable judiciary is
27 indispensable to justice in our society." Public
28 confidence in the impartiality of the judiciary is

1 maintained by the adherence of each judge to this
2 responsibility. Conversely, violations of this code
3 diminish public confidence in the judiciary and thereby
4 do injury to the system of government under law.⁴¹

5 . . .

6 "for this canon, if a retired judge is serving in the
7 Assigned Judges Program, the judge is considered to
8 'perform judicial functions.' Because retired judges who
9 are privately retained may perform judicial functions,
10 their conduct while performing those functions should be
11 guided by this code."⁴²

12 It is inappropriate and highly unusual for a person in former
13 Presiding Judge Ardaiz's position to defend his actions as a
14 prosecutor in the press. Ardaiz understands his influence in the
15 legal community and the public. He cannot separate himself from
16 it, nor does he make any effort to do so. In fact, as
17 illustrated below, a major component of his contemporary
18 professional identity is the promotion of his image and abilities
19 as an appellate and presiding judge as demonstrated by marketing
20 materials attached as Exhibits C and D.

21 Ardaiz has a judicial impact by design, and should he be
22 permitted to comment, his comments substantially interfere with
23 future hearings in this matter. If Ardaiz's professional
24 marketing efforts are successful, members of the public,
25 attorneys, and judges will believe that 'if Presiding Judge
26 Ardaiz says Chief is guilty, then Chief is guilty.' Presiding

27 ⁴¹ California Code of Judicial Ethics, Canon 1; Page 8.

28 ⁴² California Code of Judicial Ethics, ADVISORY COMMITTEE
COMMENTARY: Canon 6A 14 [emphasis added].

1 Judge Ardaiz is not situated as an ordinary retired prosecutor.
2 This contradicts the entire foundation of the Canon of Judicial
3 Ethics.

4 III.

5 PRESIDING JUDGE ARDAIZ'S COMMENTS ON A PENDING MATTER
6 ARE PREJUDICIAL UNDER BROADMAN V. COMMISSION ON
7 JUDICIAL PERFORMANCE.

8 Public comments by a judge regarding pending matters violate
9 the Canon of Judicial Ethics and case law: "A judge shall not
10 make any public comment about a pending or impending proceeding
11 in any court, and shall not make any nonpublic comment that might
12 substantially interfere with a fair trial or hearing. . ."43

13 Although a judge is permitted to make nonpublic
14 comments about pending* or impending* cases that will
15 not substantially interfere with a fair trial or
16 hearing, the judge should be cautious when making any
17 such comments. There is always a risk that a comment
18 can be misheard, misinterpreted, or repeated. A judge
19 making such a comment must be mindful of the judge's
20 obligation under Canon to act at all times in a manner
21 that promotes public confidence in the integrity* and
22 impartiality* of the judiciary.⁴⁴

19 A judge's public comment on a pending case threatens
20 the state's interest in maintaining public confidence
21 in the judiciary whether or not the case to which the
22 comment is directed is pending before the commenting
23 judge.⁴⁵

22 When the case is pending before a judge other than the
23 commenting judge, the public may perceive the comment

24 ⁴³ California Code of Judicial Ethics, Page 17, lines 14-36.

25 ⁴⁴ California Code of Judicial Ethics, Page 18, lines 14-22.

26 ⁴⁵ Broadman v. Commission on Judicial Performance, 77
27 Cal.Rptr.2d 408, 420, 18 Cal.4th 1079, 959 P.2d 715 (Cal.,
28 1998).

1 as an attempt to influence the judge who is charged
2 with deciding the case.⁴⁶

3 . . . an advocate for the interests of one of the
4 parties, or has resorted to extrajudicial means to
5 defend the judge's own rulings. Cite "As applied to
6 comments on matters pending before another judge, the
7 former canon prevents a judge from exerting, or
8 appearing to exert, pressure on another judge to
9 decide⁴⁷

10 Just as Ardaiz defended his actions as a prosecutor in the
11 press, in this case, a court found against a sitting judge who
12 defended his rulings in the media Broadman v. Commission on
13 Judicial Performance.⁴⁸ The judge was found in violation of three
14 counts of judicial misconduct for granting several interviews to
15 the press regarding his decisions in cases which were pending
16 appeal.⁴⁹ The relevant count charged that "petitioner publicly
17 commented on pending cases in violation of the Code of Judicial
18 Conduct and [18 Cal.4th 1088] used the news media as a forum to
19 defend his judicial actions.⁵⁰

20 In explaining that the judge was culpable of prejudicial
21 conduct absent bad-faith, the court explained:

22 "[p]rejudicial conduct is distinguishable from willful
23 misconduct in that a judge's acts may constitute
24 prejudicial conduct even if not committed in a judicial
25 capacity, or, if committed in a judicial capacity, not
26 committed in bad faith. Prejudicial conduct is "either
27 'conduct which a judge undertakes in good faith but
28 which nevertheless would appear to an objective observer
to be not only unjudicial conduct but conduct

25 ⁴⁶ Ibid.

26 ⁴⁷ Id. at 422.

27 ⁴⁸ Id. at 411-412.

28 ⁴⁹ Id. at 411.

⁵⁰ Ibid.

1 prejudicial to public esteem for the judicial office'
2 [citation] or 'willful misconduct out of office, i.e.,
3 unjudicial conduct committed in bad faith by a judge not
4 then acting in a [18 Cal.4th 1093] judicial capacity'
5 [citation]".⁵¹

6 In this context, bad faith means a culpable mental state
7 beyond mere negligence and consisting of either knowing
8 or not caring that the conduct being undertaken is
9 unjudicial and prejudicial to public esteem. In sum, to
10 constitute prejudicial conduct, a judge's actions must
11 bring "the judicial office into disrepute," that is, the
12 conduct would appear to an objective observer to be
13 prejudicial to " 'public esteem for the judicial
14 office.' " (Kennick v. Commission on Judicial
15 Performance, *supra*, 50 Cal.3d at p. 314, 267 Cal.Rptr.
16 293, 787 P.2d 591.)⁵²

17 Specific to instances where the case is pending in front of a
18 judge different than the judge commenting:

19 When the case is pending before a judge other than the
20 commenting judge, the public may perceive the comment
21 as an attempt to influence the judge who is charged
22 with deciding the case. (Ibid.) Such comments may also
23 create the public impression that the judge has
24 abandoned the judicial role to become an advocate for
25 the judge's own ruling or the position advanced by one
26 of the parties.⁵³

27 Presiding Judge Ardaiz's comments would be seen by the
28 objective observer as "to be not only unjudicial conduct but
conduct prejudicial to public esteem for the judicial office"

29 ⁵¹ Doan v. Commission on Judicial Performance, *supra*, 11
30 Cal.4th at p. 312, 45 Cal.Rptr.2d 254, 902 P.2d 272,
31 original italics. [emphasis added]

32 ⁵² Broadman v. Commission on Judicial Performance, 77 Cal.Rptr.2d
33 408, 18 Cal.4th 1079, 959 P.2d 715 (Cal., 1998)

34 ⁵³ Broadman v. Commission on Judicial Performance, 77
35 Cal.Rptr.2d 408, 18 Cal.4th 1079, 959 P.2d 715 (Cal., 1998)

1 whether the objective observer is a citizen of Fresno County, a
2 potential juror, a lawyer, another judge, defendants awaiting
3 trial in county jail, or anyone else. Any person who sees that a
4 former judge, or better yet a person still referring to himself
5 as a "Presiding Judge," has made public statements in conflict
6 with a federal court's order for a retrial, will form the opinion
7 that the verdict should be a foregone conclusion. This is
8 especially so with the star power of Ardaiz.

9 Ardaiz's comments to the *Fresno Bee* were relevant to the
10 exact legal issue to be decided in Chief's retrial on
11 sentencing.⁵⁴ One can only speculate as to how much he has
12 discussed this matter with other judges. There could not have
13 been any other intended result to making statements to the Fresno
14 Bee regarding Chief's conviction. Ardaiz's legal aptitude,
15 experience, and accomplishments are so incredibly superior to
16 most others that this was a focused and intentional departure
17 from professional decorum in defense of Presiding Judge Ardaiz's
18 reputation. Therefore, given what has already been demonstrated
19 by Presiding Judge Ardaiz, his speech and conduct must be
20 enjoined. Otherwise, it would be to allow gamesmanship by a
21 former judge.

22 //

23 //

24 //

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26
27 ⁵⁴ The 9th Circuit reversed and remanded for trial on punishment;
28 the issue is whether the killing was coldblooded and premeditated.

1 IV.

2 STANKEWITZ'S FIRST AMENDMENT RIGHTS MUST
3 REMAIN UNHINDERED TO COUNTER PREJUDICE FROM
4 PRESIDING JUDGE ARDAIZ'S PUBLIC STATEMENTS.

5 Chief has been prejudiced by a litany of acts against him,
6 including perjurious statements by a defense expert who has
7 since fallen from grace. Chief and his counsel must receive the
8 protection of this Court in both enjoining Presiding Judge
9 Ardaiz, but in not enjoining Chief and his counsels' ability to
10 discuss the matter with the public and media.

11 Because judges and attorneys play different roles in the
12 judicial process, their public comments on pending
13 judicial proceedings threaten the fairness of those
14 proceedings in different ways and to different degrees.
15 The public understands that in judicial proceedings,
16 lawyers, although also officers of the court, are
17 advocates for the interests of their clients (see, e.g.,
18 Gentile v. State Bar of Nevada, *supra*, 501 U.S. at p.
19 1051, 111 S.Ct. 2720.⁵⁵

20 Therefore, given the necessity for Chief and his counsel to
21 counteract the likely prejudice to the public, Chief must not be
22 restrained from making public statements.

23 //
24 //
25 //
26 //
27 //
28 //

27 ⁵⁵ Broadman v. Commission on Judicial Performance, 77 Cal.Rptr.2d
28 408, 18 Cal.4th 1079, 959 P.2d 715 (Cal., 1998)

CONCLUSION

For the reasons stated above, Ardaiz must be enjoined from making statements in connection with this case.

Dated: March 17, 2017

Respectfully submitted,

/s/Curtis L. Briggs

J. Tony Serra

Curtis L. Briggs

Tyler R. Smith

Attorneys for Defendant

Douglas Stankewitz

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Declaration of Curtis L. Briggs

I, Curtis L. Briggs, declare under penalty of perjury, if called to testify, based on information and belief, will testify as follows:

I believe all information in this motion to be true based on investigation by myself or my legal team and reviewing the various dockets associated with this case.

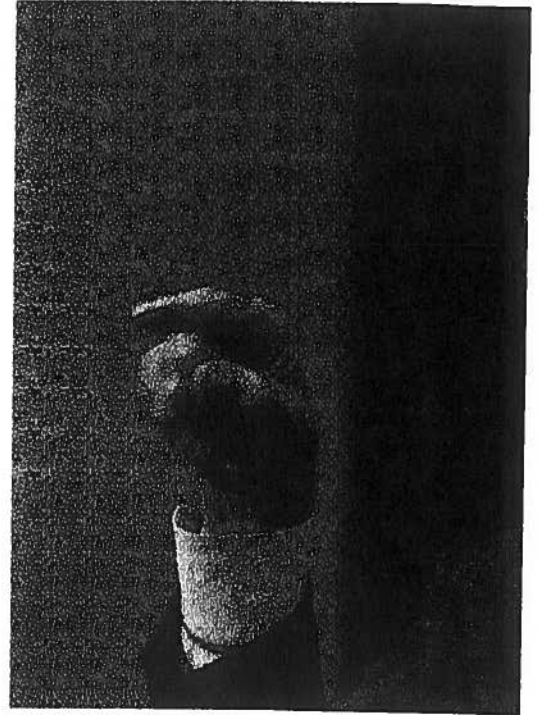
Executed at San Francisco on March 17, 2017.

