

97-185

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: May 20, 1997
AGENDA ITEM NO.: 5

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

Authorize the Chairman to sign an order of the Board to reject Claim No. C97-10, which was filed with this Board on April 11, 1997, for an undetermined amount. Claimant alleges that he was deprived of his due process right to a fair trial. The events in this action took place in 1991. This claim should be denied for the following reasons:

- Claim is not timely filed. Pursuant to Government Code § 911.2 (copy attached), claims must be presented to the Board, depending on the cause of action, no later than six months to one year from the cause of action.
- There is no substance to the claim.
- The claimant's remedy is to appeal this matter in court.

Based upon the above justification for denial, the County does not have any liability in this matter.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board usually follows Counsel's recommendation in matters of this nature.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- ⇒ Authorize Chairman to sign order to reject Claim No. C97-10.
- ⇒ Take no action; claim would automatically be denied.

COSTS: (x) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Claim No. C97-10.
Government Code § 911.2.
Notice of Rejection of Claim.

CLERK'S USE ONLY:

Res. No.: 97-185 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Absent: _____ Abstained: _____

() Approved () Denied

() Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: JG

1 JEFFREY G. GREEN
2 County Counsel
3 P. O. Box 189
4 5100 Bullion St.
5 Mariposa, CA 95338

6 BEFORE THE BOARD OF SUPERVISORS

7 OF

8 MARIPOSA COUNTY, STATE OF CALIFORNIA

9 In the Matter of:)
10 CLAIM FOR DAMAGES PURSUANT) CLAIM NO. C97-10
11 TO GOVERNMENT CODE § 911.6)
12)

13 David R. Tarvin E-76518/California Men's Colony-East
14 P.O. Box 8101
15 San Luis Obispo, CA 93409


16 having filed with this Board on April 11, 1997, a claim for damages for an undetermined
17 amount.

18 NOW, THEREFORE, it is ordered by the Board of Supervisors that the claim is hereby
19 REJECTED.


20 The foregoing order was passed by the following vote of the Board:

21 AYES: Reilly, Balmain, Stewart, Parker, Pickard
22 NOES: None
23 ABSENT: None
24 ABSTAINED: None

25 Dated this 20th day of May, 1997.

26 
27 ROBERT C. STEWART, Chairman
28 Board of Supervisors

29 ATTEST:

30 
31 MARGIE WILLIAMS, Clerk of the Board

TO: David R. Tarvin E-76518
California Men's Colony-East
P.O. box 8101
San Luis Obispo, CA 93409

RE: CLAIM FOR DAMAGES (Claim No. C97-10) AMOUNT OF CLAIM: Undetermined
NOTICE OF REJECTION

NOTICE IS HEREBY GIVEN that the claim, which you presented to the Board of Supervisors of Mariposa County on April 11, 1997, was rejected by action of the Board on May 20, 1997.

WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." (See Government Code § 945.6)

"NOTE: This six-month filing period applies only to State Court actions. If your action is based on federal law and/or you intend to file it in Federal Court, a shorter or longer period within which to file the action may apply."

"You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

JEFFREY G. GREEN
Mariposa County Counsel

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)

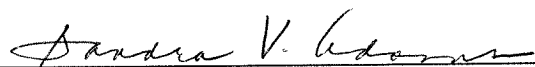
STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

I am a citizen of the United States and a resident of the County aforesaid. I am over the age of eighteen years and not a party to the within entitled action; my business address is 5100 Bullion Street (P. O. Box 189), Mariposa, CA 95338. On June 3, 1997, I served the within Notice of Rejection of Claim No. C97-10 on the claimant in said action by placing a true copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing a copy into an inter-office delivery receptacle located in Counsel's office:

David R. Tarvin E-76518/California Men's Colony-East
P.O. Box 8101
San Luis Obispo, CA 93409

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

Executed on June 3, 1997 at Mariposa, California.