/s/ Curtis L. Briggs
Curtis L. Briggs

Exhibit A

CRIME OCTOBER 17, 2016 3:40 PM

Legendary lawyer Serra will defend death row inmate Stankewitz



< 1 of 2 >



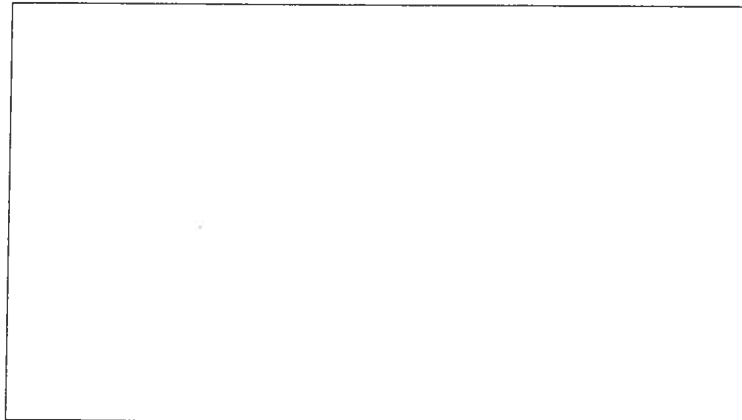
BY PABLO LOPEZ
plopez@fresnobee.com

Legendary San Francisco attorney J. Tony Serra is taking over the case of Douglas Ray Stankewitz, who is awaiting a third retrial in Fresno County Superior Court in the shooting death of 22-year-old Theresa Graybeal in February 1978.

And the 81-year-old Serra plans to bring his San Francisco legal team with him to defend the longest-tenured inmate on California's death row.

On Monday, attorney Curtis Briggs informed Judge Arlan Harrell that he, Serra and attorney Tyler Smith have reviewed critical evidence in the case and are ready to defend Stankewitz without further delays.

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KEY WITNESS BILLY BROWN, WHO HAS SINCE DIED, SAYS HE WAS PRESSURED TO GIVE FALSE TESTIMONY AGAINST STANKEWITZ. READ BROWN'S 1993 DECLARATION HERE.

According to Brown, on the ride to Fresno, Lewis held the victim and had a knife to her throat. After arriving in Fresno, the group picked up Machaca at a bar and went to 10th and Vine to buy drugs, he says.

While Menchaca went into a house to get drugs, Brown says, Stankewitz and Lewis got out of the car. Topping told Brown to remain in the car. "When I slid into the front seat onto the console, I heard a gunshot," Brown says. "I looked to the right and saw Doug Stankewitz and Marlin Lewis coming toward the car. Teresa Graybeal was already on the ground."

Brown says: "I did not see who pulled the trigger." But he says he heard Lewis say "could we have dropped her or could we have dropped her." He says he never heard Stankewitz say anything about "dropping her." Rather, "it was Lewis who said that," Brown says.

After the shooting, Brown told his mother about the shooting and she called police. In his declaration, Brown says the prosecutor, James Ardaiz, told him if he did not testify, he would be charged with homicide. He says Ardaiz "schooled" him how to testify and remembered going to the prosecutor's office on weekends to go over his testimony.

He says Ardaiz promised to give him a new identity and move him and his mother out of town. He also said he was given alcohol before he testified "to relax my nerves."

"I was usually buzzed on the stand," he says.

Brown says he tried in court to give a true account of what happened, but Ardaiz stopped him. He said Stankewitz's lawyer never interviewed him.

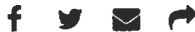
"I give this four-page statement of my own free will, without promise of reward or threat of coercion of any kind," he says.

On Monday, Ardaiz, who retired as presiding judge of the 5th District Court of Appeal, said Brown's declaration is untruthful and "simply ridiculous."

Ardaiz contends Brown was "scared to death of Doug Stankewitz" and under pressure by Stankewitz's supporters and other American Indians to change his testimony. Ardaiz said he doubts that Lewis killed Graybeal. "He was a wimp, very low-key," Ardaiz said.

Nearly four decades after Stankewitz was first convicted, Ardaiz said he has no doubt that Stankewitz killed Graybeal: "Doug Stankewitz did what I convicted him of doing - a cold-blooded, premeditated murder."

Pablo Lopez: 559-441-6434, @beecourts



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WE INTEND TO WALK HIM OUT THE DOOR.

San Francisco attorney Curtis Briggs

Harrell tentatively approved the substitution, as long as Serra signs the appropriate paperwork within two or three days. Because Briggs gave his word that Serra would sign the paperwork, Harrell gave the go-ahead to Fresno defense attorney Peter Jones, who has been representing Stankewitz, to turn over evidence in the case to Serra's legal team.

The evidence is contained in 44 boxes, several thumb drives and on a hard drive, Jones told the judge. Stankewitz's trial is tentatively scheduled to start in October 2017.

Stankewitz, 58, appeared in a good mood in the courtroom when the judge allowed the substitution.

Serra, who did not attend Monday's hearing, is a well-known civil rights lawyer, activist and tax resister. He was the subject of the 1989 movie "True Believer" about a murder in San Francisco's Chinatown in which he won an acquittal for death row inmate Chol Soo Lee.

Serra also has successfully defended Black Panther leader Huey Newton in a murder trial and represented individuals from groups as diverse and politically charged as the White Panthers, Hells Angels, Good Earth and New World Liberation Front.

In 2001, Serra represented Sara Jane Olson, who was a fugitive for more than two decades before she pleaded guilty in 2001 to two counts of possessing explosives with intent to murder, and in 2003 to second-degree murder, both stemming from her membership in the radical Symbionese Liberation Army in the 1970s. She received a sentence of 14 years in prison and was paroled in 2009.

Outside court Monday, Briggs said Stankewitz, who is American Indian and known as "Chief," first talked to Serra three decades ago about taking over his case and has been in contact with Serra over the years.

Briggs said Serra took the case because he believes American Indians like Stankewitz are too poor to afford good legal counsel. "Tony has a special fondness for American Indians and their causes," said Briggs, who pointed out that the substitution comes at no extra cost to taxpayers because Serra has taken a vow of poverty and charges his poor clients very little. "Doug's supporters have promised to chip in," Briggs said.



DOUG STANKEWITZ DID WHAT I CONVICTED HIM OF DOING – A COLD-BLOODED, PREMEDITATED MURDER.

Former Fresno prosecutor James Ardaiz

Stankewitz's claim of innocence could be difficult to prove.

In 1982, the California Supreme Court overturned Stankewitz's first death sentence. The following year, he was again convicted and sentenced to death, but that didn't hold up, either.

In 2012, the 9th U.S. Circuit Court of Appeals overturned that death sentence because of incompetent legal representation. The court didn't overturn his murder conviction. It only ruled that a new jury should determine whether Stankewitz should be executed or sentenced to life in prison without parole.

Court records say Stankewitz was 19 in February 1978 when he and three others from Fresno – Billy Brown, 14, Marlin Lewis, 22, and Teena Topping, 19 – got stranded in Modesto. Outside a department store, they forced Graybeal into her car and drove off.

In Fresno, they drove to the Calwa area, picked up Christina Menchaca, 25, and looked for heroin to buy. Later, they stopped at Vine Avenue and 10th Street.

According to Brown's testimony, Stankewitz raised a gun and shot Graybeal from about one foot away. "Did I drop her or did I drop her?" Brown quoted Stankewitz as saying.

Brown's murder charge was dropped for testifying against Stankewitz. Lewis pleaded guilty to second-degree murder. Menchaca and Topping pleaded guilty to being accessories. Since then, Brown, Lewis and Topping have died.

Briggs did not give details about any defense to the charges, but Stankewitz and his supporters point to a declaration Brown made in September 1993. In it, Brown says he never saw Stankewitz with a gun and never heard him utter the words that led to his death sentence.

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Exhibit B

CONFIDENTIAL MEMORANDUM TO COUNSEL

Date: November 30, 1993
To: Robert R. Bryan and Patience Milrod, attorneys
From: Mimi Kochuba, Chief Investigator
Paul Anderson Associates
Re: Transcription of a September 20, 1993 interview with Billy Bob Brown at the office of and in the presence of Rocky Pipkin and J.P. Pipkin, licensed investigators, Fresno [Stankewitz v. Vasquez, U.S. Dist. Ct. for the Eastern Dist. Case No. CV-F-91-616-OWW-P (death penalty)]

Note:

BB: - Billy Bob Brown
MK: - Mimi Kochuba
RP: - Rocky Pipkin
PP: - J. P. Pipkin

MK: September 20, 1993 and we are here to interview Billy. And, also present are Rocky Pipkin, and Mimi Kochuba and Rocky's father JP. So we're going to start from the beginning and go through everything that we talked about before but let's start a couple days before the homicide, and what happened and we'll take it from there, OK?

So, a couple days before the homicide, before you went up to Sacramento wha...you were living in Pinedale.

BB: Pinedale

MK: And what?

BB: I was at Pinedale OK, and that was the first time I ever seen Doug, OK.

MK: Did you meet him in Pinedale?

BB: I met him at Pinedale. It was the first time I ever met him.

MK: OK.

BB: Yeah.

MK: At a bar?

BB: No, I met him over at my sister's house. That's the first time I seen him.

MK: What sister?

BB: Cindy. My oldest one.

MK: OK.

BB: And then...ah...that was...I hadn't seen him for a while after that and then the next thing I know...ah...Teena and them come over to MARY'S PLACE looking for me. You know. I was over there sweeping.

MK: Yeah, you met Doug and then you didn't see him for a while. What do you mean, a couple of days?

BB: No, that same day we took off.

MK: Oh, that same day, oh I see.

BB: You know, and, I was over at MARY'S PLACE and the next thing I know because I sweep their floors up for them.

MK: That's a bar, right?

BB: Yeah. The next thing I know...ah...Teena comes over there and asks me if I wanna go with 'em. You know. Down to Chinatown to go see Doug with 'em. So I said yeah. Then I got done sweeping, I got my money from the owner of the bar, and we took off. We went to Chinatown. And then...ah...and then we ran into Doug down there. You know. So...so...know... from there they said they didn't have enough gas to make it all the way to Sacramento, but to go to Pinedale and then go all the way to Sacramento.

MK: Right.

BB: So, then they ask me if I can go with them. Just go ahead and they'd bring me back that same night. You know, but it didn't turn out that way.

MK: Uh huh. [agreement]

BB: You know, so what happened was we took off and we went to Sacramento. We were up there for a few days.

MK: Where did you stay when you were up there?

BB: Over at Glenda's house in Sacramento. [unintelligible]

MK: Did all of you stay at Sacramento?

BB: Yeah.

MK: I mean at Glenda's?

BB: Yeah.

MK: You all stayed at Glenda's?

BB: Yeah.

MK: And who was with you at the time?

BB: At the time it was me, Doug, Rosie, [unintelligible, possibly JC] and Teena, and Marlin that lived.

MK: Marlin, OK.

BB: We're all there.

MK: Who drove with you to Sacramento?

BB: We all... well ok the only ones who went up there to Sacramento was me, let me think that was a long time ago.

MK: Yeah.

BB: Me, Doug, Rosie, Teena, and JC.

MK: And Marlin was already up in Sacramento?

BB: Yeah, Marlin was already there. Uh huh.

MK: Ok. And while you were in Sacramento what did you do?