Sandra V. Adams

CLAIM PRESENTATION & CONSIDERATION
Div. 3.6**§ 911.2****§ 911.2. Time of presentation of claims; limitation**

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action.

(Added by Stats.1963, c. 1715, p. 3372, § 1. Amended by Stats.1987, c. 1201, § 18; Stats.1987, c. 1208, § 3.)

Law Revision Commission Comments

This section is substantially the same as the first paragraph of Government Code [former] Section 715, which applies to local public entities. It will provide a shorter period of time for presenting a claim against the State than the existing law (Government Code [former] Sections 643 and 644), which provides that a claim arising under Sections 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the board within one year after the claim first arose or accrued and that other claims shall be presented within two years after the claim first arose or accrued. [4 Cal.L.Rev.Comm. Reports 1001 (1963)]

Historical and Statutory Notes

Application of Stats.1963, c. 1715, p. 3369, see Historical and Statutory Notes under Government Code § 900.

The 1987 amendment substituted "six months" for "the 100th day."

Legislative intent and operation of Stats.1987, c. 1208, see Historical and Statutory Notes under Government Code § 820.9.

Application of Stats.1987, c. 1201, §§ 3, 9 to 25, see Historical and Statutory Notes under Code of Civil Procedure § 877.5.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Former §§ 621, 643, 644, 715, added by Stats.1959, c. 1715, pp. 4117, 4118, § 2; Stats.1959, c. 1724, p. 4136, § 1.

Former §§ 16021, 16043, 16044, added by Stats.1945, c. 119, p. 511, § 2.

Former § 53052, added by Stats.1949, c. 81, § 1, amended by Stats.1959, c. 1715, § 4.

Former § 60628, added by Stats.1951, c. 1711, § 1.

Former § 61628, added by Stats.1955, c. 1746, § 3.

Pol.C. § 667, added Stats.1927, c. 251, p. 452, § 1; Pol.C. § 688, added by Stats.1929, c. 516, p. 891, § 3, amended by Stats.1931, c. 325, p. 849, § 15; Stats.1933, c. 866, p. 2299, § 1; Stats.1939, c. 1020, p. 2823, § 1.

Public Utilities Code former § 12830, added by Stats.1957, c. 252, § 1.

Public Utilities Code former § 16684, added by Stats.1953, c. 72, § 2.

Public Utilities Code former § 29060, added by Stats.1957, c. 1056, § 3.

Stats.1931, c. 1167, p. 2475, § 1.

Stats.1921, c. 560, p. 933, § 51; Stats.1933, c. 999, p. 2571, § 12.

West's California Code Forms

See West's California Code Forms, Government.

Cross References

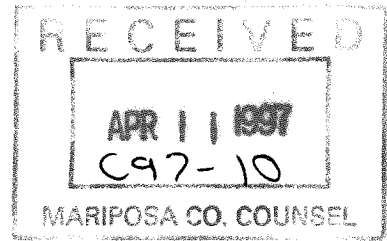
Date of accrual of cause of action, see Government Code § 901.

Lack of knowledge that injury was caused by public entity or public entity, exception to bar of cause of action, see Government Code § 950.4.

Presentation and action upon or rejection of claim as prerequisite of action, see Government Code § 945.4.

Time for presentation of claim to counties, see Government Code § 29701.

1 FROM: DAVID R. TARVIN E-76518
2 CALIFORNIA MENS COLONY-EAST
3 POST OFFICE BOX 8101
4 SAN LUIS OBISPO, CALIFORNIA 93409



5 TO: THE MARIPOSA COUNTY BOARD OF SUPERVISORS
6 POST OFFICE BOX 784
7 MARIPOSA, CALIFORNIA 95338

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9
10 COMPLAINT AGAINST: HONORABLE RICHARD McMECHAM, SUPERIOR COURT JUDGE MARIPOSA
11 COUNTY: FORMER DISTRICT ATTORNEY OF MARIPOSA COUNTY, GEORGE GRIFFITH: RICHARD S.
12 GIMBLIN, PUBLIC DEFENDER MARIPOSA COUNTY: CLAUDE RICHARDS, UNDERSHERIFF MARIPOSA
13 COUNTY; BRIAN MULLER, DEPUTY SHERIFF MARIPOSA COUNTY.