BB: Well...uh...as far as I know they left me there at the house. We went to the bar, its called the GOLDEN NUGGET, well that's the first night we were there. We went to the GOLDEN NUGGET, that's what its called. And then...ah...third, Doug and them guys were, he went in there to go see if he could get some gold. That's what they called funny I guess up there. And he walked to see if he ~~could get some gold and I was sitting at the corner of the bar and~~ some other Indian guy starts messing with me. You know. And then I went up and I told Doug, I said, 'Doug, man, this guy is messing with me.' You know. And Doug told the guy to leave me alone. And the guy kept on messin' with me. So Doug just, [popping sound] bloom, hit him upside the chops and knocked him over the bar. You know. And I guess he knows the bartender because he didn't say anything to Doug.

MK: Uh huh. [agreement]

BB: He just threw the other guy out of the bar. You know. And Doug said he didn't want anybody messin' with me. And I said 'cool.' So after that we all loaded up...the next night we all loaded up in the car and we stopped by the GOLDEN NUGGET one more time to get some beer and stuff. And then we started heading back to Fresno.

MK: Ok so, you were drinking on your way?

BB: Well, I wouldn't say drinking. I would say a twelve pack, you know, I wouldn't say drinking.

MK: Right.

BB: You know. But we were on our way back you know. And at that point it was me, JC, Marilyn, Doug's mom, and...ah...Teena and Rosie. They were all come in [unintelligible] but Marlin wasn't with us. Then we started coming back and we got stopped in Manteca. OK, and I didn't know what was happenin'. I went in the store and then I came out and they were changin' the transmission fluid in the car you know and Doug asked me to hold the hood open. So I held the hood open of the car and ah the next thing I know it, I hear somebody say 'put the hood down and put your hands on the hood.' Ok, so I looked over the hood like that, and I got guns all over us. You know, and they had us all drop down. And they took us all in right there. Took us to Manteca jail.

MK: Did they, ok, at that time did they find any weapons with you?

BB: Uh.

MK: At that time just.

BB: Oh, at that time?

MK: Yes.

BB: Whenever they got us? I don't know at that time. You know I can't say they did or they didn't. I know that they found it after we got into custody, I know they found one. You know. And...

RP: What kind of weapon?

BB: It was a 25 caliber...

RP: Little Pea shooter?

BB: pist...little pistol, you know. And...ah...they told us...ah...they took us down to Manteca jail. They had us there for several hours. And then they came out and they told us well they had some good news and some bad news for us. You know. The good news is that we could all leave and they say the bad news is the car has gotta stay, because they couldn't contact the owner of the car. You know so I...you know we all walked and...ah...

RP: Who, who was the owner of the car?

BB: I don't know to this day I don't know. Ah...But what it was...

MK: Um...

BB: it was supposed to be Teena's grandfather's or something, you know...[unintelligible] how that works.

MK: Oh, ok...

RP: Were you guys smokin' any weed or anything, or?

BB: No.

RP: Just drinkin' beer.

BB: Yep.

MK: No heroin at the time?

BB: No, not at that time.

MK: Ok, what happened to the...alright..what happened...getting back to the Manteca Police station. You said there was a 25 caliber weapon.

BB: Yeah.

MK: How did you see it?

BB: Ok, the way I seen was...ah...the officer gave it back to Marian.

MK: How did he get it to begin with?

BB: He musta got it out of one of her bags or somethin' you know, I don't know. But, he gave it back to her and said...well you know...gave her back the weapon. That was all I know.

MK: You saw him give it back to her but you never saw him take it from her, or any, out of her bag?

BB: No I didn't, no. But he did give it back to her.

MK: And were there any other weapons that you know of that she took?

BB: Yeah, there was that knife a...ah...like a skinny [? possibly skinning] knife, deer hunting knife, it was in a leather sheath, you know. That fits on the belt.

MK: Who's knife was that?

BB: As far as I know it was Marlin's.

MK: Did you wear..

RP: Uh...

MK: Go ahead.

RP: Was it like an eight inch blade, a six inch blade?

BB: It was about a... 'bout an eight inch blade, it rounded off at the tip.

RP: Kinda like a bowie knife does [unintelligible]?

BB: It came up and then rounded off at the blade, you know, like a circle at the end of the blade.

RP: And, with kind of like a dull point rather than a real sharp looking?

BB: Yeah.

MK: But, and the cops didn't take that?

BB: Uh, they took that and the gun but they gave both weapons back, so.

MK: And you saw them give the knife back to Marlin?

BB: Yeah, I seen em give em back. They gave both weapons back to Marilyn, Doug's mother.

MK: Marian.

BB: Yeah, Marian.

MK: So, they gave the gun and the knife back to Marian?

BB: That's it.

~~MK: And what did Marian do with them at that time?~~

BB: At that time she put 'em inside of her knapsack she had.

MK: Ok. And then, ok, you did not, at that time she put them in the knapsack and you didn't see her give them to anybody.

BB: That's it.

MK: Then what did you do.

BB: Then...uh...after...uh...[unintelligible possibly camera] call we said, if we asked where the closest bus depot was. And the police officers...uh...directed us to the bus depot. Ok, so we all went over to the bus depot and we were setting there because there was no buses running so early in the morning. So we were setting there and...ah...

MK: Where were you sitting? Was [unintelligible]

BB: I was setting right there on the well...

MK: They showed you where the bus depot was, were you in the bus depot?

BB: We were inside the bus depot waiting in the lobby.

MK: Ok, and then what?

BB: And then we were setting there and that's when...uh...oh, I made a mistake, JC was with us too.

MK: Right.

BB: When we were coming back from Sacramento. Because that's when JC and Doug they took a walk. They left the bus depot. And then they came back about thirty minuets later.

MK: What did they do, did they tell you?

BB: Nah, they didn't say anything. And anyways next day, morning got there and then ah Marian says well, we got you know, we only got enough money to pay for Rosie, JC, and her to get on the bus. So me, Teena, Marlin, and Doug we had to hitchhike from ah...Manteca. So we got on the on-ramp early in the morning.

MK: Ok, hold that right there then. Uh...ok, so then you left Marian and the crew. You were gonna go to hitch hike back.

BB: Yeah, yeah all of, Me, Doug, Teena and Marlin we all went over to the on-ramp [unintelligible].

MK: Did you at any time while you were in the bus depot see Marian give any of those weapons to either Doug or Marlin or Teena?

BB: No, I didn't.

MK: You never saw those weapons in the bus depot?

BB: No.

MK: And you never saw Marian go in her knapsack and give them to anybody?

BB: No.

MK: And as far as you knew none of you guys had weapons?

BB: None as far as I knew.

MK: Uh...ah...on your way to hitch hike.

BB: Uh...no, not as far as I know.

MK: Ok, go ahead. So you...so you left the depot.

BB: Yeah we went to the depot and we got on Highway 99 or whatever that highway is.

MK: Did you not know that Marian...I mean...you did...you weren't aware of the fact that there was not enough money?

BB: No, they didn't even tell us that.

MK: Until the following morning?

BB: Until right there, until they were by the gate they didn't have no money, that's why we all had to hitch hike.

MK: Allright.

BB: So, after that we started hitch hiking and then it was...

MK: Whose idea was it to hitch hike?

BB: It was Teena's and our. It was all of ours idea to hitch hike because we didn't have no other way to get home, you know, so. We started hitch hiking. It was me, let me think back, now that was a long time I'm tellin' ya, it was me, and Teena, Marlin [unintelligible] and no Teena and Doug walked ahead me and Marlin was in the back, ok. And if we caught a ride before they caught a ride, right, we were gonna stop and pick them up.

MK: Right.

BB: But if we couldn't get a ride and they got a ride they'd have em, you know, back up and pick us up.

MK: Uh huh. [agreement] So you were all trying to do it, trying to get a ride.

BB: Yeah, yeah, so what happened was uh...Doug at that point, not Doug but Marlin says 'Why don't we just go ahead and get a car from there?' You know while we're hitch hiking.

MK: Where were you at the time?

BB: Uh...We were right there leaving Manteca.

MK: And where, where exactly?

BB: Off the highway.

MK: Up 99?

BB: Yeah.

MK: You were on the ramp?

BB: Yeah, we were on the ramp gettin' on 99.

MK: And Marlin said what?

BB: 'Why don't we go ahead and get a car,' you know.

MK: And what did he mean by that?

BB: I guess...uh...what do ya think he's gonna rip one off yeah or ah...rip a car off or either just, you know kidnap somebody if we get pulled over. You know, if somebody takes us you know. So what happened was is...ah...Marlin, me and Marlin, we got a ride and we picked up Doug and them. Ok, and Marlin got all hesitated cause I know, because this guy had a big old pit bull in the back of his truck. [Laughter from all parties] I mean a big ole nasty ass pit bull and so he was, Marlin said he was gonna shine that on. So when he just took us on in to Sacra...ah...Modesto.

MK: It was a truck?

BB: Yeah, it was a truck, cause I was ridin' in the back I know it was.

RP: With the dog?

BB: Yeah... ah. [Laughter from all parties]

MK: Who put you back there? [she laughs]

BB: Yeah, because he was chained up against there and we was sittin' way toward the back. That way he wouldn't be able to snap at us. But anyway, you know, all jokes aside, we went from there, he gave us a ride to from there to Modesto. And then that's where we went through...uh...we walked across the highway to that K-MART parking lot. And then...

MK: Did you try and hitch hike after he dropped you off?

BB: Yeah, we were over on the ramp, you know. We were settin' there and it started raining you know. We were hitch hiking right when he dropped us off, we got on the on-ramp right there, started hitch hiking, but nobody picked us up. So we walked right over the overpass, you know, up to the K-MART lot. And then...uh...Doug you know tells us, you know, well Marlin says let's see if we can get a car.

MK: He said that again?

BB: Yeah, we can get a car. So ah about that time me and Teena we're over there at that SALVATION ARMY box you know, gettin' some clothes for us because you know it was cold out there, you know, and I didn't have my beanie cap on, my ski glasses you know, stuff that we found in there. Ah...she tells me she says 'listen, their

gonna get a car.' So I was sittin' over there by the telephone booth she goes 'whenever we get a car, listen, we'll holler for you. You come over when we holler for you means we got a car.' So then I was standing right there by the phone booth where the [unintelligible] and everything.

MK: Ok, so Teena, so you were looking at ah...clothes in the SALVATION ARMY bin?

BB: Yeah. we got some clothes out of it, you know.

MK: And you and Teena, ok.

BB: We got some clothes, got some clothes out of it, you know.

MK: And Teena said that, 'look their gonna get a car.'

BB: Yeah.

MK: And so then did she tell you to go stand over by the phone booth...or...did you?

BB: Yeah, she asked me to wait by the phone booth. She says 'whenever we get a car,' if they get a car, 'then we'll call you,' you know. I said Ok. Can...can we take a quick break? I got some quick questions.

MK: Yes.

BB: Um...

TAPE IS SHUT OFF.

TAPING RESUMES.

RP: Ok, we were off the tape there for about 30 seconds to just take care of some housekeeping [to order lunch]. So now we're back on the tape again.

MK: Ok so, Teena said wait by the phone and when?

BB: When they get a car they said they'll call me you know, and for me to run over and get in the car. And that's where...

RP: Not call you on the phone, on the phone just wave at you.

BB: No, no, their gonna wave at me, their gonna holler at me and that means for me to run over to the car, whatever car they got. So...ah...I was standing by the phone the next thing I heard was saying come on, come on. And I seen 'em and they were in a car.

MK: Who was yelling come on, come on?

BB: Teena was hollerin' come on, so. And I was there at the phone, so I ran over to the car, and I...ah...as far as what I seen was is Marlin had a knife up against this girl's ok. He was in the back seat.

MK: How.

BB: He was in the back seat but he had a knife up against her throat, and she was in the middle of the front seat.

MK: Ok, just a second.

RP: Was that, that the same knife that you had seen the cops give to Doug's mom?

BB: Yeah, that same knife, yeah.

RP: Ok.

MK: He was in a...she was in the middle.

BB: Yeah.

MK: The victim was in the middle?

BB: She was in the middle of the front seat. Doug was in the passenger side in the front, Teena was driving.

MK: Where...were they all in the car before you got into the car?

BB: Yeah, they were all in the car before I got there.

MK: So they...so you didn't see them actually overtake her?

BB: No I didn't see it.

MK: You...by the time you got to the car they were all in there and you didn't see anything to that point?

BB: Yeah, they were all in the car.

MK: You didn't see anything up to that point?

BB: I didn't see anything.

MK: Ok, and the victim was in the middle of the front. Marlin had a knife up against her throat. He was where?

BB: He was in the back seat. Right in the middle of the...he was in middle of the seat in the back.

MK: Ok.

BB: He had his arm wrapped around, see, to where the knife would go right by her throat so. Told her not to move.

MK: Ok. And where was Doug?

BB: Doug was in the passenger's side seat. He didn't have no weapon as far as I could see.

MK: Ok, and Marlin was that the same knife?

BB: Yeah, Marlin was the only one I seen with a weapon at that time.

MK: Ok. And you didn't see them overtake her, they were all in the car by the time you got there?

BB: No, yeah they were.

MK: And then what happened.

BB: From there we got in the car and then we took off.

MK: Where were you going?

BB: We headed toward Fresno.

MK: Ok, and where did you go?

BB: We went for Fresno, we went to Calwa. Well I thought it was Chinatown, you know, the way it looked I thought it was in Chinatown cause I was young, you know. They said, so what happened they went to Calwa to a... as far as I know from what I recall was the [unintelligible] thing over on Tenth and Vine.

MK: Yeah, but...

BB: And then ah...oh we went to Chinatown first.

MK: Ok.

BB: We stopped there and that's where we picked up Christine Menchaca.

MK: Where did you pick her up?

BB: Over at what they call the OLYMPIC MOTEL in Chinatown.

MK: Ok, and...ah...did you...first you drove to Chinatown, you went directly to the OLYMPIC MOTEL?

BB: We went right there, we picked up, we picked up Christine over at the bar I forgot the name of it. It was a long time ago, but it was a bar.

MK: You picked up Christina, Christine...

BB: At a bar right there.

MK: Ok, and then, then?

BB: Then we went to the OLYMPIC MOTEL.

MK: Who went to the OLYMPIC MOTEL?

BB: Me, Doug, Teena, Christine and Marlin.

MK: Did you all go inside the motel?

BB: No we didn't...ah...he had me and I know Teena and Doug went up to the room. Marlin and me and Christine, no, Christine, Doug and ah...Christine, Doug and Teena went up to the room. Me and Marlin was left out in the car with the girl.

MK: Ok, hold it right there then. Went up to the room.... What were they gonna do up in the room?

BB: Uh, I don't know. As far as I know, I don't know anything what they were doing up there.

RP: Were they gonna shoot up or something, or?

BB: I don't know. See, I can't say anything I don't know.

RP: They didn't say anything.

~~BB: No they didn't say anything.~~

RP: They just went up there?

BB: That's it.

MK: Ok. And...

RP: Where...

MK: I'm sorry go ahead.

RP: Where was the girl at this time?

BB: The girl was in the back seat with me and Marlin.

MK: And what, if anything, did anybody instruct you what to do?

BB: Uh...uh...Marlin just told Doug, 'I'll just kill her if she tries to run out' that's it. Marlin was the one back there with the knife, so.

MK: So he still had the knife?

BB: Yeah.

MK: On her?

BB: Yeah.

MK: He said he'd kill her if she tried anything?

BB: If she tried to run.

MK: So then you waited in the car. You didn't...ok...so.

BB: No, I didn't do anything because I knew Marlin had that knife.

MK: So you didn't try to help her leave or anything?

BB: No, no.

MK: You knew Marlin had that knife.

BB: I knew he would kill me too probably.

MK: And he held the knife up to her the whole time?

BB: Yeah, he held the knife on her.

MK: Where was he holding the knife?

BB: Right up to her pushing right here, to her chest.

MK: To her chest?

BB: Yeah.

MK: And there was no gun around that you saw?

BB: No gun, not that I seen.

MK: Ok, so then you were sitting in the back seat then. Somehow she got in the back seat, right?

BB: Yeah.

MK: Right. After you picked up Christine?

BB: Yeah. Because Christine got up in the front ok? and then they put her in the back seat with us.

MK: Uh huh. [agreement]

BB: And Christine was sittin' up front until we got over to the

Motel.

MK: Ok, so...ah...then...ah...the victim was between you and Marlin. Marlin was holding the knife?

BB: Yeah in the back seat.

MK: They went up to the hotel...uh...motel room then they came down?

BB: They came down.

MK: Was their behavior any different went they came down, do you remember?

BB: Oh yeah, Doug's was. I mean, Doug's and Teena's, looked like they was drowsy and stuff. I said that in court, you know.

MK: OK. They both looked drowsy.

BB: Yeah, that's it.

RP: Were they high?

BB: I can't tell if they were. They were, Doug was actin' just like he always did...but he wasn't, you know he was just actin' drowsy. But other than that he was just actin' normal.

RP: What do you mean by drowsy exactly?

BB: You, you know like sitting there, you know, whenever he'd lay down, whenever he'd sit in the car for a minute his eyes would start you know closing a little bit.

MK: So he's kinda nodding?

BB: Yeah.

MK: So then him and Teena, how about Christine? How was...was she drowsy or ah..?

BB: Christine was, as far as I know, she was, you know, I wasn't really looking at Christine.

MK: Ok.

BB: You know, I mean I was watching Doug and Teena. But you know 'cause, you know, that's the ones who brought me down.

MK: Were you drinking at any time during that time?

BB: Yeah I was.

MK: What were you drinking?

BB: Well they bought me a, I was drinking a little bottle of wine.

MK: Where did you get the wine? Was that...Were you drinking from the time you left the K-MART shopping center till you got to Fresno, were you drinking any of that time?

BB: I just drank when I got here to Fresno.

MK: When you got to Chinatown?

BB: Yeah.

MK: You stopped in Chinatown for some...for some?

BB: Yeah, we stopped at a store with her still in the car, stopped and got some beers and stuff, you know.

MK: Ok. Who went in and got the beer?

BB: Marlin went in and got the beer. Ok at that time when Marlin went in and got the beer, the girl was so scared. She wasn't gonna try anything anyway, you know.

MK: Uh huh. [agreement]

BB: So we just...Marlin just jumped out...Doug was still in the front passenger with the seat down, she couldn't get out anyway, you know. And [unintelligible possibly Marlin] came out and got the beer and I was, and that's when I started drinking, so.

MK: When you got to Chinatown?

BB: Yeah.

MK: You started drinking, you drank a bottle of wine, did you drink any beer?

BB: I drank about, sheeh, five cans of beer, you know, for fourteen years old, five cans of beer is gonna get you buzzin'.

MK: Sure. During that time so you came and you met Christine in Chinatown, you were drinking wine and beer did you fall asleep at all?

BB: Yeah, if I recall right I did fall asleep.

MK: When?

BB: I don't know exactly when, because I told the courts I did fall asleep but I don't know when. I think I fell asleep between Chinatown and Calwa that's where I went to sleep at. You know,

cause that why I thought we were still in Chinatown. When we went to Calwa that's where I fell asleep.

MK: That's where you fell asleep. That's where you...

BB: So, I thought we were still in Chinatown when we were over at Calwa, you know. And then we pulled over to...ah [unintelligible] Tenth and Vine. We pulled there at the corner. And ah.

MK: Were you up at that time? Were you awake at that time?

BB: Yeah, I was up yeah. Then what happened was, we pulled over to the side of the road and Teena said 'Ok, everybody got to get out of the car because ah we got to go pick up and the connection don't want anybody around his pad.' So we all got out of the car. Me and Teresa, that's her name, Ms. Graybeal, we got out of the car.

MK: You.

BB: And then Doug, ... me, Doug, Marlin and Teresa got out of the car.

MK: Where's Christine?

BB: Christine was still in the car. Ok, what happened was she asked me, I was sittin' right beside her, and she asked me if she could go to the bathroom around there.

MK: Was Teena still in the car?

BB: Yeah she was still in the car.

MK: She was still behind the wheel?

BB: Yeah, and I go, I don't know, but I asked her if she had a cigarette, you know. And she gave me a cigarette, and she got one and lit one. Then she didn't light it, I don't think, but right then Teena said 'Billy, come on, get back in the car.'

MK: Why did she say that?

BB: I don't know. She told us to get back in the car so the only ones out there, Marlin and Doug. And then that's when I heard the gun go off.

MK: Allright. She said 'get back in the car.' So you were getting back in the car?

BB: Yeah.

MK: Were you getting...Where was Christine sitting?

BB: Christine was on the...ah...if I'm correct she was sitting on

the driver's side in the back. Because I was getting into the passenger's side. And I was gonna sit in the middle on the console.

MK: Did you, ok, and when you heard the gunshot where exactly were you?

BB: I was right there on the middle of the console.

MK: Sitting on the console?

BB: Yeah, I was already sitting, and I turned around like that, that was after I heard the gunshot.

MK: Ok.

BB: So I turned around and looked, and then Doug was away from the girl. Marlin come walking from where she was at. But Doug was away from her. So I can't say who really shot her.

MK: Ok. So I want to go back. I just want to make sure I know which direction your coming, ok? The car parked here [something is moved across the table], Teena is behind the wheel...Christine...

BB: The car is parked like this, ok, say you pull up along the curb right here. The passenger side is this side, the driver side is this side. Ok, me and all us got out of this one side.

MK: Right

BB: Ok and then whenever Teena called me...Christine was sittin' over here.

MK: Were they...were you ok. You got out of the passenger side, were you in the front of the car, in the back of the car, or on the side?

BB: I was right there just on the side of it.

MK: So was, was Doug and...ah...Marlin and Teresa Graybeal on the side of the car?

BB: They were on the side yeah. We were all four standing right there.

MK: So, you weren't more towards the front of the car, more towards the back of the car, you were right on the side.

BB: No, we were right on the side of the car. Where the door opens, right there by the side of the car.

MK: Ok, then Teena told you...

BB: 'Billy get back in the car.'

MK: And as you were getting back in the car, were you already seated on the console when you heard the gunfire, or still getting in?

BB: No, I was still getting in. Then I heard the gunshot. And when I finished sitting down that's when I looked over.

MK: Ok, by the time you sat down the gun already went off?

BB: Yeah.

MK: Then you were seating yourself?

BB: Yeah.

MK: And then you sat down, you heard the gunshot but you were sitting down, you were in the process of sitting down on the console? And then you looked to your right or your left?

BB: I looked to my right because that's where we were at.

MK: And what did you see?

BB: I seen, the gun went off, I seen Marlin at that time heading back to the car. I seen her laying on the ground.

MK: Ok, and who had the gun, at the time, in their hand?

BB: At the hand, uh...at the time Marlin had it in his hand. So, at that time, at that particular moment Marlin had it in his hands.

MK: And what did he do with the gun?

BB: He didn't. He went and we put it in the on the side of the console, right there, stuck it, you know, it had a little case. You know a little 25 [unintelligible] case, stuck it on the side of the console.

MK: Who did? Marlin did?

BB: Marlin did.

MK: Alright, ah... you saw them both coming back to the car.

BB: Yeah.