14
15 The Claimant , David Tarvin, is filing a complaint against Judge Richard
16 McMecham, former District Attorney George Griffith, Public Defender Richard S.
17 Gimblin, Undersheriff Claude Richards and Deputy Sheriff Brian Muller, all from
18 Mariposa County, for knowingly and intentionally agreeing to the introduction of
19 false testimony in a court of law in order to obtain Claimant's conviction. For
20 partisipating in a conspiracy to deprive Claimant of his Fourteenth Amendment
21 due process right to a fair trial. See attached exhibit "A", the "agreed state-
22 ment" wherein, Judge McMecham, District Attorney Griffith and Defense Counsel for
23 the Claimant agreed unbeknownst to the Claimant to bring forth false testimony
24 about Claimant at his trial.

25 The prosecution knowingly and intentionally elicited false testimony
26 from Deputy Muller and reiterated this testimony to the jury in his closing argum-
27 ent. The testimony elicited by the prosecution from Deputy Muller was false bec-
28 ause, Deputy Muller stated under oath that Claimant had shot over Jim Branson's

1 head. No certified copy of a complaint of this incident was produced by Deputy
2 Muller or District Attorney Griffith verifying this incident occurred and trial
3 Judge McMecham allowed it to be heard by the jury as substantive evidence.
4 Deputy Muller's testimony, elicited by District Attorney Griffith, stating that
5 Jim Branson stated to him that Claimant shot over his head was false. This was
6 witnessed and testified to by Jim Branson during trial on direct examination under
7 oath. (See Recorder's Transcripts pages 207-208). Deputy Muller and Jim Branson
8 testified in relevant part as follows:

9 (Direct examination by District Attorney Griffith to Deputy Muller)

10 Question: Do you recall having an interview with Jim Branson June 18, 1990 ?

11 Answer: Yes, I do.

12 Question: Did he tell you about a shooting incident involving David Tarvin ?

13 Answer: Yes, he did.

14 Question: What did he say ?

15 Answer: He had stated, as I recall, he and Dave had been out wood cutting and
16 David had become angry for some reason. Had taken a rifle from his
17 vehicle and fired a shot over Jim Branson's head.

18 Question: Did you tape record that statement ?

19 Answer: No, I did not.

20 Question: And did you make a report on that shortly after you heard the statement ?

21 Answer: Yes, I did.

22 (Direct examination by District Attorney Griffith to Jim Branson)

23 Question: How long have you known Mr. Tarvin ?

24 Answer: All his life

25 Question: And was there an incident involving Mr. Tarvin shooting at you in your
26 presence ?

27 Answer: Can't recall.

28 Question: You don't recall the incident that you reported to the Sheriff's
Department ?

Answer: I reported it ?

Question: They talked to you about the case and reported that you indicated a
shooting incident involving Mr. Tarvin; Do you recall that ?

Answer: No.

Question: Are you a friend of Mr. Tarvin ?

Answer: Sure.

1 Thus, the facts of the record show that Jim Branson did not make that statement to
2 Deputy Muller, and the facts of the record show that District Attorney Griffith
3 knowingly and intentionally elicited false testimony from Deputy Muller.