MK: Now you said that Marlin was closer?

BB: Marlin was...Doug was already coming toward the car. Marlin was behind where that girl was at. Ok, he was the last one to get in.

MK: Who did you see shoot?

BB: I didn't see anybody shoot. I just heard the gun go off. See, that's why I can't understand why they said that I said I seen Doug shoot her. I didn't say that. You know, so that's a big mistake on their part because I didn't say Doug shot her.

RP: As you sit here today are you absolutely positive of that?

BB: I'm positive I didn't see Doug shoot her.

RP: And your not saying that because anyone coerced you or?

BB: No, no, no, no. You know, to this day as I'm sitting here right now, I can't tell you if Doug shot her or Marlin shot her. I don't know.

MK: Ok, ok then what happened?

BB: Then after that we all got back in the car. Marlin was in the back and he said something 'Did I drop her or did'

SIDE ONE OF TAPE ENDS.

BB: ...that's what they printed in the paper.

MK: Uh huh. [agreement]

BB: You know, and that ain't right.

MK: So, so it was Marlin who said that?

BB: Yeah, he said, he got in the back right where, I you know was sittin' in the middle and that's what he said. I know for a fact.

MK: And then what happened?

BB: And then after that, we just got in the car we took off and they brought me back to Pinedale and dropped me off. And then Doug and Teena told me not to say anything. So, but when I got out of the car I went in the house. My mom...uh...already, you know, reported me as a runaway. So then, they took me in there and they, yeh...I told my mom hey, I seen a girl get shot and killed right now. And then detectives and everything swarmed in right there and that was [unintelligible].

MK: Ok, and then you went, and they said not to say anything and then your mom had already put a....

BB: My mom'd already put a runaway on me.

MK: Right. And then?

BB: When I got home and they were coming over, I said Mom, well, I just seen this lady get shot and killed right now. So, my mom called in and that's when the detective and everything came down.

MK: Ok, now, so then I guess, then you started talking to the cops and you told them what happened. How many times were you interviewed by the police?

BB: Couple. [unintelligible]

MK: Ok. Uh...when Mr. Ardaiz talked to you did he make any deals with you? Do you remember anything that he..?

BB: He just told me I would get immunity from all charges for my testimony.

RP: Did he threaten you first though? Did he tell you, you know your facing the gas chamber?

BB: Yeah, he you know, he told me that I be,...ah...I'll be accessory to murder, armed robbery and kidnapping.

RP: Ok.

BB: You know and that's what he told me, you know, I said well I don't, he goes we'll give you free immunity of all charges if you testify against this guy.

RP: Tell you what kind of time you'd face?

BB: Yeah, he said I could get a lot of time for it.

MK: Uh huh. [agreement]

RP: How much did he tell you?

BB: He said a lot of time that's all.

RP: Did he say 25 years or life?

BB: He just said you could get a lot of time for it.

RP: What did you think what he meant?

BB: I thought I was gonna get sent up the river.

RP: How long?

BB: A long time.

MK: Ok, did he...what else...so he promised you ah immunity?

BB: He promised me immunity. He promised me a change of identity,

and he'd move me somewhere. And...uh...none of that bullshit went through. You know and as soon as he prosecuted Doug and then all that shit went down he didn't give me shit.

MK: Why do you think that...uh...why do you think that they went after Doug?

BB: He went after Doug for he can get a...to be a Superior Court judge that's why. They prosecuted Doug...

MK: Why did they pick Doug and not the other two?

BB: I don't know, by prosecuting Doug that's what put him in the fucking judge's chamber right now. But he don't care about me or anybody else.

MK: And that's why he went after Doug to be benched. Did he tell you anything about Doug's background or anything?

BB: No.

MK: Uh...but he didn't...uh...did he tell you anything about the other co-defendants?

BB: Nope.

MK: Did he tell you they were gonna cooperate as well?

BB: No, they didn't say anything about that he just told me that if I, if I would testify he was gonna promise me the world that was it. You know, and move me out of state, he hasn't done that. You know.

MK: And so that was the only deal made was the immunity?

BB: Yeah, the immunity and he was gonna change my identity and stuff. And look now, I gotta sit here in Fresno County, right I go to jail, I gotta deal with the shit in jail. I mean you know, he ain't backin' me up, he ain't guarding me or anything.

MK: Uh huh. [agreement] Did he ah...get you an attorney?

BB: I uh...he had that...oh, what's his name, I don't remember his name but he had a attorney there.

MK: Did this attorney ever advise you or talk to you?

BB: He came up and he told me to say anything...ah...or the same thing Ardaiz told me that, hey we'll give you the free immunity if, you know, we'll give you immunity of all charges you know, you won't be facin' so much time if you go ahead and testify against him.

RP: Did he talk to you in the presence of Ardaiz?

BB: He, yeah, he no not in the presence of Ardaiz. The only ones who talked to me in the presence of Ardaiz was Jim Spralding his...ah...investigator. That's the only two that talked to me...ah...you know in a closed room. The only two that talked to me.

RP: Ok.

MK: Ok, so only Spralding was with...?

BB: Yeah Ardaiz whenever they...

MK: Ardaiz, when Ardaiz talked to you?

BB: Yeah.

MK: Was he always there when Ardaiz talked to you?

BB: Uh, no not on a couple occasions. But did you put down on the, on the tape that...ah...they gave me some wine before I went to court.

MK: That, well, I wanted to ask you about that.

RP: Some Cocaine?

BB: No, wine.

RP: Oh.

BB: They bought me a bottle of wine before I went into the court.

MK: This was during the first trial?

BB: Yeah.

MK: Were going to the first trial first. Gave you wine before you testified. [writing] Did you ever do any heroin or any other drugs while you were testifying?

BB: No, no.

MK: Who gave you the wine?

BB: Uh, Bill Spralding. Jim Spralding whatever his name was.

MK: And did Ardaiz know about that?

BB: Yeah, he knew about it.

MK: How do you know?

BB: Because I called him and told him I needed something to calm my nerves. So he had to know about it.

MK: And what did he say when you said you needed something to calm your nerves?

BB: He said that Jim Spralding would take care of it for me. He did, he bought me a bottle of wine.

RP: What kind of wine was it?

BB: Thunderbird.

RP: Did you drink it all?

BB: Yep.

RP: How big was it?

BB: A fifth.

RP: And then when did you go testify?

BB: That same day.

RP: Right after that or?

BB: Yeah. Right after I drank it I went into court.

RP: Did you have a buzz when you went in?

BB: ~~Hell yeah, I did.~~ You didn't think I did? [laughs] Sheeh...my brain was cookin' when I went in there. [laughs]

RP: Well were you using heroin before this?

BB: No.

RP: Were you smokin' weed or anything like that?

BB: No.

RP: When did you first start using heroin?

BB: Uh, this was after that.

RP: After the...

BB: After the trial.

MK: After the first trial?

BB: Yeah.

MK: You started using heroin after that?

BB: No, that was after the second trial too. I haven't used on both trials. I haven't really been on it. You know, it was after this bullshit.

MK: Uh huh, [agreement] after both trials?

BB: Yeah.

MK: Ok, so during the first trial they bought you some Thunderbird and you were usually buzzed when you were on the stand?

BB: Yeah.

MK: Uh, did any...in any way did Ardaiz coach you? Or, go over what he wanted you to testify to?

BB: Oh, yeah! Hell yeah!

MK: What did he...?

BB: He took me ok, on a...it was on a weekend too, on a Saturday. He'd take me up to the DA's office up there on a Saturday. And his office would be the only one open. He'd take me into his office on a Saturday, all day long, goin' over those transcripts what he wants me to say.

MK: Uh huh. [agreement]

BB: You know, and I'm talkin' all day.

RP: Hours.

BB: You know, he said...he'd be goin' over them transcripts left and right on me. In other words, he cooked it in my brain what to say. I was like a tape recorder when I went in front of the judge. You know, I knew exactly what he wanted me to tell him.

MK: What did he want you to say?

BB: Everything! To tell him that Doug was the one that did it, that Doug pulled out the gun and shot em. You knew, all that good shit.

MK: So you never...at no time...uh...did you tell him that you didn't see that.

BB: No, I told him several times I didn't see that. He goes well, this is what I need for you to say. That's exactly what he told me. This is what I need for you to do. [taps the table for emphasis] That's it.

RP: So would you, would you say then that he put words in your mouth?

BB: He did. He put a lot of words in my mouth.

RP: And would you say those words that he...

BB: Cause ah, because what happened was...ah...he told me whenever I went in front of the judge, and then if the prosecutor asked me a question right.

RP: Uh huh. [agreement]

BB: That I couldn't remember what Ardaiz told me to tell 'em, he said to tell them I don't recall. So that's how come on this last trial I kept saying I don't recall, I don't recall. That's what they told me...they wanted me to say.

[Three high pitched beeps are heard.]

BB: Is this about done? I got something to...

MK: Yeah, we have a few more minutes. Ok? Ok so, so, he would say I don't recall.

BB: Yeah, he would tell me to say, I don't recall. If I ran across a question, right, that they wanted me to say, that he didn't want me to say, then I'd tell them I don't recall.

RP: Ok let me ask you this. So, so lets go back to, I want to ask you the question about he put words in your mouth. When, when you said what he wanted you to say like putting words in your mouth, you're telling us today that what you said then wasn't true?

BB: Right.

RP: And you're absolutely 100% sure?

BB: I'm positive.

RP: Ok.

MK: What about the second trial?

BB: The second trial was just like what I was tellin' this stuff right here. The second trial was I don't recall, I don't recall. That's all that went through that second trial was I don't recall, I don't remember.

MK: Ok, but...what happened for the second trial, was it Ardaiz who talked to you or was it Robinson?

BB: It was Robinson.

MK: Did Ardaiz ever talk to you at the second trial.

BB: No, not at the second one.

MK: What did, did Robinson threaten you in any way?

BB: No Robinson didn't...you know, he wasn't as bad as Ardaiz. You know, he didn't try to scold or coach me or anything. I just told him that I don't remember, I don't recall that's it. No, I remembered what Ardaiz told me to say so that was it.

RP: But, you remember back when Ardaiz was coaching you and if you didn't remember what he wanted you say he told you to say, I don't recall?

BB: Yeah.

RP: So you remembered that and carried that over to the second trial then?

BB: Yeah.

MK: Did Robinson reiterate your, or tell you again that you had immunity or what? Did he threaten you that...ah you'd go to jail?

BB: No, ah...Robinson didn't threaten me or anything you know. I just remembered what Ardaiz told me I don't recall, if I ever go back to trial again just say you don't recall. You know, the stuff you don't remember you say you don't recall that's all.

~~MK: Did you ever talk to Hugh Goodwin?~~

BB: Hugh Goodwin? Uh, I don't remember if I did.

RP: He's an African American.

BB: Yeah I know what he looks like.

MK: Uh, did you want to testify in the second trial?

BB: No.

MK: Did you try to, try to avoid testifying?

BB: Yeah.

MK: How, what did you do?

BB: I just trying to stay low, but they tracked me down.

MK: Who tracked you down?

BB: Uh, uh some detective, workin' for ah...what's his

name...Robinson.

MK: Did you tell Robinson you didn't want to testify?

BB: Uh, no.

MK: Did you tell anybody?

BB: Because they said, well, at that time I told them that I didn't want to go to court.

MK: Who?

BB: Well, at that time, they said they could bust that immunity on me if I didn't show up for the court. They could take me into custody for ah...contempt of court. That's what Robinson said.

RP: When you said...You just said something about they said they could bust the immunity. Did they tell you that if you didn't testify, that they'd file new charges on you?

BB: Yeah, they said that they could break the immunity charges and then...that I could be filed...you know, have new charges filed on me, and ah...I didn't want that.

RP: Murder?

BB: I don't know kind of charges they just said charges that's all.

MK: But then, they told you that before you said?

BB: That's before I even wanted to come to court. And that's how come I agreed to come back to court on the second trial.

MK: Because of the immunity? You were afraid they were going to lift the immunity?

BB: Yeah, they were going to lift the immunity.

MK: So that's when you decided you'd better...when the detective came and found you?

BB: Yeah. Yeah that's when I came to court.

MK: Were you drinking or buzzed on the stand during the second trial?

BB: No, not on the second trial.

RP: So, so Ardaiz, Ardaiz just didn't offer to go get you another a bottle of wine on this one. [he laughs]

BB: That's it Ardaiz is...ah...just full of shit that's what it is.

Are you guys almost done?

MK: We're almost done, honest, Billy. I just need to get I just want to get all of this really down, Ok?

RP: Cause we don't have to bother you again.

BB: Well, you know where I'm at you know.

MK: I know, but it's hard to get a hold of you.

BB: Not really, if you just call and let em know you're comin' you know.

MK: Well, you know I need to get your phone number.

BB: I know it's 43... [unintelligible]

MK: Allright, because after I finish this, you know, this I have a declaration, but I really would like to do a different declaration. You know what a declaration is?

BB: Un. [negative]

MK: It's just all the information you told me today I want to write it down, and then I want you to read it, and have you sign it. But I'll have to have you sign it.

BB: Do what just call me up you know where it is. Allright. Call me up and I'll sign it.

MK: Ok. Ah.

BB: As long as it's gonna help him. You know, so.

MK: Ok. Do you...ah...did you have...were you ever...do you have any juvenile court records? I mean were you ever in juvenile court?

BB: Yeah. Uh yeah before that? Yeah I was.

MK: Before the homicide?

BB: Yeah, I was busted for...ah..oh just petty stuff, right, you know.

MK: Did you have any charges that you...ah...had in juvenile court dropped after you testified?

BB: No just when I got out of court. I mean, when they gave me immunity I got those charges dropped, you know murder, attempted murder, armed robbery, and... [unintelligible]

MK: Murder charges right. Ok but and have...

BB: They were the only charges I have.

MK: In juvenile court.

BB: Yeah.

MK: And, uh even between the first and second trial were you in any kind of trouble with the juvenile court?

BB: No.

MK: None?

BB: Nope. Hell no what would I want to get in trouble for when I got murder [unintelligible] on my way [unintelligible].

MK: Uh...yeah...but then you just did time just now, what was that?

BB: Oh, that was for ninety days for under the influence though. See, they busted me for petty theft. They picked me up on a petty theft with a prior warrant. And I went to jail. I went to court on that and they gave me twenty one days. But then the cops that picked me up, they gave me under the influence charge. So I went to court the next day on that and they gave me ninety days on that. That's what I just got out for.

MK: Did you ever see a counselor or a psychiatrist or psychologist between the first and second trials?

BB: Nope, not that I can recall.

MK: You didn't see anybody, I mean you weren't having any problems sleeping or anything like that, where you thought you needed to go and see somebody.

BB: No.

MK: Were you ever given any medication, like sleeping pills or anything like that?

BB: Oh, I got ah...I got a couple from my mom but you know I never went to a doctor for it.

MK: Well yeah, no prescription I eh.

BB: Oh no, I never went to the doctor to get a prescription, but I borrowed some of my mom's sleeping pills or you know, or her nerve pills, I took those.

MK: Right.

BB: Oh yeah but I never went to the hospital.

MK: And you've never seen a doctor?

BB: Nope.

MK: Between that first and second trial. And were you on any kind of medication in the second trial?

BB: Not that I know, no.

MK: And you weren't doing any heroin during the second trial?

BB: Nope.

MK: Do you have any charges against you in any other county besides those now, I mean you know your?

BB: No, I...[unintelligible]

MK: Ok. Did anybody in...member of your family get any charges dropped against them because you testified, I mean was that part of the deal, you know, your sister's in trouble we'll drop the charges if you testify?

BB: No.

MK: Ok. How long were you without sleep on the day of the homicide? Cause I know you guys went to the police station?

BB: Well, I was...I slept all that night up there if I remember. I slept all night.

RP: At the bus depot?

BB: Yeah. I slept right there in the bus depot you know, for a little while.

MK: Uh huh. [agreement]

BB: And I slept like I said, you know, in between Chinatown and there but, you know. I was aware of what I was doing. You know, I was young that's all, you know, you're aware of stuff like that when you're young your brain's pumpin' pretty good.

MK: So from the time you saw the gun in the Manteca Police station until you saw Marlin with the gun, you never saw that gun between that time?

BB: Nope.

MK: Did you ever, did you ever hold the knife at all and use that?

BB: Not that I remember.

MK: Ok, and um...Chief...and Doug never came out of the motel and asked for the gun? When he came out of the OLYMPIC MOTEL?

BB: No.

MK: He never asked?

BB: No.

MK: Ok. Uh...I think that's...

BB: It?

MK: Yeah. [laughs] I'm just double checking.

RP: Didn't want to say that word though, Billy. [he chuckles]

BB: Oh ah, I need...ah...at you were s'posed to ask me one question that and...ah...

MK: Right. And I that's what I...eh...what I...I think maybe I asked it, but we can ask it again. Why would they finger Doug as the person?

BB: I don't know why they fingered Doug. They should have, as far as, as far as my recollection, Marlin should be the one to be fingered. 'Cause he was the one who did mostly everything.

MK: Yeah, but you didn't tell the police that?

BB: No...ah...see what happened was when they took me in they didn't give me a chance to say anything. You know, they just got me and they, boom, that's it.

MK: You mean the day of the homicide?

BB: Yeah. They had me racked up right there.

MK: So they didn't take a statement from you?

BB: Uh...they took a statement from me, from...ah...but that was a long time ago I don't know what I said or what I did.

MK: Uh huh. [agreement]. And then they let you go back to your mom's house right?

BB: No.

MK: Where did they?

BB: I didn't see my mom, didn't see my mom for about two months

later.

MK: Where were you?

BB: I was locked up from juvenile hall.

MK: Oh, so you were locked up in juvenile hall?

BB: Yeah, they said, they said, they were gonna take me right back to my mom's house, but I didn't see her for two months later.

MK: Uh huh. [agreement]

BB: They didn't let her see me, they didn't let her talk to me. The only ones I talked to was Ardaiz and that Bill Spralding...Jim Spralding. You know, and that was kinda cold right there.

RP: So they just kind of had you on ice until the trial?

BB: That's it. Yeah.

RP: They wouldn't let you go?

MK: So, they didn't say, well you know, you've heard of the Stankewitz family, their well known, we want to get the Stankewitz family?

BB: No.

MK: You didn't hear them...?

BB: They said, they told me that ah...the Stankewitz's was some mean people. They were some rude people.

MK: Uh huh. [agreement]

BB: That's all they told me.

MK: So...ah...

BB: Their not the kind of people you want to mess with and all that. No, but to tell you the truth I think Ardaiz had it out for them you know?

RP: That's just your, your opinion?

BB: Yeah my opinion.

RP: Yeah. Based on the way he acted and everything?

BB: Yeah because when Doug escaped that one time from jail. Doug...eh...Ardaiz had told my mom right to her face 'I wish I run acrost him before they catch him, I'll blow him away.' That's what

Ardaiz said.

MK: Ok, I was, I know that was the question Evelyn wanted me to ask him. Ok I'm gonna turn this off it's...

RP: We're out of tape.

MK: It's...ah.

RP: One fifty four.

MK: One fifty four.

TAPE IS SHUT OFF

Exhibit C

James A. Ardaiz

Justice Ardaiz has over 30 years of service to California as both a trial and appellate court judge administrator. He recently retired from the Fifth Appellate District where he had served since 1994.

Background

With over 30 years of service to California as both a trial and appellate court judge, Presiding Justice James Ardaiz of the Fifth District Court of Appeal has joined Baker Manock & Jensen as Special Counsel. Justice Ardaiz served as the Administrative Presiding Justice of Court of Appeal, headquartered in Fresno, since August 1994.

Justice Ardaiz served as Administrative Presiding Justice, Fifth District Court of Appeal (1994-2010); Associate Justice, Fifth District Court of Appeal (1988-1994); Superior Court, County of Fresno (1985-1988); Municipal Court, County of Fresno (1981-1988); Chief Deputy District Attorney, Homicide, County of Fresno (1997-1981).

California Jurist of the Year (1999-2000); Chair Executive Committee Judicial Council; Chair Task Force on Trial Court Employees (creating new personnel system for 20,000 employees in 58 counties with separate systems, negotiating all labor issues); Co-Author, California Evidence; National lecturer and state lecturer in evidence, trial practice, judicial decision making; Distinguished American Award (2008); Japanese American Citizen's League Hastings Alumnus of the Year (Fresno Chapter); four-time recipient of the Ralph Klepp Award for judicial management in California.

Areas of Practice

- Alternative Dispute Resolution/Mediation

Contact

jardaiz@bakermanock.com

Education

- University of California, Hastings College of the Law (J.D., 1974)
- California State University, Fresno (B.A., 1970)

Bar Admissions

- State Bar of California (1974)

Exhibit D

Of Counsel



Presiding Justice
Christopher Cottle
(ret.)

COURT OF
APPEAL, 6TH
DIST, '93-'01

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Presiding Justice James
Ardaiz (ret.)

COURT OF
APPEAL, 5TH
DIST, '94-'10

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Justice William Stein
(ret.)

COURT OF
APPEAL, 1ST
DIST, '98-'08

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Judge George Schiavelli
(ret.)

U.S. DISTRICT
COURT,
CENTRAL
DISTRICT OF
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9TH CIRCUIT
LAW CLERK, '01-
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Presiding Justice James

Ardaiz (ret.)

COURT OF APPEAL, 5TH DIST,

'94-'10

Exhibit E

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
)
James Robert Missett, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 27666)
)
Respondent)
_____)

Case No. 03-2013-233315

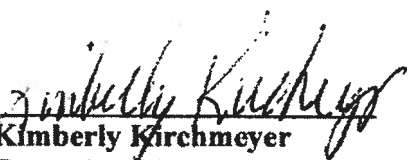
DECISION

The attached Stipulation for Surrender of Certificate is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 2, 2015

IT IS SO ORDERED May 26, 2015.

MEDICAL BOARD OF CALIFORNIA

By: 
Kimberly Kirchmeyer
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5539
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 03-2013-233315

11 JAMES MISSETT, M.D.
12 P.O. Box 326
13 555 Bryant Street
14 Palo Alto, CA 94302-0326

STIPULATION FOR SURRENDER OF
CERTIFICATE

15 Physician's and Surgeon's Certificate No. G27666

16 Respondent.

17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California, Department of Consumer
19 Affairs, (hereinafter, the "Board"), the parties hereby agree to the following Stipulation for
20 Surrender of Certificate which will be submitted to the Board for its approval and adoption as the
21 final disposition of Case No. 03-2013-233315.

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California, Department of Consumer Affairs, who brought this action solely in her
24 official capacity. She is represented in this matter by Kamala D. Harris, Attorney General of the
25 State of California, by Lawrence Mercer, Deputy Attorney General.

26 2. James Missett, M.D. ("Respondent"), is represented in this matter by Marc N.
27 Zimmerman, Esq., and Hassard Bonnington, LLP, 275 Battery Street, Suite 1600, San Francisco,
28 CA 94111.