4 Claimant asserts fact that, the District Attorney Griffith knowingly
5 and intentionally elicited false testimony from Undersheriff Richards by accusing
6 Claimant of having committed past prior criminal acts without verification, proper
7 certification or witnesses. Undersheriff Richards alleged that in January 1983,

8 hit his three year old son Erick in the face with a fist; and, in October
9 of 1982, another incident involving Claimant's son Charles, who suffered two black
10 eyes. (Recorder's Transcripts page 199, 16-22). This was false evidence solicited
11 by District Attorney Griffith to completely and utterly destroy Claimant's charac-
12 ter and defense, in lieu of evidence contrary to Claimant's claim of self-defense.
13 If defense counsel Gimblin would have informed Claimant of the District Attorneys
14 intentions to emit these allegations Claimant could have dispelled them with wit-
15 nesses who happened to be present in the court at Claimant's trial. Claimant
16 pleaded with defense counsel Gimblin to call these witnesses but, to no avail.

17 The District Attorney chose to expound upon a test performed by crim-
18 inalist John Hammon and Deputy Sheriff Davies, abrogating Claimant's testimony of
19 the facts as to how the incident occurred. (Recorder's Transcripts pages 375-378).
20 Their testimony, the results of this test, indicated that there was no sign or tra-
21 cks depicting that which the Claimant testified to. In the Recorder's Transcripts
22 page 19, line 13, Deputy Sarno states: "There was a light snow upon him". By vir-
23 tue of the laws of logic and nature this "light snow", and the rain that preceeded
24 it, would have erased any tracks or trace evidence indicative of how the victim was
25 moving at the instant of the incident. The ground was hard and dry at the time of
26 the incident. Even though the scene was compromised the District Attorney Griffith
27 stressed to the jury that, as a result of the findings of that test, the
28 testimony was a lie. This false testimony effected the jury's decision making pro-

1 cess by prejudicing the Claimant's defense. This collusion by the District Attorney
2 the defense counsel and the trial judge deprived the Claimant of his Fourteenth
3 Amendment due process right to a fair trial and civil equal rights.

4 Claimant asserts fact that, false testimony cases involve not only
5 prosecutorial misconduct but also, "a corruption of the truth seeking function of
6 the trial process". See, United States v. Agurs, 427 U.S. 104, 96 S. Ct. 2397; 49
7 L.Ed. 2d, 350.

8 Claimant asserts fact that, "a Judge who invidiously uses his office
9 to deprive a person of his federal protected constitutional rights can be held lia-
10 ble under, 42 U.S.C. Section 1983". See, Adkins v. Underwood, 52 F. 2d, 893.

11 Claimant asserts fact that, "the District Attorney has a responsibility
12 and a duty to correct what he knows to be false and elicit the truth". See, Napue
13 v. Illinois, 360 U.S. 264, 3 L. Ed. 2d, 1221.

14 In, United States v. Sanfilippo, 564 F. 2d, 178 (5th Cir. 1977), the
15 United States District Court explained and stated as follows...."Due process is vio-
16 lated when the prosecution or prosecutor, although not soliciting false evidence
17 from a government witness, allows it to stand uncorrected...". In, United States
18 v. Barham, 595 F. 2d, 241-243, the Supreme Court made it clear in no uncertain
19 terms that, "Due process is violated when the prosecution obtains a conviction with
20 the aid of false evidence which it knows to be false and allows to go uncorrected".

21 In the case of, People v. Gibson, 56 Cal. App. 3d 119, 128 Cal Rptr. 302,
22 Justice Jefferson said, "It apparently cannot be repeated to often for the guidance
23 of a part of the legal profession, that a Judge is not a meer umpire presiding over
24 a contest of wits between professional oponents, but a judicial officer entrusted
25 with the grave task of determining where the justice lies under the law and the
26 facts between the parties who have sought the protection of our courts. Within re-
27asonable limits, it is not only the right but the duty of a trial Judge to clearly
28 bring out the facts so that the important functions of his office may be fairly and

1 justly preformed". In the Claimant's case, the trial Judge should have exercised
2 his authority under Evidence Code § 352 and excluded this evidence.