1 3. On or about August 5, 1974, the Medical Board of California issued Physician's
2 and Surgeon's Certificate Number G27666 to James Missett, M.D. At all relevant times, said
3 certificate was valid and current and, unless renewed, will expire on December 31, 2015.

4 **JURISDICTION**

5 4. First Amended Accusation No. 03-2013-233315 was filed before the Board and is
6 currently pending against Respondent. The First Amended Accusation, together with all other
7 statutorily required documents, was duly served on Respondent. A copy of First Amended
8 Accusation No. 03-2013-233315 is attached as Exhibit A and incorporated herein by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, discussed with counsel and understands the charges
11 and allegations in First Amended Accusation No. 03-2013-233315. Respondent has also
12 carefully read, discussed with counsel and understands the effects of this Stipulation for
13 Surrender of Certificate.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **ACKNOWLEDGMENTS**

24 8. Respondent understands and agrees that the charges and allegations in First
25 Amended Accusation No. 03-2013-233315, if proven at a hearing, constitute cause for action
26 against his Physician's and Surgeon's Certificate. Respondent hereby gives up his right to contest
27 these charges and he agrees that his Physician's and Surgeon's Certificate is subject to action
28 pursuant to section 822 of the Business and Professions Code.

1 regulations and procedures for reinstatement of a revoked license in effect at the time any petition
2 is filed, including but not limited to Business and Professions Code section 823, and he
3 understands and agrees that all of the allegations and causes for action contained in First
4 Amended Accusation No. 03-2013-233315 will be deemed to be true, correct and admitted by
5 him for purposes of the Board's determination whether to grant or deny the petition. Respondent
6 agrees that he will not petition for reinstatement for at least one (1) year following the effective
7 date of this decision. Respondent hereby waives any time-based defense he might otherwise have
8 to the charges contained in First Amended Accusation No. 03-2013-233315 including, but not
9 limited to, the equitable defense of laches.

10 3. Respondent understands that by signing this Stipulation, he is enabling the Board
11 to issue its order accepting the surrender of his license without further process. He further
12 understands that upon acceptance of this Stipulation by the Board, he will no longer be permitted
13 to practice as a physician and surgeon in California.

14 **ACCEPTANCE**

15 I, JAMES MISSETT, M.D., have carefully read the above Stipulation for Surrender of
16 Certificate, and enter into it freely and voluntarily and with full knowledge of its force and effect,
17 do hereby agree to surrender my Physician's and Surgeon's Certificate no. G27666 to the Medical
18 Board of California for its formal acceptance. By signing this Stipulation to surrender my license,
19 I recognize that as of the effective date of this Decision, I will lose all rights and privileges to
20 practice as a physician and surgeon in the State of California and, if I have not already done so, I
21 also will cause to be delivered to the Board both my license and wallet certificates on or before
22 the effective date of the decision.

23 Dated: *May 13, 2015*

24 *James Missett, M.D.*
25 JAMES MISSETT, M.D.
26 Respondent
27
28

1 I have read and fully discussed with Respondent James Missett, M.D. the terms and
2 conditions and other matters contained in the above Stipulation for Surrender of Certificate. I
3 approve its form and content.

4
5 DATED: 5-13-15


6 MARC N. ZIMMERMAN, Esq.
7 Attorney for Respondent

8 **ENDORSEMENT**

9 The foregoing Stipulation for Surrender of Certificate is respectfully submitted for
10 consideration by the Medical Board of California, Department of Consumer Affairs.

11 Dated: _____ 2015

Respectfully submitted,

12 KAMALA D. HARRIS
13 Attorney General of California
14 JANE ZACK SIMON
15 Supervising Deputy Attorney General

16 LAWRENCE MERCER
17 Deputy Attorney General
18 *Attorneys for Complainant*

19
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Exhibit F

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2 JANE ZACK SIMON
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 03-2013-233315

12 JAMES MISSETT, M.D.
13 P.O. Box 326
14 555 Bryant Street
15 Palo Alto, CA 94302-0326

FIRST AMENDED ACCUSATION

15 Physician's and Surgeon's Certificate No. G27666

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely
21 in her official capacity as the Executive Director of the Medical Board of California (Board).

22 2. On or about August 5, 1974, the Medical Board of California issued Physician's
23 and Surgeon's Certificate Number G27666 to James Missett, M.D. (Respondent). At all relevant
24 times, said certificate was valid and current and, unless renewed, will expire on December 31,

25 2015.
26
27
28

1 he planned to close his office and to retire from the practice of medicine for this reason, which he
2 subsequently did.

3 8. Respondent's Physician's and Surgeon's Certificate no. G27666 is subject to
4 Board action pursuant to Business and Professions Code section 822, in that Respondent suffers
5 from a mental illness or physical illness affecting competency, which impairs his ability to
6 practice medicine safely.

7 **PRAYER**

8 WHEREFORE, Complainant prays that a hearing be held and that the Board issue an
9 order:

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate no. G27666, issued
11 to James Missett, M.D.;
- 12 2. Prohibiting James Missett, M.D., from supervising physician assistants;
- 13 3. Ordering James Missett, M.D., if placed on probation, to pay the costs of probation
14 monitoring;
- 15 4. Taking such other and further action as may be deemed necessary and proper.
- 16
17
18

19 DATED: _____

20 KIMBERLY KIRCHMEYER
21 Executive Director
22 Medical Board of California
23 Department of Consumer Affairs
24 State of California
25 *Complainant*

26 SF2015400645
27 missett.amendedaccusation.docx
28

Exhibit F



"California's Three Strikes Law: History, Expectations, Consequences."



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... thus limiting their ability to commit additional crimes"); see also J. Ardaiz, *California's Three Strikes Law: History, Expectations, Consequences*, 32 *McGeorge* ...

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Judge Admits His Role in '3 Strikes' Law : Courts: James A. Ardaiz of Fresno state appellate panel says he helped author the legislation. He had planned to recuse himself from 'substantive' legal questions involving the issue.

November 03, 1994 | DAN MORAIN | TIMES STAFF WRITER

FRESNO — A high-ranking state appellate court justice acknowledged that he helped draft the tough "three strikes" sentencing law, bringing criticism from some jurists who say he overstepped his role as a disinterested arbiter of law.

James A. Ardaiz, presiding justice of the Fresno-based 5th District Court of Appeal, kept his role quiet until after The Times reported this month that Mike Reynolds, sponsor of the "three strikes" Proposition 184 on Tuesday's ballot, stated that three judges helped write it.

At the time, Reynolds refused to name the judges, saying they had asked to remain anonymous because they might have to rule on "three strikes" cases. Ardaiz and two Fresno Municipal Court judges came forward after the article appeared.

In an interview, Ardaiz said he had always intended to recuse himself from appeals involving "substantive" legal questions about "three strikes." Defending his decision to help write the measure, Ardaiz said: "My motivation is very simple. I want to see (California) be a better place to live. I want it to be a safer place to live."

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December 20, 1990

A former deputy district attorney in Fresno and a judge since 1981, Ardaiz, 46, is seen as a judge on the move. If anything, his role may help his ascent, particularly if Gov. Pete Wilson, a backer of Proposition 184, wins reelection next week.

However, some colleagues criticize his involvement in the highly charged issue, saying he has lost the appearance of neutrality on criminal law. They attacked Ardaiz for keeping his role quiet, and say his actions may affect the state Supreme Court, where his brother-in-law, Justice Marvin Baxter, sits.

"This is a guy who still thinks he's in the D.A.'s office," said a veteran Court of Appeal justice, a Democrat.

The judge was one of 10 current and former appellate judges called by The Times. Like the others, the justice spoke on the condition that he not be named.

"This is getting into the area of being very pro-law enforcement," said a retired Republican Court of Appeal justice. "Judges give that up, and adopt a neutral role."

The debate is not clear-cut over whether judges should write laws, or merely interpret them. Some judges, lawyers and academics say judges should become more active in drafting legislation.

"The canons of judicial conduct permit judges to become involved in improvements regarding administration of justice," said Jerome Falk, head of the California Academy of Appellate Attorneys. "I don't see how you can differentiate between issues that are mundane and are controversial."

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"If I were Baxter, I would recuse myself," said the appellate court justice who is a Democrat. "It is an area that is gray. But I would recuse myself, and most judges would."

Ardaiz said he met with Reynolds, a family acquaintance, shortly after Reynolds' daughter, Kimber, was slain in June, 1992. Over time, Reynolds asked Ardaiz and two other judges to write a measure aimed at imprisoning repeat offenders. The judges obliged, producing what Ardaiz calls a "core framework."

The first "three strikes" bill stalled in the Legislature in 1993. But Reynolds persisted, pursuing the initiative, as well as legislation. "Three strikes" became law in March. Proposition 184 on next week's ballot mimics that statute, a sweeping measure certain to result in longer prison terms for thousands of felons. Ardaiz said provisions of the current measure were part of the initial "outline."

Judges expect many challenges to "three strikes," and say the bulk of the issues will be decided by state courts of appeal such as Ardaiz's. With Ardaiz stepping aside in "three strikes" cases, there would be nine other judges on the district's court to decide such questions.

Although Ardaiz helped write the measure, he stops short of endorsing it.

"I did not want a judicial title attached to a piece of legislation," he said.

Reynolds has shown no such inhibition. He has tried to assure voters that the measure was solidly written by saying judges were involved in drafting it.

Although Ardaiz insists that his involvement was known by a "large number of people," it was not evident to organizers of a May forum in Fresno on "three strikes," at which Ardaiz was a panelist. When lawyer Catherine Campbell, who helped organize the event, learned of Ardaiz's involvement, she said her reaction was "total shock."

"He was an outright advocate," Campbell said. "It was a dishonesty by omission."

Ardaiz maintained that nothing he said amounted to an endorsement.

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Justice Baxter did not comment. But Ardaiz said his actions will not affect Baxter, noting he "voted before to reverse me and I'm sure he has done that without the slightest pang of conscience."

But some believe Ardaiz's role in "three strikes" places Baxter in a difficult position when "three strikes"

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Clarence Ray Allen

Death Penalty

No on Prop. 34: Let the death penalty live

A former prosecutor and judge argues in favor of California's capital punishment law, saying it is a deterrent and the right moral choice.

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34 and 36

October 28, 2012 | By James A. Ardaiz

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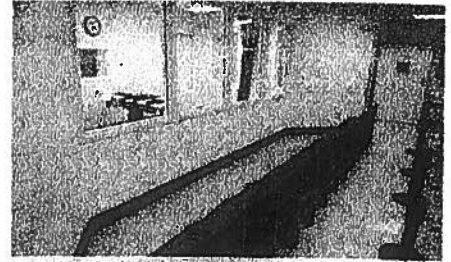
My entire professional life has been entwined with the death penalty. As a prosecutor, I asked for the death penalty. As a judge, I imposed it. As a citizen, I will vote next month to retain it as a punishment option in California.

I have often encountered the argument that the death penalty is not a deterrent because it did not deter someone from carrying out a particular murder. But the actual issue is a larger one: Would there have been more murders in California without its deterrent effect? That's a hard question to answer with certainty, of course, but there has been considerable research to suggest the death penalty is a significant deterrent.

Additionally, I am all too aware of one case in which the death penalty, imposed in a timely fashion, might have prevented additional killings.

ENDORSEMENTS: The Times' recommendations for Nov. 6

Clarence Ray Allen was the last man to be put to death in California before a moratorium on executions in the state was issued in 2006. His first murder conviction came in 1977 for arranging the 1974 killing of a potential witness against him in a burglary. I was the prosecutor on that case. We won a conviction, and Allen was sentenced to life in prison. Then, in 1980, while behind bars, Allen arranged the killings of witnesses who had testified against him in his murder trial. That was the last case I worked on as a prosecutor before I was elected as a judge.



A number of independent empirical studies have reached the conclusion. (Los Angeles Times)

In that case, he was finally sentenced to death, but even then it wasn't until 26 years after the killing that he was finally executed. During all that time, the loved ones of the deceased had no closure. Retribution is not only a need of society; it is a right of those victimized.

Our system is not infallible. Opponents say the fact that it's possible that someone could be wrongfully executed is enough to conclude we shouldn't have the death penalty. They can't, however, point to a case in California in which the system has allowed an innocent person to be executed.

OP-ED: Jimmy Carter to California -- Yes on Prop. 34

Every criminal conviction should be based on the highest degree of certainty, and we should certainly shore up weaknesses in the system. No one should be convicted, for example, by eyewitness and informant testimony that is not substantiated by independent evidence. But eliminating the death penalty does nothing to address these issues.

A number of independent empirical studies have reached the conclusion that the existence and imposition of the death penalty results in a statistically demonstrable reduction in murders. And that means human beings are alive today instead of dead as a result of a law.

No on Proposition 34: Let the death penalty live - latimes

We have no way of knowing for certain, of course, how many people are not murdered because of the existence of the death penalty, and there have been studies that concluded the death penalty had no deterrent effect, but I don't find them convincing.

Why? In part because of what I saw over a long career. In cases of premeditated murder, considerable planning often goes into the act, and that planning can include the weighing of what is to be gained against the potential penalties. Any penalty can have some deterrent effect, but the more severe the penalty, the greater the disincentive to commit the crime.

If you knew that by executing one guilty person you could save even one or two innocent people from being murdered, the moral choice seems clear. Those who criticize aggressive sentencing laws often ignore the most important moral issue. If we can, through effective sentencing, reduce victimization, then it seems to me we are morally obligated to impose sentences that have that effect.

I respect those who have moral reservations about the death penalty. But moral choices can carry consequences too. If the death penalty has prevented some people from being murder victims, then doing away with it would create additional murder victims. I would far rather face the moral consequence of the death penalty than the consequence of innocent victims being killed. I choose innocent lives over guilty lives.

James A. Ardaiz is the former presiding justice of California's 5th District Court of Appeal. His new book, "Hands Through Stone," chronicles the Clarence Ray Allen case.

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PLAYING MIND GAMES: HOW CRIMINALS MANIPULATE AND GET CAUGHT

Posted on April 14, 2014 by Mridu Khullar Relph



After graduating from the University of California, Hastings College of the Law, and becoming a trial lawyer, James A. Ardaiz quickly rose to the ranks of chief deputy district attorney. During those years, he interrogated hundreds of hardened criminals and murderers. It's safe to say that he is an expert on homicide and criminal psychology.

From 1974 to 1980, Ardaiz was a deputy district attorney prosecuting homicide cases in Fresno County. At age 32, he attained the title of Justice James Ardaiz and served as a California state judge from 1980 until his retirement in 2011. In his book *Hands Through Stone: How Clarence Ray Allen Masterminded Murder From Behind Folsom's Prison Walls*, he describes what it's like to be in a homicide

investigation, what a crime scene really looks like and what a murder

truly involves. He addresses what goes on during an interrogation, the impact on the people who work these cases and what prosecutors have to deal with.

In an interview with *Brain World*, he explained how the criminal mind works and how experienced interrogators see through the criminal's lies to unravel the truth.

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DECLARATION OF HUGH W. GOODWIN

I, HUGH W. GOODWIN, under penalty of perjury, say:

1. I am an attorney licensed to practice in the State of California and I represented petitioner Douglas Ray Stankewitz in his 1983 retrial in Fresno County Superior Court for murder with special circumstances and other offenses in Case No. 255015-5.

2. I did not hire an investigator in this case, either at guilt phase or at penalty phase, and had no tactical reason for my failure to do so.

3. I did not interview members of Mr. Stankewitz's family to determine what they could contribute at the penalty phase.

4. I failed to interview Mr. Stankewitz's school teachers, his foster parents, psychiatrists, psychologists and anyone else who had examined him during his childhood and youth, and other persons familiar with his background. I did not visit his family home in Auberry. Consequently, I was unfamiliar with the hardship and abuse to which he had been subjected.

5. I did not consult with his prior attorneys, either from the trial or from the appeal, or obtain from them their files from the prior trial.

6. I did not have a psychiatric or psychological evaluation of Mr. Stankewitz made, and did not have a tactical reason for my failure to do so.

7. I did not investigate Mr. Stankewitz's history of mental disability and mental illness. As a result, I was unaware that he had a long history of mental disability and mental illness,

1 starting at least with his placement in Napa State Hospital at age
2 six. In particular, I was unaware that he had repeatedly been
3 diagnosed as suffering from paranoia, schizoaffective disorder,
4 possible epilepsy, fetal alcohol syndrome, and other mental
5 illnesses and disabilities. I also did not investigate and was
6 consequently unaware of Mr. Stankewitz's long history of drug and
7 alcohol abuse, or the fact that his drug and alcohol abuse were
8 continuing at the time I represented him.

9 8. I did not interview or consult with the mental health
10 experts who had been involved in Mr. Stankewitz's first trial.

11 9. When I was appointed, I knew that Mr. Stankewitz, in
12 his then mental state, would not accept any attorney who intended
13 to raise mental defenses or issues as to his mental competency. I
14 was also aware that the trial judge who would appoint me was
15 anxious to go forward with the merits of the case rather than
16 engaging in further litigation of competency. Under these
17 circumstances I accepted the appointment without knowing whether
18 Mr. Stankewitz was in fact mentally competent or whether there were
19 viable defenses other than mental defenses.

20 10. In my opinion Mr. Stankewitz was not mentally
21 competent when I represented him during the pretrial and trial
22 proceedings. His behavior at the time I represented him was
23 erratic and bizarre. I do not believe he was capable of
24 understanding the legal issues in his case, and in particular the
25 concept of *mens rea* as an element of the offense and the importance
26 of mitigating evidence at the penalty phase. I do not believe he
27 was capable of understanding that a person who had diminished
28

1 capacity, or is insane or unconscious at the time of the offense
2 could be found innocent and acquitted or found guilty of a lesser
3 included offense. If I had known of his long history of mental
4 illness and substance abuse, I would have refused to take Mr.
5 Stankewitz's wish for an exclusively "whodunit" defense at face
6 value, and would have insisted upon investigating and probably
7 presenting mental defenses such as diminished capacity, insanity,
8 voluntary intoxication and unconsciousness. I also would have
9 insisted upon investigating and actively pursuing a determination
10 of incompetence, and upon investigating and presenting evidence in
11 mitigation.

12 11. I did not obtain any written records related to Mr.
13 Stankewitz's background or the background of members of his family,
14 and in particular did not obtain his school records, the records of
15 his hospitalization at Napa State Hospital, his medical records, or
16 any records from California Department of Corrections or the Fresno
17 County Jail. I also failed to obtain similar records with respect
18 to any member of his family.

19 12. I did not have a tactical reason for failing to
20 object to the prosecutor's argument to the jury that Billy Bob
21 Brown, the government's only percipient witness, was not an
22 accomplice, was not armed during the episode for which Mr.
23 Stankewitz was on trial, and played no culpable role in the
24 Graybeal kidnapping.

25 13. I did not have a tactical reason for not requesting
26 an instruction that the alleged oral admissions by Mr. Stankewitz
27 that were offered against him at guilt phase and at penalty phase
28

1 were to be viewed with caution.

2 14. I did not have a tactical reason for failing to
3 object to the admission of the writings that were found in Mr.
4 Stankewitz's cell and admitted against him at trial.

5 15. I did not have a tactical reason for failing to
6 obtain and offer a stipulation that the car in which Mr. Stankewitz
7 was riding that was impounded by the police was not stolen.

8 16. I did not have a tactical reason for failure to
9 investigate or present evidence of Billy Brown's history as a
10 "snitch."

11 17. I did not have a tactical reason for my failure to
12 object to the admission of Mr. Stankewitz's statement as to why he
13 attacked inmate Hogan in an incident at San Quentin State Prison
14 presented by the prosecution at the penalty phase.

15 18. I did not investigate the veracity of the testimony
16 presented against Mr. Stankewitz concerning the car chase in which
17 Mr. Stankewitz allegedly participated in 1973, and had no tactical
18 reason for that failure.

19 19. It is my recollection that I met Mr. Stankewitz as
20 a result of prior representation of other members of his family, in
21 particular Johnny Stankewitz.

22 20. At the time of trial I was of course aware that Mr.
23 Stankewitz was a Native American. I did not research or consider
24 the possibility of a motion for a change of venue out of Fresno
25 County based on the pervasive prejudice against Native Americans in
26 the county, or on the basis of my reputation as a judge who had
27 been criticized for bringing religion into the courtroom. I had
28

1 business interests, church involvement, and other cases in Fresno
2 County and the San Joaquin Valley which would have made it very
3 difficult for me to try the Stankewitz case in another county; I do
4 not recall discussing these concerns with Mr. Stankewitz, but they
5 may are likely to have affected my decision not to seek a change of
6 venue. I in any event did not have a strategic or tactical reason
7 for not considering or researching a change of venue motion.

8 21. I did not have a tactical reason for failing to
9 request an instruction on the lesser included offense of violation
10 of Vehicle Code Section 10851, based upon the evidence that Mr.
11 Stankewitz did not want to take the victim's automobile permanently
12 but simply to take it temporarily and then return it to her.

13 22. I did not have a tactical reason for not objecting
14 to the prosecutor's peremptory challenge of the only identified
15 Native American prospective juror at a time earlier than the motion
16 for a new trial.

17 23. I had no tactical reason for failing to voir dire
18 the jurors on whether their knowledge of my reputation would affect
19 the seriousness with which they took the presentation I made on Mr.
20 Stankewitz's behalf at the penalty phase.

21 24. I have never believed in the separation of church
22 and state, as I made clear when I was a judge. I recognize that
23 this is a controversial view which is not widely shared. When I
24 presented the testimony of a Deputy District Attorney and the
25 Fresno County Jail chaplain that they believed people could be
26 transformed by the power of God if they let God into their lives,
27 I knew that it was likely that on cross-examination they would
28

1 state that there was no evidence that Mr. Stankewitz would let God
2 into his life. Nonetheless, I believed that by presenting this
3 testimony, God's will would be done, and accordingly I did so.

4 25. Based upon my normal practice, my billing records
5 for this case would accurately reflect all the time I spent in
6 preparing for the trial.

7
8 I declare under penalty of perjury that the foregoing is true
9 and correct.

10 Executed in Fresno County, California, on this the 15 of
11 November, 1995.

12
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14 *Hugh W. Goodwin*
15 HUGH W. GOODWIN
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1 **PROOF OF SERVICE**

2 I declare that I am a citizen of the United States and am employed in San Francisco County,
3 California. I am over the age of eighteen years and not a party to the within action. My business address is
4 506 Broadway, San Francisco, California 94133.
5

6 On the date set forth below, I caused a true copy of the:

7 **MOTION TO ENJOIN PRESIDING JUDGE ARDAIZ FROM OUT-OF-COURT**
8 **STATEMENTS REGARDING DOUGLAS "CHIEF" STANKEWTIZ**

9 to be served on the following parties in the following manner:

10 Mail ___ Fax ___ Personal Service x Courier ___

11 Fresno County District Attorney's Office
12 Via personal service in court

13 I declare under penalty of perjury the foregoing is true and correct. Executed this 18th day of
14 March, 2017, at San Francisco, California.

15
16 _____
17 CURTIS L. BRIGGS
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