3 Claimant asserts fact that, public defender Richard S. Gimblin stipu-
4 lated away Claimant's rights guaranteed by the Sixth Amendment and Fourteenth
5 Amendment due process right to a fair trial and civil equal rights, by entering
6 into an agreement with District Attorney Griffith and Trial Judge McMecham, to allow
7 unsubstantiated past prior acts to be entered into the proceedings and heard by the
8 jury without Claimant's knowledge. See attached exhibit "A", the "agreed statement"
9 and, attached exhibit "B", Claimant's statement declaring no knowledge of "agreed
10 statement". Defense counsel Gimblin agreed to allow unsubstantiated untrue past
11 prior acts to be heard by the jury, in exchange for factual incidents that were
12 committed by the victim, ie...victim having been convicted of arson and under the
13 influence of a high ammount of methamphetamine, plus alcohol and marijuana, (Rec-
14 orders Transcripts page 238). In, Strickland v. Washington, 466 U.S. 668,688-693
15 (1984), it states, "In representing a criminal defendant, counsel owes the client
16 a duty of loyalty, a duty to avoid conflicts of interest, a duty to avocate the
17 defendants cause, a duty to consult with the defendant on important decisions, a
18 duty to keep defendant informed of important developments in the course of the pro-
19 secution, and a duty to bring to bear such skill and knowledge as will render the
20 trial a reliable adversarial testing process". Claimant has shown that public
21 defender Gimblin's performance fell outside the wide range of professional comp-
22 etence and that there is a reasonable probablity that, but for counsels unprofes-
23 sional errors, the result of the proceeding would have been different. Taken from
24 the "two pronged test" stated in Strickland v. Washington. In re Winship, 397
25 United States 358, 364, 90 S. Ct. 1068, 1072, 25 L. Ed. 2d 368 (1970), it states,
26 "The Supreme Court has explicitly held that the due process clause protects the
27 accused against conviction, except upon proof beyond reasonable doubt of every
28 fact necessary to constitute the crime with which he is charged".

1 California Code Civ. Proc. Sec. §283 (1) states: "An attorney and
2 counselor shall have authority to; bind his client in any of the steps of an action
3 or proceeding by his agreement filed with the clerk or entered upon the minutes
4 of the court... and not otherwise. Without a client's consent an attorney may not
5 surrender any substantial rights of his client, nor may he impair, compromise or
6 destroy client's cause of action". In, People v. Davis, (1957) 48 C 2d 241, 309
7 P 2d 1, it says: "It is Manifestly incorrect, indeed, repugnant to the duty decl-
8 ared, to infer that counsel may knowingly allow a witness to testify falsely, weat-
9 her he be a criminal defendant or otherwise".

10 Claimant is basing this claim predicated on a conviction where an un-
11 fairness so gross has occurred as to deprive the Claimant of his Sixth and Four-
12 teenth Amendment due process right to a fair trial and civil equal rights. There-
13 fore, Claimant asks that this office, or those in charge, do whatever possible
14 and in whatever capacity appropriate, rectify the injustice that has been done to
15 the Claimant.

16
17 Date: 4/8/97

18 Respectfully Submitted David Tarvin
19 David Tarvin
20 In pro per
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EXHIBIT

"A"

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
vs.
DAVID RAY TARVIN,
Defendant and Appellant.

CASE NO. F014944
(Mariposa County Superior Court No. 1032)
AGREED STATEMENT

The jury trial in the above case in the Mariposa County Superior Court commenced on October 15, 1990. Counsel for the defendant was Mr. Richard Gimblin. Counsel for the People was District Attorney George W. Griffith. The Judge was the Honorable Richard L. McMechan.

Prior to the start of the jury trial, in Judge McMechan's chambers, Mr. Gimblin informed Judge McMechan that he intended to put on evidence of self-defense by his client, which would include evidence regarding the character of the victim, John Russell Brocchini, Mr. Brocchini's propensity toward violence, and specific incidents wherein Mr. Brocchini had exhibited violent conduct.

Mr. Griffith responded that such evidence was relevant to the claim of self-defense, but that evidence of the defendant's character, his propensity toward violence and specific incidents wherein the defendant had exhibited violent conduct was also

1 relevant, not only to the defendant's claim of self-defense, but
2 also to the charge of a violation of Section 187 of the Penal
3 Code.


4 Judge McMechan informed both counsel that he would allow
5 such evidence to be admitted as to both the victim and the
6 defendant.

7 Both counsel agreed that such evidence would come in
8 without objection.

9 The foregoing discussion in Judge McMechan's chambers
10 was not recorded by the court reporter.

11 The foregoing is true and accurate to the best of my
12 recollection.

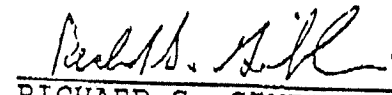
13 DATED: 9/14/91


RICHARD L. MCMCHAN
JUDGE OF THE SUPERIOR COURT

15 DATED: 9/16/91


GEORGE W. GRIFFITH
DISTRICT ATTORNEY

18 DATED: 9/17/91


RICHARD S. GIMBLIN
ATTORNEY FOR DEFENDANT,
DAVID RAY TARVIN

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EXHIBIT

"B"

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KATHERINE HART #76715
Attorney at Law
The Barrister Building
800 "M" Street
Fresno, CA 93710

(209) 264-4021

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE) CASE NO. F014944
OF CALIFORNIA,)
) (Mariposa County
Plaintiff and Respondent,) Superior Court No. 1032)
)
vs.)
)
DAVID RAY TARVIN,)
)
Defendant and Appellant.)
_____)

I, DAVID RAY TARVIN, do hereby declare under penalty of perjury as follows:

1. That I am the appellant in the above-entitled case;
2. That I was unaware that my attorney, Richard Gimblin, had entered into a pre-trial, oral stipulation with opposing counsel, George Griffith, in an unreported session in Judge's chambers, to allow in evidence of alleged incidents of former violent conduct on my part;
3. That I was unaware Judge Richard McMechan had informed both counsel that he would allow such evidence to be admitted;

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4. That since I was unaware of this stipulation, I asked my attorney to object during the trial when such evidence was introduced;

5. That when I asked my attorney to object to such evidence when it was introduced, he motioned with his hand to be quiet, saying that they would not bring it up and the jury will forget about it;

6. That had I been given an opportunity to discuss with my attorney his intent to so stipulate, I would have objected;

7. That I believe this unreported, oral, pre-trial stipulation made without my knowledge or consent seriously compromised my defense and violated my constitutional rights.

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

DATED: November 11, 1991


DAVID RAY TARVIN

DECLARATION OF SERVICE BY MAIL

CASE No. CV F 95 5902 REC SMS-P

DAVID R. TARVIN

v.

ANA M. OLIVAREZ

I am a citizen of the United States and a resident of the county of San Luis Obispo, California. I am incarcerated at the California Mens Colony-East.

I served the below specified document to each of the parties named below at the address shown, by placing a true copy in a sealed envelope and placing it in the care of the institutional mailroom.

DOCUMENT: COMPLAINT AGAINST: HONORABLE RICHARD McMECHAM, GEORGE GRIFFITH, RICHARD S. GIMBLIN, CLAUDE RICHARDS AND BRIAN MULLER.

PARTIES SERVED: THE MARIPOSA GRAND JURY
POST OFFICE BOX 789
MARIPOSA, CALIFORNIA 95338

THE MARIPOSA COUNTY BOARD OF SUPERVISORS
POST OFFICE BOX 784
MARIPOSA, CALIFORNIA 95338

I, David R. Tarvin, pursuant to 28 U.S.C. Section 1746, declare under penalty of perjury that the foregoing is true and correct. This document executed on, 8th April, 1997, At California Mens Colony-East, in San Luis Obispo, California, by:

/s/ 

David R. Tarvin

In pro per